



# CITY OF MILWAUKIE

April 10, 2020

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

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie City Council on April 7, 2020.

*Traducciones de este documento e información sobre este proyecto están disponibles en español. Para solicitar información o preguntar en español, favor de email [espanol@milwaukieoregon.gov](mailto:espanol@milwaukieoregon.gov).*

- Applicant(s):** Matt Gillis, Gillis Properties, LLC
- Location(s):** 12205-12225 SE 19<sup>th</sup> Ave
- Tax Lot(s):** 11E35DD 03200 & 03300
- Application Type(s):** Appeal
- Decision:** Appeal of master land use file #NR-2018-005 denied; Approval of amended application
- Review Criteria:** Milwaukie Municipal Code:
- MMC 12.16 Access Management
  - MMC 12.24 Clear Vision at Intersections
  - MMC 18.04 Flood Hazard Area
- Milwaukie Land Division Ordinance:
- 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 19.301 Low Density Residential Zones
  - MMC 19.401 Willamette Greenway Zone
  - MMC 19.402 Natural Resources
  - MMC 19.504 Site Design Standards

- MMC 19.505 Building Design Standards
- MMC 19.600 Off-Street Parking and Loading
- MMC 19.700 Public Facility Improvements
- MMC 19.911 Variances
- MMC 19.1006 Type III Review
- MMC 19.1010 Appeals

**Neighborhood(s):** Island Station

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1010 Appeals.

The Milwaukie City Council held a public hearing and deliberated on April 7, 2020 to consider the appeal application submitted by Matthew Gillis, Gillis Properties, LLC, of the Planning Commission's decision to deny Master land use file #NR-2018-005, for a proposed 12-unit natural resources cluster development on the property located at 12205-12225 SE 19<sup>th</sup> Ave. The City Council met and made a unanimous decision to deny the appeal and approve the amended application, submitted pursuant to Oregon Revised Statutes (ORS) 197.522, for a five-lot subdivision on the subject property.

Please contact Vera Kolas, Associate Planner, at 503-786-7653 or [koliasv@milwaukieoregon.gov](mailto:koliasv@milwaukieoregon.gov), if you wish to view this case file.

This decision may be appealed to the Oregon Land Use Board of Appeals (LUBA) at: 550 Capitol Street NE, Suite 235, Salem, Oregon 97301-2552, 503-373-1265, <http://luba.state.or.us> pursuant to state rules and statutes. They can provide information regarding the timeline for filing an appeal and the proper forms and procedures.

Mailed this \_\_\_\_\_ Tenth \_\_\_\_\_ day of \_\_\_\_\_ April \_\_\_\_\_, 2020.



Mark Gamba  
Mayor

cc: Matt Gillis, Gillis Properties (LLC) (via email)  
Mike Robinson, Schwabe, Williamson & Wyatt, Applicant's representative (via email)  
City Council (via email)  
Planning Commission (via email)

Leila Aman, Community Development Director (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)  
Mike Boumann and Izak Hamilton, CFD#1 (via email)  
NDA(s): Island Station (via email)  
Interested Persons  
Land Use File(s): AP-2019-003

**Exhibits**

1. Final Order

BEFORE THE CITY COUNCIL OF THE CITY OF MILWAUKIE  
COUNTY OF CLACKAMAS, STATE OF OREGON

In an appeal of an application to deny a Natural Resources cluster development, Willamette Greenway review, and Variances for Gillis Properties, LLC.

File Nos. AP-2019-003 (appeal), NR-2018-005; LC-2018-001; WG-2018-001; VR-2018-014; and VR-2018-015 (proceedings below)

LAND USE ORDER

**I. INTRODUCTION AND PROJECT BACKGROUND**

This land use order documents the Milwaukie City Council action regarding an appeal of a decision by the Milwaukie Planning Commission (“Commission”) denying an application filed by Matt Gillis on behalf of Gillis Properties, LLC (“Applicant”) for Natural Resources Review, Willamette Greenway review, Lot Consolidation, and Variances for a 12-unit natural resources cluster development and associated improvements on the property located at 12205-12225 SE 19<sup>th</sup> Ave in the residential R-5 Zone. The Applicant subsequently submitted an amended application pursuant to Oregon Revised Statutes (ORS) 197.522 for a five-lot subdivision, Natural Resources Review, Willamette Greenway review, and Variances.

**II. HEARINGS AND PROCESS**

On July 23, 2019, the Planning Commission held a public hearing on the set of applications. The Commission received the staff report and oral and written testimony from the Applicant and from persons both in support of and opposed to the applications; the Commission did not deliberate. In addition to continuing the public hearing to September 10, 2019, the Commission closed the public hearing but left the written record open as follows:

- 1.until August 6 for anyone to submit argument and evidence;
- 2.until August 13 for anyone to rebut the first open record period submittals; and
- 3.until September 3 for applicant only to submit final written argument without new evidence.

At the September 10 public hearing, the Commission deliberated and reached a tentative decision to deny the applications. The Commission continued the public hearing to October 8 for a final vote.

At the October 8 public hearing, the Commission denied the applications on a vote of 3 members in support, and 1 opposed. The Planning Commission Notice of Decision was mailed on October 9, 2019.

On October 24, 2019, Matt Gillis (“Appellant”), the Applicant, within the required timeframe allowed for appeals filed a notice of appeal. Pursuant to MMC Table 19.1001.5, the City Council was identified as the Appeal Authority, and the City mailed written notice of the public hearing. On November 19, 2019, December 3, 2019, and December 10, 2019, the City Council conducted public hearings and designated a record. The entire Planning Department land use file was made part of the record. The City Council closed the record following the hearing on November 19 and provided the Appellant the opportunity to submit a final written argument, which was received on November 16.

At the end of the hearing on December 10, City Council voted unanimously with 4 Councilors in support, and 0 opposed, to tentatively affirm the Planning Commission's denial of the applications and directed staff to prepare a final written decision. Pursuant to ORS 197.522(3), City Council provided the applicant the opportunity to either amend the application or submit conditions of approval so that the application could meet the applicable criteria. At the continued December 17, 2019 meeting, the City Council continued the public hearing to February 4, 2020 to review an amended application for a total of five houses rather than the previously proposed twelve.

The Applicant submitted an amended application that was reviewed at a public hearing on April 7, 2020. The City Council took action with a quorum present; Council Hyzy recused herself due to a potential conflict of interest. The City Council made all of the required disclosures and there were no challenges. After deliberation, and after reviewing the Planning and Engineering Departments' staff report, the City Council voted unanimously (4-0) to deny the Applicant's appeal of the Planning Commission's decision that denied the original application. The City Council also voted unanimously (4-0) to approve the amended application for a five-lot subdivision with findings and conditions of approval. This Order is the City's final written decision.

### **III. LIMITATIONS ON EVIDENCE**

During the review of the original twelve-unit development, under the City Council's standard of review for its appeal hearing, parties were limited to the evidence presented to the Commission, but were free to make new arguments to City Council regarding this evidence. However, in reviewing the amended application, City Council considered all evidence and arguments in the record.

Written comments and oral testimony were received from property owners within 300 feet of the subject property and from Interested Parties; those comments did not contain new facts and were therefore considered by the City Council.

The remainder of this Final Order addresses the amended application only.

### **IV. APPLICABLE CRITERIA AND FINDINGS FOR APPROVAL**

1. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC 12.16 Access Management
  - MMC 12.24 Clear Vision at Intersections
  - 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 18.04 Flood Hazard Area
  - MMC 19.301 Low Density Residential Zones

- MMC 19.401 Willamette Greenway Zone
  - MMC 19.402 Natural Resources
  - MMC 19.504 Site Design Standards
  - MMC 19.505 Building Design Standards
  - MMC 19.600 Off-Street Parking and Loading
  - MMC 19.700 Public Facility Improvements
  - MMC 19.911 Variances
  - MMC 19.1006 Type III Review
  - MMC 19.1010 Appeals
2. The application has been processed and public notice provided in accordance with MMC Sections 19.1006 Type III Review and 19.1010 Appeals. Public hearings with the Planning Commission were held on July 23, September 10, and October 8, as required by law. The Planning Commission denied the application and a Notice of Decision was issued on October 9, 2019. Public hearings with the City Council were held on November 19, December 3, December 10, December 17, February 4, 2020, March 17, and April 7, as required by law.
3. MMC Title 12 Streets, Sidewalks, and Public Places
- a. MMC Chapter 12.08 – Street & Sidewalk Excavations, Construction, and Repair
- (1) This will apply to all construction that is completed in the right of way and for all public utilities. The public improvement process will follow MMC 12.08.020.
- b. MMC Chapter 12.16 Access Management
- (1) MMC 12.16.040 Access Requirements and Standards
- MMC 12.16.040 establishes standards for access (driveway) requirements.
- (a) MMC Subsection 12.16.040.A requires that all properties be provided street access with the use of an accessway.
- The proposed development has access to SE 19<sup>th</sup> Ave. This standard is met.*
- (b) MMC Subsection 12.16.040.B Governs access spacing onto arterial and collector streets.
- 19th Ave is a local street, 12.16.040.B is not applicable.*
- (c) MMC Subsection 12.16.040.C establishes standards for accessway location.
- (i) Double Frontage
- When a lot has frontage on two (2) or more streets, access shall be provided first from the street with the lowest classification. For example, access shall be provided from a local street before a collector or arterial street.

*The subject property currently has frontage on SE 19th Ave, a local street, and undeveloped SE Sparrow St. The proposal is for all access to be from SE 19th Ave.*

*This standard is met.*

- (ii) Limiting driveway access from arterials and collectors.

*Not applicable.*

- (iii) Distance from property line

The nearest edge of the driveway apron shall be at least seven and one-half (7½) feet from the side property line in residential districts and at least ten (10) feet from the side property line in all other districts.

