



To: Planning Commission

Through: Katie Mangle, Planning Director

From: Susan P. Shanks, Senior Planner

Date: July 6, 2010, for July 13, 2010 Public Hearing

Subject: Files: WQR-10-02 & CSU-10-06

Owner/Applicant: Paul Shirey, Operations Director, for City of Milwaukie

Site Address: 2215 SE Harrison Street (Pond House)

Site Legal Description (Map & Taxlot): 1S1E36BB01600 & 1S1E25CC00900

NDA: Historic Milwaukie

ACTION REQUESTED

Approve applications WQR-10-02 and CSU-10-06 and adopt the recommended Findings and Conditions of Approval found in Attachments 1 and 2. This action would allow the City to replace the rear deck and stairs on the Pond House facility, which extends approximately 2.5 feet over a designated water quality resource (WQR) area, and install a stepping stone path and footings for a bench and artwork in the WQR area buffer.

BACKGROUND INFORMATION

The City purchased the Pond House in 2006 for the purpose of providing additional space for community meetings, cultural and artistic events, and Ledding Library storage needs. The Pond House is directly east of the Ledding Library and southeast of Scott Park. The three sites together provide a unique publicly-owned venue for outdoor music, cultural events, and neighborhood gatherings due to their proximity to Scott Lake and Spring Creek.

The Pond House, including the original rear deck and stairs, were built prior the City's adoption of WQR regulations. Given that the entire site is within a WQR area buffer, the Pond House is considered a legally existing and nonconforming structure. In 2009, the City's Operations Director consulted with the Planning Department about replacing the rear deck and stairs as they were considered unsafe due to age and wear. In general, property owners are allowed to maintain nonconforming structures in reasonable repair, but they are not allowed to expand or significantly alter them without City review and approval.

The Planning Department determined that replacement of the deck and stairs could be approved pursuant to a Type 1 (i.e. administrative) WQR review if the deck and stairs utilized the existing footings, were built in the same location, and remained the same size. Any change in size or location of the deck, stairs, or footings would trigger Minor Quasi-judicial (i.e. Planning Commission) WQR review.

Some of the detail of this determination was lost in translation between the Operations Director, Facilities Maintenance Coordinator, and the contractor that the City employed to replace the deck and stairs. As a result, when the contractor realized that the footings for the original deck were undersized and needed to be larger in order to safely support its replacement, he proceeded to pour new footings without realizing that this additional disturbance in the WQR area required minor quasi-judicial review and approval. Once this oversight was discovered, the City stopped all work on the replacement deck and stairs and submitted the appropriate land use applications for review.

A. Site and Vicinity

The site is located at 2215 SE Harrison, Milwaukie, OR 97222, which is within the Historic Milwaukie neighborhood at the intersection of 23rd Ave and Harrison St. The site is approximately 11,651 sq ft in size and contains a single structure that is a former single-family residential dwelling. The building was used as an office for several years prior to being purchased by the City. Refer to the aerial photo on the next page for more detail.

The western half of the site contains a designated WQR in the form of a manmade pond known as Scott Lake. This pond is part of the Spring Creek waterway. It is located south and west of the creek and is separated from the creek by a concrete wall that serves as a walkway during low flow periods. Spring Creek itself is piped underneath the front yard of the Pond House and is discharged through a small building just downstream of the wall. Drainage into the pond is from its topographic and engineered catchment bounded on the east and south by Harrison St and on the west by the sloped bank behind the Ledding Library. Drainage into the pond also occurs from the municipal storm sewer system through an outfall that is 50 ft south of the Pond House.

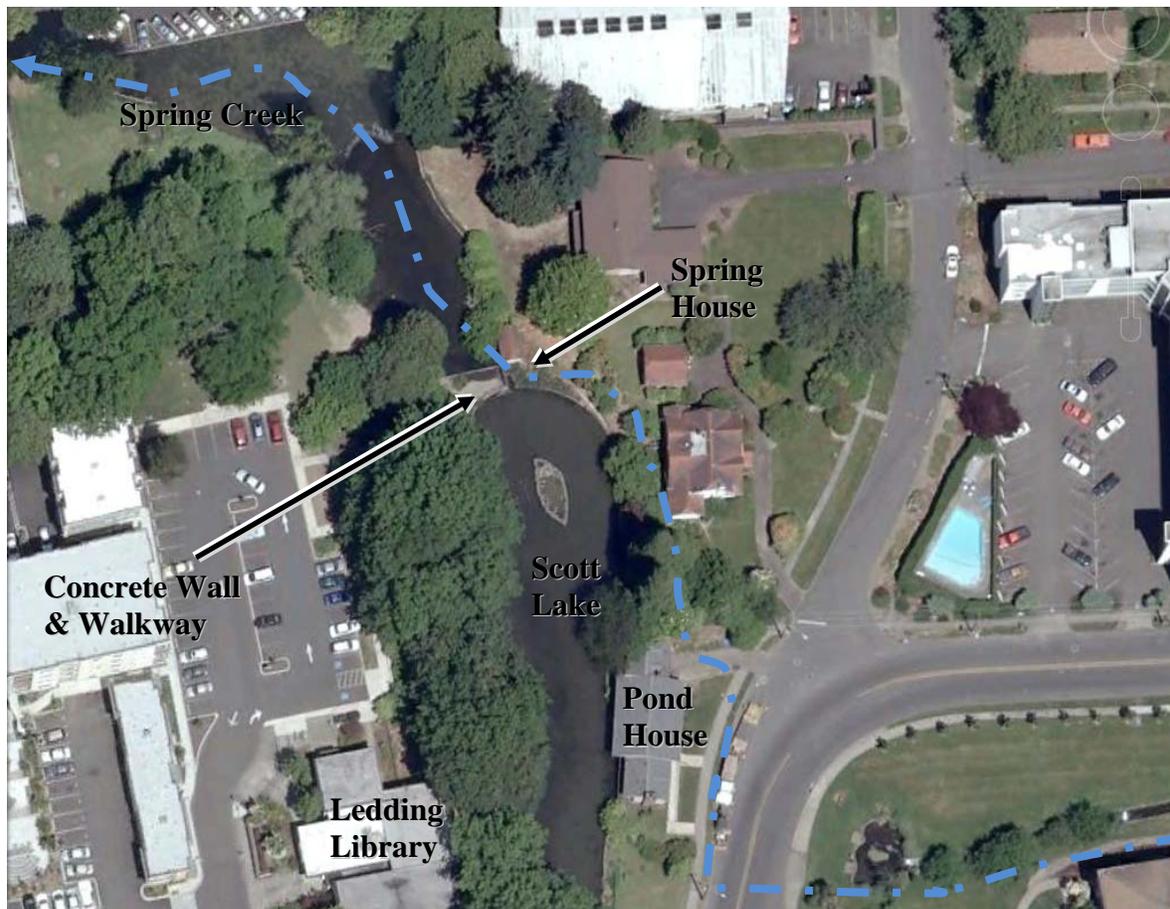
The surrounding area consists of a mix of uses consistent with Residential-Business-Office (R-1-B) and Downtown Storefront (DS) zoning. The Portland Waldorf School is directly across the street from the site to the east and south.

