



CITY OF MILWAUKIE

May 13, 2025

Land Use File(s): MHLD-2025-001

Permit(s): 601-24-001662-STR-CC, 601-24-001663-STR-CC,
601-24-001664-STR-CC, 601-24-001665-STR-CC

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on May 13, 2025.

[Note: A notice of action was previously issued on April 8, 2025, but was rescinded on April 23 because the application was erroneously processed as a Type II land use application instead of as an expedited land division as required by Oregon Revised Statutes (ORS) 92.031. This notice is issued in accordance with the appropriate procedure.]

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): Alec Shah (Shah Housing Solutions, LLC)
Location(s): 5026 SE Harrison St
Tax ID: 1S2E30CD, tax lot 11200
Application Type(s): Middle Housing Land Division
Decision: Approved with Conditions
Review Criteria: Milwaukie Municipal Code (MMC):

- MMC Title 17 Land Division, including:
 - MMC Chapter 17.24 Requirements for Tracts & Easements
 - MMC Chapter 17.26 Middle Housing & Expedited Land Divisions

Neighborhood(s) Hector Campbell

Appeal period closes: 5:00 p.m., May 27, 2025

This notice is issued in accordance with Oregon Revised Statutes (ORS) 92.031 and 197.360-380 as required by law. 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, City Hall, 10501 SE Main St. 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/mhld-2025-001.

This decision may be appealed by 5:00 p.m. on May 27, 2025, which is 14 days from the date of this decision. (Note: Please arrive by 4:45 p.m. for appeal payment processing.) As per ORS 197.375.(1), the applicant or any party that filed written comments during the previously established comment period that addressed at least one of four allegations¹ may appeal the decision. As provided in ORS 197.375.(2), an appeal would be heard by a referee appointed by the City. This decision will become final on the date above if no appeal is filed during the appeal period. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or planning@milwaukieoregon.gov.

Expiration

Per MMC Subsection 17.24.010.E.1.b, the preliminary plat approval of a middle housing land division is void if and only if a final middle housing land division plat is not approved within three (3) years of the tentative approval. As per MMC Subsections 17.04.050.B, 19.1001.7.E.2, and 19.908.3, an extension may be approved up to two years, with additional extensions available.

Conditions of Approval

1. The applicant's final plat application must include the items listed on the City of Milwaukie Final Plat Checklist. The following specific items and changes are required as part of the application:
 - a. A written narrative describing all changes made to the final plat that are not related to these conditions of approval.
 - b. A final plat that substantially conforms to the plans received by the Planning Department on February 26, 2025, and approved by this action, except as modified by these conditions of approval.
 - c. The final plat must include spaces for signatures by the Milwaukie Planning Manager and Milwaukie City Engineer, and a note indicating that this land division is subject to the requirements of City of Milwaukie Land Use File #MHLD-2025-001.
 - d. The final plat name must not be duplicative and must satisfy all other applicable requirements of the Clackamas County Surveyor and Oregon Revised Statutes.
 - e. The final plat must include the following notation:
 - (1) The sublots shown were created pursuant to a middle housing land division and may not be further divided.

¹ A. [An allegation] Of violation of the substantive provisions of the applicable land use regulations;
B. Of unconstitutionality of the decision;
C. That the application is not eligible for review under [ORS 92.031 \(Middle housing land division\)](#) or [ORS 197.360 \("Expedited land division" defined\)](#) to [197.380 \(Application fees\)](#) and should be reviewed as a land use decision or limited land use decision; or
D. That the parties' substantive rights have been substantially prejudiced by an error in procedure by the local government.

- (2) The middle housing developed on the sublots shown on the preliminary plat must remain middle housing and will not be considered to be any other housing type as a result of the middle housing land division.
 - (3) Accessory dwelling units are not permitted on sublots resulting from a middle housing land division.
 - (4) This plat was approved as a middle housing land division per ORS 92.031.
 - f. The final plat must include appropriate utility and access easements for the benefit of all affected sublots as applicable, including responsibilities for maintenance of the easement areas. A declaration of maintenance agreement must be recorded and noted on the final plat.
2. Prior to approval of the final plat, the following must be resolved:
- a. The applicant must record a maintenance agreement that commits the property owner(s) as the designee(s) to maintain the utility and access easements. The maintenance agreement, upon approval by the City, must be recorded prior to the approval of the final plat.

