



December 16, 2016

Land Use File(s): MLP-2016-001, VR-20216-009

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on December 16, 2016.

Applicant(s): Charles Clark, Pacific Designs NW
Location(s): 5301 SE Mullan St.
Tax Lot(s): 12E30DC01502
Application Type(s): Minor Land Partition, Variance
Decision: Approved with Conditions
Review Criteria: **Milwaukie Land Division Ordinance (Title 17):**

- Chapter 17.12 Application Procedure & Approval Criteria
- Chapter 17.16 Application Requirements and Procedures
- Chapter 17.20 Preliminary Plat
- Chapter 17.28 Design Standards
- Chapter 17.32 Improvements

Milwaukie Zoning Ordinance (Title 19):

- Section 19.301 Low Density Residential Zones
- Section 19.504.8 Flag Lot Design and Development Standards
- Chapter 19.700 Public Facility Improvements
- Section 19.911 Variances
- Section 19.1005 Type II Review
- Chapter 19.1200 Solar Access Protection

Neighborhood(s): Lewelling

Appeal period closes: 5:00 p.m., December 31, 2016

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1005 Type II 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 Mary Heberling, Assistant Planner, at 503-786-7658 or heberlingm@milwaukieoregon.gov, if you wish to view this case file or visit the project webpage at <http://www.milwaukieoregon.gov/planning/MLP-2016-001>.

This decision may be appealed by 5:00 p.m. on December 31, 2016, which is 15 days from the date of this decision.¹ Any person who is adversely affected or aggrieved by this decision may appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie Planning Commission following the procedures of MMC Section 19.1010 Appeals. This decision will become final on the date above if no appeal is filed during the appeal period. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or planning@milwaukieoregon.gov.

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

Findings in Support of Approval

1. The applicant, Charles Clark, has applied for approval of a minor land partition and variances for the property at 5301 SE Mullan St. (Tax Lot ID 12E30DC01502) (“the subject property”). The applicant is the property owner and has authority to initiate the application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. The applications were initially submitted on November 3, 2016, and deemed complete on November 14, 2016. The land use application file number is MLP-2015-001; VR-2015-009.
2. The site is in the R7 Low Density Residential zone and has no overlay zones or special areas designated in MMC Chapter 19.400. The Comprehensive Plan Land Use Designation for the site and adjacent properties is Low Density. The site has frontage on Mullan St and the site is undeveloped. Surrounding uses are single family residential dwellings also in the R7 zone.
3. The proposal is to partition the property into 2 new parcels. Parcel 1 will be 7,020 SF in size and will front on Mullan St. Parcel 2 will be a flag lot located behind Parcel 1 and will contain 11,305 SF. A variance is requested for the front and rear yard setbacks on Parcel 2 to allow setbacks of 22.5 ft rather than the 30 ft required. Mullan St is fully improved with curb and sidewalks.
4. The standards and criteria that are applicable to the applications are:
 - MMC 19.301, Low Density Residential Zones
 - MMC 19.504.8, Flag Lot Design and Development Standards
 - MMC 19.700, Public Facility Improvements
 - MMC 19.911, Variances
 - MMC 19.1005 Type II review
 - MMC Chapter 19.1200 Solar Access Protection
 - MMC 17.12.040, Approval Criteria for Preliminary Plat
 - MMC 17.20, Preliminary Plat
 - MMC 17.28, Design Standards
 - MMC 17.32, Improvements

Portions of the Milwaukie Municipal Code not addressed in these findings are found not to be applicable for purposes of rendering this land use decision.

¹ As per MMC Section 19.1010, if the 15th day falls on a weekend or legal holiday, the end of the appeal period shall be extended to the end of the next business day.

5. As established in MMC Section 19.901, partitions are subject to Type II review. As established in MMC Section 19.911, certain variances are subject to Type II review. The applications have been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review. Public notice was mailed to property owners and residents of lots within 300 ft of the subject property on November 23, 2016, with a minimum of 14 days to comment on the application. A notice sign of the application was posted on the subject property on November 15, 2016.

6. MMC Chapter 17.12 Application Procedure and Approval Criteria

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

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

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

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

As proposed, the buildable areas for the primary structures on the new parcels are all adequate to accommodate the uses allowed in the R-7 zone. The parcels do not have physical constraints that would necessitate the need for a variance.

