



February 24, 2016

Land Use Files: MLP-2015-006, VR-2015-007

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on February 23, 2016.

Applicants: Louie and Debra Bomotti
Location: 4401 SE Rockwood St
Tax Lot: 1S2E30CB00700
Application Types: Minor Land Partition (Preliminary Plat), Variance Request
Decision: Approved with Conditions
Review Criteria: Milwaukie Land Division Ordinance:

- Chapter 17.12 Application Procedure & Approval Criteria
- Chapter 17.16 Application Requirements and Procedures
- Chapter 17.20 Preliminary Plat
- Chapter 17.28 Design Standards

Milwaukie Zoning Ordinance:

- Section 19.1006 Type III Review
- Section 19.301 Low Density Residential Zones (including R-7)
- Section 19.502 Accessory Structures
- Chapter 19.600 Off-Street Parking and Loading
- Chapter 19.700 Public Facility Improvements
- Section 19.911 Variances
- Chapter 19.1200 Solar Access Protection

Neighborhood: Lewelling

Appeal period closes: 5:00 p.m., March 10, 2016

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 kelterb@milwaukieoregon.gov, if you wish to view this case file.

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This decision may be appealed by 5:00 p.m. on March 10, 2016, 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 17.04.050.A, this decision on the land division (preliminary plat) shall expire 1 year from the date of this approval; extensions may be granted per MMC Subsection 17.04.050.B. Per MMC Section 17.24.040, an application for final plat shall be submitted within 6 months of the date of this approval. Per MMC Subsection 19.1001.7.E, this decision on the variance request shall expire unless the development utilizes its approvals within 4 years of this land use approval. Extensions can be granted per MMC Section 19.908.

Findings in Support of Approval

1. The applicants, Louie and Debra Bomotti, have applied for approval of a minor land partition their property at 4401 SE Rockwood Street (“the subject property”). The applicants are the property owners and have authority to initiate the application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. The application was initially submitted on November 18, 2015, and deemed complete on January 7, 2016. The land use application master file number is MLP-2015-006, with a related variance request (file #VR-2015-007).
2. The site is in the R-7 Low Density Residential zone and includes no zoning overlays or special areas as designated in MMC Chapter 19.400. The Comprehensive Plan Land Use Designation for the site is Low Density. The site has frontage on Rockwood Street as well as on 44th Court and is developed with a single-family detached dwelling and two detached accessory structures (a shop/carport and another shop). Surrounding properties are also zoned R-7 and are developed with single-family detached dwellings.
3. The proposal is to partition the subject property into two parcels of approximately 10,000 sq ft each, preserving the existing single-family house on Parcel 1 and making Parcel 2 available for future development as allowed in the R-7 zone. Parcel 1 has approximately 68.5 ft of frontage on Rockwood Street and approximately 19 ft on 44th Court. Parcel 2 has approximately 41 ft of frontage on 44th Court. The existing public right-of-way adjacent to the subject property is 50 ft wide on Rockwood Street and 60 ft wide on 44th Court. No right-of-way dedication or street improvements are required.

Because Parcel 2 has frontage on and will take access from 44th Court, its lot depth is calculated along the east-west axis and measures approximately 68.5 ft, which is less than the 80-ft minimum lot depth required in the R-7 zone. The applicant has requested a variance to the lot depth standard for Parcel 2. Because the requested variance of 12 ft is more than 10% of the minimum standard, the variance request is subject to the Type III review process.

4. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.1006 Type III Review
 - MMC Chapter 17.12 Application Procedure & Approval Criteria
 - MMC Chapter 17.16 Application Requirements and Procedures

- MMC Chapter 17.20 Preliminary Plat
 - MMC Chapter 17.28 Design Standards
 - MMC Section 19.301 Low Density Residential Zones (including R-7)
 - MMC Section 19.502 Accessory Structures
 - MMC Chapter 19.600 Off-Street Parking and Loading
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.911 Variances
 - MMC Chapter 19.1200 Solar Access Protection
5. As established in MMC Section 19.901, partitions are subject to Type II review. However, the applicant has requested a variance that does not qualify for Type II review and instead requires Type III review. As per MMC Subsection 19.1001.6.B, concurrent applications may be combined into a single review process, using the highest numbered review type required for any part of the overall application.

The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held on February 23, 2016, as required by law.

6. MMC Chapter 17.12 Application Procedure and Approval Criteria

MMC 17.12 establishes the process and procedures for various types of property boundary changes and land division, including for partitions.

a. MMC Section 17.12.020 Application Procedure

MMC 17.12.020 establishes the application procedures and review types for property boundary changes and land division. Specifically, MMC Subsection 17.12.020.D.1 establishes that applications for preliminary partition plat shall be processed with Type II review, unless an associated application is subject to Type III review, in which case the partition application shall also be processed according to MMC Section 19.1006 Type III review.

