



March 14, 2012

Files: WQR-11-05  
VR-12-01

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on March 13, 2012.

<b>Applicant:</b>	<b>Bruce Goldson (Theta LLC)</b>
<b>Location:</b>	<b>SE Furnberg St, near SE 64<sup>th</sup> Ave (no site address)</b>
<b>Tax Lots:</b>	<b>1S2E32CB, tax lots 2801 &amp; 2802</b>
<b>Application Types:</b>	<b>Water Quality Resource Review (WQR), Variance Request (VR)</b>
<b>Decision:</b>	<b>Approved with Conditions</b>
<b>Review Criteria:</b>	<b><u>Milwaukie Zoning Ordinance:</u></b> <ul style="list-style-type: none"><li>• 19.1006 Type III review</li><li>• 19.302 Residential Zone R-7</li><li>• 19.402 Water Quality Resource Regulations</li><li>• 19.504 Site Design Standards</li><li>• 19.505.1 Design Standards for Single-Family Dwellings</li><li>• 19.600 Off-Street Parking and Loading</li><li>• 19.700 Public Facility Improvements</li><li>• 19.911 Variances</li></ul> <b><u>Milwaukie Land Division Ordinance:</u></b> <ul style="list-style-type: none"><li>• 17.28 Design Standards</li></ul> <b>Metro Model Ordinance for Title 13 (Nature in Neighborhoods)</b>
<b>Neighborhood:</b>	<b>Linwood</b>

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 Brett Kever, Associate Planner, at 503-786-7657 or [kerverb@ci.milwaukie.or.us](mailto:kerverb@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 29, 2012**

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**

1. The applicant, Bruce Goldson of Theta, LLC ("the applicant"), is seeking land use approval to construct a single-family residence on the subject property. The property is vacant and has no official street address; it is comprised of tax lots 2801 and 2802 on Assessor Map 1S2E32CB. The property is zoned Residential R-7 with designated natural resource areas; including a large Water Quality Resource (WQR) area in the form of a delineated wetland, its vegetated buffer, and two stream channels, as well as Habitat Conservation Area (HCA).
2. The limited street frontage of the subject property is located between 6404 SE Furnberg Street on the west and 6460 SE Furnberg St on the east. The property is shaped like a flag lot, with a narrow accessway (approximately 26 ft wide) onto Furnberg St. The site has a total area of approximately 34,560 sq ft and is comprised of two tax lots created by deed from Block 2 of the Furnberg Park subdivision of 1958. The site is undeveloped, with a small pond on the western side, a mix of small trees and shrubs in the low wetland areas around the edges, and grasses in the flatter north-central portion where development is proposed.

Deed records from the County Assessor's office indicate that tax lot 2801 was in its current configuration as early as 1969; tax lot 2802 was created as early as 1972. Since both tax lots were established prior to October 5, 1973 (the date the City began strictly enforcing its Subdivision Ordinance as per State directive), both are considered lots of record and are recognized as legal.

3. The proposal is subject to the following provisions of Milwaukie Municipal Code (MMC) Title 19 Zoning and Title 17 Land Division:

MMC Subsection 19.1006 Type III review

MMC 19.302 Residential Zone R-7

MMC 19.402 Water Quality Resource Regulations\*\*

MMC 19.504 Site Design Standards

MMC 19.505.1 Design Standards for Single-Family Dwellings

MMC 19.600 Off-Street Parking and Loading

MMC 19.700 Public Facility Improvements

MMC 19.911 Variances

MMC 17.28 Design Standards

\*\*Note: The application was submitted on September 2, 2011, prior to the effective date of Ordinance 2036, which repealed MMC 19.402 Water Quality Resource Regulations and

replaced it with a new MMC 19.402 Natural Resources. As per MMC 19.1001.7.B, the application is subject to the standards and criteria in place at the time of original submittal.

The application is also subject to the Metro Model Ordinance for Title 13 (Nature in Neighborhoods), as applied by the City to land use decisions as of June 1, 2009.

4. The application has been reviewed in compliance with the Type III review process described in MMC 19.1006. As required, public notice has been posted at the site and mailed to surrounding property owners and residents within 300 ft of the site. The Planning Commission held a duly advertised public hearing considering the application on February 28, 2012, which was continued to March 13, 2012.
5. The Planning Commission reviewed the application for compliance with the code sections listed in Finding 3. The Planning Commission finds that code sections not addressed in these findings are not applicable to the decision.
6. MMC 19.302 Residential R-7 zone

MMC 19.302.3 establishes standards for lots in the R-7 zone. Table 1 (below) evaluates the subject property and proposed development with respect to the applicable standards. Many of the development standards will be evaluated at the time of building permit review.

**Table 1 – Standards of the R-7 Zone**

<b>Development Standard</b>	<b>R-7 Standard</b>	<b>Subject Property</b>
<b>Lot Size</b>	<b>7,000 sq ft</b>	34,560 sq ft (0.79 acres)
<b>Lot Width</b>	<b>60 ft</b>	207 ft
<b>Lot Depth</b>	<b>80 ft</b>	159 ft <i>(not including flag pole)</i>
<b>Front Yard Setback<sup>1</sup></b>	<b>20 ft</b>	30 ft <i>(proposed)</i>
<b>Side Yard Setback</b>	<b>5 ft and 10ft (20 ft street-side)</b>	22 ft / 137 ft <i>(proposed)</i>
<b>Rear Yard Setback</b>	<b>20 ft</b>	80 ft <i>(proposed)</i>
<b>Off-Street Parking</b>	<b>1 space min. (no max.)</b>	4+ spaces <i>(proposed)</i>
<b>Height Restriction</b>	<b>35 ft or 2.5 stories</b>	n/a <i>(to be reviewed at time of building permit)</i>
<b>Lot Coverage</b>	<b>30% max</b>	6.5%
<b>Minimum Vegetation</b>	<b>30% min</b>	90.5%
<b>Frontage Requirements</b>	<b>35 ft</b>	26 ft <i>(existing frontage)</i>
<b>Density</b>	<b>5.0 to 6.2 dwelling units per net acre</b>	1.3 units per net acre <sup>2</sup>

<sup>1</sup> Although the subject property is shaped like a flag lot, the two tax lots comprising the property were created as early as 1969 and 1972, before the City first established special standards for flag lots in 1979. Therefore, the property is subject to the regular standards of the R-7 zone and not to the flag lot development standards of MMC 19.504.9.