Other requirements

1. MMC Section 17.04.120 Recording

As per MMC 17.04.120, partitions and subdivisions must be recorded by plat. An application for final plat must be submitted to both the City Planning Department and the County Surveyor. Once approved by the County Surveyor, a copy of the recorded final plat must be submitted to the City Planning Department.

Findings in Support of Approval

The Findings for this application are included as Exhibit 1.

Manager's Declaration of Impartiality

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

Decision

- ☐ Approved
- ☒ Approved with Conditions
- ☐ Denied



Laura Weigel, AICP
Planning Manager

Exhibits

1. Findings in support of approval
2. Preliminary partition plat

cc: Alec Shah, owner/applicant (via email)
Rick Givens, planning consultant, applicant's representative (via email)
Planning Commission (via email)
City Council (via email)
Joseph Briglio, Acting Community Development Director (via email)
Jennifer Garbely, City Engineer (via email)
Jeff Tolentino, Assistant City Engineer (via email)
Engineering Development Review (via email)
Peter Pasarelli, Public Works Director (via email)
Patrick McLeod, Building Official (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Coordinator (via email)
Emilie Bushlen, Building Permit Technician (via email)
Shawn Olson, Fire Marshal, Clackamas Fire District #1 (via email)
North Clackamas School District (via email)
North Clackamas Parks & Recreation District (via email)
NW Natural (via email)
Owners of property and residents within 100 ft of the subject property
NDA(s): Hector Campbell (via email)
Land Use File(s): MHLD-2025-001
Address File(s): 5026 SE Harrison St

EXHIBIT 1
Findings in Support of Approval
File #MHL-2025-001 (5026 SE Harrison St)

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, Alec Shah of Shah Housing Solutions, LLC, has applied for approval to divide the subject property to create four sublots using the middle housing land division process. The subject property is addressed as 5026 SE Harrison St and is zoned Moderate Density Residential (R-MD). The land use application file number is MHL-2025-001.
2. The subject property is approximately 5,580 sq ft (0.13 acres) and is currently vacant. The property is approximately 50 ft by 110 ft deep, with a single frontage on Harrison Street to the north. The applicant has submitted permits to develop a detached quadplex (i.e., four detached dwelling units) on the site and proposes to divide the subject property to place each quadplex unit on its own subplot. Two sublots would have direct frontage on Harrison Street (approximately 1,450 and 1,480 sq ft each) and two other sublots would be behind them with no street frontage (approximately 1,325 sq ft each).

Oregon Senate bill 458 was adopted by the Oregon state legislature in 2021. The bill is a follow-up to House bill 2001 (HB 2001) and allows land divisions for middle housing units that enable them to be sold or owned individually. The legislation requires cities to allow such land divisions for any HB 2001 middle housing type (i.e., duplexes, triplexes, fourplexes, townhomes, and cottage clusters) that is built in accordance with the middle housing code provisions adopted by local jurisdictions under Oregon Revised Statutes (ORS) 197.758. The legislation is very specific that communities cannot require the sublots to individually meet standards such as lot size, dimensions, lot coverage, setbacks, etc. Rather, the applicable standards must be met for the larger “parent” lot. To divide the property as a middle housing land division, the division must comply with all aspects of ORS 92.031 as administered in Milwaukie Municipal Code (MMC) Chapter 17.26.

3. The proposed land division constitutes a middle housing land division as per the definitions in MMC Chapter 17.08 and ORS 92.031. The proposal is subject to the following provisions of the MMC:
 - MMC Title 17 Land Division, including:
 - MMC Chapter 17.24 Requirements for Tracts & Easements
 - MMC Chapter 17.26 Middle Housing & Expedited Land Divisions

As allowed by MMC Subsection 19.1002.2.B.1, the requirement for a preapplication conference was waived by the Planning Manager. The application was submitted on March 7, 2025, and was deemed complete on March 11, 2025. The application was initially processed improperly with Type II review instead of as an expedited land division. The application has been reprocessed in accordance with Oregon Revised Statutes (ORS) 92.031 and 197.360-380 as required by law, 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 17.24 Requirements for Tracts & Easements

MMC 17.24 establishes the requirements for the tracts and easements that may be necessary for a proposed land division. Specifically, MMC Section 17.24.010 establishes requirements for the ownership of tracts and for accompanying maintenance agreements.

