



October 24, 2019

Land Use File(s): R-2019-004 (master file), VR-2019-010

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on October 22, 2019.

- Applicant(s):** Lucica Muresan
- Location(s):** 5084 SE King Rd
- Tax Lot(s):** 1S2E30CD06800
- Application Type(s):** Partition Replat, Variance Request
- Decision:** Approved with Conditions
- Review Criteria:** Milwaukie Land Division Ordinance (Milwaukie Municipal Code (MMC) Title 17):
- 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 Chapter 17.32 Improvements
- Milwaukie Zoning Ordinance (MMC Title 19):
- MMC Section 19.301 Low Density Residential Zones (including R-5)
 - MMC Chapter 19.600 Off-Street Parking and Loading
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.911 Variances
 - MMC Section 19.1006 Type III Review
 - MMC Chapter 19.1200 Solar Access Protection
- Neighborhood(s):** Hector Campbell, Lewelling, Linwood

Appeal period closes: 5:00 p.m., November 8, 2019

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1006 Type III Review. The complete case file for this application is available for review by appointment between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Brett Kelter, Associate Planner, at 503-786-7657 or kelterb@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on November 8, 2019, which is 15 days from the date of this decision. (Note: Please arrive by 4:45 p.m. for appeal payment processing.) Only persons who submitted comments or made an appearance of record at the public hearing have standing to appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie City Council following the procedures of MMC Section 19.1010 Appeals. This decision will become final on the date above if no appeal is filed during the appeal period. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or planning@milwaukieoregon.gov.

Per MMC Subsection 17.04.050.A, this decision on the proposed land division shall expire 1 year after the date of approval. An extension of up to 6 months may be granted upon submission of a formal request to the original decision-making authority (the Planning Commission, in this case), subject to the provisions of MMC Subsection 17.04.050.B, which include the following:

- a. No changes are made on the original plan as approved;
- b. The applicant can show intent of recording the boundary change within the 6-month extension period; and
- c. There have been no changes in the ordinance provisions on which the approval was based.

Findings in Support of Approval

The Findings for this application are included as Exhibit 1.

Conditions of Approval

1. For development on Parcel 2, additional variances from the R-5 development standards are prohibited. A deed restriction shall be established to this effect.
2. The 10-ft rear yard setback allowance approved for Parcel 1 shall apply only to the location of the existing covered patio. No other portion of the existing house that is out of conformance with the 20-ft required rear yard standard may be extended beyond its current location without review and approval of a new variance request.
3. Prior to City approval of the associated final plat, the following shall be resolved:
 - a. As proposed, close the existing easternmost driveway from Parcel 1 onto King Rd. The closure shall be consistent with the applicable Public Works Standards, including curb reconstruction. Also, install the proposed front-yard landscaping areas on Parcel 1, consistent with the plans submitted and meeting at least the minimum front yard vegetation standard.
 - b. Remove the existing accessory structures from Parcel 2; or establish a deed restriction for Parcel 2 to ensure that the existing accessory structures on Parcel 2 shall be removed within 24 months of final plat approval 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, 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 3-b-(1) above.
- c. Remove all signs, structures, or vegetation in excess of 3 ft in height located in "vision clearance areas" at intersections of streets, driveways, and alleys fronting the subject property. Confirm the location of clear vision areas with the Engineering Department prior to removing any vegetation.

Other requirements

1. MMC Section 17.04.120 Recording

As per MMC Section 17.04.120, replats must be recorded by plat. An application for final plat shall be submitted to both the City Planning Department and the County Surveyor within 6 months of the date of this approval. Once approved by the County Surveyor, a copy of the recorded final plat shall be submitted to the City Planning Department.

2. In conjunction with the required final plat submittal, the following shall be resolved:


- a. Submit a stormwater management plan to the City of Milwaukie Engineering Department for review and approval. The plan shall be prepared in accordance with Section 2—Stormwater Design Standards of the City of Milwaukie Public Works Standards. If the stormwater management system contains underground injection control devices, submit proof of acceptance of the stormwater system design from the Department of Environmental Quality.
- b. Submit full-engineered plans for construction of all public improvements, reviewed and approved by the City of Milwaukie Engineering Department.
- c. Obtain a right-of-way permit for construction of all public improvements.
- d. Pay an inspection fee equal to 5.5% of the cost of all public improvements.
- e. Provide a payment and performance bond for 100% of the cost of all public improvements.

3. Prior to commencement of any earth-disturbing activities, the applicant shall obtain an erosion control permit.

4. Development activity on the site shall be limited to 7:00 a.m. to 10:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. Saturday and Sunday, per MMC Subsection 8.08.070(I).