<sup>2</sup> MMC 19.302.3.J provides the standard for minimum and maximum density in the R-7 zone. Proposals that require review by the Planning Commission must demonstrate compliance with the density standard. Technically, developing the subject property with only one dwelling unit does not meet the density standard and therefore requires a variance, which staff is requesting on behalf of the applicant (see Finding 13).

*The Planning Commission finds that the proposed development, as conditioned and with the approval of a variance to the density standard (see Finding 13), will comply with the applicable standards of the R-7 Zone (MMC 19.302).*

7. MMC 19.402 Water Quality Resource Regulations

- A. MMC 19.402.3 establishes applicability of the Water Quality Resource (WQR) regulations, including all properties containing protected water features as shown on the City's WQR map.

*The subject property includes a delineated wetland in the western and southern portions of the site and two stream channels on the eastern side of the site. These protected water features, as well as their vegetated buffer areas as defined in Table 19.402.9.A, constitute a WQR on the site.*

*The Planning Commission finds that the WQR requirements of MMC 19.402 are applicable to the subject property.*

- B. MMC 19.402.7 establishes that certain activities within a designated WQR, including development activities allowed in the base zone, are subject to Type III review and the standards of MMC 19.1006.

*The proposal includes construction of a new single-family house, with a new driveway and utility connections that will disturb the WQR.*

*The Planning Commission finds that the activities related to the proposed development are subject to the relevant standards of MMC 19.402 and Type III review.*

- C. MMC 19.402.9 establishes application requirements for projects requiring Type III review.

- i. MMC 19.402.9.A requires a topographic map of the site at contour intervals of 5 ft or less, showing a delineation of the WQR as established in Table 19.402.9.A. Similarly, MMC 19.402.9.B requires the identification of all existing natural features, including all trees with a greater than 6-in diameter at breast height.

*The applicant has provided a site plan showing 1-ft contour intervals and demarcating the WQR as provided in Table 19.402.9.A. The site plan also shows the location of existing trees with their diameter at breast height.*

*ESA, the City's on-call natural resource consultant, has reviewed the applicant's materials and visited the site to assess the existing conditions. ESA concluded that the applicant's materials are generally sufficient to meet the requirements of MMC 19.402.9.A and B, with one significant exception: ESA determined that the applicant's demarcation of the WQR should be adjusted by approximately 14 ft to account for the steep slope between the wetland and the south side of the proposed development. The applicant has submitted revised plans showing the corrected WQR boundary.*

*The Planning Commission finds that, with the corrected WQR boundary, the application meets the requirement to provide the information listed in MMC 19.402.9.A and 19.402.9.B.*

- ii. MMC 19.402.9.C requires identified wetlands to be delineated according to the official process outlined by the Oregon Division of State Lands (DSL).

*The applicant has submitted a wetland delineation that has been approved by DSL (WD# 2011-0331).*

*The Planning Commission finds that the application meets the requirement of MMC 19.402.9.C to provide a DSL-approved wetland delineation.*

- iii. MMC 19.402.9.D requires an inventory and location of existing debris and noxious materials. MMC 19.402.9.E requires an assessment of the existing condition of the WQR in accordance with Table 19.402.9.E. MMC 19.402.9.F requires an inventory of vegetation within the WQR, including percentage of ground and canopy coverage.

*The applicant's materials state that there is no debris or noxious material on the site. The applicant's WQR Assessment Report describes the WQR as Degraded because it includes less than 25% canopy coverage and has greater than 10% coverage by non-native species, including Himalayan blackberry and English ivy. The low amount of canopy coverage (7%) is provided by approximately three dozen red alder trees on the northwestern quarter of the site.*

*ESA confirmed that there is no debris or noxious material on the site and that the existing condition of the WQR is Degraded as defined in Table 19.402.9.E. During a site visit on February 28, 2012, staff observed a small amount of debris in the proposed mitigation planting area within the WQR in the northeast corner of the site. A condition has been established to ensure that all debris is removed from mitigation planting areas.*

*The Planning Commission finds that the applicant's presentation of existing conditions of the WQR meets the requirements of MMC Subsections 19.402.9.D-F.*

- iv. MMC 19.402.9.G requires an analysis of alternatives to the proposed disturbance, including a demonstration that the following criteria are met:
- (a) No practicable alternatives to the requested development exist that will not disturb the WQR.

