



CITY OF MILWAUKIE

AGENDA

July 9, 2019

PLANNING COMMISSION

City Hall Council Chambers
10722 SE Main Street
www.milwaukieoregon.gov

- 1.0 Call to Order - Procedural Matters** — 6:30 PM
- 2.0 Planning Commission Minutes** — None
- 3.0 Information Items**
- 4.0 Audience Participation** — This is an opportunity for the public to comment on any item not on the agenda
- 5.0 Public Hearings** — Public hearings will follow the procedure listed on reverse
 - 5.1 Summary: Revised Partition Proposal
Applicant/Owner: Tony and Michelle DaRosa
Address: 10244 SE 43rd Ave
File: MLP-2018-001
Staff: Brett Kelter, Associate Planner
 - 5.2 Summary: Planned Development Code Amendments
File: ZA-2019-001
Staff: Vera Koliass, Associate Planner
- 6.0 Worksession Items** — None
 - 6.1 Summary: Comprehensive Plan Block 3 Policies (Continued; No Packet Materials included)
Staff: David Levitan, Senior Planner
- 7.0 Planning Department Other Business/Updates** — None
- 8.0 Planning Commission Committee Updates and Discussion Items** — This is an opportunity for comment or discussion for items not on the agenda.
- 9.0 Forecast for Future Meetings:**
 - July 23, 2019
 - 1. A-2019-002 – Annexation of ROW on Lake Rd & Kuehn Rd
 - 2. NR-2018-005 – Elk Rock Estates
 - August 13, 2019
 - 1. VR-2019-004 – Home Occupation Variance
 - 2. Hillside Master Plan
 - 3. Comp Plan Block 3 Policies (Tentative)
 - August 27, 2019
 - 1. Continuation of NR-2018-005 – Elk Rock Estates (Tentative)

Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

- 1. PROCEDURAL MATTERS.** If you wish to speak at this meeting, please fill out a yellow card and give to planning staff. Please turn off all personal communication devices during meeting. For background information on agenda items, call the Planning Department at 503-786-7600 or email planning@milwaukieoregon.gov. Thank you.
- 2. PLANNING COMMISSION and CITY COUNCIL MINUTES.** City Council and Planning Commission minutes can be found on the City website at www.milwaukieoregon.gov/meetings.
- 3. FORECAST FOR FUTURE MEETING.** These items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
- 4. TIME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue the agenda item to a future date or finish the agenda item.

Public Hearing Procedure

Those who wish to testify should come to the front podium, state his or her name and address for the record, and remain at the podium until the Chairperson has asked if there are any questions from the Commissioners.

- 1. STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
- 2. CORRESPONDENCE.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
- 3. APPLICANT'S PRESENTATION.**
- 4. PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
- 5. NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
- 6. PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
- 7. QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
- 8. REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
- 9. CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience, but may ask questions of anyone who has testified.
- 10. COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
- 11. MEETING CONTINUANCE.** Prior to the close of the first public hearing, any person may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain, or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

The City of Milwaukie will make reasonable accommodation for people with disabilities. Please notify us no less than five (5) business days prior to the meeting.

Milwaukie Planning Commission:

Kim Travis, Chair
John Henry Burns, Vice Chair
Adam Argo
Joseph Edge
Greg Hemer
Lauren Loosveldt
Robert Massey

Planning Department Staff:

Denny Egner, Planning Director
David Levitan, Senior Planner
Brett Kelder, Associate Planner
Vera Koliass, Associate Planner
Mary Heberling, Assistant Planner
Dan Harris, Administrative Specialist II



CITY OF MILWAUKIE

To: Planning Commission

Through: Dennis Egner, Planning Director

From: Brett Kelter, Associate Planner

Date: July 2, 2019, for July 9, 2019, Public Hearing (continued)

Subject: **File(s):** MLP-2018-001 (master file, with VR-2019-007 & VR-2019-008)
Applicant(s)/Owner(s): Tony and Michelle DaRosa
Subject Property: 10244 SE 43rd Ave
Legal Description (Map & Tax Lot): 1S2E30CC 05200
NDA: Lewelling

ACTION REQUESTED

Open a public hearing to consider a minor land partition and the variances necessary to approve a lot configuration that does not include dedication for public right-of-way for a future connection to White Lake Rd. The recommended Findings and Conditions of Approval are included as Attachments 1 and 2, respectively.

BACKGROUND INFORMATION

The applicants for land use file #MLP-2018-001, Michelle and Tony DaRosa, proposed a 2-parcel partition of their property at 10244 SE 43rd Ave to retain the existing house and create a new developable lot. Originally, staff determined that the proposal required a 20-ft-wide right-of-way (ROW) dedication along the northern boundary of the subject property, to allow for access to the new lot and to provide a future connection to White Lake Rd to the east. The partition was initially approved, but the approval was appealed by the adjacent neighbor to the north at 10194 SE 43rd Ave out of concern about the impacts of the potential future street connection.

At the appeal hearing in February 2019, Ms. DaRosa expressed her interest in having the partition approved but added that she believed the required ROW dedication was not proportional to the impacts of the project and constituted a taking of her property. The Planning Commission continued the hearing and asked for more information about staff's rough proportionality analysis as well as for an outline of the applicant's options for a partition that did not include a requirement for ROW dedication for White Lake Rd.

When the hearing continued in March, the Commission expressed willingness to consider a revised proposal without White Lake Rd ROW. The applicants agreed to extend the 120-day land use clock if they could revise the proposal and address any needed variances. The Commission agreed and continued the hearing again, to July 9, 2019. The Commission clarified that, if a revised version of the partition were to be approved, the appeal would become moot.

The applicant provided a revised partition proposal with no ROW dedication for White Lake Rd and an amended application that included a request for the required variances as determined by staff (additional file #s VR-2019-007 and VR-2019-008).

A. Site and Vicinity

The subject property (10244 SE 43rd Ave) is approximately 0.61 acres (26,700 sq ft) in area and is zoned Residential R-7. The lot is currently developed with a single-family house and detached garage and has frontage on 43rd Ave; its northeastern corner is only one lot away from the western end of White Lake Rd (see Figure 1). The King Road Shopping Center is less than 400 ft to the south at the intersection of 43rd Ave and King Rd.

Figure 1. Vicinity map



The surrounding area to the north and east is developed primarily for residential use, mostly with single-family houses. An apartment building is located to the south; a vacant site is located across 43rd Ave to the west. The immediate vicinity to the north and east is zoned R-7; the areas to the south and to the west are zoned R-3 and R-5 (see Figure 2).

B. Zoning Designation

Residential R-7

C. Comprehensive Plan Designation

Low-Density Residential (LDR)

D. Land Use History

City records indicate no prior land use actions for this site.

E. Proposal

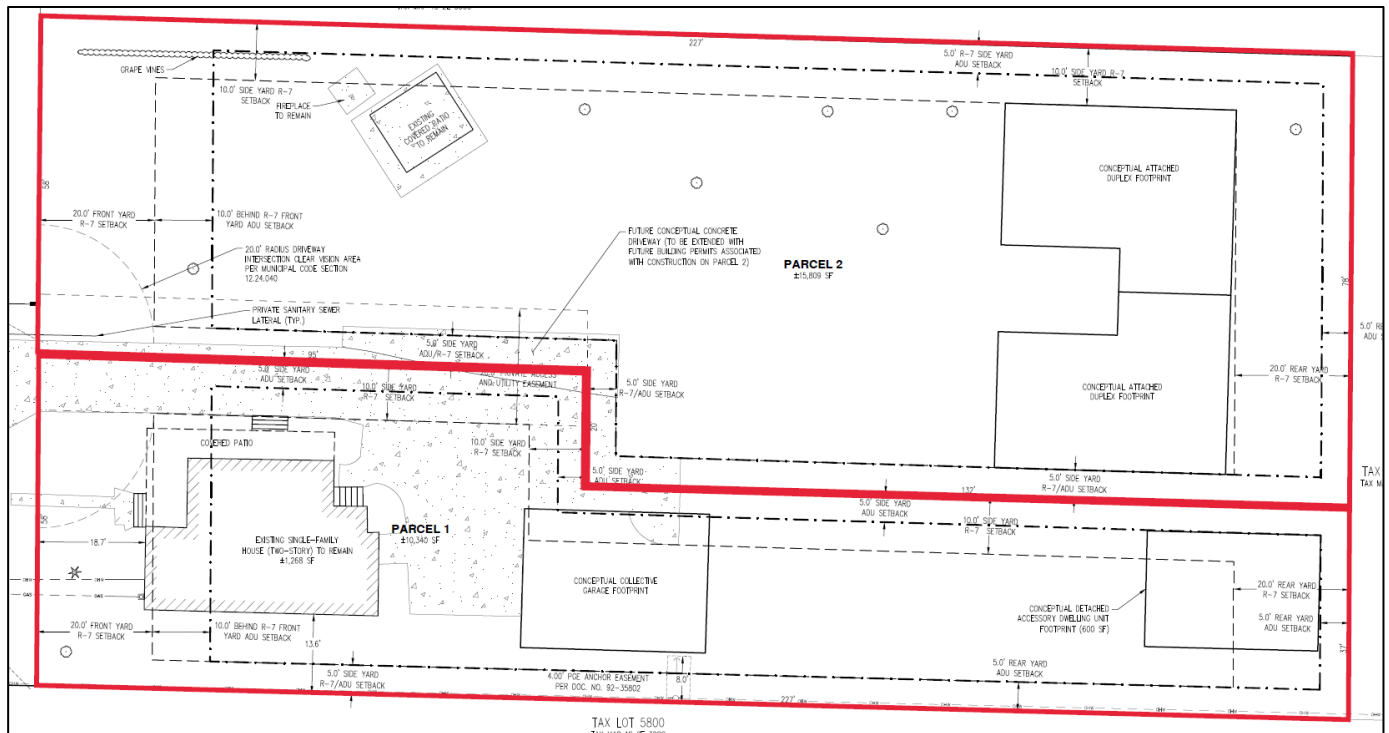
The applicant has revised the original partition plat to propose a 2-parcel configuration that does not include dedication of public right-of-way for a future connection to White Lake Rd. Both proposed parcels would have frontage on 43rd Ave and would share access through the existing driveway on Parcel 1.

Parcel 1, which includes the existing single-family house, is approximately 10,340 sq ft in area. Parcel 2, which is vacant, is approximately 15,810 sq ft and is large enough to allow development of a duplex (see Figure 3 for an overview; see the applicant's revised materials in Attachment 3 for more detail).

Figure 2. Zoning map



Figure 3. Preliminary plat & site plan



The project requires approval of the following application(s):

1. Minor Land Partition (MLP-2018-001)

The proposal is to partition the subject property to establish 1 parcel for the existing house and 1 parcel for future development of a primary structure.

2. Variance Request (VR-2019-007)

A Type II variance has been requested to adjust the minimum lot width standard by less than 10% for both lots (from 60 ft to 58 ft each).

3. Variance Request (VR-2019-008)

Three (3) additional variances requiring Type III review have been requested: (1) from the maximum block perimeter standard of MMC Subsection 19.708.1.F(5); (2) from the maximum intersection spacing standard of MMC Subsection 19.708.1.F(6); and (3) from the limitation on individual access for Parcel 2 as a new lot, as established in MMC Subsection 12.16.040.C(2).

KEY ISSUES

Summary

Staff has identified the following key issue for the Planning Commission's deliberation. Aspects of the proposal not listed below are addressed in the Findings (see Attachment 1) and generally require less analysis and discretion by the Commission.

A. Are there negative impacts that result from approval of this partition?

Analysis

A. Are there negative impacts that result from approval of this partition?

If the Planning Commission decides that the revised partition proposal is approvable with the requested variances, the likelihood of any connection to White Lake Rd being established in the future would be significantly reduced. The adjacent property to the east at 4446 SE White Lake Rd could be redeveloped without needing a connection to 43rd Ave (although ROW dedication would be necessary to create a new lot there fronting on White Lake Rd). Likewise, the development of an accessory dwelling unit (ADU) on Parcel 2 by itself would not require ROW dedication for a connection to White Lake Rd. With the revised proposal, the City would have to purchase property for ROW or purchase an access easement to establish a connection to White Lake Rd.

Without a connection to White Lake Rd (even a simple connection for pedestrians and bicycles), residents on White Lake Rd and surrounding streets would continue to use 45th Ave and Rhodesia St to access 43rd Ave, or 46th Ave to access King Rd, to reach the King Road Shopping Center. The extension of White Lake Rd would shorten the walking trip to the shopping center for approximately 14 houses, although for a few of those houses it would

be only 50-100 ft shorter. Without the existence of Rhodessa St or 46th Ave, the lost opportunity to improve connectivity for the neighborhood would be more striking.

The requested variances eliminate the option for providing more connectivity in the area, but is that loss significant, and is the possibility of a future connection very likely? The variances do not affect the existing connectivity, and staff has not proposed any mitigation.

CONCLUSIONS

At the last hearing on March 12, the Planning Commission directed staff to utilize a revised proposal from the applicant to develop findings for approval of a partition that does not include ROW dedication for a future connection to White Lake Rd. Those findings are included as Attachment 1 and should be adopted if the Commission opts to approve the revised proposal.

Recommended conditions of approval of the revised proposal are provided in Attachment 2, highlighted by a requirement for construction of street improvements (including 5-ft bike lane, standard curb and gutter, 6-ft landscape strip, and 6-ft set-back sidewalk) along the frontages of both parcels.

CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC).

- MMC Chapter 12.16 Access Management
- MMC Chapter 17.12 Application Procedure & Approval Criteria
- MMC Chapter 17.16 Application Requirements and Procedures
- MMC Chapter 17.20 Preliminary Plat
- MMC Chapter 17.28 Design Standards
- MMC Chapter 17.32 Improvements
- MMC Section 19.301 Low Density Residential Zones (including R-7)
- MMC Chapter 19.700 Public Facility Improvements
- MMC Section 19.911 Variances
- MMC Section 19.1006 Type III Review
- MMC Chapter 19.1200 Solar Access Protection

This application is subject to Type III review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above. In Type III reviews, the Commission assesses the application against review criteria and development standards and evaluates testimony and evidence received at the public hearing.

Decision-Making Options

The status of the appeal of the decision to approve the original partition proposal (appeal file #A-2019-001) depends on the Commission's decision regarding the revised partition proposal

and accompanying variances. The following table presents the decision-making options staff has identified for the revised proposal, as well as the resulting consequences for the appeal:

Planning Commission Action	Impact on Appeal (file #A-2019-001)
Approve revised partition	Appeal is rendered moot
Deny revised partition	Appeal is rendered moot
Deny revised partition, and reconsider original proposal (if applicant requests)	Will need a decision on the appeal: <ul style="list-style-type: none"> • If original partition is reconsidered and denied, findings would reflect that the appeal was upheld • If original partition is approved, findings would reflect that appeal was denied

The recommended Findings and Conditions of Approval presented in Attachments 1 and 2, respectively, are written to support approval of the revised partition proposal. If the Commission chooses to approve the revised proposal with modified findings and/or conditions of approval, such modifications will need to be read into the record.

If the Commission chooses to deny the revised application upon finding that it does not meet the applicable approval criteria, the findings will need to be modified accordingly and the changes read into the record.

If the Commission chooses to continue the hearing, the applicant must be asked for another extension of the 120-day clock for a decision on the partition, as allowed by MMC Subsection 19.1001.7.C. The current extension for the partition application runs through July 12, 2019.

COMMENTS

Notice of the amended proposal was given to the following agencies and persons: City of Milwaukie Building, Engineering, Public Works, and Police Departments; Milwaukie City Attorney; Lewelling Neighborhood District Association (NDA) Chairperson & Land Use Committee; Hector Campbell NDA Chairperson & Land Use Committee; Clackamas Fire District #1; Clackamas County Department of Transportation & Development, Metro, and properties within 300 ft of the site.

Planning and Engineering staff coordinated to develop the recommended findings and conditions regarding MMC Title 12 Streets, Sidewalks, and Public Places and MMC Chapter 19.700 Public Facility Improvements. The following is a summary of the one comment received by the City—see Attachment 4 for further details.