The variance request for the front and rear yard setbacks of Parcel 2, a flag lot, does not affect the ability for the lots to meet standards in the R-7 zone. It has only been requested to allow for a larger building envelope. Without the variance, the parcels would still be of adequate size and share to be developed. As proposed, this criterion is met.

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

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

- MMC Subsection 17.12.040.A.4 requires that the streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.

The applicant proposes no improvements along SE Mullan St since all public improvements are currently constructed. The applicant made these improvements with the development of a previous Minor Land Partition: MLP-2015-005.

As proposed, this criterion is met.

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

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

As proposed, the Planning Director finds that the proposed preliminary plat meets the applicable criteria.

7. MMC Chapter 17.16 Application Requirements and Procedures

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

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

As proposed, the Planning Director finds that the application meets the applicable requirements for submittal of a preliminary plat.

8. MMC Chapter 17.20 Preliminary Plat

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

The applicant's preliminary plat submittal is to scale, shows dimensions, includes a vicinity map, shows existing adjacent structures, indicates minimum setbacks for future development,

As proposed, the Planning Director finds that the proposed preliminary plat includes the relevant and necessary information as outlined in MMC 17.20.

9. MMC Chapter 17.28 Design Standards

MMC 17.28 establishes design standards for land divisions and boundary changes, including a requirement for conformity with other City development plans, the applicability of MMC Chapter 19.700 Public Facility Improvements, and a requirement to provide utility easements as needed.

In particular, MMC Section 17.28.040 establishes standards for general lot design.

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

The proposed parcels meet the minimum area and dimensional requirements for the underlying R-7 zone. Parcel 1 is oriented to face the public street on Mullan St with Parcel 2 located behind as a flag lot. The parcels conform to the other relevant standards of Title 19 as described in these findings.

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

The proposed parcels are rectilinear in shape, with side lot lines at right angles and the rear lot lines parallel to the street on Mullan St.

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

No compound lot lines are proposed for the side or rear lot lines on any of the parcels.

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

No variance to the lot shape standards is requested in this application.

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

None of the proposed parcels have frontage on more than one public right-of-way.

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

All parcels in the proposed partition have only one street frontage, along Mullan St. As discussed in Finding 11-b, the frontages meet the minimum requirements for street frontage in the R-7 zone.

As proposed, the Planning Director finds that the new parcels presented in the applicant's preliminary plat meet the applicable design standards established in MMC Chapter 17.28

10. MMC Chapter 17.32 Improvements

MMC 17.32 establishes procedures for public improvements, including a requirement to place new utilities underground.

As evidenced by the applicant's submittal materials, all new utilities will be placed underground.

As proposed, the Planning Director finds that the applicable standards of MMC 17.32 are met.

11. MMC Section 19.301 Low Density Residential Zones

MMC 19.301 contains standards for Low Density Residential zones, including the R7 zone. The applications meet the standards of this section as described below.

- MMC Subsection 19.301.2 Allowed Uses

MMC 19.301.2 establishes the uses allowed in the R-7 zone, including single-family detached dwellings and duplexes as outright permitted uses.

The applicant has indicated that both parcels will be developed with single-family homes, which are allowed outright in the R-7 zone. At the time of future development, the actual proposed uses will be reviewed for compliance with the standards of this subsection.

As proposed, this standard is met.

- MMC Subsection 19.301.4 Development Standards

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

Table 1 – Zoning Compliance

Residential Zone R-7 Development Standards			
	R-7 Zone Standards	Parcel 1	Parcel 2
Lot Area	7,000 sq ft for single-family	7,020 sq ft	11,305 sq ft
Lot Width	60 ft	73.88 ft	99.43 ft
Lot Depth	80 ft	94.91 ft	90 ft
Public Street Frontage	35 ft, 25 ft for single flag lot	73.88 ft	25 ft
Lot Coverage	30% max.	0%	0%
Minimum Vegetation	35% min.	NA	NA
Front Yard Setback	20 ft 30 ft (flag lots)	NA	22.50 ft (variance requested)
Side Yard Setback	5 ft / 10 ft	NA	NA
Maximum Building Height	35 ft / 2.5 stories	NA	NA
Side Yard Height Plane	45 degree angle, 20 ft above ground	NA	NA
Rear Yard Setback	20 ft 30 ft (flag lots)	NA	22.50 ft (variance requested)
Residential Density	5.0 units/acre minimum; 6.2 units per acre maximum	2 dwelling units on 2 lots – see Finding for MMC 19.301.5.D [Net area of 18,325 sq ft = .42 acres 2.1 units minimum; 2.6 units maximum]	

