

Summary

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Location: 5111 SE Lake Rd, Milwaukie, OR 97222

Zone: R10

Land use review requested: Type III variances:

- 1) Allow 4 non-resident employee(s) to continue work under additional Home Occupations.
- 2) Allow 2 additional home occupations beyond limited 2 allowed by current city code.
- 3) Allow a maximum of 2 non-resident professionals to work at the site.

Situation:

Our property is unique with a 32,180 sq. ft lot and 5 buildings on site including:

- 1) 2332 sq. ft. primary residence
- 2) 500 sq. ft. attached 3 car garage
- 3) 1808 sq. ft. detached 6 car garage
- 4) 2666 sq. ft. barn
- 5) 934 sq. ft. 2nd house.

Our north boundary is adjacent to the slope onto State Hwy 224, our west boundary is adjacent to $\frac{3}{4}$ of an acre of state property and the on/off ramp to Hwy 224, the southern boundary is adjacent to Lake Rd and the intersection of Lake Rd and highway ramp. Our only proximate neighbor is on our east side and across Lena Ave.

The size, location and layout of the site are all conducive to use as a small office and commercially mixed use. Historically use of the site has included a variety of similar uses for over 50 years when under previous ownership including a real estate brokerage, precious stone shop and logging truck repair.

There are currently 20 parking spots on the site. More than enough for our current and potential future needs and ensuring that all the parking for residents, employee(s) and patients are on the property. We have landscaped the site with fencing and hedges to minimize any visual parking and maintain the residential characteristics of the premises and neighborhood.

I have a personal hobby of wood working. I was recently contracted to mill some trees and dry the wood for city of Milwaukie as part of the new library construction project. As a contractor to the city I was required to obtain a 2nd business license. In that process it was brought to our attention that the current city code (see below) allows non-resident employees with one home occupation but paradoxically doesn't permit any "non-resident" employees with two home occupations.

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.

I have been operating my first home occupation, a chiropractic and massage clinic, Milwaukie Wellness Center at this site since 2008. At times I have had as many as 4 employees and currently have 1.

I am asking for a variance on three issues. The first is to be allowed to have a total of 4 non-resident employees with multiple home occupations. At a minimum, this would permit me to retain my current non-resident employee in my first home occupation and continue with additional home occupations without being in violation of the code.

The second requested variance is to be allowed more than two home occupations. Currently the city code doesn't address that possibility of additional home occupations beyond two. My wife and I are considering opening a short-term rental and this would require a new business license with the city. Another possibility would be that my wife, Sheryl Riley, OT wants to start a part-time home occupation business using her professional occupational therapy license. Currently the city code doesn't address the possibility of additional home occupations beyond two. The specific variance request is allowance for these two additional home occupations.

The third requested variance is to be allowed to lease or share space with another non-resident in a similar profession eg. chiropractor, massage therapist, licensed counselor. If I take on a partner or associate, they would not be an employee and to ensure that I'm not in violation of the city code I need a variance. I would limit the total number of non-resident subcontractors &/or renters to 2.

The requested variances are all related to the unique characteristics of this particular site including the size, layout, location and abundance of available parking. These requested variances would not change the primary residential characteristics of the site and still fit within the criteria of the city regulations regarding home occupations and variances. Specifically, the uses would be 1) incidental and accessory to the residential use, 2) maintain the outward appearance and character of a residence and not detract from the character of the neighborhood. Rather than detracting, the landscaping and maintenance we have done have added to the character of the local neighborhood and optimized the residential and historical light commercial use of the site.

With regards to the specific issues with of each of the three requested variances and approval criteria for a Type III approval, please consider the following:

1) **Allowing maximum of 4 non-resident employees permitted to work at the site with multiple home Occupations.**

We would limit the maximum number to 4 non-resident employees for all the allowed licensed home occupations. A potential problem with this variance would be increased traffic to and from the site. The increase would be minimal as I have had 4 employees in the past and there were no issues at that time. It would be rare if ever that all 4 non-resident employees would be at the site simultaneously. The home occupations that require potential employees are the Chiropractic, massage clinic and Milwaukie Hardwoods. Both of these businesses are only open during normal business daytime hours. Another potential problem would be additional parking needs. As it is, currently we have more than enough parking on-site for our needs and could easily accommodate 1-2 additional non-resident employees. There would be no additional impact on the neighborhood beyond what we are currently doing and no change to the essential residential characteristics of the site.

