



June 15, 2017

Land Use File(s): S-2017-002; VR-2017-001; VR-2017-006

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on June 13, 2017.

Applicant(s): Sustainable Infill Development, LLC
Location(s): 4217-4219 SE Railroad Ave
Tax Lot(s): 12E31BC 08000, 08100, 08200, 08300
Application Type(s): Subdivision; Variance
Decision: Approved with Conditions
Review Criteria: Milwaukie Zoning Ordinance:

- 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 17.28 Design Standards
- MMC 17.32 Improvements
- MMC 19.301 Low Density Residential Zones
- MMC 19.500 Supplementary Development Regulations
- MMC 19.600 Off-street Parking
- MMC 19.700 Public Facility Improvements
- MMC 19.902 Amendments to Maps and Ordinances
- MMC 19.911 Variances
- MMC 19.1006 Type III Review
- MMC 19.1007 Type IV Review
- MMC 19.1200 Solar Access Protection

Neighborhood(s): Hector Campbell

Appeal period closes: 5:00 p.m., June 30, 2017

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 Kolas, Associate Planner, at 503-786-7653 or koliasv@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on June 30, 2017, 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.

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, Simon Lofts of Sustainable Infill Development LLC, has applied for approval to create a 19-lot subdivision at 4217-4219 SE Railroad Ave. The site is made up of 4 contiguous lots and is zoned Low Density Residential R-7. The land use application master file number is S-2017-002, with accompanying file numbers ZA-2017-002, CPA-2017-001, VR-2017-001, and VR-2017-006. An application to demolish the historic structure located at 4217 SE Railroad Ave was processed separately as Land Use File #HR-2017-001. The Planning Commission approved the demolition at a public hearing on May 9, 2017.
2. The subdivision application was submitted on March 24, 2017. It was initially deemed incomplete by City staff on April 11, 2017. The applicant revised and resubmitted the application on April 28, 2017 and requested that the City deem the application complete as of April 28, 2017.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - 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 17.28 Design Standards
 - MMC 17.32 Improvements
 - MMC 19.301 Low Density Residential Zones
 - MMC 19.500 Supplementary Development Regulations
 - MMC 19.600 Off-street Parking
 - MMC 19.700 Public Facility Improvements
 - MMC 19.902 Amendments to Maps and Ordinances
 - MMC 19.911 Variances
 - MMC 19.1006 Type III Review
 - MMC 19.1007 Type IV 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 and Section 19.1007 Type IV Review. A public hearing was held on June 13, 2017, as required by law.

4. MMC 12.02 Public Works Standards

MMC 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:

Collector - Minimum 300 feet

As proposed, the distance between SE 42nd Ave to the west of the site and the new SE 43rd Ave will be only 126 ft.

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 proposed, Lot 1 will have an accessway onto SE 42nd Ave, which is a collector street. The other frontage of Lot 1, SE Railroad Ave, is also a collector. It is the city's preference that access be taken from SE 42nd Ave, not SE Railroad Ave as there is no other practicable alternative to this driveway location. Shared accessways must be designed to contain all vehicle backing movements on site. The applicant has proposed that a shared driveway be provided across Lot 1 to serve Lot 2. To avoid conflicts and potential backing movements onto SE 42nd Ave, a condition has been included that requires a shared access for Lots 2 and 3 onto the proposed new street.

- MMC 12.16.040.C provides requirements for accessway locations.

Two double frontage lots are proposed (Lots 18 and 19). The proposed development, as conditioned, is consistent with MMC 12.16.040.C.1. A variance has been submitted to permit 2 double frontage lots. However, only 1 accessway per lot is proposed, with access taken from the proposed local street.

As proposed, Lot 1 will have an accessway onto SE 42nd Ave, which is a collector street. The other frontage of Lot 1, SE Railroad Ave, is also a collector. It is the city's

preference that access be taken from SE 42nd Ave, not SE Railroad Ave as there is no other practicable alternative to this driveway location. As noted above in the finding for MMC 12.16.040.D, a condition has been included that requires that Lot 2 receive access via a shared drive with Lot 3.

