



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

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DECISION, CONDITIONS, FINDINGS OF FACT AND CONCLUSIONARY FINDINGS FOR THE APPROVAL OF A VARIANCE TO ALLOW AN INCREASE IN THE NUMBER OF LOTS PERMITTED TO BE ACCESSED BY PRIVATE EASEMENT AT 2185/2191 NW 2ND STREET

- DOCKET:** VR 2-21 (Variance)
- REQUEST:** Application for a variance to allow an increase in the number of lots permitted to be accessed by private easement to support a future partition of the subject property, allowing two existing commercial structures to be on their own lots.
- LOCATION:** 2185/2191 NW 2nd Street (Parcel 1 of Partition Plat 2005-06, and Tax Lot 502, Section 19AC, T. 4 S., R. 4 W., W.M.)
- ZONING:** C-3 (General Commercial)
- APPLICANT:** Nora Collins (property owner)
- STAFF:** Jamie Fleckenstein, Associate Planner
- DATE DEEMED COMPLETE:** May 14, 2021
- HEARINGS BODY & ACTION:** The McMinnville Planning Commission makes the final decision, unless the Planning Commission's decision is appealed to the City Council.
- HEARING DATE & LOCATION:** May 20, 2021, Civic Hall, 200 NE 2nd Street, McMinnville, Oregon, and Zoom Online Meeting 927 1251 1996.
- 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 the number of lots permitted to be accessed by private easement are provided as follows: Zoning Ordinance (Title 17 of the McMinnville Code): MMC Section 17.74.100. Variance – Planning Commission Authority; MMC Section 17.74.100. Conditions for Granting Variance; MMC Section 17.53.100-Creation of Streets, Subsection (C). 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

Attachments:

Attachment 1 – Application and Attachments

I. APPLICATION SUMMARY & BACKGROUND:

Subject Property & Request

The subject property is a 1.46 acre lot located at 2185/2191 NW 2nd Street at the northwest corner of NW 2nd Street and NW Hill Road, and is more specifically described as Parcel 1 of Partition Plat 2005-06, and Tax Lot 502, Section 19AC, T. 4 S., R. 4 W., W.M. The property is zoned C-3 (General Commercial) and is developed with two medical office buildings. The property shares an access easement from NW 2nd Street with the two adjacent lots to the east, each zoned C-3 (General Commercial) and each is developed with a medical office building. Together, the three (3) lots with four (4) office buildings form the Yamhill Valley Wellness Plaza. The access easement provides shared access and parking for all three (3) lots and four (4) office buildings. No access into the plaza complex is provided from Hill Road. **See Exhibits 1 and 2.**

Section 17.53.100(C)(1) of the Zoning Ordinance limits the number of parcels that can be served by private access easement to three (3):

“If it is the only reasonable method by which the rear portion of a lot being unusually deep or having an unusual configuration that is large enough to warrant partitioning into two more new parcels, i.e., a total of not more than three (3) parcels including the original may then exist, that may be provided with access [...]”

The access easement in question is an existing easement from NW 2nd Street that provides shared access and parking to Parcels 1, 2, and 3 of Partition Plat 2005-06. **See Exhibit 3.**

The Applicant’s request is for a variance to allow an increase in the number of lots permitted to be accessed by private easement, thereby allowing a future partition of the subject site to allow the two (2) commercial medical office buildings to be on their own lots. This will allow the sale of the lot(s) and office building(s) to the long-term lease holder(s) currently using the office space(s). The following describing of the nature of the request is excerpted from the application:

“The subject property is located at 2185/2191 NW 2 Street, and is more specifically described as Parcel I of Partition Plat 200 5-06, and as Tax Lot 502, Section 19AC, R. 4 S., T. 4 W., W.M. (the "Property"). The Property is shown on the site plan attached as Exhibit A.

Applicant requests a variance from Section 17.53.100(C)(1) of the McMinnville Municipal Code, which has been interpreted by the City to limit the number of parcels that may be served by a private easement to three (3). The ordinance currently reads:

If it is the only reasonable method by which the rear portion of a lot being unusually deep or having an unusual configuration that is large enough to warrant partitioning into two more new parcels, i.e., a total of not more than three (3) parcels including the original may then exist, that may be provided with access and said access shall be not less than 15 (fifteen) feet in width and shall have a hard surfaced drive of 10 (ten) feet width minimum ... [emphasis added by Applicant]

The Property is currently served by a private easement that serves two other parcels. The Property currently has two lawful commercial buildings on it, each housing different businesses. Applicant has made application to partition the Property into two parcels, placing each commercial building on a separate lot, with each new lot serviced by the existing private easement for a total of four (4).