- **David Aschenbrenner, Chair, Hector Campbell Neighborhood District Association (NDA):** The site is not within the Hector Campbell NDA boundary, so they defer to the other NDAs. Request that all trees be preserved (or as many as possible) and that there be a requirement to plant more trees.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	Early PC Mailing	PC Packet	Public Copies	Packet
1. Recommended Findings in Support of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Recommended Conditions of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Applicant's Revised Narrative and Supporting Documentation (stamped received June 17, 2019)				
a. Narrative	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Revised Preliminary Plat/Site Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4. Comments Received	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

Early PC Mailing = paper materials provided to Planning Commission at the time of public notice 20 days prior to the hearing.

PC Packet = paper materials provided to Planning Commission 7 days prior to the hearing.

Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.

Packet = packet materials available online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-32>.

Recommended Findings
Master File #MLP-2018-001 (revised proposal)

Sections of the Milwaukie Municipal Code (MMC) not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicants, Tony and Michelle DaRosa, have applied for approval of a partition to create 2 parcels at 10244 SE 43rd Ave (“the subject property”). The subject property is identified as Tax Lot ID 1S2E30CC05200 on the Clackamas County Tax Assessor map and is in the Residential R-7 Zone.

The applicants are the property owners and have authority to initiate the application per MMC Subsection 19.1001.6.A. The application was initially submitted on October 24, 2018, and deemed complete on November 14, 2018. As allowed by MMC Subsection 19.1001.7.C, the applicant extended the 120-day decision requirement by an additional 120 days, to July 12, 2019.

On June 17, 2019, the applicant amended the application, revising the proposed parcel configuration and adding 4 variance requests. The land use application master file number is MLP-2018-001; variance applications were added for the revised proposal, with the file numbers VR-2019-007 and VR-2019-008.

2. The proposal is for a partition of the subject property to create 2 separate developable parcels, both with street frontage on 43rd Ave. The existing house would remain on Parcel 1, which would be approximately 10,340 sq ft; Parcel 2 would be vacant, with an area of approximately 15,810 sq ft. An existing detached garage and covered area that straddle the boundary between Parcels 1 and 2 are proposed to be removed.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Chapter 12.16 Access Management
 - MMC Chapter 17.12 Application Procedure & Approval Criteria
 - MMC Chapter 17.16 Application Requirements and Procedures
 - MMC Chapter 17.20 Preliminary Plat
 - MMC Chapter 17.28 Design Standards
 - MMC Chapter 17.32 Improvements
 - MMC Section 19.301 Low Density Residential Zones (including R-7)
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.911 Variances
 - MMC Section 19.1006 Type III Review
 - MMC Chapter 19.1200 Solar Access Protection

The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. Public notice of the amended application was mailed to

property owners and residents of lots within 300 ft of the subject property on June 19, 2019; a notice of the amended application was posted on the subject property on June 24, 2019. A public hearing with the Planning Commission was held on July 9, 2019, as required by law.

4. MMC Chapter 12.16 Access Management

MMC 12.16 regulates access from private property onto public streets, with specific requirements and standards provided in MMC Section 12.16.040.

MMC Subsection 12.16.040.A states that access to private property shall be permitted with the use of driveway curb cuts, that driveways shall meet all applicable guidelines of the Americans with Disabilities Act (ADA), and that driveway approaches shall be improved to meet the requirements of the City's Public Works Standards. MMC Subsection 12.16.040.B governs the spacing of accessways (driveways), requiring a minimum of 300 ft for spacing between accessways on collector streets. MMC Subsection 12.16.040.C regulates accessway location, including a prohibition of individual single-family accessways on collector streets. An individual driveway may be approved by the City Engineer only if there is no practicable alternative to access the site, shared access is provided by easement with adjacent properties, and the accessway is designed to contain all vehicle backing movements on the site and provide shared access with adjacent properties.

As addressed in Finding 12, the applicant has requested a variance from the standard prohibiting individual single-family accessways on collector streets. As proposed, both new parcels have frontage on 43rd Ave and would take access through the existing driveway on Parcel 1.

A condition has been established to require improvements to the existing driveway approach on 43rd Ave to bring it into compliance with the applicable City standards.

As conditioned, and with the variance approved as discussed in Finding 12, the Planning Commission finds that the proposed partition meets the applicable access management standards of MMC 12.16.

5. MMC Chapter 17.12 Application Procedure and Approval Criteria

MMC Section 17.12.040 establishes the approval criteria for preliminary plat. The proposed preliminary plat meets these criteria as described below.

- a. MMC Subsection 17.12.040.A.1 requires that the proposed preliminary plat complies with Title 19 Zoning and other applicable ordinances, regulations, and design standards.

As demonstrated by the applicant's submittal materials and evidenced by these findings, the proposed preliminary plat complies with the applicable ordinances, regulations, and design standards. As proposed, this criterion is met.

- b. MMC Subsection 17.12.040.A.2 requires that the proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.

The proposed partition will provide sufficient area on both parcels to accommodate future development in accordance with the standards of the underlying R-7 zone. The parcels do not have physical constraints or dimensional limitations that would necessitate the need for a variance. As proposed, this criterion is met.

- c. MMC Subsection 17.12.040.A.3 requires that the proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).

The proposed plat is a partition plat; therefore, this criterion is not applicable.

- d. MMC Subsection 17.12.040.A.4 requires that the streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.

Adjacent to the subject property, the existing public right-of-way (ROW) on 43rd Ave, which is functionally classified as a collector street in the City's Transportation System Plan, is 50 ft wide. As discussed in Finding 11, a 5-ft dedication is required but no changes to the layout of the existing street are proposed. As proposed, this criterion is met.

- e. MMC Subsection 17.12.040.A.5 requires a detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.

The applicant's submittal materials include a detailed narrative demonstrating compliance with all applicable standards and criteria. As proposed, this criterion is met.

As proposed, the Planning Commission finds that the preliminary plat meets the applicable criteria.

6. MMC Chapter 17.16 Application Requirements and Procedures

MMC Section 17.16.060 establishes the application requirements for preliminary plat, including completed application forms and checklists, applicable fees, and the information specified in MMC Chapter 17.20 Preliminary Plat.

The applicant's submittal materials include the necessary forms, checklists, and fees, as well as sufficient information to demonstrate compliance with the applicable standards and criteria.

As proposed, the Planning Commission finds that the application meets the applicable requirements for submittal of a preliminary plat.

7. MMC Chapter 17.20 Preliminary Plat

MMC 17.20 establishes the information required for a preliminary plat, including general information to be shown on the plat and existing and proposed conditions.

The applicant's preliminary plat submittal is to scale and includes a vicinity map, existing conditions, contour lines, structures on surrounding properties, minimum setbacks for future development, and concepts for future development.

As proposed, the Planning Commission finds that the proposed preliminary plat includes the relevant and necessary information as outlined in MMC 17.20.

8. MMC Chapter 17.28 Design Standards

MMC 17.28, particularly MMC Section 17.28.040, establishes standards for lot design for land divisions and boundary changes.

- a. MMC Subsection 17.28.040.A requires that the lot size, width, shape, and orientation shall be appropriate for the location and the type of use contemplated, as well as that minimum lot standards shall conform to Title 19.

As discussed in Finding 10, the proposed parcels meet the minimum area and dimensional requirements for the underlying R-7 zone, except for lot width. The applicant has requested a variance to the lot width standard for both parcels, with the approval criteria discussed in Finding 12-c(1). As proposed, and with the variance approved as discussed in Finding 12, this standard is met.

- b. MMC Subsection 17.28.040.B requires that lot shape shall be rectilinear, except where not practicable due to location along a street radius, or existing lot shape. The sidelines of lots, as far as practicable, shall run at right angles to the street upon which the lots face. As far as practicable, the rear lot line shall run parallel to the street.

The proposed parcels are both rectilinear in shape and have frontage on 43rd Ave. The side lot lines of both parcels run at right angles to 43rd Ave and the rear lot lines are parallel to 43rd Ave. As proposed, this standard is met.

- c. MMC Subsection 17.28.040.C limits compound lot lines for side or rear lot lines. Cumulative lateral changes in direction exceeding 10% of the distance between opposing lot corners along a given lot line may only be permitted through the variance provisions of MMC Subsection 19.911.

As proposed, a compound line would separate the parcels along their common boundary, with a cumulative lateral change in direction of 20 ft. The distance between opposing lot corners is approximately 228 ft, so the change in direction is allowable without need of a variance. As proposed, this standard is met.

- d. MMC Subsection 17.28.040.D allows lot shape standards to be varied pursuant to MMC 19.911.

No variance to the lot shape standards is requested in this application.

- e. MMC Subsection 17.28.040.E limits double frontage and reversed frontage lots, stating that they should be avoided except in certain situations.

Neither of the proposed parcels is a double frontage or reversed frontage lot.

- f. MMC Subsection 17.28.040.F requires that, pursuant to the definition and development standards contained in Title 19 for frontage, required frontage shall be measured along the street upon which the lot takes access. This standard applies when a lot has frontage on more than one street.

As proposed, both parcels would take access from 43rd Ave. Each parcel has approximately 58 ft of public street frontage and so provide the 35-ft minimum required in the R-7 zone. As proposed, this standard is met.

As proposed, and with the variances approved as discussed in Finding 12, the Planning Commission finds that the new parcels presented in the applicant’s preliminary plat meet the applicable design standards established in MMC 17.28.

9. MMC Chapter 17.32 Improvements

MMC 17.32 establishes procedures for public improvements, including a requirement that work shall not begin until plans have been approved by the City.

As discussed in Finding 11, the applicant would dedicate property to the existing public right-of-way along 43rd Ave and construct physical improvements along the frontage of both parcels.

As proposed, the Planning Commission finds that the applicable standards of MMC 17.32 are met.

10. MMC Section 19.301 Low Density Residential Zones (including R-7)

MMC 19.301 contains standards for Low Density Residential zones, including the R-7 zone. The application meets the applicable standards of this section as described below.

a. MMC Subsection 19.301.2 Allowed Uses

MMC 19.301.2 establishes the uses allowed in the R-7 zone, including single-family detached dwellings, duplexes, and accessory dwelling units (ADUs) as outright permitted uses.

As proposed, the existing house on Parcel 1 would remain. Parcel 2 would be large enough to allow development of either a single-family detached house or a duplex, both of which are allowed uses in the R-7 zone. Any actual proposed use will be reviewed for compliance with the applicable standards of the R-7 zone and other relevant sections of the municipal code at the time of future development.

As proposed, this standard is met.

b. MMC Subsections 19.301.4 and 19.301.5 Development Standards

MMC 19.301.4 and 19.301.5 establish development standards for the R-7 zone. The applicable standards are addressed and met as described in Table 9-b (Zoning Compliance) below.

Table 9-b Applicable R-7 Development Standards			
Standard	R-7 Requirement	Parcel 1	Parcel 2
Lot Area	7,000 sq ft	10,340 sq ft	15,809 sq ft
Lot Width	60 ft	58 ft (see Finding 12 for discussion of the	58 ft (see Finding 12 for discussion of the

		variance requested)	variance requested)
Lot Depth	80 ft	227 ft	227 ft
Public Street Frontage	35 ft	58 ft	58 ft
Front Yard	20 ft (as per MMC 19.501.2, the required setback for 43 rd Ave is 22.5 ft = 20 ft for R-7 zone, plus 2.5 ft for special 30-ft setback from centerline of 43 rd Ave ROW)	13.7 ft (existing nonconforming development, further reduced by dedication to ROW)	To Be Determined at time of development (TBD)
Side Yard	5 ft / 10 ft (interior yards)	13.6 ft (south) c.12 ft (north)	TBD
Rear Yard	20 ft	>165 ft	TBD
Maximum Building Height	2 stories or 35 ft (lesser of)	2 stories, <35 ft	TBD
Maximum lot coverage	30%	Approx. 11%	TBD
Minimum vegetation	30%	>65%	TBD
Front Yard Minimum Vegetation	40%	>75%	TBD
Density requirements	Total lot area is 0.5 acres (after ROW dedications) Min. density = 2 units (@5.0 units/acre) Max. density = 3 units (@6.2 units/acre)	1 dwelling unit (single-family house)	Sized for duplex (2 dwelling units)

As proposed, the applicable development standards of these subsections are met.

As proposed, the Planning Commission finds that the applicable R-7 zone standards of MMC 19.301 are met.

11. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 establishes provisions to ensure that development provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts.

a. MMC Section 19.702 Applicability

MMC 19.702 establishes the applicability of the provisions of MMC 19.700, including land divisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that result in any projected increase in vehicle trips or any increase in gross floor area on the site.

The applicant proposes to partition the subject property into 2 distinct parcels. The proposed partition triggers the requirements of MMC 19.700.

MMC 19.700 applies to the proposed development.

b. MMC Section 19.703 Review Process

MMC 19.703 establishes the review process for development that is subject to MMC 19.700, including requiring a preapplication conference, establishing the type of application required, and establishing approval criteria.

The applicant had a preapplication conference with City staff on January 4, 2018, prior to application submittal. The proposed action does not trigger a Transportation Impact Study (TIS) (as addressed in Finding 11-c), but it does require a preliminary plat application. The proposal's compliance with MMC 19.700 is being reviewed as part of the preliminary plat application and a separate Transportation Facilities Review (TFR) application is not necessary. As addressed in Findings 11-d and 11-e, the applicant will provide mitigation in rough proportion to the potential impacts of the proposed partition.

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 requires submission of a TIS documenting the development impacts on the surrounding transportation system.

The City Engineer has determined that a transportation impact study was not required, as the impacts of the proposed partition on the transportation system were minimal and evident.

d. MMC Section 19.705 Rough Proportionality

MMC 19.705 requires that transportation impacts of the proposed development be mitigated in proportion to its potential impacts.

Finding 11-e addresses the required dedications to the public right-of-way along the subject property's frontage on 43rd Ave. A rough analysis of proportionality shows that right-of-way dedication and the construction of street improvements are proportional to the anticipated impacts of creating 1 new parcel sized for residential development of a duplex. With the required dedication and improvements, the surrounding transportation system will continue to operate at the level of service as before the proposed action.

The proposed development is consistent with MMC 19.705.

e. MMC Section 19.708 Transportation Facility Requirements

MMC 19.708 establishes the City's requirements and standards for improvements to public streets, including pedestrian, bicycle, and transit facilities. MMC Subsection 19.708.1 points to MMC Chapter 12.16 and establishes general requirements and standards for streets, including access management, clear vision, street design, connectivity, and intersection design and spacing standards. MMC Table 19.708.2 provides more specific street design standards for various street classifications, including for collector and local streets. The City's street design standards are based

on the street classification system described in the City’s Transportation System Plan (TSP).

All streets, sidewalks, necessary public improvements, and other public transportation facilities located in the public ROW and abutting the development site shall be adequate at the time of development or shall be made adequate in a timely manner. Driveway approach aprons shall be between 9 ft and 20 ft in width and least 7.5 ft from the side property line, though shared driveways may straddle property lines. In addition, all signs, structures, or vegetation over 3 ft in height shall be removed from “vision clearance areas” at intersections of streets, driveways, and alleys.

The Milwaukie TSP and Transportation Design Manual (TDM) classify of 43rd Ave as a collector street. As established in MMC Table 19.708.2, the required ROW width for a collector street is between 40 ft and 74 ft depending on the required street improvements. For this section of 43rd Ave, the Engineering Department has determined that the required ROW width is 60 ft, to allow for a half-street cross-section consisting of a 12-ft travel lane, 5-ft bicycle lane, standard curb and gutter, 6-ft landscape strip, and 6-ft set-back sidewalk. The existing ROW width of 43rd Ave fronting the subject property is 50 ft, so the applicant is responsible for dedicating half (5 ft) of the remaining 10 ft needed for the ROW along 43rd Ave fronting the subject property. And given that the only existing half-street improvement along the subject property frontage is a 12-ft travel lane, the improvements noted above will be required. Conditions have been established to ensure that the needed ROW dedication and street improvements are provided.

The City will be constructing sidewalks on 43rd Ave within the next 2 years, so the existing fencing that is located in the 43rd Ave right-of-way will not be allowed to remain. A condition has been established to require the applicant to relocate this fence onto the private property.

As proposed, Parcel 2 will share access to 43rd Ave through the existing driveway on Parcel 1, which will remain. A condition of approval has been established to ensure that the driveway approach for Parcel 1 is reconstructed with a standard asphalt driveway approach that meets all guidelines of the Americans with Disabilities Act (ADA) as well as all other applicable requirements and standards for accessways.

