



AGENDA

MILWAUKIE PLANNING COMMISSION Tuesday, February 23, 2016, 6:30 PM

MILWAUKIE CITY HALL
10722 SE MAIN STREET

- 1.0 Call to Order - Procedural Matters**
- 2.0 Planning Commission Minutes** – Motion Needed
- 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 Public Hearings** – Public hearings will follow the procedure listed on reverse
 - 5.1 Summary: Rockwood St Partition
Applicant/Owner: Louie & Debra Bomotti
Address: 4401 SE Rockwood St
File: MLP-2015-006, VR-2015-007
Staff: Brett Kelter
 - 5.2 Summary: Short-term Rentals Code Amendments (*continued from 2/09/16; materials to be sent under separate cover*)
Applicant: City of Milwaukie
File: ZA-2015-003
Staff: Denny Egner
- 6.0 Worksession Items**
 - 6.1 Summary: Comprehensive Plan Visioning Update
Staff: Denny Egner
- 7.0 Planning Department Other Business/Updates**
- 8.0 Planning Commission Discussion Items** – This is an opportunity for comment or discussion for items not on the agenda.
- 9.0 Forecast for Future Meetings:**
 - March 8, 2016 1. TBD
 - March 22, 2016 1. Public Hearing: CSU-2015-008 Northwest Housing Alternatives *tentative*
 2. Public Hearing: MLP-2015-004 55th Ave Partition

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 speak at this meeting, please fill out a yellow card and give to planning staff. Please turn off all personal communication devices during meeting. For background information on agenda items, call the Planning Department at 503-786-7600 or email planning@ci.milwaukie.or.us. Thank You.
2. **PLANNING COMMISSION MINUTES.** Approved PC Minutes can be found on the City website at www.cityofmilwaukie.org
3. **CITY COUNCIL MINUTES** City Council Minutes can be found on the City website at www.cityofmilwaukie.org
4. **FORECAST FOR FUTURE MEETING.** These items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
5. **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 come to the front podium, state his or her name and address for the record, and remain at the podium until the Chairperson has asked if there are any questions from the Commissioners.

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.

The City of Milwaukie will make reasonable accommodation for people with disabilities. Please notify us no less than five (5) business days prior to the meeting.

Milwaukie Planning Commission:

Sine Adams, Chair
Shaun Lowcock, Vice Chair
Shane Abma
Shannah Anderson
Adam Argo
Scott Barbur
Greg Hemer

Planning Department Staff:

Denny Egner, Planning Director
Li Alligood, Senior Planner
Brett Kelver, Associate Planner
Vera Kolas, Associate Planner
Alicia Martin, Administrative Specialist II



To: Planning Commission
Through: Dennis Egner, Planning Director
From: Brett Kolver, Associate Planner
Date: February 16, 2016, for February 23, 2016, Public Hearing
Subject: File: MLP-2015-006, VR-2015-007
Applicants/Owners: Louie and Debra Bomotti
Address: 4401 SE Rockwood St
Legal Description (Map & Tax Lot): 1S2E30CB00700
NDA: Lewelling

ACTION REQUESTED

Approve applications MLP-2015-006 and VR-2015-007, and adopt the recommended Findings and Conditions of Approval found in Attachments 1 and 2, respectively. This action would allow for the subject property to be partitioned into two developable lots, with a variance to the lot depth standard for Parcel 2.

BACKGROUND INFORMATION

A. Site and Vicinity

The subject property is located at 4401 SE Rockwood Street in the R-7 Low Density Residential zone and includes no zoning overlays or special areas. The proposed Parcel 1 has approximately 68.5 ft of frontage on Rockwood Street and approximately 19 ft on 44th Court; the proposed Parcel 2 has only one frontage, approximately 41 ft on 44th Court. Surrounding properties are also developed primarily with single-family detached dwellings (see Figure 1, Vicinity map).

Figure 1 – Vicinity map



B. Zoning Designation

Low Density Residential Zone R-7 (see Figure 2, Zoning map)

C. Comprehensive Plan Designation

Low Density (LD)

D. Land Use History

City records indicate no previous land use actions for this site.

E. Proposal

The applicants have applied to partition the subject property at 4401 SE Rockwood Street into two parcels of approximately 10,000 sq ft each, with a variance to the R-7 zone lot depth standard for Parcel 2. The site has frontage on Rockwood Street as well as on 44th Court and is currently developed with a single-family detached dwelling and two detached accessory structures (see Figure 3, Proposed partition).

Parcel 1 takes access from Rockwood Street and contains the existing single-family house and a detached carport-shop structure. Parcel 2 would take access from 44th Court and includes another existing detached shop structure. The applicants have proposed that the existing detached accessory structure on Parcel 2 be allowed to remain as long as the lot is under the same ownership as an adjacent property that contains a primary structure, or in conjunction with development of a primary structure on Parcel 2.

As proposed, Parcel 1 meets the applicable standards of the underlying R-7 zone; Parcel 2 would meet the applicable R-7 zone standards except for lot depth (it is only approximately 68 ft deep instead of the minimum required 80 ft). Because the requested variance of approximately 12 ft is more than 10% of the minimum standard, the variance request is subject to the Type III review process. See Attachment 3 for the applicant’s materials, including a narrative and site plans.

The project requires approval of the following applications:

1. Minor Land Partition (Preliminary Plat) (land use file #MLP-2015-006)
2. Variance Request (file #VR-2015-007)

Figure 2 – Zoning map

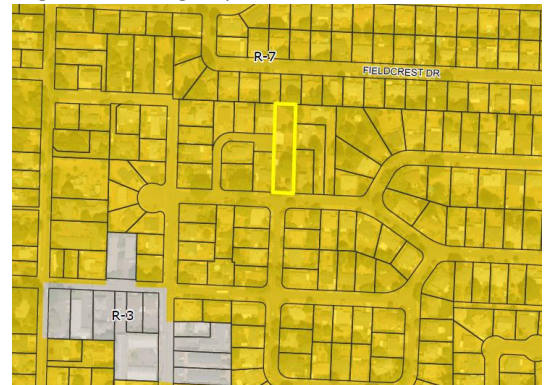
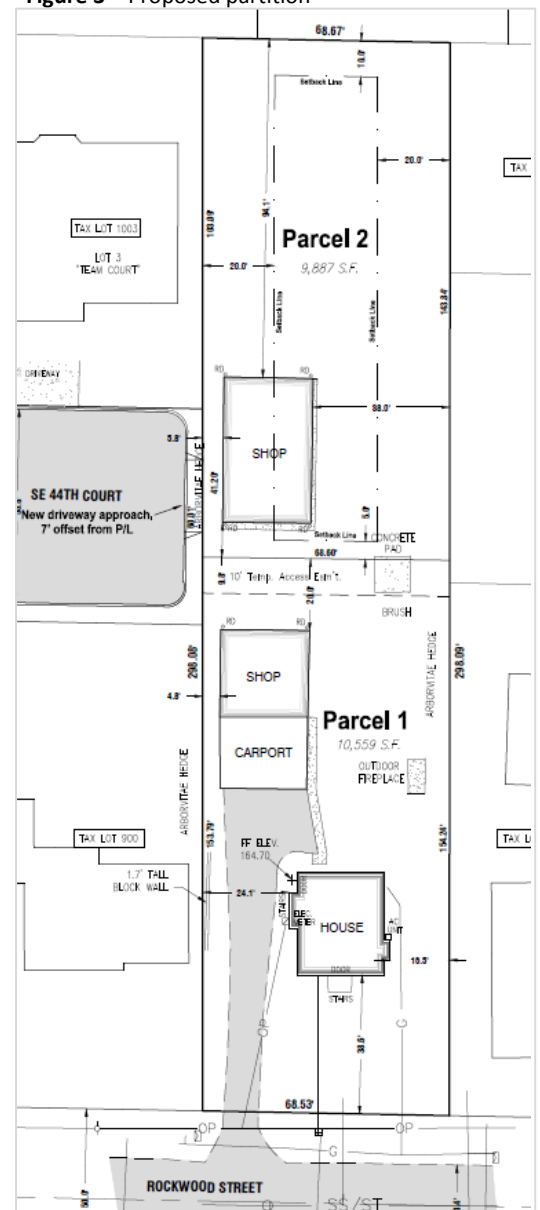


Figure 3 – Proposed partition



KEY ISSUES

Summary

Staff has identified the following key issue 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. Is the requested variance to the lot depth standard for Parcel 2 reasonable and justified, considering future possible development scenarios on the site?

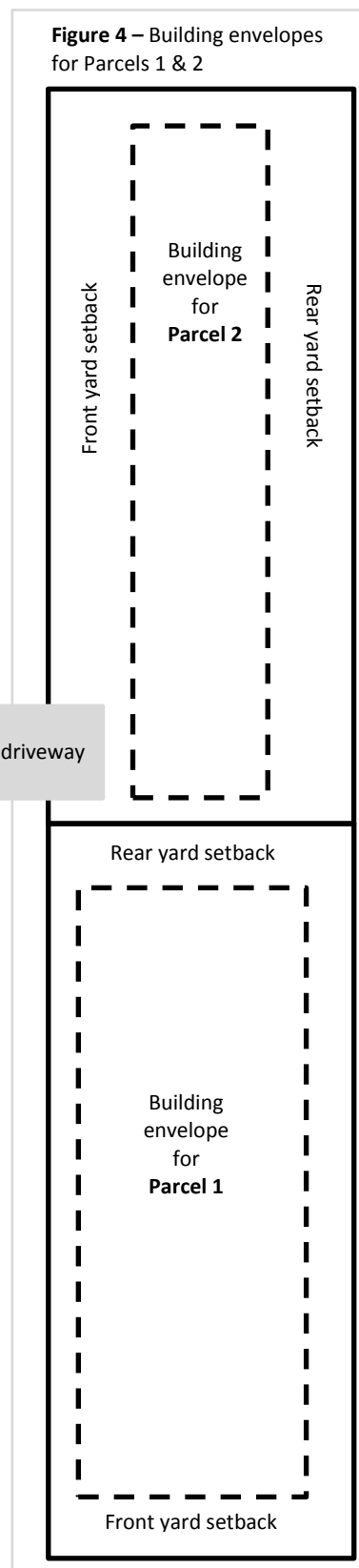
Analysis

- A. **Is the requested variance to the lot depth standard for Parcel 2 reasonable and justified, considering future possible development scenarios on the site?**

At over 20,000 sq ft in area, the subject property is certainly large enough to be divided into two lots that meet the minimum R-7 lot size standard of 7,000 sq ft. The minimum required density for the site is 2 units. The subject property does not have the dimensional width to allow for a flag lot partition with access to Rockwood Street, but it does have the benefit of adequate frontage on both Rockwood Street and 44th Court to allow for two distinct lots, each with its own frontage and access on a separate street.

As proposed, Parcel 2 is approximately 12 ft short of meeting the R-7 minimum depth requirement of 80 ft. However, it is approximately 143 wide (well above the minimum lot width requirement of 60 ft) and so allows sufficient flexibility for a future building envelope on the site. After factoring in the required front and rear yard setbacks of 20 ft each, the envelope is approximately 28 ft deep and could accommodate a variety of simple house plans. Given that the new driveway will be located at the southern edge of the new lot, the north side yard on Parcel 2 will most likely function as the de facto backyard for a new house. The building envelopes for Parcels 1 and 2 are distinct (see Figure 4), and a future developer may choose to request a variance from the front and/or rear yard setback requirement for Parcel 2 to provide even more flexibility for new home design, but Parcel 2 is developable as-is with the proposed variance to the lot depth standard.

If earlier development decisions involving the double flag lot immediately adjacent to the east had played out differently, 44th Court might have been able to extend farther east and taken the shape of a more traditional cul-de-sac, which would have allowed a slightly different lot configuration for Parcel 2 and several of the adjacent lots to the east. Given the relatively



short frontage the lot has on 44th Court (approximately 41 ft), a new house on Parcel 2 will be somewhat awkwardly situated regardless of whether its western boundary (along 44th Court) or southern boundary is considered to be the front lot line. With some creative and flexible design work, a future developer for the site should be able to configure a house that takes advantage of the unique situation of the lot and still maintains the privacy and character of the surrounding properties.

CONCLUSIONS

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

1. Approve the preliminary plat application for a 2-lot minor land partition. This will create two parcels from the subject property at 4401 SE Rockwood Street, one taking access from Rockwood Street and the other taking access from 44th Court.
2. Approve the application for the requested variance to the R-7 zone lot depth standard for the proposed Parcel 2. This will approve Parcel 2 with a lot depth of approximately 68 ft instead of the minimum 80 ft required in the R-7 zone.
3. 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):

- Prior to approval of the final plat, construct a driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA) to the new lot on 44th Court.
- Prior to final inspection for any new structure on either new parcel, construct a private storm management system (e.g., drywell) on the proposed development property.
- Provide a deed restriction to ensure the removal of the accessory structure on Parcel 2 within 24 months of final plat approval, unless either (1) a building permit for a primary dwelling on Parcel 2 is applied for and obtained within the 24-month period or (2) Parcel 2 is maintained in mutual ownership with an adjacent lot containing a primary structure.

CODE AUTHORITY AND DECISION-MAKING PROCESS

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

- MMC Section 19.1006 Type III Review
- MMC Chapter 17.12 Application Procedure & Approval Criteria
- MMC Chapter 17.16 Application Requirements and Procedures
- MMC Chapter 17.20 Preliminary Plat
- MMC Chapter 17.28 Design Standards
- MMC Section 19.301 Low Density Residential Zones (including R-7)
- MMC Section 19.502 Accessory Structures
- MMC Chapter 19.600 Off-Street Parking and Loading

- MMC Chapter 19.700 Public Facility Improvements
- MMC Section 19.911 Variances
- MMC Chapter 19.1200 Solar Access Protection

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 subject to the recommended Findings and Conditions of Approval.
- B. Approve the application with modified Findings and Conditions 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 May 6, 2016, 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 Department, Milwaukie Engineering Department, Clackamas Fire District #1, Lewelling Neighborhood District Association (NDA) Chairperson and Land Use Committee. The following is a summary of the comments received by the City. See Attachment 4 for further details.

- **Chrissy Dawson, Engineering Technician II, Milwaukie Engineering Department:** The Milwaukie Engineering Department responded with a memorandum regarding public facility improvements and stormwater management requirements. The Engineering comments have been incorporated into the findings for MMC Chapter 19.700 and the Conditions of Approval.
- **Matt Amos, Fire Inspector, Clackamas Fire District #1:** No comments for this proposal.

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	E-Packet
1. Recommended Findings in Support of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Recommended Conditions of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

	Early PC Mailing	PC Packet	Public Copies	E- Packet
3. Applicant's Narrative and Supporting Documentation dated January 7, 2016:				
a. Narrative	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Site Plans				
(1) Existing Conditions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
(2) Preliminary Partition Plat	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c. Preapplication Conference Notes (July 30, 2015)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4. Comments Received	<input type="checkbox"/>	<input checked="" 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.

E-Packet = packet materials available online at <http://www.milwaukieoregon.gov/planning/planning-commission-145>.

