



CITY OF MILWAUKIE

May 14, 2021

Land Use File(s): VR-2021-002

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on May 11, 2021.

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.

Applicant(s):	North Clackamas School District (NCSD)
Location(s):	2301 SE Willard St.
Tax Lot(s):	11E36BC05600
Application Type(s):	Variance
Decision:	Denial based on lack of majority
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• MMC 14.32 Sign Adjustment• MMC 14.08.090 Conditional and Community Service Use Signs• MMC 14.16.010 Residential Zone Sign District• MMC 19.1006 Type III Review
Neighborhood(s):	Historic Milwaukie

Appeal period closes: 5:00 p.m., May 29, 2021

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1006 Type III Review. The complete case file for this application is available for review by appointment between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Mary Heberling, Assistant Planner, at 503-786-7658 or heberlingm@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on May 29, 2021, which is 15 days from the date of this decision.¹ (Note: Please arrive by 4:45 p.m. for appeal payment processing.) Only persons who submitted comments or made an appearance of record at the public hearing have standing to appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie City Council following the procedures of MMC Section 19.1010 Appeals. This decision will become final on the date above if no appeal is filed during the appeal period. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or planning@milwaukieoregon.gov.

Per MMC Subsection 19.1001.7.E, this land use approval expires unless the applicant has: (1) obtained and paid for all necessary development permits and started construction within 2 years of land use approval, and (2) passed final inspection and/or obtained a certificate of occupancy within 4 years of land use approval. Extensions can be granted per MMC Section 19.908.

Findings for Denial

The Findings for this application are included as Exhibit 1.

cc: North Clackamas School District
Mercedes Serra, 3J Consulting (via email)
Planning Commission (via email)
Kelly Brooks, Interim Community Development Director (via email)
Mike Boumann and Alex McGladrey, CFD#1 (via email)
NDA(s): Historic Milwaukie (via email)
Interested Persons
Land Use File(s): VR-2021-002

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

ATTACHMENT 1
Findings for Denial
File #VR-2021-002, MHS Sign Adjustment

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

1. The applicant, North Clackamas School District (NCSD), has applied for approval for a sign adjustment to allow an electronic reader board sign at 2301 SE Willard St. This site is in the R-2 Zone. The land use application file number is VR-2021-002.
2. The North Clackamas School District (NCSD) is proposing an adjustment to the Sign Code to permit an electronic message sign at Milwaukie High School (MHS). The high school is located in the R-2 (Residential) zoning district, which does not permit electronic message signs for institutional uses, such as a school, without an approved sign adjustment.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 14.32 Sign Adjustment
 - MMC Subsection 14.08.090 Conditional and Community Service Use Signs
 - MMC Subsection 14.16.010 Residential Zone Sign District
 - MMC 19.1006 Type III Review

The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held on April 13, 2021, as required by law. The April 13 hearing was continued to May 11 to allow the applicant additional time to submit information sufficient to establish that the proposal met the applicable approval criteria in MMC 14.32, and specifically the findings required by MMC 14.36.030.

4. MMC 14.08.090 Conditional and Community Service Use Signs
 - a. MMC 14.08.090.A states that signs for conditional and community service uses shall be limited to those allowed in the underlying zone, except as allowed by Subsections 14.08.090.B and C.

Milwaukie High School is an existing Community Service Use (CSU) and has an underlying zone of R-2. Beyond standards listed in 14.08.090.B and C, the proposed sign will follow the standards for signs in residential zones, except for the electronic function of the sign, where a sign adjustment is being requested. The sign adjustment findings are below in Finding #6.

The Planning Commission will review the sign adjustment request below.

- b. MMC 14.08.090.C lists the standards for Conditional and Community Service Use Signs with Minor Quasi-Judicial Review. This includes standards for monument or freestanding signs.

The applicant is proposing a monument sign and the standards are listed below in Table 19.08.090.C:

Table 14.080.090.C Standards for Conditional and Community Service Use Signs with Minor Quasi-Judicial Review			
Standard	Required	Proposed	Staff Comment
Monument or Freestanding Sign			
Size	Max. 40 SF per display surface, Max. length 20 ft	Total sign size: 18.56 sq ft Total display area size: 16.83 sq ft Length: 5'5"	Complies with standard.
Number	1	1	Complies with standard.
Height	Max. 12 ft above ground	Sign height: 3' 3-3/4", the sign will be on the ground	Complies with standard.
Location	Not in the public right of way	On Milwaukie High School property	Complies with standard.

The proposed sign complies with the standards for a Community Service Use sign with minor quasi-judicial review. Sign illumination is mentioned in the residential sign code and not within the CSU sign standards.

The Planning Commission failed to obtain the majority required to approve or deny the application.

5. MMC 14.16.010 Residential Zone

All allowed signs in residential zones require external illumination only. Par spot or reflective-type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets. Sign illumination shall be directed away from, and not be reflected upon, adjacent premises. More information is listed in MMC Section 14.24.020.

The applicant's proposed electronic display sign is not external illumination and will require a sign adjustment per MMC 14.32.

