



CITY OF MILWAUKIE

January 13, 2022

Land Use File(s): MLP-2021-001

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on January 13, 2022.

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):	Renat Zdancius, Z and R Design, LLC
Location(s):	5053 SE King Rd
Tax Lot(s):	12E30CD06100
Application Type(s):	Minor Land Partition
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Land Division Ordinance: <ul style="list-style-type: none">• 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 <ul style="list-style-type: none">• MMC Section 19.301 Low Density Residential Zones (including R-7)• MMC Chapter 19.700 Public Facility Improvements• MMC Section 19.504 Site Design Standards• MMC Section 19.1005 Type II Review Milwaukie Municipal Code <ul style="list-style-type: none">• MMC Chapter 12.16 Access Management
Neighborhood(s):	Lewelling, Hector Campbell

Appeal period closes: 5:00 p.m., January 28, 2022

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1005 Type II 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 Laura Weigel, Planning Manager, at 503-786-7654 or weigell@milwaukieoregon.gov, if you wish to view this case file or visit the project webpage at <https://www.milwaukieoregon.gov/planning/mlp-2021-001>.

This decision may be appealed by 5:00 p.m. on January 28, 2022, which is 15 days from the date of this decision.¹ (Note: Please arrive by 4:45 p.m. for appeal payment processing.) Any person who is adversely affected or aggrieved by this decision may appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie Planning Commission 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. Prior to removal of any trees on site 6 inches or greater in diameter, as measured at the lowest limb or 4 ft above the ground, whichever is less, the applicant must submit a written statement explaining why removal of the tree is necessary for site development and demonstrating that there are no practicable alternatives to removal. If required to be removed, trees will be replaced per the standards in MMC 19.504.8.F.
2. Prior to start of any site work or earth removal, a fenced tree protection zone (TPZ) must be established around each tree that will remain on the site – particularly the trees along the eastern property line. The TPZ is defined as the tree canopy drip line. The TPZ must be maintained with a 4 ft – 6 ft tall fence around the perimeter of the TPZ; signage is required on the fencing stating that no one, and no equipment, is allowed to enter or disturb the area. Fencing required to be installed prior to any earth-disturbing activity and must be maintained throughout the project. An inspection of the TPZ fencing is required prior to any earth-disturbing activity.

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.

3. The applicant shall submit a final plat application within 6 months of the preliminary plat approval in accordance with MMC Subsection 17.24.040. The applicant shall obtain approval of the final plat prior to the expiration of this preliminary plat approval.
4. The applicant's final plat application shall include the items listed on the City of Milwaukie Final Plat Checklist. The following specific items and changes are required as part of the application:
 - a. A written narrative describing all changes made to the final plat that are not related to these conditions of approval.
 - b. A final plat that substantially conforms to the plans received by the Planning Department on November 23, 2021 and approved by this action, except as modified by these conditions of approval.
 - c. The plat shall include spaces for signatures by the Milwaukie Planning Manager and Milwaukie City Engineer, and a note indicating that this partition is subject to the requirements of City of Milwaukie Land Use Applications MLP-2021-001.
 - d. The plat shall include appropriate access easements on Parcels 2 and 3 for the benefit of all parcels, including responsibilities for maintenance of the easement areas.
 - e. The plat shall include appropriate easements or restrictions to maintain a 12-ft wide paved driveway with a 20-ft wide unobstructed driving surface and minimum 13-ft 6-in vertical clearance for fire apparatus access.
 - f. In order to comply with the requirements for an exemption to MMC 19.1203.3 Design Standards for Solar Access for New Development, the plat shall include language stating that, per MMC 19.1203.4, 50% of the tree crown cover shall be preserved.
 - g. The plat shall include a 10-ft Public Utility Easement (PUE).
5. Prior to approval of the final plat, the following shall be resolved:
 - a. 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.
 - b. Submit full-engineered plans for construction of all required public improvements, reviewed and approved by the City of Milwaukie Engineering Department.
 - c. Obtain a right-of-way permit for construction of all required public improvements listed in these recommended conditions of approval.
 - d. Pay an inspection fee equal to 5.5% of the cost of the public improvements.
 - e. Provide a payment and performance bond for 130 percent of the cost of the required public improvements.
 - f. Provide an erosion control plan and obtain an erosion control permit.

