



CITY OF MILWAUKIE

AGENDA

October 26, 2021

PLANNING COMMISSION

milwaukieoregon.gov

Zoom Video Meeting: due to high rates of community COVID-19 transmission, the Planning Commission will hold this meeting through Zoom video. The public is invited to watch the meeting online through the City of Milwaukie YouTube page (https://www.youtube.com/channel/UCRFbfqe3OnDWLQKSB_m9cAw) or on Comcast Channel 30 within city limits.

If you wish to provide comments, the city encourages written comments via email at planning@milwaukieoregon.gov. Written comments should be submitted before the Planning Commission meeting begins to ensure that they can be provided to the Planning Commissioners ahead of time. To speak during the meeting, visit the meeting webpage (<https://www.milwaukieoregon.gov/bc-pc/planning-commission-83>) and follow the Zoom webinar login instructions.

1.0 Call to Order – Procedural Matters — 6:30 PM

2.0 Planning Commission Minutes – Motion Needed

2.1 August 24, 2021

3.0 Information Items

4.0 Audience Participation — This is an opportunity for the public to comment on any item not on the agenda

5.0 Hearing Items

5.1 2215 SE Harrison St

Summary: A Property Line Adjustment (PLA) along the northern property line for the lot. The proposed lot line shape does not meet the standard that limits compound lot line segments in MMC 17.28.040 and requires a variance.

Applicant: David Benjamin Henzel

Address: 2215 SE Harrison St

File: VR-2021-014, PLA-2021-002

Staff: Senior Planner Vera Koliass

5.2 Middle Housing Code – Continued Hearing (#2)

Summary: Proposed code and map amendments for the first phase of implementing the Comprehensive Plan – middle housing, tree preservation, and residential parking.

File: ZA-2021-002

Staff: Senior Planner Vera Koliass

6.0 Planning Department Other Business/Updates

7.0 Planning Commission Committee Updates and Discussion Items — This is an opportunity for comment or discussion for items not on the agenda.

8.0 Forecast for Future Meetings

November 9, 2021 Hearing: VR-2021-015, Filbert St ADU conversion variance
Continued Hearing: ZA-2021-002, Code and Map amendments implementing the Comprehensive Plan – middle housing, tree preservation and residential parking – focus on tree code

November 23, 2021 Hearing: CSU-2021-005, MHS Sign (tentative)

Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

1. **PROCEDURAL MATTERS.** If you wish to register to provide spoken comment at this meeting or for background information on agenda items please send an email to planning@milwaukieoregon.gov.
2. **PLANNING COMMISSION and CITY COUNCIL MINUTES.** City Council and Planning Commission minutes can be found on the City website at www.milwaukieoregon.gov/meetings.
3. **FORECAST FOR FUTURE MEETINGS.** These items are tentatively scheduled but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
4. **TIME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue the agenda item to a future date or finish the agenda item.

Public Hearing Procedure

Those who wish to testify should attend the Zoom meeting posted on the city website, state their name and city of residence for the record, and remain available until the Chairperson has asked if there are any questions from the Commissioners. Speakers are asked to submit their contact information to staff via email so they may establish standing.

1. **STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
2. **CORRESPONDENCE.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
3. **APPLICANT'S PRESENTATION.**
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience but may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** Prior to the close of the first public hearing, any person may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice

The city is committed to providing equal access to public meetings. To request listening and mobility assistance services contact the Office of the City Recorder at least 48 hours before the meeting by email at ocr@milwaukieoregon.gov or phone at 503-786-7502. To request Spanish language translation services email espanol@milwaukieoregon.gov at least 48 hours before the meeting. Staff will do their best to respond in a timely manner and to accommodate requests. Most Council meetings are broadcast live on the city's YouTube channel and Comcast Channel 30 in city limits.

Servicios de Accesibilidad para Reuniones y Aviso de la Ley de Estadounidenses con Discapacidades (ADA)

La ciudad se compromete a proporcionar igualdad de acceso para reuniones públicas. Para solicitar servicios de asistencia auditiva y de movilidad, favor de comunicarse a la Oficina del Registro de la Ciudad con un mínimo de 48 horas antes de la reunión por correo electrónico a ocr@milwaukieoregon.gov o llame al 503-786-7502. Para solicitar servicios de traducción al español, envíe un correo electrónico a espanol@milwaukieoregon.gov al menos 48 horas antes de la reunión. El personal hará todo lo posible para responder de manera oportuna y atender las solicitudes. La mayoría de las reuniones del Consejo de la Ciudad se transmiten en vivo en el canal de YouTube de la ciudad y el Canal 30 de Comcast dentro de los límites de la ciudad.

Milwaukie Planning Commission:

Lauren Loosveldt, Chair
Joseph Edge, Vice Chair
Greg Hemer
Robert Massey
Amy Erdt
Adam Khosroabadi
Jacob Sherman

Planning Department Staff:

Laura Weigel, Planning Manager
Vera Koliass, Senior Planner
Brett Kolver, Senior Planner
Will First, Administrative Specialist II



CITY OF MILWAUKIE

PLANNING COMMISSION MINUTES

City Hall Council Chambers
10722 SE Main Street
www.milwaukieoregon.gov

August 24, 2021

Present: Lauren Loosveldt, Chair
Joseph Edge, Vice Chair
Greg Hemer
Adam Khosroabadi
Robert Massey
Jacob Sherman

Staff: Vera Kalias, Senior Planner
Natalie Rogers, Climate and Natural
Resources Manager
Justin Gericke, City Attorney

Absent: Amy Erdt

(00:15:57)

1.0 Call to Order — Procedural Matters*

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

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

(00:16:23)

2.0 Planning Commission Minutes

The July 27, 2021 minutes were approved with a 5 – 0 vote.

(00:17:26)

3.0 Information Items

No information was presented for this portion of the meeting.

(00:17:39)

4.0 Audience Participation

No information was presented for this portion of the meeting.

(00:17:56)

5.0 Work Session Items

(00:17:56)

5.1 Comprehensive Plan Implementation – Tree Code

Vera Kolias, Senior Planner shared an update of the Comprehensive Plan Implementation Project. The policy mandates were to increase supply of middle housing, increase the tree canopy, preserve existing trees, and manage parking to enable middle housing. Draft code and maps were under development.

Natalie Rogers, Climate and Natural Resources Manager presented an overview of the proposal to establish a private tree code. Some of the key amendments were to:

- Establish tree preservation standards to protect trees on site, prioritizing trees based on their native and climate adapted status.
- Establish canopy standards which ensure intentional preservation and planting on development sites to achieve 40% canopy coverage.
- Establish mitigation standards which provide mitigation fees or discretionary alternatives for necessary but excessive tree removal.
- Establish tree protection standards to prevent occurrences which harm new plantings on sites during development.
- Require a permit for non-development tree removal if the tree is equal to or greater than six inches in diameter breast height (DBH), if the tree is less than six inches in DBH but is a species specified on the city's rare or threatened tree list, or if it was planted to meet any requirements in the private tree code.

Rogers continued, the proposed canopy standards ensure intentional preservation and planting on development sites to achieve 40% canopy coverage on each completed development site. 75% of the predicted mature canopy coverage of any new planting may be considered to achieve the required 40% canopy coverage. The canopy standards prohibit the removal of more than 33% of priority trees without mitigation. This standard would be one of the highest in the region and is based on a recommendation by the tree board. If 40% canopy coverage cannot be met or tree removal in excess of 33% is required for development mitigation is necessary.

Chair Loosveldt asked how new plantings used to achieve 40% canopy coverage would be ensured. **Rogers** responded that the urban forester must review proposed tree species and their placement and provide approval. There is also a bonding opportunity to ensure tree plantings grow to a healthy size, which hasn't been fully explored. **Consultant Todd Prager** noted bond issuances are a tool other municipalities use, however they are usually a non-code item often administered as a condition of approval. **Commissioner Sherman** requested that bond issuances for new plantings be more explicitly noted or encouraged in the code.

Commissioner Hemer asked for clarification on tree related terms and who determines current and projected tree canopy and ultimately which trees can be removed for development. **Rogers** responded that trees are defined as a multi-stemmed vegetation which reaches sixteen feet tall and trees at maturity are those which have reached their maximum size. The developer's designated

arborist is required to complete an arborist report and tree inventory. The report includes calculating the existing tree canopy by the tree's dripline. The arborist will estimate a sapling's projected tree canopy size at maturity based on comparisons to other trees in the existing tree lists. **Commissioner Hemer** requested that "planted in the ground" be added to the definition of tree.

