



November 19, 2019

Land Use File(s): MLP-2019-003; VR-2019-011; CU-2019-003

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on November 19, 2019.

Applicant(s):	Stephen McMurtrey, Housing Authority of Clackamas County
Location(s):	2889 SE Hillside Ct
Tax Lot(s):	11E25CD00100
Application Type(s):	Minor Land Partition; Variance; Minor Modification to a Conditional use
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• MMC Section 19.302 Medium and High Density Residential Zones (including R-3)• MMC Chapter 19.700 Public Facility Improvements• MMC Section 19.905 Conditional Uses• MMC Section 19.911 Variances• MMC Section 19.1005 Type II Review Milwaukie Land Division Ordinance: <ul style="list-style-type: none">• 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
Neighborhood(s):	Ardenwald-Johnson Creek ; Historic Milwaukie

Appeal period closes: 5:00 p.m., December 4, 2019

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1005 Type II 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 Vera Koliass, Associate Planner, at 503-786-7653 or koliassv@milwaukieoregon.gov, if you wish to view this case file or visit the project webpage at www.milwaukieoregon.gov/planning/mlp-2019-003.

This decision may be appealed by 5:00 p.m. on December 4, 2019, which is 15 days from the date of this decision.¹ (Note: Please arrive by 4:45 p.m. for appeal payment processing.) Any person who is adversely affected or aggrieved by this decision may appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie Planning Commission 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 19.1001.7.E, this land use approval expires unless the applicant has: (1) obtained and paid for all necessary development permits and started construction within 2 years of land use approval, and (2) passed final inspection and/or obtained a certificate of occupancy within 4 years of land use approval. Extensions can be granted per MMC Section 19.908.

Findings in Support of Approval

The Findings for this application are included as Exhibit 1.

Conditions of Approval

1. Prior to approval of the final plat, the following shall be resolved:
 - a. Provide public utility easement documents for all public water lines on Parcel 1.
 - b. Provide proof of recording of the access easement on Parcel 2 to benefit Parcel 1 for access to the walking paths and exercise stations.
 - c. Without further zoning or Planned Development approvals, the overall number of units permitted on Parcels 1 and 2 shall be limited to no more than 234.

Other requirements

1. MMC Section 17.04.120 Recording
 - a. As per MMC Section 17.04.120, partition plats 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

¹ As per MMC Section 19.1010, if the 15th day falls on a weekend or legal holiday, the end of the appeal period shall be extended to the end of the next business day.

approval. Once approved by the County Surveyor, a copy of the recorded final plat shall be submitted to the City Planning Department.

Director's Declaration of Impartiality

I certify that neither I nor any member of my immediate family has a material, personal, or financial relationship with the applicant. I further certify that no other relationship, bias, or ethical conflict exists which would have prevented me from evaluating the land use application solely on its merits and in accordance with the Milwaukie Municipal Code.

Decision

- Approved
- Approved with Conditions
- Denied



Dennis Egner, FAICP
Planning Director

Exhibits

1. Findings in Support of Approval

- cc: Stephen McMurtrey, Housing Authority of Clackamas County (via email)
Debbie Cleek, The Bookin Group (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; for variances only)
Mike Boumann and Izak Hamilton, CFD#1 (via email)
NDA(s): Ardenwald-Johnson Creek ; Historic Milwaukie (via email)

Land Use File(s): MLP-2019-003

EXHIBIT 1
Findings in Support of Approval
File #MLP-2019-003, Hillside Manor partition