The proposed development, as conditioned, is consistent with MMC 12.16.040.C.2.

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 lot layout allows for the siting of houses that will facilitate the required 45 ft accessway spacing distance from intersections.

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 proposed development, as conditioned, is consistent with MMC 12.16.040.D.1 (please refer to the Finding above related to MMC 12.16.040.C) 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. As proposed, the subdivision would create 19 lots that range in size between 5,000 sq ft to 6,345 sq ft. The minimum lot size for a single-family detached home in the R-5 zone is 5,000 sq ft. 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 19 proposed lots total 79,501 sq ft 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 19 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 4 parcels into 19 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 January 26, 2017.
 - (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.

Nearly all of the trips for this proposed development affect SE Railroad Ave. An accessway for 2 lots is proposed from SE 42nd Ave. Each of these streets is classified as a collector street. The proposed development will not trigger a significant increase in trip generation and therefore the subdivision itself does not require a transportation impact study.

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 an acceptable level of service, the same as prior to the proposed development.

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.

19.708.1.A – Access Management

Access requirements shall comply with access management standards contained in Chapter 12.16.

19.708.1.B – Clear Vision

Clear vision requirements shall comply with clear vision requirements contained in Chapter 12.24.

19.708.1.D – Development in Non-Downtown Zones

The existing right-of-way width of SE Railroad Ave fronting the proposed development is 40 feet. The Milwaukie Transportation System Plan and Transportation Design Manual classify the fronting portions of SE Railroad Ave as a collector street. Per Table 19.708.2 Street Design Standards, the required right-of-way width for a collector street is between 40 feet and 74 feet depending on the required street improvements. The required right-of-way needed for the required street improvements is 60 feet. The applicant is responsible for 20 feet of right-of-way dedication along SE Railroad Avenue fronting the development property.

As conditioned, the proposed development is consistent with MMC 19.708.1.D.3.

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 and provide opportunity for land development. The City can maintain control over access to public streets by requiring a 1-ft wide reserve strip along the east edge of proposed SE 44th Ave along tax lot 8500.

A condition of approval is proposed to require this reserve strip.

The proposed development is consistent with the remainder of MMC 19.708.3.E.

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

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 300 ft to 126 ft.

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

The applicant shall construct frontage improvements on the north side of SE Railroad Ave along the site's frontage. The street improvement includes the construction of a 12-foot wide asphalt pedestrian path.

The required street construction for proposed SE 43rd Ave and SE 44th Ave are as follows: 5-ft setback sidewalk, 3-ft landscape strip, and curb & gutter on both sides, and 25-ft asphalt. The total right-of-way width is 46 feet. This will provide for two 8-ft travel lanes and two 6-ft parking lanes.

The applicant originally proposed cross sections for SE 43rd Ave and SE 44th Ave that do not include the required landscape strip on one side, and have insufficient width to

accommodate parking on both sides of the street. The applicant has not demonstrated the need to remove any of these components.

The proposed development, as conditioned, will include right-of-way improvements for internal streets that will conform to MMC 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 current proposal does not include a receiving ADA ramp on the west side of SE 42nd Ave.

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.

The portion of SE Railroad Ave fronting the proposed development is classified as a bike route in the Milwaukie Transportation System Plan. As a result, bicycle facility improvements on the Railroad Ave frontage are required for the proposed development.

The proposed development as proposed is consistent with MMC 19.708.4.

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

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

SE Railroad Ave is not classified as a transit route in the Milwaukie Transportation System Plan. Therefore, 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 Railroad Ave.

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

11. MMC 19.902 Amendments to Maps and Ordinances

- A. MMC 19.902.3.B establishes the approval criteria for Comprehensive Plan text amendments.

Changes to the Milwaukie Comprehensive Plan may be approved if the following criteria are met:

1. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, as proposed to be amended.