Commissioner Sherman asked whether other permits or land use applications could trigger requirements to adhere to canopy standards. **Rogers** responded it is possible but could potentially be cost prohibitive.

Rogers continued the overview, when mitigation is necessary, the private tree code establishes mitigation standards which provide mitigation fees or discretionary alternatives for necessary tree removal. Mitigation fees are calculated based on the diameter at breast height (DBH) of the trees removed. Discretionary alternatives aim to incentivize other sustainable design practices which don't thrive under tree canopy. They include but are not limited to wildlife enhancements, minimization of hydrological impacts, or energy efficiency beyond regulatory requirements. **Chair Loosveldt and Commissioner Khosroabadi** expressed concern that mitigation fees may not deter developers from removing priority trees unless the fees are substantial enough and asked if mitigation fees would be put towards new plantings elsewhere. **Rogers** responded that fee calculations are not complete and open to discussion and that portions of the mitigation fees may be used for a variety of services intended to expand the city's tree canopy. **Commissioner Sherman and Chair Loosveldt** asked what tools could be used to incentivize tree planting over other priorities such as parking.

Rogers explained tree protection standards would be established to prevent occurrences which harm new plantings. Additionally, tree protection standards require developers to establish a tree protection plan and root protection zones which ensures existing trees are protected from development impacts. When these prescriptive measures are not feasible, the applicant may propose alternative measures under the guidance of an International Society of Arboriculture (ISA) certified arborist. The developer must ensure the tree protection standards are met but an ISA certified arborist is required to submit the report to establish the root protection zones for a given site. If there is disagreement between the developer's arborist and the city's arborist the code states that the city has the authority to interpret their code to ensure the standards are met. **Chair Loosveldt** asked whether any of the measures are currently required. **Rogers** noted the only required measures currently are erosion and sediment control.

Rogers continued, soil volume standards would be established to improve new planting's chance of long-term success. The standards require at least 1,000 cubic feet of soil per tree planted. The proposed code requires developers to submit a soil volume plan which must be conducted by an arborist. The methods and specifications used in the plan must be consistent with ISA best management practices.

The proposed code requires a permit for non-development tree removal if the tree is equal to or greater than six inches in DBH, the tree is less than six inches in DBH but is a species specified on the city's rare or threatened tree list, or if it was planted to meet any requirements in the private tree code. The code establishes mitigation fees and replanting requirements for healthy tree removal. The code further establishes approval standards to waive mitigation fees for trees which are dead, dying, or a hazard. For these trees replanting is required. For trees whose removal is required for fire management purposes or necessary thinning, no replanting is required. No permits are required for removal of agricultural trees (i.e., a Christmas tree farm does not need a permit to remove each tree). The City Manager may exempt property owners from the permit and replanting fees when the owner demonstrates household income at or below 80% of median household income for the Portland-Vancouver-Hillsboro Metropolitan Statistical Area. **Commissioner Hemer** asked whether you need a permit to remove a tree which is on the State of Oregon noxious weed list. **Rogers** responded that a permit is still required however one of the permit approval standards is whether the tree is on the noxious weed list. **Commissioner Sherman** asked if the permit fee or entire process could be waived for removal of trees on the noxious weed list. **Rogers** responded that the permit process is necessary to track tree inventory within the city but waiving the permit cost would be considered. **Vice-Chair Edge** asked what volume of permits we should expect. **Rogers** responded that there's no accurate prediction currently, but ways to streamline the permit process are being considered. **Commissioner Hemer** asked what the cost will be to the city after implementing the code. **Rogers** responded that the city has an arborist on staff and that permit costs are intended to cover much of the labor necessary to process the permits.

Commissioner Sherman expressed concerns applying natural resource zones to properties abutting but not within natural resource zones and whether the city has legal authority to require root protection zones within a redevelopment site for trees located in abutting properties. **Rogers** noted the code will be reviewed by the city attorney who will determine whether the city has the legal authority to create the requirements.

Commissioner Sherman asked what the objective standard was for determining unreasonable in "whether maintenance of the tree creates an unreasonable burden for the property owner" and recommended that "whether the removal will have a negative impact on neighborhood character" be removed from the code.

Commissioner Sherman recommended the language be clarified for non-development tree removal permits so it is clear and objective, stating clearly which and how many of the tree board considerations need to be met. Clarification was also requested for the penalties. **Vice Chair Edge** asked whether the tree board's decision could be appealed and who would have the ultimate authority in deciding whether cases meet the considerations defined in

the code. **Prager** responded that the non-development code language is not legally required to be clear and objective. **Rogers** added that the City of Lake Oswego recently developed clear and objective standards for their code which can be referenced in developing Milwaukie's code language. **Commissioner Massey and Chair Loosveldt** stated that the tree board considerations would likely not present challenges and that allowing the tree board's decision to be appealed is unnecessary.

Rogers discussed the various public outreach and engagement efforts used to grow awareness around the tree code and comprehensive plan implementation. The efforts include an informational campaign, program branding, and website and online media refresh. Continued outreach is key to foster stewardship, grow awareness of best management practices, and ensure utilization of low-income assistance. **Commissioner Sherman** suggested signage be used on development sites to display the number of trees removed and the city arborist's contact information to increase accessibility and public awareness.

Commissioner Hemer noted that his vote on the code adoption will be determined by public comments and advocated for the public to comment on the code.

(01:54:53)

5.2 Comprehensive Plan Implementation – Draft Code / Map Amendments – Batch #3

Kolias and Consultant Marcy McInelly presented a report on draft code/map amendments which were under development. The proposed amendments were informed by the city's comprehensive plan goals and policies to expand housing choice, , compliance with HB 2001, and DLCD's Large City Model Code, and . Some of the key amendments were to:

- Establish universal design standards which apply to all middle housing
- Allow lot size to determine permitted housing types
- Allow middle housing to be permitted as stacked, attached, or detached units
- Establish design standards for townhouses creating a maximum width for attached townhouses in the R-MD zone
- Require one parking space per unit and allow the space to be located in the driveway or setback
- Establish maximum number of clusters on large cottage cluster lots
- Prohibit cottage clusters on flag lots over a certain area

McInelly noted the proposed design standards regulate the maximum width of attached townhouses by total street frontage in feet as opposed to the number of townhouses to maximize distance between driveways and keep townhouses congruent with the surrounding urban form. **Commissioner Khosroabadi, Commissioner Hemer, Vice Chair Edge, and Chair Loosveldt** agreed that width in feet as opposed to number of units should be used to determine maximum width

of attached townhouses to also maximize the number of housing units on a given lot. **Commissioner Sherman** noted that parking requirements may conflict with a developments ability to meet the city's proposed 40% canopy requirement. **Commissioner Khosroabadi** stated canopy requirements should supersede parking requirements and asked if parking requirements could be waived in situations where parking and canopy requirements are in conflict. **Kolias** responded tree preservation and other canopy considerations can potentially be added to waive parking requirements. **Commissioner Hemer** stated parking requirements should not be waived. **Commissioner Sherman** responded that the market would continue to build townhouses with parking spaces for each unit but requiring parking minimums is unnecessary with the ample availability of on-street parking.

Commissioner Hemer asked if there was a requirement for the street facing main entrance to have a paved path directly to the street or to a shared driveway. **McInelly** responded there was a requirement for a paved path directly to the street.

Vice Chair Edge asked whether proposed townhouse developments would require a preapplication conference for any of the requirements presented. **Kolias** responded that a parking modification would require a preapplication conference and land partition would require a preapplication conference although the proposed SB 458 would require the process to be expedited making the process essentially by-right.

Kolias shared the requirements of HB 2001 to permit cottage clusters on all lots greater than 7,000 sq ft. The proposed cottage cluster code amendments were informed by the Large City Model Code, the 2019 Cottage Cluster Feasibility Study, and the design and modeling recommendations from the project consultant Urbsworks. The amendments are intended to promote market-rate homes affordable to households of a variety of incomes and sizes, encourage design which promotes shared outdoor common areas, and promote community-building both within the housing cluster and with the surrounding neighborhood.

