



CITY OF MCMINNVILLE
PLANNING DEPARTMENT
231 NE FIFTH STREET
MCMINNVILLE, OR 97128

503-434-7311

www.mcminnvilleoregon.gov

DECISION, CONDITIONS, FINDINGS OF FACT AND CONCLUSIONARY FINDINGS FOR THE APPROVAL OF A VARIANCE TO THE FRONT AND EXTERIOR SIDE YARD SETBACK FOR PROPERTY AT 1032 NE HEMBREE STREET

- DOCKET:** VR 1-19 (Variance)
- REQUEST:** Application for a 5-foot variance to the front yard setback for a new front porch for the existing residence to be 10 feet from the front property line and new stairs to be 5 feet from the front property line on NE Hembree Street, and a 1-1/2 foot variance for the northerly portion of the front porch to be approximately 13-1/2 feet from the exterior side property line on NE 11th Street
- LOCATION:** 1032 NE Hembree Street (Tax Lot 12000, Section 16CD, T. 4 S., R. 4 W., W.M.)
- ZONING:** R-3 (Two-family Residential).
- APPLICANT:** Hans Van Dale (property owner)
- STAFF:** Tom Schauer, Senior Planner
- DATE DEEMED COMPLETE:** July 15, 2019
- HEARINGS BODY & ACTION:** McMinnville Planning Commission
- HEARING DATE & LOCATION:** August 15, 2019, Civic Hall, 200 NE 2nd Street, McMinnville, Oregon.
- PROCEDURE:** An application for a variance is processed in accordance with the procedures in Section 17.72.120 of the Zoning Ordinance. The application is reviewed by the Planning Commission in accordance with the quasi-judicial public hearing procedures specified in Section 17.72.130 of the Zoning Ordinance.
- CRITERIA:** The applicable criteria for a variance to front and exterior side yard setback requirements are provided as follows: Zoning Ordinance (Title 71 of the McMinnville Code): MMC Section 17.74.100. Variance – Planning Commission Authority; MMC Section 17.74.100. Conditions for Granting Variance; MMC Section 17.54.050. Yards, Subsection (H). In addition, the goals, policies, and proposals in Volume II of the Comprehensive Plan are to be applied to all land use decisions as criteria for approval, denial, or modification of the proposed request. Goals and policies are mandated; all land use decisions must conform to the applicable goals and policies of Volume II. “Proposals” specified in Volume

It are not mandated, but are to be undertaken in relation to all applicable land use requests.

APPEAL: The Planning Commission’s decision is final unless appealed to the City Council. Such an appeal must be filed within 15 calendar days of the date the written notice of decision is mailed.

If the Planning Commission’s decision is appealed to City Council, the City Council’s final decision may be appealed to the Oregon Land Use Board of Appeals as specified in State Statute. The City’s final decision is subject to the 120 day processing timeline, including resolution of any local appeal.

COMMENTS: This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Parks Department, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Public Works; Yamhill County Planning Department; Frontier Communications; Comcast; and Northwest Natural Gas.

DECISION

Based on the findings and conclusionary findings, the Planning Commission finds the applicable criteria are satisfied with conditions and **APPROVES** of the variance (VR 1-19) **subject to the conditions of approval provided in Section II of this document.**

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DECISION: APPROVAL WITH CONDITIONS
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Planning Commission: Roger A. Hall Date: 8-19-2019
Roger Hall, Chair of the McMinnville Planning Commission

Planning Department: [Signature] Date: 8-19-19
Heather Richards, Planning Director

I. APPLICATION SUMMARY & BACKGROUND:

Subject Property & Request

The proposal is an application for a variance to the front and exterior side yard setbacks for a new front porch and stairs. The required front yard setback of the R-3 zone is 15 feet, and the applicant is requesting a variance to reduce the front yard setback on NE Hembree to 10 feet for the porch. The porch also has eaves that would overhang into this setback. The Zoning Ordinance allows for encroachment by eaves of up to 30 inches into a required yard. In addition, the variance also applies to the proposed steps to the front porch. Section 17.54.040(C) of the Zoning Ordinance allows for steps that are not covered or enclosed to encroach up to 5 feet into a required front yard. With the porch encroaching five feet into the required front yard, that would mean the proposed stairs would encroach ten feet into the required fifteen foot front yard, where they would be approximately five feet from the front property line. The northerly portion of the porch would also encroach into the 15-foot setback along NE 11th Street by about 18 inches. The existing home is closer to NE 11th Street than the proposed porch. **See Exhibit 4.**

The subject property is a 5,375 square foot lot located at 1032 NE Hembree Street on the southeast corner of NE Hembree Street and NE 11th Street. The lot was originally 50'x100', but the abutting 15-foot alley was subsequently vacated, and 7.5 feet of the alley reverted to the lot. **See Exhibit 1.**

The subject property and surrounding properties are zoned R-3. The property and surrounding properties are generally in an area where the zoning transitions from the commercial core to the south, with residential zoning stepping down from R-4 to R-3 to R-2 northerly from the commercial core. To the east, there are properties with M-1 light industrial zoning along the railroad. Surrounding uses are predominantly single-family homes with some vacation rentals in this area. **See Exhibit 2.**

Summary of Criteria

The applicable criteria for a variance to front yard setback requirements are as follows:

- **Zoning Ordinance (Title 71 of the McMinnville Code):**
 - MMC Section 17.74.100. Variance – Planning Commission Authority;
 - MMC Section 17.74.100. Conditions for Granting Variance;
 - MMC Section 17.54.050. Yards, Subsection (H).
- **Comprehensive Plan:** The goals, policies, and proposals in Volume II of the Comprehensive Plan are to be applied to all land use decisions as criteria for approval, denial, or modification of the proposed request. Goals and policies are mandated; all land use decisions must conform to the applicable goals and policies of Volume II. “Proposals” specified in Volume II are not mandated, but are to be undertaken in relation to all applicable land use requests.

Interpreting the Variance Criteria

Some communities have variance criteria that serve strictly as a “relief valve” in the event a land use regulation would preclude all reasonable use of a property when the regulation is applied to a property that has unique characteristics that don’t generally apply to other properties subject to the same regulations. As a result, application of a standard to a specific property could result in a regulatory taking absent a variance process to allow reasonable use of the property. With such variance criteria, the bar to address the criteria is very high. For example, it would be nearly impossible to demonstrate the need for a variance on a property that has been developed and used for residential purposes since the 1930s.

Attachments:

Attachment 1 – Application and Attachments

Other communities have less restrictive variance criteria which are intended to provide for equity; those criteria are intended to provide for reasonable use and development of a property for intended uses, where there is a unique circumstance associated with the property. Such criteria typically provide for a comparison of the subject property to other similarly situated properties to allow for an adjustment to a general standard which isn't tailored to each unique situation that might arise on a property, where strict application of a standard might be unreasonable in a specific context. Often, this relates to unique size, shape, or topography of a property. In short, a limited variance to such a standard would allow for development with certain reasonable expectations about the use and development that are customary for the enjoyment of the property for intended uses.

The variance criteria in the McMinnville Zoning Ordinance include a comparison to other properties "in the same zone or vicinity." Therefore, the intent of the variance provisions of the McMinnville Zoning Ordinance are more consistent with the latter philosophy.