Decision

- Approved
 Approved with Conditions
 Denied



Dennis Egner, FAICP
Planning Director

Exhibits

1. Findings in Support of Approval
- cc: Lucica Muresan, applicant (5084 SE King Rd, Milwaukie, OR 97222) (via email)
Paul Roeger, CMT Surveying and Consulting, applicant's representative (via email)
Planning Commission (via email)
Leila Aman, Community Development Director (via email)
Justin Gericke, City Attorney (via email)
Steve Adams, City Engineer (via email)
Engineering Development Review (via email)
Samantha Vandagriff, Building Official (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Technician (via email)
Tim Salyers, Code Compliance Coordinator (via email)
Mike Boumann and Izak Hamilton, CFD#1 (via email)
NDA(s): Hector Campbell, Lewelling, Linwood (via email)
Land Use File(s): R-2019-004 (master file)

EXHIBIT 1
Findings in Support of Approval
Master File #R-2019-004

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

1. The applicant, Lucica Muresan, has applied for approval to replat the property at 5084 SE King Rd (“the subject property”) to establish 2 developable parcels, with variance requests to adjust several lot and development standards. The subject property is identified as Tax Lot ID 1S2E30CD006800 on the Clackamas County Tax Assessor map and is in the Residential R-5 Zone. The land use master file number is R-2019-004, with VR-2019-010.
2. The proposal is to replat the 11,150-sq-ft subject property to create 2 separate developable parcels. Parcel 1 would be approximately 6,850 sq ft in area; Parcel 2 would be approximately 4,300 sq ft. An existing house would remain on Parcel 1; 2 existing carport structures and an existing storage shed would be removed from Parcel 2, which would be developed with a single-family house. Variances have been requested to (1) reduce the minimum lot depth of Parcel 2 from 80 ft to just under 75 ft; (2) reduce the lot area of Parcel 2 below the required minimum 5,000 sq ft, to approximately 4,300 sq ft; and (3) reduce the minimum rear yard of Parcel 1 from 20 ft to 10 ft.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Chapter 12.16 Access Management
 - MMC Title 17 Land Division, including:
 - 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 Chapter 17.32 Improvements
 - MMC Section 19.301 Low Density Residential Zones (including R-5)
 - MMC Chapter 19.600 Off-Street Parking and Loading
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.911 Variances
 - MMC Section 19.1006 Type III Review
 - MMC Chapter 19.1200 Solar Access Protection

The applicant’s submittal includes applications for Replat and Variance Requests. The Variance Request application requires Type III review, as discussed in Finding 9-b; the Replat application requires II review. As per MMC Subsection 19.1001.6.B, both applications are being processed with Type III review.

The applicant is the property owner and has authority to initiate the application per MMC Subsection 19.1001.6.A. The application was initially submitted on August 22, 2019, and deemed complete on September 6, 2019. The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. Public notice of the amended application was mailed to property owners and residents of lots within 300 ft of the subject property on October 2, 2019. A revised notice was mailed on October 4, 2019, to reflect the change in master file number (from minor land partition file #MLP-2019-002 to replat file #R-2019-004). A public hearing with the Planning Commission was held on October 22, 2019, as required by law.

4. MMC Chapter 12.16 Access Management

MMC 12.16 regulates access from private property onto public streets, with specific requirements and standards provided in MMC Section 12.16.040.

MMC Subsection 12.16.040.B governs the spacing of accessways (driveways), requiring a minimum of 600 ft for spacing between accessways on arterial streets like King Rd. MMC Subsection 12.16.040.C regulates accessway location, including a prohibition of individual single-family accessways on arterial streets. MMC Subsection 12.16.040.D establishes standards for the number of accessways, minimizing the number of accessways on arterial streets and limiting single-family residential uses to 1 accessway each. MMC Subsection 12.16.040.E.3 requires that accessways be designed to contain all backing movements on the site.

The subject property currently has 2 driveways on King Rd within the area proposed as Parcel 1, including a driveway within approximately 25 ft of the intersection with 51st Ave to the east. The applicant has proposed to close the easternmost driveway, which would bring Parcel 1 closer to conformance with both the 600-ft spacing standard for the 51st Ave intersection and the limitations on single-family access to arterial streets. A condition has been established to ensure that the closure is conducted in accordance with the applicable Public Works Standards and clear vision requirements.

In conjunction with the proposed driveway closure, the associated reconfiguration of the front yard area on Parcel 1 would retain adequate space for vehicles to turn around on site and avoid backing onto King Rd. Parcel 2 has frontage only on 51st Ave, a local street, and can accommodate a standard single driveway for the proposed new house.

As conditioned, the Planning Commission finds that the proposed replat meets the applicable access management standards of MMC 12.16.

5. MMC Title 17 Land Division

MMC Title 17 establishes the standards and procedures for land division and property boundary changes.

a. MMC Chapter 17.12 Application Procedure and Approval Criteria

MMC 17.12 specifies the process and procedures for lot consolidation, property line adjustment, partition, subdivision, and replat.

