

KELLOGG CREEK Milwaukie, Oregon

Supplemental Information for a Type III Variance Request

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Applicant:
Brownstone Development, Inc.
47 South State Street
Lake Oswego, OR 97934

Prepared by:
DOWL
720 SW Washington Street, Suite 750
Portland, Oregon 97205
(971) 280-8641

The responses below should be used to replace the variance responses starting on page 23 of the previously submitted Planned Development narrative.

Section 19.911 Variances

19.911.3 Review Process

C. Type III Variances

Type III variances allow for larger or more complex variations to standards that require additional discretion and warrant a public hearing consistent with the Type III review process. Any variance request that is not specifically listed as a Type II variance per Subsection 19.911.3.B shall be evaluated through a Type III review per Section 19.1006.

Response: The applicant is requesting two variances:

- A variance is requested to reduce the 45-foot driveway spacing standard in MMC 12.16.040 for lot 72 of the proposed subdivision. Specifically, MMC 12.16.040.C.4.a states that the distance between the nearest edge of a driveway apron to the nearest intersecting street face of curb must be at least 45 feet. The driveway apron for Lot 72 is approximately 26 feet from the nearest intersecting street face of curb, which falls short of meeting the standard. This type of variance request is not specifically listed as a Type II variance; therefore a Type III variance is required.
- A variance is requested to the natural resource standards in MMC 19.402 pertaining to applications for subdivisions. Specifically, MMC 19.402.13.I.2.a states that, “All proposed lots shall have adequate buildable area outside of the WQR and HCA.” As indicated in the Natural Resources Report in Exhibit J (see Figure 5) approximately 31 of the proposed 92 lots do not meet this standard. Those lots are lots 29-32, 33-35, 63-71, and 73-87. This type of variance request is not specifically listed as a Type II variance; therefore a Type III variance is required.

19.911.4 Approval Criteria

B. Type III Variances

An application for a Type III variance shall be approved when all of the criteria in either Subsection 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.

1. Discretionary Relief Criteria

- a. 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.

Response:

Lot 72 driveway spacing variance. In order to meet the 45-foot driveway spacing standard, lot 72 (and subsequently, the whole block of lots north of lot 72) would need to shift to the north approximately 20 feet, which would create further impacts to the natural resource area. Allowing the driveway to remain in its current location will help minimize impacts to natural resources. Potential impacts from allowing a driveway that does not meet the spacing standard will be minimal and can be mitigated as described in the response to criterion (c) below.

Adequate buildable area variance. As noted above, the requested variance impacts 31 of the 92 lots in the proposed Planned Development subdivision. Without the variance, those 31 lots could not be retained and the resulting Planned Development would be reduced to approximately 61 lots. That represents a significant reduction in the number of proposed lots, which would have a number of impacts:

- Minimum density for the Planned Development subdivision was calculated per the table below. As shown, the minimum density is 66 units. Loss of 31 lots in the proposed subdivision would result in a project that **does not** meet the minimum density requirement established by the code.

Zoning	Gross Acres	FEMA Mapped Floodway	Right-of-way	Additional Open Space ¹	Net Acres ²	Minimum Density
R-3	9.58	1.20	1.36	1.99	5.03	58 units
R-10	4.44	0.50	0.87	0.98	2.09	7 units
Totals	14.02	1.70	2.23	2.97	7.12	66 units

- Required open space is one-third of the gross acreage (per PD provisions in 19.311.3.E). The above calculations assume a portion of the open space overlaps with floodway. Additional open space needed to achieve one-third of the gross is indicated here.
- Net acres = gross acres – (floodway + right-of-way + open space)
- Minimum density is based on 11.6 units per acre for R-3 and 3.5 units per acre for R-10

