



CITY OF MILWAUKIE

To: Planning Commission
Through: Laura Weigel, Planning Manager
From: Brett Kelter, Senior Planner
Date: March 17, 2022, for March 22, 2022, Public Hearing
Subject: Additional Materials for R-2021-004 (principal file)

The packet materials that were posted on March 15, 2022, for the March 22 Planning Commission meeting included a staff report for Hearing Item 6.2 (Subdivision Replat file #R-2021-004). The staff report noted two attachments that were not in the packet but would be provided as soon as possible. Those items are now available and are included in this addendum to the meeting packet.

The Recommended Findings in Support of Approval and Recommended Conditions of Approval for R-2021-004 are provided in Attachments 1 and 2, respectively.

In addition, public comments received after posting the packet for R-2021-004 are included with this addendum as Attachment 3.

ATTACHMENTS

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

	Public Copies	E-Packet	Addendum 1
1. Recommended Findings in Support of Approval	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Recommended Conditions of Approval	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Additional Comments Received	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Ley Garnett, owner/resident at 4928 SE Llewellyn St and member of City Tree Board			

Key:

Public Copies = materials posted online to application website (<https://www.milwaukieoregon.gov/planning/r-2021-004>).

E-Packet = meeting packet materials available one week before the meeting, posted online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-92>.

Addendum 1 = meeting packet materials posted on March 17 after the E-Packet was published, also posted online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-92>.

ATTACHMENT 1
Recommended Findings in Support of Approval
Principal File #R-2021-004

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 applicant, Victoria Rystadt, has applied for approval to replat the properties at 10586 and 10610 SE Home Ave (“the subject properties”) to establish eight distinct lots. The proposal includes variance requests to adjust lot width and lot area standards for two of the lots. The subject properties are identified as Tax Lots 1S2E30CD10100 and 1S2E31BA00700 on the Clackamas County Tax Assessor map and are in the Residential R-5 Zone. The principal land use file number for the proposed subdivision replat is R-2021-004, with VR-2019-019 for the requested variances.
2. The subject properties are each approximately 26,000 sq ft in area (just under 0.6 acres each, or 1.19 acres total) and are comprised of 16 total underlying lots (25 ft wide by 100 ft deep) from Blocks 20 and 37 of the Minthorn Addition, platted in 1890. In addition, each property includes a 30-ft width of the Harrison Street right-of-way, which was vacated in 1926. Both properties are currently developed with single-unit houses and several detached accessory structures. There is one house on 10610 SE Home Ave and two houses on 10586 SE Home Ave (the second house is addressed as 10544 SE Home Ave). The proposed replat would consolidate and reconfigure the historical underlying lots to establish eight distinct lots. Three of the lots (Lots 1, 2, and 3) will contain the three existing houses (10544, 10586, and 10610 SE Home Ave, respectively); the other five lots will be vacant and developable.

Lots 1-4 will front on Home Avenue; Lots 5-8 will have frontage on a new extension of Harrison Street from its current terminus within the adjacent Mission Park subdivision to the east. A narrower fire lane access will be dedicated as public right-of-way between Lots 2 and 3 to connect Harrison Street to Home Avenue. The new street will have full improvements in front of Lots 5-8 (with a 48-ft right-of-way); the fire lane (with a 26-ft right-of-way) will be improved with a durable surface and clearance sufficient for fire and emergency vehicles. The applicant has requested variances to reduce the lot width and lot area of Lots 1 and 4 below the minimum standards.

3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Title 12 Streets, Sidewalks, and Public Places
 - MMC Title 17 Land Division, including:
 - 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-5)
- MMC Chapter 19.500 Supplementary Development Regulations
- MMC Section 19.607 Off-Street Parking Standards for Residential Areas
- 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 applicant has been authorized by both property owners to initiate the application per MMC Subsection 19.1001.6.A. The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing with the Planning Commission was held on March 22, 2022, as required by law.

4. MMC Title 12 Streets, Sidewalks, and Public Places

a. MMC Chapter 12.08 Street and Sidewalk Excavations, Construction, and Repair

MMC 12.08 applies to all construction that is completed in the right-of-way that is eventually dedicated to the City.

As proposed, the applicant's public improvement process will follow the requirements MMC Section 12.08.020.

This standard is met.

b. 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.

- (1) MMC Subsection 12.16.040.A requires that all properties be provided street access with the use of an accessway.

The proposed development is conditioned to be constructed in compliance with the City of Milwaukee Public Works Standards and is consistent with MMC 12.16.040.A.

- (2) MMC Subsection 12.16.040.C regulates accessway location, including the required minimum distance from the side property line of 7.5 ft.

The proposed development is conditioned to be constructed in compliance with the City of Milwaukee Public Works Standards and is consistent with MMC 12.16.040.C.

- (3) MMC Subsection 12.16.040.D establishes standards for the number of accessways, minimizing the number of accessways on arterial streets and limiting single-unit residential uses to 1 accessway each.

The proposed development is conditioned to be constructed in compliance with the City of Milwaukee Public Works Standards and is consistent with MMC 12.16.040.D.

A condition has been established to ensure that construction of curb cuts and accessways for new single-unit residential uses will be completed in compliance with the City of Milwaukee's Public Works Standards. As conditioned, these standards are met.