- g. Remove the existing western driveway, and construct 6-ft curb-tight concrete sidewalk and curb in compliance with the Americans with Disabilities Act (ADA) standards.
 - h. Construct a shared driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA). Driveway shall be largely in conformance to that shown on material submitted to the city on November 23, 2021.
 - i. Construct 6-ft curb-tight concrete sidewalks and curb along the remainder of the property frontage on King Road.
 - (1) The applicant may choose to apply for Fee in Lieu of Construction (FILOC) for this portion of the frontage improvements.
 - j. Provide a final approved set of electronic PDF “As Constructed” drawings to the City of Milwaukie prior to final inspection.
 - k. Remove all signs, structures, or vegetation between three ft and eight ft in height located in “clear vision areas” at intersections of streets, driveways, and alleys fronting the proposed development. 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. At the time of application for a development permit on Parcels 2 and 3, the applicant shall submit landscaping plans meeting the standards of MMC 19.504.8.G. The plans shall include replanting per the standards in MMC 19.504.8.F for any trees that were required to be removed for development.

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 Milwaukie Municipal Code and Public Works Standards that are required at various points in the development and permitting process. They are included for the applicant’s convenience and do not necessarily represent all standards or requirements that may be applicable.

1. The Time Limit on Approval established in MMC 17.04.050 applies to this proposed partition.
 - a. MMC 17.040.050.A: All decisions on boundary changes and land divisions shall expire 1 year after the date of approval. Reactivation of expired decisions may only be made by submission of a new application and related fees. *Staff note - approval of a final plat must occur prior to the expiration of the preliminary plat approval on which the final plat is based.*
 - b. MMC 17.04.050.B: Approvals may be extended up to 6 months upon submission of formal request to the original decision-making authority. One extension of the

approval period not to exceed 6 months will be granted if the criteria in MMC 17.04.050.B are satisfied.

2. The requirements on MMC 17.24 for preparation and recording the final plat are as follows:
 - a. MMC 17.24.040: Within 6 months of City approval the applicant shall submit the final plat for City signatures. Approval of the final plat shall be null and void if the plat is not submitted within the time specified or if the plat is not recorded within 30 days after the date the last required signature has been obtained. One copy of the recorded plat shall be supplied to the City.
 - b. MMC 17.04.120.B: Prior to recording a lot consolidation, property line adjustment, subdivision, or partition plat or replat, the applicant shall submit the recording instruments to the Planning Manager for a determination of consistency with the City Code and required approvals.
 - c. MMC 17.04.120.A: Recording instruments for boundary change, subdivision, partition, and replat shall be submitted to the County Surveyor within 6 months of City approval.

3. MMC Section 17.04.120 Recording

As per MMC Section 17.04.120, partition plats must be recorded by plat. An application for final plat shall 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.

4. A right-of-way permit is required for construction of all required public improvements listed in these Conditions of Approval.

Manager’s Declaration of Impartiality

I certify that neither I nor any member of my immediate family has a material, personal, or financial relationship with the applicant. I further certify that no other relationship, bias, or ethical conflict exists which would have prevented me from evaluating the land use application solely on its merits and in accordance with the Milwaukie Municipal Code.

