

BEFORE THE CITY COUNCIL OF THE CITY OF MILWAUKIE COUNTY
OF CLACKAMAS, STATE OF OREGON

In the appeal of an application to
approve a preliminary plat for a
subdivision and variance for
Mission Homes NW, LLC

File Nos. AP-2016-002 (appeal), S-
2016-001; VR-2016-007 (proceedings
below)

LAND USE ORDER

I. INTRODUCTION AND PROJECT BACKGROUND

These proceedings arose on application of Mission Homes NW, LLC ("Applicant") for preliminary plat approval for a subdivision comprised of 14 lots and 1 tract on a 2.66 acre property fronting the south side of SE King Rd in the residential R-5 zone. In addition to approval of the subdivision, the Applicant submitted an application for a variance from the street/intersection spacing standards in MMC 19.708.1 to allow access to and from a proposed public street new street on SE King Rd less than the minimum required 530 ft from SE Home Ave and SE 52 Ave. 14 new lots ranging in size between 5,008 SF to 6,876 SF will be served by 2 new public streets: SE 51st Ave (which will run north-south connecting to SE King Rd) and SE Lewellyn St (which will connect to SE 51st Ave near the center of the site). Two existing single-family homes will be removed. City utility services will be provided via an extension of public sanitary sewer and water lines from SE King Rd to serve all of the proposed new lots.

II. HEARINGS AND PROCESS

The City of Milwaukie ("City") set the application for a November 22, 2016, public hearing before the Planning Commission ("Commission"). At the hearing, the Commission received oral and written testimony from the Applicant and from persons opposed to the applications. The Commission approved the applications on a vote of 4 members in support, 0 opposed.

On December 13, 2016, the Hector Campbell neighborhood district association filed a notice of appeal. Thereafter, the City Council took up the application and promulgated notice of a public hearing. On January 17, 2017, the City Council conducted a public hearing and designated a record. At the end of the hearing, Council decided to modify the decision under appeal for land use applications S-2016-001 and VR-2016-007 with modified Findings and Conditions of approval, subject to preparation of a final written decision. This Order is the City's final written decision.

III. LIMITATIONS ON EVIDENCE

Under the City Council's standard of review for its appeal hearing, parties were limited to the evidence presented to the Planning Commission, though they were free to make new arguments to Council regarding this evidence.

Certain opponent testimony contained new facts. The City Attorney identified these facts for Council and the City Attorney instructed Council to disregard them. The City Council did not rely on these facts in making its decision.

Comments were received from one abutter within 300 feet of the subject property, but those comments contained new facts. The City Attorney identified these facts for Council and the City Attorney instructed Council to disregard them. The City Council did not rely on these facts in making its decision.

IV. APPLICABLE CRITERIA AND FINDINGS AND CONDITIONS OF APPROVAL

1. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 12.02, Public Works Standards
 - MMC 12.08, Street and Sidewalk Excavations, Construction and Repair
 - MMC 12.16, Access Management
 - MMC 12.24, Clear Vision at Intersections
 - MMC 17.12, Application Procedure and Approval Criteria - Land Division
 - MMC 17.20, Preliminary Plat
 - MMC 19.301, Low Density Residential Zones
 - MMC 19.600, Off-street Parking
 - MMC 19.700, Public Facility Improvements
 - MMC 19.911, Variances
 - MMC 19.1006, Type III Review
 - MMC 19.1200, Solar Access Protection

The appeal application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held on January 17, 2017, as required by law.

2. MMC 12.02 Public Works Standards

A. 12.02.010 requires “all new public works, including streets, sanitary sewers, storm sewers, and water lines constructed or installed in the City shall be constructed in conformance with the applicable public works standards adopted under Section 12.02.020 of this chapter.”

The public works standards require intersections which are not directly aligned with street centerlines, the centerline spacing must meet the following:

Arterial - Minimum 530 feet, Maximum 1000 feet.

The distance between SE 52nd Ave to the east of the site and SE Home Ave to the west of the site is 930 ft. As proposed, the new SE 51st Ave will be sited between the 2 existing street only 285 ft from SE 52nd Ave.

A variance application has been submitted to respond to this requirement. As conditioned, subject to the approval of said variance, this criterion is met.

3. MMC 12.08 Street and Sidewalk Excavations, Construction and Repair

MMC 12.08 applies to all construction that is completed within right-of-way that will be dedicated to the City. The public improvement process for this project shall follow MMC 12.08.020.

4. MMC 12.16 Access Management

MMC Chapter 12.16.040 establishes standards for access (driveway) requirements.

- MMC 12.16.040.A requires that all properties be provided street access with the use of an accessway.

The proposed development, as conditioned to be constructed in compliance with the City of Milwaukie Public Works Standards, is consistent with MMC 12.16.040A.

