



PLANNING DEPARTMENT  
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# Appeal of Land Use Decision

~~S-2016-001~~  
File #AP-2016-002  
~~VR-2016-007~~

## RESPONSIBLE PARTIES:

<b>APPELLANT:</b> <i>Hector Campbell Neighborhood District Association</i>	
Mailing address: <i>10722 S.E. Main St</i>	Zip: <i>97222</i>
Phone(s): <i>503-786-7568</i>	E-mail: <i>info@hectorcampbellnda.org</i>
<b>APPELLANT'S REPRESENTATIVE</b> (if different than above): <i>Ley Garnett</i>	
Mailing address: <i>4928 S.E. Llewellyn St.</i>	Zip: <i>97222</i>
Phone(s): <i>503-653-7547</i>	E-mail: <i>leygarnett@comcast.net</i>

## APPEAL INFORMATION:

Appeal of File #: <i>S-2016-001</i> <del>VR-2016-007</del>	Review Type of Appealed Decision: <input type="checkbox"/> I <input type="checkbox"/> II <input checked="" type="checkbox"/> III
Site Address: <i>5126 + 5096 King Rd.</i>	Map & Tax Lot(s): <i>12E30CD 7701, 10300, 10400, 6900, 7400, 7700</i>
Comprehensive Plan Designation: <i>MD</i>	Zoning: <i>R-5</i> Size of property: <i>2.65 acres</i>

## STANDING FOR APPEAL (check applicable box):

Applicant or applicant's representative from Type I, II, or III decision

Person or organization adversely affected or aggrieved by Type II decision

Person or organization that participated or provided testimony or evidence on the record for Type III decision. List the date and briefly describe the form of participation, testimony, or evidence:  
*11-22-16 testimony by <sup>Neighborhood</sup> Association & by individual*

## BASIS OF APPEAL (attach a detailed statement describing the basis of the appeal):

Identify which approval criterion or development standard is believed to have been overlooked or incorrectly interpreted or applied and/or which aspect of the proposal is believed to have been overlooked or incorrectly evaluated.

For appeal of a Type II decision, identify either an error as described above or the manner in which the person filing the appeal was adversely impacted or aggrieved by the decision.

## SIGNATURE:

**ATTEST:** I have standing to appeal the land use decision identified on this application and have provided the necessary items and information for filing an appeal per Milwaukie Municipal Code (MMC) Subsection 19.1010.1. To the best of my knowledge, the information provided within this appeal package is complete and accurate.

Submitted by: *Ley Garnett* Date: *12/13/16*

**IMPORTANT INFORMATION ON REVERSE SIDE**

**APPEAL HEARINGS** (excerpted from MMC Subsections 19.1001.5 and 19.1010.3) :

**Appeals of Type I and II decisions:**

Appeals of Type I and II decisions are heard by the Planning Commission. The appeal hearing is an unrestricted de novo hearing, which means that new evidence, testimony, and argument that were not introduced in the original decision can be introduced in the appeal. The standard of review for the Planning Commission is whether the initial decision has findings and/or conditions that are in error as a matter of fact or law. The Planning Commission's decision on the appeal is the City's final decision on the initial land use application per ORS 227.178. Further appeals of the application may be made to the Oregon Land Use Board of Appeals or other court.

**Appeals of Type III decisions:**

Appeals of Type III decisions are heard by the City Council. The appeal hearing is an on-the-record de novo hearing, which means that new evidence that was not introduced in the original decision cannot be introduced in the appeal. New testimony is allowed. New argument is also allowed that is based on evidence already in the record and on testimony that is new or already in the record. The standard of review for the City Council is a new evaluation of existing evidence, new and existing testimony, and new and existing arguments. The City Council's decision on the appeal is the City's final decision on the initial land use application per ORS 227.178. Further appeals of the application may be made to the Oregon Land Use Board of Appeals or other court.

**DECISIONS NOT SUBJECT TO LOCAL APPEAL:**

The initial hearing for Type IV and V decisions is held by the Planning Commission. The Planning Commission does not issue a decision on these types of review and, instead, issues a recommendation to the City Council. This recommendation is not a final decision and is not appealable.

The review authority for Type IV and V decisions is the City Council. Since there is no higher authority within the City, the City Council's decisions on these types of reviews are the City's final decision on the land use application. Appeals of these types of applications may be made to the Oregon Land Use Board of Appeals or other court.

Downtown Design Review applications are considered at a public meeting by the Design and Landmarks Committee. The Design and Landmarks Committee does not issue a decision on these types of review and, instead, issues a recommendation to the Planning Commission. This recommendation is not a final decision and is not appealable.