Decision

- Approved
- Approved with Conditions
- Denied



Laura Weigel, AICP
Planning Manager

Exhibits

1. Findings in Support of Approval
- cc: Renat Zdancius, Z & R Design LLC (13486 SE 97th Ave, Clackamas, OR 97015) (via email)
John DeJong, Technical Engineering (Applicant’s Representative) (via email)
Planning Commission (via email)
Joseph Briglio, 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)
Valere Liljefelt, CFD#1 (via email)
NDA(s): Lewelling, Hector Campbell (via email)
Interested Persons
Land Use File(s): MLP-2021-001

EXHIBIT 1
Findings in Support of Approval
File #MLP-2021-001, 5053 SE King Rd partition

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, John DeJong, on behalf of Z and R Design, LLC, has applied for approval to create three building lots on the parcel located at 5053 SE King Rd. This site is in the Residential R-5 Zone. The land use application file number is MLP-2021-001.
2. The proposed project is a three-lot partition, including two flag lots, and a driveway relocation. The existing home will be retained on one of the new lots.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.1005 Type II Review
 - 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 Section 19.301 Low Density Residential Zones (including R-5)
 - MMC 19.504 Site Design Standards
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Chapter 12.16 Access Management

The application has been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review.

4. 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.
 - a. 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.
 - b. 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 partition 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 a variance. As proposed, this criterion is met.

- c. 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 a partition plat; therefore, this criterion is not applicable.

- d. 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.

The proposed partition does not require right-of-way dedication on King Rd. This criterion is not applicable.

- e. 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 detailed narrative demonstrating compliance with all applicable standards and criteria. As proposed, this criterion is met.

As proposed, the Planning Manager finds that the preliminary plat meets the applicable criteria.

5. 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 include the necessary forms, checklists, and fees, as well as sufficient information to demonstrate compliance with the applicable standards and criteria.

As proposed, the Planning Manager finds that the application meets the applicable requirements for submittal of a preliminary plat.

6. 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, structures on surrounding properties, minimum setbacks for future development, and concepts for future development.

As proposed, the Planning Manager finds that the proposed preliminary plat includes the relevant and necessary information as outlined in MMC 17.20.

7. 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.

- a. 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 parcels are rectangular in shape and meet the minimum area and dimensional requirements for the underlying R-5 zone. All parcels conform to the relevant standards of the R-5 zone as described in Finding 9 and to other applicable standards of Title 19 as described elsewhere in these findings.

- b. 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 parcels are rectangular in shape and meet the minimum lot standards in Title 19. The proposed new lot lines are at a 90-degree angle to King Rd and the rear lot lines are parallel to the street.

- c. 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.

- d. MMC Subsection 17.28.040.D allows lot shape standards to be varied pursuant to MMC 19.911.

No variance to the lot shape standards is requested in this application.

- e. 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 parcels is a double frontage or reversed frontage lot.

- f. 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, Parcel 1 has 64.98 ft of frontage on King Rd. Parcels 2 and 3 are flag lots and have a shared access measuring 35 ft. All parcels meet or exceed the 35-ft minimum public street frontage required in the R-7 zone.

As proposed, the Planning Manager finds that the new parcels presented in the applicant's preliminary plat meet the applicable design standards established in MMC 17.28.

8. 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 11, physical improvements are required as a result of the proposed partition, including new curb and sidewalk. A new shared accessway must be constructed as proposed. The remaining frontage improvements along King Road must include new curb and sidewalk.

As conditioned, the Planning Manager finds that the applicable standards of MMC 17.32 are met.

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

MMC 19.301 contains standards for Low Density Residential zones, including the R-5 zone. The application meets the applicable standards of this section as described below.

a. MMC Subsection 19.301.2 Allowed Uses

MMC 19.301.2 establishes the uses allowed in the R-5 zone, including single-family detached dwellings, duplexes, and accessory dwelling units (ADUs) as outright permitted uses.

The applicant is proposing a single-family detached dwelling on each of the two new lots and the existing home will remain on the third lot. This is a permitted use in the R-5 zone as listed in Table 19.301.2.