A sign adjustment review is listed below.

6. MMC 14.32 Sign Adjustment

a. MMC 14.32.010 Authorization to Grant or Deny Adjustments

Planning Commission may authorize adjustments to the requirements of this chapter per Section 19.1006 Type III Review where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this

chapter would cause an undue or unnecessary hardship. The cost of meeting the standard shall not be a basis for granting an adjustment. In granting an adjustment, the Planning Commission, in addition to the time limitations of Section 14.32.040, may attach conditions which it finds necessary to protect the welfare of the City and otherwise achieve the purposes of this chapter.

The Planning Commission is reviewing the proposed sign adjustment through a Type III Review. The basis for granting or denying the proposed adjustment is listed below.

(1) MMC 14.32.010.C Adjustments may be granted where it can be shown that there are special and unusual circumstances related to the specific property or sign, the adjustment is consistent with the guiding principles of the Downtown Design Guidelines, and the adjustment meets either of the following criteria:

(a) Strict application of this chapter would cause an undue or unnecessary hardship. The cost of meeting the standard shall not constitute a hardship;
or

The applicant proposes that the adjustment is based on special and unusual circumstances related to the specific property and the specific sign. Milwaukie High School (MHS) is the only public high school in the R-2 zoning district (and the only North Clackamas high school in the Milwaukie City limits).

The applicant states that the proposed electronic sign at Milwaukie High School would allow information to be quickly, efficiently and accurately provided to a student body and Milwaukie community that includes many people without regular internet access. They also state that MHS is the only high school in the North Clackamas School District that does not have an electronic reader board; a communication tool considered essential by the District and seen as an inequity to the students, parents, staff and the Milwaukie Community.

Milwaukie High School is also the only known Category 4: Critical/Essential Building located in the City of Milwaukie. The high school is the largest public school within the City of Milwaukie, with a maximum capacity of 1,500 students. OEM guidance on Community Preparedness advises that in the case of a catastrophic disaster, the organizations which deal with emergencies (police, fire, hospitals, emergency managers, the Red Cross, etc.) will not be able to meet the surge of needs and many people within the community will need to reach out to trusted organizations for help. OEM advises that community preparedness plans to create partnerships between non-profits, faith-based organizations, schools, and colleges.

Existing emergency alert systems rely on Wireless Emergency Alerts (WEAs) sent out by national, state, and/or local public safety officials, Emergency Alert Systems (EAS) sent out by the president through broadcasters, satellite digital audio services, direct broadcast satellite providers, cable television systems, wireless cable systems and NOAA Weather Radio All Hazards (NWR). These alert systems rely

on communications infrastructure that may be damaged or inaccessible during a catastrophic emergency. The proposed electronic reader board sign will be connected to the school's generator and will be operational in the event of a power outage. The sign will have the capability to provide emergency updates without any reliance on communications infrastructure that may not be operational in a catastrophic emergency.

Strict application of the chapter would inhibit the ability for Milwaukie High School to disseminate important and vital emergency information during a catastrophic event creating undue or unnecessary hardship.

The Planning Commission failed to obtain the majority required to approve or deny the application.

- (b) The adjustment serves to protect or enhance significant features such as, but not limited to, trees, historic or culturally significant buildings, or landmark signs.

The applicant does not propose that this sign adjustment is to protect or enhance significant features on the site.

The Planning Commission failed to obtain the majority required to approve or deny the application.

(2) MMC 14.32.030 Circumstances for Granting Adjustment

The review authority shall consider and make findings with respect to each of the following:

- (a) That strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of the Sign Ordinance;

The applicant states that an electronic reader board sign is a versatile communication tool with the capability to rotate through messages and provide information in multiple languages. These signs can be easily and quickly changed by the school administration to provide updates about current and upcoming events. A non-electronic sign is limited in space to how many magnetic letters can fit on the static sign and the letters provided with the sign. High schools are active places with many events happening during the same week. A static sign creates issues for the school in determining which activity gets posted and which gets left out. This can create inequities. Additionally, a static sign relies on a custodial staff member or signs are changed less frequently than an electronic sign. To keep with the school's events and communications at the rate that an electronic sign would create a practical difficulty and unnecessary physical hardship for the custodial staff.

The applicant also states that the installation of an electronic reader board sign at Milwaukie High School would meet all of the objectives and purpose statements of

the Sign Ordinance. Precluding the high school from installing this sign will result in practical difficulty of students, families of students, teachers, school administrators and the general public not having quick and easy access to important school-and Milwaukie community-related information. The applicant states that this is directly in contrast with the first purpose of the Sign Ordinance: Protect the health, safety, property and welfare of the public. As seen in recent months with the COVID-19 Pandemic and the wildfires in Clackamas County and elsewhere in the state, it is imperative that citizens have ready access to up-to-date information. According to the applicant, a standard sign cannot do this in the same way an electronic sign can. Some residents in Milwaukie may not have reliable access to the internet and other information sources, therefore a community messaging system such as this would reduce unnecessary physical hardship for both school and Milwaukie community populations.

