



CITY OF MILWAUKIE

December 15, 2022

Land Use File(s): R-2022-005; VR-2022-012

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on December 15, 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):	Joe Troychak
Location(s):	10903 SE Home Ave
Tax Lot(s):	1S2E31BA10900
Application Type(s):	Replat; Variance
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• MMC Title 17 Land Division• MMC 19.301 Moderate Density Residential Zones• MMC 19.504 Site Design Standards• MMC 19.700 Public Facility Improvements• MMC 19.911 Variances (Type II)• MMC 19.1005 Type II Review
Neighborhood(s):	Hector Campbell

Appeal period closes: 5:00 p.m., December 30, 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 Ryan Dyar, Assistant Planner at 503-786-7661 or dyarr@milwaukieoregon.gov if you wish to view this case file or visit the project webpage at <https://www.milwaukieoregon.gov/planning/r-2022-005>.

This decision may be appealed by 5:00 p.m. on December 30th, 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. A formalized 10 ft Public Utility Easement (PUE) is required to be shown on the final plat along the frontage of Home Ave.
2. Prior to the City signing the final plat, the applicant is required to either remove the existing accessory structure from proposed Lot 2 or establish deed restrictions to ensure compliance with the Milwaukie Municipal Code. If choosing the latter, the City will provide the applicant with the deed restriction document to be filed with Clackamas County. The deed restriction will include the following language:

Per condition of approval #2 of land use application #R-2022-005, the existing accessory structure on Parcel 2 will be removed within 24 months of final plat approval unless one of the following conditions is satisfied:

- a. Building permits for a primary dwelling unit(s) be sited on Parcel 2 are applied for and obtained within the 24-month period, with construction commencing within three months of permit receipt and final inspection for the primary dwellings being concluded within 12 months of permit receipt.
- b. Parcels 1 and 2 are maintained in mutual ownership with an adjacent lot containing a primary structure and will remain in mutual ownership with that adjacent lot unless a primary dwelling is constructed on Parcel 2.

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. Prior to issuing a certificate of occupancy for development on Parcel 2, the applicant is required to construct a combined accessway in accordance with the standards in Milwaukie Municipal Code Chapters 12.16 and 12.24. This includes permitting and constructing a new driveway approach and driveway that is at least 12 ft wide, centered on the pole portion of Parcel 2, and located at least 5 ft from any property line.
 - a. A Right-of-Way permit is required to be approved and issued prior to starting work on constructing the combined accessway.
4. Prior to issuing a certificate of occupancy for development on Parcel 2, the applicant must provide a paved turnaround for emergency access vehicles as required in MMC Section 19.504.
5. Installation of required screening and planting in accordance with the standards in MMC Subsection 19.504.7.D is required prior to final inspections and occupancy of development on Parcel 2 unless a bond or other surety acceptable to the City Attorney is provided.
6. Prior to the issuance of a building permit for new construction on Parcel 2, a landscaping plan must be provided to the Planning Manager that complies with the requirements in MMC Subsection 19.504.7.E.

Additional Requirements

Additional requirements are items that the applicant will be required to complete as their project progresses. They are included with the conditions so that applicants and staff have a clear understanding of what is required at various points in the development and permitting process. Typical examples are items like stormwater management plans, limits on the hours of construction, and other inspections and permits required by Building, Engineering, or Public Works.

1. MMC Section 17.04.120 Recording
 - a. As per MMC Subsection 17.04.120.A, the recording instruments for boundary changes must be submitted to the County Surveyor within 6 months of City approval.
 - b. As per MMC Subsection 17.04.120.B, prior to recording a replat the applicant must submit the recording instruments to the Planning Manager for a determination of consistency with the City Code and required approvals.
 - c. As per MMC Subsection 17.04.120.E, a copy of the recording instruments must be submitted to the Planning Manager no later than 15 days after filing with the County Surveyor.
2. Per MMC 19.504, no parking is permitted along the pole portion of Parcel 2 to allow emergency vehicle access to both Parcel 1 and Parcel 2.

