

To: City of Milwaukie
c/o Brett Kevler, Associate Planner
6101 SE Johnson Creek Blvd
Milwaukie, OR 97206
(503) 786-7657

July 13, 2019

Applicant: David Mealey, resident and business owner at
5111 SE Lake Rd
Milwaukie, OR 97222

RE: Variance Requests for restrictions on home occupation standards at 5111 SE Lake Rd, Milwaukie, OR

Please accept the 9 attached pages as replacements for the original variance application. The follow-up questions/approvability items are herein included for your review and comment as well as updated maps for clarification.

This attachment includes separated packages for each of the 3 variance requests, each with direct references to Application packet and Milwaukie Municipal Code (MMC), section references and responses when applicable and the following maps:

- Tax Map 03_2s2e06ba
- Aerial Overview = Locates site in City
- Site Plan = To orient all to site structures
- Parking Plan = Existing facilities, parking access, etc.

Overview

The Milwaukie Wellness Center (MWC) is a home-based business currently in operation at the subject property. Recently a second home-based business was added, Milwaukie Hardwoods, LLC (MHW). The applicant seeks relief from the several restrictions of the city's home occupation standards: (1) to allow non-resident employees (requested maximum of 4) when there is more than 1 home-based business on site, (2) to allow more than two home-based occupations at a site (requested maximum of 4 total) and (3) to allow a maximum of two non-resident business owners to operate at the site under the umbrella of the existing home-based occupation.

Approvability items (follow up to May 20th Completeness letter

Item #1 – As clarified within the short term-rental would be in Garage 1

Item #2 – The applicants' son has been mentioned as an occasional helper with Milwaukie Hardwoods but is no way considered an employee. The "working relationship" is one of convenience for father and son and is sporadic at most. Applicant wishes to withdraw any consideration of him as an official employee.

Item #3 – Cleaning turnover of a potential short-term rental would be done by applicant and his wife.

Item #4 – Clarification for weekly trip estimates are as follows

Existing or Potential Uses	Location	Avg. resident weekly trips	Avg. business owner weekly trips	Avg. clients' weekly trips	Avg. non-resident employee weekly trips	Total avg. weekly trips	Minimum # of parking spaces
Owner-Main residence	Home 1	14	0	0	0	14	2
Long term rental	Home 2	14	0	0	0	14	2
Milwaukie Wellness Center	Home 1	0	1	32	8	41	4
Milwaukie Hardwoods	Barn	0	1	1	0	2	2
Spouse's home occupation	Home 1	0	1	14	0	15	1
Short term rental	Garage 1	4	0	0	0	4	1
Sub consult 1	Home 1	0	8	10	0	18	2
Sub consult 2	Home 1	0	8	10	0	18	2
		32	33	66	8	126	16

A. Requested Variances

- 1) **Allow a maximum of 4 non-resident employees when there is more than 1 home-based occupation at the site.**
- 2) **Allow more than two home-based occupations at a site (maximum of 4 total), specifically a short-term rental and a home-based Occupational Therapy practice for spouse in addition to MWC and MHW.**
- 3) **Allow a maximum of two non-resident business owners to operate at the site under the umbrella of the existing home-based occupation.**

A. Existing Conditions

The 0.74 acres site, 5111 SE Lake Rd, Milwaukie OR is located on an isolated 1.7 acres section of land that was created when the State Hwy. 224 (Milwaukie Expressway) was constructed in 1965. Originally lots 9 & 10 of the Mintone Homes plat, established in 1926, were 0.46 acres each. Currently the land is zoned R-10. SE Lake Rd borders the southern boundary, SE Lena Ave. is to the east, State Hwy 224 is the northern boundary where a 3:1 slope drops 20' to the eastbound on/off ramp leaving the majority of the site out of view from highway traffic. The adjoining lot on the west is owned by ODOT which has no formal access and is regularly mowed and maintained by the applicant. The onramp to HWY 224 begins just west of the driveway to the primary residence (Home 1) on site. The site has a gentle slope of approximately 0.7% to the SE. The top of the bank for the onramp rests near the northern boundary. The remainder of boundary is at or near grade of adjoining public land. Approximately 59% of the site contains lawn &/or gravel, 13% is asphalt or concrete and 28% contains structures. There are five existing structures on the site and labeled in attached Site Plan.