The subject property is composed of existing underlying lots and portions of lots from the Minthorn Addition to the City of Portland subdivision, which was platted in 1890. Specifically, the subject property is composed of Lots 15, 16, and 17 (each lot 25 ft by 100 ft), as well as the northern halves of Lots 32, 33, and 34 (each portion 25 ft by 50 ft). The proposed reconfiguration would consolidate the underlying Minthorn subdivision lots into 2 new lots, which is a partition replat as per the definitions of MMC Chapter 17.08 and the guidance of MMC Table 17.12.020. The proposed reconfiguration was initially considered a minor land partition by Planning staff and was assigned the file number MLP-2019-002, but it is being reviewed as a partition replat (file number R-2019-004).

MMC Section 17.12.030 establishes the approval criteria for lot consolidation, property line adjustment, and replat. The proposed replat meets these criteria as described below.

(1) Compliance with MMC Titles 17 and 19.

As demonstrated by the applicant's submittal materials and evidenced by these findings, including the variance requests addressed in Finding 9 and associated conditions of approval, the proposed replat complies with all applicable standards of MMC Titles 17 and 19. As proposed and conditioned, this criterion is met.

(2) The boundary change will allow reasonable development and will not create the need for a variance of any land division or zoning standard.

The proposed replat will provide sufficient area on both parcels to accommodate future development in accordance with the standards of the underlying R-5 zone. The applicant has requested variances to address lot design standards for Parcel 2 and for the setback to the existing structure on Parcel 1, as discussed in Finding 9. However, conditions have been established to prohibit additional variances for future development on Parcel 2 or to allow the extension of nonconformities related to the rear yard on Parcel 1. As proposed and conditioned, this criterion is met.

(3) Boundary changes shall not reduce residential density below the minimum density requirements of the underlying zone.

The subject property is approximately 0.26 acres (11,150 sq ft) and is zoned R-5, requiring a minimum density of 7.0 units/acre and allowing up to 8.7 units/acre. As per the measurement methodology established in MMC Subsection 19.202.2.4, the minimum and maximum densities for the site both round out to 2 units. The proposed replat would create two lots, one approximately 0.16 acres (6,845 sq ft) and the other approximately 0.1 acres (4,300 sq ft), each with a minimum and maximum density of 1 unit and therefore resulting in no change to the overall residential density of the subject property. As proposed, this criterion is met.

As proposed and conditioned, the Planning Commission finds that the preliminary plat meets the applicable criteria.

b. MMC Chapter 17.16 Application Requirements and Procedures

MMC Section 17.16.050 establishes the application requirements for replat, including completed application forms and checklists, applicable fees, a narrative describing how the proposal meets approval criteria, and the applicable information specified for preliminary plat on the City's Preliminary Plat Checklist and in MMC Chapter 17.20 Preliminary Plat.

The applicant's submittal materials include the necessary forms, checklists, and fees, as well as a narrative, preliminary plat document, and other information sufficient to demonstrate compliance with the applicable standards and criteria.

As proposed, the Planning Commission finds that the application meets the applicable requirements for replat submittal.

c. 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 applicant's preliminary plat submittal is to scale and includes a vicinity map, existing conditions, contour lines, proposed improvements on Parcel 1, and a proposed driveway location for future development on Parcel 2.

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

d. MMC Chapter 17.28 Design Standards

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

- (1) 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.

As discussed in Finding 6, the proposed parcels meet the minimum area and dimensional requirements for the underlying R-5 zone, except for Parcel 2's lot depth and lot area. The applicant has requested variances to the lot depth and lot area standards for Parcel 2, with the approval criteria discussed in Finding 9-c-(1). As proposed, and with the variances approved as discussed in Finding 9, this standard is met.

- (2) 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 and have frontage on public streets (King Rd and 51st Ave for Parcel 1, 51st Ave for Parcel 2). The side lot lines of both parcels

run at right angles to the streets they face (King Rd for Parcel 1 and 51st Ave for Parcel 2) and the rear lot lines are parallel those streets. As proposed, this standard is met.

- (3) MMC Subsection 17.28.040.C limits compound lot lines for side or rear lot lines. Cumulative lateral changes in direction exceeding 10% of the distance between opposing lot corners along a given lot line may only be permitted through the variance provisions of MMC Subsection 19.911.

The proposed replat does not include any compound lot lines. This standard is met.

- (4) MMC Subsection 17.28.040.D allows lot shape standards to be varied pursuant to MMC 19.911.

No variance to the lot shape standards is requested in this application.

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

Neither of the proposed parcels is a double frontage or reversed frontage lot.

- (6) 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.

As proposed, Parcel 1 would continue to take access from King Rd, where it has 75 ft of frontage. Parcel 2 would take access from 51st Ave, where it has 57.5 ft of frontage. Both parcels provide the 35-ft minimum frontage required in the R-5 zone. As proposed, this standard is met.