**Recommended Findings in Support of Approval
Master File #MLP-2015-006, Bomotti Partition**

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

1. The applicants, Louie and Debra Bomotti, have applied for approval of a minor land partition their property at 4401 SE Rockwood Street (“the subject property”). The applicants are the property owners and have authority to initiate the application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. The application was initially submitted on November 18, 2015, and deemed complete on January 7, 2016. The land use application master file number is MLP-2015-006, with a related variance request (file #VR-2015-007).
2. The site is in the R-7 Low Density Residential zone and includes no zoning overlays or special areas as designated in MMC Chapter 19.400. The Comprehensive Plan Land Use Designation for the site is Low Density. The site has frontage on Rockwood Street as well as on 44th Court and is developed with a single-family detached dwelling and two detached accessory structures (a shop/carport and another shop). Surrounding properties are also zoned R-7 and are developed with single-family detached dwellings.
3. The proposal is to partition the subject property into two parcels of approximately 10,000 sq ft each, preserving the existing single-family house on Parcel 1 and making Parcel 2 available for future development as allowed in the R-7 zone. Parcel 1 has approximately 68.5 ft of frontage on Rockwood Street and approximately 19 ft on 44th Court. Parcel 2 has approximately 41 ft of frontage on 44th Court. The existing public right-of-way adjacent to the subject property is 50 ft wide on Rockwood Street and 60 ft wide on 44th Court. No right-of-way dedication or street improvements are required.

Because Parcel 2 has frontage on and will take access from 44th Court, its lot depth is calculated along the east-west axis and measures approximately 68.5 ft, which is less than the 80-ft minimum lot depth required in the R-7 zone. The applicant has requested a variance to the lot depth standard for Parcel 2. Because the requested variance of 12 ft is more than 10% of the minimum standard, the variance request is subject to the Type III review process.

4. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.1006 Type III Review
 - MMC Chapter 17.12 Application Procedure & Approval Criteria
 - MMC Chapter 17.16 Application Requirements and Procedures
 - MMC Chapter 17.20 Preliminary Plat
 - MMC Chapter 17.28 Design Standards
 - MMC Section 19.301 Low Density Residential Zones (including R-7)
 - MMC Section 19.502 Accessory Structures
 - MMC Chapter 19.600 Off-Street Parking and Loading
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.911 Variances
 - MMC Chapter 19.1200 Solar Access Protection

5. As established in MMC Section 19.901, partitions are subject to Type II review. However, the applicant has requested a variance that does not qualify for Type II review and instead requires Type III review. As per MMC Subsection 19.1001.6.B, concurrent applications may be combined into a single review process, using the highest numbered review type required for any part of the overall application.

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 February 23, 2016, as required by law.

6. MMC Chapter 17.12 Application Procedure and Approval Criteria

MMC 17.12 establishes the process and procedures for various types of property boundary changes and land division, including for partitions.

- a. MMC Section 17.12.020 Application Procedure

MMC 17.12.020 establishes the application procedures and review types for property boundary changes and land division. Specifically, MMC Subsection 17.12.020.D.1 establishes that applications for preliminary partition plat shall be processed with Type II review, unless an associated application is subject to Type III review, in which case the partition application shall also be processed according to MMC Section 19.1006 Type III review.

As noted in Finding 3, the applicants have requested a variance to the lot depth standard for Parcel 2, which requires Type III review. The Planning Commission finds that the associated partition is also subject to Type III review, as per MMC 17.12.020.D.1.

- b. MMC Section 17.12.040 Approval Criteria for Preliminary Plat

MMC 17.12.040 establishes the approval criteria for preliminary plat. The proposed preliminary plat meets these criteria as described below.

- (1) MMC Subsection 17.12.040.A.1 requires that the proposed preliminary plat complies with Title 19 Zoning and other applicable ordinances, regulations, and design standards.

As demonstrated by the applicants' submittal materials and as evidenced by these findings, the proposed preliminary plat complies with the applicable ordinances, regulations, and design standards. As proposed, this criterion is met.

- (2) MMC Subsection 17.12.040.A.2 requires that the proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.

As proposed, the buildable areas for the primary structures on the new parcels are adequate to accommodate the uses allowed in the R-7 zone. The creation of Parcel 2 requires a variance to the lot depth standard because the partition would orient the lot to face 44th Court instead of Rockwood Street, which would make the parcel much wider than it is deep. The Planning Commission recognizes that an additional variance(s) from the front and/or rear yard standards would allow more flexibility for design and could be considered and approved in conjunction with future development, but the Commission finds that Parcel 2 includes an adequate amount of buildable area and that additional variances are not necessary to allow for reasonable development. Neither of the

parcels have any other dimensional constraints that would necessitate the need for a variance to allow reasonable development. As proposed, this criterion is met.

- (3) MMC Subsection 17.12.040.A.3 requires that the proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).

The proposed plat is a partition plat; therefore, this criterion is not applicable.

- (4) MMC Subsection 17.12.040.A.4 requires that the streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.

Adjacent to the subject property, the existing public rights-of-way on Rockwood Street and 44th Court, both of which are functionally classified as local streets in the City's Transportation System Plan, are 50 ft and 60 ft wide, respectively. No additional right-of-way is required for either street, and no changes to the layout of the existing streets are proposed. As proposed, this criterion is met.

- (5) MMC Subsection 17.12.040.A.5 requires a detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.

The applicants' submittal materials include a detailed narrative demonstrating compliance with all applicable standards and criteria. As proposed, this criterion is met.

The Planning Commission finds that the proposed preliminary plat meets the applicable approval criteria for preliminary plat, as established in MMC 17.12.040.

As proposed, the Planning Commission finds that the application for preliminary plat has been processed according to the procedures of and meets the applicable criteria established in MMC 17.12.

7. MMC Chapter 17.16 Application Requirements and Procedures

MMC Section 17.16.060 establishes the application requirements for preliminary plat, including completed application forms and checklists, applicable fees, and the information specified in MMC Chapter 17.20 Preliminary Plat.

The applicants' submittal materials include the necessary forms, checklists, and fees, as well as sufficient information to demonstrate compliance with the applicable standards and criteria.

As proposed, the Planning Commission finds that the application meets the applicable requirements for submittal of a preliminary plat, as established in MMC 17.16.

8. MMC Chapter 17.20 Preliminary Plat

MMC 17.20 establishes the information required for a preliminary plat, including general information to be shown on the plat and existing and proposed conditions.

The applicants' preliminary plat submittal is to scale, includes a vicinity map, and shows zoning, existing structures on the subject property and adjacent properties, lot design and layout, minimum setbacks for future development, streets and driveway accesses, a proposed access easement, and locations of existing utilities.

The Planning Commission finds that the proposed preliminary plat includes the relevant and necessary information as outlined in MMC 17.20.

9. MMC Chapter 17.28 Design Standards

MMC 17.28 establishes design standards for land divisions and boundary changes. In particular, MMC Section 17.28.040 establishes standards for general lot design.

- a. MMC Subsection 17.28.040.A requires that the lot size, width, shape, and orientation shall be appropriate for the location and the type of use contemplated, as well as that minimum lot standards shall conform to Title 19.

Both of the proposed parcels meet the minimum area requirements for the underlying R-7 zone. Parcel 1 is oriented toward Rockwood Street and Parcel 2 faces 44th Court. Parcel 1 meets all of the minimum dimensional requirements for the R-7 zone; Parcel 2 meets the minimum lot width standard of 60 ft but does not meet the minimum lot depth standard of 80 ft. The applicants have requested a variance to the lot depth standard, with the variance criteria addressed in Finding 14. Both parcels conform to the other relevant standards of Title 19 as described in these findings.

- b. MMC Subsection 17.28.040.B requires that lot shape shall be rectilinear, except where not practicable due to location along a street radius, or existing lot shape. The sidelines of lots, as far as practicable, shall run at right angles to the street upon which the lots face. As far as practicable, the rear lot line shall run parallel to the street.

The proposed parcels are both rectilinear in shape. For Parcel 1, the side lot lines run at right angles to and the rear lot line is parallel to Rockwood Street. For Parcel 2, the side lot lines run at right angles to and the rear lot line is parallel to 44th Court.

- c. MMC Subsection 17.28.040.C limits compound lot lines for side or rear lot lines.

No compound lot lines are proposed for the side or rear lot lines on either parcel.

- d. MMC Subsection 17.28.040.D allows lot shape standards to be varied pursuant to MMC 19.911.

The applicants have requested a variance to the lot depth standard for Lot 2, but no variance to the lot shape standards is requested in this application.

- e. MMC Subsection 17.28.040.E limits double frontage and reversed frontage lots, stating that they should be avoided except in certain situations.

The existing subject property has approximately 68 ft of frontage on Rockwood Street and 60 ft of frontage on 44th Court. The proposed partition will leave Parcel 1 with the 68-ft frontage on Rockwood Street for its primary access and will reduce its frontage on 44th Court to approximately 19 ft in its northwestern corner. Parcel 2 will keep the remaining 41 ft of frontage on 44th Court for its primary access. As proposed, the partition reduces the double-frontage aspect for Parcel 1 and eliminates it entirely for Parcel 2.

- f. MMC Subsection 17.28.040.F requires that, pursuant to the definition and development standards contained in Title 19 for frontage, required frontage shall be measured along the street upon which the lot takes access. This standard applies when a lot has frontage on more than one street.

Parcel 1 has frontage on both Rockwood Street (approximately 68 ft) and 44th Court (approximately 19 ft) and will take access from Rockwood Street. Parcel 2 has

approximately 41 ft of frontage on 44th Court, where it will take access. As discussed in Finding 10-b, these frontages meet the minimum requirements for street frontage in the R-7 zone.

The Planning Commission finds that the proposed new parcels presented in the applicants' preliminary plat meet the applicable design standards established in MMC Chapter 17.28.

10. MMC Section 19.301 Low Density Residential Zones (including R-7)

MMC 19.301 establishes standards for Low Residential zones, including the R-7 zone. The application meets the applicable standards of this section as described below.

a. MMC Subsection 19.301.2 Allowed Uses

MMC 19.301.2 establishes the uses allowed in the R-7 zone, including single-family detached dwellings as outright permitted uses.

An existing single-family detached dwelling currently exists on Parcel 1 and is proposed to remain. Parcel 2 is proposed to be developed with a single-family detached dwelling at some point in the future; currently, it includes an existing detached accessory structure, which is proposed to remain. As defined in MMC Section 19.201, an accessory structure is one that is "incidental and subordinate to the main use of the property." A new accessory structure would not be allowed without an existing primary use, so the proposed partition will make the existing accessory structure a nonconforming situation for as long as there is no primary structure on Parcel 2. A condition has been established to ensure that the accessory structure on Parcel 2 is either removed or else formally approved with a variance request in conjunction with development of a primary structure on Parcel 2.

As conditioned, this standard is met.

b. MMC Subsection 19.301.4 Development Standards

MMC 19.301.4 establishes development standards for low density residential zones, including the R-7 zone. The applicable standards are addressed and met as described in Table 1 (Zoning Compliance) below.

Table 1 – Zoning Compliance Residential Zone R-7 Development Standards			
Standard	Required	Proposed Parcel 1	Proposed Parcel 2
Lot Area	7,000 sq ft for single-family detached; 14,000 for duplex	10,559 sq ft	9,887 sq ft
Lot Width	60 ft	68.5 ft	144 ft
Lot Depth	80 ft	154 ft	68.5 ft **
Public Street Frontage	35 ft (for standard lot)	68.5 ft	41 ft
Front Yard	20 ft	38.6 ft	NA
Side Yard	5 ft / 10 ft	16.5 ft / 24.1 ft	NA
Rear Yard	20 ft	87 ft	NA
Building Height	2.5 stories or 35 ft	2 stories (approx. 17 ft)	NA

Maximum Lot Coverage	30%	17%	10%
Minimum Vegetation	30%	64%	90%
Residential Density	Minimum: 5.0 units/acre For overall site = 2 units	Large enough for 1 unit	Large enough for 1 unit
	Maximum: 6.2 units/acre For overall site = 3 units		

** A variance has been requested for the lot depth standard for Parcel 2, as addressed in Finding 14.

For Parcel 2, the standards for yard setbacks, building height, lot coverage, and minimum vegetation are not applicable at the time of partition and will be addressed at the time of development.

As proposed, and as per the approved variance request addressed in Finding 14, the applicable standards of this subsection are met.

c. MMC 19.301.5 Additional Development Standards

MMC 19.301.5 establishes additional development standards applicable to the R-7 zone, including side yards, lot coverage, front yard minimum vegetation, accessory structures, residential densities, number of dwelling structures, off-street parking, and public facility improvements.

For Parcel 1, front yard vegetation is over 80%, which far exceeds the minimum requirement of 40%. Parcel 1 includes an existing single-family house, which is the only primary building designed for dwelling purposes on the lot, meeting the standard of Subsection 19.301.5.F. For Parcel 2, compliance with the other applicable standards will be determined at the time of future development.

The requirements for accessory structures are addressed in Finding 11; those for off-street parking are addressed in Finding 12; and those for public facility improvements are addressed in Finding 13.

As proposed, the applicable standards of this subsection are met.

As proposed, and with the approved variance as addressed in Finding 14, the Planning Commission finds that the applicable standards of MMC 19.301 for the R-7 zone are met.

11. MMC Section 19.502 Accessory Structures

MMC 19.502 establishes standards for accessory structures. In particular, MMC Subsection 19.502.2.A establishes specific provisions for residential accessory structures, including development standards, design standards, and requirements related to roof pitch.

a. MMC Subsection 19.502.2.A.1 Development Standards

MMC 19.502.2.A.1 establishes height, footprint, and setback standards for residential accessory structures.

The subject property includes two existing detached accessory structures, both of which are proposed to remain in place. A carport/shop will remain on Parcel 1 and a pole-barn shop will remain on Parcel 2. Table 2 presents the relevant data for each structure with respect to the applicable standards of MMC 19.502.2.A.1.

Table 2 – Residential Accessory Structures Height and Footprint Standards			
Standard	Requirement (for Type C Structures)	Structure on Parcel 1	Structure on Parcel 2
Maximum Building Height	Lesser of 25 ft OR not taller than highest point of primary structure (allowed at least 15 ft regardless)	10 ft	10 ft
Maximum Building Footprint	Lesser of 75% of primary structure OR 1,500 sq ft (allowed at least 850 sq ft if lot area > 10,000 sq ft)	1,075 sq ft **	974 sq ft **
Required Rear Yard	Base zone requirement = 20 ft for R-7	20 ft	38 ft
Required Side Yard	Base zone requirement = 5 ft or 10 ft for R-7	4.8 ft	9.8 ft
Required Front Yard	Not allowed in front yard unless structure is at least 40 ft from front lot line	90 ft	5.8 ft
Building Separation	Minimum of 5 ft between exterior wall of accessory structure and any other structure on site	24 ft	NA

** Both structures were constructed prior to the 2002 adoption of size restrictions for accessory structures.

The size and height allowances for the accessory structure on Parcel 1 are dependent on the existing primary structure, which is a two-story house with a footprint of approximately 725 sq ft and a building height of approximately 17 ft. The accessory structure on Parcel 1 meets the height standard and will meet the required rear yard setback but is nonconforming with respect to the standards for the maximum allowed footprint and side yard setback. For those aspects, Parcel 1 is subject to the applicable provisions of MMC Chapter 19.800 Nonconforming Uses and Development.

The accessory structure on Parcel 2 is located within the front yard and is not at least 40 ft from the front lot line; the height and footprint standards are impossible to evaluate without a primary structure on the lot. According to the definition established in MMC Section 19.201, an accessory structure is one that is “incidental and subordinate to the main use of property and located on the same lot as the main use.” The existence of an accessory structure on Parcel 2 without a primary structure creates a nonconforming situation that will require an approved variance request to remain in conjunction with development of a primary structure. A condition has been established to require that the existing accessory structure on Parcel 2 be removed unless it becomes accessory to a primary structure.

