



# CITY OF MILWAUKIE

## AGENDA

March 12, 2019

### PLANNING COMMISSION

City Hall Council Chambers  
10722 SE Main Street  
[www.milwaukieoregon.gov](http://www.milwaukieoregon.gov)

- 1.0 Call to Order - Procedural Matters — 6:30 PM**
- 2.0 Planning Commission Minutes – Motion Needed**
  - 2.1 June 26, 2018
  - 2.2 August 14, 2018
- 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: Appeal of MLP-2018-001 (continued from 2/12/2019)  
Appellant: Daniel Barela  
Address: 10244 SE 43<sup>rd</sup> Ave  
File: AP-2019-001  
Staff: Brett Kelter, Associate Planner  
*(Materials sent March 7, 2019)*
  - 5.2 Summary: Harlene St Driveway Width  
Applicant/Owner: Steve Vukovich  
Address: 5485 SE Harlene St  
File: VR-2019-002  
Staff: Brett Kelter, Associate Planner  
*(Materials sent March 7, 2019)*
- 6.0 Worksession Items—None**
- 7.0 Planning Department Other Business/Updates**
  - 7.1 PC Notebook Interim Update Pages
- 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:**
  - March 26, 2019
    - 1. Public Hearing: AP-2019-002 11380 SE 21<sup>st</sup> Ave
    - 2. Worksession: Comprehensive Plan Update – Housing
  - April 9, 2019
    - 1. Public Hearing: WG-2019-001 Riverway Ln Single-Family Residence Replacement
    - 2. Public Hearing: NR-2018-005 Elk Rock Estates Development

### 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](mailto: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](http://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  
Sherry Grau  
Greg Hemer  
Robert Massey

#### **Planning Department Staff:**

Denny Egner, Planning Director  
David Levitan, Senior Planner  
Brett Kolver, Associate Planner  
Vera Koliass, Associate Planner  
Mary Heberling, Assistant Planner  
Alicia Martin, Administrative Specialist II



# CITY OF MILWAUKIE

## PLANNING COMMISSION MINUTES

City Hall Council Chambers  
10722 SE Main Street  
[www.milwaukieoregon.gov](http://www.milwaukieoregon.gov)

June 26, 2018

**Present:** Joseph Edge  
Sherry Grau  
Greg Hemer  
Scott Jones

**Staff:** Denny Egner, Planning Director  
David Levitan, Senior Planner  
Tim Ramis, City Attorney

**Absent:** Kim Travis, Chair  
John Henry Burns, Vice Chair  
Adam Argo

### 1.0 Call to Order — Procedural Matters\*

**Denny Egner, Planning Director**, suggested that since both the Chair and Vice Chair were not in attendance, the Commission should elect a Commissioner to act as Chair for the meeting.

**Commissioner Edge** elected and Commissioner Jones seconded for Commissioner Hemer to act as Chair.

**Commissioner-as-Chair Hemer** called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

***Note:** The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.milwaukieoregon.gov/meetings>.*

### 2.0 Planning Commission Minutes

2.1 April 10, 2018

**Commissioner Jones moved and Commissioner Edge seconded to approve the April 10, 2018 Planning Commission minutes as presented. The motion passed unanimously.**

2.2 April 24, 2018

**Commissioner Grau moved and Commissioner Jones seconded to approve the April 24, 2018 Planning Commission minutes as presented. The motion passed unanimously.**

2.3 May 8, 2018

**Commissioner Edge moved and Commissioner Grau seconded to approve the May 8, 2018 Planning Commission minutes as presented. The motion passed unanimously.**

### 3.0 Information Items

**Mr. Egner** noted the first public hearing for the appeal of the Milwaukie High School Lake Road Sports Complex approval was held on June 19. City Council gave staff direction to revise a few conditions and the appeal would return to Council. It was expected that the Commission's

decision would be upheld and the appeal denied. He added that the North Milwaukie Innovation Area (NMIA) Plan and code amendments were continued to August.

**4.0 Audience Participation** — This is an opportunity for the public to comment on any item not on the agenda. There was none.

**5.0 Public Hearings** — None

**6.0 Worksession Items**

6.1 Summary: Comprehensive Plan Update – Block 1 Policy Review  
Staff: David Levitant, Senior Planner

**David Levitan, Senior Planner**, presented the staff report via PowerPoint and reviewed the goals of the meeting to review the process and feedback received for the Block 1 goals and policies, and to discuss any further feedback the Commission may have prior to the next Comprehensive Plan Advisory Committee (CPAC) meeting scheduled for the following evening.

**Mr. Levitan** recapped the Block 1 topic areas which were Community Engagement, Economic Development, Urban Growth Management, and History, Arts, and Culture. He reviewed the community engagement for these policies and goals to date that included CPAC meetings, a public town hall, online survey, and a worksession each for the Commission and Council. He noted some details of the survey and its results.

**Mr. Levitan** reviewed the survey results and Commission's feedback from the May 22nd worksession for each topic area as follows:

Community Engagement:

- It was suggested that, rather than the Commission acting as the Community Involvement Advisory Committee (CIAC), there be a standalone committee to serve in that capacity to cover all things community involvement. The City Manager's Office agreed that it would not be ideal for the Commission to serve in that role, so the policy language was revised to have the Commission serve in the CIAC role for evaluating Goal 1 compliance for land use and transportation planning topics.
- The majority of responses to the survey agreed that the goals were moving in the right direction. Results included responses from all neighborhoods, but several respondents noted that the Neighborhood District Associations (NDAs) could be more representative and accessible.

Economic Development:

- A Definitions section would be created to clarify terms such as "shared/sharing economy."
- A proposed policy was to increase the workforce through home-based businesses and the Commission felt the impact of those businesses be evaluated. Mr. Levitan asked for direction on how the Commission would prefer to address this, either through policy language or as code amendments were proposed regarding home-based businesses, etc.
- Survey results supports the direction the goals were moving toward. There was confusion over terms such as "nimble" and suggestions for a better title for Economic Land Supply.

Urban Growth Management:

- The Commission supported better outreach to nearby unincorporated neighborhoods and more incentives to annex into the city.

- Although there were only two goals in this section, annexation was the lowest ranked goal from the survey. The general feedback was the desire to remain a smaller city and to not have an aggression annexation policy.

History, Arts, and Culture:

- Should historic preservation be encouraged or required?
- Environmental impacts of adaptive use should be noted.
- The survey results supported the proposed goals and policies. There was interest in creative spaces but there were feasibility concerns
- The goals for incorporating local art in the built environment and for accounting for all of Milwaukie's history was supported and appreciated.

**Mr. Levitan** noted that CPAC would review the final proposals for Block 1 at their next meeting and those policies would go to City Council to be pinned down by resolution in July. The CPAC would then meet in August to begin discussing Block 2 goals and policies, and neighborhood hubs outreach would begin in August as well. Block 2 would include housing, climate change and energy, Willamette greenway, and parks and recreation. The housing component would require a lot of community engagement and discussion, as other projects were underway including the Housing Affordability Strategic Plan and the Cottage Cluster Feasibility Analysis. The Climate Action Plan would also be incorporated into the Comprehensive Plan as well.

**Mr. Levitan** asked questions of the Commission around if there were goals or policies that needed to be changed, if there were specific policies that the CPAC should discuss further, and if there were too many policies in any of the chapters.

**The Commission** and staff discussed why annexation was important and why was it a goal as follows:

- **Mr. Levitan** said that local governments should be the primary provider for urban services. The challenge for Milwaukie was that much of the area was already developed. However, it has been a long-standing goal to expand the city limits to incorporate the entire urban growth management area (UGMA). It was a high-level question as to if that should continue to be a goal.
- **Mr. Egner** added that statewide planning goal 14 addressed urban growth boundaries and urban growth management, and goal 2 focused on coordination between jurisdictions. When the original Comprehensive Plan was created, it was determined that the unincorporated land to the east and south would be annexed into the city. The intergovernmental agreement with Clackamas County to implement that was weakly worded and did not give the city many paths to annexing that land, and many of the urban services in the unincorporated areas were already provided by other agencies. However, many of the surrounding areas participated in Milwaukie events and should be incorporated into the community, and the proposed policies were focused on developing a strategy for that as the city had to be creative about incentivizing annexation. What the city could provide was services like better streets, sidewalks, stormwater management, local police, etc.
- **The group** discussed the UGMA areas. The Harmony Road Campus of Clackamas Community College was planned to annex into the city but it was still to be determined how the jurisdiction of Harmony Rd would be handled.
- **Mr. Egner** said unincorporated subdivision on Lake Rd that was currently under construction has provided an example of how, under County zoning, the property had more development potential than it would have had within the city. He added that that discrepancy

should be addressed in order to allow for the same development potential for properties in either the City or the County to increase annexation potential. It shouldn't be more attractive to develop in the County.