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

- MMC 19.301.5 Additional Development Standards

MMC 19.301.5 establishes additional development standards applicable to the R-7 zone, including side yards, lot coverage, minimum vegetation, height exceptions, residential densities, building limitations, transition measures, off-street parking, and public facility improvements.

The requirements for public facility improvements are addressed in Finding 13; compliance with the other applicable standards will be determined at the time of future development.

MMC 19.301.5.D requires that land divisions are required to meet the density requirements for the base zone.

Based on the net lot area of 18,325 sf, the site's minimum density requirement is 2.1 units and the maximum density allowed is 2.6 units. Per the rounding procedures in MMC 19.202.4.B, the minimum density is rounded down to the nearest whole number for fractions of 0.50 and below, and maximum residential density is rounded down to the nearest whole number for fractions of 0.75 and below. The resulting in both minimum and maximum density for the site is 2 units, respectively. The proposal results in 2 parcels, both of which can accommodate a single-family dwelling. As proposed, the applicable standards of this subsection are met.

As proposed, the Planning Director finds that the applicable R-7 zone standards of MMC 19.301 are met.

12. MMC 19.504.8 establishes flag lot design and development standards. This section is met as described below.
- MMC 19.504.8.A states that flag lots in all zones are subject to the development standards of MMC 19.504.8.

Parcel 2 is a flag lot and would be subject to the development standards in this subsection. Parcel 1 does not meet the definition of 'flag lot' in MMC 19.201 and is not subject to the development standards of MMC 19.504.8 (MMC 19.201, "Flag lot means a lot that has a narrow frontage on a public street with access provided via a narrow accessway or "pole" to the main part of the lot used for building, which is located behind another lot that has street frontage. There are 2 distinct parts to the flag lot; the development area or "flag" which comprises the actual building site, and the access strip or "pole" which provides access from the street to the flag").
 - MMC 19.504.8.B contains development standards for flag lots.
 - (1) MMC 19.504.8.B.1 states that the areas contained within the accessway or pole portion of the lot shall not be counted toward meeting the minimum lot area requirement. *Parcel 2 flag has 8,541 sf in area outside of the accessway and complies with the minimum lot area requirement for the R7 zone.*
 - (2) MMC 19.504.8.B.2 establishes yard setbacks for flag lot development requiring a minimum 30-ft front and rear yard and 10-ft side yards. *A 25% variance has been requested to the minimum front and rear yard setbacks.*
 - MMC 19.504.8.C prohibits variances of lot area, lot width, and lot depth standards. *There are no variances requested for the creation of Parcel 2.*
 - MMC 19.504.8.D establishes standards for flag lot frontage, accessway, and driveway design.
 - (1) MMC 19.504.8.D.1 requires that flag lots shall have frontage and access on a public street and that the minimum width of the accessway and street frontage is 25 ft. *Parcel 2 is proposed with 25 ft of frontage with access to Mullan St.*

