



October 30, 2017

Land Use File(s): S-2017-003, VR-2017-010

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on October 24, 2017.

Applicant: Hayes McCoy
Location: 11159 SE Maplehurst Rd
Tax Lot: 1S2E32BC00100
Application Type(s): Subdivision (preliminary plat), Variance Request
Decision: Approved with Conditions
Review Criteria: Milwaukie Land Division Ordinance (MMC Title 17)
Milwaukie Zoning Ordinance (MMC Title 19):

- Section 19.1006 Type III Review
- Section 19.301 Low Density Residential Zones (including R-7)
- Chapter 19.700 Public Facility Improvements
- Section 19.911 Variances
- Chapter 19.1200 Solar Access Protection

Neighborhood: Linwood

Appeal period closes: 5:00 p.m., November 14, 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 Brett Kelter, Associate Planner, at 503-786-7657 or kelperb@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on November 14, 2017, which is 15 days from the date of this decision. ¹ 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.

¹ As per MMC Section 19.1010, if the 15th day falls on a weekend or legal holiday, the end of the appeal period shall be extended to the end of the next business day.

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 (Hayes McCoy), representing the property owner (David Riggins), has applied for approval to subdivide the property at 11159 SE Maplehurst Dr. This site is in the Residential R-7 Zone. The land use application master file number is S-2017-003, with accompanying file number VR-2017-010.
2. The applicant has proposed an 11-lot subdivision for development of single-family detached dwellings. A new public street would be extended into the subdivision from Maplehurst Rd to the east, where the existing driveway is located. The new street would connect to an extension of 66th Ave from the north but would also establish a cul-de-sac at the west end of the site. The new streets would include landscape strips and setback sidewalks (except along the west side of the newly extended 66th Ave, where the sidewalk is proposed to be curb-tight), with public water and wastewater lines. The wastewater line would connect to an existing public line that extends from 64th Ave through an easement across an adjacent residential property to the west.

The applicant originally requested a variance to reduce the minimum rear yard setbacks for all lots from 20 ft to 15 ft. However, during the public hearing the applicant withdrew this variance request and modified the proposal to include plantings along the property boundaries adjacent to residential lots outside the proposed development. The plantings may be evergreen or deciduous and will be species expected to achieve a height of 25 ft within 5 years of planting, spaced to provide a visual screen (with at least 50% opacity for at least half of the year) between the proposed development and adjacent properties.

In addition, the applicant modified the proposal to specify that the minimum required front yards for all lots would be at least 24 ft, measured from the front property line. This will result in the front building lines of all new houses being set back at least 18 ft from the property-side edge of the required 6-ft public access easement.

As addressed in Finding 5-d(3)(c), an additional variance request has been made to allow Lots 6 and 8 to exceed the 10% compound line segment standard of MMC Subsection 17.28.040.C. As addressed in Finding 6-b, an additional variance request has been made to allow Lots 5, 9, and 11 to fall below the 80-ft minimum lot depth standard of the R-7 zone. As addressed in Finding 7-f, an additional variance request has been made to address the intersection spacing standards of MMC Subsection 19.708.1.

3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.1006 Type III Review
 - MMC Title 17 Land Division
 - MMC Section 19.301 Low Density Residential Zones (including R-7)
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.911 Variances
 - MMC Chapter 19.1200 Solar Access Protection

4. The application submittal includes a proposed Subdivision (preliminary plat) and Variance Request. The subdivision requires Type III review; 1 of the variance requests requires Type II review and the other 2 variance requests require Type III review. As per MMC Subsection 19.1001.6.B, the overall proposal was processed with Type III review. Public notice was provided in accordance with MMC Subsection 19.1006.3. A public hearing was held on October 24, 2017, as required by law.

5. MMC Title 17 Land Division

MMC Title 17 establishes the City's regulations and procedures for lot consolidations, land divisions, property boundary changes, and creation of streets and rights-of-way. As per MMC Section 17.04.050, all decisions on boundary changes and land divisions expire 1 year after the date of approval, with one 6-month extension allowed upon submission of a formal request to the original decision-making authority.

a. MMC Chapter 17.12 Application Procedure and Approval Criteria

MMC 17.12 establishes the application procedures and approval criteria for land divisions and property boundary changes. Specifically, MMC Subsection 17.12.020.E provides that applications for subdivision preliminary plat are subject to Type III review.

MMC Section 17.12.040 establishes the following approval criteria for preliminary plat:

(1) The proposed preliminary plat complies with Title 19 of this code and other applicable ordinances, regulations, and design standards.

The proposed preliminary plat is for a subdivision of 11 lots for development of single-family detached dwellings. As addressed throughout these findings, the proposed subdivision complies with the applicable standards of Title 19 and other applicable ordinances, regulations, and design standards.

The Planning Commission finds that this standard is met.

(2) The proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.

