

5/23/2020

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Milwaukie Planning Dept.  
6101 SE Johnson Creek Blvd  
Milwaukie OR 97206

Re: VR-2019-013; P-2019-001; DEV-2019-013; TRF-2020-001

Application concerning 9391 SE 32<sup>nd</sup> Ave Neighborhood Mixed Use (NMU) Development:

Type III height variance request per MMC 19.911  
Type III driveway exception variance per MMC 19.911  
Type II parking minimum variance per MMC 19.605.2

Applicable code sections for response:  
MMC 12.16 – Access Management  
MMC 19.303 – Commercial Mixes Use/Zone  
MMC 505.7 – Nonresidential Development  
MMC 19.600 – Off-street Parking and Loading  
MMC 19.700 – Public Facility Improvements  
MMC 19.911 - Variances

**The Ardenwald/Johnson Creek Neighborhood Association (AJCNDAs) appreciates the amount of work that the applicants, Valerie Hunter, Auryn White, and the City of Milwaukie, has put into creating this application for development in the AJCNDAs. The neighborhood also greatly appreciates the information that this application has provided about the City of Milwaukie's NMU code and feels that this has been a very educational application about precedent setting within this new zone. We do, however, wish that the applicant had agreed to attend a neighborhood meeting to present this proposal and discuss neighborhood concerns about such an important project not only for the applicant, but for the neighborhood as well.**

**Regretfully, the AJCNDAs does not agree that the applicable code sections required by the City of Milwaukie's NMU have been met by this Type III variance application and do oppose it. The neighborhood looks at land use applications through the lens of: 1) safety concerns for citizens; 2) does the application fulfill what the code says; 3) how will this application affect the neighborhood and the concerns that neighbors have about the application.**

12.16.040.C Accessway Location

4. 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.

b. At least one hundred (100) feet for multifamily residential properties and all other uses accessing local and neighborhood streets.

**We understand that this property could not possibly meet this safety code of more than 100' from a local and a collector intersection and must request a variance. This application site is right on the corner and puts the proposed accessway <50' from the intersection. It is a very small parcel, .24 acres, on the corner of the street(s) which made it a great place for a prior gasoline station, then automotive repair shop, (a DEQ registered site with conditions). The neighborhood views that this accessway variance will affect more than just the intersection request concerning**

access/traffic and requires more discussion/consideration for safety. The prior use of this site was entered from 32<sup>nd</sup> which has a sidewalk. Olsen street does not have sidewalks, and even if one is built near the new building, pedestrians and bicyclists will still be entering the area from the middle of the street. The neighborhood wonders if possibly not having parking at this site is an option that was considered for this project. Even though it would cause more hardship and increase hazards for the neighborhood, it might be safer??

12.16.040.E

2C Cause hazardous conditions that would constitute a clear and present danger to the public health, safety, and general welfare.

**This community area has no sidewalks on streets on the west side of 32<sup>nd</sup>, nor are there plans to make any, which means limited safety for pedestrians and bicyclists, especially if several cars are parked on the new street/curb on 32<sup>nd</sup> and on the street on Olsen. Many of those pedestrians are children since this is near Ardenwald Elementary School. Also, across the street there is a school bus pickup location for middle, high school, and special needs students. It is the view of this neighborhood that this variance in access will create a hardship and create hazards for local neighbors, local businesses, and a real safety hazard for pedestrians and bicyclists.**

12.040.B Access Spacing

2. Modification of Access Spacing

Access spacing may be modified with submission of an access study prepared and certified by a registered professional traffic engineer in the State of Oregon. The access study shall assess transportation impacts adjacent to the project frontage within a distance equal to the access spacing requirement established in Subsection 12.16.040.B.1. For example, for a site with arterial access, the access study would include evaluation of site access and capacity along the project frontage plus capacity and access issues within six hundred (600) feet of the adjacent property. The access study shall include the following:

b. Evaluation of traffic impacts adjacent to the site within a distance equal to the access spacing distance from the project site