- (2) MMC 19.504.8.D.2 requires that abutting flag lots shall have a combined frontage and accessway of 35 ft. *This standard does not apply as a double flag lot is not proposed.*
- (3) MMC 19.504.8.D.3 contains standards for driveway design and emergency vehicle access. *As conditioned, the applicant shall construct a driveway approach to the new flag lot (Parcel 2) and combine the access with Parcel 1 to meet all guidelines of the Americans with Disabilities Act (ADA) prior to final inspection. The driveway approach apron shall be designed in accordance with MMC 19.504.8.D.3. As conditioned, this standard is met.*
 - (a) MMC 19.504.8.D.3.a requires that driveways shall be designed and constructed in accordance with Chapters 12.16 and 12.24 and the Public Works Standards. *As conditioned, the proposed driveway will be constructed in accordance with these standards.*
 - (b) MMC 19.504.8.D.3.b requires that driveways serving single flag lots shall have a minimum paved width of 12 ft. *As conditioned, the proposed driveway will meet the 12 ft wide requirement.*
 - (c) MMC 19.504.8.D.3.c requires that driveways shall be centered within the accessway to minimize impacts on adjoining lots except when otherwise warranted to preserve existing vegetation or meet the intent of this subsection. *As conditioned, the proposed driveway will meet these standards.*
 - (d) MMC 19.504.8.D.3.d requires that a paved turnaround area, or other provisions intended to provide emergency vehicle access and adequate maneuvering area, may be required. *As conditioned, the plat shall also include appropriate easements or restrictions to maintain a 12-ft wide paved driveway with a 20-ft wide unobstructed driving surface and minimum 13 ft 6 in vertical clearance.*
 - (e) MMC 19.504.8.D.3.e requires that driveways serving 2 flag lots shall be consolidated and have a minimum shared driveway width of 16 ft. *The proposed driveway would serve only 1 flag lot. This standard is not applicable.*
 - (f) MMC 19.504.8.D.3.f requires that the flag lot driveway shall be consolidated with the driveway on the parent lot to the greatest extent practicable. *As conditioned, the applicant shall construct a driveway approach to the new flag lot (Parcel 2) and combine the access with Parcel 1 to meet all guidelines of the Americans with Disabilities Act (ADA) prior to final inspection. The driveway approach apron shall be designed in accordance with MMC 19.504.8.D.3. As conditioned, this standard is met.*
 - (g) MMC 19.504.8.D.3.g requires that design standards for shared driveways serving more than 3 lots shall be specified by the Engineering Director after consultation with the Fire Marshal. *As conditioned, the proposed driveway would serve 2 lots and Clackamas Fire District #1 (CFD) has reviewed the proposed partition. As conditioned, the driveway, turnaround, and future development on Parcels 1 and 2 shall comply with CFD requirements.*
 - (h) MMC 19.504.8.D.3.h requires that parking along any portion of the driveway within the accessway is prohibited unless the driveway is suitably

sized to meet the combined needs of parking and emergency access requirements. *The proposed driveway is not suitably sized to allow the combined needs of parking and emergency access requirements. As conditioned, no parking signage shall be installed and maintained within the access pole area.*

- (4) MMC 19.504.8.E contains standards for protection of adjoining properties for flag lot development. Flag lots must be screened in accordance with this subsection to minimize potential adverse impacts to abutting properties. Fencing and screening must conform to the clear vision standards of Chapter 12.24. Fencing shall conform to the standards of Subsection 19.502.2.B.

- (a) MMC 19.504.8.E.1 requires that planting and screening must be provided at the time of development. Installation of required screening and planting is required prior to final inspections and occupancy of the site unless a bond or other surety acceptable to the City Attorney is provided. Screening and landscaping shall be installed within 6 months thereafter or the bond will be foreclosed. The property owner shall maintain required screening and planting in good and healthy condition. The requirement to maintain required screening and planting is continuous.

As conditioned, planting and screening required pursuant to this subsection will be required prior to final inspection and occupancy of structures on Parcel 2.

MMC 19.504.8.E.2 requires that impacts to neighboring lots due to use of the flag lot driveway shall be mitigated to the greatest extent practicable through screening and planting. Continuous screening along lot lines of the flag lot abutting any neighboring lot that is not part of the parent lot from which the flag lot was created is required as described in MMC 19.504.8.E.2.a – c. Parcel 1 is part of the parent lot from which the flag lot is created, and screening on lot lines adjoining these parcels is not required. *As conditioned, planting and screening required pursuant to this subsection will be installed prior to final inspection and occupancy of structures on Parcel 2.*

- (b) MMC 19.504.8.F applies to flag lots and requires that all trees 6 in or greater in diameter, as measured at the lowest limb or 4 ft above the ground, whichever is less, shall be preserved. Where trees are required to be removed for site development, at least 1 evergreen or deciduous tree, of a species known to grow in the region, shall be replanted for each tree removed. At planting, deciduous trees shall be a minimum of 2 in caliper and evergreen trees shall be a minimum of 5 ft tall.

