



February 24, 2023

Land Use File(s): EXT-2022-001

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on February 24, 2023.

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 (John Eld)
Location(s):	5801 SE Kellogg Creek Dr
Tax Lot(s):	2S2E06AD 00901
Application Type(s):	Extension to Expiring Approval
Decision:	Approved
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• Milwaukie Municipal Code (MMC) Section 19.908 Extensions to Expiring Approvals• MMC Section 19.1005 Type II Review
Neighborhood(s):	Lake Road

Appeal period closes: 5:00 p.m., March 13, 2023

Conditions of Approval

None

Other requirements

None

Case File

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 from the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Brett Kelter, Senior Planner, at 503-786-7657 or kelterb@milwaukieoregon.gov, if you wish to view this case file or visit the project webpage at www.milwaukieoregon.gov/planning/ext-2022-001.

Appeal

This decision may be appealed by 5:00 p.m. on March 13, 2023, which is 15 days from the date of this decision.¹ 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.

Expiration

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 two years of land use approval, and (2) passed final inspection and/or obtained a certificate of occupancy within four years of land use approval. With this additional two-year extension, the original land use approval will now expire on March 15, 2025, six years after the original approval date of March 15, 2019. If the applicant obtains and pays for all necessary development permits and starts construction by March 15, 2025, they will have two additional years (until March 15, 2027) to complete the project and pass a final inspection and/or obtain a certificate of occupancy.

Findings in Support of Approval

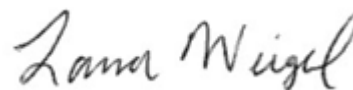
The Findings for this application are included as Exhibit 1.

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

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.

Exhibits

1. Findings in Support of Approval

cc: John Eld, applicant (MWSH Milwaukie LLC) (via email)
Planning Commission (via email)
Joseph Briglio, Community Development Director (via email)
Steve Adams, City Engineer (via email)
Engineering Development Review (via email)
Patrick McLeod, Building Official (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Technician (via email)
Shawn Olson, Fire Marshal, CFD#1 (via email)
NDA(s): Lake Road (via email)
Land Use File(s): EXT-2022-001
Address File(s): 5801 SE Kellogg Creek Dr

EXHIBIT 1
Findings in Support of Approval
File #EXT-2022-001
MWSH Milwaukie LLC (Senior Housing)

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 Eld on behalf of MWSH Milwaukie LLC, has applied for an additional extension of the expiring approval of land use primary file #CU-2018-003 for the property located at 5801 SE Kellogg Creek Dr (Tax Lot 2S2E06AD 00901). The site is split-zoned High Density Residential (HDR) and Moderate Density Residential (R-MD). The land use application file number for the extension request is EXT-2022-001.
2. Primary file CU-2018-003 was an application for approval to construct a 170-unit senior housing facility on the subject property in a multi-story building ranging from one to four stories in height. The new facility will provide 78 independent living suites (one- and two-bedroom units with full kitchens), 60 assisted living suites (one- and two-bedroom units, with all meals provided in a communal dining room), and 32 memory care suites (rooms located in a secured section of the building, with a separate serving kitchen and shared dining room and common amenities). A looped driveway will circle the building for access and circulation, with 139 off-street parking spaces for staff, visitors, and the approximately 30% of independent living residents expected to keep a car on site. 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.

The independent living and assisted living suites were reviewed as “senior and retirement housing,” which was a conditional use in the R-3 and R-10 zones¹; the memory care units were reviewed as a nursing or convalescent home, which is a community service use. Three variances were requested and approved: for building height (to allow four stories), for providing pedestrian walkway connections into the site at less than 300-ft intervals, and from the requirement that nursing and convalescent homes have access from an arterial or collector street. A natural resources review was conducted to evaluate the proposed disturbance to designated Water Quality Resource (WQR) and Habitat Conservation Area (HCA) resources on the site. The application was approved on February 28, 2019, and the appeal period ended on March 15, 2019.

3. In July 2019, the applicant submitted applications for the initial development permits associated with the project (site development, plumbing, electrical) and began some preliminary site-preparation work. Delays due to the COVID-19 pandemic and associated lending restrictions made it challenging for the applicant to obtain the remaining permits and continue the construction process in earnest. In early 2021, prior to the expiration of

¹ At the time of the original review and approval, the site was split-zoned R-3 and R-10. The R-3 zone has since been incorporated into the High Density Residential (HDR) zone and the R-10 zone has been incorporated into the Moderate Density Residential (R-MD) zone.

the original approval (March 15, 2021), the applicant requested and was granted a two-year extension to allow additional time to obtain permits and start construction (to March 15, 2023), as well as a two-year extension to the original deadline to complete construction and obtain a certificate of occupancy (to March 15, 2025).

Delays have continued, but in November 2022 the applicant indicated their intent to revive the project in February 2023. To be safe, they applied for a second extension to the original land use approval, requesting another two years to obtain all necessary permits (to March 15, 2025) plus two more years to complete the project (to March 15, 2027).

4. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):

- MMC Section 19.908 Extensions to Expiring Approvals
- MMC Section 19.1005 Type II Review

The application has been processed in accordance with MMC Section 19.1005 Type II Review, with a decision rendered by the Planning Manager. As allowed by MMC Subsection 19.1002.2.B.1, the requirement of MMC Subsection 19.1005.1 for a preapplication conference was waived by the Planning Manager. The application was deemed complete on February 8, 2023, and public notice was mailed to surrounding property owners that same day. MMC Subsection 19.1005.3.B requires public notice to be mailed to surrounding property owners within 300 ft of the site, but since the applicant originally requested that notice be sent to a 500-ft notice radius, this extension request is also being sent to a 500-ft radius. Public notice of the application was posted on the subject property on February 15, 2023, as required by MMC Subsection 19.1005.3.C.

5. MMC Section 19.908 Extensions to Expiring Approvals

MMC 19.908 establishes a review process for extending the time period during which land use approvals are valid and may be utilized.

a. MMC Subsection 19.908.2 Applicability

MMC 19.908.2 establishes that unexpired land use applications that were required by MMC Titles 14 (Signs), 17 (Land Division), or 19 (Zoning) and that required Type I, II, or III review are eligible for an extension. Applications that have already expired are not eligible for extension. There is no limit to the number of extensions that may be requested or approved.

Primary file CU-2018-003 is an unexpired land use application that was required by MMC Title 19 and was approved through a Type III review. A previous extension was granted in February 2021 (file #EXT-2021-001) and has not yet expired.

The Planning Manager finds that CU-2018-003 is eligible for another extension.

b. MMC Subsection 19.908.3 Review Process

MMC 19.908.3 establishes the procedures and review types that are applicable to extension requests. MMC Subsection 19.908.3.B.2 requires Type II review for the extension application for an expiring application approved through a Type III review.

The expiring application (primary file CU-2018-003) was originally approved by the Planning Commission through Type III review.

The Planning Manager finds that the requested extension is subject to Type II review and that the applicable standards of MMC 19.908.3 are met.

c. MMC Subsection 19.908.4 Approval Criteria

MMC 19.908.4 establishes the following criteria for approving an extension to an expiring land use application:

- (1) There have been no significant changes on the subject property, in the vicinity of the subject property, or to any relevant regulations since the original application was approved.

Aside from the applicant's preliminary permitted site-preparation work, there have not been any significant changes to the property or in the vicinity of the site since the original approval became effective on March 15, 2019.

The zoning designations for the site at the time of approval (R-3 and R-10) have changed—in 2022, the R-3 zone was incorporated into the new High Density Residential (HDR) zone and the R-10 zone was incorporated into the new Moderate Density Residential (R-MD) zone. Both new zones allow uses very similar to what was allowed in the various zones that now comprise them (i.e., R-3, R-2.5, R-2, R-1, and R-1-B for the HDR zone and R-10, R-7, and R-5 for the R-MD zone). In addition, the term "senior and retirement housing" was eliminated in favor of the overarching term "residential care facility," which is allowed outright in the HDR zone and as a community service use (CSU) in the R-MD zone. If the same senior housing project was proposed under the current code, it would be considered a residential care facility. The split zoning would require that it be processed as a CSU (because the site includes R-MD zoning) with Type III review as before, only there would be no conditional use component.

The Planning Manager finds that these adjustments do not constitute significant changes to relevant regulations.

- (2) No modifications are proposed to the approved application or to the conditions of approval.

No modifications to the approved land use or the conditions of approval have been proposed.

- (3) If the previously approved application included a transportation impact study or a natural resource report, an updated report was provided with the extension

application that shows no significant changes on the subject property or in the vicinity of the subject property. A letter from a recognized professional will also satisfy this criterion if it states that conditions have not changed since the original approval and that no new analysis is warranted.

The application for primary file CU-2018-003 included both a transportation impact study and a natural resource report. The applicant has provided letters from the preparers of both reports stating that no significant changes on the subject property or its vicinity have occurred and confirming that no new analysis of either transportation impacts or natural resources is warranted.

The Planning Manager finds that the approval criteria of MMC 19.908.4 are met.

As proposed, the Planning Manager finds that the requested extension is allowable as per the applicable standards and requirements of MMC 19.908.

6. As described in Finding 4, public notice of the application was posted on site and mailed to property owners within 500 ft of the site, the same notification area as that used for primary file CU-2018-003. The application was referred for comment to the following entities: Milwaukie Engineering Department, Milwaukie Building Department, Milwaukie Public Works Department, Milwaukie Police Department, City Attorney, Clackamas Fire District #1, Clackamas County Engineering Review, Metro, ODOT, TriMet, NW Natural, North Clackamas School District, North Clackamas Parks and Recreation District, Lake Road Neighborhood District Association, and Oak Grove Community Council.

No comments were received.