This variance is appropriate under applicable criteria because the development and configuration of Applicant's property pre-dates the City's current ordinance and is causing

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Applicant undue hardship. Applicant's buildings were lawfully constructed in 2005, and each building is lawfully accessed by the private easement. At the time the buildings were constructed, Section 17.53.100(C)(1) of the McMinnville Municipal Code did not restrict use of an easement to only 3 parcels. At that time, Section 24(C)(1) of Ordinance 4471 was controlling and read as follows:

If it is the only reasonable method by which the rear portion of a lot being unusually deep or having an unusual configuration that is large enough to warrant partitioning into two more new parcels (e.g., a total of not more than three (3) parcels including the original may then exist) that may be provided with access and said access shall be not less than 15 feet in width and shall have a hard surfaced drive of 10 feet width minimum ... [emphasis added by Applicant]

When Applicant lawfully constructed the two commercial buildings on the Property, the language "(e.g. a total of not more than three (3) parcels including the original may then exist)" was separated as a parenthetical and hypothetical phrase; it was not a mandatory restriction on the use of private easements. The relevant language was taken out of the parenthetical and listed in its current form in 2009 with the adoption of Ordinance 4905. The old Ordinance 4471, which was controlling when Applicant constructed the commercial buildings, supported Applicant's use of the existing easement to access both parcels resulting from the partition proposed above, making a variance appropriate in this case."

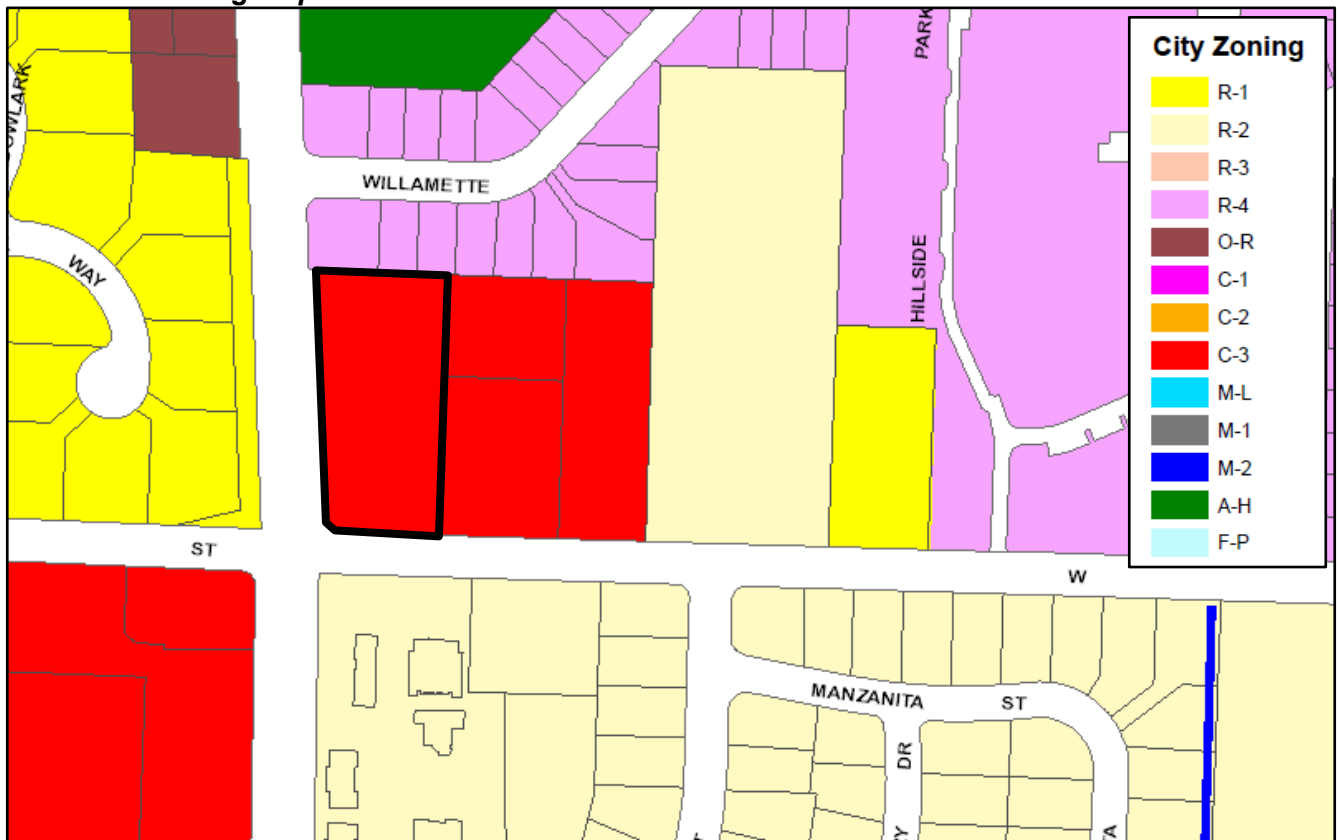
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Exhibit 1. Vicinity Map & Aerial Photo