2) Allowing 4 home occupations beyond the two currently permitted by current city code.

The city code for Home Occupations does not currently allow for additional home occupations beyond two. I am requesting a variance to be allowed two additional licenses. As explained earlier we are considering opening a short-term rental and my wife, Sheryl Riley, OT is considering a private practice utilizing her Occupational Therapy license. With either a short-term rental or home-based bio-neuro feedback practice there will be no additional employees.

Short-term rentals of 1-3 days with 3-4 rentals per month would have minimal increased traffic and/or parking. This would have minimal impact on the site or surrounding neighbors as we have the space, parking and amenities.

The other potential home-based occupation is my wife Sheryl Riley doing a part-time bio/neurofeedback practice. This would be a solo practice of 2-3 days per week serving a maximum of 3-4 clients per day. The hours of her practice would be between 9 a.m. and 5 p.m. and on "to be determined" days but probably a Tuesday, Thursday, Saturday schedule. The traffic impacts would be an additional 12-16 client visits per week. As described, we have ample parking and there would be no outward changes to the site or home.

3) Allow a maximum of 2 non-resident professionals to work at the site.

On my days off or upon retirement we would like to utilize the wellness center by including other health professionals such as another chiropractor, massage therapist or counselor on a rental or sub-contractual basis. As with previous variance requests the potential for more traffic &/or parking would be the primary issues. The clinic would only be open during normal business hours during the Monday to Friday workweek. No changes to either the exterior or interior of the building would be required. This would likely increase the traffic or parking but would easily be accommodated with the ample parking and space we have.

With the requested variances and in consideration of the Public Facility Improvements chapter in the zoning code we would agree that closure of the existing driveway on SE Lake Rd. would be agreeable and appropriate. This would accomplish two improvements. The first is that moving the entry and exit further away from the exit ramp onto Hwy 224 would make for safer entry and exit onto and off the site. The second is that it would add two more on-site parking spaces.

Supporting documentation:

- Tax Map-exhibition B from Annexation file
- Site Plan
- County GIS overhead image of site with buildings labeled

Type III Variance Request:

Maximum of 4 non-resident employees permitted to work at the site with multiple home occupations.

19.911.4 Approval Criteria

B. Type III Variances

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.

Over the course of the 9 to 10 years that I have had my primary home-occupation I have had employees and at one time a total of 4 non-residential employees. I currently have one. The previous 4 employees were rarely at the site simultaneously. The impacts of allowing a total of 4 non-residential employees with multiple home occupations in the future would be increased traffic to the site. Other than closing the driveway we won't need to alter the site in any other way. The estimated increase of trips is 4-8 additional weekly trips to the site during normal business hours. A second issue would be additional parking needs. We have more than enough parking on-site and there will be no additional impact to the neighborhood beyond what we are currently doing and no change to the essential residential characteristics of the site. Closing off the driveway onto SE Lake Rd will add two additional parking spaces.

The alternatives to this variance are 1) limiting the site to one home occupation, 2) changing the zoning to light commercial usage. The first alternative is not practical as it would allow me to have an unlimited amount of non-resident employees with one home occupation but essentially penalize me for having an additional home occupation. Option 2 is not doable as a prior attempt at a zone change was effectively blocked by the county.

The benefits would be to allow us to utilize the site to its full potential and still comply with city code without any changes or adverse effects on the neighborhood or site.

- 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.

By removing the driveway to Lake Rd. we would be adding more parking spaces and making the entry/exit to and from site onto SE Lena Ave. safer. This would align with SE 51st Ave in a more traffic friendly manner, providing for safer traffic patterns onto and off Lake Rd from the site. When we started our first home occupation over 9 years ago we installed a driveway from SE Lena Ave, onto the front of the property to direct traffic onto our site before it had an impact on our sole neighbor to the east. This has been working for the entire time we have been here and will continue to the same.

C. Type III Variance Request B

Allowing 2 additional home occupations beyond the 2 currently permitted by current city code.

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.

19.911.4 Approval Criteria

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.

The city code for Home Occupations currently limits home occupations to 2. I am requesting a variance to be allowed two additional licenses for 1) a short-term rental 2) a home based occupational therapy practice.

