



March 5, 2013

File(s): NCU-13-01

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on February 26, 2013.

Applicant(s):	Clackamas Federal Credit Union
Appellant (if applicable)	Alyssa Leeviraphan, Mahlum Architects
Location(s):	10400 SE Main St
Tax Lot(s):	11E25CC 00403
Application Type(s):	Nonconforming Use Alteration
Decision:	Approved with Conditions
Review Criteria:	<u>Milwaukie Zoning Ordinance:</u> <ul style="list-style-type: none">• 19.804
Neighborhood(s):	Historic Milwaukie

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 5:00 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Kari Svanstrom, Associate Planner, at 503-786-7653 or svanstromk@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., March 20, 2013

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.

Findings in Support of Approval

1. The applicant, Clackamas Federal Credit Union (CFCU), has applied for approval to replace a legal nonconforming use (financial institution) with a different nonconforming use

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(veterinary clinic) at 10400 SE Main St. This site is in the Downtown Residential Zone DR. The land use application file number is NCU-13-01.

2. The project site is 10400 SE Main St, Tax Lot 12E25CC 00403. The site is an approximately 0.8 acre (34,800 square feet) parcel developed with a 7,000 square foot, two-story (one story with mezzanine) building. It is currently occupied by CFCU and used as a financial institution. The building was constructed and began operations when the zoning for the parcel was General Commercial C-G, which allows financial institutions as a permitted use. The current use is therefore a legal nonconforming use.
3. The base zone of the site is Downtown Residential DR, and the Comprehensive Plan land use designation is Town Center TC. The site has a Natural Resources (NR) overlay, and there is a Water Quality Resource (WQR) area located on the southeast corner of the site.
4. The site has been in use as a financial institution since 1983. The zoning for the site in 1983 was General Commercial, which allowed financial institutions. The zoning was changed to Downtown Residential in 2000; at that time, financial institutions became prohibited, and the use became a legal nonconforming use.
5. The applicant proposes to sell the property to a new owner who proposes to establish a veterinary clinic on the site. The proposed veterinary clinic would specialize in the treatment of pets (limited to dogs, cats, and other small household pets) with cancer and other conditions requiring specialty care.
6. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 19.304 Downtown Zones
 - MMC 19.600 Off-Street Parking and Loading
 - MMC 19.804 Alteration of Nonconforming Uses and Development
 - MMC 19.1006 Type III Review
7. MMC 19.804 Alteration of Uses and Development
 - A. MMC 19.804.1.A establishes three provisions for approving an alteration to a nonconforming use:
 1. *MMC 19.804.1.A.1 states that a nonconforming use shall not be moved, in whole or in part, to any portion of the site other than that occupied by the nonconforming use, except as allowed per Subsection 19.804.1.B.1.*

The applicant is not proposing to move the existing structure or use. The Planning Commission finds that MMC 19.804.1.A.1 does not apply to this application.
 2. *MMC 19.804.1.A.2 states that no additional development or physical alterations associated with the nonconforming use shall occur, except as allowed per Subsection 19.804.1.B.1.*

The applicant is not proposing any additional development or physical alterations at this time. While the applicant has indicated they may propose such changes in the future, these will be subject to review of Subsection 19.804.1.B.1, and are not a part of this land use application. The Planning Commission finds that MMC 19.804.1.A.2 does not apply to this application.
 3. *MMC 19.804.1.A.3 states that no intensification of the nonconforming use shall occur, except as allowed per Subsection 19.804.1.B.1. Alterations that decrease the intensity of the nonconforming use are allowed.*

The proposed veterinary clinic is anticipated to generate less vehicular traffic than the current financial institution use. The hours of the clinic are proposed to be business hours Monday through Saturday, with no overnight boarding of animals. These hours are similar to the CFCU's hours, which were Monday through Friday 9:00-5:30, and Saturday mornings until 1 pm. Staff therefore believes overall that the proposed nonconforming use will decrease the intensity of use of the site.

Alterations that decrease the intensity of the nonconforming use, including changes of use, are allowed. The Planning Commission finds that provision 19.804.1.A.3 has been met.

B.MMC 19.804.1.B establishes the requirement for a land use review and that the application meet the following criteria for approval of an alteration to a nonconforming use:

1. *MMC 19.804.1.B.2 states that, if a nonconforming use involving a structure is replaced by another use, the new use shall conform to Title 19 unless the Planning Commission determines that such structure is suitable only for another nonconforming use through a Type III review. The applicant shall demonstrate the new nonconforming use would be no more detrimental to surrounding properties than the one it is replacing.*

For a use to be conforming in this zone, the development would need to include a minimum of 24 units of housing. The existing building is a 7,000 square foot building with an open mezzanine, a built-in bank vault, and a drive through window. It was designed and constructed as a commercial office building. The building's lot placement, design, and infrastructure are such that the current building is not adequate for conversion to residential units. The Planning Commission finds that this criterion is met.