Variances for compound line segments (Lots 6 and 8), lot depth (Lots 5, 9, and 11), and intersection spacing are discussed in Findings 5-d(3)(c), 6-b, and 7-f(1), respectively. Aside from these issues, the proposed subdivision will create lots that meet the minimum standards of the underlying R-7 zone and will allow reasonable development without the need for any additional variances of land division or zoning standards at the time of construction.

The Planning Commission finds that this standard is met.

(3) The proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).

The proposed subdivision name, Silas Heights, is not duplicative, and the plat otherwise satisfies the provisions of ORS 92.090(1).

The Planning Commission finds that this standard is met.

(4) 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.

Phase 2 of the Shields Addition (platted in 1986) as well as the Maple Hurst subdivision of 1909 are adjacent to the subject property to the north. Both subdivisions established portions of the public right-of-way for 66th Ave, which terminates at the northern boundary of the subject property. The proposed subdivision would extend 66th Ave to provide access to several of the new lots and to connect with a new public street (Silas St) that would extend west to Maplehurst Rd.

The Cleveland Addition (platted in 1955) established 16 lots adjacent to the subject property to the south, accessed by a cul-de-sac extended east from Maplehurst Rd. No future street connections with adjacent properties were incorporated into the Cleveland Addition subdivision.

Given that the proposed subdivision connects the street stub at 66th Ave with Maplehurst Rd, the Planning Commission finds that this standard is met.

- (5) A detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.

The applicant has provided a detailed narrative description that demonstrates how the proposal conforms to all applicable standards and addresses variance requests as needed.

The Planning Commission finds that this standard is met.

The Planning Commission finds that the applicable procedures and approval criteria for the proposed subdivision, as outlined in MMC 17.12, are met.

- b. MMC Chapter 17.16 Application Requirements and Procedures

MMC 17.16 establishes application requirements for land divisions and property boundary changes, including for preliminary plat for subdivision. The application must include all required forms and fees, as well as the information specified on the Submittal Requirements and Preliminary Plat checklists.

The applicant's submittal materials include all required forms and fees for the proposed subdivision, as well as plan sheets, narratives addressing the various applicable standards and criteria, and supporting documents and reports.

The Planning Commission finds that the application requirements and procedures of MMC 17.16 are met.

- c. MMC Chapter 17.20 Preliminary Plat

MMC 17.20 establishes the information required with the preliminary plat, including existing and proposed conditions, a drainage summary report, proposed deed restrictions (if any), and proposed public improvements.

The applicant's preliminary plat materials include existing and proposed conditions; a preliminary stormwater management plan; and plans for proposed improvements including grading, landscaping, public utilities, and frontage improvements. No deed restrictions are proposed.

The Planning Commission finds that the preliminary plat requirements of MMC 17.20 are met.

d. MMC Chapter 17.28 Design Standards

MMC 17.28 establishes general design standards for land divisions and property boundary changes.

(1) MMC Section 17.28.020 Public Facility Improvements

MMC 17.28.020 requires that all land divisions that increase the number of lots are subject to the requirements and standards of MMC Chapter 19.700 Public Facility Improvements.

The proposed subdivision will increase the number of lots. The applicable standards of MMC 19.700 are addressed in Finding 7.

(2) MMC Section 17.28.030 Easements

MMC 17.28.030 requires that easements for public utilities (including sewers and water mains) be dedicated wherever necessary.

The proposed subdivision will establish new public streets, where most of the public utility infrastructure will be located, including one detention pond for stormwater. Existing utility easements across the adjacent residential properties to the west allow for new connections from the proposed development to existing utility facilities. The applicant has proposed to extend an easement for the public sewer main to be extended across Lots 6 and 7. A condition has been established to require the extension of all utility easements from the adjacent residential properties to the west and to install the corresponding utility infrastructure to connect to existing City utility facilities in 64th Ave.

As conditioned, this standard is met.

(3) MMC Section 17.28.040 General Lot Design

MMC Section 17.28.040 provides standards for general lot design.

(a) Size and Shape

Lot size, width, shape, and orientation shall be appropriate for the location and type of use contemplated. Minimum lot standards shall conform to Title 19.

As discussed further in Finding 5-d(3), the size, shape, width, and orientation of the proposed lots is appropriate for the location and type of use proposed. As discussed in Finding 6, the proposed lots conform to the minimum standards established in Title 19.

(b) Rectilinear Lots Required

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 lots are mostly rectilinear, except where the alignment of the proposed new street connection to Maplehurst Rd creates curving frontages for 3 lots (Lots 1, 2, and 11), and where the curve of the proposed cul-de-sac results in 3 lots (Lots 6-8) being more trapezoidal than rectangular in shape. As far as practicable, the sidelines of all lots run at right angles to the street upon which they face and the rear lot lines run parallel to the street.