B. Zoning Designation

The site is zoned Residential-Business Office-Commercial (R-1-B) and a WQR overlay zone covers the entire site. The overlay zone includes the designated water quality resource and a buffer area to protect the resource. The site contains some regionally-designated Habitat Conservation Area (HCA), but the WQR and its more restrictive policies override the HCA designation.

C. Comprehensive Plan Designation

The site has a land use designation of Town Center (TC).



Aerial Photograph dated June 19, 2008, showing Scott Lake (i.e. the pond) and concrete wall and walkway in relation to approximate course of Spring Creek. Note that the creek is fully piped from the small pond in the lower right hand corner to the Spring House in the middle of the photograph. Spring Creek flows from right to left. *Source: Photo and text from Applicant's materials.*

D. Land Use History

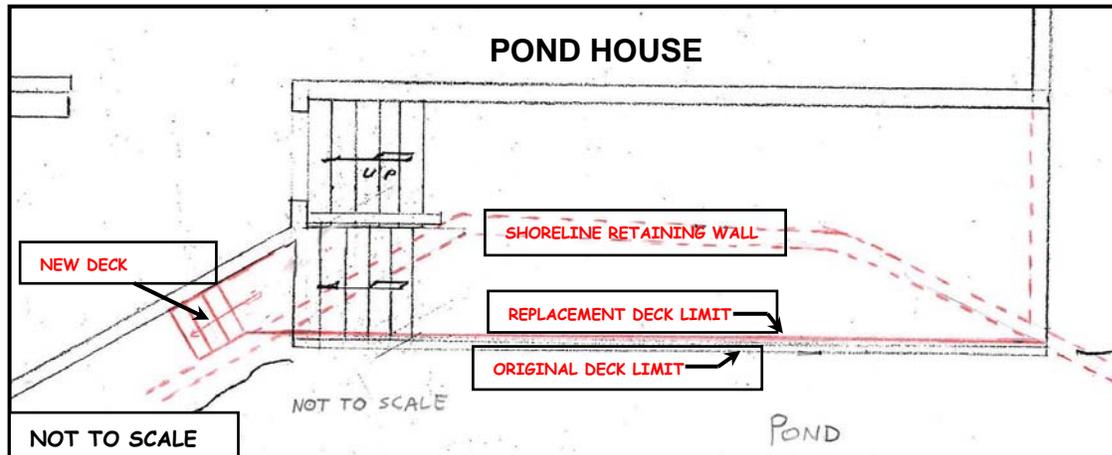
January 2009: Planning Commission approved land use applications CSU-08-05 and TPR-08-05 to establish a new community service use (CSU) that allows for several community-based retail activities at this location, including a yearly plant sale, several garage sales, and a small book store in the former garage area of the house. The book store is run by volunteers from Friends of the Ledding Library, and its proceeds support Ledding Library activities.

There are no other known land use approvals for this site. The site's previous owner used the structure as a dental office, a use that was outright allowed in the R-1-B zone.

E. Proposal

The Applicant's proposal has two components. The first involves the replacement of the deck and stairs that were removed from the rear of the Pond House in early 2009. The deck and stairs were removed because they were no longer safe to use due to age and wear. The proposed deck is approximately 0.5 feet narrower than the previous deck, resulting in a decrease in deck area of 11 sq ft, but it is slightly longer to accommodate a reconfigured stair landing on the northern end, resulting in an increase in deck/stair area of 21 sq ft, for a total surface area increase of 10 sq ft. The reconfigured stairs allow the deck to remain roughly the same size and keeps the outside edge of the stairs parallel to the foundation wall. Upon removal of the old deck

it was determined that the original footings were not large enough to adequately support a replacement deck. Consequently, the proposal also includes an increase of 8.6 sq ft of impervious surface (in the form of concrete footings) in the WQR area buffer to meet building code requirements.



Source: Applicant's materials.

The purpose of the replacement deck and stairs are to provide a second egress from the Pond House main common area and to allow for the public's enjoyment of Scott Lake and the adjacent natural areas across the pond at Ledding Library and Scott Park.