McInelly explained the code language determines the maximum number of cottages allowed through determining maximum number of cottages per cluster, and number of clusters allowed which is congruent with HB 2001. **Commissioner Hemer** asked what separates one cluster from another. **McInelly** responded the design standards determine what is a common courtyard and a cluster is a group of units facing the same common courtyard, HB 2001 prohibits more than 50% of the cottages on a lot to be facing away from any of the common courtyards. **Commissioner Sherman** asked what the setback requirements are for cottage clusters. **McInelly** responded that HB 2001 prohibits setback requirements in excess of five feet for cottage clusters. **Commissioner Khosroabadi and Chair Loosveldt** commented that the two-cluster example presented in the report balanced the comprehensive plans priorities well. **Vice**

Chair Edge expressed concern in capping the number of clusters on a lot at two. He stated support for allowing attached structures in clusters in the R-MD zones if they are congruent with the surrounding urban form. **McInelly** responded that additional clusters can be added with review, however by allowing more than two clusters by right, may cause issues such as ineffective infrastructure service and emergency response access. **Commissioner Massey** noted the cottage cluster provision has been in effect for nearly a decade and none have been developed. **McInelly** responded that Milwaukie is one of the few jurisdictions that allowed the cottage cluster before HB 2001 and the bill will likely act as an impetus for new cottage cluster development.

Commissioner Hemer and Vice Chair Edge requested that flag lots be permitted to have cottage clusters provided the pole portion of the lot adhere to any requirements emergency vehicles require for adequate access. **Kolias** responded an alternative in some scenarios may be incorporating a parent home into the cottage cluster such that the flag lot would not need to be created in the first place. She further notes that any development needs to adhere to Clackamas Fire standards regardless. **Commissioner Sherman and Vice Chair Edge** advocated for allowing parent homes on large lots to develop cottage clusters and incorporate their parent home into the cluster.

Commissioner Hemer requested the eyes on the street consideration be eliminated for cottage clusters on flag lots.

Commissioner Khosroabadi requested single family detached dwellings and duplexes be allowed by right on 1,500 sq ft lots.

Vice Chair Edge expressed his desire to allow every lot the ability to develop four dwellings by right and more than four should the additional dwellings be affordable. **Commissioner Hemer** noted that all lots should be allowed to develop four dwellings by right but no more in the R-MD zone. **Vice Chair Edge** responded with a proposal to cap lots in R-MD at six total units with two guaranteed affordable. **Commissioner Sherman** added that many areas in the city could be up zoned to better provide dense development where appropriate. **Kolias** responded that staff will be revisiting the zoning map during the Neighborhood Hubs project.

Kolias noted this was the final work session for the middle housing code and the first hearing will take place October 12, 2021.

(03:28:13)

6.0 Planning Department Other Business/Updates

Kolias shared that Assistant Planner Mary Heberling is leaving the City of Milwaukie as she accepted a position with the city of Newburg, OR.

(03:29:38)

7.0 Planning Commission Committee Updates and Discussion Items

Commissioner Hemer shared that August 29 is the car-free day downtown and September 11 is a comedy performance at the Milwaukie Museum.

(03:31:02)

8.0 Forecast for Future Meetings:

- | | |
|--------------------|--|
| September 14, 2021 | 1. Public Hearing: VR 2021-013, Bonaventure Senior Living Walkways |
| September 28, 2021 | 1. Public Hearing: DR-2021-001, Coho Point Redevelopment (tentative) |
| October 12, 2021 | 1. Public Hearing: Middle Housing Code – Hearing #1 |
| October 26, 2021 | 1. Public Hearing: PD-2021-001, Hillside Final PD (tentative) |

Meeting adjourned at approximately 9:47 p.m.

Respectfully submitted,

Will First, Administrative Specialist II



CITY OF MILWAUKIE

To: Planning Commission
Through: Laura Weigel, Planning Manager
From: Vera Kalias, Senior Planner
Date: October 19, 2021, for October 26, 2021, Public Hearing
Subject: **File:** VR-2021-014
Applicant: David Benjamin Henzel
Address: 2215 SE Harrison St
Legal Description (Map & Tax Lot): 11E25CC00900
NDA: Historic Milwaukie

ACTION REQUESTED

Approve application VR-2021-014 and adopt the recommended Findings found in Attachment 1. This action will allow the applicant to adjust the property line shared with the adjacent property at 10565 SE 23rd Ave and transfer 330 sq ft to the applicant.

BACKGROUND INFORMATION

David Benjamin Henzel, the applicant and current owner of the office property at 2215 SE Harrison St (former Pond House), is requesting a property line adjustment (PLA) between his property and the adjacent property at 10565 SE 23rd Ave. The proposed lot line shape does not meet the standard that limits compound lot line segments in MMC 17.28.040 and requires a variance.

A. Site and Vicinity

The site is the former city-owned Pond House and is located at 2215 SE Harrison St. The site is made up of two tax lots and has a combined area of approximately 11,653 sq ft (0.26 acres) and contains an office building. The surrounding area consists of the Ledding Library, Waldorf School, attorney's offices, and multi-unit dwellings.



Figure 1. Site and vicinity

B. Zoning Designation

The property is zoned Residential R-1-B and includes Habitat Conservation Area and Water Quality Resource Area.

C. Comprehensive Plan Designation

High Density (HD)

D. Land Use History

- **CSU-2008-005:** Land use approval for a Major Modification to a Community Service Use to allow the Pond House to be used as an extension of the Ledding Library.
- **CSU-2010-006 and WQR-2010-002:** Land use approval to replace the rear deck, construct a slightly larger deck and stairs and install a stepping stone path and footings for a bench and artwork in the yard.

E. Proposal

The applicant has proposed a property line adjustment (PLA) between his property and the adjacent property at 10565 SE 23rd Ave. The PLA is requested to resolve a concern regarding potential encroachments, provide additional area for a landscape buffer, and is designed to preserve mature vegetation and an existing stacked rock wall. The proposed lot line shape does not meet the standard that limits compound lot line segments in MMC 17.28.040 and requires a variance. A Type III variance is required per MMC 17.28.040.C.

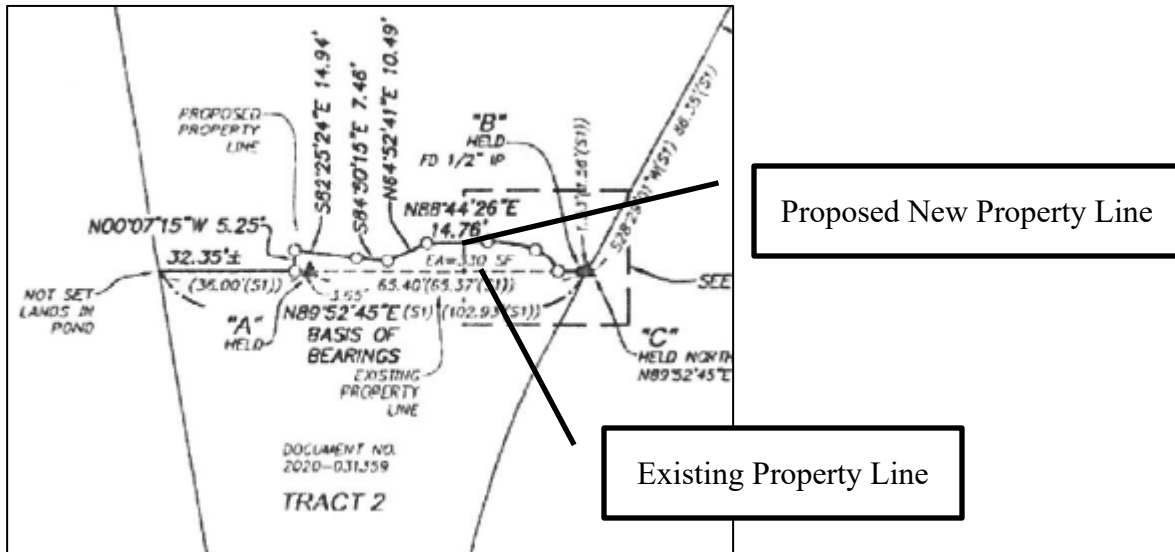


Figure 2. Proposed PLA

KEY ISSUES

Summary

Staff has identified the following key issues for the Planning Commission's deliberation. Aspects of the proposal not listed below are addressed in the Findings (see Attachment 1) and generally require less analysis and discretion by the Commission.

Analysis

Would approval of the variances result in any negative impacts?

As noted in the application summary, the applicant has proposed a lot line adjustment by which a small surplus portion of the adjoining property located at 10565 SE 23rd Ave, will be transferred to the applicant. The surplus property consists of 330 square feet along the common property line and consists of property which is not usable by the adjacent property owner. This additional area will provide the applicant with additional property to provide a sufficient setback to avoid potential encroachments and space to provide additional landscape buffer. The proposed property line follows an existing stacked stone wall, which is why the shape is not rectilinear.