- a. Home 1 – 2332 sq. ft. primary residence built in 1951
- b. Garage 1 – 500 sq. ft. semi-attached 3 car garage
- c. Home 2 – 934 sq. ft. 2nd house
- d. Garage 2 – 1800 sq. ft. detached 6 car garage
- e. Barn – 2666 sq. ft. barn

The only proximate neighbor to the site is a single-family home across the public but unimproved road, Lena Ave. The neighboring home sits on lot 8 of the Mintone Homes Plat which is 70' deep with driveway access on SE Lena Rd rather than Lake Rd. There are more distant neighbors' as shown on the Aerial Overview both across HWY 224 On/Offramp and across Lake Rd including a subdivision down SE 51st Ave built in the mid-1970's.

B. History

Historically the site has been used for a variety of similar uses over the last 50 years when under previous ownership, including a real estate brokerage, precious stone shop and logging truck storage and repair.

Upon taking ownership in 2008, applicant voluntarily annexed the site from unincorporated Clackamas County to the City of Milwaukie and has been operating a home-based occupation under the auspices of City of Milwaukie code. A front drive path and parking area were added to the site in 2008 when applicant began residence and his first home-occupation. Much care was taken at that time to maintain the neighborhoods residential characteristics by way of landscaping, fencing and screening of any non-typical views from Lake Rd.

The variance requested herein is related to the unique characteristics of this site including its' relative isolation from other residences, size, layout and location with an existing abundance of available parking and access to public transportation. The variances requested would not make any changes to the primary residential characteristics of the site and residence more than then is currently viewed.

C. Current Uses

Currently the structures of the site support a primary living in Home 1, a long term rental in Home 2, a home occupation of a chiropractic and massage clinic, Milwaukie Wellness Center (MWC), a wood working hobby that has recently morphed into a second home-based business, Milwaukie Hardwoods, LLC (MHW).

MWC has been in operation since applicant started residence at the site in 2009. At times MWC has had as many as 4 non-resident employees but currently has 1. Applicant would like to maintain the ability and freedom to hire and shift share as needed.

This variance request ironically came about due to a recent application to the City of Milwaukie for a business license required when applicant contracted with the city to help with the new library construction project. Paradoxically the current city code won't allow for any non-resident employees when there are 2 allowed home occupations at the same site but permits an unspecified amount of employees with one home occupation.

19.507.2 -E "Only 1 home occupation is allowed per residence, except that 2 may be permitted provided no employees not residing in the home are engaged in the conduct of any business activity on the premises.

Applicant finds hardship with the limited ordinances which may preclude the effective and long-term use of the unique property and its existing structures.

D. Desired long term uses:

- a. Licensing of MHW in order to meet the city's contractor requirements and complete participation of the city's library project.
- b. Maintain the freedom to have a maximum of 4 "non-residential" employees as allowed with a single home occupation but disallowed with a second home occupation.
- c. Variance to allow 4 total home-occupations to include, MWC, MHW, spouses' Occupational therapy practice and a short-term rental
- d. Allowance for 2 additional non-resident health care related business owners to operate at the site under the umbrella of the existing home-based occupation

E. Applicable City Codes Under Review

19.507.1 Home Occupation Standards –

19.507.1.A Be incidental and accessory to the residential use of the property.

Ordinance met with request for MWC/MHW - The primary use of the property has and continues to be residential and Milwaukie Wellness Center and/or Milwaukie Hardwoods along with any future health related business or short-term rentals would still be incidental to that primary use.

19.507.1.B Maintain the residential character of the building and premise

Ordinance met with request for MWC/MHW- The existing Milwaukie Wellness Center and Milwaukie Hardwoods along with any future health related business or short term rental, have no need or desire for changes to any outside display or change to the site and will continue to appear and function as a single family residence with no outside storage or display atypical of a residence. A vegetated screen and fencing along Lake Rd. have been installed and maintained to mitigate whatever appearance there may be of any business activity on site

19.507.1.C Not have the outward appearance of a business

Ordinance met with request for MWC/MHW- The existing Milwaukie Wellness Center and Milwaukie Hardwoods along with any future health related business or short term rental, have no need or desire for the outside display or change to the site and will continue to appear and function as a single family residence with no outside storage or display atypical of a residence. A vegetated screen and fencing along Lake Rd. have been installed and maintained to mitigate whatever appearance there may be of any business activity on site.