The second aspect of the Applicant's proposal involves a landscaping plan to replace some of the existing front lawn and weedy shrub/lawn areas to the south of the building with shrubs and trees that will improve shading, visual interest, and water holding capacity. The proposed plant list includes Pacific NW native plants and others that are well adapted to the existing site conditions. The proposal also includes the addition of new impervious surface in the form of stepping stones and footings for a bench and artwork, for a total of approximately 39 sq ft of additional impervious area in the WQR area buffer. **The landscape plantings are allowed outright. It is the addition of new impervious surface that requires WQR land use review.**

The Applicant describes the proposal as follows:

"The proposed plants and materials have all been chosen with the understanding of the sensitivity of the stream side location, the limited city maintenance resources available, and the Library's desire to make the Pond House a "show case" for Milwaukie. The proposed landscape improvements will more than make up for the proposed disturbances/new impervious areas by improving the water holding capacity of the landscape and by making the site more enjoyable for Pond House visitors."

The purpose of these landscaping improvements is to beautify the site with plantings and artwork, partially restore it to a more natural state given its proximity to a WQR area, and allow for the public's enjoyment of the site through the provision of a bench, art, and stepping stones down to the lower lawn area.

The proposal requires approval of the following two applications:

1. WQR-10-02
2. CSU-10-06

KEY ISSUES

Summary

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

- A. Are the proposed improvements consistent with the City's water quality resource regulations?
- B. Do the proposed improvements meet the applicable approval criteria, and are they appropriate for the approved community service use?

Analysis

A. Are the proposed improvements consistent with the City's water quality resource regulations?

Planning staff believes the proposed improvements are consistent with the City's water quality resource regulations. All required documentation and analysis was submitted and best management practices will be utilized during the construction process to minimize impacts to the WQR area.

The proposed impacts to the WQR area are relatively minor in nature and consist of the addition of approximately 9 sq ft of new impervious surface in the form of two larger footings for the replacement deck and stairs, and 39 sq ft of new impervious surface in the form of three new footings for a bench and artwork, and a path of stepping stones. No reasonably practicable alternative design exists that would not disturb the WQR area due to the fact that the entire site is within the WQR area. The area that would be disturbed by the proposed replacement deck is currently unvegetated, as it was fully shaded by the original deck and will be shaded by the replacement deck. This constitutes a "Degraded Existing Vegetated Corridor" per MMC Table 19.322.9.E. The area that would be disturbed by the proposed landscape improvements also constitutes a "Degraded Existing Vegetated Corridor," as it consists mostly of turf lawn with some weedy shrub areas.

One alternative considered by the Applicant was to not replace the deck and stairs. The Pond House, however, was designed with a rear egress to a deck and stairs. This rear egress is the only other egress from the main common area besides the front door. An occupant load of 49 would trigger a requirement for a second egress. The current occupant load for the Pond House is 45. Even though a second egress is not required, the Applicant believes that it is prudent to maintain a second egress at this location. Moreover, a replacement deck and stairs at this location would require less disturbance in the WQR area than stairs alone because additional stairs would be needed to cross over the second retaining wall that extends from the southwest corner of the house to the shoreline wall.

Staff believes that the proposed locations for the bench, artwork, and stepping stones are appropriate for the site's approved uses and are sensitive to the adjacent WQR area. The 39 sq ft of impervious area proposed as part of the landscape improvements is dispersed over the site in three locations, with no one impervious area larger than four square feet. The bench and artwork are located away from the WQR area and take advantage of the site's existing development in order to minimize impacts. The stepping stone path to the lower lawn allows for enjoyment of the area while simultaneously minimizing impacts to the WQR area through the use of native rock, instead of a solid concrete path, and the use of mulch and plantings along the pathway to capture stormwater runoff and improve water absorption.

The proposal does not include revegetation of the area that would be directly impacted by the proposed replacement deck. The proposed deck would completely shade the ground beneath it, making it unsuitable for planting. The area on either side of the proposed replacement deck would also not be suitable for planting given its narrowness and proximity to the shoreline wall and house foundation. Staff believes that any plantings in these areas would require some form of maintenance, which could result in more disturbance than benefit to the WQR area, and plantings that close to a retaining wall and house foundation may eventually cause root damage. On the other hand, the proposed replacement deck would provide the same water quality benefit to Scott Lake as the original deck (in the form of shading) and the proposal includes landscaping improvements that could be used to mitigate for the impacts of the proposed replacement deck.

The proposed Landscaping Plan (see Attachment 3) calls for the replacement of approximately 175 sq ft of turf lawn with native and nonnuisance plantings on the east side of the building and approximately 350 sq ft of weeds, bark mulch, and grass with native and non-nuisance plantings on the south side of the building. The Engineering Department has indicated that most of the proposed plants are appropriate for use in water quality facilities, which means that the proposed landscaping improvements would help to clean the site's stormwater runoff before entering Scott Lake and Spring Creek (see Attachment 4).

Given the minor nature of the impacts that would result from this project (i.e. 48 sq ft of new impervious surface and 10 sq ft of new pervious surface) relative to the proposed improvements (i.e. 525 sq ft of native and nonnuisance landscaping), staff believes that the proposed plantings mitigate for the short-term disturbance and long-term impacts caused by the proposed deck and stairs, stepping stone path, and footings for a bench and artwork.

B. Do the proposed improvements meet the applicable approval criteria and are they appropriate for the approved community service use?

The Planning Director determined that the proposed improvements constitute a minor physical modification to the Pond House site, an existing community service use (CSU). A minor modification of an existing CSU is normally a staff level decision when not being processed with a minor quasi-judicial application. Minor modification approval criteria require that the Applicant demonstrate that the proposal will:

- Not intensify the use.
No additional uses and no increase in the frequency or length of existing uses are proposed, and the replacement of the deck will not alter the occupancy load for the building. The Pond House facility will continue to operate within the bounds of its original 2009 CSU approval.
- Meet the standards of the underlying zone.
The proposed improvements meet the standards of the R-1-B Zone.
- Not result in the deterioration or loss of a protected natural feature.
All impacts to the WQR area and buffer can be mitigated.
- Not negatively affect nearby properties.
Neighboring properties are over 100 ft away and include other public and private facilities on large sites, e.g. Ledding Library and Portland Waldorf School. As a result, no adverse impacts to neighboring properties from noise or light are anticipated.
- Not alter or contravene previous land use approvals issued by the Planning Commission or City Council.
The site's only land use approval occurred in 2008. The proposal does not alter or contravene any of the site's 2008 conditions of approval.
- Not cause any public facility to fail.