As noted in Finding 3, the applicants have requested a variance to the lot depth standard for Parcel 2, which requires Type III review. The Planning Commission finds that the associated partition is also subject to Type III review, as per MMC 17.12.020.D.1.

b. MMC Section 17.12.040 Approval Criteria for Preliminary Plat

MMC 17.12.040 establishes the approval criteria for preliminary plat. The proposed preliminary plat meets these criteria as described below.

- (1) MMC Subsection 17.12.040.A.1 requires that the proposed preliminary plat complies with Title 19 Zoning and other applicable ordinances, regulations, and design standards.

As demonstrated by the applicants' submittal materials and as evidenced by these findings, the proposed preliminary plat complies with the applicable ordinances, regulations, and design standards. As proposed, this criterion is met.

- (2) MMC Subsection 17.12.040.A.2 requires that the proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.

As proposed, the buildable areas for the primary structures on the new parcels are adequate to accommodate the uses allowed in the R-7 zone. The creation of Parcel 2 requires a variance to the lot depth standard because the partition would orient the lot to face 44th Court instead of Rockwood Street, which would make the parcel much wider than it is deep. The Planning Commission recognizes that an additional variance(s) from the front and/or rear yard standards would allow more flexibility for design and could be considered and approved in conjunction with future development, but the Commission finds that Parcel 2 includes an adequate amount of buildable area and that additional variances are not necessary to allow for reasonable development. Neither of the parcels have any other dimensional constraints that would necessitate the need for a variance to allow reasonable development. As proposed, this criterion is met.

- (3) MMC Subsection 17.12.040.A.3 requires that the proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).

The proposed plat is a partition plat; therefore, this criterion is not applicable.

- (4) MMC Subsection 17.12.040.A.4 requires that 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.

Adjacent to the subject property, the existing public rights-of-way on Rockwood Street and 44th Court, both of which are functionally classified as local streets in the City's Transportation System Plan, are 50 ft and 60 ft wide, respectively. No additional right-of-way is required for either street, and no changes to the layout of the existing streets are proposed. As proposed, this criterion is met.

- (5) MMC Subsection 17.12.040.A.5 requires a detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.

The applicants' submittal materials include a detailed narrative demonstrating compliance with all applicable standards and criteria. As proposed, this criterion is met.

The Planning Commission finds that the proposed preliminary plat meets the applicable approval criteria for preliminary plat, as established in MMC 17.12.040.

As proposed, the Planning Commission finds that the application for preliminary plat has been processed according to the procedures of and meets the applicable criteria established in MMC 17.12.

7. MMC Chapter 17.16 Application Requirements and Procedures

MMC Section 17.16.060 establishes the application requirements for preliminary plat, including completed application forms and checklists, applicable fees, and the information specified in MMC Chapter 17.20 Preliminary Plat.

The applicants' submittal materials include the necessary forms, checklists, and fees, as well as sufficient information to demonstrate compliance with the applicable standards and criteria.

As proposed, the Planning Commission finds that the application meets the applicable requirements for submittal of a preliminary plat, as established in MMC 17.16.

8. MMC Chapter 17.20 Preliminary Plat

MMC 17.20 establishes the information required for a preliminary plat, including general information to be shown on the plat and existing and proposed conditions.

The applicants' preliminary plat submittal is to scale, includes a vicinity map, and shows zoning, existing structures on the subject property and adjacent properties, lot design and layout, minimum setbacks for future development, streets and driveway accesses, a proposed access easement, and locations of existing utilities.

The Planning Commission finds that the proposed preliminary plat includes the relevant and necessary information as outlined in MMC 17.20.

9. MMC Chapter 17.28 Design Standards

MMC 17.28 establishes design standards for land divisions and boundary changes. In particular, MMC Section 17.28.040 establishes standards for general lot design.

- a. MMC Subsection 17.28.040.A requires that the lot size, width, shape, and orientation shall be appropriate for the location and the type of use contemplated, as well as that minimum lot standards shall conform to Title 19.

Both of the proposed parcels meet the minimum area requirements for the underlying R-7 zone. Parcel 1 is oriented toward Rockwood Street and Parcel 2 faces 44th Court. Parcel 1 meets all of the minimum dimensional requirements for the R-7 zone; Parcel 2 meets the minimum lot width standard of 60 ft but does not meet the minimum lot depth standard of 80 ft. The applicants have requested a variance to the lot depth standard, with the variance criteria addressed in Finding 14. Both parcels conform to the other relevant standards of Title 19 as described in these findings.

- b. MMC Subsection 17.28.040.B requires that lot shape shall be rectilinear, except where not practicable due to location along a street radius, or existing lot shape. The sidelines of lots, as far as practicable, shall run at right angles to the street upon which the lots face. As far as practicable, the rear lot line shall run parallel to the street.

The proposed parcels are both rectilinear in shape. For Parcel 1, the side lot lines run at right angles to and the rear lot line is parallel to Rockwood Street. For Parcel 2, the side lot lines run at right angles to and the rear lot line is parallel to 44th Court.