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

1. The applicant, Debbie Cleek on behalf of the Housing Authority of Clackamas County, has applied for approval to create a separate tax lot for Hillside Manor at 2889 SE Hillside Ct. This site is in the Residential R-3 Zone. The land use application file number is MLP-2019-003.
2. The 16.16 acre Hillside Park property is developed with the Hillside Manor tower, a 100-unit affordable housing apartment building, and 99 detached single-family dwelling units plus 1 duplex. This partition request is to create two parcels to separate the Manor from the remainder of the site in order to finance a rehabilitation project for the tower. A variance is requested to allow a side yard setback of 4.1 ft rather than 5 ft. between the new property line and the existing community building. The partition, and its associated applications, is proposed in advance of a future land use application for a Planned Development on the site for the Hillside Master Plan.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - Milwaukie Municipal Code (MMC) Title 17 Land Division, including:
 - MMC Chapter 17.12 Application Procedure & Approval Criteria
 - MMC Chapter 17.20 Preliminary Plat
 - MMC Chapter 17.28 Design Standards
 - MMC Chapter 17.32 Improvements
 - MMC Section 19.302 Medium and High Density Residential Zones (including R-3)
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.905 Conditional Uses
 - MMC Section 19.911 Variances
 - MMC Section 19.1005 Type II Review

The application has been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review.

4. MMC Chapter 17.12 Application Procedure and Approval Criteria
MMC Section 17.12.040 establishes the approval criteria for preliminary plat. The proposed preliminary plat meets these criteria as described below.
 - a. MMC Subsection 17.12.040.A.1 requires that the proposed preliminary plat complies with Title 19 Zoning and other applicable ordinances, regulations, and design standards.

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

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

The proposed partition will provide sufficient area on both parcels to accommodate future development in accordance with the standards of the underlying R-3 zone. The parcels do not have physical constraints or dimensional limitations that would necessitate the need for a variance for future development. As proposed, this criterion is met.

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

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

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

The proposed partition is for an existing development that includes existing public right-of-way. The proposed partition does not affect street layout. As proposed, this criterion is met.

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

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

As proposed, the Planning Director finds that the preliminary plat meets the applicable criteria.

5. MMC Chapter 17.16 Application Requirements and Procedures

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

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

As proposed, the Planning Director finds that the application meets the applicable requirements for submittal of a preliminary plat.

6. 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, structures on surrounding properties, minimum setbacks for future development, and concepts for future development.

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

7. 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.

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

The existing parent parcel is an irregularly shaped lot, due to the public right-of-way that crisscrosses the site. The proposed Parcel 2 is not more irregular in shape and proposed Parcel 1 is more regular in shape than the existing and both meet the minimum area and dimensional requirements for the underlying R-3 zone. Both parcels conform to the relevant standards of the R-3 zone as described in Finding 9 and to other applicable standards of Title 19 as described elsewhere in these findings.

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

The existing parent parcel is an irregularly shaped lot, due to the public right-of-way that crisscrosses the site. The proposed Parcel 2 is not more irregular in shape and proposed Parcel 1 is more regular in shape than the existing and both meet the minimum lot standards in Title 19. The proposed new lot lines are at a 90-degree angle to Hillside Ct and the rear lot lines are parallel to the street.

- c. MMC Subsection 17.28.040.C limits compound lot lines for side or rear lot lines.
- d. *Compound lot lines are proposed for the side or rear lot lines on Parcel 2 as a result of carving out Parcel 1. However, the existing parcel has numerous compound lot lines due to the existing right-of-way crisscrossing the lot.*

- e. 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.

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

Parcel 1 will front on SE Hillside Ct. Parcel 2 is a single lot with extensive public right-of-way crisscrossing throughout.

- g. 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, each parcel has more than 200 ft of frontage along Hillside Ct and 32nd Ave, which exceeds the 35-ft minimum public street frontage required in the R-3 zone.

As proposed, the Planning Director finds that the new parcels presented in the applicant's preliminary plat meet the applicable design standards established in MMC 17.28.

8. 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 10, no physical improvements are required as a result of the proposed partition, including sidewalks and ADA ramps. This partition does not create any potential for additional transportation impacts.

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

9. MMC Section 19.302 Medium and High Density Residential Zones (including R-3)

MMC 19.302 contains standards for Medium and High Density Residential zones, including the R-3 zone. The application meets the applicable standards of this section as described below.

a. MMC Subsection 19.302.2 Allowed Uses

MMC 19.302.2 establishes the uses allowed in the R-3 zone, including multifamily housing, which is permitted subject to conditional use review.

