



October 14, 2015

Land Use File(s): NR-2015-003, WG-2015-004

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on October 13, 2015.

Applicants: Gary and Sharon Klein
Location: 10795 SE Riverway Lane
Tax Lot: 1S1E35AA04400
Application Types: Natural Resource Review, Willamette Greenway Review
Decision: Approved with Conditions
Review Criteria: Milwaukie Zoning Ordinance:

- Section 19.1006 Type III Review
- Section 19.402 Natural Resources
- Section 19.401 Willamette Greenway Zone WG
- Section 19.905 Conditional Uses
- Section 19.302 Medium and High Density Residential Zones (incl. R-2)

Neighborhood: Historic Milwaukie

Appeal period closes: 5:00 p.m., October 29, 2015

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 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, Associate Planner, at 503-786-7657 or kelverb@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on October 29, 2015, which is 15 days from the date of this decision. 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 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

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

1. The applicants, Gary and Sharon Klein, have applied for approval to stabilize a steep slope on their property and remove and replace an existing swimming pool and patio. The site is a single tax lot located at 10795 SE Riverway Lane and is zoned Residential R-2, with Natural Resource and Willamette Greenway overlays. The proposed activity triggers land use review against the applicable standards of the Natural Resource and Willamette Greenway sections of the zoning code. The land use application master file number is NR-2015-003, with associated file number WG-2015-004.
2. The proposed activity is focused on a steep slope on the subject property, between the existing house and the confluence of Johnson Creek with the Willamette River. The project involves stabilizing the slope, which is gradually sloughing toward the river. The project will remove two or three large trees near the top of the slope, as well as remove the existing in-ground swimming pool and brick patio and replace them with a smaller pool and deck set farther back from the edge of the slope.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.1006 Type III Review
 - MMC Section 19.402 Natural Resources NR
 - MMC Section 19.401 Willamette Greenway Zone WG
 - MMC Section 19.905 Conditional Uses
 - MMC Section 19.301 Medium and High Density Residential Zones (incl. R-2)

The proposed activity does not result in the expansion of any existing structures. The municipal code relies on an increase in building square footage to calculate vehicle trip generation to and from the site. The Engineering Department has determined that MMC Chapter 19.700 Public Facility Improvements does not apply to this application.

4. 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 October 13, 2015, as required by law.
5. MMC Section 19.402 Natural Resources

MMC 19.402 establishes regulations for designated natural resource areas. The standards and requirements of MMC 19.402 are an acknowledgment that many of the riparian, wildlife, and wetland resources in the community have been adversely impacted by development over time. The regulations are intended to minimize additional negative impacts and to restore and improve natural resources where possible.

- a. MMC Subsection 19.402.3 Applicability

MMC 19.402.3 establishes applicability of the Natural Resource (NR) regulations, including all properties containing Water Quality Resources (WQRs) and Habitat Conservation Areas (HCAs) as shown on the City's Natural Resource (NR) Administrative Map.

The site is adjacent to Johnson Creek at its confluence with the Willamette River, both of which are protected water features. As per MMC Table 19.402.15, primary protected water features, along with their associated vegetated corridors, constitute a WQR on the site. The City's NR Administrative Map also shows the HCA designation over a large portion of the site between the existing house and the creek and river below.

Finding 5-f addresses discrepancies between the applicant's submittal materials and the guidelines provided in MMC Subsection 19.402.15 for determining the exact locations of WQR and HCA areas on a site. Some corrections to the various site plans are necessary to more accurately show the WQR and HCA locations, and a condition has been established to ensure that the actual amount of disturbance to each can be more accurately calculated. In general, larger areas of WQR and HCA are affected by the project than is demonstrated in the applicant's submittal materials.

As presented in the applicant's submittal materials, the proposed activity will disturb approximately 2,800 sq ft of WQR and/or HCA area. At that scale, the proposed activity is not listed as exempt according to the standards outlined in MMC 19.402.4, even without the needed corrections to the applicant's calculation of actual WQR and HCA disturbance area.

The Planning Commission finds that the requirements of MMC 19.402 are applicable to the proposed activity.

b. MMC Subsection 19.402.6 Activities Requiring Type I Review

MMC 19.402.6 establishes that certain activities within a designated WQR and/or HCA are subject to Type I review in accordance with MMC 19.1004. As per MMC 19.402.6.H, this includes boundary verification for minor corrections to the NR Administrative Map that are in accordance with MMC 19.402.15.A.1.