As conditioned, the Planning Commission finds that the applicable standards of MMC Title 12 are met.

5. MMC Title 17 Land Division

MMC Title 17 establishes the standards and procedures for land division and property boundary changes.

a. MMC Chapter 17.12 Application Procedure and Approval Criteria

MMC 17.12 specifies the process and procedures for lot consolidation, property line adjustment, partition, subdivision, and replat.

The subject properties are comprised of 16 existing underlying lots (each one 25 ft by 100 ft) and a 30-ft width of vacated right-of-way from the Minthorn Addition, a subdivision platted in 1890. The northern property is comprised of Lots 25-32 from Block 20 and the northern 30 ft of the vacated Harrison Street right-of-way. The southern lot is comprised of Lots 17-24 from Block 37 and the southern 30 ft of the vacated Harrison Street right-of-way.

The proposed reconfiguration would consolidate the underlying lots and vacated right-of-way and establish eight new lots and dedicated right-of-way for Harrison Street. This action constitutes a subdivision replat as per the definitions of MMC Chapter 17.08 and the guidance of MMC Table 17.12.020.

MMC Section 17.12.030 establishes the approval criteria for lot consolidation, property line adjustment, and replat. The proposed replat meets these criteria as described below.

(1) Compliance with MMC Titles 17 and 19.

As demonstrated by the applicant's submittal materials and evidenced by these findings, including the variance requests addressed in Finding 10, the proposed replat complies with all applicable standards of MMC Titles 17 and 19. As proposed, this criterion is met.

(2) The boundary change will allow reasonable development and will not create the need for a variance of any land division or zoning standard.

The proposed replat will provide sufficient area on all proposed lots to accommodate future development in accordance with the standards of the underlying R-5 zone. To accommodate existing development on the subject properties, the applicant has requested variances to the lot width and lot area standards for Lots 1 and 4, as discussed in Finding 10. But each of the proposed lots will be developable or re-developable without the need for a variance. As proposed, this criterion is met.

(3) Boundary changes must not reduce residential density below the minimum density requirements of the underlying zone.

Each of the subject properties is just under 0.6 acres (26,000 sq ft) in area, for a total of 1.19 acres (52,000 sq ft). The existing lots are zoned R-5, which has a minimum density requirement of 7.0 units/acre. Although the current limitations of the R-5 zone make it impossible to achieve the prescribed minimum density of 4 units per lot without partitioning (a duplex is the most dense form of residential development allowed on a single R-5 lot), the subject properties have a total minimum density requirement of 8.33 units, which rounds down to 8 units.

The proposed replat will create eight lots and includes the dedication of approximately 3,400 sq ft as public right-of-way. As per the measurement methodology established in MMC Subsection 19.202.2.4, the right-of-way dedication reduces the net area for calculating density to 1.16 acres, which still results in a required minimum density of 8 units. The proposed lots range in size from 4,023 sq ft to 8,236 sq ft, which, in accordance with the standards of the R-5 zone as discussed in Finding 6 and with the variances discussed in Finding 10, will allow one primary residential unit each. As proposed, this criterion is met.

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

b. MMC Chapter 17.16 Application Requirements and Procedures

MMC Section 17.16.050 establishes the application requirements for replat, including completed application forms and checklists, applicable fees, a narrative describing how the proposal meets approval criteria, and the applicable information specified for preliminary plat on the City's Preliminary Plat Checklist and in MMC Chapter 17.20 Preliminary Plat.

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

As proposed, the Planning Commission finds that the application meets the applicable requirements for replat submittal.

c. 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 map of existing conditions, contour lines, utilities, proposed street layout, and minimum required setbacks on all eight proposed lots.

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

d. 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.

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

As discussed in Finding 6, the proposed lots meet the minimum area and dimensional requirements for the underlying R-5 zone, except where variances have been requested for the lot width and lot area of Lots 1 and 4 (discussed in Finding 10). As proposed, and with the variances approved as discussed in Finding 10, this standard is met.

- (2) MMC Subsection 17.28.040.B requires that lot shape must 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, must run at right angles to the street upon which the lots face. As far as practicable, the rear lot line must run parallel to the street.

The proposed lots are both rectilinear in shape and have frontage on public streets (Home Avenue for Lots 1-4 and an extension of Harrison Street for Lots 5-8. The side lines of all lots run at right angles to the streets they face, and the rear lot lines are parallel to those streets. As proposed, this standard is met.

- (3) 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.

The proposed replat does not include any compound lot lines. This standard is met.

- (4) 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.

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

None of the proposed lots is a double frontage or reversed frontage lot.

- (6) 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, Lots 2 and 3 are corner lots and take access from Home Avenue, where they both have well over the minimum 35 ft of public street frontage. All other lots have frontage on only one street. As proposed, this standard is met.

As proposed, and with the variances approved as discussed in Finding 10, the Planning Commission finds that the lots presented in the applicant's preliminary plat meet the applicable design standards established in MMC 17.28.

e. 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 9, dedication to the public right-of-way and physical improvements are required to establish Lots 5-8 and the applicant has proposed additional improvements between Lots 2 and 3 to provide the required fire access. Conditions of approval have been established to ensure that all improvements are designed and constructed as required.