The existing nonconforming aspects on both parcels are subject to the provisions of MMC 19.800. As conditioned, the applicable standards of MMC 19.502.2.A.1 are met for Parcel 2.

b. MMC Subsection 19.502.2.A.2 Design Standards

MMC 19.502.2.A.2 establishes design standards for accessory structures. Metal siding is prohibited on structures more than 10 ft high or with a footprint greater than 200 sq ft, unless the siding replicates the siding on the primary dwelling or has the appearance of siding commonly used for residential structures. In addition, structures

located in a front, side, or street-side yard that are visible from the right-of-way at a pedestrian level shall use exterior siding and roofing materials that are commonly used on residential structures.

Both existing accessory structures are metal-sided buildings that are greater than 200 sq ft in area, and both were constructed prior to the 2002 adoption of design standards for accessory structures. Both accessory structures are nonconforming with respect to the prohibition on metal siding and are subject to the applicable provisions of MMC 19.800.

The Planning Commission finds that the existing nonconforming aspects on both parcels are subject to the provisions of MMC 19.800. As conditioned, the Planning Commission finds that the proposed partition meets the applicable standards of MMC 19.502.2.A.2 for Parcel 2.

12. MMC Chapter 19.600 Off-Street Parking and Loading

MMC 19.600 regulates off-street parking and loading areas on private property outside the public right-of-way. The purpose of these requirements includes providing adequate space for off-street parking, minimizing parking impacts to adjacent properties, and minimizing environmental impacts of parking areas.

a. MMC Section 19.602 Applicability

MMC 19.602 establishes the applicability of the provisions of MMC 19.600. Specifically, MMC Subsection 19.602.3 addresses applicability for development of vacant sites as well as for improvements to existing off-street parking areas for development and changes in use.

The proposed partition will create Parcel 1, which includes an existing single-family home and detached accessory structure; and Parcel 2, which includes an existing accessory structure but no primary structure. As established in MMC Subsection 19.504.2, no required off-street parking area shall be reduced below the minimum requirements, so the provisions of MMC 19.600 are applicable to Parcel 1. Future construction of a primary structure on Parcel 2 will trigger compliance with the off-street parking standards at the time of development.

b. MMC Section 19.605 Vehicle Parking Requirements

MMC 19.605 establishes standards to ensure that development provides adequate vehicle parking based on estimated parking demand. In particular, MMC Table 19.605.1 provides minimum and maximum requirements for a range of different uses. For single-family dwellings, a minimum of 1 space is required, with no maximum limit.

The existing use on Parcel 1 is a single-family dwelling, so a minimum of 1 off-street parking space is required. Parcel 2 currently has no primary use, so no off-street parking spaces are required at this time.

c. MMC Section 19.607 Off-Street Parking Standards for Residential Areas

MMC Subsection 19.607.1 establishes off-street parking standards intended to preserve residential neighborhood character, applicable to passenger vehicles and off-street parking areas for a number of different housing types, including single-family detached dwellings. The provisions of MMC 19.607.1 include a minimum space dimension of 9 ft by 18 ft, limitations on where required spaces can be located (not in the required front yard), requirements for parking surface materials, and a limitation of

no more than 50% of the front yard area for uncovered parking and maneuvering areas.

As noted above, the off-street parking requirements for Parcel 2 will be evaluated at the time of future development. On Parcel 1, an existing 10-ft-wide asphalt driveway extends from the front property line approximately 90 ft to an existing detached accessory structure that includes a carport feature situated more than 50 ft behind the front of the existing house. The existing driveway occupies only 14% of the front yard area. The proposed partition will not reduce the existing off-street parking area for Parcel 1.

The Planning Commission finds that Parcel 1 meets the applicable standards of MMC 19.607.

As proposed, the Planning Commission finds that the applicable standards of MMC 19.600 are met.

13. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 establishes provisions to ensure that development provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts.

a. MMC Section 19.702 Applicability

MMC 19.702 establishes the applicability of the provisions of MMC 19.700, including land divisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that result in any projected increase in vehicle trips or any increase in gross floor area on the site.

The applicants propose to partition the existing parcel to establish two lots. The proposed partition triggers the requirements of MMC 19.700.

MMC 19.700 applies to the proposed partition.

b. MMC Section 19.703 Review Process

MMC 19.703 establishes the review process for development that is subject to MMC 19.700, including requiring a preapplication conference, establishing the type of application required, and providing approval criteria.

The applicants had a preapplication conference with City staff prior to application submittal, on July 30, 2015. The proposed partition does not trigger a Transportation Impact Study (as addressed in Finding 13-c), but it does require a preliminary plat application. The proposal's compliance with MMC 19.700 is being reviewed as part of the preliminary plat application and a separate Transportation Facilities Review application is not necessary. Finding 13-e addresses the proposal's compliance with the approval criteria established in MMC Subsection 19.703.3, particularly the required transportation facility improvements.

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 requires submission of a Transportation Impact Study (TIS) documenting the development impacts on the surrounding transportation system.

The proposed partition will not trigger a significant increase in trip generation and therefore does not require a TIS.

d. MMC Section 19.705 Rough Proportionality

MMC 19.705 requires that transportation impacts of the proposed partition be mitigated in proportion to its potential impacts.

The proposed partition does not trigger mitigation of impacts beyond the required construction of a driveway approach to the newly created lot on 44th Court (Parcel 2), for which a condition has been established. The portion of the proposed partition that fronts 44th Court is not of sufficient length to make a requirement for sidewalk construction, in addition to construction of a driveway approach, practical. The portion of the proposed partition that fronts Rockwood Street is the fronting property line for the “parent” lot (Parcel 1), which already contains a single family residence. No new development on Parcel 1 is proposed. Impacts to the surrounding transportation system are minimal and will continue to operate at the level of service previous to the proposed partition.

As conditioned, the proposed partition is consistent with MMC 19.705.

e. MMC Section 19.708 Transportation Facility Requirements

MMC 19.708 establishes the City’s requirements and standards for improvements to public streets, including pedestrian, bicycle, and transit facilities. The City’s street design standards are based on the street classification system described in the City’s Transportation System Plan (TSP).

- (1) MMC Subsection 19.708.1 establishes general requirements and standards for streets, including access management, clear vision, street design, connectivity, and intersection design and spacing standards.

The applicants shall construct a driveway approach to the new lot on 44th Court (Parcel 2), sufficient to meet all guidelines of the Americans with Disabilities Act (ADA). The driveway approach apron shall be between 9 ft and 20 ft in width and least 7.5 ft from both the side property line with Parcel 1 and the front property line of tax lot 1003 (9501 SE 44th Court). In addition, the applicants shall remove all signs, structures, or vegetation in excess of 3 ft in height from “vision clearance areas” at the intersection of streets and driveways fronting the proposed partition. A condition of approval has been established to ensure that the applicable general requirements and standards of MMC 19.708.1 are met.

As conditioned, the proposed partition is consistent with MMC 19.708.1.

- (2) MMC Subsection 19.708.2 establishes more specific standards for street design and improvement based on functional classification.

The applicants shall construct a driveway approach to the new lot on 44th Court (Parcel 2), sufficient to meet all guidelines of the ADA. The driveway approach apron shall be between 9 ft and 20 ft in width and least 7.5 ft from both the side property line with Parcel 1 and the front property line of tax lot 1003 (9501 SE 44th Court). A condition of approval has been established to ensure that the applicable specific requirements and standards are met.

The existing right-of-way width of 44th Court fronting the proposed partition is 68 ft as measured from perpendicular to the fronting property line. The Milwaukie TSP and Transportation Design Manual classify the fronting portions of 44th Court a local street. According to MMC Table 19.708.2 Street Design Standards, the required right-of-way width for a local street is between 20 ft and 68 ft depending on the required street improvements. The existing right-of-way width

is sufficient to accommodate the required improvements on 44th Court. The applicants are not responsible for right-of-way dedication.

As conditioned, the proposed partition is consistent with MMC 19.708.2.

- (3) MMC Subsection 19.708.3 establishes that sidewalks shall be provided on the public street frontage of all development.

As addressed in Findings 13-e-1 and e-2, a condition requiring the construction of a driveway approach along the frontage of the subject property abutting 44th Court is included in the street frontage requirements.

The portion of the proposed partition that fronts 44th Court is not of sufficient length to make a requirement for sidewalk construction, in addition to a driveway approach, practical. MMC 19.708 states that:

“The City recognizes the importance of balancing the need for improved transportation facilities with the need to ensure that required improvements are fair and proportional. The City also acknowledges the value in providing street design standards that are both objective and flexible. Objective standards allow for consistency of design and provide some measure of certainty for developers and property owners. Flexibility, on the other hand, gives the City the ability to design streets that are safe and that respond to existing street and development conditions in a way that preserves neighborhood character.”

The proposed partition fronts the end of a cul-de-sac that currently does not contain sidewalk, providing no opportunity for sidewalk connectivity, and is not required to provide one.

As conditioned, the proposed partition is consistent with MMC 19.708.3.

- (4) MMC Subsection 19.708.4 establishes standards for bicycle facilities.

The portion of 44th Court fronting the proposed partition is not classified as a bike route in the Milwaukie TSP. As a result, bicycle facility improvements are not required for the proposed partition.

MMC 19.708.4 does not apply to the proposed partition.

- (5) MMC Subsection 19.708.5 establishes standards for pedestrian and bicycle paths.

The proposed partition property is surrounded by single-family residences. The proposed partition does not present an opportunity to provide a pedestrian or bicycle path and is not required to provide one.

MMC 19.708.5 does not apply to the proposed partition.

- (6) MMC Subsection 19.708.6 establishes standards for transit facilities.

The portion of 44th Court fronting the proposed partition is not classified as a transit route in the Milwaukie TSP. As a result, transit facility improvements are not required for the proposed partition.

As conditioned, the proposed partition meets all the applicable standards of MMC 19.708.

As conditioned, the Planning Commission finds that the proposed partition meets the applicable public facility improvement standards of MMC 19.700.

14. 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.

The applicants have requested a variance to reduce the required lot depth for Parcel 2 by more than 10% below the 80-ft minimum standard for the R-7 zone (MMC Subsection 19.301.4.A.3). The requested variance would allow the new parcel, which has historically been oriented to face Rockwood Street as part of the larger subject property, to be oriented to face and take access from 44th Court as a separate developable lot.

The request would not eliminate the restriction on a prohibited activity, change a required review type, allow a use not allowed outright in the R-7 zone, or otherwise produce any of the results listed in MMC Subsection 19.911.2.B. The request is eligible for a variance as per MMC 19.911.2.

b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. Specifically, MMC Subsection 19.911.3.B allows for limited variations to numerical standards, including a variance of up to 10% to lot width or depth standards. MMC Subsection 19.911.3.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 applicants have requested a variance of more than 11 ft to the 80-ft lot depth standard for the R-7 zone. The request is for a variance of more than 10% to the lot depth standard and, as per MMC 19.911.3, does not qualify for Type II review. The requested variance has been evaluated through Type III review.

c. MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes approval criteria for variance requests. Specifically, MMC Subsection 19.911.4.B provides two sets of approval criteria for Type III variances, one for discretionary relief and the other for economic hardship. The applicants have chosen to meet the discretionary relief criteria, which are established in MMC Subsection 19.911.4.B.1 as follows:

- (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 applicants have provided an analysis of the impacts and benefits of the proposed variance as compared to the baseline code requirements, asserting that the benefits outweigh any negative impacts. The key points of the applicants' analysis involve a comparison of the proposed lot configuration with a flag lot scenario. If Parcel 2 was not allowed to access 44th Court, then making Parcel 2 a flag lot with access to Rockwood Street would be the only way to

complete the partition and achieve the minimum development density for the subject property.

However, the subject property is only approximately 68 ft wide; the minimum lot width for standard lots in the R-7 zone is 60 ft, and the minimum required width for the accessway and street frontage of a flag lot is 25 ft. The subject property is not wide enough to do a flag lot partition without requesting a variance to the lot width standard for the parent lot (Parcel 1). In addition, a flag lot configuration would generate increased vehicle traffic on the existing driveway, producing additional negative impacts for both Parcel 1 and the adjacent residential property to the west. And more impervious surface would be required to extend the existing driveway, with implications for stormwater treatment.

In comparison, approving the proposed partition with the requested variance to the lot depth standard for Parcel 2 would allow for a new lot that, after accounting for the required 20-ft front and rear yard setbacks for the R-7 zone, would still have approximately 28 ft of depth for a new house footprint. With over 143 ft in lot width (far exceeding the minimum requirement of 60 ft), Parcel 2 has ample room for reasonable development and is unlikely to have any difficulty meeting the R-7 standards for maximum lot coverage (30% of lot area) and minimum vegetation (also 30% of lot area). Impacts to neighboring properties would be minimal, with access to Parcel 2 coming directly from 44th Court instead of via an accessway shared with Parcel 1.

The Planning Commission finds that the applicants' alternatives analysis sufficiently demonstrates the impacts and benefits of the proposed variance as compared to the baseline code 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.

As addressed in Finding 14-c-1, the requested variance to allow a reduction in lot depth for Parcel 2 would have few if any negative impacts on surrounding properties. Access to Parcel 2 would be directly from 44th Court instead of through Parcel 1, which would preserve some privacy for both Parcel 1 and the adjacent lot to the west on Rockwood Street. Unless a separate variance were to be requested and approved at the time of development, a new house on Parcel 2 would face 44th Court, the street where the lot takes access, and would meet all required setbacks and applicable development standards of the R-7 zone. The requested variance would avoid an extension of the existing driveway on Parcel 1, reducing the need to expand impervious surfaces and thereby minimizing new stormwater impacts. The requested variance and proposed partition would allow the subject property to be developed to achieve the minimum required density and would more fully utilize the existing public street for access.

The Planning Commission finds that the proposed variance is both reasonable and appropriate. Furthermore, the Planning Commission finds that the proposed variance avoids or minimizes impacts to surrounding properties and that it has desirable public benefits. This criterion is met.

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

The requested variance would reduce the minimum lot depth for Parcel 2 from 80 ft to approximately 68 ft. However, the buildable area that remains after subtracting the required yard setbacks, together with the ample lot width of approximately 143 ft, is sufficient to allow reasonable development on Parcel 2 without negative impacts to surrounding properties.

The Planning Commission finds that the proposed variance will not generate negative impacts that require mitigation. This criterion is met.

The Planning Commission finds that the discretionary relief criteria for a Type III variance request, as provided in MMC 19.911.4.B.1, are met.

The Planning Commission finds that the proposed variance is allowable as per the standards of MMC 19.911.

15. MMC Chapter 19.1200 Solar Access Protection

A primary purpose of MMC 19.1200 is to orient new lots and parcels to allow utilization of solar energy. In particular, MMC Section 19.1203 establishes solar access provisions for new development.

a. MMC Subsection 19.1203.2 Applicability

MMC 19.1203.2 establishes the applicability of MMC Subsection 19.1203.3 as applications for creating lots in single-family zones. Exceptions are allowable to the extent the Planning Director finds that the applicant has shown one or more of the conditions listed in MMC Subsections 19.1203.4 and 19.1203.5 exist and that exemptions or adjustments are warranted.

