



CITY OF MILWAUKIE

September 21, 2021

Land Use File(s): VR-2021-013

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on September 14, 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):	MWSH Milwaukie LLC
Location(s):	5801 SE Kellogg Creek Dr
Tax Lot(s):	2S2E06AD, lot 901
Application Type(s):	Variance Request
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• Milwaukie Municipal Code (MMC) Subsection 19.504.9 On-Site Walkways and Circulation• MMC Section 19.911 Variances• MMC Section 19.1006 Type III Review
Neighborhood(s):	Lake Road

Appeal period closes: 5:00 p.m., October 6, 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 Brett Kolver, Senior Planner, at 503-786-7657 or kolverb@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on October 6, 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

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.

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 in Support of Approval

The Findings for this application are included as Exhibit 1.

Conditions of Approval

1. As per Finding 5-c, revise the overall landscaping plan approved with master file #CU-2018-003 to include additional new trees, at the ratios provided on the City's Tree Credit Worksheet for the total amount of new impervious walkway (approximately 13,630 sq ft as proposed). The trees must be a mix of Oregon ash (*Fraxinus latifolia*), bigleaf maple (*Acer macrophyllum*), Scouler's willow (*Salix scouleriana*), and Ponderosa pine (*Pinus ponderosa*) and should be least 1.5-in caliper (and at least 5 ft tall, for coniferous trees) at the time of planting. The applicant must coordinate with City staff to identify planting locations, prioritizing areas near impervious surfaces. Eighty percent (80%) of the number of trees planted as mitigation for the approved variance must survive at least five years after planting, with replacement plants installed as necessary. An annual report on mitigation planting survival must be submitted for five years.

Other requirements

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements contained in the MMC and Public Works Standards that are required at various points in the development and permitting process.

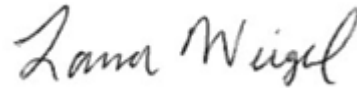
1. Expiration of Approval

As per MMC Subsection 19.1001.7.E, the land use approval granted with this decision will expire and become void unless the following criteria are satisfied. For proposals requiring any kind of development permit, the development must complete both of the following steps:

- a. Obtain and pay for all necessary development permits and start construction within two years of land use approval.
- b. Pass final inspection and/or obtain a certificate of occupancy within four years of land use approval.

Decision

- Approved
 Approved with Conditions
 Denied



Laura Weigel, AICP
Planning Manager

Exhibits

1. Findings in Support of Approval

cc: Mark Lowen, MWSH Milwaukie LLC, applicant (via email)
Planning Commission (via email)
Kelly Brooks, Interim 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)
Alex McGladrey and Valerie Liljefelt, CFD#1 (via email)
NDA(s): Lake Road (via email)
Interested Persons (via email)
Land Use File(s): VR-2021-013
Address File(s): 5801 SE Kellogg Creek Dr

EXHIBIT 1
Recommended Findings in Support of Approval
File #VR-2021-013, Bonaventure Senior Housing Walkways

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, MWSH Milwaukie LLC, has applied for approval of a variance related the design standards for on-site walkways established in Milwaukie Municipal Code (MMC) Subsection 19.504.9.E. In particular, the request is to vary the requirement that walkways must be permeable for stormwater. The walkways are part of a larger project approved in 2019 to develop a 170-unit senior housing facility (master land use application file #CU-2018-003). The subject property is addressed as 5801 SE Kellogg Creek Dr (Tax ID 2S2E06AD, lot 901). The land use file number for the variance request is VR-2021-013.
2. The subject property is approximately 14.3 acres in area. The proposed development approved with CU-2018-003 will establish 170 units of senior housing in a multistory building ranging from one to four stories in height. The facility will provide 78 independent living suites, 60 assisted living suites, and 32 memory care suites. A looped driveway will circle the building for access and provides 139 off-street parking spaces. The remainder of the site, to the west and on the north side of Mount Scott Creek, will remain undeveloped to preserve the designated natural resource and floodplain areas on the property.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Subsection 19.504.9 On-Site Walkways and Circulation
 - MMC Section 19.911 Variances
 - MMC Section 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 by the Planning Commission on September 14, 2021, as required by law.

4. MMC Subsection 19.504.9 On-Site Walkways and Circulation

MMC 19.504.9 establishes standards for on-site walkways, including requirements that on-site walkways be at least 5 ft wide, constructed of hard surface materials that are permeable for stormwater, and lighted to a minimum level of 0.5 footcandles.