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

As proposed, the Planning Commission finds that the proposed replat meets all applicable standards of MMC Title 17.

6. MMC Section 19.301 Low Density Residential Zones (including R-5)

MMC 19.301 contains standards for Low Density Residential zones, including the R-5 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-5 zone, including single-family detached dwellings, duplexes, and accessory dwelling units (ADUs) as outright permitted uses.

As proposed, the existing houses will remain on Lots 1, 2, and 3. Lots 4-8 are large enough and dimensioned to allow development of single-unit houses, which is an allowed use in the R-5 zone. Future development on Lots 4-8 will be reviewed for compliance with the applicable standards of the R-5 zone and other relevant sections of the municipal code at that time.

By definition, accessory uses are allowed only when there is a primary use on the site, so the existing accessory structures that would be completely or partially on Lots 2 and 7 as well as on Lots 3 and 5 cannot remain without a conforming use being established on the site and cannot encroach across property lines if the various properties are under separate ownership. The applicant has proposed to remove the existing accessory structures, and a condition has been established to clarify the timing of that required action.

As conditioned, 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-5 zone. The applicable standards are addressed and met as described in Table 6-b (Applicable R-5 Development Standards) below.

**Table 6-b
Applicable R-5 Development Standards**

Standard	R-5 Requirement	Lot 1	Lot 2	Lot 3	Lot 4	Lot 5	Lot 6	Lot 7	Lot 8
Lot Area	5,000 sq ft	4,094 sq ft (see Finding 10 for discussion of requested variance)	7,091 sq ft	8,236 sq ft	4,023 sq ft (see Finding 10 for discussion of requested variance)	5,362 sq ft	5,685 sq ft	5,428 sq ft	5,034 sq ft
Lot Width	50 ft	41.27 ft (see Finding 10 for discussion of requested variance)	71.38 ft	83.07 ft	40.29 ft (see Finding 10 for discussion of requested variance)	50.1 ft	50.00 ft	50.00 ft	51.00 ft
Lot Depth	80 ft	99.33 ft	99.33 ft	99.65 ft	99.66 ft	107.79 ft	112.92 ft	105.28 ft	99.94 ft
Public Street Frontage	35 ft	41.27 ft	71.38 ft + 99.33 ft = 170.71 ft (corner lot)	83.07 ft + 99.65 ft = 182.72 ft (corner lot)	40.29 ft	50.1 ft	50.00 ft	50.00 ft	51.00 ft
Front Yard	20 ft	20 ft	10.9 ft (existing, no change proposed)	27.5 ft	Not Applicable until time of development (NA)	NA	NA	NA	NA
Side Yard	5 ft (interior yards) 15 ft (street-side yards)	4.5 ft (north side = existing, no change proposed) 7.4 ft (south side)	5.3 ft (north side) 21.5 ft (south/street-side)	3.6 ft (north/street-side = see Finding 7 re: exception) 5 ft (south side)	NA	NA	NA	NA	NA

Rear Yard	20 ft	c.45 ft	c.27 ft	c.32 ft	NA	NA	NA	NA	NA
Maximum Building Height	2.5 stories or 35 ft (whichever is less)	1 story, <20 ft	1 story, <20 ft	2 stories, <35 ft	NA	NA	NA	NA	NA
Side-Yard Height Plane Limit	20 ft (with 45° slope)	<20 ft	<20 ft	>20 ft (see Finding 7 re: exception)	NA	NA	NA	NA	NA
Maximum lot coverage	35%	24%	32%	27%	NA	NA	NA	NA	NA
Minimum vegetation	25%	72%	62%	68%	NA	NA	NA	NA	NA
Front Yard Minimum Vegetation	40%	82%	67%	74%	NA	NA	NA	NA	NA
Density requirements	Total area of subject property is 1.19 acres Min. density = 8 units (@7.0 units/acre) Max. density = 10 units (@8.7 units/acre)	0.09 acres Min. & Max. density = 1 dwelling unit (existing single-unit house)	0.16 acres Min. & Max. density = 1 dwelling unit (existing single-unit house)	0.19 acres Min. & Max. density = 1 dwelling unit (existing single-unit house)	0.09 acres Min. & Max. density = 1 dwelling unit (sized for single-unit house)	0.12 acres Min. & Max. density = 1 dwelling unit (sized for single-unit house)	0.13 acres Min. & Max. density = 1 dwelling unit (sized for single-unit house)	0.12 acres Min. & Max. density = 1 dwelling unit (sized for single-unit house)	0.12 acres Min. & Max. density = 1 dwelling unit (sized for single-unit house)

As proposed, and as per the exceptions and variances discussed in Findings 7 and 10, respectively, the applicable development standards of MMC Subsections 19.301.4 and 19.301.5 are met.

As conditioned, and with approval of the variances discussed in Finding 10, the Planning Commission finds that the applicable R-5 zone standards of MMC 19.301 are met.

7. MMC Chapter 19.500 Supplementary Development Regulations

MMC 19.500 establishes various regulations for development in addition to those of the base zone, including by-right exceptions and standards for accessory structures, accessory uses, site design, building design, manufactured dwelling siting and design, home occupations, downtown site and building design, marijuana businesses, and green buildings.