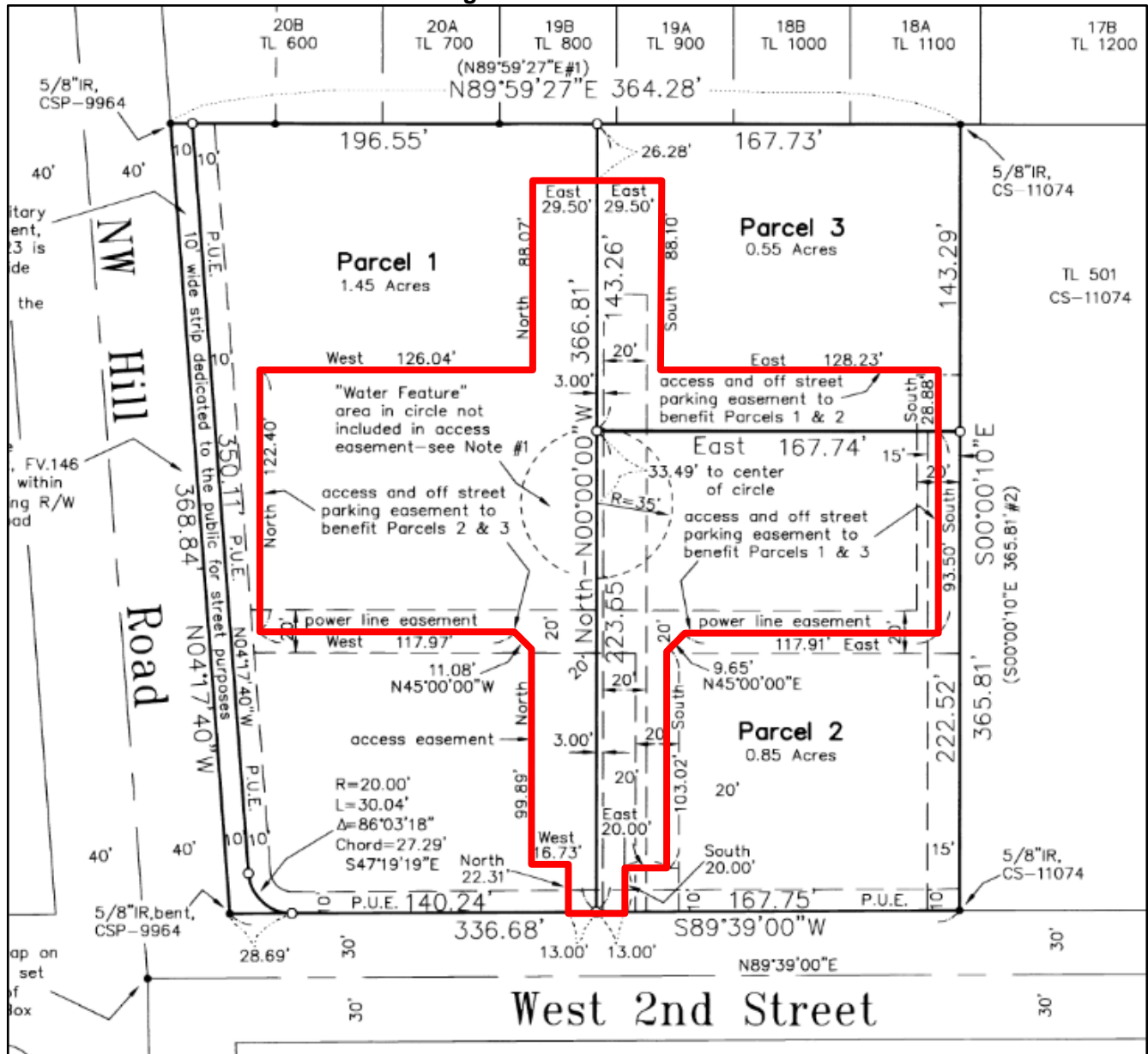
Exhibit 2. Zoning Map



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Exhibit 3. Partition Plat 2005-06 Parking and Access Easement



Summary of Criteria

The applicable criteria for a variance to the number of lots permitted access via private easement are as follows:

- **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.
- **Zoning Ordinance (Title 17 of the McMinnville Code):**
 - MMC Section 17.53.100(C). Creation of Streets
 - MMC Section 17.74.100. Variance – Planning Commission Authority;

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- MMC Section 17.74.110. Conditions for Granting Variance;

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.

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.

II. CONDITIONS:

Not Applicable.

III. ATTACHMENTS:

- V 2-21 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. The following comments have been received:

- Comcast

We do have conduit and active lines on the property, but I don’t see it as being in conflict.

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- McMinnville Building Division

No building code issues.

- McMinnville Engineering Department

No comments on the variance. Both buildings already have direct connections to the public sanitary sewer.

- McMinnville Water & Light

MW&L does not have any comments on this permit.

Public Comments

Notice of this request was mailed to property owners located within 300 feet of the subject site. Notice of the public hearing was provided in the News Register on Friday, June 11, 2021. As of the date of the issuance of this Decision Document to the Planning Commission on Thursday, June 10, 2021, no public testimonies have been received by the Planning Department:

V. FINDINGS OF FACT - PROCEDURAL FINDINGS

1. The applicant and property owner, Nora Collins, submitted the application on April 14, 2021.
2. The applicant held a neighborhood meeting in accordance with Section 17.72.095 of the Zoning Ordinance on April 6, 2021.
3. The application was deemed complete on May 14, 2021.
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. Comments received from public agencies are addressed in the Decision Document.