- c. MMC Subsection 17.28.040.C limits compound lot lines for side or rear lot lines.

No compound lot lines are proposed for the side or rear lot lines on either parcel.

- d. MMC Subsection 17.28.040.D allows lot shape standards to be varied pursuant to MMC 19.911.

The applicants have requested a variance to the lot depth standard for Lot 2, but no variance to the lot shape standards is requested in this application.

- e. MMC Subsection 17.28.040.E limits double frontage and reversed frontage lots, stating that they should be avoided except in certain situations.

The existing subject property has approximately 68 ft of frontage on Rockwood Street and 60 ft of frontage on 44th Court. The proposed partition will leave Parcel 1 with the 68-ft frontage on Rockwood Street for its primary access and will reduce its frontage

on 44th Court to approximately 19 ft in its northwestern corner. Parcel 2 will keep the remaining 41 ft of frontage on 44th Court for its primary access. As proposed, the partition reduces the double-frontage aspect for Parcel 1 and eliminates it entirely for Parcel 2.

- f. MMC Subsection 17.28.040.F requires that, pursuant to the definition and development standards contained in Title 19 for frontage, required frontage shall be measured along the street upon which the lot takes access. This standard applies when a lot has frontage on more than one street.

Parcel 1 has frontage on both Rockwood Street (approximately 68 ft) and 44th Court (approximately 19 ft) and will take access from Rockwood Street. Parcel 2 has approximately 41 ft of frontage on 44th Court, where it will take access. As discussed in Finding 10-b, these frontages meet the minimum requirements for street frontage in the R-7 zone.

The Planning Commission finds that the proposed new parcels presented in the applicants' preliminary plat meet the applicable design standards established in MMC Chapter 17.28.

10. MMC Section 19.301 Low Density Residential Zones (including R-7)

MMC 19.301 establishes standards for Low Residential zones, including the R-7 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 in the R-7 zone, including single-family detached dwellings as outright permitted uses.

An existing single-family detached dwelling currently exists on Parcel 1 and is proposed to remain. Parcel 2 is proposed to be developed with a single-family detached dwelling at some point in the future; currently, it includes an existing detached accessory structure, which is proposed to remain. As defined in MMC Section 19.201, an accessory structure is one that is "incidental and subordinate to the main use of the property." A new accessory structure would not be allowed without an existing primary use, so the proposed partition will make the existing accessory structure a nonconforming situation for as long as there is no primary structure on Parcel 2. A condition has been established to ensure that the accessory structure on Parcel 2 is either removed or else formally approved with a variance request in conjunction with development of a primary structure on Parcel 2.

As conditioned, this standard is met.

b. MMC Subsection 19.301.4 Development Standards

MMC 19.301.4 establishes development standards for low density residential zones, including the R-7 zone. The applicable standards are addressed and met as described in Table 1 (Zoning Compliance) below.

Table 1 – Zoning Compliance Residential Zone R-7 Development Standards			
Standard	Required	Proposed Parcel 1	Proposed Parcel 2
Lot Area	7,000 sq ft for single-family detached; 14,000 for duplex	10,559 sq ft	9,887 sq ft

Lot Width	60 ft	68.5 ft	144 ft
Lot Depth	80 ft	154 ft	68.5 ft **
Public Street Frontage	35 ft (for standard lot)	68.5 ft	41 ft
Front Yard	20 ft	38.6 ft	NA
Side Yard	5 ft / 10 ft	16.5 ft / 24.1 ft	NA
Rear Yard	20 ft	87 ft	NA
Building Height	2.5 stories or 35 ft	2 stories (approx. 17 ft)	NA
Maximum Lot Coverage	30%	17%	10%
Minimum Vegetation	30%	64%	90%
Residential Density	Minimum: 5.0 units/acre For overall site = 2 units	Large enough for 1 unit	Large enough for 1 unit
	Maximum: 6.2 units/acre For overall site = 3 units		

** A variance has been requested for the lot depth standard for Parcel 2, as addressed in Finding 14.

For Parcel 2, the standards for yard setbacks, building height, lot coverage, and minimum vegetation are not applicable at the time of partition and will be addressed at the time of development.

As proposed, and as per the approved variance request addressed in Finding 14, the applicable standards of this subsection are met.

c. MMC 19.301.5 Additional Development Standards

MMC 19.301.5 establishes additional development standards applicable to the R-7 zone, including side yards, lot coverage, front yard minimum vegetation, accessory structures, residential densities, number of dwelling structures, off-street parking, and public facility improvements.

For Parcel 1, front yard vegetation is over 80%, which far exceeds the minimum requirement of 40%. Parcel 1 includes an existing single-family house, which is the only primary building designed for dwelling purposes on the lot, meeting the standard of Subsection 19.301.5.F. For Parcel 2, compliance with the other applicable standards will be determined at the time of future development.