- MMC 12.16.040.B provides requirements for access spacing onto arterial and collector streets.

The proposed development, as conditioned, is consistent with MMC 12.16.040B, as no accessways are proposed on a collector or arterial street.

- MMC 12.16.040.C provides requirements for accessway locations.

The proposed development, as conditioned, is consistent with MMC 12.16.040.C.1 as no double frontage lots are proposed.

The proposed development, as conditioned, is consistent with MMC 12.16.040.C.2, as no accessways are proposed on a collector or arterial street.

Driveways in the proposed development, as conditioned, are consistent with MMC 12.16.040.C.3.

- MMC 12.16.040.C regulates accessway locations. MMC 12.16.040.C.4 regulates the distance of an accessway from an intersection.

The proposed relocation of the driveway to tax lot 7000 and tax lot 6404 does not comply with the required 45 ft accessway spacing from intersections.

The proposed development, as conditioned is consistent with MMC 12.16.040.C.4.a.

The proposed street intersection creates a non-conforming driveways to tax lot 6500 (Milwaukie Christian Church) with the required 600 ft accessway spacing from intersections.

The proposed development does not comply as submitted. Subject to the approval of a design exception per PWS 1.0060, and as conditioned, the project is consistent with MMC 12.16.040.C.4.d.

The proposed development, as conditioned, is consistent with MMC 12.16.040.4.a, b, and c.

- MMC 12.16.040.D provides requirements for the number of accessway locations.

The applicant has proposed the minimum number of accessway locations.

The proposed development, as conditioned, is consistent with MMC 12.16.040.D.1, as the proposed development does not have any accessways on an arterial or collector street and only 1 accessway per property is proposed.

- MMC 12.16.040.E and MMC 12.16.040.F provide requirements for ADA standards and width for accessways.

The proposed development, as conditioned to be constructed in compliance with the City of Milwaukie Public Works Standards, will conform to MMC 12.16.040.E and F.

The applicant has failed to adequately address MMC 12.16.040.C. The applicant's request to modify the design does not include mitigation measures that provide safe ingress and egress into the commercial driveway north of the proposed development (Milwaukie Christian Church). As conditioned, which requires an access study and proposed mitigation measures acceptable to the Engineering Director, the proposed development is consistent with MMC 12.16.040.

5. MMC 12.24 Clear Vision at Intersections

MMC 12.24.040 provides requirements for clear vision.

The proposed driveways, accessways, and intersections in the proposed development, as conditioned, will conform to the standards in MMC 12.24.030.

6. MMC 19.301 Low Density Residential Zones

MMC 19.301 establishes the development standards that are applicable to this site. The proposed subdivision would create 14 lots that range in size between 5,008 sf to 6,876 sf. The minimum lot size for a single-family detached home in the R-5 zone is 5,000 sf. The minimum density requirement for the R-5 zone is 7 dwellings per acre and the maximum density requirement for the R-5 zone is 8.7 dwellings per acre. The 14 proposed lots total 79,501 sf or 1.82 acres, which results in an overall density of approximately 7.69 dwellings per acre. The minimum frontage requirement for a standard lot in the R5 zone is 35 ft. Lots 5 and 6 have 35 ft of frontage and have the smallest amount of street frontage of the 14 proposed lots.

The City Council finds that the proposal complies with the applicable standards of the R-5 zone.

7. MMC 19.607 Off-Street Parking Standards for Residential Areas

MMC 19.607 establishes off-street parking standards for residential areas. The applicant's materials indicate awareness of these requirements and will address compliance during the development permit process.

8. MMC 19.700 contains regulations for Public Facility Improvements. The proposal complies with these regulations as described in this finding.

- A. MMC Chapter 19.700 applies to partitions, subdivisions, 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 applicant proposes to partition the existing 6 parcels into 14 new lots. The subdivision triggers the requirements of MMC Chapter 19.700.

MMC 19.700 applies to the proposed development.

- B. MMC 19.703 contains the requirements for the review process for all proposed developments subject to Chapter 19.700.

(1) MMC 19.703.1 requires a pre-application conference for proposals that require a land use application. The requirement was satisfied on March 10, 2016.

(2) MMC 19.703.3.B requires that development shall provide transportation improvements and mitigation at the time of development in rough proportion to the potential impacts of the development per MMC 19.705. As conditioned, the proposal is consistent with MMC 19.703.3

- C. MMC 19.704 requires submission of a transportation impact study documenting the development impacts on the surrounding transportation system.

All of the trips for this proposed development affect SE King Rd, which is classified as an arterial street. The proposed development will not trigger a significant increase in trip generation on an arterial street and therefore the subdivision itself does not require a transportation impact study. (A traffic access study was required for the access design exception request.)

MMC 19.704 does not apply to the proposed development.

- D. MMC 19.705 requires that transportation impacts of the proposed development be mitigated in rough proportion of the impacts.