As discussed in Finding 5-f, the applicant's submittal materials indicate some simple incongruities between the NR Administrative Map's designation of HCA areas on the site and existing developed areas. This level of boundary verification is subject to Type I review as per MMC 19.402.15.A.1.

However, as discussed in Findings 5-c and 7-a, the proposed activity requires other applications (i.e., Natural Resource review, Willamette Greenway review) that are being processed concurrently with Type III review. As provided in MMC 19.1001.6.B.1, concurrent applications shall be processed according to the highest numbered review type, with a single decision to be issued that includes findings for all concurrent applications.

The Planning Commission finds that the boundary verification for minor corrections to the NR Administrative Map shall be processed concurrently with Type III review.

c. MMC Subsection 19.402.8 Activities Requiring Type III Review

MMC 19.402.8 establishes that certain activities within a designated WQR and/or HCA are subject to Type III review in accordance with MMC 19.1006. As per MMC 19.402.8.A.1, this includes activities allowed in the base zone that are not otherwise exempt or permitted as a Type I or II activity.

The proposed activity is associated with the existing residential use and is allowed outright in the underlying Residential R-2 zone. The level of disturbance proposed within the WQR and HCA areas on the subject property exceeds the levels allowed by Type I and II review, as provided in MMC 19.402.6 and 402.7, respectively. As

such, the activity must be reviewed using Type III review and the discretionary process established in MMC 19.402.12.

The Planning Commission finds that the proposed activity shall be processed with Type III review.

d. MMC Subsection 19.402.9 Construction Management Plans

MMC 19.402.9 establishes standards for construction management plans, which are required for projects that disturb more than 150 sq ft of designated natural resource area. Construction management plans must provide information related to site access, staging of materials and equipment, and measures for tree protection and erosion control.

The applicant's submittal materials include a construction management plan that shows the locations of proposed erosion control measures, access to the work area for machinery and people, and a staging area for equipment and materials. High-visibility fencing and sediment fence will be utilized to protect nearby trees from damage.

The Planning Commission finds that the applicant's construction management plan is sufficient to satisfy the requirements of MMC 19.402.9.

e. MMC Subsection 19.402.12 General Discretionary Review

MMC 19.402.12 establishes the discretionary review process for activities that substantially disturb designated natural resource areas.

(1) Impact Evaluation and Analysis

MMC 19.402.12.A requires an impact evaluation and alternatives analysis in order to determine compliance with the approval criteria for discretionary review and to evaluate alternatives to the proposed development. A technical report prepared by a qualified natural resource professional is required and should include the following components:

- Identification of ecological functions
- Inventory of vegetation
- Assessment of water quality impacts
- Alternatives analysis
- Demonstration that no practicable alternative method or design exists that would have a lesser impact on the resource and that impacts are mitigated to the extent practicable
- Mitigation plan

The applicant's submittal materials include a technical report prepared by Otak, a multidisciplinary design firm with staff experience and expertise in geological sciences, environmental studies, environmental engineering, civil engineering, natural system design, hydraulics engineering, floodplain management, and geotechnical engineering. The technical report includes an impact evaluation and alternatives analysis consistent with the required components listed above.

In summary, the technical report notes that the ecological function of the WQR and HCA areas within the project area is compromised by the extremely steep slope, which supports very little native vegetation, provides little flow attenuation and water storage, and is at risk of eroding and contributing additional sediment

to the nearby creek and river. Three large, existing native trees at the top of the slope provide a shade canopy but are leaning downslope, with a limited shrub layer in the understory and a high percentage of coverage by invasive plants, namely English ivy.

The proposed activity involves removing the pool, patio, and two to three trees; re-grading a limited portion of the hillside to reduce the angle of the slope; and replanting the project area with native plants. The report presents an analysis of four alternatives to the proposed activity: 1) leave existing conditions as they are, 2) retain the existing pool and stabilize the slope with a micropile structural wall, 3) retain the existing pool and stabilize the slope with a rock buttress, and 4) remove the existing pool and re-grade a much larger portion of the slope.

The technical report demonstrates that the proposed activity is the least impactful option that also reduces the likelihood of further slope erosion. The first alternative does nothing to address the current condition of slope instability and erosion into the natural resource area. The other three alternatives would all disturb significantly more of the natural resource area to achieve slope stability. The micropile wall option would leave in place the existing pool, which is a structure of some concern for long-term slope stability. The rock buttress option would leave the existing pool in place and result in a non-vegetated slope. And the larger-area re-grading option would disturb a far larger amount of natural resource area than the proposed activity, which is focused on a more limited area where the slope is very steep.