The requirements for accessory structures are addressed in Finding 11; those for off-street parking are addressed in Finding 12; and those for public facility improvements are addressed in Finding 13.

As proposed, the applicable standards of this subsection are met.

As proposed, and with the approved variance as addressed in Finding 14, the Planning Commission finds that the applicable standards of MMC 19.301 for the R-7 zone are met.

11. MMC Section 19.502 Accessory Structures

MMC 19.502 establishes standards for accessory structures. In particular, MMC Subsection 19.502.2.A establishes specific provisions for residential accessory structures, including development standards, design standards, and requirements related to roof pitch.

a. MMC Subsection 19.502.2.A.1 Development Standards

MMC 19.502.2.A.1 establishes height, footprint, and setback standards for residential accessory structures.

The subject property includes two existing detached accessory structures, both of which are proposed to remain in place. A carport/shop will remain on Parcel 1 and a pole-barn shop will remain on Parcel 2. Table 2 presents the relevant data for each structure with respect to the applicable standards of MMC 19.502.2.A.1.

Table 2 – Residential Accessory Structures Height and Footprint Standards			
Standard	Requirement (for Type C Structures)	Structure on Parcel 1	Structure on Parcel 2
Maximum Building Height	Lesser of 25 ft OR not taller than highest point of primary structure (allowed at least 15 ft regardless)	10 ft	10 ft
Maximum Building Footprint	Lesser of 75% of primary structure OR 1,500 sq ft (allowed at least 850 sq ft if lot area > 10,000 sq ft)	1,075 sq ft **	974 sq ft **
Required Rear Yard	Base zone requirement = 20 ft for R-7	20 ft	38 ft
Required Side Yard	Base zone requirement = 5 ft or 10 ft for R-7	4.8 ft	9.8 ft
Required Front Yard	Not allowed in front yard unless structure is at least 40 ft from front lot line	90 ft	5.8 ft
Building Separation	Minimum of 5 ft between exterior wall of accessory structure and any other structure on site	24 ft	NA

** Both structures were constructed prior to the 2002 adoption of size restrictions for accessory structures.

The size and height allowances for the accessory structure on Parcel 1 are dependent on the existing primary structure, which is a two-story house with a footprint of approximately 725 sq ft and a building height of approximately 17 ft. The accessory structure on Parcel 1 meets the height standard and will meet the required rear yard setback but is nonconforming with respect to the standards for the maximum allowed footprint and side yard setback. For those aspects, Parcel 1 is subject to the applicable provisions of MMC Chapter 19.800 Nonconforming Uses and Development.

The accessory structure on Parcel 2 is located within the front yard and is not at least 40 ft from the front lot line; the height and footprint standards are impossible to evaluate without a primary structure on the lot. According to the definition established in MMC Section 19.201, an accessory structure is one that is “incidental and subordinate to the main use of property and located on the same lot as the main use.” The existence of an accessory structure on Parcel 2 without a primary structure

creates a nonconforming situation that will require an approved variance request to remain in conjunction with development of a primary structure. A condition has been established to require that the existing accessory structure on Parcel 2 be removed unless it becomes accessory to a primary structure.

The existing nonconforming aspects on both parcels are subject to the provisions of MMC 19.800. As conditioned, the applicable standards of MMC 19.502.2.A.1 are met for Parcel 2.

b. MMC Subsection 19.502.2.A.2 Design Standards

MMC 19.502.2.A.2 establishes design standards for accessory structures. Metal siding is prohibited on structures more than 10 ft high or with a footprint greater than 200 sq ft, unless the siding replicates the siding on the primary dwelling or has the appearance of siding commonly used for residential structures. In addition, structures located in a front, side, or street-side yard that are visible from the right-of-way at a pedestrian level shall use exterior siding and roofing materials that are commonly used on residential structures.

Both existing accessory structures are metal-sided buildings that are greater than 200 sq ft in area, and both were constructed prior to the 2002 adoption of design standards for accessory structures. Both accessory structures are nonconforming with respect to the prohibition on metal siding and are subject to the applicable provisions of MMC 19.800.

The Planning Commission finds that the existing nonconforming aspects on both parcels are subject to the provisions of MMC 19.800. As conditioned, the Planning Commission finds that the proposed partition meets the applicable standards of MMC 19.502.2.A.2 for Parcel 2.

12. 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. Specifically, MMC Subsection 19.602.3 addresses applicability for development of vacant sites as well as for improvements to existing off-street parking areas for development and changes in use.

The proposed partition will create Parcel 1, which includes an existing single-family home and detached accessory structure; and Parcel 2, which includes an existing accessory structure but no primary structure. As established in MMC Subsection 19.504.2, no required off-street parking area shall be reduced below the minimum requirements, so the provisions of MMC 19.600 are applicable to Parcel 1. Future construction of a primary structure on Parcel 2 will trigger compliance with the off-street parking standards at the time of development.

b. MMC Section 19.605 Vehicle Parking Requirements

MMC 19.605 establishes standards to ensure that development provides adequate vehicle parking based on estimated parking demand. In particular, MMC Table

19.605.1 provides minimum and maximum requirements for a range of different uses. For single-family dwellings, a minimum of 1 space is required, with no maximum limit.