*The subject property is comprised of two lots of record in the R-7 zone, which allows development of a single-family detached dwelling as an outright permitted use. The WQR designation covers a majority of the site, except for an approximately 1,350-sq-ft rectangular area in the north-central portion of the property and a narrow portion of the accessway from Furnberg St. Some disturbance of the WQR in the accessway is necessary to provide a driveway of adequate width.*

*After subtracting the minimum required front yard setback of 20 ft, the non-WQR area in which a house could be built is reduced to approximately 350 sq ft (7 ft by 50 ft). That area is too small to accommodate the placement and construction of a conventional building. For comparison, the footprint of other houses in the surrounding area ranges from approximately 1,300 sq ft to 1,600 sq ft, and on much smaller lots.*

*Given that approximately 96% of the site is covered by WQR, any development on the site will cause at least some temporary disturbance of the WQR. However, it also appears possible to situate the proposed building footprint farther from the wetland portion of the WQR. There are practicable alternative site plans that keep more of the building footprint out of the WQR area.*

*The Planning Commission finds that there is no practicable alternative to the location of the proposed driveway or to the proposed footprint and location of the new house.*

- (b) Development in the WQR has been limited to the area necessary to allow for the proposed use.

*The proposed development would permanently disturb a total of approximately 2,585 sq ft within the WQR. The proposed driveway would disturb approximately 585 sq ft within the WQR; it is configured to impact as little of the WQR as possible and still meet other relevant City standards. As proposed, the new house would permanently disturb approximately 1,590 sq ft within the WQR. As proposed, most of the footprint of the new house would be within the WQR.*

*The Planning Commission finds that, as proposed, the area that will be permanently disturbed by the new house has been limited to the minimum area necessary. However, the subject property is composed of two developable lots of record (tax lots 2801 and 2802). Without a requirement to consolidate the two lots, a future proposal could result in additional impacts to the WQR by another new single-family dwelling. A condition has been established to require that the two lots of record be consolidated. Another condition has been established to require provision of a permanent development restriction below the 158-ft elevation mark, to ensure that there are no future negative impacts to the resource.*

- (c) The WQR can be restored to an equal or better condition in accordance with Table 19.402.9.E.

*The applicant proposes to restore the WQR where temporary disturbances will result from construction. As proposed, temporarily impacted areas of existing vegetation will be revegetated as soon as practicable. A condition has been established to specify that revegetation plantings in temporary disturbance areas shall be native, non-nuisance species from the Milwaukie Native Plant List.*

*For permanent disturbances to the WQR, the applicant proposes to mitigate by planting native-species trees and shrubs in the WQR to the west of the new house. Using the ratio provided as Option 2 for mitigating HCA disturbance in proportion to the square footage of disturbance area, the applicant has proposed to plant 42 trees and 210 shrubs. Prior to planting, the applicant has proposed to remove existing nuisance-species plants within the mitigation area.*

*ESA, the City's on-call natural resource consultant, has reviewed the proposed mitigation plan and confirmed that it is generally adequate for the nature and scale of the proposed WQR disturbance.*

*Given that almost 50% of existing vegetation on the site has been identified as invasive or noxious species, removing invasive plants and revegetating with native species will result in a significant improvement in the condition of the WQR. In particular, as the new trees mature, the percentage of canopy will increase. As proposed, the applicant asserts that the mitigation will improve the condition of the WQR to the Good category, as defined in Table 19.402.9.E. This improvement will satisfy the requirement to restore the WQR to an equal or better condition.*

- (d) An explanation of the rationale behind choosing the alternative selected, including how adverse impacts to resource areas will be avoided and/or minimized.

*The applicant's narrative presents two alternatives to the preferred option for the location and configuration of the new house and has explained why neither is acceptable. One alternative would move the garage to the southeast corner of the house. This would require the driveway and turnaround area to be realigned along the eastern boundary, almost doubling the square footage of driveway. Placing the driveway and turnaround area on the east side of the new house pushes the entire development to the west and closer to the main wetland area and pond than the preferred option.*

*The second alternative would put the garage in the northeast corner of the house. This would reduce the amount of WQR disturbance caused by construction of the driveway but would move the development farther to the west and closer to the main wetland area and pond than the preferred option. The applicant asserts that this alternative would make it difficult or impossible to meet the requirement of MMC 19.505.1.A.1 to orient the main entrance of the dwelling toward the street that provides vehicle access.*

*Because the subject property is shaped like a flag lot, a vehicular turnaround area is needed. The Planning Commission is satisfied that the proposed house configuration (Option 1A) sufficiently minimizes impacts to the WQR.*

*As conditioned, the Planning Commission finds that the application meets the requirement of MMC 19.402.9.G to provide an analysis of alternatives.*

- v. MMC 19.402.9.I requires a mitigation plan for the WQR that includes information about adverse impacts to resource areas; how adverse impacts will be avoided, minimized, and/or mitigated; a list of all responsible parties; a map showing where specific mitigation activities will occur; and an implementation scheme.

*The applicant submitted a mitigation plan for the proposed disturbance, with information about adverse impacts and how they will be avoided, minimized, and/or mitigated. Because the infiltration capacity of the site is too low for pervious paving materials, a stormwater treatment swale will be constructed adjacent to the new driveway to accommodate runoff. The proposed location and configuration of the new house is intended to minimize additional permanent disturbance of the WQR, though a condition has been established to adjust the new house footprint and further reduce impacts.*

*The mitigation plan includes a map showing where mitigation activities will occur. The current property owner, West Coast Home Solutions, LLC, is responsible for ensuring that the mitigation plantings are installed as proposed. A condition has been established to require submittal of a more detailed mitigation plan, including timeline and clear description of responsibility for the work.*

*As conditioned, the Planning Commission finds that the mitigation plan meets the requirements of MMC 19.402.9.I.*

*As conditioned, the Planning Commission finds that the proposed development meets all of the relevant application requirements of MMC 19.402.9.*

- D. MMC 19.402.10 provides standards for development in WQRs.

The development standards include requirements for restoring and maintaining the WQR in accordance with an approved mitigation plan, protecting existing vegetation, revegetating where vegetation is removed, performing all mitigation activities on site,

and conducting all project work in accordance with the provisions of an approved construction management plan.