The only public facility that the proposed improvements could impact is the City's storm system, which utilizes Scott Lake and Spring Creek for drainage. Stormwater runoff from the proposed improvements is minimal and will not negatively affect any public stormwater facility on or near the site.

Staff believes that the proposal meets the applicable approval criteria. Staff also believes that the proposed low-impact improvements are appropriate for this location and for the approved community service use. The Pond House is a City-owned facility that is used for small community meetings, cultural events, and community-based retail activities. Staff believes that it is appropriate to maintain the second egress from the rear of the house for safety reasons. While not required by the Building Code, a second egress would provide a second way for the public to exit the main common area in case of emergency. The deck would also enable the public to enjoy the site's unique natural setting. Staff also believes that it is appropriate to allow the installation of a stepping stone path down to the lower lawn area and a bench and artwork at the front of the house. These improvements would serve to make the site more aesthetically appealing for Pond House visitors and generally support its purpose as a community facility. Replacement of the deck would also reinforce the building's relationship to the library across the pond.

CONCLUSIONS

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

1. Approve applications WQR-10-02 and CSU-10-06. This action would allow the City to replace the rear deck and stairs on the Pond House facility and install a stepping stone path and footings for a bench and artwork in the WQR area buffer.
2. Adopt the attached Findings and Conditions of Approval.

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

- Site improvements shall be in substantial conformance with the mitigation, construction, and landscaping plans approved by this action, which are the plans stamped received by the City on May 28, 2010.

CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Zoning Ordinance, which is Title 19 of the Milwaukie Municipal Code (MMC).

- Section 19.307 R-1-B Zone
- Section 19.321 Community Service Use
- Section 19.322 Water Quality Resource Regulations
- Section 19.402 Accessory Structures and Uses
- Subsection 19.1011.3 Minor Quasi-Judicial Review

This application is subject to minor quasi-judicial review, which requires the Planning Commission to consider whether the Applicant has demonstrated compliance with the code sections shown above. In quasi-judicial 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 with the recommended Findings and Conditions of Approval.
- B. Approve the application with modified Findings and Conditions of Approval. Any modifications need to be read into the record. If the deck replacement element of the application is denied, staff recommends that the Planning Commission add a condition of approval that requires the Applicant to mitigate for the enlarged footings that have already been installed. The proposed landscaping improvements may serve as mitigation.
- 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 September 25, 2010, in accordance with the Oregon Revised Statutes and the Code. The Applicant can waive the time period in which the application must be decided.

COMMENTS

The proposal was referred to the following departments and associations on June 4, 2010: City of Milwaukie Engineering and Building Departments and Historic Milwaukie Neighborhood District Association. The following is a summary of the comments received by the City. See Attachment 4 for further details.

- **Brad Albert, Civil Engineer, City of Milwaukie:** Indicated that the proposed plantings will improve water quality in Spring Creek.
- **Tom Larsen, Building Official, City of Milwaukie:** Indicated that new and larger footings are necessary for a replacement deck at this location.

ATTACHMENTS

Attachments are provided only to the Planning Commission unless noted as being attached. All material is available for viewing upon request.

1. Recommended Findings in Support of Approval (attached)
2. Recommended Conditions of Approval (attached)
3. Applicant's Application Materials dated May 28, 2010 (attached)
4. Comments Received
5. Exhibits List

ATTACHMENT 1
Recommended Findings in Support of Approval
Casefile # WQR-10-02 & CSU-10-06
(Pond House Deck and Landscaping Proposal)

1. The applicant, Paul Shirey, City of Milwaukie Operations Director, submitted the appropriate land use applications to replace the rear deck and stairs on the Pond House facility and install a stepping stone path and footings for a bench and artwork in the Pond House yard. The proposed replacement deck, as compared to the original deck, will utilize slightly larger deck footings and relocate the deck stairs a few feet to the north, increasing the total surface area of the deck and stairs in the WQR buffer by approximately 10 sq ft. The proposed stepping stone path and bench and artwork footings will add approximately 39 sq ft of new impervious surfaces in the WQR area buffer. Land use review is required because the proposal will disturb the WQR area and buffer and constitutes a physical change to an existing community service use (CSU). The Pond House is a City-owned facility located at 2215 SE Harrison Street. The land use applications are WQR-10-02 and CSU-10-06.
2. The site is zoned Residential-Business Office-Commercial (R-1-B). A WQR overlay zone covers the entire site due to the presence of Scott Lake, a manmade pond that is part of the Spring Creek waterway.
3. The City purchased the Pond House in 2006 for the purpose of providing additional space for community meetings, cultural and artistic events, and Ledding Library storage needs. The Pond House is directly east of the Ledding Library and southeast of Scott Park. The three sites together provide a unique publicly-owned venue for outdoor music, cultural events, and neighborhood gatherings due to their proximity to Scott Lake and Spring Creek. Planning Commission approved land use applications CSU-08-05 and TPR-08-05 establishing a new CSU at the Pond House that allows for several community-based retail activities at this location, including a yearly plant sale, several garage sales, and a small book store in the former garage area of the house.
4. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC or the Code):
 - Section 19.307 R-1-B Zone
 - Section 19.321 Community Service Use
 - Section 19.322 Water Quality Resource Regulations
 - Section 19.402 Accessory Structures and Uses
 - Subsection 19.1011.3 Minor Quasi-Judicial Review
5. Sections of the Milwaukie Municipal Code not addressed in these findings are found to be not applicable to the decision on this application.
6. Public notice has been provided in accordance with MMC Subsection 19.1011.3 Minor Quasi-Judicial Review. A public hearing was held on July 13, 2010, as required by law.
7. MMC Subsection 19.307.3 contains applicable R-1-B Zone development standards

- A. A front yard and rear yard shall be at least 15 feet. A side yard shall be at least 5 feet, and there shall be 1 additional foot of side yard for each 3 feet of height over 2 stories or 25 feet, whichever is less, except on corner lots a side yard shall be at least 15 feet on the side abutting the street.