**As density increases in the AJC neighborhood, remember how much busier this intersection will be and how many more people may be impacted. We did not see any future analysis, specific neighborhood traffic analysis, or background growth analyses of any already approved developments such as the Monroe Street Apartments (234 units near Harrison and 32<sup>nd</sup>) or the Hillside Park Redevelopment (500 units on 32<sup>nd</sup> and Hillside Court and Meek Street) included/ provided, but currently on 32<sup>nd</sup> in peak mornings from the JCB and Harrison intersection counts in the TIS Figure 5 page 12 ~974 cars travel 32<sup>nd</sup> not including background traffic volumes which is as much or more. In the pm ~1,050 cars will be on 32<sup>nd</sup> not including background traffic volumes, which is as much or more. This is again only the information that was given from the City of Milwaukie for the TIS report. The neighborhood notes that the intersection of Johnson Creek Blvd was not included as an intersection in the TIS report as far as operations analyses, but it is part of our neighborhood and is very much part of the consideration of the safety of this variance request. The neighborhood requests that for a better heartbeat on the safety of 32<sup>nd</sup> and Olsen, that at least the JCB intersection data and background growth analyses of already approved developments be included in these analyses.**

19.303.1 Purpose

B. The Neighborhood Mixed Use Zone is intended to recognize 32<sup>nd</sup> and 42<sup>nd</sup> Avenues as neighborhood commercial centers. This zone allows for a mix of small-scale retail and services, along with residential uses, that meet the needs of nearby residents and contribute to a vibrant, local economy.

It is also intended to provide a safe and pleasant pedestrian environment while maintaining a neighborhood-scale identity.

The neighborhood disagrees that this code section has been met and after reviewing this purpose/intent of the NMU and thinking about how this new code was presented to the neighborhoods is troubling, and unfortunately raises several concerns/discussion points about this application.

The retail space provided by this development is sited in various parts of the application as 1,085 sq. ft. (TIS introduction) The neighborhood could not find this specifically stated on the property information site plan, but after careful measuring with a magnifying hand lens and calculations determined it could be no more than ~1350 sq. ft including bathrooms and such for all 3 spaces. In emails in the TIS it is noted that the smaller NE retail space is already reserved for the property management office of the owner leaving < 800-1000sq ft of actual retail broken into 2 spaces to “meet the needs of nearby residents and contribute to a vibrant, local economy”. For the size of the building 33,762sq ft (as referenced in the TIS site plan including the garage) or 32,548sq ft (as referenced in the application site plan), this NMU application “intends to allow for a precedent of the type of buildings that are beneficial to the area” (applicant quote under type 3 variance-discretionary relief criteria).

The neighborhood argues that this type of building is not beneficial to the area as, allowing only this small amount of space for retail purposes does not “meet the needs of nearby residents and contribute to a vibrant, local economy.” It does not allow enough retail for a project of this size, and setting a precedent with this paradigm will mean the neighborhood will never have a local shopping hub that offers the neighborhood any retail amenities, while allowing many variances. (A coffee shop might be able to fit in one of those spaces or a food cart size business but would never provide a real neighborhood hub space. Milwaukie Café, across the street from the proposed site, has ~1700sq ft for people to enjoy and is considered the hub of this neighborhood. The neighborhood wonders/asks if anyone from the City or the applicant have reached out to the owner to discuss any project concerns the owner may have (Parking/Traffic/Construction, etc.).

From reviewing this application, and in the concerns of safety for citizens it would probably be better to not have the retail stores on the bottom and make extra space for parking which would make it a stand-alone residential building, but maybe take the on-street parking out of the equation making the environment more safe for pedestrians and bicyclists. Or, the number of units in the building could be diversified to 1, 2, and 3 bedrooms. In retrospect, retail on the bottom floor is what the neighborhood wanted to make our community a more walkable, local shopping hub. During neighborhood hub walks and open houses the neighborhood wanted a Green Zebra or small grocer, or a local wine bar for tastings and gatherings, but there isn't realistically enough space leftover for a real gathering or shopping place for neighbors in this application.