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

cc: Joe Troychak, applicant (via email)
Milwaukie Planning Commission (via email)
Joseph Briglio, Community Development Director (via email)
Steve Adams, City Engineer (via email)
Engineering Development Review (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Technician (via email)
Clackamas County Fire District #1 (via email)
Clackamas County Engineering Development Review (via email)
NDA(s): Hector Campbell (via email)
Interested Persons: Lara Magnani (via email)
Land Use File(s): R-2022-005

EXHIBIT 1
Findings in Support of Approval
File #R-2022-005; VR-2022-012, Replat and Variance for 10903 SE Home Ave

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, Joe Troychak, has applied for approval to replat his property at 10903 SE Home Ave (the “subject property”) to create a new flag lot. He is also requesting a variance to reduce the front and rear yard setbacks on the newly created flag lot to accommodate a new single-unit dwelling. The subject property is identified as (1S2E31BA10900) on the Clackamas County Tax Assessor map and is zoned Moderate Density Residential (R-MD).
2. The subject property is comprised of the east one-half of the south one-half of Lot 1, Block 4, of the Homewood Park Subdivision (subdivision platted in 1925). The proposal is to replat the property, which is approximately 21,070-sq ft, to create two total lots. Parcel 1 would be a standard rectangular lot of approximately 9,070 sq ft in area. Parcel 2 would be a flag lot that is approximately 11,897sq ft in area, with a 25.27 ft-wide accessway or “pole” and a “flag” portion of approximately 9,018 sq ft in area.
3. The proposed boundary adjustment involves the reconfiguration of a platted lot from a recorded subdivision and therefore constitutes a replat as per the definitions in Milwaukie Municipal Code (MMC) Chapter 17.08. The proposal is subject to the following provisions of the MMC:
 - MMC Title 17 Land Division, including:
 - 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 Moderate Density Residential Zone (R-MD)
 - MMC Section 19.504 Site Design Standards
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.911 Variances (Type II)
 - MMC Section 19.1005 Type II Review

The applicant is the property owner and has authority to initiate the application per MMC Subsection 19.1001.6.A. The application was initially submitted on November 3, 2022 and deemed complete on December 18, 2022. The application has been processed in accordance with MMC Section 19.1005 Type II Review, with a decision by the Planning Manager.

4. MMC Title 17 Land Division

MMC Title 17 establishes the standards and procedures for land division and property boundary changes.

a. MMC Chapter 17.12 Application Procedure and Approval Criteria

1) MMC Section 17.12.020 Application Procedure

MMC Table 17.12.020 outlines the applicable review procedures for various types of land divisions and property boundary changes, including replats. As per MMC Table 17.12.020, a partition replat (i.e., a replat resulting in 3 or fewer lots) that does not modify a plat originally decided by the City's Planning Commission and is not a parcel consolidation is subject to Type II review. As per MMC Subsection 17.12.020.B.1, Type II review may be changed to Type I review upon finding that the proposal is consistent with applicable standards and criteria, that it is consistent with the basis and findings of the original approval, and that it does not increase the number of lots.

The subject property is comprised of the east one-half (1/2) of the south one-half (1/2) of Lot 1, Block 4, of the Homewood Park Subdivision (subdivision platted in 1925). The proposed reconfiguration of the underlying subdivision lot would create a new developable lot, which is a partition replat as per the definitions of MMC Chapter 17.08 and the guidance of MMC Table 17.12.020.

The original plat, Homewood Park, was platted and recorded in 1925 by Clackamas County, well before the City's first subdivision ordinance was adopted in 1967. The proposed replat is not a parcel consolidation and is consistent with all applicable standards and criteria but would increase the number of lots from one to two.

The Planning Manager finds that the proposed replat is not a candidate for reduction to Type I review because it is not a consolidation and will result in the creation of an additional developable lot. Therefore, it is subject to Type II review.

2) MMC Section 17.12.030 Approval Criteria for Lot Consolidation, Property Line Adjustment, and Replat

MMC 17.12.030 establishes three approval criteria for a replat.

(a) The boundary change is compliant with Title 17 and Title 19.

As discussed in these findings, the proposed replat complies with all applicable standards of Titles 17 and 19.

(b) The boundary change will allow reasonable development of the affected lots and will not create the need for a variance of any land division or zoning standard.

As discussed in Findings 7, the applicant is requesting a variance to the rear and front yard setback standard on Parcel 2 to accommodate a larger single-unit dwelling. No further development is proposed for Parcel 1, which already contains a single-unit dwelling.

Notwithstanding the variance requested, the proposed lot configuration could easily accommodate development without this variance. The proposed configuration of Parcel 1 and Parcel 2 allows for reasonable development to occur without the need for a variance of any land division or zoning standard.