The proposed replacement deck will be attached to the primary structure and is therefore considered part of the primary structure for yard requirement purposes. As proposed, it will be located in the rear yard, approximately 25 ft from the rear property line and 70 ft from the side property line. The proposed stepping stones will not be attached to the house, will not be above 18 inches in height, and will not have a fixed base. As a result, they are not subject to yard requirements. The proposed bench and artwork are also not proposed to be attached to the primary structure, but they will have fixed bases in the form of footings. As a result, they are considered accessory structures and are subject to different yard requirements that are discussed under Finding 8 below. This standard is met.

- B. Maximum area that may be covered by the principal structure and accessory buildings shall not exceed 50% of the total area of the lot. Minimum area that must be left or planted in trees, grass, shrubs, etc., shall be 15% of the total area of the lot.

The site is approximately 11,651 sq ft in area. The house covers 2275 sq ft, or 19% of the lot. The proposed replacement deck and stairs will bring the lot coverage up to 20%, which is below the maximum lot coverage allowance of 50%. Sidewalks, including an accessible ramp, and the former driveway area and rock walls cover an additional 1056 sq ft. The proposed impervious landscape improvements cover an additional 39 sq ft. As proposed, the deck and landscape improvements will reduce the vegetated area on the lot to 70%; this exceeds the minimum vegetation requirement of 15%. This standard is met.

The Planning Commission finds that the applicable development standards of the R-1-B zone are met.

8. MMC 19.402.1.D contains the City's applicable accessory structure standards.

- A. Accessory structures excluding fences, pergolas, arbors, or trellises may not be located within the required front yard except as otherwise permitted in this chapter.

The proposed bench and artwork will be located in the required front yard area. This is in large part because the subject lot is wide but not very deep, as it is bounded on the east by Harrison St and on the west by Scott Lake. The house, which was built in 1950, was located as close as possible to Scott Lake and has a relatively small footprint, but, even so, the site has a very limited front yard area. The proposed bench and artwork are technically considered accessory structures because they have fixed bases in the form of footings. Neither object has to have a fixed base, but a fixed base is being proposed to prevent theft, to provide a stable base that will allow for safe public use, and to maintain the life of the objects by avoiding direct contact with the ground. The Planning Commission finds that the proposed bench and artwork are similar in nature to pergolas, arbors, and trellises in that they are small in size and overall mass. They also serve similar purposes in that they augment and support the landscaping experience, not the uses inside the primary structure. As a result, the Planning Commission finds that the proposed bench and artwork may be located in the front yard of the Pond House.

The Planning Commission finds that the proposed bench and artwork are similar in nature to pergolas, arbors, and trellises and are therefore exempt from the front yard requirement for accessory structures.

9. MMC Subsection 19.321.6.C contains criteria for approving minor modifications to existing community service uses (CSU).

A. Does not increase the intensity of any use.

No additional uses and no increase in the frequency or length of existing uses are proposed, and the replacement of the deck will not alter the occupancy load for the building. The Pond House facility will continue to operate within the bounds of its original 2009 CSU approval. This criterion is met.

B. Meets all requirements of the underlying zone relating to building size and location and off-street parking and the standards of Title 19.

The proposed improvements meet all relevant requirements of the underlying R-1-B zone as described in Finding 7 above. The only applicable standard pertaining to accessory structures is discussed in Finding 8 above. The only applicable CSU development standard is contained in MMC Subsection 19.321.12.C, which requires that setbacks be equal to a minimum of two-thirds the height of the principal structure. The principal structure is a 1-1/2-story house that is approximately 20 ft tall as measured to the midpoint of the roof. The proposed replacement deck will be more than 20 ft away from both the side and rear property lines. This criterion is met.

C. Does not result in deterioration or loss of any protected natural feature or open space, and does not negatively affect nearby properties.

Impacts of the proposed replacement deck, stairs, and landscape improvements on the adjacent WQR area are discussed in Findings 10, 11, and 12 below. As proposed, the replacement deck will be attached to the back of the Pond House and overlook Scott Lake, which is directly across the water from the back side of Ledding Library. The deck will be over 100 ft away from all of its neighbors. Consequently, the minor change to the deck footings and stairs will not negatively affect nearby properties. Moreover, since there is no anticipated change in use, there will be no additional noise or light impacts from the either the deck replacement or the landscape improvements. This criterion is met.

D. Does not alter or contravene any conditions specifically placed on the development by the Planning Commission or City Council.

The only land use approval granted by the Planning Commission for this site occurred in January 2009. (See land use files CSU-08-05 and TPR-08-05.) The proposed replacement deck and landscape improvements will not alter or contravene any conditions contained in this approval. The proposal includes installation of a more permanent enclosure to screen the trash and recycling containers, a condition of the CSU-08-05 approval. This criterion is met.

E. Does not cause any public facility, including transportation, water, sewer and storm drainage, to fail to meet any applicable standards relating to adequacy of the public facility.