19.507.1.D Not detract from the residential characteristics of the neighborhood

Ordinance met with request for MWC/MHW- The existing Milwaukie Wellness Center and Milwaukie Hardwoods along with any future health related business or short term rental, have no need or desire for the outside display or change to the site and will continue to appear and function as a single family residence with no outside storage or display atypical of a residence. A vegetated screen and fencing along Lake Rd. have been installed and maintained to mitigate whatever appearance there may be of any business activity on site.

19.507.1.E Be Owned and operated by an occupant of the dwelling

Ordinance met with request for MWC/MHW- The existing Milwaukie Wellness Center and Milwaukie Hardwoods are owned and operated by the primary resident and applicant.

19.507.2 Prohibitions and Use Restrictions**19.507.2.A Outside display of merchandise, materials or equipment on the premises or any adjacent right of way is prohibited.**

Ordinance met with request for MWC/MHW- The existing Milwaukie Wellness Center and Milwaukie Hardwoods along with any future health related business or short term rental, have no need or desire for the outside display or change to the site and will continue to appear and function as a single family residence with no outside storage or display atypical of a residence. A vegetated screen and fencing along Lake Rd. have been installed and maintained to mitigate whatever appearance there may be of any business activity on site
The equipment and truck and trailer utilized in MHW are parked discretely onsite and out of view from Lake Rd and neighboring properties.

19.507.2.B Noise, odor, smoke, gases, vibration, heat or glare that is detectable beyond the limits of the property is prohibited.

Ordinance met with request for MWC/MHW- The existing Milwaukie Wellness Center and Milwaukie Hardwoods along with any future health related business or short-term rental have no noise, odor, smoke, gases, vibration, heat or glare detectable beyond the limits of the property. The proposed short-term rental in Garage 1 will continue to appear and function as a single-family residence with no odor, smoke, gases, vibration, heat or glare emitted. The noise component will be closely monitored to remain onsite by applicant who resides in Home 1.

19.507.2.C In the case of on-premise instruction, no more than 5 enrollees shall be present at one time

Not applicable, no such businesses are proposed

19.507.2.D Motor vehicle, boat or trailer repair is prohibited as a home occupation

Not applicable, no such businesses are proposed

19.507.2.E Only one home occupation is allowed per residence, except that 2 may be permitted provided no employees not residing in the home are engaged in the conduct of any business activity on the premises

Response: **Variance Requested** – Applicant seeks a variance on this ordinance and specifically allowance for a maximum of 4 non-residential employees in any and all home-based occupations allowed.

“Home occupation” means an occupation normally carried on at a dwelling as an accessory use to the dwelling, with the activity conducted in a manner as to give no appearance of a business with no infringement upon the right of the neighboring residents to enjoy the peaceful occupancy of their homes.

Milwaukie Wellness Center was established in 2009 and has complied with that definition for over 10 years will continue to do so in the future. At various times in the past MWC has had multiple employees and currently has one. Milwaukie Hardwoods is currently is a one- person operation ie. the applicant, that may in the future hire some employees. Applicant seeks the requested variance to provide some flexibility and freedom to hire employees while still meeting the criteria of a home-based occupation.

19.507.2F Except as set forth in Section 19.509, all marijuana-related businesses.....

Not applicable, no such businesses are proposed

F. TYPE III Variance Request 19.911.4

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.

Response: For the last 10 years applicant has resided and worked out of the site under the Milwaukie codes for home-occupations. There have been no known complaints to the city regarding the current usage at the site. During that time applicant has had numerous non-residential employees. Currently he has 1. The primary impacts of allowing 4 non-residential employees, 2 additional home occupations and 2 non-resident health care related business owners to operate at the site under the umbrella of the existing home-based occupation would be increased traffic to the site and increased parking onsite. There would be no physical changes, no additional signage and the primary residence would continue to function and appear as a single-family home. The table on page 2 details the projected trips with the requested variances. There is ample parking on-site and for parking needs for all 3 potential variances. There are no additional impacts to the neighborhood and no changes to the essential residential characteristics of the site.