5. Notice of the application and the June 17, 2021 Planning Commission public hearing was mailed to property owners within 100 feet of the subject property on May 27, 2021 in accordance with Section 17.72.120 of the Zoning Ordinance.
6. Notice of the application and the June 17, 2021 Planning Commission public hearing was published in the News Register on Friday, June 11, 2021, in accordance with Section 17.72.120 of the Zoning Ordinance.

No public testimony was submitted to the Planning Department prior to the issuance of this document.

7. On June 17, 2021, the Planning Commission held a duly noticed public hearing to consider the request.

VI. FINDINGS OF FACT - GENERAL FINDINGS

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1. **Location:** 2185/2191 NW 2nd Street (Parcel 1 of Partition Plat 2005-06, and Tax Lot 502, Section 19AC, T. 4 S., R. 4 W., W.M.)
2. **Lot Size:** 1.46 acres
3. **Comprehensive Plan Map Designation:** Commercial
4. **Zoning:** C-3 (General Commercial)
5. **Overlay Zones/Special Districts:** None
6. **Current Use:** Two (2) medical office buildings
7. **Inventoried Significant Resources:**
 - a. **Historic Resources:** None
 - b. **Other:** None Identified
8. **Other Features:** The site is generally level with no significant features.
9. **Utilities:**
 - a. **Water:** The site is served by a water main in NW Hill Road. Water is provided to both office buildings on site.
 - b. **Sewer:** The site is served by a sewer main in NW 2nd Street. Sewer is provided to both office buildings on site.
 - c. **Stormwater:** The site is served by a storm drain line in NW 2nd Street.
 - d. **Other Services:** Other services are available to the property. An existing access and utility easement provides shared utility access from 2nd Street and Hill Road to the site and parcels 2 and 3 of PT 2005-06.
10. **Transportation:** NW Hill Road and NW 2nd Street are classified as Minor Arterials in the 2010 McMinnville Transportation System Plan. Hill Road has an 80 foot right-of-way. 2nd Street has an 80 foot right-of-way, and a 40-foot curb-to-curb width. Sidewalk, curbs, gutters, and a bike lane are present adjacent to the property. Hill Road is improved with sidewalk, curbs, and gutters adjacent to the property. An existing private access easement from 2nd Street provides access to Parcels 1, 2, and 3 of Partition Plat 2005-06. No access to the subject site is provided from Hill Road.