*No planned access ways are within 7 ½ ft of the property line.*

*This standard is met.*

- (iv) Distance from Intersection

To protect the safety and capacity of street intersections, the following minimum distance from the nearest intersecting street face of curb to the nearest edge of driveway apron shall be maintained. Where intersecting streets do not have curbs, the distance shall be measured from the nearest intersecting street edge of pavement. Distance from intersection may be modified with a modification as described in MMC Section 12.16.040.B.2.

- (v) At least forty-five (45) feet for single-family residential properties accessing local and neighborhood streets.

*The applicant has proposed the driveway for the new lot containing 1225 SE 19<sup>th</sup> Ave within forty-five feet of Sparrow St. With approval of an access spacing study to determine mitigation needs, as outlined in MMC 12.16.040.B.2, the applicant will meet this standard.*

- (d) MMC Subsection 12.16.040.D Sets standards for the number of accessway locations.

- (i) Requires the number of accessway locations be the minimum necessary without inhibiting safe circulation and carrying capacity of the street.

*The applicant has proposed five single-family home lots to be accessed via individual driveways from SE 19<sup>th</sup> Ave. SE 19<sup>th</sup> Ave is a local street identified as neighborhood greenway. Circulation and carrying capacity of the street will not be significantly reduced by an additional three driveways on SE19<sup>th</sup> Ave. The street will continue to function as planned.*

*The proposed development is consistent with MMC 12.16.040.D.1.*

- (ii) Requires shared access to be used on collector and arterial streets to minimize the number of access points.

*Not applicable.*

- (iii) Specifies accessway number and spacing for single-family residential. One accessway per property is allowed for single-family residential uses. One additional accessway per property is allowed on a second local road frontage or when spaced 50 feet apart on the same frontage. Existing conditions conform.

*One accessway is proposed per single-family property. The standard is met.*

- (e) MMC Subsection 12.16.040.E Requires accessway designs meet ADA and Public Works Standards.

*The applicant has indicated that accessways shall meet ADA and Public Works Standards.*

- (f) MMC Subsection 12.16.040.F establishes accessway size to minimize surface water runoff and reduce conflicts between vehicles, bicyclists, and pedestrians.

*The applicant has proposed accessway sizes that meet this standard.*

c. MMC Chapter 12.24 – Clear Vision at Intersections

This code section defines a clear vision area for safe access and use of City streets.

*The applicant has not proposed any clear vision violations.*

4. MMC Title 17 establishes the regulations governing land division.

a. 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.

- (1) 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.*

- (2) 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 subdivision, with requested variances to side yard height plane and minimum lot width and street frontage will provide sufficient area on all parcels to accommodate future development in accordance with the standards of the underlying R-5 zone. The parcels do not have physical constraints or dimensional limitations that would necessitate the need for additional variances in the future, as all requested variances accommodate the proposed development. As proposed, this criterion is met.*

- (3) 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 named Elk Rock Estates, which is not duplicative.*



- (4) 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.

*No streets or roads are proposed as part of this subdivision. All of the proposed lots front on 19<sup>th</sup> Ave, an existing public right-of-way.*

*As proposed, this criterion is met.*

- (5) 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 narrative demonstrating compliance with all applicable standards and criteria. As proposed, this criterion is met.*

*As proposed, the City Council finds that the preliminary plat meets the applicable criteria.*

b. 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 were provided as an amended application as part of an active appeal hearing. No additional forms, checklists, or fees were required, but the materials included sufficient information to demonstrate compliance with the applicable standards and criteria.*

*As proposed, the City Council finds that the application meets the applicable requirements for submittal of a preliminary plat.*

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, and structures on surrounding properties.*

*As proposed, the City Council 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.

*The proposed lots are rectangular in shape and meet the minimum area requirements for the underlying R-5 zone. The lots will meet the R-5 dimensional requirements upon approval of the requested variances for minimum lot width and minimum street frontage. All lots conform to the relevant standards of the R-5 zone as described in Finding 8 and to other applicable standards of Title 19 as described elsewhere in these findings.*

- (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 lots are rectangular in shape and meet the minimum lot standards in Title 19 upon approval of the requested variances to minimum lot width and minimum street frontage as described in Finding 12. The proposed new lot lines are at a 90-degree angle to 19<sup>th</sup> Ave and the rear lot lines are generally parallel to the street.*

- (3) MMC Subsection 17.28.040.C limits compound lot lines for side or rear lot lines. No compound lot lines are proposed for the side or rear lot lines on either parcel.
- (4) MMC Subsection 17.28.040.D allows lot shape standards to be varied pursuant to MMC 19.911.

*No variances to the lot shape standards are 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.

*None of the proposed lots 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, two lots have less than the minimum required 35 ft of frontage along 19<sup>th</sup> Ave in the R-5 zone; a variance has been requested as described in Finding 14.*

*As proposed, conditional upon approval of the requested variances, the City Council finds that the new lots 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 12, physical improvements are required as a result of the proposed partition. The applicant proposes to construct public facilities aligned with the 19th and Sparrow Neighborhood Greenway design concept. This is consistent with City of Milwaukee Resolution No. 53-2016.*

*As conditioned, the City Council finds that the applicable standards of MMC 17.32 are met.*

5. MMC 18 Flood Hazard Regulations

- a. MMC 18.04 provides standards intended to minimize public and private losses due to flood conditions in specific areas. The regulations established in MMC Title 18 do this in part by controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters; controlling filling, grading, dredging, and other development which may increase flood damage; and preventing or regulating the construction of flood barriers which will

unnaturally divert flood waters or which may increase flood hazards in other areas. As per MMC Section 18.04.100, a development permit is required prior to any construction or development within the flood management area.

*The development parcel is located within the City's flood management area. The applicant states within the application materials that they acknowledge the inherent risks of building within the floodplain and will construct the project in accordance with current federal and local requirements for construction of homes within a floodplain. A floodplain development permit is required prior to beginning work upon approval of this application. All flood prone structures need to be appropriately certified and surveyed prior to completion of construction. No watercourses are proposed to be altered or relocated as part of the proposed development.*

*The City Council finds that MMC 18 applies to the proposed development.*

(1) MMC 18.04.150 General Standards

MMC 18.04.150 establishes the required standards for development in a flood hazard area.

(a) Anchoring

- (i) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

*The applicant proposes that all new structures in this development will be securely anchored to properly designed foundations to prevent flotation, lateral movement or collapse in accordance with accepted engineering practices.*

*Additionally, the applicant must meet these requirements for existing structures that are substantially improved.*

(b) Construction Materials and Methods

- (i) All new construction and substantial improvements shall be constructed with materials and utilize equipment resistant to flood damage.
- (ii) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (iii) Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

*The applicant proposes that all new structures will be constructed consistent with this chapter.*

(c) Utilities

- (i) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

- (ii) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and
- (iii) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

*The applicant proposes that all new water supply and sanitary sewer systems would be designed to minimize or eliminate infiltration of floodwaters in accordance with accepted engineering practices. No on-site waste disposal systems are proposed.*

(d) Subdivision Proposals

- (i) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (ii) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.
- (iii) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (iv) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least fifty (50) lots or five (5) acres (whichever is less).

*The applicant proposes to minimize flood damages by proposing structures around the area of highest natural grade and complying with provisions of this chapter. Base flood elevation data is already available for the site through a regulatory flood insurance study.*

(e) Review of Building Permits

Where elevation data are not available, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two (2) feet above grade in these zones may result in higher insurance rates.

*Federally established flood elevation data is available for the site. The applicable Flood Insurance Rate Map (FIRM) is 41005C0017D. The flood elevation of the 1996 areas of inundation has been codified in MMC 18.04.030.*

(f) Balanced Cut and Fill

The displacement of flood storage area by the placement of fill or structures (including building foundations) shall conform to the following standards for balanced cut and fill:

- (i) The placement of fill or structures that displaces ten (10) cubic yards or less of flood storage area is exempt from the requirements of subsection 2 below.

- (ii) The placement of fill or structures that displaces more than ten (10) cubic yards of flood storage area shall comply with the following standards:
1. No net fill in any floodplain is allowed.
  2. All fill placed in a floodplain shall be balanced with at least an equal amount of soil material removal.
  3. Any excavation below bankfull stage shall not count toward compensating for fill.
  4. Excavation to balance a fill shall be located on the same parcel as the fill unless it is not reasonable or practicable to do so. In such cases, the excavation may be located in the same drainage basin and as close as possible to the fill site subject to the following:
    - a. The proposed excavation and fill will not increase flood impacts for surrounding properties as determined through hydrologic and hydraulic analysis;
    - b. The proposed excavation is authorized under applicable municipal code provisions including Section 19.402 Natural Resources; and
    - c. Measures to ensure the continued protection and preservation of the excavated area for providing balanced cut and fill shall be approved by the City.

*The applicant proposes no net fill. Some material excavated from the same parcel is proposed to be placed west of the building footprints in accordance with this section.*

*Through obtaining a floodplain development permit, the applicant will demonstrate compliance for development on the site.*
  5. Temporary fills permitted during construction shall be removed at the end of construction.

*Any temporary fills needed for construction will be removed at the end of construction. No temporary fills beyond the end of construction have been proposed.*
  6. New culverts, stream crossings, and transportation projects shall be designed as balanced cut and fill projects or designed not to significantly raise the design flood elevation. Such projects shall be designed to minimize the area of fill in flood management areas and to minimize erosive velocities. Stream crossings shall be as close to perpendicular to the stream as practicable. Bridges shall be used instead of culverts wherever practicable.

*No new culverts, stream crossings or transportation projects are proposed. This criterion does not apply.*

7. Excavation and fill required for the construction of detention facilities or structures, and other facilities, shall be designed to reduce or mitigate flood impacts and improve water quality. Levees shall not be used to create vacant buildable lands.