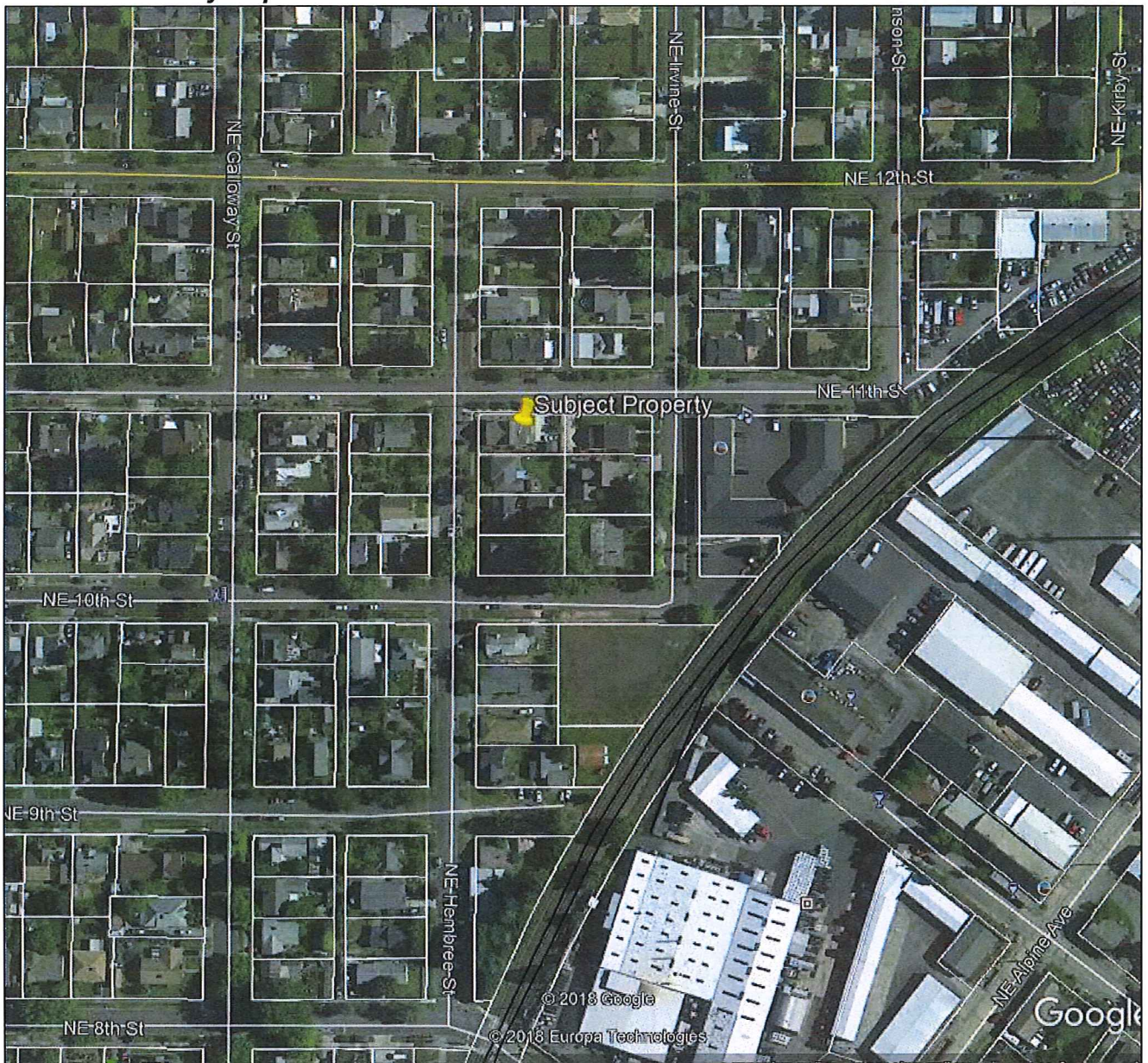
In either case, the unique situation associated with a property that creates the need for a variance shouldn't be a self-created hardship and shouldn't confer an additional special right to the property that isn't available to other properties (or wouldn't be available to another property with similar unique circumstances through a comparable variance application). Further, a variance shouldn't typically substitute for a legislative change that may be needed. For example, if a standard is always varied upon request no matter the context, then it would be more appropriate to change the standard so a variance isn't required. Otherwise, the standard wouldn't appear to serve a valid public purpose or appropriately implement policy if it is routinely varied.

Section VI of this document, the General Findings section, provides more detailed discussion of the context of the subject property, the vicinity, and the regulatory context of the zoning district.

Attachments:

Attachment 1 – Application and Attachments

Exhibit 1. Vicinity Map & Aerial Photo



Attachments :
Attachment 1 – Application and Attachments

Exhibit 2. Zoning Map

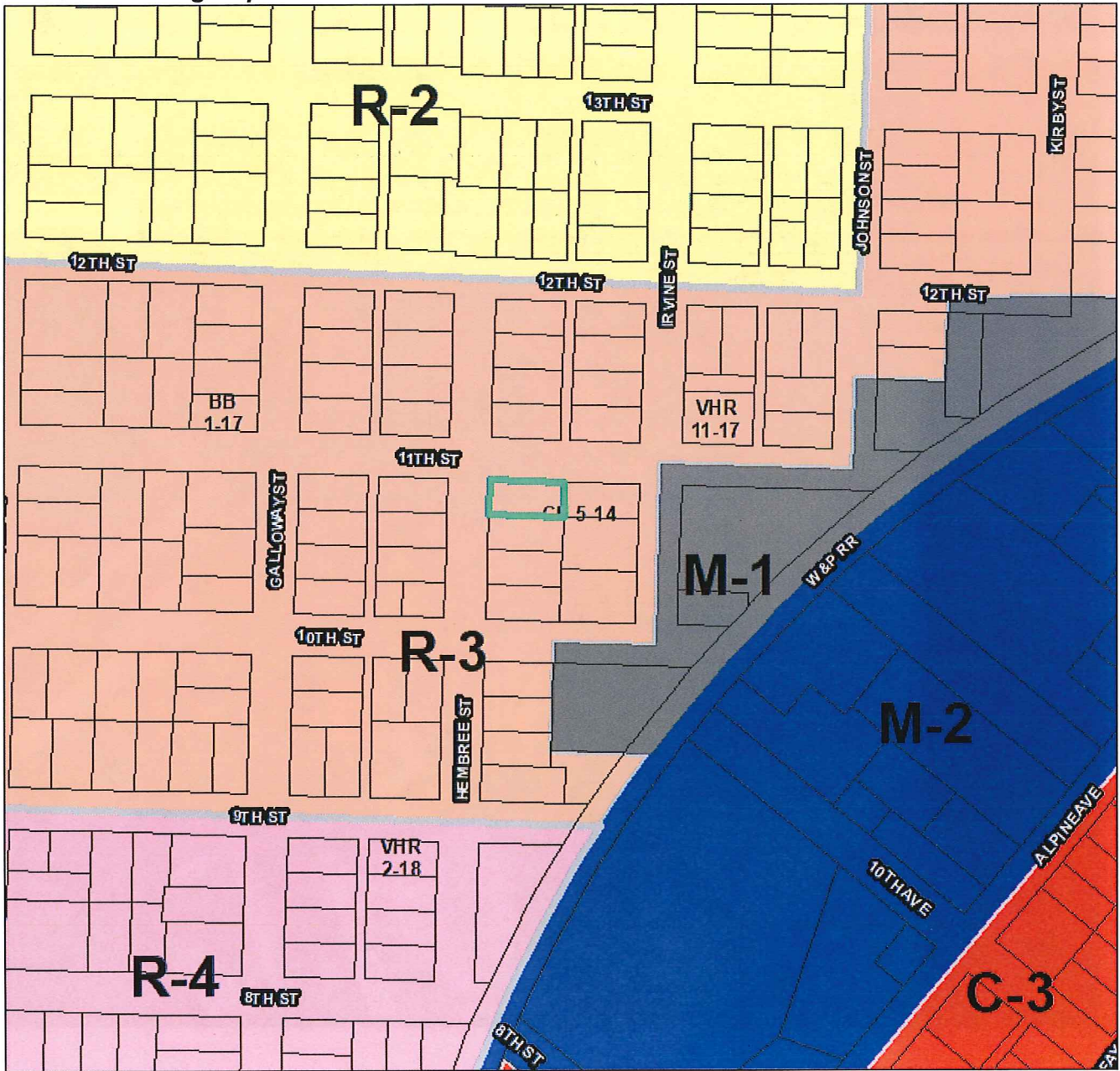
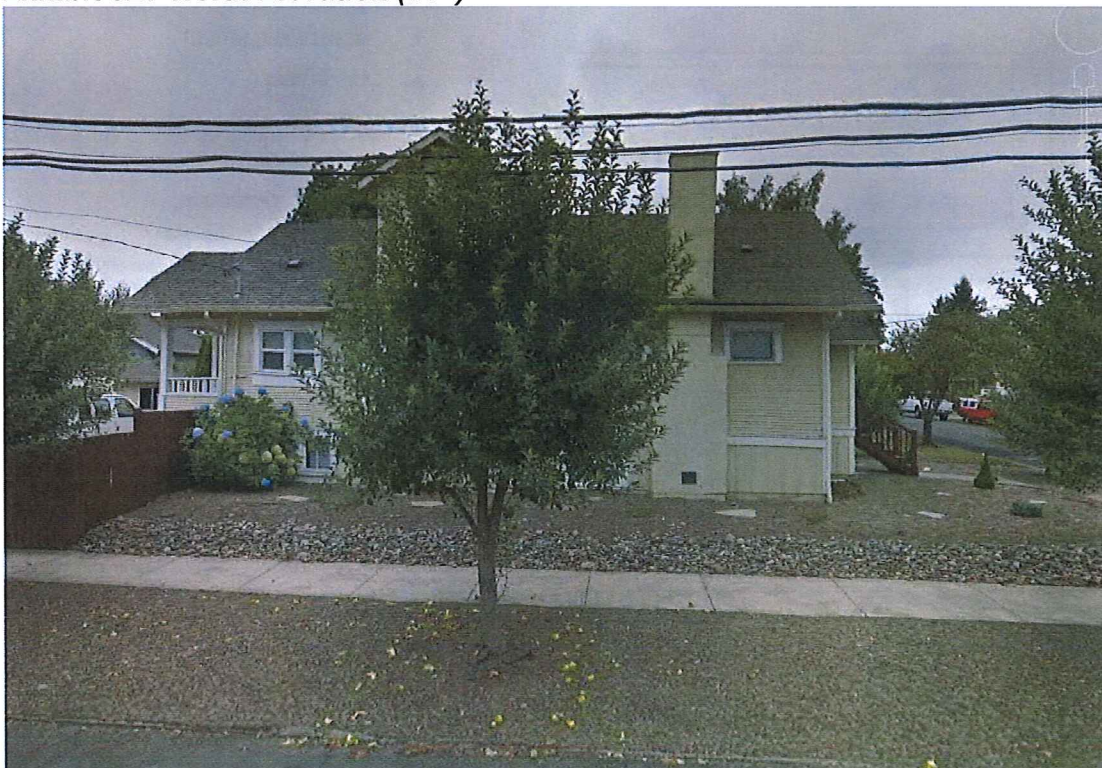