The proposed development does not trigger mitigation of impacts beyond the required frontage improvements. The impacts are minimal and the surrounding transportation system will continue to operate at the level of service previous to the proposed development. However, note that there are potential safety impacts due to turning movement conflicts with adjacent driveways. See Finding 11.B.

The proposed development, as conditioned, is consistent with MMC 19.705.

- E. MMC 19.708.1 requires that all development shall comply with access management, clear vision, street design, connectivity, and intersection design and spacing standards.

The applicant shall construct a driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA) to each new lot. The driveway approach apron shall be between 9 ft and 20 ft in width and least 7.5 ft from the side property line. All access requirements shall comply with access management standards contained in MMC 12.16. Per MMC 19.708.1.B, clear vision requirements shall comply with MMC 12.24.

MMC 19.708.1.D applies to development in non-downtown zones and applies to street frontages outside of the downtown. The proposed development is outside of the downtown and, as conditioned to be constructed in compliance with the City of Milwaukie Public Works Standards, is consistent with MMC 19.708.1.D.

MMC Section 19.708.1.E.3 requires that streets shall be extended to the boundary lines of the developing property where necessary to give access to or allow for future development of adjoining properties. The proposed streets abut property to the east, west, and south and provide opportunity for land development in these locations. As shown on the Future Connectivity and Development Concept Plan: tax lot 7000 could be divided into 3 parcels; tax lot 10101 could be divided into 3 parcels; tax lot 700 could be divided into 4 parcels; tax lots 600 and 601 could be divided into 2 parcels each; and tax lots 400 and 500 could potentially be divided into 2 parcels each. The City can maintain control over access to public streets by requiring a 1-ft wide reserve strip as follows:

1. End of proposed SE 51stAve, the full width of the right-of-way.
2. On the west side of SE 51st Ave along tax lot 6800
3. Along the South side of SE 51stAve along tax lot 600, tax lot 601 and a portion of tax lot 500.

A condition of approval is proposed to require these reserve strips.

- F. MMC 19.708.1.F includes specific intersection design and spacing requirements.

Per MMC 19.702.1.B, Chapter 19.700 applies to all subdivisions. A replat that re-establishes the original lot lines would be exempt from MMC 19.700. This proposal creates 14 new lots and public streets and is therefore a subdivision; MMC 19.700 applies. The required minimum intersection spacing of 530 ft is not met.

The proposed development requires a variance from the requirements of MMC 19.708.1. The applicant is requesting a variance from the minimum intersection spacing requirements of 530 ft to 285 ft.

- G. MMC Section 19.708.2 establishes standards for street design and improvement.

The applicant shall construct a frontage improvement on the south side of SE King Rd along the site's frontage. The street improvement includes, from the fronting property line, construction of a 6-ft wide setback sidewalk, 5.3-ft wide planter strip, curb and gutter. The applicant is only responsible for new curb and gutter which aligns a proper turning radius into proposed SE 51st Ave, the planter strip, and sidewalk.

The existing right-of-way width of SE King Rd fronting the proposed development is 60 ft. The Milwaukie Transportation System Plan and Transportation Design Manual classify the fronting portions of SE King Rd

as an Arterial street. According to Table 19.708.2 Street Design Standards, the required right-of-way width for an arterial street is between 54 ft and 89 ft depending on the required street improvements. The required right-of-way needed for the planned street improvements is 73 ft. The applicant is responsible for 6.5 ft of right-of-way dedication along SE King Rd fronting the development.

The proposed cross sections for SE 51st Ave and SE Llewellyn St conform to requirements and are consistent with MMC Section 19.708.2. The proposed development, as conditioned, is consistent with MMC Section 19.708.2.

- H. MMC 19.708.3 requires that sidewalks shall be provided on the public street frontage of all development.

The construction of sidewalks along the proposed development property abutting all public rights-of-way is included in the street frontage requirements.

19.708.3.A.2 requires that public sidewalks shall conform to ADA standards. The proposal does not include ADA ramps on the north side of SE King Rd, on the east side of the intersection of SE 51st Ave and SE King Rd at tax lot 7000, or on the east side of the intersection of SE 51st Ave and SE Llewellyn St. A revised design is required to show compliance with this section. The proposed development, as conditioned to comply with the MMC 19.708.3 and the City of Milwaukie Public Works Standards, is consistent with MMC Section 19.708.3.

- I. MMC 19.708.4 establishes standards for bicycle facilities.

SE Harrison St and SE Llewellyn St, which will eventually connect to this subdivision from the west, are not classified as bike routes in the Milwaukie Transportation System Plan. The portion of SE King Rd fronting the proposed development is classified as a bike route in the Milwaukie Transportation System Plan, and bike facilities are already in place. As a result, bicycle facility improvements are not required for the proposed development.

