



August 23, 2017

Land Use File(s): CSU-2017-004

NOTICE OF DECISION

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

Applicant(s): Tamara Jata, Blueberry House Tutoring
Appellant (if applicable)
Location(s): 10670 SE 52nd Ave
Tax Lot(s): 12E31AB04000
Application Type(s): Community Service Use
Decision: Approved with Conditions
Review Criteria: Milwaukie Municipal Code:

- MMC Chapter 12.08 Street and Sidewalk Excavations, Construction, and Repair
- MMC Chapter 12.16 Access Management
- MMC Chapter 12.24 Clear Vision at Intersections
- MMC Section 19.904 Community Service Uses
- MMC Chapter 19.600 Off-Street Parking and Loading
- MMC Chapter 19.700 Public Facility Improvements
- MMC Section 19.301 Low Density Residential Zones
- MMC Section 19.1006 Type III Review

Neighborhood(s): Linwood

Appeal period closes: 5:00 p.m., Thursday September 7, 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 Koliass, Associate Planner, at 503-786-7653 or koliassv@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on Thursday, September 7, 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

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, Tamara Jata, has applied for approval for a Community Service Use (CSU) at 10670 SE 52nd Ave. This site is in the R-7 Zone. The land use application file number is CSU-2017-004.
2. The applicant is seeking land use approval for a Community Service Use (CSU) for a religious education tutoring company for homeschool students. Blueberry House Tutoring LLC also provides after school tutoring for students throughout the metro area, currently enrolls 40 students, and employs 5 teachers. Blueberry House operates from September through May, and on Mondays through Thursdays, from 8:30 a.m. to 5:30 p.m. There are a total of 5 rooms that are shared between Blueberry House and the Living Water Community Fellowship Church, and 1 is room reserved exclusively for Blueberry House. The intent of the applicant is to permit the operation of Blueberry House Tutoring LLC within the Living Water Community Fellowship's church building. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - a. MMC Section 19.1006 Type III Review
 - b. MMC Chapter 12.08 Street and Sidewalk Excavations, Construction, and Repair
 - c. MMC Chapter 12.16 Access Management
 - d. MMC Chapter 12.24 Clear Vision at Intersections
 - e. MMC Section 19.904 Community Service Uses
 - f. MMC Chapter 19.600 Off-Street Parking and Loading
 - g. MMC Chapter 19.700 Public Facility Improvements
 - h. MMC Section 19.301 Low Density Residential Zones (incl. R-7)
3. 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 August 22, 2017, as required by law.
4. MMC 12.08 – Street & Sidewalk Excavations, Construction, and Repair

MMC Chapter 12.08 applies to all construction that is completed in the right-of-way that is eventually dedicated to the City. The public improvement process will follow MMC 12.08.020.
5. MMC 12.16 – Access Management

MMC 12.16.040 establishes standards for access (driveway) requirements. The Planning Commission finds that the following complies with applicable criteria of MMC Chapter 12.16.

12.16.040E & 12.16.040F: Accessway Design - ADA standards & Width

As conditioned, the proposed development will include driveways that conform to MMC 12.16.040.E and MMC 12.16.040.F.

6. MMC Chapter 12.24 – Clear Vision at Intersections

12.24.030: clear vision requirements

As conditioned, the proposed development will include driveways and accessways that conform to MMC 12.24.030.

The Planning Commission finds that the proposed development, as conditioned, complies with the applicable criteria in MMC Chapter 12.

7. MMC Section 19.904 Community Service Use

MMC 19.904 provides standards and procedures for review of applications for community service uses. These are uses that are not specifically allowed outright in most zoning districts but that address a public necessity or otherwise provide some public benefit. Community service uses may include schools, government buildings, hospitals, religious institutions, utilities, parks, communication facilities, or private or public recreation facilities.

a. MMC 19.904.2 Applicability – lists the various uses that are allowed through the Community Service Use (CSU) process.