Exhibit 3A. Existing Development – West Elevation (Hembree)



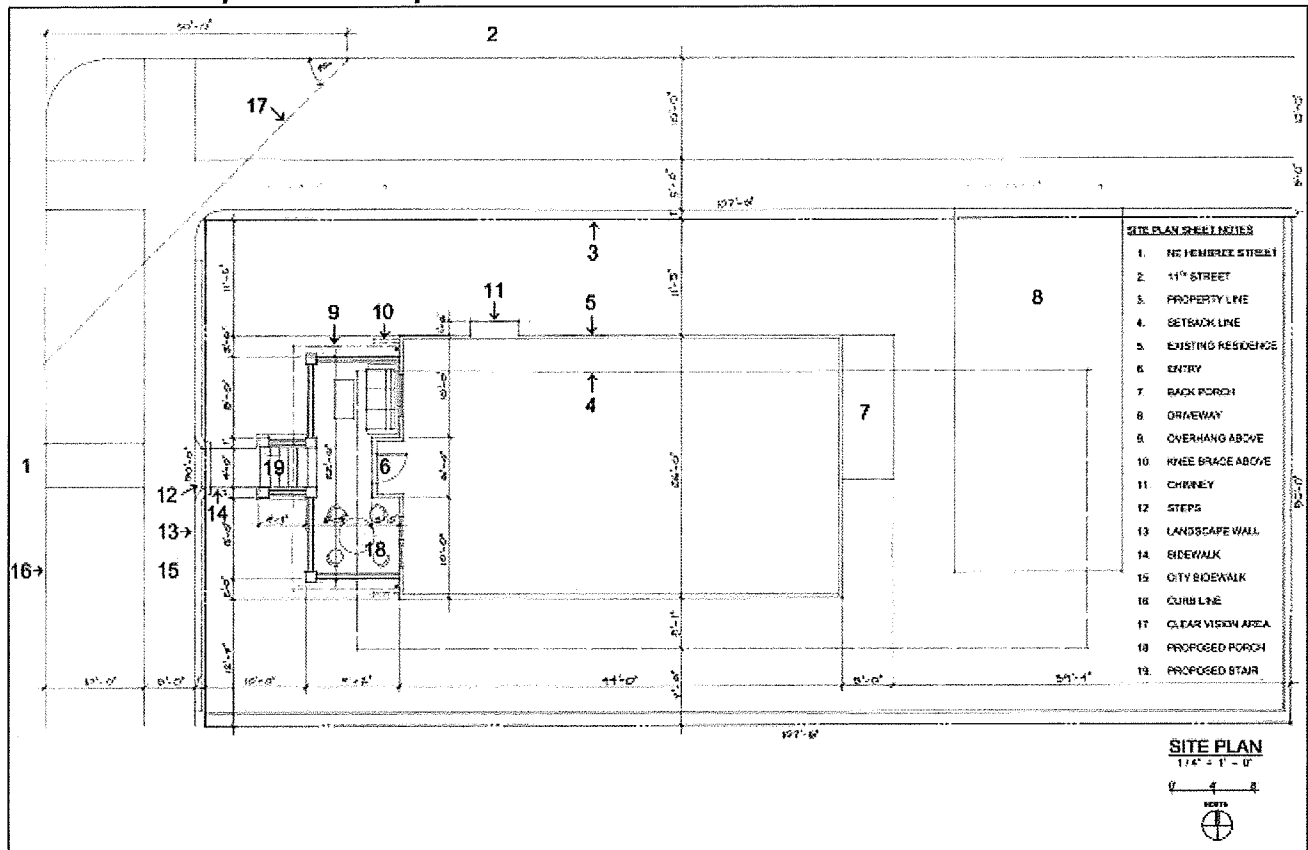
Exhibit 3B. North Elevation (11th)