The technical report includes a mitigation plan that calls for replanting disturbed areas with native species plants, with trees and shrubs planted in the ratios listed in MMC Subsection 19.402.11.D.2.b. The native species of trees, shrubs, and groundcover planted will improve the quality of vegetated cover within the WQR and HCA. The mitigation plan includes an implementation schedule and plan for maintenance and monitoring to ensure successful planting survival.

The Planning Commission finds that the applicant's impact evaluation and alternatives analysis is sufficient for purposes of reviewing the proposed activity against the approval criteria provided in MMC 19.402.12. This standard is met.

(2) Approval Criteria

MMC 19.402.12.B provides the approval criteria for discretionary review as follows:

- (a) Avoid – The proposed activity avoids the intrusion of development into the WQR and/or HCA to the extent practicable, and has less detrimental impact to the natural resource areas than other practicable alternatives.
- (b) Minimize – If the applicant demonstrates that there is no practicable alternative to avoid disturbance of the natural resource, then the proposed activity shall minimize detrimental impacts to the extent practicable.
- (c) Mitigate – If the applicant demonstrates that there is no practicable alternative that will avoid disturbance of the natural resource, then the proposed activity shall mitigate for adverse impacts to the resource area. The applicant shall present a mitigation plan that demonstrates compensation for detrimental impacts to ecological functions, with mitigation occurring on the site of the disturbance to the extent practicable,

utilization of native plants, and a maintenance plan to ensure the success of plantings.

ESA Vigil-Agrimis (ESA), the City's on-call consultant for natural resource services, reviewed the applicant's technical report. ESA presented its assessment to the City in a summary memo, which informs this portion of the findings.

The proposed activity would minimize disturbance impacts to the WQR and HCA on the site to the extent practicable while still achieving the goal of stabilizing the slope. The project would affect only those portions of the slope and nearby areas within the WQR and HCA as necessary to re-grade the slope itself and provide access for equipment and materials. As discussed in Finding 5-e-(1), the other alternatives all would have greater impacts on the natural resource area than the proposed activity. Doing nothing would leave the slope vulnerable to further erosion, increasing the likelihood of additional sediment being deposited in the protected water features below. The other alternatives, which involve other engineering measures (i.e., micropile wall, rock buttress, and re-grading entire slope), would all result in a larger disturbance area than the proposed activity.

To minimize impacts to the WQR and HCA, the applicant's construction management plan shows the sediment fencing and high-visibility fencing that will be used to demarcate where disturbance is expected. An existing road overgrown with vegetation will provide access for materials and equipment. Staging and pedestrian access areas will be located within already-landscaped portions of the site, to avoid disturbance of existing native vegetation.

Mitigation for the proposed impacts to the WQR and HCA will take the form of native species plantings, with trees and shrubs provided in numbers consistent with the ratios listed in MMC Subsection 19.402.11.D.2.b (i.e., 5 trees and 25 shrubs for every 500 sq ft of disturbance within an HCA). In addition, the mitigation plan calls for groundcover plantings consisting of a mix of native grasses and herbs.

ESA has reviewed the mitigation plan and concurs that the applicant's approach is reasonable and adequate to account for the project's adverse impacts to the WQR and HCA. ESA has suggested that new plants be distributed on the site according to each species' preference for particular conditions. For example, the ESA assessment notes that some of the proposed species are better suited for the wetter conditions on the lower part of the slope near the ordinary high water mark than in the higher, drier areas. ESA also suggested that any downed trees should be left on the site within the natural resource area, in order to preserve the riparian habitat functions they would serve if left to fall naturally over time.

As addressed in Finding 5-f, the applicant's submittal materials somewhat under-represent the location of WQR and HCA areas on the subject property, which results in a larger area of WQR and HCA disturbance than originally indicated and a need for the applicant to revise the proposed amount of mitigation planting. A condition has been established to require that revised site plans be presented in conjunction with development permits to more accurately show the location of the WQR and HCA on site and to recalculate the amount of area being disturbed. The condition includes a requirement to provide a revised

planting plan that adjusts the number of mitigation plantings using the same ratio of 5 trees and 25 shrubs per 500 sq ft of disturbance.