MMC 19.708.4 does not apply to the proposed development.

- J. MMC 19.708.5 establishes standards for pedestrian and bicycle paths.

The proposed development property is surrounded by single family residences. The proposed development does not present an opportunity to provide a pedestrian or bicycle path, except for required sidewalks, and is not required to provide them.

MMC 19.708.5 does not apply to the proposed development.

- K. MMC Section 19.708.6 establishes standards for transit facilities.

The portion of SE King Rd fronting the proposed development is classified as a transit route in the Milwaukie Transportation System Plan, however, transit facilities are already in place. As a result, transit facility improvements are not required for the proposed development.

MMC 19.708.6 does not apply to the proposed development.

- L. MMC Section 19.709 establishes standards for public utility improvements.

The proposed development will be installing new water and wastewater public utilities to serve the proposed lots which are to be connected to utilities in SE King Rd.

The proposed development, as conditioned, is consistent with MMC Section 19.709.

9. MMC 19.911 Variances

A. MMC 19.911.3 establishes the review process for variance applications.

The applicant has requested a variance to the required intersection spacing standards established in MMC 19.708.1.F. The variance would reduce the minimum spacing standard of 530 ft to 285 ft. This type of variance is not specified in the list of Type II variances.

The City Council finds that the application is subject to Type III Variance review for the proposed intersection spacing of less than 530 ft.

B. MMC 19.911.4.B establishes criteria for approving Type III Variance applications.

An application for a Type III Variance shall be approved when all of the criteria in either 19.911.4.B.1 or 2 have been met. An applicant may choose which set of criteria to meet based upon the nature of the variance request, the nature of the development proposal, and the existing site conditions.

The applicant has chosen to address the criteria of 19.911.4.B.1 Discretionary Relief Criteria.

(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.

Public right-of-way frontage for the subject property is provided onto SE King Rd along the property's north boundary; the subject property has no other public right-of-way frontage. The concurrent Mission Park Subdivision proposes to dedicate 2 new public streets, SE Llewellyn St and SE 51st Ave, to serve the subject property and provide for future connectivity to adjacent parcels. The proposed SE 51st Ave intersects SE King Rd at the NE corner of the subject property. Given both the existing SE Home Ave and existing SE 52nd Ave intersections with SE King Rd, the SE 51st Ave intersection on SE King Rd is less than minimum intersection spacing standard for arterial streets. The development's frontage on SE King Rd and the location of the existing streets are fixed.

Adjacent properties to the east, west and south of the subject property contain existing single-family homes and are zoned both R-5 and R-7. Based on this existing residential development in the surrounding neighborhood, the Mission Park Subdivision cannot take access from the east, west, or south. Given that the subject property takes access onto SE King Rd between SE Home Ave and SE 52nd Ave, it is not feasible to provide access to the subject property, while satisfying the standards of Table 19.708.1.

However, as approved by the Planning Commission, the proposed intersection location of SE 51st Ave and SE King Rd makes three driveways non-conforming with MMC 12.16.040. MMC 12.16.040.B.2

specifies the requirements for modification of access spacing. As mitigation to avoid conflicts with driveways to the north, the Planning Commission required a condition for a center median on King Rd and right-in/right-out turning movements at the intersection of King Rd and SE 51st Ave.

Upon further review, the City Council has determined that to avoid the out-of-direction travel that results from a right-in/right-out intersection, a better solution can be achieved by locating SE 51st Ave and its intersection along the western property line. This eliminates the need for a design exception based on access spacing and would also eliminate the need for a center median and restricted right in right out access from SE 51st Ave to SE King Rd.

Further, as proposed, the development will remove nearly all of the mature trees on the subject site, which would result in significant impact to the surrounding properties. No tree protection plan was submitted as part of the application materials and no discussion about this impact was included.

As conditioned, subject to the inclusion of a redesigned intersection on the final plat, a corresponding revision to lot layout, and a tree protection plan identifying specific tree stands that will remain as well as replacement plantings, the City Council finds that this criterion is met.

2) *The proposed variance is determined by the City Council 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.*

As approved by the Planning Commission, the proposed Variance allows the intersection of SE 51st Ave and SE King Rd to be roughly centered between SE Home Ave and SE 52nd Ave to the greatest extent possible, but it creates the need for a center median and restricted right in right out access from SE 51st Ave to SE King Rd. The City Council finds that a better solution is provided by relocating SE 51st Ave and the intersection with King Rd to the western property line. This solution does a better job of minimizing conflicts with existing driveways while eliminating the need for a center median.

The variance also results in a proposed subdivision plan that would remove all of the mature trees on the subject site; no tree protection plan or planting plan was submitted. The loss of over 100 mature trees is a significant impact to surrounding properties.