The proposed development is for a religious educational tutoring company, to operate out of the Living Water Community Fellowship Church. Blueberry House Tutoring LLC will provide educational instruction for homeschool students, as well as after school tutoring for students from private and public schools throughout the metro area. 40 students are currently enrolled, and 5 teachers are employed. Blueberry House operates from September through May, and provides classes on Monday through Thursday, from 8:30am to 5:30pm. The Church shares 5 out of its 6 rooms with Blueberry House, and the 6th room is used exclusively by Blueberry House.

MMC 19.904.2.A lists the Community Service Uses that are categorized as Institutions – Public or Private and Other Public Facilities. Examples of uses are schools, governments office buildings, hospitals, cemetery, nursing or convalescent home, religious institutions, community meeting building, temporary or transitional facility, and other similar uses as determined by the Planning Commission. The code explicitly mentions day-care centers, schools, and religious institutions as applicable community service uses.

The Planning Commission finds that the proposed religious educational tutoring company, Blueberry House Tutoring LLC, is a community service use and the standards of MMC 19.904 are applicable to the proposed development.

b. MMC 19.904.3 establishes the review process for CSUs. Except for wireless communication facilities and minor modifications to existing CSUs, applications for CSUs are subject to Type III review (MMC 19.1006).

The proposed development is not a wireless communication facility, nor does it represent a minor modification to the existing CSU.

The Planning Commission finds that the proposed development is subject to the procedures for Type III review outlined in MMC 19.1006.

c. MMC 19.904.4 establishes the following approval criteria for CSUs:

- (1) The building setback, height limitation, and off-street parking and similar requirements governing the size and location of development in the underlying zone are met. Where a specific standard is not proposed in the CSU, the standards of the underlying zone must be met.

The building intended for the CSU is zoned residential R-7. The applicant is applying to permit the operation of their school within the existing building. No additions or expansions are proposed, thus creating no applicable development standards in the base zone.

The use of the building for an educational and after school tutoring program does not trigger any additional off-street parking requirements.

- (2) Specific standards for the proposed uses as found in Subsections 19.904 7-11 are met.

19.904.7 Specific Standards for Schools

Public, private or parochial, elementary, secondary, preschool, nursery schools, kindergartens, and day-care centers are included.

- (a) Public elementary or secondary schools shall provide the site area/pupil ratio required by state law. Other schools shall provide 1 acre of site area for each 75 pupils of capacity or for each 2½ classrooms, whichever is greater, except as provided in Subsection 19.904.7.B below.

The proposed school will occupy a portion of an existing church site and building. As proposed, the school will use 7 different classrooms on a site of approximately 0.9 acres.

- (b) Preschools, nursery schools, day-care centers, or kindergartens shall provide a fenced, outdoor play area of at least 75 sq ft for each child of total capacity, or a greater amount if so required by state law. In facilities where groups of children are scheduled at different times for outdoor play, the total play area may be reduced proportionally based on the number of children playing out-of-doors at one time. However, the total play area may not be reduced by more than half. These uses must comply with the State Children's Services Division requirements as well as the City provisions.

An approximate total area of over 3000 sq ft exists on the Church's property and is available for use by Blueberry House for recess. Of the total number of students enrolled, roughly only 10 to 12 students take a break outside at one time.

- (c) Walkways, both on and off the site, shall be provided as necessary for safe pedestrian access to schools subject to the requirements and standards of Chapter 19.700.

Blueberry House will be using an existing building with existing walkways and a parking lot for access into the building.

- (d) Sight-obscuring fence of 4 to 6 ft in height shall be provided to separate the play area from adjacent residential uses.

A fence currently exists, separating the property from neighboring residential uses.

- (e) Public facilities must be adequate to serve the facility.

Public facilities, as part of the existing church building, are adequate for Blueberry House's proposed use.

- (f) Safe loading and ingress and egress will be provided on and to the site.

The existing building in which Blueberry House will operate has existing loading, ingress and egress facilities.

- (g) Off-street parking (including buses) shall be provided as per Chapter 19.600.