(c) Limits on Compound Lot Line Segments

Changes in direction along any side and rear lot lines shall be avoided. Cumulative lateral changes in direction of a side or rear lot line exceeding 10% of the distance between opposing lot corners along a given lot line is prohibited. Changes in direction shall be measured from a straight line drawn between opposing lot corners.

As proposed, 2 of the lots in the cul-de-sac (Lots 6 and 8) have compound side lot lines that exceed the 10% standard. The compound segment for Lot 6 has a lateral change of approximately 17% and the compound segment for Lot 8 has a lateral change of approximately 25%. As noted in Finding 5-d(3)(d), a variance request to address this issue is discussed in Finding 8.

(d) Adjustments to Lot Shape Standard

Lot shape standards may be adjusted subject to Section 19.911 Variances.

As noted in Finding 5-d(3)(c), the side lot lines for Lots 6 and 8 exceed the 10% lateral change allowed by MMC Subsection 17.28.040.C. As allowed by MMC Subsection 17.28.040.D, a variance to exceed the 10% standard has been added to the proposal and is addressed in Finding 8.

(e) Limits on Double and Reversed Frontage Lots

Double frontage and reversed frontage lots should be avoided, except where essential to provide separations of residential development from railroads, traffic arteries, or adjacent nonresidential uses, or to overcome specific disadvantages of topography and orientation.

No double frontage or reversed frontage lots are proposed.

(f) Measurement of Required Frontage

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.

As proposed, the required frontages of all lots are measured along the streets upon which they take access.

As conditioned, and with the variance for lot shape addressed in Finding 8, the Planning Commission finds that the applicable lot design standards of MMC 17.28 are met.

The Planning Commission finds that, as conditioned, the proposed subdivision meets all applicable land division standards of MMC Title 17.

6. MMC Section 19.301 Low Density Residential Zones (including R-7)

MMC 19.301 establishes the allowable uses and development standards for the residential R-7 zone.

a. Permitted Uses

As per MMC Table 19.301.2, development of single-family detached dwellings is a permitted use in the R-7 zone.

The applicant has proposed an 11-lot subdivision, with lots sized to allow for development of detached single-family dwellings.

b. Lot and Development Standards

Table 6-b provides the applicable standards for development in the R-7 zone and indicates how the proposed new lots compare.

Table 6-b Lot and Development Standards		
Standard	R-7 Requirement	Proposed New Lots
1. Minimum Lot Size	7,000 sq ft	Lots range from 7,000 sq ft to approx. 8,200 sq ft.
2. Minimum Lot Width	60 ft	All lots are at least 60 ft wide.
3. Minimum Lot Depth	80 ft	All lots are at least 80 ft deep, except for Lots 5, 9, and 11, which are impacted by the street layout. Lot 5 = 76-ft average depth Lot 9 = 78-ft average depth Lot 11 = 78-ft average depth (with proposed stormwater easement) A variance request has been added to address these adjustments (see Finding 8).
4. Minimum street frontage	35 ft	All lots have at least 35 ft of street frontage.
5. Front Yard	20 ft	As proposed, all lots can provide the minimum 20-ft front yard setback.
6. Side Yard	5 ft / 10 ft	As proposed, all interior lots can provide the minimum 5-ft and 10-ft side yard setbacks.
7. Street-Side Yard	20 ft	Lots 9, 10, and 11 are the only corner lots, and all can provide the minimum 20-ft street-side yard setback.
8. Rear Yard	20 ft	As proposed, all lots can provide the minimum 20-ft rear yard setback.
8. Maximum Building Height	2.5 stories or 35 ft (whichever is less)	NA (will be evaluated at time of building permit review)
9. Side yard height plane limit	45-degree slope at 20 ft height	NA (will be evaluated at time of building permit review)
10. Maximum lot coverage	30%	NA (will be evaluated at time of building permit review)
11. Minimum vegetation	30%	NA (will be evaluated at time of building permit review)
12. Front yard minimum vegetation	40%	NA (will be evaluated at time of building permit review)
13. Minimum density	5.0 units per acre	Minimum of 10 units (Net lot area is approximately 1.97 acres, after subtracting the area of the proposed new public right-of-way.)
14. Maximum density	6.2 units per acre	Maximum of 12 units (Net lot area is approximately 1.97 acres, after subtracting the area of the proposed new public right-of-way.)

7. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 establishes provisions to ensure that development provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts.

a. MMC Section 19.702 Applicability

MMC 19.702 establishes the applicability of the provisions of MMC 19.700, including land divisions, 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 subject property into 11 new lots. The proposed subdivision triggers the requirements of MMC 19.700.

b. MMC Section 19.703 Review Process

MMC 19.703 establishes the review process for development that is subject to MMC 19.700, including requiring a preapplication conference, establishing the type of application required, and providing approval criteria.

The applicant had a preapplication conference with City staff prior to application submittal, on May 18, 2017. As addressed in Finding 7-c, the proposed development does not trigger a Transportation Impact Study and the proposal's compliance with MMC 19.700 has been evaluated as part of the overall subdivision review.