*The applicant will provide engineered stormwater plans. Stormwater shall be managed on each lot and comply with all floodplain development permit requirements.*

(g) Crawlspace Construction

Below-grade crawlspaces are allowed subject to the following standards as found in FEMA Technical Bulletin 1101, Crawlspace Construction for Buildings Located in Special Flood Hazard Areas.

- (i) The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in Section B of FEMA Technical Bulletin 1101. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas.
- (ii) The crawlspace is an enclosed area below the base flood elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one (1) foot above the lowest adjacent exterior grade.
- (iii) Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.
- (iv) Any building utility systems within the crawlspace must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.
- (v) The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.
- (vi) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall, must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall

height according to the engineering analyses and building code requirements for flood hazard areas.

- (vii) There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles or gravel or crushed stone drainage by gravity, or mechanical means.
  - (viii) The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawlspace. For velocities in excess of five (5) feet per second, other foundation types should be used.
- (2) *The applicant proposes to meet construction standards through the floodplain development permit process. 18.04.160 Specific Standards*

MMC 18.04.160 establishes specific required provisions and standards for development in special flood hazard and flood management areas where base flood elevation data has been provided.

(a) Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one (1) foot above base flood elevation.

*The applicant proposes that all new structures would be constructed with finished floors at least 1 ft above the design flood elevation. The applicant must also meet these requirements for substantial improvements of existing buildings. The NFIP defines a "basement" as any area that is below-grade on all sides. The regulations do not allow basements to extend below the BFE.*

(b) Miscellaneous Provisions

- (i) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are prohibited or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
- (ii) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
- (iii) The bottom of all openings shall be no higher than one (1) foot above grade.
- (iv) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

*The applicant proposes that automatic flood vents would be installed at all areas below the BFE.*

*Additionally, the applicant must meet these requirements for structures that are substantially improved.*

(3) MMC 18.04.170 Floodways

MMC 18.04.107 establishes the standards and requirements for development in floodways, which are areas located within areas of special flood hazard. These standards are established since the floodway is an extremely hazardous area due to the velocity of floodwaters.

*The applicant is not proposing any development in the floodway.*

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

a. Table 19.301.4 establishes standards for development in the R-5 zone.

<b>Table 19.301.4 Residential Zone R-5 Development Standards</b>			
Standard	Required	Proposed	Staff Comment
1. Minimum Lot Size	5,000 sq ft	<i>Lots 1-5 range in size from 12,005 sq ft to 30,868 sq ft</i>	<i>Comply with standard.</i>
2. Minimum Lot Width	50 ft	<i>Lots 2 – 4 have widths of 34 – 35.5 ft</i>	<i>Per Finding 14-b, a variance has been submitted requesting relief from this standard.</i>
3. Minimum Lot Depth	80 ft	<i>Lots 1 – 5 have lot depths exceeding 300 ft</i>	<i>Complies with the standard.</i>
4. Minimum Street Frontage	35 ft	<i>Lots 2 and 4 have street frontage of 34.5 ft and 34 ft respectively</i>	<i>Per Finding 14-b, a variance has been submitted requesting relief from this standard.</i>
5. Off-Street Parking and Loading	Min one/dwelling unit; no maximum	<i>Each lot has a garage or driveway as required.</i>	<i>Complies with the standard.</i>
6. Height Restriction	2½ stories or 35 ft, whichever is less	<i>Will comply with standard. No specific house plans have been submitted.</i>	<i>Applicant's materials state that each of the new homes will comply with this standard.</i>
9. Side yard height plane limit	20 ft/45 degrees		<i>Per Finding 14-b, a variance has been submitted requesting relief from this standard.</i>



10. Density	7.0-8.7 units/net acre	5 dwelling units	<i>Per Finding 14-b, a variance has been submitted requesting relief from this standard. The density allowed for the gross property area would be 25-32 dwelling units based on the ratio of 7-8.7 dwelling units per the base R-5 zone. The proposed development of 5 dwellings is 1.51 dwellings per gross acre.</i>
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*With conditions and subject to approval of the requested variances, the City Council finds that this standard would be met.*

7. MMC 19.400 Overlay Zones and Special Areas

a. MMC 19.401 Willamette Greenway Overlay Zone

MMC 19.401 establishes criteria for reviewing and approving development in the Willamette Greenway.

(1) MMC Subsection 19.401.5 Procedures

MMC 19.401.5 establishes procedures related to proposed uses and activities in the Willamette Greenway zone. Development in the Willamette Greenway zone requires conditional use review, subject to the standards of MMC Section 19.905 and in accordance with the approval criteria established in MMC Subsection 19.401.6.

*To divide land constitutes “development” as defined in MMC Subsection 19.401.4 and is subject to the conditional use review standards of MMC 19.905 and the approval criteria of MMC 19.401.6.*

(2) MMC Subsection 19.401.6 Criteria

MMC 19.401.6 establishes the criteria for approving conditional uses in the Willamette Greenway zone.

(a) Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan

The State Willamette River Greenway Plan defines “lands committed to urban use” in part as “those lands upon which the economic, developmental and locational factors have, when considered together, made the use of the property for other than urban purposes inappropriate.”

*The upland portion of the property is committed to an urban use. The majority of the area in the floodplain is undeveloped. The portion west of the Willamette slough is not appropriate for urban use.*

- (b) Compatibility with the scenic, natural, historic, economic, and recreational character of the river

*The site is adjacent to the Willamette slough and according to 1967 aerial photographs, it was actively used for agricultural or logging use in the past. The proposal is consistent with the character of the river because this section of the greenway includes residential property to the north and has been developed over the past 100 years for residential and commercial use.*

- (c) Protection of views both toward and away from the river

*The site is adjacent to the Willamette slough and provides views to the main channel of the river to the northwest and to the southwest. There are limited views from the 19<sup>th</sup> Ave public right-of-way, so consideration is required with respect to view protection. The proposed development has been configured to provide narrow view corridors between the proposed homes. The proposed dedication of the 1.66-acre "island area" west of the slough to the city for potential expansion of Spring Park would provide significant unobstructed views and public access to the river. A condition has been added to restrict the construction of fences between the houses that would impact these view corridors.*

- (d) Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable

*The existing site has been disturbed over the years and although it is located in the floodplain, there is little significant natural vegetation on the site to the east of the slough. The proposed development of only five lots, on which there are two existing homes, would disturb approximately 19,900 sq ft (or 26%) of the site that is east of the slough. Areas outside of the developed portion on the site east of the slough will remain undisturbed except as permitted by city code.*

- (e) Public access to and along the river, to the greatest possible degree, by appropriate legal means

*Public access would be provided from Spring Park and Elk Rock Island to the 1.66-acre "island area" proposed to be dedicated to the city as mitigation for the five-lot development.*

- (f) Emphasis on water-oriented and recreational uses

*The subject properties are private residential properties. The project would provide direct pedestrian access to the Willamette River from the 1.66-acre "island area" to be dedicated to the city.*

- (g) Maintain or increase views between the Willamette River and downtown

*The site is not in the downtown.*

- (h) Protection of the natural environment according to regulations in Section 19.402

*As identified in Finding 9-b, as conditioned, the application meets the applicable approval criteria for development and disturbance in mapped natural resource areas.*

- (i) Advice and recommendations of the Design and Landmarks Committee, as appropriate

*The subject properties are not within a downtown zone and the proposed activity does not require review by the Design and Landmarks Committee.*

- (j) Conformance to applicable Comprehensive Plan policies

The Willamette Greenway Element in the Milwaukie Comprehensive Plan includes policies related to land use, public access and view protection, and maintenance of private property. These policies include the requirement of a conditional use permit for new development and intensification of existing uses, evaluation of development impacts to visual corridors, and limitations on authorizing the unrestricted public use of private land.

The Natural Hazards Element includes policies that prohibit development in known areas of natural disasters and hazards without appropriate safeguards. The Open Spaces, Scenic Areas, and Natural Resources Element includes policies to conserve open space and protect and enhance natural and scenic resources.

*The proposed development is being reviewed through the Willamette Greenway conditional use process as provided in MMC Subsection 19.401.5. The project will not significantly impact visual corridors from SE 19<sup>th</sup> Ave given the limited view opportunities that currently exist. The proposed development is on private property but will provide public access to the river for pedestrians on the 1.66-acre "island area" to be dedicated to the city.*

- (k) The request is consistent with applicable plans and programs of the Division of State Lands

*The proposed activity is not inconsistent with any known plans or programs of the Department of State Lands (DSL).*

- (l) A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C

*The subject properties are not immediately adjacent to the main channel of the Willamette River. The proposed residential development is more than 300 ft from the top of the slough bank and no areas of riverbank (or slough bank) erosion have been identified as requiring stabilization.*

*The City Council finds that, as conditioned, the proposed activity meets all relevant approval criteria provided in MMC 19.401.6.*

- (3) MMC Subsection 19.401.9 Private Noncommercial Docks

MMC 19.401.9 establishes the requirements for private noncommercial docks.

- (a) Only 1 dock is allowed per riverfront lot of record.

*No docks are proposed as part of this development.*

*This standard is not applicable.*

*The City Council finds that, as conditioned, the proposed activity meets all applicable standards of development activity in the Willamette Greenway zone.*

b. MMC 19.402 Natural Resources

*Note: ESA, the City's environmental consultant, reviewed the applicant's original technical report and presented its assessment to the City in a summary memo, which informs this portion of the findings.*

MMC 19.402 establishes regulations for designated natural resource areas. The standards and requirements of MMC 19.402 are an acknowledgment that many of the riparian, wildlife, and wetland resources in the community have been adversely impacted by development over time. The regulations are intended to minimize additional negative impacts and to restore and improve natural resources where possible.

(1) MMC Subsection 19.402.3 Applicability

MMC 19.402.3 establishes applicability of the Natural Resource (NR) regulations, including all properties containing Water Quality Resources (WQRs) and Habitat Conservation Areas (HCAs) as shown on the City's Natural Resource (NR) Administrative Map.