- As proposed, the project proposes 92 lots, which represents an approximately 15 percent increase in the allowed maximum density for the site. The Planned Development provisions in MMC 19.311 allow a density bonus up to 20 percent if the project can demonstrate that it is “outstanding in planned land use and design” and provides amenities that would not otherwise be provided. This project proposes a number of design features and amenities that were included specifically to justify the proposed density increase. However, if the number of lots is reduced, the density bonus is no longer applicable and those amenities would no longer be necessary. In other words, without the proposed variance, project amenities such as the open space trail, additional landscaping, and community garden would not be provided.
- Although the proposed variance will result in impacts to areas of mapped natural resources on the site, those impacts will be minimized and mitigated. The result of the mitigation and enhancement activities will be an overall improvement in the quality of natural resource areas on the site. This is described in more detail in the responses below.
- As discussed in more detail below, the proposed variance will allow the project to provide 92 units of a needed housing type (attached single-family residential) for the City. Without the variance, the ability of the project to provide this type of housing (attached ownership units) at the identified price point (low to mid \$300,000 range) will be constrained.

The table below summarizes the impacts and benefits of the proposed project under baseline code requirements (i.e., without the variance) versus the proposed project with the requested variance.

Issue	Project without Variance	Project with Variance
Impacts natural resource areas	Minimal impacts to natural resources	HCA impacts: 1.06 acres WQR impacts: 0.80 acres
Improves and restores natural resource areas	No	Yes
Meets Minimum Density	No	Yes
Provides Community Amenities	No	Yes
Provides Needed Housing	Unlikely to provide needed attached single family housing type	Provides 92 attached single family units - providing a housing type that is identified as needed in the City’s HNA

b. *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:*

(1) *The proposed variance avoids or minimizes impacts to surrounding properties.*

Response:

Neither variance request will have impacts to surrounding properties. The requested variances are internal to the subdivision site and will not change how the development interacts with, or impacts, surrounding uses. The Traffic Impact Study provided in Exhibit G demonstrates that traffic impacts from the proposed subdivision, with the requested variances, will not negatively impact functionality or safety of the public street system.

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

Response:

Lot 72 driveway spacing variance. The proposed variance will help to minimize impacts to the natural resources located on the site.

Adequate buildable area variance. The proposed variance will provide a number of public benefits that would otherwise not be provided.

- As noted above, the variance will allow the proposed Planned Development to achieve 92 lots, which utilizes the density bonus allowed by the Planned Development provisions. In response to the density bonus, the project includes public amenities (open space trail, community garden and additional landscaping). Without the variance, those public amenities would not be provided.
- This project specifically responds to the need for additional single family attached housing in Milwaukie. A recent housing needs analysis¹ was prepared for the City to forecast housing needs over the next 20 years. That analysis identifies a need for over 1,000 new housing units. The majority (71 percent) of that housing is projected to be ownership housing, over half of which is projected to be an attached housing type. The proposed variance will allow the project to provide 92 units of attached housing for ownership, thereby supporting the City's goal to provide more of this type of needed housing. Without the variance, it is likely that the project would shift to a different housing type with larger lots and at a higher price point that would not provide the attached housing type needed in the City.

A memo prepared by Johnson Economics states the following (emphasis added):

*"The proposed development is consistent with the observed trends in the residential market, and is expected to deliver a product that is consistent with identified market demand. **The subject site is particularly well suited for this type of development**, with proximate parks and open space to complement the limited yard space provided in a townhome configuration. We would expect the project to **appeal to a cost-sensitive starter family market**, which will value the local amenity mix as well as proximity to employment and commercial services.*

*The development is requesting a Planned Development approval, which would allow for flexibility to deal with the site and natural resources. The site is split zoned, with portions zoned either R-10 or R-3. The R-10 zoning has a minimum lot size of 10,000 square feet, and would yield few units. Even under a duplex scenario, the zoning would require 14,000 square feet per duplex. The R-3 zoning allows for 3,000 square foot lots sizes, but with the level of natural resource on the site, a development would not be able to meet minimum density. **As zoned, any development on the site would necessarily be at a price point that would not be responsive to the local demand.***

¹ Housing and Residential Land Needs Assessment, prepared by Johnson Economics, August 2016.