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 establishes the process and requirements for evaluating development impacts on the surrounding transportation system, including determining when a formal Transportation Impact Study (TIS) is necessary and what mitigation measures will be required.

Trips generated from the proposed development affect neighboring local streets. The impacts are minimal and the surrounding transportation system will continue to operate at the level of service previous to the proposed development. The proposed development also improves street connectivity and does not require a TIS.

d. MMC Section 19.705 Rough Proportionality

MMC 19.705 requires that transportation impacts of the proposed development be mitigated in proportion to its potential impacts.

The proposed development does not trigger mitigation of impacts beyond the required frontage improvements.

e. MMC Section 19.707 Agency Notification and Coordinated Review

MMC 19.707 establishes provisions for coordinating land use application review with other agencies that may have some interest in a project that is in proximity to facilities they manage.

The location and nature of the proposed development did not trigger referral of the application to any other agencies.

f. MMC Section 19.708 Transportation Facility Requirements

MMC 19.708 establishes the City's requirements and standards for improvements to public streets, including pedestrian, bicycle, and transit facilities.

(1) MMC Subsection 19.708.1 General Street Requirements and Standards

MMC 19.708.1 provides general standards for streets, including for access management, clear vision, street layout and connectivity, and intersection design and spacing.

The applicant has demonstrated that adequate right-of-way, pedestrian improvements, and public utilities can be constructed within the provided preliminary plat. Final design will be approved through the plan review process. The proposed development is consistent with MMC Subsection 19.708.1.D.

Spacing between the proposed Silas St and the existing Catalina Ln is between 50 and 60 ft, less than the required 100-ft spacing between intersections on a local street. Approval of a variance to this spacing requirement will be required. Catalina Ln is a dead-end road that serves 14 houses and is not stubbed out to extend east for future development. The City's Engineering Department is recommending approval of the necessary intersection spacing variance, as Catalina Ln does not generate enough traffic to affect the new intersection of Silas St and Maplehurst Rd being created by the proposed development.

With the approval of the intersection spacing variance addressed in Finding 8, the proposed development is consistent with the applicable standards of MMC 19.708.1.

(2) MMC Subsection 19.708.2 Street Design Standards

MMC 19.708.2 provides design standards for streets, including dimensional requirements for the various street elements (e.g., travel lanes, bike lanes, on-street parking, landscape strips, and sidewalks).

The proposed cross section for Silas St does not include the required minimum landscape strip width of 3 ft. The proposed travel lane is 15 ft wide, which can be reduced to the minimum of 14 ft to create a larger landscape strip. A condition of approval has been established to ensure that the minimum standards are met.

The required half-street construction for the proposed Silas St and 66th Ave includes the following elements: 5-ft setback sidewalk, 3-ft landscape strip, curb and gutter, and 12.5 ft of asphalt. The total proposed right-of-way width is 36 ft, which will provide for two 8-ft travel lanes and two 6-ft parking lanes, curb and gutter and 3-ft landscape strips on both sides, and with sidewalks in a public access easement. A condition has been established to ensure that the required improvements are constructed.

As conditioned, the proposed cross sections for Silas St and 66th Ave will conform to the applicable requirements of MMC 19.708.2.

(3) MMC Subsection 19.708.3 Sidewalk Requirements and Standards

MMC 19.708.3 provides standards for public sidewalks, including the requirement for compliance with applicable standards of the Americans with Disabilities Act (ADA).

The construction of sidewalks along the proposed development property abutting all public rights-of-way is included in the street frontage requirements noted above. As proposed, all sidewalks will be constructed within 5.5-ft public access easements, except for the west side of 66th Ave, where the sidewalk will

be constructed in the public right-of-way. A condition has been established to require that the public access easements be widened to 6 ft to allow for sidewalk maintenance.

The sidewalks being constructed in an easement on private property could cause conflicts with placement of private utilities. A public utility easement shall be established to accommodate the placement of facilities outside of the sidewalk. A condition has been established to eliminate this conflict.

MMC Subsection 19.708.3.A.2 requires that public sidewalks shall conform to ADA standards. As proposed, the development plans do not include ADA ramps on any of the internal corners. A condition has been established to ensure that this standard will be met.

As conditioned, the development will be consistent with all applicable standards of MMC 19.708.3.

(4) MMC Subsection 19.708.4 Bicycle Facility Requirements and Standards

MMC 19.708.4 provides standards for bicycle facilities.

Milwaukie's Transportation System Plan (TSP) does not identify adjacent roadways as bike routes.

MMC 19.708.4 does not apply to the proposed development.

(5) MMC Subsection 19.708.5 Pedestrian/Bicycle Path Requirements and Standards

MMC 19.708.5 provides standards for pedestrian and bicycle paths.

The proposed development property is surrounded by single-family residences. The proposed development does not present an opportunity to provide a pedestrian or bicycle path within the development and is not required to provide one.