*The project site is bisected by the Willamette Slough. The City's NR Administrative Map shows WQR and HCA designations on the majority of site and portions of these natural resource areas will be disturbed by the proposed development.*

*As presented in the applicant's amended submittal materials, the proposed development will temporarily or permanently disturb approximately 11,700 sq ft of HCA. At that scale, the proposed activity is not listed as exempt according to the standards outlined in MMC 19.402.4.*

*The City Council finds that the requirements of MMC 19.402 are applicable to the proposed activity.*

(2) MMC Subsection 19.402.8 Activities Requiring Type III Review

MMC 19.402.8 establishes that certain activities within a designated WQR and/or HCA are subject to Type III review in accordance with MMC 19.1006. As per MMC 19.402.8.A.1, this includes activities allowed in the base zone that are not otherwise exempt or permitted as a Type I or II activity.

*The amended proposal is a five-lot subdivision and the level of disturbance proposed within the designated WQR and HCA areas on the subject property exceeds the levels allowed by Type I and II review, as provided in MMC 19.402.6 and 402.7, respectively. As such, the activity is subject to Type III review and the discretionary process established in MMC 19.402.12. As noted in Finding 4-b above, the Natural Resource review is associated with other applications being processed concurrently with Type III.*

*The City Council finds that the proposed activity is subject to Type III review.*

(3) MMC Subsection 19.402.9 Construction Management Plans

MMC 19.402.9 establishes standards for construction management plans, which are required for projects that disturb more than 150 sq ft of designated natural resource area. Construction management plans must provide information related to site access, staging of materials and equipment, and measures for tree protection and erosion control.

*As conditioned, and required prior to approval of any construction permits, a construction management plan will be submitted for review at the time of submittal for development permits.*

(4) MMC Subsection 19.402.11 Development Standards

MMC 19.402.11 establishes development standards for projects that impact a designated natural resource, including requirements to protect natural resource areas during development and general standards for required mitigation (e.g., plant species, size, spacing, and diversity).

*MMC Subsection 19.402.11.D establishes mitigation requirements for disturbance within HCAs. The proposed development will not result in the removal of any trees, and the few trees on the site are on the margins. The total amount of HCA proposed to be permanently disturbed is 3,100 sq ft, which is approximately 2 percent of the total site area. Mitigation for this disturbance has been proposed in the form of a dedication to the city of the 1.66-acre "island area" to the west of the slough for the expansion of Spring Park.*

*Mitigation Option 2 calculates required mitigation based on the size of the disturbance area and assigns required trees and shrubs based on this area. Nearly 1.3 acres of the "island area" is vegetated with trees and shrubs, including some invasive Himalayan blackberry. However, there are also large stands of mature trees and areas of shrubs which would satisfy the mitigation planting requirements.*

*As conditioned, the City Council finds that the applicable development standards of MMC 19.402.11 are met.*

(5) MMC Subsection 19.402.12 General Discretionary Review

MMC 19.402.12 establishes the discretionary review process for activities that substantially disturb designated natural resource areas.

(a) Impact Evaluation and Analysis

MMC Subsection 19.402.12.A requires an impact evaluation and alternatives analysis in order to determine compliance with the approval criteria for discretionary review and to evaluate alternatives to the proposed development. A technical report prepared by a qualified natural resource professional is required and should include the following components:

(i) Identification of ecological functions

*The original application materials concluded that the proposed development area is "degraded" based on the low cover of shrubs and trees and the high percentage of weeds in the groundcover. This characterization is assumed to meet the Class C "Poor" category per Table 19. 402.11.C. The application provides a discussion of ecological functions of riparian habitat.*

(ii) Inventory of vegetation

*The applicant's original submittal materials include a technical report prepared by Environmental Technology Consultants, a private firm providing a range of environmental consulting services including natural resource assessment, wetland delineation, and environmental restoration. The technical report included an impact evaluation and alternatives analysis, as well as an inventory of existing vegetation. The natural resource documentation concluded that the WQR of the slough is "degraded" which appears accurate based on the lack of shrub and tree cover on-site. An assessment of the condition of the natural resources west of the slough was also provided.*

(iii) Assessment of water quality impacts

*Four sample plots were established by the applicant to characterize vegetation and investigate the presence of potential wetlands (no wetlands were found). ESA agreed with the determination that no wetlands conditions occur in the proposed mitigation area, although the area is presumed to experience flooding during high flows of the Willamette River.*

(iv) Alternatives analysis

*The amended application materials consider five alternatives to the preferred development: an alternative with 12 dwelling units, an alternative with 23 dwelling units, an alternative with 18 units, and two alternatives with 16 dwelling units. All alternatives would result in significantly more disturbance to the WQR and HCA. The report concludes that the proposed development is the most practicable alternative that results in the least impact to designated natural resources on the site.*

<b>Alternative</b>	<b>WQR/HCA impacts (combined)</b>	<b>Wetland fill</b>	<b>Below OHWM of the Willamette River</b>
<i>Preferred – 5 units</i>	<i>3,100 sq ft (permanent) 8,600 sq ft (temporary)</i>	<i>0</i>	<i>N/A – no dock is proposed</i>
<i>#2 – 12 units</i>	<i>38,500 sq ft</i>	<i>0</i>	<i>Repair to existing dock, no new structure</i>
<i>#3 – 23 units</i>	<i>57,213 sq ft</i>	<i>3,363 sq ft</i>	<i>Proposed Dock plus possible additional fill</i>
<i>#4 – 16 units</i>	<i>&gt;38,500 sq ft; less impact than #2 but more than #4 and the preferred because the private drive would extend further south into the buffer of Wetland A.</i>	<i>0</i>	<i>Proposed Dock</i>
<i>#5 – 18 units</i>	<i>&gt;38,500 sq ft</i>	<i>0</i>	<i>Proposed Dock</i>
<i>#6 – 16 units<sup>1</sup></i>	<i>Unknown – includes units on the “island” west of the slough and an access bridge</i>	<i>unknown</i>	<i>Proposed Dock</i>

*The preferred design appears to impact the least amount of natural resources of the six development alternatives. The impacts from the preferred option are due to the building footprints of the proposed three new homes.*

*The applicant submitted information and arguments to support the assertion that there is no practicable alternative to impacts on the mapped natural resources. More than 80% of the site contains resources areas. Balancing other code requirements, such as floodplain standards, minimum setbacks, and access requirements, makes avoiding impacts virtually impossible. Minimum density requires at least 12 dwelling units on the site, but in order to further minimize impacts, the applicant requests a variance to minimum density to allow the development of only five lots with the homes clustered as close as possible to 19th Ave.*

*Based on comments in earlier public hearings that suggested that an alternative, or alternatives, that proposed fewer homes, duplexes, or multifamily units outside of the HCA/WQR should have been considered, the applicant has proposed a project that is more than 60% smaller than originally proposed.*

<sup>1</sup> Alternative #5 submitted as a site plan on July 12, 2019 to illustrate another development alternative. No mitigation, floodplain evaluation, etc. was provided for this alternative.

*The City Council finds that the applicant's impact evaluation and alternatives analysis is sufficient for purposes of reviewing the proposed activity against the approval criteria provided in MMC 19.402.12. This standard is met.*

- (v) Demonstration that no practicable alternative method or design exists that would have a lesser impact on the resource and that impacts are mitigated to the extent practicable

*As identified above, the City Council finds that the applicant's impact evaluation and alternatives analysis is sufficient for purposes of reviewing the proposed activity against the approval criteria provided in MMC 19.402.12. This standard is met.*

- (vi) Mitigation plan

*The applicant's amended application materials include a mitigation plan for permanent and temporary impacts to the WQR and HCA.*

*The remaining HCA outside the developed area would be contiguous across the lots, as well as within the "island area" west of the slough. Originally proposed as the mitigation area under the 12-unit alternative, the applicant proposes to dedicate the approximately 1.66-acre "island area" to the city as a potential expansion of Spring Park. This dedicated mitigation area is nearly 50% of the total site area. The applicant has proposed that the final dedication would occur prior to the issuance of the certificate of occupancy for the last house to be built. However, a condition of approval requiring the final dedication at the time of approval of the final plat has been included. This dedicated mitigation area is nearly 50% of the total site area. Mitigation of 3,100 sq ft of permanent HCA disturbance with a dedicated area over 20 times that size more than adequately meets the spirit of the mitigation requirements and the Natural Resource and Willamette Greenway regulations.*

*The City Council finds that the applicant's mitigation plan is sufficient for purposes of reviewing the proposed activity against the approval criteria provided in MMC 19.402.12. As conditioned, this standard is met.*

- (b) Approval Criteria

MMC Subsection 19.402.12.B provides the approval criteria for discretionary review as follows:

*Note: ESA reviewed the applicant's technical report and presented its assessment to the City in a summary memo, which informs this portion of the findings.*

- (i) Avoid – The proposed activity avoids the intrusion of development into the WQR and/or HCA to the extent practicable, and has less detrimental impact to the natural resource areas than other practicable alternatives.

*The Willamette Slough bisects the site and the 100-year floodplain covers nearly all of the site, resulting in significant areas of designated WQR and HCA. Site development that avoids any impacts to the WQR and HCA at permitted densities is not possible. The applicant*



*has proposed a development of five single family homes accessed from 19<sup>th</sup> Ave. However, the buildings would intrude into the HCA and disturb approximately 3,100 sq ft of natural resource area. An additional approximately 8,600 sq ft will be disturbed due to removal of the existing gravel driveway in the center of the site, installation of sanitary sewer laterals and drywells, and to accommodate any necessary cuts to mitigate fill for construction of the new houses. As noted in the discussion of alternatives noted in Finding 9-b(5) above, the proposed development avoids impacts to the HCA to the greatest extent practicable.*

- (ii) Minimize – If the applicant demonstrates that there is no practicable alternative to avoid disturbance of the natural resource, then the proposed activity shall minimize detrimental impacts to the extent practicable.