Also, the intent of this NMU application should be to “provide a safe and pleasant pedestrian environment while maintaining a neighborhood-scale identity”. The neighborhood has already raised its concerns about a safe pedestrian and bicyclist environment earlier under 12.16.040.E2C The code 19.303.4B2C states “Maximum building height in NMU Zone is 3 stories or 45', whichever is less”. The applicant is requesting a type 3 variance to allow a height of 48' for this building. The site plan for this application and the TIS site plan both state under property information that the actual height of this building is 51'1”, so higher than 48' is required. Also, under 19.303.3B5 the maximum lot coverage allowed in the NMU zone is listed at 85%, and on both the TIS and the main application site plans it is listed at 90%(really 91%) or 9775sq ft of the 10,800sq ft total plus exterior concrete paving of 60' for an additional .5% coverage. (There were various numbers listed throughout all the paperwork stating what the maximum lot coverage was, but since the 2 site maps listed the 9775sq ft consistently, that is the number the neighborhood determined was the correct one.) The neighborhood opposes this height variance request arguing that it does not maintain a neighborhood-scale identity in the NMU zone and does not

meet the NMU lot coverage standard. Also, the elephant in the room is that the height variance request for the entire extra story is for 1 5-bedroom, 4-bathroom unit. There isn't anything in the code stating that 1 story of a building couldn't be 1 unit, but with the need of affordable housing in the area brought up continually for the past 5 years and part of the reason the city stated that the NMU hub areas were needed seems highly contradictory. The neighborhood asks if granting this height variance request for the purpose of adding a 1 story unit is what was intended for the NMU zone. If it is, this will lead to gentrification and displacement of low and middle-income families in the AJC neighborhood, and change the area from a family oriented one to a much more affluent one.

**This application contains several discrepancies which make it hard to discern what numbers are correct, but it is the NMU code that is problematic. The neighborhood clearly stated, when the NMU code was being discussed and written, that since the southern part of AJC would have taller buildings (Monroe Street Apts. = 5 stories part of Central Milwaukie, Hillside Park = 4 stories part of Central Milwaukie) that the center of the AJC neighborhood (not part of Central Milwaukie) would have a maximum height of 3 stories, period. This was discussed and determined by citizens to fit more cohesively with the 1 and 2 story houses, duplexes, and existing apartment buildings during numerous open houses. Even a stepped back building at 51'1" is still almost 5 stories tall, and far beyond the neighborhood-scale identity that was envisioned for AJC by its citizens in the NMU zone. The AJC neighborhood opposes the requested variances.**

#### 19.505.7 Nonresidential Development

##### A. Purpose

The design standards contained in this section are intended to encourage building design and construction with durable, high-quality materials. The design standards support development of an attractive, cohesive, and pedestrian-friendly commercial area. The design standards do not prescribe a particular building or architectural style.

**The neighborhood does cede that the design of the building is pleasant overall, and the materials appear to be used for best effect. Others may argue that the use of brick increases the appearance of mass or density or squareness of the building, but out of all the comments the neighborhood has about this project, it has the least.**

#### 19.605.2 Quantity Modifications and Required Parking Determinations

##### C. Approval Criteria

The Planning Director shall consider the following criteria in deciding whether to approve the determination or modification. The Planning Director, based on the applicant's materials and other data the Planning Director deems relevant, shall set the minimum parking requirement and maximum parking allowed. Conditions of approval may be placed on the decision to ensure compliance with the parking determination.

1. All modifications and determinations must demonstrate that the proposed parking quantities are reasonable based on existing parking demand for similar use in other locations; parking quantity requirements for the use in other jurisdictions; and professional literature about the parking demands of the proposed use.