Benefits would be to maintain the appropriate and beneficial use of the site for the community and neighborhood, providing nearby access to health care. Another benefit would be continued economic contributions of additional business revenue to the city of Milwaukie. The uses proposed align with the City's recent attempts at "walkable neighborhoods" and "neighborhood nodes".

Alternatives to the first requested variance (allowing maximum of 4 non-residential employees with multiple home occupations) are:

- 1) Terminate the current employee for Home Occupation #1, ie. Milwaukie Wellness Center
- 2) Limit to one home-based business and close down the second or other home occupations.
- 3) apply to change the zoning to light commercial usage.

The first alternative is extreme and would deprive the current employee of her livelihood without any discernible impact on the traffic to and from the site and/or onsite parking. The second alternative is nonsensical as it would allow an unlimited amount of non-resident employees with one home occupation but essentially penalizes applicant and employee for having an additional home occupation. Option 3 was explored in 2009 but in discussions with the state and county it became apparent that neither bureaucracy was amenable to a zone change.

An alternative to requested variances 2 & 3 are similar ie. limit the site to 2 home-based occupations. This would not make any significant differences in the current impacts, usage or characteristics of the site and eliminate all of the benefits.

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.

Response: The proposed variances do not make any significant changes to the site layout or appearance. The impacts of increased traffic and parking are easily accommodated by the existing infrastructure and site plan.

19.507.5 Special Provisions for Specific Uses

Short Term Rentals- A short term rental is an accessory use to a primary residence and allowed as a home occupation provided the following provisions are met:

a. The residence must be occupied by the owner or a primary operator for not less than 270 days per year.

Response: Ordinance Met- owner lives on site in “Home 1”

b. Un-hosted rentals (where the primary occupants vacate the unit or site during the rental period) are limited to no more than 95 days per year.

Response: N/A -this proposed rental is not un-hosted and the owner lives onsite.

c. If a dwelling on a property with an accessory dwelling unit is being used for short-term rental purposes, either the primary residence or the accessory dwelling unit must be occupied by the property owner for not less than 270 days per year

Response: N/A – The rental not proposed in the ADU but the primary residence.

d. A property in a low-density residential zone or any property with a duplex is limited to having 1 short-term rental operating at any given time period.

Response: Ordinance Met – only one short-term rental will operate in any given time period.

e. At any given time, no more than 2 rental parties (i.e., under 2 separate reservations) shall occupy a dwelling unit used for short-term rental purposes.

Response: Ordinance Met-only one short-term rental will operate in any given time period.

- f. Building code and fire code standards must be met.
Response: Ordinance Met – Owner will comply with building and fire codes as required.





- g. The operator of a short-term rental shall register with the City and comply with all relevant requirements of Title 5 of the Milwaukie Municipal Code. The registration process will be used to verify that all code provisions have been satisfied. The right to operate the short-term rental business may be revoked if the owner or operator fails to comply with these provisions or any other home occupation standards. (Ord. 2134 § 2, 2016; Ord. 2120 § 2, 2016; Ord. 2025 § 2, 2011)
Response: Ordinance Met - Owner will comply with building and fire codes as required.

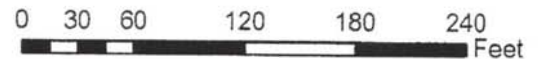
**ATTACHMENT 1
EXHIBIT B**



**5111 SE Lake Road (Tax Map 2S2E06BA 00100)
Annexation File A-09-02**

Legend

-  Annexation Site
-  City of Milwaukie Boundary
-  City of Milwaukie Tax Lots
-  Unincorporated Clackamas County Tax Lots