MMC 19.708.5 does not apply to the proposed development.

(6) MMC Subsection 19.708.6 Transit Requirements and Standards

MMC 19.708.6 provides standards for transit facilities.

Transit facility improvements are not required for the proposed development.

MMC 19.708.6 does not apply to the proposed development.

As conditioned, the proposed development meets the applicable standards of MMC 19.708.

g. MMC Section 19.709 Public Utility Requirements

MMC 19.709 establishes standards for review of new development with respect to adequacy of existing public utilities.

The applicant will be responsible for conducting a fire flow test on the hydrant at 66th Ave and Eunice St. The applicant will be responsible for constructing water line to the east property line of the subject property.

The City's stormwater system is available to connect to through a storm easement to the west of the development. Drywells have been proposed as part of the stormwater system. The applicant may only construct drywells if it is demonstrated that a

connection cannot be made to the stormwater system of either the City or Clackamas County Water Environment Services (WES).

Conditions have been established to ensure that public utilities will be adequate to serve the proposed development.

As conditioned, the proposed development meets the applicable standards of MMC 19.709.

As conditioned, the Planning Commission finds that the proposed development meets the applicable public facility improvement standards of MMC 19.700.

8. MMC Section 19.911 Variances

MMC Section 19.911 establishes the variance process for seeking relief from specific code sections that have the unintended effect of preventing reasonable development or imposing undue hardship.

a. MMC Subsection 19.911.2 Applicability

MMC 19.911.2 establishes applicability standards for variance requests.

Variances may be requested to any standard of MMC Title 19, provided the request is not specifically listed as ineligible in MMC Subsection 19.911.2.B. Ineligible variances include requests that result in any of the following: change of a review type, change or omission of a procedural step, change to a definition, increase in density, allowance of a building code violation, allowance of a use that is not allowed in the base zone, or the elimination of restrictions on uses or development that contain the word “prohibited.”

The applicant originally requested a variance to reduce the minimum rear yard setbacks for all lots from 20 ft to 15 ft. However, during the public hearing the applicant withdrew this variance request and modified the proposal to include plantings to provide screening along the property boundaries adjacent to residential lots outside the proposed development. A condition has been established to clarify this proposed modification.

Staff noted 3 additional variances that are needed for the proposed subdivision: (1) for Lots 6 and 8 to exceed the 10% compound line segment standard of MMC 17.28.040.C; (2) to allow Lots 5, 9, and 11 to fall below the 80-ft minimum lot depth standard of the R-7 zone; and (3) to allow an adjustment to the intersection spacing standards of MMC Subsection 19.708.1.

The proposed variances meet the eligibility requirements and none of the proposed variances are considered ineligible. MMC Subsection 17.28.040.C specifies that compound lot line segments that exceed a 10% cumulative lateral shift are prohibited; however, given that this provision is not about the use of land or the development (alteration or construction) of land as defined in MMC 19.201, it is not considered an ineligible variance request. In addition, MMC Subsection 17.28.040.D states that lot shape standards may be adjusted subject to the variance procedures of MMC 19.911. Because compound lot lines impact lot shape, they are therefore eligible for adjustment through the variance process.

The Planning Commission finds that the requests are each eligible for a variance as per MMC 19.911.2.

b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. MMC Subsection 19.911.3.B establishes the Type II review process for limited variations to numerical standards, including a variance of up to 10% to a lot depth standard. MMC Subsection 19.911.3.C establishes the Type III review process for larger or more complex variations to standards than those allowed through the Type II review process, as variations that require additional discretion and warrant a public hearing.

The request to allow Lots 6 and 8 to exceed the 10% compound line standard of MMC 17.28.040.C (noted by staff) is not reviewable through the Type II process and is subject to the Type III approval criteria established in MMC Subsection 19.911.4.B. The request for Lots 5, 9, and 11 to fall less than 10% below the 80-ft lot depth standard of the R-7 zone (noted by staff) is eligible for Type II review as provided in MMC 19.911.3.B and is subject to the Type II approval criteria established in MMC 19.911.4.A. The request to allow an adjustment to the intersection spacing standards of MMC Subsection 19.708.1 is not reviewable through the Type II process and is subject to the Type III approval criteria established in MMC Subsection 19.911.4.B.

c. MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes approval criteria for variance requests.

(1) MMC Subsection 19.911.4.A provides the following approval criteria for Type II variances:

- (a) The proposed variance, or cumulative effect of multiple variances, will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare.

Lot Depth Variance: The shapes of Lots 5, 9, and 11 result in the depth of each lot being slightly reduced below the 80-ft minimum requirement. This will not significantly affect the buildable area footprints for these lots. The reduced lot depths will still provide adequate dimension for meeting the required R-7 setbacks.

The Planning Commission finds that the proposed variance will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare.