The existing use on Parcel 1 is a single-family dwelling, so a minimum of 1 off-street parking space is required. Parcel 2 currently has no primary use, so no off-street parking spaces are required at this time.

c. MMC Section 19.607 Off-Street Parking Standards for Residential Areas

MMC Subsection 19.607.1 establishes off-street parking standards intended to preserve residential neighborhood character, applicable to passenger vehicles and off-street parking areas for a number of different housing types, including single-family detached dwellings. The provisions of MMC 19.607.1 include a minimum space dimension of 9 ft by 18 ft, limitations on where required spaces can be located (not in the required front yard), requirements for parking surface materials, and a limitation of no more than 50% of the front yard area for uncovered parking and maneuvering areas.

As noted above, the off-street parking requirements for Parcel 2 will be evaluated at the time of future development. On Parcel 1, an existing 10-ft-wide asphalt driveway extends from the front property line approximately 90 ft to an existing detached accessory structure that includes a carport feature situated more than 50 ft behind the front of the existing house. The existing driveway occupies only 14% of the front yard area. The proposed partition will not reduce the existing off-street parking area for Parcel 1.

The Planning Commission finds that Parcel 1 meets the applicable standards of MMC 19.607.

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

13. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 establishes provisions to ensure that development provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts.

a. MMC Section 19.702 Applicability

MMC 19.702 establishes the applicability of the provisions of MMC 19.700, including 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 or any increase in gross floor area on the site.

The applicants propose to partition the existing parcel to establish two lots. The proposed partition triggers the requirements of MMC 19.700.

MMC 19.700 applies to the proposed partition.

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 providing approval criteria.

The applicants had a preapplication conference with City staff prior to application submittal, on July 30, 2015. The proposed partition does not trigger a Transportation Impact Study (as addressed in Finding 13-c), but it does require a preliminary plat application. The proposal's compliance with MMC 19.700 is being reviewed as part of

the preliminary plat application and a separate Transportation Facilities Review application is not necessary. Finding 13-e addresses the proposal's compliance with the approval criteria established in MMC Subsection 19.703.3, particularly the required transportation facility improvements.

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 requires submission of a Transportation Impact Study (TIS) documenting the development impacts on the surrounding transportation system.

The proposed partition will not trigger a significant increase in trip generation and therefore does not require a TIS.

d. MMC Section 19.705 Rough Proportionality

MMC 19.705 requires that transportation impacts of the proposed partition be mitigated in proportion to its potential impacts.

The proposed partition does not trigger mitigation of impacts beyond the required construction of a driveway approach to the newly created lot on 44th Court (Parcel 2), for which a condition has been established. The portion of the proposed partition that fronts 44th Court is not of sufficient length to make a requirement for sidewalk construction, in addition to construction of a driveway approach, practical. The portion of the proposed partition that fronts Rockwood Street is the fronting property line for the "parent" lot (Parcel 1), which already contains a single family residence. No new development on Parcel 1 is proposed. Impacts to the surrounding transportation system are minimal and will continue to operate at the level of service previous to the proposed partition.

As conditioned, the proposed partition is consistent with MMC 19.705.

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. The City's street design standards are based on the street classification system described in the City's Transportation System Plan (TSP).

- (1) MMC Subsection 19.708.1 establishes general requirements and standards for streets, including access management, clear vision, street design, connectivity, and intersection design and spacing standards.

The applicants shall construct a driveway approach to the new lot on 44th Court (Parcel 2), sufficient to meet all guidelines of the Americans with Disabilities Act (ADA). The driveway approach apron shall be between 9 ft and 20 ft in width and least 7.5 ft from both the side property line with Parcel 1 and the front property line of tax lot 1003 (9501 SE 44th Court). In addition, the applicants shall remove all signs, structures, or vegetation in excess of 3 ft in height from "vision clearance areas" at the intersection of streets and driveways fronting the proposed partition. A condition of approval has been established to ensure that the applicable general requirements and standards of MMC 19.708.1 are met.

As conditioned, the proposed partition is consistent with MMC 19.708.1.

- (2) MMC Subsection 19.708.2 establishes more specific standards for street design and improvement based on functional classification.

The applicants shall construct a driveway approach to the new lot on 44th Court (Parcel 2), sufficient to meet all guidelines of the ADA. The driveway approach apron shall be between 9 ft and 20 ft in width and least 7.5 ft from both the side property line with Parcel 1 and the front property line of tax lot 1003 (9501 SE 44th Court). A condition of approval has been established to ensure that the applicable specific requirements and standards are met.

