



August 25, 2017

Land Use File(s): S-2016-002, VR-2016-010, PLA-2016-002

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on August 22, 2017.

Applicant(s): Julian Illingworth
Location(s): 4543 SE Logus Rd.
Tax Lot(s): 12E30CB12000
Application Type(s): Subdivision, Variance, and Property Line Adjustment
Decision: Approved with Conditions
Review Criteria: Milwaukie Zoning Ordinance:

- Milwaukie Municipal Code (MMC) Title 17 Land Division
- MMC Title 12 Streets, Sidewalks, and Public Places
- MMC Section 19.301 Low Density Residential Zones (incl. R-7)
- MMC Chapter 19.500 Supplementary Development Regulations
- MMC Chapter 19.600 Off-Street Parking and Loading
- MMC Chapter 19.700 Public Facility Improvements
- MMC Section 19.911 Variances
- MMC Section 19.1006 Type III Review
- MMC Chapter 19.1200 Solar Access Protection

Neighborhood(s): Lewelling

Appeal period closes: 5:00 p.m., September 6, 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 Mary Heberling, Assistant Planner, at 503-786-7658 or heberling@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on September 6, 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.

Attachments

1. Findings in Support of Approval
2. Conditions of Approval



Dennis Egner, FAICP
Planning Director

cc: Julian Illingworth, 4543 SE Logus Rd.
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): S-2016-002, VR-2016-010, PLA-2016-002

ATTACHMENT 1
Recommended Findings in Support of Approval
File #S-2016-002, VR-2016-010, PLA-2016-002, Julian Illingworth Subdivision

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

1. The applicant, Julian Illingworth, has applied for approval to subdivide the site into 4 parcels at 4543 SE Logus Rd. This site is in the R-7 Zone. The land use application file numbers are S-2016-002, VR-2016-010, and PLA-2016-002.
2. The proposal is to subdivide the subject project to establish 4 lots including a property line adjustment (PLA) to the boundary between Lot 2 and 4521 SE Logus Rd. The proposal includes variance requests for lot depth (Lot 4) and setbacks for existing accessory structures on Lots 1 and 2.

The applicant extend Melody Ln across the northernmost portion of the site. Lots 2, 3, and 4 will take access from the extension of Melody Ln and Lot 1 will continue to take access from Logus Rd.

The current site is a single lot fronting on Logus Rd, with an existing single-family home and two accessory structures. The owner of this lot is the applicant for the subdivision, variance, and property line adjustment applications. The owner intends to retain the single-family home and one of the accessory structures on Lot 1. Lot 2 contains a metal clad utility building which will either be dismantled upon sale of the lot or retained and sold along with vacant Lot 3, which borders it to the east. There are no existing structures on proposed Lots 3 and 4.

3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - Milwaukie Municipal Code (MMC) Title 17 Land Division
 - MMC Title 12 Streets, Sidewalks, and Public Places
 - MMC Section 19.301 Low Density Residential Zones (incl. R-7)
 - MMC Chapter 19.500 Supplementary Development Regulations
 - MMC Chapter 19.600 Off-St Parking and Loading
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.911 Variances
 - MMC Section 19.1006 Type III Review
 - MMC Chapter 19.1200 Solar Access Protection
4. The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held on July 25, 2017, as required by law.
5. MMC 17.12030 Application Procedure and Approval Criteria for Property Line Adjustments
MMC 17.12.030 contains approval criteria for a property line adjustment (PLA). The criteria are addressed below.
 - A. MMC 17.12.030.A.1 requires the PLA be in compliance with this title and Title 19.

Part of the proposed application is a PLA between Taxlot 12000 (site) and Taxlot 11800 (4521 SE Logus Rd). The PLA will affect the shared lot line on the north of Taxlot 11800 by shifting the line 12.6 ft to the north. This would grant the owners of Taxlot 11800 an additional 529 sq ft. Both lots will meet all standards for lot size and setbacks in the R-7 zone after the PLA. (See Table 2 below)

Table 2

PLA Compliance with Residential Zone R-7 Development Standards			
Standard	Required	Proposed	Staff Comment
1. <i>Minimum Lot Size</i>	7,000 sq ft	7,809 sq ft	<i>Complies with standard.</i>
2. <i>Minimum Lot Width</i>	60 ft	<i>Front: 50 ft Rear: 42 ft.</i>	<i>Existing legal non-conforming lot width that is not affected by the PLA. Complies with standard.</i>
3. <i>Minimum Lot Depth</i>	80 ft	164 ft	<i>Complies with standard.</i>
4. <i>St Frontage</i>	35 ft	50 ft	<i>Complies with standard.</i>
5. <i>Density</i>	5.0-6.2 units/net acre	<i>No new dwelling units proposed</i>	<i>Not Applicable.</i>

- 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 PLA does not affect setbacks and other development requirements for the existing single-family residence on Taxlot 11800 or single-family residence and detached accessory structures on Taxlot 12000.