- (c) Boundary changes shall not reduce residential density below minimum density requirements of the zoning district in which the property is located.

The subject property is zoned for moderate-density residential development, with 0.48 acres and a minimum density of 2 single-dwelling units. As proposed, Parcel 1 would be approximately 0.20 acres, with a minimum and maximum density of 1 unit. Parcel 2, as proposed, would be approximately 0.27 acres, with a minimum density and maximum density of 1 unit. As proposed, each property would contain 1 single-dwelling unit. The minimum density requirements for the property remain unchanged. The proposed replat does not reduce the residential density below minimum density requirements.

The Planning Manager finds that the proposed replat meets the approval criteria established in MMC 17.12.030.

The Planning Manager finds that the proposed replat meets all applicable standards of MMC 17.12.

- b. MMC Chapter 17.16 Application Requirements and Procedures

MMC Section 17.16.050 establishes the application requirements for replat, including completed application forms and checklists, applicable fees, a narrative describing how the proposal meets approval criteria, and the applicable information specified for preliminary plat on the City's Preliminary Plat Checklist and in MMC Chapter 17.20 Preliminary Plat.

The applicant's submittal materials include the necessary forms, checklists, and fees, as well as a narrative, preliminary plat document, and other information sufficient to demonstrate compliance with the applicable standards and criteria.

As proposed, the Planning Manager finds that the application meets the applicable requirements for replat submittal.

- c. 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, existing improvements on Parcels 1 and 2, and the new configuration for both proposed parcels.

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

d. MMC Chapter 17.28 Design Standards

1) MMC Section 17.28.040 General Lot Design

MMC 17.28.040 establishes general design standards for lots, including standards for size, shape, compound lot line segments, and frontage.

(a) MMC Subsection 17.28.040.A Size and Shape

MMC 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. Minimum lot standards shall conform to Title 19.

As addressed in Findings 5 and 6, the proposed replat would result in parcels that both have adequate size and dimensions for development and uses allowed in the underlying R-MD zone and conform to the standards of Title 19.

(b) MMC 17.28.040.B Rectilinear Lots Required

MMC 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.

As proposed, Parcel 1 would be rectilinear in shape, with sidelines running at right angles to the street that each lot faces and rear lot lines running parallel to the street. Parcel 2 is proposed as a flag lot and complies with the standards for flag lots in Section 19.504.

(c) MMC 17.28.040.C Limits on Compound Lot Line Segments

MMC 17.28.040.C discourages cumulative lateral changes in direction of a side or rear lot line exceeding 10% of the distance between opposing lot corners along a given lot line. Changes in direction shall be measured from a straight line drawn between opposing lot corners.

As proposed, Parcel 1 would be a standard rectangular shape. Parcel 2 would be a flag lot shape, which technically includes a compound segment. However, Parcel 2 would conform to the applicable flag lot design standards as addressed in Finding 6.

(d) MMC 17.28.040.D Adjustments to Lot Shape Standard

MMC 17.28.040.D provides that lot shape standards may be adjusted subject to Section 19.911 Variances.

No adjustment to lot shape standards has been requested or proposed.

(e) MMC 17.28.040.E Limits on Double and Reversed Frontage Lots

MMC 17.28.040.E limits double and reversed frontage lots except where essential to provide separations of residential development from railroads,

traffic arteries, or adjacent nonresidential uses, or to overcome specific disadvantages of topography and orientation.

The proposed replat would not result in any double or reversed frontage lots.

(f) MMC 17.28.040.F Measurement of Required Frontage

MMC 17.28.040.F requires that the required frontage be measured along the street upon which the lot takes access.

As proposed, both parcels have frontage on and would take access from Home Ave. Parcel 2 would have 79.51 ft of frontage, more than the 35 ft minimum requirement. Parcel 1 would provide 25.27 ft of frontage, which complies with the 25 ft requirement for flag lots.

The Planning Manager finds that the proposed replat complies with all applicable design standards of MMC 17.28.040.

e. MMC Chapter 17.32 Improvements

MMC 17.32 establishes procedures for public improvements, including a requirement that all work shall conform to the standards and specifications of the Public Works Standards and MMC Chapter 19.700.

As discussed in Finding 7, a combined driveway approach and accessway must be established prior to future development. This requirement is included as a condition of approval. A new curb and sidewalk were recently added along Home Ave; therefore, no additional improvements are required.

