



November 28, 2016

Land Use File(s): S-2016-001; VR-2016-007

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on November 22, 2016.

- Applicant(s):** Mission Homes, LLC
- Location(s):** 5126 and 5096 SE King Rd.
- Tax Lot(s):** 12E30CD 6900, 7400, 7700, 7701, 10300, 10400
- Application Type(s):** Preliminary Plat (Subdivision); Variance
- Decision:** Approved with Conditions
- Review Criteria:** **Milwaukie Zoning Ordinance:**
- 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
- Milwaukie Land Division Ordinance:**
- MMC 17.12, Application Procedure and Approval Criteria - Land Division
  - MMC 17.20, Preliminary Plat
- Milwaukie Municipal Code:**
- 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
- Neighborhood(s):** Hector Campbell, Lewelling, and Linwood

**Appeal period closes: 5:00 p.m., December 13, 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 Vera Koliass, Associate Planner, at 503-786-7653 or [koliassv@milwaukieoregon.gov](mailto:koliassv@milwaukieoregon.gov), if you wish to view this case file.

**This decision may be appealed by 5:00 p.m. on December 13, 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](mailto:planning@milwaukieoregon.gov).

Per MMC Subsection 19.1001.7.E, this land use approval expires unless the applicant has: (1) obtained and paid for all necessary development permits and started construction within 2 years of land use approval, and (2) passed final inspection and/or obtained a certificate of occupancy within 4 years of land use approval. Extensions can be granted per MMC Section 19.908.

### **Findings in Support of Approval**

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

1. The applicant, Kurt Dalbey of Mission Homes NW, LLC, is proposing to subdivide 6 parcels to create 14 lots and 1 tract on the properties located at 5126 SE King Rd. This site is in the Residential R-5 Zone. The land use application file number is S-2016-001; VR-2016-007.
2. The subdivision application was submitted on May 25, 2016. It was initially deemed incomplete by City staff on June 24, 2016. The applicant revised and resubmitted the application on July 14, 2016. The City deemed the subdivision application complete on July 20, 2016. Based on additional analysis by the City, it was determined that a variance to street intersection spacing standards was necessary and subsequently a concurrent variance application was submitted by the applicant on October 14, 2016. The applicant waived the timeframe for a decision for the initial subdivision application to run concurrently with the variance application; the City has until February 4, 2017 to issue a final decision on the application.
3. 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 application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held on November 22, 2016, as required by law.

4. 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 52<sup>nd</sup> 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 51<sup>st</sup> Ave will be sited between the 2 existing street only 285 ft from SE 52<sup>nd</sup> 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.

5. 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.

6. 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 applicant has addressed MMC 12.16.040.C in a request for a design modification that was submitted to the Engineering Director. The Engineering Director has determined that the traffic impact analysis shows that the requirements can be met but requested a stamped resubmittal with an approved mitigation plan that provides safe ingress and egress into the commercial driveway north of the proposed development (Milwaukie Christian Church). As conditioned to include an access study and proposed mitigation measures acceptable to the Engineering Director, the proposed development is consistent with MMC 12.16.040.

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.

## 7. 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.

## 8. 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 Planning Commission finds that the proposal complies with the applicable standards of the R-5 zone.

9. 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

10. 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 51<sup>st</sup> Ave, the full width of the right-of-way.
2. Along east edge of proposed SE 51<sup>st</sup> Ave along tax lot 7000.
3. Along the South side of SE 51<sup>st</sup> Ave 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 51<sup>st</sup> Ave and SE King Rd at tax lot 7000, or on the east side of the intersection of SE 51<sup>st</sup> 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.

## 11. 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 Planning Commission 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 52<sup>nd</sup> 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 52<sup>nd</sup> Ave, it is not feasible to provide access to the subject property, while satisfying the standards of Table 19.708.1.

However, as designed, the proposed intersection location of SE 51<sup>st</sup> Ave and SE King Rd makes three driveways non-conforming with MMC 12.16.040. The new driveway proposed for TL 7000 on the new public street (SE 51<sup>st</sup> Ave) will be required to comply with 12.16.040. MMC 12.16.040.B.2 specifies the requirements for modification of access spacing.

As provided in PWS 1.0060, the applicant has submitted a traffic impact analysis to the Engineering Director as part of a request for a design substitution to access spacing (driveway spacing) standards. The Engineering Director has determined that the traffic impact analysis shows that the requirements can be met but has requested



a stamped resubmittal that satisfies the City's requirements, including a mitigation plan.