*The proposed townhome development would allow for family-oriented units at a price point that meets identified demand, and can provide workforce housing. **It would help realize and expand the City's housing capacity, increasing housing options for local residents as well as locally-employed households.***

Without the requested variance to allow 92 lots, the project would not be able to deliver housing at a price point desired by the community and needed in the region.

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

Response:

Lot 72 driveway spacing variance. This criterion is not applicable to the requested driveway spacing variance.

Adequate buildable area variance. The Planned Development site has a large amount of mapped natural resources that significantly limits the developable area. The proposed variance responds to this condition by ensuring that development encroachment areas are limited to areas that provide low habitat/water quality function and value. Mitigation proposed to compensate for encroachment into the mapped areas will result in an overall improvement in the quality and value of natural resource areas on the site.

Although impacts to natural resources will occur, those impacts have been identified and documented in the Natural Resource Report (Exhibit J). The report identifies areas of water quality resource (WQR) on the site and rates their quality according to definitions provided in MMC Chapter 19.402. The following summary describes those WQR areas:

- WQR area south of Mt. Scott Creek is Class A, or “good” quality. That area **is not** being impacted by the proposed variance.
- WQR area west of Wetland A is Class A, or “good” quality. That area **is not** being impacted by the proposed variance.
- WQR areas east and south of Wetland A are Class C, or “poor” quality. Those are the areas that will be impacted by the proposed variance.

In addition, the habitat conservation area (HCA) located at the northern edge of the proposed subdivision (impacted by lots 73-86) is not good quality wildlife habitat. This area is primarily composed of non-native, weedy plant species and lacks vegetation structure and diversity. As such, it provides less wildlife habitat than those areas that are forested and have a more diverse understory. The Natural Resources Report states the following:

“The development has been designed taking into consideration the City's building, design, and development requirements, while avoiding and minimizing resource impacts to the greatest extent practicable, and still allowing the project to be financially feasible. As such development in the WQR and HCA has been limited to the outer portions of each, in areas that are of lowest quality.”

The proposed variance responds to the natural environment by limiting impacts to primarily those natural resource areas that have been identified as low or poor quality. Mitigation and enhancement activities on the site (discussed more in the response below) will ensure that the overall quality of natural resource areas will be improved.

c. *Impacts from the proposed variance will be mitigated to the extent practicable.*

Response:

Lot 72 driveway spacing variance. Possible impacts from the proposed driveway spacing variance include potential conflicts between vehicles accessing the lot 72 driveway and vehicles traveling on Streets A and B. These conflicts will be minimized and mitigated as follows:

- The intersection of Streets A and B will be controlled with stop signs, which are anticipated to be placed on Street A.
- There will be adequate visibility at the lot 72 driveway for drivers to check for oncoming vehicles before backing out of the driveway.
- Traffic volume on Streets A and B is expected to be low, thus minimizing potential for conflicts.
- Due to low traffic volumes and stop signs located on Street A, queuing lengths for vehicles traveling southbound on Street B and turning onto Street A are not anticipated to interfere with the driveway apron for lot 72.

Adequate buildable area variance. As proposed, the subdivision will impact 1.06 acres of habitat conservation area and 0.80 acres of water quality resource. The Natural Resource Report provided in Exhibit J describes in detail how the natural resource impacts from the proposed variance will be minimized and mitigated. Those measures include:

- A construction management plan that describes how erosion and sediment control measures will protect natural resource areas during construction activities.
- A tree protection plan that describes how trees will be protected during construction.
- Natural resource areas that will be temporarily disturbed during construction will be restored and improved through removal of invasive plant species and replanting with native species suitable to the site that will enhance habitat value.
- Natural resource areas that will be permanently disturbed will be mitigated on the site consistent with requirements in MMC Chapter 19.402 and with federal requirements for mitigation of wetland impacts (through the joint DSL and COE permit process). Mitigation areas are shown on Figure 9 and will include:
 - Inventory and removal of man-made debris and noxious materials that are located on the site, as identified in the Geo-Technical Report in Exhibit F.
 - Removal of non-native, invasive plant species from the riparian corridor along Mt. Scott Creek.
 - Installation of tree and shrubs within the remaining natural resource areas and floodplain storage area to restore a diverse, native plant community.
 - Bare or open soil areas will be seeded to 100 percent surface coverage with native grasses and other groundcover species.
 - Woody material will be placed in the mitigation and restoration areas after construction to maximize survival of the plantings.
 - Monitoring of the mitigation and restoration areas will occur in the two years following construction. Annual monitoring reports will be submitted to the City consistent with requirements in MMC 19.402.

In addition to required mitigation, the project will provide further enhancement to two areas on the site. Those areas are shown as Additional Enhancement Areas A and B on the revised Figure 9 from the Natural Resources Report. Enhancement Area A is approximately 0.34 acres and is located north of Mt. Scott Creek. Enhancement Area B is approximately 0.12 acres and is located south of Mt. Scott Creek and Highway 224 in the eastern

corner of the site. Both of those areas will be enhanced through the removal of man-made debris, removal of invasive plant species and planting with native trees, shrubs and seed mix. Those plantings will improve the native plant community, vegetation structure and diversity – all of which will improve the overall quality of wildlife habitat on the site. The planting lists for the mitigation area and the two additional enhancement areas are shown on Figure 9A of the Natural Resources Report.

As a result of mitigation and enhancement activities on the site, the Natural Resource Report describes the overall impacts of the project as follows:

“The proposed project is not anticipated to have any adverse impacts to water quality. The use of erosion and sediment controls during construction will prevent sediment-related impacts to water quality. The proposed project is not anticipated to result in additional nutrient inputs to the stream, and the restoration of the floodplain on the south side of Mt. Scott Creek will increase shade on the stream as the riparian plantings mature, helping to reduce water temperatures in the stream.”

The report further states that (emphasis added),

“Implementation of the proposed mitigation will ensure the proposed project minimizes adverse effects to the ecological functions of the WQR and loss of habitat, as follows:

- *The minimization of areal impacts as well as the proposed plantings to restore native plant communities on the south side of Mt. Scott Creek, along the northeast and south sides of Wetland A, and within the floodplain storage area will ensure that the WQR continues to provide vegetated corridors that separate protected water features from development.*
- *As the proposed tree and shrub plantings south of Mt. Scott Creek, around Wetland A, and within the floodplain storage area mature, they will increasingly provide microclimate regulation and shade for the stream and wetland, and **provide better microclimate regulation and shade as compared to the existing plant communities.***
- *As the proposed tree and shrub plantings south of Mt. Scott Creek, around Wetland A, and the floodplain storage area mature, they **will provide more effective streamflow moderation during high flow events than the herbaceous plant community, predominantly composed of reed canarygrass, that is present under existing conditions.***
- *The diverse plant community within the WQR, HCA and floodplain storage area will continue to provide water filtration, infiltration, and natural purification functions. The proposed project will not adversely affect these functions.*
- *The proposed restoration plantings and the resulting diverse plant community within the WQR, HCA and floodplain storage area will continue to provide bank stabilization and sediment and pollution control functions. The proposed project will not adversely affect these functions.*
- *Trees will remain within the vegetated corridor following construction, and therefore, the WQR will continue to provide the potential for large wood recruitment and retention functions. No impacts are proposed for the creek, and therefore, there will be no adverse impact on channel dynamics.*
- *Because the WQR will continue to be vegetated with a diverse plant community, the proposed project will not adversely affect the resource’s ability to provide organic inputs to the stream and riparian area.”*