As proposed, and with the variances approved as discussed in Finding 9, the Planning Commission finds that the new parcels presented in the applicant's preliminary plat meet the applicable design standards established in MMC 17.28.

e. MMC Chapter 17.32 Improvements

MMC 17.32 establishes procedures for public improvements, including a requirement that work shall not begin until plans have been approved by the City.

As discussed in Finding 8, neither dedication to the public right-of-way nor physical improvements are required along the frontage of either parcel.

As proposed, the Planning Commission finds that the applicable standards of MMC 17.32 are met.

As proposed, the Planning Commission finds that the proposed replat meets all applicable standards of MMC Title 17.

6. MMC Section 19.301 Low Density Residential Zones (including R-5)

MMC 19.301 contains standards for Low Density Residential zones, including the R-5 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-5 zone, including single-family detached dwellings, duplexes, and accessory dwelling units (ADUs) as outright permitted uses.

As proposed, the existing house on Parcel 1 would remain. Parcel 2 would be large enough and dimensioned to allow development of a single-family house, which is an allowed use in the R-5 zone. Future development on Parcel 2 will be reviewed for compliance with the applicable standards of the R-5 zone and other relevant sections of the municipal code at that time.

By definition, accessory uses are allowed only when there is a primary use on the site, so the existing carport structures and storage shed on Parcel 2 cannot remain without a conforming use being established on the site. The applicant has proposed to remove the existing accessory structures on Parcel 2, and a condition has been established to clarify the timing of that required action.

As conditioned, this standard is met.

b. MMC Subsections 19.301.4 and 19.301.5 Development Standards

MMC 19.301.4 and 19.301.5 establish development standards for the R-5 zone. The applicable standards are addressed and met as described in Table 6-b (Zoning Compliance) below.

Table 6-b Applicable R-5 Development Standards			
Standard	R-5 Requirement	Parcel 1	Parcel 2
Lot Area	5,000 sq ft	6,845 sq ft	4,301 sq ft (see Finding 9 for discussion of requested variance)
Lot Width	50 ft	75 ft	57.5 ft
Lot Depth	80 ft	91.5 ft	75 ft (see Finding 9 for discussion of requested variance)
Public Street Frontage	35 ft	75 ft + 91.5 ft (corner lot)	57.5 ft
Front Yard	20 ft (as per MMC 19.501.2, the required setback for King Rd is 30 ft = 20 ft for R-5 zone, plus an additional 10 ft to provide the 40-ft setback from centerline of King Rd ROW, which is 60 ft wide)	34.5 ft	To Be Determined at time of development (TBD)
Side Yard	5 ft (interior yards)	18 ft (interior)	TBD

	15 ft (street-side yards)	2.3 ft (street-side = existing nonconforming, no change proposed)	
Rear Yard	20 ft	10 ft (see Finding 9 for discussion of requested variance)	TBD
Maximum Building Height	2.5 stories or 35 ft (whichever is less)	1 story, <20 ft	TBD
Maximum lot coverage	35%	32%	TBD
Minimum vegetation	25%	>28%	TBD
Front Yard Minimum Vegetation	40%	c.57% (with closure of second driveway and proposed landscaping improvements)	TBD
Density requirements	Total lot area is 0.26 acres Min. density = 2 units (@7.0 units/acre) Max. density = 2 units (@8.7 units/acre)	1 dwelling unit (existing single-family house)	1 dwelling unit (sized for single-family house)

As proposed, the applicable development standards of these subsections are met.

As proposed, and with approval of the variances discussed in Finding 9, the Planning Commission finds that the applicable R-5 zone standards of MMC 19.301 are met.

7. 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. As per MMC Subsection 19.602.3.B, existing off-street parking areas must be brought closer to conformance when new development or changes of use occur; conversely, new development cannot cause existing parking areas to fall out of compliance (or farther out of conformance). The applicant must demonstrate that the proposed partition does not make Parcel 1 nonconforming with the applicable standards of MMC 19.600; Parcel 2’s compliance with the applicable off-street parking standards will be evaluated at such time as development is proposed on that lot.

a. MMC Section 19.605 Vehicle Parking Quantity Requirements

MMC 19.605 establishes standards to ensure that development provides adequate vehicle parking (off-street) based on estimated parking demand. The section establishes processes for determination of parking requirements, exemptions and reductions to the required ratios, and provisions for shared parking.

For residential homes and similar assisted living facilities (i.e., dwelling units operated as single housekeeping units that provide permanent residence for the elderly, disabled, and others requiring personal services and care), MMC Table 19.605.1 establishes a minimum quantity requirement of 1 space per dwelling unit plus 1 space per employee on the largest shift. The maximum quantity allowed for residential homes is the minimum amount plus 1 space per bedroom.