The applicant has requested variances to the maximum block perimeter standard of MMC Subsection 19.708.1.F(5) and the maximum intersection spacing standard of MMC Subsection 19.708.1.F(6). These variances are discussed in Finding 12.

As conditioned, and with the variances approved as discussed in Finding 12, the proposed partition meets all the applicable standards of MMC 19.708.

f. MMC Section 19.709 Public Utility Requirements

MMC 19.709 establishes the City’s requirements and standards to ensure the adequacy of public utilities to serve development.

As discussed above in Finding 11-e, the proposed partition is required to dedicate 5 ft along the 43rd Ave frontage. In addition, the applicant has proposed to have Parcel 2 share access to

43rd Ave through the existing driveway on Parcel 1, and a condition has been established to ensure that the driveway approach is reconstructed to meet applicable standards. Connections to utilities for Parcel 2 can be made directly to existing services in the ROW along the parcel's frontage on 43rd Ave or via an easement through Parcel 1. If the applicant elects to take the utility and access easement approach, then these easements will need to be identified on the plat. A condition has been established to ensure this requirement will be met if needed.

As conditioned, the proposed development meets the standards of MMC 19.709.

As conditioned, the Planning Commission finds that the proposed partition meets the applicable public facility improvement standards of MMC 19.700.

12. MMC Section 19.911 Variances

MMC Section 19.911 establishes the variance process for seeking relief from specific code sections that have the unintended effect of preventing reasonable development or imposing undue hardship.

a. MMC Subsection 19.911.2 Applicability

MMC 19.911.2 establishes applicability standards for variance requests.

Variances may be requested to any standard of MMC Title 19, provided the request is not specifically listed as ineligible in MMC Subsection 19.911.2.B. Ineligible variances include requests that result in any of the following: change of a review type, change or omission of a procedural step, change to a definition, increase in density, allowance of a building code violation, allowance of a use that is not allowed in the base zone, or the elimination of restrictions on uses or development that contain the word "prohibited."

The applicant has requested 4 variances: (1) from the lot width standards of the R-7 zone for both parcels, as established in MMC Subsection 19.301.4.A(2); (2) from the maximum block perimeter standard of MMC Subsection 19.708.1.F(5); (3) from the maximum intersection spacing standard of MMC Subsection 19.708.1.F(6); and (4) from the limitation on individual access for Parcel 2 as a new lot, as established in MMC Subsection 12.16.040.C(2) .

The requested variances meet the eligibility requirements established in MMC 19.911.2.

b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. Subsection 3-B establishes the Type II review process for limited variations to certain numerical standards. Subsection 3-C establishes the Type III review process for larger or more complex variations to standards that require additional discretion and warrant a public hearing.

The variance requested to the R-7 lot width standard falls within the 10% allowance for Type II review. However, the other 3 variances are not identified in MMC 19.911.3.B as being eligible for Type II review and so are subject to the Type III review process. The lot width variance is subject to the Type II approval criteria established in MMC Subsection 19.911.4.A;

the other 3 variances must show compliance with the Type III approval criteria established in MMC Subsection 19.911.4.B.

c. MMC Subsection 19.911.4 Approval Criteria

(1) MMC 19.911.4.A establishes approval criteria for Type II variance requests.

- (a) The proposed variance, or cumulative effect of multiple variances, will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare.

The minimum required lot width for the R-7 zone is 60 ft; the proposed width of both Parcels 1 and 2 is 58 ft, or 2 ft below the standard. The requested adjustment represents a difference of approximately 3% from the minimum, which is not significant and would not be detrimental to surrounding properties or public health, safety, or welfare. There are no designated natural resource areas on the subject property.

This criterion is met.

- (b) The proposed variance will not interfere with planned future improvements to any public transportation facility or utility identified in an officially adopted plan such as the Transportation System Plan or Water Master Plan.

The City has a Capital Improvement Project scheduled to construct curbs, landscape strips, and set back sidewalks on 43rd Ave within the next 2 years. The requested minor adjustment to the lot width of both parcels would not interfere with these or any other planned improvements.

This criterion is met.

- (c) Where site improvements already exist, the proposed variance will sustain the integrity of, or enhance, an existing building or site design.

The proposed variance to reduce the width of both parcels by 2 ft would not have any negative impact on existing buildings. As noted in Finding 10-b, the existing house that would remain on Parcel 1 will meet the minimum required side yard setbacks for the R-7 zone.

As per the definition provided in MMC Section 19.201, lot width is measured at the building line. Given that the proposed partition includes a compound line segment that results in Parcel 2 being 78 ft wide in the back half of the lot where the applicant has indicated interest in locating the new primary structure, it is possible that the actual width of Parcel 2 will meet the minimum standard. Regardless, the 58-ft width of Parcel 2 at the front lot line would allow development of a primary structure that could easily meet the 5-ft and 10-ft side-yard setback standards of the R-7 zone.

This criterion is met.

- (d) Impacts from the proposed variance will be mitigated to the extent practicable.

As discussed above, the proposed 2-ft reduction in lot width is not significant and should not result in any negative impacts that require mitigation.

This criterion is met.

As proposed, the Planning Commission finds that the variance requested to the R-7 lot width standard meets the approval criteria established in MMC 19.911.4.A for Type II variances. The variance to the lot width standard is approved for both parcels.

- (2) MMC 19.911.4.B establishes approval criteria for Type III variance requests, including discretionary relief criteria and economic hardship criteria. The applicant may choose which set of criteria to meet based upon the nature of the request, the development proposal, and the existing site conditions.

The applicant has elected to address the economic hardship criteria for each of the Type III variances, which are provided in MMC Subsection 19.911.4.B(2). These 3 variances are all related to the issue of providing for a future connection to White Lake Rd and are discussed collectively in the context of the approval criteria below.

- (a) Due to unusual site characteristics and/or other physical conditions on or near the site, the variance is necessary to allow reasonable economic use of the property comparable with other properties in the same area and zoning district.

As per MMC Table 19.708.1, the minimum distance between intersections on designated collector streets like 43rd Ave is 300 ft and the maximum distance is 600 ft. Along 43rd Ave, Rhodesia St is approximately 210 ft north of the nearest point of the subject property and approximately 620 ft from the intersection of 43rd Ave with King Rd. The location of the subject property makes a variance from one or the other of the intersection spacing standards necessary, whether or not the applicant proposed ROW dedication for a future connection to White Lake Rd. With the dedication, a variance would be needed from the minimum spacing standard because Rhodesia St would be less than 300 ft away; without the dedication, a variance from the maximum spacing standard would be required because King Rd and Rhodesia St would remain more than 600 ft apart.

As per MMC Table 19.708.1, the maximum block perimeter measured from a collector street is 1,800 ft. For the subject property, the existing perimeter of the block extending from 43rd Ave to King Rd to 46th Ave to White Lake Rd to 45th Ave to Rhodesia St and back to 43rd Ave is approximately 2,900 ft. A variance to the block perimeter standard is necessary to allow the subject property to be redeveloped as would be a comparable property in the area.

Finally, the subject property has a single existing access on 43rd Ave. As per MMC Subsection 12.16.040.C.2, individual access to a collector street is prohibited unless the City Engineer finds there is no practicable alternative to access the site,

shared access is provided by easement with adjacent properties, and the accessway is designed to contain all backing movements on site. Although a future connection to White Lake Rd is physically possible, public testimony by nearby neighbors indicates little public support for the connection, and the pattern of existing development in the area does not facilitate the additional actions necessary to actualize such a connection. With that in mind and given that the applicant has proposed that both parcels share the existing driveway access onto 43rd Ave (which is adequately situated to contain all backing movements on site), a variance to the standard limiting access to a collector street is necessary to allow reasonable redevelopment of the subject property.

The Planning Commission finds that the requested variances are necessary to allow reasonable economic use of the property. This criterion is met.

- (b) The proposed variance is the minimum variance necessary to allow for reasonable economic use of the property.

The applicant has proposed that both parcels share the existing access onto 43rd Ave and that no new individual access would be opened onto that collector street. Given the finding discussed above that ROW dedication for a future connection to White Lake Rd is not publicly supported or highly likely, there is no other alternative to allow for reasonable economic use of the property than to grant the requested variances.

The Planning Commission finds that the requested variances are the minimum necessary to allow for reasonable economic use of the property. This criterion is met.

- (c) Impacts from the proposed variance will be mitigated to the extent practicable.

Given the findings discussed above that ROW dedication for a future connection to White Lake Rd is not publicly supported or highly likely, there is no alternative to the requested variances. The primary impact is less connectivity for the surrounding neighborhood, although a connection to White Lake Rd would shorten the walking trip to the nearby King Road Shopping Center for only approximately 14 houses and by only 50-100 ft for many of them.

The Planning Commission finds that the requested variances would have no significant impacts that require mitigation.

The Planning Commission has assessed the merits of requiring dedication of ROW to make a future connection to White Lake Rd. Having heard public testimony from owners and residents of nearby properties to the north and east of the subject property in opposition to a future street connection, noting that the surrounding area is already developed and presents little opportunity for redevelopment, and concluding that no properties depend on a through connection to White Lake Rd for redevelopment, the

Planning Commission finds that the actualization of a future street connection to White Lake Rd is highly unlikely.

As proposed, the Planning Commission finds that the requested variances meet the approval criteria established in MMC 19.911.4.B(2) for Type III variances based on economic hardship.

As proposed, the Planning Commission finds that the requested variances meet the applicable Type III variance approval criteria established in MMC 19.911.4.

The Planning Commission finds that the requested variances are allowable as per the applicable standards of MMC 19.911 and are therefore approved.

13. MMC Chapter 19.1200 Solar Access Protection

A primary purpose of MMC 19.1200 is to orient new lots and parcels to allow utilization of solar energy. In particular, MMC Section 19.1203 establishes solar access provisions for new development.

- a. MMC Subsection 19.1203.2 establishes the applicability of MMC Subsection 19.1203.3 as for applications to create lots in single-family zones. Exceptions are allowable to the extent the Planning Director finds that the applicant has shown one or more of the conditions listed in MMC Subsections 19.1203.4 and 19.1203.5 exist and that exemptions or adjustments are warranted.

The proposed partition will create new parcels in the R-7 zone, which allows single-family residences. As discussed in Findings 13-b, 13-c, and 13-d, the solar design standards of MMC 19.1203.3 are applicable, and no exemptions or adjustments are necessary.

- b. MMC 19.1203.3 establishes solar design standards, including basic requirements for north-south dimension and front-lot-line orientation with respect to a true east-west axis. There are two other options for compliance, for either establishing a protected solar building line or demonstrating a particular level of performance with respect to protection from shading.

Neither of the parcels created by the proposed partition have a north-south dimension of 90 ft or more or front lot lines that are oriented within 30° of a true east-west axis. As discussed in Finding 13-d, the Planning Director has reduced the percentage of lots that must comply with this standard to 0.

As proposed, the solar design standards are not applicable.

- c. MMC 19.1203.4 establishes exemptions from the standards of MMC 19.1203.3, including where an off-site structure and/or vegetation produces a shadow pattern that would affect allowable development on the site.

As noted in Finding 13-d, both parcels resulting from the proposed partition have been exempted from compliance with the solar design standards. No exemptions are necessary.

- d. MMC 19.1203.5 establishes provisions for adjustments to the percentage of lots that must comply with the solar design standards of MMC 19.1203.3, including cases in

which the application of the solar design standards would reduce the density or increase the on-site development costs.

As discussed in Finding 12, dedication of public ROW for a future street connection to White Lake Rd has been deemed impractical, so the proposed parcels are both be oriented with a long east-west axis to take access from 43rd Ave and with north-south dimensions well under 90 ft. The existing configuration of the subject property in relation to the 43rd Ave ROW makes it impossible to configure the proposed parcels to meet the solar design standards of MMC 19.1203.3. The Planning Director has reduced the percentage of lots that must comply with the solar design standards to 0.

The Planning Commission finds that both lots in the proposed partition are exempt from the solar design standards of MMC 19.1203.3. As proposed, the applicable provisions of the solar access standards established in MMC 19.1200 are met.

14. As described in Finding 3, public notice of the application was posted on site and mailed as required by the Type III review process established in MMC 19.1006. The application was referred for comment to the following departments and agencies on June 20, 2019:

- Milwaukie Engineering Department
- Milwaukie Building Department
- Milwaukie Public Works Department
- Milwaukie Police Department
- Clackamas Fire District #1 (CFD #1)
- Lewelling Neighborhood District Association (NDA) Chairperson & Land Use Committee
- Hector Campbell NDA Chairperson & Land Use Committee
- Clackamas County Department of Transportation & Development
- Metro

In addition, public notice of the application with an invitation to comment was sent on June 19, 2019, to property owners and residents within 300 ft of the subject property.

The comments received are summarized as follows:

- **David Aschenbrenner, Chair, Hector Campbell Neighborhood District Association (NDA):** The site is not within the NDA boundary, so they defer to the other NDAs but request that all trees be preserved (or as many as possible) and that there be a requirement to plant more trees.

**Recommended Conditions of Approval
Master File #MLP-2018-001 (revised proposal)**

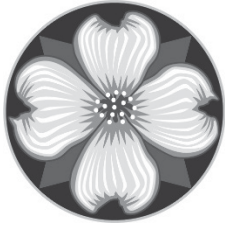
Conditions

1. Prior to approval of the final plat, the following shall be resolved:
 - a. Provide a 5-ft-wide right-of-way (ROW) dedication on the 43rd Ave frontage of both parcels.
 - b. Construct a new driveway approach for the existing access on 43rd Ave that conforms to Milwaukie Public Works Standards 502F. The driveway approach shall meet all guidelines of the Americans with Disabilities Act (ADA), with the driveway approach apron between 9 ft and 20 ft in width. Per MMC Subsection 12.16.040.C.3, as the driveway is a shared driveway for Parcels 1 and 2, the spacing requirements from the side property line do not apply. Parcels 1 and 2 must provide maneuvering space on site to prevent vehicles from backing into the ROW.
 - c. Construct half-street improvements along the 43rd Ave frontage of both parcels, consisting of a 12-ft travel lane, 5-ft bicycle lane, standard curb and gutter, 6-ft landscape strip, and 6-ft set-back sidewalk.
 - d. If needed (as discussed in Finding 11-f), provide access and utility easements for the benefit of Parcel 2 across Parcel 1.
 - e. Relocate the existing fence on the 43rd Ave frontage to behind the resulting front property lines of Parcels 1 and 2 after the required right-of-way dedication.
 - f. Remove all signs, structures, or vegetation in excess of 3 ft in height located in "vision clearance areas" at intersections of streets, driveways, and alleys fronting the proposed partition. Confirm the location of clear vision areas with the Engineering Department prior to removing any vegetation.

Additional Requirements

1. MMC Section 17.04.120 Recording

As per MMC Section 17.04.120, partition plats must be recorded by plat. An application for final plat shall be submitted to both the City Planning Department and the County Surveyor within 6 months of the date of this approval. Once approved by the County Surveyor, a copy of the recorded final plat shall be submitted to the City Planning Department.
2. Obtain a ROW permit for construction of the required driveway approach improvements listed in the conditions of approval.
3. Prior to final inspection for any building on the proposed development, connect all residential roof drains to a private drywell or other approved structure.



PLANNING DEPARTMENT
 6101 SE Johnson Creek Blvd
 Milwaukie OR 97206
 503-786-7630
 planning@milwaukieoregon.gov

Application for Land Use Action

Master File #: _____

Review type*: I II III IV V

CHOOSE APPLICATION TYPE(S):

Variance: Variance

...

...

...

...

- Use separate application forms for:**
- Annexation and/or Boundary Change
 - Compensation for Reduction in Property Value (Measure 37)
 - Daily Display Sign
 - Appeal

RESPONSIBLE PARTIES:

APPLICANT (owner or other eligible applicant—see reverse): Antonio J. Da Rosa and Michelle D. Da Rosa

Mailing address: 10244 SE 43rd Avenue, Milwaukie, OR Zip: 97222

Phone(s): Please Contact Applicant's Consultant Email: Please Contact Applicant's Consultant

APPLICANT'S REPRESENTATIVE (if different than above): AKS Engineering & Forestry, LLC - Chris Goodell

Mailing address: 12965 SW Herman Road, Suite 100 Zip: 97062

Phone(s): (503) 563-6151 Email: chrisg@aks-eng.com

SITE INFORMATION:

Address: 10244 SE 43rd Avenue Map & Tax Lot(s): 12ES30CC 5200

Comprehensive Plan Designation: LD Zoning: R-7 Size of property: +/-0.61 Acres

PROPOSAL (describe briefly):

This application includes Type II and Type III Variances. Please refer to written memorandum.