An existing single family home with frontage on SE King Rd, adjacent to the east boundary of the subject property (Tax Lot 7000), currently takes access onto SE King Rd via a driveway through the subject property. As approved by the Planning Commission, the proposed development provides this adjacent property with frontage and access onto SE 51st Ave. The driveway access to King Rd would be replaced by a street so that the actual number of new access points on King Rd would not increase.

The City Council finds that depending on how the lots and street are reconfigured, the relocation of 51st Ave to the west property line may eliminate the opportunity for Tax Lot 7000 to take access from 51st Ave. The Council finds that the benefits of relocating 51st Ave to the west property line outweigh any negative impacts of having Tax Lot 7000 directly access King Rd.

As conditioned, subject to the inclusion of a redesigned intersection on the final plat, a corresponding revision to lot layout, and a tree protection plan identifying specific tree stands that will remain as well as replacement plantings, the City Council finds that this criterion is met.

(b) *The proposed variance has desirable public benefits.*

“Public benefits” are typically understood to refer to benefits to be enjoyed by members of the general public as a result of a particular project, or preservation of a public resource. Aesthetic improvements of a specific and limited nature do not typically constitute a public benefit.

Over 100 mature trees ranging in size from 10-in diameter to 54-in diameter deciduous and evergreen trees. This represents a public benefit due to the size and maturity of this stand of trees and this criterion is applicable; the loss of over 100 mature trees is a significant impact to surrounding properties. The variance results in a proposed subdivision plan that would remove all of the mature trees on the subject site; no tree protection plan or planting plan was submitted.

As conditioned, subject to the inclusion of a redesigned intersection on the final plat, a corresponding revision to lot layout, and a tree protection plan identifying specific tree stands that will remain as well as replacement plantings, the City Council finds that this criterion is met.

(c) *The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.*

This criterion encourages flexibility in site planning and development when the existing built or natural environment provide challenges to standard development or site planning.

The variance results in a proposed subdivision plan that would remove all of the mature trees on the subject site; no tree protection plan or planting plan was submitted. The proposed design does not adequately address the existing tree stand of over 100 mature trees ranging in size from 10 in-diameter to 54-inch diameter deciduous and evergreen trees. The proposed design does not include proposed plantings to replace the removal of existing vegetation in an effort to balance minimum density with existing site conditions. Given the significant stand of large and mature trees on the site, the Council finds that this criterion is applicable.

As conditioned, subject to the inclusion of a redesigned intersection on the final plat, a corresponding revision to lot layout, and a tree protection plan identifying specific tree stands that will remain as well

as replacement plantings, the City Council finds that this criterion is met.

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

As noted in Finding 9.B (1), the City Council finds there are negative impacts and mitigation is needed.

As conditioned, subject to the inclusion of a redesigned intersection on the final plat, a corresponding revision to lot layout, and a tree protection plan identifying specific tree stands that will remain as well as replacement plantings, the City Council finds that this criterion is met.

As conditioned, subject to the inclusion of a redesigned intersection on the final plat, a corresponding revision to lot layout, and a tree protection plan identifying specific tree stands that will remain as well as replacement plantings, the City Council finds that this criterion is met.

10. MMC 19.1200 contains standards for solar access. These standards as described below.
 - A. MMC 19.1203.2 states that the standards of Chapter 19.1200 apply to applications for a development to create lots in single-family zones, and are applicable to the proposed subdivision.
 - B. MMC 19.1203.5.A states that the Director shall reduce the percentage of lots that must comply with Subsection 19.1203.3, to the minimum extent necessary, if he or she finds the applicant has shown it would cause an adverse impact on density or on-site development costs. Based on the existing street system, the configuration of the subject site, and the code requirement to extend public right-of-way through the property to both serve the proposed 14 lots and future development on adjacent properties, only 2 lots can meet the design requirements of this section. It is not possible for all of the lots to meet these standards without reducing the total number of lots below the minimum density required.

The proposal is determined to comply with this standard based on the adverse impacts of compliance.

11. MMC 17.12.040 contains approval criteria for a preliminary plat. These criteria are met as described below.
 - A. MMC 17.12.040.A.1 requires that the proposed preliminary plat complies with Title 19 of this code and other applicable ordinances, regulations, and design standards. These findings demonstrate that the proposed subdivision and preliminary plat comply with the applicable ordinances, regulations, and design standards in the Milwaukie Municipal Code.

MMC 19.708.1.F includes specific intersection design and spacing requirements, which the proposed development does not meet. These standards are addressed in Finding 8. The required minimum distance between street intersections on arterial streets (SE King Rd) is 530 ft. The proposed development includes a new local street intersection between SE Home and SE 52nd Ave in the middle of the existing block which is less than the required 530 ft. The required minimum intersection spacing of 530 ft must be met, or a variance will be required.

