



CITY OF MILWAUKIE

April 14, 2022

Land Use File(s):R-2023-001; VR-2023-003

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on April 14, 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):	Eduard Shtogrin, Integrity Homes NW, Inc.
Location(s):	10705 SE 52 nd Ave
Tax Lot(s):	1S2E31BA01200
Application Type(s):	Replat; Variance
Decision:	Approved
Review Criteria:	Milwaukie Municipal Code: <ul style="list-style-type: none">• MMC Title 17 Land Division, including:<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• MMC 19.301 Moderate Density Residential (R-MD) Zone• MMC 19.700 Public Facility Improvements• MMC 19.911 Variances• MMC 19.1005 Type II Review
Neighborhood(s):	Hector-Campbell; Linwood

Appeal period closes: 5:00 p.m., May 1, 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 by email at dyarr@milwaukieoregon.gov if you wish to view this case file or visit the project webpage at <https://www.milwaukieoregon.gov/planning/r-2023-001>.

This decision may be appealed by 5:00 p.m. on May 1, 2023, 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.

Exhibits:

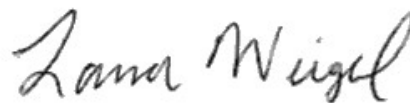
1. Findings in Support of Approval

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

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.

cc: Eduard Shtogrin, Integrity Homes NW, Inc., Applicant (via email)
Paul Roeger, CMT Surveying and Consulting, Applicant Representative (via email)
Joseph Briglio, Community Development Director (via email)
Steve Adams, City Engineer (via email)
Engineering Development Review (via email)
Peter Passarelli, Public Works Director (via email)
Milwaukie Building Department (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Technician (via email)
Clackamas County Fire District #1 (via email)
NDA(s): Hector Campbell ; Linwood (via email)
Milwaukie NDA Program Manager
Clackamas County Engineering Development Review (via email)
Metro Land Use Review (via email)
NW Natural (via email)
Land Use File(s): R-2023-001; VR-2023-003
Address File: 10705 SE 52nd Ave
Interested Persons:
Linda Hedges (via email)
Mary Zellharie (via email)
Christopher and Diane McKillop (via email)
Erika Wedenoja (via email)
Yolanda Farron (via email)
Kate O'Brien (via email)
Susan Dornfeld (via email)

EXHIBIT 1
Findings in Support of Approval
File #R-2023-001; VR-2023-003, Replat and Variance for 10705 SE 52nd 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, Eduard Shtogrin, Integrity Homes NW, Inc., and his representative, Paul Roeger, applied for approval to adjust the boundary lines of five historic subdivision lots at 10705 SE 52nd Ave, (the “subject property”) through a replat. The subject property is identified in the Clackamas County Tax Assessor map as 1S2E31BA01200 and is zoned Moderate Density Residential (R-MD).
2. The subject property is comprised of Lots 1-5, Block 48, of the Minthorn Addition to the City of Portland Subdivision (subdivision platted in 1890). The underlying lots are currently all 25 ft wide by 100 ft deep and have historically been used as a single property that is approximately 12,513 sq ft. The site was previously developed with a single-unit dwelling that has since been demolished; the site is currently vacant. The applicant is proposing to re-establish and adjust the historic property lines to accommodate a five-unit townhouse development. Under the proposal, the replatted Lot 1 will be 2,999 sq ft, Lot 2 will be 2,000 sq ft, Lots 3 and 4 will be 2,467 sq ft, and Lot 5 will be 2,475 sq ft.
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 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 the authority to initiate the application per MMC Subsection 19.1001.6.A. The application was submitted on March 9, 2023; it was deemed complete on March 24, 2023. 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 subdivision replat (i.e., any modification to a plat affecting 4 or more lots) is subject to a Type III review. As per MMC Subsection 17.12.020.B.1, Type III review may be changed to Type II 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 Lots 1-5, Block 48, of the Minthorn Addition to the City of Portland (subdivision platted in 1890). The proposal would reconfigure five underlying subdivision lots, which is a subdivision replat as per the definitions of MMC Chapter 17.08 and the guidance of MMC Table 17.12.020.

The original plat was recorded in 1890 by Clackamas County; this was before the City's first subdivision ordinance was adopted in 1967. The proposed replat is consistent with all applicable standards and criteria, does not increase the number of lots, and would not alter a decision made by the Milwaukie Planning Commission because the plat predates the Commission.