SIGNATURE:

ATTEST: I am the property owner or I am eligible to initiate this application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. If required, I have attached written authorization to submit this application. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by: _____ Date: _____

IMPORTANT INFORMATION ON REVERSE SIDE

*For multiple applications, this is based on the highest required review type. See MMC Subsection 19.1001.6.B.1.

WHO IS ELIGIBLE TO SUBMIT A LAND USE APPLICATION (excerpted from MMC Subsection 19.1001.6.A):

Type I, II, III, and IV applications may be initiated by the property owner or contract purchaser of the subject property, any person authorized in writing to represent the property owner or contract purchaser, and any agency that has statutory rights of eminent domain for projects they have the authority to construct.

Type V applications may be initiated by any individual.

PREAPPLICATION CONFERENCE:

A preapplication conference may be required or desirable prior to submitting this application. Please discuss with Planning staff.

REVIEW TYPES:

This application will be processed per the assigned review type, as described in the following sections of the Milwaukie Municipal Code:

- Type I: Section 19.1004
- Type II: Section 19.1005
- Type III: Section 19.1006
- Type IV: Section 19.1007
- Type V: Section 19.1008

THIS SECTION FOR OFFICE USE ONLY:

FILE TYPE	FILE NUMBER	FEE AMOUNT*	PERCENT DISCOUNT	DISCOUNT TYPE	DEPOSIT AMOUNT	DATE STAMP
Master file		\$			\$	
Concurrent application files		\$			\$	
		\$			\$	
		\$			\$	
		\$			\$	
SUBTOTALS		\$			\$	
TOTAL AMOUNT RECEIVED: \$			RECEIPT #:			RCD BY:
Associated application file #s (appeals, modifications, previous approvals, etc.):						
Neighborhood District Association(s):						
Notes:						

*After discount (if any)

Date: 6/17/2019
To: Brett Kelter, City of Milwaukie
From: Tony and Michelle Da Rosa
Project: SE 43rd Avenue Partition (Land Use File: MLP-2018-001)
Site Location: 10244 SE 43rd Avenue (Clackamas County Assessor's Map 1 2 E 30 CC Tax Lot 5200)

Subject: **Modification to Preliminary Partition Plat/Site Plan**

An application (Land Use File: MLP-2018-001) was submitted to the City of Milwaukie for the creation of two units of land (Parcel 1 and Parcel 2) on the Applicant's property. A Notice of Decision was issued by the City's Planning Director (dated December 31, 2018), which approved the land use application with conditions including a 20-foot-wide public right-of-way dedication along the subject site's northern property line (Condition 1.a.(1)) for the City's potential future extension of SE White Lake Road from the east. Subsequently, the Planning Director's Decision was appealed by neighbors in opposition to the 20-foot wide right-of-way dedication requirement (the "ROW Dedication") but otherwise supportive of the proposed partition. A public hearing was held on February 12, 2019 and was continued to March 12, 2019. The hearing was continued once again at the March 12th public hearing held with the Planning Commission directing the Applicant to submit a modified preliminary partition plat and site plan omitting the ROW Dedication. Based on subsequent correspondence with City staff, it is understood that a Type II Variance and three Type III Variances are necessary for approval of the Modified Preliminary Partition Plat/Site Plan. The Type II Variance is related to minimum lot width standard for Parcel 1 per Section 19.301(A)(2) of the City's Zoning Ordinance. The Type III Variances are necessary to retain the property's existing access onto SE 43rd Avenue (Section 12.16.040(C)(2)), to retain the existing block perimeter (Section 19.708.1(F)(5)), and for intersection spacing and (Section 19.708.1(F)(6)). Based on Section 19.911.1, variances may be granted for the purpose of fostering reinvestment in existing buildings, allowing for creative infill development solutions, and avoiding environmental impacts. The variance applications included with this memorandum are necessary to accommodate the Modified Preliminary Partition Plat/Site Plan and to provide needed infill housing (a duplex on Parcel 2 and an Accessory Dwelling Unit (ADU) on Parcel 1) supporting the purpose of the City of Milwaukie Municipal Code.

It should be noted that the ROW Dedication and the future extension of SE White Lake Road does not feature in the City's Transportation System Plan and thus is not included in the City's plans for additional connectivity as further discussed on Page 14 below. Additionally, the Modified Partition Plat/Site Plan omitting the ROW Dedication and the variance applications included with this memorandum should be approved because the original partition configuration with the ROW Dedication fails the rough proportionality test that is set forth in *Dolan v. City of Tigard* and subsequent citing Oregon cases that tests the proportionality of an exaction to the anticipated impact of a proposed development, and the essential nexus text that is set forth in *Nollan v. California Coastal Commission* and subsequent citing Oregon cases that requires a logical nexus between the exaction as a remedy for the anticipated impact of a proposed development. These tests provide the appropriate test for the constitutionality of exactions as conditions of land use approvals. The ROW Dedication would constitute a taking of 18% of the parent

parcel and significantly reduce the buildable area of the new parcels, as discussed on Page 13 below. Please refer to the applicant’s testimony at the February 12, 2019 and March 12, 2019 public hearings.

Please refer to the Modified Preliminary Plat/Site Plan and discussion provided below which otherwise supports approval of the application.

CITY OF MILWAUKIE MUNICIPAL CODE

TITLE 19 ZONING

CHAPTER 19.300 BASE ZONES

19.301 LOW DENSITY RESIDENTIAL ZONES

The low density residential zones are Residential Zone R-10, Residential Zone R-7, and Residential Zone R-5. These zones implement the Low Density and Moderate Density residential land use designations in the Milwaukie Comprehensive Plan.

19.301.2 Allowed Uses in Low Density Residential Zones

Uses allowed, either outright or conditionally, in the low density residential zones are listed in Table 19.301.2 below. Similar uses not listed in the table may be allowed through a Director’s Determination pursuant to Section 19.903. Notes and/or cross references to other applicable code sections are listed in the “Standards/Additional Provisions” column.

See Section 19.201 Definitions for specific descriptions of the uses listed in the table.

Table 19.301.2 - Low Density Residential Uses Allowed		
Use	R-7	Standards/Additional Provisions
Single-family detached dwelling	P	Subsection 19.505.1 Single-Family Dwellings and Duplexes
Accessory dwelling unit	P/II	Subsection 19.910.1 Accessory Dwelling Units
P = Permitted. II= Type II review required.		

Response: The subject site currently supports an existing single-family home, a detached accessory building (garage), and detached accessory structures (covered patio/fireplace). This project includes a land division (partition) to create two separate units of land (parcels), one of which is intended to retain the existing home and another which is planned to accommodate a future duplex. In the future, the Applicant also plans to build an ADU on Parcel 1. To accommodate the partition, planned future duplex, and planned future ADU, the existing detached garage is planned to be removed. All this is considered appropriate and permitted in the R-7 zone.

19.301.4 Development Standards

In the low density residential zones, the development standards in Table 19.301.4 apply. Notes and/or cross references to other applicable code sections are listed in the “Standards/Additional Provisions” column. Additional standards are provided in Subsection 19.301.5.

See Sections 19.201 Definitions and 19.202 Measurements for specific descriptions of standards and measurements listed in the table.

Table 19.301.4 - Low Density Residential Development Standards			
Standard	R-7	Standards/ Provisions	Additional
A. Lot Standards			
1. Minimum Lot Size (sq. ft) a. Single-family detached	7,000	Subsection 19.501.1 Lot Size Exceptions	
2. Minimum lot width (ft.)	60		
3. Minimum lot depth (ft)	80		
4. Minimum street frontage requirements (ft) a. Standard lot b. Flag lot c. Double flag lot	35 25 35		
B. Development Standards			
1. Minimum yard requirements for primary structures (ft.) a. Front yard b. Side yard c. Street side yard d. Rear yard	20 5/10 20 20	Subsection 19.301.5.A Side Yards Subsection 19.501.2 Yard Exceptions Subsection 19.504.8 Flag Lot Design and Development Standards	
2. Maximum building height for primary structures	2.5 stories or 35 ft, whichever is less	Subsection 19.501.3 Building Height and Side Yard Height Plane Exceptions	
3. Side yard height plane limit a. Height above ground at minimum required side yard depth (ft) b. Slope of plane (degrees)	20 45	Subsection 19.501.3 Building Height and Side Yard Height Plane Exceptions	
4. Maximum lot coverage (percent of total lot area)	30%	Section 19.201 "Lot coverage" definition Subsection 19.301.5.B Lot Coverage	
5. Minimum vegetation (percent of total lot area)	30%	Subsection 19.301.5.C Front Yard Minimum Vegetation Subsection 19.504.7 Minimum Vegetation	
C. Other Standards			
1. Density requirements (dwelling units per acre) a. Minimum b. Maximum	5.0 6.2	Subsection 19.301.5.D Residential Densities Subsection 19.501.4 Density Exceptions	

Response: As illustrated on the Modified Preliminary Partition Plat/Site Plan (attached), the two-parcel partition conforms to the low-density residential development standards provided in Table 19.301.4 above, with the exception of the minimum lot width. Due to the existing geometry of the parent property, the lot width (\pm 116 feet), does not allow two 60-foot wide parcels. The two-parcel partition results in one parcel (Parcel 1) that is slightly less than 60 feet wide (58 feet) measured in accordance with Figure 19.201-3 Lot Width; therefore, a Type II Variance is necessary and the applicable approval criteria are addressed in Section 19.911.3 (p.9).

19.301.5 Additional Development Standards

A. Side Yards

In the R-7 Zone, one side yard shall be at least 5 ft and one side yard shall be at least 10 ft, except on a corner lot the street side yard shall be 20 ft.

Response: Parcel 1 and Parcel 2 are both planned to have 5-foot side yard setbacks and 10-foot side yard setbacks. The side yard setbacks are depicted on the Modified Preliminary Partition Plat/Site Plan (attached). Additionally, the subject site is not considered to be a corner lot. This criterion is met.

B. Lot Coverage

The lot coverage standards in Subsection 19.301.4.B.4 are modified for specific uses and lot sizes as described below. The reductions and increases are combined for properties that are described by more than one of the situations below.

1. Decreased Lot Coverage for Large Lots

Response: As a result of this two-parcel partition, the two parcels are not 2.5 times larger than the minimum lot size in Subsection 19.301.4.A.1. Therefore, this criterion does not apply.

2. Increased Lot Coverage for Single-Family Detached Dwellings

Response: Increasing the maximum lot coverage is not included in this application. Therefore, this criterion does not apply.

A. Type II variance per Subsection 19.911.4.A, to further increase this lot coverage allowance, is prohibited.

3. Increased Lot Coverage for Duplexes

4. Increased Lot Coverage for Detached Accessory Dwelling Units

Response: Increasing the maximum lot coverage is not included in this application. This criterion does not apply. That said, an increase in lot coverage could be considered in the future.

C. Front Yard Minimum Vegetation

At least 40% of the front yard shall be vegetated. The front yard vegetation area required by this subsection counts toward the minimum required vegetation for the lot. A property may provide less than the 40% of the front yard vegetation requirement if it is necessary to provide a turnaround area so that vehicles can enter a collector or arterial street in a forward motion.

Response: As illustrated on the Modified Preliminary Partition Plat/Site Plan, Parcel 1 contains existing landscaping and vegetation which meet the minimum requirements listed above, and is planned to continue to meet the front yard minimum vegetation requirements. In addition, Parcel 1 has an existing driveway/turnaround that provides access to SE 43rd Avenue (collector). As conceptually illustrated on the Modified Preliminary Partition Plat/Site Plan, Parcel 2 also complies with the front yard minimum vegetation requirement. Therefore, these criteria are satisfied.

D. Residential Densities

The minimum and maximum development densities in Subsection 19.301.4.C.1 are applicable for land divisions and replats that change the number of lots.

If a proposal for a replat or land division is not able to meet the minimum density requirement—due to the dimensional requirements for lot width, lot depth, or lot frontage—the minimum density requirement shall instead be equal to the maximum number of lots that can be obtained from the site given its dimensional constraints. The inability of new lot lines to meet required yard dimensions from existing structures shall not be considered as a basis for automatically lowering the minimum density requirement.

Response: Density calculations are provided on the Modified Preliminary Partition Plat/Site Plan which demonstrate the planned two-parcel partition conforms to the residential density requirements in Subsection 19.301.4.C.1. Therefore, this criterion is met.

E. Accessory Structure Standards
Standards specific to accessory structures are contained in Section 19.502.

Response: These standards are applicable to potential future accessory structures and compliance with these standards is to be addressed at the time of building permit review.

F. Number of Dwelling Structures
In the low density residential zones, 1 primary building designed for dwelling purposes shall be permitted per lot. See Subsection 19.504.4.

Response: As illustrated on the Modified Preliminary Partition Plat/Site Plan, the partition is planned to create two units of land. The subject site contains one existing single-family home (primary building), which is planned to be retained on Parcel 1. The Applicant also intends to construct an ADU on Parcel 1 in the future. Parcel 2 is intended to accommodate the future construction of a duplex (primary building). Therefore, this criterion is satisfied.

G. Off-Street Parking and Loading
Off-street parking and loading is required as specified in Chapter 19.600.

Response: Per Table 19.605.1, one off-street parking space per dwelling unit is required. As illustrated on the Modified Preliminary Partition Plat/Site Plan (attached), the existing house and associated off-street parking (provided by existing driveway on Parcel 1) meet the minimum off-street parking requirements. Also illustrated on the Modified Preliminary Partition Plat/Site Plan is a conceptual collective garage on Parcel 1, which is planned to be constructed in the future to provide additional off-street parking. Additionally, the minimum required off-street parking associated with the future duplex on Parcel 2 and future ADU on Parcel 1 is to be addressed at the time of building permit review. Therefore, the standards included in Chapter 19.600 are met, as applicable.

H. Public Facility Improvements
Transportation requirements and public facility improvements are required as specified in Chapter 19.700.

Response: As previously described, the Applicant was directed to submit a Modified Preliminary Partition Plat/Site Plan for the planned two-parcel partition without the 20-foot wide right-of-way dedication for the potential future extension of SE White Lake Road (by the City Planning Commission). Based on subsequent conversations with City staff, it is understood that two Type III Variances to standards included in Chapter 19.700 are

necessary for the Modified Preliminary Partition Plat/Site Plan (the third variance pertains to Section 12.16.040(C)(2)). The approval criteria for Section 19.708.1(F)(5) and Section 19.708.1(F)(6) are addressed below in Section 19.911.4 (p.13). That said, the planned public facility improvements are illustrated on the Modified Preliminary Partition Plat/Site Plan.

I. Additional Standards

Depending upon the type of use and development proposed, the following sections of Chapter 19.500 Supplementary Development Regulations may apply. These sections are referenced for convenience, and do not limit or determine the applicability of other sections within the Milwaukee Municipal Code.

1. Subsection 19.504.4 Buildings on the Same Lot
2. Subsection 19.504.8 Flag Lot Design and Development Standards
3. Subsection 19.505.1 Single-Family Dwellings and Duplexes
4. Subsection 19.505.2 Garages and Carports
5. Subsection 19.506.4 Manufactured Dwelling Siting and Design Standards, Siting Standards

Response: These standards are relevant to potential future site improvements and are to be addressed and satisfied when applicable at the time of building permit review.

19.906.4 Approval Criteria

The criteria in this subsection are the approval criteria for Type I and Type II development review applications. The criteria are based on a review of development standards throughout Title 19 Zoning. Not all of the standards within the chapters listed below are applicable to a proposal, and the City will identify the applicable standards through the development review process. Though the criteria are the same for Type I and Type II development review, the standards evaluated in a Type I review will be clear and objective or require limited professional judgment, while the Type II review will involve discretionary standards and/or criteria.

An application for Type I or Type II development review shall be approved when all of the following criteria have been met:

- A.** The proposal complies with all applicable base zone standards in Chapter 19.300.

Response: As previously demonstrated in the responses above, this partition application complies with the standards in Chapter 19.300, with the exception of the minimum lot width. Due to the existing geometry of the parent property, the Modified Preliminary Partition Plat/Site Plan results in one parcel (Parcel 1) that is slightly less than 60 feet in width; therefore, a Type II Variance is necessary and the applicable approval criteria are addressed below in Section 19.911.4 (p.9). Therefore, this criterion is satisfied.