- C. MMC 17.12.030.A.3 requires that the boundary change shall not reduce residential density below minimum density requirements of the zoning district. See Table 3 below.

Table 3

PLA Compliance with Residential Zone R-7 Development Standards			
Standard	Minimum Density Requirement	Density Available after PLA	Staff Comment
<i>Density</i>	<i>Taxlot 11800: 1 unit Taxlot 12000: 4 units (5 units per acre)</i>	<i>Taxlot 11800: 1 unit Taxlot 12000: 4 units</i>	<i>The boundary change will not reduce residential density below the minimum requirements.</i>

Planning Commission finds that the approval criteria is met for the PLA.

6. MMC 17.12.040 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.

The findings presented below in sections 7 through 13 demonstrate that the proposed subdivision and preliminary plat comply with the applicable ordinances, regulations, and design standards in the Milwaukie Municipal Code.

- B. 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.

The buildable areas for the primary structures on the parcels are all adequate to accommodate the uses allowed in the R-7 zone. Per MMC 19.301.4, minimum lot depth for the R-7 zone is 80 ft. Lot 4 requires a variance for lot depth. The lot depth of Lot 4 is proposed to be 62.38 ft which will be deep enough to allow construction of a house without additional variances to lot setbacks. The variance is needed due to the location of the SE Melody Ln extension Minimum density requirements for the site require 4 dwelling units. Without Lot 4, the applicant would not be able to meet the density requirements. The other parcels meet all of the standards and criteria.

The findings for the approval of the variance can be found in Finding 13. As proposed with the approval for the variance, the standards are met for MMC 17.12.040.A.2.

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

The proposed subdivision plat name of "Rosebank Estates" is not duplicative in this jurisdiction and will satisfy the provisions of ORS 92.090(1).

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

The extension of Melody Ln would allow for future access and development of neighboring properties to the east. This would be a continuation of current direction of Melody Ln to the east. This criterion is satisfied.

- E. 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 for the land use application.

Planning Commission finds that the approval criteria is met for the Subdivision Preliminary Plat.

7. MMC 17.20 contains the information required for a preliminary plat application.

The materials submitted by the applicant satisfy the requirements of this chapter.

8. 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.

As demonstrated by these findings, the subdivision conforms with all applicable city criteria and standards.

- B. MMC 17.28.020 requires that all land divisions and boundary changes that increase the number of lots shall be subject to the requirements and standards contained in Chapter 19.700 Public Facility Improvements and the Public Works Standards for improvements to streets, sidewalks, bicycle facilities, transit facilities, and public utilities.

As described elsewhere in these findings, the proposed subdivision complies with Chapter 19.700. Utilities and work within the right-of-way will be reviewed by the Milwaukie Engineering Department for conformance with Public Works Standards.

- C. MMC 17.28.040 contains standards for lot design.

- (1) MMC 17.28.040.A requires that the lot size, width, shape, and orientation shall be appropriate for the location and the type of use contemplated. Minimum lot standards shall conform to Title 19.

The proposed parcels have adequate size and dimensions for development and uses allowed in the R7 zone. All lots conform to the standards of Title 19, except for Lot 4 which requires approval of a lot depth variance (see section 14 below).

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

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

- (3) MMC 17.28.040.C limits compound lot lines for side or rear lot lines.

Compound lot lines have been avoided as much as possible, the few that could not be avoided have been arranged to fall under the allowed 10% lateral shift requirement.

- (4) MMC 17.28.040.D allows lot shape standards to be varied pursuant to MMC 19.911.

No variance is requested in this application for lot shape standards.

- (5) MMC 17.28.040.E states that double frontage and reversed frontage lots should be avoided except in certain situations.

None of the parcels in the proposed partition have frontage on more than 1 public right-of-way.

- (6) MMC 17.28.040.F requires that pursuant to the definition and development standards contained in Title 19 for frontage, required frontage shall be measured along the street upon which the lot takes access.

This standard applies when a lot has frontage on more than 1 street. All parcels in the proposed partition have only 1 street frontage. As established in Finding 8, these frontages meet the minimum required street frontage in the R7 zone.

- D. MMC 17.28.080 contains criteria for public open spaces.