*The applicant submitted a mitigation plan for the proposed disturbance, including a designated planting area and general indication of species to be planted. As proposed, the WQR will be restored and enhanced sufficient to reclassify it as being in Good condition as defined in Table 19.402.9.E. Conditions have been established to require a more detailed final mitigation plan and a construction management plan that shows the measures taken to protect the WQR.*

*As conditioned, the Planning Commission finds that the proposed development meets the applicable development standards of MMC 19.402.10.*

*The Planning Commission finds that, as conditioned, the proposed development meets all applicable standards of MMC 19.402 Water Quality Resource Regulations.*

8. Metro's Title 13 Model Ordinance (Nature in Neighborhoods)

On June 1, 2009, the City began applying the Metro Model Ordinance implementing Title 13 of the Urban Growth Management Functional Plan. Title 13 regulations are intended to protect designated Habitat Conservation Areas (HCAs). On August 16, 2011, the City Council adopted an updated version of MMC 19.402 Natural Resources that incorporated much of the Metro Model Ordinance and made the City compliant with Title 13. However, the new rules did not become effective until September 15, 2011, approximately 2 weeks after the applicant submitted the application for WQR-11-05. Therefore, the application is subject to both the previous version of MMC 19.402 Water Quality Resource Regulations and the City-implemented portions of the Metro Model Ordinance.

- A. Section 2 of the Model Ordinance establishes applicability for properties containing a HCA. Proposals for development within the HCA must provide a construction management plan as per Section 5, must comply with the development standards established in either Section 6 or Section 7, and must verify the HCA boundary as per Section 9.

*The subject property includes a delineated wetland in the western and southern portions of the site and two stream channels on the eastern side of the site. These protected water features and their associated vegetated buffers constitute a WQR on much of the site. In addition, High-value HCA has been designated under most of the WQR area, as well as over the entire non-WQR buildable footprint area where development and disturbance are proposed.*

*The Planning Commission finds that the Model Ordinance is applicable to the proposed development.*

- B. Section 5 of the Model Ordinance requires a construction management plan to ensure that trees and vegetation within the HCA are not damaged during construction.

*The applicant has asserted that a construction management plan will be provided as part of the building permit process. A condition has been established to ensure that this standard will be met.*

*As conditioned, the Planning Commission finds that the proposed development meets the standards of Section 5 of the Model Ordinance.*

- C. Section 6 of the Model Ordinance establishes standards for development within HCAs.

- i. Section 6-A provides application requirements, including a detailed site plan showing the location and value of all HCAs on the property as well as the location of all existing trees within the HCA with a greater than 6-in diameter at breast height.

*The applicant has provided site plans showing the requested information, including a demonstration that all of the HCA on the site is designated as High-value HCA. This standard is met.*

- ii. Section 6-B provides methods for avoiding HCAs, including building setback flexibility and flexible landscaping requirements.

*Given the amount and distribution of HCA on the site, these allowances are not useful or applicable to the proposed development.*

- iii. Section 6-C establishes nondiscretionary standards for development within HCAs, including limitations on disturbance area. Projects that can meet the nondiscretionary standards are not subject to the additional analysis and requirements as established in Section 7 of the Model Ordinance.

- (a) Section 6-C-1 provides a means for calculating the maximum allowed disturbance of the HCA for single-family residential projects.

*The subject property has an area of approximately 34,560 sq ft, with approximately 1,530 sq ft designated High-value HCA outside of any WQR. For High-value HCA, the maximum disturbance area for single-family residential development is 50% of total lot area or 5,000 sq ft, whichever is less; in this case, the 5,000-sq-ft limit applies. Only approximately 415 sq ft of the subject property is not designated HCA or WQR, so the total allowable HCA disturbance is 4,585 sq ft.*

*Because only 1,530 sq ft of HCA is outside any WQR, the limit on HCA disturbance through the nondiscretionary process established in Section 6-C is effectively 1,530 sq ft. As proposed, the new development would permanently disturb only approximately 920 sq ft of HCA outside any WQR, well below the maximum amount allowed through the nondiscretionary process. The nondiscretionary standard for allowed HCA disturbance on the subject property is met.*

- (b) Section 6-C-2 establishes standards for protection of the HCA during development, including a requirement to mark work areas and a prohibition on using trees in HCAs as anchors for stabilizing construction equipment.

*These standards apply to the proposed development. The applicant has proposed to provide appropriate fencing and flagging to protect the HCA, and a condition requiring a construction management plan has been established to ensure these standards will be met.*

*As conditioned, the proposed development can meet the nondiscretionary standards established in Section 6-C and is not subject to the requirements of Section 7.*

- iv. Section 6-E establishes mitigation requirements for disturbance within HCAs, including options for determining the number of required plantings and standards for those plantings. Mitigation Option 2 bases the required mitigation upon the total area of HCA disturbance.