2. *MMC 19.804.1.B.2 also states that the applicant shall demonstrate the new nonconforming use would be no more detrimental to surrounding properties than the one it is replacing.*

The City's Engineering Department has determined that the proposed use would generate substantially fewer vehicle trips per day than a financial institution of the same size. Many of the trips generated by the financial institution are from the public coming to either the drive-through or to the bank lobby. The traffic generated is likely to be less of a detriment to the surrounding properties than the current use.

Hours of operation for the proposed veterinary clinic use, Monday through Saturday between 8 a.m. and 5 p.m., are similar to the current use, which had hours of 9 am to 5:30 pm Monday through Friday and Saturdays 9 am to 1 pm (hours have been reduced to ATM access only at this time).

The applicant has stated that their use of exterior spaces will be limited to a small enclosed and controlled outdoor area where individual dogs will be allowed under the supervision of a staff member or owners. Animals will not be permitted to roam outdoors unattended. The noise generated by this use is likely to be minimal and not cause a further detriment to surrounding properties.

As conditioned, the Planning Commission finds that this criterion has been met.

8. MMC 19.304 Downtown Zones

MMC 19.304 establishes criteria for both uses and development in downtown zones. Two Subsections are applicable to this proposal:

A. MMC 19.304.3 outlines permitted uses in the downtown zones.

The DR zone requires 30 dwelling units per net acre. Financial institutions are not currently permitted uses in the Downtown Residential zone DR. A veterinary clinic is not a permitted use in the DR zone.

The current use is a legal nonconforming use, as financial institutions were allowed at the site when the site was first use as a financial institution in 1983, and as such may continue operations until such time that it has ceased operations for a year.

Approval of the land use application NCU-13-01 would allow the veterinary clinic to operate as a legal nonconforming use, and therefore be exempt from the residential density requirement until such time as the land use approval expires or the site is redeveloped. If the property is redeveloped in the future, the residential density requirements in place for the property's zone at that time will be applicable. As proposed, the Planning Commission finds that this criterion is met.

B. MMC 19.304.4 sets development standards for development of property in downtown zones. The applicable standards at this time are landscaping and off-street parking.

Minimum landscaping of 15% is required in the DR zone.

The 8,150 sq ft, or 23%, of the site is landscaped. This standard is met.

9. MMC 19.600 Off-Street Parking and Loading

MMC 19.600 establishes criteria for off-street parking minimum and maximums.

A. Minimum parking requirements on site for a veterinary clinic use is 27 spaces; maximum parking permitted on site is 34 spaces.

There are currently 34 existing off-street parking spaces on the site. The Planning Commission finds that this standard is met.

B. Bicycle parking required per MMC 19.609.2 shall be 10% of required vehicle parking therefore, 3 spaces shall be provided.

There are currently 3 bicycle parking spaces. The Planning Commission finds that this standard is met.

10. Public notice has been provided in accordance with MMC Subsection 19.1006.3 Type III Public Notice. A public hearing was held on February 26, 2013, as required by law.

11. The application was referred to the following departments and agencies on January 28, 2013:

- Milwaukie Building Division
- Milwaukie Engineering Department
- Milwaukie City Manager
- Clackamas County Fire District #1
- Historic Milwaukie Neighborhood District Association Chairperson and Land Use Committee

The comments received are summarized as follows:

- **Tom Larson, Building Official, City of Milwaukie Building Department:** Building and related permits will be required for any remodeling or addition to the building. Any remodeling that will affect the use of, or access to, an area containing a primary function will trigger ADA upgrades (to a maximum of 25% of the remodeling budget).

- **Brad Albert, Civil Engineer, City of Milwaukie Engineering Department:** The Engineering Department evaluated the vehicular traffic generation to and from the site for the existing and proposed uses. Staff determined that the number of vehicle trips would reduce for the proposed use in comparison to the existing use. Therefore, MMC Chapter 19.700 was not triggered with this application.

Conditions of Approval

1. The site shall be used in a manner as proposed and approved through this land use action and as submitted in materials date stamped by the City on January 11, 2013 and February 12, 2013. This includes:
 - a. Clinic hours (open to the public) shall be within the times of 8 am to 6 pm. Variations for special evening events no later than 10 pm and no more than once a month are excepted from this requirement. Overnight care of patients by staff is allowed.
 - b. No kenneling of animals shall be provided.
 - c. Animals treated shall be limited to dogs, cats, and other small household pets.
 - d. Animals shall be accompanied by a staff person or pet owner at all times in any outdoor areas intended for use by animals, and no more than four animals at a time.
2. The site and use shall be modified from the original proposal only as described in these conditions of approval. All other modifications shall be through a formal modification process per MMC 19.804.
3. Pursuant to Subsection 19.1001.7.E, this land use approval will expire if not utilized within 4 years from the date of approval.

Exhibits

Exhibits are not attached to the decision but are available for viewing upon request.

1. Applicant's Materials



Stephen C. Butler, FAICP
Planning Director

cc: Applicant
Planning Commission
Steve Butler, Planning Director and Interim Community Development Director
Jason Rice, Engineering Manager
Brad Albert, Civil Engineer
Tom Larsen, Building Official
Bonnie Lanz, Permit Specialist
Mike Boumann and Shawn Olson, CCFD#1
NDA(s): Historic Milwaukie
Interested Persons
File(s): NCU-13-01