- (b) The proposed variance will not interfere with planned future improvements to any public transportation facility or utility identified in an officially adopted plan such as the Transportation System Plan or Water Master Plan.

Lot Depth Variance: The slightly reduced depths of Lots 5, 9, and 11 are a result of the new street system configuration, which is necessary to connect 66th Ave and Maplehurst Rd. The proposed lot depth variance will have no effect on planned future improvements to transportation facilities or utilities.

The Planning Commission finds that the requested variance is reasonable and appropriate and meets one or more of the criteria provided in MMC Subsection 19.911.B.1.b.

- (c) Where site improvements already exist, the proposed variance will sustain the integrity of, or enhance, an existing building or site design.

Lot Depth Variance: As proposed, the existing single-family dwelling and detached accessory structures on the subject property will be removed as part of the proposed development. No existing site improvements will remain to be affected by the proposed variance.

The Planning Commission finds that this criterion is not applicable.

- (d) Impacts from the proposed variance will be mitigated to the extent practicable.

Lot Depth Variance: The slightly reduced depths of Lots 5, 9, and 11 will not significantly affect the buildable area footprints for those lots and will not negatively impact adjacent properties or public facilities.

The Planning Commission finds that there are no impacts to be mitigated from the requested variance.

The Planning Commission finds that the proposed lot depth variance discussed in Finding 8-c(1) meets the approval criteria for a Type II variance request, as provided in MMC 19.911.4.A.

- (2) MMC Subsection 19.911.4.B.1 provides the following approval criteria for Type III variances where the applicant elects to utilize the Discretionary Relief Criteria:

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

Compound Line Segment Variance: The narrow north-south dimension of the subject property and the need to provide a connected street network make it a challenge to meet the minimum density requirement for the subject property. Adjusting the configuration of Lots 6 and 8 to reduce the cumulative lateral changes in direction for the compound line segments below 10% would reduce the area of both lots below the 7,000-sq-ft minimum for the R-7 zone.

Alternately, since the cul-de-sac is a necessary feature of the street network through the subject property, it creates a spatial situation where lot lines will have to run at angles from the street bulb toward the rear corners of the larger subject property, which inevitably results in compound line segments. Even if Lot 7 were to be eliminated and redistributed between Lots 6 and 8, both lots would still have compound line segments. The proposed lot configuration appears to be the best one for achieving the minimum density with lots that are all roughly equal in area and that provide a reasonable building area.

Intersection Spacing Variance: The subject property's street frontage on Maplehurst Rd is on the northern side of the overall property shape, due to the location of the adjacent residential property to the east. If the subject property included that adjacent property, the proposed new street connection to Maplehurst Rd could be shifted farther to the south and would meet the 100-ft spacing requirement from Catalina Ln.

As proposed, the new intersection of Silas St and Maplehurst Rd would be between 50 and 60 ft from Catalina Ln. Catalina Ln is a dead-end street serving 14 houses and is not stubbed out to extend east for future development. Catalina Ln does not generate enough traffic to affect the proposed new intersection of Silas St and Maplehurst Rd. It is important that the proposed development be served by a street connection to Maplehurst Rd, and there is only one place to locate the new street within the subject property. The proposed reduction in intersection spacing is the best option available to the applicant.

The Planning Commission finds that the applicant's analyses of alternatives are sufficient to address the impacts and benefits of the proposed variances. This criterion is met.

- (b) The proposed variance is determined to be both reasonable and appropriate, and it meets one or more of the following criteria:
 - (i) The proposed variance avoids or minimizes impacts to surrounding properties.
 - (ii) The proposed variance has desirable public benefits.
 - (iii) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

Compound Line Segment Variance: The proposal to allow Lots 6 and 8 to have compound line segments that exceed the 10% standard is reasonable and appropriate, given the configuration and dimensions of the subject property and the need to provide adequate street frontage for all proposed lots. The proposed variance does not result in impacts to surrounding properties, provides a more reasonable buildable area on both lots, and allows the overall site to develop at or just above the minimum required density.

Intersection Spacing Variance: The proposal to allow Silas St to be less than 100 ft from Catalina Ln where both streets intersect Maplehurst Rd is reasonable and appropriate, given that the subject property has a very limited frontage on Maplehurst Rd and no opportunity to shift Silas St farther south. The proposed variance avoids impacting the existing adjacent house to the east and provides a needed street connection for the proposed development to Maplehurst Rd.

The Planning Commission finds that the requested variances are reasonable and appropriate and meet one or more of the criteria provided in MMC Subsection 19.911.B.1.b.

- (c) Impacts from the proposed variance will be mitigated to the extent practicable.

Compound Line Segment Variance: The proposed variance to the compound line segment standard will not result in any impacts that require mitigation.

Intersection Spacing Variance: As required by the standards of MMC Chapter 12.24, clear vision will be maintained at the intersection of Silas St and Maplehurst Rd. The proposed variance to the intersection spacing standard will not result in any impacts that require mitigation.