As originally proposed and approved with CU-2018-003, the proposed development included pervious, lighted walkways around the new building, as well as two pedestrian connections to the public sidewalk on Kellogg Creek Dr. A condition was established to require more detailed photometric information to confirm that the minimum lighting was provided, and a variance was granted for relief from the requirement for a pedestrian connection to the site's short frontage on Rusk Road.

With this variance application, the applicant is requesting relief from the requirement of MMC Subsection 19.504.9.E that the on-site walkways be permeable and is proposing to construct them with impervious concrete instead. The rationale for that request, and a discussion of how the request responds to the approval criteria for a variance, are addressed in Finding 5. Compliance with the various conditions of approval of CU-2018-003 (including for walkway lighting) has been assessed and confirmed through the development review process (file #DEV-2019-010).

As discussed in Finding 5, the Planning Commission finds that the requested variance from the requirement for permeable on-site walkways is approvable, and that the other applicable standards of MMC 19.504.9 are met, pursuant to the other applicable conditions of CU-2018-003.

5. MMC Section 19.911 Variances

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 a variance to the requirement of MMC Subsection 19.504.9.E that on-site walkways be constructed to be permeable for stormwater.

The requested variance meets the eligibility requirements.

b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. MMC Subsection 19.911.3.B establishes the Type II review process for limited variations to certain numerical standards. MMC Subsection 19.911.3.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 is not eligible for Type II review and so is subject to the Type III review process.

c. MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes approval criteria for variance requests. For Type III variances, MMC Subsection 19.911.4.B.1 provides approval criteria related to discretionary relief and MMC Subsection 19.911.4.B.2 provides approval criteria related to economic hardship.

The applicant has elected to address the discretionary relief criteria for the requested variance.

- (1) 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 applicant's submittal materials include an assessment of the situation provided by a geotechnical engineer. The assessment explains that pervious concrete sidewalks are suitable for use when the supporting subgrade soils have a certain capacity for retaining nutrients and include at least a baseline level of organic matter. According to the geotechnical assessment, pervious pavement treatments are not recommended for structural fill soils like the ones on the subject property because they have a limited rate of infiltration.

The assessment indicates that the limited infiltration capacity of the soil on site would require an increased thickness of underlying aggregate base rock beneath the on-site walkways to provide adequate storage of stormwater during storm events. Even with increased base rock and proper design, the assessment notes that a pervious walkway would still be susceptible to excess runoff in an extreme rainfall event.

The applicant's narrative suggests that pervious concrete would not provide as smooth a surface as impervious concrete, posing a mobility challenge to residents of the approved senior housing facility. The narrative posits that pervious concrete has a greater probability for damage and instability in the context of Oregon weather and that impervious concrete provides a safer, long-lasting, all-weather surface that is critical for maintaining a safe and reliable surface.

The Planning Commission finds that the analysis of the impacts and benefits of the requested variance compared to the baseline requirements is acceptable. This criterion is met.

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

The applicant's narrative indicates that, due to the large percentage of pervious area on the site, the additional stormwater runoff that will be generated if the walkways are impervious (covering an area of approximately 13,630 sq ft) would sufficiently infiltrate elsewhere on the subject property. The applicant's engineers have confirmed that the various stormwater swales dispersed around the site are adequately sized to handle the additional runoff.

The approved development is a senior housing facility, whose residents will have a range of mobility challenges that can be mitigated by having a smooth and consistent surface.

As noted above, the applicant has asserted that pervious concrete is harder to maintain in the condition that best serves the needs of residents, staff, and guests. The applicant's narrative suggests that allowing the use of impervious concrete provides a public benefit by improving the long-term condition of this one important aspect of the approved senior housing facility.

Finally, the geotechnical assessment references the presence of compacted structural fill in the near-surface soil on the site, with near-surface subgrade soils consisting of a practically impermeable mixture of sand, silt, and clay. The existing soil conditions make it difficult to ensure adequate infiltration and storage of stormwater through a pervious walkway without increasing the thickness of underlying aggregate base rock. The proposal to use impervious concrete would reduce both the need for more intensive maintenance (to prevent clogging of a pervious walkway) and the pace of walkway deterioration. The result would make the extensive on-site walkway system safer and easier to maintain.

The Planning Commission finds that the requested variance is reasonable and appropriate and that it meets one or more of the criteria provided in MMC Subsection 19.911.B.1.b.