The proposed Comprehensive Plan text amendment would remove the property located at 4217 SE Railroad Ave from Appendix 1 – Historic Resources Property List. This amendment is necessary as the Planning Commission approved the demolition of this historic structure on May 9, 2017 (land use file #HR-2017-001). Demolition of the structure results in a property which would no longer meet the criteria for an historic resource.

2. The proposed amendment is in the public interest with regard to neighborhood or community conditions.

Removing the property from Appendix 1 maintains a full and accurate historic resources property list in the Comprehensive Plan, which is in the public interest. The Hector Campbell Neighborhood District Association (NDA) and the Milwaukie Historical Society support the demolition based on the poor condition of the structure.

3. The public need is best satisfied by this particular proposed amendment.

Removing the property from Appendix 1 maintains a full and accurate historic resources property list in the Comprehensive Plan, which is in the public interest.

4. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

This criterion is not applicable to the proposed amendment.

5. The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

Removing the property from Appendix 1 maintains a full and accurate historic resources property list in the Comprehensive Plan. The removal follows the process outlined in city code which has been acknowledged as being in conformance with Statewide Planning Goal 5. Goal 5 addresses open space, natural resources, and historic resources.

As conditioned, the Planning Commission finds that this criterion is met.

- B. MMC 19.902.4.B establishes the approval criteria for Comprehensive Plan Map Amendments

Changes to the maps of the Milwaukie Comprehensive Plan shall be evaluated against the approval criteria in Subsection 19.902.3.B. A quasi-judicial map amendment shall be approved if these criteria are met.

Changes to the Milwaukie Comprehensive Plan may be approved if the following criteria are met:

1. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, as proposed to be amended.

The proposed Comprehensive Plan map amendment would change the land use designation of the site from Low Density LD to Moderate Density MD. This application requests a zoning map amendment from Residential R-7 to Residential R-5; the new land use designation corresponds to that of the Residential R-5 Zone. This amendment is necessary to maintain consistency between the Comprehensive Plan and Zoning Map. Per Land Use Objective #2, Policy #3, areas may be designated Moderate Density if the predominant housing type will be single family detached on moderate to small lots. The proposed subdivision will be single family homes on lots ranging from 5,000 sq ft to 6,345 sq ft.

2. The proposed amendment is in the public interest with regard to neighborhood or community conditions.

The site is surrounded by residential development on 3 sides, with LD to the north and east and MD to the west across SE 42nd Ave. Lot sizes in the neighborhood to the north and east of the site are approximately 6,000 sq ft in size, less than the minimum 7,000 sq ft required in the R-7 Zone. Industrial land use is to the south across SE Railroad Ave as well as an active rail line. The MD land use designation reflects a slightly higher density single-family residential use that is still designated a low density residential zone in the zoning code. This change is consistent with the surrounding neighborhood as it contains predominantly single-family detached dwellings. The Hector Campbell NDA does not oppose the re-zoning of the site.

3. The public need is best satisfied by this particular proposed amendment.

The MD land use designation reflects a higher density single-family residential use that is consistent with the surrounding neighborhood. However, smaller minimum lot sizes will provide more opportunity for the development of additional housing. The loss of this Low Density area does not create compatibility conflicts given the surroundings land use pattern and density. Areas with a Low Density designation make up over 52% of the City (including right-of-way), the largest residential land use designation in the City. By comparison, Moderate Density comprises just over 10% of the land area.

Further, the 2016 Housing Needs Assessment (HNA), which assesses the city's 20-year housing and residential land needs projects the need for 1,150 new housing units by 2036. Designating the site with a higher density land use and the accompanying zoning amendment, will provide the opportunity for more housing units than allowed under the current designation. Although the HNA acknowledges no new need for housing in the middle of the pricing spectrum (\$240,000 - \$490,000), we can assume that homes built on R-5 lots will be less expensive than those built on R-7 lots. The proposal responds to an identified need for additional housing supply.

4. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The MD land use designation reflects a slightly higher density single-family residential use as compared to the LD land use designation, which is consistent with Metro Urban Growth Management Functional Plan (UGMFP) and relevant regional policies. Title 1 of the UGMFP states that plan amendments and zone changes cannot have the effect of lowering density. This proposal increases density on the property, which is not in conflict with Title 1.