The existing right-of-way width of 44th Court fronting the proposed partition is 68 ft as measured from perpendicular to the fronting property line. The Milwaukie TSP and Transportation Design Manual classify the fronting portions of 44th Court a local street. According to MMC Table 19.708.2 Street Design Standards, the required right-of-way width for a local street is between 20 ft and 68 ft depending on the required street improvements. The existing right-of-way width is sufficient to accommodate the required improvements on 44th Court. The applicants are not responsible for right-of-way dedication.

As conditioned, the proposed partition is consistent with MMC 19.708.2.

- (3) MMC Subsection 19.708.3 establishes that sidewalks shall be provided on the public street frontage of all development.

As addressed in Findings 13-e-1 and e-2, a condition requiring the construction of a driveway approach along the frontage of the subject property abutting 44th Court is included in the street frontage requirements.

The portion of the proposed partition that fronts 44th Court is not of sufficient length to make a requirement for sidewalk construction, in addition to a driveway approach, practical. MMC 19.708 states that:

“The City recognizes the importance of balancing the need for improved transportation facilities with the need to ensure that required improvements are fair and proportional. The City also acknowledges the value in providing street design standards that are both objective and flexible. Objective standards allow for consistency of design and provide some measure of certainty for developers and property owners. Flexibility, on the other hand, gives the City the ability to design streets that are safe and that respond to existing street and development conditions in a way that preserves neighborhood character.”

The proposed partition fronts the end of a cul-de-sac that currently does not contain sidewalk, providing no opportunity for sidewalk connectivity, and is not required to provide one.

As conditioned, the proposed partition is consistent with MMC 19.708.3.

- (4) MMC Subsection 19.708.4 establishes standards for bicycle facilities.

The portion of 44th Court fronting the proposed partition is not classified as a bike route in the Milwaukie TSP. As a result, bicycle facility improvements are not required for the proposed partition.

MMC 19.708.4 does not apply to the proposed partition.

- (5) MMC Subsection 19.708.5 establishes standards for pedestrian and bicycle paths.

The proposed partition property is surrounded by single-family residences. The proposed partition does not present an opportunity to provide a pedestrian or bicycle path and is not required to provide one.

MMC 19.708.5 does not apply to the proposed partition.

- (6) MMC Subsection 19.708.6 establishes standards for transit facilities.

The portion of 44th Court fronting the proposed partition is not classified as a transit route in the Milwaukie TSP. As a result, transit facility improvements are not required for the proposed partition.

As conditioned, the proposed partition meets all the applicable standards of MMC 19.708.

As conditioned, the Planning Commission finds that the proposed partition meets the applicable public facility improvement standards of MMC 19.700.

14. MMC Section 19.911 Variances

MMC Section 19.911 establishes the variance process for seeking relief from specific code sections that have the unintended effect of preventing reasonable development or imposing undue hardship.

a. MMC Subsection 19.911.2 Applicability

MMC 19.911.2 establishes applicability standards for variance requests.

Variances may be requested to any standard of MMC Title 19, provided the request is not specifically listed as ineligible in MMC Subsection 19.911.2.B.

The applicants have requested a variance to reduce the required lot depth for Parcel 2 by more than 10% below the 80-ft minimum standard for the R-7 zone (MMC Subsection 19.301.4.A.3). The requested variance would allow the new parcel, which has historically been oriented to face Rockwood Street as part of the larger subject property, to be oriented to face and take access from 44th Court as a separate developable lot.

The request would not eliminate the restriction on a prohibited activity, change a required review type, allow a use not allowed outright in the R-7 zone, or otherwise produce any of the results listed in MMC Subsection 19.911.2.B. The request is eligible for a variance as per MMC 19.911.2.

b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. Specifically, MMC Subsection 19.911.3.B allows for limited variations to numerical standards, including a variance of up to 10% to lot width or depth standards. MMC Subsection 19.911.3.C establishes the Type III review process for larger or more complex variations to standards that require additional discretion and warrant a public hearing.

The applicants have requested a variance of more than 11 ft to the 80-ft lot depth standard for the R-7 zone. The request is for a variance of more than 10% to the lot depth standard and, as per MMC 19.911.3, does not qualify for Type II review. The requested variance has been evaluated through Type III review.

c. MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes approval criteria for variance requests. Specifically, MMC Subsection 19.911.4.B provides two sets of approval criteria for Type III variances, one for discretionary relief and the other for economic hardship. The applicants have chosen to meet the discretionary relief criteria, which are established in MMC Subsection 19.911.4.B.1 as follows:

- (1) The applicant's alternatives analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.

The applicants have provided an analysis of the impacts and benefits of the proposed variance as compared to the baseline code requirements, asserting that the benefits outweigh any negative impacts. The key points of the applicants' analysis involve a comparison of the proposed lot configuration with a flag lot scenario. If Parcel 2 was not allowed to access 44th Court, then making Parcel 2 a flag lot with access to Rockwood Street would be the only way to complete the partition and achieve the minimum development density for the subject property.