The proposed partition will create new parcels in the R-7 zone, which is a zone that allows single-family residences. The solar design standards of MMC 19.1203.3 are applicable to the proposed partition.

b. MMC Subsection 19.1203.3 Design Standard

MMC 19.1203.3 establishes a solar design standard, including basic requirements for north-south dimension and front-lot-line orientation with respect to a true east-west axis. There are two other options for compliance, either establishing a protected solar building line or demonstrating a particular level of performance with respect to protection from shading.

The new parcels created by the proposed partition both have north-south dimensions of more than 140 ft. The front lot line of Parcel 1 is on an east-west axis and so complies with the basic requirement. The front lot line of Parcel 2 is not on an east-west axis, but it qualifies for an exemption as per MMC Subsection 19.1203.4, discussed in Finding 15-c.

As proposed, and with the exemption discussed in Finding 15-c, the proposed partition meets the solar design standard of MMC 19.1203.3.

c. MMC Subsection 19.1203.4 Exemptions from Design Standard

MMC 19.1203.4 establishes exemptions from the standards of MMC 19.1203.3, including where on-site features that will remain after the proposed development produce a shadow pattern on a portion of the site.

On the subject property (the overall development site), the existing accessory structure on Parcel 1 (the carport/shop) will remain after the proposed partition. The structure is located 20 ft from the rear lot line of Parcel 1 (the side lot line of Parcel 2), has a peak height of 12 ft, and produces a shadow pattern that will extend into the minimum side yard setback area of Parcel 2. As the north-south dimension of Parcel 2 (approximately 144 ft) is large enough to allow sufficient room for reasonable development that can benefit from solar access, an exemption to the solar design standard is warranted for Parcel 2.

The Planning Commission finds that Parcel 2 is exempt from the standards of MMC 19.1203.3.

As proposed, the Planning Commission finds that the proposed new parcels either meet the solar design standard of MMC 19.1203.3 (Parcel 1) or are exempt from that standard as per MMC 19.1203.4 (Parcel 2). The applicable solar access provisions established in MMC 19.1200 are met.

16. The application was referred to the following departments and agencies on January 8, 2016: Milwaukie Building Department, Milwaukie Engineering Department, Clackamas Fire District #1, Lewelling Neighborhood District Association (NDA) Chairperson and Land Use Committee. The responses received are summarized below.
- Milwaukie Engineering Department – The Milwaukie Engineering Department responded with a memorandum regarding public facility improvements and stormwater management requirements. The Engineering comments have been incorporated into the findings for MMC Chapter 19.700 (Finding 13) and the Conditions of Approval.
 - Clackamas Fire District #1 – No comments for this proposal.

**Recommended Conditions of Approval
Master File #MLP-2015-006, Bomotti Partition**

Conditions

1. At the time of submission of the final plat application, the following shall be resolved:
 - a. The final plat submitted for review and approval shall be in substantial conformance with plans approved by this action, which are the plans stamped received by the City on January 7, 2016, except as otherwise modified by these conditions.
 - b. Provide a narrative describing all actions taken to comply with these conditions of approval.
 - c. Provide a narrative describing any changes made after the issuance of this land use decision that are not related to these conditions of approval.
2. Prior to approval of the final plat, the following shall be resolved:
 - a. Obtain a right-of-way permit for construction of all required public improvements listed in these recommended conditions of approval.
 - b. Pay a street opening deposit of \$1,500 which shall be refunded after any damage to abutting asphalt caused by driveway construction is repaired.
 - c. Construct a driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA) to the new lot on 44th Court (Parcel 2). The driveway approach apron shall be between 9 ft and 20 ft in width and least 7.5 ft from both the side property line with Parcel 1 and the front property line of tax lot 1003 (9501 SE 44th Court), and shall be constructed in conformance with Milwaukie Public Works Standard Drawing #502A.
 - d. Remove all signs, structures, or vegetation in excess of 3 ft in height located in "vision clearance areas" at intersections of streets and driveways fronting the proposed development.
 - e. Establish a deed restriction for Parcel 2 to ensure that, within 24 months of final plat approval for this land division, the existing accessory structure on Parcel 2 shall be removed unless one of the following conditions is satisfied:
 - (1) A building permit for a primary dwelling to be sited on Parcel 2 is applied for and obtained within the 24-month period, including any variance approvals necessary to allow the accessory structure to remain if desired, with construction commencing within 3 months of permit receipt and final inspection for the primary dwelling being concluded within 12 months of permit receipt.
 - (2) Parcel 2 is maintained in mutual ownership with an adjacent lot containing a primary structure and shall remain in mutual ownership with that adjacent lot, unless a primary dwelling is constructed per Condition 2-e-(1) above.
3. Prior to final inspection for any new structure on either new parcel, the following shall be resolved:
 - a. Construct a private storm management system (e.g., drywell) on the proposed development property for runoff created by the proposed development. Connect all rain drains to the private storm management system.

Additional Requirements

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements contained in the Milwaukie Municipal Code (MMC) and Public Works Standards that are required at various points in the development and permitting process.

1. Development activity on the site shall be limited to 7 a.m. to 10 p.m. Monday through Friday and 8 a.m. to 5 p.m. Saturday and Sunday, per MMC Subsection 8.08.070(l).
2. Prior to commencement of any earth-disturbing activities, the applicant shall obtain an erosion control permit.

**Partition and Variance Application
4401 SE Rockwood St.**

Introduction:

This application proposes a two-lot partition application for property located at 4401 SE Rockwood Street. The subject property is zoned R-7 and is 20,446 sq. ft. in area. The property fronts onto SE Rockwood Street and is developed with a single-family home and two outbuildings. The property measures 68 feet wide by 298 feet deep. The proposed partition would create a new lot to the rear of the existing home. This lot would be accessed from the end of SE 44th Ct., which stubs to the western property line of the subject property. Because the new lot would front onto this street, rather than Rockwood Street, its depth would be measured on an east-west axis, which equates to 68 feet. The R-7 zone requires a minimum lot depth of 80 feet and, therefore, a variance is required in order to allow for the partitioning of this property.

Compliance with Partition Approval Criteria:

17.12.040 APPROVAL CRITERIA FOR PRELIMINARY PLAT

A. Approval Criteria

The approval authority may approve, approve with conditions, or deny a preliminary plat based on the following approval criteria:

- 1. The proposed preliminary plat complies with Title 19 of this code and other applicable ordinances, regulations, and design standards.*
- 2. The proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.*
- 3. The proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).*
- 4. The streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.*
- 5. A detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.*

Comment: The proposed development complies with Title 19, as discussed below in this narrative. The proposed division allows for the reasonable development of two lots on nearly one-half acre of land that is zoned R-7. Each lot exceeds the minimum lot size of this zone and is suitable for single-family residential use. A variance to the lot depth standard is required, but is justified based upon the approval criteria set forth in Chapter 19.911, as discussed below. The proposed development is a partition and as such, rather than a plat name, will have a plat number assigned by the Clackamas County Surveyor. This is an infill lot and all surrounding properties are fully developed to R-7 densities. The road system in this area is complete and no

new roads are proposed in conjunction with this partition. This narrative will provide a complete discussion of how the proposal conforms to applicable code sections and design standards.

CHAPTER 17.16 APPLICATION REQUIREMENTS AND PROCEDURES

17.16.060 PRELIMINARY PLAT FOR PARTITION AND SUBDIVISION

The following shall accompany applications for partition:

- A. Completed application form signed by all owners of property included in the proposal;*
- B. Application fee as adopted by the City Council;*
- C. Completed and signed "submission requirements" and "partition checklist" or "subdivision checklist" forms as appropriate;*
- D. All information specified on the "submission requirements" and "partition checklist" or "subdivision checklist" forms as appropriate;*
- E. Requirements and information specified in Chapter 17.20; and*
- F. Any additional information as may be needed to demonstrate compliance with approval criteria. (Ord. 1907 (Attach. 1), 2002)*

Comment: The required application form has been completed and is signed by the owners. The required application fee has been paid by the applicant. The Preliminary Plat Checklist is included and signed. The applicant is submitting all of the information required by the checklist. The requirements of Chapter 17.20 are met, as discussed below. To the applicant's knowledge, no additional information is required.

CHAPTER 17.20 PRELIMINARY PLAT

17.20.010 SUBMISSION OF PLANS

Applicants for partition, subdivision, and replat shall prepare a preliminary plat and such improvement plans and other supplemental material including as may be required to describe and represent the objectives of the proposal. (Ord. 1907 (Attach. 1), 2002)

Comment: The required preliminary plat has been prepared and is included with this application. No improvements are required as the adjacent streets are fully developed.

17.20.020 SCALE

The preliminary plat shall be drawn at a scale and on a sheet size that reliably and conveniently represents design details sufficient for the proper plan review and determination of compliance with this title. (Ord. 1907 (Attach. 1), 2002)

Comment: The preliminary plat has been drawn at a scale of 1" = 20' in order to provide sufficient detail of existing site conditions and the proposed partition.

17.20.030 GENERAL INFORMATION TO BE SHOWN ON THE PRELIMINARY PLAT

- A. *Preliminary plats shall be prepared by an Oregon registered land surveyor.*
- B. *The following general information shall be submitted with the preliminary plat:*
 - 1. *Proposed name of the subdivision/partition. The name shall not duplicate nor resemble the name of another subdivision in the county. Subdivision names shall be approved by the County Surveyor in accordance with ORS Chapter 92;*
 - 2. *Date, north point, and scale of drawing;*
 - 3. *Appropriate identification clearly stating the map is a preliminary plat;*
 - 4. *Location by section, township, and range; and a legal description sufficient to define the location and boundaries of the area to be divided;*
 - 5. *Names and addresses of the owner, subdivider, and engineer or surveyor;*
 - 6. *Acreage;*
 - 7. *Structures and yard setbacks;*
 - 8. *The location, width, and purpose of easements;*
 - 9. *The location, approximate dimensions, and area of all lots;*
 - 10. *Lot and block numbers; and*
 - 11. *Other information as maybe specified on application forms and checklists prescribed by the Planning Director.*
- C. *Vicinity map shall be drawn at an appropriate scale, showing all existing subdivisions, streets, and unsubdivided land between the proposed subdivision and the nearest existing arterial or collector streets, and showing how proposed streets may be extended to connect with existing streets. At a minimum, the vicinity map shall depict future street connections for land within 400 feet of the subject property. (Ord. 1907 (Attach. 1), 2002)*

Comment: The preliminary plat is based upon a survey by Compass Land Surveyors and is stamped by a registered surveyor. All of the required information listed in 17.20.030B is shown on the Preliminary Plat. A vicinity map is shown on the Preliminary Plat. It is at a scale of 1" = 20' and provides information on all street connections within a 400 foot radius of the property.

17.20.040 BUILDING LINES PROHIBITED

Platted building lines are prohibited. The effect of building lines may be executed through recordation of instruments, which shall be referenced on the recorded plat. (Ord. 1907 (Attach. 1), 2002)

Comment: No platted building lines are proposed.

17.20.050 EXISTING CONDITIONS

The following shall be shown on the preliminary plat:

- A. Location, width, and names of all existing or platted streets within or adjacent to the tract, together with easements, railroad right-of-way, and other important features, such as section lines and corners, City boundary lines, and monuments.
- B. Contour lines related to an established benchmark or other datum approved by the Engineering Director, with intervals at a minimum of 2 feet for slopes up to 10% and 5 feet for slopes over 10%.
- C. Location within the area to be divided, and in the adjoining streets and property, of existing sewers, water mains, culverts, storm drain system, and electric conduits or lines proposed to service the property to be subdivided, and invert elevations of sewer manholes, drain pipes, and culverts.
- D. Zoning and existing uses within the tract and 200 feet on all sides, including the location and use of all existing structures indicating those that will remain and those to be removed.
- E. Approximate location of areas subject to inundation or stormwater overflow with approximate high-water elevation. Location, width, direction, and flow of all watercourses on or abutting the tract including wetlands and watercourses as shown on City-adopted natural resource and Title 3 maps.
- F. Natural features such as rock outcroppings, drainages whether seasonal or perennial, wooded areas, and isolated trees, including type and caliper.
- G. Floodway and floodplain boundary.
- H. Areas containing slopes of 25% or greater. (Ord. 1907 (Attach. 1), 2002)

Comment: The preliminary plat contains information for all of the relevant above requirements. Street names and dimensions are shown. Contour lines based on a field survey are depicted. Locations of utilities are provided as required. All of the surrounding area within 200 feet is zoned R-7 and this is noted on the plan. There are no areas on the property that are subject to inundation. There are no significant natural features on the property other than trees. The trees have been mapped as required. The property is not within a floodway or floodplain boundary. There are no areas containing slopes of 25% or greater on the property.

17.20.060 PROPOSED CONDITIONS

- A. 12 copies of a preliminary plat shall be submitted to the Planning Director. The plat shall include the following information:
 - 1. Date, north point, scale, address, assessor reference number, and legal description;
 - 2. Name and address of the record owner or owners and of the person who prepared the site plan;

3. *Approximate acreage and square feet under a single ownership, or if more than 1 ownership is involved, the total contiguous acreage of all landowners directly involved in the partition;*
4. *For land adjacent to and within the area to be divided, the locations, names, and existing widths of all streets, driveways, public safety accesses, easements, and rights-of-way; location, width, and purpose of all other existing easements; and location and size of sewer and waterlines, drainage ways, power poles, and other utilities;*
5. *Location of existing structures, identifying those to remain in place and those to be removed;*
6. *Lot design and layout, showing proposed setbacks, landscaping, buffers, driveways, lot sizes, and relationship to existing or proposed streets and utility easements;*
7. *Existing development and natural features for the site and adjacent properties, including those properties within 100 feet of the proposal, showing buildings, mature trees, topography, and other structures;*
8. *Elevation and location of flood hazard boundaries;*
9. *The location, width, name, and approximate centerline grade and curve radii of all streets; the relationship of all streets to any projected streets planned by the City; whether roads will continue beyond the plat; and existing and proposed grade profiles. No street name may be used which will duplicate or be confused with the name of an existing street, except for extensions of existing streets. Street names and numbers shall conform to the established pattern in the surrounding area.*

Comment: All of the above information that relates to the subject property is depicted on the preliminary plan for the partition.

B. A conceptual plan shall be provided for complete subdivision or partitioning of the property, as well as any adjacent vacant or underutilized properties, so that access issues may be addressed in a comprehensive manner. The concept plan shall include documentation that all options for access have been investigated including shared driveways, pedestrian accessways, and new street development.

Comment: The proposed plan provides for complete partitioning of the property. Neither of the lots would be large enough to be further partitioned. All of the adjacent properties are also fully developed. The only options available to access the rear lot on this property are the creation of a flag strip for Rockwood Street or to make use of the existing right-of-way of SE 44th Ct. that is stubbed to the western boundary of this site. For reasons discussed in the variance section of this narrative, the proposed use of SE 44th Ct. makes the most sense.

C. A detailed narrative description demonstrating how the proposal meets all applicable provisions of this title, Title 19, and City design standards, including the Public Works Standards.

Comment: This narrative addresses all of the relevant provisions required in this chapter.

D. Plans and drawings as necessary to demonstrate compliance with all applicable provisions of chapters of this title, Title 19, and City design standards, including the Public Works Standards.

Comment: The preliminary plan contains all of the information required to show compliance with the provisions of these ordinances and documents.