5. The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed land use map amendment from LD to MD still identifies single-family home development as the predominant land use type and is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule. The proposal addresses Goal 10 – Housing, by proposing residential development at a higher density. The 2016 Housing Needs Assessment (HNA), which assesses the city’s 20-year housing and residential land needs projects the need for 1,150 new housing units by 2036. Designating the site with a higher density land use and the accompanying zoning amendment, will provide the opportunity for more housing units than allowed under the current designation.

Goal 12 – Transportation is addressed as the number of new dwelling units and the associated trips will not impact the functional classification of SE Railroad Ave or SE 42nd Ave, both of which are collector streets.

As conditioned, the Planning Commission finds that this criterion is met.

C. MMC 19.902.6.B establishes the approval criteria for Zoning Map amendments.

The proposal requests 2 zoning map amendments: rezone the site from Residential R-7 to Residential R-5; and remove the Historic Resources Overlay from the property located at 4217 SE Railroad Ave.

Changes to the Zoning Map shall be evaluated against the following approval criteria. A quasi-judicial map amendment shall be approved if the following criteria are met:

1. The proposed amendment is compatible with the surrounding area based on the following factors:
 - a. Site location and character of the area.
 - b. Predominant land use pattern and density of the area.
 - c. Expected changes in the development pattern for the area.

The zone change proposal is appropriate given the characteristics of the surrounding area. To the west across SE 42nd Avenue is an area zoned R-5 with a Moderate Density designation in the Comprehensive Plan. To the south across SE Railroad Avenue is an area zoned Business Industrial (BI) with an Industrial designation in the Comprehensive Plan. In the directly adjacent R-7 zoned areas, many of the lots are sub-standard for the R-7 zone. Seventeen of the nineteen lots zoned R-7 that are

adjacent to the site are 6,500 square feet or less. Although the R-5 zone and the Moderate Density land use designation reflect a higher density single-family residential use, they are similar in density with the surrounding neighborhood. Further, smaller minimum lot sizes will provide more opportunity for the development of 6 units of additional housing over the R-7 zone. The R-7 zone is also the largest zone in the city, comprising over 40% of the land area (including right of way). By comparison, R-5 comprises just over 10% of the land area.

Removing the Historic Resources Overlay from the property located at 4217 SE Railroad Ave is appropriate given the approval of the demolition permit for the historic structure (HR-2017-001).

The Hector Campbell Neighborhood District Association had no objections to the proposal.

2. The need is demonstrated for uses allowed by the proposed amendment.

The R-5 zone will provide the opportunity to build additional single-family homes on the site. The R-5 zone is considered a Low Density Residential Zone in the zoning code, with the same permitted uses. There is demonstrated need for additional housing in the city and in the greater region, illustrated by the Council's recent declaration of a housing emergency. Further, the 2016 Housing Needs Assessment (HNA), which assesses the city's 20-year housing and residential land needs projects the need for 1,150 new housing units by 2036. Designating the site with a higher density land use and the accompanying zoning amendment, will provide the opportunity for more housing units than allowed under the current designation.

3. The availability is shown of suitable alternative areas with the same or similar zoning designation.

This criterion is intended to ensure that a suitable number of other properties with the same base zone designation will remain available for development. The R-7 zone is the largest zone in the city, comprising over 40% of the land area (including right of way). By comparison, R-5 comprises just over 10% of the land area. There is ample area in the city available for larger-lot single family residential development.

4. The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment.

This area is adequately served by public utilities and transportation infrastructure. There is a 10-inch sewer main and a 14-inch water line in SE Railroad Ave which are adequate to serve 19 new homes. Within the public rights-of-way that will serve the proposed development, new water and sanitary sewer mains will be constructed as per City standards and will be maintained by the City. The proposed development is estimated to have an average daily vehicle trip count of 190, which is not a significant increase to a collector street. As conditioned with additional improvements, the development will have adequate services.