The Milwaukie Comprehensive Plan does not identify any planned park or open space for the site. As such, no dedication for public open space is required.

9. MMC 19.301 Low Density Residential Zones

A. MMC 19.301.4 establishes the development standards that are applicable to this site.

The proposed subdivision would create 4 lots that range in size between 7,070 sq ft to 12,414 sq ft. The minimum lot size for a single-family detached home in the R-7 zone is 7,000 sq ft. (Table 1 demonstrates how the proposed lots comply with the R-7 development standards)

Table 1

Compliance with Residential Zone R-7 Development Standards					
	Minimum Lot Size (sq ft)	Minimum Lot Depth (ft)	Minimum Lot Width (ft)	Minimum St Frontage (ft)	Staff Comment
<i>R-7 Requirements</i>	7,000 sq ft	80 ft	60 ft	35 ft	
<i>Lot 1</i>	12,414 sq ft	167.55 ft	72.61 ft	72.61 ft	<i>Complies with standards.</i>
<i>Lot 2</i>	7,348 sq ft	122.25 ft	60.04 ft	60.04 ft	<i>Complies with standards.</i>
<i>Lot 3</i>	7,070 sq ft	111.4 ft	62.65 ft	62.65 ft	<i>Complies with standards.</i>
<i>Lot 4</i>	8,592 sq ft	62.35 ft ¹	137.7 ft	137.7 ft	<i>Variance requested for lot depth.</i>

¹*The applicant is requesting a variance for lot depth on Lot 4 due to the location of the extension of SE Melody Ln.*

The minimum density requirement for the R-7 zone is 5 dwellings per acre and the maximum density requirement for the R-7 zone is 6.2 dwellings per acre. The parent parcel totals 35,424 sq ft, which results in required minimum of 4 dwellings. The maximum is 5 dwelling units. The proposal meets the minimum density requirement.

The Planning Commission finds that the proposal complies with the applicable standards of the R-7 zone, per the approval of the variance request for lot depth of Lot 4.

B. MMC 19.301.2 establishes the allowed residential uses that are applicable to this site.

The site has an existing accessory structure with kitchen facilities. It is used as a recreational room, a studio room with a bathroom, and a 2 car garage. Currently kitchen facilities exist in the studio room. An accessory use with kitchen facilities is considered an accessory dwelling unit (ADU) versus an accessory use. Both are permitted uses in the R-7 zone, but an ADU would require further review and possible variances due to the size of the accessory structure.

The applicant has proposed to remove the existing electric stovetop from the studio and treat the space as an accessory use to the primary structure.

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

10. MMC Chapter 19.500 Supplementary Development Regulations

MMC 19.500 establishes various supplementary regulations for development.

A. MMC Section 19.502 Accessory Structures

MMC 19.502 establishes standards for accessory structures. In particular, MMC Subsection 19.502.2.A establishes specific provisions for residential accessory structures, including development standards, design standards, and requirements related to roof pitch.

(1) MMC Subsection 19.502.2.A.1 Development Standards

MMC 19.502.2.A.1 establishes height, footprint, and setback standards for residential accessory structures.

The subject property includes two existing detached accessory structures, both of which are proposed to remain in place. A recreational room and garage will remain on Lot 1 and a utility building will remain on Lot 2. Table 2 presents the relevant data for each structure with respect to the applicable standards of MMC 19.502.2.A.1.

Table 2 – Residential Accessory Structures Height and Footprint Standards			
Standard	Requirement (for Type C Structures)	Structure on Lot 1	Structure on Lot 2
Maximum Building Height	Lesser of 25 ft OR not taller than highest point of primary structure (allowed at least 15 ft regardless)	20 ft	15 ft
Maximum Building Footprint	Lesser of 75% of primary structure OR 1,500 sq ft (allowed at least 850 sq ft if lot area > 10,000 sq ft)	1,720 sq ft *	1,500 sq ft *
Required Rear Yard	Base zone requirement = 20 ft for R-7	9.51 ft **	50 ft
Required Side Yard	Base zone requirement = 5 ft or 10 ft for R-7	1.33 ft ***	3 ft ****
Required Front Yard	Not allowed in front yard unless structure is at least 40 ft from front lot line	83 ft	45 ft
Building Separation	Minimum of 5 ft between exterior wall of accessory structure and any other structure on site	5 ft	NA

* Both structures were constructed prior to the 2002 adoption of size restrictions for accessory structures.