Within those regulations, MMC Subsection 19.504.2 provides that lot area, yards and other open spaces, and off-street parking and loading areas are not to be reduced below the minimum requirements of the zoning code except when the reduction happens by dedication or conveyance for a public use.

Currently, along their shared boundary the existing houses on 10586 and 10610 SE Home Ave meet the R-5 minimum side yard setback standard of 5 ft (at approximately 41 ft and 10 ft, respectively). The proposed dedication of a 26-ft width as public right-of-way between Lots 2 and 3 not only reduces the setback for both houses but also converts what had been an interior yard into a street-side yard for both. The minimum R-5 street-side yard setback requirement is 15 ft. The house on Lot 2 will meet the street-side yard standard with a setback of 21.5 ft; the street-side yard for the house on Lot 3 will be reduced to 3.6 ft, well below the standard. However, the provision of MMC 19.504.2 allows such a reduction without need for a variance when the reduction is the result of a dedication.

Likewise, the proposed right-of-way dedication and the new designation of a street-side yard on the north side of Lot 3 push the existing structure out of compliance with the side-yard height plane limit. However, MMC 19.504.2 allows the reduction without need of a variance.

The Planning Commission finds that the allowance of MMC 19.504.2 is applicable to the proposed replat and the newly nonconforming nature of the street-side yard and side-yard height plane limits for Lot 3. This standard is met.

8. MMC Section 19.607 Off-Street Parking Standards for Residential Areas

MMC Subsection 19.607.1 establishes standards for residential driveways and vehicle parking areas, including a requirement for providing at least one off-street parking space for the property that is not located in the required front or street-side yard. The parking space must be at least 9 ft wide by 18 ft deep. No more than 50% of the front yard area can be used for parking, with no more than three parking spaces allowed in the front yard. In addition, the subsection does not allow parking spaces in the required front yard to be counted toward the minimum required parking.

As per MMC Subsection 19.602.3.B, existing off-street parking areas must be brought closer to conformance when new development or changes of use occur; conversely, new development cannot cause existing parking areas to fall out of compliance (or farther out of conformance). The applicant must demonstrate that the proposed replat does not make the existing development on Lots 1-3 nonconforming with the applicable standards of MMC 19.607; the compliance of Lots 4-8 with the applicable off-street parking standards will be evaluated at such time as development is proposed on each lot.

The existing houses at 10544, 10586, and 10610 SE Home Ave all have driveways leading to attached garages. None of the driveways occupy more than 50% of the front yard area nor provide room for more than three parking spaces. The required parking space for each house is counted within the garage for each, and only the garage for 10586 SE Home Ave is nonconforming with respect to meeting the front yard setback requirement of 20 ft. With the proposed replat, the three houses will be separated onto Lots 1, 2, and 3, respectively, and no aspect of the existing off-street parking situation will be affected for any of the three. Compliance of the other five lots with the standards of MMC 19.607 will be evaluated at the time of development for each.

As proposed, the Planning Commission finds that the existing development's compliance with the applicable standards of MMC 19.607 will remain unchanged. This standard is met.

9. 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 replat the subject property to create eight distinct lots. The proposed replat 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 April 22, 2021. As stated in Finding 9-c, a Transportation Impact Study (TIS) is not required, therefore a Transportation Facilities Review application is not necessary.

This standard is met.

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 establishes that the City Engineer will determine whether a proposed development has impacts on the transportation system by using existing transportation data. If the City Engineer cannot properly evaluate a proposed development's impacts without a more detailed study, a TIS will be required to evaluate the adequacy of the transportation system to serve the proposed development and determine proportionate mitigation of impacts.

The City Engineer has determined that a TIS is not required, as the impacts of the proposed replat on the transportation system are minimal. No change is proposed to the existing land

use of the subject properties (i.e., low-density residential). New impacts are estimated at an average PM peak hour trip generation of 1.0 trips per lot, the level established in the Institute of Transportation Engineers (ITE) Manual for single-unit detached dwellings.

This standard is met.

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.

The proposed replat would establish eight lots, with five new developable lots. Lots 1, 2, and 3 will retain three existing houses and so present no new impacts to the transportation system. Lot 4 fronts Home Avenue and is subject to a Fee In Lieu of Construction (FILOC) as noted in Finding 9-e. Lots 5-8 will have frontage on a new extension of Harrison Street that the applicant is responsible to construct. The requirements for this extension are discussed in Finding 9-e.

A condition has been established to ensure that the fire-lane segment of the Harrison Street extension between Lots 2 and 3 will be constructed to meet applicable fire and life safety requirements as well as to enable pedestrian, bicycle, and vehicle access. Lots 2 and 3 present no new impacts; however, the applicant is required to provide a minimum 20-ft wide fire access lane to connect the extension of Harrison Street (adjacent to Lots 5-8) to Home Avenue. Improvements to the Harrison Street extension and fire lane are required to be constructed as shown in the Proposed Improvement Plans (as submitted with this land use application) and in conformance with the City's Public Works Standards. However, the City is opting to utilize surface treatments for the fire lane as shown in the adopted low-volume street concept plan and to connect the proposed new sidewalk on the north side to the fire lane and tie in the fire-lane pedestrian way to a curb ramp at Home Avenue. The costs of these additional bicycle and pedestrian improvements on the fire-lane are reimbursable by the City to the developer.

