

From: [Robert Vancreveld](#)
To: [Vera Kalias](#); planning@milwaukieorego.gov
Subject: Re: Comments for VR-2021-012 (9285 SE 58th Dr)
Date: Monday, April 18, 2022 16:58:11

This Message originated outside your organization.

Dear planning commission

As a close neighbor (of many years)to the proposed manufacturing facility I feel the need to respond.

The proposed use of the site is inappropriate due to the parcels small size.

Variance from the setback rules will result in congestion and accidents at this site.

A single onsite parking place(ada) is inadequate. Zero lot line will result in vehicles parking in the street. Delivery and pickup will be parking in the street.

The traffic study is a joke. This site will generate a great deal more traffic than shown.

Sight lines will be jeopardized by a blocky building. Years ago a small boulder was placed on the corner and it blocked the sight lines to on coming traffic on jcb.

Robert and Barbara vancreveld
5730 se westfork
541-270-6592



HATHAWAY LARSON

Koback · Connors · Heth

April 19, 2022

VIA EMAIL (koliasv@milwaukieoregon.gov & planning@milwaukieoregon.gov)

Planning Commission
City of Milwaukie
6101 S.E. Johnson Creek Blvd.
Milwaukie, OR 97206

Re: Variance & Development Review Applications – 9285 SE 58th Dr.
Application File Nos. VR-2021-012, DEV-2021-006 & P-2021-003
My Client – Smith Rock, Inc.

Dear Commissioners:

This firm represents Smith Rock, Inc. (“Smith Rock”), who operates a business located at 6001 SE Johnson Creek Boulevard which is adjacent to the property subject to the above-referenced applications (the “Applications”) filed by Lyver Engineering and Design, LLC (the “Applicant”). At the April 12, 2022 hearing, the Planning Commission continued the hearing until May 24, 2022 and established a post-hearing submission process. Smith Rock is submitting this letter as its initial post-hearing submission.

A. No new evidence or argument.

Smith Rock requested the continuance of the April 12 hearing because the Applicant waited until a few hours before the hearing to submit the Ard Engineering Technical Memorandum, dated January 25, 2022, and Smith Rock did not have sufficient time to evaluate it and consult with a traffic engineer. It is not clear why the Applicant waited so long to provide this information to the City and other parties. We were hoping the Planning Commission would continue the hearing to a later date as it did when the Applicant requested a continuance at the January 25, 2022 hearing, as opposed to establish a post-hearing submission process that required Smith Rock to respond in seven (7) days. Unfortunately, seven (7) days was not sufficient time for us to retain our own traffic engineer to review and comment on the Ard Engineering Technical Memorandum. Therefore, we are not submitting any new evidence at this stage.

We summarized the reasons why the Planning Commission should deny the Application in Section B below so it is easier to understand our position. This summary is based on previous legal

E. Michael Connors
1331 NW Lovejoy Street, Suite 950
Portland, OR 97209
mike@hathawaylarson.com
(503) 303-3111 direct
(503) 303-3101 main

arguments we have already made on the record and does not rely on any new evidence. Therefore, the Applicant is not entitled to submit any rebuttal evidence in response to this letter because it does not contain any new evidence or argument. ORS 197.763(6)(c) & MMC 19.1009.11.D. To the extent the Applicant attempts to submit rebuttal evidence in response to this letter, we intend to file procedural objections.

B. Summary of reasons to deny the Application.

As we previously explained in our letters and testimony at the April 12 hearing, there are multiple reasons why the Planning Commission should deny the Application due to the Applicant's failure to demonstrate compliance with several applicable approval criteria. The following is a summary of those reasons.

The Applicant applied for the variances under the discretionary relief criteria as opposed to the economic hardship criteria because the variances are not necessary to allow reasonable economic use of the property. Therefore, these variances are not necessary to develop the property but rather are the Applicant's development preferences. The Applicant failed to justify these development preferences.

The Applicant failed to demonstrate that "the proposed variance has desirable public benefits" as required by MMC 19.911.4.B.1.b.2. The Applicant relies exclusively on the purported benefit of developing a vacant site and producing jobs, taxes, etc., but that claim is dubious and irrelevant because the property can be reasonably developed without these variances.