*Technically, the applicant's calculation of total disturbance does not need to include the square footage of disturbed WQR on the property, since the Model Ordinance*

*applies specifically to HCA disturbance. However, the applicant has elected to utilize the HCA mitigation requirements for WQR disturbance as well, so the applicant's calculation of total disturbed area does not distinguish between HCA and WQR.*

*The proposed area of permanent disturbance is approximately 4,200 sq ft. The applicant has used Mitigation Option 2 to determine that 42 trees and 210 shrubs are required for that amount of disturbance. As proposed, the mitigation plantings would be installed within the vegetated buffer abutting the delineated wetland in the northwestern corner of the site.*

*ESA has confirmed that the proposed mitigation plan is generally adequate for the nature and scale of the permanent disturbance to both HCA and WQR on the site. However, the Model Ordinance includes temporary disturbances in the calculation of total disturbance area. A condition has been established to require a final recalculation of the total disturbance area and of required mitigation plantings, to demonstrate compliance with this standard.*

*The additional standards of Section 6-E regarding plant size, spacing, diversity, survival, etc., are applicable to the proposed development. The applicant has generally addressed these standards and indicated that a final mitigation plan will be prepared for the building permit review process. A condition has been established to ensure that a more detailed mitigation plan is provided to demonstrate that the applicable standards will be met.*

*As conditioned, the Planning Commission finds that proposed development meets the applicable development standards of Section 6 of the Model Ordinance.*

- D. Section 9 of the Model Ordinance outlines the process for verifying the HCA boundary. In particular, Section 9-F-1 establishes the basic verification approach of agreeing that the HCA map is accurate, which includes submittal of a detailed property description, copy of the HCA map, and 2005 aerial photograph of the property.

*The applicant has provided the information required to verify the HCA boundary, while asserting that the HCA map is not entirely accurate. However, the applicant has opted not to pursue the more detailed verification approach outlined in Section 9-G; for purposes of this application, the applicant has essentially agreed that the HCA map is accurate.*

*As proposed, the Planning Commission finds that the proposed development meets the applicable standards of Section 9 of the Model Ordinance.*

*The Planning Commission finds that the proposed development, as conditioned, meets the applicable standards of Metro's Title 13 Model Ordinance.*

#### 9. MMC 19.504 Site Design Standards

MMC 19.504 establishes standards related to site design for items including clear vision, buildings on the same lot, minimum distances from property lines, and minimum vegetation. In particular, MMC 19.504.9 provides standards for the design and development of flag lots.

*Because the subject property was established as a legal lot of record prior to the City having standards for flag lots, it is subject to the development standards of the R-7 zone (see Finding 6) and not to the standards of MMC 19.504.9.*

*The Planning Commission finds that the site design standards provided in MMC 19.504, where applicable, will be more appropriately applied to the proposed development during the building permit review process.*

10. MMC 19.505 Design Standards for Single-Family Dwellings

MMC 19.505 establishes standards for the design of single-family dwellings, many of which will be evaluated as part of the building permit review process. However, MMC 19.505.1.A.1 requires that the main entrance of the dwelling be oriented to face the street which provides vehicle access.

*The subject property takes access from Furnberg St to the north. In determining how to position the proposed new house and evaluating alternative options, the applicant has considered the requirement of MMC 19.505.1.A.1 and proposed a design that will meet this standard.*

*The Planning Commission finds that the proposed development meets the applicable standards of MMC 19.505 and that other relevant standards will be addressed during the building permit review process.*

11. MMC 19.600 Off-Street Parking and Loading

A. MMC 19.605 establishes quantity requirements for off-street parking for specific uses, including residential uses. Single-family residences require a minimum of 1 parking space per dwelling unit.

*The proposed development includes a garage with 2 parking spaces in addition to at least 2 spaces in the driveway and vehicle turnaround area. This standard is met.*

B. MMC 19.607 provides off-street parking standards for residential areas. In particular, MMC 19.607.1 requires that residential off-street parking spaces must have minimum dimensions of 9 ft by 18 ft and, along with the driveway, must have a durable and dust-free surface. The required parking space may not be located in the required front yard.

*The proposed development includes an asphalt driveway and vehicle turnaround area, as well as a 2-car garage that will meet the 20-ft front yard setback requirement of the R-7 zone. This standard is met.*

*The Planning Commission finds that the proposed development meets the applicable standards of MMC 19.600.*

12. MMC 19.700 Public Facility Improvements

MMC 19.700 applies to partitions, subdivisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that result in any projected increase in vehicle trips or any increase in gross floor area on the site.

*The applicant proposes to construct a single family residence on the existing parcel. The new construction of the single family residence on tax lot 2801 is projected to slightly increase vehicle trips to the site.*

*The Planning Commission finds that MMC 19.700 applies to the proposed development.*

A. MMC 19.703 Review Process

MMC 19.703 requires for minimum safety and functionality standards to be met before a development permit will be issued.

*The proposed single family residence on tax lot 2801 does have adequate paved width along the site's frontage on Furnberg St. The existing paved width on Furnberg St is 25 ft. The minimum paved width allowed along the site's frontage is 16 ft. The applicant is*

*not required to provide any additional paving to meet the minimum safety and functionality standard.*

*The Planning Commission finds that the proposed development meets the requirements of MMC 19.703.*

B. MMC 19.704 Transportation Impact Evaluation

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

*The proposed development will not trigger a significant increase in trip generation and therefore does not require a transportation impact study.*

- i. MMC 19.704.4 requires that transportation impacts of the proposed development be mitigated.

*The proposed development does not trigger mitigation of impacts beyond the required frontage improvements. The impacts are minimal and the surrounding transportation system will continue to operate at the level of service previous to the proposed development.*

*The Planning Commission finds that the proposed development meets the requirements of MMC 19.704.4.*

*The Planning Commission finds that the proposed development meets the requirements of MMC 19.704.*

C. MMC 19.706 Fee in Lieu of Construction

MMC 19.706 establishes specific criteria for accepting a fee in lieu of construction of required transportation facility improvements.

*The applicant has requested to pay a fee in lieu of construction of the required transportation facility improvements triggered by the construction of a new single family residence on tax lot 2801. The Engineering Director accepts the fee in lieu of construction on the basis that the required improvements may present a safety hazard because tax lot 2801 is mid-block with 25 ft of frontage on a curve and the required improvements are not safe to construct. The applicant must pay the fee in lieu of construction for the required frontage improvements prior to a development permit being issued. A condition has been established to ensure that this requirement will be met.*

*The Planning Commission finds that, as conditioned, the proposed development meets the requirements of MMC 19.706.*

D. MMC 19.708 Transportation Facility Requirements

- i. MMC 19.708.1 requires all development to comply with access management, clear vision, street design, connectivity, and intersection design and spacing standards.