*As noted in the above discussion of avoiding impacts, absent another alternative that completely avoids the resource areas, the preferred alternative impacts the least amount of resource area of the alternatives provided.*

- (iii) Mitigate – If the applicant demonstrates that there is no practicable alternative that will avoid disturbance of the natural resource, then the proposed activity shall mitigate for adverse impacts to the resource area. The applicant shall present a mitigation plan that demonstrates compensation for detrimental impacts to ecological functions, with mitigation occurring on the site of the disturbance to the extent practicable, utilization of native plants, and a maintenance plan to ensure the success of plantings.

*As noted in Finding 9-b(5), the applicant's submittal includes a mitigation plan for the HCA disturbance that will accompany the proposed development. The applicant has proposed to dedicate the 1.66-acre "island area" west of the slough to the city for potential expansion of Spring Park and the Elk Rock Natural Area. The proposed mitigation meets the code requirements.*

*The City Council finds that, as conditioned, the proposed development meets the approval criteria for discretionary review as established in MMC 19.402.12.B.*

(c) Limitations and Mitigation for Disturbance of HCAs

MMC Subsection 19.402.12.C establishes the discretionary review process for mitigation of more HCA disturbance than would be allowed by the nondiscretionary standards of MMC Subsection 19.402.11.D.1. In such cases, the applicant must submit an Impact Evaluation and Alternatives Analysis consistent with the standards established in MMC 19.402.12.A and subject to the approval criteria established in MMC 19.402.12.B.

*As discussed in Finding 9-b(5), the applicant's amended application materials include information that provides an explanation of the impacts to the HCA areas. Based on the materials submitted, the proposed development meets the approval criteria established in MMC 19.402.12.B.*

*The City Council finds that the proposed development meets the discretionary standards for disturbance of HCAs as established in MMC 19.402.12.C.*

*As conditioned, the City Council finds that the proposed development meets the applicable discretionary review standards of MMC 19.402.12.*

(6) MMC Subsection 19.402.13 Land Division and Property Line Adjustments

MMC 19.402.13 applies to all forms of land division defined in MMC 17.08.

(a) MMC Subsection 19.402.13.B Construction Management Plans

In accordance with Subsection 19.402.9, a construction management plan (CMP) is required for applications for land division that will require physical site improvements (e.g., grading and/or construction of structures, streets, or utilities) within, or within 100 ft of, a WQR or HCA.

*A condition of approval has been included requiring a CMP during permit review.*

(b) MMC Subsection 19.402.13.C Impacts from Site Improvements

Applications for land division that will require physical site improvements (e.g., grading and/or the construction of streets, sidewalks, culverts, bridges, or utilities) within a WQR or HCA shall comply with the relevant standards for disturbance limitation and mitigation provided in Subsections 19.402.11 and/or 19.402.12, as applicable.

*As noted in Finding 9-b(5), the applicant's submittal includes a mitigation plan for the HCA disturbance that will accompany the proposed development. The applicant has proposed to dedicate the 1.66-acre "island area" west of the slough to the city for potential expansion of Spring Park and the Elk Rock Natural Area. The proposed mitigation meets the code requirements.*

*As conditioned, the City Council finds that the proposed development meets the applicable discretionary review standards of MMC 19.402.12.*

(c) MMC Subsection 19.402.13.D Mitigation for Future Structures or Improvements

Applications proposing a division of land on which future construction may impact a WQR or HCA shall complete the mitigation requirements for any impacts to the WQR or HCA, in accordance with the requirements of Section 19.402, thereby exempting all subsequent development on lots containing a WQR and/or HCA from further review if in compliance with the related approval.

*As noted in Finding 9-b(5), the applicant has proposed to dedicate the 1.66-acre "island area" west of the slough to the city for potential expansion of Spring Park and the Elk Rock Natural Area. The dedication area is more than six times the size of the total HCA disturbance area, and more than 20 times the size of the permanently disturbed HCA area. As conditioned, the proposed mitigation meets the code requirements for the proposed development of five lots with three new single-family homes as shown on the site plan received by the city on February 11, 2020. Future*

*improvements or development proposed for the site must comply with the standards and requirements of MMC 19.402.*

(d) MMC Subsection 19.402.13.I Subdivisions

Applications for subdivisions must comply with one of two standards.

*The applicant has elected to have the subdivision reviewed under standard #2:*

- (i) All proposed lots shall have adequate buildable area outside of the WQR and HCA.

*The amended application materials include a site plan identifying proposed lot lines and building footprints for each of the three new homes. A total of 3,100 sq ft of HCA would be permanently disturbed, which is less than 3% of the total HCA on the site. An approximate additional 8,600 sq ft of temporary disturbance is proposed related to removal of the existing gravel driveway in the center of the site, installation of sanitary sewer laterals and drywells, and to accommodate any necessary cuts to mitigate fill for construction of the new houses.*

- (ii) To the extent practicable, the lot and access configurations shall mitigate the potential future impacts to the WQR and HCA from access and development.

*All of the lots would be accessed from 19th Ave, minimizing any impacts to the HCA on the site.*

- (iii) An Impact Evaluation and Alternatives Analysis shall be prepared in accordance with the relevant portions of Subsection 19.402.12.A.

*As noted in the discussion of alternatives noted in Finding 9-b(5) above, the proposed development avoids impacts to the HCA to the greatest extent practicable.*

- (iv) For properties where the HCA covers more than 85% of the total lot area, the Impact Evaluation and Alternatives Analysis shall address how the applicant's proposal retains the greatest practicable degree of contiguity of the HCA across the new lots.

*The remaining HCA outside the developed area would be contiguous across the lots, as well as within the "island area" west of the slough. Originally proposed as the mitigation area under the 12-unit alternative, the applicant proposes to dedicate the approximately 1.66-acre "island area" to the city as a potential expansion of Spring Park. This dedicated mitigation area is nearly 50% of the total site area.*

(e) MMC Subsection 19.402.13. J Resource Area as a Separate Tract

Where required by Section 19.402, the new subdivision or partition plat shall delineate and show all WQRs and HCAs as being located in a separate unbuildable tract(s).

*This requirement would be applicable to a subdivision reviewed under standard #1 in Subsection 19.402.13.1; the amended application is being reviewed under standard #2. However, the applicant proposes to dedicate the 1.66-acre "island area" to the city for potential expansion of Spring Park and Elk Rock Natural Area, effectively placing the area in a separate tract to be owned by the city as parkland.*

*As conditioned, per Finding 9-b(5), the City Council finds that the proposed development's disturbance of HCA areas on the subject property and proposed mitigation meets the applicable standards of MMC 19.402. The City Council finds that the criteria in 19.402.13 have been met.*

8. MMC 19.500 Supplementary Development Regulations

a. MMC 19.505 Building Design Standards

MMC 19.505 establishes design standards for single-family dwellings. The design standards apply to the closest street-facing façade that is within 50 ft of a front or street side lot line.

*The amended application consists of three new and two existing detached, single-family homes on a five-lot subdivision. The three new homes are subject to these standards.*

(1) MMC 19.505.2 Garages and Carports

MMC 19.505.2 establishes standards for garages and carports, with the intent of preventing garages from obscuring or dominating the street-facing façade of a dwelling and providing a pleasant pedestrian environment.

- (i) The width of a street-facing garage door(s), as measured between the inside of the garage door frame, may not exceed 40% of the total width of the street-facing façades on the same street frontage as the garage door. See Figure 19.505.2.C.2. Notwithstanding this limit, a dwelling is allowed one 12-ft-wide garage door, regardless of the total width of street-facing façades.

The maximum allowed garage door width may be increased to 50% of the total width of the street-facing façade if a total of seven detailed design elements in Subsection 19.505.1.C.4 are included on the street-facing façade.

*Each of the new homes is entitled to a 12-ft-wide garage door. The amended application materials state that the new homes will comply with this standard.*

*This standard is met.*

9. 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.

a. MMC Section 19.602 Applicability

MMC 19.602 establishes the applicability of the provisions of MMC 19.600, and MMC Subsection 19.602.3 establishes thresholds for full compliance with the standards of MMC 19.600. Development of a vacant site is required to provide off-street parking and loading areas that conform fully to the requirements of MMC 19.600.

*The proposed development consists of a five-lot subdivision with three new single-family homes and two existing single-family homes. The development is required to conform fully to the requirements of MMC 19.600.*

*The City Council finds that the provisions of MMC 19.600 are applicable to the proposed development.*

b. 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. MMC Subsection 19.605.2 establishes a process for determining parking requirements when a use is not listed in MMC Table 19.605.1 or if the applicant seeks a modification from the minimum required or maximum allowed quantities as listed in the table.

*The proposed residential development will have a total of five single-family homes.*

*As per MMC Table 19.605.1, the minimum number of required off-street parking spaces single-family homes is one space per dwelling with no maximum. According to MMC Table 19.605.1, the proposed development should provide a minimum of five spaces.*

*The proposed development provides five off street parking spaces, one for each home.*

*This standard is met.*

10. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 is intended to ensure that development, including redevelopment, 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 partitions, subdivisions, 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 amended application is for a five-lot subdivision, three new homes and improvements to two existing homes. The subdivision triggers the requirements of MMC Chapter 19.700.*

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 pre-application conference, establishing the type of application required, and providing approval criteria.

*The applicant had a pre-application conference with City staff on March 28th, 2018, prior to the original application submittal for 12 units. The proposed development for five lots does not require a Transportation Facilities Review application. The applicant*

*will provide transportation improvements and mitigation in rough proportion to the potential impacts of the development.*

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 establishes the process and requirements for evaluating development impacts on the surrounding transportation system, including determining when a formal Transportation Impact Study (TIS) is necessary and what mitigation measures will be required.