Furthermore, the applicant's mitigation plan does not include a planting site plan showing the proposed locations of new plants with respect to topography and ordinary high water mark. That level of detail is necessary for staff to verify that future plantings are located where they are more likely to survive and become established. A condition has been established to ensure that such a planting site plan is provided at the time of development permits. In addition, a condition has been established to ensure that, as proposed, any downed trees will be left on the site within the WQR and/or HCA, to the extent practicable.

As conditioned, the Planning Commission finds that the proposed activity meets the approval criteria for discretionary review.

As conditioned, the Planning Commission finds that the proposed activity meets the applicable discretionary review standards of MMC 19.402.12.

f. MMC Subsection 19.402.15 Boundary Verification and Map Administration

MMC 19.402.15 establishes standards for verifying the boundaries of WQRs and HCAs and for administering the City's Natural Resource (NR) Administrative Map.

The locations of WQRs are determined based on the provisions of MMC Table 19.402.15. For streams, the WQR includes the feature itself and a vegetated corridor that extends 50 ft from the ordinary high water mark or 2-year recurrence interval flood elevation. Where the slope exceeds 25% for less than 150 ft, the vegetated corridor is measured with a 50-ft width from the break in the 25% slope.

MMC 19.402.15.A.1.a establishes the information required to justify corrections to mapped HCAs where there are simple incongruities, including a site plan with existing conditions, a copy of the applicable portion of the NR Administrative Map, the latest aerial photos of the property, and a demonstration of the misalignment between the NR Administrative Map and the property's tax lot boundaries.

The applicant's submittal includes a site plan that overlays the existing conditions with the HCA boundary from the NR Administrative Map, a recent aerial photo, and the tax lot boundaries. The site plan demonstrates that there is some discrepancy between the HCA boundary on the NR Administrative Map and the existing developed part of the subject property, namely a portion of the house, in-ground pool, and brick patio, as measured by topographic survey.

The applicant's materials and the NR Administrative Map show the WQR boundary extending simply 50 ft uphill from the ordinary high water mark, without accounting for the steep slope within the project area. The actual WQR boundary on the subject property appears to extend farther uphill than is shown on the applicant's materials and the NR Administrative Map, and likely overlaps more with the HCA boundary.

In addition, the applicant's materials indicate that a portion of the HCA shown on the NR Administrative Map includes existing developed and landscaped areas that should not be designated as HCA. However, as per the principles outlined in MMC Subsection 19.402.15.A.1.a, landscaped areas are not considered developed areas for purposes of determining HCA boundaries and are not eligible for consideration as simple incongruities. The applicant's calculations of HCA disturbance excluded these landscaped areas, which should still be considered HCA. As addressed in Finding 5-e, a condition has been established to provide revised plans that distinguish

developed features from landscaped areas, to verify which areas should have the HCA designation removed from the NR Administrative Map.

The Planning Commission finds that the City's NR Administrative Map shall be corrected to remove the HCA designation from existing developed areas on the subject property, using the topographically surveyed conditions as the basis for accuracy. As conditioned, the Planning Commission finds that the standards of MMC 19.402.15 for boundary verification and map administration have been met.

As conditioned, the Planning Commission finds that the proposed activity, including disturbance and restoration of a portion of the designated natural resource area on the subject property, meets all applicable standards of MMC 19.402.

6. MMC Section 19.401 Willamette Greenway Zone

MMC 19.401 establishes standards for the Willamette Greenway overlay designation. The subject property is entirely within the Willamette Greenway zone as shown on the City's zoning map.

a. MMC Subsection 19.401.5 Procedures

MMC 19.401.5 establishes procedures related to proposed uses and activities in the Willamette Greenway zone. Development in the Willamette Greenway zone requires conditional use review, subject to the standards of MMC Section 19.905 and in accordance with the approval criteria established in MMC Subsection 19.401.6.

By virtue of regrading and stabilizing the slope adjacent to the creek and river, the project involves the substantial alteration of natural site characteristics and constitutes "development" as defined in MMC Subsection 19.401.4. The proposed activity is subject to the conditional use review standards of MMC 19.905 and the approval criteria of MMC 19.401.6.

b. MMC Subsection 19.401.6 Criteria

MMC 19.401.6 establishes the criteria for approving conditional uses in the Willamette Greenway zone.