As provided in MMC 19.703.5.A, the proposed development requires a variance to the standards in MMC 19.708.1. A variance application has been submitted to respond to this requirement. As conditioned, subject to the inclusion of a redesigned intersection on the final plat locating the intersection to the western property line, a corresponding revision to lot layout, and a tree protection plan identifying specific tree stands that will remain as well as replacement plantings, the approval of said variance, this criterion is met.

MMC 19.708.3 requires that sidewalks shall be provided on the public street frontage of all development. The construction of sidewalks along the proposed development property abutting all public rights-of-way is included in the street frontage requirements.

MMC 19.708.3.A.2 requires that public sidewalks shall conform to ADA standards. Please refer to Finding 8.H.

As proposed, the development is inconsistent with MMC 12.040.A.1. As conditioned, the proposal is consistent with MMC 12.040.A.1.

- B. MMC 17.12.030A2 requires that “the boundary change will allow reasonable development of the affected lots and will not create the need for a variance of any land division or zoning standard.”

The proposed development requires a variance to the minimum intersection spacing to satisfy this requirement. A variance application has been submitted to respond to this requirement. As conditioned, subject to the inclusion of a redesigned intersection on the final plat locating the intersection to the western property line, a corresponding revision to lot layout, and a tree protection plan identifying specific tree stands that will remain as well as replacement plantings, the approval of said variance, this criterion is met.

- C. MMC 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. The buildable areas for the primary structures on the parcels are all adequate to accommodate the uses allowed in the R-5 zone. The parcels do not have physical constraints that would necessitate the need for a variance in order to develop.

MMC 19.708.1.F includes specific intersection design and spacing requirements, which the proposed development does not meet. Please refer to Finding 10.F.

As provided in MMC 19.703.5.A, the proposed development requires a variance to the standards in MMC 19.708.1. A variance application has been submitted to respond to this requirement. As conditioned, subject to the inclusion of a redesigned intersection on the final plat locating the intersection to the western property line, a corresponding revision to lot layout, and a tree protection plan identifying specific tree stands that will remain as well as replacement plantings, and to the approval of said variance, this criterion is met.

- D. MMC 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 subdivision plat name of "Mission Park" is not duplicative in this jurisdiction and will satisfy the provisions of ORS 92.090(1).

- E. MMC 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. This criterion is satisfied within the confines of what the City can obtain for street right-of-way per MMC Chapter 19.700.

MMC 19.708.1.F includes specific intersection design and spacing requirements, which the proposed development does not meet. Please refer to Finding 10.F.

As provided in MMC 19.703.5.A, the proposed development requires a variance to the standards in MMC 19.708.1. A variance application has been submitted to respond to this requirement. As conditioned, subject to the inclusion of a redesigned intersection on the final plat locating the intersection to the western property line, a corresponding revision to lot layout, and a tree protection plan identifying specific tree stands that will remain as well as replacement plantings, and to the approval of said variance, this criterion is met.

- F. MMC 17.12.040.A.5 requires a detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards. The applicant has submitted this information in the materials submitted for the land use application.
- 12. MMC 17.20 contains the information required for a preliminary plat application. The materials submitted by the applicant satisfy the requirements of this chapter except for the necessity for a variance to the requirements of MMC 19.708.1.
 - 13. MMC 17.28 contains design standards for land divisions and boundary changes. The proposed subdivision satisfies these as described below.
 - A. MMC 17.28.010 requires that partitions and subdivisions shall conform with any development plans of the City and shall take into consideration any preliminary plans made in anticipation thereof and shall conform with the requirements of state laws and with the standards established by the City. The proposed streets abut property to the east, west, and south and provide opportunity for land development in these locations and to access these new streets. As demonstrated by these findings, and as conditioned to accommodate the future development of adjoining property, the subdivision conforms with applicable city criteria and standards.
 - B. MMC 17.28.020 requires that all land divisions and boundary changes that increase the number of lots shall be subject to the requirements and standards contained in Chapter 19.700 Public Facility Improvements and the Public Works Standards for improvements to streets, sidewalks, bicycle facilities, transit facilities, and public utilities. As described elsewhere in these findings, the proposed subdivision complies with Chapter 19.700. Utilities and work within the right-of-way will be reviewed by the Milwaukie Engineering Department for conformance with Public Works Standards.
 - C. MMC 17.28.040 contains standards for lot design. As a result of the street intersection relocation, some lots will need to be reconfigured. A condition requires all newly reconfigured lots to meet the standards of MMC 17.28.040.