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

As conditioned, the Planning Manager finds that the proposed replat meets all applicable standards of MMC Title 17.

5. MMC Section 19.301 Moderate Density Residential (R-MD) Zone.

a. MMC Subsection 19.301.2 Allowed Uses

MMC 19.301.2 establishes the uses allowed in the R-MD zone. Various types of residential uses are permitted by right, including single-unit dwellings, duplexes, triplexes, quadplexes, townhouses, and cottage cluster developments.

As proposed, the existing house will remain on Parcel 1, and Parcel 1 is large enough and has appropriate dimensions to accommodate various permitted housing types allowed in the R-MD zone. Future development on Parcel 2 will be reviewed for compliance with the applicable standards of the R-MD zone and other relevant sections of the municipal code at that time.

An accessory use is allowed only when there is a primary use on the site, so the existing accessory structures that would be on Parcel 2 cannot remain without a conforming use being established. The applicant has proposed to demolish the existing detached garage on Parcel 2

and add a primary use (a single-unit dwelling). A condition has been established to clarify the timing of that required action.

As conditioned, the standard is met.

- b. MMC Table 19.301.4 establishes development standards for the Moderate Density Residential (R-MD) zone. Table 1 provides the applicable standards for development in the R-MD zone with respect to both lots resulting from the proposed replat.

Table 1 Lot and Development Standards			
Standard	R-MD Requirement	Parcel 1	Parcel 2
Minimum lot size	5,000 sq ft (for a single-unit dwelling)	9,070 sq ft	9,018 sq ft flag with 2,879 sq ft pole
Minimum lot width	Lots > 7,000 sq ft = 60	79.51 ft	104.82 ft
Minimum lot depth	Lots > 7,000 sq ft = 80 ft	114.09	86.04 ft
Minimum street frontage	Standard Lot = 35 ft Flag Lot = 25 ft	79.51 ft	25.27 ft
Front yard	Standard Lot 20 ft Flag Lot with Single-Unit Dwelling = 30 ft	48.2 ft	22.5 ft
Side yard(s)	Lots > 7,000 sq ft = 5/10	30.4 ft to the north property line and 18.8 ft to the proposed southern property line.	No specific single-unit dwelling has yet been proposed. Future development will be required to meet the 5/10 side-yard setback standard.
Rear yard	Standard Lot 20 ft Flag Lot with Single-Unit Dwelling = 30 ft	25.9 ft	22.5 ft
Minimum density	Lots > 7,000 sq ft = 5.0 units/acre (1 Unit)	1 unit	1 unit
Maximum density	Lots > 7,000 sq ft = 6.2 units/acre (1 Unit)	1 unit	1 unit

The Planning Manager finds that with the approval of the variance to reduce the front and rear yard setbacks for Parcel 2, the proposed replat meets all applicable development standards of MMC 19.301 for both parcels.

- 6. MMC Section 19.504.7 Flag Lot and Back Lot Design and Development Standards
 MMC Subsection 19.504.7 establishes flag lot design and development standards. This section is met as described below.

- a. MMC 19.504.7.A states that flag lots in all zones are subject to the development standards of MMC 19.504.7.

As proposed, Parcel 2 is a flag lot and therefore is 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 19.504.7.B contains development standards for flag lots.

- 1) MMC 19.504.7.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 has an area of 9,018 sq ft outside of the pole and complies with the minimum lot area requirement for the R-MD zone. The standard is met.

- 2) MMC 19.504.7.B.2 establishes yard setbacks for flag lot development requiring a minimum 30-ft front and rear yard and 10-ft side yards.

There is no specific development proposed for Parcel 2. As discussed in Finding 8, however, the applicant is requesting a variance to reduce the rear and front yard setbacks on Parcel 2 to 22.5 ft to accommodate a single-unit dwelling. The applicant is not proposing to reduce the side-yard setbacks. With the approval of the variance, the standard is met.

- 3) MMC 19.504.7.B.3 states that variances to lot area, lot width, and lot depth standards are subject to Section MMC 19.911.

There are no variances requested for the creation of Parcel 2. The standard does not apply.

- 4) MMC 19.504.7.B.4 establishes standards for flag lot frontage, accessway, and driveway design.

- (a) MMC 19.504.7.B.4.a 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.