- (1) Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan

The State Willamette River Greenway Plan defines "lands committed to urban use" in part as "those lands upon which the economic, developmental and locational factors have, when considered together, made the use of the property for other than urban purposes inappropriate."

The subject property has been developed for private residential use since at least 1948. The land is committed to an urban use.

- (2) Compatibility with the scenic, natural, historic, economic, and recreational character of the river

The project area is adjacent to and overlooks the confluence of Johnson Creek with the Willamette River. The intent of the project is to prevent continued erosion of the existing steep slope into the natural resource area below. The proposed activity includes replanting vegetation in and around the disturbance area to enhance the natural resource area. The project presents no significant impacts to the character of the river and is compatible with it.

- (3) Protection of views both toward and away from the river

The project area is adjacent to the river and includes a range of elevations due to a steep slope on the site. The proposed activity includes removing two or three mature trees, which will temporarily open up views toward and away from the river. Native trees and shrubs will be planted as mitigation, and the vegetated visual buffer between the site and the river will be reestablished over time. Over the long term, views toward and away from the river will not be significantly changed as a result of this project.

- (4) Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable

The project area includes an existing in-ground swimming pool and patio at the top of a vegetated slope leading down across the riparian fringe to the confluence of the creek and river. No new permanent disturbance is proposed between the existing pool and the riparian area, and additional native vegetation will be planted to restore disturbed areas and enhance the existing habitat.

- (5) Public access to and along the river, to the greatest possible degree, by appropriate legal means

The subject property is a private residential property and does not provide public access to the river. The river is publicly accessible nearby from the south side of Johnson Creek, at Klein Point in the City's Riverfront Park.

- (6) Emphasis on water-oriented and recreational uses

The site is a residential property that provides private access to the creek and river, as well as to an in-ground swimming pool and patio on site. The proposed activity will not impact the water-oriented and recreational uses currently provided by the subject property.

- (7) Maintain or increase views between the Willamette River and downtown

The project area is approximately 300 ft (linear distance) from the nearest portion of downtown Milwaukie on the east side of SE McLoughlin Boulevard (Highway 99E). However, due to extensive vegetation, elevation differences, and the presence of Johnson Creek, the subject property is not very visible from downtown. The proposed activity will have no effect on views between the river and downtown.

- (8) Protection of the natural environment according to regulations in Section 19.402

The intent of the proposed activity is to protect the existing natural area on site, a significant portion of which includes WQR and HCA natural resource designations. As addressed in Finding 5, the proposed activity has been reviewed against the standards for natural resource protection as provided in MMC Section 19.402. The project includes mitigation for impacts to the designated natural resource areas on the subject property and will improve the overall ecological health of the natural environment.

- (9) Advice and recommendations of the Design and Landmark Committee, as appropriate

The subject property is not within a downtown zone and the proposed activity does not require review by the Design and Landmarks Committee (DLC).

- (10) Conformance to applicable Comprehensive Plan policies

The Willamette Greenway Element in the Milwaukie Comprehensive Plan includes policies related to land use, public access and view protection, and maintenance of private property. These policies include the requirement of a conditional use permit for new development and intensification of existing uses, evaluation of development impacts to visual corridors, and limitations on authorizing the unrestricted public use of private land.

The Natural Hazards Element includes policies that prohibit development in known areas of natural disasters and hazards without appropriate safeguards. The Open Spaces, Scenic Areas, and Natural Resources Element includes policies to conserve open space and protect and enhance natural and scenic resources.

The proposed activity is being reviewed through the Willamette Greenway conditional use process as provided in MMC Subsection 19.401.5. The project will not significantly or permanently impact visual corridors. The proposed activity is on private property and does not involve increasing public access to the river over private land. The project area is outside the 100-year floodplain and is also being reviewed through the general discretionary review process for natural resource areas as provided in MMC Section 19.402.

- (11) The request is consistent with applicable plans and programs of the Division of State Lands

The proposed activity is not inconsistent with any known plans or programs of the Department of State Lands (DSL).

- (12) A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C

The proposed activity involves stabilization of a steep slope on the site, with accompanying plantings to mitigate for disturbance. The project area includes a Willamette Greenway vegetation buffer (land within 25 ft of the ordinary high water mark), primarily where a temporary road will provide access. The applicant's materials include a mitigation plan that proposes to restore the access road with native grasses and plant a vegetation buffer area adjacent to the location where the slope will be stabilized. No trees will be removed from within the Willamette Greenway vegetation buffer and scenic views will not be significantly affected over the long term. The proposed activity will enhance the vegetation buffer area.