Staff has not identified any impacts resulting from the non-rectilinear lot line. A straight lot line would not accommodate the full preservation of existing vegetation and an existing stacked rock wall. The location of the proposed side property line is to minimize impact to the adjoining property owner. Use of a lot line as proposed preserves existing mature vegetation and the existing stacked rock wall and ensures these elements are retained under the control and preservation of the adjoining property owner. Given the limited scope of the affected area and that both property owners have agreed to the PLA, a variance is supportable.

CONCLUSIONS

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

1. Approve the variance to allow the property line adjustment as proposed.
3. Adopt the attached Findings.

CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC).

- MMC 19.302 High density residential zones (including R-1-B)
- MMC 19.911 Variances
- MMC 17.28.040.C Limits on Compound Lot Line Segments

This application is subject to Type III review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above. In Type III reviews, the Commission assesses the application against review criteria and development standards and evaluates testimony and evidence received at the public hearing.

The Commission has 4 decision-making options as follows:

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

The final decision on these applications, which includes any appeals to the City Council, must be made by December 16, 2021, in accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance. The applicant can waive the time period in which the application must be decided.

COMMENTS

Notice of the proposed changes was given to the following agencies and persons: City of Milwaukie Building and Engineering Departments; Historic Milwaukie Neighborhood District Association (NDA) Chairperson & Land Use Committee; Clackamas Fire District #1; and properties within 300 ft of the site.

No comments were received.

ATTACHMENTS

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

	Early PC Mailing	PC Packet	Public Copies	Packet
1. Recommended Findings in Support of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Applicant's Narrative and Supporting Documentation (received August 18, 2021)				
a. Narrative	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Plans and property description	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

Early PC Mailing = paper materials provided to Planning Commission at the time of public notice 20 days prior to the hearing.

PC Packet = paper materials provided to Planning Commission 7 days prior to the hearing.

Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.

Packet = packet materials available online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-83>.

Findings in Support of Approval
File #VR-2021-014, David Benjamin Henzel – 2215 SE Harrison St

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicant, David Benjamin Henzel, has applied for a variance to allow a property line adjustment between his property and the adjacent property at 10565 SE 23rd Ave that does not meet the standards of MMC 17.28.040.C – Limits on Compound Lot Line Segments. The address of the site is 2215 SE Harrison St and it is in the R-1-B Zone. The land use application file number is VR-2021-014.
2. The site is the former city-owned Pond House and is located at 2215 SE Harrison St. The site is made up of two tax lots and has a combined area of approximately 11,653 sq ft (0.26 acres) and contains an office building. The surrounding area consists of the Ledding Library, Waldorf School, attorney's offices, and multi-unit dwellings. The applicant has proposed a property line adjustment (PLA) on the northern property line (side property line). The PLA is requested to resolve a concern regarding potential encroachments, provide additional area for a landscape buffer, and is designed to preserve mature vegetation and an existing stacked rock wall. The proposed lot line shape does not meet the standard that limits compound lot line segments in MMC 17.28.040 and requires a variance.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.1006 Type III Review
 - MMC Section 19.302 High Density Residential Zones (including R-1-B)
 - MMC Section 17.28.040 General Lot Design
 - MMC Section 17.12.030 Approval Criteria for Lot Consolidation, Property Line Adjustment, and Replat
 - MMC Section 19.911 Variances

The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held on October 26, 2021, as required by law.

4. MMC Section 19.302 High Density Residential Zones (including R-1-B)

MMC 19.302 establishes standards for the high-density residential zones, including the R-1-B zone. The subject property is zoned R-1-B.

MMC Subsections 19.302.4 provides applicable development standards for the R-1-B zone, summarized in Table 1:

Table 1 R-1-B Lot and Development Standards		
Standard	R-1-B Requirement	Subject Property
Minimum side yard setback	5 ft	5 ft (standard met)

The existing development on the subject property meets the minimum side yard setback. The proposed PLA does not bring the property out of conformance with this standard. The Planning Commission finds that approval of the requested variance meets the applicable R-1-B development standards. This standard is met.

5. MMC Section 17.28.040 General Lot Design

- a. MMC Subsection 17.28040.C establishes the specific provisions for compound lot line segments and states that changes in direction alongside and rear lot lines shall be avoided.

The applicant’s proposed PLA contains several changes in direction because the new lot line will follow an existing stacked rock wall and will preserve existing mature vegetation. A variance has been requested to allow the proposed lot line adjustment as designed.

As proposed, and with approval of the variance discussed in Finding 7, the Planning Commission finds that the applicable standards of MMC 17.28.040 are met.

6. MMC Section 17.12.030 Approval Criteria for Lot Consolidation, Property Line Adjustment, and Replat

MMC Subsection 17.12.030.A establishes the approval criteria for a property line adjustment.

- a. Compliance with this title and Title 19 of this code.

As described here and elsewhere in these findings, the proposed PLA complies with applicable sections of Title 17 and Title 19.

- b. The boundary change will allow reasonable development of the affected lots and will not create the need for a variance of any land division or zoning standard.

The PLA does not alter the zoning of either parcel of real property, does not change the comprehensive plan designation of either parcel, and does not result in either parcel failing to meet applicable land use and zoning standards. Both affected lots will remain legal in size and use. No additional development would result from this proposed lot line adjustment.

Approval of the proposed lot line adjustment will resolve concerns regarding the encroachment of improvements on the subject property, provide additional landscape screening, and allow productive use of a presently unproductive surplus portion of the real property owned by the adjoining property owner.

- c. Boundary changes shall not reduce residential density below minimum density requirements of the zoning district in which the property is located.

The adjoining property located at 10565 SE 23rd Ave will transfer approximately 330 square feet to the property located at 2215 SE Harrison St as a result of the proposed PLA. The reduction in property will not make the 10565 SE 23rd Ave parcel less than the required minimum lot size in the R-1-B zone, which is 5,000 square feet, or reduce the lot width below code requirements, which is fifty feet.

The Planning Commission finds that the proposed property line adjustment meets the requirements of MMC 17.12.030. The criteria are met.

7. MMC Section 19.911 Variances

MMC Section 19.911 establishes the variance process for seeking relief from specific code sections that have the unintended effect of preventing reasonable development or imposing undue hardship.

a. MMC Subsection 19.911.2 Applicability

MMC 19.911.2 establishes applicability standards for variance requests.

Variances may be requested to any standard of MMC Title 19, provided the request is not specifically listed as ineligible in MMC Subsection 19.911.2.B. In addition, MMC Section 17.28.040 allows requests for relief from the compound lot line standard to be processed according to the procedures and criteria of MMC 19.911. Ineligible variances include requests that result in any of the following: change of a review type, change or omission of a procedural step, change to a definition, increase in density, allowance of a building code violation, allowance of a use that is not allowed in the base zone, or the elimination of restrictions on uses or development that contain the word “prohibited.”

The applicant has requested a variance to allow a new side property line to include numerous changes in direction.

The requested variance meets the eligibility requirements established in MMC 19.911.2.

b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. Subsection 3-B establishes the Type II review process for limited variations to certain numerical standards. Subsection 3-C establishes the Type III review process for larger or more complex variations to standards that require additional discretion and warrant a public hearing.

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

c. MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes approval criteria for variance requests.

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

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

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

The applicant's submittal materials described the proposal. The adjoining property owner has agreed to the lot line adjustment to address concerns regarding a possible encroachment and to allow additional landscape screening in an otherwise unproductive portion of the adjoining property. A straight lot line would have been preferable to the applicant, but the adjoining property owners were not agreeable to such a straight lot line because it could not accommodate the full preservation of existing vegetation and an existing stacked rock wall. Given the limited scope of the affected area, and the small likelihood that subsequent development, approval of a variance to the compound lot line requirement is reasonable and supportable.

There are no identified negative impacts related to the requested variance.

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

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

The reason the Applicant seeks a lot line adjustment which contains lateral changes to the side property line is to minimize impact to the adjoining property owner. Use of a lot line as proposed by the applicant preserves existing mature vegetation and an existing stacked rock wall and ensures these elements are retained under the control and preservation of the adjoining property owner.

The preservation of the mature vegetation and the stacked rock wall allow the adjoining property owner to preserve these elements of the historic property for the benefit of the public, a cause to which the adjoining property owner is passionate and committed.

The proposed lot line is designed specifically to preserve an existing stacked rock wall and existing mature vegetation on the adjoining property on which it is presently located. The owner of the adjoining property is enthusiastic about historic preservation and has a strong desire to preserve the existing vegetation and the existing stacked rock wall.

Staff has not identified any impacts as a result of the variance.