- Commissioners and staff shared ideas and suggestions for incentivizing development within the city limits through Comprehensive Plan policies and other means.
- Redefining the UGMA boundaries was discussed. The land out to I-205 could provide revenue potential and services to the community. Connectivity to the area had improved and would continue to improve. Major developments were also planned for the area, which would serve what was currently an underserved area.

**Commissioner Hemer** noted that, regarding the History, Arts, and Culture section, local agencies could be contacted for ideas about policies for historic preservation. Historical overlays should be considered to facilitate the preservation of historic buildings regardless of the zoning. Allowing conditional use options was also suggested for protecting historic properties. The group discussed the topic as follows:

- Policies could be added to develop some mechanism to allow a wider range of land uses of historic properties if they were protected. As density increases, preserving historic structures becomes more difficult but those with unique architectural styles in Milwaukie should be considered.
- Allowing the transfer of development rights from a site with an historic asset to an adjacent or downtown site was suggested to encourage the protection of historic assets, similar to what was allowed in natural resource areas. Having policy language that facilitated that type of an approach would provide opportunity for that discussion.
- Preservation credits and easements were also briefly discussed.
- The city's historic resource list needed to be updated. Staff confirmed funds had been budgeted to update the natural resource and historic inventories. However, the policies need to be sorted out first.

**Mr. Levitan** continued to review the goals and policies, and discussed the community survey and outreach options.

- Goal 2, Policy 2.1 should state, "Provide opportunities and programs for art and cultural events to be located throughout Milwaukie" to include other forms of non-visual art.
- Goal 5 would be split between three policy blocks. Open space would be discussed during the next block as part of the Parks and Recreation component. The last block would include discussions on natural resource protection.
- Since the city had met statewide Goal 9 requirements and did not have vacant land available, the policies would focus primarily on redevelopment.
- Although staff had hoped for more than 100 to 120 participants for the survey, the Comprehensive Plan update topic was only attractive to certain people. He agreed the city's outreach methods needed improvement.
- The original survey was more focused on goals and policies but for the next survey, it would be more conceptual and less technical – more toward town hall-type input.

**The Commission** discussed other outreach options.

## **7.0 Planning Department Other Business/Updates**

**Mr. Egner** noted the upcoming joint meeting with the Design and Landmarks Committee (DLC) on the Downtown Design Standards, adding once the concepts were agreed upon, the

Commission would discuss the standards in more detail. No radical changes were expected to the City's approach to downtown; the process was intended to match standards with guidelines and to make the process more user-friendly.

**7.0 Planning Department Other Business/Updates**

**8.0 Planning Commission Discussion Items**

**9.0 Forecast for Future Meetings:**

- |               |   |
|---------------|---|
| July 10, 2018 | 1. Worksession: Housekeeping Room Service Code Amendments |
| July 24, 2018 | 1. TBD  |

Meeting adjourned at approximately 8:23 p.m.

Respectfully submitted,

Alicia Martin, Administrative Specialist II

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Kim Travis, Chair



# CITY OF MILWAUKIE

## PLANNING COMMISSION MINUTES

City Hall Council Chambers  
10722 SE Main Street  
[www.milwaukieoregon.gov](http://www.milwaukieoregon.gov)

AUGUST 14, 2018

**Present:** Kim Travis, Chair  
John Henry Burns, Vice Chair  
Adam Argo  
Joseph Edge  
Sherry Grau  
Greg Hemer  
Scott Jones

**Staff:** Denny Egner, Planning Director  
David Levitan, Senior Planner  
Brett Kelter Associate Planner  
Vera Kolas, Associate Planner  
Mary Heberling, Assistant Planner  
Tim Ramis, City Attorney

**Absent:** None

### 1.0 Call to Order — Procedural Matters\*

**Chair Travis** called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

***Note:** The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.milwaukieoregon.gov/meetings>.*

### 2.0 Planning Commission Minutes

2.1 February 23, 2018

**Commissioner Hemer** corrected the spelling of his name in the motion on Page 3.

**Commissioner Hemer moved and Commissioner Argo seconded to approve the February 23, 2018 Planning Commission minutes as corrected. The motion passed unanimously.**

### 3.0 Information Items

**Denny Egner, Planning Director**, noted staff had been conducting neighborhood outreach regarding the neighborhood hubs portion of the Comprehensive Plan update project and had received more than 280 responses to the survey.

**Mr. Egner** added that the Comprehensive Plan Block 1 Policies, North Milwaukie Industrial/Innovation Area Plan, and additional housekeeping code amendments would go before City Council at the next meeting.

North Clackamas Park and Recreation District (NCPRD) would host an event on August 24, 2018 to discuss the changes that would occur on the next phase of Milwaukie Bay Park.

He also invited the Commissioners to the Planning Commission training and full day Planner training that would be held in September and paid for by the City.

**4.0 Audience Participation** — This is an opportunity for the public to comment on any item not on the agenda. There was none.



## **5.0 Public Hearings**

- 5.1 Summary: 44<sup>th</sup> Ave & Llewellyn St Rezone  
Applicant's Representative: Barry Sandhorst  
Owners: Dieringer Properties, Inc.; Greg Van Dyke; Arnold Keller  
Address: 4401-4409 & 4411 SE Llewellyn St; 10500 SE 44<sup>th</sup> Ave; 4401 SE  
Harrison St  
File: ZA-2018-003  
Staff: Brett Kelter, Associate Planner

**Chair Travis** called the hearing to order and read the conduct of quasi-judicial hearing format into the record.

**Brett Kelter, Associate Planner**, presented the staff report via PowerPoint, noting that the rezone would facilitate future development. Staff recommended approval. He added that the rezone would likely limit the need for future variance requests for lot size or lot dimension. He distributed a revised version of the Findings and entered it into the record regarding adoption of the zone change by Council.

**Chair Travis** confirmed that all of the correspondence received was included in the staff report. She called for the applicant's testimony.

**Barry Sandhorst** stated he had no testimony but was available to answer questions.

**Mr. Kelter** clarified that if the Commission approved the request, the change would need to be read into the record, so staff could adjust the Findings.

**Chair Travis** confirmed there was no public testimony and closed the public testimony.

### **Planning Commission Deliberation**

**Commissioner Hemer** believed the request was approvable, adding that by changing the zoning to increase density, an increase of occupancy could be assumed. The site was near major city arterials and fit well with the neighborhood hub concept.

**Chair Travis** added it provided an excellent example of redevelopment opportunities in the city. Others might follow suit to increase the utilization of existing properties for redevelopment.

**Commissioner Hemer moved and Commissioner Edge seconded to approve the application ZA-2018-003, adopting the recommended Findings in Attachment 1 and including Exhibit 1. The motion passed unanimously.**

**Chair Travis** read the rules of appeal into the record.

## **6.0 Worksession Items**

- 6.1 Summary: Comprehensive Plan Housing Discussion  
Staff: David Levitan, Senior Planner

**David Levitan, Senior Planner**, stated the next block of work for the Comprehensive Plan Update focused on the Housing section, which included housing, climate change and energy,

the Willamette Greenway, parks and recreation, and hazards. The 2016 Housing Needs Analysis showed Milwaukie had an adequate supply of a variety of housing types to meet projected demands for the next 20 years, so the City could be more flexible and creative with the goals and policies that were established and still meet Goal 10 requirements. Staff sought feedback about specific items the Commission wanted staff to consider for the Housing section.

**Mr. Egner** noted that since the Housing Needs Analysis did not recommend any changes, the Council focus was to provide more affordable housing options. Staff was working on two parallel projects, which could be grant funded, to find further opportunities to facilitate affordable housing projects. One project involved an audit of the City's Accessory Dwelling Unit (ADU) codes and the other would consider Code amendments for facilitating cottage cluster housing.

**Mr. Egner** explained the difference between form-based and use-based regulations, noting that City Council had provided direction to refrain from being too conservative when considering zoning options intended to broaden housing opportunities. Council suggested that Housing be addressed apart from the other Block 2 topics. Staff was to return to the City Manager with a methodology to give more time and focus to the housing piece.

Discussion about housing and potential Comprehensive Plan amendments included the following key comments:

- **Commissioner Hemer** suggested the City allow for all types of housing so that the market drives development, rather than being overly prescriptive. Allowing flexibility would create opportunity for the economic system to provide needed affordable housing.
- A grant program should be developed to assist living wage or low income workers with a first home down payment, which would provide stable, long term housing without worrying about rising rents. It would also provide opportunity for more rental property, which was currently limited by the existing rules.
- Some communities have prevented up-zoning which resulted in increased housing costs. How could the Commission educate the public about housing issues?
  - Staff agreed there would need to be robust community engagement, and likely economic analysis to explain it. Economic concerns related to homeownership would need to be adequately addressed.
- The **Commission** discussed form-based zoning.
  - The Comprehensive Plan Advisory Committee (CPAC) was expected to provide a forum for a discussion on form-based design and related legal or State processes. Having examples of what other Oregon communities were using would help in educating the public about options and constraints.
  - The housing crisis was much more systemic than solutions like form-based code or loosening zoning regulations would provide.
  - Design standards would have to be retained if all types of housing were allowed.
  - Considering a form-based code made sense. Policy objectives to get more housing must balance with the needs of current residents. Form-based code could help preserve some compatibility between the existing established neighborhood and the new development of multiplexes within the setbacks of a single-family dwelling.
- Open space, transportation, hazard considerations, and other policies were already addressed in the Comprehensive Plan and did not need to be in the Housing section.
- Downtown also needed to accommodate more housing.