The Planning Commission finds that the proposed activity meets all relevant approval criteria provided in MMC 19.401.6.

The Planning Commission finds that the proposed activity meets all applicable standards of the Willamette Greenway zone.

7. MMC Section 19.905 Conditional Uses

MMC 19.905 establishes regulations for conditional uses, including standards for reviewing modifications to existing conditional uses. As noted in Finding 6-a and as provided in MMC Subsection 19.401.5.A, activities within the Willamette Greenway zone that trigger Willamette Greenway review are subject to the provisions of Section 19.905 as conditional uses.

a. MMC Subsection 19.905.3 Review Process

MMC 19.905.3 establishes the process by which a new conditional use, or a major or minor modification of an existing conditional use, must be reviewed.

As noted in Finding 6-a, the proposed development is an activity within the Willamette Greenway zone that requires review as a conditional use. The existing use on the subject property is a private residence, which is an allowed use in the underlying residential R-2 zone. The proposed activity involves removing and replacing an existing swimming pool and patio, as well as excavating to stabilize and restore a steep slope on the site, which represents a major modification to the existing use.

MMC 19.905.3.A requires that a major modification of an existing conditional use be evaluated through the Type III review process per MMC Section 19.1006.

b. MMC Subsection 19.905.4 Approval Criteria

MMC 19.905.4.A establishes the approval criteria for a new conditional use or a major modification to an existing conditional use.

- (1) The characteristics of the lot are suitable for the proposed use considering size, shape, location, topography, existing improvements, and natural features.

The subject property is a residential lot approximately 56,600 sq ft in size. The property is developed with a single-family residence and accompanying landscaped areas, including an in-ground swimming pool and patio. The site is adjacent to the confluence of Johnson Creek and the Willamette River and includes WQR and HCA natural resource areas. The proposed activity is intended to reduce the occurrence of the existing slope slowly eroding into the natural resource areas.

The Planning Commission finds that this standard is met.

- (2) The operating and physical characteristics of the proposed use will be reasonably compatible with, and have minimal impact on, nearby uses.

The subject property is adjacent to Johnson Creek and the Willamette River, with access from a private dead-end road. The project area is located behind the existing house, where it will be visible only from the creek, river, and the Klein Point portion of Riverfront Park to the south. The proposed activity involves removing and replacing an existing in-ground swimming pool and patio, as well as removing some existing vegetation and replacing it with new native plantings. The project's impacts on nearby uses will be minimal.

The Planning Commission finds that this standard is met.

- (3) All identified impacts will be mitigated to the extent practicable.

The primary impact of the proposed activity will be the temporary disturbance of the designated natural resource areas (WQR and HCA) on the site. The project includes planting native species of trees, shrubs, and groundcover to mitigate the disturbance.

The Planning Commission finds that this standard is met.

- (4) The proposed use will not have unmitigated nuisance impacts, such as from noise, odor, and/or vibrations, greater than usually generated by uses allowed outright at the proposed location.

The proposed activity will not result in any different use of the subject property than currently exists and will not generate any unmitigated nuisance impacts.

The Planning Commission finds that this standard is met.

- (5) The proposed use will comply with all applicable development standards and requirements of the base zone, any overlay zones or special areas, and the standards in Section 19.905.

The subject property is in the Residential R-2 zone, where the applicable development standards are those for lot coverage (maximum of 45% of lot area) and minimum vegetation (minimum of 15% of lot area). Currently, the 56,600-sq-ft lot is covered by approximately 5,600 sq ft of structural footprint (10% lot coverage) and another approximately 3,000 sq ft of non-vegetated area (85% minimum vegetation). The proposed activity will not expand the footprint of existing structures and will not increase the amount of non-vegetated area, leaving the site well over the minimum thresholds for compliance with both relevant standards.

As addressed in Findings 5 and 6, the proposed activity will comply with the relevant standards of the Natural Resource and Willamette Greenway overlay zones, respectively. As addressed elsewhere in Finding 7, the proposed activity is compliant with the other standards of MMC 19.905.

The Planning Commission finds that this standard is met.

- (6) The proposed use is consistent with applicable Comprehensive Plan policies related to the proposed use.

As addressed in Finding 6-b-10, the proposed development is consistent with all relevant policies in the Comprehensive Plan.