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

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

Currently, there are no identified impacts resulting from the requested variance. There will be no ongoing work or impacts and the variance will permit the preservation of the mature vegetation and the stacked rock wall.

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

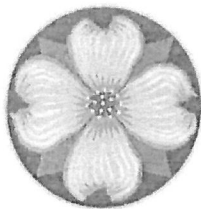
The Planning Commission finds that the requested variance is allowable as per the applicable standards of MMC 19.911 and is therefore approved.

8. The application was referred to the following departments and agencies on August 23, 2021:

- Milwaukie Building Department
- Milwaukie Engineering Department
- Historice Milwaukie Neighborhood District Association (NDA) Chairperson & Land Use Committee
- Clackamas Fire District #1

Notice of the application was also sent to surrounding property owners and residents within 300 ft of the site on October 6, 2021, and a sign was posted on the property on October 7, 2021.

No comments were received.



MILWAUKIE PLANNING
 6101 SE Johnson Creek Blvd
 Milwaukie OR 97206
 503-786-7630
 planning@milwaukieoregon.gov

Application for Land Use Action

Master File #: VR-2021-014, PLA-2021-002

Review type*: I II III IV V

CHECK ALL APPLICATION TYPES THAT APPLY:

<input type="checkbox"/> Amendment to Maps and/or Ordinances: <input type="checkbox"/> Comprehensive Plan Text Amendment <input type="checkbox"/> Comprehensive Plan Map Amendment <input type="checkbox"/> Zoning Text Amendment <input type="checkbox"/> Zoning Map Amendment <input type="checkbox"/> Code Interpretation <input type="checkbox"/> Community Service Use <input type="checkbox"/> Conditional Use <input type="checkbox"/> Development Review <input type="checkbox"/> Director Determination <input type="checkbox"/> Downtown Design Review <input type="checkbox"/> Extension to Expiring Approval <input type="checkbox"/> Historic Resource: <input type="checkbox"/> Alteration <input type="checkbox"/> Demolition <input type="checkbox"/> Status Designation <input type="checkbox"/> Status Deletion	<input checked="" type="checkbox"/> Land Division: <input type="checkbox"/> Final Plat <input type="checkbox"/> Lot Consolidation <input type="checkbox"/> Partition <input checked="" type="checkbox"/> Property Line Adjustment <input type="checkbox"/> Replat <input type="checkbox"/> Subdivision <input type="checkbox"/> Miscellaneous: <input type="checkbox"/> Barbed Wire Fencing <input type="checkbox"/> Mixed Use Overlay Review <input type="checkbox"/> Modification to Existing Approval <input type="checkbox"/> Natural Resource Review** <input type="checkbox"/> Nonconforming Use Alteration <input type="checkbox"/> Parking: <input type="checkbox"/> Quantity Determination <input type="checkbox"/> Quantity Modification <input type="checkbox"/> Shared Parking <input type="checkbox"/> Structured Parking <input type="checkbox"/> Planned Development	<input type="checkbox"/> Residential Dwelling: <input type="checkbox"/> Accessory Dwelling Unit <input type="checkbox"/> Duplex <input type="checkbox"/> Manufactured Dwelling Park <input type="checkbox"/> Temporary Dwelling Unit <input type="checkbox"/> Sign Review <input type="checkbox"/> Transportation Facilities Review <input checked="" type="checkbox"/> Variance: <input type="checkbox"/> Use Exception <input type="checkbox"/> Variance <input type="checkbox"/> Willamette Greenway Review <input type="checkbox"/> Other: _____ <input type="checkbox"/> Use separate application forms for: Annexation and/or Boundary Change • Compensation for Reduction in Property Value (Measure 37) • Daily Display Sign • Appeal • Appeal
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RESPONSIBLE PARTIES:

APPLICANT (owner or other eligible applicant—see reverse): **DAVID BENJAMIN HENZEL**

Mailing address: **PO BOX 220027, MILWAUKIE** State/Zip: **OR 97269**

Phone(s): **(503) 546-1583** Email: **dbh@henzelpc.com**

Please note: The information submitted in this application may be subject to public records law.

APPLICANT'S REPRESENTATIVE (if different than above): **same**

Mailing address: _____ State/Zip: _____

Phone(s): _____ Email: _____

SITE INFORMATION:

Address: **2215 SE Harrison Street** Map & Tax Lot(s): **1S 1E 25CC - Lot 0900**

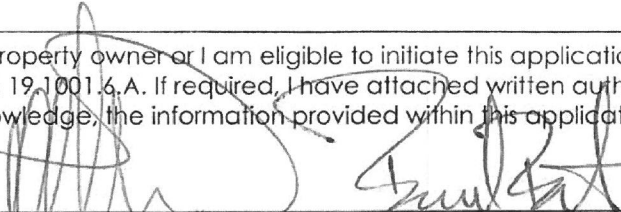
Comprehensive Plan Designation: **TC** Zoning: **R-1-B** Size of property: **0.20 Acre**

PROPOSAL (describe briefly):

Please see attached.

SIGNATURE:

ATTEST: I am the property owner or I am eligible to initiate this application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. If required, I have attached written authorization to submit this application. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by:  Date: **06/18/2021**

IMPORTANT INFORMATION ON REVERSE SIDE

*For multiple applications, this is based on the highest required review type. See MMC Subsection 19.1001.6.B.1.

WHO IS ELIGIBLE TO SUBMIT A LAND USE APPLICATION (excerpted from MMC Subsection 19.1001.6.A):

Type I, II, III, and IV applications may be initiated by the property owner or contract purchaser of the subject property, any person authorized in writing to represent the property owner or contract purchaser, and any agency that has statutory rights of eminent domain for projects they have the authority to construct.

Type V applications may be initiated by any individual.

PREAPPLICATION CONFERENCE:

A preapplication conference may be required or desirable prior to submitting this application. Please discuss with Planning staff.

REVIEW TYPES:

This application will be processed per the assigned review type, as described in the following sections of the Milwaukie Municipal Code:

- Type I: Section 19.1004
- Type II: Section 19.1005
- Type III: Section 19.1006
- Type IV: Section 19.1007
- Type V: Section 19.1008

****Note:** Natural Resource Review applications **may require a refundable deposit**. Deposits require completion of a Deposit Authorization Form, found at www.milwaukieoregon.gov/building/deposit-authorization-form.

THIS SECTION FOR OFFICE USE ONLY:

FILE TYPE	FILE NUMBER	AMOUNT <small>(after discount, if any)</small>	PERCENT DISCOUNT	DISCOUNT TYPE	DATE STAMP
Master file	VR-2021-014	\$ 2,000.00			RECEIVED AUG 09 2021 CITY OF MILWAUKIE PLANNING DEPARTMENT
Concurrent application files	PLA-2021-002	\$ 487.50	25%	Multi-Applications	
		\$			
		\$			
Deposit (NR only)				<input type="checkbox"/> Deposit Authorization Form received	
TOTAL AMOUNT RECEIVED: \$		2,487.50	RECEIPT #:	RCD BY:	
Associated application file #s (appeals, modifications, previous approvals, etc.):					
Neighborhood District Association(s): <i>Historic Milwaukie</i>					
Notes:					

APPLICATION FOR LAND USE ACTION

Subject Properties:

Applicant Property:

2215 SE Harrison Street, Milwaukie, OR 97222
Map Number: 11E25CC
Taxlot Number: 11E25CC00900
Parcel Number: 00009788
Acres: 0.20
Zone: R-1-B
Comp. Plan: TC - Town Center

Adjoining Property:

10565 SE 23rd Ave, Milwaukie, 97222
Map Number: 11E25CC
Taxlot Number: 11E25CC01001
Parcel Number: 00009797
Acres: 0.67
Zone: R-1-B
Comp. Plan: TC - Town Center

Proposed Lot Line Adjustment:

David Benjamin Henzel (the Applicant”) is the owner of the real property located at 2215 SE Harrison Street, Milwaukie, OR 97222. Applicant proposes a lot line adjustment by which a small surplus portion of the adjoining property located at 10565 SE 23rd Ave, Milwaukie, 97222, owned by Historic Offices, LLC, will be transferred to Applicant. The surplus property consists of 330 square feet along the common property line and consists of property which is not usable by Historic Offices, LLC and which will provide the Applicant with additional property to provide a sufficient setback to avoid encroachments and space to provide further landscape buffer.

Approval Criteria (Milwaukie Municipal Code 17.12.030):

The Applicant is required to comply with the following:

1. Title 17 and Title 19 of the Milwaukie Municipal Code.

Applicant believes the proposed lot line adjustment comply with all applicable codes.