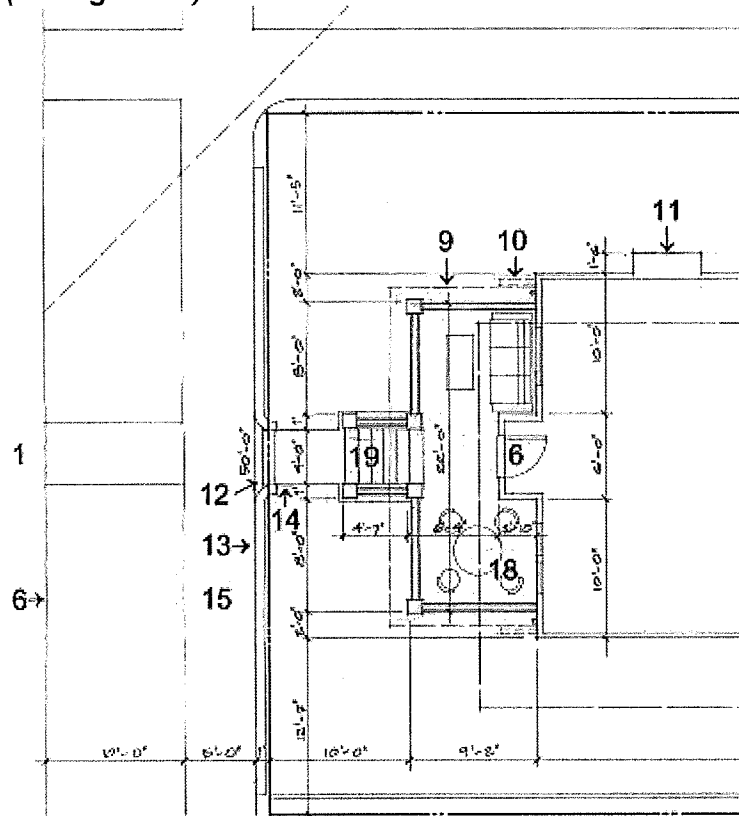
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Exhibit 4A. Proposed Development – Plan View



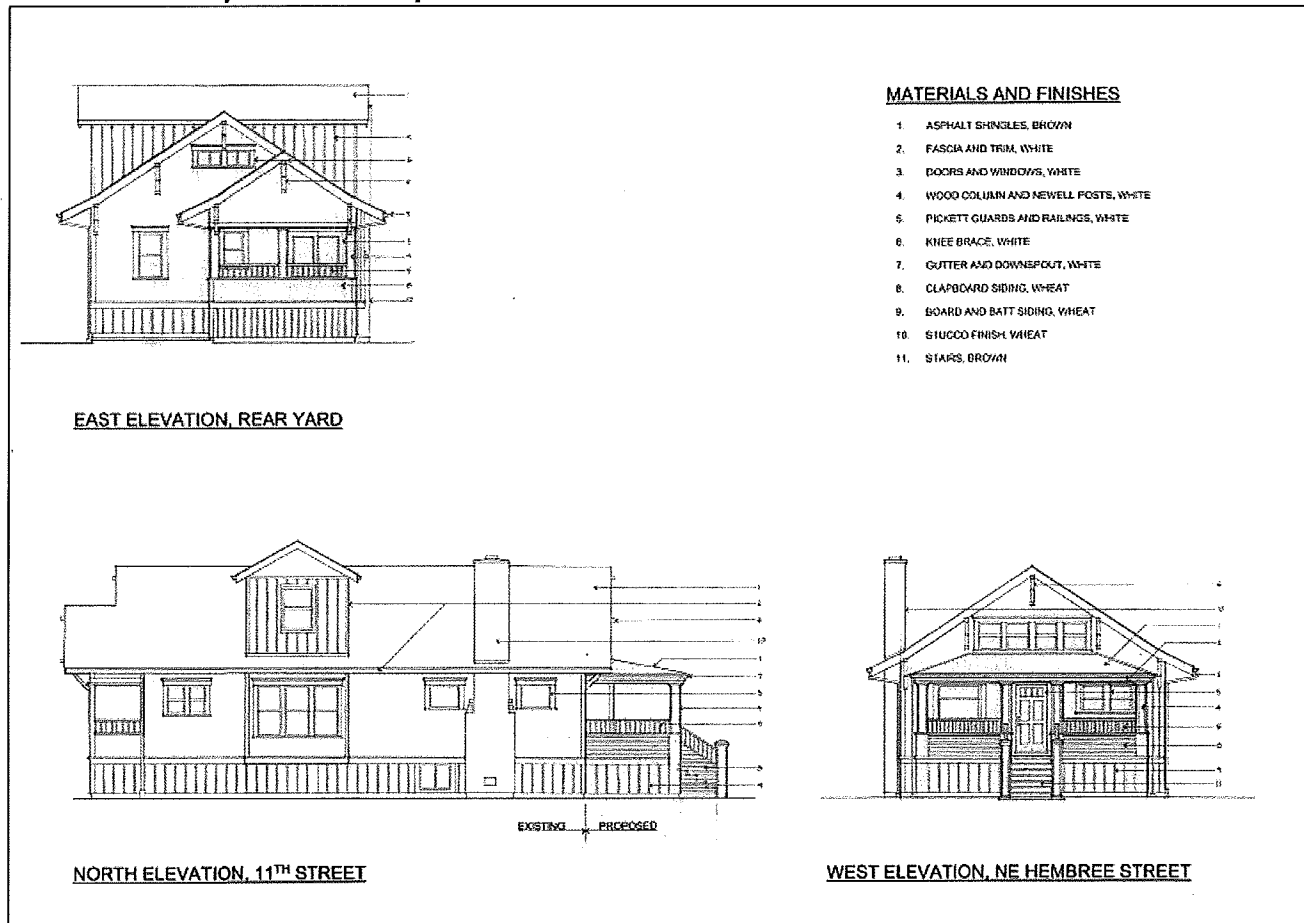
(Enlargement)



SITE PLAN SHEET NOTES

1. NE HEMBREE STREET
2. 11TH STREET
3. PROPERTY LINE
4. SETBACK LINE
5. EXISTING RESIDENCE
6. ENTRY
7. BACK PORCH
8. DRIVEWAY
9. OVERHANG ABOVE
10. KNEE BRACE ABOVE
11. CHIMNEY
12. STEPS
13. LANDSCAPE WALL
14. SIDEWALK
15. CITY SIDEWALK
16. CURB LINE
17. CLEAR VISION AREA
18. PROPOSED PORCH
19. PROPOSED STAIR

Exhibit 4B. Proposed Development - Elevations



II. CONDITIONS:

1. This variance shall be for the specific development of the new front porch and stairs described in the application. The front yard setback on NE Hembree Street shall be reduced by 5 feet. This variance therefore authorizes the proposed covered porch to be 10 feet rather than 15 feet from the property line, and authorizes the eaves to encroach up to 30 inches within the reduced setback. This variance also authorizes the uncovered & unenclosed stairs to be 5 feet rather than 10 feet from the front property line.

The exterior side setback on NE 11th Street shall be reduced by 1-1/2 feet for the northerly portion of the front porch. This variance therefore authorizes the proposed covered porch to be 13-1/2 feet rather than 15 feet from the north property line, and authorizes the eaves and kneebrace/bracket to encroach up to 30 inches within the reduced setback.

This variance shall not authorize encroachment of other development not included in the proposal, and doesn't allow encroachment into the required front yard or exterior side yard to a greater depth or width than specified for the proposed front porch and stairs. This variance doesn't authorize the future enclosure of the porch to become additional interior living space. The variance doesn't authorize redesign of the porch and stairs without reapplication for a new variance to demonstrate such future design would meet the applicable criteria. The Planning Director may authorize minor "de minimus" changes to the design that don't materially affect the character of development or consistency with the applicable criteria.