The Planning Manager finds that the proposed replat is a candidate for reduction 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 Finding 7, the applicant is requesting a variance to two separate standards in Title 19. The first variance would reduce the 15-ft street-side setback on Lot 1 to 11.25 ft to accommodate the location of a proposed townhouse. The second variance would increase the maximum lot coverage from 45% to 49.5% for Lot 2 to accommodate a townhouse that is of equal size to the other units proposed in the development.

Both variances stem from an unforeseen consequence of recent changes to the Milwaukie Municipal Code (MMC); the code was updated to allow for middle

housing types, as required by Oregon House Bill 2001 (2019) and called for in the Milwaukie Comprehensive Plan Section 7: Housing Goals and Policies. Per MMC Table 19.301.4, the maximum lot size for a townhouse lot is 3,000 sq ft. If this maximum lot size is considered in conjunction with the street-side setback (15ft), the typical width of a townhouse (20 ft), and the typical lot depth in the city (100 ft), it becomes challenging not to exceed the maximum lot size standard on a typical corner lot. This was not the intent of the code update, and changes have been proposed to the MMC to accommodate a townhouse on corner lots up to 3,500 sq ft.

That said, the proposed Lot 1 is of sufficient size that it could accommodate a townhouse without the street-side setback variance; the Milwaukie Building Official confirmed that it would be possible to build a 14-ft-wide townhouse that complies with the Oregon Residential Specialty Code. However, the applicant has elected to pursue a variance to the street-side setback to build a more conventionally sized townhouse unit.

To minimize the magnitude of the setback reduction, the applicant has also proposed a reconfiguration of the property line between Lots 1 and 2. This results in Lot 2 being smaller than the site otherwise would allow for and is the basis for the second variance request, to increase the maximum lot coverage from 45% to 49.5%. Although it would be possible to build a smaller unit on Lot 2 to comply with the maximum lot coverage standard, the applicant is requesting to slightly exceed the standard to accommodate the size of unit that would be feasible if not for the maximum lot size issue on Lot 1.

In summary, the proposed configuration of Lots 1-5 would allow for reasonable development to occur without the need for a variance of any land division or zoning standard. Here, reasonableness is defined by what the Oregon Residentially Specialty Code would permit. This standard is met.

- (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 and is comprised of five historic subdivision lots. Each of the underlying lots is approximately 2,500 sq ft. The minimum and maximum density for townhouse development in the R-MD zone is 25 units per acre. For each underlying lot, the minimum density is 1.43 units, which is rounded down to one unit per the density measurement standards of MMC Subsection 19.202.4.

As proposed, each reconfigured lot would be between 2,000 sq ft and 2,999 sq ft. The minimum density for each of these lots is one unit; therefore, the boundary change will 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 details about the vicinity, existing conditions, existing improvements on the property, and the new configuration for each of the five lots.

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 lots that each 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, Lots 1-5 would be rectilinear in shape, with sidelines running at right angles to the street and front and rear lot lines running parallel to the street.

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, Lots 1-5 are rectilinear in shape and do not contain lateral changes in the side or rear lot lines.

(c) 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.

(d) 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.

(e) MMC 17.28.040.F Measurement of Required Frontage

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

As proposed, Lots 1-5 would take access from Jackson Street, and each would have between 20 and 29.9 ft of frontage along that street. The minimum required frontage for a new townhouse lot is 20 ft.

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 conforms to the standards and specifications of the Public Works Standards and MMC Chapter 19.700.

The frontage along Jackson Street does not currently contain a sidewalk. Finding 7 discusses the requirements for public improvements related to this proposed development.

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 Zone (R-MD)

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 and as discussed in these findings, the reconfigured lots are consistent with the standards for townhouse lots. Townhouses are an outright permitted use in the R-MD zone.

The Planning Manager finds that this standard is met.

b. MMC Subsection 19.301.4 and 19.301.5 Development Standards

MMC Table 19.301.4 establishes development standards for the R-MD zone. Table 1 provides the applicable standards for development in the R-MD zone with respect to the five lots resulting from the proposed replat.