** The applicant is proposing a variance for the rear yard setback on Lot 1.

*** The side yard setback would be met, but the City Engineering Department has required 15 ft ROW dedication, which causes the side yard setback requirement to not be met. Since the City is requiring the ROW dedication, the side yard requirement does not need a variance.

**** The applicant is proposing a variance for the side yard setback on Lot 2.

The size and height allowances for the accessory structure on Lot 1 are dependent on the existing primary structure, which is a two-story house with a footprint of approximately 1,810 sq ft and a building height of approximately 20 ft. The accessory structure on Lot 1 meets the height standard, but is

nonconforming with respect to the standards for the maximum allowed footprint and side yard setback. For those aspects, Lot 1 is subject to the applicable provisions of MMC Chapter 19.800 Nonconforming Uses and Development.

The accessory structure on Lot 2 is located within the front yard and is at least 40 ft from the front lot line; the height and footprint standards are impossible to evaluate without a primary structure on the lot. According to the definition established in MMC Section 19.201, an accessory structure is one that is “incidental and subordinate to the main use of property and located on the same lot as the main use.” The existence of an accessory structure on Lot 2 without a primary structure creates a nonconforming situation that will require an approved variance request to remain in conjunction with development of a primary structure. A condition has been established to require that the existing accessory structure on Lot 2 be removed unless it becomes accessory to a primary structure.

The existing nonconforming aspects of the accessory structures on both lots are subject to the provisions of MMC 19.800. As conditioned, the applicable standards of MMC 19.502.2.A.1 are met for Lot 2.

(2) MMC Subsection 19.502.2.A.2 Design Standards

MMC 19.502.2.A.2 establishes design standards for accessory structures. Metal siding is prohibited on structures more than 10 ft high or with a footprint greater than 200 sq ft, unless the siding replicates the siding on the primary dwelling or has the appearance of siding commonly used for residential structures. In addition, structures located in a front, side, or street-side yard that are visible from the right-of-way at a pedestrian level shall use exterior siding and roofing materials that are commonly used on residential structures.

Both existing accessory structures were constructed prior to the 2002 adoption of design standards for accessory structures. Both accessory structures are nonconforming with respect to the prohibition on metal siding and are subject to the applicable provisions of MMC 19.800.

The Planning Commission finds that the existing nonconforming aspects on both parcels are subject to the provisions of MMC 19.800. As conditioned, the Planning Commission finds that the proposed partition meets the applicable standards of MMC 19.502.2.A.2 for Parcel 2.

B. MMC Section 19.504 Site Design Standards

MMC 19.504 establishes standards for site design, including clear vision areas, transition area measures, and flag lot design and development standards. Specifically, MMC Subsection 19.504.2 states that no lot area, yard, other open space, or off-street parking or loading area shall be reduced by conveyance or otherwise below the minimum requirements of this title, except by dedication or conveyance for a public use.

The existing single-family residence on Lot 1 would be closer than 20 ft for the street side-yard setback after the dedication of 15 ft for a road to connect Melody Ln and Logus Rd. Since the 15 ft is for a public road, the street side-yard setback is not an issue with meeting the minimum requirements.

The Planning Commission finds that the standard is met.

As conditioned, the Planning Commission finds that the applicable standards of MMC 19.500 are met.

11. MMC 19.607 Off-St 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. The existing single-family home on the proposed Lot 1 has 2 off-street parking spaces per the 2 car garage.

The Planning Commission finds that the proposal meets the off-street parking standards.

12. 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 subdivide the existing parcel into 4 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.

- a. MMC 19.703.1 requires a pre-application conference for proposals that require a land use application. *The requirement was satisfied on September 17, 2015.*
- b. 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.

The applicant is proposing to dedicate a 7-ft frontage ROW along SE Logus Rd. This will upgrade the existing ROW to a width of 40 as requested by Milwaukie Engineering Department. The existing ROW on Melody Ln is 40 ft. The required ROW is 40 ft. The proposed site plan and improvement plan show a proposed ROW of 40 ft along the projected alignment of the continuation of Melody Ln. The proposed ROW dedication and improvement will be from the west property line to the east property line of the boundary of the subdivision. Driveway curb cuts and ADA rams will be required to meet the Milwaukie Public Works Standards.

As conditioned, the proposal is consistent with MMC 19.703.3

- C. MMC 19.704 requires submission of a transportation impact study documenting the development impacts on the surrounding transportation system.

All of the trips for Lot 1 of the proposed development affect SE Logus Rd. All of the trips for Lots 2, 3, and 4 will affect the new extension of SE Melody Ln. The proposed development will not trigger a significant increase in trip generation on either neighborhood streets 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 the level of service previous to the proposed development.