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2. As specified in Section 17.74.130(A) of the Zoning Ordinance, the variance “runs with the land.” The variance shall become an integral part of the property and shall be conveyed to the benefit of the owner or other person(s) entitled to possession regardless of transfer of title or interest unless otherwise specified herein.
3. The variance is subject to the following Termination Conditions and Procedures, specified in Sections 17.74.130 of the Zoning Ordinance.
 - A. The variance shall be terminated if:
 1. Any construction or remodeling relative to the variance as approved has not been started within one year of the date specified on a development schedule approved with the variance, or in case no such development schedule was approved, within one year of the effective date of approval;
 2. There is a failure to meet any condition as may be specifically required by the Planning Commission at the time of approval of the variance;
 - B. The Planning Director shall determine if a variance is in compliance with this section and any condition imposed by the Planning Commission. At such time as a variance becomes subject to termination as provided by this section, the Planning Director shall notify in writing the legal owner of record or the occupant the grounds on which the variance will be terminated. Notice of termination will be delivered by registered mail. A receipt of delivery will be returned to the Planning Director;
 - C. An action or ruling of the Planning Director pursuant to this section may be appealed to the Planning Commission within thirty days after the recorded date of delivery of the notice of termination. In the event the notice is not deliverable or acceptance is refused or unclaimed, the thirty days in which an appeal may be filed shall be computed from the date of mailing. Notice of appeal shall be in writing and filed with the Planning Department. The decision of the Planning Director is final if the appeal is not taken within the 30 (thirty) day period. If the appeal is filed, the Planning Commission shall receive a report and recommendation thereon from the Planning Director and shall hold a public hearing on the appeal pursuant to Section 17.72.130. The variance shall be invalid during the appeal process, and no work shall be undertaken during the appeal process;
 - D. Upon termination of a variance, the property shall thereafter be used in accordance with the zoning ordinance and other applicable plans, ordinances, resolutions, rules, and regulations unless a variance or other action is subsequently approved.

III. ATTACHMENTS:

1. V 1-19 Application and Attachments (on file with the Planning Department)

IV. COMMENTS:

Agency Comments

This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Parks and Recreation Department, Engineering and Building Departments, City Manager, and City Attorney, McMinnville School District No. 40, McMinnville Water and Light, Yamhill County Public Works, Yamhill County Planning Department, Recology Western Oregon, Frontier Communications, Comcast, and Northwest Natural Gas.

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The McMinnville Engineering Department and McMinnville Water and Light responded that they had no comments.

Public Comments

Notice of this request was mailed to property owners located within 100 feet of the subject site. Notice of the public hearing was also provided in the News Register on Tuesday, August 6, 2019. As of the date of the Planning Commission public hearing on August 15, 2019, no public testimony had been received by the Planning Department.

V. FINDINGS OF FACT - PROCEDURAL FINDINGS

1. The applicant held a neighborhood meeting in accordance with Section 17.72.095 of the Zoning Ordinance on June 7, 2019.
2. The application was submitted on June 14, 2019
3. The application was deemed complete on July 15, 2019.
4. Notice of the application was referred to the following public agencies for comment in accordance with Section 17.72.120 of the Zoning Ordinance: McMinnville Fire Department, Police Department, Parks and Recreation Department, Engineering and Building Departments, City Manager, and City Attorney, McMinnville School District No. 40, McMinnville Water and Light, Yamhill County Public Works, Yamhill County Planning Department, Recology Western Oregon, Frontier Communications, Comcast, Northwest Natural Gas.

The McMinnville Engineering Department and McMinnville Water and Light responded that they had no comments.

5. Notice of the application and the August 15, 2019 Planning Commission public hearing was mailed to property owners within 100 feet of the subject property on July 23, 2019 in accordance with Section 17.72.120 of the Zoning Ordinance.
6. Notice of the application and the August 15, 2019 Planning Commission public hearing was published in the News Register on Tuesday, August 6, 2019, in accordance with Section 17.72.120 of the Zoning Ordinance.

No public testimony was submitted to the Planning Department prior to the Planning Commission public hearing.

7. On August 15, 2019, the Planning Commission held a duly noticed public hearing to consider the request.

VI. FINDINGS OF FACT - GENERAL FINDINGS

1. **Location:** 1032 NE Hembree Street (Tax Lot 12000, Section 16CD, T. 4 S., R. 4 W., W.M.):
2. **Lot Size:** 5,375 square feet (original 50'x100' lot plus half the width of vacated 15' alley)
3. **Comprehensive Plan Map Designation:** Residential
4. **Zoning:** R-3 (Two-family residential).
 - a. **Minimum Lot Size:** 6,000 square feet.

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- b. **Minimum Yards:**
- i. Front: 15'
 - ii. Rear: 20'
 - iii. Interior Side: 7.5'
 - iv. Exterior Side, Corner Lot: 15'
5. **Overlay Zones/Special Districts:** None
6. **Current Use:** Single-family dwelling. The property previously had prior authorization for a vacation rental, but that ceased in 2017. A permit was issued for a carport in 1995.
7. **Inventoried Significant Resources:**
- a. **Historic Resources:** The property is designated as a Class C historic resource in the City's historic resource inventory. Historic resources were inventoried and classified. Those classified as Class A or B resources are "landmarks". Those classified as Class C or D resources are "resources" only. Class C resources that are not on the National Register or within a historic district are not subject to review for exterior alteration, but are subject to review for demolition or relocation.
 - b. **Other:** None Identified
8. **Other Features:** The site is generally level, with the lot elevated above the sidewalk level with a retaining wall and steps on Hembree and with the site sloping up and leveling off to the building exterior on NE 11th. The home has a basement, and there are steps up to the main floor of the home on Hembree.
9. **Utilities:**
- a. **Water:** A 12" water main is present along the frontage in NE 11th and a 10" water main is present in NE Hembree
 - b. **Sewer:** A 36" sewer main is present in NE 11th and an 8" main is present in NE Hembree.
 - c. **Stormwater:** A 10" storm drain is present in NE Hembree, with a catchbasin located at the corner of this lot.
 - d. **Other Services:** Other services are available to the property. Overhead utilities are present along the property frontage on NE 11th Street and on the west side of NE Hembree, predominantly within the planter strip area within the right-of-way.
10. **Transportation:** NE Hembree Street and NE 11th Street are both classified as local streets. Both are improved in this area with curb, gutter, planter strips, and sidewalks within a 60-foot right-of-way. The street width from face of curb to face of curb is approximately 28 feet wide. The property has driveway access off NE 11th Street near the east side of the lot.
11. **Description of Vicinity and Regulatory Context.** The property was platted as part of the Oak Park Addition in 1889. The vicinity is predominantly comprised of 200' x 215' blocks, most of which had eight 50'x100' lots per block, with a 15' wide right-of-way for rear alleys and 60' wide right-of-way for streets. Some of the alleys have since been vacated, resulting in lots that are 50' by 107.5' after the alley right-of-way reversion to the adjacent lots. Some of the lots have also been adjusted and reconfigured. Adjoining subdivisions in the vicinity include Beaumont Park Addition to the northwest, platted in 1910 and I.M. Johns Addition to the southwest, platted in 1877. These lots and blocks generally have similar characteristics as the Oak Park Addition.

Where the Oak Park Addition abuts these adjoining subdivisions, some of the adjacent blocks are joined, with 60'x100' lots rather than 60' right-of-way between the blocks, making the blocks

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approximately 490' from east to west and 200' from north to south. There is a concentration of homes in this area which were built in the late 1800s and early to mid-1900s.

The subject property is a corner lot (Lot 4) of Block 40 of the Oak Park Addition. It remains as originally configured, except that the 15' alley has been vacated extending the dimensions of the 50'x100' lot to 50'x107.5'. The existing home was built in 1935.

Records of land use regulations predating the 1968 zoning ordinance are not readily available. It appears the vicinity was zoned R-3 at the time of the 1968 Zoning Ordinance. At that time, the R-3 zone specified 20' minimum yards for front and exterior side yards, and it specified a minimum lot size of 6,000 square feet. The minimum required front and side yards were subsequently reduced to 15' minimum.

The R-3 zoning made most of the properties in the vicinity, predominantly 5,000 square foot lots, nonconforming in lot area due to the 6,000 square foot minimum lot size requirement. It also made many existing structures nonconforming in respect to setbacks/required yards. Many structures, or porches, in the vicinity are setback less than 15' feet from the front and/or exterior side yards. The applicant has submitted several examples of structures and/or porches in the vicinity with setback less than 15'. These examples include structures on interior lots and corner lots.