- The Affordability and Livability Agenda in Seattle allowed a 1:1 density bonus equivalent to the amount of protected affordable housing provided. Such an incentive would improve the ability of housing developments to pencil out and provide protected affordable housing.
  - The City should allow more plexes and find opportunities for plexes at street corners, which Portland provided via its alternative zoning densities.
- Providing flexibility in housing options, housing form, and housing structure would encourage individual property owners to modify and improve their property or utilize some option that increased density. Whereas, rezoning an entire block would create a prime opportunity for a large developer to build an entire neighborhood of tract houses or high density apartments.
- The City should provide relief for system development charges (SDCs). The SDC process should be more transparent and easy to understand. SDC incentives were an important piece for building density and smaller homes.
- Educating residents could reduce stigmas surrounding affordable housing residents. Messaging and public engagement regarding housing policies would be important. The Community Vision encouraged dispersing affordable housing and a variety of housing types throughout the community.
- Mixed income neighborhoods actually benefit lower income families according to a 2014 Harvard study. The City should include Comprehensive Plan policies that encourage a mix income levels within neighborhoods. Staff noted mixed income housing was being discussed for the Hillside site.
  - Mixing ADUs and small houses in with plexes would enable lower income earners and families to build equity and then sell and move up to larger homes.
  - The market would still dictate housing prices regardless of policies; however, grant programs and subsidies could provide opportunities for lower income, first-time home buyers.
- There was no way to guarantee how long units would stay affordable, so preservation of affordable housing was a major concern.
- Making the existing zoning process more efficient and considering incremental changes to the existing zones should be weighted equally with more sweeping changes.
- The more radical the changes, the more transportation system could be impacted. The TSP may need to be updated.

## **7.0 Planning Department Other Business/Updates**

### 7.1 Planning Commissioner Notebook Replacement and Interim Update Pages

**Mr. Egner** distributed a notice to the Commission that the time allowed for the subdivision on Logus Rd was extended, so the applicant could return with their final plat.

Several Commissioners requested electronic copies of the notebooks with active hyperlinks rather than having physical, paper copies of the notebook.

## **8.0 Planning Commission Committee Updates and Discussion Items**

**Commissioner Hemer** announced that a Milwaukie Museum History Walk was being done in accordance with an AARP walk on August 25<sup>th</sup> from 10 am to 12 pm at the Ledding Library.

**Mr. Levitan** confirmed the library received a notice to proceed and that no revised bond

measure was required. He provided background information about the project and did not know when construction would start.

**Mr. Egner** directed Commissioners to the City website for updates on the Adams St Overpass Project.

**Commissioner Edge** invited everyone to the Trolley Trail Festival in Oak Grove on August 18<sup>th</sup> from 8 am to 4 pm.

**9.0 Forecast for Future Meetings:**

August 28, 2018 1. TBD  
September 11, 2018 1. TBD

**Mr. Egner** confirmed the Commission wanted to review the Room Service/Housekeeping Code Amendments on August 28<sup>th</sup>, so the September 11<sup>th</sup> meeting would be cancelled. The hearing on the Harmony Park Apartments was scheduled for the September 25<sup>th</sup> Planning Commission meeting. The Oregon Chapter of the American Planning Association and DLCD would host training meetings on September 12<sup>th</sup> and 13<sup>th</sup> and housing would be a discussion topic. Commissioners should let staff know if they wanted to attend.

Meeting adjourned at approximately 8:20 pm.

Respectfully submitted,

Alicia Martin, Administrative Specialist II

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Kim Travis, Chair



# CITY OF MILWAUKIE

**To:** Planning Commission

**Through:** Dennis Egner, Planning Director

**From:** Brett Kelder, Associate Planner

**Date:** March 7, 2019, for March 12, 2019, Public Hearing (continued)

**Subject:** **File:** AP-2019-001 (an appeal of MLP-2018-001)  
**Appellant:** Daniel Barela  
**Owner(s):** Tony and Michelle DaRosa  
**Subject Property:** 10244 SE 43<sup>rd</sup> Ave  
**Legal Description (Map & Tax Lot):** 1S2E30CC 05200  
**NDA:** Lewelling

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## **ACTION REQUESTED**

Reopen the public hearing on the appeal of the minor land partition approved with land use file #MLP-2018-001. Consider the new information presented by staff as requested at the February 12 hearing and decide whether to uphold, modify, or reverse the original partition decision. The recommended Findings and Conditions of Approval were provided with the February 12 staff report.

## **BACKGROUND INFORMATION**

The applicants for land use file #MLP-2018-001, Michelle and Tony DaRosa, proposed a 2-lot partition of their property at 10244 SE 43<sup>rd</sup> Ave to retain the existing house and create a new developable lot. 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 a future connection to White Lake Rd to the east. The approval was appealed by Daniel Barela, the adjacent neighbor to the north at 10194 SE 43<sup>rd</sup> Ave, out of concern about the impacts of the potential future street connection.

At the appeal hearing opened on February 12, 2019, Ms. DaRosa explained that she wanted the partition to be approved but believed the required ROW dedication was not proportional to the impacts of the project and in fact constituted a taking of her property. The standard of review for the appeal is whether the findings and/or conditions of the original decision include an error of fact or law. The Planning Commission identified the rough proportionality analysis required

for the partition as a potential error and continued the hearing to March 12 with a request for two things: (1) more information about staff’s analysis of rough proportionality and (2) an outline of the applicant’s options if the Commission were to approve the partition without a requirement for right-of-way (ROW) dedication for a future connection to White Lake Rd.

### Partition Options

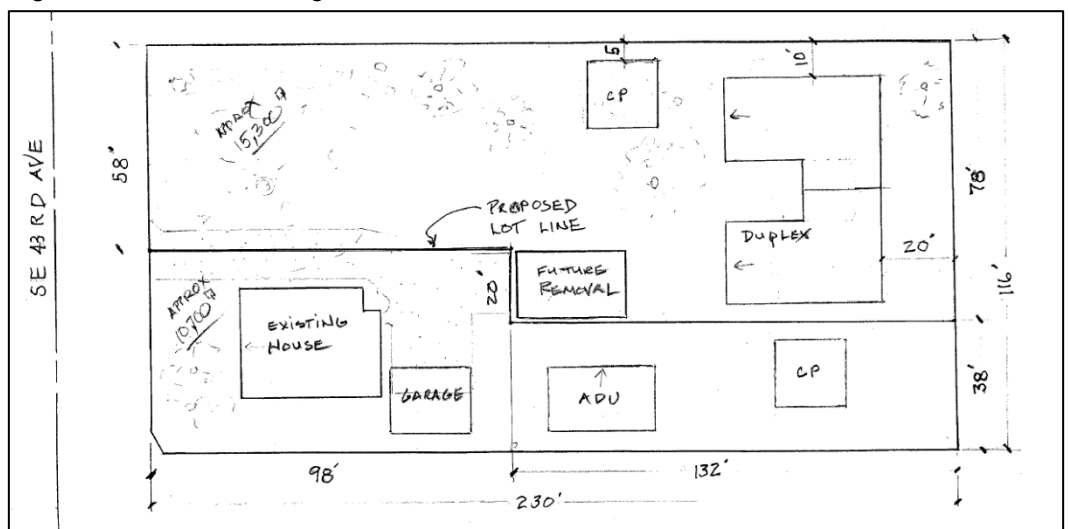
Before addressing the question of rough proportionality, it is important to understand how the applicant and staff arrived at the partition configuration that was approved by MLP-2018-001.

Staff’s typical approach to development proposals is to work with the applicant to identify an approach that avoids variances from code requirements whenever possible. In this case, the applicant originally presented two basic concepts for a two-lot partition of the subject property: a flag-lot-type configuration and a split configuration with both lots having nearly equal frontage on 43<sup>rd</sup> Ave.

**Flag Lot Configuration** – MMC Section 17.28.050 requires that applicants for flag lot partitioning show that access by means of a dedicated public street is not possible, with consideration given to other inaccessible adjacent or nearby lots where a jointly dedicated public ROW could provide suitable access and avoid other flag lots. Looking at the adjacent lot to the east (4446 SE White Lake Rd) and the nearby dead-end of White Lake Rd, staff concluded that access by means of a dedicated public street was in fact possible and that a Type III variance would be required if the applicant wanted to pursue a flag lot partition. Staff likely would have recommended denial of such a variance, though the Planning Commission would have been the decision-maker. At least one of the lots would need to have been sized to accommodate a potential duplex in order to meet the minimum density requirement of 3 units for the site, unless another variance was requested (for which staff would also most likely have recommended denial).