As proposed, this standard is met.

b. MMC Subsections 19.301.4 and 19.301.5 Development Standards

MMC 19.301.4 and 19.301.5 establish development standards for the R-5 zone. The applicable standards are addressed and met as described in the table below.

Residential Zone R-5 Development Standards				
	R-5 Zone Standards	Parcel 1	Parcel 2 (will include existing home)	Parcel 3
Lot Area	5,000 sq ft for single-family; 10,000 sq ft for duplex	5,858 sq ft	8,690 sq ft (excludes access pole)	10,445 sq ft (excludes access pole)
Lot Width	60 ft	64.98 ft	80 ft	100.77 ft
Lot Depth	80 ft	90 ft	104.90 ft	97 ft
Public Street Frontage	35 ft, 25 ft for single flag lot	64.98 ft	35 ft	35 ft
Lot Coverage	35% max.	0%	15.83%	0%

Minimum Vegetation	30% min.	30%+	30%+	30%+
Front Yard Setback	20 ft; 30 ft for flag lot	NA	30.6 ft	NA
Side Yard Setback	5 ft / 10 ft; 10 ft for flag lot	NA	5.9 ft (existing)/18.3 ft	NA
Maximum Building Height	35 ft / 2.5 stories	NA	1.5 stories	NA
Side Yard Height Plane	45 degree angle, 20 ft above ground	NA	complies	NA
Rear Yard Setback	20 ft; 30 ft for flag lot	NA	30 ft	NA
Residential Density	7.0 units/acre minimum; 8.7 units per acre maximum	4 dwelling units – see Finding for MMC 19.301.5.D [Net area of 29,324.74 sq ft = .67 ac 5 units minimum; 6 units maximum]		

As proposed, the applicable standards of this subsection are met or will be met at the time of permit submittal.

(1) MMC Subsection 19.301.5.D Residential Densities

MMC Subsection 19.301.5.D establishes the minimum and maximum density requirements.

The minimum and maximum development densities in Subsection 19.301.4.C.1 are applicable for land divisions and replats that change the number of lots.

If a proposal for a replat or land division is not able to meet the minimum density requirement—due to the dimensional requirements for lot width, lot depth, or lot frontage—the minimum density requirement shall instead be equal to the maximum number of lots that can be obtained from the site given its dimensional constraints. The inability of new lot lines to meet required yard dimensions from existing structures shall not be considered as a basis for automatically lowering the minimum density requirement.

The proposal is a 3-lot partition that can accommodate 4 dwelling units, which is less than the minimum density of 5 dwelling units. However, site is rectangular in shape, being somewhat long and skinny with the narrow end being adjacent to King Rd. In order to provide access to Parcels 2 and 3, and for the existing home to remain, there is not enough width on the parent parcel to accommodate the needed dimension to divide the parcel and provide flag pole driveways. The site contains enough square footage for

an additional unit (duplex on Parcel 3), but the width of 100.77 feet does not allow for lots that can meet the minimum requirements for the R-5 zone for lot width and depth. The applicant requests the site be developed with a total of three parcels and a capacity for 4 dwelling units, which fits within the existing dimensions of the parent parcel.

As proposed, the applicable standards of this subsection are met or will be met at the time of permit submittal.

As proposed, the Planning Manager finds that the applicable R-5 zone standards of MMC 19.301 are met.

10. MMC 19.504.8 establishes flag lot design and development standards. This section is met as described below.
 - a. MMC 19.504.8.A states that flag lots in all zones are subject to the development standards of MMC 19.504.8.

Parcels 2 and 3 are flag lots and would be subject to the development standards in this subsection. Parcel 1 is a standard frontage lot and is not subject to the development standards of this section.
 - b. MMC 19.504.8.B contains development standards for flag lots.
 - (1) MMC 19.504.8.B.1 states that the areas contained within the accessway or pole portion of the lot shall not be counted toward meeting the minimum lot area requirement.