Approximately 64 off-street parking spaces are provided. Blueberry House uses 6 of these. Other spaces are used for student pick-up and drop-off. Roughly 25 cars come and go between 8:30 a.m. and 3:15 p.m., and busses can access the parking lot, as well.

- (h) Minimum setback requirements:

Front yard: 20 ft

Rear yard: 20 ft

Side yard: 20 ft

Setbacks may be increased depending on the type and size of school in order to ensure adequate buffering between uses and safety for students.

The existing building that Blueberry House will operate out of was built with a 5 ft side yard setback on the north side of the building. It is a pre-existing nonconforming structure.

- (i) Bicycle facilities are required which adequately serve the facility.

There are currently no bicycle facilities on the site.

- i. MMC 19.609 establishes standards for bicycle parking.

The quantity of required bicycle spaces shall be as described in the subsection. In no case, shall less than 2 spaces be provided.

The applicant shall provide 2 bicycle parking spots prior to the issuance of a certificate of occupancy.

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

- ii. A minimum of 50% of the bicycle spaces shall be covered and/or enclosed (in lockers or a secure room) in any of the following situations:

1. When 10% or more of the vehicle parking is covered.

2. If more than 10 bicycle parking spaces are required.
3. Multifamily residential development with 4 or more units.

The CSU proposal does not have any covered vehicle parking, is not requiring more than 10 bicycle parking spaces, and is not a multifamily development.

This standard is not applicable.

- iii. The dimension of each bicycle parking space shall be a minimum of 2 x 6 ft. A 5-ft wide access aisle must be provided. If spaces are covered, 7 ft of overhead clearance must be provided. Bicycle racks must be securely anchored and designed to allow the frame and 1 wheel to be locked to a rack using a high security, U-shaped, shackle lock.

The applicant shall adhere to the standards for bicycle parking and racks for the required 2 bicycle parking spaces.

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

- iv. Location

1. Bicycle parking facilities shall meet the following requirements:
 - a. Located within 50 ft of the main building entrance.
 - b. Closer to the entrance than the nearest non-ADA designated vehicle parking space.
 - c. Designed to provide direct access to a public right-of-way.
 - d. Dispersed for multiple entrances.
 - e. In a location that is visible to building occupants or from the main parking lot.
 - f. Designed not to impede pedestrians along sidewalks or public rights-of-way.
 - g. Separated from vehicle parking areas by curbing or other similar physical barriers.
2. The public right-of-way may be utilized for bicycle parking when parking cannot be reasonably accommodated on the site and the location is convenient to the building's front entrance. The bicycle parking area in the right-of-way must leave a clear, unobstructed width of sidewalk that meets the Engineering Department's Public Works Standards for sidewalk passage. A right-of-way permit is required.

The applicant shall adhere to the standards for the bicycle parking spaces location for the required 2 bicycle parking spaces.

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

As conditioned, the proposed development meets all applicable standards MMC 19.600 for off-street parking.

- (j) 15% of the total site is to be landscaped.

The existing property has maintained landscaping on the site.

- (3) The hours and level of operation of the proposed use are reasonably compatible with surrounding uses.

Blueberry House Tutoring LLC will use the building between 8:30 a.m. and 5:30 p.m., Monday through Thursday during the months of September through May. This time of day is comparable with other schools in the neighborhood. Blueberry House will use the Church's existing parking lot during the day, avoiding conflict with evening usage by church attendees. The parking lot will be used for dropping off and picking up students.

The hours and level of operation of the proposed community service use is compatible with nearby schools.

- (4) The public benefits of the proposed use are greater than the negative impact, if any, on the neighborhood.

The applicant states that Blueberry House will benefit the neighborhood by offering a community service that is needed for children in the area, due to the popularity and necessity of tutoring for those in the North Clackamas/Milwaukie school district.

Trips generated by school use are higher than church use. Preliminary transportation calculations indicate an additional peak hour trip count of 6.0 trips. Additional trips in and out of the parking lot could increase neighborhood car traffic, however it was determined that a traffic impact analysis was not required. These additional trips will increase parking demand, but 64 parking spaces are available for use, which is sufficient for the proposed use.