5. The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700.

As conditioned with additional improvements, the proposed development will not have a negative impact on the existing transportation network. The proposed development is estimated to have an average daily vehicle trip count of 190, which is not a significant increase to a collector street. A transportation impact study was not required for the proposed development.

6. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, including the Land Use Map.

The proposed Comprehensive Plan map amendment would change the land use designation of the site from Low Density LD to Moderate Density MD. This subdivision application requests a zoning map amendment from Residential R-7 to Residential R-5; the new land use designation corresponds to that of the Residential R-5 Zone. This amendment is necessary to maintain consistency between the Comprehensive Plan and Zoning Map. Per Land Use Objective #2, Policy #3, areas may be designated Moderate Density if the predominant housing type will be single family detached on moderate to small lots. The proposed subdivision will be single family homes on lots measuring approximately 5,000 sq ft.

7. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The proposed zoning map amendment from R-7 to R-5 is still within the City's low density residential zones and is consistent with the Metro Urban Growth Management Functional Plan. The MD land use designation reflects a slightly higher density single-family residential use as compared to the LD land use designation, which is consistent with Metro Urban Growth Management Functional Plan (UGMFP) and relevant regional policies. Title 1 of the UGMFP states that plan amendments and zone changes cannot have the effect of lowering density. This proposal increases density on the property, which is not in conflict with Title 1.

8. The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed zoning map amendment from R-7 to R-5 is still within the City's low density residential zones and is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed land use map amendment from LD to MD still identifies single-family home development as the predominant land use type and is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and

Transportation Planning Rule. The proposal addresses Goal 10 – Housing, by proposing residential development at a higher density. The 2016 Housing Needs Assessment (HNA), which assesses the city’s 20-year housing and residential land needs projects the need for 1,150 new housing units by 2036. Designating the site with a higher density land use and the accompanying zoning amendment, will provide the opportunity for 6 more housing units than allowed under the current designation.

Goal 12 – Transportation is addressed as the number of new dwelling units and the associated trips will not impact the functional classification of SE Railroad Ave or SE 42nd Ave, both of which are collector streets.

As conditioned, the Planning Commission finds that this criterion is met.

12. MMC 19.911 Variances

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

The applicant has requested the following variances:

- A variance to the required intersection spacing standards established in MMC 19.708.1.F. The variance would reduce the minimum spacing standard of 300 ft to 126 ft. This type of variance is not specified in the list of Type II variances.
- A variance to allow double frontage lots, which is not specified in the list of Type II variances
- Variances to the minimum rear yard setback on Lots 13 and 19 to allow 10 ft rather than the minimum of 20 ft, which exceeds 25% for a Type II variance.
- A variance to allow alternative access to Lots 1, 2, 13, and 14, which is not specified in the list of Type II variances

The Planning Commission finds that the Variance applications for the 5 variances are subject to Type III Variance review.

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.

The applicant’s alternatives analysis states that the variance to the street spacing requirement is to provide a loop road, as required by the City. Because the site is nearly triangular, the variance to allow double frontage lots allows the development of

the site without a separate tract, which would not be part of a buildable lot and would be a maintenance issue. Although not explicitly stated, the alternative to the requested variances would likely be fewer buildable lots.

The applicant has submitted 2 Variance applications for a total of 5 variances:

- *Variance to MMC 17.28.040.F to allow alternative access to Lots 1, 2, 13, and 14 rather than over the required frontage;*
- *2 Variances to MMC 19.301.4 to allow a rear yard setback of 10 ft rather than the minimum 20 ft required on Lots 13 and 19;*
- *Variance to MMC 19.708.1 to allow the access spacing between SE 42nd Ave and SE 43rd Ave to be approximately 126 ft rather than the minimum 300 ft required;*
- *Variance to MMC 17.28.040.E to allow Lots 18 and 19 to be double frontage lots.*

The applicant has requested variances due to the City's restriction of access to Railroad Ave and the Engineering Department's request that Lot 1 should be accessed from SE 42nd Ave. The applicant has proposed that a shared driveway be provided across Lot 1 to serve Lot 2, which requires a variance. To avoid conflicts and potential backing movements onto SE 42nd Ave, a condition has been included that would require a shared access for Lots 2 and 3 onto the proposed new street.