Parcel 2 flag lot has an area of 8,690 sq ft outside of the pole and complies with the minimum lot area requirement for the R5 zone. Parcel 3 flag lot has an area of 10,445 sq ft outside of the pole and complies with the minimum lot area requirement for the R5 zone.
 - (2) MMC 19.504.8.B.2 establishes yard setbacks of for flag lot development requiring a minimum 30-ft front and rear yard and 10-ft side yards.

The existing home would be located on Parcel 2. The submitted plans show that it meets the minimum setbacks except for the existing western side yard setback of 5.9 ft. Future development on Parcel 3 will be required to comply with these standards.
 - c. MMC 19.504.8.C prohibits variances of lot area, lot width, and lot depth standards.

There are no variances requested for the creation of Parcel 2 and Parcel 3.
 - d. MMC 19.504.8.D establishes standards for flag lot frontage, accessway, and driveway design.
 - (1) MMC 19.504.8.D.1 requires that flag lots shall have frontage and access on a public street and that the minimum width of the accessway and street frontage is 25 ft.

This standard is not applicable as the proposal is for a double flag lot.

- (2) MMC 19.504.8.D.2 requires that abutting flag lots shall have a combined frontage and accessway of 35 ft.

Parcels 2 and 3 have frontage and access on King Rd and the access pole and street frontage is 35 ft wide.

- (3) MMC 19.504.8.D.3 contains standards for driveway design and emergency vehicle access.

The proposed driveway would provide access to all 3 parcels through the access pole portion of the lots via an access easement.

- (a) MMC 19.504.8.D.3.a requires that driveways shall be designed and constructed in accordance with Chapters 12.16 and 12.24 and the Public Works Standards.

As conditioned, the proposed driveway will be constructed in accordance with these standards.

- (b) MMC 19.504.8.D.3.b requires that driveways serving single flag lots shall have a minimum paved width of 12 ft.

The proposed driveway is 12 ft wide.

- (c) MMC 19.504.8.D.3.c requires that driveways shall be centered within the accessway to minimize impacts on adjoining lots except when otherwise warranted to preserve existing vegetation or meet the intent of this subsection.

The proposed driveway is generally centered within the accessway but is setback from the existing trees located on the eastern property line near King Rd.

- (d) MMC 19.504.8.D.3.d requires that a paved turnaround area, or other provisions intended to provide emergency vehicle access and adequate maneuvering area, may be required.

Clackamas Fire District #1 (CFD) reviewed the proposed partition and had no comments regarding the proposed access and turnaround as shown on the plans. As conditioned, the plat shall also include appropriate easements or restrictions to maintain the minimum requirements for CFD access.

- (e) MMC 19.504.8.D.3.e requires that driveways serving 2 flag lots shall be consolidated and have a minimum shared driveway width of 16 ft.

The proposed driveway would serve only 2 flag lots and the parent lot with access easements to provide access to all three lots and a main paved width of 12 ft (with 16 ft where all 3 lots access the site) is proposed.

- (f) MMC 19.504.8.D.3.f requires that the flag lot driveway shall be consolidated with the driveway on the parent lot to the greatest extent practicable.

The proposed driveway would be a consolidated access that would serve the frontage lot (Parcel 1) and the flag lots (Parcels 2 and 3).

- (g) MMC 19.504.8.D.3.g requires that design standards for shared driveways serving more than 3 lots shall be specified by the Engineering Director after consultation with the Fire Marshal.

The proposed driveway would serve 3 lots and CFD has reviewed the proposed partition. As conditioned, the driveway, turnaround, and future development on Parcels 1-3 shall comply with CFD requirements.

- (h) MMC 19.504.8.D.3.h requires that parking along any portion of the driveway within the accessway is prohibited unless the driveway is suitably sized to meet the combined needs of parking and emergency access requirements.

The proposed driveway is not suitably sized to allow the combined needs of parking and emergency access requirements. As conditioned, no parking signage shall be installed and maintained within the access pole area.