**Split Configuration** – The other concept was for 2 side-by-side lots, with new development located toward the rear of the new lot in order to preserve the existing grape vines and other vegetation along the north side of the property (see Figure 1). Because the compound line separating the two lots had less than a 10% change in direction, it would not have needed a variance from the standard of MMC Subsection 17.28.040.C.

Figure 1. Conventional Configuration



However, both lots would have required a Type II variance for up to a 10% adjustment from the lot width requirement of the R-7 zone (60 ft minimum). The Planning Director would likely have denied the variance request because access through a dedicated public street was practicable given the subject property's location; the Planning Commission would have been the final decision-maker on appeal.

Technically, the applicant could have pursued either of the other two options and requested variances as necessary, understanding the likelihood of denial and the need for an appeal to the Planning Commission. They opted to proceed with a two-lot configuration that included ROW dedication along the White Lake Rd alignment to provide the required public street frontage for the new lot and avoid the need for any variances.

### **Analysis of Rough Proportionality**

Creating a new developable lot results in new impacts on the City's transportation and utility systems. The City's Engineering staff evaluated the proposed partition to determine what public improvements would be roughly proportional to the new impacts, although the details of the analysis were not written into the findings (specifically, Finding 11-d). The basic conclusion reflected in the findings was that a requirement for physical improvements would not be proportional to the anticipated new impacts but that a requirement for ROW dedication would be.

The logic and method that staff employed in this analysis began with the requirement of MMC Subsection 19.703.3.C that a developable property provide a number of basic features, including adequate public utilities (water and sewer mains) and access onto a public street with a minimum paved width of 16 ft (for a local street). Where not already in place, these minimum improvements must be constructed from the end of the nearest developed street to the new property's frontage.<sup>1</sup>

The applicant provided staff with an estimate of \$187,500 for cost of constructing public improvements in the proposed White Lake Rd extension. Of the total 227-ft length of the proposed ROW extension, the proposed frontage of the existing developed lot (Lot 1) is 121 ft and that of the new lot (Lot 2) is 106 ft. With approximately 47% of the total length, staff calculated that Lot 2's share of improvements would be approximately \$88,125, based on the applicant's estimate (and not including the value of the land dedicated to the public ROW). Considering that the average cost of public improvements for prior single-family developments in the city has been between \$30,000 and \$57,500, staff determined that the \$88,125 cost for improvements alone in front of Lot 2 was not proportional to the new impacts.

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<sup>1</sup> The City's practice has been to not factor the cost of off-site minimum improvements into the analysis of proportionality, because those features are essentially a prerequisite for development. Developers have the option of applying to establish reimbursement districts to recover some of those costs from adjacent property owners when they (re)develop their sites, though that is obviously not an option in the current scenario, where the adjacent lot is part of the proposed partition and the lots to the north are already developed. In this case, the value of the land being dedicated to the public ROW was considered in the proportionality analysis because that ROW did not previously exist.

Given that the full improvements were deemed not proportional, the next alternative considered was to require the construction of minimum improvements in front of Lot 1 and allow construction of a driveway only in front of Lot 2, plus a proportional fee in lieu of construction of the required improvements in front of Lot 2. Staff determined that, since it was not preferable to construct only the minimum access improvements in front of Lot 1, the City would be amenable to a proposal from the applicant to simply dedicate both the 20-ft-wide ROW for a future White Lake Rd extension and 5 ft to the 43<sup>rd</sup> Ave ROW in front of Lot 1, which would facilitate the City's funded capital improvement project to construct sidewalks on 43<sup>rd</sup> Ave. Using the value of the subject property as provided by the Clackamas County Assessor's office, staff calculated the value of the area being dedicated to the ROW (just over 5,000 sq ft) at approximately \$41,700.

Given that this figure fell within the range of \$30,000 to \$57,500 provided by other similar developments and considering that the City's current value for fee in lieu of construction of street improvements is \$446 per lineal ft (approximately \$47,275 for the 106-ft frontage of Lot 2), staff concluded that the approximate \$41,700 figure was roughly proportional to the impacts of the proposed partition. It is worth noting that the phrase is "rough proportionality" — the analysis is not intended or required to arrive at an exact dollar figure.

**Summary** – Staff disagrees with the applicant's characterization (in testimony at the February 12 hearing) of the ROW dedication as an unconstitutional taking and stands behind its conclusion that the dedication requirement is both appropriate for this location and roughly proportional to the impacts of the new lot. It is understandable that many of the current immediate neighbors have expressed opposition to White Lake Rd becoming a through street, but it is important to remember that the City has goals and policies related to connectivity and accessibility that provide a greater public benefit. It is important to preserve the possibility of a future connection to White Lake Rd, even if it may be many years before any kind of physical connection is developed.

Staff suggests that Finding 11-d be modified as follows to clarify the rough proportionality analysis:

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 ROW along the subject property's frontage on 43<sup>rd</sup> Ave as well as to provide for the future extension of White Lake Rd. A rough analysis of proportionality shows that ROW dedication is proportional to the anticipated impacts of 1 new lot sized for single-family residential development; the construction of physical improvements is not proportional. The cost of constructing the required street improvements along the frontage of the new lot is higher than the range of average cost of improvements for similar-scale single-family development, while the value of the land dedicated to the public ROW is within that range. The surrounding transportation system will continue to operate at the level of service as before the proposed action. The proposed partition does not trigger mitigation of impacts beyond the required ROW*



*dedication, unless access modification cannot be justified in accordance with MMC Subsection 12.16.040.B.2.d.*

*The proposed development is consistent with MMC 19.705.*

### **Options if ROW Dedication is Not Required**

In the event the Commission decides that staff's rough proportionality analysis is in error but still wishes to approve the partition, the applicant has indicated interest in waiving the 120-day clock to allow time for the necessary proceedings (see Attachment 1). If the rough proportionality analysis were to be categorized as an error that could be resolved by eliminating the requirement for ROW dedication, the applicant could revise the proposed partition and present a lot configuration without ROW for a future connection to White Lake Rd. A flag lot design might work, or a side-by-side lot configuration with a compound line.

Whether any variances would be needed depends on the specific configuration chosen. Possible variances include the following:

1. Minimum density (depending on the size of the proposed lots)
2. Access spacing standards (MMC Subsection 12.16.040) if shared access is not proposed
3. Lot width (60 ft minimum for the R-7 zone)

### **CONCLUSIONS**

Staff believes that, as amended above, there is no error in the findings or conditions of the original decision for MLP-2018-001. The requirement for ROW dedication to establish a future connection to White Lake Rd is roughly proportional to the impacts resulting from the creation of a new developable lot.

### **Staff recommendation to the Planning Commission is as follows:**

1. Deny the appeal and uphold the original approval of MLP-2018-001.
2. Adopt the Findings and Conditions of Approval provided with the February 12 staff report.

### **CODE AUTHORITY AND DECISION-MAKING PROCESS**

As per Milwaukie Municipal Code (MMC) Subsection 19.1001.5, the Planning Commission is the designated appeal authority for a Type II decision. As per MMC Subsections 19.1010.3.A and 19.1010.5, the appeal hearing is an unrestricted de novo hearing, which allows for the presentation of new evidence, testimony, and argument by any party. The Commission will consider all relevant evidence, testimony, and argument provided at the hearing by the appellant or any party. The scope of the hearing is not limited to the issues that were raised on appeal. The standard of review is whether the initial decision has findings and/or conditions that are in error as a matter of fact or law.

The Commission has four (4) decision-making options as follows:

- A. Deny the appeal and uphold the initial decision approving the partition (file #MLP-2018-001). Adopt the original Recommended Findings and Conditions for MLP-2018-001, with the amended finding on rough proportionality as presented earlier in this report.
- B. Approve the appeal upon finding that the initial decision was in error, with Findings sufficiently worded to deny the partition as originally proposed in MLP-2018-001. Such Findings would need to be read into the record.
- C. Preliminarily deny the appeal, subject to Planning Commission approval of an amended partition that does not include ROW dedication for White Lake Rd, including any required variances. The applicant would need to waive the 120-day clock for MLP-2018-001 and amend the proposed partition, supplementing it with any variance requests as needed. The proposal would return to the Planning Commission for a public hearing and decision on both the partition and any variances.<sup>2</sup> If the variances were approved, the appeal would be officially denied, and the amended partition would be approved. The decision on the partition would be the final local decision, but the decision on any variances could be appealed to City Council. If the applicant were to be ultimately unsuccessful in obtaining the necessary variances, the appeal would be officially approved, and the amended partition would not be able to be actualized.
- D. Continue the hearing again for further discussion and deliberation on the appeal. The 120-day limit by which time the City must issue a final decision is March 14, 2019, so this option would require that the applicant waive the 120-day clock for MLP-2018-001. If the applicant were not willing to provide such a waiver, the Planning Commission would need to make a decision using one of the other options above (A, B, or C).