**After reviewing the submissions of the Seattle, WA Municipal code for Parking and a table from the City of Portland Parking/Zoning code, the AJC neighborhood argues that both of these entities are hardly fair comparisons and proposed parking quantities are not reasonable to the City of Milwaukie, and that the existing parking demand for similar use in other locations is not equivalent. City of Seattle population: 744,955 (2018); City of Portland population: 653,115 (2018); City of Milwaukie population: 21,014 (2018). Examples that are a closer fit in scale and demand would more clearly outline the parking scope of a small town and not a large city.**

2. In addition to the criteria in Subsection 19.605.2.C.1, requests for modifications to decrease the amount of minimum required parking shall meet the following criteria:

a. The use of transit, parking demand management programs, and/or special characteristics of the site users will reduce expected vehicle use and parking space demand for the proposed use or development, as compared with the standards in Table 19.605.1.

**The neighborhood would also state that by not providing adequate or minimal parking on site, it will decrease the livability of the residents of the proposed building. This building per MMC Table 19.605.1 is minimally required to provide 26.67 (27) parking stalls. It has reduced this amount by utilizing Reduction 2 – being close to mass transit in a multi-family building – lower by 20% (5 stalls) to ~22 stalls. The applicant has argued that because of the size of the units provided that the tenants are more likely to be younger and more transit oriented and therefore 17 spaces will be adequate. This means that residents, being younger, will be out later, and as is implied, not have a family, but many friends/visitors. Because there is a limited transit schedule on 32<sup>nd</sup> street for bus #75 (buses run every 15min or longer during peak hours, but have no late evening service, weekend service is stopped to Milwaukie/Ardenwald after 7pm, and there is over a mile walk to either max station). Parking will be needed for each of the housing units, retail parking for employees and customers, guests/visitors of residents, and in reality only 15 spaces of the 17 will be available for most tenants as 1 space is reserved for the penthouse unit and 1 space is ADA. As noted before this development focusses more on a higher number of smaller residential units with little retail, so making it a stand-alone residential building appears to be the higher interest of the applicant.**

b. The reduction of off-street parking will not adversely affect available on-street parking.

**It is hard to predict whether the reduction of off-street parking will adversely affect available on - street parking, but it will impact it. On street parking on this corner is already busy so there could be issues. Currently, when Milwaukie Café is open, parking already occurs on both the north and south sides of Olsen Street and on 32<sup>nd</sup> in front of their building. The neighborhood does foresee that parking on Olsen Street is already adversely affecting Olsen Street neighbors as some have placed “leave driveways unblocked signs” in front of their homes.**

c. The requested reduction is the smallest reduction needed based on the specific circumstances of the use and/or site.

**The requested reduction is 5 spaces (with 5 already reduced so 10 spaces total). Again, as there is little retail, more parking spaces could be provided on site in lieu of retail.**

#### 19.911.4B Approval Criteria

##### Type III Variances

#### 2. Economic Hardship Criteria

a. Due to unusual site characteristics and/or other physical conditions on or near the site, the variance is necessary to allow reasonable economic use of the property comparable with other properties in the same area and zoning district.

**We understand that this property could not possibly meet this access safety code of more than 100' from a local and a collector intersection and must request a variance. This application site is right on the corner and puts the proposed accessway <50' from the intersection. It is a very small parcel, .24 acres, on the corner of the street(s) which made it a great place for a prior gasoline station, then automotive repair shop, (a DEQ registered site with conditions). The neighborhood views that this accessway variance will affect more than just the intersection request concerning access/traffic and requires more discussion/consideration for safety. The prior use of this site was entered from 32<sup>nd</sup> which has a sidewalk. Olsen street does not have sidewalks, and even if one is built near the new building, pedestrians and bicyclists will still be coming up the middle of the street further down the road and may not use the sidewalks anyway. The neighborhood wonders if possibly not having parking at this site is an option that was considered for this**

**project. Even though it would cause more hardship and increase some hazards for the neighborhood, it might be safer?**

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

**Again, what other possibilities are there besides parking, 1) car sharing, 2) parking elsewhere, that could allow for reasonable economic use.**

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

**This is problematic as the impacts of this variance are the safety of pedestrians, bicyclists, and school kids. This variance warrants further discussion concerning safety and the neighborhood argues that there should be input from other boards such as the Public Safety Advisory Committee. This variance in access will create a hardship and create hazards for local neighbors, local businesses, and a real safety hazard for pedestrians and bicyclists.**

#### 19.911.4 B. Approval Criteria

##### Type III Variances

##### 1. Discretionary Relief Criteria

a. The applicant's alternatives analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.

