



CITY OF MILWAUKIE

August 24, 2023

Land Use File(s): CSU-2023-002

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on August 22, 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):	City of Milwaukie (represented by Peter Passarelli)
Location(s):	3039 SE Balfour St
Tax Lot(s):	1S1E25CA, lots 6900 & 7000
Application Type(s):	Community Service Use
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Municipal Code (MMC): <ul style="list-style-type: none">• MMC Section 19.301 Moderate Density Residential Zone (R-MD)• MMC Subsection 19.504.7 On-Site Walkways & Circulation• MMC Chapter 19.600 Off-Street Parking and Loading• MMC Chapter 19.700 Public Facility Improvements• MMC Section 19.904 Community Service Uses• MMC Section 14.08.090 Conditional and Community Service Use Signs• MMC Section 19.1006 Type III Review
Neighborhood(s):	Ardenwald-Johnson Creek

Appeal period closes: 5:00 p.m., September 8, 2023

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1006 Type III 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 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/csu-2023-002.

This decision may be appealed by 5:00 p.m. on September 8, 2023, which is 15 days from the date of this decision.¹ Only persons who submitted comments or made an appearance of record at the public hearing have standing to appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie City Council 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.

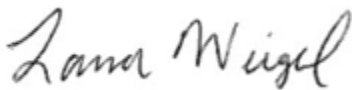
Per MMC Subsection 19.1001.7.E, this land use approval expires unless the applicant has: (1) obtained and paid for all necessary development permits and started construction within two years of land use approval, and (2) passed final inspection and/or obtained a certificate of occupancy within four years of land use approval. 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. The final plans submitted for development permit review for the proposed improvements must be in substantial conformance with plans approved by this action, which are the plans stamped received by the City on June 23, 2023, except as otherwise modified by these conditions.
2. As per Finding 7-e, construct improvements along the subject property's frontage on Balfour Street, including curb, gutter, and sidewalk; or request to pay a fee in lieu of construction (FILOC) as provided by Milwaukie Municipal Code (MMC) Chapter 13.32. For constructed improvements, engineered plans must be reviewed and approved by the City's Engineering Department in conjunction with processing of the associated right-of-way permit.
3. As per Finding 7-f, provide a 10-ft public utility easement (PUE) along the subject property's frontage on Balfour Street, to accommodate future utility needs.



Laura Weigel, AICP
Planning Manager

Exhibits

1. Findings in Support of Approval

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: Peter Passarelli, Public Works Director, applicant (via email)
Adam Moore, Parks Development Coordinator, applicant's representative (via email)
Matt Hastie, MIG, applicant's representative (via email)
Ben Johnson, GreenWorks, P.C., 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)
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): Ardenwald-Johnson Creek (via email)
Interested Persons
Land Use File(s): CSU-2023-002

EXHIBIT 1
Findings in Support of Approval
File #CSU-2023-002
Development of Balfour Park

Sections of the Milwaukie Municipal Code (MMC) not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicant, Peter Passarelli (Public Works Director), on behalf of the City of Milwaukie, has applied for community service use approval to construct improvements at Balfour Park. The subject property is located at 3039 SE Balfour St and is zoned Moderate Density Residential (R-MD). The land use application file number is CSU-2023-002.
2. The applicant proposes to develop Balfour Park in accordance with the associated concept plan adopted by City Council in 2015 (file #CPA-2015-002). The site, which consists of Lots 17 and 18 from Block 9 of the Bonnie View Acres Plat No. 4 subdivision (platted in 1923), is currently undeveloped; a pre-existing single-unit dwelling on the site was demolished in 2006-07. The proposed park improvements include a play area, natural play features, walking trails, water fountain, picnic shelter, bicycle parking, and a monument sign.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.301 Moderate Density Residential Zone (R-MD)
 - MMC Subsection 19.504.7 On-Site Walkways and Circulation
 - MMC Chapter 19.600 Off-Street Parking and Loading
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.904 Community Service Uses
 - MMC Section 14.08.090 Conditional and Community Service Use Signs
 - MMC Section 19.1006 Type III Review

The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held by the Planning Commission on August 22, 2023, as required by law.

