



July 27, 2011

File(s): CSU-11-05

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on July 26, 2011.

**Applicant(s):** Lee Winn for BDC/Milwaukie, LLC  
**Location(s):** 5555 SE King Road  
**Tax Lot(s):** 1S 2E 30DC 02700  
**Application Type(s):** Community Service Use  
**Decision:** Approved, with conditions  
**Review Criteria:** **Milwaukie Zoning Ordinance:**

- 19.904.4, Community Service Use Approval Criteria
- 19.904.9, Specific Standards for Institutions - Public, Private, Religious, and Other Facilities not Covered by Other Standards
- 19.302, Residential zone R-7
- 19.600, Off-Street Parking and Loading

**Neighborhood(s):** Lewelling

This notice is issued in accordance with Milwaukie Municipal Code Section 19.1006 Type III Review. The complete case file for this application is available for review between 8:00 a.m. and 5 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Ryan Marquardt, Associate Planner, at 503-786-7658 or [marquardtr@ci.milwaukie.or.us](mailto:marquardtr@ci.milwaukie.or.us), if you wish to view this case file.

Only persons who submitted comments or made an appearance of record at the public hearing have standing to appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie City Council. The period during which an appeal can be filed expires on the date shown below. This decision becomes final on the date below if no appeal is filed during the appeal period.

**Appeal period closes: 5:00 p.m., August 11, 2011**

Appeals of Planning Commission decisions must follow the procedures of Milwaukie Municipal Code Section 19.1010 Appeals. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or [planning@ci.milwaukie.or.us](mailto:planning@ci.milwaukie.or.us).

**Findings in Support of Approval**

Sections of the Milwaukie Municipal Code that are not addressed in these findings are found to not be applicable decision criteria for the development proposal.

1. BPM Senior Living (applicant) has submitted a Community Service Use application (File #CSU-11-05). The applicant is seeking approval to convert part of a senior independent living facility to an assisted living and memory care facility. The application materials were initially submitted May 26, 2011. City staff deemed the application complete on June 13, 2011.
2. The project site is 5555 SE Kind Road, Tax Lot 1S 2E 30DC 02700. A large majority of the site is already developed with a two-story, 27,728 sq ft, 80-unit senior independent living facility and associated parking area. The site has one access to SE King Rd on its southern border. Its northern border fronts on SE Mullan St, which is an undeveloped right-of-way. Much of the surrounding development is large lot single family dwellings. Areas to the east of the site are in unincorporated Clackamas County.
3. The base zone of the site is Residential zone R-7 (R-7), and the Comprehensive Plan land use designation is Low Density Residential. There are no overlay zones or designations on the site.
4. The proposed project would convert space on the ground floor of the southern portion of the existing building to create a 28-bed memory care facility. A new courtyard area would be built to the east of the converted memory care area in an existing landscaped area and parking area. A 7-ft tall wall would surround the patio area to ensure memory care patient safety. The remaining space in the building would contain a 29-bed assisted living area and a 28-unit independent living facility. The amount of parking on site would decrease from 59 spaces to 48 spaces.
5. The history of land use applications on the site is as follows.
  - A. A-1978-6: City Council approved annexation of the site through Resolution #10-1979. The existing structure on the site for senior and retirement housing was constructed prior to annexation, and the property owner wanted to annex into the city for water service.
  - B. CU-2005-01: Planning Commission approval of a conditional use application for changes to the roof and façade of the structure. This review and approval established the facility as a Conditional Use in the R-7 zone.
  - C. 2011 CSU Determination: The Planning Commission provided direction about whether the applicant's proposal for a continuum care facility should be evaluated as a Conditional Use and Community Service Use, or a Community Service Use only. The Planning Commission decided that the proper review would be as a Community Service Use only. The Planning Commission emphasized that their input on the review of this application does not set a precedent for reviewing all similar continuum care facilities as a Community Service Use

There are no outstanding issues or conditions of approval from these land use decisions that affect the current proposal.

6. The proposed conversion of senior and retirement housing to memory care and assisted living housing requires approval of a Community Service Use (CSU) application. The proposed uses are described as Community Service Uses per Milwaukie Municipal Code (MMC) 19.904.2.A: other uses similar to those listed in MMC 19.904.2.A, as determined by the Planning Commission.
7. MMC 19.904.3 requires a Type III review process for approval of a new CSU. Public notice has been provided per the requirements listed in MMC 19.1006.3. The Planning Commission held a public hearing to consider the application on July 26, 2011. Notice of the hearing was provided 20 days before the hearing to property owners and the Neighborhood District Associations that received the application referral, and was posted at the site for 14 days prior to the hearing.
8. MMC 19.904.4 contains approval criteria for a CSU. The Planning Commission finds that the proposed CSU meets these criteria

A. *MMC 19.904.4.A.1: The building setback, height limitation, and off-street parking and similar requirements governing the size and location of development in the underlying zone are met. Where a specific standard is not proposed in the CSU, the standards of the underlying zone are met.*

The site is in the R-7 zone, and subject to the development standards of MMC 19.302.3.