**The site plan for this application and the TIS site plan both state under property information that the actual height of this building is 51'1", so higher than the 48' variance that is requested.**

**A typical 3 story building (36'-40') next to a 1 story (15'-20') or 2 story (20'-30') house makes sense and is vastly different than having a 1 story (15'-20') next to an almost 5 story at 51'1" building. No matter how this is described, by allowing this height variance to add a 5-bedroom, 4-bathroom, 1 story unit, this will set a precedent for all NMUs in the city. As the applicant states, "This proposal will create a neighborhood-scale identity". The neighborhood opposes this height variance request arguing that it does not maintain a neighborhood-scale identity in the NMU zone. Again, the neighborhood clearly stated, when the NMU code was being discussed and written, that since the southern part of AJC would have taller buildings (Monroe Street Apts. = 5 stories part of Central Milwaukie, Hillside Park = 4 stories part of Central Milwaukie) that the center of the AJC neighborhood (not part of Central Milwaukie) would have a maximum height of 3 stories, period. This was discussed and determined by citizens to fit more cohesively with the 1 and 2 story houses, duplexes, and existing apartment buildings during numerous open houses. Even a stepped back building at 51'1" is still almost 5 stories tall, and far beyond the neighborhood-scale identity that was envisioned for AJC by its citizens in the NMU zone. The AJC neighborhood opposes the requested variance.**

**No surrounding buildings have reached or exceeded the maximum building height code, and this building, at this height, could take away the beauty of our community. It would certainly change our home values and could become a hardship on families in our community if this precedent became the standard.**

b. The proposed variance is determined by the Planning Commission to be both reasonable and appropriate, and it meets one or more of the following criteria:

(1) The proposed variance avoids or minimizes impacts to surrounding properties.

**The neighborhood argues that this increased height variance does not avoid or minimize impacts to surrounding properties. Properties to the north and east will have reduced solar access and properties to the west will have a 51'1" building 1'-2' (depending on which maps you look at) from their property line. Several homes on Olsen, Kelvin, Malcom, and 32<sup>nd</sup> will lose their privacy, and all community members will not be able to avoid seeing this building as it towers over the heart of our neighborhood. Having a setback on various sides of the building will still make it over 4 stories on the other side facing other neighbors, and planters, screens, etc., will do more for the homeowner than the neighborhood.**

(2) The proposed variance has desirable public benefits.

**The neighborhood argues that this height variance does not have desirable public benefits. The only benefit is to the owner who will have a 5-bedroom, 4-bathroom 1 story unit with a fabulous view.**

(3) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

**The neighborhood argues that the height variance does not respond to the existing built or natural environment in a creative and sensitive manner. If this height variance is given, this building will be a looming wall over 32<sup>nd</sup> Ave. At 51'1" it will be far taller than the current road is wide.**

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

**The impacts from the proposed height variance cannot be mitigated to the extent practicable to the community.**

**By allowing this height variance to set precedent, every NMU development application in our neighborhood and the city will request a height variance, a parking variance, and most likely an access variance. This is problematic because looking at 19.303.4 F3 – Exemptions – “Maximum residential densities for mixed use building are controlled by height limits”, and the number of units determines the amount of parking required. Therefore, every application will request a height variance, a parking variance, and an access variance. Each building will have as many units as possible crammed into it with less parking, and the neighborhood will become unsafe for families to live in. In trying to achieve more diversity by creating the NMU zone, the outcome will be the opposite, and this “urbanization” will be just be another “D” street where people go for dinner and then leave because...who would want to live there?**

**Ardenwald/Johnson Creek NDA Board**