The Zoning Ordinance provides some relief as follows:

- **Lot Size.** Section 17.63.020: Lots of record—Single-family dwelling construction permitted. In a residential district, one single-family dwelling may be constructed on any single lot of record which is nonconforming because of area, width, length, or a combination thereof, provided the lot is no less than four thousand square feet in area. All other zoning requirements, such as yard dimensions, setbacks, etc., shall conform to the zone in which the lot is located. (Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).
- **Front Yards.** Section 17.54.050(B): Yards, Requirement Exceptions. The following exceptions to the front-yard requirements for a dwelling are authorized for a lot in any zone:
 1. If there are dwellings on both abutting lots with front yards of depths less than the required depth for the zone, the depth of the front yard for the intervening lot need not exceed the average depth of the front yards of the abutting lots.
 2. If there is a dwelling on one abutting lot with a front yard of less depth than the required depth for the zone, the front yard for the lot need not exceed a depth halfway between the depth of the abutting lot and the required front-yard depth.

However, it is also restrictive as follows regarding nonconforming use and development:

- 17.63.010. Purpose. Within the zones established by this title there exist lots, structures and uses of land and structures which were lawful before the ordinance codified in this title was passed or amended, but which are now prohibited, regulated, or restricted under the terms of this title and amendments. It is the intent of this title to permit these nonconformities until they are removed or abandoned, but not to encourage their survival. Such uses are declared by this title to be incompatible with permitted uses in the zones involved. It is further the intent of this title that nonconformities shall not be enlarged upon, expanded or extended, except as provided for in this title. (Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).

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- 17.63.030. Structures—Alteration or extension. Structures conforming as to use but nonconforming as to height, yard requirements, setback, lot size, or density may be altered or extended, provided the alteration or extension does not result in a violation of this title, except as provided below:
 - A. Dwellings may be altered or extended subject to the provisions of Section 17.54.050;
 - B. Dwellings located in residential zones may be altered or extended so long as the alteration or extension does not result in a violation of this title or so long as the alteration or extension is confined within the existing building lines. (Ord. 4912 §3 2009; Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).

Given the historic development pattern of the vicinity, the combined effect of these provisions would be to substantially transform the character and pattern of development in this vicinity. These provisions generally preclude new development that would match the historic development pattern of lots in the vicinity. As addressed below, the R-3 zoning district was applied to land with a variety of contexts for different purposes. The development standards of the R-3 zone are a somewhat “coarser-grained” regulatory tool, with one set of standards applicable to regulation the different contexts to which the R-3 zone is applied. Therefore, it may not fully account for the differences in those contexts. For example, in this instance, the R-3 zone is applied to a historic neighborhood of existing development. In other locations, the R-3 zone is applied to vacant land for new development.

While Section 17.54.050(B) serves to provide limited relief without a variance, it only provides for consideration of the development on immediately adjacent lots. Further, the Zoning Ordinance doesn’t distinguish between the front yard “averaging” for a porch vs. the wall of a primary dwelling, which have different characteristics. In some instances, a reduced setback for a porch might match surrounding historic development, whereas a reduced setback from the exterior walls of the primary structure might not.

Absent a variance, this limited relief provision doesn’t allow for the recognition of the concentration of other nonconforming front setbacks in the vicinity, but rather only considers the context of immediately adjacent lots.

However, it should be noted this standard provides a basis for reducing setbacks to match existing context. It provides an opportunity to reduce setbacks based on context in some circumstances without the need for a variance.

Sections 17.54.020 and 17.54.050 of the Zoning Ordinance provide some exceptions to setback requirements, but do not provide exceptions for encroachment of a covered porch into a front yard setbacks, other than for eaves. Section 17.54.050(C) provides that “stairs may encroach up to five (5) feet into a required front yard provided that the stairs are not covered or enclosed, except for an eave not exceeding the 30 (thirty) inch encroachment as noted above.”

Therefore, no other relief is available in the Zoning Ordinance, and a variance is the appropriate application to seek relief from the applicable front yard standards.

12. **Description of Residential Zones, Properties within the R-3 Zone, and Regulatory Context.** The Zoning Ordinance has four residential zones: R-1, R-2, R-3, and R-4. The R-1 and R-2 zones are predominantly single-family residential zones, with some allowance for semi-detached housing (sharing only one common wall) and corner duplexes; in addition, the R-3

zone also allows duplexes on other lots; in addition, the R-4 zone also allows attached housing and multi-family housing.

Minimum lot sizes and minimum yard requirements are generally as provided in the following table, as applicable to single-family detached homes, with some differences for duplexes and attached housing:

Zone	Minimum Lot Size (sq ft)	Max. Height (feet)	Minimum Required Yards (feet)			
			Front	Exterior Side (corner lot)	Interior Side	Rear
R-1	9,000	35	20	20	10	20
R-2	7,000	35	20	20	7.5	20
R-3	6,000	35	15	15	7.5	20
R-4	5,000	60	15	15	6	20

Note: These lot sizes and yards are generally applicable to single-family detached homes and may vary in some zones for other uses, such as certain lots with duplexes, semi-detached, and attached housing.

The City doesn't have a separate residential zoning district with development standards that are comparable to the historic development pattern of the neighborhood and vicinity. In short, the zoning ordinance doesn't provide a finer gradation of zoning districts that reflect a "small lot single-family zone" with smaller setbacks and lot sizes that historically occurred in some neighborhoods. There is no zoning district with a minimum front yard setback less than 15 feet. (The R-3 zone previously had a minimum front yard setback of 20 feet). In addition, the R-4 zone is the only zone with a 5,000 square foot minimum lot size; however, it also allows multi-family residential development up to 60 feet in height with densities up to approximately 29 units per acre.

The R-3 zoning which applies to the subject property is applied to a wide variety of contexts within the community. It is applied to the vicinity described above, providing a transition from the R-4 zoning near the downtown core to the south, transitioning to the R-3 area, and to the R-2 zoned area to the north of this area.

It is also applied to approximately seven other areas throughout McMinnville. This covers areas of a variety of eras, up to and including requests for rezoning of vacant land for new development.

As a result of applying the R-3 zoning in the vicinity of the subject property, many of the existing lots and structures were made nonconforming. In other areas, it has been applied with the expectation that all newly subdivided lots and new development on those lots would occur in accordance with the zoning and standards of the R-3 zoning in effect at time of subdivision and development. There are circumstances that apply to the subject property and neighborhood that don't apply to other areas within the R-3 zone.

13. **Context Considerations.** As discussed in Section 17.63.010, it is possible that the R-3 zoning was applied to certain areas with the intent of transforming the area to gradually bring all of the existing development into compliance with the new zoning and standards over time, or gradually transitioning the area to more intensive duplex development over time. However, it appears unlikely that either of those outcomes was the intent of applying the R-3 zoning to this area and the vicinity of the subject property, especially given the recognition of the high concentration of designated and recognized historic properties in the vicinity.

It is more likely that the "step down" transition in intensity of zoning from the core commercial area outward implements a reasonable policy objective, but the lack of "finer-grained" zoning

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tailored to the historic context may have resulted in a “coarser-grained” and generalized regulatory tool that doesn’t specifically recognize and maintain the context and character of the historic neighborhood. With the R-3 zoning, it doesn’t appear that the intent was to encourage substantial redevelopment of the area, since the incremental difference between the existing development and limited potential for more intensive development allowed in the R-3 zone isn’t dramatically different enough given the existing development pattern and parcelization to induce redevelopment with more intensive development. In fact, many lots in this neighborhood and area with the R-3 zoning are too small to meet the minimum lot area and density requirements that would allow a duplex or any residential use other than a single-family dwelling.