There will be no additional employees with either a short-term rental or home-based occupational therapy practice.

Potential impacts for both or either additional home occupation include possible increased traffic on and off the site. Short-term rentals of 1-3 days with 3-4 rentals per month would have minimal increased traffic and/or parking with minimal impact on the site or surrounding neighbors as we have the space, parking and amenities. We would use the semi-attached 3 car garage to the main house for the short-term rental. This is a 500 sq. ft. with a full bath and small kitchenette.

The other home-based occupation would be my wife Sheryl Riley, OT doing a part-time bio/neurofeedback practice. This would be a solo practice of 2-3 days per week serving a maximum of 3-4 clients per day. The hours of her practice would be between 9 a.m. and 5 p.m. and on "to be determined" days but probably on Tuesdays, Thursdays and Saturdays. The traffic impacts would also be minimal with a project maximum total of 12-16 client visits per week.

Current typical usage for Milwaukie Wellness Center maximum trips to and from the site are 45-60 trips per week. Milwaukie Hardwoods has 4-5 trips per week. The additional home occupations would add approximately 12-16 trips for the home based Occupational Therapy practice and 3-4 trips per week for the short term rental. Allowing the additional home occupations would create an increase of 15-20 trips per week to the site.

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.

By removing the driveway to Lake Rd. we are adding more parking spaces and making the entry/exit to and from site onto SE Lena Ave. safer This would align with SE 51st Ave in a more traffic friendly manner, providing for safer traffic patterns onto and off Lake Rd from the site. When we started our first home occupation over 9 years ago, we installed a driveway from SE Lena Ave, onto the front of the property to direct traffic onto our site before it had an impact on our sole neighbor to the east. This has been working for the entire time we have been there and will continue to the same.

There are no additional impacts on surrounding properties as all parking is on site and the residential nature and uses are maintained. Maintaining the current landscaping and fencing will continue to minimize any appearance of business activities.

A potential impact with this variance would be increased traffic to and from the site. We estimate a slight increase of of 15-20 additional trips per week to the site during normal business hours. A second issue would be additional parking needs. We have more than enough parking on-site and there will be no additional impact to the neighborhood beyond what we are currently doing and no change to the essential residential characteristics of the site.

The alternatives to this variance are 1) limiting the site to two home occupations 2) changing the zoning to light commercial usage. The first alternative would limit the would limit the optimal uses of the site without any of the benefits. Option 2 is not doable in that a prior attempt at a zone change was met with marked resistance from the county.

C. Type III Variance Request B

Allow a maximum of 2 non-resident professionals to work at the site as subcontractors or renters.

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.

19.911.4 Approval Criteria

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.

The city code for Home Occupations does not allow "non-resident" subcontractors or renters to work at the site. I am requesting a variance to be allowed to rent to either a maximum of 2 subcontractors &/or renters who don't reside at the site.

Potential impacts for this variance include increased traffic on and off the site. Current typical usage for Milwaukie Wellness Center maximum trips to and from the site are 45-60 trips per week. Milwaukie Hardwoods has 4-5 trips per week. Additional professionals would add an estimated 10-15 weekly trips to the site.

- 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.

By removing the driveway to Lake Rd. we would be adding more parking spaces and making the entry/exit to and from site onto SE Lena Ave. safer This would align with SE 51st Ave in a more traffic friendly manner, providing for safer traffic patterns onto and off Lake Rd from the site. When we started our first home occupation over 9 years ago we installed a driveway from SE Lena Ave, onto the front of the property to direct traffic onto our site before it had an impact on our sole neighbor to the east. This has been working for the entire time we have been there and will continue to the same.

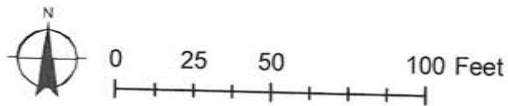
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There are no additional impacts on surrounding properties as all parking is on site and the residential nature and uses are maintained. Maintaining the current landscaping and fencing will continue to minimize any appearance of business activities.

The alternative to this variance is changing the zoning to light commercial usage. This is effectively a no go with the county.