- B.** The proposal complies with all applicable overlay zone and special area standards in Chapter 19.400.

Response: The subject site is not located within an overlay zone or special area. Therefore, this partition application is not subject to the standards in Chapter 19.400. This criterion is not applicable.

- C.** The proposal complies with all applicable supplementary development regulations in Chapter 19.500.

Response: As demonstrated in the responses above, this application involves a two-parcel partition. The applicable supplementary development regulations subsections provided above are to be applied to the future duplex and ADU at the time of building permit review. Therefore, the subsections provided above do not apply at this time.

D. The proposal complies with all applicable off-street parking and loading standards and requirements in Chapter 19.600.

Response: As demonstrated in the response above, the applicable off-street parking and loading standards and requirements in Chapter 19.600 are met.

E. The proposal complies with all applicable public facility standards and requirements, including any required street improvements, in Chapter 19.700.

Response: As described above, the Applicant was directed to submit a Modified Preliminary Partition Plat/Site Plan without a 20-foot wide right-of-way dedication for the future extension of SE White Lake Road. Based on conversations with City staff, two Type III Variances to standards included in Chapter 19.700 (the third variance pertains to Section 12.16.040(C)(2)), are necessary for the Modified Preliminary Partition Plat/Site Plan, which excludes a 20-foot wide right-of-way dedication to the City. The approval criteria to Section 19.708.1(F)(5) and Section 19.708.1(F)(6) are addressed below in Section 19.911.4 (p.13).

F. The proposal complies with all applicable conditions of any land use approvals for the proposal issued prior to or concurrent with the development review application.

Response: Previous land use approvals/conditions for this property do not exist; therefore, this criterion is not applicable.

17.28.040 GENERAL LOT DESIGN

This section does not apply to units of land that are created for purposes other than land development including parks, natural areas, right-of-way dedications, or reservations of a similar nature. Lots and tracts created for cottage cluster housing development, per Subsection 19.505.4, are also exempt from the requirements of this section.

A. Size and Shape

Lot size, width, shape, and orientation shall be appropriate for the location and the type of use contemplated. Minimum lot standards shall conform to Title 19.

Response: As previously noted, the subject site is designated R-7 and the intended future use involves an existing single-family home and the future construction of an ADU on Parcel 1, and the future addition of a duplex on Parcel 2. The Modified Preliminary Partition Plat/Site Plan demonstrates the parcel size, width, shape, and orientation are appropriate for this land use and conform with Title 19, with exception to the minimum lot width standard for Parcel 1 (Section 19.301.4(A)(2)). The Modified Preliminary Partition Plat/Site Plan results in one parcel (Parcel 1) that is less than 60 feet in width; therefore, a Type II Variance is necessary for Parcel 1 and the applicable approval criteria are addressed in Section 19.911.4 (p.13).

B. Rectilinear Lots Required

Lot shape shall be rectilinear, except where not practicable due to location along a street radius, or existing lot shape. The sidelines of lots, as far as practicable, shall run at right angles to the street upon which the lots face. As far as practicable, the rear lot line shall run parallel to the street.

Response: The subject property is a rectilinear lot, ±116 feet by ±232 feet, and ±0.61 acres (per deed and survey) with frontage on SE 43rd Avenue to the west. As shown on the Modified Preliminary Partition Plat/Site Plan, the two parcels created from the partition are also designed to be generally rectangular and appropriate in size and shape to retain the existing single-family home, the future construction of an ADU on Parcel 1, and the future construction of a duplex on Parcel 2. Additionally, the rear lot line of each parcel is oriented to run parallel to the street (SE 43rd Avenue). Therefore, the criteria are met.

C. Limits on Compound Lot Line Segments

Changes in direction along side and rear lot lines shall be avoided. Cumulative lateral changes in direction of a side or rear lot line exceeding 10% of the distance between opposing lot corners along a given lot line is prohibited. Changes in direction shall be measured from a straight line drawn between opposing lot corners.

Response: As illustrated on the Modified Preliminary Partition Plat/Site Plan, the two planned parcels are designed so that changes in direction along rear lot lines are avoided. The minor lateral change in direction between the southern property line of Parcel 2 and the northern property line of Parcel 1 is less than 10% (± 22.7 feet) of the distance between opposing parcel corners along the property line, consistent with the provision above. Therefore, this criterion is satisfied.

D. Adjustments to Lot Shape Standard

Lot shape standards may be adjusted subject to Section 19.911 Variances.

Response: As noted above, Parcels 1 and 2 are in conformance with the lot shape standards, except for the minimum lot width, as shown on the Modified Preliminary Partition Plat/Site Plan and detailed in the sections above. Therefore, the approval criteria for a variance to the minimum lot width standards (Section 19.301.4(A)(2)) for Parcel 1 are addressed below in Section 19.911.4 (p.9).

E. Limits on Double and Reversed Frontage Lots

Double frontage and reversed frontage lots should be avoided, except where essential to provide separations of residential development from railroads, traffic arteries, or adjacent nonresidential uses, or to overcome specific disadvantages of topography and orientation.

Response: As illustrated on the Modified Preliminary Partition Plat/Site Plan (attached), Parcels 1 and 2 are planned to have frontage along SE 43rd Avenue. The subject site is surrounded by properties improved with single-family and multi-family dwellings; other existing streets do not surround the site. Therefore, double and reverse frontage lots are avoided. This criterion is satisfied.

F. Measurement of Required Frontage

Pursuant to the definition and development standards contained in Title 19 for frontage, required frontage shall be measured along the street upon which the lot takes access.

Response: As demonstrated on the Modified Preliminary Partition Plat/Site Plan (attached), Parcels 1 and 2 are planned to take access from SE 43rd Avenue and the required minimum frontage (35 feet) is measured along SE 43rd Avenue. Therefore, this criterion is satisfied.

19.911.3 REVIEW PROCESS

A. General Provisions

1. Variance applications shall be evaluated through either a Type II or III review, depending on the nature and scope of the variance request and the discretion involved in the decision-making process.

Response: A variance application to the minimum lot width requirement (Section 19.301.4(A)(2)) is to be processed through a Type II Review. This Type II Variance application supplements the existing land use application (Land Use File: MLP-2018-001) considering the Modified Preliminary Partition Plat/Site Plan. The applicable criteria for the variance are addressed Section 19.911.4 (p.9).

2. Variance applications may be combined with, and reviewed concurrently with, other land use applications.

Response: This provision is understood.

3. One variance application may include up to three variance requests. Each variance request must be addressed separately in the application. If all of the variance requests are Type II, the application will be processed through a Type II review. If one or more of the variance requests is Type III, the application will be processed through a Type III review. Additional variance requests must be made on a separate variance application.

Response: This provision is understood.

B. Type II Variances

Type II variances allow for limited variations to numerical standards. The following types of variance requests shall be evaluated through a Type II review per Section 19.1005:

4. A variance of up to 10% to lot width or depth standards.

Response: The Modified Preliminary Partition Plat/Site Plan (attached) results in a minimum lot width (the horizontal distance between side lot lines measured at the building line of the primary structure) of less than 60 feet for Parcel 1. The minimum lot width required in the R-7 is 60 feet. Parcel 1 is slightly under the minimum lot width standard, which is planned to be ±58 feet, and within 10% of the minimum lot width standard. Therefore, a variance to the minimum lot width standard is to be evaluated through a Type II review.

19.911.4 APPROVAL CRITERIA

A. Type II Variances

An application for a Type II variance shall be approved when all of the following criteria have been met:

1. The proposed variance, or cumulative effect of multiple variances, will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare.

Response: Per Section 19.301.4(A)(2), the minimum lot width required in the R-7 zone is 60 feet. The existing width of the property is approximately 116 feet. Due to this existing site constraint, the subject property does not allow for a partition that results in two parcels that each have 60-foot widths. The Modified Preliminary Partition Plat/Site Plan results in the lot width of Parcel 1 being slightly under (± 58 feet) the minimum lot width standard required, which is less than 10% of the minimum lot width standard. This reduction to the lot width for Parcel 1 is insignificant and expected to have little to no impact the surrounding properties, public health, safety, or welfare and otherwise complies with the lot shape standards of Title 19. Additionally, natural resources are not present on the subject site. Therefore, this approval criterion is met.

2. The proposed variance will not interfere with planned future improvements to any public transportation facility or utility identified in an officially adopted plan such as the Transportation System Plan or Water Master Plan.

Response: A variance to the minimum lot width standard is not expected to interfere with planned future improvements to any public transportation facility or utility identified on the Transportation System Plan or Water Master Plan. Frontage improvements for 43rd Avenue are planned through a funded future City project. Therefore, this approval criterion is met.

3. Where site improvements already exist, the proposed variance will sustain the integrity of, or enhance, an existing building or site design.

Response: The intent of the variance to Section 19.301.4(A)(2), the minimum lot width standard, is to retain the existing single-family home located on Parcel 1 and accommodate the future construction of a duplex on Parcel 2. Therefore, a variance to reduce the minimum lot width for Parcel 1 by ± 2.3 feet creates a parcel size and shape which sustains the integrity of the existing single-family home. The integrity of the planned two-parcel partition is enhanced by establishing two parcels that are appropriate in design to retain the existing single-family home and construct a future ADU on Parcel 1 and future duplex on Parcel 2. This approval criterion is met.

4. Impacts from the proposed variance will be mitigated to the extent practicable.

Response: The insignificant reduction (± 2.3 feet) to the minimum lot width is not expected to create impacts that warrant mitigation. Therefore, mitigation measures are not anticipated to be necessary. This approval criterion is met.

19.911.3 REVIEW PROCESS

A. General Provisions

1. Variance applications shall be evaluated through either a Type II or III review, depending on the nature and scope of the variance request and the discretion involved in the decision-making process.

Response: A variance application to the access location limitations standard (Section 12.16.040(C)(2)), the maximum block perimeter standard (Section 19.708.1(F)(5)), and the maximum intersection spacing standard (Section 19.708.1(F)(6)), is to be processed through a Type III Review. This Type III Variance application supplements the existing land use application (Land Use File: MLP-2018-001) considering the Modified Preliminary Partition Plat/Site Plan. The applicable approval criteria for these variances are addressed in Section 19.911.4 (p.13).

2. Variance applications may be combined with, and reviewed concurrently with, other land use applications.

Response: This provision is understood.

3. One variance application may include up to three variance requests. Each variance request must be addressed separately in the application. If all of the variance requests are Type II, the application will be processed through a Type II review. If one or more of the variance requests is Type III, the application will be processed through a Type III review. Additional variance requests must be made on a separate variance application.

Response: This provision is understood.

C. Type III Variances

Type III variances allow for larger or more complex variations to standards that require additional discretion and warrant a public hearing consistent with the Type III review process. Any variance request that is not specifically listed as a Type II variance per Subsection 19.911.3.B shall be evaluated through a Type III review per Section 19.1006.

Response: Based on correspondence with City staff, it is understood that variances to the standards previously described and listed/discussed in further detail below are to be evaluated through a Type III review. The approval criteria are addressed in Section 19.911.4 (p.13).

CHAPTER 12.16 ACCESS MANAGEMENT

12.16.040 ACCESS REQUIREMENTS AND STANDARDS

C. Accessway Location

2. Location Limitations

Individual access to single-family residential lots from arterial and collector streets is prohibited. An individual accessway may be approved by the Engineering Director only if there is no practicable alternative to access the site, shared access is provided by easement with adjacent properties, and the accessway is designed to contain all

vehicle backing movements on the site and provide shared access with adjacent properties.

Response: In this case, the subject site has an existing home that is planned to be retained while partitioning the property to accommodate an expected future duplex. The existing driveway is planned to be utilized as a shared access from SE 43rd Avenue (collector street) for the project common to both the existing home and the planned future duplex. Therefore, individual access to single-family lots is not included in the application. That said, based on correspondence with City staff, it is understood that a variance is required to allow the shared access to SE 43rd Avenue.

19.708 TRANSPORTATION FACILITY REQUIREMENTS

19.708.1 General Street Requirements and Standards

F. Intersection Design and Spacing

- 5. Minimum and maximum block perimeter standards are provided in Table 19.708.1.
- 6. Minimum and maximum intersection spacing standards are provided in Table 19.708.1.

Table 19.708.1 Street/Intersection Spacing			
Street Classification	Minimum Distance Between Street Intersections	Maximum Distance Between Street Intersections	Maximum Block Perimeter
Arterial	530'	1,000'	2600'
Collector	300'	600'	1800'

Response: The subject site is located along a perimeter block that includes a collector, local, and an arterial street. Per Section 19.708.1(F)(5), the maximum block perimeter length on a collector street is 2,600 feet. The existing perimeter block length is approximately 3,000 feet. A variance is necessary to preserve the existing perimeter block length.

Per Section 19.708.1(F)(6), the maximum intersection spacing on a collector street is 600 feet. A variance is necessary to preserve the existing intersection spacing allowing the existing driveway to remain. Approval of these two variances relating to intersection design and spacing standards would accommodate the two-parcel partition, omitting the 20-foot wide right-of-way dedication, as illustrated on the Modified Preliminary Partition Plat/Site Plan. Therefore, the variance approval criteria are addressed directly below in Section 19.911.4 (p.13).

19.911.4 APPROVAL CRITERIA

B. Type III Variances

An application for a Type III variance shall be approved when all of the criteria in either Subsection 19.911.4.B.1 or 2 have been met. An applicant may choose which set of criteria to meet based upon the

nature of the variance request, the nature of the development proposal, and the existing site conditions.

2. Economic Hardship Criteria

- a. Due to unusual site characteristics and/or other physical conditions on or near the site, the variance is necessary to allow reasonable economic use of the property comparable with other properties in the same area and zoning district.
- b. The proposed variance is the minimum variance necessary to allow for reasonable economic use of the property.
- c. Impacts from the proposed variance will be mitigated to the extent practicable.

Response: Compliance with the City standards listed above is constrained by the existing physical infrastructure surrounding the site, the location and orientation of the subject property, and the existing site geometry. The variances included are the minimum necessary to allow for the partition application and thus allow for reasonable economic use of the property. Mitigation is not expected to be necessary especially in light of testimony received by Planning Commission. The subject site meets the economic hardship criteria for these three variances as demonstrated below and the following statements support the approval of these variances:

- Most notably, the buildable area of the subject property would be reduced by approximately 25-percent if a right-of-way dedication is required by the City on the subject property. Additionally, when comparing the buildable area of Parcel 2 on the Modified Preliminary Plat/Site Plan to the buildable area of Parcel 2 that would remain after a 20-foot wide right-of-way dedication, the buildable area of Parcel 2 would be reduced by approximately 50-percent. The reduction to the subject property's buildable area created by a 20-foot wide right-of-way dedication would be significant. The potential loss in buildable area would also limit the future improvements (i.e. location, design, size, etc.) the Applicant can construct.
- As previously described the existing driveway, which is intended to become a shared access, becomes compliant with the accessway location standards. The Modified Preliminary Partition Plat/Site Plan (attached) illustrates that the shared driveway access (with a turnaround to ensure safety of vehicles) is consistent with Section 12.16.040(D)(2), which states 'The number of accessways on collector and arterial streets shall be minimized whenever possible through the use of shared accessways and coordinated on-site circulation patterns...'. Additionally, shared access is permitted onto an arterial street per Section 12.16.040(D)(4). Evidently, preserving the existing driveway access on the subject property to provide a shared access to Parcels 1 and 2 meets the City Municipal Code standards relating to shared access onto a collector street.