The Planning Commission finds that this standard is met.

- (7) Adequate public transportation facilities and public utilities will be available to serve the proposed use prior to occupancy pursuant to Chapter 19.700.

The Engineering Department has reviewed the proposal and confirmed that existing public transportation facilities and public utilities are adequate to serve the proposed development.

The Planning Commission finds that this standard is met.

The Planning Commission finds that the proposed development meets all of the approval criteria outlined in MMC 19.905.4.A for a major modification to an existing conditional use.

c. MMC Subsection 19.905.5 Conditions of Approval

MMC 19.905.5 establishes the types of conditions that may be imposed on a conditional use to ensure compatibility with nearby uses. Conditions may be related to a number of issues, including access, landscaping, lighting, and preservation of existing trees.

The Planning Commission finds that, as proposed, the new development sufficiently mitigates any negative impacts as proposed and that no additional conditions are necessary to ensure compatibility with nearby uses.

d. MMC Subsection 19.905.6 Conditional Use Permit

MMC 19.905.6 establishes standards for issuance of a conditional use permit, including upon approval of a major modification of an existing conditional use. The

provisions include a requirement to record the conditional use permit with the Clackamas County Recorder's Office and provide a copy to the City prior to commencing operations allowed by the conditional use permit.

An advisory note has been included with the conditions of approval to outline the conditional use permit process.

The Planning Commission finds that the proposed development is consistent with the relevant standards established in MMC 19.905 for conditional uses.

8. As per MMC Subsection 19.1001.7.E.1.a, proposals requiring any kind of development permit must complete both of the following steps:
 - a. Obtain and pay for all necessary development permits and start construction within two (2) years of land use approval.
 - b. Pass final inspection and/or obtain a certificate of occupancy within four (4) years of land use approval.

As per MMC Subsection 19.1001.7.E.2.b, land use approvals shall expire unless both steps noted above have been completed or unless the review authority specifies a different expiration date in the land use decision to accommodate large, complex, or phased development projects.

9. The application was referred to the following departments and agencies on August 27, 2015:

- Milwaukie Building Department
- Milwaukie Engineering Department
- Milwaukie Operations Department (Stormwater Division)
- ESA Vigil-Agrimis (City's on-call consultant for natural resources)
- Clackamas Fire District #1
- Historic Milwaukie Neighborhood District Association (NDA) Chairperson and Land Use Committee (LUC)
- Oregon Parks and Recreation Department
- Oregon Department of State Lands (DSL)
- Oregon Department of Fish and Wildlife
- Oregon State Marine Board
- Oregon Department of Transportation (ODOT)

The comments received are summarized as follows:

- a. **Chrissy Dawson, Civil Engineer, Milwaukie Engineering Department:** No comments on the proposal.
- b. **Rob Livingston, Environmental Services Coordinator, Milwaukie Public Works Department:** Restorative planting areas shall use compost mulch for ground cover in addition to the planned plants. The access road shall be restored with straw mulch or compost mulch in addition to the planned seeding. All EC [erosion control] measures must be properly installed prior to starting work at site.

Conditions of Approval

1. At the time of submittal of the associated development permit application(s), the following shall be resolved:
 - a. Final plans submitted for development permit review shall be in substantial conformance with plans approved by this action, which are the plans stamped received by the City on August 17, 2015, except as otherwise modified by these conditions.
 - b. Provide a narrative describing all actions taken to comply with these conditions of approval.
 - c. Provide a narrative describing any changes made after the issuance of this land use decision that are not related to these conditions of approval.
 - d. Provide revised versions of the following site plans, adjusting the representations of the location of Water Quality Resource (WQR), Habitat Conservation Area (HCA), and Willamette Greenway vegetation buffer in accordance with the provisions of MMC Subsections 19.402.15 and 19.401.8.A, respectively. For WQR areas, the revised plans should account for the areas where slopes equal or exceed 25% for less than 150 ft, starting the measurement of the 50-ft vegetated corridor from the break in the 25% slope. For HCA areas, the revised plans should exclude from the HCA any areas of existing structures, patios, walkways, and similar development but should retain as HCA any landscaped areas. For the Willamette Greenway vegetation buffer, the measurement shall be 25 ft upland from the ordinary high water mark, measured horizontally and not by vertical elevation.