Milwaukie Municipal Code 17.28.040 provides:

“This section does not apply to units of land that are created for purposes other than land development including parks, natural areas, right-of-way dedications, or reservations of a similar nature. Lots and tracts created for cottage cluster housing development, per Subsection 19.505.4, are also exempt from the requirements of this section.”

Applicant does not believe MCC 17.28.040 is applicable because the proposed lot line adjustment is not creating a unit of land for purposes of development. The existing lots are developed and no additional development is planned or permissible. Rather the lot line adjustment is for the purposes of resolving concerns regarding the encroachment of the improvements on Applicant's property, to provide additional landscape screening, and to allow productive use of a presently unproductive surplus portion of the real property owned by Historic Offices, LLC. Even if this section of the code is applicable, a variance should be granted under the discretionary provisions of MMC 17.28.040.C.

Milwaukie Municipal Code 17.28.040.C provides:

“Changes in direction alongside and rear lot lines shall be avoided. Cumulative lateral changes in direction of a side or rear lot line exceeding 10% of the distance between opposing lot corners along a given lot line may only be permitted through the variance provisions of MMC Subsection 19.911. Changes in direction shall be measured from a straight line drawn between opposing lot corners.

Variance Criteria. Milwaukie Municipal Code 19.911.4.B.1 provides the discretionary relief criteria for a variance as follows:

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

Here, the adjoining property owner, Historic Offices, LLC has agreed to the lot line adjustment to address concerns regarding a possible encroachment and to allow additional landscape screening in an otherwise unproductive portion of the adjoining property. A straight lot line would have been preferable to the applicant, but the adjoining property owners was not agreeable to such a straight lot line because it could not accommodate the full preservation of existing vegetation and an existing stacked rock wall. Given the limited scope of the affected area, and the small likelihood that subsequent development will be conducted, the base code requires should be set aside to permit the preservation of these resources.

b. The proposed variance is determined by the Planning Commission to be both reasonable and appropriate, and it meets one or more of the following criteria:

- (1) The proposed variance avoids or minimizes impacts to surrounding properties.
- (2) The proposed variance has desirable public benefits.
- (3) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

The Applicant believes that the proposed variance meets all of the forgoing criteria:

1. The reason that Applicant seeks a lot line adjustment which contains lateral changes to the side property line is to minimize impact to the adjoining property owner. Use of a lot line as proposed by Applicant preserves existing mature vegetation and an existing stacked rock wall and ensures these elements are retained under the control and preservation of the adjoining property owner.

2. The preservation of the mature vegetation and the stacked rock wall allow the adjoining property owner to preserve these elements of the historic property for the benefit of the public, a cause to which the adjoining property owner is passionate and committed.

3. The proposed lot line is designed specifically to preserve an existing stacked rock wall and existing mature vegetation on the adjoining property on which it is presently located. The owner of Historic Offices, LLC, Dennis Osterlund, is passionate and enthusiastic about historic preservation and has a strong desire to preserve the existing vegetation and the existing stacked rock wall.

c. Impacts from the proposed variance will be mitigated to the extent practicable.

The Applicant believe that the impacts of the proposed variance are minimal. The costs associated with the survey and this application were higher than anticipated, and there appears to be additional work on planning staff associated with this variance, but once these matters are resolved, there will be no ongoing work or impacts and the variance will permit the preservation of the mature vegetation and the stacked rock wall.

2. The proposed lot line adjustment will allow reasonable development of the affected lots and will not create the need for a variance of any land division or zoning standard.

The proposed lot line adjustment does not alter the zoning of either parcel of real property, does not change the comprehensive plan designation of either parcel, and does not result in either parcel failing to meet applicable land use and zoning standards. Both affected lots will remain legal in size and use. No additional development would result from this proposed lot line adjustment.

Approval of the proposed lot line adjustment will resolve concerns regarding the encroachment of the improvements on Applicant's property, provide additional landscape screening, and allow productive use of a presently unproductive surplus portion of the real property owned by Historic Offices, LLC.

3. Boundary changes shall not reduce residential density below minimum density requirements of the zoning district in which the property is located.

The real property located at 10565 SE 23rd Ave, Milwaukie, 97222 will transfer approximately 330 square feet to the property located at 2215 SE Harrison Street, Milwaukie OR 97222. The reduction in property will not make the 10565 SE 23rd Ave, Milwaukie, 97222 parcel less than required minimum lot size, which is 5,000 square feet, or reduce the lot width below MMC requirements, which are fifty feet. (MMC Table 19.302.4)



CENTERLINE CONCEPTS
LAND SURVEYING, INC.

19376 Molalla Avenue, Ste. 120, Oregon City, OR 97045
P. 503-650-0188 F. 503-650-0189

Exhibit "A"
Exchange Area
Legal Description

A Tract of land being a portion of Block 1, "STREIB'S FIRST ADDITION", located in the northwest one-quarter of Section 36, Township 1 South, Range 1 East, of the Willamette Meridian, City of Milwaukie, County of Clackamas, State of Oregon, being more particularly described as follows:

BEGINNING at a 5/8" iron rod with a red plastic cap marked "Centerline Concepts" on the south line of that Tract of land described in Deed recorded as Document No. 2017-059990, Clackamas County Deed Records, being South 89°52'45" West, 7.19 feet from the southeast corner thereof; thence along the north line of that Tract of land described in Deed recorded as Document No. 2020-031359, Clackamas County Deed Records, South 89°52'45" West, 63.39 feet to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence leaving said north line, North 00°07'15" West, 5.25 feet to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence South 82°25'24" East, 14.94 feet to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence South 84°50'15" East, 7.46 feet to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence North 64°52'41" East, 10.49 feet to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence North 88°44'26" East, 14.76 feet to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence along the arc of a 30.00 foot radius curve to the right, through a central angle of 22°37'04", an arc length of 11.84 feet (chord of which bears South 79°57'02" East, 11.77 feet) to a to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence along the arc of a 9.50 foot radius curve to the right, through a central angle of 46°05'03", an arc length of 7.64 feet (chord of which bears South 45°35'58" East, 7.44 feet) to the **POINT OF BEGINNING**.

Contains 330 square feet, more or less.

11 JUN 21
REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 13, 2004
TOBY G. BOLDEN
60377LS

RENEWS: 31 DEC 21



CENTERLINE CONCEPTS
LAND SURVEYING, INC.

19376 Molalla Avenue, Ste. 120, Oregon City, OR 97045
P. 503-650-0188 F. 503-650-0189

Exhibit "B"
Tract 1
Legal Description

A Tract of land being a portion that tract of land conveyed by deed recorded as Document No. 2017-059990, said tract also being a portion of Block 1, "STREIB'S FIRST ADDITION", located in the northwest one-quarter of Section 36, Township 1 South, Range 1 East, of the Willamette Meridian, City of Milwaukie, County of Clackamas, State of Oregon, more particularly described as follows:

[Verbatim Original Description from Document No. 2017-059990]
BEGINNING AT A POINT ON THE WESTERLY BOUNDARY OF SAID BLOCK 1 THAT IS A DISTANCE OF 30.00 FEET OUTH OF THE NORTH LINE OF SAID BLOCK, WHEN MEASURED AT RIGHT ANGLES THERETO; THENCE CONTINUING SOUTH 9°09' EAST, ALONG THE WESTERLY BOUNDARY OF SAID BLOCK, 180.00 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF THAT TRACT OF LAND CONVEYED TO LAWRENCE A. DENNIS BY DEED RECORDED IN BOOK 621, PAGE 167 OF DEED RECORDS; THENCE SOUTH 89°20' EAST, ALONG SAID TRACT, 102.71 FEET TO THE NORTHEAST CORNER THEREOF; THENCE NORTHERLY ALON GTHE EASTERLY LINE OF SAID BLOCK, 180.00 FEET MORE OR LESS, TO A POINT THAT IS 30.00 FEET SOUTH OF THE NORTH LINE OF SAID BLOCK, WHEN MEASRUED AT RIGHT ANGLES THERETO; THENCE WEST, PARALLEL WITH AND 30.00 FEET SOUTH FROM THE NORTH LINE OF SAID BLOCK, 210.00 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

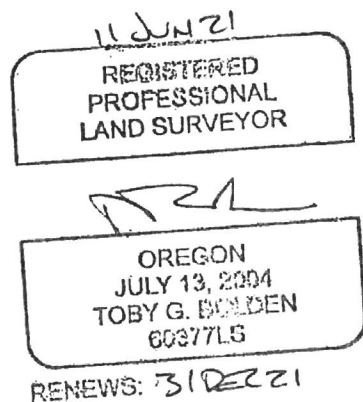
NOTE: THIS LEGAL DESCRIPTION WAS CREATED PRIOR TO JANUARY 01, 2008.