- i) MMC 19.302.3.A – D, F, G, and I are not applicable because the proposal would not alter the property boundaries or the height, location or extent of the structures on site.
- ii) MMC 19.302.3.E requires off-street parking and loading, per the requirements in MMC Chapter 19.600. Compliance with these standards is addressed in Finding 9.
- iii) MMC 19.302.3.H requires that at least 30% of the lot area have vegetation. The lot area of the site is 91,984 sq ft, and the vegetated area on site after the addition of the patio would be 39,323 sq ft, or 42% of the site.
- iv) MMC 19.302.3.J requires minimum and maximum residential density standards for certain types of applications reviewed through a Type III land use review process. The Planning Commission finds that this standard is applicable to proposals involving residential dwelling units. The proposed CSU is an institutional use, and not a typical residential use. The Planning Commission finds that minimum and maximum density standards are not applicable to the proposed CSU.
- v) MMC 19.302.3.K requires public infrastructure improvements per the requirements of MMC Chapter 19.700. The proposed CSU would take the total floor area on site from a maximum occupancy of 98 persons to 93 persons following the remodeling. The Planning Commission finds that the proposal does not trigger the applicability section for MMC Chapter 19.700 as outlined in MMC 19.702.

B. *MMC 19.904.4.A.2: Specific standards for the proposed uses as found in Subsections 19.904.7-11 are met*

The Planning Commission finds that the proposed continuum care facility does not fall under any of the use specific standards in MMC 19.904.7, 8, 10 or 11, and that the applicable CSU specific standards are those of MMC 19.904.9, Specific Standards for Institutions—Public, Private, Religious, and Other Facilities not Covered by Other Standards. These standards are met as described below.

- i) *MMC 19.904.9.A: Utilities, streets, or other improvements necessary for the public facility or institutional use shall be provided by the agency constructing the use.*

The Planning Commission finds that the proposed changes to the site do not necessitate new or upgraded public facilities.

- ii) *MMC 19.904.9.B: When located in or adjacent to a residential zone, access should be located on a collector street if practicable. If access is to a local residential street, consideration of a request shall include an analysis of the projected average daily trips to be generated by the proposed use and their distribution pattern, and the impact of the traffic on the capacity of the street system which would serve the use. Uses which are estimated to generate fewer than 20 trips per day are exempted from this subsection.*

The site's only access is on King Rd, which is an arterial street. The site does not have access on a residential street, and the proposal would not increase the number of trips to the site. The Planning Commission finds that this standard is met.

- iii) *MMC 19.904.9.C: When located in a residential zone, lot area shall be sufficient to allow required setbacks that are equal to a minimum of  $\frac{2}{3}$  the height of the principal structure. As the size of the structure increases, the depth of the setback must also increase to provide adequate buffering.*

The existing building is 25 ft tall. A setback of  $\frac{2}{3}$  of this height is 16.66 ft. The smallest setback is 21 ft 7 in on the western side of the building. All other setbacks on the property exceed this requirement. The Planning Commission finds that this standard is met.

- iv) *MMC 19.904.9.D: The height limitation of a zone may be exceeded to a maximum height of 50 ft provided Subsection 19.904.9.C of this subsection is met.*

The existing building is 25 ft tall. The Planning Commission finds that this standard is met.

- v) *MMC 19.904.9.E: Noise-generating equipment shall be sound-buffered when adjacent to residential areas.*

The applicant indicates that an emergency generator is required for the facility. Aside from operation during power outages, it is required to be tested once a month for 30 minutes. The applicant has not yet determined where the generator will be located on site. As conditioned, the applicant shall record the noise level from the operating generator after its installation and submit this data to the Planning Director. The Planning Director shall evaluate the data against MMC Chapter 8.08, Noise Control, and require noise buffering to appropriately buffer noise from the generator, consistent with MMC 19.8.08. The Planning Commission finds that this standard is met.