As conditioned, subject to the submittal of a traffic impact analysis and mitigation plan approved by the Engineering Director and that satisfy PWS 1.0060, the Planning Commission finds that 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.*

Taking into account existing conditions, 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, so as to maximize intersection spacing on SE King Rd.

An existing single family home with frontage on SE King Rd, adjacent to the east boundary of the subject property, currently takes access onto SE King Rd. As proposed, the development provides this adjacent property driveway access onto SE 51st Ave and eliminates a driveway accessing SE King Rd. Approval of this intersection spacing variance concurrent with the Mission Park subdivision will provide one public street intersection onto SE King Rd for the 14 new subdivision lots and the 1 existing home adjacent to the east. The number of access points onto SE King Rd will not increase as a result of the Mission Park Subdivision.

As conditioned, subject to the submittal and approval by the Engineering Director of a traffic impact analysis and a mitigation plan that satisfy PWS 1.0060, the Planning Commission 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.

The Planning Commission finds that this criterion is not applicable.

(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 Planning Commission finds that this criterion is not applicable.

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

As noted in Finding 11.B (1), the Commission finds there are negative impacts and mitigation is needed.

As conditioned, subject to the submittal and approval by the Engineering Director of a traffic impact analysis and a mitigation plan that satisfy PWS 1.0060, the Planning Commission finds that this criterion is met.

As conditioned, subject to the submittal and approval by the Engineering Director of a traffic impact analysis and a mitigation plan that satisfy PWS 1.0060, the Planning Commission finds that the variance criteria are met.

12. 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.

13. 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 10. 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 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 10.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 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 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 as well as with an approved design modification and mitigation plan. Please refer to Finding 6.

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 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.

14. 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.

15. 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, pending approval of the submitted design exception, 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.
  - (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. The proposed parcels 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.

16. 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.
17. As described in Finding 3, public notice of these applications was posted on site and mailed to parties as identified in the Milwaukie Municipal Code. The applications were referred for comment to the following: Milwaukie Engineering Department, Milwaukie Building Department, Clackamas Fire District #1, and the Linwood, Lewelling, and Hector Campbell Neighborhood District Associations. The responses received are summarized below. Agencies did not respond if a response is not listed below.
  - **Milwaukie Building Department** – no comment
  - **Milwaukie Engineering Department** – the Milwaukie Engineering Department responded with a memorandum regarding public improvements and stormwater. The memorandum has been incorporated as the findings for MMC Chapter 19.700 and in the “Conditions of Approval” and “Other Requirements” sections of this notice.
  - **Clackamas Fire District #1** – responded with comments regarding the required access and water supply plan as well as turning radius requirements. These requirements are incorporated into the findings and conditions of approval.

**Aarisa Smith, Hector Campbell Neighborhood resident:** Comments included questions about the removal of the existing trees from the site, the lack of a proper emergency vehicle turnaround, and the protection of existing structures on the site.

**Staff response:** The current City code does not include tree protection language except for trees located in mapped natural resource areas, of which there are none on the subject property. The issue of the removal of essentially all of the trees on the site was identified both in the initial Incompleteness letter as well as the Completeness letter, and staff encouraged the applicant to provide alternatives in order to preserve some of the trees on the site. The applicant indicated that a certified arborist has been retained to inventory and assess the condition of all trees on the property 12” in size and greater. However, an arborist report, or any additional information, was not provided to the City.

Regarding fire access and turnaround, the Fire Department submitted comments to that effect and requested additional information and/or revised plans to identify compliance with their access requirements.

Regarding the protection of the existing structures on the site, the Land Division code requires that the plans identify all existing structures and whether or not they will be removed. However, as with existing trees on the site, there is no language requiring that they be preserved nor that the narrative provide an alternatives analysis to identify why they are not being preserved.

**Lars Campbell, on behalf of the Hector Campbell NDA:** The NDA submitted several comments and questions regarding the following:

- Full street right-of-way design and pedestrian crossings
- Tree removal
- Stormwater facility
- Fire turnaround
- Proposed driveway locations
- On-street parking and bicycle lanes on the proposed new streets
- Fencing of property lines to, and protection of, adjacent parcels outside of the project limits