As proposed, Parcel 2 has access on Home Ave, a public street, and at least 25 ft of frontage. The standard is met.

- (b) MMC 19.504.7.B.4.b requires that abutting flag lots shall have a combined frontage and accessway of 25 ft.

As proposed Parcel 1 will be a standards rectilinear lot and only Parcel 2 will be a flag lot. The standard is not applicable.

- (c) MMC 19.504.7.B.4.c contains standards for driveway design and emergency vehicle access.

- (i) MMC 19.504.7.B.4.c.1 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.

- (ii) MMC 19.504.7.B.4.c.2 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.

As proposed and conditioned, the driveway will be centered within the pole portion of the flag lot.

- (iii) MMC 19.504.7.B.4.c.3 requires that a paved turnaround area, or other provisions intended to provide emergency vehicle access and adequate maneuvering area, may be required.

The application was referred to Clackamas Fire District #1 (CFD) on November 22nd, 2022. No comments were provided from CFD. As conditioned, the plat shall include appropriate easements or restrictions to maintain the minimum requirements for CFD access.

- (iv) MMC 19.504.7.B.4.c.4 requires that the flag lot driveway be consolidated with the driveway on the parent lot to the greatest extent possible.

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

- (v) MMC 19.504.7.B.4.c.5 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 2 lots. The standard does not apply.

- (vi) MMC 19.504.7.B.4.c.6 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 will be permitted within the access pole area.

The Planning Manager finds that as proposed and conditioned, the standards in MMC 19.504.7.B.4.c. are met.

The Planning Manager finds that as proposed and conditioned, the standards in MMC 19.504.7.B are satisfied.

- c. MMC 19.504.7.D contains standards for the protection of adjoining properties for flag lot development. Flag lots must be screened in accordance with this subsection to minimize potential adverse impacts on abutting properties. Fencing and screening must conform to the clear vision standards of Chapter 12.24. Fencing shall also conform to the standards of Subsection 19.502.2.B.

- 1) MMC 19.504.7.D.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 the 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 the final inspection and occupancy of structures on Parcel 2.

- 2) MMC 19.504.7.D.2 requires that impacts to neighboring lots due to the use of the flag lot driveway 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 19.504.7.D.2.a – c.

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

- 3) MMC 19.504.7.E requires that a landscaping plan be submitted to the Planning Manager prior to the issuance of a building permit for new construction.

As conditioned, a landscaping plan will be submitted with the building permit application.

As conditioned, the Planning Manager finds that the development complies with the requirements in 19.504.

7. MMC 19.700 Public Facility Improvements

MMC 19.700 is intended to ensure that development, including redevelopment, 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 partitions, subdivisions, replats, new construction, modification of existing structures, and changes or intensifications in use.

The applicant proposes to replat the subject property to create a new developable lot. The proposed replat triggers the requirements of MMC 19.700.

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 pre-application conference, establishing the type of application required, and providing approval criteria.

The applicant had a preapplication conference on October 13th, 2022. As noted in Finding 7-c, the proposed replat does not trigger a Transportation Impact Study (TIS), so the proposal's compliance with MMC 19.700 has been evaluated as part of the replat review, as per MMC Subsection 19.703.2.B.

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 establishes the process and requirements for evaluating development impacts on the surrounding transportation system, including determining when a formal TIS is necessary and what mitigation measures will be required.

The City Engineer has determined that the proposed replat (which involves the creation of a new developable lot) would not trigger a significant increase in trip generation and therefore does not require a TIS.

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.

The proposed replat would create one new developable lot (Parcel 2) of sufficient size to support a single-unit detached dwelling or a middle-housing development. Development on Parcel 2 would have new impacts on the public street system. New public improvements, in the form of a curb, sidewalk, and bioswale were recently added along the frontage of both Parcel 1 and Parcel 2. However, the existing accessway is not sized appropriately for the combined access required under 19.504 (see Finding 6). Before a certificate of occupancy is issued for development on Parcel 2, a new combined driveway must be permitted and constructed. This will be added as a condition of approval. The proposed improvement will enable safe and efficient access for passenger and emergency vehicles; the improvement is proportional to the anticipated impacts of development on Parcel 2.

e. MMC Section 19.707 Agency Notification and Coordinated Review

MMC 19.707 establishes provisions for coordinating land use application review with other agencies that may have some interest in a project that is in proximity to facilities they manage.