- In regard to the intersection spacing and design standards, the existing perimeter block length is approximately 3,000 feet (measured along SE 43rd Avenue, SE Rhodessa Street, SE 45th Avenue, and SE King Road). If SE White Lake Road were to be constructed in the future, the perimeter block length would be approximately 2,600 feet (approximately 400 feet less than the existing perimeter block length), which still does not meet the maximum block perimeter length on an arterial street (1,800 feet). Modifying the existing perimeter block length to approximately 400 feet less would not provide a noticeable benefit to the surrounding area. Moreover, the distance between the two existing intersections on SE 43rd Avenue between SE Rhodessa Street and SE King Street is approximately 660 feet, a slightly longer distance than the maximum distance between street intersections allowed on a collector street (600 feet). Based on existing conditions, if SE White Lake Road were to be extended through to SE 43rd Avenue, the intersection spacing between the existing driveway access on the subject property and SE White Lake Road (± 215 feet) would no longer comply with Section 12.16.040(C)(4)(c). Per Section 12.16.040(C)(4)(c) at least 300 feet for collectors, or beyond the end of queue of traffic during peak hour conditions, whichever is greater, is required to protect the safety and capacity of street intersections, the minimum distance from the nearest intersecting street face of curb to the nearest edge of driveway apron shall be maintained. If the City required a right-of-way dedication at this location, it would trigger the need for a variance to Section 12.16.040(C)(4)(c). Additionally, based on the City of Milwaukie Transportation System Plan (Figure 8-4), neither SE White Lake Road nor any other potential or proposed future street extension is designated within the parameters of the existing city block.
- With respect to the subject property's existing site constraints and the potential impacts to surrounding properties, the city block where the subject site resides is surrounded by properties that support single-family and multi-family homes with access onto arterial and collector streets, including the adjacent property to the south of the subject site (a multi-family residential building) with one shared access onto SE 43rd Avenue. Additionally, the existing improvements, the timeline, and physical alterations that would be required to redevelop the subject property and surrounding properties to force the potential future construction/extensions of SE White Lake Road, mean the City would have to engage in condemnation of neighboring property that would be politically and economically impracticable and expensive for the City. Because the extension of SE White Lake Road is not part of the City's Transportation System Plan, and as omitted not a connectivity project that is approved for funding, it does not make sense to require the current property owner (Applicant) to dedicate land that immediately impacts their ability to attain reasonable economic use and value of their property in comparison to surrounding properties. The variances previously described are not expected to impact the surrounding area. The probable impacts to the surrounding properties in the foreseeable future created by the conceptual future construction/extension of SE White Lake Road is arguably greater than the

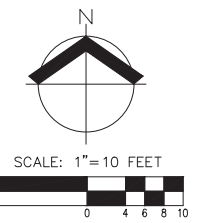
minimal (if any) impacts created by preserving the existing driveway, intersection spacing, and perimeter block length; therefore, mitigation measures are not anticipated to be necessary for these variances.

- In conclusion, the approval of the variances in support of the Modified Preliminary Partition Plat/Site Plan offers a more achievable alternative to the proposed ROW Dedication on the subject property and provides two parcels suitable for residential in-fill development. The approval of these variances is the minimum necessary to allow reasonable economic use (needed housing in the City of Milwaukie) of the subject property, also in comparison to surrounding properties in the R-7 zone as demonstrated above. It is evidenced that an economic hardship is the consequence of the requirement of a 20-foot wide right-of-way dedication. Therefore, a right-of-way dedication on the subject site for the potential future construction/extension of SE White Lake Road (by others) is not feasible or warranted. The approval criteria are met for the Modified Preliminary Partition Plat/Site Plan.

Enclosures:

Additional City Application Form

Modified Preliminary Partition Plat/Site Plan (22 inches x 34 inches)



- NOTES:**
- STORM DRAINAGE FROM NEW IMPERVIOUS SURFACES TO BE INFILTRATED BY AN ON-SITE DRY WELL.
 - FRONTAGE IMPROVEMENTS FOR 43RD AVENUE ARE PLANNED THROUGH A FUNDED FUTURE CITY PROJECT.
 - FRONTAGE IMPROVEMENTS FOR SE WHITE LAKE ROAD ARE NOT INCLUDED WITH THIS PROJECT.

TAX LOT 3400
 TAX MAP 1S 2E 30CC

TAX LOT 3403
 TAX MAP 1S 2E 30CC

TAX LOT 5100
 TAX MAP 1S 2E 30CC

TAX LOT 5800
 TAX MAP 1S 2E 30CC

DEVELOPMENT STANDARD CALCULATIONS

R-7 ZONE STANDARDS

MINIMUM LOT SIZE	7,000 SF
MINIMUM LOT WIDTH	60'
MINIMUM LOT DEPTH	80'
MAXIMUM LOT COVERAGE	35% W/ADU
MAX ADU FOOTPRINT	600 SF
MINIMUM VEGETATION	30%
MINIMUM FRONT YARD VEGETATION	40%
MINIMUM STREET FRONTAGE	35'

PARCEL 1

PARCEL SIZE	±10,340 SF
PARCEL WIDTH	58'
PARCEL DEPTH	227'
PARCEL COVERAGE	±26% (±2,668 SF)
-EXISTING HOUSE FOOTPRINT	1,268 SF
-GARAGE FOOTPRINT	800 SF
-ADU FOOTPRINT	600 SF
VEGETATION	±55% (±5,729 SF)
FRONT YARD	1,151 SF
FRONT YARD VEGETATION	±74% (±848 SF)
STREET FRONTAGE	58'

PARCEL 2

PARCEL SIZE	±15,809 SF
PARCEL WIDTH	78'
LOT DEPTH	227'
*LOT COVERAGE	±19% (±3,000 SF)
-HOUSE/GARAGE FOOTPRINT	±2,400 SF
-ADU FOOTPRINT	600 SF
*VEGETATION	30% (4,847 SF)
*FRONT YARD	1,161 SF
*FRONT YARD VEGETATION	40% (±464 SF)
STREET FRONTAGE	58'

* - ANTICIPATED FUTURE CONDITION

MINIMUM REQUIRED R-7 SETBACK SUMMARY

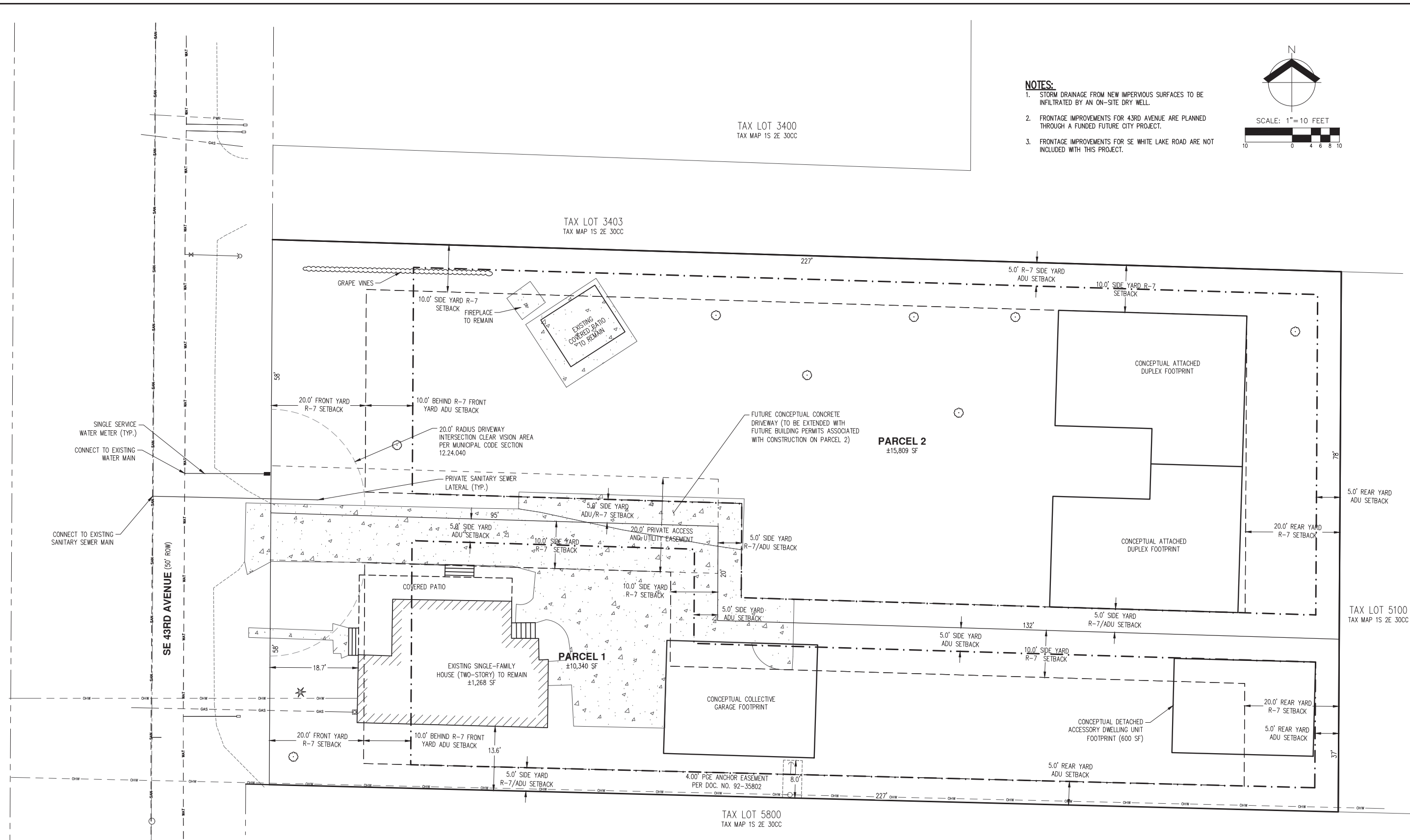
20.0'	FRONT YARD SETBACK
20.0'	REAR YARD SETBACK
10.0'/5.0'	SIDE YARD SETBACK

MINIMUM REQUIRED ADU DETACHED TYPE II SETBACK SUMMARY

10.0'	BEHIND FRONT YARD SETBACK UNLESS LOCATED AT LEAST 40.0' FEET FROM THE FRONT LOT LINE
5.0'	REAR YARD SETBACK
5.0'	SIDE YARD SETBACK

DENSITY CALCULATIONS

R-7 ZONE
 MINIMUM DENSITY=5.0 DU/AC
 MAXIMUM DENSITY=6.2 DU/AC
 TOTAL GROSS AREA=±0.496 ACRES
 MINIMUM UNITS=5.0 DU/AC X ±0.496 ACRES=2.48 UNITS
 =2.0 UNITS (ROUNDING PER MUNICIPAL CODE SECTION 19.202.4B)
 MAXIMUM UNITS=6.2 DU/AC X ±0.0496 ACRES=3.08 UNITS
 =3.0 DU (ROUNDING PER MUNICIPAL CODE SECTION 19.202.4B)
 *DU/AC: DWELLING UNITS PER ACRE



Brett Kelter

From: 2dasch@gmail.com
Sent: Friday, June 21, 2019 12:19 PM
To: Brett Kelter; Sarah Smith; Melanie Bocek
Subject: Re: follow-up RE: MLP-2018-001 Application Referral and Notice of Public Hearing

Comments on this land use from the Hector Campbell NDSas follows:

As this is out side of our NDA [ascross King Rd] we would defer to the other NDS and ask that all trees pe preserved or as many as possible. Also add requirements to plant more trees.

On Fri, Jun 21, 2019 at 9:00 AM Brett Kelter <KelterB@milwaukieoregon.gov> wrote:

A quick follow-up to note that there is a shorter turnaround time than normal for this particular application (comments due June 28, one week from now).

That is in part because it is a revised version of an earlier proposed partition, and also because we just got these materials from the applicant earlier this week and have a hearing on July 9 (so, staff report due out on July 2).

The main difference in this version of the partition is that it does not include a public right-of-way dedication for a future connection to White Lake Rd. Most of the comments I received on the first go-round were from neighbors upset about the proposed street connection, so unless you have comments about the lack of a street connection I am guessing you won't have anything new on this one.

But I did want to point out the short timeline and the difference in the revised proposal. Please let me know if you have any questions or feel that you will have comments but won't be able to meet the June 28 deadline. Thank you!

BRETT KELVER

Associate Planner

City of Milwaukie

o: 503.786.7657 f: 503.774.8236

6101 SE Johnson Creek Blvd • Milwaukie, OR 97206



CITY OF MILWAUKIE

To: Planning Commission
Through: Dennis Egner, Planning Director
From: Vera Koliass, Associate Planner
Date: July 2, 2019, for July 9, 2019, Public Hearing
Subject: Planned Development Code Amendments

ACTION REQUESTED

Open the public hearing for application ZA-2019-001. Discuss the proposed amendments, take public testimony, and provide direction to staff regarding any desired revisions to the proposed amendments. Recommend City Council approval of application ZA-2019-001 and adoption of the recommended Findings of Approval found in Attachment 2. This action would allow for the adoption of amendments to the Milwaukie Zoning Ordinance.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

[June 18, 2019](#): City Council held a worksession to discuss the proposed code amendments.

BACKGROUND INFORMATION

The proposed amendments relate to Milwaukie Municipal Code (MMC) Chapter 19.311 Planned Development Zone (PD). Discussions and meetings about the proposed Hillside Master Plan project, which will be reviewed as a PD zone, has revealed gaps in the code that are a barrier to larger, phased developments. The proposed amendments are intended to be surgical in nature, addressing specific issues related to process and future phasing. They are not intended to change the fundamental goals of a PD, which is to provide greater flexibility, variety, and a mix of housing types and land uses. A larger package of code amendments related to housing and development review procedures is being developed and will come before the Planning Commission and Council for review following adoption of the Comprehensive Plan policies later this year.

The proposed revisions are not intended to change the existing code language as it relates to specific design elements, such as energy efficiency, landscaping, or other standards. The PD process is a discretionary review process that allows customized design standards specific to each project.

Any specific project-related design elements would be identified during the PD review process. The proposed code amendments clarify the review and approval process and allow for phasing

of a development if required. The existing code language does not allow for a phased project to be developed over time, which is not unusual for larger projects. Please refer to Attachment 1 for the draft language.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	PC Packet	Public Copies	EPacket
1. Ordinance	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
a. Recommended Findings in Support of Approval	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Draft code amendment language (underline/strikeout)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c. Draft code amendment language (clean)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

PC Packet = paper materials provided to Planning Commission 7 days prior to the meeting.

Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.

E-Packet = packet materials available online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-32>.



COUNCIL ORDINANCE No.

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING TITLE 19 ZONING TO MAKE MINOR CHANGES TO SELECT SECTIONS FOR THE PURPOSE OF CLARIFICATION AND IMPROVED EFFECTIVENESS (FILE #ZA-2019-001).

WHEREAS, the proposed amendments to Title 19 make changes and clarifications that will more effectively communicate and implement existing policy related to the Planned Development Zone; and

WHEREAS, legal and public notices have been provided as required by law; and

WHEREAS, on July 9, 2019, the Milwaukie Planning Commission conducted a public hearing, as required by MMC 19.1008.5 and adopted a motion in support of the amendment; and

WHEREAS, the Milwaukie City Council finds that the proposed amendments are in the public interest of the City of Milwaukie.

Now, Therefore, the City of Milwaukie does ordain as follows:

Section 1. Findings. Findings of fact in support of the amendments are adopted by the City Council and are attached as Exhibit A.

Section 2. Amendments. The Milwaukie Municipal Code is amended as described in Exhibit B (Title 19 Zoning underline/strikeout version), and Exhibit C (Title 19 Zoning clean version).

Section 3. Effective Date. The amendments shall become effective 15 days from the date of adoption.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Mark Gamba, Mayor

APPROVED AS TO FORM:

ATTEST:

Scott Stauffer, City Recorder

Justin D. Gericke, City Attorney

**Recommended Findings in Support of Approval
File #ZA-2019-001, Planned Development Code Amendments**

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicant, the City of Milwaukie, proposes to amend regulations that are contained in Title 19 Zoning Ordinance of the Milwaukie Municipal Code (MMC). The land use application file number is ZA-2019-001.
2. The purpose of the proposed code amendments is to amend code language related to the planned development zone. The proposed amendments are not intended to be a change of the intent of current policies. The amendments affect the following title of the municipal code:

Zoning Ordinance: MMC 19.311 – Planned Development Zone (PD)

3. The proposal is subject to the criteria and procedures outlined in the following sections of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.902 Amendments to Maps and Ordinances
 - MMC Chapter 19.1000 Review Procedures
4. Sections of the MMC or MCP not addressed in these findings are found to be not applicable to the decision on this land use application.
5. The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. A public hearing was held on July 9, 2019 and August 6, 2019 as required by law.
6. MMC Chapter 19.1000 establishes the initiation and review requirements for land use applications. The City Council finds that these requirements have been met as follows.
 - a. MMC Subsection 19.1001.6 requires that Type V applications be initiated by the Milwaukie City Council, Planning Commission, Planning Director, or any individual.