A number of trees were removed from this site approximately 2 years ago. As conditioned, no additional trees shall be removed from Parcels 2 unless required for development of the site, including construction of a primary structure, driveways necessary to access the site, and provision of utilities to the site. Prior to removal of any trees on site 6 in or greater in diameter, as measured at the lowest limb or 4 ft above the ground, whichever is less, the applicant shall submit a written statement explaining why removal of the tree is necessary for site development and demonstrating that there are no practicable alternatives to removal. The applicant's submittal materials

state that any trees that are required to be removed, replanting shall be per the standards in MMC 19.504.8.F.

- (c) MMC 19.504.8.G requires that a landscaping plan shall be submitted to the Planning Director prior to issuance of a building permit for new construction. *The applicant's submittal materials state that a landscaping plan will be submitted with the building permit application. The landscaping plan shall list out existing vegetation on site, details for protection of existing trees, location of proposed plantings, notations of trees to be removed, and the size and quantity of plant materials.*

13. MMC Chapter 19.700 Public Facility Improvements

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

- MMC Section 19.702 Applicability

MMC 19.702 establishes the applicability of the provisions of MMC 19.700, including land divisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that result in any projected increase in vehicle trips or any increase in gross floor area on the site.

The applicant proposes to partition the existing parcel into 2 new lots. The proposed partition triggers the requirements of MMC 19.700.

MMC 19.700 applies to the proposed development.

- MMC Section 19.703 Review Process

MMC 19.703 establishes the review process for development that is subject to MMC 19.700, including requiring a preapplication conference, establishing the type of application required, and establishing approval criteria.

The applicant had a preapplication conference with City staff prior to application submittal, on November 13, 2016. The proposed development does not trigger a TIS (as addressed in Finding 13-c), but it does require a preliminary plat application; the proposal's compliance with MMC 19.700 is being reviewed as part of the preliminary plat application and a separate TFR application is not necessary. Finding 13-e addresses the proposal's compliance with the approval criteria established in MMC 19.703.3, particularly the required transportation facility improvements.

- MMC Section 19.704 Transportation Impact Evaluation

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

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

- MMC Section 19.705 Rough Proportionality

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

The proposed development does not trigger mitigation of impacts. The impacts are minimal and the surrounding transportation system will continue to operate at the level of service previous to the proposed development.

The proposed development is consistent with MMC 19.705.

- MMC Section 19.708 Transportation Facility Requirements

MMC 19.708 establishes the City's requirements and standards for improvements to public streets, including pedestrian, bicycle, and transit facilities. The City's street design standards are based on the street classification system described in the City's Transportation System Plan (TSP).

The subject property's street frontage along Mullan St was improved through conditions of previous application: MLP-2015-005. The standards are met.

The Planning Director finds that the proposed development meets the applicable public facility improvement standards of MMC 19.700.

14. MMC Chapter 19.911 Variances

- MMC 19.911.3 establishes the review process for variance applications.

The applicant has requested a variance to the required minimum front and rear yard setbacks for a flag lot (Parcel 2), requesting setbacks of 22.5 ft rather than the minimum 30 ft required. This request meets the allowable variance of 25% permitted through Type II review.

The Planning Director finds that the application is subject to Type II Variance review for the proposed front and rear yard setbacks of 22.5 ft on Parcel 2, a flag lot.

- MMC 19.911.4.A establishes criteria for approving Type II Variance applications. An application for a Type II variance shall be approved when all of the following criteria have been met:

(1) The proposed variance, or cumulative effect of multiple variances, will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare.

The proposed variance will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare. Front and rear yard setbacks for flag lots exceed those for the underlying R7 zone. The proposed setbacks, even with the variance, will exceed the minimum required for the R7 zone. The proposed side yard setbacks also meet or exceed the minimum required for the R7 zone. The variance is requested in order to allow for a slightly larger building envelope; all other requirements will be met during development.

(2) The proposed variance will not interfere with planned future improvements to any public transportation facility or utility identified in an officially adopted plan such as the Transportation System Plan or Water Master Plan.