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:

- **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.
- **Zoning Ordinance (Title 17 of the McMinnville Code):**
 - MMC Section 17.74.100. Variance – Planning Commission Authority;
 - MMC Section 17.74.100. Conditions for Granting Variance;

Comprehensive Plan Volume II:

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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, policies, 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 X. CITIZEN INVOLVEMENT AND PLAN AMENDMENT

GOAL X 1: TO PROVIDE OPPORTUNITIES FOR CITIZEN INVOLVEMENT IN THE LAND USE DECISION MAKING PROCESS ESTABLISHED BY THE CITY OF McMinnville.

Policy 188.00 The City of McMinnville shall continue to provide opportunities for citizen involvement in all phases of the planning process. The opportunities will allow for review and comment by community residents and will be supplemented by the availability of information on planning requests and the provision of feedback mechanisms to evaluate decisions and keep citizens informed.

APPLICANT’S RESPONSE: None.

FINDING: SATISFIED. The process for a Variance provides an opportunity for citizen involvement through the public hearing process. Throughout the process, there are opportunities for the public to review and obtain copies of the application materials prior to the McMinnville Planning Commission’s review of the request. All members of the public have access to provide testimony and ask questions during the public hearing process.

McMinnville Zoning Ordinance

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

- 17.53.100(C). Creation of Streets
- 17.74.100. Variance – Planning Commission Authority
- 17.74.110. Conditions for Granting Variance

Section 17.53.100. Creation of Streets

C. An easement providing access to property and which is created to allow the partitioning of land for the purpose of lease, transfer of ownership, or building development, whether immediate or future, shall be in the form of a street in a subdivision, except that a private easement to be established by deed without full compliance with these regulations may be approved by the Planning Director under the following conditions:

1. If it is the only reasonable method by which the rear portion of a lot being unusually deep or having an unusual configuration that is large enough to warrant partitioning into two more new parcels, i.e., a total of not more than three (3) parcels including the original may then exist, that may be provided with access and said access shall be not less than 15 (fifteen) feet in width and shall have a hard surfaced drive of 10 (ten) feet width minimum;

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APPLICANT’S RESPONSE: N/A

FINDING: NOT SATISFIED. The Application is requesting a variance to the number of parcels allowed to be accessed via private easement. The Applicant has not demonstrated that the subject site is unusually deep or has an unusual configuration such that it would qualify for a private access easement instead of public right of way to access the lots. The Applicant failed to provide any evidence in its Application that such a circumstance exists.

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.

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: (N/A)

FINDING: NOT SATISFIED. As described in more detail in the finding below for 17.74.110(A) the applicant has not provided sufficient evidence that special and unusual circumstances exist for the subject site.

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 subject site is developed with two medical office buildings, an allowed use in the C-3 zone. The variance would not change the existing use on either proposed parcel.

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)

FINDING: NOT APPLICABLE.

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: As detailed above, the ordinance from which Applicant seeks a variance did not exist in its current form when Applicant constructed two commercial buildings on the Property. The Property was of such a size to permit the construction of two commercial

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buildings and Applicant lawfully constructed those buildings with all requisite authority. At the time Applicant constructed the two commercial buildings, the relevant zoning language would not have restricted use of the private easement to three parcels and supported use of the existing easement to serve both parcels resulting from the partition proposed by Applicant. Applicant had no control of the passage of Ordinance 4905, which changed the applicable zoning language to applicant's detriment.

FINDING: NOT SATISFIED. Applicant must prove that exceptional or extraordinary circumstances apply to the property that do not apply to other properties in the same zone or vicinity relating to the lot size, shape, topography, or other circumstance outside of the Applicant's control. Applicant does not provide any evidence that the property has some unique or unusual physical characteristic as the criteria requires such as a difficult shape or topography. Applicant's sole basis for meeting this criteria is based on an alleged change of the Zoning Ordinance where Applicant argues that private access easements for more than three (3) properties used to be allowed under the McMinnville Code, but is no longer allowed. Although Applicant's basis is unfounded (as explained further below), the alleged change in the Code did not result in a change to the configuration, shape, topography, or any other physical characteristics of the property. When an applicant is required to demonstrate extraordinary circumstances, as the case here, the applicant must show that there are physical characteristics that pose barriers to the development of the property. In other words, the Code expressly requires evidence of some exception or extraordinary circumstance related to the specific characteristics of the property to qualify for a variance.