EXCEPTING THEREFROM THE FOLLOWING:

A Tract of land being a portion of Block 1, "STREIB'S FIRST ADDITION", located in the northwest one-quarter of Section 36, Township 1 South, Range 1 East, of the Willamette Meridian, City of Milwaukie, County of Clackamas, State of Oregon, being more particularly described as follows:

BEGINNING at a 5/8" iron rod with a red plastic cap marked "Centerline Concepts" on the south line of that Tract of land described in Deed recorded as Document No. 2017-059990, Clackamas County Deed Records, being South 89°52'45" West, 7.19 feet from the southeast corner thereof; thence along the north line of that Tract of land described in Deed recorded as Document No. 2020-031359, Clackamas County Deed Records, South 89°52'45" West, 63.39 feet to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence leaving said north line, North 00°07'15" West, 5.25 feet to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence South 82°25'24" East, 14.94 feet to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence South 84°50'15" East, 7.46 feet to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence North 64°52'41" East, 10.49 feet to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence North 88°44'26" East, 14.76 feet to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence along the arc of a 30.00 foot radius curve to the right, through a central angle of 22°37'04", an arc length of 11.84 feet (chord of which bears South 79°57'02" East, 11.77 feet) to a to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence along the arc of a 9.50 foot radius curve to the right, through a central angle of 46°05'03", an arc length of 7.64 feet (chord of which bears South 45°35'58" East, 7.44 feet) to the **POINT OF BEGINNING**.

Contains 330 square feet, more or less.





CENTERLINE CONCEPTS
LAND SURVEYING, INC.

19376 Molalla Avenue, Ste. 120, Oregon City, OR 97045
P. 503-650-0188 F. 503-650-0189

Exhibit "C"
Tract 2
Legal Description

A Tract of land being all of that tract of land conveyed by deed recorded as Document No. 2020-031359, together with a portion of that tract of land conveyed by deed recorded as Document No. 2017-059990, also being a portion of Block 1, "STREIB'S FIRST ADDITION", and other land, located in the northwest one-quarter of Section 36, Township 1 South, Range 1 East, of the Willamette Meridian, City of Milwaukie, County of Clackamas, State of Oregon, being more particularly described as follows:

[Verbatim Original Description from Document No. 2020-031359]

A tract of land located partition in Block 1, STREIB'S FIRST ADDITION TO MILWAUKIE, as the same is recorded on Book 8, Page 20, Record of Townplats for Clackamas County, Oregon, and partly in the Lot Whitcomb Donation Land Claim No. 38 in Township 1 South, Range 1 East of the Willamette Meridian, in the City of Milwaukie, Clackamas County, Oregon, being more particularly described as follows: Beginning at a point in the Southwesterly boundary of said Block 1 that is South 9°09' East 208.70 feet distant from the most Westerly corner of said block; from said beginning point, thence, continuing along the Southwesterly boundary of said Block 1, 128.58 feet to the most Southerly corner thereof; thence continuing South 9°09' East, 85.27 feet to the most Westerly corner of that tract of land described in that certain conveyance from Philip and Karolina Streib to the Town of Milwaukie and recorded on July 9, 1930, in Book 208, Page 38, Record of Deeds for Clackamas County, Oregon, which point is also North 09°09' West 14.00 feet distance from the Southeast corner of Block 3, LEWELLING PARK, as the same is recorded in Book 7, Page 14, said Record of Townplats; thence Northeasterly, along a curve to the left having a radius of 183.6 feet, a distance of 96.00 feet to a point that bears South 1°51' East 6.00 feet distant from the Southeast corner of said Block 1, STREIB'S FIRST ADDITION (said last mentioned curve to the left also being the Northwesterly boundary of the aforesaid Town of Milwaukie Tract); thence North 1°51' West 6.00 feet to the Southeast corner of said Block 1, STREIB'S FIRST ADDITION; thence following the Southeasterly boundary of said Block 1, Northeasterly along a 102.30 foot radius curve to the right, through a central angle of 30°01', a distance of 102.70 feet for an end of curve; thence, tangent North 28°10' East 19.94 feet to a ½ inch iron pipe;

thence North 89°20 West 102.71 feet to the place of beginning of the tract herein described.

TOGETHER WITH THE FOLLOWING:

A Tract of land being a portion of Block 1, "STREIB'S FIRST ADDITION", located in the northwest one-quarter of Section 36, Township 1 South, Range 1 East, of the Willamette Meridian, City of Milwaukie, County of Clackamas, State of Oregon, being more particularly described as follows:

BEGINNING at a 5/8" iron rod with a red plastic cap marked "Centerline Concepts" on the south line of that Tract of land described in Deed recorded as Document No. 2017-059990, Clackamas County Deed Records, being South 89°52'45" West, 7.19 feet from the southeast corner thereof; thence along the north line of that Tract of land described in Deed recorded as Document No. 2020-031359, Clackamas County Deed Records, South 89°52'45" West, 63.39 feet to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence leaving said north line, North 00°07'15" West, 5.25 feet to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence South 82°25'24" East, 14.94 feet to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence South 84°50'15" East, 7.46 feet to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence North 64°52'41" East, 10.49 feet to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence North 88°44'26" East, 14.76 feet to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence along the arc of a 30.00 foot radius curve to the right, through a central angle of 22°37'04", an arc length of 11.84 feet (chord of which bears South 79°57'02" East, 11.77 feet) to a to a 5/8" iron rod with a red plastic cap marked "Centerline Concepts"; thence along the arc of a 9.50 foot radius curve to the right, through a central angle of 46°05'03", an arc length of 7.64 feet (chord of which bears South 45°35'58" East, 7.44 feet) to the **POINT OF BEGINNING**.

Contains 330 square feet, more or less.

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LAND SURVEYOR

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OREGON
JULY 13, 2004
TOBY G. BOLDEN
63277LS

RENEWS: 31 DEC 21



MILWAUKIE PLANNING
 6101 SE Johnson Creek Blvd
 Milwaukie OR 97206
 503.786.7600
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PREAPPLICATION CONFERENCE WAIVER

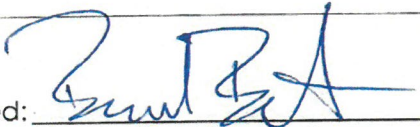
I/We, David Benjamin Henzel (print), as applicant(s)/property owner(s) of 2215 SE Harrison Street, Milwaukie 97222 (address of property), request to waive the requirement for a preapplication conference for the submission of a **Type II** III / IV / V (circle one) land use application per MMC Subsection 19.1002.2 Applicability.

Please provide an explanation for the waiver request:

MMC Section 19.1002 Preapplication Conference is provided on the reverse

I feel that the lot line adjustment is fairly straightforward and non-controversial. The lot line adjustment simply resolves a concern regarding the encroachment of improvements on my property to the neighbor's property, without permitting any new or additional development. The lot line adjustment is designed to preserve mature vegetation and a stacked rock wall.

A preapplication conference likely would not benefit the applicant given the straightforward nature of this land use application and the fact that the applicant has addressed approval criteria in the application already.

Signed: 
 Applicant/Property Owner

Approved: _____
 Planning Director



CITY OF MILWAUKIE

To: Planning Commission
Through: Laura Weigel, Planning Manager
From: Vera Kalias, Senior Planner
Date: October 19, 2021, for October 26, 2021, Public hearing
Subject: File #ZA-2021-002 – Proposed Code Amendments: Middle Housing, Residential Parking, and Tree Preservation – Hearing #2

ACTION REQUESTED

Open the continued public hearing for land use file #ZA-2021-002. Discuss the proposed amendments to the Milwaukie Municipal Code (MMC) Title 19 (Zoning), Title 17 (Land Division), Zoning map, Comprehensive Plan, and Comprehensive Plan Land Use map, take public testimony, and provide direction to staff regarding any desired revisions to the proposed amendments.

Discussion about the comments made during the October 12, 2021 public hearing is the focus of this hearing.

The requested action this evening is that the Planning Commission continue the hearing to November 9, 2021 where the focus will be the proposed Tree Code and a final recommendation to City Council.

BACKGROUND INFORMATION

Please review the staff report from the [October 12, 2021 public hearing](#) for the background information on this project.