As per MMC Subsection 19.1010.5.D, the Commission’s decision on this appeal is the final local decision.

## ATTACHMENTS

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

	PC Packet	Public Copies	Packet
1. Note from Applicant (received March 4, 2019)	<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 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-24>.

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<sup>2</sup> Regardless of the type of variances ultimately required (Type II or III), staff believes it is most reasonable for the Planning Commission to make the variance decision, given that the partition itself is being decided by the Commission.

# ATTACHMENT 1

**Brett Kolver**

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**From:** Michelle DaRosa <mdarosa@landandcondolaw.com>  
**Sent:** Monday, March 04, 2019 9:01 AM  
**To:** Brett Kolver  
**Subject:** Re 10244 SE 43rd Partition March 12 Planning hearing

Dear Brett,

Thank you for being patient regarding the email you requested at our February 22, 2019 working meeting with you, Alex and Justin.

As we discussed should the Planning Commission uphold the appeal by our neighbor, Dan for our partition application (Land Use File MLP 2018-001), we would hope to proceed as follows:

- Agree to an adequate extension of the 120-day review period to consider revision to our application
- Revise our application to include necessary Type III variances to allow for one of the alternative partition configurations we discussed, and submit to another Planning Commission hearing for their determination on those variances. Our preference is probably the flag lot, with the understanding that the parent parcel would provide an access easement to the new parcel over the existing driveway area so as not to compound the accessway issue under MMC 12.16.040, and that the flag pole would remain undeveloped, even following permits and construction of improvements on the new parcel
- Provide the City a no-build easement over the north 20 feet of the property (about half of which would be the flag pole and half of which would be part of the flag area for the new parcel)

In our February 22 meeting, the City staff provided us with a summary of what it believes are the applicable ordinances to a reconfigured partition plan, to which I offer the following comments:

- Variance for 19.708.5 pedestrian/bicycle requirements: While it is true that MMC 19.702.1 states that chapter 19.700 applies to all partitions, this provision of the Code carves out its application more narrowly. MMC 19.708.5 says it applies “within and from new residential subdivisions, multifamily developments, planned developments, shopping center.” Our partition is none of those things; future development of the new parcels would not be either. I request the City reconsider its construction of this part of the code; we do not believe a variance should be required
- If the Planning Commission were to find against the condition of the 20-foot ROW dedication, then I don’t believe that a variance for MMC 12.16.040.B would be needed. I think that “no practicable alternative” would reasonably include a finding that the ROW dedication desired is not proper, or in this case, roughly proportional to the impact of our proposed partition.

In the summary of what sections of the Public Facility Improvement code are triggered by our partition, reconfigured in any way that does not include the 20-foot right-of-way dedication on the north boundary on which our original partition has been conditioned, the City points to MMC19.708.1.E. I am puzzled by what the code means by a “permanent turnaround” and why we would need to build one on White Lake Road? Without the ROW dedication, our property does not touch White Lake Road, so I don’t see why or how this particular ordinance would apply.

Thank you,

**Michelle D. Da Rosa**

Attorney at Law

205 SE Spokane Street, Suite 300

Portland, OR 97202

Office: (503) 220-2891

Mobile: (971) 600-6307

[mdarosa@landandcondolaw.com](mailto:mdarosa@landandcondolaw.com)



# CITY OF MILWAUKIE

**To:** Planning Commission

**Through:** Dennis Egner, Planning Director

**From:** Brett Kelter, Associate Planner  
Tay Stone, Planning Intern

**Date:** March 7, 2019, for March 12, 2019, Public Hearing

**Subject:** **File:** VR-2019-002  
**Applicant/Owner:** Steve Vukovich  
**Address:** 5485 SE Harlene St  
**Legal Description (Map & Tax Lot):** 1S2E31AB14800  
**NDA:** Linwood

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## ACTION REQUESTED

Approve land use application VR-2019-002 and adopt the recommended Findings and Conditions of Approval found in Attachments 1 and 2, respectively. This action would allow a variance from the 20-ft maximum width standard for a single-family residential driveway apron as established in Milwaukie Municipal Code (MMC) Subsection 12.16.040.F.2. The requested variance is for a 32-ft-wide driveway approach.

## BACKGROUND INFORMATION

Steve Vukovich, the applicant and current owner of the residential property at 5485 SE Harlene St, recently made improvements to the existing driveway that effectively widened the approach to 32 ft, in excess of the maximum 20-ft width allowed by MMC 12.16.040.F.2 (see Figure 1). Harlene St does not have curbs or sidewalks, so the street surface is essentially flush with all driveways along the street.



**Figure 1.** Improved driveway at subject property (Feb. 2019)

Harlene St is a dead-end street and the subject property is at the end of the road. The applicant's submittal materials show the repeated use of the subject property's driveway for turnaround movements, and the applicant reports a history of some property damage resulting from the maneuvering of vehicles turning around in the driveway. When the applicant decided to improve the driveway, he had it graded to prevent it from collecting stormwater from the street and widened it to accommodate the maneuvering of vehicles turning around. The City's Code Compliance Coordinator observed that the driveway had been widened beyond the allowed width and issued a notice of violation. The applicant approached Planning staff to discuss options for resolving the issue and opted to apply for a variance.

**A. Site and Vicinity**

The subject property is located at 5485 SE Harlene St. The site is approximately 16,500 sq ft (0.37 acres) and is developed with a detached single-family dwelling as well as a detached garage and small shed located in the rear yard (see Figure 2). The site has approximately 24% lot coverage and provides vegetation on 60% of the property, including almost 70% vegetation in the front yard. The surrounding area consists of detached single-family homes.



Figure 2. Site and vicinity

**B. Zoning Designation**

Residential R-7

**C. Comprehensive Plan Designation**

Low Density Residential (LD)

**D. Land Use History**

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

**E. Proposal**

The applicant has requested a variance to allow the existing 32-ft-wide driveway approach to remain.

The project requires approval of the following applications:

1. Variance Request (VR-2019-002)

MMC Subsection 12.16.040.F.2 requires that single-family residential uses have a minimum driveway apron width of at least 9 ft and maximum width of 20 ft. The applicant has proposed a 32-ft-wide driveway approach, which requires a Type III variance.

## KEY ISSUES

### Summary

Staff has identified the following key issues 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. If the street is improved with curbs and sidewalks in the future, will the wider driveway approach be allowed to remain?

### Analysis

**A. If the street is improved with curbs and sidewalks in the future, will the wider driveway approach be allowed to remain?**

A narrow strip of public ROW extends west from the subject property all the way to Wood Ave, and all 4 of the properties in between are large enough to redevelop. At some point in the future, it is likely that Harlene St will be extended through to Wood Ave as a result of such redevelopment. At that point, the need for a turnaround at the current dead end will be eliminated and there might be some momentum for constructing curbs, sidewalks, and similar street improvements on Harlene St.

One of the reasons for the 20-ft limitation on driveway approach width is to shorten the distance that users of the public ROW (particularly pedestrians) are exposed to the potential conflicts presented by vehicle movements on and off private properties. If Harlene St were to be extended further west, it would be preferable to reduce the width of the driveway approach on the subject property back to the allowable range (9 ft to 20 ft), especially if curbs and sidewalks were to be constructed in front of the subject property. Staff has proposed a condition of approval to require that the applicant sign a formal agreement to not object to a narrowing of the driveway approach at such time in the future as such public improvements are constructed on Harlene St along the subject property frontage.

## CONCLUSIONS

**A. Staff recommendation to the Planning Commission is as follows:**

1. Approve the requested variance, allowing the 32-ft-wide driveway approach.
2. Adopt the attached Findings and Conditions of Approval.

**B. Staff recommends the following key conditions of approval (see Attachment 2 for the full list of Conditions of Approval):**

- Sign and record an agreement to not object to a narrowing of the driveway approach to comply with the code requirements in place at such time as curbs and/or sidewalks are constructed on Harlene St along the subject property frontage. The agreement should include a provision acknowledging that, when the driveway approach is narrowed as required, the contemporary property owner shall be responsible for

modifying the on-site driveway as needed to comply with the applicable residential off-street parking standards related to driveway width and alignment with the driveway approach

## **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 Section 19.301 Low Density Residential Zones
- MMC Section 19.607 Off Street Parking Standards for Residential Areas
- MMC Section 19.911 Variances
- MMC Section 19.1006 Type III

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.

The Commission has 4 decision-making options as follows:

- A. Approve the application subject to the recommended Findings and Conditions of Approval.
- B. Approve the application with modified Findings and Conditions of Approval. Such modifications need to be read into the record.
- C. Deny the application upon finding that it does not meet approval criteria.
- D. Continue the hearing.