- Project timeline for construction and eventual sale of the new homes

**Staff response:** The Engineering Department responded to several of the comments as follows:

- The proposed sidewalk alignment at SE King Rd does not comply with the City of Milwaukie Public Works Standards. The final sidewalk will be required to be a 6' wide setback sidewalk with a 5.3-ft wide planter strip. One requirement of this development is to provide a crosswalk across SE King Rd at the proposed intersection of SE 51st Ave. Receiving ramps will be required to be constructed on the north side of SE King Rd as well.
- Tree removal, other than in resource areas, is not regulated in the code. The applicant indicated that a certified arborist had been retained to inventory and assess the condition of all trees on the property 12" in size and greater. No additional information was provided to the City.
- Clackamas Fire District has asked for additional information regarding the proposed fire turnaround. This information will be reviewed as part of the development permits for the project.
- Driveway locations will be covered under the building permit review process. The only restrictions are that the driveways are 7.5 ft from each side property line and that they are between 9 ft and 20 ft wide.
- Bicycle lanes are not required as the Transportation System Plan does not identify the need for bike lanes on SE Llewellyn St or SE Harrison St that may eventually connect to this subdivision.
- The proposal, as conditioned, creates streets in conformance with MMC 19.708 to allow parking on both sides.
- Sidewalk and paving will be constructed to the west property line. The line marked "4" on Sheet P400 of the preliminary plat is going to be the location of barricades indicating end of roadway. The south property line will be left open.
- As with any single family construction, there is no requirement for the builder to construct fencing. The erosion control plan submitted during the development process will require a silt fence at all boundaries of the project site.

The comments were forwarded to the applicant. No additional information was submitted to the City.

**Zac Perry, Linwood NDA:** The NDA submitted several comments and questions regarding the requested reduction in the solar access requirement for new development per MMC 19.1203. The NDA's concern was about the lack of specific information to support the request.

**Staff response:** The comments were forwarded to the applicant. No additional information was submitted to the City.

**Janet Cartmill, 5466 SE Monroe St:** Comments centered on the removal of a large number of mature trees from the site.

**Staff response:** The current City code does not include tree protection language except for trees located in mapped resource areas, of which there are none on the subject property. The issue of the removal of essentially all of the trees on the site was identified both in the initial Incompleteness letter as well as the Completeness letter, and staff encouraged the applicant to provide alternatives in order to preserve some of the trees on the site. The applicant indicated that a certified arborist has been retained to inventory and assess the condition of all trees on the property 12” in size and greater. No additional information was submitted to the City.

### **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:
  - a. Submittal of a revised traffic impact analysis 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.
  - b. 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. 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 S-2016-001; VR-2016-007.
4. 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 51<sup>st</sup> Ave.
- k. Construct all required sidewalks, ramps and driveways on SE Llewellyn St, SE 51<sup>st</sup> 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 the entire width of the proposed SE 51st Ave to the final approved width along tax lot 7000.
- n. Construct the required sidewalk along the proposed SE 51st Ave along tax lot 7000.
- o. 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.
- p. Design and construct SE 51<sup>st</sup> Ave at Lot 14 such that tax lot 500 shall have adequate frontage meeting the development standards of the applicable zoning designation.
- q. Dedicate 1-ft wide reserve strips to the City of Milwaukie at the end of SE 51<sup>st</sup> Ave and on the south side of 51<sup>st</sup> Ave along tax lot 600, tax lot 601 and a portion of tax lot 500.



- r. 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.
  - s. The proposed intersection shall be constructed with a median, or other acceptable design, in SE King Rd restricting access to right in and right out of SE 51st Ave, while providing access for the existing left turn movement entering and exiting the existing commercial and residential driveways. The design of the median, or other acceptable design, shall be in accordance with City standards, with coordination with Clackamas Fire District, and approved by the Engineering Director.
  - t. Clear vision areas shall be maintained at all driveways and accessways and on the corners of all property adjacent to an intersection.
  - u. Provide a final approved set of Mylar and electronic PDF “As Constructed” drawings to the City of Milwaukie prior to final inspection.
  - v. 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.
  - w. Provide a final Access and Water Supply plan to be reviewed and approved by Clackamas Fire District #1.
5. 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. *Staff note - 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.



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Dennis Egner, FAICP  
Planning Director

cc: Kurt Dalbey (Mission Homes NW, LLC, PO Box 1689, Lake Oswego, OR 97035)  
Ken Sandblast (Westlake Consultants, Inc., 15115 SW Sequoia Parkway, Suite 150, Tigard, OR 97224)  
Michael Robinson (Perkins Coie LLP, 1120 NW Couch St, Tenth Floor, Portland, OR 97209-4128)  
Planning Commission (*via e-mail*)  
Alma Flores, Community Development Director (*via e-mail*)  
Chuck Eaton, Engineering Director (*via e-mail*)  
Alex Roller, 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  
NDA(s): Hector Campbell, Linwood, Lewelling (*via e-mail*)  
Interested Persons  
Land Use File(s): S-2016-001; VR-2016-007