Applicant argues that the City's prior zoning ordinance, Ordinance No. 4471, could theoretically allow more than three (3) lots to be accessed by a private access easement. The Applicant now claims that MMC 17.53.100(C)(1), the current counterpart to the prior provision in Ordinance No. 4471, limits the number of lots that could be accessed from a private access easement to three (3) or fewer lots, including the lot where the access originates. The Applicant's argument is based on the change from "e.g." to "i.e."

"E.g." is the abbreviation for the Latin phrase *exempli gratia*, which means "for example," while "i.e." is the abbreviation for the Latin phrase *id est*, which means "that is." E.g. is used to provide an example of the previous statement, where i.e. is used to restate or clarify what was previously stated. When Ordinance No. 4471 stated "e.g., a total of not more than three (3) parcels including the original may then exist..." the example was that a total of not more than three (3) parcels would be allowed to have access through a private access easement. While the current Code has changed to "i.e.," the result is the same – the Code does not allow more than three (3) parcels to have access through a private access easement.

Furthermore, under both the prior Ordinance No. 4471 and MMC 17.53.100(C)(1), the Applicant must demonstrate that the lot is unusually deep or has an unusual configuration to have a private access easement instead of public right of way to access the lots. The Applicant failed to provide any evidence in its Application that such a circumstance exists. Under either the prior or current Code provisions, the Applicant does not meet the requirements to qualify for a private access easement.

Finally, even assuming, without admitting, that a change in the Code could qualify for a variance, every property within the City that is accessed through a private access easement could be impacted by the change. Thus, the circumstance is not extraordinary or exceptional to Applicant's specific property.

- 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;

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APPLICANT’S RESPONSE: Granting the variance would preserve the right of Applicant to seek a partition that would allow Applicant to own and convey the two separate commercial buildings separately, as was permitted when Applicant constructed them. The imposition of the three-parcel restriction with the passage of Ordinance 4905 took away Applicant's right.

FINDING: SATISFIED. Staff concurs with the Applicant’s finding in part, in that the variance would allow a request for partition of the property. A partition application for this parcel would require demonstrating access compliant with 17.53.100(C), the portion of code for which the variance is requested. Staff does not concur with the Applicant’s assertion that the passage of the current Zoning Ordinance denied a right of the Applicant held under the prior Zoning Ordinance.

- 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: Granting this variance request will not be detrimental to the surrounding area because it won't change the existing use of the Property. As detailed above, the Property and its two commercial buildings are already accessed by the private easement, so granting the variance will not increase the use of the easement or the Property. Granting the request will simply allow Applicant to seek to partition the Property for the purpose of placing each commercial building on a separate lot.

Allowing a variance to Section 17.53.100(C)(1) would promote the Property's commercial zoning and commercial comprehensive plan by removing an unnecessary access restriction that is preventing the Applicant from placing two lawfully existing commercial buildings on separate lots. This prohibition has the actual effect of restricting otherwise lawful commercial uses because the existing commercial buildings are required to remain on one lot.

FINDING: SATISFIED. Staff concurs that the variance would not be detrimental to the surrounding area because it would not change the existing use of the site, or the intensity of the use. The property was previously developed in 2005 in accordance with City policies and plans. The variance would support a partition to allow a change in land ownership and would not alter any of the development characteristics that previously complied with City plans and policies.

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

APPLICANT’S RESPONSE: This variance is the minimum variance necessary to alleviate Applicant's hardship because no other variance would alleviate the hardship. Other points of access to the subject property, namely from Hill Road, are not feasible and could create hazards to the existing flow of pedestrian traffic on the newly constructed sidewalks. Granting this variance would also allow access to remain in its current configuration without requiring additional access points that could increase/change traffic patterns in the surrounding area, particularly the intersection of Hill Road and 2nd Street.

FINDING: SATISFIED. Staff concurs with the applicant’s finding. Additionally, the applicant is requesting to increase the number of parcels allowed to be accessed by private easement by one (1) which is the minimum variance that could be requested.

JF

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