Milwaukie High School is also the only known Category 4: Critical/Essential Building located in the City of Milwaukie. The high school is the largest public school within the City of Milwaukie, with a maximum capacity of 1,500 students. OEM guidance on Community Preparedness advises that in the case of a catastrophic disaster, the organizations which deal with emergencies (police, fire, hospitals, emergency managers, the Red Cross, etc.) will not be able to meet the surge of needs and many people within the community will need to reach out to trusted organizations for help. OEM advises that community preparedness plans to create partnerships between non-profits, faith-based organizations, schools, and colleges.

Existing emergency alert systems rely on Wireless Emergency Alerts (WEAs) sent out by national, state, and/or local public safety officials, Emergency Alert Systems (EAS) sent out by the president through broadcasters, satellite digital audio services, direct broadcast satellite providers, cable television systems, wireless cable systems and NOAA Weather Radio All Hazards (NWR). These alert systems rely on communications infrastructure that may be damaged or inaccessible during a catastrophic emergency. The proposed electronic reader board sign will be connected to the school's generator and will be operational in the event of a power outage. The sign will have the capability to provide emergency updates without any reliance on communications infrastructure that may not be operational in a catastrophic emergency.

The Planning Commission failed to obtain the majority required to approve or deny the application.

- (b) That there are exceptional or extraordinary circumstances or conditions applicable to the property involved, or to the intended use of the property, which do not apply generally to other properties classified in the same zoning district;

The applicant states Milwaukie High School is in the R-2 Zoning District, a residential zoning district. Section 14.16.010 identifies sign types permitted in residential zones. All sign types permitted are related to residential development, not schools or institutional sites. According to the applicant, this results in exceptional or extraordinary circumstances applied to this property (Milwaukie High School) that do not generally apply to other properties in the R-2 Zone (generally housing).

Within the City of Milwaukie, there are four public elementary schools, two public middle schools, and one public high school. The high school is the largest public school within the City, with a maximum capacity of 1,500 students. Milwaukie High School is also the only known Category 4: Critical/Essential Building to be used as a community shelter during a disaster located within the City of Milwaukie.

OEM guidance on Community Preparedness advises that in the case of a catastrophic disaster, the organizations which deal with emergencies (police, fire, hospitals, emergency managers, the Red Cross, etc.) will not be able to meet the surge of needs and many people within the community will need to reach out to trusted organizations for help. OEM advises that community preparedness plans create partnerships between non-profits, faith-based organizations, schools, and collages.

Existing emergency alert systems rely on communications infrastructure that may be damaged or inaccessible during a catastrophic emergency. The proposed electronic reader board sign will be connected to the school's generator and will be operational in the event of a power outage. The sign will have the capability to provide emergency updates without any reliance on communications infrastructure that may not be operational in a catastrophic emergency.

The Planning Commission failed to obtain the majority required to approve or deny the application.

- (c) That strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zoning district;

The applicant states owners of other properties in the same zoning district are generally residential and zoned R-2. Section 14.16.010 provides standards by which residential developments may install signs that are appropriate to residential developments.

Electronic signs, however, are not allowed in residential zones. Other properties zoned R-2 do not have the privilege of allowing an electronic sign, which the applicant is proposing. The applicant's proposal would create a situation where they are enjoying privileges that others in the R-2 zone are not able to enjoy and therefore do not meet this criteria.

The Planning Commission failed to obtain the majority required to approve or deny the application based on a tie vote over whether this specific criterion had been met.

- (d) That the granting of the adjustment will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zoning district; and,

The applicant states that Milwaukie High School is the only known Category 4: Critical/Essential Building within the City of Milwaukie. The school's capability to be operational as a shelter in a catastrophic emergency provides a unique circumstance that is not currently applicable to existing community service uses or residential uses in residential zones within the city. As discussed above, section 14.16.010 provides the ability of residential property in the R-2 zoning district to install appropriate types of signage. The granting of this adjustment will allow the high school the ability to install signage appropriate to the use on the site as well. This does not constitute a grant of special privilege inconsistent with the limitations on other properties in the R-2 zone.

The Planning Commission failed to obtain the majority required to approve or deny the application.

- (e) That the granting of the adjustment will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity.

The applicant states that the granting of the adjustment will be beneficial to the public health, safety and welfare and will not be materially injurious to properties or improvements in the vicinity. According to the applicant, many Milwaukie High School students and nearby community neighbors do not have reliable, regular internet access. They also state that Milwaukie High School has also recently been designated as Category 4: Critical/Essential Building that can be an evacuation site for natural disasters such as wildfires. An electronic reader sign at the high school would provide both students and Milwaukie community members timely, accurate, important information about both the school and the city.

The sign hours will be from the time of 7am-9pm, limiting any negative or detrimental impacts to the surrounding properties. The sign also meets the requirements for electronic signs in MMC 14.24.020.

The Planning Commission failed to obtain the majority required to approve or deny the application.

With the Planning Commission unable to obtain the majority required to approve or deny the application, and not being able to resolve the tie vote, the application is denied for lack of a majority.