With the recent adoption of Great Neighborhood Principles and the 2019 legislative enactment of HB 2001, there may be value in considering future legislative action to evaluate broader zoning changes to the historic neighborhood context to allow for continuation of development that is in character and context of the small lot single family development with lesser setbacks.

A 10-foot front or exterior side setback would likely be the greater authorized reduction for a covered porch in most areas, since there is frequently a need for 10-foot public utility easements behind the right-of-way. However, in historic neighborhoods, utilities are sometimes provided within the right-of-way or alleyway.

VII. CONCLUSIONARY FINDINGS:

The Conclusionary Findings are the findings regarding consistency with the applicable criteria for the application. The applicable criteria for a variance to front yard setback requirements are as follows:

- **Zoning Ordinance (Title 71 of the McMinnville Code):**
 - MMC Section 17.74.100. Variance – Planning Commission Authority;
 - MMC Section 17.74.100. Conditions for Granting Variance;
 - MMC Section 17.54.050. Yards, Subsection (H).
- **Comprehensive Plan:** The goals, policies, and proposals in Volume II of the Comprehensive Plan are to be applied to all land use decisions as criteria for approval, denial, or modification of the proposed request. Goals and policies are mandated; all land use decisions must conform to the applicable goals and policies of Volume II. “Proposals” specified in Volume II are not mandated, but are to be undertaken in relation to all applicable land use requests.

MCMINNVILLE ZONING ORDINANCE

The following Sections of the McMinnville Zoning Ordinance (Ord. No. 3380) provide criteria applicable to the request:

- 17.74.100. Variance – Planning Commission Authority
- 17.74.110. Conditions for granting Variance.
- 17.54.050. Yards, Subsection (H)

Section 17.74.100. Variance – Planning Commission Authority

The Planning Commission may authorize variances from the requirements of this title where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this title would cause an undue or unnecessary hardship, except that no variance shall be granted to allow the use of property for a purpose not authorized within the zone in which the proposed use would be located. In granting a variance, the Planning Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood and otherwise achieve the purposes of this title.

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Owing to special and unusual circumstances related to a specific piece of property, strict application of this title would cause an undue or unnecessary hardship.

APPLICANT’S RESPONSE: It would be an unnecessary hardship to prevent the construction of a porch that would allow the owners to enjoy the sense of community enjoyed by other homes in the neighborhood.

FINDING: SATISFIED. As discussed in Section VI, the subject property and surrounding properties are part of the Oak Park Addition platted in 1889 before R-3 zoning applied to the property. As a result, there are numerous homes in the area which were built in the late 1800s and early to mid-1900s before the R-3 zone applied to the property, and the homes do not meet the setbacks of the R-3 zone. The applicant has provided several examples of both interior and corner lots in the vicinity with homes that don’t meet the current R-3 setbacks. In some cases these have nonconforming porches and in other cases exterior walls of the dwellings setback less than the 15-foot setback specified by the R-3 zone.

The subject property is a small lot, which is nonconforming in respect to the lot area of the R-3 zone. It was developed historically before the R-3 zoning and setbacks applied to the property. It is located in a vicinity where most of the properties are also small lots nonconforming in respect to the 6,000 square foot minimum lot size requirement of the R-3 zone. In this vicinity, there are numerous properties which developed prior to the R-3 zoning with structures which became nonconforming as a result of the R-3 zoning and its setback standards. There are examples of nearly identical development to what is proposed within surrounding blocks of the subject property. While some properties in the vicinity may be eligible for reduced front yard setbacks in the vicinity due to nonconforming setbacks on adjacent lots, this lot doesn’t have that circumstance on the adjacent lots, and doesn’t qualify for that relief absent a variance.

Currently, the front entrance to the property has steps up the front door, and a small covered entry that is only large enough to provide protection from the elements at the front door. There is no space for a functional front porch without the need for a variance. Functional covered front porches with reduced setbacks are a feature common to historic properties in this vicinity. The nonconforming size of the lot relative to the zoning, and the historic placement of the home on this site before the R-3 zoning was applied precludes the ability to provide a functional front porch on the property without a variance. Strict application of the R-3 setback given the context of the home in this vicinity would create an unnecessary hardship for reasonable use of the property consistent with the historic context of the property and vicinity.

No variance shall be granted to allow the use of property for a purpose not authorized within the zone

APPLICANT’S RESPONSE: (N/A)

FINDING: SATISFIED. The proposed use of the property for a new front porch and stairs for the existing dwelling is a permitted use of the property in the R-3 zone.

In granting a variance, the Planning Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood and otherwise achieve the purposes of this title.

APPLICANT’S RESPONSE: (N/A)

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FINDING: SATISFIED WITH CONDITIONS. The purpose of Title 17 (Zoning) is provided below:

17.03.020. Purpose. The purpose of the ordinance codified in Chapters 17.03 (General Provisions) through 17.74 (Review Criteria) of this title is to encourage appropriate and orderly physical development in the city through standards designed to protect residential, commercial, industrial, and civic areas from the intrusions of incompatible uses; to provide opportunities for establishments to concentrate for efficient operation in mutually beneficial relationship to each other and to shared services; to provide adequate open space, desired levels of population densities, workable relationships between land uses and the transportation system, adequate community facilities; and to provide assurance of opportunities for effective utilization of the land resources; and to promote in other ways public health, safety, convenience, and general welfare.

The requested variance is for the covered front porch and the uncovered steps to the front porch. The variance runs with the land. However, the variance is granted for the specific development proposal. It is not an unlimited variance to reduce the setbacks in general. This criterion is met subject to conditions that attach the variance to this specific development.

This protects the best interests of the surrounding property and neighborhood and achieves the purposes by limiting the variance to this proposal. While the proposal is consistent with the historic context of the vicinity and neighborhood, the variance is not open-ended. It doesn't apply to a porch that lacks historic character, it doesn't allow for the exterior walls of the main building to encroach into the front yard setback, and it doesn't grant a variance to the setback in general for width or depth – only where the proposed porch and stairs encroach. The limited relief granted by the variance would require any other future application that doesn't meet the standards to apply for a variance and demonstrate compatibility with the vicinity and neighborhood and consistency with applicable criteria.

This is consistent with the purpose stated above, providing assurance of effective utilization of land resources and compatibility of use.

17.74.110. Conditions for Granting Variance

A variance may be granted only in the event that the following circumstances substantially exist:

- A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape legally existing prior to the date of the ordinance codified in this title, topography, or other circumstance over which the applicant has no control;

APPLICANT'S RESPONSE: The original construction of this house predates the majority of houses in the neighborhood and the city zoning ordinance. The house is too close to the front setback line to allow for a functional front porch within the setback lines.

FINDING: SATISFIED. Circumstances apply to the subject property and vicinity which do not apply generally to other properties in the same zone. Much of the area became nonconforming when the R-3 zoning was applied to the historic neighborhood. As discussed in the general findings, the subject property and properties in the general vicinity became nonconforming in respect to size, and many in respect to setbacks, as the result of the R-3 zoning being applied to properties in the vicinity after the historic development had occurred. Properties in this vicinity differ from other areas with R-3 zoning which

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developed after the R-3 zoning was applied, and which generally conform to the R-3 standards. Some properties in this vicinity may be eligible for reduced setbacks without the need for a variance based on code provisions relating to existing development and setbacks on adjacent lots. However, the variance process provides an opportunity to review similar relief on a case-by-case basis to ensure compatibility with the historic context of the neighborhood and the characteristics of the proposed development.

- B. The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess;

APPLICANT’S RESPONSE: A large majority of the neighborhood homes have covered front porches. The porch would be consistent with the texture of the neighborhood. This home should enjoy the same benefits shared by all the other homes with front porches.