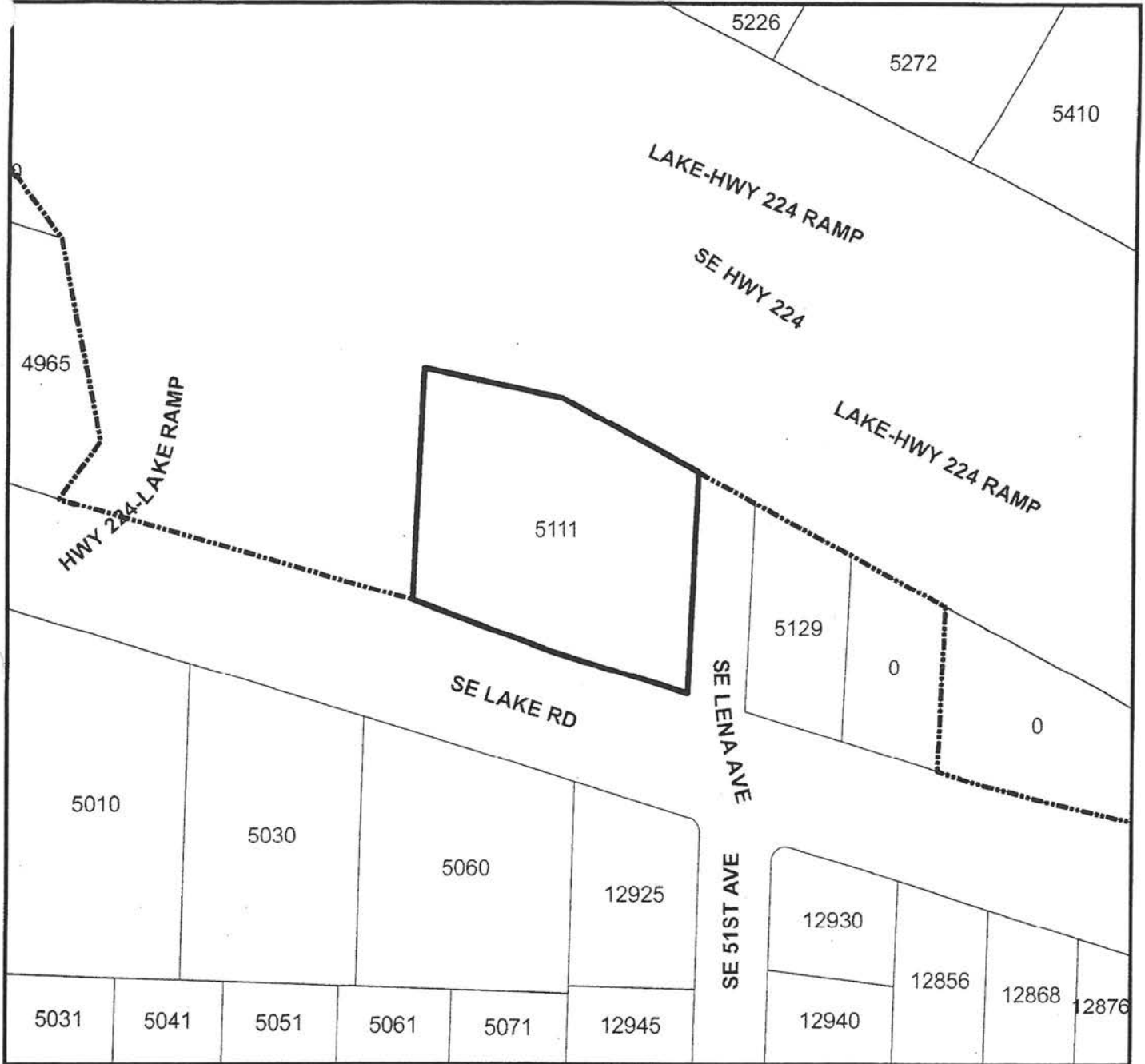
5111 SE Lake Road, Clackamas County



Author: City of Milwaukie Planning Department, March 2009
Source: City of Milwaukie GIS, Clackamas County GIS,
Metro Data Resource Center
All data depicted is approximate.
Not suitable for building or engineering purposes.