The existing 7-bedroom house on Parcel 1 is occupied by the applicant as a primary residence but is also operated as a residential home (providing care to elderly and/or disabled residents) with 1 non-resident employee. As per MMC Table 19.605.1, a minimum of 2 off-street parking spaces are required, with a maximum of 9 spaces allowed.

With its paved front yard parking and turnaround area, long driveway along the west side of the existing house, and 2 carport structures and associated maneuvering area behind the house, the subject property is configured in such a way as to provide enough dimensional room to fit 12-13 spaces that meet the minimum required parking-stall measurements of 9 ft wide by 18 ft deep. In its current state, the subject property is well over the maximum number of parking spaces allowed for an assisted living facility of its size and operational scale.

However, the proposed partition would result in the removal of the 2 carport structures and elimination of the parking and maneuvering area behind the existing house. The applicant also proposes to remove a significant amount of parking area in front of the house, leaving space for approximately 4 parking spaces. As proposed, Parcel 1 would meet the standard for minimum number of off-street spaces and would no longer exceed the maximum allowed for the current use and structure. Parcel 2 will be evaluated for compliance with the relevant off-street parking standards when that site is developed.

The Planning Commission finds that the proposed partition would bring Parcel 1 into compliance with current quantity standards for off-street parking and that Parcel 2's compliance will be evaluated at the time of development. This standard is met.

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

MMC Subsection 19.607.1 establishes standards for residential driveways and vehicle parking areas, including limits on the percentage of front yard area used for parking (maximum of 50%) and on the number of parking spaces allowed in the front yard (maximum of 3). In addition, the subsection does not allow parking spaces in the required front yard to be counted toward the minimum required parking.

As noted above in Table 6-b, the nearest point of the existing house on Parcel 1 is 34.5 ft from the front lot line, establishing a front yard area of approximately 2,585 sq ft. Within that front yard area, the site currently presents approximately 2,020 sq ft of paved parking and maneuvering area, which is 78% of the front yard. The dimensions of this parking area are sufficient to count at least 7 spaces that meet the minimum 9 ft by 18 ft dimension.

However, the applicant has proposed to close one of the 2 existing driveways onto King Rd and replace a significant portion of the existing front-yard pavement with new landscaping area, resulting in a total of approximately 1,480 sq ft of front-yard landscaping and leaving

only approximately 860 sq ft of parking area (33%). As proposed, the reconfigured front yard area would have room for 3 parking spaces at most, but Parcel 1 would retain the existing parking area on the west side of the house, which is sufficiently dimensioned to provide the minimum required 2 spaces. The changes proposed in conjunction with the proposed replat would bring the front yard parking area of Parcel 1 into conformance with the applicable standards of MMC 19.607.

As proposed, the Planning Commission finds that the proposed development meets all applicable standards of MMC 19.600.

8. 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 applicant proposes to replat the subject property to create 2 distinct parcels. The proposed replat triggers the requirements of MMC 19.700.

MMC 19.700 applies to the proposed development.

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 establishing approval criteria.

The applicant had a preapplication conference with City staff on May 9, 2019, prior to application submittal. The proposed action does not trigger a Transportation Impact Study (TIS) (as addressed in Finding 8-c), but it does require a replat application. The proposal's compliance with MMC 19.700 is being reviewed as part of the replat application and a separate Transportation Facilities Review (TFR) application is not necessary. As addressed in Findings 8-d and 8-e, no mitigation is required for the potential impacts of the proposed replat, beyond compliance with MMC Title 12.

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 requires submission of a TIS documenting the development impacts on the surrounding transportation system.

The City Engineer has determined that a TIS is not required, as the impacts of the proposed replat on the transportation system are minimal and evident.

d. MMC Section 19.705 Rough Proportionality

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

The proposed replat would create 2 developable parcels. Parcel 1 would retain the existing house, which is also used as a residential home (providing care to elderly and/or disabled residents); Parcel 2 would be developed with a new single-family house. As proposed, and particularly with the proposed closure of one of the existing driveways on King Rd, Parcel 1 would produce no new impacts, so no mitigation is needed. Development on Parcel 2 would result in new impacts, but the site's street frontage on 51st Ave is already up to current City standards, as discussed in Finding 8-e. Since no improvements are required to mitigate the potential impacts of the proposed replat, no rough analysis of proportionality is necessary.

As proposed, no mitigation for transportation impacts is required. This standard is met.

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. MMC Subsection 19.708.1 requires compliance with MMC Chapter 12.16 and establishes general requirements and standards for streets, including access management, clear vision, street design, connectivity, and intersection design and spacing standards. MMC Table 19.708.2 provides more specific street design standards for various street classifications, including for arterial and local streets. The City's street design standards are based on the street classification system described in the City's Transportation System Plan (TSP).