*The City Engineer determined that a transportation impact study was not required as the existence of impacts on the transportation system was 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.

*Transportation impacts of the proposed development are to be mitigated through the required improvements along the full width of 19<sup>th</sup> Ave fronting the development.*

e. MMC Section 19.707 Agency Notification and Coordinated Review

MMC 19.707 establishes provisions for coordinating land use application review with other agencies that may have some interest in a project that is in proximity to facilities they manage.

*Given the relatively small scale and location of the project, the application does not trigger general notice provisions to other agencies.*

f. 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.

(1) MMC Subsection 19.708.1 General Street Requirements and Standards

MMC 19.708.1 provides general standards for streets, including for access management, clear vision, street layout and connectivity, and intersection design and spacing.

*The applicant has not provided a public improvement plan set. The applicant will need to comply with the applicable standards of MMC 19.708.1. prior to receiving development permits.*

(2) MMC Subsection 19.708.2 Street Design Standards

MMC 19.708.2 provides design standards for streets, including dimensional requirements for the various street elements (e.g., travel lanes, bike lanes, on-street parking, landscape strips, and sidewalks).

*Applicant is responsible for constructing 15-feet of asphalt, six-inch flush mount curbs and three-foot load bearing gravel shoulders on both sides of the roadway, ADA pedestrian accommodation, and flexible zone treatments consistent with resolution no. 53-2016 and the City's TSP. This roadway design is unique to SE 19th Ave. The asphalt surface functions as the ADA pedestrian route and requires ADA longitudinal delineation within the roadway structure in addition to specialized signing. The flexible zone treatments for 19<sup>th</sup> Ave fronting the development will include maximizing parking on the east side of 19<sup>th</sup> Ave,*

*incorporating trees and shrubbery on the west side of 19<sup>th</sup> Ave, and utilizing other elements where approved.*

*Required public facility improvements include reconstructing and relocating existing accessways. The retaining wall adjacent to 12205 SE 19<sup>th</sup> Ave west is to be reconstructed to incorporate flexible elements on 19<sup>th</sup> and prevent vehicle access below street grade.*

*The applicant is proposing a parking area north of the structure at 12205. A stairway to this area may be permitted to be located within the right-of-way through a separate encroachment application. An ADA compliant ramp from the street grade should be considered and can be included in the same encroachment agreement.*

*The applicant is required to remove both sets of stairs located adjacent to 12225 19<sup>th</sup>. Those encroachments are not to remain within the right-of-way. The applicant may install stairs on the private property from the new driveway to the front of the house.*

(3) MMC Subsection 19.708.3 Sidewalk Requirements and Standards

MMC 19.708.3 provides standards for public sidewalks, including the requirement for compliance with applicable standards of the Americans with Disabilities Act (ADA).

*The applicant proposes to construct public facilities aligned with the 19<sup>th</sup> and Sparrow Neighborhood Greenway design concept. The asphalt surface functions as the ADA pedestrian route and requires ADA longitudinal delineation. This is consistent with City of Milwaukie Resolution No. 53-2016.*

(4) MMC Subsection 19.708.4 Bicycle Facility Requirements and Standards

MMC 19.708.4 provides standards for bicycle facilities, including a reference to the Public Works Standards.

*The portion of 19th Avenue fronting the proposed development is designated as a neighborhood greenway in the Milwaukie Transportation Plan and is governed by the design plan for the 19th and Sparrow Neighborhood Greenway. Bicycle facility improvements are to be consistent with the greenway concept plan.*

(5) MMC Subsection 19.708.5 Pedestrian/Bicycle Path Requirements and Standards

MMC 19.708.5 provides standards for pedestrian and bicycle paths and requires such connection be built in addition to public streets in residential districts every 300ft when a street connection is not feasible, in residential districts where a path would reduce walking distance by at least 400ft to a transit stop, school, shopping center, or park, or where a path would provide a midblock connection between blocks that exceed 800ft or would link the end of a turnaround with a nearby street or activity center.

*The proposed development does not present an opportunity to construct an additional public path. Neighborhood greenway improvements on 19<sup>th</sup> Ave achieve the desired connectivity outlined in the Transportation Systems Plan.*

(6) MMC Subsection 19.708.6 Transit Requirements and Standards

MMC 19.708.6 provides standards for transit facilities.

*Transit facility improvements are not required for the proposed development.*

*As conditioned, the City Council finds that the proposed development will meet the applicable public facility improvement standards of MMC 19.700.*

11. MMC Section 19.905 Conditional Uses

MMC 19.905 establishes regulations for conditional uses, including standards for establishing uses identified as conditional uses in any overlay zones. As noted in Finding 7-a and as provided in MMC Subsection 19.401.5.A, activities within the Willamette Greenway zone that trigger Willamette Greenway review are subject to the provisions of Section 19.905 as conditional uses.

a. MMC Subsection 19.905.3 Review Process

MMC 19.905.3 establishes the process by which a new conditional use must be reviewed.

As noted in Finding 7-a, the proposed activity is development as defined for the Willamette Greenway zone and so requires review as a conditional use.

*MMC 19.905.3.A requires that establishment of a new conditional use be evaluated through the Type III review process per MMC Section 19.1006.*

b. MMC Subsection 19.905.4 Approval Criteria

MMC 19.905.4.A establishes the approval criteria for a new conditional use or a major modification to an existing conditional use.

- (1) The characteristics of the lot are suitable for the proposed use considering size, shape, location, topography, existing improvements, and natural features.

*Although the subject property is in the 100-yr floodplain and mapped natural resource areas, the development meets the necessary standards as described in Findings 7 and 9. The applicant has proposed a development that minimizes impacts on the floodplain and natural resources by clustering new development along 19<sup>th</sup> Ave.*

*The City Council finds that this standard is met.*

- (2) The operating and physical characteristics of the proposed use will be reasonably compatible with, and have minimal impact on, nearby uses.

*As described in Finding 7, impacts of the development on the 100-yr floodplain will be mitigated and will not impact surrounding properties. Impacts on natural resources will be minimized by clustering the development along 19<sup>th</sup> Ave away from the river.*

*The City Council finds that this standard is met.*

- (3) All identified impacts will be mitigated to the extent practicable.

*As described in Findings 7 and 9, as designed, mitigation of floodplain impacts and impacts to mapped natural resources have been demonstrated.*

*The City Council finds that this standard is met.*

- (4) The proposed use will not have unmitigated nuisance impacts, such as from noise, odor, and/or vibrations, greater than usually generated by uses allowed outright at the proposed location.



*The proposed development is for a five-lot residential subdivision with three new homes and two existing homes in a residential zone and will not generate any unmitigated nuisance impacts due to that use.*

*The City Council finds that this standard is met.*

- (5) The proposed use 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.

*The subject property is in the Residential R-5 zone, Willamette Greenway zone, 100-yr floodplain, and contains mapped WQR and HCA. In addition to the R-5 standards for building height, side-yard height plane, lot coverage, and minimum vegetation, the proposed development is subject to the standards for development in the floodplain, the WG zone, and for subdivisions in areas with mapped natural resources. As addressed in Finding 14, the applicant has requested variances from the minimum lot width requirements for two of the new lots, minimum street frontage requirements for three of the new lots, and side yard height plane for three of the new lots, as well as minimum density on the site. As addressed in Findings 7 and 9 the proposed activity will comply with the relevant standards of the flood hazard area, Willamette Greenway overlay zone, and the Natural Resources chapter in the code. As addressed elsewhere in Finding 13, the proposed activity is compliant with the other standards of MMC 19.905.*

*The City Council finds that this standard is met.*

- (6) The proposed use is consistent with applicable Comprehensive Plan policies related to the proposed use.

*As addressed in Finding 9-a(2), the proposed development is consistent with all relevant polices in the Comprehensive Plan.*

*The City Council finds that this standard is met.*

- (7) Adequate public transportation facilities and public utilities will be available to serve the proposed use prior to occupancy pursuant to Chapter 19.700.

*As addressed in Finding 12, the proposed development triggers the requirements of MMC 19.700 and will be reviewed for compliance with the applicable provisions of this chapter at the time development permits are submitted.*

*The City Council finds that this standard is met.*

*The City Council finds that the proposed development meets the approval criteria outlined in MMC 19.905.4.A for establishing a conditional use.*

c. MMC Subsection 19.905.5 Conditions of Approval

MMC 19.905.5 establishes the types of conditions that may be imposed on a conditional use to ensure compatibility with nearby uses. Conditions may be related to a number of issues, including access, landscaping, lighting, and preservation of existing trees.

*The City Council finds that with conditions, the proposed development adequately mitigates impacts to floodplain and natural resource areas.*

d. MMC Subsection 19.905.6 Conditional Use Permit

MMC 19.905.6 establishes standards for issuance of a conditional use permit, including upon approval of a major modification of an existing conditional use. The provisions include a requirement to record the conditional use permit with the Clackamas County Recorder's Office and provide a copy to the City prior to commencing operations allowed by the conditional use permit.

*As conditioned, the City Council finds that the proposed development is consistent with the relevant standards established in MMC 19.905 for conditional uses.*

12. 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 the following three variances:*

- (1) exceed the maximum side yard height plane of the underlying R5 zone for the three proposed new homes;*
- (2) relief from the minimum lot width requirements for Lots 2-4 to allow 34 ft – 35.5 ft rather than 50ft;*
- (3) relief from the minimum lot street frontage requirements for Lots 2 and 4 to allow 34.5 ft – 34 ft respectively rather than 35 ft; and*
- (4) relief from the minimum density requirements for the site to allow five dwellings rather than 12.*

*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 requested variance to the minimum street frontage standard is identified in MMC 19.911.3.B as being eligible for Type II review. The other requested variances are subject to the Type III review process and the approval criteria established in MMC Subsection 19.911.4.B.*

c. MMC Subsection 19.911.4 Approval Criteria

(1) MMC 19.911.4 establishes approval criteria for variance requests. Specifically, MMC 19.11.4.A.1 provides the following approval criteria for Type II variances:

- (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.