Through these updates to the City's zoning code, the following policy mandates are addressed:

- Increasing the supply of middle and attainable housing, and providing equitable access and housing choice for all
- Increasing the tree canopy and preserving existing trees to support the City's goal of a 40% tree canopy
- Managing parking to enable middle housing and protect trees

DISCUSSION ITEMS FROM OCTOBER 12 PUBLIC HEARING

Allow flag lots and back lots in subdivisions

Significant changes to flag lot development standards were enacted in 2002, in an effort to discourage their development, including:

- Increased width of accessway from 20 feet to 25 feet
- 2-lot limitation on the number of flag lots that can be created from a parent parcel
- Prohibited flag lots in subdivisions
- Increased front, rear, and side yard setback requirements
- Prohibited variances of lot area, lot width, and lot depth
- New driveway design standards
- Improved landscaping requirements to help protect neighboring properties
- New provision requiring houses to be oriented to the street

The reason for these amendments was described in a 2002 public information release:

For many years the city has struggled with the changes and impacts to neighboring properties created by flag lots. Over the past few years citizens, Neighborhood District Associations, the Planning Commission and City Council have sought means to improve flag lot development and reduce impacts to neighboring properties. In 1998 the Council adopted interim regulations to help meet these concerns. More recently, and with the support and directions from the City Council, Planning Commission, and Neighborhood District Associations, city staff has developed additional changes to help bring codes into line with community values concerning residential development.

The proposed middle housing code amendments view flag lots and back lots as an opportunity for infill development and the proposed changes allow more flexibility in their development. However, the question remains as to whether to allow flag lots and back lots as part of new subdivisions – current code prohibits them.

A current example is the Cereghino Farms subdivision off Lake Rd:



Figure 1. Cereghino Farms back lots

Five back lots were developed as part of the subdivision to increase the number of lots/dwellings in the project. Although flag lots and back lots are typically considered an infill development tool and a source of “hidden density” there could be instances where they are beneficial in the overall lotting pattern of a new development: where the shape of the parent lot would not allow for additional traditional lots.

Does the Planning Commission want to recommend an amendment that would allow flag lots and back lots in new subdivisions? If so, should they be permitted outright or subject to a Type III variance based on development constraints?

Reduce minimum off-street parking for middle housing to 0.5 spaces per dwelling unit

Required off-street parking has been the subject of a lot of discussion during this process, with arguments made both for and against less parking. The proposed code requires 1 off-street parking space per dwelling unit (except for cottage clusters in the high-density zones) and has the following by-right reductions in off-street parking for residential development:

- The total reduction in required parking is increased to 50% for affordable housing units as defined in Subsection 19.605.3.8

- For any multiunit dwelling unit or middle housing dwelling unit that is affordable to households earning equal to or less than 80 percent of the area median income (AMI) as defined by the U.S. Department of Housing and Urban Development, adjusted for household size, and guaranteed affordable for a minimum term of 30 years through restrictive covenant or other similar guarantee, the minimum parking requirement for that unit may be reduced by 25 percent.
- Parking for multifamily multi-unit dwellings and middle housing may be reduced by up to 20% if the development is within 500-ft walking distance, as defined in Subsection 19.605.3.B.2.d, of a transit stop with a peak hour service frequency of 30 minutes or less.
- Parking for all uses except single-family attached and detached dwellings may be reduced by 25% if the development is within 1,000-ft walking distance, as defined in Subsection 19.605.3.B.2.d, of a light rail transit stop, or if it is located in the Downtown Mixed Use Zone DMU.

There are also the following proposed provisions within the parking modification section to expand the ways an applicant could argue for less than the required minimum parking:

- For middle housing, provide occupancy and use data quantifying conditions of the on-street parking system within one block of the middle housing development.
- Identify factors specific to the site, such as the preservation of a priority tree or trees, or planting of new trees to achieve 40% canopy, as identified in MMC 16.32.

The question before the Planning Commission is if the off-street parking requirements for all middle housing should be reduced to 0.5 spaces per unit as the baseline requirement:

Table 19.605.1 Minimum To Maximum Off-Street Parking Requirements		
Use	Minimum Required	Maximum Allowed
A. Residential Uses		
1. Single-family detached dwellings, including rowhouses and manufactured homes.	1 space per dwelling unit.	No maximum.
2. <u>Multi-Unit Dwellings</u> a. Dwelling units with 800 sq ft of floor area or less and all units located in the DMU Zone. b. Dwelling units with more than 800 sq ft of floor area.	1 space per dwelling unit. 1.25 spaces per dwelling unit.	2 spaces per dwelling unit. 2 spaces per dwelling unit.
3. <u>Middle Housing</u> a. <u>Duplexes</u> b. <u>Triplexes</u>	<u>0.5 space per dwelling unit</u> <u>0.5 space per dwelling unit</u>	<u>1 space per dwelling unit</u> <u>1 space per dwelling unit</u>

c. Quadplexes d. Town Houses e. Cottage Clusters	0.5 space per dwelling unit 0.5 space per dwelling unit 0.5 space per dwelling unit	1 space per dwelling unit 1 space per dwelling unit 1 space per dwelling unit
3 4. Residential homes and similar facilities allowed by right in residential zones.	1 space per dwelling unit plus 1 space per employee on the largest shift.	Minimum required parking plus 1 space per bedroom.
4. 5. Accessory dwelling units (ADU)—Types I and II.	No additional space required unless used as a vacation rental, which requires 1 space per rental unit	No maximum.

On-street parking spaces would mitigate the loss of on-site spaces – current code would require frontage improvements for the addition of new dwelling units, so the right-of-way would be improved to provide on-street parking as determined by the Public Works Standards. The code would not preclude the construction of more off-street parking but would require fewer spaces.

Does the Commission wish to reduce the minimum requirements to 0.5 spaces per dwelling for middle housing? If so, should the proposed by-right reductions remain in place? If so, then the reductions would allow for even less on-site parking. For example, a quadplex of 4 affordable units would be required to provide 1 off-street parking space.

Allow all middle housing types, except cottage clusters, on 3,000 sq ft lots

There appears to be general support from the Planning Commission to further reduce the minimum lot size beyond the lot sizes outlined in HB 2001. This would provide additional opportunity to develop middle housing that could be smaller and thereby, potentially less expensive.

Lot Size	Permitted Housing Types currently	Permitted Housing Types proposed
1,500 sq. ft.	Rowhouse (townhouse)	Rowhouse (townhouse)
3,000 sq. ft. to 4,999 sq. ft.	Detached single dwelling Detached single dwelling + ADU Duplex	Detached single dwelling Detached single dwelling + 2 ADU Duplex Triplex Quadplex

5,000 sq. ft. to 6,999 sq. ft.	Detached single dwelling Detached single dwelling + ADU Duplex	Detached single dwelling Detached single dwelling + 2 ADU Duplex Triplex Quadplex
7,000 sq. ft. and greater	Detached single dwelling Detached single dwelling + ADU Duplex	Detached single dwelling Detached single dwelling + 2 ADU Duplex Triplex Quadplex Cottage Cluster

Given the development and design standards that would apply to this development, it is unlikely that there would be a large number of these small lot, dense developments. However, providing more housing opportunities is part of policy directive from the Comprehensive Plan and this proposal would open up those opportunities.

Additional incentives for income-restricted housing

Research tells us that the way to incentivize income-restricted housing is to reduce the development cost. Programs that provide funding or reduce cost such as reduced SDCs or reduced application fees can help with the bottom line; these are things that the Community Development Department and other city departments are working on. Options are limited within the zoning code, but could include reducing off-street parking requirements (see discussion above) and reducing setbacks.

	Proposed Code	Alternative standards for discussion
Front yard	20 ft	10 ft (note: impacts off-street parking)
Rear yard	15/20 ft	15 ft
Side yard	5/10 ft	5 ft
Street side yard	15/20 ft	10 ft (note: impacts off-street parking)

Reducing minimum setbacks adds flexibility:

- Provides more space on the lot to create one-story buildings, which are important for people who need a one-story home because of preference or limited mobility.

- Allows additional space on the lot that might be needed for triplexes and quadplexes, either because they are larger or oriented differently (such as longer front to back) or want to provide on-site parking and/or open space.
- Creates more lots where it is possible to add new homes without tearing down an existing house.
- Could provide flexibility to preserve trees. Could also mean additional tree removal in some situations.
- Could provide flexibility to allow buildings that respond to different cultural values and practices.

Does the Commission wish to recommend alternative minimum setbacks for income-restricted housing?