Similarly, the applicant is requesting a variance to the minimum rear yard setback for Lot 13 and to allow alternative access to it via an easement over Lot 14. Due to the triangular shape of the parent lot, the variance to the rear yard setback for Lots 13 and 19, a corner lot, and the variance to the standard discouraging double frontage lots (Lots 18-19) are reasonable. Given the odd shape of the parent lot, design options for the street network and lot layout are limited.

The requested variances are to allow the project to maximize the number of lots that can be built in a manner that meets as many of the zoning criteria as applicable. The double frontage variance is a consequence of the shape of the underlying parcel, combined with the required internal loop street. For the loop street to provide access to all lots requires that it be pushed as far east and west as possible, which consequently requires a variance to the minimum access spacing standards.

The variance to the rear yard setbacks for lots 13 and 19 is to allow a buildable envelope that is similar in nature to those adjacent lots.

As conditioned, the Planning Commission finds that this criterion is met for the variances as noted above.

- 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.

No impacts to surrounding properties have been identified. The proposed variances to minimum street spacing, rear yard setback for Lots 13 and 19, and

double frontage lots respond to the existing lot shape, roadway design standards, and applicable code requirements. The Planning Commission approves the variances to alternative access for Lots 1, 2, 13, and 14 and the variance to the minimum required rear yard setback for Lots 13 and 19.

As conditioned, the Planning Commission finds that this criterion is met for the variances as noted above.

(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 no negative impacts. As conditioned, the proposed variances to minimum street spacing, rear yard setback for Lots 13 and 19, and double frontage lots respond to the existing lot shape, roadway design standards, and applicable code requirements. Similarly, the Planning Commission approves the variances to alternative access for Lots 1, 2, 13, and 14.

As conditioned, the Planning Commission finds that this criterion is met for the variances noted above.

As conditioned, the Planning Commission finds that this criterion is met.

13. 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 19.1203.3 establishes the design standard for compliance with the solar access requirement: at least 80% of the lots in a development shall comply with one or more of the options in this subsection, including the following basic requirement:
 - Has a north-south dimension of 90 ft or more; and

- Has a front lot line that is oriented within 30 degrees of a true east-west axis (see Figure 19.1203.3).

As proposed, Lots 1-10 and 15-18 meet this basic requirement, totaling 84% of the lots.

The Planning Commission finds that this criterion is met.

14. 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 local street intersections on collector streets (SE Railroad Ave) is 300 ft. The proposed development includes a new local street intersection between SE 42nd Ave and the proposed SE 43rd Ave which is less than the required 300 ft. The required minimum intersection spacing of 300 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.

- B. MMC 17.12.030.A.2 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 land division will allow reasonable development and will not create the need for a variance of any land division or zoning standard. However, as proposed, the buildable areas for the primary structures on the parcels are not all adequate to accommodate the uses allowed in the R-5 zone. Variances have been requested to allow a reduction in the minimum rear yard setback on Lots 13 and 19 to provide a reasonable building envelope. A variance has also been requested to allow alternate access to Lot 13 via an easement across Lot 14. A few lots will have a decreased building envelope due to the required minimum lot width, which is measured at the building line. Further, as proposed, Lots

16 and 17 do not meet the standard of MMC 17.28.040.B as the rear lot lines are not parallel to the street.

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 noted above, variances have been requested to increase the buildable area on Lots 13 and 19 due to lot shape as well as variances to allow alternate access. The proposal responds to the triangular-shaped parcel and maximizes the development potential of the site, resulting in multiple variances. A consequence of the proposed design, with requested variances, is the creation of irregularly shaped lots including rear lot lines on Lots 16 and 17 that do not meet MMC 17.28.040.B, and the need for shared access. However, to efficiently develop the property, the Planning Commission approves the variances to alternative access for Lots 1, 2, 13, and 14 and the variance to the rear yard setback for Lots 13 and 19.