1 inch equals 100 feet

Aerial Overview VR-2019-004

5111 SE Lake Road, Milwaukie, OR 97222



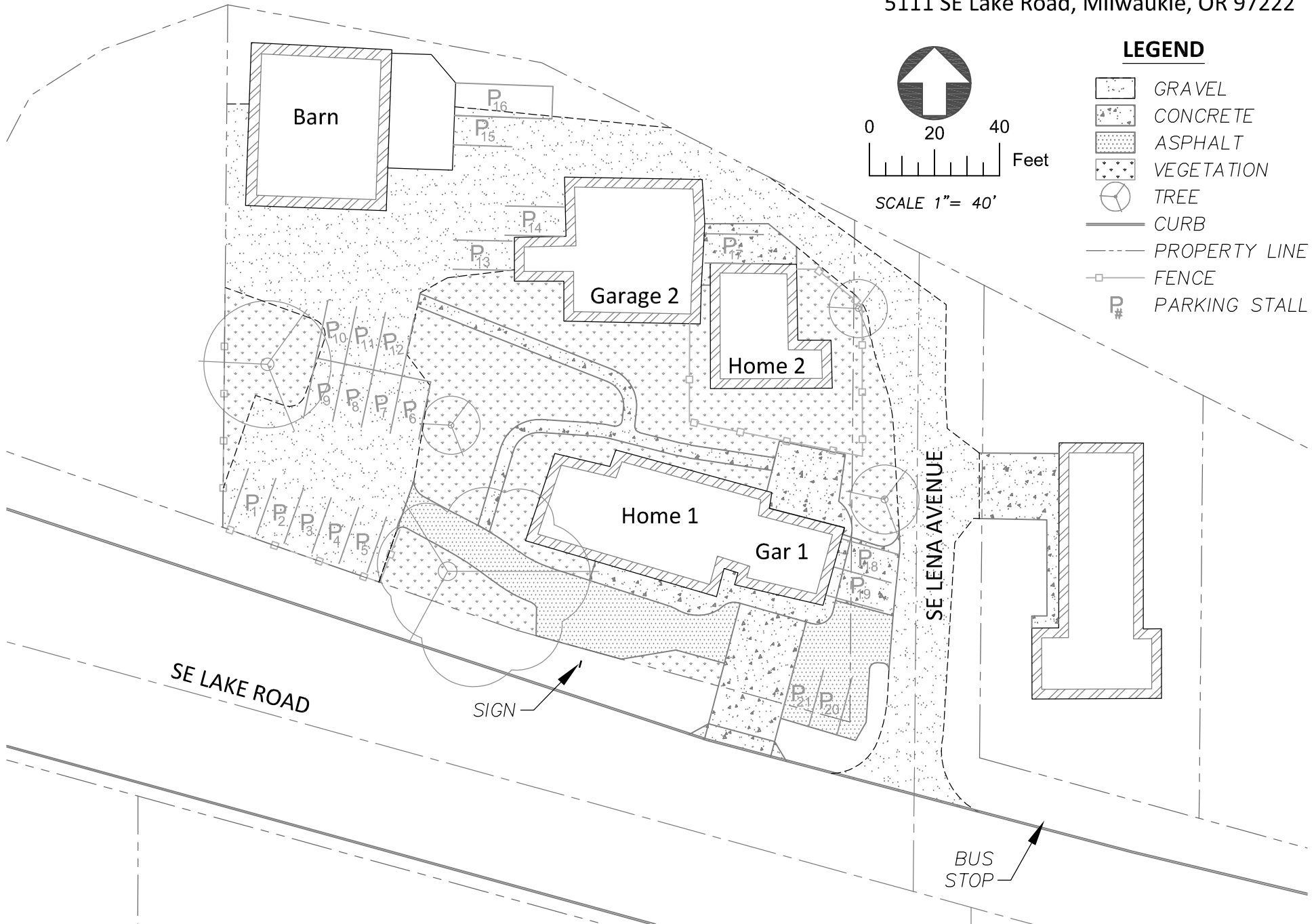
Site Plan VR-2019-004

5111 SE Lake Road, Milwaukie, OR 97222












Parking Plan VR-2019-004

5111 SE Lake Road, Milwaukie, OR 97222



LEGEND

-  GRAVEL
-  CONCRETE
-  ASPHALT
-  VEGETATION
-  TREE
-  CURB
-  PROPERTY LINE
-  FENCE
-  P# PARKING STALL