MMC 19.705 does not apply to the proposed development.

- E. MMC 19.708 Transportation Facility Requirements

This section contains the City's requirements and standards for improvements to public streets, including pedestrian, bicycle, and transit facilities.

1. MMC 19.708.1.A states all development to Chapter 19.700 shall comply with access management standards contained in Chapter 12.16.

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

As conditioned, the Planning Commission finds that the standard is met.

2. MMC 19.708.1.B states that all development to Chapter 19.700 shall comply with access management standards contained in Chapter 12.24.

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

As conditioned, the Planning Commission finds that the standard is met.

3. MMC 19.708.D states that development in a non-downtown zone that has frontage on a street section shown in the Public Area Requirements (PAR) is subject to the requirements of the Milwaukie Public Works Standards.

The proposed development, as conditioned, is consistent with 19.708.D.

As conditioned, the Planning Commission finds that the standard is met.

4. MMC 19.708.1.E.3 states 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 Milwaukie Planning and Engineering Department is requiring the applicant to dedicate a 15-ft wide ROW on the east side of the site to allow the future creation of a road to connect Melody Ln down to Logus Rd. A 15 ft ROW dedication will allow for future development and dedication by the property to the east if/when they wish to develop the rear of that lot. A 15-ft ROW dedication is consistent with the standards for more narrow lots, like the applicant's site, and takes into consideration the existing structures.

The applicant is also proposing an extension of Melody Ln on the north end of the site to the property boundary on the east. This will allow for future development to the east if/when they choose to redevelop those lots.

Planning Commission finds that the standard is met.

5. MMC 19.708.1.F Intersection Design and Spacing

The proposed street will be located outside of the required 530 ft for maximum intersection spacing on a neighborhood street (Logus Road). The City has asked

for the dedication for this eventual street connection, and will not require a variance for this location. Per 19.703.4.B – Street Design, the engineering director has determined that the location of this road will most effectively serve infill development without precluding adjacent properties from developing.

The Planning Commission finds that the standard is met.

6. MMC 19.708.2 establishes standards for street design and improvement.

To satisfy MMC 19.708.2, the applicant shall construct frontage improvements for the extension of SE Melody Lane. The street improvements include, from the north fronting property line, construction of a 5-ft wide setback sidewalk, 5-ft wide planter strip, curb and gutter, 25 feet of asphalt (28-ft travel way), curb & gutter.

The existing right-of-way width of SE Logus Road fronting the proposed development is 30 ft. The Milwaukie Transportation System Plan and Transportation Design Manual classify the fronting portions of SE King Road as a Neighborhood Route. According to Table 19.708.2 Street Design Standards, the required right-of-way width for a neighborhood route is between 20 ft and 68 ft depending on the required street improvements. The required right-of-way needed for the required street improvements is 37 ft. The applicant is responsible for 7 ft of right-of-way dedication along SE Logus Road fronting the development property.

Through conformance with MMC 17.28.050 15 ft of dedication is required on the east side of the development property for future access and creation of a new north/south road connecting Logus Road to Melody Lane.

The proposed cross section for Melody Lane conforms to requirements consistent with MMC Section 19.708.2.

As conditioned, the Planning Commission finds that the standard is met.

7. MMC 19.708.3 Sidewalk Requirements and Standards states sidewalks shall be provided on the public street frontage of all development per the requirements of this chapter. Sidewalks shall generally be constructed within the dedicated public right-of-way, but may be located outside of the right-of-way within a public easement with the approval of the Engineering Director.

The construction of sidewalks along the proposed development property abutting all public rights-of-way is included in the street frontage requirements. The applicant will construct the required cross section for Melody Lane which is sidewalk only on the north side of the road. Melody lane will be the access road for all three new lots. A proportionality analysis was completed for this development and determined that improvements would only be required for the Melody Lane right-of-way. The value of the 4,796 sq ft of land dedicated and the additional improvements being constructed between the end of existing Melody Lane and the west edge were deemed proportional to the effect of 3 additional new lots.

19.708.3.A.2 requires that public sidewalks shall conform to ADA standards.

As conditioned, the Planning Commission finds that the standard is met.

F. MMC Section 19.709 Public Utility Requirements

This section establishes standards for public utility improvements. They are required for proposed development that would have a detrimental effect on existing public

utilities, cause capacity problems for existing public utilities, or fail to meet standards in the Public Works Standards.