As conditioned, the Planning Commission finds that this criterion is met for the variances noted above.

- 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 applicant has stated that the proposed subdivision plat name of "Keil Gardens" is not duplicative in this jurisdiction and will satisfy the provisions of ORS 92.090(1). However, documentation showing the approval of the subdivision plat name by the Clackamas County Surveyor was not provided as required.

As conditioned to require proof of approval by the Clackamas County Surveyor, this criterion is met.

- E. MMC 17.12.040.A.4 requires that the streets and roads are laid out to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern. This criterion is satisfied within the confines of what the City can obtain for street right-of-way per MMC Chapter 19.700.

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

As provided in MMC 19.703.5.A, the proposed development requires a variance to the standards in MMC 19.708.1. A variance application has been submitted to respond to this requirement. As conditioned, subject to the 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.

15. 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.
16. 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 and provide opportunity for land development in this location and to access these new streets. As demonstrated by these findings, and as conditioned to accommodate the future development of adjoining property, the subdivision conforms with applicable city criteria and standards.
 - B. MMC 17.28.020 requires that all land divisions and boundary changes that increase the number of lots shall be subject to the requirements and standards contained in Chapter 19.700 Public Facility Improvements and the Public Works Standards for improvements to streets, sidewalks, bicycle facilities, transit facilities, and public utilities. As described elsewhere in these findings, the proposed subdivision complies with Chapter 19.700. Utilities and work within the right-of-way will be reviewed by the Milwaukie Engineering Department for conformance with Public Works Standards.
 - C. MMC 17.28.040 contains standards for lot design.
 - (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 design includes parcels that do not have adequate dimensions for development and uses allowed in the R-5 zone (Lots 13, 16, 17, and 19), as described in these findings. Variances have been requested to allow less than the minimum rear yard setback on Lots 13 and 19; Lots 16 and 17 have rear lot lines that are not parallel to the front lot line as required.
 - (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. As proposed, Lots 16 and 17 do not meet this standard as their rear lot lines are not parallel to the front lot line. As demonstrated by these Findings, and as conditioned, this issue has been addressed.
 - (3) MMC 17.28.040.C limits compound lot lines for side or rear lot lines. As proposed, Lot 11 has a compound lot line, but the cumulative lateral changes in direction in the rear lot line is less than 10% as allowed.
 - (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. Two of the parcels in the proposed subdivision have frontage on more than 1 public right-of-way. A variance application has been submitted to respond to this requirement. As conditioned, subject to the approval of said variance, this criterion is met.
 - (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. As proposed, 4 parcels in the proposed subdivision will take access from other than the required frontage. A variance application has been submitted to respond to this requirement. The Planning Commission approves these variances, as noted above. As conditioned, to provide shared access for Lots 2 and 3 onto the proposed new street, this criterion is met.
- 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.
17. 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.
 18. 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 Building Division; Milwaukie Engineering Department; Clackamas Fire District #1; Clackamas County; Metro; ODOT; and the Hector Campbell Neighborhood District Association Chairperson and Land Use Committee. 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.
 - ODOT** – The applicant is advised that a residential development on the proposed site may be exposed to noise from heavy rail freight trains, passenger trains or transit vehicles. It is generally not the State’s responsibility to provide mitigation for receptors that are built after the noise source is in place. Builders should take appropriate measures to mitigate the noise impacts.

Hector Campbell NDA – The NDA generally supports the project, but has the following comments/concerns:

- They prefer a diversity of street trees.
- They would like to see plans that include trees on each lot.
- They have concerns about the roadway access for Lots 1 and 2 onto SE 42nd Ave and would prefer the Commission consider a variance for access to the new SE 43rd Ave.
- They have no concerns about double frontage lots and alternate access.
- They would like to see some of the wood from the historic house used in the new home construction if possible to honor the history of the area.