The following site plans should be revised accordingly:

- (1) Existing Conditions (Drawing E01)
 - (2) Existing Natural Resource Overlays (Figure 1 in Impact Evaluation section)
 - (3) HCA Boundary Verification (Figure 3 in Impact Evaluation)
 - (4) Preliminary HCA Impacts (Figure 4 in Impact Evaluation)
 - (5) WQR Impacts (Figure 5 in Impact Evaluation)
 - (6) Willamette Greenway Vegetation Buffer Impacts (Figure 1 in Mitigation Plan)
 - (7) Mitigation Activities (Figure 2 in Mitigation Plan)
 - (8) Construction Management Plan (Figure 1)
- e. Based on the revised site plans noted in Condition 1-d, provide an adjusted figure for WQR and HCA disturbance and a recalculation of mitigation plantings, at the ratio of 5 trees and 25 shrubs per 500 sq ft of disturbance.
 - f. Provide a planting site plan showing the general locations and/or distributions of the various species, to ensure that species are located appropriately for the site conditions based on their various characteristics. The plan shall demonstrate that, to the greatest extent practicable, trees removed from the project area will be left within the WQR and/or HCA, to preserve the riparian habitat functions the downed trees would serve if left to fall naturally over time.

Other requirements

1. Conditional Use Permit

As per MMC Subsection 19.905.6, the City will issue a conditional use permit upon approval of an application to allow major modification of an existing conditional use (including Willamette Greenway conditional uses). The applicant must record the conditional use permit with the Clackamas County Recorder's Office and provide a copy to the City prior to commencing operations allowed by the conditional use permit.

2. Development Standards

Projects affecting designated natural resources are subject to the standards provided in MMC Subsection 19.402.11.A for protection of natural resources during development. In addition, projects requiring mitigation for impacts to natural resource areas are subject to the standards provided in MMC Subsection 19.402.11.B, including survival rates, minimum plant sizes, and others.

3. Erosion Control

Restorative planting areas shall use compost mulch for ground cover in addition to the planned plants. The access road shall be restored with straw mulch or compost mulch in addition to the planned seeding. All erosion control measures must be properly installed prior to starting work at site.

4. Limitations on Development Activity

Development activity on the site shall be limited to 7:00 a.m. to 10:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. Saturday and Sunday, as per MMC 8.08.070(l).

5. Expiration of Approval

As per MMC Subsection 19.1001.7.E.1.a, proposals requiring any kind of development permit must complete both of the following steps:

- a. Obtain and pay for all necessary development permits and start construction within two (2) years of land use approval.
- b. Pass final inspection and/or obtain a certificate of occupancy within four (4) years of land use approval.

As per MMC Subsection 19.1001.7.E.2.b, land use approvals shall expire unless both steps noted above have been completed or unless the review authority specifies a different expiration date in the land use decision to accommodate large, complex, or phased development projects.

As per MMC Section 19.908, a request to extend this land use approval may be requested prior to the expiration date. The extension request would be reviewed through the process outlined in MMC Subsection 19.908.3 and subject to the approval criteria provided in MMC Subsection 19.908.4.

6. Pool Replacement

The applicant's proposal includes replacement of the existing in-ground swimming pool with a smaller pool and deck, in the same area as the existing pool but set back farther from the slope. The applicant is not required to install a new pool and deck, and the City acknowledges that the applicant may choose not to execute that part of the original proposal. To be clear, this land use approval includes the new pool and deck component, provided that the work is completed prior to the expiration of the land use approval.



Dennis Egner, AICP
Planning Director

cc: Gary and Sharon Klein, applicants (10795 SE Riverway Ln)
Melanie McCandless, project consultant (c/o OTAK, Inc., 808 SW 3rd Ave, Ste 300, Portland, OR 97204)
Planning Commission (*via e-mail*)
Alma Flores, Community Development Director (*via e-mail*)
Chuck Eaton, Engineering Director (*via e-mail*)
Chrissy Dawson, Engineering Tech II (*via e-mail*)
Samantha Vandagriff, Building Official (*via e-mail*)
Bonnie Lanz, Permit Specialist (*via e-mail*)
Rob Livingston, Environmental Services Coordinator (*via e-mail*)
John Vlastilicia, Sr. Environmental Scientist, ESA Vigil-Agrimis (City's natural resource consultant)
Mike Boumann and Matt Amos, Clackamas Fire District #1 (*via e-mail*)
NDA: Historic Milwaukie (*via e-mail*)
Land Use File(s): NR-2015-003, WG-2015-004