*Tax lot 2801 currently has no driveway access fronting Furnberg St.*

*The applicant is required to construct a driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA) on Furnberg St. The driveway approach apron shall be between 9 ft and 20 ft in width and least 7.5 ft from the side property line. A condition has been established to ensure that these standards will be met.*

*The applicant is required to remove all signs, structures, or vegetation in excess of 3 ft in height from "vision clearance areas" at intersections of streets, driveways, and alleys. A condition has been established to ensure that this standard is met.*

*The Planning Commission finds that the proposed development, as conditioned, is consistent with MMC 19.708.1.*

- ii. MMC 19.708.2 establishes standards for street design and improvement.

*The applicant is responsible for street improvements along the tax lot 2801 frontage adjacent to Furnberg St. The street improvement includes construction of a 14-ft wide paved half street, standard curb and gutter, minimum 5-ft wide planter strip, and minimum 5-ft wide setback sidewalk to accommodate pedestrians. The applicant has proposed a fee in lieu of construction for the required street improvements. The Engineering Director accepts the fee in lieu of construction on the basis that the required improvements may present a safety hazard because tax lot 2801 is mid-block and the required improvements are not safe to construct.*

*The existing right-of-way width of Furnberg St fronting the proposed development is 50 ft. The Milwaukie Transportation System Plan and Transportation Design Manual classify the fronting portions of Furnberg St as a neighborhood route. According to Table 19.708.2 Street Design Standards, the required right-of-way width for a neighborhood route is between 20 ft and 68 ft depending on the required street improvements. The required right-of-way width needed for the required street improvements is 52 ft. The applicant is responsible for half the required dedication. The applicant shall dedicate 1 ft of right-of-way to the public on Furnberg St fronting the proposed development. A condition has been established to ensure that this standard is met.*

*The Planning Commission finds that the proposed development, as conditioned, is consistent with MMC 19.708.2.*

- iii. MMC 19.708.3 establishes that sidewalks shall be provided on the public street frontage of all development.

*The construction of sidewalks along the proposed development property abutting Furnberg St is included in the street frontage requirements. The applicant will pay a fee in lieu of construction for the required improvements. A condition has been established to ensure that this condition will be met.*

*The Planning Commission finds that the proposed development, as conditioned, is consistent with MMC 19.708.3.*

- iv. MMC 19.708.4 establishes standards for bicycle facilities.

*The portion of Furnberg St fronting the proposed development is not classified as a bike route in the Milwaukie Transportation System Plan. As a result, bicycle facility improvements are not required for the proposed development.*

*The Planning Commission finds that the proposed development is consistent with MMC 19.708.4.*

- v. MMC 19.708.5 establishes standards for pedestrian and bicycle paths.

*The proposed development property is surrounded by single-family residences and a water quality resource area with no mid-block connectivity. As a result, a pedestrian/bicycle path is not required for the proposed development.*

*The Planning Commission finds that the proposed development is consistent with MMC 19.708.5.*

- vi. MMC 19.708.6 establishes standards for transit facilities.

*The portion of Furnberg St fronting the proposed development is not classified as a transit route in the Milwaukie Transportation System Plan. As a result, transit facility improvements are not required for the proposed development.*

*The Planning Commission finds that the proposed development is consistent with MMC 19.708.6.*

*As conditioned, the Planning Commission finds that the proposed development is consistent with all applicable standards of MMC 19.708.*

*The Planning Commission finds that, as conditioned, the proposed development is consistent with all applicable standards of MMC 19.700.*

### 13. MMC 19.911 Variances

MMC 19.911 establishes the process and criteria for requests for variances from specific code provisions.

*The applicant has proposed to develop a single-family detached dwelling on the subject property, at a density of approximately 1.3 units per acre. A single-family detached dwelling is an allowed use in the R-7 zone; however, MMC 19.302.3.J requires that the proposal must demonstrate compliance with the density standard of the R-7 zone because the proposed development is being reviewed by the Planning Commission.*

*The density range for the R-7 zone is 5.0 to 6.2 units per net acre. The definition of "net acre" in place at the time of application submittal excludes WQRs and HCAs, which comprise approximately 99% of the total property area and reduce the site to 0.01 net acres. As proposed, one dwelling unit on 0.01 net acres represents a density of approximately 105 units per net acre. Therefore, a variance to the maximum density standard (6.2 units per net acre) is required.*

*MMC 19.911.2.B.5 prohibits variance requests to increase, or have the same effect as increasing, the maximum permitted density. However, because the zoning code and City-implemented Metro Model Ordinance for Title 13 both provide mechanisms for allowing mitigated disturbance to WQRs and HCAs, the proposed development does not represent an actual request to exceed the maximum permitted density. This issue did not surface during the required preapplication conference, so staff has requested the variance on behalf of the applicant.*

#### A. MMC 19.911.3 establishes the review process for variances.

*MMC 19.911.3.B lists Type II variances for some limited variations to numerical standards. However, there is no Type II variance for the minimum density standard. Therefore, the Planning Commission finds that the proposed development is subject to the Type III variance procedure as per MMC 19.911.3.C.*

#### B. MMC 19.911.4 provides the approval criteria for variances.

Specifically, MMC 19.911.4.B.1 provides discretionary relief criteria for approving Type III variances.