E. A drainage summary report and plan prepared in accordance with the applicable Public Works Standards.

Comment: We discussed this requirement with Chrissy Dawson in Public Works. There is no new street associated with this partition application. Parcel 2 will have a new home constructed on it at some point, which will necessitate the removal of the existing 994 sq. ft. shop on that lot in order to provide for driveway access. The net amount of new impervious area will be very modest. Ms. Dawson noted that a drywell will likely be the method of dealing with runoff from the roof and foundation drains. She stated that because the requirement to prepare a storm report and plan would be met at the time of submittal of a building permit application for a home to be built on Parcel 2.

F. Proposed deed restrictions, if any, in outline form.

Comment: The only deed restriction that will be proposed relates to the existing accessory structure on Parcel 2. The restriction will require that the accessory structure can only remain on the property as long as Parcel 1 and 2 are in the same ownership or if a building permit has been filed for a new primary structure on Parcel 2. Note that a temporary access easement over a portion of the rear yard area of Parcel 1 is depicted on the site plan. The purpose of this easement is to allow for access to Parcel 2 during the time period prior to the removal of the shop building on that property to allow for the construction of a new home. Once the shop is removed, the temporary access easement will terminate. The purpose is to allow for sufficient room to move materials around the shop and to provide for maintenance to the shop building.

G. Improvements to be made by the developer and the approximate time such improvements are to be completed. Sufficient detail regarding proposed improvements shall be submitted so that they may be checked for compliance with the objectives of this title, State law, and other applicable City ordinances. If the nature of the improvements is such that it is impractical to prepare all necessary details prior to approval of the

preliminary plat, the additional details shall be submitted with the request for final plat approval. (Ord. 2003 § 2, 2009; Ord. 1907 (Attach. 1), 2002)

Comment: No improvements are proposed in conjunction with this partition.

19.301 LOW DENSITY RESIDENTIAL ZONES

19.301.2 Allowed Uses in Low Density Residential Zones

Comment: The site is zoned R-7 and this zoning district allows single-family detached dwelling units, the use proposed for the two parcels in this partition.

19.301.4 Development Standards

Comment: The development standards specified in Table 19.301.04 for the R-7 zone are:

Minimum lot size – single family detached: 7,000 sq. ft.

Both parcels exceed this minimum standard. Parcel 1 is 10,559 sq. ft. in area and Parcel 2 contains 9,887 sq. ft.

Minimum lot width – 60’.

Both parcels exceed this minimum standard. Parcel 1 is 68.6’ wide and Parcel 2 is approximately 144’ wide.

Minimum lot depth – 80’.

Parcel 1 exceeds the minimum standard at approximately 154’ deep. Parcel 2 takes access from SE 44th Ct. Lot depth is measured perpendicular to the street from which access is taken. Parcel 2 cannot meet the minimum depth standard as it measures only 68.6’ on that axis. A variance is being requested. Please refer to the discussion of the variance approval criteria, below.

Minimum street frontage – 35’.

Both lots exceed the minimum street frontage standard. Parcel 1 has 68.53’ of frontage on SE Rockwood St. and Parcel 2 has 41.2’ of frontage on SE 44th Ct.

Minimum yard requirements – Front-20, Side-5/10, Rear-20’.

Setbacks for the existing home on Parcel 1 are shown on the site plan and all meet or exceed these standards. Yards for Parcel 2 will be reviewed at the time of building permit application.

Maximum building height for primary structures – 2.5 stories or 35’, whichever is less.

The existing home satisfies this standard. Height for Parcel 2 will be reviewed at the time of building permit application.

Side yard height plane limit – 20’ at side yard depth. 45 degree slope of plane.

The existing home on Parcel 1 meets this requirement and, in any event, is pre-existing and will not be changed. The future home on Parcel 2 will be reviewed for compliance at the time of building permit application.

Maximum lot coverage – 35%.

The existing home has a footprint of 725 sq. ft. and the carport/shop has a footprint of 1,075 sq. ft. Total lot coverage is 1,800 sq. ft. on the 10,559 sq. ft. lot, or 17%. Lot coverage for Parcel 2 will be reviewed at the time of building permit application.

Minimum vegetation – 30%.

In addition to the 1,800 sq. ft. of building footprint area on Parcel 1, an additional 1,968 sq. ft. of the lot is covered by the existing driveway, walks and an outdoor fireplace. The vegetated area of the lot is 6,791 sq. ft., or 64.3%. Compliance with this standard for Parcel 2 will be reviewed at the time of building permit application.

Density requirements – Minimum 5.0 Units/Acre, Maximum 6.2 Units/Acre.

The subject property is approximately .5 acres in area and is proposed to be developed with 2 dwelling units, for a density of 4 units per acre. This is less than the maximum standard of 6.2 units per acre. 19.301.5D modifies the minimum density standard for partitions that are not able to meet typical minimum density requirements due to the dimensional requirements for lot width, lot depth, or lot frontage. In this instance, there is insufficient frontage to allow further division and, therefore, the minimum density is equal to the maximum number of lots that can be obtained. In this case, that is two lots.

19.301.5 Additional Development Standards

- A. Side Yards. In the R-7 zone one side yard must be at least 5 feet and the other at least 10 feet. The existing home exceeds these requirements, as shown on the site plan. Parcel 2 will be reviewed at building permit stage.
- B Lot Coverage. None of the conditions addressed in this section apply to the subject property.
- C. Front Yard Minimum Vegetation. – 40% minimum
The front yard area of Parcel 1 is 2,631 sq. ft. Of this total, approximately 400 sq. ft. is driveway and steps. Approximately 85% of the front yard area, therefore, is vegetated. Parcel 2 will be reviewed for compliance with the building permit.
- D. Residential Densities. Discussed above.
- E. Accessory Structure Standards – See discussion of Section 19.502.
- F. Number of Dwelling Structures – As required, only one primary dwelling will be allowed on each parcel.

- G. Off-street Parking. Chapter 19.600 requires a minimum of one off-street parking space for a single-family home. The existing home on Parcel 1 has room for 4 or more cars (2 in the carport and 2 in the driveway). Parcel 2 has sufficient room to meet the standard and will be reviewed for compliance at building permit stage.
- H. Public Facility Improvements. Based on discussions with staff and the pre-app notes, no public facility improvements are required.
- I. Additional Standards – See discussion of relevant additional standards below.

19.502 ACCESSORY STRUCTURES

19.502.1 General Provisions

- A. *No accessory structure shall encroach upon or interfere with the use of any adjoining property or public right-of-way including but not limited to streets, alleys, and public and private easements.*
- B. *Multiple accessory structures are permitted subject to building separation, building coverage, and minimum vegetation requirements of the zoning district in which the lot is located.*
- C. *An accessory structure shall comply with all of the requirements of the Uniform Building Code.*
- D. *Accessory structures excluding fences, flagpoles, pergolas, arbors, or trellises may not be located within the required front yard except as otherwise permitted in this chapter.*
- E. *Regardless of the base zone requirements in Chapter 19.300, the required side and rear yards for an accessory structure are reduced to 5 ft, except as described below.*
 - 1. *Accessory structures are subject to the minimum street side yard requirements of the base zones in Chapter 19.300.*
 - 2. *Regulations for overlay zones or special areas in Chapter 19.400 may require an accessory structure to be set back beyond the minimum side or rear yard requirements.*
 - 3. *If the rear or side yard requirement in the base zone in Chapter 19.300 is less than 5 ft, then the yard requirements of the base zone shall apply.*
 - 4. *The rear or side yard requirement for residential accessory structures per Subsection 19.502.2.A or 19.910.1.E.4 may specify a different yard requirement.*
- F. *Alteration or modification of nonconforming accessory structures is subject to the provisions of Chapter 19.800 Nonconforming Uses and Development.*
- G. *Fences, flagpoles, pergolas, arbors, and trellises are permitted in yards in all residential zones.*

Comment: There is an existing accessory carport and shop structure on Parcel 1. This structure is located wholly on the subject property and meets required setbacks and, therefore, will not

impact the use of any adjoining property or right-of-way. There is also an accessory structure on Parcel 2 that will likely need to be removed to allow for the construction of a new home. A deed restriction will be recorded noting that this structure can only remain while Parcels 1 and 2 are under the ownership or if a building permit has been filed with the City. No alterations to either structure are proposed.

19.502.2 Specific Provisions for Accessory Structures

A. The following standards apply for residential accessory structures on single-family detached, duplex, rowhouse, and cottage cluster properties. The standards in Subsection 19.502.2.A do not apply to pools, uncovered decks, and patios.

The purpose of these standards is to allow accessory structures that accommodate the typical needs of a single-family residence, while protecting the character of single-family neighborhoods.

1. Development Standards

a. Height and Footprint

The maximum height and footprint allowed for an accessory structure is determined by the yard depths between the structure and the lot lines. Accessory structures with a larger height and footprint must meet the increased yard requirements. An accessory structure is allowed the maximum building height and footprint listed in Table 19.502.2.A.1.a only if the entire structure meets or exceeds all the yard requirements in the same column. See Figure 19.502.2.A.1.a.

Comment: The accessory structures are single story and do not exceed the height standard. The accessory structure on Parcel 1 has a footprint of 1,075 sq. ft. and the structure on Parcel 2 has a footprint of 974 sq. ft. On lots that are at 10,000 sq ft in area, the Type C accessory structure can be at least 850 sq ft in area, regardless of the primary structure size. For Parcel 1, since the existing house is only about 720 sq. ft. in area, the lot needs to be at least 10,000 sq ft in area to make the accessory structure (which is already larger than the house, at 1,075 sq ft) less nonconforming (since the minimum allowance is at least 850 sq ft). Parcel 2 is less than 10,000 sq. ft. and the existing shop exceeds the maximum lot coverage standard. As noted previously, this nonconforming building will be removed prior to the issuance of a building permit for the future home on Parcel 2.

19.504.4 Buildings on the Same Lot

A. In R-10, R-7, and R-5 Zones, 1 primary dwelling shall be permitted per lot. A detached accessory dwelling unit may be permitted per Subsection 19.910.1.

Comment: Both parcels will have one primary dwelling. No accessory dwelling units are proposed at this time.

19.504.8 Flag Lot Design and Development Standards

Comment: Not applicable. No flag lots are proposed.

19.505.1 Design Standards for Single-Family Dwellings and Duplexes

Comment: Not applicable at this time. No changes to the existing home are proposed. When a home is constructed on Parcel 2, compliance with this chapter will be reviewed prior to issuance of the building permit.

19.505.2 Garage and Carport Standards

Comment: Not applicable at this time. No changes to the existing carport are proposed. When a home is constructed on Parcel 2, compliance with this chapter will be reviewed prior to issuance of the building permit.

19.506 MANUFACTURED DWELLING SITING AND DESIGN STANDARDS

Comment: Not applicable. There is no proposal to site a manufactured dwelling on either parcel.

CHAPTER 19.700 PUBLIC FACILITY IMPROVEMENTS

19.702 Applicability

Comment: The provisions of this chapter are applicable to this proposal because it involves a land partition.

19.703.1 Preapplication Conference

For all proposed development that requires a land use application and is subject to Chapter 19.700 per Section 19.702, the applicant shall schedule a preapplication conference with the City prior to submittal of the land use application. The Engineering Director may waive this requirement for proposals that are not complex.

Comment: The applicant scheduled a pre-application conference with the City and it was held on July 30, 2015.

19.703.2 Application Submittal

For all proposed development that is subject to Chapter 19.700 per Section 19.702, one of the following types of applications is required.

A. Development Permit Application

If the proposed development does not require a land use application, compliance with Chapter 19.700 will be reviewed as part of the development permit application submittal.

B. Transportation Facilities Review (TFR) Land Use Application

If the proposed development triggers a transportation impact study (TIS) per Section 19.704, a TFR land use application shall be required. Compliance with Chapter 19.700 will be reviewed as part of the TFR application submittal and will be subject to a Type II review process as set forth in Section 19.1005. The TFR application shall be consolidated with, and processed concurrently with, any other required land use applications.

If the proposed development does not trigger a TIS per Section 19.704, but does require the submittal of other land use applications, compliance with Chapter 19.700 will be reviewed during the review of the other land use applications.

Comment: The application requires a non-TFR review because the two-lot partition does not trigger a Traffic Impact Study.

19.703.3 Approval Criteria

For all proposed development that is subject to Chapter 19.700 per Section 19.702, the required development permit and/or land use application shall demonstrate compliance with the following approval criteria at the time of submittal.

A. Procedures, Requirements, and Standards

Development and related public facility improvements shall comply with procedures, requirements, and standards of Chapter 19.700 and the Public Works Standards.

B. Transportation Facility Improvements

Development shall provide transportation improvements and mitigation at the time of development in rough proportion to the potential impacts of the development per Section 19.705 Rough Proportionality, except as allowed by Section 19.706 Fee in Lieu of Construction.

Development in downtown zones that is exempt per Subsection 19.702.3.B shall only be required to provide transportation improvements that are identified by a Transportation Impact Study as necessary to mitigate the development's transportation impacts. Such development is not required to provide on-site frontage improvements.

C. Safety and Functionality Standards

The City will not issue any development permits unless the proposed development complies with the City's basic safety and functionality standards, the purpose of which is to ensure that development does not occur in areas where the surrounding public facilities are inadequate. Upon submittal of a development permit application, an applicant shall demonstrate that the development property has or will have all of the following:

- 1. Adequate street drainage, as determined by the Engineering Director.*

Comment: SE Rockwood St. and SE 44th Ct. are improved with adequate storm drainage facilities. No improvements are required per Public Works comments at the pre-application conference.

2. Safe access and clear vision at intersections, as determined by the Engineering Director.

Comment: The existing driveway onto SE Rockwood St. and the proposed driveway onto SE 44th Ct. have adequate clear vision and meet safe access requirements. A new driveway approach will be required for Parcel 2 onto SE 44th Ct. This driveway approach will be designed to the requirements of MMC 12.16.040, the Americans with Disabilities Act, and the City of Milwaukie Public Works Standards.

3. Adequate public utilities, as determined by the Engineering Director.

Comment: As shown on the Existing Conditions Map, there are existing sewer, water, and other utilities in SE Rockwood St. and SE 44th Ct. to meet the needs of the proposed development.

4. Access onto a public street with the minimum paved widths as stated in Subsection 19.703.3.C.5 below.

Comment: Both SE Rockwood St. and SE 44th Ct. meet the minimum paved width criteria, as addressed below.

5. Adequate frontage improvements as follows:

- a. For local streets, a minimum paved width of 16 ft along the site's frontage.*
- b. For nonlocal streets, a minimum paved width of 20 ft along the site's frontage.*
- c. For all streets, a minimum horizontal right-of-way clearance of 20 ft along the site's frontage.*

Comment: Both SE Rockwood St. and SE 44th Ct. are local streets. As shown on the Existing Conditions Map, both of these streets have existing paved widths in excess of 16 feet along the site's frontage. Both also provide for more than 20 feet of horizontal right-of-way clearance. SE Rockwood Street has a 50 foot wide right-of-way and the right-of-way width of SE 44th Ct. is 60 feet in the cul-de-sac at the frontage of Parcel 2 and 30 feet wide on the street approaching the cul-de-sac.

6. Compliance with Level of Service D for all intersections impacted by the development, except those on Oregon Highway 99E that shall be subject to the following:

- a. Level of Service F for the first hour of the morning or evening 2-hour peak period.*
- b. Level of Service E for the second hour of the morning or evening 2-hour peak period.*

Comment: Public Works comments at the pre-application conference indicate that the existing levels of service in this area are adequate.