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

MMC 19.301 establishes standards for the Moderate Density Residential (R-MD) 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 outright in the R-MD zone, including single detached dwellings, middle housing types (duplexes, triplexes, quadplexes, townhouses, and cottage clusters), accessory dwelling units (ADUs), and residential homes. Community service uses are allowed with additional review as per MMC Section 19.904.

The subject property is currently undeveloped. The applicant is proposing to develop the space as a public park, which according to MMC 19.904.2.C is a community service use (CSU). CSUs are permitted in the R-MD zone subject to Type III review per MMC Table 19.301.2.

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-MD zone for lot coverage, minimum vegetation, yard setbacks, and maximum height.

The key features of the proposal include a covered picnic area and a playground. No improvement is proposed to exceed the maximum height of 35 ft or proposed to be in a required yard. The applicant has submitted plans showing that the property will be vegetated well beyond the 30% minimum requirement and that there will be no structures that count towards lot coverage, as the covered picnic shelter will be unenclosed and the surface height will be less than 18 in above average grade.

As proposed, the applicable development standards of these subsections are met.

As proposed, the Planning Commission finds that the proposed development meets all applicable standards of MMC 19.301. This standard is met.

5. MMC Subsection 19.504.7 On-Site Walkways and Circulation

MMC 19.504.7 establishes standards for on-site walkways, which are required for all development that is subject to MMC Chapter 19.700 (excluding single-detached and multi-unit residential development). A walkway must be provided into the site for every 300 ft of street frontage and must connect with sidewalks and bicycle facilities. On-site walkways must be reasonably direct, constructed with a hard surface material, permeable for stormwater, and at least 5 ft wide. Walkways must be separated from parking areas using curbing, landscaping, or distinctive paving materials and must be lighted to an average 0.5-footcandle level.

As noted in Finding 2, the subject property is comprised of two tax lots; jointly, the lots have 144 ft of frontage on Balfour Street. As proposed, there will be two pedestrian entryways into the site from Balfour Street, forming a U-shaped walkway that begins and ends at the edge of the public right-of-way (ROW). Balfour Street does not currently have sidewalks and there are no plans to add them; however, the pathway does connect to the paved portion of the ROW. The proposed walkway is 6 ft wide, constructed with permeable pavers, and connects pedestrians to the park's various amenities in a reasonably direct way. As a neighborhood park, the proposal does not include any off-street vehicular parking spaces; therefore, the walkway separation standard is inapplicable. The pathway is not proposed to be illuminated, as the park will only be open during daytime hours.

The Planning Commission finds that the proposed development meets all applicable standards of MMC 19.504.7. This standard is met.

6. MMC Chapter 19.600 Off-Street Parking and Loading

MMC 19.600 regulates off-street parking and loading areas on private property outside the public right-of-way. The purpose of these requirements includes providing adequate space

for off-street parking, minimizing parking impacts to adjacent properties, and minimizing environmental impacts of parking areas.

a. MMC Section 19.602 Applicability

MMC 19.602 establishes the applicability of the provisions of MMC 19.600, and MMC Subsection 19.602.3 establishes thresholds for full compliance with the standards of MMC 19.600. Development of a vacant site shall have off-street parking and off-street loading areas that conform to the requirements of Chapter 19.600.

Per Oregon Administrative Rules (OAR) 660-012-0012 and 660-12-0440, which relate to Climate-Friendly and Equitable Communities (CFEC) rulemaking, the City is prohibited from mandating minimum off-street vehicular parking quantity requirements because of the subject property's proximity to a TriMet bus stop. However, all other provisions of MMC 19.600 may still apply.