The requested variance does not affect any proposed transportation or utility plans; all required facilities are proposed in the partition application.

(3) Where site improvements already exist, the proposed variance will sustain the integrity of, or enhance, an existing building or site design.

No structures exist on the property therefore this criterion is not applicable.

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

The Applicant's materials indicate that the mitigation will come in the form of enhanced landscaping and buffering. Specific plant species and quantity will mitigate the effects of the development by creating a natural buffer between the homes. The landscaping proposed for mitigation has been outlined in the Conditions of Approval.

The Planning Director finds that the approval criteria have been met.

15. MMC Chapter 19.1200 Solar Access Protection

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

- MMC Subsection 19.1203.2 establishes the applicability of MMC Subsection 19.1203.3 as for applications to create lots in single-family zones. Exceptions are allowable to the extent the Planning Director finds that the applicant has shown one or more of the conditions listed in MMC Subsections 19.1203.4 and 19.1203.5 exist and that exemptions or adjustments are warranted.
- The proposed partition will create new parcels in the R-7 zone, which is a zone that allows single-family residences. As discussed in Findings 14-b, 14-c, and 14-d, the solar design standards of MMC 19.1203.3 are applicable. 19.1203.3 establishes solar design standards, including basic requirements for north-south dimension and front-lot-line orientation with respect to a true east-west axis. There are two other options for compliance, for either establishing a protected solar building line or demonstrating a particular level of performance with respect to protection from shading.

The new parcels created by the proposed partition meet the basic requirements for north-south dimension (all parcels exceed 90 ft in depth) and front-lot-line orientation to a true east-west axis.

As proposed, the solar design standards are met.

- MMC 19.1203.4 establishes exemptions from the standards of MMC 19.1203.3, including where an off-site structure and/or vegetation produces a shadow pattern that would affect allowable development on the site.

Exceptions are not required for the proposal.

- MMC 19.1203.5 establishes provisions for adjustments to the percentage of lots that must comply with the solar design standards of MMC 19.1203.3, including cases in which the application of the solar design standards would reduce the density or increase the on-site development costs.

Exceptions are not required for the proposal.

As proposed, the Planning Director finds that the proposal meets the applicable solar access provisions established in MMC 19.1200.

16. As described in Finding 5, public notice of the application was posted on site and mailed as required by the Type II review process established in MMC 19.1005. The application was referred for comment to the following departments and agencies on November 23, 2016: Milwaukie Engineering Department, Milwaukie Building Department, Clackamas Fire

District #1, and the Lewelling Neighborhood District Association (NDA). The responses received are summarized below.

- Clackamas Fire District #1 –
 - (1) Provide address numbering that is clearly visible from the street.
 - (2) No part of a building may be more than 150 feet from an approved fire department access road.
 - (3) Fire apparatus access roads shall have an unobstructed driving surface width of not less than 20 feet (26 feet adjacent to fire hydrants) and an unobstructed vertical clearance of not less than 13 feet 6 inches.
- Milwaukie Engineering Department – No comments for this proposal as public facility improvements and stormwater management requirements were met with the previous applicant's application: MLP-2015-005.
- Comments from Community Members:
 1. Concerns about fire risk, due to proposed increase in number of houses and the proximity to each other, as well as, less access for fire trucks on Mullan St with possible increase in traffic from new development.

Staff Response: There is a fire hydrant located on SE 54th close to the corner of SE 54th and Mullan St. Clackamas Fire District #1 stated no concerns about fire risk with the land partition and future development in the area. The roads currently meet the access requirements for the fire district, as well as, standards for street standards according the Milwaukie Engineering Department. The proposed access drive for Parcel 2 will meet access standards.

2. Concerns about increased density in the neighborhood and the proposed 2-story single family homes on the parcels would not meet the surrounding character of the neighborhood.

Staff Response: The proposed lots to be partitioned meet the requirements of lot size in the R-7 zone. The applicant's proposed single family residences (SFRs) on each lot would meet the density minimums and maximums for the R-7 zone. The R-7 zone, also, allows for 2-story SFRs as long as they meet the height requirements. The applicant has stated that the height of the SFRs will meet the requirements of the R-7 zone.