The extension of SE Melody Ln will consist of a 28-ft wide asphalt concrete section, standard curbs and gutters on both sides, 4.5-ft wide infiltration planter (consistent with City of Portland Storm Water Standards), and a 5 ft wide sidewalk on the north side of Melody Ln. The roadway will provide parking on one side only.

There will be a transition zone as part of this development that will cover the roadway improvements from the terminus point of existing improvements on SE Melody Ln to the western boundary line of the subdivision. The proposed transition will provide curbs, asphalt, and sidewalk on the north side only due to ROW restrictions in existing Melody Ln.

The Engineering Department calculated a proportionality analysis and determined that the necessary improvements along SE Logus Rd would not be proportional to the potential impacts of the proposed development. No road improvements are required along SE Logus Rd. An additional 7 ft of ROW along Logus Rd is being dedicated as recommended by the Milwaukie Engineering Department.

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

13. MMC 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. In particular, MMC Subsection 19.1203.2 establishes the applicability of MMC Subsection 19.1203.3 as applications for the creation of 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.

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.

1. MMC 19.1203.3 states that at least 80% of the lots in a development subject to these provisions shall comply with one or more of the basic requirement options:

1. Has a north-south dimension of 90 ft more; and
2. Has a front lot line that is oriented within 30 degrees of a true east-west axis.

Lots 1, 2, and 3 meet the design standards of 19.1203.3 by having over 90 ft of north-south dimension, and are within 30 degrees of the east-west axis.

2. MMC 19.1203.3.C provides alternatives to the design standards in 19.1203.3.

1. Habitable structures built on that lot will have their long axis oriented within 30 degrees of a true east-west axis, and at least 80% of their ground floor south wall will be protected from shade by structures and nonexempt trees using appropriate deed restrictions; or
2. Habitable structures built on that lot will orient at least 32% of their glazing, and at least 500 sq ft of their roof area, to face within 30 degrees east or west of true south, and that glazing and roof area are protected from shade by structures and nonexempt trees using appropriate deed restrictions.

Lot 4 complies with design standard 19.1203.C.1. The lot will have a deed restriction placed on it that forces any habitable building to meet 1 of the alternative design standards in MMC 19.1203.3.C (listed above). The applicant feels these alternative design standards can easily be achieved considering the lot dimensions and layout.

The Planning Commission finds that the standards are met.

14. MMC Title 12 Streets, Sidewalks, and Public Places

Title 12 refers to standards that address street and sidewalk excavations, construction, and repair; access management; clear vision at intersections; and other work or entities within the public right-of-way.

The proposal has been reviewed by the City of Milwaukie Engineering Department for compliance with Title 12. Appropriate requirements relating to Title 12 have been addressed in Attachment 2 Recommended Conditions.

As Conditioned, the Planning Commission finds that the standards are met.

15. MMC 19.911 Variances

The applicant has requested approval of three variances for the subdivision:

- (1) Variance to the lot depth for Lot 4.

The lot depth of Lot 4 is proposed to be 62.38 ft versus the required 80 ft. The City's land division standards require the applicant to extend Melody Ln to the east in order to provide access and facilitate future development. Due to the location of the extended Melody Ln, the resulting proposed width of Lot 4 will be less than the required amount in the R-7 zone.

- (2) Variance to the rear yard setback for the existing accessory structure on Lot 1.

Lot 1 has an existing accessory structure. With the proposed layout of the subdivision, the rear yard setback for the accessory structure on Lot 1 is 9.51 ft versus the required setback of 20 ft for the R-7 zone.

- (3) Variance to the side yard setbacks for the existing accessory structure on Lot 2.

Lot 2 has an existing accessory structure that is a utility building. With the proposed layout of the subdivision, the structure on Lot 2 will have side yard setbacks of 3 ft and 7 ft. The R-7 zone requires the setbacks to be 5 ft or 10 ft. The proposed 7 ft setback meets the requirement, but the 3 ft setback does not.

A. 19.911.3 Review Process

Variance applications shall be evaluated through either a Type II or Type III review, depending on the nature and scope of the variance request and the discretion involved in the decision-making process.

Each variance will be reviewed through the Type III review process. All variance applications are larger and more complex than what is permitted under Type II review. The side yard setback variance is greater than 40% of the requirement for a Type II review. The rear yard setback is greater than 25% of the requirement for a Type II review. The lot depth variance is greater than the 10% lot width requirement for a Type II review.

Planning Commission finds that all variance applications will be reviewed through a Type III procedure.