- (4) MMC 19.504.8.E contains standards for protection of adjoining properties for flag lot development. Flag lots must be screened in accordance with this subsection to minimize potential adverse impacts to abutting properties. Fencing and screening must conform to the clear vision standards of Chapter 12.24. Fencing shall conform to the standards of Subsection 19.502.2.B.

- (a) MMC 19.504.8.E.1 requires that planting and screening must be provided at the time of development. Installation of required screening and planting is required prior to final inspections and occupancy of the site unless a bond or other surety acceptable to the City Attorney is provided. Screening and landscaping shall be installed within 6 months thereafter or the bond will be foreclosed. The property owner shall maintain required screening and planting in good and healthy condition. The requirement to maintain required screening and planting is continuous.

As conditioned, planting and screening required pursuant to this subsection will be required prior to final inspection and occupancy of structures on Parcels 2 and 3.

- (b) MMC 19.504.8.E.2 requires that impacts to neighboring lots due to use of the flag lot driveway shall be mitigated to the greatest extent practicable through screening and planting. Continuous screening along lot lines of the flag lot abutting any neighboring lot that is not part of the parent lot from which the flag lot was created is required as described in MMC 19.504.8.E.2.a – c.

Landscaping will be provided with a combination of dense plantings of trees and shrubs and fencing that will provide continuous sight obstruction. The property

owner will maintain required screening and plantings in good and healthy condition.

As conditioned, planting and screening required pursuant to this subsection will be required prior to final inspection and occupancy of structures on Parcels 2 and 3.

- (c) MMC 19.504.8.F requires that all trees 6 in or greater in diameter, as measured at the lowest limb or 4 ft above the ground, whichever is less, shall be preserved. Where trees are required to be removed for site development, at least 1 evergreen or deciduous tree, of a species known to grow in the region, shall be replanted for each tree removed. At planting, deciduous trees shall be a minimum of 2 in caliper and evergreen trees shall be a minimum of 5 ft tall.

The only tree anticipated to be removed is the 41-inch deciduous tree within the building footprint for the future house on Parcel 1. Prior to removal of any trees on site 6 inches or greater in diameter, as measured at the lowest limb or 4 ft above the ground, whichever is less, the applicant must submit a written statement explaining why removal of the tree is necessary for site development and demonstrating that there are no practicable alternatives to removal. If required to be removed, this tree will be replaced with a new deciduous tree within the front landscaping area for Parcel 1 per the standards in MMC 19.504.8.F.

- (d) MMC 19.504.8.G requires that a landscaping plan shall be submitted to the Planning Manager prior to issuance of a building permit for new construction.

The applicant's submittal materials state that a landscaping plan will be submitted with the building permit application.

As conditioned, the Planning Manager finds that the development complies with this section.

11. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 establishes provisions to ensure that development 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 land divisions, 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 applicant proposes to partition the subject property into three distinct parcels. The proposed partition triggers the requirements of MMC 19.700.

MMC 19.700 applies to the proposed development.

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 preapplication conference, establishing the type of application required, and establishing approval criteria.

The applicant had a preapplication conference with City staff on October 14, 2021, prior to application submittal. The proposed action does not trigger a Transportation Facilities Review.

As discussed in Finding 11-e, transportation facility improvements along the King Road frontage are required. The applicant may choose to apply for Fee in Lieu of Construction, rather than construct these improvements.

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 requires submission of a TIS documenting the development impacts on the surrounding transportation system.

The City Engineer determined that a transportation impact study was not required.

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.

Finding 11-e addresses the required frontage improvements. The proposed development does not trigger mitigation of impacts beyond the required frontage improvements. The impacts are minimal, and the surrounding transportation system will continue to operate at the level of service previous to the proposed development.