The applicant is proposing to develop the subject property, which is currently vacant, as a public park by adding a paved walkway, bicycle racks, a covered picnic area, landscaping, and a playground. Although the CFEC-related limitations noted above prevent the implementation of minimum off-street vehicular parking quantity requirements, the Planning Commission finds that the proposal constitutes the development of a vacant site and that compliance with the other applicable sections of MMC 19.600 is required.

b. MMC Section 19.605 Vehicle Parking Quantity Requirements

MMC 19.605 establishes standards to ensure that development provides adequate vehicle parking (off-street) based on estimated parking demand. As per the CFEC-related limitations noted above, the City is prohibited from mandating minimum off-street vehicular parking quantity requirements because of the subject property's proximity to frequent transit provided by TriMet. However, maximum off-street vehicular parking limitations still apply. Additionally, off-street vehicular parking minimums are used to determine the required quantity of off-street bicycle parking per MMC Section 19.609 and for that reason are addressed below.

MMC Table 19.605.1 does not provide minimum and maximum quantity requirements for park uses. The park is designated as a neighborhood park in the City's Comprehensive Plan and is intended to primarily be accessed by people walking or bicycling. A previous parking determination (file #P-2013-02) specified that neighborhood parks are not designed to generate demand for off-street parking because the size and facilities available are intended to only attract users that live near the park. Moreover, even if parking quantity standards were identified, recent changes to state law prohibit the City from requiring a minimum quantity of off-street parking for this property because of its proximity to frequent transit. Parking maximums are not a concern, as the applicant is not proposing any off-street vehicular parking.

c. MMC Section 19.609 Bicycle Parking

MMC 19.609 establishes standards for bicycle parking. Unless otherwise specified, the number of bicycle parking spaces is at least 10% of the minimum required vehicle

parking for the use (CFEC limitations aside). In no case will fewer than two bicycle spaces be provided.

MMC Subsection 19.609.3.A requires that each bicycle parking space have minimum dimensions of 2 ft by 6 ft, with 5-ft-wide aisles for maneuvering. MMC Subsection 19.609.4 requires bike racks to be securely anchored and designed to allow the frame and one wheel to be locked to the rack with a U-shaped lock. Bicycle parking must be located within 50 ft of a main building entrance, closer to the entrance than the nearest non-ADA-designated vehicle parking space, designed to provide access to a public right-of-way, in a location that is visible from the main parking lot, designed not to impede pedestrians along sidewalks, and separated from vehicle parking areas by curbing or other similar physical barriers.

As noted above, there are no required vehicle parking spaces for the site. Consequently, a minimum of two bicycle parking spaces are required. There are currently no bicycle parking spaces on site and the applicant is proposing to add three staple-style racks adjacent to the southwestern park entrance, thereby providing six total bicycle parking spaces. The applicant has included anchoring plans and shows that the racks' location provides the minimum 2-ft by 6-ft space dimensions without impeding the adjacent 6-ft-wide pedestrian walkway. Staple-style racks allow the user to lock both the frame and one wheel with a high-security, U-shaped, shackle lock. The parking spaces provide direct access to the public ROW and will be visible to park visitors.

As proposed, the standards of MMC 19.609 are met.

As proposed and conditioned, the Planning Commission finds that the applicable standards of MMC 19.600 are met.

7. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 is intended to ensure that development, including expansions, 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 MMC 19.700, including a new dwelling unit, any increase in gross floor area, 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.

The applicant is proposing to develop the space as a public park. The City Engineer has determined that these improvements would result in an increase in trips. The proposed development triggers the requirements of MMC 19.700.

MMC 19.700 is applicable 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 requirement for a preapplication conference with City staff was waived by the Planning Manager for this proposal. As noted in Finding 7-c, a Transportation Impact Study (TIS) is not required; therefore, a Transportation Facilities Review application is not necessary. Rather than construct the transportation improvements noted in Finding 7-e, payment of a Fee in Lieu of Construction (FILOC) is recommended.

This standard is met.

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 establishes that the City Engineer will determine whether a proposed development has impacts on the transportation system by using existing transportation data. If the City Engineer cannot properly evaluate a proposed development's impacts without a more detailed study, a TIS will be required to evaluate the adequacy of the transportation system to serve the proposed development and determine proportionate mitigation of impacts.