The only public facility that the proposed improvements could impact is the City's storm system, which utilizes Scott Lake and Spring Creek for drainage. The proposed

replacement deck will be roughly the same size and configuration as the original deck. Consequently, drainage patterns will be roughly the same as before. Rainfall which would naturally go to Scott Lake will land on the inert deck surface or the coated/encased supporting structure before dripping into the lake, and rainfall which falls beyond the Pond House roofline but behind the retaining wall will drain to the backfill rock. The 39 sq ft of impervious area proposed as part of the landscape improvements will be dispersed over the site in three locations, with no one impervious area larger than four square feet. Storm water runoff from these small impervious areas will be minimal and will be managed by surrounding vegetated areas. Runoff will not affect any public facility on or near the site, and the proposed plantings will improve the site's water holding capacity and Scott Lake's water quality. This criterion is met.

The Planning Commission finds that the minor modification approval criteria are met.

10. MMC Section 19.322 contains the City's water quality resource (WQR) regulations. WQR regulations apply to all properties containing protected water features as shown on the City's adopted WQR maps. It is not the intent of these regulations to:

- Impose any obligation on property owners for the restoration of existing developed sites to predevelopment or natural condition. *The Pond House property is an existing developed site.*
- Impose any hardship or limitation against the continued maintenance of existing legal site conditions. Conditions legally existing as of December 17, 2002 that are inconsistent with this chapter are considered legal nonconforming situations. *Per the County Assessor records, the Pond House was built in 1950. As such, it is considered a legal nonconforming situation.*

Per MMC Subsection 19.322.7.G, additions, alterations, rehabilitation, or replacement of existing structures and development that increase the structural footprint or disturbed area within the WQR area requires minor quasi-judicial review by the Planning Commission. The July 13 Planning Commission hearing fulfills this requirement.

11. MMC Subsection 19.322.9 contains application requirements for minor quasi-judicial review.

The Planning Commission finds that the Applicant submitted all required information and that the alternatives analysis and mitigation plan are acceptable. An overview and discussion of key points is provided below:

- There are no wetlands in the area of the proposed improvements.
- The elevation of ordinary high water is 0.36 ft below the top of the concrete retaining wall behind the building. Therefore, all proposed work will be performed above the ordinary high water mark.
- The area that will be disturbed by the proposed replacement deck and stairs is currently unvegetated, as it was fully shaded by the original deck and will be shaded by the replacement deck. This constitutes a "Degraded Existing Vegetated Corridor" per MMC Table 19. 322.9.E.
- The area that will be disturbed by the proposed landscape improvements also constitutes a "Degraded Existing Vegetated Corridor," as it consists mostly of turf lawn with some weedy shrub areas.

- The original deck provided shading of surface waters. Because surface tributary waters to Johnson Creek, such as Spring Creek, are subject to a temperature Total Maximum Daily Load by Oregon Department of Environmental Quality, any shading is considered useful. However, shading by either the original or replacement decks is minimal compared to the unshaded surface area of Scott Lake and is not expected to produce a measurable positive impact on water quality.

For the proposed replacement deck, the applicant shall demonstrate that:

- A. No reasonably practicable alternative design or method of development exists that would have a lesser impact on the Water Quality Resource Area than the one proposed.

No reasonably practicable alternative design exists that will not disturb the WQR area due to the fact that the entire site is within the WQR area. The Pond House building is a legally existing and nonconforming structure that was designed with a rear egress to a deck. This rear egress is the only other egress from the main common area besides the front door. To retrofit the back egress with stairs alone would necessitate even more disturbance in the WQR area because additional stairs would be needed to cross over the second retaining wall that extends from the southwest corner of the house to the shoreline wall. The proposed replacement deck maintains the second egress with slight modifications to the footings and deck configuration that will result in a safer deck and minimal impacts to the WQR area.

- B. If no such reasonably practicable alternative design or method of development exists, the project should be conditioned to limit its disturbance and impact on the Water Quality Resource Area to the minimum extent necessary to achieve the proposed addition, alteration, restoration, replacement, or rehabilitation.

The proposed deck will be approximately 0.5 feet narrower than the original deck, for a total decrease in deck area of 11 sq ft, but will be slightly longer to accommodate a reconfigured stair landing on the northern end. The reconfigured stairs will allow the deck to remain roughly the same size and will keep the outside edge of the stairs parallel to the foundation wall. Upon removal of the original deck it was determined that the original footings were not large enough to adequately support a replacement deck. Consequently, the proposal also includes an increase of 8.6 sq ft of impervious surface (in the form of concrete footings) in the WQR area buffer to meet building code requirements. The proposed footings are the minimum size necessary to accommodate the replacement deck.

The adverse impacts caused by replacement of the deck with one nearly identical in size and dimension are: (1) the potential for spilling concrete or construction debris into the pond, and (2) the leaching of pentachlorophenol into the pond. Suitable construction-phase best management practices for control of cement and other solid waste and encapsulation of portions of pressure-treated lumber so as to prevent leaching will be employed to minimize water quality impacts to the pond. Hand construction and limited access to the site will also be employed to minimize adverse site impacts.

All work will occur above ordinary high water during the in-water work period of July 15-August 31, 2010.

- C. Provide mitigation to ensure that impacts to the functions and values of the Water Quality Resource Area will be mitigated or restored to the extent practicable.

Due to the existing site conditions there is no net benefit to revegetating the area in the immediate vicinity of the proposed replacement deck. The deck will completely shade

the ground beneath it, making it unsuitable for planting. The area on either side of the proposed replacement deck is also not suitable for planting given its narrowness and proximity to the shoreline wall and house foundation. Any plantings in these areas will require some form of maintenance, which could result in more disturbance than benefit to the WQR area, and plantings that close to a retaining wall and house foundation may eventually cause root damage. On the other hand, the proposed replacement deck will provide the same water quality benefit to Scott Lake in the form of shading as was provided by the original deck.