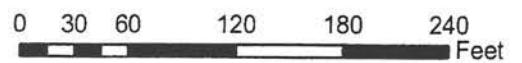
**ATTACHMENT 1
EXHIBIT B**



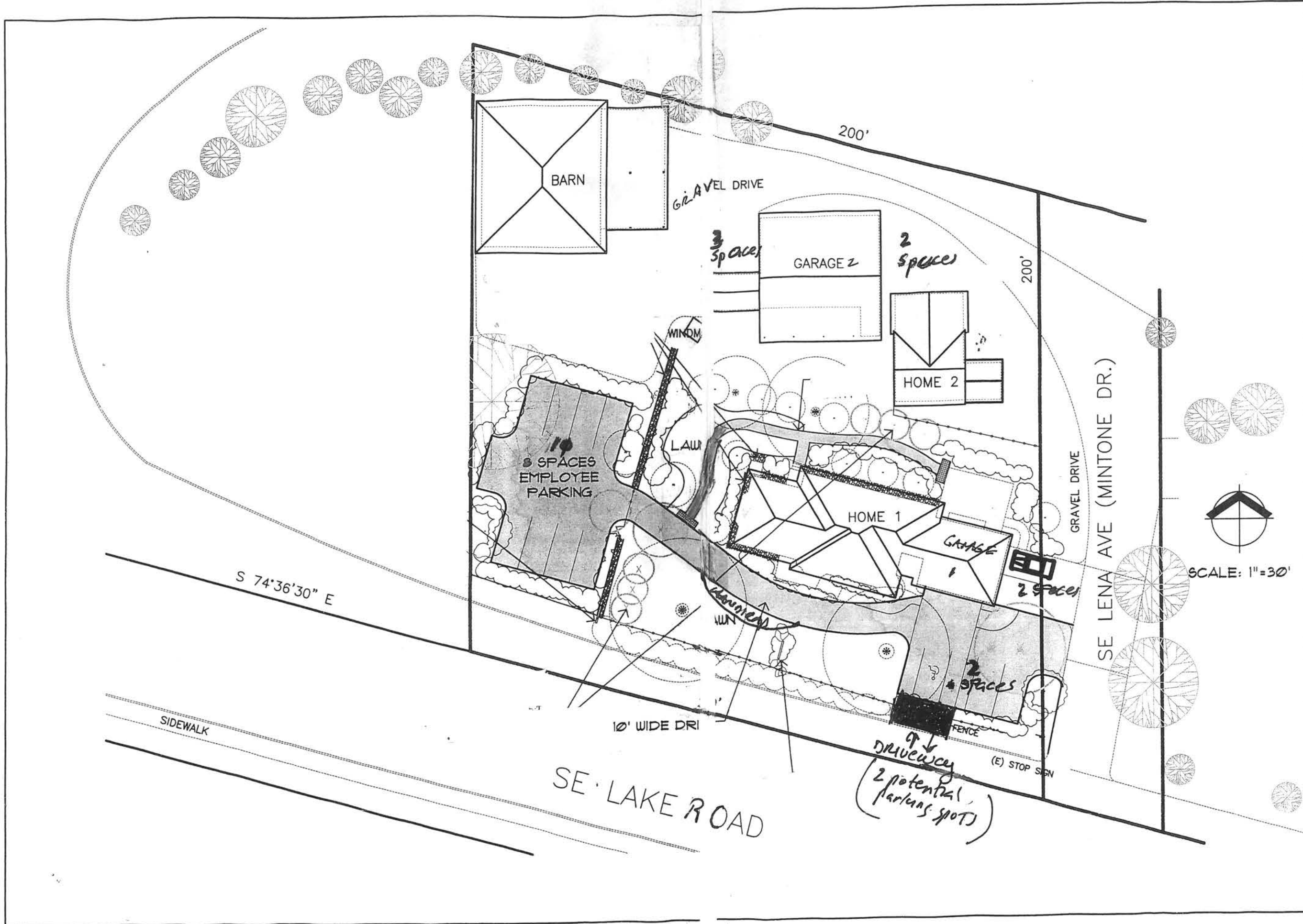
**5111 SE Lake Road (Tax Map 2S2E06BA 00100)
Annexation File A-09-02**

Legend

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



1 inch equals 100 feet



| | |
|-------------|---------|
| SITE PLAN | |
| PROJECT NO. | 09-03 |
| DATE | 8/31/09 |
| DRAWN | mlb |
| REV | - |
| REV | - |
| REV | - |

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SITE PLAN
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SHEET
L-1