The final decision on these applications, which includes any appeals to the City Council, must be made by May 23, 2019, in accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance. The applicant can waive the time period in which the application must be decided.

## **COMMENTS**

Notice of the proposed changes was given to the following agencies and persons: City of Milwaukie Building, Engineering, and Public Works Departments (including Streets, Stormwater, and Environmental Services Divisions); Milwaukie Code Compliance; Milwaukie City Attorney; Linwood Neighborhood District Association (NDA) Chairperson & Land Use Committee; Clackamas Fire District #1; and properties within 300 ft of the site.

No comments were received for this application.

## 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 Narrative and Supporting Documentation (stamped received January 18, 2019)				
a. Narrative	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Site Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c. Stormwater Runoff (photos)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
d. Turnaround Diagram	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
e. Vehicle Traffic (photos)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
f. Non-Standard Accessways (photos)	<input checked="" type="checkbox"/>	<input 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.

Supplemental Materials = materials provided to Planning Commission less than 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-24>



**Recommended Findings in Support of Approval  
File #VR-2019-02, Steve Vukovich – 5485 SE Harlene St**

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, Steve Vukovich, has applied for a variance to approve a 32-ft-wide driveway approach at the subject property, 5485 SE Harlene St. The site is in the R-7 Zone. The land use application file number is VR-2019-02.
2. The subject property is approximately 16,500 sq ft (0.37 acres) in size and is developed with a detached single-family dwelling as well as a detached garage and small shed located in the rear yard. The applicant recently improved the existing driveway, effectively widening it to 32 ft, in excess of the maximum 20-ft width allowed by Milwaukie Municipal Code (MMC) Subsection 12.16.040.F.2. The proposal to vary from this access management standard requires a variance, as established in MMC Section 12.16.050.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC Section 19.1006 Type III Review
  - MMC Chapter 12.16 Access Management
  - MMC Section 19.301 Low Density Residential Zones (including R-7)
  - MMC Section 19.607 Off Street Parking Standards for Residential Areas
  - MMC Section 19.911 Variances

The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held on March 12, 2019, as required by law.

4. MMC Chapter 12.16 Access Management
  - a. MMC Section 12.16.040 Access Requirements and Standards

MMC 12.16.040 establishes standards for access (driveway) requirements, including location, number, and size.

    - (1) MMC Subsection 12.16.040.C Accessway Location

MMC 12.16.040.C.3 requires that the nearest edge of the driveway apron shall be at least 7.5 ft from the side property line in residential districts.

*As proposed, the nearest edge of the driveway approach is approximately 8 ft from the nearest side property line.*
    - (2) MMC Subsection 12.16.040.D Number of Accessway Locations

MMC 12.16.040.D.3 allows single-family residential lots with one street frontage to have one additional accessway where the driveway approaches can be spaced at least 50 ft apart.

*Harlene St is a local street. The applicant has not proposed a second driveway approach, but it is noted that the subject property’s frontage is approximately 100 ft in length and the existing driveway location on the far west side of the frontage would allow a second driveway to be located at least 50 ft away on the far east side.*

(3) MMC Subsection 12.16.040.F Accessway Size

MMC 12.16.040.F.2 requires that single-family detached residential uses shall have a minimum driveway apron width of 9 ft and a maximum width of 20 ft.

*A variance has been requested to allow the subject property driveway to exceed the maximum width of 20 ft, to a width of 32 ft (see Finding 7).*

*As proposed, and with approval of the variance discussed in Finding 7, the applicable standards of MMC 12.16.040 are met.*

b. MMC 12.16.050 Variance

MMC 12.16.050 provides that relief from any access management requirement or standard of MMC 12.16.040 may be granted through a variance process, which requires submission and approval of a variance land use application pursuant to criteria and procedures of MMC Section 19.911.

*The applicant has requested relief from the maximum driveway width standard of 20 ft, established in MMC 12.16.040.D.3. As required, the applicant has applied for a variance subject to the approval criteria of MMC 19.911, addressed in Finding 7.*

*As proposed, and with approval of the variance discussed in Finding 7, the Planning Commission finds that the applicable standards of MMC 12.16 are met.*

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

MMC 19.301 establishes standards for the low-density residential zones, including the R-7 zone. The subject property is zoned R-7.

MMC Subsections 19.301.4 and 19.301.5 provide applicable development standards for the R-7 zone, summarized in Table 5:

<b>Table 5 R-7 Lot and Development Standards</b>		
<b>Standard</b>	<b>R-7 Requirement</b>	<b>Subject Property</b>
<b>Maximum lot coverage</b>	30%	<24%
<b>Minimum vegetation</b>	30%	>60%
<b>Front yard minimum vegetation</b>	40%	>68%

*The Planning Commission finds that approval of the requested variance would not cause the subject property to fail to comply with the applicable R-7 development standards. This standard is met.*

6. 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 limit on the percentage of front yard area used for parking

(maximum of 50%), a limit on the number of parking spaces allowed in the front yard (maximum of 3), and a requirement that the on-site driveway align with the driveway approach.

*As proposed, the widened driveway area occupies less than 32% of the front yard, with room for 3 parking spaces. With approval of the variance as discussed in Finding 7, the on-site driveway would align with the driveway approach as required.*

*As proposed, and with approval of the variance discussed in Finding 7, the Planning Commission finds that the applicable standards of MMC 19.607 are met.*

## 7. 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. In addition, MMC Section 12.16.050 allows requests for relief from the City's access management requirements to be processed according to the procedures and criteria of MMC 19.911. 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 a variance from one of the access management standards of MMC 12.16.050.*

*The requested variance meets 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 requested variance is not identified in MMC 19.911.3.B as being eligible for Type II review. Therefore, the requested variance is subject to the Type III review process and the approval criteria established in MMC Subsection 19.911.4.B.*

### c. MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes approval criteria for variance requests.

*The applicant has elected to address the criteria of 19.911.4.B.1 Discretionary Relief Criteria.*

MMC Subsection 19.911.4.B.1 provides the following approval criteria for Type III variances where the applicant elects to utilize the Discretionary Relief Criteria:

- (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.

*The applicant's submittal materials outlined the pre-existing conditions that led to the expansion of the accessway, including the age of the original driveway approach and its degradation due to stormwater runoff and by vehicles using it as an informal turnaround. The applicant also noted that, due to its location at the end of a dead-end street with only a 30-ft turnaround radius in the public right-of-way (ROW) instead of the standard 45-ft radius, vehicles sometimes encroach onto the property.*

*The applicant reported that the previous driveway approach width of 20 ft required continual maintenance with a laying of gravel to alleviate negative impacts from stormwater runoff from the street onto the subject property. The applicant also recounted property damage resulting from the driveway's use as an informal turnaround and asserted that a requirement to reduce the driveway approach to the standard maximum width of 20 ft would likely lead to additional negative impacts to the property.*

*The applicant noted that MMC Subsection 12.16.040.D.3.b allows for an additional accessway if the two driveways can be located at least 50 ft apart. The 100-ft width of the subject property's frontage on Harlene St and the location of the existing driveway on the far west side of the lot would allow a second driveway 50 ft away on the far east side of the lot. If the proposed driveway widening were not allowed and a second driveway were to be constructed on the east side of the lot, the reduction in front yard vegetation and the addition of stormwater runoff would be no greater than what is proposed with the requested variance.*

*The applicant provided evidence that widening the driveway approach would not hinder the property's compliance with the minimum front yard vegetation requirement. There are no other identified negative impacts related to the requested variance.*

*The Planning Commission finds that the applicant's submittal provides an adequate analysis of the impacts and benefits of the requested variance compared to the baseline requirements. This criterion is met.*

- (2) The proposed variance is determined by the Planning Commission to be both reasonable and appropriate, and it meets one or more of the following criteria:
  - (a) The proposed variance avoids or minimizes impacts to surrounding properties.
  - (b) The proposed variance has desirable public benefits.

- (c) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

*The widened driveway approach would not result in any identified impacts to surrounding properties. Harlene St is currently a dead-end street and is not improved with curbs or sidewalks; pedestrians are required to walk in the street itself, which, although not ideal, in this case means that there is at least no increase in potential conflict between pedestrians and vehicles using the wider driveway approach.*

*As long as Harlene St remains a dead-end street, the proposed widened driveway approach would provide the benefit of a wider hard-surface turnaround area for vehicles turning around in that section of Harlene St. Given that the existing driveway is reportedly already used for vehicle turnaround movements, it is reasonable to construct a wider approach that would lessen the impact to the existing built and natural environment by providing a better surface for turning movements and reducing the instances of mud or other debris being tracked into the roadway.*

*The Planning Commission finds that the requested variance is reasonable and appropriate and that it meets 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.