*There are no identified impacts from allowing Lots 2 and 4 to have six inches and one foot less street frontage than the minimum required. The development of these lots will result in homes that meet the minimum setbacks and all of the design standards for single-family homes.*

- (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.

*Slightly less street frontage on Lots 2 and 4 will not interfere with the required improvements on 19<sup>th</sup> Ave.*

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

*The variance is proposed for two new lots without any site improvements.*

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

*There are no identified impacts from allowing Lots 2 and 4 to have slightly less than the required minimum street frontage. Narrower lots limit opportunities for on-street parking, but requirements for improvements to 19<sup>th</sup> Ave will include parking on the east side of the street.*

(2) MMC Subsection 19.911.4.B.1 provides the following approval criteria for Type III variances where the applicant elects to utilize the 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.

*Minimum density: To minimize the impacts to the HCA on the site and to minimize building in the 100-year flood, the applicant has proposed to build less than the minimum number of dwellings on the property. The code requires 12 dwellings on the property, which would impact more than 38,000 sq ft of mapped resource area and would result in significant earth disturbance to balance cut and fill. Reducing the number of dwellings is the only feasible way to minimize disturbance to the resources and the floodplain and still garner some economic value from the property. Approval of the amended application would result in the dedication of the 1.66-acre "island area" west of the sough to the city for potential expansion of Spring Park and the Elk Rock Natural Area.*

*Side yard height plane: The rear portion of the 3 new homes is affected by the side yard height plane standard. Although the homes would meet the maximum height standard for single-family homes, because of the nearly 16-ft grade change between 19<sup>th</sup> Ave and western portion of the site, impacts to the design of the homes is significant. Attempting to avoid and*

*minimize impacts to the HCA and the floodplain on the site results in narrow lots that necessitate narrow homes that are quite deep. Constructing fewer homes is not practical, as the proposal is already below minimum density, and altering the layout of the development would result in more homes constructed, increasing the impacts on the natural resources and the 100-year floodplain. Approval of the amended application would result in the dedication of the 1.66-acre "island area" west of the sough to the city for potential expansion of Spring Park. A condition of approval has been included requiring compliance with the side yard height plane requirement at the street.*

*Minimum lot width on Lots 2-4: The goal of the amended application is to avoid and minimize impacts to the HCA and the floodplain on the site, which necessitates the development of narrow lots with narrow homes. The proposed three new homes would still meet minimum setbacks and all single-family design standards. Reducing the width of the lots is the only feasible way to minimize disturbance to the resources and the floodplain and still garner some economic value from the property. Approval of the amended application would result in the dedication of the 1.66-acre "island area" west of the sough to the city for potential expansion of Spring Park and the Elk Rock Natural Area.*

*The City Council finds that the applicant's submittal provides an adequate analysis of the impacts and benefits of the requested variances compared to the baseline requirements. This criterion is met.*

- (b) The proposed variance is determined to be both reasonable and appropriate, and it meets one or more of the following criteria:
  - (i) The proposed variance avoids or minimizes impacts to surrounding properties.
  - (ii) The proposed variance has desirable public benefits.
  - (iii) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

*Minimum density: To minimize the impacts to the HCA on the site and to avoid building in the 100-year flood as much as possible, the applicant has proposed to build less than the minimum number of dwellings on the property. Reducing the number of dwellings is the only feasible way to minimize disturbance to the resources and the floodplain and still garner some economic value from the property. Approval of the amended application would result in the dedication of the 1.66-acre "island area" west of the sough to the city for potential expansion of Spring Park and the Elk Rock Island Natural Area.*

*Side yard height plane: The rear portion of the three new homes is affected by the side yard height plane standard. Although the homes would meet the maximum height standard for single-family homes, because of the nearly 16-ft grade change between SE 19th Ave and western portion of the site, impacts to the design of the homes is significant. The standard can be met at the street, but as the site slopes down, the standard cannot be*

*met at the rear of the home without significant stepping down of the house design. Given that this requested variance would only apply to the new homes built on Lots 2-4, the only affected properties are the lots in the subdivision. With the impacts focused on the new development and the adjacent existing homes in the subdivision, the variance request is reasonable and supportable.*

*Approval of the amended application would result in the dedication of the 1.66-acre "island area" west of the sough to the city for potential expansion of Spring Park and the Elk Rock Natural Area.*

*Minimum lot width on Lots 2-4: The goal of the amended application is to avoid and minimize impacts to the HCA and the floodplain on the site, which necessitates the development of narrow lots with narrow homes. In order to minimize any development impacts to the natural resources and avoid the floodplain to much as possible, the proposal would cluster the new homes along 19<sup>th</sup> Ave, leaving the majority of the property undisturbed. However, to balance the desire to avoid the mapped natural resources on the site and to limit the amount of development in the floodplain with the required minimum density in the R-5 zone, narrower lots with "skinny homes" are required. The result is the development of three new lots between the two existing homes. The new homes will be on lots measuring between 34 ft and 35.5 ft in width. The proposed three new homes would still meet minimum setbacks and all design standards. Reducing the width of the lots is the only feasible way to minimize disturbance to the resources and the floodplain and still garner some economic value from the property. Approval of the amended application would result in the dedication of the 1.66-acre "island area" west of the slough to the city for potential expansion of Spring Park and the Elk Rock Natural Area.*

*The City Council finds that the requested variances are reasonable and appropriate and that each meets one or more of the criteria provided in MMC Subsection 19.911.B.1.b.*

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

*Minimum density: There are no identified impacts that result from the approval of a variance to minimum density.*

*Side yard height plane: The rear portion of the three new homes is affected by the side yard height plane standard. Although the homes would meet the maximum height standard for single-family homes, because of the nearly 16-ft grade change between 19th Ave and western portion of the site, impacts to the design of the homes is significant. The standard can be met at the street, but as the site slopes down, the standard cannot be met at the rear of the home without significant stepping down of the house design. Given that this requested variance would only apply to the new homes built on Lots 2-4, the only affected properties are the new lots and*

*the existing homes to the north and south. With the impacts focused on the new development and the adjacent existing homes, the variance request is reasonable and supportable.*

*Minimum lot width on Lots 2-4: The goal of the amended application is to avoid and minimize impacts to the HCA and the floodplain on the site, which necessitates the development of narrow lots with narrow homes. The proposed three new homes would still meet minimum setbacks and all single-family design standards, but not the side yard height plane standard for the rear portion of the homes. Reducing the width of the lots is the only feasible way to minimize disturbance to the resources and the floodplain and still garner some economic value from the property. Approval of the amended application would result in the dedication of the 1.66-acre "island area" west of the slough to the city for potential expansion of Spring Park and the Elk Rock Natural Area.*

*As proposed, the City Council finds that the requested variances meet the approval criteria established in MMC 19.911.4.B.1 for Type III variances seeking discretionary relief.*

*The City Council finds that the requested variances are allowable as per the applicable standards of MMC 19.911.*

13. The original application was referred to the following departments and agencies on February 28, 2019:
- Milwaukie Building Division
  - Milwaukie Engineering Department
  - Milwaukie Public Works Department
  - Clackamas County Fire District #1
  - Island Station Neighborhood District Association Chairperson and Land Use Committee
  - Oregon Marine Board
  - Oregon Department of Fish and Wildlife
  - Division of State Lands – Wetlands and Waterways
  - Oregon Parks and Recreation Department
  - North Clackamas Parks and Recreation District

Notice of the public hearing for the original application was mailed to owners and residents of properties within 300 ft of the subject property on May 8, 2019.

As described in Finding 4, public notice of the appeal hearing was mailed to parties as identified in the Milwaukie Municipal Code: properties within 300 ft of the subject site, Interested Persons, the Appellant, the Applicant, the Planning Commission, and the Island Station Neighborhood District Association on October 30, 2019.

The following individuals submitted comments in opposition to the project:

- Christopher Roberts
- Steve Gerken
- Theresa Silver
- Beth Mills

- Priscilla Elliott
- Mary Weick
- Beth Lorio
- Kathy Jones

The submitted comments can be reviewed here:

<https://www.milwaukieoregon.gov/planning/ap-2019-003>.

The amended application was submitted to the Milwaukie Planning Department on February 10, 2020. As further described in Finding 4, public notice of the appeal hearing for the amended application was mailed to parties as identified in the Milwaukie Municipal Code: properties within 300 ft of the subject site, NR-2018-005 Interested Persons, the Appellant, the Applicant, the Planning Commission, and the Island Station Neighborhood District Association on February 25, 2020.

Comments were received as follows:

- **Steve Gerken, 12114 SE 19<sup>th</sup> Ave:** Comments regarding lack of detailed information about compliance with Title 18, off-street parking, and design of the proposed new homes. Mr. Gerken recommends either denial of the application as submitted or a continuation of the hearing pending receipt of additional detailed information.
- **Randy Decker, 12220 SE 19<sup>th</sup> Ave:** Comments in opposition to the project for the following reasons: approval of the requested variances would be contrary to code requirements, narrow homes would have unsightly garages, construction of the three new homes would diminish the view of the river from 19<sup>th</sup> Ave, additional traffic due to the additional home permitted if the variances are approved, and claims of a quid pro quo arrangement with the city.
- **Christopher Roberts, 12203 SE 19<sup>th</sup> Ave:** Comments regarding the positive direction the amended application has taken, particularly the reduction in impacts to the floodplain and natural resources. However, Mr. Roberts expressed concerns about the size and height of the proposed new homes and their lack of compatibility with the surrounding neighborhood. He expresses concerns that the variances may set a precedent for future development along the river.
- **Priscilla Elliott, 12203 SE 19<sup>th</sup> Ave:** Comments regarding the reduction in impacts as a result of the proposal, but Ms. Elliott has questions given the lack of specific details regarding design of the homes and grades for one of the driveways. She questions approving so many variances without more detailed information.
- **Carolyn Cleasby, 12115 SE 19<sup>th</sup> Ave:** Comments in opposition to the project, particularly related to impacts to the floodplain.
- **Beth Mills (no address provided):** Comments in opposition to the project as an impact to the surrounding natural area.