##### i. MMC 19.911.4.B.1.a requires an alternatives analysis of the impacts and benefits of the variance proposal as compared to the baseline code.

*Most of the subject property is designated as either WQR or HCA. Most proposed development activity will trigger a land use application and review by the Planning Commission to consider potential impacts on natural resources. Planning Commission review triggers compliance with the density standard, even though the*

*proposal does not involve dividing the subject property or establishing multiple dwelling units on it.*

*Because the subject property is comprised of two developable (though constrained) lots of record, the proposed development represents a minimal use of the site. Constructing one dwelling unit on the site presents fewer direct impacts to surrounding properties than other alternative proposals that would actually increase the density by establishing more than one dwelling unit.*

*The zoning code and City-implemented Metro Model Ordinance for Title 13 both provide mechanisms for allowing mitigated disturbance to designated natural resource areas. Granting the variance request and allowing development of a single-family house as proposed, with the accompanying requirements to remove invasive vegetation and mitigate with native plantings, would result in the enhancement of the undisturbed natural resource areas remaining on the site.*

*The Planning Commission finds that this analysis demonstrates an overall benefit from the requested variance as compared to the baseline code.*

- ii. MMC 19.911.4.B.1.b requires that the requested variance be both reasonable and appropriate and meet at least one of three criteria related to (1) minimizing impacts to surrounding properties, (2) providing desirable public benefits, and (3) responding to the existing built or natural environment in a creative and sensitive manner.

*The requested variance would allow development of a single-family detached dwelling, a use that is permitted outright in the R-7 zone. If not for the natural resource designation on the property, density would not be an issue and a new house on the site would be reviewed simply through the standard building permit process. Prohibiting development on the site due only to the density standard could be challenged as a regulatory taking, since the zoning code provides a process for mitigating impacts to designated natural resources. It is reasonable and appropriate to allow development of one single-family house on a residential property that is over 3,000 sq ft in area and has frontage on a public street, as per MMC 19.501.1.*

*The Planning Commission finds that the proposed development is reasonable and appropriate and meets the criteria of both MMC 19.911.4.B.1.b(1) and b(2).*

- iii. MMC 19.911.4.B.1.c requires mitigation of impacts from the requested variance to the extent possible.

*The Planning Commission finds that allowing development of a single-family house on the subject property does not constitute an effective increase of the maximum permitted density and results in no negative impacts that require mitigation.*

*The Planning Commission finds that the variance request meets the three approval criteria provided in MMC 19.911.4.*

*The Planning Commission approves the requested variance to the density standard established in MMC 19.302.3.J.*

#### 14. MMC 17.28 Design Standards

MMC 17.28.030 requires that easements for sewers, water mains, electric lines, or other public utilities shall be dedicated to the City wherever necessary.

*The proposed development property has an underground stormwater mainline that runs along the south side of the property. The applicant does not show an easement for the*

*mainline on the site plan. The applicant must grant and record a 10-ft-wide stormwater easement to the City for the stormwater mainline on tax lots 2801 and 2802. A condition has been established to ensure that this requirement will be met.*

*The Planning Commission finds that, as conditioned, the proposed development meets the specific requirements of MMC 17.28.030 and the applicable standards of MMC 17.28.*

15. The City's Public Works Standards require erosion control measures to be installed prior to earth-disturbing activities. A condition has been established to ensure that this standard is met.

*As conditioned, the Planning Commission finds that the proposed development meets the applicable requirements of the City's Public Works Standards.*

16. MMC 12.24 requires clear vision at street and driveway intersections. A condition has been established to ensure that this standard is met.

*As conditioned, the Planning Commission finds that the proposed development is consistent with the clear vision standards of MMC 12.24.*

17. The application was forwarded to the following City departments and related entities for review and comment on January 20, 2012: City of Milwaukie Building and Engineering Departments, Clackamas County Fire District #1, Linwood Neighborhood District Association, Southgate Community Planning Organization (unincorporated Clackamas County), and ESA (the City's on-call natural resource consultant). Notice of the initial public hearing was mailed to property owners and current residents at all properties within 300 ft of the subject property on February 8, 2012.

The following is a summary of the comments received by the City:

- **Tom Larsen, City of Milwaukie Building Official:** Due to the location of the proposed home near the wetlands, a soil test will need to be performed by a qualified firm or individual, verifying the adequacy of the soil to support the proposed structure. Report to be submitted with the building permit application.

*Response: A condition has been established to ensure that this requirement is met.*

- **Dolly Macken-Hambright, Beth Kelland, and Don Wiley, members of Linwood NDA Land Use Committee:** The proposed development will add hardscape on the subject property, which could affect stormwater drainage. In particular, the four abutting properties to the south may be particularly affected by any increased surface runoff or increased volume of ground water.

*Response: The City of Milwaukie Engineering Department has reviewed the proposed development for compliance with current stormwater management standards. Increased runoff from the new house and driveway will be treated on site in stormwater facilities that are designed and approved to adequately handle the new volume. Ongoing maintenance of those storm water facilities by the subject property owner is incorporated in the Stormwater Design Standards in the City of Milwaukie Public Works Standards.*

- **Brad Albert, City of Milwaukie Engineering Department:** Various comments related to MMC 19.700 Public Facility Improvements, MMC 17.28 Design Standards, and MMC 12.24 Clear Vision at Intersections.