The Applicant failed to provide an alternative analysis "of the impacts and benefits of the variance proposal as compared to the baseline code requirements" as required by MMC 19.911.4.B.1.a. The Applicant did not submit anything comparing the proposed development with the variances to the development option using the baseline code requirements.

The Applicant failed to demonstrate that "the proposed variance avoids or minimizes impacts to surrounding properties" as required by MMC 19.911.4.B.1.b.1. Several surrounding neighbors raised legitimate concerns about the impact of the development and proposed variances. The Applicant made no effort to reach out to affected neighbors and unfairly dismissed their concerns as speculative and unfounded. The neighbors' concerns about access safety, damage to the large blue spruce tree near the property line, lack of a sufficient landscaping buffer to mitigate impacts on the adjacent residence and the location of the access drive on SE 58th Dr. are legitimate concerns the Applicant should have made some efforts to address.

The Applicant cannot satisfy the Transition Area Standards in MMC 19.309.6.F because it failed to provide any information regarding the manufacturer who will operate on this site. MMC 19.309.6.F requires consideration of several characteristics of the proposed use, including noise, lighting, hours of operation, delivery and shipping, and provides that the "review authority may attach conditions to reduce any potentially adverse impacts to residential properties." This

requirement is important since there is an adjacent residence less than 25 feet from the site and residential zoned properties less than 70 feet from the site. The Applicant cannot satisfy this approval criteria as a matter of law because it doesn't know who will operate on the site.

The Applicant cannot satisfy the Quantity Modifications and Required Parking Determinations standards in MMC 19.605.2.B.1 because it failed to provide any information regarding the manufacturer who will operate on this site. MMC 19.605.2.B.1 requires the Applicant to provide information about "the size and types of the uses on site, and information about site users (employees, customers, etc.)" so the parking demands can be determined. The Applicant cannot satisfy this approval criteria as a matter of law because it doesn't know who will operate on the site.

The Applicant failed to address several applicable approval criteria in MMC Chapter 19.500, including MMC 19.504.1 (Clear Vision Areas), 19.504.5 (Distance from Property Line), 19.504.6 (Transition Area Measures), 19.504.9 (On-Site Walkways and Circulation) and 19.505.8 (Building Orientation to Transit).

The Applicant's February 2022 email exchange with Clackamas County confirms there will be conflicts with the Johnson Creek Blvd. road improvement project based on the zero front yard setback for the building. The County confirmed "[i]t likely will be challenging to construct the sidewalk with the trellis at the back of it" and the Applicant suggested it can simply delay installing the trellis. At the April 12 hearing, the Applicant suggested it will abandon the trellis altogether and put the onus on the City to tell it what it should do instead. The Applicant has not been transparent about this conflict and failed to develop a contingency plan to address this conflict.

The Applicant's project plans are preliminary and still in flux. The Applicant still has no idea what manufacturer will operate in the building. Although the City staff specifically requested that the Applicant use a trellis structure with plants (in addition to windows and other design features) to soften the impacts of the zero front yard setback, the Applicant testified that it has no idea if the trellis is feasible or what it will propose in lieu of the trellis. The Applicant indicated it will look to the City to provide those answers, not understanding that it is the Applicant's project and burden to demonstrate compliance with the approval criteria. The Applicant should be required to wait until its project plans are more complete and have been properly vetted before the City approves the project.

C. Conclusion.

We respectfully request that the Planning Commission deny the Application due to the Applicant's failure to comply with multiple approval criteria. The Applicant is proposing an undefined industrial use that requires multiple variances from the standard development requirements and will impact the surrounding uses. Variances are disfavored because they deviate from the standard requirements and should only be allowed when truly necessary. The Applicant failed to justify the variance requests, address all of the relevant approval criteria or respond to the legitimate concerns raised by the neighbors. Therefore, the Application should be denied.

Very truly yours,

HATHAWAY LARSON LLP

/s/

E. Michael Connors

EMC/ep

Cc: Smith Rock, Inc.