However, the subject property is only approximately 68 ft wide; the minimum lot width for standard lots in the R-7 zone is 60 ft, and the minimum required width for the accessway and street frontage of a flag lot is 25 ft. The subject property is not wide enough to do a flag lot partition without requesting a variance to the lot width standard for the parent lot (Parcel 1). In addition, a flag lot configuration would generate increased vehicle traffic on the existing driveway, producing additional negative impacts for both Parcel 1 and the adjacent residential property to the west. And more impervious surface would be required to extend the existing driveway, with implications for stormwater treatment.

In comparison, approving the proposed partition with the requested variance to the lot depth standard for Parcel 2 would allow for a new lot that, after accounting for the required 20-ft front and rear yard setbacks for the R-7 zone, would still have approximately 28 ft of depth for a new house footprint. With over 143 ft in lot width (far exceeding the minimum requirement of 60 ft), Parcel 2 has ample room for reasonable development and is unlikely to have any difficulty meeting the R-7 standards for maximum lot coverage (30% of lot area) and minimum vegetation (also 30% of lot area). Impacts to neighboring properties would be minimal, with access to Parcel 2 coming directly from 44th Court instead of via an accessway shared with Parcel 1.

The Planning Commission finds that the applicants' alternatives analysis sufficiently demonstrates the impacts and benefits of the proposed variance as compared to the baseline code requirements. This criterion is met.

- (2) The proposed variance is determined by the Planning Commission to be both reasonable and appropriate, and it meets one or more of the following criteria:
 - (a) The proposed variance avoids or minimizes impacts to surrounding properties.
 - (b) The proposed variance has desirable public benefits.
 - (c) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

As addressed in Finding 14-c-1, the requested variance to allow a reduction in lot depth for Parcel 2 would have few if any negative impacts on surrounding properties. Access to Parcel 2 would be directly from 44th Court instead of through Parcel 1, which would preserve some privacy for both Parcel 1 and the adjacent lot to the west on Rockwood Street. Unless a separate variance were to be requested and approved at the time of development, a new house on Parcel 2 would face 44th Court, the street where the lot takes access, and would meet all required setbacks and applicable development standards of the R-7 zone. The requested variance would avoid an extension of the existing driveway on Parcel 1, reducing the need to expand impervious surfaces and thereby minimizing new stormwater impacts. The requested variance and proposed partition would allow the subject property to be developed to achieve the minimum required density and would more fully utilize the existing public street for access.

The Planning Commission finds that the proposed variance is both reasonable and appropriate. Furthermore, the Planning Commission finds that the proposed variance avoids or minimizes impacts to surrounding properties and that it has desirable public benefits. This criterion is met.

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

The requested variance would reduce the minimum lot depth for Parcel 2 from 80 ft to approximately 68 ft. However, the buildable area that remains after subtracting the required yard setbacks, together with the ample lot width of approximately 143 ft, is sufficient to allow reasonable development on Parcel 2 without negative impacts to surrounding properties.

The Planning Commission finds that the proposed variance will not generate negative impacts that require mitigation. This criterion is met.

The Planning Commission finds that the discretionary relief criteria for a Type III variance request, as provided in MMC 19.911.4.B.1, are met.

The Planning Commission finds that the proposed variance is allowable as per the standards of MMC 19.911.

15. MMC Chapter 19.1200 Solar Access Protection

A primary purpose of MMC 19.1200 is to orient new lots and parcels to allow utilization of solar energy. In particular, MMC Section 19.1203 establishes solar access provisions for new development.

a. MMC Subsection 19.1203.2 Applicability

MMC 19.1203.2 establishes the applicability of MMC Subsection 19.1203.3 as applications for creating lots in single-family zones. Exceptions are allowable to the extent the Planning Director finds that the applicant has shown one or more of the conditions listed in MMC Subsections 19.1203.4 and 19.1203.5 exist and that exemptions or adjustments are warranted.

The proposed partition will create new parcels in the R-7 zone, which is a zone that allows single-family residences. The solar design standards of MMC 19.1203.3 are applicable to the proposed partition.

b. MMC Subsection 19.1203.3 Design Standard

MMC 19.1203.3 establishes a solar design standard, including basic requirements for north-south dimension and front-lot-line orientation with respect to a true east-west axis. There are two other options for compliance, either establishing a protected solar building line or demonstrating a particular level of performance with respect to protection from shading.

The new parcels created by the proposed partition both have north-south dimensions of more than 140 ft. The front lot line of Parcel 1 is on an east-west axis and so complies with the basic requirement. The front lot line of Parcel 2 is not on an east-west axis, but it qualifies for an exemption as per MMC Subsection 19.1203.4, discussed in Finding 15-c.