The amendments were initiated by the Planning Director on April 17, 2019.
 - b. MMC Section 19.1008 establishes requirements for Type V review. The procedures for Type V Review have been met as follows:
 - (1) Subsection 19.1008.3.A.1 requires opportunity for public comment.

Opportunity for public comment and review has been provided. The current version of the draft amendments has been posted on the City's web site since June 7, 2019. On June 18, 2019 staff e-mailed NDA leaders with information about the Planning Commission hearing and a link to the draft proposed amendments.
 - (2) Subsection 19.1008.3.A.2 requires notice of public hearing on a Type V Review to be posted on the City website and at City facilities that are open to the public at least 30 days prior to the hearing.

A notice of the Planning Commission's July 9, 2019, hearing was posted as required on June 7, 2019. A notice of the City Council's August 6, 2019 hearing was posted as required on July 3, 2019.

- (3) Subsection 19.1008.3.A.3 requires notice be sent to individual property owners if the proposal affects a discrete geographic area or specific properties in the City.

The Planning Director has determined that the proposal affects a large geographic area.

- (4) Subsection 19.1008.3.B requires notice of a Type V application be sent to the Department of Land Conservation and Development (DLCD) 35 days prior to the first evidentiary hearing.

Notice of the proposed amendments was sent to DLCD on June 5, 2019.

- (5) Subsection 19.1008.3.C requires notice of a Type V application be sent to Metro 35 days prior to the first evidentiary hearing.

Notice of the proposed amendments was sent to Metro on June 5, 2019.

- (6) Subsection 19.1008.3.D requires notice to property owners if, in the Planning Director's opinion, the proposed amendments would affect the permissible uses of land for those property owners.

The proposed amendments generally do not further restrict the use of property. In general, the proposed amendments add flexibility.

- (7) Subsection 19.1008.4 and 5 establish the review authority and process for review of a Type V application.

The Planning Commission held a duly advertised public hearing on July 9, 2019 and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on August 6, 2019 and approved the amendments.

7. MMC 19.902 Amendments to Maps and Ordinances

- a. MMC 19.902.5 establishes requirements for amendments to the text of the zoning ordinance. The City Council finds that these requirements have been met as follows.

- (1) MMC Subsection 19.902.5.A requires that changes to the text of the land use regulations of the Milwaukie Municipal Code shall be evaluated through a Type V review per Section 19.1008.

The Planning Commission held a duly advertised public hearing on July 9, 2019. A public hearing before City Council is tentatively scheduled for August 6, 2019. Public notice was provided in accordance with MMC Subsection 19.1008.3.

- (2) MMC Subsection 19.902.5.B establishes the approval criteria for changes to land use regulations of the Milwaukie Municipal Code.

- (a) MMC Subsection 19.905.B.1 requires that the proposed amendment be consistent with other provisions of the Milwaukie Municipal Code.

The proposed amendments have been coordinated with and are consistent with other provisions of the Milwaukie Municipal Code. The amendments are not intended to affect policy.

- (b) MMC Subsection 19.902.5.B.2 requires that the proposed amendment be consistent with the goals and policies of the Comprehensive Plan.

Only the goals, objectives, and policies of Comprehensive Plan that are listed below are found to be relevant to the proposed text amendment.

The Goal statement of the Residential Land Use and Housing Element reads as follows:

To provide for the maintenance of existing housing, the rehabilitation of older housing and the development of sound, adequate new housing to meet the housing needs of local residents and the larger metropolitan housing market, while preserving and enhancing local neighborhood quality and identity.

Objective #3 – Residential Land Use: Design states:

To encourage a desirable living environment by allowing flexibility in design, minimizing the impact of new construction on existing development, and assuring that natural open spaces and developed recreational areas are provided whenever feasible.

Policy #2 within Objective #3 states:

In all Planned Unit Developments, a density bonus up to twenty percent (20%) over the allowable density may be granted in exchange for exceptional design quality or special project amenities.

Policy #3 within Objective #3 states:

All Planned Unit Developments will have area devoted to open space and/or outdoor recreational areas. At least half of the open space and/or recreational areas will be of the same general character as the area containing dwelling units. Open space and/or recreational areas do not include public or private streets.

The proposed amendments do not change the intent of Planned Development (PD) Zone language, which is to encourage greater flexibility of design, promote a variety in the physical development pattern of the city, and to encourage a mix of housing types. The amendments are confined to revisions that clarify the process for

reviewing a PD application and provide the ability to phase large scale developments. None of the language related to project design or density is proposed to change.

- (c) MMC Subsection 19.902.5.B.3 requires that the proposed amendment be consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The proposed amendments were sent to Metro for comment. Metro did not identify any inconsistencies with the Metro Urban Growth Management Functional Plan or relevant regional policies.

- (d) MMC Subsection 19.902.5.B.4 requires that the proposed amendment be consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed amendments were sent to the Department of Land Conservation and Development (DLCD) for comment. DLCD did not identify any inconsistencies with relevant State statutes or administrative rules.

- (e) MMC Subsection 19.902.5.B.5 requires that the proposed amendment be consistent with relevant federal regulations.

Relevant federal regulations are those that address land use, the environment, or development in the context of local government planning. Typically, regulations such as those set forth under the following acts may be relevant to a local government land use process: the Americans with Disabilities Act, the Clean Air Act, the Clean Water Act, the Endangered Species Act, the Fair Housing Act, the National Environmental Policy Act, the Religious Land Use and Institutionalized Persons Act, and the Resource Conservation and Recovery Act. None of these acts include regulations that impact the subject proposal or that cannot be met through normal permitting procedures. Therefore, the proposal is found to be consistent with federal regulations that are relevant to local government planning.

Underline/Strikeout Amendments

Title 19 Zoning Ordinance

19.311 PLANNED DEVELOPMENT ZONE PD

In a Planned Development Zone the following regulations shall apply:

19.311.1 Purpose

The purpose of a PD Planned Development Zone is:

- A. To provide a more desirable environment than is possible through the strict application of Zoning Ordinance requirements;
- B. To encourage greater flexibility of design and the application of new techniques in land development;
- C. To provide a more efficient, aesthetic, and desirable use of public and private common open space;
- D. To promote variety in the physical development pattern of the City; and
- E. To encourage a mix of housing types and to allow a mix of residential and other land uses.

19.311.2 Use

A planned development approved by the City Council and based on a final development plan and program shall constitute the Planned Development Zone. The PD Zone is a superimposed zone applied in combination with regular existing zones. A PD Zone shall be comprised of such combinations of types of dwellings and other structures and uses as shall be authorized by the City Council, but the City Council shall authorize only those types of dwellings and other structures and uses as will:

- A. Conform to the City's Comprehensive Plan;
- B. Form a compatible and harmonious group;
- C. Be suited to the capacity of existing and proposed public utilities and facilities;
- D. Be cohesively designed and consistent with the protection of public health, safety, and welfare in general; and
- E. Afford reasonable protection to the permissible uses of properties surrounding the site. In addition to residences and their accessory uses, the City Council may authorize commercial and nonresidential uses which it finds to be:
 - 1. Designed to serve primarily the residents of the planned development or surrounding area, and
 - ~~2. Limited to those nonresidential uses which do not exist in the vicinity, and~~
 - 23. Fully compatible with, and incorporated into, the design of the planned development.

19.311.3 Development Standards

All standards and requirements of this chapter and other City ordinances shall apply in a PD Zone unless the Planning Commission grants a variance from said PD Zone standards in its approval of the PD Zone or accompanying subdivision plat. Approval of a PD Zone establishes a modified set of development standards specific to the development.

Proposed Code Amendment

A. Minimum Size of a PD Zone

A PD Zone may be established only on land which is suitable for the proposed development and of sufficient size to be planned and developed in a manner consistent with the purposes of this zone. ~~A PD Zone shall not be established on less than 2 acres of contiguous land unless the Planning Commission finds that a smaller site is suitable because of unique character, topography, landscaping features, or constitutes an isolated problem area.~~

B. Special Improvements

In its approval of the final plan or subdivision plat within a PD Zone, the City may require the developer to provide special or oversize sewer lines, water lines, roads and streets, or other service facilities. Such approval shall not obligate the City to expend funds for additional construction equipment or for special road, sewer, lighting, water, fire, or police service.

C. Density Increase and Control

The City Council may permit residential densities which exceed those of the underlying zone, if it determines that the planned development is outstanding in planned land use and design and provides exceptional advantages in living conditions and amenities not found in similar developments constructed under regular zoning. In no case shall such density increase be more than 20% greater than the density range prescribed for the primary land use designation indicated in the Comprehensive Plan.

D. Peripheral Yards

Along the periphery of any PD Zone, additional yard depth, buffering, or screening may be required. Peripheral yards shall be at least as deep as that required by the front yard regulations of underlying zones. Open space may serve as peripheral yard and/or buffer strips to separate one planned area from another, if such dual use of the land is deemed to comply with this section.

E. Open Space

Open space means the land area to be set aside and used for scenic, landscaping, or open recreational purposes within the development. Open space may also include areas which, because of topographic or other conditions, are deemed by the City Council to be suitable for leaving in a natural condition. Open space shall be adequate for the recreational and leisure needs of the occupants of the development, and shall include the preservation of areas designated by the City for open space or scenic preservation in the Comprehensive Plan or other plans adopted by the City.

The development plan and program shall provide for the landscaping and/or preservation of the natural features of the land. To ensure that open space will be permanent, deeds or dedication of easements of development rights to the City may be required. Instruments and documents guaranteeing the maintenance of open space shall be approved as to form by the City Attorney. Failure to maintain open space or any other property in a manner specified in the development plan and program shall empower the City to enter said property in order to bring it up to specified standards. In order to recover such maintenance costs, the City may, at its option, assess the real property and improvements within the planned development.

All planned unit developments will have at least one-third of the gross site area devoted to open space and/or outdoor recreational areas. At least half of the required open space and/or recreational areas will be of the same general character as the area containing

dwelling units. Open space and/or recreational areas do not include public or private streets.

19.311.4 Subject to Design Review

Any development within a PD Zone shall be subject to the provisions of design review as outlined in a separate ordinance.

19.311.5 Preliminary Development Plan and Program

A. Applicant

For the purpose of this section, “owner” or “owner-applicant” means and includes any individual(s), partnership(s), corporation(s), public body(ies), legal entity(ies), or holder(s) of a written option to purchase said property. An owner of land located outside, but contiguous to, the City may submit a preliminary development plan for consideration by the City providing that an application for annexation to the City has been filed.

B. Preliminary Development Plan

A preliminary development plan and program shall be submitted by the applicant with the information on the forms and checklists as required with information as required by resolution of the Planning Commission and shall include a phasing plan if applicable. If the proposed project is to be constructed in phases, the project as a whole shall be portrayed in the application materials and shall require preliminary approval.

19.311.6 Planning Commission Review of Preliminary Development Plan and Program

A. Conditional approval by Planning Commission

Following the meeting, or any continuance thereof, the Planning Commission shall notify the applicant whether, in its opinion, the provisions of this chapter have been satisfied, or advise of any deficiencies.

B. Upon approval in principle of the preliminary development plan and program by the Planning Commission, with or without modifications, the owner-applicant shall, within ~~6~~ 18 months, file with the City a final development plan and program, including a phasing plan if applicable, and an application for a change of zone classification which shall serve as an application for a PD Zone change.

19.311.7 Final Development Plan and Program

The final development plan and program and applicable phasing plan shall contain information as required.

19.311.8 Subdivision Plat

A. ~~_____If the planned development will involve the subdivision of land as defined in City land division regulations, the owner-applicant shall prepare and submit a preliminary subdivision plat along with information required by said ordinance to be considered at the same time as the final development plan and program. then the review process shall be as follows:~~

A. The owner-applicant may prepare and submit a preliminary subdivision plat to be considered at the same time as the final development plan. The final subdivision plat shall be submitted within 1 year subsequent to approval of the preliminary plat.

Proposed Code Amendment

- B. For phased development, the owner-applicant may prepare and submit a preliminary subdivision plat for the initial phase only to be considered at the same time as the final development plan. The final subdivision plat for the initial phase shall be submitted within 1 year subsequent to approval of the preliminary plat. For subsequent phases, preliminary and final plat approval is required for each separate phase, in accordance with Subsection 19.311.17.
- C. For subdivisions, final plat approval for the last phase must be obtained within 7 years of the date of approval of the final development plan. For all other projects, in no case shall the total time period of construction of all phases exceed 7 years, as measured from the date of approval of the final development plan until the date that building permit(s) for the last phase is(are) obtained.
- ~~B. The final subdivision plat shall be submitted within 1 year subsequent to approval of the planned development zone by Council.~~

19.311.9 Approval Criteria Application for Zone Change

~~Together with submittal of the final plan and development program, the owner-applicant shall submit an application for a zone change to apply the PD Zone to the subject property. The approval authority(ies) may approve, approve with conditions, or deny the PD Zone based on the following approval criteria:~~

- A. Substantial consistency with the proposal approved with Subsection 19.311.6;
- B. Compliance with Subsections 19.311.1, 19.311.2, and 19.311.3;
- C. The proposed amendment is compatible with the surrounding area based on the following factors:
 - 1. Site location and character of the area.
 - 2. Predominant land use pattern and density of the area.
 - 3. Expected changes in the development pattern for the area.
- D. The need is demonstrated for uses allowed by the proposed amendment.
- E. The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment.
- F. The proposal is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700.
- G. Compliance with all applicable standards in Title 17 Land Division.
- H. Compliance with all applicable development standards and requirements; and
- I. The proposal demonstrates that it addresses a public purpose and provides public benefits and/or amenities beyond those permitted in the base zone.

19.311.10 Planning Commission Action on Final Development Plan and Program

- A. Upon receipt of the final development plan and program, ~~phasing plan, zone change application,~~ and preliminary subdivision plat, where applicable, notice shall be given and the Planning Commission shall hold a public hearing per Section 19.1007 ~~Type IV Review~~. If the final development plan and program is found to be consistent in compliance with

previous approval and with the intent and requirements of this title, it shall recommend the same, together with appropriate documents and conditions, to the City Council for adoption.

- B. It shall at the same time recommend the change to PD Zone in accordance with the provisions of Section 19.902. The approved final development plan and program shall be the basis upon which the change in zone is made. It shall at the same time approve the preliminary subdivision plat in accordance with the Milwaukie land division regulations unless the proposal is a phased development in accordance with the provisions of Subsection 19.311.17.
- C. If the land upon which the change to PD Zone is sought is not within the boundaries of the City, the Planning Commission may approve the zone change and recommend it to the City Council to become effective when the land becomes annexed to the City; or continue the public hearing for the purpose of suitably amending the proposal; or disapprove the proposed developments and abandon hearings and proceedings thereon.

19.311.11 City Council Action on Final Development Plan and Program

- A. Upon receipt of Planning Commission recommendations as set forth above, the final development plan and program and applicable phasing plan and zone change application shall be considered by the City Council per Section 19.1007 ~~Type IV Review~~.
- B. Following the ~~consideration,~~ review and finding of compliance with the approval criteria in Subsection 19.311.9, the City Council may adopt an ordinance applying the PD Zone to the subject property and, in so doing, shall adopt the approved final development plan and program as the standards and requirements for said zone. The City Council, by said ordinance, shall also accept or reject all or part of the dedications of public facilities, land, and open space consistent with the approved phasing plan.
- C. If the proposed PD Zone is contiguous to, but not within, the City boundaries, the City Council shall delay final action until the land is officially annexed to the City.
- D. The City Council may also continue consideration and refer the matter back to the Planning Commission with recommendations for amendment thereof, or reject the proposals and abandon further hearings and proceedings thereon.

19.311.12 Filing of Approved Final Plan and Program

Following action to amend the Zoning ~~Map Ordinance~~ and prior to its effective date, the owner-applicant shall file with the City a conformed and approved final development plan and program, together with all pertinent documents approved as to form by the City Attorney.

19.311.13 Recording of Notice of Final Development Plan

Each owner of property so rezoned shall execute a notice prepared by the City which acknowledges that the final development plan and program approved by the City Council constitutes zoning for the property. Such notice shall contain a legal description of the property and reference to the certified copy of the final development plan and program filed in the office of the City Recorder. Said notices shall be recorded in the office of the County Recorder of Clackamas County.