The City Engineer has determined that a TIS is not required, as the impacts of the park improvements on the transportation system are minimal. The park is centrally located in the neighborhood, is proposed to include basic amenities, and is most likely to be used by people walking and bicycling.

This standard is met.

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 7-e addresses the required construction of new sidewalk on Balfour Street along the subject property frontage. Finding 7-f addresses the requirement for public utility easements along the property's street frontage. The proposed development does not trigger mitigation of impacts beyond those discussed in these findings.

This standard is met.

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 requires compliance with 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 arterial and neighborhood routes. All streets, sidewalks,

necessary public improvements, and other public transportation facilities located in the public ROW and abutting the development site must be adequate at the time of development or must be made adequate in a timely manner. The City's street design standards are based on the street classification system described in the City's Transportation System Plan (TSP).

The subject property has frontage on Balfour Street, which the City's TSP and Transportation Design Manual classify as a local street. As established in MMC Table 19.708.2 Street Design Standards, the required ROW width for a local street is between 20 ft and 68 ft, depending on the required street improvements. Balfour Street has a ROW width of 50 ft. This standard is met.

New curb, gutter, and sidewalk on Balfour Street along the entire subject property frontage is required to provide a connecting pedestrian route between the park and the street. Per MMC 13.32, the applicant may apply to pay a Fee in Lieu of Construction (FILOC) rather than construct these improvements. A condition has been established to ensure that these improvements are provided and that the applicable standards of MMC 19.708 are met.

As conditioned, the proposed development meets 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.

The proposed development does not present significant new impacts to existing public utilities, which are adequate to serve the proposed use. To ensure there is sufficient room to accommodate future utility needs, a condition has been established to require a 10-ft public utility easement (PUE) along the subject property's frontage on Balfour Street.

As conditioned, the proposed development meets the applicable standards of MMC 19.709.

As proposed and conditioned, the Planning Commission finds that the applicable standards of MMC 19.700 are met.

8. MMC Section 19.904 Community Service Uses

MMC 19.904 provides standards and procedures for review of applications for community service uses (CSUs). These are uses that are not specifically allowed outright in most zoning districts but that address a public necessity or otherwise provide some public benefit. CSUs include schools and accompanying sports facilities.

a. MMC Subsection 19.904.2 Applicability

MMC 19.904.2 establishes applicability of the CSU regulations, including a requirement for review to establish or modify a CSU.

The application is to establish a new CSU.

The Planning Commission finds that the standards of MMC 19.904 are applicable to the proposed development.

b. MMC Subsection 19.904.3 Review Process

MMC 19.904.3 establishes the review process for CSUs. Except for wireless communication facilities and minor modifications to existing CSUs, applications for CSUs are subject to Type III review (MMC 19.1006).

The proposal is for establishing a new CSU and does not qualify as a minor modification to an existing CSU as per MMC Subsection 19.904.5.C.

The Planning Commission finds that the proposed development is subject to the procedures for Type III review.

c. MMC Subsection 19.904.4 Approval Criteria

MMC 19.904.4 establishes the following approval criteria for CSUs:

- (1) The building setback, height limitation, and off-street parking and similar requirements governing the size and location of development in the underlying zone are met. Where a specific standard is not proposed for a CSU, the standards of the underlying zone must be met.

As discussed in Findings 6-b and 6-c, the applicant is not proposing any vehicular off-street parking and is meeting the minimum bicycle parking quantity and spacing requirements of MMC 19.609. The property is zoned R-MD, and so the standards in Table MMC 19.301.4 apply. The key features of the development include a picnic area and a playground; as discussed in Finding 5, no feature is proposed to exceed the maximum height or be in a required yard.

This criterion is met.

- (2) Specific standards for the proposed uses as found in MMC 19.904.7-11 are met.

The proposed modifications are subject to the standards provided in MMC Subsection 19.904.8 for public, private, religious, and other facilities not covered by other standards. The only specific standards of MMC 19.904.8 that apply to the proposed modification are the requirements of MMC Subsections 19.904.8.F and 19.904.8.G. The former requires that lighting be designed to avoid glare on adjacent residential uses; the latter requires that hours of operation be adjusted to make the use compatible with adjacent uses.