*Response: These comments have been incorporated into the Findings.*

- **Sarah Hartung, Senior Biologist with ESA:** As the City's on-call natural resource consultant, ESA reviewed the application; assessed the existing conditions, alternatives analysis, and proposed mitigation plan; and prepared a report summarizing the analysis.  
*Response: The ESA analysis has been incorporated into the Findings.*
- **Mike Boumann, Clackamas County Fire District #1:** Various comments related to the Oregon Fire Code, including standards for fire apparatus access and water supply.  
*Response: These comments are advisory for the applicant and are most relevant to the building permit review process.*
- **Deborah Barnes, owner/resident at 6330 SE Furnberg St:** Concerns about impacts of the proposed development on wetland and natural resource areas as well as on privacy for neighboring properties.  
*Response: The intent of the WQR review is to evaluate whether the applicant has done as much as possible to avoid or minimize impacts to natural resources and then has adequately mitigated where impacts are unavoidable. The City recognizes the subject property as being developable, though the burden of proof is on the applicant to show how the natural resources will be protected. Privacy for neighboring properties is not part of the WQR review; and the current flag lot standards are not applicable, since the subject property was established before the City had standards for flag lots.*

### **Conditions of Approval**

1. Prior to issuance of any building permits for construction on the subject property, the following shall be resolved:
  - A. Unless otherwise required by these conditions of approval, all plans submitted for building permits for the subject property shall be substantially similar to those submitted as part of the final land use application (stamped received on January 19, 2012, for most of the applicant's materials; or September 2, 2011, for the applicant's Water Quality Resource Assessment Report; or February 27, 2012, for the Option 1A Plan and revised Mitigation Plan.)
  - B. Consolidate the two lots of record that comprise the subject property. An appropriate recording instrument shall be presented to the Planning Director for review and approval as provided in Milwaukie Municipal Code (MMC) Title 17 Land Division. Once approved by the City, the recording instrument shall be filed with the County Surveyor and recorded with the County. A copy of the recorded document shall be provided to the Planning Department for the land use file.
  - C. Provide evidence of a permanent development restriction on the consolidated lot, below the 158-ft elevation mark. This could take the form of a conservation easement or deed restriction or some similar instrument to ensure no future negative impacts to the resource.
  - D. Provide a construction management plan that shows the following:
    - i. Location of site access (ingress and egress) that construction equipment will use
    - ii. Equipment and material staging and stockpile areas
    - iii. Measures to protect trees and other vegetation located within the Habitat Conservation Area (HCA) but outside of the approved disturbance area

- E. Provide a final mitigation plan that includes the following details:
- i. Final revised calculation of all permanent and temporary disturbance areas, with recalculation of required mitigation plantings based on the formula of 5 trees and 25 shrubs per 500 sq ft of disturbance
  - ii. Clear indication of the person responsible for the mitigation work, including primary contact, phone number, and address
  - iii. Demarcation of mitigation planting areas for permanent disturbances to the Water Quality Resource (WQR) and/or HCA, including the fence shown on the revised mitigation plan
  - iv. Locations of particular plant species within the mitigation planting area— plantings shall be appropriate for particular conditions (e.g., sun/shade, wet/dry, etc.) and shall be native, non-nuisance species from the Milwaukie Native Plant List
  - v. Demonstration that plantings to restore temporarily disturbed areas are native, non-nuisance species from the Milwaukie Native Plant List
  - vi. Timeline for planting, with schedule for watering, monitoring, and replacement of plants
  - vii. Contingency plan for ensuring that work will be completed as proposed
- All mitigation planting shall be done in accordance with the standards provided in Section 6-E of the Metro Model Ordinance for Title 13. This includes standards for plant size, spacing, and survival.
- F. Submit a report documenting a soil test performed by a qualified firm or individual, verifying the adequacy of the soil to support the proposed structure.
- G. Submit a stormwater 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.
- H. Obtain a right-of-way permit for construction of the required driveway approach along the site's frontage on Furnberg St.
- I. Pay the fee-in-lieu of construction costs for the required travel lane, curb, planter strip, and setback sidewalk. The fee for the required improvements will be calculated with the submission of the building permit.
- J. Dedicate 1 ft of right-of-way on Furnberg St fronting the proposed development.
- K. Provide an erosion control plan and obtain an erosion control permit.
2. Prior to final inspection for any building permit for the subject property, the following shall be resolved:
- A. Implement the final mitigation plan.
    - i. Restore temporarily disturbed areas according to the details provided in the final mitigation plan.
    - ii. Remove all invasive nonnative vegetation and any debris or noxious material from within designated mitigation planting areas.

- iii. Install trees, shrubs, and ground cover according to the details provided in the final mitigation plan.
  - iv. Provide a signed statement from the responsible party identified in Condition 1-D-ii above, stating that all mitigation plantings have been installed according to the final mitigation plan.
  - B. Construct a driveway approach onto Furnberg St to meet all guidelines of the Americans with Disabilities Act (ADA) prior to final inspection. The driveway approach apron shall be between 9 ft and 20 ft in width and least 7.5 ft from the side property lines.
  - C. Remove all signs, structures, or vegetation in excess of 3 ft in height located in "vision clearance areas" at intersections of streets, driveways, and alleys fronting the proposed development.
  - D. Record a 10-ft-wide stormwater easement on the south side of tax lots 2801 and 2802 for the City stormwater mainline.
3. The land use approval shall expire and become void unless both of the following steps are completed:
- A. Obtain and pay for all necessary development permits and start construction within 2 years of land use approval.
  - B. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval.



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Katie Mangle  
Planning Director

cc: Applicant  
Planning Commission  
Kenny Asher, Community Development/Public Works Director  
Katie Mangle, Planning Director  
Gary Parkin, Engineering Director  
Brad Albert, Civil Engineer  
Tom Larsen, Building Official  
Bonnie Lanz, Permit Specialist  
Doug Whiteley, Lieutenant Deputy Fire Marshal  
NDA: Linwood  
Interested Persons  
Files: WQR-11-05, VR-12-01