The Planning Commission finds that the proposed variances will not result in any impacts that require mitigation.

The Planning Commission finds that the 2 proposed variances discussed in Finding 8-c(2) meet the approval criteria for Discretionary Relief for a Type III variance request, as provided in MMC 19.911.4.B.1.

As proposed, the Planning Commission finds that all 3 of the requested variances meet the applicable approvable criteria of MMC 19.911.4.

The Planning Commission finds that all 3 of the proposed variances are allowable as per the applicable standards of MMC 19.911.

9. MMC Chapter 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. MMC Section 19.1203 establishes solar access provisions for new development. 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 Subsection 19.1203.3 Design Standard

MMC 19.1203.3 establishes a solar design standard for at least 80% of the lots in any proposed development, including basic requirements for minimum north-south dimension (90 ft) and front-lot-line orientation with respect to a true east-west axis (within 30 degrees). There are two other options for compliance, either establishing a protected solar building line or demonstrating a level of performance with respect to protection from shading.

The proposed development is for 11 lots, only one of which (Lot 11) has a minimum north-south dimension of at least 90 ft. However, 8 of the lots (approximately 73%) have a minimum north-south dimension of at least 80 ft, and 9 of the lots (approximately 82%) have the front lot line oriented within 30 degrees of a true east-west axis.

The applicant has proposed to use the performance option. However, the Planning Commission finds that an adjustment to the design standard of MMC 19.1203.3 is warranted.

b. MMC Subsection 19.1203.5 Adjustment to Design Standard

MMC 19.1203.5 allows the reduction of the number of lots that must comply with MMC 19.1203.3 to the minimum extent necessary, if the applicant demonstrates that the standard would cause or is subject to certain conditions, such as adverse impacts on density, cost, or amenities.

Considering the size and dimensions of the subject property, as well as the importance of meeting the minimum density standard of the underlying R-7 zone and providing a connected street network, the design standard of MMC 19.1203.3 presents a challenge for the subject property. To configure lots with a north-south axis of at least 90 ft would greatly reduce the number of lots below the minimum required density and would make a public street connection between 66th Ave and Maplehurst Rd impossible.

As proposed, 8 of the 11 proposed lots (approximately 73%) are close to meeting the design standard of MMC 19.1203.3, with a north-south dimension of at least 80 ft; and 9 lots (approximately 82%) have the front lot line oriented within 30 degrees of a true east-west axis. In the proposed scenario, where strict adherence to the design standard would result in a significant decrease in density, a request to reduce the number of lots that must comply is reasonable.

The Planning Commission finds that the request to adjust the number of lots that must comply with the design standard of MMC 19.1203.3 is warranted. The 8 lots with a north-south axis of at least 80 ft are sufficient to meet the requirements of MMC 19.1200.

With the approved reduction noted above, the Planning Commission finds that the proposed development complies with the applicable standards of MMC 19.1200.

10. The application was referred to the following departments and agencies on September 13, 2017: Milwaukie Building Department, Milwaukie Engineering Department, Milwaukie Public Works Department, Clackamas Fire District #1, Linwood Neighborhood District Association (NDA) Chairperson and Land Use Committee (LUC), Southgate Planning Association, North Clackamas School District. In addition, public notice of the application was provided as per the standards of MMC Section 19.1006 Type III Review.

The comments received are summarized as follows:

- **Rob Livingston, Erosion Control Specialist, City of Milwaukie Public Works:** The applicant should note that the Underground Injection Control (UIC) devices proposed to collect and treat stormwater runoff must meet the minimum requirements established in the City's Public Works Standards (including for depth). Also, the applicant is advised that the project will require a 1200C erosion control permit from DEQ [Department of Environmental Quality], since the project is larger than 1 acre.
- **Jesse Temblay, LUC Member, Linwood NDA:** The NDA has no concerns or questions about the proposal. The LUC is in favor of approving the rear-yard variance and supports the addition of 11 lots for development.
- **Matt Amos, Fire Inspector, Clackamas Fire District #1 (CFD#1):** There do not appear to be any issues with access or water supply.
- **Alex Roller, Engineering Tech II, City of Milwaukie Engineering Department:** Comments related to the proposal's compliance with Milwaukie Municipal Code (MMC) Title 12 Streets, Sidewalks, and Public Places; and MMC Chapter 19.700 Public Facility Improvements, with relevant recommended conditions of approval.
- **Mark Moffett, area resident:** Has no problem with the originally proposed variance to reduce the rear yard setback and would prefer that the standard front yard setback be preserved to maintain the R-7 character established elsewhere in the neighborhood. Concerned about poor or non-existent pedestrian facilities in the surrounding area. Sidewalks should be provided in the new subdivision, to at least connect with existing sidewalks on 66th Ave. Suggestion that sidewalk and safety improvements along Monroe St and Linwood Ave be prioritized as mitigation for impacts from the new development, with a focus on improving pedestrian connections in the area.
- **David Adams, area resident:** Concerns about increased traffic through the neighborhood, impacts from a possible roundabout to be located at the intersection of Linwood Ave and Monroe St, whether the new homes would be rentals or owner-occupied, and mitigation of stormwater runoff at the west end of the subject property.