The proposed development does not trigger mitigation of impacts beyond the required frontage improvements of the new portion of Harrison Street and FILOC for the Lot 4 frontage.

As conditioned, this standard is met.

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 requires compliance with 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 arterial 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 right-of-way (ROW) and abutting the development site shall be adequate at the time of development or shall be made adequate in a timely manner. 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) classifies Home Avenue as a neighborhood route and Harrison Street as a local street. As established in MMC Table 19.708.2, the required ROW width for both a neighborhood street and a local street is between 20 ft and 68 ft, depending on the required street improvements.

The existing ROW on Home Avenue in front of the subject properties is 60 ft wide and has curb and curb-tight sidewalks on the west side north of Harrison. The frontage is substandard, but as noted in Finding 9-d, the creation of Lots 1, 2, and 3 would result in no new impacts to Home Avenue, which is the street where these three lots take access. The newly created Lot 4 will result in new impacts and is required to improve its frontage on Home Avenue; however, the required improvements are part of a larger approved capital improvement project for Home Avenue that is listed as a funded project in the City’s Capital Improvement Program. As allowed by MMC Section 13.32.020, the applicant has requested and the City will accept payment of FILOC instead.

The existing ROW on Harrison Street at its current terminus in the Mission Park subdivision to the east is 48 ft wide and has curb, gutter, and setback sidewalk on the north and south sides of the ROW. The creation of Lots 5-8 requires the extension of Harrison Street to provide access and the required public street frontage.

For the ROW of the Harrison Street extension in front of Lots 5-8, a 48-ft width is required, with each half-street improvement including a 13-ft minimum paved asphalt travel way, 6-in curb and 1-ft gutter, a minimum landscape strip width of 4 ft, and a minimum setback sidewalk width of 5 ft. The required full street width from curb-to-curb is 28 ft, including the gutter. Where landscape strips are required, street trees are required to be planted a minimum of every 40 ft in accordance with the Public Works Standards and Milwaukie Street Tree List and Street Tree Planting Guidelines. Type III barricades are required at the end of sidewalk adjacent to Lots 5 and 7, and asphalt transition ramps are required to connect the pedestrian route to the narrow extension of Harrison Street between Lots 2 and 3.

For the ROW of the Harrison Street fire-lane segment between Lots 2 and 3, a minimum width of 26 ft is required, with a 6-ft-wide water quality facility and a minimum paved width of 20 ft for shared vehicular and pedestrian access in line with a “woonerf” style of “Complete Street” design. A tactile warning strip and pavement markings delineating a 14-ft vehicular travel lane on the south side and 6-ft pedestrian travel lane on the north side are required as part of the design. The applicant is required to construct a curb ramp on the northeast corner of Harrison Street and Home Avenue in compliance with all applicable requirements outlined in the Milwaukie Public Works Standards and the Americans with Disabilities Act (ADA); the western connection will be constructed by the City as part of an upcoming capital

improvement project on Home Avenue. An asphalt transition ramp connecting the pedestrian route from the northeast corner of Home Avenue and Harrison Street to the Complete Street woonerf improvements is required.

As conditioned, and in accordance with the rough proportionality principles discussed above in Finding 9-d, the City will reimburse the applicant for actual costs to construct the ADA ramp at Home Avenue and Harrison Street, the three asphalt transition ramps, and the pavement markings and tactile warning strip on the narrow portion of the Harrison Street fire-lane segment between Lots 2 and 3.

As conditioned, the proposed replat meets all 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.

The applicant is required to construct new 8-in ductile iron pipe (DIP) water main along the entire extension of Harrison Street to service Lots 5-8, with a new connection required at Home Avenue. Additionally, the applicant is required to upsize the existing 6-in water main line on Home Avenue to 8-in DIP for approximately 35 ft to meet with the existing undersized connection at Home Avenue and Harrison Street. This connection must be upsized by the applicant to accommodate the new 8-in line.

The applicant must provide engineered utility plans to the City Engineer for review and approval prior to construction to demonstrate compliance with all City Standards and requirements.

A condition has been established to require a 10-ft Public Utility Easement (PUE) along the frontage of each of the eight new lots.

As conditioned, the City will reimburse the applicant for actual costs to upsize the water line on Home Avenue, as the upsizing is not required for the proposed development itself but is required by the City to improve the existing system, including water pressure.

As conditioned, the proposed replat meets the applicable standards of MMC 19.709.

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

10. **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 two variances: (1) to reduce the lot width of Lots 1 and 4 below the required minimum 50 ft to 41.27 ft and 40.29 ft, respectively; and (2) to reduce the area of Lots 1 and 4 below the required minimum 5,000 sq ft to 4,094 sq ft and 4,023 sq ft, respectively.

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 request for a 9- to 10-ft reduction from the 50-ft width requirement represents an 18-20% change, which is beyond the 10% allowance for Type II review. The lot area variance is not identified in MMC 19.911.3.B as being eligible for Type II review and so is subject to the Type III review process. Both 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

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 discretionary relief criteria, which are provided in MMC Subsection 19.911.4.B.1. The requested variances for lot width and lot area are interconnected, so they are addressed together for Lot 1 and for Lot 4 below.