19.704 TRANSPORTATION IMPACT EVALUATION

19.704.1 TIS Determination

- A. *Based on information provided by the applicant about the proposed development, the Engineering Director will determine when a TIS is required and will consider the following when making that determination.*
1. *Changes in land use designation, zoning designation, or development standard.*
 2. *Changes in use or intensity of use.*
 3. *Projected increase in trip generation.*
 4. *Potential impacts to residential areas and local streets.*
 5. *Potential impacts to priority pedestrian and bicycle routes, including, but not limited to, school routes and multimodal street improvements identified in the TSP.*
 6. *Potential impacts to intersection level of service (LOS).*

Comment: A TIS has been determined by the Milwaukie Engineering Department to not be required for a partition because of minimal impacts upon the transportation system.

19.706 FEE IN LIEU OF CONSTRUCTION

The applicant is not proposing a fee in lieu of construction of street improvements.

19.708 TRANSPORTATION FACILITY REQUIREMENTS

19.708.1 General Street Requirements and Standards

Comment: Based upon information presented by the Milwaukie Engineering Department at the pre-application conference, the only required street improvement is a driveway approach from SE 44th Ct. to service Parcel 2. This improvement is illustrated on the site plan.

19.708.2 Street Design Standards

Comment: Both Rockwood St. and SE 44th Ct. are local streets. Each has sufficient right-of-way to meet City standards. As noted above, the only improvement required by Engineering is the driveway approach depicted on the site plan.

19.708.3 Sidewalk Requirements and Standards

Comment: Information presented by the Milwaukie Engineering Department indicates that no new sidewalks are required. A driveway approach to Parcel 2 will be provided, consistent with the pre-application conference notes.

19.708.4 Bicycle Facility Requirements and Standards

Comment: SE Rockwood St. and SE 44th Ct. are not listed in the Transportation System Plan (TSP) as a bike boulevard; therefore, the requirements of this section do not apply.

19.708.5 Pedestrian/Bicycle Path Requirements and Standards

Comment: The subject property and proposed development do not trigger the need for a pedestrian/bicycle pathway. The adjacent property to the north is fully developed without provision for a pathway connection so there is no opportunity to provide a connecting pathway.

19.708.6 Transit Requirements and Standards

Comment: The proposed development is not located on a transit route listed in the TSP; therefore the requirements of this section do not apply.

Compliance with Variance Approval Criteria:

The criteria for approval of variance applications are found in Chapter 19.911 of the Milwaukie Zoning Ordinance. These criteria are discussed below:

19.911.2 Applicability

A. Eligible Variances

Except for situations described in Subsection 19.911.2.B, a variance may be requested to any standard or regulation in Titles 17 or 19 of the Milwaukie Municipal Code, or any other portion of the Milwaukie Municipal Code that constitutes a land use regulation per ORS 197.015.

Comment: The requested variance is to the minimum 80 foot lot depth standard for the R-7 zone specified in Table 19.301.4. As such, this variance is eligible to be approved by the City.

B. Ineligible Variances

A variance may not be requested for the following purposes:

- 1. To eliminate restrictions on uses or development that contain the word "prohibited."*
- 2. To change a required review type.*
- 3. To change or omit the steps of a procedure.*
- 4. To change a definition.*
- 5. To increase, or have the same effect as increasing, the maximum permitted density for a residential zone.*

6. *To justify or allow a Building Code violation.*
7. *To allow a use that is not allowed outright by the base zone. Requests of this nature may be allowed through the use exception provisions in Subsection 19.911.5, nonconforming use replacement provisions in Subsection 19.804.1.B.2, conditional use provisions in Section 19.905, or community service use provisions in Section 19.904.*

Comment: The requested variance does not involve any of the above reasons that would make it ineligible to be approved by the City.

C. Exceptions

A variance application is not required where other sections of the municipal code specifically provide for exceptions, adjustments, or modifications to standards either “by right” or as part of a specific land use application review process.

Comment: There are no exceptions, adjustments or modifications to the lot depth standard as a part of a specific land use application review process.

19.911.3 Review Process

A. General Provisions

1. *Variance applications shall be evaluated through either a Type II or III review, depending on the nature and scope of the variance request and the discretion involved in the decision-making process.*
2. *Variance applications may be combined with, and reviewed concurrently with, other land use applications.*
3. *One variance application may include up to three variance requests. Each variance request must be addressed separately in the application. If all of the variance requests are Type II, the application will be processed through a Type II review. If one or more of the variance requests is Type III, the application will be processed through a Type III review. Additional variance requests must be made on a separate variance application.*

B. Type II Variances

Type II variances allow for limited variations to numerical standards. The following types of variance requests shall be evaluated through a Type II review per Section 19.1005:

1. *A variance of up to 40% to a side yard width standard.*
2. *A variance of up to 25% to a front, rear, or street side yard width standard. A front yard width may not be reduced to less than 15 ft through a Type II review.*
3. *A variance of up to 10% to lot coverage or minimum vegetation standards.*
4. *A variance of up to 10% to lot width or depth standards.*
5. *A variance of up to 10% to a lot frontage standard.*

6. *A variance to compliance with Subsection 19.505.1.C.4 Detailed Design, or with Subsection 19.901.1.E.4.c.(1) in cases where a unique and creative housing design merits flexibility from the requirements of that subsection.*

C. *Type III Variances*

Type III variances allow for larger or more complex variations to standards that require additional discretion and warrant a public hearing consistent with the Type III review process. Any variance request that is not specifically listed as a Type II variance per Subsection 19.911.3.B shall be evaluated through a Type III review per Section 19.1006.

Comment: The requested variance would allow a lot depth of 68 feet rather than the required 80 foot minimum depth applicable in the R-7 zone. This variance would exceed the 10 percent threshold allowed through a Type II process and, therefore, must be considered through a Type III process.

19.911.4 Approval Criteria

A. *Type II Variances*

An application for a Type II variance shall be approved when all of the following criteria have been met:

1. *The proposed variance, or cumulative effect of multiple variances, will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare.*
2. *The proposed variance will not interfere with planned future improvements to any public transportation facility or utility identified in an officially adopted plan such as the Transportation System Plan or Water Master Plan.*
3. *Where site improvements already exist, the proposed variance will sustain the integrity of, or enhance, an existing building or site design.*
4. *Impacts from the proposed variance will be mitigated to the extent practicable.*

Comment: Not applicable. This is a Type III variance application.

B. *Type III Variances*

An application for a Type III variance shall be approved when all of the criteria in either Subsection 19.911.4.B.1 or 2 have been met. An applicant may choose which set of criteria to meet based upon the nature of the variance request, the nature of the development proposal, and the existing site conditions.

1. *Discretionary Relief Criteria*

- 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.*

Comment: As shown on the aerial photograph below, the subject property is a narrow parcel that has existing single-family development abutting on all sides. SE 44th Ct. is stubbed to the western property line of the subject site.



If SE 44th Ct. was not constructed to provide for access to the subject property, there would be no other alternative to divide the lot. The normal process for an infill property such as this would be to provide access via a flag strip from SE Rockwood St., however City standards require a 25' access strip and 60 feet of lot width for the lot fronting on SE Rockwood St. Since the lot width is only 68 feet, there is insufficient room for a flag lot option. It might be possible to apply

for a variance to the access strip width standard, but under such a development plan the access would be via a long driveway that would have greater impacts on the privacy of the existing home on the adjacent property to the west (TL 900) than would result from making use of the access afforded by SE 44th Ct. The proposed lot depth variance would allow making use of SE 44th Ct. for access and would protect the home on TL 900 from the impacts of additional vehicular traffic. It would also result in a shorter driveway and lesser impervious area than would a flag lot configuration. This would help to reduce impacts upon storm drainage. There is no option allowing the property to be partitioned without a variance to at least one ordinance provision. Given the size of the subject property, not allowing for the division of this lot would be a waste of urban land and an inefficient use of existing public facilities and services.

- 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.*

Comment: Allowing this variance to lot depth will permit Parcel 2 to front onto SE 44th Ct., thereby minimizing impacts to TL 900 that would otherwise result from a flag lot driveway configuration. No other properties will be impacted by the proposed variance as all required setbacks will still remain in effect. The proposal has desirable public benefits of reducing impervious area associated with driveway access and thereby minimizing impacts on storm water runoff. Finally, the proposal makes full use of the existing built environment by making use of a street that is stubbed to the property line rather than constructing a new private driveway from Rockwood St.

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

Comment: Presumably, the intent of the minimum lot depth standard is to ensure that there is adequate room to build a home while maintaining required front and rear yard setbacks so as to preserve privacy between neighboring homes. In this instance, the proposed lot depth is approximately 68.6 feet. With required 20' front and rear setbacks, this still leaves room for a home that is 28 feet deep. Given the width of this parcel is more than 140 feet, there is ample room to construct a home while maintaining the required front and rear setbacks. With normal backyard landscaping, there will be no impacts on adjoining properties associated with approval of this variance request.

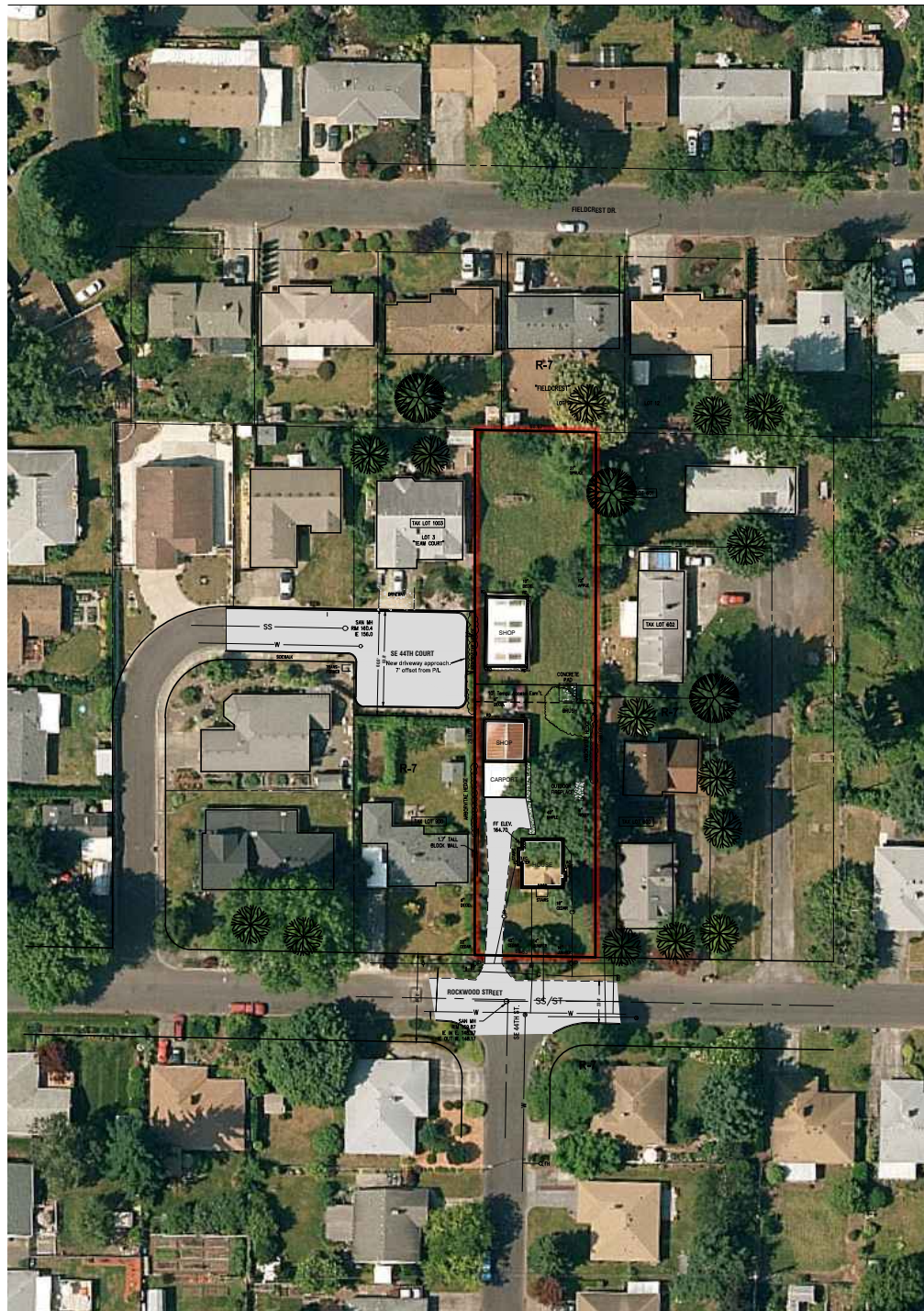
2. Economic Hardship Criteria

- a. *Due to unusual site characteristics and/or other physical conditions on or near the site, the variance is necessary to allow reasonable economic use of the property comparable with other properties in the same area and zoning district.*
- b. *The proposed variance is the minimum variance necessary to allow for reasonable economic use of the property.*
- c. *Impacts from the proposed variance will be mitigated to the extent practicable.*

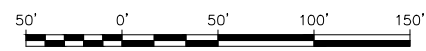
Comment: Not applicable.

19.911.5 Use Exceptions

Comment: Not applicable. No use variance is requested.