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

As originally proposed and approved, the on-site system of pervious walkways would infiltrate stormwater in a dispersed fashion around the perimeter of the building, broadly recharging the water table. The dispersed infiltration offered by pervious walkways would reduce the potential of higher sheet flows into nearby Mount Scott Creek during heavy rainfall and storm events. Although the approved on-site stormwater management system is designed and sized to accommodate the additional volume of runoff from the approximately 13,630-sq-ft walkway system if it is made impervious instead of permeable, the requested change to impervious material would direct more stormwater into one of five large stormwater swales distributed around the site. This represents a loss of opportunity for more dispersion and arguably warrants some mitigation.

Trees serve an important stormwater management function by intercepting precipitation, removing water from the soil through transpiration, and enhancing infiltration. Tree roots help increase the infiltration of soil and improve groundwater recharge. In this case, while the approved landscape planting plan does include a few trees near the walkways at certain points around the site, it is reasonable to suggest that planting additional trees alongside the impervious walkway system would be one way to mitigate for the loss of dispersed infiltration. It is also reasonable to directly associate the square footage of impervious walkway with the area of tree canopy provided by new trees, where increasing canopy coverage would increase the accompanying stormwater benefits. A condition has been established to ensure this mitigation.

*The City's Urban Forester visited the site and identified several tree species that would be appropriate for this particular environment: Oregon ash (*Fraxinus latifolia*), bigleaf maple (*Acer macrophyllum*), Scouler's willow (*Salix scouleriana*), and *Ponderosa**

pine (Pinus ponderosa). The City's Tree Credit Worksheet, which is used to determine allowable reductions in stormwater facility size based in return for planting trees, gives credit for 200 sq ft of impervious surface for each coniferous tree and 100 sq ft for each broadleaf tree. The worksheet represents an established methodology already in use by the City and is therefore an appropriate guide for determining a proportional number of trees as mitigation. The condition requires planting a combination of the four species noted above, in such numbers as would achieve 13,630-sq-ft worth of credit as per the Tree Credit Worksheet.

When used to determine the allowable reduction in the size of required stormwater facilities, the Tree Credit Worksheet requires new trees to be planted within 10 ft of impervious surface, where they are more effective at intercepting rainfall. The walkway is very close to the building in many areas, with little room for adding large trees. There are some areas around the outer edges of the on-site roadway that may offer opportunities for tree planting, and there is considerable open space in the vicinity of each of the stormwater swales dispersed around the site. The condition prioritizes locations near impervious surfaces over the larger open spaces on the site but allows for mitigation plantings in both. Given that each new tree is mitigation for a specific amount of impervious walkway, the condition requires an 80% survival rate at five years for the number of trees planted.

As conditioned, the Planning Commission finds that any impacts resulting from the requested variance will be sufficiently mitigated. This criterion is met.

As conditioned, the Planning Commission finds that the requested variance meets the approval criteria established in MMC 19.911.4.B.1 for Type III variances seeking discretionary relief.

The Planning Commission finds that the requested variance is allowable as per the applicable standards of MMC 19.911.

6. The application was referred to the following departments and agencies on August 4, 2021:
 - Milwaukie Community Development Department
 - Milwaukie Engineering Department
 - Milwaukie Building Department
 - Milwaukie Public Works Department (including Environmental Services)
 - Milwaukie Police Department
 - City Attorney
 - Lake Road Neighborhood District Association (NDA) Chairperson and Land Use Committee (LUC)
 - Clackamas Fire District #1 (CFD #1)
 - Clackamas County Department of Transportation & Development
 - Metro
 - ODOT

- TriMet
- North Clackamas School District
- NW Natural

The comments received are summarized as follows:

- **Paul Hawkins, LUC Chair, Lake Road NDA:** The NDA is supportive of this project and would like to see it move forward. Changing the walkway material would not adversely affect the moisture content of the surrounding soil.
- **Alex McGladrey, Lieutenant – Deputy Fire Marshal, CFD #1:** No comments.
- **Neil Schulman, Executive Director, North Clackamas Watersheds Council (NCWC):** NCWC is working to reduce the amount of impervious surface in the watershed to minimize future downstream flood risk and improve water quality. Although NCWC would prefer that the on-site walkways remain permeable as originally approved, it is amenable to the variance request if native trees are planted as mitigation to intercept rainfall on or near impervious areas. NCWC supports the staff recommendation of tree planting at a ratio of 1:4 (one square foot of tree canopy for every four square feet of impervious walkway), provided that (1) mitigation trees are placed near impervious areas, (2) appropriate tree species are used, and (3) the requirement for maintenance and survival is increased from two to five years.