- (1) The applicant’s alternatives analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.

Lot 1: Currently, the existing houses at 10544 and 10586 SE Home Ave are on the same lot; the proposed replat would put the 10544 house on its own lot (Lot 1). The 10544 house has a nonconforming side-yard setback of 4.5 ft on the north side and is almost 13 ft away from the 10586 house to the south, which allows up to a nearly 7.5-ft side-yard setback on the south side without requiring that Lot 2 get a variance for its side yard. However, the 10544 house is narrow enough (approximately 29 ft) that even the maximum 7.5-ft setback leaves the lot width well under the 50-ft minimum (at 41.27 ft).

Likewise, the proposed lot width of 41.27 ft means Lot 1 would have to be deeper than the proposed 99.33 ft to achieve the minimum 5,000-sq-ft lot area required for the R-5 zone. But making Lot 1 deeper impacts the width of Lot 7 and potentially that of Lot 8 as well, both of which are being created out of the large back yard of the 10544-10586 SE Home Ave property. As proposed, Lots 7 and 8 are at the 50-ft minimum width and very close to the minimum lot size. If Lot 1 is made wider and/or larger than proposed, it will require additional variances for one or more of the adjacent lots.

Lot 4: The size and location of the existing house at 10610 SE Home Ave create a similar situation for the proposed Lot 4. After preserving 5 ft on the south side of the 10610 house for the required side-yard setback, there are only 40.29 ft remaining along the Home Avenue frontage of the property to establish Lot 4. Making Lot 4 deeper than the proposed 99.66 ft impacts the width and area of Lot 5 and potentially Lot 6, both of which are already close to the minimum standards. And it would introduce a compound line segment for Lot 5. Increasing the dimensions and area of Lot 4 will require additional variances for Lots 5 and 6. And with a minimum density requirement of eight units for the subject properties, eliminating Lot 4 will bring the proposed replat below the minimum required density standard, which will require another variance.

The Planning Commission finds that the analysis of the impacts and benefits of the requested variances compared to the baseline requirements is acceptable. This criterion is met.

- (2) The proposed variance is determined to be both reasonable and appropriate, and it meets one or more of the following criteria:
- The proposed variance avoids or minimizes impacts to surrounding properties.
 - The proposed variance has desirable public benefits.
 - The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

Lot 1: As discussed in Finding 10-c-1 above, the requested variances for Lot 1 avoid the need for additional variances for Lots 2, 7, and/or 8. As proposed, the dimensions of Lot 1 capture the current practical boundaries of the property, minus the very deep back yard. The proposed configuration represents a reasonable and appropriate effort to put the 10544 house on its own lot while leaving room to create additional conforming lots and provide the minimum required residential density.

Lot 4: Similarly, the requested variances for Lot 4 avoid the need for additional variances for Lots 3, 5, and/or 6. The lot dimensions and area proposed for Lot 4 provide a reasonable and appropriate building footprint for this moderate density zone without impacting other proposed lots. They allow the creation of an eighth lot, which meets the minimum required density for the subject properties.

The Planning Commission finds that the requested variances are reasonable and appropriate and that they both meet one or more of the criteria provided in MMC Subsection 19.911.B.1.b. This criterion is met.

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

Lot 1: The existing houses at 10544 and 10586 SE Home Ave are obviously in place and already impact each other and surrounding properties in the ways they do. Lot 1 exceeds the minimum required lot depth of 80 ft (proposed at 99.33 ft) and provides at least a 45-ft setback from the proposed common boundary with Lot 7, so there is adequate space as a buffer in the one area where there will be new development. The requested variances for Lot 1 do not present any new impacts that require mitigation.

Lot 4: Although more narrow and smaller than prescribed by the dimensional standards of the R-5 zone, new development on Lot 4 will be subject to the same development standards as other R-5 lots (i.e., setbacks, lot coverage limits, required vegetation, etc.). A developer will work within those parameters to construct a structure that will fit on the lot, with the same impacts as other R-5 lots. The narrower width provides less street frontage on Home Avenue, which translates to a little less room for on-street parking. But given that the existing driveways for the adjacent properties to the north (10610 SE Home Ave) and south (10618 SE Home Ave) are both located at the far north and south, respectively, of those two properties, there should be no noticeable impact to on-street parking. The requested variances for Lot 4 do not present any new impacts that require mitigation.

The Planning Commission finds that the requested variances would not result in measurable impacts to surrounding properties and that no mitigation is necessary. This criterion is met.

As proposed, the Planning Commission finds that the requested variances meet the approval criteria established in MMC 19.911.4.B.1 for Type III variances seeking discretionary relief.

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

11. 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 extending to applications to create lots in single-family zones. Exceptions are allowable to the extent the Planning Manager 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 replat will create new lots in the R-5 zone, which allows single-unit development. As discussed in Findings 11-b and 11-d, the solar design standards of MMC

19.1203.3 are applicable to Lots 5-8, while the Planning Manager has granted an adjustment for Lots 1-4.

- b. MMC Subsection 19.1203.3 establishes solar design standards, including basic requirements for north-south dimension (minimum 90 ft) and front-lot-line orientation with respect to a true east-west axis (within 30°). 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.