According to the applicant, Blueberry House's occupancy of the building, and usage of the parking lot, has cut down on crime in the neighborhood and on the church property. The applicant states that the building has been graffitied, teenagers have been known to destroy property inside the building, mail has been stolen from the mailbox, and the bank has called about forged checks from the address of the church. Vandalism and drug activities were also issues until Blueberry House started occupying the building.

- (5) The location is appropriate for the type of use proposed.

Blueberry House Tutoring LLC will be in an existing church, located within the R-7 residential zone. They will be offering religious based educational tutoring instruction for homeschool, private, and public school students. There are other community centers and schools within the area, justifying the location. The faith-based teaching of Blueberry House also fits the broader use of the Church within the community.

- d. MMC 19.904.5 establishes the procedures for reviewing CSUs.

- (1) MMC 19.904.5.A requires the Planning Commission to hold a public hearing to consider the establishment of new CSUs or the major modification of existing CSUs. The Commission shall determine whether the proposed use meets the approval criteria of MMC 19.904.4.

The proposed development is to establish a new CSU. The Planning Commission held a public hearing on August 22, 2017, to evaluate the proposed major modification to the CSU in the context of the approval criteria of MMC 19.904.4.

This standard is met.

- (2) MMC 19.904.5.B establishes the types of conditions that the Planning Commission may impose on CSUs to ensure compatibility with other uses in the vicinity. Conditions may involve such aspects as hours or intensities of operation, measures to limit noise or glare, special yard setbacks, design of vehicle access points, and size or location of a building.

The proposed CSU is to establish a religious educational tutoring school within a currently operational church. The use is compatible with the structure and surrounding neighborhood.

The Planning Commission finds that the conditions allowed under MMC 19.904.5.B are not needed for this application.

- (3) MMC 19.904.5.C authorizes the Planning Director to approve minor modifications to an approved community service use through the Type I review process, subject to compliance with specific criteria.

The proposed development is to establish a new CSU.

The Planning Commission finds that MMC 19.904.5.C does not apply to this application.

The Planning Commission finds that the applicable standards of MMC 19.904.5 are met.

- e. MMC 19.904.6 establishes the application requirements for CSUs, including a narrative describing the proposed use, maps showing the vicinity and existing uses, and detailed plans for the project.

The applicant's submittal materials include site plans and a narrative description of the proposed development.

The Planning Commission finds that this standard is met.

The Planning Commission finds that the proposed development meets all applicable standards of MMC 19.904 and is approvable as a new CSU.

8. MMC Chapter 19.700 – Public Facility Improvements

- 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 change the use of the building, which increases the trip generation of the site. This change in use triggers the requirements of MMC Chapter 19.700.

MMC 19.700 applies to the proposed development.

b. MMC Section 19.703 Approval Criteria

19.703.1 Preapplication Conference

The requirement for a preapplication conference was satisfied on February 23rd 2017.

c. MMC Section 19.705 requires that transportation impacts of the proposed development be mitigated.

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 same level of service as existed prior to the proposed development.

The proposed development is consistent with MMC 19.705.

d. MMC Section 19.708.1 requires all development shall comply with access management, clear vision, street design, connectivity, and intersection design and spacing standards.

19.708.1.A – Access Management

As conditioned, the proposed development will comply with access management standards contained in Chapter 12.16.

19.708.1.B – Clear Vision

As conditioned, the proposed development will 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 52nd Avenue fronting the proposed development is 60 feet. The Milwaukie Transportation System Plan and Transportation Design Manual classify the fronting portions of SE 52nd Avenue a local street. According to Table 19.708.2 Street Design Standards, the required right-of-way width for a local street is between 20 and 68 feet depending on the required street improvements. The right-of-way needed for the required street improvements is 60 feet. The applicant is not responsible for any right-of-way dedication along SE 52nd Avenue fronting the development property.