The existing Hillside Manor tower was originally approved on the site through a 1969 Variance (VR-69-7) which allowed the building to vary from the normal height and parking requirements of the zoning at the time. In the current R-3 zone multifamily housing is permitted though a conditional use therefore, the tower development has "de facto" conditional use status on the site per MCC 19.905.8.

The 99 detached dwellings with one duplex on Parcel 2 were legally built in the 1940s prior to any zoning requirements on the site. Under the current code this development pattern would also be considered "multifamily development", requiring a conditional use in the R-3 zone. As such, the existing development on proposed Parcel 2 also has "de facto" conditional use status.

Per Finding 11, the proposed partition requires modifications to the de facto conditional use given that the action changes the size of the parcels that are associated with the town and the other dwellings.

As proposed, this standard is met.

b. MMC Subsections 19.302.4 and 19.302.5 Development Standards

MMC 19.302.4 and 19.302.5 establish development standards for the R-3 zone. The applicable standards are addressed and met as described in Table 9-b (Zoning Compliance) below.

Table 9-b Applicable R-3 Development Standards			
Standard	R-3 Requirement	Parcel 1	Parcel 2
Lot Area (multifamily)	5,000 sq ft	108,900 sq ft	595,030 sq ft
Lot Width	50 ft	300 ft	>50 ft
Lot Depth	80 ft	330 ft	>80 ft
Public Street Frontage	35 ft	>143 ft	>35 ft (varies)
Front Yard	15 ft	114 ft	>15 ft (varies)
Side Yard	5 ft	94 ft/70 ft	4.1 ft (variance requested)
Rear Yard	15 ft	145	>15 ft (varies)
Density requirements	Min. density = 11.6 units/acre Max. density = 14.5 units/acre (234 du on the entire site)	40.4 du/acre (density is balanced through the conditional use – see Finding 11 (36 du at maximum density))	7.3 du/acre (density is balanced through the conditional use – see Finding 11 (198 du at maximum density))

Subject to the requested variance and modification to a conditional use, the applicable standards of this subsection are met.

As proposed, the Planning Director finds that the applicable R-3 zone standards of MMC 19.302 are met.

10. 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 partition the subject property into two distinct parcels. The proposed partition triggers the requirements of MMC 19.700, however no public

improvements are required for this partition, as both lots are developed. Frontage improvement requirements will be addressed with the future development of the proposed Planned Development on Parcel 2.

MMC 19.700 applies to the proposed development, however no public improvements are required.

b. 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.

Public utilities are already in place to serve Parcels 1 and 2, however the public waterlines on Parcel 1 are not located in a public utility easement. A condition has been established accordingly. Public utility easements will be established for all public water lines in Parcel 1. Public utilities on Parcel 2 will change when the future Planned Development application is submitted. Therefore, no changes to the existing utility easements on Parcel 2 are required at this time.

As conditioned, the proposed partition meets the standards of MMC 19.709.

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

11. MMC Section 19.905 Conditional Uses

MMC 19.905 establishes a process for evaluating certain uses that may be appropriately located in some zoning districts, if appropriate for the specific site on which they are proposed. MMC Subsection 19.905.2.A provides that the provisions of Section 19.905 apply to uses identified as a conditional use in the base zone in Chapter 19.300, such as those identified for the R-3 zone in MMC Subsection 19.302.2. MMC Subsection 19.905.3.B provides that the minor modification of a conditional use shall be evaluated through a Type I review per Section 19.1004.

The proposal to partition the site of the existing multifamily development constitutes a request to modify an existing conditional use in the R-3 zone. The Planning Director has determined this is a minor modification and is subject to Type I review.

a. MMC Subsection 19.905.4 Approval Criteria

MMC Subsection 19.905.4.B establishes the following approval criteria for a minor modification of a conditional use:

- (1) The proposed modification will not significantly increase the intensity of the use at this location.