All streets, sidewalks, necessary public improvements, and other public transportation facilities located in the public right-of-way (ROW) and abutting the development site shall be adequate at the time of development or shall be made adequate in a timely manner. In addition, all signs, structures, or vegetation over 3 ft in height shall be removed from "vision clearance areas" at intersections of streets, driveways, and alleys.

The Milwaukie TSP and Transportation Design Manual (TDM) classifies King Rd as an arterial street; 51st Ave is a local street. As established in MMC Table 19.708.2, the required ROW width for an arterial street is between 54 ft and 89 ft depending on the required street improvements; the required ROW width for a local street is between 20 ft and 68 ft.

The existing ROW on King Rd in front of the subject property is 60 ft wide, with a center turn lane, vehicle travel lanes, bike lanes, and curb-tight sidewalks. The frontage is substandard, but as noted in Finding 8-d, the creation of Parcel 1 would result in no new impacts to King Rd, which is the street where it takes access.

The existing ROW on 51st Ave is 54.5 ft wide where the subject property has frontage. As a result of the adjacent platting of the Mission Park subdivision (2018), 51st Ave is already improved to current standards, with vehicle travel lanes, landscape strips, and setback sidewalks. Although the creation of a developable Parcel 2 would result in new impacts, no

further improvements are necessary because the public facilities in 51st Ave (where the new lot would take its access) meet current standards, as noted in Finding 8-d.

The proposed replat is subject to the applicable standards of MMC 12.16, with which Parcel 1 does not currently comply, as discussed in Finding 4. The applicant has proposed several access-related improvements to bring Parcel 1 closer into compliance with MMC 12.16, and a condition has been established to ensure that the applicable standards are met.

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

f. MMC Section 19.709 Public Utility Requirements

MMC 19.709 establishes the City's requirements and standards to ensure the adequacy of public utilities to serve development.

The existing public utilities in King Rd and 51st Ave, including streets, sewer, and water service, are all adequate to serve the existing and proposed development on the subject property. A moratorium is in place for disturbance to the paved surface of 51st Ave, which was constructed within the last 2 years, so the applicant will be subject to the applicable fees and standards for any disturbance to and replacement of the new road surface.

The proposed replat meets the applicable standards of MMC 19.709.

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

9. 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. Ineligible variances include requests that result in any of the following: change of a review type, change or omission of a procedural step, change to a definition, increase in density, allowance of a building code violation, allowance of a use that is not allowed in the base zone, or the elimination of restrictions on uses or development that contain the word "prohibited."

The applicant has requested 3 variances: (1) to reduce the minimum lot depth of Parcel 2 from 80 ft to just under 75 ft; (2) to reduce the lot area of Parcel 2 below the required minimum 5,000 sq ft to approximately 4,300 sq ft; and (3) to reduce the minimum rear yard of Parcel 1 from 20 ft to 10 ft.

The requested variances meet the eligibility requirements established in MMC 19.911.2.

b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. Subsection 3-B establishes the Type II review process for limited variations to certain numerical standards. Subsection 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 variance requested to the R-5 lot depth standard falls within the 10% allowance for Type II review. However, the lot area and rear yard setback variances are not identified in MMC 19.911.3.B as being eligible for Type II review and so are subject to the Type III review process. The lot depth variance is subject to the Type II approval criteria established in MMC Subsection 19.911.4.A; the other 2 variances must show compliance with the Type III approval criteria established in MMC Subsection 19.911.4.B.

c. MMC Subsection 19.911.4 Approval Criteria

(1) MMC 19.911.4.A establishes approval criteria for Type II variance requests.

- (a) 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.

The minimum required lot depth for the R-5 zone is 80 ft; the proposed depth of Parcel 2 is just under 75 ft, or approximately 5 ft below the standard. The requested adjustment represents a difference of approximately 6% from the minimum, which is not significant and would not be detrimental to surrounding properties or public health, safety, or welfare. There are no designated natural resource areas on the subject property.

This criterion is met.

- (b) 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.

The City has identified a Capital Improvement Project to construct sidewalks on King Rd, though the project is not scheduled within the next 2 years. The requested minor adjustment to the lot depth of Parcel 2, which has its street frontage on 51st Ave, would not interfere with this or other planned improvements.

This criterion is met.

- (c) Where site improvements already exist, the proposed variance will sustain the integrity of, or enhance, an existing building or site design.

The proposed variance to reduce the depth of Parcel 2 by 5 ft would not have a negative impact on any existing buildings. The existing accessory structures on Parcel 2 are proposed to be removed prior to redevelopment of the lot with a new

single-family house, so Parcel 2 will effectively present a blank slate for new construction of a primary structure. There is a large accessory structure in the rear yard of the adjacent property to the west at 5052 SE King Rd, abutting the rear lot line of Parcel 2. But the 20-ft rear yard setback required in the R-5 zone will provide an adequate buffer from a new primary structure on Parcel 2.