As proposed, Lots 5-8 all have a north-south dimension of at least 100 ft and front lot lines oriented within 30° of a true east-west axis. Lots 1-4 all have north-south dimensions of less than 90 ft and front lot lines oriented 90° from a true east-west axis. As discussed in Finding 11-d, the Planning Manager has found that an adjustment is warranted that would exempt Lots 1-4 from this standard.

As proposed and as discussed in these findings, the solar design standards are met for Lots 5-8 and are not applicable to Lots 1-4.

- c. MMC Subsection 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.

No exemptions from the solar design standards have been requested. This standard is not applicable.

- d. MMC Subsection 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.

The subject properties are developed with three existing houses, all of which are oriented toward Home Avenue, which has a north-south orientation. At 1.19 acres in total area, the subject properties are large enough for redevelopment and have a minimum density requirement of eight units. As noted above in Finding 11-b, four of the proposed eight lots are configured to meet the solar design standards of MMC 19.1203.3, but the location and orientation of the three existing houses make it impossible to capture them on new lots that meet the solar design standards. The proposed lot configuration is essentially the only one that will allow the subject properties to achieve the minimum required density through land division. Therefore, the Planning Manager has reduced the percentage of lots that must comply with the solar design standards to 50%, effectively exempting Lots 1-4 from the solar design standards.

The Planning Commission finds that Lots 5-8 meet the solar design standards of MMC 19.1203.3 and that an adjustment to exempt Lots 1-4 from the design standards is warranted. As proposed, the applicable provisions of the solar access standards established in MMC 19.1200 are met.

12. As noted 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 February 4, 2022:

- Milwaukie Engineering Department
- Milwaukie Building Department
- Milwaukie Public Works Department
- Milwaukie Police Department
- Milwaukie City Attorney
- Hector Campbell Neighborhood District Association (NDA) Chairperson & Land Use Committee (LUC)
- Clackamas Fire District #1 (CFD #1)
- NW Natural
- North Clackamas School District

In addition, public notice of the application with an invitation to comment was sent on March 2, 2022, to property owners and residents within 300 ft of the subject property.

The responses received are summarized as follows:

- **Alex McGladrey, Deputy Fire Marshal, CFD:** The subject properties are in an area with public water supply and there are no site conditions that would prevent the applicant from constructing the proper access. Fire department access and water supply will be reviewed for compliance with the adopted edition of the Oregon Fire Code at the time of application for development permits.
- **Jeremy Lorence, East Metro Engineer, NW Natural:** No comments.
- **Sandy Conley, owner/resident at 10434 SE 51st Ave:** Concerns about cut-through traffic and decreased safety for residents if Harrison Street is extended through to Home Avenue. Not enough notice and information have been provided, and there has been some confusion about the details of the proposal. Urges the City not to push Harrison Street through to Home Avenue-if the connection is made, requests that the developer install two speed bumps on 51st Avenue.
- **Tom and Tamara Wissbaum, owners/residents at 10450 SE 51st Ave:** Strongly opposed to the proposal to open 51st Avenue and Harrison Street to through traffic, citing safety concerns. Amenable to a walking path from Harrison Street to Home Avenue as a compromise, but not a vehicle connection.
- **Kelsey Nealeigh and Jon O'Toole, owners/residents at 10458 SE 51st Ave:** Values the dead-end nature of the neighborhood and is concerned about cut-through traffic and decreased safety for residents if the street connection is made to Home Avenue. Cites clear vision issues with backing out of driveway near the corner of 51st Avenue and Harrison Street. Insufficient time and information for all neighborhood residents to adequately comment.

- **Allison Kruse, owner/resident at 10449 SE 51st Ave:** Insufficient information has been provided about potential safety and traffic impacts. Requests additional information about traffic impacts and proposed street design, with additional time for review.
- **Chris and Diane McKillop, owners/residents at 5101 SE Jackson St:** Concerns about tree removal, safety issues resulting from extending Harrison Street through to Home Avenue, apparent lack of proposed sidewalks along the street extension to Home Avenue, and impacts from cut-through traffic.
- **Axis Espinosa and Raju Reddy, owners/residents at 5025 SE Llewellyn St:** Concerns about cut-through traffic and decreased safety for residents, including that 51st Avenue is too narrow to be a through street.
- **Rolanne Stafford, owner/resident at 5017 SE Llewellyn St:** Concerns that no traffic study has been conducted for the proposed street extension, that there appears to be no sidewalk between Lots 2 and 3, and that the different widths of the Harrison Street extension do not meet design standards.
- **Ley Garnett, owner/resident at 4928 SE Llewellyn St and member of City Tree Board:** Opposes the project unless it is subject to the proposed tree code.