B. 19.911.4 Approval Criteria

Type III variances can be reviewed through two different approval criteria: Discretionary Relief Criteria or Economic Hardship Criteria. The applicant proposed the Discretionary Relief Criteria to review the variance applications. The Discretionary Relief Criteria is addressed below:

1. The applicant's alternative analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.

Variance 1 (Lot depth): The location for the extension of Melody Ln causes Lot 4 to not meet the minimum lot depth requirements. The applicant's alternative would be to move the extension of Melody Ln farther south to meet the lot depth standards.

The concerns of the applicant regarding the alternative are:

1. *The bend in the road to move it further south may cause safety issues for fire trucks and other response vehicles. This road would be used as a turnaround for them.*
2. *Moving the road farther south prevents Lots 2 and 3 from meeting the lot area requirements in the R-7 zone. This would reduce the number of lots and fail to meet the minimum density requirement for the site, which is 4 dwelling units.*

Variance 2 (Rear yard setback): The proposed rear yard property line for Lot 1 only allows a 9.51 ft setback from the existing accessory structure. The applicant's alternative would be to move the rear yard property line north another 11 ft to meet the required 20 ft setback in the R-7 zone. The concerns from the applicant regarding this alternative are:

1. *Moving the rear yard property line for Lot 1 would reduce the lot area of Lot 3 to be below the 7,000 sq ft requirement in the R-7 zone. This would reduce the number of lots to be below the minimum required density for the site.*
2. *It would also exacerbate the lateral shift of the rear property line, causing it to be much greater than 10%, which is the allowed maximum shift. The applicant has moved the rear lot line as far north as possible without breaking the 10% lateral shift, which is prohibited.*

Variance 3 (Side yard setback): The existing Utility Building on Lot 2 is too close to the proposed east side yard property line. One of the applicant's alternative is to move the east side property line further east to meet the required side yard setback in R-7. The concerns from the applicant with this alternative are:

1. *Moving the side property line further east is unfeasible due to the required 15 ft ROW on the east side of Lot 3. This limits the ability to shift Lot 3 further east to have Lot 2 meet the side yard setback requirements.*
2. *Shifting Lot 2's eastern side property line would decrease Lot 3's area below the minimum lot area requirements, which would cause the applicant to lose Lot 3 and be below the minimum density requirement for the site.*

3. *The movement of the eastern side property line of Lot 2 causes problems with the requirements to limit compound lot lines on the north property line of Lot 1.*

Another alternative for the side yard setback variance on Lot 2 would be to dismantle or demolish the utility building. The applicants felt that this was an undesirable option since there is significant use and value in the utility building. It is well maintained and in good shape. A future owner of Lot 3 may be interested in acquiring both properties jointly and keeping the utility building in place.

Due to the concerns from the alternatives analysis for the variances, the applicant felt that the alternatives were not a viable option to consider.

Planning Commission finds that the applicant has provided a thorough analysis of alternatives and the criteria is satisfied.

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:
 1. The proposed variance avoids or minimizes impacts to surrounding properties.
 2. The proposed variance has desirable public benefits.
 3. The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

The Planning Commission finds that each variance will have minimal impact to surrounding properties. The findings are listed below:

Variance 1 (Lot depth): There will be little to no impact on the 3 adjoining properties to the north of Lot 4 on Howe Ln (Tax lots 4408, 4512, and 4516). These lots are all roughly 125 ft deep and the houses are located close to the front of their lots and subsequently have large rear yard setback spaces behind the houses. Lot 4 is also over 8,000 sq ft with over 130 ft of lot width. Any proposed development on the lot will be able to meet side yard setbacks and have minimal impacts on any lots to the east or west of the property.

Variance 2 (Rear yard setback): The primary recreation and outdoor gather area for the existing single-family home on Lot 1 is located in and around the pool/patio, which is located to the west side of the accessory structure. There is a total of approximately 3,500 sq ft in that area, thus the impact of the accessory structure's proximity to the rear of the lot is minimal. The proposed Lot 3 is also over 100 ft deep and has ample area to build a structure on Lot 3 farther from the rear property line if the new property owner wants to be farther from the accessory structure on Lot 1.

Variance 3 (Side yard setback): With the requirement that the Utility Building share ownership with Lot 3 or be dismantled with a change of ownership, the requirement is minimal impact from granting the variance.

Planning Commission finds that the criteria is met.

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

Impacts from the proposed variances are minimal given the size of the surrounding properties. The variances are the best options to meet density requirements for the

site, limit compound lot lines, and provide an extension of Melody Ln to increase the possibility for future development on the property to the east of the site.

Planning Commission finds that the criteria is met.

Planning Commission finds that the Type III Variance requests by the applicant meets the Discretionary Relief Criteria and approves all three variances.