19.311.14 Development Improvement Prohibited Pending Compliance

No excavation, grading, construction, improvement, or building shall begin, and no permits therefor shall be issued, within the PD Zone until all provisions of this article including execution and filing of required documents, all requirements of the City Land Division Ordinance and Building Code, and all requirements of the final development plan and program have been complied with, unless approved by the Planning Commission.

19.311.15 Variations from Final Development Plan and Program

- A. The City Manager or designee shall determine whether the modified proposal substantially conforms to the plans and/or other development documents upon which the original proposal was evaluated and approved. This determination is not a land use decision and is not subject to appeal.
- B. If the City Manager or designee determines that a modified proposal no longer substantially conforms to the original approval, the City Manager or designee shall determine whether the modification is major or minor in nature. This determination is not a land use decision and is not subject to appeal.
 - 1. Major modifications are modifications that alter a condition of approval, have different or more impacts than the original proposal, and/or require substantial changes to the findings from the original approval.
 - 2. Minor modifications are all modifications not otherwise identified as major modifications.
- C. Minor modifications shall be evaluated through either a Type I or Type II review per Section 19.1004 or 19.1005. The City Manager or designee shall determine the review type after considering the nature and scope of the modification. The City Manager or designee's determination shall favor the review type that provides the most appropriate public notice and opportunity for public comment. This determination is not a land use decision and is not subject to appeal. Major modifications shall be evaluated through a Type III review per Section 19.1006.
- ~~A. Proposed changes which do not meet these criteria shall be processed in the same manner as for a new planned development.~~
- ~~B. The development may vary from the approved final plan and program so long as it is consistent with any subsequent subdivision plat approved by the Planning Commission and does not alter total density, ratio of dwelling unit types, boundaries of the planned development, or location or area of public spaces.~~
- ~~C. Where changes in a subdivision plat are not required, an application for approval of variations to the recorded final plan and program may be submitted in writing. Such variations may be approved by the City staff provided they do not alter dwelling unit densities, alter dwelling unit type ratios, increase or change the type or location of commercial or residential structures, change the boundaries of the planned development, or change the location and area of public open spaces and recreational areas.~~

19.311.16 Expiration of Planned Development Zone

If, within 6~~12~~ months of its effective date, substantial construction or development in the PD Zone has not commenced~~occurred~~ in compliance with the approved final development plan and program and schedule for stage completion, the Planning Commission may initiate a review of the PD Zone and hold a public hearing to determine whether its continuation in whole or in part is in the public interest. Notification and hearing shall be in accordance with Section 19.1007 Type IV Review. If found not to be, the Planning Commission shall recommend to the City Council that the PD Zone be removed by appropriate amendment to the Zoning Map Ordinance and property changed back to original zoning.

In the case of phased development, as governed by Subsection 19.311.17, this provision shall apply to the first phase of the development.

19.311.17 Phased Development

- A. The Planning Commission may approve a time schedule for developing a site in phases as follows:
1. For subdivisions, final plat approval for the last phase must be obtained within 10 years of the date of approval of the final development plan.
 2. For all other projects, in no case shall the total time period of construction of all phases exceed 10 years, as measured from the date of approval of the final development plan until the date that building permit(s) for the last phase is(are) obtained.
- B. The criteria for approving a phased detail development plan proposal are that:
1. The public infrastructure shall be constructed in conjunction with or prior to each phase; and
 2. The development and occupancy of any phase shall be dependent on the use of public facilities constructed to the applicable City or special district standards.
- C. If the planned development will involve the subdivision of land as defined in City land division regulations, the owner-applicant may prepare and submit a preliminary subdivision plat with each separate phase. The final subdivision plat shall be submitted within 1 year subsequent to approval of the preliminary plat.
- D. Extensions to the approved time schedule are permitted subject to Subsection 19.908.

Clean Amendments

Title 19 Zoning Ordinance

19.311 PLANNED DEVELOPMENT ZONE PD

In a Planned Development Zone the following regulations shall apply:

19.311.1 Purpose

The purpose of a PD Planned Development Zone is:

- A. To provide a more desirable environment than is possible through the strict application of Zoning Ordinance requirements;
- B. To encourage greater flexibility of design and the application of new techniques in land development;
- C. To provide a more efficient, aesthetic, and desirable use of public and private common open space;
- D. To promote variety in the physical development pattern of the City; and
- E. To encourage a mix of housing types and to allow a mix of residential and other land uses.

19.311.2 Use

A planned development approved by the City Council and based on a final development plan and program shall constitute the Planned Development Zone. The PD Zone is a superimposed zone applied in combination with regular existing zones. A PD Zone shall be comprised of such combinations of types of dwellings and other structures and uses as shall be authorized by the City Council, but the City Council shall authorize only those types of dwellings and other structures and uses as will:

- A. Conform to the City's Comprehensive Plan;
- B. Form a compatible and harmonious group;
- C. Be suited to the capacity of existing and proposed public utilities and facilities;
- D. Be cohesively designed and consistent with the protection of public health, safety, and welfare in general; and
- E. Afford reasonable protection to the permissible uses of properties surrounding the site. In addition to residences and their accessory uses, the City Council may authorize commercial and nonresidential uses which it finds to be:
 - 1. Designed to serve primarily the residents of the planned development or surrounding area, and
 - 2. Fully compatible with, and incorporated into, the design of the planned development.

19.311.3 Development Standards

All standards and requirements of this chapter and other City ordinances shall apply in a PD Zone unless the Planning Commission grants a variance from said PD Zone standards in its approval of the PD Zone or accompanying subdivision plat. Approval of a PD Zone establishes a modified set of development standards specific to the development.

- A. Minimum Size of a PD Zone

A PD Zone may be established only on land which is suitable for the proposed development and of sufficient size to be planned and developed in a manner consistent with the purposes of this zone.

B. Special Improvements

In its approval of the final plan or subdivision plat within a PD Zone, the City may require the developer to provide special or oversize sewer lines, water lines, roads and streets, or other service facilities. Such approval shall not obligate the City to expend funds for additional construction equipment or for special road, sewer, lighting, water, fire, or police service.

C. Density Increase and Control

The City Council may permit residential densities which exceed those of the underlying zone, if it determines that the planned development is outstanding in planned land use and design and provides exceptional advantages in living conditions and amenities not found in similar developments constructed under regular zoning. In no case shall such density increase be more than 20% greater than the density range prescribed for the primary land use designation indicated in the Comprehensive Plan.

D. Peripheral Yards

Along the periphery of any PD Zone, additional yard depth, buffering, or screening may be required. Peripheral yards shall be at least as deep as that required by the front yard regulations of underlying zones. Open space may serve as peripheral yard and/or buffer strips to separate one planned area from another, if such dual use of the land is deemed to comply with this section.

E. Open Space

Open space means the land area to be set aside and used for scenic, landscaping, or open recreational purposes within the development. Open space may also include areas which, because of topographic or other conditions, are deemed by the City Council to be suitable for leaving in a natural condition. Open space shall be adequate for the recreational and leisure needs of the occupants of the development, and shall include the preservation of areas designated by the City for open space or scenic preservation in the Comprehensive Plan or other plans adopted by the City.

The development plan and program shall provide for the landscaping and/or preservation of the natural features of the land. To ensure that open space will be permanent, deeds or dedication of easements of development rights to the City may be required. Instruments and documents guaranteeing the maintenance of open space shall be approved as to form by the City Attorney. Failure to maintain open space or any other property in a manner specified in the development plan and program shall empower the City to enter said property in order to bring it up to specified standards. In order to recover such maintenance costs, the City may, at its option, assess the real property and improvements within the planned development.

All planned unit developments will have at least one-third of the gross site area devoted to open space and/or outdoor recreational areas. At least half of the required open space and/or recreational areas will be of the same general character as the area containing dwelling units. Open space and/or recreational areas do not include public or private streets.

19.311.4 Subject to Design Review

Any development within a PD Zone shall be subject to the provisions of design review as outlined in a separate ordinance.

19.311.5 Preliminary Development Plan and Program

A. Applicant

For the purpose of this section, “owner” or “owner-applicant” means and includes any individual(s), partnership(s), corporation(s), public body(ies), legal entity(ies), or holder(s) of a written option to purchase said property. An owner of land located outside, but contiguous to, the City may submit a preliminary development plan for consideration by the City providing that an application for annexation to the City has been filed.

B. Preliminary Development Plan

A preliminary development plan and program shall be submitted by the applicant with the information on the forms and checklists as required and shall include a phasing plan if applicable. If the proposed project is to be constructed in phases, the project as a whole shall be portrayed in the application materials and shall require preliminary approval.

19.311.6 Planning Commission Review of Preliminary Development Plan and Program

A. Conditional approval by Planning Commission

Following the meeting, or any continuance thereof, the Planning Commission shall notify the applicant whether, in its opinion, the provisions of this chapter have been satisfied, or advise of any deficiencies.

B. Upon approval in principle of the preliminary development plan and program by the Planning Commission, with or without modifications, the owner-applicant shall, within 18 months, file with the City a final development plan and program, including a phasing plan if applicable which shall serve as an application for a PD Zone change.

19.311.7 Final Development Plan and Program

The final development plan and program and applicable phasing plan shall contain information as required.

19.311.8 Subdivision Plat

If the planned development will involve the subdivision of land as defined in City land division regulations, then the review process shall be as follows:

- A. The owner-applicant may prepare and submit a preliminary subdivision plat to be considered at the same time as the final development plan. The final subdivision plat shall be submitted within 1 year subsequent to approval of the preliminary plat.
- B. For phased development, the owner-applicant may prepare and submit a preliminary subdivision plat for the initial phase only to be considered at the same time as the final development plan. The final subdivision plat for the initial phase shall be submitted within 1 year subsequent to approval of the preliminary plat. For subsequent phases, preliminary and final plat approval is required for each separate phase, in accordance with Subsection 19.311.17.
- C. For subdivisions, final plat approval for the last phase must be obtained within 7 years of the date of approval of the final development plan. For all other projects, in no case shall

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the total time period of construction of all phases exceed 7 years, as measured from the date of approval of the final development plan until the date that building permit(s) for the last phase is(are) obtained.

19.311.9 Approval Criteria

The approval authority(ies) may approve, approve with conditions, or deny the PD Zone based on the following approval criteria:

- A. Substantial consistency with the proposal approved with Subsection 19.311.6;
- B. Compliance with Subsections 19.311.1, 19.311.2, and 19.311.3;
- C. The proposed amendment is compatible with the surrounding area based on the following factors:
 - 1. Site location and character of the area.
 - 2. Predominant land use pattern and density of the area.
 - 3. Expected changes in the development pattern for the area.
- D. The need is demonstrated for uses allowed by the proposed amendment.
- E. The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment.
- F. The proposal is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700.
- G. Compliance with all applicable standards in Title 17 Land Division.
- H. Compliance with all applicable development standards and requirements; and
- I. The proposal demonstrates that it addresses a public purpose and provides public benefits and/or amenities beyond those permitted in the base zone.

19.311.10 Planning Commission Action on Final Development Plan and Program

- A. Upon receipt of the final development plan and program, phasing plan, and preliminary subdivision plat, where applicable, notice shall be given and the Planning Commission shall hold a public hearing per Section 19.1007. If the final development plan and program is found to be consistent with previous approval and with the intent and requirements of this title, it shall recommend the same, together with appropriate documents and conditions, to the City Council for adoption.
- B. It shall at the same time recommend the change to PD Zone in accordance with the provisions of Section 19.902. The approved final development plan and program shall be the basis upon which the change in zone is made. It shall at the same time approve the preliminary subdivision plat in accordance with the Milwaukie land division regulations unless the proposal is a phased development in accordance with the provisions of Subsection 19.311.17.
- C. If the land upon which the change to PD Zone is sought is not within the boundaries of the City, the Planning Commission may approve the zone change and recommend it to the City Council to become effective when the land becomes annexed to the City; or continue the

public hearing for the purpose of suitably amending the proposal; or disapprove the proposed developments and abandon hearings and proceedings thereon.

19.311.11 City Council Action on Final Development Plan and Program

- A. Upon receipt of Planning Commission recommendations as set forth above, the final development plan and program and applicable phasing plan shall be considered by the City Council per Section 19.1007.
- B. Following the review and finding of compliance with the approval criteria in Subsection 19.311.9, the City Council may adopt an ordinance applying the PD Zone to the subject property and, in so doing, shall adopt the approved final development plan and program as the standards and requirements for said zone. The City Council, by said ordinance, shall also accept or reject all or part of the dedications of public facilities, land, and open space consistent with the approved phasing plan.
- C. If the proposed PD Zone is contiguous to, but not within, the City boundaries, the City Council shall delay final action until the land is officially annexed to the City.
- D. The City Council may also continue consideration and refer the matter back to the Planning Commission with recommendations for amendment thereof, or reject the proposals and abandon further hearings and proceedings thereon.

19.311.12 Filing of Approved Final Plan and Program

Following action to amend the Zoning Map and prior to its effective date, the owner-applicant shall file with the City a conformed and approved final development plan and program, together with all pertinent documents approved as to form by the City Attorney.

19.311.13 Recording of Notice of Final Development Plan

Each owner of property so rezoned shall execute a notice prepared by the City which acknowledges that the final development plan and program approved by the City Council constitutes zoning for the property. Such notice shall contain a legal description of the property and reference to the certified copy of the final development plan and program filed in the office of the City Recorder. Said notices shall be recorded in the office of the County Recorder of Clackamas County.

19.311.14 Development Improvement Prohibited Pending Compliance

No excavation, grading, construction, improvement, or building shall begin, and no permits therefor shall be issued, within the PD Zone until all provisions of this article including execution and filing of required documents, all requirements of the City Land Division Ordinance and Building Code, and all requirements of the final development plan and program have been complied with, unless approved by the Planning Commission.

19.311.15 Variations from Final Development Plan and Program

- A. The City Manager or designee shall determine whether the modified proposal substantially conforms to the plans and/or other development documents upon which the original proposal was evaluated and approved. This determination is not a land use decision and is not subject to appeal.
- B. If the City Manager or designee determines that a modified proposal no longer substantially conforms to the original approval, the City Manager or designee shall determine whether the modification is major or minor in nature. This determination is not a land use decision and is not subject to appeal.

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1. Major modifications are modifications that alter a condition of approval, have different or more impacts than the original proposal, and/or require substantial changes to the findings from the original approval.
 2. Minor modifications are all modifications not otherwise identified as major modifications.
- C. Minor modifications shall be evaluated through either a Type I or Type II review per Section 19.1004 or 19.1005. The City Manager or designee shall determine the review type after considering the nature and scope of the modification. The City Manager or designee's determination shall favor the review type that provides the most appropriate public notice and opportunity for public comment. This determination is not a land use decision and is not subject to appeal. Major modifications shall be evaluated through a Type III review per Section 19.1006.

19.311.16 Expiration of Planned Development Zone

If, within 12 months of its effective date, substantial construction or development in the PD Zone has not commenced in compliance with the approved final development plan and program and schedule for stage completion, the Planning Commission may initiate a review of the PD Zone and hold a public hearing to determine whether its continuation in whole or in part is in the public interest. Notification and hearing shall be in accordance with Section 19.1007 Type IV Review. If found not to be, the Planning Commission shall recommend to the City Council that the PD Zone be removed by appropriate amendment to the Zoning Map and property changed back to original zoning.

In the case of phased development, as governed by Subsection 19.311.17, this provision shall apply to the first phase of the development.

19.311.17 Phased Development

- A. The Planning Commission may approve a time schedule for developing a site in phases as follows:
 1. For subdivisions, final plat approval for the last phase must be obtained within 10 years of the date of approval of the final development plan.
 2. For all other projects, in no case shall the total time period of construction of all phases exceed 10 years, as measured from the date of approval of the final development plan until the date that building permit(s) for the last phase is(are) obtained.
- B. The criteria for approving a phased detail development plan proposal are that:
 1. The public infrastructure shall be constructed in conjunction with or prior to each phase; and
 2. The development and occupancy of any phase shall be dependent on the use of public facilities constructed to the applicable City or special district standards.
- C. If the planned development will involve the subdivision of land as defined in City land division regulations, the owner-applicant may prepare and submit a preliminary subdivision plat with each separate phase. The final subdivision plat shall be submitted within 1 year subsequent to approval of the preliminary plat.
- D. Extensions to the approved time schedule are permitted subject to Subsection 19.908.