- (1) MMC 17.28.040.A requires that the lot size, width, shape, and orientation shall be appropriate for the location and the type of use contemplated. Minimum lot standards shall conform to Title 19. As conditioned, the proposed parcels will have adequate size and dimensions for development and uses allowed in the R-5 zone, and conform to the standards of Title 19 as described in these findings.
 - (2) MMC 17.28.040.B requires that lot shape shall be rectilinear, except where not practicable due to location along a street radius, or existing lot shape. The sidelines of lots, as far as practicable, shall run at right angles to the street upon which the lots face. As far as practicable, the rear lot line shall run parallel to the street. The proposed parcels are rectilinear in shape, with side lot lines at right angles and the rear lot lines parallel to the street.
 - (3) MMC 17.28.040.C limits compound lot lines for side or rear lot lines. There are no compound lot lines proposed for side or rear lot lines on any parcel.
 - (4) MMC 17.28.040.D allows lot shape standards to be varied pursuant to MMC 19.911. No variance is requested in this application for lot shape standards.
 - (5) MMC 17.28.040.E states that double frontage and reversed frontage lots should be avoided except in certain situations. None of the parcels in the proposed partition have frontage on more than 1 public right-of-way.
 - (6) MMC 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 1 street. All parcels in the proposed subdivision will take access from a single frontage. As established in Finding 4.a, these frontages meet the minimum required street frontage in the R-5 zone.
- D. MMC 17.28.080 contains criteria for public open spaces. The Milwaukie Comprehensive Plan does not identify any planned park or open space for the site. As such, no dedication for public open space is required.
14. MMC 17.32 describes required public improvements. The applicant proposes that all public improvements will meet the standards of this chapter. As conditioned, the proposal is consistent with MMC 17.32.
 15. As described in Finding 1, public notice of this application was mailed to parties as identified in the Milwaukie Municipal Code: properties within 300 ft of the subject site, Interested Persons, the Applicant, and the Linwood, Lewelling, and Hector Campbell Neighborhood District Associations. No responses were received.

CONDITIONS OF APPROVAL

1. Approval of the preliminary plat and a variance to allow a new public road intersection with a minimum intersection spacing not in conformance with the Public Works Design Standards shall be subject to:
 - (1) A revised intersection design which relocates the intersection to the western property line meeting the requirements of PWS 1.0060 that

resolves identified access conflicts and ADA access and crosswalks that is acceptable to the Engineering Director in accordance with MMC 12.16.040.B.2;

- (2) Submittal of a tree protection and mitigation plan identifying specific trees that will remain. Within side and rear yard setbacks of the proposed lots and within the area identified as the storm water facility, an aggregate minimum of 50% of the mature existing trees over 12-inches in diameter shall be protected. In addition, the applicant shall plant a minimum of 2 trees per lot. Each of the required trees shall be a minimum of 2 inches in caliper.

Submittal of proposed mitigation measures required to achieve compliance with Public Works Standards in accordance with MMC 12.16.040.2.d.

2. The applicant shall submit a final plat application within 6 months of the preliminary plat approval in accordance with MMC Subsection 17.24.040. The applicant shall obtain approval of the final plat prior to the expiration of this preliminary plat approval.
3. A final plat, substantially based on the plan approved by the Planning Commission and as conditioned by this decision, shall be submitted that depicts the street intersection relocation to the west of the subject property and the associated reconfigured lot pattern in the area north of, and including, the proposed SE Llewellyn St. The lot reconfiguration shall include 3 lots fronting directly on SE 51st Ave and 2 lots on the north side of SE Llewellyn St. All newly reconfigured lots shall meet the standards of MMC 17.28.040.
4. The applicant's final plat application shall include the items listed on the City of Milwaukie Final Plat Checklist. The following specific items and changes are required as part of the application:
 - a. A written narrative describing all changes made to the final plat that are not related to these conditions of approval.
 - b. A final plat that substantially conforms to the plans received by the Planning Department on July 14, 2016 and approved by this action, except as modified by these conditions of approval.
 - c. The final plat shall include spaces for signatures by the Milwaukie Planning Director and Milwaukie Engineering Director, and a note indicating that this subdivision is subject to the requirements of City of Milwaukie Land Use Application AP-2016-002; S-2016-001; VR-2016-007.
5. Prior to approval of the final plat, the following issues shall be resolved.
 - a. Submit a storm water management plan to the City of Milwaukie Engineering Department for review and approval. The plan shall be prepared in accordance with Section 2 – Stormwater Design Standards of the City of Milwaukie Public Works Standards. In the event the storm management system contains underground injection control devices, submit proof of acceptance of the storm system design from the Department of Environmental Quality.
 - b. Submit full-engineered plans for construction of all required public improvements, including the entire intersection of the proposed new public street with SE King Rd, reviewed and approved by the City of Milwaukie Engineering Department.