ATTACHMENT 2
Recommended Conditions of Approval
Principal File #R-2021-004

Conditions

1. Prior to City approval of the associated final plat, the following must be resolved:
 - a. As per Finding 6-a, remove the existing accessory structures from Lots 2 and 7 as well as from Lots 3 and 5; or establish deed restrictions as needed to ensure that the existing accessory structures will be removed within 24 months of final plat approval unless one of the following conditions is satisfied:
 - (1) Building permits for primary dwellings to be sited on Lots 5 and 7 are applied for and obtained within the 24-month period, with construction commencing within three months of permit receipt and final inspection for the primary dwellings being concluded within 12 months of permit receipt.
 - (2) Lots 5 and 7 are maintained in mutual ownership with an adjacent lot containing a primary structure and will remain in mutual ownership with that adjacent lot, unless a primary dwelling is constructed per Condition 1-a-(1) above.
 - b. Submit full-engineered plans for construction of all required public improvements, to be reviewed and approved by the City of Milwaukie Engineering Department. Prior to construction of the improvements outlined in Condition 1-l, the developer is required to submit the contractor's bid for this extra work to the Engineering Department for review and approval.
 - c. Submit a storm water management plan to the City of Milwaukie Engineering Department for review and approval. The plan must be prepared in accordance with Section 2 – Stormwater Design Standards of the City of Milwaukie Public Works Standards. Private properties may only connect to public storm systems if percolation tests show that infiltration cannot be obtained on site. In the event the storm management system contains underground injection control devices, submit proof of acceptance of the storm system design from the Department of Environmental Quality.
 - d. Obtain a right-of-way permit for construction of all required public improvements listed in these conditions of approval.
 - e. Pay an inspection fee equal to 5.5% of the cost of the public improvements.
 - f. Provide a payment and performance bond for 130% of the cost of the required public improvements.
 - g. Provide an erosion control plan and obtain an erosion control permit prior to any earth-moving activities.

- h. Install 8-in ductile iron pipe (DIP) water main along the proposed extension of Harrison Street, connecting to the existing water main along Home Avenue with an 8-in by 8-in tee. Install approximately 35 ft of 8-in DIP water main along Home Avenue to the existing 8-in by 6-in connection tee at Harrison Street. Upsize the connection to an 8-in by 8-in tee. Upsized connections and new 8-in DIP water main on Home Avenue are subject to reimbursement by the City.
- i. Install all underground utilities, including stubs for utility service, prior to surfacing any streets.
- j. As per Finding 9-e, construct public improvements along the extension of Harrison Street along the frontage of Lots 5-8. Construction includes, but is not limited to, 5-ft setback sidewalks, 4-ft landscape strips, curb and gutter, 26-ft paved asphalt travel way, and driveways. Approved street trees must also be planted at a minimum 40-ft spacing.
- k. Install Type III barricades at the end of sidewalks by Lots 5 and 7 and install asphalt transition ramps to connect the pedestrian route to the Harrison Street fire-lane segment between Lots 2 and 3. The northern asphalt transition ramp is subject to reimbursement by the City.
- l. As per Finding 9-e, construct "woonerf"-style "Complete Street" improvements along the Harrison Street fire-lane segment between Lots 2 and 3. Construction includes, but is not limited to, a 5-ft water quality facility with curb and gutter on the north side; and a 20-ft paved asphalt travel lane, with a tactile warning strip along the full length delineating a 6-ft pedestrian route and a 14-ft vehicle lane, pavement markings for pedestrians on the 6-ft portion, and sharrow pavement markings on the 14-ft portion. Tactile warning strip and pavement markings are subject to reimbursement by the City.
- m. Construct one Americans with Disabilities Act (ADA) compliant ramp at the northeast corner of Harrison Street and Home Avenue. The western connection will be installed by the City as part of an upcoming Capital Improvement Plan project. Install an asphalt transition ramp connecting the pedestrian route from the northeast corner of Harrison Street and Home Avenue to the narrow portion of the Harrison Street extension between Lots 2 and 3. ADA ramp and asphalt transition ramp are subject to reimbursement by the City.
- n. Construct a driveway approach to meet all guidelines of the ADA to each new lot. The driveway approach aprons must be between 9 ft and 20 ft in width and at least 7.5 ft from the side property line.
- o. 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 subject property. Confirm the location of clear vision areas with the Engineering Department prior to removing any vegetation.
- p. Provide a 10-ft Public Utility Easement (PUE) for each of the eight new lots.

2. As per Finding 9-e, the applicant is required to pay a fee in lieu of construction (FILOC) for the entire length of the Lot 4 frontage on Home Avenue. The current 2022 FILOC rate is \$311/lineal foot, and the proposed frontage of Lot 4 is 40.29 ft; the current FILOC fee would be \$12,530.19. Actual FILOC rate may change depending on application date.

Additional Requirements

1. MMC Section 17.04.120 Recording

As per MMC Section 17.04.120, replats must be recorded by plat. An application for final plat must 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 must be submitted to the City Planning Department.

2. Development activity on the site is limited to 7:00 a.m. to 10:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. Saturday and Sunday, per MMC Subsection 8.08.070.I.

Addendum Attachment 3

Brett Kelter

From: Ley Garnett <leygarnett@comcast.net>
Sent: Wednesday, March 16, 2022 9:43 AM
To: Brett Kelter
Subject: R-2021-004

This Message originated outside your organization.

As a neighborhood resident, I oppose this project unless it is subject to the proposed Tree Code. We have already lost our air shed due to Mission Park. If it is not going to be subject to the new Tree Code, I ask that this project be delayed at least until it is. We already have major construction going on with the Home Avenue sidewalk.

Ley Garnett (City Tree Board member)
4928 SE Llewellyn St