Conditions of Approval

1. The applicant shall submit a final plat application within 6 months of the preliminary plat approval, in accordance with MMC Section 17.24.040. The applicant shall obtain approval of the final plat prior to the expiration of this preliminary plat approval. 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. Provide a written narrative describing all changes made to the final plat that are not related to these conditions of approval.
 - b. Provide a narrative describing any changes made after the issuance of this land use decision that are not related to these conditions of approval.
 - c. Provide a final plat that substantially conforms to the revised plans approved by this action, which are the plans stamped received by the City on August 8, 2017, except as otherwise modified by these conditions of approval.

The modifications required by these conditions of approval include the following revisions:

- (1) As per Finding 7-f(3), revise the width of the proposed public access easements to 6 ft.
 - (2) As per Finding 7-f(3), a public utility easement shall be established to accommodate private utility structures that cannot be placed in the sidewalk.
2. Prior to approval of the final plat, the following shall be resolved:
 - a. Extend existing public utility easements from adjacent properties west of the subject property across the new lots, and install the corresponding utilities to connect to existing public utilities.
 - b. 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 the 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.
 - c. Submit full-engineered plans for construction of all required public improvements, reviewed and approved by the City of Milwaukie Engineering Department.
 - d. Obtain a right-of-way permit for construction of all required public improvements listed in these recommended conditions of approval.
 - e. Pay an inspection fee equal to 5.5% of the cost of the public improvements.
 - f. Provide a payment and performance bond for 100% of the cost of the required public improvements.
 - g. Provide an erosion control plan and obtain an erosion control permit.
 - h. Install all underground utilities, including stubs for utility service prior to surfacing any streets. A water flow test shall be required to assure adequate water flow for development. Water line shall be constructed to the east property line of development.

- i. Construct 5-ft setback sidewalks, 3-ft landscape strips, curb and gutter, 25-ft asphalt surface, and driveways on all internal streets.
 - j. 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.
 - k. Construct ADA ramps on all corners of the intersection of 66th Ave and Silas St. Construct a curb return design that is approved by City of Milwaukie and Clackamas County at the intersection of Silas St and Maplehurst Rd.
 - l. Clear vision areas shall be maintained at all driveways and accessways and on the corners of all property adjacent to an intersection.
 - m. Provide a final approved set of Mylar and electronic PDF “As Constructed” drawings to the City of Milwaukie prior to final inspection.
 - n. 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.
3. Prior to the final inspection for each primary structure constructed on the lots within the proposed development, the following shall be resolved:
- a. Connect all residential roof drains to a private drywell or other approved structure.
 - b. As per Finding 8-a, install plantings along the property boundaries adjacent to residential lots outside the proposed development. The plantings shall be of species that are expected to achieve a height of 25 ft within 5 years of planting and shall be spaced sufficiently to provide a visual screen (with at least 50% opacity for at least half of the year) between the proposed development and adjacent properties. Plantings may be evergreen or deciduous but shall not be listed as nuisance species on the City’s Native Plant List.

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 point in the development and permitting process.

1. As modified by the applicant during the public hearing, the minimum required front yards for all lots shall be at least 24 ft deep, measured from the front property line. This will result in the front building line of all new houses being set back at least 18 ft from the property-side edge of the required 6-ft public access easement.
2. The applicant should note that the Underground Injection Control (UIC) devices proposed to collect and treat stormwater runoff must meet the minimum requirements established in the City’s Public Works Standards (including for depth). Also, the applicant is advised that the project will require a 1200C erosion control permit from DEQ [Department of Environmental Quality], since the project is larger than 1 acre.
3. Development activity on the site shall be limited to 7 a.m. to 10 p.m. Monday through Friday and 8 a.m. to 5 p.m. Saturday and Sunday, per MMC Subsection 8.08.070(l).

Exhibits

None



Dennis Egner, FAICP
Planning Director

cc: Hayes McCoy, applicant (1180 SW Lake Rd, Suite 201, Redmond, OR 97756)
David Riggins, property owner (13605 SE Highway 212, Clackamas, OR 97015)
Planning Commission (*via email*)
Alma Flores, Community Development Director (*via email*)
Chuck Eaton, Engineering Director (*via email*)
Alex Roller, Engineering Technician II (*via email*)
Samantha Vandagriff, Building Official (*via email*)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (*via email*)
Rob Livingston, Erosion Control Specialist (*via email*)
Mike Boumann and Matt Amos, CFD#1 (*via email*)
NDA: Linwood (*via email*)
Interested Persons (*via email as possible*)
Land Use File(s): S-2017-003, VR-2017-010