(1) Ownership of Tracts

Unless otherwise specified in this title or the land use decision, tracts must be owned by either the property owners served by the tract, a homeowners' association, a non-profit organization, or the City or other jurisdiction.

No tracts are proposed in the proposed land division.

(2) Maintenance Agreement

The applicant must record with the County Recorder a maintenance agreement that commits the owners or owners' designee to maintain all elements of the tract or easement. Facilities within the tract or easement that will be maintained by a specified City agency may be recorded in a separate maintenance agreement. The maintenance agreement must be approved by the City in advance of final plat approval and must be submitted to the County Recorder to be recorded with the final plat.

The proposed land division includes utility and access easements for the four sublots as needed. A condition has been established to require the recording of a maintenance agreement that commits the property owner(s) as the designee(s) to maintain the shared easements. A maintenance agreement, upon approval by the City, will be recorded prior to approval of the final plat. As conditioned, this standard is met.

As conditioned, the Planning Manager finds that the proposed middle housing land division meets the applicable standards of MMC 17.24.

b. MMC Chapter 17.26 Middle Housing and Expedited Land Divisions

MMC Section 17.26.010 specifies the process, procedures, and approval criteria for middle housing and expedited land divisions.

MMC Subsection 17.26.010.A establishes that middle housing land division is a partition or subdivision of a lot or parcel on which a middle housing project has been developed or approved for development under the provisions of this code and ORS 197.758. Following the land division, the units of land created in a middle housing land division (the sublots or subparcels) will be collectively considered a single lot or parcel for all but platting and property transfer purposes under City code and state rules and statutes; including for lot standards (e.g., size, setback, lot coverage, lot

width and depth), definition of unit type, allowed number of dwelling units and accessory dwelling units, and compliance with middle housing rules and statutes in ORS 197 and Oregon Administrative Rules (OAR) 660-046.

MMC Subsection 17.26.010.B requires that applications for any land division affecting middle housing as provided in ORS 197.758(2) must be processed as an expedited land division process as outlined in ORS 197.360 to 197.380. Further division of the resulting sublots or subparcels in an approved middle housing land division is prohibited.

MMC Subsection 17.26.010.C requires a two-step process for middle housing land division: a preliminary plat and a final plat. The preliminary plat is processed as an expedited land division as per ORS 197.360-380. The preliminary plat must be approved before the final plat can be submitted for approval. The final plat must satisfy all conditions of approval imposed as part of the preliminary plat approval.

The applicant has submitted permits to develop a detached quadplex (i.e., four detached dwelling units) on the subject property and proposes to subdivide the lot to place each dwelling unit on its own subplot. This action constitutes a middle housing land division and is subject to review as an expedited land division. An application for final plat will be accepted once the preliminary plat has been approved.

MMC Subsection 17.26.010.D establishes the approval criteria for the preliminary plat for a middle housing land division.

- (1) The proposed preliminary plat complies with Title 19 and other applicable ordinances, regulations, and design standards.

As demonstrated by the applicant's submittal materials and evidenced by these findings, the proposed land division complies with all applicable standards of MMC Titles 17 and 19. As proposed, this criterion is met.

- (2) The proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.

The proposed land division will establish four sublots, each accommodating an individual unit from the detached quadplex that is allowed outright in the underlying R-MD zone. The proposed land division does not create the need for any variances. As proposed, this criterion is met.

- (3) The proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of Oregon Revised Statutes (ORS) 92.090(1).

A condition has been established to ensure that the subdivision plat name is not duplicative and that the plat satisfies any other applicable requirements of the Clackamas County Surveyor and ORS. As conditioned, this criterion is met.

- (4) The streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in

all other respects unless the City determines it is in the public interest to modify the street or road pattern.

No new streets or roads are included in the proposed land division. This criterion is not applicable.

- (5) A detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.