Table 1 Lot and Development Standards						
Standard	R-MD Requirement	Lot 1	Lot 2	Lot 3	Lot 4	Lot 5
Min/max lot size	1,500/3,000 sq ft (Townhouse)	2,999 sq ft	2,000 sq ft	2,467 sq ft	2,467 sq ft	2,475 sq ft
Minimum lot width	Lots 1,500 – 3,000 sq ft = 20	29.99	20	24.67	24.67	24.75
Minimum lot depth	Lots 1,500 – 3,000 sq ft = 70 ft	100 ft	100 ft	100 ft	100 ft	100 ft
Minimum street frontage	20 ft	29.99 ft	20 ft	24.67 ft	24.67 ft	24.75 ft
Side yard(s)	Standard Side: 5 ft or 0 ft for internal townhouse lots Street-Side-Yard: 15 ft	11.25 ft (Subject to Variance. See Finding 7) 0 ft (Internal Lot Line)	0 ft (Internal Lot Line) 0 ft (Internal Lot Line)	0 ft (Internal Lot Line) 5 ft	5 ft 0 ft (Internal Lot Line)	0 ft (Internal Lot Line) 5.08 ft

Maximum Lot Coverage	45%	29%	49.5% (Subject to variance. See Finding 7).	38%	38%	38%
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The development will be reviewed for compliance with the remaining development standards in MMC Table 19.301.4 and MMC Subsection 19.301.5 through the development permit process.

The Planning Manager finds that, with approval of the variance, the proposed replat meets all applicable development standards of MMC 19.301.

6. 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 reconfigure five developable lots. 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 pre-application conference on November 23, 2022. As noted in Finding 6-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 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 reconfigure five developable lots. As stated, the applicant is proposing to construct five new townhouses. There are no existing frontage improvements on

either the 52nd Avenue or Jackson Street frontages. The City Engineer has determined that a Fee In Lieu of Construction (FILOC) for curb, gutter, sidewalks, and landscaping on both frontages is proportional to the development. The FILOC will not include the width of any new accessways.

To service the new development, the existing sewer main must be extended on Jackson Street. Street paving and repair will be required along all new utility trenches.

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 subject property is within 200 ft of a designated collector, Monroe Street. Consistent with MMC 19.707, the application was referred to Clackamas County Engineering Development Review and Metro on March 24, 2023.

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 for access management, clear vision, street layout and connectivity, and intersection design and spacing.

As discussed above, the City Engineer has determined that FILOC will be acceptable for this development. Three new accessways are proposed to service the five new townhouses.

An extension of the existing 8-in wastewater main located under Jackson Street is required to service the new development. A new manhole must be constructed 5 ft past the last sewer lateral connection. New sewer connections are required for the new townhouses. If the existing sewer lateral is in acceptable condition, it can be used for one of the units.

New waterline connections are required for the new townhouses. If the existing water service lateral is in acceptable condition, it can be used for one of the units.

The developer will be responsible for half-street pavement repairs along the Jackson Street frontage for the utility trenches. Additionally, it is recommended that the applicant enter a Development Agreement with the city to construct an asphalt pavement overly Jackson Street from 52nd Avenue to Home Avenue.

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.

7. MMC Chapter 19.911 Variances

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

The applicant is requesting a variance to two separate standards in Title 19. The first variance would reduce the 15-ft street-side setback on Lot 1 from 15 ft to 11.25 ft to accommodate the location of a proposed townhouse. The second variance would increase the maximum lot coverage from 45% to 49.5% for Lot 2 to accommodate a townhouse that is of equal size to the other units proposed in the development. MMC Subsection 19.911.3.B allows applicants to request a reduction of up to 25% of the street-side width standard and up to 10% of the lot coverage standard through a Type II review process. The request meets the procedural requirements for a variance through the Type II review process. Per MMC Subsection 19.911.3.A.3, a single variance application may include up to three variance requests.

The Planning Manager finds that the application is subject to Type II Variance review.

- 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.

Street-side setback (Lot 1): Concerns were raised through the public comment period that reducing the street-side setback would cause a clear vision issue at the corner of 52nd Avenue and Jackson Street. The City Engineer reviewed the proposal and concluded that the variance would not result in the violation of the clear vision standard under MMC Chapter 12.24. There is an approximately 13-ft vegetated buffer between the eastern property line of Lot 1 and the paved portion of 52nd Avenue; with a street-side setback of 11.25 ft, the structure will sit approximately 24 ft from the edge of the pavement. Clear sight distance is measured at a point of 15 ft from the edge of the travel lane; therefore, there is no evidence that the proposal will interfere with clear vision.