*Currently, there are no identified impacts resulting from the requested variance. However, it is likely that Harlene St will be extended through to Wood Ave at some point in the future, given that a narrow strip of public ROW already extends west from the subject property all the way to Wood Ave, and all 4 of the properties in between are large enough to redevelop. At that point, the need for a turnaround at the current dead end would be eliminated and there might be some momentum for constructing curbs, sidewalks, and similar street improvements on Harlene St.*

*If Harlene St were to be extended further west and curbs and sidewalks were to be constructed, it would be preferable to reduce the width of the driveway approach on the subject property back to the allowable range (9 ft to 20 ft). This would help reduce conflicts between pedestrians on the sidewalk and vehicles entering or exiting the public ROW at that location. A condition has been established to require that the applicant sign a formal agreement to narrow the driveway approach at such time in the future as street improvements (e.g., curb, sidewalk, etc.) are constructed along the subject property's Harlene St frontage.*

*As conditioned, the Planning Commission finds that future impacts from the requested variance will be mitigated to the extent practicable.*

*As proposed, the Planning Commission finds that the requested variance meets 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 variance is allowable as per the applicable standards of MMC 19.911 and is therefore approved.*

8. The application was referred to the following departments and agencies on January 25, 2019:

- Milwaukie Building Department
- Milwaukie Engineering Department
- Milwaukie Public Works Department (including Streets, Stormwater, and Environmental Services Divisions)
- Milwaukie Code Compliance
- Milwaukie City Attorney
- Linwood Neighborhood District Association (NDA) Chairperson & Land Use Committee
- Clackamas Fire District #1

Notice of the application was also sent to surrounding property owners and residents within 300 ft of the site on February 20, 2019, and a sign was posted on the property on February 22, 2019.

No comments were received for this application.

**Recommended Conditions of Approval  
File #VR-2019-02, Steve Vukovich – 5485 SE Harlene St**

**Conditions**

1. Within 3 months of this approval, the applicant shall sign a formal agreement to not object to a narrowing of the driveway approach to comply with the code requirements in place at such time as curbs and/or sidewalks are constructed on Harlene St along the subject property frontage. The agreement shall be recorded with the Clackamas County Recorder and shall bind the current and any future owner of the property. The agreement shall include a provision acknowledging that, when the driveway is narrowed as required, the contemporary property owner shall be responsible for modifying the on-site driveway as needed to comply with the applicable residential off-street parking standards related to driveway width and alignment with the driveway approach.

JAN 18 2019

CITY OF MILWAUKIE  
PLANNING DEPARTMENT**Summary**

Location: 5485 SE Harlene St, Milwaukie, OR, 97222.

Zone: R7.

Land use review requested: Type III variance. Expansion of maximum accessway size from 20 feet to 32 feet as described in 12.16.040.F.2 and 19.607 (currently 60 square feet violation).

**Situation**

My house is located at the bottom of a hill and the end of a street. My parents built the house in 1955 and lived there until the mid 90's when they sold it. I purchased the house in 2005 and brought it back into the family. Since 2005 I've been doing typical repairs and maintenance that's required on a 60-year-old house. One of those repairs was to replace the driveway. The driveway was in significant disrepair due to age, stormwater runoff and continuous vehicle traffic. I have been spreading a yard or two of gravel yearly for the past few years in an attempt to deter the stormwater runoff onto my property and provide a more suitable and wider surface for vehicle traffic. Though this is a dead-end street it was not designed with a true turnaround. I have had my front yard split rail fence hit twice by vehicles backing up. When I replaced the driveway, I had it graded to help with the stormwater runoff issue and widened to help with the vehicle traffic issue.

**Proposed variance**

The allowance of the widened accessway (60 square feet) due to the circumstances described above.

**Supporting documentation (attached exhibits)**

- **Exhibit 1** (Site Plan): Describes my property and identifies variance area.
- **Exhibit 2** (Stormwater Runoff): Shows the impact of the stormwater runoff on my property.
- **Exhibit 3** (Turnaround): Shows the actual size of the turnaround (30' Rad) compared to current code dimensions for a turnaround (45' Rad). Because of this smaller turnaround, vehicle traffic uses my property as a turnaround. I do not have an issue with this vehicle traffic. In fact, the concrete on the lower portion of my driveway is of higher strength than typical for this specific reason.
- **Exhibit 4** (Vehicle Traffic): These are examples where vehicle traffic is using my driveway as a turnaround (examples from roughly the last month).
- **Exhibit 5** (Non-Standard Accessways): These may not be a code violation or may have been grandfathered in. These examples show that my accessway is not an outlier on my street.

**Approval criteria for Type III variance**

19.911.4.B.1.b(1) - The proposed variance avoids or minimizes impacts to surrounding properties.

- Now that the driveway is widened the vehicle traffic no longer drives over the side of my driveway (which was cracking it) and then driving onto dirt or gravel. This variance would avoid impacts to my property.
- I know of no impacts to surrounding properties. I've spoken with all my immediate neighbors and they are all happy with the improvement.

19.911.4.B.1.b(2) - The proposed variance has desirable public benefits.

- There is now a proper and wider surface for vehicle traffic.

19.911.4.B.1.b(3) - The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

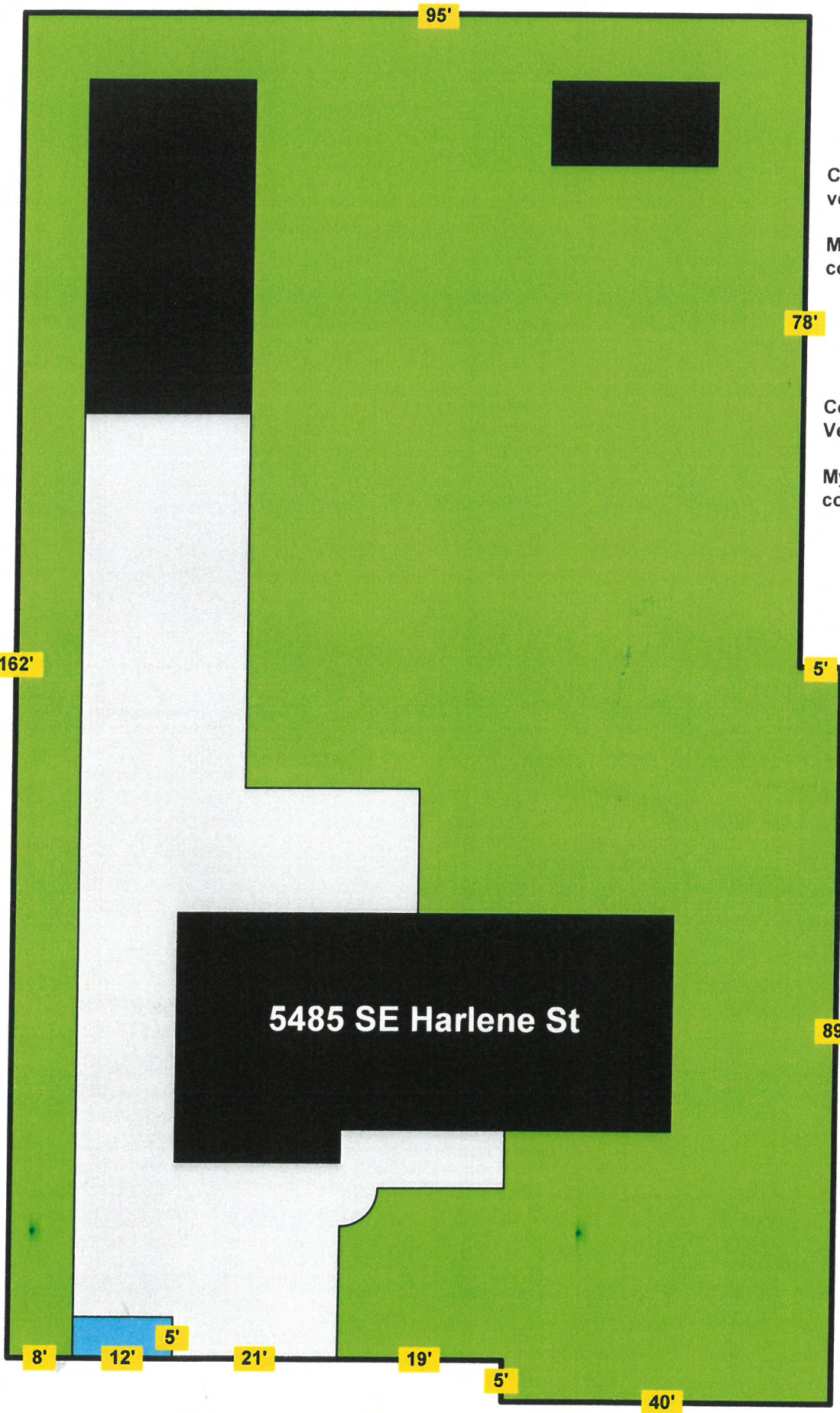
- Harlene St does not have curbs or sidewalks. There are multiple properties on the street (as referenced in the "supporting documentation") with non-standard accessways.
- My lot minimum vegetation requirements are still being met.
- My front yard minimum vegetation requirements are still being met.