- vi) *MMC 19.904.9.F: Lighting shall be designed to avoid glare on adjacent residential uses and public streets.*

The applicant has not identified proposed or existing lighting that would be in conflict with this standard. As conditioned, the applicant shall show existing and proposed lighting, and include photometric studies as appropriate, to demonstrate that lighting on the site will not cause glare or excessive light trespass onto the street or other properties. The Planning Commission finds that this standard is met.

- vii) *MMC 19.904.9.G: Where possible, hours and levels of operation shall be adjusted to make the use compatible with adjacent uses.*

The facility is residential in nature and is in continuous operation, with 5-15 employees on-site. The operation of the facility would not change from the existing hours and level of operation. The City has not received comment from adjacent residents or any Neighborhood District Association that the existing use is incompatible. The Planning Commission finds that the continuing care facility, as proposed, meets this standard.

- viii) *MMC 19.904.9.H-J apply to religious institutions and park and ride facilities, and the standards in these sections are not applicable to the proposed continuing care facility.*

- C. *MMC 19.904.4.A.3: The hours and levels of operation of the proposed use are reasonably compatible with surrounding uses.*

As described in Finding 8.B.vii, the Planning Commission finds that the continuing care facility, as proposed, is consistent with the surrounding uses in terms of hours and levels of operation.

- D. *MMC 19.904.4.A.4: The public benefits of the proposed use are greater than the negative impacts, if any, on the neighborhood.*

The applicant has submitted a market study and other information which documents the need for more specialized care for the aging population. The proposed facility would meet this demand by adding increased levels of care to an existing senior and retirement facility. The care and operation of the facility would be overseen by the Oregon Department of Human Services. An additional benefit of the proposal is that it is a conversion of an existing building, and would not significantly change the character of the area. Locating this type of facility within the city allows for more convenient access by employees and visitors.

There are not any significant impacts identified with the proposed development. The proposed wall surrounding the patio would be visible from the street and other properties. If not well designed, the wall could present a monotonous and blank face at the front of the property. As conditioned, the wall surrounding the patio must include variations in material, pattern, and/or color to break up the expanse of the wall. The wall shall incorporate colors, styles, and materials from the existing building to the extent possible. The Planning Commission finds that the proposed benefits of the proposal outweigh the negative impacts.

*E. MMC 19.904.4.A.5: The location is appropriate for the type of use proposed.*

The facility would be located on King Road. The location allows convenient access for residents to the King Road shopping center. The site is also located on a transit route, which allows convenient transportation for employees, visitors, and residents. The facility is residential in nature and is located in a predominantly residential area. The Planning Commission finds that the location is appropriate for the proposed continuing care facility.

9. MMC Chapter 19.600 regulates off-street parking and loading. The Planning Commission finds that the standards of this chapter are met, as described below.

A. MMC 19.602.3 defines the applicability of the off-street parking and loading standards for development and change in use activity. The Planning Commission finds that the proposal is a change in use, and that the existing off-street parking and loading areas shall be brought closer into conformance with the standards of Chapter 19.600, per Subsection 19.602.5.

B. MMC 19.602.5 regulates the improvements made to existing off-street parking and loading areas when a change of use or development occurs. As conditioned, the applicant shall bring the existing parking area closer to conformance. The cost of bringing the parking area closer to conformance will be limited per MMC 19.602.5.B. The areas to be brought closer to conformance will be identified by the Planning Director during the review of the final development plans for this proposal as part of a Type I Development Review application.

C. MMC 19.605 determines the vehicle parking quantity requirements. The applicable uses listed in Table 19.605.1 are A.2, Multifamily dwellings containing 3 or more dwelling units (includes senior and retirement housing), with a minimum requirement of 1.25 spaces per dwelling unit or 1 space per dwelling unit for units with 800 square feet of floor area or less, and a maximum of 2 spaces per dwelling unit and B.7, Nursing, convalescent, and extended-care facilities with a minimum requirement of 1 space per 4 beds and a maximum of 1 space per 3 beds.

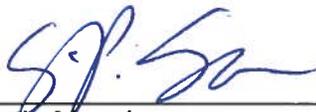
The proposed development would have 28 independent living dwelling units, and 57 beds in the assisted living and memory care facility. 22 of the independent living units are under 800 square feet in floor area. The total minimum parking requirement is 43 spaces, and the total maximum parking allowed is 75 spaces. The applicant proposed to have a total of 48 spaces on site after the addition of the outdoor courtyard. As proposed, the Planning Commission finds that the required quantity of off-street parking spaces is met. As conditioned, further land use review is required if changes in the amount of floor area devoted to the senior independent living, assisted living, or memory care facility causes the site to go out of conformance with the minimum amount of required parking.