Additional concerns were raised about the aesthetics of the proposed townhouses vis-à-vis existing development in the vicinity, which is primarily single-unit houses. One commenter suggested that permitting a reduction to the street-side setback would exacerbate the contrast between development styles. Promoting high-quality development is a goal of the City, and the MMC is drafted toward that end; there is no evidence to suggest that the proposed development will be detrimental to surrounding properties or the public health, safety, or welfare. Per state law and City policy, the townhouse style of development is permitted by right in the zone. Moreover, as established above, there is a 13-ft landscaped buffer between the pavement edge and the easternmost property line and there is no funding or plan to make improvements to 52nd Avenue that would eliminate this buffer; therefore, the setback difference will arguably be difficult for a passerby to perceive.

Finally, there are no designated natural resources protected by MMC 19.402 on the subject property or on nearby properties.

Maximum Lot Coverage (Lot 2): No evidence exists to suggest that granting the variance to the lot coverage standard would be detrimental to surrounding properties. The smaller size of Lot 2 is primarily a result of the greater street-side setback required on Lot 1 and the builder's desire to reduce the magnitude of the street-side setback variance request. As proposed, the other four lots in the development far exceed the minimum lot size and, as shown in Table 1 under Finding 5, are proposed to be well below the maximum lot coverage standard. The difference in lot size and coverage will be difficult to perceive by a passerby. Lastly, as noted above, there are no designated natural resources on the property or nearby.

Summary: There is no evidence to suggest that approving the variances, whether independently or in conjunction, will be detrimental to surrounding properties or the broader public interest. Rather, the evidence suggests that the property is of sufficient size to accommodate the proposed development and that the need for the variances is primarily the result of an administrative oversight in the code-writing process. The evidence suggests that permitting the requested variances will primarily have a positive impact on surrounding properties, public health, safety, and welfare by providing needed housing and using land more efficiently. The Planning Manager finds that this approval criterion is met for both requested variances.

- (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.

Street-Side Setback (Lot 1): The Milwaukie City Engineer has confirmed that the setback reduction will not interfere with any future right-of-way (ROW) improvements along 52nd Avenue. There are currently no plans to widen the ROW, which is designated as a local road in Figure 8-1 in the City's Transportation System Plan. Per MMC Table 19.708.2, the full ROW width of a local road is between 20 ft and 68 ft; currently, the ROW portion of 52nd Avenue is 60 ft wide. As mentioned in Finding 7(b)(1), there is approximately 13 ft of undeveloped ROW between the easternmost property line of Lot 1 and the edge of the paved portion of the street. Rather than roadway widening, future improvements on this portion of 52nd Avenue would most likely involve adding sidewalks. Per MMC Table 19.708.2, a standard curb-tight sidewalk for a local road is 6 ft; the width required for a standard sidewalk, two 6-in curbs, and a landscape buffer is between 9 ft and 12 ft. Therefore, even if improvements are made in the future, the proposed townhouse is unlikely to move closer to the travel lane than the roughly 24 ft of separation that is currently proposed.

Maximum Lot Coverage (Lot 2): The Milwaukie City Engineer has confirmed that increasing the maximum lot coverage by 4.5 percentage points will not interfere with future ROW improvements. There are currently no plans to expand the ROW or make significant improvements to either 52nd Avenue or Jackson Street. Moreover, there is no clear relationship between ROW improvements and the maximum lot coverage standard for an interior lot, which only has frontage along Jackson Street and presumably—since no variance has been requested to that standard—will meet the front yard setback requirement.

Summary: To restate, there are no current plans or funds available to widen or establish sidewalks along either frontage street. Future improvements would be unlikely to include ROW dedication, as there is sufficient undeveloped space between the paved portion of 52nd Avenue and the easternmost property line to accommodate sidewalks, which is the most likely type of improvement that would be made. Moreover, there is no clear relationship between the maximum lot coverage standard and possible ROW improvements.

The Planning Manager finds that this approval criterion is met for both requested variances.

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

There are no current improvements on the site, as the pre-existing single-unit dwelling was demolished.

The Planning Manager finds that the approval criterion is not relevant to the request.

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

Street-side setback (Lot 1): As discussed in Finding 7(b)(1) and 7(b)(2), no impacts from reducing the street-side setback for Lot 1 have been identified. The variance would bring the townhouse closer to the easternmost property line, but this does not interfere with any future right-of-way improvements, nor is there any evidence that approving it would be detrimental to surrounding properties, or to public health, public safety, or public welfare.