3. Concerns about the land being elevated during construction of new SFRs on the partitioned lots.

Staff Response: The City does not have any regulations regarding land being elevated during the construction of SFRs. The applicant has stated that their intention is to construct at ground level for SFRs on the parcels.

4. Concerns over loss of trees and vegetation on the proposed lots.

Staff Response: Most of the trees on this site were removed approximately 2 years ago. The City does not have any general regulations to restrict tree removal on private property. Each lot is required to maintain 30% coverage with vegetation. All development proposals are inspected to meet this criterion.

Flag lots have other design standards (MMC: 19.504.8.F) that affect trees and vegetation. They do have requirements to provide planting and screening for protection of adjoining properties. All trees 6 inches or greater in diameter, as measured at the lowest limb or 4 feet above the ground, whichever is less, shall be preserved. Although the code also states that where trees are required to be removed for site development, at least 1 evergreen or deciduous tree, of a species known to grow in the region, shall be replanted for each tree removal. At planting, deciduous trees shall be a minimum of 2 in caliper and evergreen trees shall be a minimum of 5 feet tall. Flag lots also require a landscaping plan. The applicant has agreed to meet all of these requirements when developing both of the partitioned lots.

5. Concerns over serial partition of the property.

Staff Response: Repartition of lots are counted during the calendar year. An applicant can partition 3 lots in one calendar year and 1 lot the next calendar year and neither would count as a subdivision since they would be 2 partition applications under the 4 lot partition requirement to be considered a subdivision.

Conditions of Approval

1. The applicant shall submit a final plat application within 6 months of this preliminary plat approval, in accordance with MMC Section 17.24.040. The applicant shall obtain approval of the final plat prior to the expiration of the preliminary plat approval, which is established by MMC Section 17.04.050 as 1 year from the date of this approval.
2. The applicant's final plat application shall include the items listed on the City of Milwaukie Final Plat Checklist. The following specific items and/or changes are required as part of the application:
 - A written narrative describing all changes made to the final plat that are not related to these conditions of approval.
 - A final plat that substantially conforms to the plans received by the Planning Department on December 31, 2016, and approved by this action, except as modified by these conditions of approval.
 - The plat shall include spaces for signatures by the Milwaukie Planning Director and Milwaukie Engineering Director, and a note indicating that this partition is subject to the requirements of City of Milwaukie Land Use Application File #MLP-2016-001, VR-2016-009.

3. Prior to approval of the final plat, the following shall be resolved:

- Construct a driveway approach to the new flag lot (Parcel 2) and combine the access with Parcel 1 to meet all guidelines of the Americans with Disabilities Act (ADA) prior to final inspection. The driveway approach apron shall be designed in accordance with MMC 19.504.8.D.3.
- Provide a final approved set of Mylar “As Constructed” drawings to the City of Milwaukie prior to final inspection.
- Remove all signs, structures, or vegetation in excess of three feet in height located in “vision clearance areas” at intersections of streets, driveways, and alleys fronting the proposed development.
- No parking signage shall be installed and maintained within the access pole area.
- Per MMC 19.504.8.G, a landscaping plan will be submitted with the building permit application. The landscaping plan shall list out existing vegetation on site, details for protection of existing trees, location of proposed plantings, notations of trees to be removed, and the size and quantity of plant materials.
- Per MMC 19.504.8.E, the flag lot (Parcel 2) must contain standards for protection of adjoining properties for flag lot development. Flag lots must be screened in accordance with this subsection to minimize potential adverse impacts to abutting properties. Fencing and screening must conform to the clear vision standards of Chapter 12.24. Fencing shall conform to the standards of Subsection 19.502.2.B.

Given neighbor concerns about visual impacts, Parcel 2 shall have enhanced landscaping and screening along the west property line. The screening shall be designed to match the screening used along the west property line of the parcel to the North (5290 SE Logus St) and shall consist of Leyland Cypress (7'-8') and Golden Bamboo (8'-10') planted at a similar density.



Dennis Egner, FAICP
Planning Director

cc: Charles Clark, 5301 SE Mullan St.
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): Lewelling (*via e-mail*)
Interested Persons
Land Use File(s): MLP-2016-001, VR-2016-009