



CITY OF MILWAUKIE

April 2, 2019

Land Use File(s): AP-2019-002

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on March 26, 2019.

Applicant(s): Robert and Carla Pletka
Appellant Robert and Carla Pletka
Location(s): 11380 SE 21st Ave
Tax Lot(s): 11E36BC03700
Application Type(s): Appeal
Decision: Appeal denied (AP-2019-002); Planning Director decision affirmed with revised conditions (DEV-2019-002)
Review Criteria: Milwaukie Zoning Ordinance:

- MMC Section 19.1010 Appeals
- MMC Section 19.304 Downtown Mixed Use Zone
- MMC Chapter 19.700 Public Facility Improvements
- MMC Section 19.1004 Type I Review

Milwaukie Municipal Code

- MMC Section 12.16 Access Management

Neighborhood(s): Historic Milwaukie

The Milwaukie Planning Commission held a public hearing and deliberated on March 26, 2019 to consider the appeal application submitted by Robert and Carla Pletka challenging a condition of approval of the Planning Director's decision to approve a Development Review application for a change in use at 11380 SE 21st Ave.

Please contact Vera Kolias, Associate Planner, at 503-786-7653 or koliasv@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed to the Oregon Land Use Board of Appeals (LUBA) at: 550 Capitol Street NE, Suite 235, Salem, Oregon 97301-2552, 503-373-1265, <http://luba.state.or.us> pursuant to state rules and statutes.

Mailed this 5th day of April, 2019.



Dennis Egner, FAICP
Planning Director

cc: Planning Commission (via email)
Alma Flores, Community Development Director (via email)
Kelly Brooks, Acting Engineering Director (via email)
Alex Roller, Engineering Technician II (via email)
Samantha Vandagriff, Building Official (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Interested Persons
Land Use File(s): AP-2019-002

BEFORE THE PLANNING COMMISSION OF THE CITY OF
MILWAUKIE COUNTY OF CLACKAMAS, STATE OF
OREGON

In the appeal of a condition of approval in an application to approve a Development Review for a change in use for Robert and Carla Pletka

File Nos. AP-2019-002 (appeal), DEV-2019-002 (proceedings below)

LAND USE ORDER

I. INTRODUCTION AND PROJECT BACKGROUND

This land use order documents the Milwaukie Planning Commission action regarding an appeal of a decision by the Milwaukie Planning Director ("Director") approving an application filed by Robert and Carla Pletka ("Applicant") for Type I Development Review of a change in use for two new businesses on the property located at 11380 SE 21st Ave in the Downtown Mixed Use Zone.

II. HEARINGS AND PROCESS

The Development Review application was submitted on January 25, 2019. On February 12, 2019, the Director issued a decision to approve the application with conditions. The key condition under appeal is the requirement to close the easternmost driveway (Driveway C) as it does not meet the access spacing requirements specified in MMC 12.16.040. The Notice of Decision was mailed on February 12, 2019.

On February 27, 2019, Robert and Carla Pletka, within the required timeframe allowed for appeals, filed a notice of appeal challenging the condition to close Driveway C. Pursuant to MMC Table 19.1001.5 the Planning Commission was identified as the Appeal Authority, and the City mailed written notice of the public hearing. On March 26, 2019, the Planning Commission conducted a public hearing, heard testimony, and established the record on appeal. At the end of the hearing, the Planning Commission voted unanimously with six Commissioners in support, and none opposed, to affirm the Planning Director's approval of the application with a modified condition of approval. This Order is the City's final written decision.

III. LIMITATIONS ON EVIDENCE

Under the Planning Commission's standard of review for its appeal hearing, parties were not limited to the evidence presented in the original application, and were free to make new arguments to the Planning Commission and submit new evidence. The scope of the hearing was not limited to the issues raised on appeal.

Oral testimony was received from the applicants.

IV. STANDARD OF REVIEW

The standard of review for the Planning Commission was whether the initial decision had findings and/or conditions that are in error as a matter of fact or law.

V. APPLICABLE CRITERIA AND FINDINGS AND CONDITIONS OF APPROVAL

The appeal application has been processed and public notice provided in accordance with MMC Section 19.1010 Appeals. A public hearing on the appeal was held on March 26, 2019, as required by law.

As findings supporting its decision, the Planning Commission incorporates the February 12, 2019 Notice of Decision issued by the Planning Director with amendments. The Planning Commission also incorporates the March 19, 2018 Staff Report prepared for the Planning Commission hearing. A new Notice of Decision for land use file# DEV-2019-002 will be issued.

The following are the supplementary findings and conclusions of the Planning Commission based upon its review of the record and the arguments and issues presented in the appeal process:

Errors of Fact or Law

The Appellant submitted both written and oral testimony describing the necessity of Driveway C for the use of the property as well as the fact that the driveway has been in place for decades. Additional testimony regarding the sight distance at the driveway location and a more detailed description of the proposed use were included. However, the Planning Commission did not find that the initial decision had findings or conditions that are in error of fact or law.

VI. CONDITIONS OF APPROVAL

The Planning Commission required the following modifications to the conditions of approval identified in the Director's decision:

1. Prior to final inspection for any building on the proposed development, the following shall be resolved:
 - a. Sign Driveway B as enter only. Applicant will coordinate with City staff prior to installation of the sign.
 - e. Within 365 days of the Planning Commission decision, the applicant must obtain approval of an access spacing modification that authorizes access from Driveway C. If an access modification is not granted, the applicant shall permanently close Driveway C per the Public Works standards.

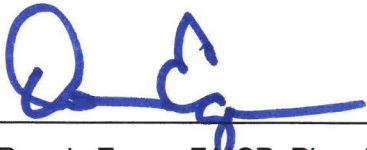
VII. CONCLUSION

The Planning Commission concludes that land use file# DEV-2019-002, as conditioned, meets all applicable approval criteria and should be approved.

VIII. ORDER

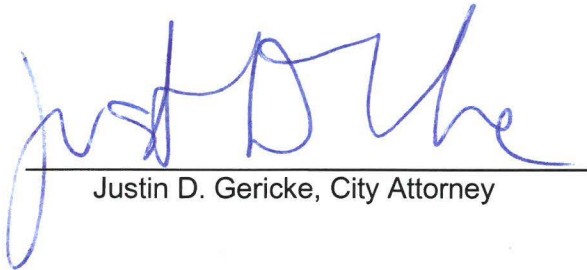
Based upon the findings set forth above, the Milwaukie Planning Commission orders that the decision of the Planning Director be affirmed as modified, the appeal denied, and land use file DEV-2019-002 is approved with conditions.

DATED this 2nd day of April 2019

A handwritten signature in blue ink, appearing to read 'Dennis Egner', written over a horizontal line.

Dennis Egner, FAICP, Planning Director

APPROVED AS TO FORM:

A handwritten signature in blue ink, appearing to read 'Justin D. Gericke', written over a horizontal line.

Justin D. Gericke, City Attorney