The proposed partition does not include any intensification of the existing use on the site since no new development is proposed. The existing multifamily development is considered a "de facto" conditional use and will remain on the site with no additional units proposed. Approval of the proposed partition will result in Parcel 1 exceeding the maximum density standards of the R-3 zone. However, proposed Parcel 2 will be well

below the maximum density standard, so the excess density on Parcel 1 can be tied to Parcel 2.

Based on the existing 16.16 acre lot size, the maximum permitted density of 14.5 du/acre would allow up to 234 units on the property, across the two parcels. A condition is included that will limit development on Parcel 2 so that any density calculation must be calculated in conjunction with Parcel 1.

This application is in advance of a future application for a Planned Development for a overall master plan for development on the site. A condition of approval is included that acknowledges the density on each proposed parcel and links the density limitation to the future Planned Development application.

As conditioned, this criterion is met.

- (2) The proposed modification will comply with all applicable development standards and requirements of the base zone, any overlay zones or special areas, and the standards in Section 19.905.

As identified in these findings, the proposed modification will comply with all applicable development standards and requirements of the base zone and the standards in Section 19.905.

- (3) The proposed modification will not negatively impact nearby uses, protected natural features, or public facilities more than the original conditional use.

The proposed partition will not result in any negative impacts.

- (4) The proposed modification will comply with any conditions of approval from the original conditional use approval.

The proposed partition complies with the conditions of approval from the original 1969 variance approval. The proposed partition of the site has no relationship to the current occupancy of the Hillside Manor tower, so the original condition that the facility be used exclusively for the elderly is not affected. Similarly, the provision of open space and recreational space for the entire Hillside development, as well as the provision of utilities, are not affected by the proposed partition.

The Planning Director finds that the proposed partition meets the approval criteria for a minor modification of a conditional use as established in MMC 19.905.4.B. This standard is met.

As conditioned, the Planning Director finds that proposal meets the applicable standards of MMC 19.905 and is approvable as a minor modification of a conditional use.

12. MMC 19.911 Variances

- a. MMC 19.911.3 establishes the review process for variance applications.
- b. MMC 19.911.4.A establishes criteria for approving Type II Variance applications.

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

- (1) The proposed variance, or cumulative effect of multiple variances, will not be detrimental to surrounding properties, natural resource areas, or public health, safety or welfare.

The proposed variance to the minimum side yard setback to be reduced by 0.9 ft for the existing community center building will not be detrimental to surrounding properties, natural resources areas, or public health, safety, or welfare. Both of the proposed parcels are owned and operated by the Housing Authority of Clackamas County and the variance relates to what is effectively an interior shared lot line within the overall Hillside development.

- (2) The proposed variance will not interfere with planned future improvements to any public transportation facility or utility identified in an officially adopted plan such as the Transportation System Plan or Water Master Plan.

The proposed variance will not interfere with any planned future improvements since all of the streets on the site are already platted and built and the utilities serving the area are in place. If the area were to redevelop in the future, approval of the variance will not conflict with any future street plans adopted by the City, since the community center building is not in a location where future streets or utilities are anticipated by these plans.

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

The requested variance is necessary to maintain the existing Hillside community center building on the site. This center is a public building used as an amenity by the Hillside residents and approving the variance will assure that it is able to remain on this site for the benefit the residents.

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

No impacts from the proposed variance have been identified.

As proposed, the Planning Director finds that the approval criteria have been met.

13. As described in Finding 3, public notice of the application was posted on site and mailed as required by the Type II review process established in MMC 19.1005. The application was referred for comment to the following departments and agencies on November 15, 2018:

- Milwaukie Engineering Department
- Milwaukie Building Department
- Milwaukie Public Works Department
- Milwaukie Police Department
- Clackamas Fire District #1 (CFD #1)

- Ardenwald and Historic Milwaukie Neighborhood District Associations (NDA)
Chairperson and Land Use Committee
- Metro
- Trimet

In addition, public notice of the application with an invitation to comment was sent on October 29, 2019, to property owners and residents within 300 ft of the subject property. No comments were received.