Maximum Lot Coverage (Lot 2): As discussed in Finding 7(b)(1) and 7(b)(2), no impacts from the proposed lot coverage variance have been identified. The proposal to increase the lot coverage for Lot 2 is primarily a function of reducing the magnitude of variance requested to accommodate the townhouse on Lot 1, which as discussed above, far exceeds the maximum lot size and dimensional requirements for a townhouse lot as established in MMC Table 19.301.4.

Summary: There is no evidence to indicate that approving the variances independently or in conjunction presents any impacts requiring mitigation. Although many comments were provided expressing concerns about the proposed number of units, the number of driveways, off-street parking, and the proposed removal of trees and shrubs around the

perimeter of the property, those concerns are not directly related to either requested variance. Townhouses are a type of development permitted by right in the R-MD zone.

It is worth noting that, although the trees and shrubs on the property are not designated natural resources protected under MMC Section 19.402, the property is subject to the residential development tree code (MMC Chapter 16.32), and compliance with that code will be reviewed through the development permitting process. Should trees be removed through that process in excess of the 40% minimum canopy coverage requirement, the builder will be required to mitigate the impacts through replanting or paying fees per MMC 16.32.042. That review, however, is outside the scope of the variance requests.

The Planning Manager finds that this approval criterion is met for both requested variances.

- (5) The proposed variance would allow the development to preserve a priority tree or trees or provide more opportunity to plant new trees to achieve 40% canopy, as required by Chapter 16.32.

The applicant has not requested a variance in order to preserve a priority tree or to provide more opportunities to plant new trees to achieve 40% canopy coverage.

The Planning Manager finds that the approval criterion is not relevant to the request.

The Planning Manager finds that the approval criteria for the Type II variances to reduce the street-side setback from 15 ft to 11.25 ft and to increase the maximum permitted lot coverage from 45% to 49.5% are satisfied.

8. The application was referred to the following departments and agencies on March 24, 2023:

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

In addition, a notice of the proposal was mailed to owners and residents of properties within 300 ft of the subject property on March 24, 2023.

The comments received are summarized as follows:

Linda Hedges (5185 SE Elk St): Recommended that the builder establish a sidewalk along the property frontage to offer a needed amenity in the neighborhood, to improve safety for walkers, and to provide more formalized on-street parking. Additionally, recommended denial of the variance to reduce the street-side setback because approving it would further exacerbate the different character of the townhouse development vis-à-vis surrounding development.

Mary Zellharie (5273 SE Jackson St): Wrote to express concern about the plan to remove and replant trees on the property and to inquire about the standards for replacement trees.

Christopher and Diane McKillop (No address provided): Recommended that the application for the replat and variance be denied. Expressed concerns that the development would reduce visibility and cause clear vision issues at the corner of Jackson Street and 52nd Avenue. Suggested that reduced visibility would make a bus stop across the street from the subject property unsafe. Also shared concerns about the validity of the tree survey and site plan—that the project was evaluated for fewer units than what's being proposed and that the site plan did not demonstrate that the clear vision standard was satisfied. Lastly, expressed concerns that the number of housing units proposed was too many and that the increased number of driveways along SE Jackson would make the street unsafe for pedestrians.

Erika Wedenoja (Monroe Street): Expressed concerns about the tree and shrub removal along the perimeter of the property but did not object to the townhouses themselves.

Yolanda Farron (No address provided): Expressed concerns that the builder was proposing too many units on the property and that the development would lead to parking issues and overcrowding in the neighborhood.

Kate O'Brien (4880 SE Jackson St): Shared concerns about the size and scope of the proposed development—that it would not synch with what the neighborhood was designed to handle and would be destructive to the environment. Shared concerns about the traffic impacts—that many intersections are uncontrolled, speed signs are absent, and because of this and the increased traffic, vulnerable pedestrians will be at risk. Also shared concerns about the number of trees and other vegetation that would be removed as part of the proposal.

Susan Dornfeld (No address provided): Commented that the builder should be required to maintain and protect from harm the existing trees and rhododendrons because the vegetation stores carbon, which mitigates the effects of climate change. Commented that the vegetation provides a sense of well-being to residents and increases property values.