10. MMC Section 19.702.1 defines the applicability of Chapter 19.700, Public Facility Improvements, for non-single family residential development. The Planning Commission finds that the proposed development does not increase the number of trips to the site, and is not otherwise described by the applicability criteria in MMC 19.702.1, and that MMC Chapter 19.700 is not applicable to this proposal. As conditioned, further land use review would be required if future changes to the site would result in an increase in the number of trips.
11. MMC 19.906.2.A requires a Type I Development Review application for changes in primary use. As conditioned, the final development plans for the proposed facility will be reviewed as a Type I Development Review application to evaluate compliance with this land use approval and other applicable development standards.
12. Per MMC 19.1001.7.E.1, land use approvals expire if the approved development is not constructed and completed within specified periods of time. As conditioned, this land use approval will expire within four years of this land use approval unless the conditions in MMC 19.1001.7.E.1 are met or an extension is granted per MMC 19.908.
13. MMC 19.905.8.B.1 governs loss of conditional use status for existing conditional uses and de facto conditional uses. Through approval of a Community Service Use application for this facility, the site will automatically lose its status as a Conditional Use.
14. The proposed development requires a storm water management plan to be reviewed and approved by the City of Milwaukie Engineering Department. The plan shall be prepared in accordance with Section 2 – Stormwater Design Standards of the City of Milwaukie Public Works Standards.
15. The proposal was referred to the following agencies: City of Milwaukie Engineering Department, City of Milwaukie Building Department, and the Lewelling and the Linwood Neighborhood District Association (NDA) Chairs and Land Use Committees, Clackamas County, and TriMet. Comments from the Milwaukie Engineering Department are incorporated into these findings. The Building Department and TriMet responded that they had no comment. The Linwood NDA responded that they wanted to ensure that the increased development on site does not cause stormwater runoff problems for surrounding properties, and that they have not otherwise see any reason why the proposal should not be approved. No other responses from the application referral were received.

### **Conditions of Approval**

1. The applicant shall submit a Type I Development Review application with final construction plans for the proposed development for review and approval by the Planning Department. These plans shall be in substantial conformance with the plans presented in Land Use File #CSU-11-05. The following items shall be addressed during review of this application.
  - A. The applicant shall show existing and proposed lighting, and include photometric studies as appropriate, to demonstrate that lighting on the site will not cause glare or excessive light trespass onto the street or other properties.

- B. The applicant shall bring the existing parking area closer to conformance. The cost of bringing the parking area closer to conformance will be limited per MMC 19.602.5.B. The areas to be brought closer to conformance will be identified by the Planning Director using MMC 19.602.5.C, with priority given to adding trees along the site's perimeter and bicycle parking, per Planning Commission direction.
- C. The wall surrounding the patio must include variations in material, pattern, and/or color to break up the expanse of the wall. The wall shall incorporate colors, styles, and materials from the existing building to the extent possible.
2. Prior to the issuance of a building permit, the applicant shall submit a storm water management plan to the City of Milwaukie Engineering Department for review and approval. The plan shall be prepared in accordance with Section 2 – Stormwater Design Standards of the City of Milwaukie Public Works Standards. 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.
3. The applicant shall record the noise level from the operating generator after its installation and submit this data to the Planning Director. The Planning Director shall evaluate the data against MMC Chapter 8.08, Noise Control, and require noise buffering to appropriately buffer noise from the generator, consistent with MMC 19.8.08.
4. The land use approval granted by Land Use File #CSU-11-05 will expire unless the conditions in MMC 19.1001.7.E.1 are met or an extension is granted per MMC 19.908.
5. Future changes made to shift the amount of floor area devoted to the senior independent living, assisted living, and memory care portions of the facility are allowed outright if the total occupant load does not increase and the property maintains conformance with the minimum parking requirements. Land use approval is required for changes that increase the occupancy or would bring the property out of conformance with the parking quantity requirements.

 (Susan P. Shanks for Katie Mangle)

Katie Mangle  
Planning Director

cc: Applicant and Property Owner  
Planning Commission  
Kenny Asher, Community Development/Public Works Director  
Gary Parkin, Engineering Director  
Brad Albert, Civil Engineer  
Tom Larsen, Building Official  
Bonnie Lanz, Permit Specialist  
Doug Whiteley, Lieutenant Deputy Fire Marshal  
NDA(s): Lewelling, Linwood  
Interested Persons  
File(s): CSU-11-05