16. The application was referred to the following departments and agencies on June 12, 2017:
- Milwaukie Building Division
 - Milwaukie Engineering Department
 - Clackamas County Fire District #1
 - Lewelling Neighborhood District Association Chairperson and Land Use Committee

The comments received are summarized as follows:

1. Matt Amos, Fire Inspector, Clackamas County Fire District #1: Clackamas Fire has no comments for this proposal.
2. Alex Roller, Engineering Technician II, City of Milwaukie Engineering Department: Comments reflected recommended conditions for ROW dedication, street construction, access management, and clear vision standards. Findings and conditions have been incorporated into Attachments 1 and 2

ATTACHMENT 2
Conditions of Approval
Master File #S-2016-002, Julian Illingworth Subdivision

Conditions

1. At the time of submission of the final plat application, the following shall be resolved:
 - 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 May 31, 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-2016-001; VR-2016-007.
2. Prior to approval of the final plat, the following shall be resolved:
 - a. Establish a deed restriction for Lot 2 to ensure that, within 24 months of final plat approval for this land division, the existing accessory structure on Lot 2 shall be removed unless:

Lot 2 is maintained in mutual ownership with an adjacent lot containing a primary structure and shall remain in mutual ownership with that adjacent lot. If Lot 2 is sold without an adjacent lot, the accessory structure will be dismantled upon sale.
 - b. Remove the existing electric stove-top from the pool-house studio and treat the space as an accessory use structure, not an accessory dwelling unit.
 - c. 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.
 - d. Submit full-engineered plans for construction of all required public improvements, reviewed and approved by the City of Milwaukie Engineering Department.
 - e. Obtain a right-of-way (ROW) permit for construction of all required public improvements listed in these conditions of approval.
 - f. Pay an inspection fee equal to 5.5% of the cost of the public improvements.
 - g. Provide a payment and performance bond for 100% of the cost of the required public improvements.
 - h. Provide an erosion control plan and obtain an erosion control permit.
 - i. Construct 8-in wastewater main to the east end of development property in Melody Ln ROW. A new sanitary manhole is required at the end of wastewater main.

- j. Extend 6-in water main to east end of development property in Melody Ln ROW. Move existing blowoff to the east end of water main extension.
 - k. Install all underground utilities, including stubs for utility service prior to surfacing any streets. Relocate or provide a private utility easement for all utilities encroaching onto adjacent properties.
 - l. Dedicate 7 ft of ROW on the Logus Rd frontage of the development property.
 - m. Dedicate 40 ft of ROW for the extension of Melody Ln fronting the development property.
 - n. Dedicate 15 ft of ROW along the east side of the development property from Logus Rd to the newly dedicated Melody Ln right-of-way.

Restrict vehicle access for the 15-ft ROW. A vehicle barrier shall be placed at the northern end of the 15 ft ROW. In addition a vehicle barrier shall be placed at the eastern end of the extension of Melody Ln. There will be informal pedestrian access and no signs restricting pedestrian access.
 - o. Construct all sidewalks, ramps, and driveways on Melody Ln.
 - p. Construct a driveway approach to meet all ADA guidelines 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. A new driveway approach is also required for 4422 SE Melody Ln.
 - q. The subdivision plat shall clearly state that the City of Milwaukie shall control and manage access at the end of the newly dedicated Melody Ln. The access control provision shall extend from the southeast corner of Lot 4 south to Logus Rd along the 15-ft ROW adjacent to 4591 SE Logus Rd.
 - r. Clear vision areas shall be maintained at all driveways and accessways and on the corners of all property adjacent to an intersection.
 - s. Provide a final approved set of Mylar and electronic PDF “As Constructed” drawings to the City of Milwaukie prior to final inspection.
 - t. Remove all signs, structures, or vegetation in excess of 3 ft in height located in “vision clearance areas” at intersections of streets, driveways, and alleys fronting the proposed development.
 - u. The owner of the development property shall sign and record a waiver of remonstrance against participation in a local improvement district or similar funding mechanism for the necessary street improvements along the north-south ROW from Melody Ln to Logus Rd. The waiver of remonstrance shall apply to the deeds of all 4 lots in the subdivision.¹
3. Prior to final inspection for any building on the proposed development, the following shall be resolved:
- a. Connect all residential roof drains to private drywell or other approved structure.

¹ The funding mechanism shall be designed so that all properties that benefit from the north-south street connection pay a fair share of the costs. This may include consideration of a credit for the value of the 15-ft ROW dedication required as part of this subdivision.