The proposed development is consistent with MMC 19.708.1.D.

e. MMC Section 19.708.2 establishes standards for street design and improvement.

The applicant shall construct a frontage improvement on the east side of SE 52nd Avenue along the site's frontage. The required half street construction are: 6-foot setback sidewalk and thickened curb. Improvements will connect to existing asphalt.

As conditioned, the frontage improvements will conform to 19.708.2.

- f. MMC Section 19.708.3 requires sidewalks to 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.

As conditioned, the Planning Commission finds that the proposed development complies with applicable criteria of MMC Chapter 19.700.

9. As per MMC Subsection 19.1001.7.E.1.a, proposals requiring any kind of development permit must complete both of the following steps:

- a. Obtain and pay for all necessary development permits and start construction within two (2) years of land use approval.
- b. Pass final inspection and/or obtain a certificate of occupancy within four (4) years of land use approval.

As per MMC Subsection 19.1001.7.E.2.b, land use approvals shall expire unless both steps noted above have been completed or unless the review authority specifies a different expiration date in the land use decision to accommodate large, complex, or phased development projects.

10. The application was referred to the following departments and agencies on July 12, 2017.:

- Milwaukie Community Development
- Milwaukie Planning Department.
- Milwaukie Building Division
- Milwaukie Engineering Department
- Clackamas County Fire District #1
- Linwood Neighborhood District Association Chairperson and Land Use Committee

The comments received are summarized as follows:

- a. **Matt Amos, Fire Inspector, Clackamas Fire District #1:** No comments for this proposal.
- b. **Jesse Tremblay, Linwood NDA Land Use Chair:** Provided comments regarding the applicability of the use, and is supportive of the CSU for Blueberry House Tutoring, LLC.
- c. **Alex Roller, Engineering Technician II, Milwaukie Engineering Department:** comments have been incorporated into these findings and the conditions of approval.

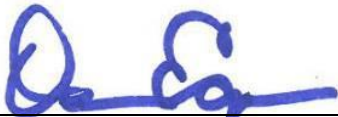
11. Public Comment

Public notice was sent to all property owners within 300 ft of the site, as well as signage posted at the site.

Conditions of Approval

1. Prior to the issuance of a certificate of occupancy, the following shall be resolved:
 - a. Bicycle Parking Facilities Requirements

- (1) Prior to the issuance of a certificate of occupancy, the applicant shall provide 2 bicycle parking spaces and racks which adhere to the standards of MMC 19.609.
- b. Engineering Requirements
- (1) Submit full-engineered plans for construction of all required public improvements, reviewed and approved by the City of Milwaukie Engineering Department.
 - (2) Obtain a right-of-way permit for construction of all required public improvements listed in these recommended conditions of approval.
 - (3) Pay an inspection fee equal to 5.5% of the cost of the public improvements.
 - (4) Provide a payment and performance bond for 100% of the cost of the required public improvements. If work is not completed by the start of school, then the performance bond will have a 1 yr deadline to complete improvements.
 - (5) Construct a 6 ft curb-tight sidewalk with thickened curb, and tie into existing asphalt on SE 52nd Avenue frontage.
 - (6) 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 at least 7.5 ft from the side property line.
 - (7) Clear vision areas shall be maintained at all driveways and accessways and on the corners of all property adjacent to an intersection.
 - (8) Provide a final approved set of Mylar and electronic PDF “As Constructed” drawings to the City of Milwaukie prior to final inspection.
 - (9) Remove all signs, structures, or vegetation in excess of three feet in height located in “vision clearance areas” at intersections of streets, driveways, and alleys fronting the proposed development.



Dennis Egner, FAICP
Planning Director

cc: Tamara Jata, 14135 S Canyon Ridge Circle, Oregon City, OR 97045
Sonja Souder, Property representative (665 Zepher Way, Molalla, OR 97038)
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): Linwood (*via e-mail*)
Interested Persons
Land Use File(s): CSU-2017-004