There are other opportunities on the site that are within the WQR area buffer that are suitable for planting. As conditioned, the impacts to the WQR area will be proportionally mitigated.

For the proposed landscape improvements, including new impervious areas in the form of stepping stones and footings for a bench and artwork, the applicant shall demonstrate that:

- D. No practicable alternatives to the requested development exist that will not disturb the Water Quality Resource Area.

No practicable alternatives to the requested development exist that will not disturb the WQR area due to the fact that the entire site is within the WQR area. The adverse impacts created by the addition of 39 sq ft of new impervious surface is limited to a negligible amount of localized stormwater runoff which can be readily absorbed and cleaned before entering Scott Lake. None of the improvements will result in direct stormwater discharge to Scott Lake.

- E. Development in the Water Quality Resource Area has been limited to the area necessary to allow for the proposed use.

Development in the WQR area has been limited to the area necessary to allow for the proposed improvements. The proposed footings for the bench and artwork will be small in size, totaling approximately 5 sq ft, and will be located near existing concrete areas. The bench will utilize the existing concrete walkway to support the front legs, and individual footings will be used to support the rear legs instead of a single large concrete slab.

The stepping stone path to the lower lawn area will allow for enjoyment of the WQR area while simultaneously minimizing impacts to the area through the use of native rock, instead of a solid concrete path, and the use of mulch and plantings along the pathway to capture stormwater runoff and improve water absorption.

- F. The Water Quality Resource Area can be restored to an equal or better condition in accordance with Table 19.322.9.E.

An area proportionate in size to the impacted area will be restored to an equal or better condition in accordance with Table 19.322.9.E. While the Code is silent on proportionality with respect to WQR mitigation, the City Attorney has indicated that it is fair and appropriate to require WQR mitigation that is proportionate to WQR impacts. In this case, 39 sq ft of area will be impacted and approximately 525 sq ft of new landscaping is being proposed. The amount of proposed new landscaping will exceed the Code's requirement for mitigation. The plants chosen to replace the existing lawn/weedy planting bed area will be a combination of Pacific Northwest native plants and others that are well adapted to the existing site. None of the plants chosen are identified as nuisance plants per Milwaukie's Native Plant List. As a result, all of the proposed plantings can count toward meeting the project's mitigation requirement.

Approximately 175 sq ft of turf lawn will be replaced with new plantings on the east side of the building; and approximately 350 sq ft of weeds, bark mulch, and grass will be replaced with new plantings on the south side of the building. Once the plants mature, their canopies will fill in the area. Right after planting any bare soil will be covered with bark mulch to reduce the possibility of erosion and to help control weeds.

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

The addition of a bench, artwork, and stepping stones will enhance the community's enjoyment of the site.

A wooden bench was chosen for its quality and design aesthetic. Providing footings for the bench legs will make the bench more stable and secure and will keep it off of the ground, which will extend its useable life. The site for the proposed bench was chosen to take advantage of the existing concrete walkway. The bench's front legs will be bolted to the existing concrete, which then requires only two 8-in x 8-in (or smaller) areas of new concrete under its back legs. The proposed art (not yet selected) will need a concrete base to support and secure it; however, the concrete will be sized only large enough to do its job. It is not a decorative element, so all efforts will be made to reduce its area.

The proposed stepping stone path is situated to direct foot traffic from the existing concrete walkway, through the new landscaped area, to the existing stone steps in the rock wall to the lower lawn area. Stepping stones were chosen because they will add less impervious surface than a concrete path.

12. MMC Subsection 19.322.10 contains applicable development standards.

- A. The WQR area shall be protected throughout the construction process and restored and maintained in accordance with the mitigation plan.

The Planning Commission finds that the Applicant's construction and mitigation plans as summarized in Finding 11 and date stamped received by the City on May 28, 2010 are acceptable. This standard is met.

- B. Additions, alterations, rehabilitation, or replacement of existing structures shall not encroach closer to the protected water feature than the existing development.

The Planning Commission finds that the proposed replacement deck and landscape improvements do not encroach closer to the protected water feature than the existing development. The proposed deck is 0.5 ft narrower than the original deck and the proposed landscaping improvements are all behind the manmade rock wall that delineates the shoreline of Scott Lake. This standard is met.

- C. Where proposed, development of trails, rest points, viewpoints, and other facilities for the enjoyment of the resource must be done in such a manner so as to reduce impacts on the natural resource while allowing for the enjoyment of the resource.

The Planning Commission finds that the stepping stone path to the lower lawn area allows for enjoyment of the WQR area while simultaneously minimizing impacts to this area through the utilization of native rock, instead of a solid concrete path, and the use of mulch and plantings along the pathway to capture stormwater runoff and improve water absorption. This standard is met.

- D. Stormwater flows as a result of proposed development within and to natural drainage courses shall not exceed predevelopment flows.

The Planning Commission finds that the modifications to the proposed replacement deck and the addition of 39 sq ft of new impervious surface for landscaping improvements will not create a measurable difference in stormwater flows on the site. This standard is met.

13. The proposal was referred to the following departments and associations on June 4, 2010: City of Milwaukie Engineering and Building Departments and Historic Milwaukie Neighborhood District Association. The comments received are summarized as follows:
- **Brad Albert, Civil Engineer, City of Milwaukie:** Indicated that the proposed plantings will improve water quality in Spring Creek.
 - **Tom Larsen, Building Official, City of Milwaukie:** Indicated that new and larger footings are necessary for a replacement deck at this location.