The applicant's submittal materials include a narrative that addresses all applicable code sections and design standards.

- (6) Approval of a preliminary plat for a middle housing land division will be granted if the Planning Manager finds that the applicant has met all of the following criteria:

- (a) The middle housing development complies with the Oregon Residential Specialty Code and the applicable middle housing regulations in this code. To demonstrate compliance with this criterion, the applicant must submit approved building permits or concurrent building permits demonstrating that existing or proposed structures comply with the Oregon Residential Specialty Code and middle housing regulations in Titles 12 and 19;

The proposed land division involves the development of a detached quadplex, which is currently in permit review. The permits for all four units have been deemed approvable with respect to all applicable criteria. This standard is met.

- (b) The middle housing development is in compliance with the land use regulations applicable to the parent lot allowed under ORS 197.758(5);

The subject of the proposed land division is a detached quadplex development, which is an outright permitted use in the underlying R-MD zone. The parent lot's compliance with the applicable land use regulations is addressed throughout these findings. This standard is met.

- (c) Separate utility service connections for public water, sewer, and stormwater will be provided for each dwelling unit;

Public water and public sanitary sewer connections will be provided for each dwelling unit in the detached quadplex. The proposed land division includes utility easements as needed to allow for sewer and water utilities to be provided for each of the resulting sublots. This standard is met.

- (d) Easements will be provided as necessary for each dwelling unit on the site for:

- (i) Locating, accessing, replacing, and servicing all utilities;
- (ii) Pedestrian access from each dwelling unit to a private or public road;
- (iii) Any common use areas or shared building elements;

- (iv) Any dedicated driveways or parking; and
- (v) Any dedicated common area.

The proposed land division includes utility easements for all four sublots as needed, as well as easements for pedestrian access to the rear sublots. There are no dedicated common areas or shared building elements for the detached quadplex. A condition has been established to ensure that the necessary easements will be recorded. As conditioned, this standard is met.

- (e) Exactly one dwelling unit will be located on each subplot except for lots or tracts used as common areas, on which no dwelling units will be permitted.

As proposed, the land division will result in four sublots, with one dwelling unit located on each subplot. This standard is met.

- (f) Buildings or structures on a subplot will comply with applicable building code provisions relating to new property lines.

The subject property is vacant and the proposed detached quadplex is currently in permit review. The permits for all four units have been deemed approvable, including with respect to the requirement of at least 3 ft of separation between each structure and new property lines. This standard is met.

- (g) Structures or buildings located on the sublots will comply with the Oregon Residential Specialty Code.

All dwelling units on the proposed sublots have been deemed approvable under the Oregon Residential Specialty Code. This standard is met.

- (h) Where a resulting lot abuts a street that does not meet City standards, street frontage improvements will be constructed and, if necessary, additional right-of-way (ROW) will be dedicated, pursuant to Chapter 19.700.

The required street improvements on Harrison Street were constructed in conjunction with the subdivision plat that produced the subject property (primary file #R-2021-004 and final plat file #FP-2022-004). No additional improvements or ROW dedication are necessary. This standard is met.

- (i) The proposed middle housing land division will not cause any existing improvements on the sublots to be inconsistent with applicable standards in this land use code.

There are no existing improvements on the subject property. This standard is met.

As proposed and conditioned, the specific criteria for middle housing land division are met.

As proposed and conditioned, the Planning Manager finds that the proposed preliminary plat for middle housing land division meets the applicable criteria.

The Planning Manager finds that the proposed middle housing land division meets all applicable standards of MMC Title 17.

5. The application was referred to the following departments and agencies on March 13, 2025:

- Milwaukie Community Development Department
- Milwaukie Building Department
- Milwaukie Engineering Department
- Milwaukie Public Works Department
- Milwaukie Police Department
- Milwaukie City Manager
- Milwaukie City Attorney
- Clackamas Fire District #1
- Hector Campbell Neighborhood District Association (NDA) and Land Use Committee
- North Clackamas School District
- NW Natural

In addition, a revised notice of the public hearing was mailed to owners and residents of properties within 100 ft of the subject property on April 24, 2025.

No comments were received in response to the mailed notice.

SHEET:

1/1