Conditions of Approval

1. The Planning Commission approves the following requested variances:
 - a. Variance to the minimum street spacing requirement;
 - b. Variance to the minimum rear yard setback for Lots 13 and 19;
 - c. Variance to allow double frontage lots for Lots 18 and 19
 - d. Variance to allow alternate access for Lots 1, 2, 13, and 14
2. Approval of the Preliminary Plat and Variances shall be subject to:
 - a. Approval by the City Council of a Zoning Map Amendment rezoning the subject property from Residential R-7 to Residential R-5 and removing the property located at 4217 SE Railroad Ave from the Historic Preservation Overlay Zone.
 - b. Approval by the City Council of a Comprehensive Plan Map Amendment rezoning the subject property from Low Density Residential to Medium Density Residential.
 - c. Approval by the City Council of a Comprehensive Plan Text Amendment removing the property located at 4217 SE Railroad Ave from Appendix 1 – Historic Resources Property List.
 - d. A revised design that reflects the approved variances noted above and provides shared access for Lots 2 and 3 onto the proposed new street.
3. 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.
4. The applicant's final plat application shall include the items listed on the City of Milwaukie Final Plat Checklist. The following specific items and changes are required as part of the application:
 - a. A written narrative describing all changes made to the final plat that are not related to these conditions of approval.
 - b. A final plat that substantially conforms to the plans received by the Planning Department on April 28, 2017, as revised and received on May 23, 2017 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-2017-002; -ZA-2017-002, CPA-2017-001; VR-2017-001; VR-2017-006.
5. Prior to approval of the final plat, the following issues shall be resolved.
- a. Provide confirmation that the proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1). Approval by the County Survey is required.
 - b. Obtain a variance, as submitted in an application, to the standards of MMC 19.708.1.F for minimum intersection spacing.
 - c. Dedicate 20 feet of right-of-way on SE Railroad Ave fronting the proposed development property.
 - d. Construct a 12-ft wide asphalt bike bath on the SE Railroad Ave frontage.
 - e. Construct 5-ft setback sidewalks, 3-ft landscape strips, curb and gutter, 25-ft asphalt surface and driveways (28-ft travel way) on SE 43rd Ave and SE 44th Ave on both sides of the street. Only half street improvements and 20-ft asphalt surface required on the portion of SE 44th Ave fronting Taxlot 8500 to the east.
 - f. Construct a driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA) to each new lot. The driveway approach aprons shall be between 9 ft and 20 ft in width and least 7.5 ft from the side property line.
 - g. The on-site shared driveway for Lot 1 must accommodate all vehicle backing movements on site.
 - h. Construct a receiving ADA ramp on west side of SE 42nd Ave.
 - i. Dedicate a 1-ft reserve strip to the City of Milwaukie along the west side of Taxlot 8500.
 - j. Provide a final Access and Water Supply plan to be reviewed and approved by Clackamas Fire District #1.

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. Prior to approval of the final plat, the following are required:
 - 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. Private properties may only connect to public storm system if percolation

tests show that infiltration cannot be obtained on site. 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 streets with SE Railroad Ave, 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. Install all underground utilities, including stubs for utility service prior to surfacing any streets.
 - h. Clear vision areas shall be maintained at all driveways and accessways and on the corners of all property adjacent to an intersection.
 - i. Provide a final approved set of Mylar and electronic PDF “As Constructed” drawings to the City of Milwaukie prior to final inspection.
 - j. 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.
2. 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.
 3. 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.
 4. 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.
5. Submit and pass a hydrant flow test per the requirements of Clackamas Fire District #1.



Dennis Egner, FAICP
Planning Director

cc: Simon Lofts, Sustainable Infill Development, LLC (795 NW Torrey View Ln., Portland, OR 97229)

Mark Dane, Mark Dane Planning (14631 SW Millikan Way, #6, Beaverton, OR 97003)
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 (*via e-mail*)

Interested Persons

Land Use File(s): S-2017-002; VR-2017-001; VR-2017-006