FINDING: SATISFIED WITH CONDITIONS. As discussed in the general findings, the variance provides for development of property substantially the same as exists for numerous properties in the vicinity which developed with lesser setbacks before the R-3 zoning and standards were applied to this vicinity which is characterized by historic development. This criterion is met subject to conditions that attach the variance to this specific development. The variance is necessary for preservation of a property right substantially the same as other properties which developed in the vicinity under lesser setback requirements. The conditions limiting the scope of the variance ensure the variance approval doesn’t confer broader property rights with more open-ended variance to the setbacks that may not be comparable to other properties in the same vicinity.

- C. The variance would not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city plan or policy;

APPLICANT’S RESPONSE: There are no safety issues associated with the request. On the contrary, where buildings are closer to the street, the street feels smaller and more protected. Close proximity to the sidewalk promotes interaction with neighbors walking by, pushing strollers, walking their dogs, etc. A greater sense of community is developed.

FINDING: SATISFIED WITH CONDITIONS. The variance would allow development of the property in a manner that has substantially the same characteristics as a number of other properties in the vicinity in which the property is located. It would not be materially detrimental to the purposes of the title or conflict with objectives of city policies. Additional findings regarding policies are addressed under the Comprehensive Plan criteria below. This criterion is met subject to conditions that attach the variance to this specific development proposal.

- D. The variance requested is the minimum variance which would alleviate the hardship.

APPLICANT’S RESPONSE: The proposed porch design is not a cosmetic add-on. The area proposed is the minimum space to have it functional with a comfortable seating group on one side and a table and chairs on the other side while providing a clear exit pathway to a safer stair.

FINDING: SATISFIED WITH CONDITIONS. The applicant has demonstrated the proposed porch is the minimum which would provide a functional, rather than merely decorative, front porch, consistent with historic forms typical of other historic structures within the vicinity. This criterion is met subject to conditions that attach the variance to this

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specific development proposal, without a more general variance in width or depth to the setbacks.

Section 17.54.050. Yards, Subsection (H)

(H) Setback variance requests shall be processed under the provisions of Chapters 17.72 (Applications and Review Process) and 17.74 (Review Criteria), except that:

1. The applicant must prove that the vision of motorists, bicyclists, and pedestrians will not be blocked or adversely affected as a result of the variance.

APPLICANT’S RESPONSE: (The applicant’s site plan shows compliance with the vision clearance triangle). **See Exhibit 4A.**

FINDING: SATISFIED WITH CONDITIONS. The applicant’s site plan demonstrates the proposed porch will not encroach into the clear vision areas required by Section 17.54.080 of the Zoning Ordinance.

2. Variances to the requirements of this section which do not involve building setbacks must comply with Section 17.54.060(H)(1) above, but need not comply with Section 17.74.110.

APPLICANT’S RESPONSE: (N/A)

FINDING: NOT APPLICABLE. The proposed variance involves building setbacks.

COMPREHENSIVE PLAN VOLUME II:

The following Goals, Policies, and Proposals from Volume II of the Comprehensive Plan provide criteria applicable to this request:

The implementation of most goals, policies, and proposals as they apply to this application are accomplished through the provisions, procedures, and standards in the city codes and master plans, which are sufficient to adequately address applicable goals, polices, and proposals as they apply to this application. Therefore, where applicable standards exist, subsequent findings regarding the parallel comprehensive plan policies are not made when they are duplicative or a restatement of the specific standards which achieve and implement the applicable goals and policies.

The following additional findings are made relating to specific Goals and Policies. Policies applicable to this variance application are addressed through implementation standards, except as provided below.

CHAPTER III. CULTURAL, HISTORICAL, AND EDUCATIONAL RESOURCES

HISTORIC PRESERVATION

GOAL III 2: TO PRESERVE AND PROTECT SITES, STRUCTURES, AREAS, AND OBJECTS OF HISTORICAL, CULTURAL, ARCHITECTURAL, OR ARCHEOLOGICAL SIGNIFICANCE TO THE CITY OF MCMINNVILLE.

GOAL III 4: ENCOURAGE THE PRESERVATION AND REHABILITATION OF HISTORIC RESOURCES.

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Policies:

17.07. *Strengthen the integration of historic preservation in city planning to capitalize on neighborhood history and character as city assets.*

Proposals:

3.20. *Update city zoning per recommendations in this plan to encourage the retention of historic residential character in key areas around the downtown.*

APPLICANT’S RESPONSE: (N/A)

FINDING, CHAPTER III: SATISFIED WITH CONDITIONS. Approval of the variance would authorize development that capitalizes on and retains neighborhood history and character in this historic area north of downtown. Subject to conditions that attach the variance to the specific development proposal, the proposal and variance is consistent with the applicable goals and policies of Chapter III.

CHAPTER V. HOUSING AND RESIDENTIAL DEVELOPMENT

GOAL V 1: TO PROMOTE DEVELOPMENT OF AFFORDABLE, QUALITY HOUSING FOR ALL CITIZENS.

General Housing Policies:

58.00. *City land development ordinances shall provide opportunities for development of a variety of housing types and densities.*

Housing Rehabilitation Policies

62.00. *The maintenance, rehabilitation, and restoration of existing housing in residentially designated areas shall be encouraged to provide affordable housing.*

GOAL V 2: TO PROMOTE A RESIDENTIAL DEVELOPMENT PATTERN THAT IS LAND INTENSIVE AND ENERGY-EFFICIENT, THAT PROVIDES FOR AN URBAN LEVEL OF PUBLIC AND PRIVATE SERVICES, AND THAT ALLOWS UNIQUE AND INNOVATIVE DEVELOPMENT TECHNIQUES TO BE EMPLOYED IN RESIDENTIAL DESIGNS.

Policies:

68.00 *The City of McMinnville shall encourage a compact form of urban development by directing residential growth close to the city center and to those areas where urban services are already available before committing alternate areas to residential use.*

70.00. *The City of McMinnville shall continue to update zoning and subdivision ordinances to include innovative land development techniques and incentives that provide for a variety of housing types, densities, and price ranges that will adequately meet the present and future needs of the community.*

APPLICANT’S RESPONSE: (N/A)

FINDING, CHAPTER V: SATISFIED WITH CONDITIONS. Approval of the variance would authorize development that promotes investment close to the city center and provides for

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retention, rehabilitation, and restoration of existing housing stock and small lot single-family housing. It provides opportunities for housing types and densities consistent with the historic character of the neighborhood. Subject to conditions that attach the variance to the specific development proposal, the proposal and variance is consistent with the applicable goals and policies of Chapter V.

CHAPTER IX. URBANIZATION

GOAL IX 2: TO ESTABLISH A LAND USE PLANNING FRAMEWORK FOR APPLICATION OF THE GOALS, POLICIES, AND PROPOSALS OF THE MCMINNVILLE COMPREHENSIVE PLAN.

GREAT NEIGHBORHOOD PRINCIPLES

- 187.40. ...the Great Neighborhood Principles shall also guide applicable current land use and development applications.
- 187.50(8). Human Scale Design. Great Neighborhoods shall have buildings and spaces that are designed to be comfortable at a human scale and that foster human interaction with the built environment.
- a. The size, form, and proportionality of development is designed to function and be balanced with the existing built environment.
 - b. Buildings include design elements that promote inclusion and interaction within the right-of-way and public spaces, including, but not limited to, building orientation towards the street or public place and placement of vehicle oriented uses in less prominent locations.

APPLICANT'S RESPONSE: (N/A)

FINDING, CHAPTER IX: SATISFIED WITH CONDITIONS. Approval of the variance would authorize development that supports comfort at a human scale and fosters human interaction with the built environment. The proposal provides a building form consistent with the historic built environment. It includes design elements that promote inclusion and interaction within the right-of-way with an active useable space oriented to the street. Subject to conditions that attach the variance to the specific development proposal, the proposal and variance is consistent with the applicable goals and policies of Chapter IX.

TS:sjs