## V. CONDITIONS OF APPROVAL

The City Council adopts and incorporates these conditions as part of the Decision.

### 1. MMC Section 17.04.120 Recording

Pursuant to MMC Section 17.04.120, partition plats must be recorded by plat. An application for final plat must 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. Conditional Use Permit

As per MMC Subsection 19.905.6, the City will issue a conditional use permit upon approval of an application to establish a conditional use (including the Willamette Greenway conditional use). The applicant must record the conditional use permit with the Clackamas County Recorder's Office and provide a copy to the City prior to developing the property.

3. Prior to approval of the final plat, the following must be resolved:

a. Submit the final documentation for the dedication of the "island area" west of slough to the City of Milwaukie.

b. Submit a final storm water 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. In the event the storm management system contains underground injection control devices, submit proof of acceptance of the storm system design from the Department of Environmental Quality. Stormwater facilities must be designed to mitigate flooding impacts.

c. Submit fully-engineered plans for construction of all required public improvements, to be reviewed and approved by the City of Milwaukie Engineering Department. The plans must be prepared in accordance with the City's Transportation System Plan (TSP) and Resolution No. 53-2016, adopting the 19<sup>th</sup> Ave and Sparrow Street greenway concept plan.

d. Submit an access study for the new driveway alignment at 12225 SE 19<sup>th</sup> Ave that satisfies MMC 12.16.040.B.2.

e. Obtain a right-of-way permit for construction of all required public improvements listed in these recommended conditions of approval.

f. Pay an inspection fee equal to 5.5% of the cost of the public improvements.

g. Provide a payment and performance bond for 130 percent of the cost of the required public improvements.

h. Provide an erosion control plan and obtain an erosion control permit.

i. Install all underground utilities, including stubs for utility service prior to surfacing any streets.

4. Prior to the approval of any development permits, the following must be resolved:

a. Provide a narrative describing all actions taken to comply with these conditions of approval. In addition, describe any changes made after the issuance of this land use decision that are not related to these conditions of approval.

b. The applicant must submit a Construction Management Plan (CMP) that satisfies the requirements of MMC 19.402.9 and shows the following:



- i. The CMP must establish root protection zones (RPZs) around trees in WQR/HCA adjacent to any approved work area. Per 19.402.9, the RPZ shall extend from the trunk to the outer edge of the tree's canopy, or as close to the outer edge of the canopy as is practicable for the approved project.
  - ii. Clarify the location of all staging and access areas, and ensure that all temporary disturbance areas have been identified and accounted for in the mitigation plan.
- c. The applicant must provide documentation by a professional engineer, certified floodplain manager, or other approved professional certifying compliance with all relevant NFIP policies and Milwaukie Municipal Code Title 18.
- d. The applicant must analyze the effect of onsite detention on downstream peak flows. If downstream peak flows are shown not to increase with this development, then on-site detention will not be required.
- e. Submit an operation and maintenance plan for all private stormwater facilities.
- f. Provide evidence of compliance of no net fill requirements for the site.
- g. Obtain a City of Milwaukie Floodplain Development Permit.
- h. Submit an affidavit concerning costs of construction for the two existing structures. All improvements classified as substantial improvements in the flood hazard areas must follow all NFIP requirements for new construction in flood hazard areas.
- i. Applicant must construct right-of-way improvement on 19<sup>th</sup> Ave in conformance with the Island Station Neighborhood Greenway plan which requires pavement width of 15 feet, an ADA route identified with tactile warning strips, sharrow pavement markings, 6-inch wide flush mount curbs, 3-foot wide load bearing gravel shoulders, and improvements in the flexible zones. These improvements include prioritizing parking on the east side of 19<sup>th</sup> Ave and prioritizing trees and landscaping on the west side of 19<sup>th</sup> Ave.
- j. Applicant must provide water quality facilities for all impervious right-of-way improvements. The city will allow the applicant use of available right-of-way on the north side of Wren St, west of 19<sup>th</sup> for a water quality facility.
- k. At 12205 SE 19<sup>th</sup> Ave., the existing retaining wall must be reconstructed and relocated with features to prevent vehicles from traveling below the street grade, and in a location that allows the required improvements on 19<sup>th</sup> Ave to be constructed. Design must include a safety element(s) to prevent vehicles, bicycles, and pedestrians from leaving the roadway adjacent to this retaining wall. Submit design and construction plans for a new structural retaining wall from a registered structural or geotechnical engineer, including appropriate drainage and safety elements.
- l. At 12225 SE 19<sup>th</sup> Ave., demolish the two sets of stairs located within the right-of-way. Any stairways for private access must occur on the property. Pedestrian access to the right-of-way will be via the planned, new driveway.

m. Submit a construction vehicle access route plan through the Island Station Neighborhood for approval by the City Engineer. Submit photographs of the road conditions along the approved route prior to construction vehicles accessing the site. Failure of vehicles related to construction to follow the approved route or missing photographs for sections of road may result in fines detailed in MMC 12.08.050. The condition of the route must be inspected prior to issuance of occupancy certificates. Any excessive wear or damage as the result of construction activities for the project in the area shall be repaired by the applicant or developer at their expense. No occupancy certificates shall be issued prior to review by the City of the condition of the construction vehicle access route.

n. The variance to the side yard height planes on Lots 2-4 does not apply to the front of the houses and only applies to the portions of the lots where the grade falls away from the street. For these lots, the side yard height planes that are required at the front lot building lines must be extended horizontally to the west and apply to the portions of the homes behind the front lot building lines.

5. Prior to issuance of a certificate of occupancy for any building, the following must be resolved:

- a. Remove trash and debris from transient camps that have been established on site.
- b. For each subdivision lot, construct or reconstruct all driveways on 19<sup>th</sup> Avenue so they meet all guidelines of the Americans with Disabilities Act (ADA). The driveway approach aprons shall meet city design standards.
- c. Submit all relevant elevation certificates to the City.
- d. Record a deed restriction for floors below BFE to prevent conversion to any use that is not strictly parking, storage, or access. Record a deed protecting all areas serving as compensatory excavation for balanced floodplain cut and fill. Obtain an encroachment permit for each property maintaining non-exempt private infrastructure or property in the right-of-way.
- e. Record a deed restriction to maintain view corridors between buildings so that Elk Rock Island, the slough, and/or the Willamette River from the street system. To ensure views to the Willamette River between the homes, the top of any site-obscuring fence may extend no higher than the elevation of the road surface adjacent to the lot and in no case shall the fence be taller than six feet from the ground.

## **VI. ADDITIONAL REQUIREMENTS**

The City Council adopts and incorporates these additional requirements as part of the Decision.

1. At the time of submission of any building permit application, final plans submitted for building permit review shall be in substantial conformance with plans approved by this action, which are the plans stamped received by the City on February 10, 2020, except as otherwise modified by these conditions.
2. Limitations on Development Activity  
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, as per MMC Subsection 8.08.070.(l).
3. Clear vision areas shall be maintained at all driveways and accessways and on the corners of all property adjacent to an intersection.

4. Provide a final approved set of electronic "As Constructed" drawings to the City of Milwaukie prior to final inspection.
5. Remove all signs, structures, or vegetation in excess of three feet in height located in "vision clearance areas" at intersections of streets, driveways, and alleys fronting the proposed development. Complete any necessary mitigation for the new driveway alignment at 12225 SE 19<sup>th</sup> Ave as determined in the request for modification of access spacing standards. Prior to the removal of any vegetation, applicant shall confirm with the Engineering department the location of clear vision areas and if the vegetation removal is required to comply with clear vision standards.
6. Expiration of Approval  
As per MMC 19.1001.7.E.1.a, proposals requiring any kind of development permit must compete both of the following steps:
  - a. Obtain and pay all necessary development permits and start construction within 2 years of land use approval.
  - b. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval.

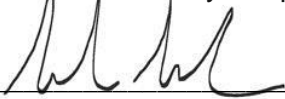
## VII. CONCLUSION

The City Council concludes that the amended application submitted pursuant to ORS 197.522 on appeal of the Planning Commission's decision in land use application file #AP-2019-003 meets all applicable approval criteria and should be approved. Accordingly, Master Land Use file #NR-2018-005, denied by the Planning Commission and appealed by the applicant, should be denied.

## VIII. ORDER

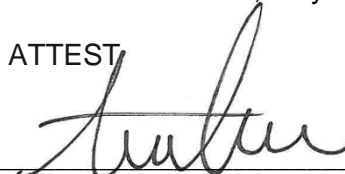
Based upon the findings set forth above, the Milwaukie City Council orders that the decision of the Planning Commission be affirmed for Master Land Use file #NR-2018-005, the appeal denied, and the amended application submitted by the Applicant pursuant to ORS 197.522 for a five-lot subdivision be approved subject to the conditions of approval set forth above for Master Land Use file #AP-2019-003.

DATED this 10th day of April 2020



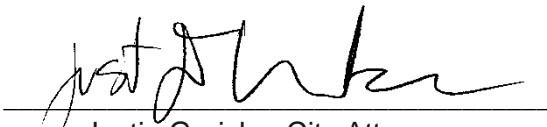
Mark Gamba, Mayor

ATTEST



Ann Ober, City Manager

APPROVED AS TO FORM:



Justin Gericke, City Attorney