ATTACHMENT 2
Recommended Conditions in Support of Approval
Casefile # WQR-10-02 & CSU-10-06
(Pond House Deck and Landscaping Proposal)

1. Site improvements shall be in substantial conformance with the mitigation, construction, and landscaping plans approved by this action, which are the plans stamped received by the City on May 28, 2010.
2. At least 19 sq ft of plantings shall be installed prior to or concurrent with the installation of the deck and stairs to mitigate for the larger footings and additional deck/stair surface area in the WQR area buffer.
3. At least 39 sq ft of plantings shall be installed prior to or concurrent with the installation of the stepping stone path and bench and artwork footings to mitigate for the additional impervious surface in the WQR area buffer.
4. Deck and stair construction shall occur during the in-water work period of July 15 - August 31. Landscaping improvements, including the installation of the stepping stone path and the bench and artwork footings, may occur at any time as long as the mitigation requirements of Conditions #3 and #4 are met.



Application for Land Use Action

WATER QUALITY RESOURCE REVIEW

- Admin. I Minor QJ Leg.
 Admin. II Major QJ

RESPONSIBLE PARTIES:

(Please print or type)

| | |
|---|----------------------------|
| APPLICANT(S): <i>Paul Shirey, COM Operations Director</i> | Phone: <i>503-786-7614</i> |
| Address: <i>6101 SE Johnson Creek Blvd, Milwaukie</i> | Zip: <i>97206</i> |
| PROPERTY OWNER(S): <i>City of Milwaukie</i> | Phone: <i>503-786-7555</i> |
| Address: <i>10722 SE Main Street, Milwaukie</i> | Zip: <i>97222</i> |

SITE INFORMATION: *"Pond House"*

151E36 BB 01600 +

| | |
|---|---|
| Address: <i>2245 SE Harrison St.</i> | Map & Tax Lot(s): <i>151E25 CC00900</i> |
| Comprehensive Plan Designation: <i>TC</i> | Zoning: <i>R-1-B</i> Size of property: <i>~11651 sq.ft.</i> |

PROPOSAL (describe briefly):

Replace worn deck adjacent to Spring Creek pond at Ledding Library Pond House facility and improve landscaping.

PLEASE NOTE: The Land Use Committee (LUC) of your Neighborhood District Association (NDA) will receive a review copy of this application. They may contact you and/or you may wish to contact them:

NDA: *Historic Milwaukie* LUC Chair: *Ed Zumwalt* Phone: *503-654-2493*

ATTEST: I am the property owner or I have attached the owner's authorization to submit this application. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by: *[Signature]* Date: *May 28, 2010*

THIS SECTION FOR OFFICE USE ONLY:

| | | | |
|--------------------------|------------------|---------------------|---|
| File #: <i>WQR-10-02</i> | Fee: \$ <i>0</i> | Rcd. by: <i>SPS</i> | Date stamp: |
| Notes: | | | RECEIVED MAY 28 2010 CITY OF MILWAUKIE PLANNING DEPARTMENT |

SEE REVERSE SIDE FOR APPLICATION CHECKLIST

MEMORANDUM

TO: Community Development Department
THROUGH: Gary Parkin, Director of Engineering
FROM: Brad Albert, Civil Engineer
RE: Community Service Use – Pond House
CSU-10-06, WQR-10-02
DATE: June 18, 2010

Proposed reconstruction of a 198 square foot wood deck and site re-landscaping.

1. MMC Chapter 19.1400 – Transportation Planning, Design Standards, and Procedures

The Engineering Department finds that MMC Chapter 19.1400 does apply to this application.

Recommended Conditions of Approval

None

Other notes

The use of native plants for the re-landscaping portion of the project is very beneficial. Most of the plants listed to be used are on the City of Portland's Stormwater Management Manual for water quality facilities. The use of native plants helps to clean the stormwater runoff before it enters Spring Creek. This is a vast improvement over the existing lawn currently onsite.

**CITY OF MILWAUKIE
BUILDING
DEPARTMENT**

Memo

To: Susan Shanks, Senior Planner
From: Tom Larsen, Building Official
Date: June 21, 2010
Re: Pond House Deck

I visited the site (2215 SE Harrison) with Willie Miller, Facilities Coordinator sometime this past winter. Although there is no permit required for the reconstruction of the deck, it was clear that the existing footings were undersized and in poor condition. The soil bearing capacity near waterways is typically quite poor, which necessitated the larger spread footings.

ATTACHMENT 5
Exhibits List
Casefile # WQR-10-02 & CSU-10-06
(Pond House Deck and Landscaping Proposal)

The following documents are part of the official record for this application as of July 6, 2010. This list will be updated as new documents are received up until the expiration of the appeal deadline as noted in the Notice of Decision.

- A. Land Use Application Materials
 - 1. Current Application: WQR-10-02 & CSU-10-06
 - 2. Completeness letter dated May 28, 2010

- B. Notification information:
 - 1. Referral sheet dated June 4, 2010
 - 2. Notice mailed to adjacent properties dated June 23, 2010
 - 3. Returned notice envelopes from adjacent properties
 - 4. Mailing list for adjacent property notification
 - 5. Notice published in Clackamas Review
 - 6. Affidavit of Clackamas Review notice publication
 - 7. Notice posted on the site

- C. Materials from City Planning Staff:
 - 1. Staff Report dated July 6, 2010 for July 13, 2010 hearing
 - 2. Recommended Findings in Support of Approval
 - 3. Recommended Conditions of Approval

- D. Agency Responses:
 - 1. City of Milwaukie Engineering Department dated June 18, 2010
 - 2. City of Milwaukie Building Department dated June 21, 2010

- E. Comments Received: None received

- F. Materials Received at the Hearing:
 - 1. Staff PowerPoint presentation dated July 13, 2010

- G. Public Testimony:
 - 1. Sign-in sheet for July 13, 2010 Planning Commission hearing

- H. Notice of Decision dated: _____