This criterion is met.

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

As discussed above, the proposed 5-ft reduction in lot depth is not significant and would not result in any negative impacts that require mitigation.

This criterion is met.

As proposed, the Planning Commission finds that the variance requested to the R-5 lot depth standard meets the approval criteria established in MMC 19.911.4.A for Type II variances. The variance to the lot depth standard is approved for Parcel 2.

- (2) MMC 19.911.4.B establishes approval criteria for Type III variance requests, including discretionary relief criteria and economic hardship criteria. The applicant may choose which set of criteria to meet based upon the nature of the request, the development proposal, and the existing site conditions.

For the Type III variances, the applicant has elected to address the economic hardship criteria, which are provided in MMC Subsection 19.911.4.B(2). The variances for Parcel 1's rear yard and Parcel 2's lot area are interconnected and part of an effort to balance impacts in a way that preserves the economic investment in the existing house, so they are addressed together below.

- (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.

At 11,150 sq ft, the overall subject property is large enough to create 2 lots sized at more than 5,000 sq ft each. However, the existing house on Parcel 1 is sized and situated in such a way that a second parcel could not meet the 5,000-sq-ft minimum lot size standard and required R-5 setbacks without demolishing a portion of the house. The proposal to create a 4,300-sq-ft parcel would result in a lot large enough to allow up to a 1,500-sq-ft house footprint (meeting the R-5 lot coverage standard) with some flexibility for placement that would also meet the R-5 standards for yard setbacks.

The minimum required density for the subject property is 2 units. The existing house could be improved to establish a duplex, either with an addition or by converting existing space into a second dwelling unit. This action would involve an expense comparable to (if not more than) building a detached single-family

house on its own lot and would have more impacts on the existing residential home currently in operation on Parcel 1.

As proposed, the rear of the existing house on Parcel 1 would be approximately 15 ft from the proposed boundary with Parcel 2, and an existing patio cover attached to the Parcel 1 house would be only 10 ft from the rear lot line. Requiring the existing structure on Parcel 1 to meet the required rear yard setback would further reduce the area of Parcel 2. Requiring the demolition of the existing covered patio would incur costs and diminish a notable amenity of the existing house without achieving the required rear yard setback. Instead, it is reasonable to grant the requested variances and allow a new lot to be created to achieve the required minimum density with a new detached single-family dwelling rather than requiring a duplex development as the only option for meeting minimum density on the site.

The Planning Commission finds that the requested variances are necessary to allow reasonable economic use of the subject property. This criterion is met.

- (b) *The proposed variance is the minimum variance necessary to allow for reasonable economic use of the property.*

Any effort to push Parcel 2 closer to meeting the 5,000-sq-ft lot size standard would move its common boundary with Parcel 1 to the north and would further reduce Parcel 1's rear yard. Moving the common boundary to the south to bring the rear yard closer to meeting the 20-ft minimum standard would reduce Parcel 2's lot area below the proposed 4,300-sq-ft size and would further reduce any flexibility for a new building footprint. Although Parcel 1 well exceeds the 5,000-sq-ft minimum area requirement, each 1 ft of adjustment to the common boundary (and Parcel 1's rear yard measurement) yields only 75 sq ft of change in the lot area for each parcel.

The proposed reduction in lot size would not reduce the minimum density of Parcel 2 below the R-5 standard and would leave sufficient area to develop the property with a single-family house that could meet all relevant development standards. The proposal to create Parcel 2 with 4,300 sq ft of area and provide a 10-ft rear yard setback on Parcel 1 establishes a balance that allows reasonable economic use of the property by creating a second buildable lot from a property large enough to divide in the R-5 zone.

The Planning Commission finds that the requested variances are the minimum necessary to allow for reasonable economic use of the property. This criterion is met.

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

Allowing a 14% reduction in Parcel 2's lot area would reduce the flexibility for future development on the site to establish a detached single-family dwelling,

though such development would be feasible. Impacts to surrounding properties would be mitigated by the R-5 development standards. The limitation on lot coverage is proportional to lot area, so a smaller lot has less area that can be covered with a structure. Yard requirements and the limitation on building height are fixed numbers and so result in essentially the same aesthetic effect regardless of lot size. As long as no additional variances to the R-5 development standards are allowed for Parcel 2, approval of the requested variance for lot area would not have any negative impacts on surrounding properties. A condition has been established to provide this assurance.

Allowing the rear yard setback on Parcel 1 to be reduced to 10 ft to account for the location of the existing covered patio would result in significantly less separation between the existing structure and the side yard and future footprint of a structure on Parcel 2. To avoid additional impacts from potential future improvements to the existing house on Parcel 1, a condition has been established that limits the approved 10-ft rear yard setback to the area of the existing covered patio and prohibits any other portion of the existing house that does not conform to the 20-ft rear yard standard from being extended beyond its current location.