The applicant has proposed lighting only under the picnic shelter; the application confirms that the lighting will be located at the peak of the shelter roof and oriented downwards to minimize any impact on the surrounding area. As discussed below in Finding 8-c-3, the City has operating hours for public parks that effectively limit the operating hours to daytime use only.

This criterion is met.

- (3) MMC Subsection 19.904.4.C requires the hours and levels of operation of the proposed use to be reasonably compatible with surrounding uses.

As per MMC Subsection 9.28.020.F, parks open 30 minutes before sunrise and close 30 minutes after sunset. Balfour Park will employ these same hours, so it is essentially a facility for daytime use only. Surrounding uses include primarily single-unit detached dwellings, and the park is intended to primarily serve residents within approximately a half-mile of the site.

This criterion is met.

- (4) MMC Subsection 19.904.4.D requires that the public benefits of the proposed use be greater than the negative impacts, if any, on the neighborhood.

Balfour Park is classified in the Milwaukie Comprehensive Plan as a neighborhood park, which means it is intended to serve residents within approximately a half-mile of the site. The nature and scale of amenities that will be provided are not intended to attract users from farther parts of the city or the larger parks district. The park will serve as a recreational amenity for the adjacent neighborhood.

The park will be officially open only during daylight hours throughout the year. No off-street parking will be provided at the park, as most users will access the site from the adjacent neighborhood area by bicycle or on foot. Impacts from increased vehicle traffic will be minimal. The proposed improvements do not include athletic fields for organized sporting events, so noise impacts will be minimal.

The Planning Commission finds that the public benefits of the proposed development are greater than any negative impacts.

This criterion is met.

- (5) MMC Subsection 19.904.4.E requires the location to be appropriate for the type of use proposed.

The subject property has a “Public” land use designation in the Comprehensive Plan. Balfour Park is classified as a “neighborhood park” that is intended to serve the surrounding residential neighborhood. The property is located on Balfour Street, which is identified as a local street in Figure 8-1 of the Milwaukie TSP. Balfour Street is not developed with sidewalks or bicycle lanes; however, as a local street, the volume of traffic is less than 1,500 trips per day and the street is intended to be shared by all users.

This criterion is met.

As proposed, the Planning Commission finds that the proposed new CSU meets the approval criteria of MMC 19.904.4.

The Planning Commission finds that the proposed development meets all applicable standards of MMC 19.904 to be approved as a new CSU. This standard is met.

9. MMC Section 14.08.090 Conditional and Community Service Use Signs

MMC 14.08.090 establishes that, in general, signs for conditional and community service uses are limited to those allowed in the underlying zone. However, as per MMC Subsection 14.08.090.B, the underlying zone standards may be increased to the standards listed in MMC Table 14.08.090.B, subject to Type I review. A monument or freestanding sign may be approved with a maximum area of 16 sq ft per display surface.

As noted in Finding 2, the applicant has proposed to install a new monument sign. The sign is proposed to be no taller than 3 ft with a display surface of no larger than 12 sq ft. No illumination is proposed, though external illumination would be allowed in the underlying residential sign district as per MMC Section 14.16.010.

The Planning Commission finds that the proposed signage is consistent with that allowed for conditional and community service uses through Type I review, as per MMC Subsection 14.08.090.B. This standard is met.

10. The application was referred to the following departments and agencies on July 13, 2023:

- Milwaukie Community Development Department
- Milwaukie Engineering Department
- Milwaukie Building Department
- Milwaukie Public Works Department
- Milwaukie Police Department
- City Attorney
- Ardenwald-Johnson Creek Neighborhood District Association (NDA) Chairperson and Land Use Committee (LUC)
- Clackamas Fire District #1 (CFD)
- Clackamas County Department of Transportation & Development
- Metro
- TriMet
- North Clackamas Parks and Recreation District (NCPRD)
- NW Natural

In addition, public notice was provided on August 2, 2023, as required by MMC Subsection 19.1006.3. No responses were received from either the referral or public notice mailing.