The proposed replat is within 200 ft of SE Monroe St, a designated Collector in Figure 8-1 of the City's Transportation System Plan. It was referred to Clackamas County Engineering as required under MMC 19.707. The County did not provide any comments.

f. 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.

1) MMC Subsection 19.708.1 General Street Requirements and Standards

MMC 19.708.1 provides general standards for streets, including access management, clear vision, street layout and connectivity, and intersection design and spacing.

As mentioned, new improvements (sidewalk, curb, bioswale) were recently added along the frontage of proposed Parcel 1 and Parcel 2. A new shared driveway approach proportional to the anticipated impacts will be required for Parcel 2. A condition of approval has been included requiring the applicant to obtain a right-of-way permit and construct the combined accessway prior to issuing a certificate of occupancy for development on Parcel 2.

As conditioned, the proposed replat is consistent with the applicable standards of MMC 19.708.1.

As conditioned, the Planning Manager finds that the proposed replat will meet all applicable standards of MMC 19.708.

The Planning Manager finds that, as conditioned, the proposed replat meets the applicable public facility improvement standards of MMC 19.700.

8. MMC Section 19.911 Variances

a. MMC 19.911.3 establishes the review process for variance applications.

The applicant has requested a variance to reduce the front and rear yard setback from the required 30 ft for a single-unit dwelling to 22.5 ft. The MMC, Subsection 19.911.3, allows applicants to request a reduction of up to 25% of a yard width standard through a Type II review process. The request meets the procedural requirements for a variance through the Type II review process.

The Planning Manager finds that the application is subject to Type II Variance review to reduce the front and rear yard setback to 22.5 ft

b. MMC 19.911.4.A establishes criteria for approving Type II Variance applications.

An application for a Type II Variance shall be approved when all the criteria in 19.911.4.A have been met.

1) The proposed variance, or the cumulative effect of multiple variances, will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare.

The variance is being pursued to permit the development of a single-unit dwelling with reduced setbacks and there is no evidence that granting the variance will be detrimental to the surrounding properties. The applicant's narrative discusses the inherently private and landscaped nature of Parcel 2, relative to surrounding properties and proposed Parcel 1. Cumulatively, these plantings and the existing fence should provide a sufficient buffer to mitigate the impacts associated with the reduced setbacks. There are no identified natural resources nearby.

The Planning Manager finds that the approval criteria are met.

- 2) The proposed variance will not interfere with planned future improvements to any public transportation facility or utility identified in an officially adopted plan such as the Transportation System Plan or Water Master Plan.

The Engineering Department has confirmed that the setback reduction will not interfere with any future right-of-way improvements. Proposed Parcel 2's front-facing eastern property line is approximately 114 ft from Home Ave.

The Planning Manager finds that this approval criterion is met.

- 3) Where site improvements already exist, the proposed variance will sustain the integrity of, or enhance, an existing building or site design.

There is no evidence that granting the variance will threaten the integrity of the existing development or site design. The existing house and perimeter landscaping will be maintained.

The Planning Manager finds that the approval criteria are met.

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

No impacts from the proposed variance have been identified.

The Planning Manager finds that the approval criteria are met.

The Planning Manager finds that the approval criteria for the Type II Variance are met. The setback reduction is limited to a single-unit dwelling on Parcel 2 and any future development beyond that must meet the setback standards in the Milwaukie Municipal Code unless a separate variance is pursued and granted.

9. The application was referred to the following departments and agencies on November 22nd, 2022:

- Milwaukie Building Department
- Milwaukie Community Development Director
- Milwaukie Planning Manager
- Milwaukie Engineering Department
- Milwaukie Public Works Department
- Milwaukie NDA Program Manager
- Milwaukie Police Department
- City Attorney
- Hector-Campbell (NDA), Chairperson and Land Use Committee (LUC)
- Clackamas County Engineering Development Review
- Clackamas Fire District #1 (CFD#1)
- NW Natural

In addition, notice of the application was mailed to owners and residents of properties within 300 ft of the subject property on November 22nd, 2022.

The comments received are summarized as follows:

- **Lara Magnani** (neighbor) provided comments in opposition to developing the rear portion for the property with a dwelling and offered some support for adding a detached garage to the property. The comment also asked staff to clarify which setbacks the applicant proposed to reduce through the variance process.