- c. Obtain a right-of-way permit for construction of all required public improvements listed in these recommended conditions of approval.
- d. Pay an inspection fee equal to 5.5% of the cost of the public improvements.
- e. Provide a payment and performance bond for 100 percent of the cost of the required public improvements.
- f. Provide an erosion control plan and obtain an erosion control permit.
- g. Dedicate 6.5 feet of right-of-way on SE King Rd fronting the proposed development property.
- h. Install all underground utilities, including stubs for utility service prior to surfacing any streets. Relocate or provide a private utility easement for all utilities encroaching onto adjacent properties.
- i. Construct a 6-ft set-back sidewalk, 5.3-ft wide planter strip, curb and gutter on entire frontage of SE King Rd.
- j. Construct all sidewalks, ramps and driveways for the intersection of SE King and SE 51st Ave.
- k. Construct planter strips, sidewalks on both sides, ramps and driveways on SE Llewellyn St, SE 51st Ave, and SE King Rd to comply with the MMC 19.708.3 and the City of Milwaukie Public Works Standards.
- l. Relocate the driveway approach to tax lot 7000 to comply with the requirements of MMC 12.16.040.C.4.a.
- m. Construct a driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA) to each new lot per the City of Milwaukie Public Works Standards. The driveway approach aprons shall be between 9 feet and 20 feet in width and least 7.5 feet from the side property line.
- n. Design and construct SE 51st Ave at Lot 14 such that tax lot 500 shall have adequate frontage meeting the development standards of the applicable zoning designation.
- o. Dedicate 1-ft wide reserve strips to the City of Milwaukie on the west side of SE 51st Ave along tax lot 6800, at the end of SE 51st Ave and on the south side of 51st Ave along tax lot 600, tax lot 601 and a portion of tax lot 500.
- p. Install fencing along the southern edge of roadway of SE 51st Ave at tax lot 500, tax lot 600, and tax lot 601 as necessary to prevent access.
- q. The proposed intersection shall be designed in accordance with City standards and approved by the Engineering Director.
- r. Clear vision areas shall be maintained at all driveways and accessways and on the corners of all property adjacent to an intersection.

- s. Provide a final approved set of Mylar and electronic PDF "As Constructed" drawings to the City of Milwaukie prior to final inspection.
 - t. Remove all signs, structures, or vegetation in excess of three feet in height located in "vision clearance areas" at intersections of streets and driveways fronting the proposed development.
 - u. Provide a final Access and Water Supply plan to be reviewed and approved by Clackamas Fire District #1.
6. Prior to final inspection for any building within the proposed development, the following shall be resolved:
- a. Connect all residential roof drains to private drywells or other approved structures.

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 and Public Works Standards that are required at various points in the development and permitting process. They are included for the applicant's convenience and do not necessarily represent all standards or requirements that may be applicable.

1. The Time Limit on Approval established in MMC 17.04.050 applies to this proposed subdivision.
 - a. MMC 17.040.050.A: All decisions on boundary changes and land divisions shall expire 1 year after the date of approval. Reactivation of expired decisions may only be made by submission of a new application and related fees. Approval of a final plat must occur prior to the expiration of the preliminary plat approval on which the final plat is based.
 - b. MMC 17.04.050.B: Approvals may be extended up to 6 months upon submission of formal request to the original decision-making authority. One extension of the approval period not to exceed 6 months will be granted if the criteria in MMC 17.04.050.B are satisfied.
2. The requirements on MMC 17.24 for preparation and recording the final plat are as follows:
 - a. MMC 17.24.040: Within 6 months of City approval the applicant shall submit the final plat for City signatures. Approval of the final plat shall be null and void if the plat is not submitted within the time specified or if the plat is not recorded within 30 days after the date the last required signature has been obtained. One copy of the recorded plat shall be supplied to the City.
 - b. MMC 17.04.120.B: Prior to recording a lot consolidation, property line adjustment, subdivision, or partition plat or replat, the applicant shall submit the recording instruments to the Planning Director for a determination of consistency with the City Code and required approvals.
 - c. MMC 17.04.120.A: Recording instruments for boundary change, subdivision, partition, and replat shall be submitted to the County Surveyor within 6 months of City approval.

V. CONCLUSION

In sum, Applicant was required to meet all the criteria. As conditioned, the applications satisfy all criteria, thus the City must approve the application.

VI. ORDER

Based upon the findings set forth above, Council affirms the decision of the Planning Commission with modified findings and conditions of approval in the application embodied in File Nos. S-2016-001 and VR-2016-007.

DATED this 19th day of January, 2017.



Mark Gamba, Mayor

ATTEST



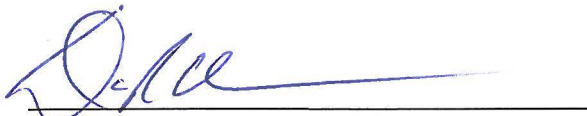
Ann Ober, City Manager

RECEIVED

JAN 31 2017

CITY OF MILWAUKIE
PLANNING DEPARTMENT

APPROVED AS TO FORM:
Jordan Ramis PC



City Attorney