Surrounding Development



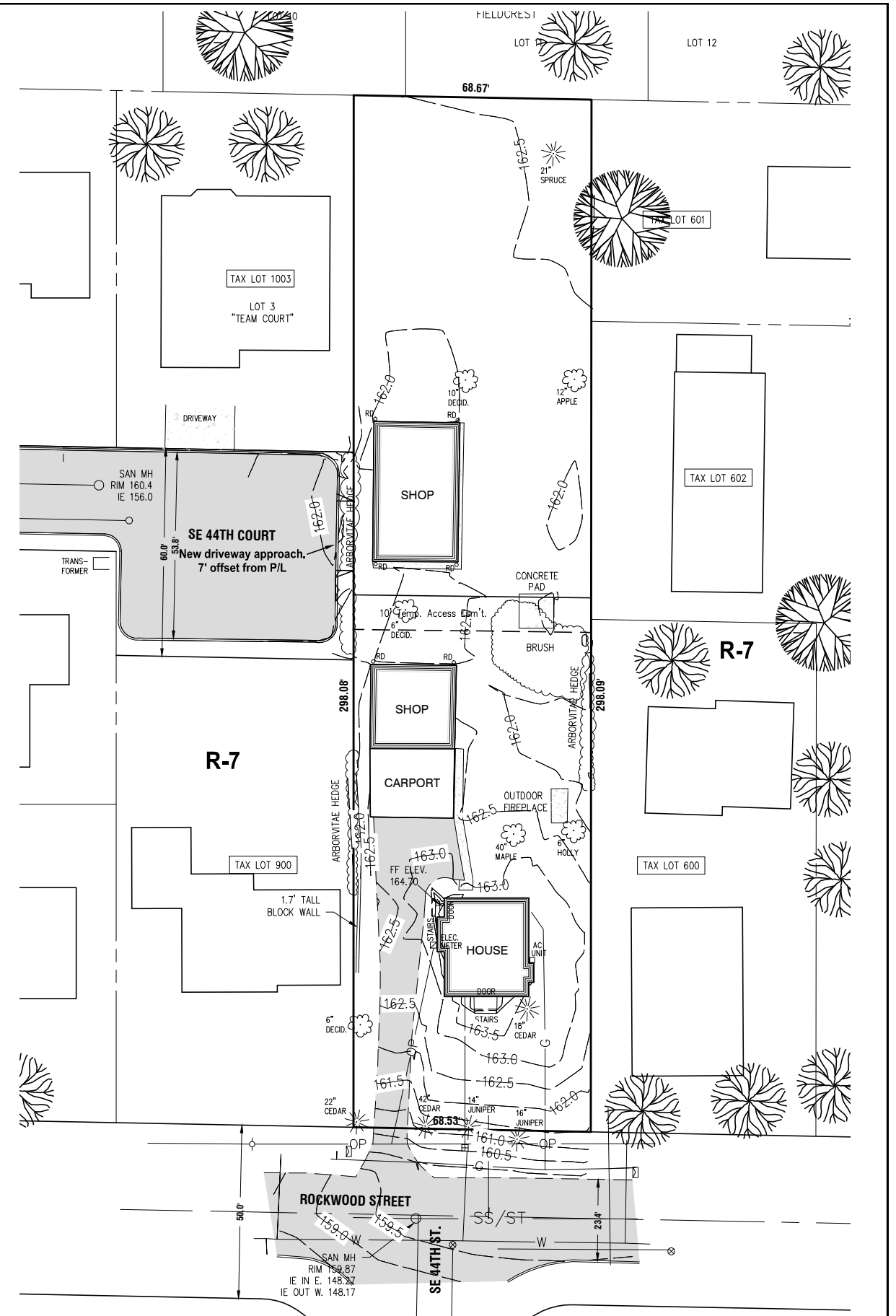
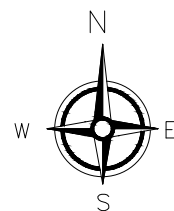
Scale: 1" = 100'

Notes:

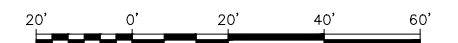
- UTILITY INFORMATION SHOWN ON THIS MAP IS BASED UPON OBSERVED FEATURES. NO WARRANTIES ARE MADE REGARDING THE ACCURACY OR COMPLETENESS OF THE UTILITY INFORMATION SHOWN. ADDITIONAL UTILITIES MAY EXIST. INTERESTED PARTIES ARE HEREBY ADVISED THAT UTILITY LOCATIONS SHOULD BE VERIFIED PRIOR TO DESIGN OR CONSTRUCTION OF ANY CRITICAL ITEMS.
- VERTICAL DATUM: NAVD '88
- CONTOUR INTERVAL IS ONE-HALF FOOT.
- TOPOGRAPHIC FEATURES SHOWN ON THIS MAP WERE LOCATED USING STANDARD PRECISION TOPOGRAPHIC MAPPING PROCEDURES. THIRD PARTY USERS OF DATA FROM THIS MAP PROVIDED VIA AUTOCAD DRAWING FILES OR DATA EXCHANGE FILES SHOULD NOT RELY ON ANY AUTOCAD GENERATED INFORMATION WHICH IS BEYOND THE LIMITS OF PRECISION OF THIS MAP. THIRD PARTIES USING DATA FROM THIS MAP IN AN AUTOCAD FORMAT SHOULD VERIFY ANY ELEMENTS REQUIRING PRECISE LOCATIONS PRIOR TO COMMENCEMENT OF ANY CRITICAL DESIGN OR CONSTRUCTION. CONTACT COMPASS LAND SURVEYORS FOR FURTHER INFORMATION. FURTHERMORE, COMPASS LAND SURVEYORS WILL NOT BE RESPONSIBLE NOR HELD LIABLE FOR ANY DESIGN OR CONSTRUCTION RELATED PROBLEMS THAT ARISE OUT OF THIRD PARTY USAGE OF THIS MAP (IN AUTOCAD OR OTHER FORMAT) FOR ANY PURPOSE OTHER THAN SPECIFICALLY STATED HEREIN. THIS STATEMENT IS AN OFFICIAL PART OF THIS MAP.
- THIS DOES NOT CONSTITUTE A BOUNDARY SURVEY AND SHOULD NOT BE CONSTRUED AS SUCH. PROPERTY LINES ARE BASED ON RECORDED SURVEYS.

Legend:

- G — GAS LINE
- OP — OVERHEAD POWER LINE
- SS/ST — COMBO SANITARY/STORM SEWER LINE
- W — WATER LINE

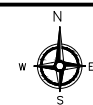


Existing Conditions



Scale: 1" = 40'

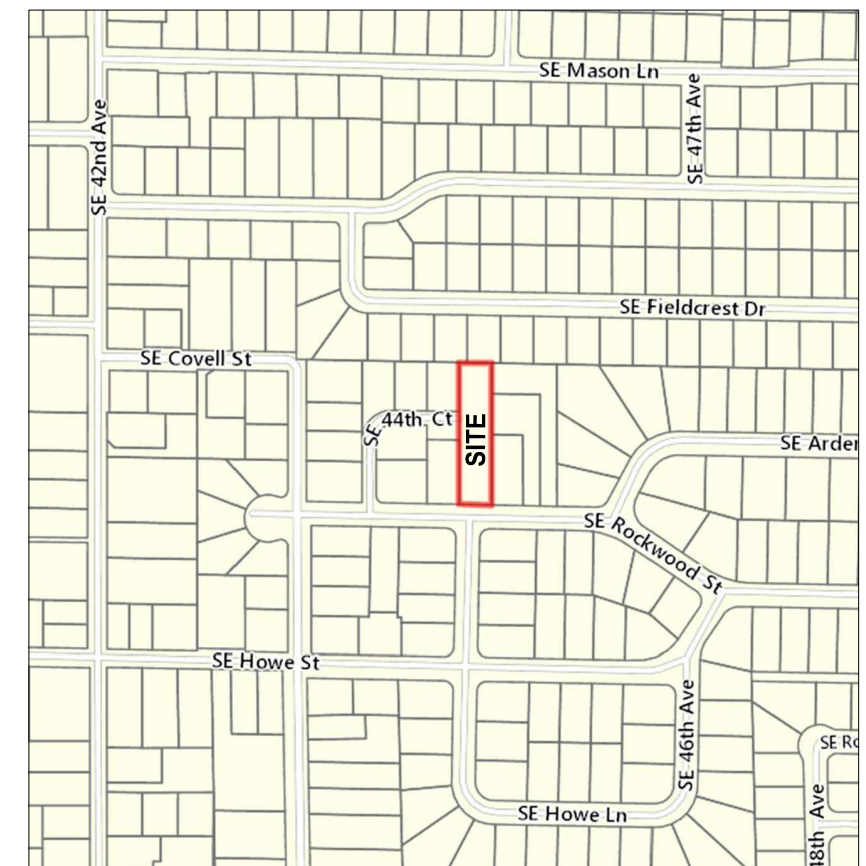
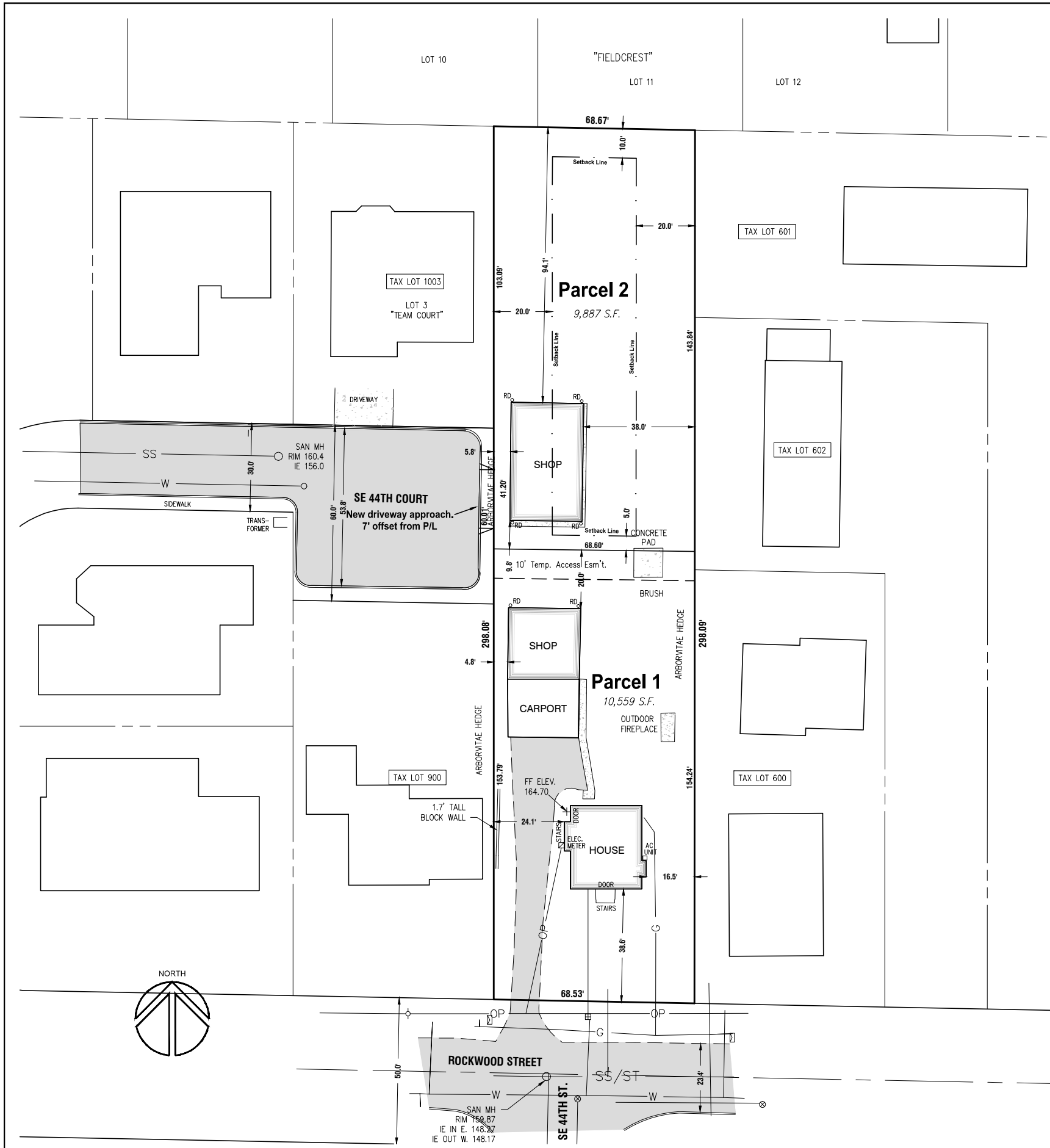
DRAWN	MMM	CHECK	MAR
SCALE	As Noted	DATE	OCT., 2015
7821 Topo.dwg			



COMPASS Land Surveyors
 4107 SE International Way, Suite 705
 Milwaukie, Oregon 97222 503-653-9093

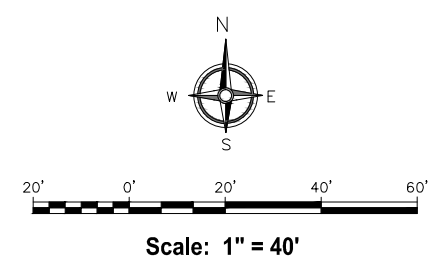
LOUIS BOMOTTI
 4401 SE ROCKWOOD STREET
 MILWAUKIE, OREGON 97222

TAX LOT 700, MAP 1-2E-30CB
CITY OF MILWAUKIE
CLACKAMAS COUNTY, OREGON



VICINITY MAP
SCALE: 1" = 400'

Legal Description: East one-half of lot 3, Block 1 "Gloverland"
Site Area: 20,446 Sq. Ft.



Preliminary Partition Plat

1/5/2016	1	Straightened lot line between Parcels 1 and 2.	
DRAWN	MMM	CHECK	MAR
SCALE	1" = 20'	DATE	OCT., 2015
7821 Topo.dwg			


COMPASS Land Surveyors
 4107 SE International Way, Suite 705
 Milwaukie, Oregon 97222 503-653-9093

LOUIS BOMOTTI
 4401 SE ROCKWOOD STREET
 MILWAUKIE, OREGON 97222

TAX LOT 700, MAP 1-2E-30CB
CITY OF MILWAUKIE
CLACKAMAS COUNTY, OREGON



August 12, 2015

Louie & Debra Bomotti
4401 SE Rockwood St
Milwaukie OR 97222

Re: Preapplication Report

Dear Louie & Debra:

Enclosed is the Preapplication Report Summary from your meeting with the City on July 30, 2015, concerning your proposal for action on property located at 4401 SE Rockwood St.

A preapplication conference is required prior to submittal of certain types of land use applications in the City of Milwaukie. Where a preapplication conference is required, please be advised of the following:

- Preapplication conferences are valid for a period of 2 years from the date of the conference. If a land use application or development permit has not been submitted within 2 years of the conference date, the Planning Director may require a new preapplication conference.
- If a development proposal is significantly modified after a preapplication conference occurs, the Planning Director may require a new preapplication conference.

If you have any questions concerning the content of this report, please contact the appropriate City staff.

Sincerely,

Alicia Martin
Administrative Specialist II

Enclosure

cc: file
Rick Givens

PRE-APPLICATION CONFERENCE REPORT

This report is provided as a follow-up to a meeting that was held on 7/30/2015 at 10:00 AM

Applicant Name: LOUIE BOMOTTI
Company:
Applicant 'Role': Owner
Address Line 1: 4401 SE ROCKWOOD
Address Line 2:
City, State Zip:
Project Name:
Description:
ProjectAddress: 4401 SE ROCKWOOD STREET
Zone: Residential Zone R-7
Occupancy Group:
Construction Type:
Use: Single-family residential.
Occupant Load:
AppsPresent: Louie & Debra Bomotti
Staff Attendance: Li Alligood, Stefan Heisler, Chrissy Dawson

BUILDING ISSUES

ADA:
Structural:
Mechanical:
Plumbing:
Plumb Site Utilities:
Electrical:
Notes:

Please note all drawings must be individually rolled. If the drawings are small enough to fold they must be individually folded.

FIRE MARSHAL ISSUES

Fire Sprinklers:

Fire Alarms:

Fire Hydrants:

Turn Arounds:

Addressing:

Fire Protection:

Fire Access:

Hazardous Mat.:

Fire Marshal Notes:

PUBLIC WORKS ISSUES

Water: N/A

Sewer: N/A

Storm: N/A

Street: N/A

Frontage: N/A

Right of Way: N/A

Driveways: Code Section 12.16.040.A states that access to private property shall be permitted with the use of driveway curb cuts and driveways shall meet all applicable guidelines of the Americans with Disabilities Act (ADA). Driveway approaches shall be improved to meet the requirements of Milwaukee's Public Works Standards.

Erosion Control: N/A

Traffic Impact Study: N/A

PW Notes: N/A

PLANNING ISSUES

Setbacks: Residential zone R-7: front yard 20 ft; side yard 10 ft/5ft; rear yard 20 ft. Accessory structures (sheds, detached garages, etc.) cannot be located in the required front yard or street side yard. Cornices, eaves,

Dated Completed:

City of Milwaukee DRT PA Report

Page 2 of 6

canopies, sunshades, gutters, steps, unroofed landings, and flues may project up to 24 inches into a required side yard and up to 36 inches into a required front or rear yard.