**Impact of the proposed variance**

19.911.4.B.1.c - Impacts from the proposed variance will be mitigated to the extent practicable.

- A condition that may appear as an impact is the stormwater runoff from my property onto the street because of the widened accessway. 12.16.040.D.3.b allows for an additional accessway if the property meets the requirements. My property meets those requirements. Therefore, my widened accessway has basically the same accessway width (and therefore the same amount of stormwater runoff) as a standard accessway with the additional accessway allowed under 12.16.040.D.3.b.





Code minimum lot  
vegetation coverage: 30%

My lot vegetation  
coverage: 66%

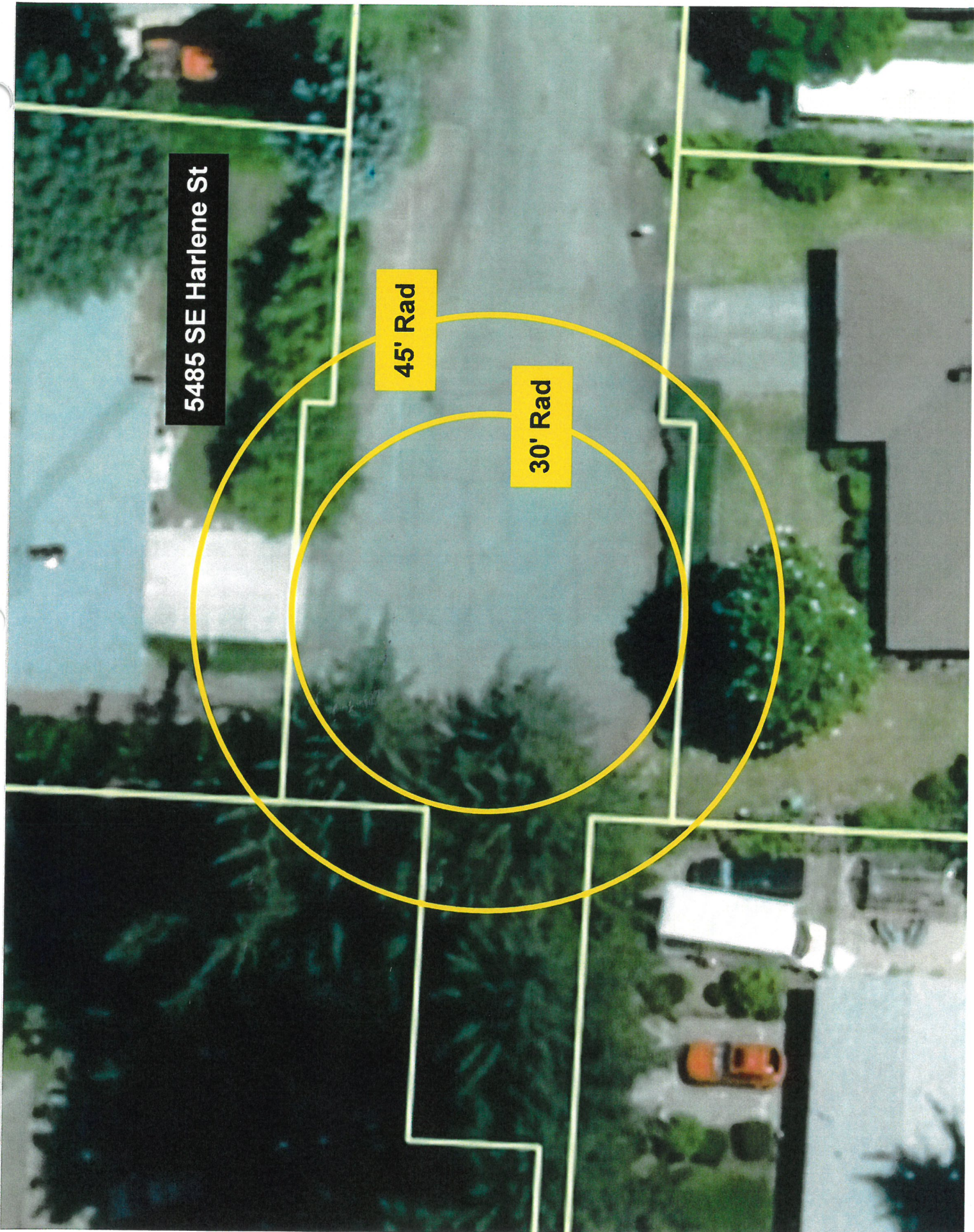
Code minimum front yard  
Vegetation coverage: 40%

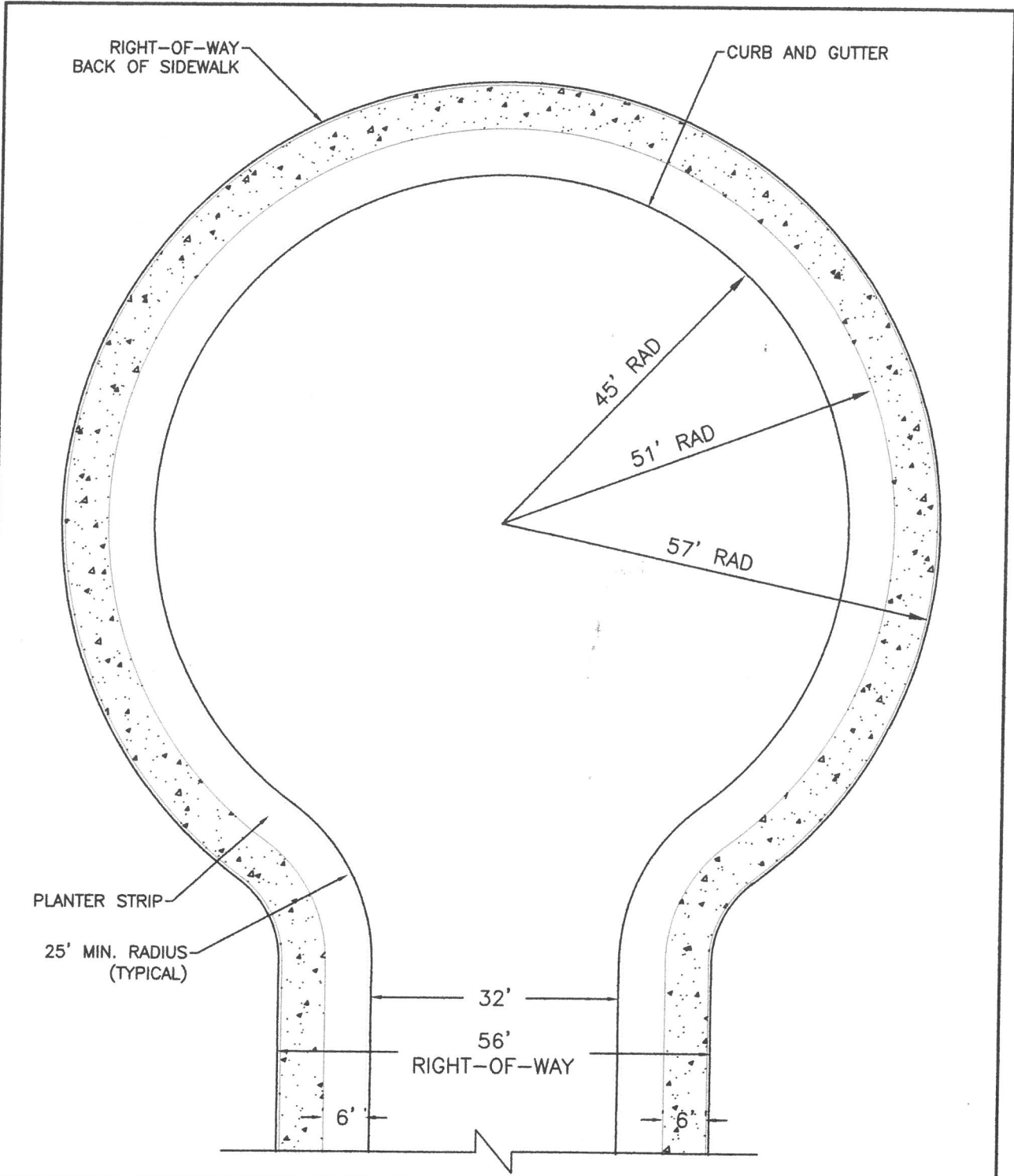
My front yard vegetation  
coverage: 66%

- Structure
- Vegetation
- Hard surface
- Variance area
- Lot dimension (approx)









CITY OF MILWAUKIE, OREGON - PUBLIC WORKS DEPT.

Cul De Sac

DRAWING NO.

511

APPROVED  
  
 CITY ENGINEER

12/14  
 DATE

NO.	REVISIONS	DATE	BY
1	DRAWING NUMBER CHANGED	12/10	MCP