As proposed, and with the exemption discussed in Finding 15-c, the proposed partition meets the solar design standard of MMC 19.1203.3.

c. MMC Subsection 19.1203.4 Exemptions from Design Standard

MMC 19.1203.4 establishes exemptions from the standards of MMC 19.1203.3, including where on-site features that will remain after the proposed development produce a shadow pattern on a portion of the site.

On the subject property (the overall development site), the existing accessory structure on Parcel 1 (the carport/shop) will remain after the proposed partition. The structure is located 20 ft from the rear lot line of Parcel 1 (the side lot line of Parcel 2), has a peak height of 12 ft, and produces a shadow pattern that will extend into the minimum side yard setback area of Parcel 2. As the north-south dimension of Parcel 2 (approximately 144 ft) is large enough to allow sufficient room for reasonable development that can benefit from solar access, an exemption to the solar design standard is warranted for Parcel 2.

The Planning Commission finds that Parcel 2 is exempt from the standards of MMC 19.1203.3.

As proposed, the Planning Commission finds that the proposed new parcels either meet the solar design standard of MMC 19.1203.3 (Parcel 1) or are exempt from that standard as per MMC 19.1203.4 (Parcel 2). The applicable solar access provisions established in MMC 19.1200 are met.

16. The application was referred to the following departments and agencies on January 8, 2016: Milwaukie Building Department, Milwaukie Engineering Department, Clackamas Fire District #1, Lewelling Neighborhood District Association (NDA) Chairperson and Land Use Committee. The responses received are summarized below.

- Milwaukie Engineering Department – The Milwaukie Engineering Department responded with a memorandum regarding public facility improvements and stormwater management requirements. The Engineering comments have been incorporated into the findings for MMC Chapter 19.700 (Finding 13) and the Conditions of Approval.
- Clackamas Fire District #1 – No comments for this proposal.

Conditions of Approval

1. At the time of submission of the final plat application, the following shall be resolved:
 - a. The final plat submitted for review and approval shall be in substantial conformance with plans approved by this action, which are the plans stamped received by the City on January 7, 2016, 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.
2. Prior to approval of the final plat, the following shall be resolved:
 - a. Obtain a right-of-way permit for construction of all required public improvements listed in these recommended conditions of approval.
 - b. Pay a street opening deposit of \$1,500 which shall be refunded after any damage to abutting asphalt caused by driveway construction is repaired.
 - c. Construct a driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA) to the new lot on 44th Court (Parcel 2). The driveway approach apron shall be between 9 ft and 20 ft in width and least 7.5 ft from both the side property line with Parcel 1 and the front property line of tax lot 1003 (9501 SE 44th Court), and shall be constructed in conformance with Milwaukie Public Works Standard Drawing #502A.
 - d. Remove all signs, structures, or vegetation in excess of 3 ft in height located in “vision clearance areas” at intersections of streets and driveways fronting the proposed development.
 - e. Establish a deed restriction for Parcel 2 to ensure that, within 36 months of final plat approval for this land division, the existing accessory structure on Parcel 2 shall be removed unless one of the following conditions is satisfied:
 - (1) A building permit for a primary dwelling to be sited on Parcel 2 is applied for and obtained within the 36-month period, including any variance approvals necessary to allow the accessory structure to remain if desired, with construction commencing within 3 months of permit receipt and final inspection for the primary dwelling being concluded within 12 months of permit receipt.
 - (2) Parcel 2 is maintained in mutual ownership with an adjacent lot containing a primary structure and shall remain in mutual ownership with that adjacent lot, unless a primary dwelling is constructed per Condition 2-e-(1) above.
3. Prior to final inspection for any new structure on either new parcel, the following shall be resolved:
 - a. Construct a private storm management system (e.g., drywell) on the proposed development property for runoff created by the proposed development. Connect all rain drains to the private storm management system.

Other requirements

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements contained in

the Milwaukie Municipal Code (MMC) and Public Works Standards that are required at various points in the development and permitting process.

1. Development activity on the site shall be limited to 7 a.m. to 10 p.m. Monday through Friday and 8 a.m. to 5 p.m. Saturday and Sunday, per MMC Subsection 8.08.070(l).
2. Prior to commencement of any earth-disturbing activities, the applicant shall obtain an erosion control permit.



Dennis Egner, AICP
Planning Director

cc: Louie and Debra Bomotti (4401 SE Rockwood St, Milwaukie, OR 97222)
Planning Commission (*via e-mail*)
Alma Flores, Community Development Director (*via e-mail*)
Chuck Eaton, Engineering Director (*via e-mail*)
Chrissy Dawson, Engineering Technician II (*via e-mail*)
Samantha Vandagriff, Building Official (*via e-mail*)
Bonnie Lanz, Permit Specialist (*via e-mail*)
Mike Boumann and Matt Amos, CFD#1 (*via e-mail*)
NDA: Lewelling (*via e-mail*)
Land Use File(s): MLP-2015-006, VR-2015-007