Landscaping: The R-7 zone requires that 30% of the total area of the lot be left or planted in trees, grass, shrubs, planting beds, etc. No more than 20% of the required vegetation area shall be covered in mulch or bark dust.

At least 40% of the front yard shall be vegetated. The front yard vegetation area required by this subsection counts toward the minimum required vegetation for the lot. A property may provide less than the 40% of the front yard vegetation requirement if it is necessary to provide a turnaround area so that vehicles can enter a collector or arterial street in a forward motion.

Landscape:

The R-7 zone requires that 30% of the total area of the lot be left or planted in trees, grass, shrubs, planting beds, etc. No more than 20% of the required vegetation area shall be covered in mulch or bark dust.

At least 40% of the front yard shall be vegetated. The front yard vegetation area required by this subsection counts toward the minimum required vegetation for the lot. A property may provide less than the 40% of the front yard vegetation requirement if it is necessary to provide a turnaround area so that vehicles can enter a collector or arterial street in a forward motion.

Parking:

Single-family residential uses require a minimum of 1 off-street parking space per dwelling unit (minimum 9 ft by 18 ft) upon development. Required spaces cannot be located in a required front or street side yard. Parking and maneuvering areas must be paved or otherwise hard, durable, dust-free surfaces. The use of pervious materials is allowed and encouraged. See MMC Section 19.607 for more details.

Transportation Review:

Transportation review: The City's transportation requirements are located in MMC 19.700. See 'Public Works' notes for details.

Application Procedures:

Application procedures: The applicant is interested in dividing the existing property into 2 lots. The existing single-family home and two accessory structures on the lot would be retained. The new lot would front 44th Ct, and the new lot line would be the rear lot line for 4401 SE Rockwood St. The proposal would require a Type III Variance to the minimum depth of the new lot, and a Type II Variance to the rear yard setback for the existing lot.

The following applications must be submitted and approved concurrently. Applications submitted concurrently are processed according to the highest numbered review type (in this case, Type III).

Variance (VR): VR approval is required because the depth of the existing lot facing 44th Ct is 68 ft and the minimum depth for a lot in the R-7 Zone is 80 ft. The application is reviewed through a Type III review per MMC 19.1006, and the application fee is \$2,000. The following sections of the Milwaukie Municipal Code apply to a Type III variance: 19.911.4.B Type III Variances and 19.301 Low Density Residential Zones.

Variance (VR): VR approval is required if the new lot line will be located less than 20 ft from the rear of the existing garage. The minimum rear yard setback in the R-7 Zone is 20 ft, and the applicant has proposed a rear yard setback of 15 ft. The application is reviewed through a Type II review per MMC 19.1005, and the application fee is \$1,000. The following sections of the Milwaukie Municipal Code apply to a Type II Variance: 19.911.4.A Type II Variances and 19.301 Low Density Residential Zones.

Minor Land Partition (MLP): MLP approval is required to create each new lot. The application is

reviewed through a Type II review per MMC 19.1005, and the application fee is \$2,000. The following sections of the Milwaukie Municipal Code apply to a minor land partition to create a flag lot: 17.12 Application Procedure and Approval Criteria; 17.16 Application Requirements and Procedures; 17.28 Design Standards; 17.29 Preliminary Plat; 17.24 Final Plat; 19.301 Low Density Residential Zones; 19.504.9 Flag Lot Design and Development Standards; and 19.700 Public Facility Improvements.

Once the VR and MLP applications have been submitted, the Final Plat application can be filed.

Final Plat (Type I): FP approval is required prior to development permit submittal. The application is reviewed through a Type I review per MMC 19.1004, and the application fee is \$200. The following sections of the Milwaukie Municipal Code would apply to the final plat partition to create a flag lot: 17.12 Application Procedure and Approval Criteria; 17.16 Application Requirements and Procedures; 17.24 Final Plat; and 19.700 Public Facility Improvements.

Application fees are based on the current fee schedule. Fees are typically updated on July 1st of each year. For applications submitted concurrently, the most expensive application is charged at full price and each additional application receives a 25% discount.

For the City's initial review, the applicant should submit 5 complete copies of the application, including all required forms and checklists. A determination of the application's completeness will be issued within 30 days. If deemed incomplete, additional information will be requested. If deemed complete, additional copies of the application will be required for referral to other departments, the Neighborhood District Association (NDA), and other relevant parties and agencies. City staff will inform the applicant of the total number of copies needed.

Land use application submission materials are listed below for your convenience. Please refer to the handouts distributed at the pre-application conference for more detailed information.

1. All applicable land use applications forms with signatures of property owners.
2. All applicable land use application fees.
3. Completed and signed "Submittal Requirements" and "Preliminary Plat Checklist and Procedures" or "Final Plat Checklist and Procedures" forms.
4. 5 copies of an existing conditions and a proposed conditions site plan, both to scale. These two site plans can be combined onto one site plan. Once the application is deemed complete, additional copies will be requested for distribution to City departments, applicable governmental agencies, and the neighborhood district association for review.
5. Detailed narrative describing compliance with all applicable code sections.

Type III applications are discretionary in nature and require minor quasi-judicial review by the Planning Commission. The timeline for review and approval is generally 3-4 months. The Planning Commission hears land use applications on the second Tuesday of every month, and complete applications need to be submitted to the Planning Department no later than 45 days prior to the target Planning Commission hearing date. In general, staff recommends that an applicant submit at least 30 days prior to the 45-day deadline in order to ensure that there is time to make all applications complete if they are initially deemed incomplete.

Type II applications are administrative in nature and are decided by the Planning Director with an opportunity for public comment. Once the application is deemed complete, notice of the application will be mailed to property owners and residents within 300 ft of the subject property, with 14 days to respond with comments. Within 7 days of being deemed complete, a sign giving notice of the application must be posted on the subject property, to remain until the decision is issued. A decision will not be issued before the end of the 14-day comment period.

Type I applications are administrative in nature and are decided by the Planning Director. A decision is generally issued within 14 days of the application being deemed complete.

Natural Resource Review: The property does not contain any mapped natural resource areas.

Lot Geography: The property consists of one tax lot and is rectilinear in shape. Access is available from Rockwood St and 44th Ct.

- Planning Notes:**
1. The preapplication conference is valid for purposes of submitting future land use applications as described in MMC 19.1002.4. A preapplication conference is valid for 2 years.
 2. The site is located in the Lewelling Neighborhood District Association (NDA) boundary. Staff strongly encourages the applicant to present any proposed land partition to the NDA and/or its Land Use Committee, as well as to the immediate property owners. The NDA's webpage is on-line at <http://www.milwaukieoregon.gov/citymanager/lewelling-nda>. Their meetings are held at 7:00pm on the second Wednesday of the month at Lewelling Elementary, 5325 SE Logus St. The NDA Chairperson is Bryan Trotter (971-295-0393, lewellingtrotter@outlook.com). Please contact the Chair to coordinate a meeting to discuss the proposal.
 3. A covenant will need to be recorded outlining the conditions under which an accessory structure can be retained on the newly created lot. Generally, it can remain as long as the two lots are under the same ownership, or if a building permit has been filed for a primary structure on the site.
 4. Analysis for the request for a variance to the minimum lot depth could include an evaluation of the adjacent development patterns (homes to the west front on 44th Ct and allowing a new lot to front on 44th Ct would provide additional privacy for those homes).
 5. The City considers this action to be a minor land partition. However, Clackamas County may consider this action a replat. The applicant is strongly advised to check with the Clackamas County Surveyor prior to preparation of a survey to identify the documents the County will require for recording the final plat.
 6. The Milwaukie Municipal Code is located online at <http://www.qcode.us/codes/milwaukie/>. Land use application forms are located online at <http://www.milwaukieoregon.gov/planning/land-use-application>.

ADDITIONAL NOTES AND ISSUES

County Health Notes:

Other Notes:

Dated Completed:

City of Milwaukie DRT PA Report

Page 5 of 6

This is only preliminary preapplication conference information based on the applicant's proposal and does not cover all possible development scenarios. Other requirements may be added after an applicant submits land use applications or building permits. City policies and code requirements are subject to change. If you have any questions, please contact the City staff that attended the conference (listed on Page 1). Contact numbers for these staff are City staff listed at the end of the report.

Sincerely,

City of Milwaukie Development Review Team

BUILDING DEPARTMENT

Tom Larsen - Building Official - 503-786-7611
Bonnie Lanz - Permit Specialist - 503-786-7613

ENGINEERING DEPARTMENT

Gary Parkin - City Engineer - 503-786-7601
Brad Albert - Civil Engineer - 503-786-7609
Tach Weigel - Civil Engineer - 503-786-7610
Jason Rice - Civil Engineer - 503-786-7605
Matt Palmer - Associate Engineer - 503-786-7602

COMMUNITY DEVELOPMENT DEPARTMENT

Jeanne Garst - Administrative Supervisor - 503-786-7655
Marcia Hamley - Admin Specialist - 503-786-7656
Blanca Marston - Admin Specialist - 503-786-7609
Alicia Martin - Admin Specialist - 503-786-7600

PLANNING DEPARTMENT

Stephen Butler - Planning Director - 503-786-7652
Ryan Marquardt - Senior Planner - 503-786-7658
Brett Kelyer - Associate Planner - 503-786-7657
Li Alligood - Associate Planner - 503-786-7627
Kari Svanstrom - Associate Planner - 503-786-7653

CLACKAMAS FIRE DISTRICT

Mike Boumann - Lieutenant Deputy Fire Marshal - 503-742-267

MEMORANDUM

TO: Community Development Department
THROUGH: Chuck Eaton, Engineering Director
FROM: Chrissy Dawson, Engineering Technician II
RE: 2-Lot Partition – 4401 SE Rockwood Street
MLP-2015-006
DATE: January 26, 2016

Partition an existing parcel into two lots.

1. MMC Chapter 19.700 – Public Facility Improvements

The Planning Commission finds that the following complies with applicable criteria of MMC Chapter 19.700.

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

The applicant proposes to partition the existing parcel into two lots. The partition triggers the requirements of MMC Chapter 19.700.

MMC 19.700 applies to the proposed development.

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

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

MMC 19.704 does not apply to the proposed development.

- C. MMC Section 19.705 requires that transportation impacts of the proposed development be mitigated.

The proposed development does not trigger mitigation of impacts beyond the required construction of a driveway approach to the newly created lot on SE 44th Court. The portion of the proposed development which fronts SE 44th Court is not of sufficient length to make a requirement for sidewalk construction, in addition to a driveway approach, practical. The portion of the proposed development which fronts SE Rockwood Street is the fronting property line for the “parent” lot, which already contains a single family residence. No new development on the “parent” lot is proposed, therefore the impacts to SE Rockwood Street are negligible and no mitigation measures are required. Impacts to the surrounding transportation system are minimal and will continue to operate at the level of service previous to the proposed development.

The proposed development, as conditioned, is consistent with MMC 19.705.

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

The applicant shall construct a driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA) to the new lot. The driveway approach apron shall be between 9 feet and 20 feet in width and least 7.5 feet from the side property line.

The applicant shall remove all signs, structures, or vegetation in excess of three feet in height from “vision clearance areas” at intersections of streets, driveways, and alleys.

The proposed development, as conditioned, is consistent with MMC 19.708.1.

- E. MMC Section 19.708.2 establishes standards for street design and improvement.

The applicant shall construct a driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA) to the new lot on SE 44th Court. The driveway approach apron shall be between 9 feet and 20 feet in width and least 7.5 feet from the side property line.

The existing right-of-way width of SE 44th Court fronting the proposed development is 68 feet as measured from perpendicular to the fronting property line. The Milwaukie Transportation System Plan and Transportation Design Manual classify the fronting portions of SE 44th Court a local street. According to Table 19.708.2 Street Design Standards, the required right-of-way width for a local street is between 20 feet and 68 feet depending on the required street improvements. The existing right-of-way width is sufficient to accommodate the required improvements on SE 44th Court. The applicant is not responsible for right-of-way dedication.

The proposed development, as conditioned, is consistent with MMC Section 19.708.2.

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

The portion of the proposed development which fronts SE 44th Court is not of sufficient length to make a requirement for sidewalk construction, in addition to a driveway approach, practical. MMC Section 19.708 states that “The City recognizes the importance of balancing the need for improved transportation facilities with the need to ensure that required improvements are fair and proportional. The City also acknowledges the value in providing street design standards that are both objective and flexible. Objective standards allow for consistency of design and provide some measure of certainty for developers and property owners. Flexibility, on the other hand, gives the City the ability to design streets that are safe

and that respond to existing street and development conditions in a way that preserves neighborhood character". The proposed development fronts the end of a cul-de-sac which currently does not contain sidewalk, providing no opportunity for sidewalk connectivity and is not required to provide one.

The proposed development, as conditioned, is consistent with MMC Section 19.708.3.

- G. MMC Section 19.708.4 establishes standards for bicycle facilities.

The portion of SE 44th Court fronting the proposed development is not classified as a bike route in the Milwaukie Transportation System Plan. As a result, bicycle facility improvements are not required for the proposed development.

MMC 19.708.4 does not apply to the proposed development.

- H. MMC Section 19.708.5 establishes standards for pedestrian and bicycle paths.

The proposed development property is surrounded by single family residences. The proposed development does not present an opportunity to provide a pedestrian or bicycle path and is not required to provide one.

MMC 19.708.5 does not apply to the proposed development.

- I. MMC Section 19.708.6 establishes standards for transit facilities.

The portion of SE 44th Court fronting the proposed development is not classified as a transit route in the Milwaukie Transportation System Plan. As a result, transit facility improvements are not required for the proposed development.

MMC 19.708.6 does not apply to the proposed development.

Recommended Conditions of Approval

1. Prior to approval of the final plat, the following shall be resolved.
 - A. Obtain a right-of-way permit for construction of all required public improvements listed in these recommended conditions of approval.
 - B. Pay a street opening deposit of \$1500 which shall be refunded after any damage to abutting asphalt caused by driveway construction is repaired.
 - C. Construct a driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA) to the new lot on SE 44th Court. The driveway approach apron shall be between 9 feet and 20 feet in width and least 7.5 feet from the side property line, and shall be constructed in conformance with Milwaukie Public Works Standard Drawing #502A.

- D. Remove all signs, structures, or vegetation in excess of three feet in height located in “vision clearance areas” at intersections of streets, driveways, and alleys fronting the proposed development.
2. Prior to final inspection for any building on the proposed development, the following shall be resolved:
- A. Construct a private storm management system (e.g. drywell) on the proposed development property for runoff created by the proposed development. Connect all rain drains to the private storm management system.

Clackamas County Fire District #1

Fire Prevention Office



E-mail Memorandum

To: Brett Kelter, Associate Planner, City of Milwaukie Planning Department
From: Matt Amos, Fire Inspector, Clackamas Fire District #1
Date: **1/28/2016**
Re: Minor Land Partition 4401 SE Rockwood St. MLP-2015-006, VR-2015-007

This review is based upon the current version of the Oregon Fire Code (OFC), as adopted by the Oregon State Fire Marshal's Office. The scope of review is typically limited to fire apparatus access and water supply, although the applicant must comply with all applicable OFC requirements. When buildings are completely protected with an approved automatic fire sprinkler system, the requirements for fire apparatus access and water supply may be modified as approved by the fire code official. The following items should be addressed by the applicant:

COMMENTS:

1. The Fire District has no comments for this proposal.