**THIS SECTION FOR OFFICE USE ONLY:**

FILE TYPE	FILE NUMBER	FEE AMOUNT*	PERCENT DISCOUNT	DISCOUNT TYPE	DEPOSIT AMOUNT	DATE STAMP
Master file		\$			\$	<p>RECEIVED                      DEC 13 2016                      CITY OF MILWAUKIE                      PLANNING DEPARTMENT</p>
Concurrent application files		\$			\$	
		\$			\$	
		\$			\$	
		\$			\$	
<b>SUBTOTALS</b>		\$			\$	
<b>TOTAL AMOUNT RECEIVED: \$</b>		<b>RECEIPT #:</b>			<b>RCD BY:</b>	
<b>Associated application file #s (appeals, modifications, previous approvals, etc.):</b>						
<b>Neighborhood District Association(s):</b>						
<b>Notes:</b>						

\*After discount (if any)

I believe the Milwaukie Planning Commission incorrectly applied 19.911.4 of the City's Municipal Code when it approved the variance for a proposed new 51st Avenue intersection with SE King Rd. This is a major variance. It's allowing a new intersection on an arterial with a distance of only 285 feet from 52nd Ave., when it's supposed to be 530 feet. Without it the project could not go forward.

The Planning Commission determined that the variance complied with City code because it met criteria A of 19.911.4, which states "The proposed variance avoids or minimizes impacts to surrounding properties." The Planning Commission agreed with the developer that this criteria was met because a single property, located at 5156 King Rd., would be provided driveway access to the proposed new intersection at 51st and King.

This property already has driveway access to King Rd. and I contend that the variance does not address the disruptive impact this project would cause to all other surrounding properties. This disruptive impact would be felt by those properties, not only through the lengthy construction phase of the project---including frequent traffic blockages of King Rd, but also felt in the loss of its treeline, summer shade and the noise buffer the big trees provide.

I believe my argument is strengthened when you examine the other two criteria that could have been met for variance approval. The project clearly cannot meet criteria B of 19.911.4 because to be a public benefit it would, or could be "preservation of a public resource," when in actuality it would result in the destruction of more than 100 trees--which is a public resource.

Nor can the project meet criteria C. Instead it clearly is the opposite of criteria C, which states that "The proposed variance responds to the existing built or natural environment in a creative and sensitive manor." Among the trees standing in the way of this intersection, that needs a 245-foot variance to be legal, are a 50-inch diameter fir and another with a 48-inch diameter. Farther down the path of the proposed new 51st Ave. is another 48-inch fir and finally in the middle of 51st is the biggest tree on the property--a 54-inch diameter tree.

The Planning Commission approved this variance without having a final design of the proposed new intersection on paper. It had only the supposition of the City Engineer that the theoretical intersection could function. It would be a complex intersection with a new median, but is not supposed to interfere with the nearby entrance to Milwaukie Christian Church. The intersection design should be definitive before approval.

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Furthermore, I contend the Planning Commission overlooked Objectives 3 and 4 within Chapter 4 (Land Use) of the city's Comprehensive Plan.

There can be no dispute that this project violates Policies 5 and 6 under Objective 3. Policy 5 states that "In all cases, existing tree coverage will be preserved whenever possible, and areas of trees and shrubs will remain connected particularly along natural drainage courses."

Policy 6: "Specified trees will be protected during construction, in accordance with conditions attached to building permits."

Additionally, the project clearly does not meet Objective 4, Policy 2, under Neighborhood Conservation.

Policy 2: "Within Moderate and Medium Density areas, the rehabilitation of older housing is encouraged in lieu of large area clearance and new construction. When projects involve destruction of older housing, it must be shown that rehabilitation is not justified because of structural, health or other important considerations." The project would level two existing single-family houses. No evidence was presented to the Planning Commission regarding the condition of these houses or why they should be torn down.

Finally, I believe the Planning Commission has overlooked Section C of 17.28.080 of the City's Comprehensive Plan. It states that: "Where considered desirable by the Planning Commission, and where the Comprehensive Plan or adopted master plan of the City does not indicate proposed public use area, the Planning Commission may require the dedication or reservation of areas or sites of a character, extent, and location suitable for the development of parks and other public use." The Commission seems to have stopped at Section B and determined that this project doesn't need to dedicate any open space. A Homewood like park could be set aside and it would have larger trees than Homewood's.

I assert that it is through Section C of 17.28.080 that the Planning Commission has the authority to require open space in this development and save some of the larger trees by attaching the provision to building permits. The larger trees are somewhat grouped together making this goal attainable.

Therefore, this project should be denied in its current status because it does not comply with the city's Municipal Code and its Comprehensive Plan.