The Planning Commission finds that the conditions established are sufficient to mitigate any impacts resulting from approval of the requested variances.

As proposed, the Planning Commission finds that the requested variances for Parcel 1's rear yard and Parcel 2's lot area meet the approval criteria established in MMC 19.911.4.B(2) for Type III variances based on economic hardship.

As proposed, the Planning Commission finds that the requested variances meet the applicable approval criteria for Type II and Type III variances as established in MMC 19.911.4.

The Planning Commission finds that the requested variances are allowable as per the applicable standards of MMC 19.911 and are therefore approved.

10. 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 establishes the applicability of MMC Subsection 19.1203.3 as extending to applications to create 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 replat will create new parcels in the R-5 zone, which allows single-family residences. As discussed in Findings 10-b and 10-d, the solar design standards of MMC 19.1203.3 are applicable to Parcel 1, while the Planning Director has granted an adjustment for Parcel 2.

- b. MMC Subsection 19.1203.3 establishes solar design standards, including basic requirements for north-south dimension (minimum 90 ft) and front-lot-line orientation with respect to a true east-west axis (within 30°). There are two other options for compliance, for either establishing a protected solar building line or demonstrating a particular level of performance with respect to protection from shading.

As proposed, Parcel 1 has a north-south dimension of 91.5 ft and a front lot line oriented within 30° of a true east-west axis. Parcel 2 has a north-south dimension of only 57.5 ft and a front lot line oriented nearly 90° from a true east-west axis. As discussed in Finding 10-d, the Planning Director has found that an adjustment is warranted that would exempt Parcel 2 from this standard.

As proposed and as discussed in these findings, the solar design standards are met for Parcel 1 and are not applicable to Parcel 2.

- c. MMC Subsection 19.1203.4 establishes exemptions from the standards of MMC 19.1203.3, including where an off-site structure and/or vegetation produces a shadow pattern that would affect allowable development on the site.

No exemptions from the solar design standards have been requested. This standard is not applicable.

- d. MMC Subsection 19.1203.5 establishes provisions for adjustments to the percentage of lots that must comply with the solar design standards of MMC 19.1203.3, including cases in which the application of the solar design standards would reduce the density or increase the on-site development costs.

The subject property is 75 ft wide and 149 ft deep, with its front lot line at King Rd oriented within 30° of a true east-west axis and a north-south dimension of more than 90 ft. It is large enough to be divided but not wide enough to be split into 2 lots that each have a 90-ft north-south dimension. The existing configuration of the subject property makes it impossible to create a second parcel (Parcel 2) that can meet the solar design standards of MMC 19.1203.3, in turn preventing the subject property from achieving the minimum required density through land division. The Planning Director has reduced the percentage of lots that must comply with the solar design standards to 50%, effectively excepting Parcel 2 from the solar design standards.

The Planning Commission finds that Parcel 1 meets the solar design standards of MMC 19.1203.3 and that an adjustment to except Parcel 2 from the design standards is warranted. As proposed, the applicable provisions of the solar access standards established in MMC 19.1200 are met.

11. As described in Finding 3, public notice of the application was posted on site and mailed as required by the Type III review process established in MMC 19.1006. The application was referred for comment to the following departments and agencies on September 9, 2019:

- Milwaukie Engineering Department
- Milwaukie Building Department

- Milwaukie Public Works Department
- Milwaukie Police Department
- Milwaukie City Attorney
- Hector Campbell Neighborhood District Association (NDA) Chairperson & Land Use Committee (LUC)
- Lewelling NDA Chairperson & LUC
- Linwood NDA Chairperson & LUC
- Clackamas Fire District #1 (CFD #1)
- Clackamas County Department of Transportation & Development (DTD)
- Metro
- TriMet
- NW Natural

In addition, public notice of the application with an invitation to comment was sent on October 2, 2019, and again on October 4, 2019, to property owners and residents within 300 ft of the subject property.

The comments received are summarized as follows:

- **Jeremy Lorence, East Metro Resource Engineer, NW Natural:** The proposed partition does not present conflicts with any NW Natural facilities.
- **David Hedges, Vice Chair, Hector Campbell NDA:** The NDA does not support the granting of the requested variances, due to the belief that they will have detrimental effects on surrounding properties. In particular, the proposal to reduce the lot area of Parcel 2 below the minimum 5,000-sq-ft standard is substantial and is not in keeping with the lot sizes of nearby properties. Also, the proposed 50% reduction in the rear yard setback of Parcel 1 does not appear to provide sufficient room to allow future occupants of both parcels to enjoy their respective outside spaces.
- **Jonny Gish, Engineering Tech 4, Clackamas County DTD:** Clackamas County has no frontage along the subject property boundaries so there are no comments from the DTD.