The proposed development, as conditioned, is consistent with MMC 19.705.

e. 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. MMC Subsection 19.708.1 points to MMC Chapter 12.16 and establishes general requirements and standards for streets, including access management, clear vision, street design, connectivity, and intersection design and spacing standards. MMC Table 19.708.2 provides more specific street design standards for various street classifications, including for Collector and Local streets. The City's street design standards are based on the street classification system described in the City's Transportation System Plan (TSP).

All rights-of-way, streets, sidewalks, necessary public improvements, and other public transportation facilities located in the public right-of-way and abutting the development site shall be adequate at the time of development or shall be made adequate in a timely manner. Driveway approach aprons shall be between 9 ft and 20 ft in width and least 7.5 ft from the side property line. In addition, all signs,

structures, or vegetation over 3 ft in height shall be removed from “vision clearance areas” at intersections of streets, driveways, and alleys.

The western driveway shall be removed and replaced with new curb and sidewalk. A new shared accessway shall be constructed as proposed. The remaining frontage improvements along King Road shall include new curb and sidewalk. As discussed in Finding 11-b, the applicant may choose to apply for FILOC for the remaining frontage improvements. All improvements shall be constructed in conformance to requirements outlined in MMC 12.16, the Milwaukie Public Works Standards, and the Americans with Disabilities Act. A Right-of-Way permit is required prior to starting any work in the public right-of-way.

As conditioned, the proposed partition meets all the applicable standards of MMC 19.708.

f. MMC Section 19.709 Public Utility Requirements

MMC 19.709 establishes the City’s requirements and standards to ensure the adequacy of public utilities to serve development.

A 10-ft Public Utility Easement (PUE) is required along the entire frontage on King Road. Engineered utility plans shall be submitted to the City Engineer for review and approval prior to construction.

The City Engineer shall monitor the progress of all public utility improvements by the applicant to ensure project completion and compliance with all city permitting requirements and standards. Any work in the public right-of-way requires the issuance of a Right-of-Way permit from the city prior to construction.

As conditioned, the proposed partition meets the standards of MMC 19.709.

As conditioned, the Planning Manager finds that the proposed partition meets the applicable public facility improvement standards of MMC 19.700.

12. MMC Chapter 12.16 Access Management

MMC 12.16 regulates access from private property onto public streets, with specific requirements and standards provided in MMC Section 12.16.040.

MMC Subsection 12.16.040.A states that access to private property shall be permitted with the use of driveway curb cuts, that driveways shall meet all applicable guidelines of the Americans with Disabilities Act (ADA), and that driveway approaches shall be improved to meet the requirements of the City’s Public Works Standards. MMC Subsection 12.16.040.B.1 governs the spacing of accessways (driveways), requiring a minimum of 300 ft for spacing between accessways on collector streets and prohibiting the creation and/or modification of single-family accessways.

As discussed in Finding 11-e, the proposed partition includes the construction of a new shared accessway. Removal of the existing western accessway is required. The proposed driveways will conform to ADA standards and width as required by MMC 12.16.040.E and F. Conditions have been established to require conformance with the applicable City standards.

As conditioned, the Planning Manager finds that the proposed partition meets the applicable access management standards of MMC 12.16.

13. As described in Finding 3, public notice of the application was posted on site and mailed as required by the Type II review process established in MMC 19.1005. The application was referred for comment to the following departments and agencies on December 20, 2021:

- Milwaukie Engineering Department
- Milwaukie Building Department
- Milwaukie Public Works Department
- Clackamas Fire District #1 (CFD #1)
- Lewelling Neighborhood District Association (NDA) Chairperson and Land Use Committee
- North Clackamas School District

In addition, public notice of the application with an invitation to comment was sent on December 20, 2021 to property owners and residents within 300 ft of the subject property. Comments received are summarized as follows:

- **Betsy Richard and Jim Eikrem, 5085 SE King Rd:** questions regarding tree protection during construction, particularly the trees along the shared property line. Additional concerns were expressed regarding additional traffic impacts from the proposed development.