



November 8, 2017

Land Use File(s): AP-2017-001

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie City Council on November 7, 2017.

Applicant(s):	Kurt Schultz, SERA Architects
Appellant (if applicable)	Scott Churchill
Location(s):	2036 SE Washington St
Tax Lot(s):	11E36 0100
Application Type(s):	Appeal
Decision:	Appeal denied (AP-2017-001); Planning Commission decision affirmed (DR-2017-001; VR-2017-007)
Review Criteria:	<u>Milwaukie Zoning Ordinance:</u> <ul style="list-style-type: none">• MMC 12.16 Access Management• MMC 19.304 Downtown Zones• MMC 19.508 Downtown Site and Building Design Standards• MMC 19.600 Off-Street Parking and Loading• MMC 19.700 Public Facility Requirements• MMC 19.907 Downtown Design Review• MMC 19.911 Variances• MMC 19.1006 Type III Review• MMC 19.1010 Appeals
Neighborhood(s):	Historic Milwaukie

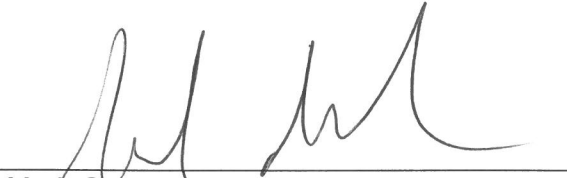
The Milwaukie City Council held public hearings and deliberations on October 17, 2017 and November 7, 2017 to consider the appeal application submitted by Scott Churchill of the Planning Commission's decision to approve land use file #DR-2017-001 and VR-2017-007, for a proposed 5-story mixed-use development at 2036 SE Washington St.

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1010 Appeals. The Final Decision and Order and 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 or on the City's website at: <https://www.milwaukieoregon.gov/planning/ap-2017-001>.

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

This decision may be appealed to the Oregon Land Use Board of Appeals (LUBA) at: 550 Capitol Street NE, Suite 235, Salem, Oregon 97301-2552, 503-373-1265, <http://luba.state.or.us> pursuant to state rules and statutes.

Mailed this 8th day of November, 2017



Mark Gamba
Mayor

cc: City Council (*via email*)
Planning Commission (*via e-mail*)
Denny Egner, Planning Director (*via email*)
Ann Ober, City Manager (*via email*)
Alma Flores, Community Development Director (*via e-mail*)
Chuck Eaton, Engineering Director (*via e-mail*)
Alex Roller, Engineering Tech II (*via e-mail*)
Samantha Vandagriff, Building Official (*via e-mail*)
NDA(s): Historic Milwaukie(*via e-mail*)
Interested Persons
Land Use File(s): AP-2017-001

BEFORE THE CITY COUNCIL OF THE CITY OF MILWAUKIE
COUNTY OF CLACKAMAS, STATE OF OREGON

In the appeal of an application to
approve a Downtown Design Review
and Variances for Guardian
Development LLC

File Nos. AP-2017-001 (appeal), DR-2017-
001; VR-2017-007 (proceedings below)

LAND USE ORDER

I. INTRODUCTION AND PROJECT BACKGROUND

This is an appeal of a decision by the Milwaukie Planning Commission ("Commission") approving an application filed by Kurt Schultz, SERA Architects on behalf of Guardian Development LLC ("Applicant") for downtown design review and variance approval for a 5-story mixed-used development on the property located at 2036 SE Washington St. in the Downtown Mixed Use Zone. In addition to a request for downtown design review (DR-2017-001), the application included two variance requests (VR-2017-007): 1) a variance from the accessway spacing standards in Milwaukie Municipal Code ("MMC") 12.16.040 to allow an accessway that is located midpoint of the proposed building, which is less than the required 300 ft from the intersections with 21st Ave. and Main St.; and 2) a variance from the 6-foot step back standard at MMC 19.304.5.B.2.d applicable to the 4th and 5th floors of the proposed building.

II. HEARINGS AND PROCESS

The City of Milwaukie ("City") set the application for a public meeting with the Design and Landmarks Committee on August 7, 2017 ("Committee"). At the meeting, the Committee received oral testimony from the Applicant and from persons opposed to the applications. The Committee recommended approval of the application with several additional considerations. Of particular importance to this appeal, the Committee recommended approval of the variance for the 6-foot step back, but recommended the Commission "review the 5th floor and require a minimum 4-ft step back or consider other alternatives or options to reduce massing, specifically on the Washington Street and 21st Avenue elevations."

On August 22, 2017 the Commission held a public hearing on the applications. The Commission received oral and written testimony from the Applicant and from persons both in support of and opposed to the applications. The Commission continued the hearing to September 12, 2017 to allow consideration of revised design drawings produced by the Applicant in response to design direction from the Planning Commission. Specifically, the revised drawings showed an additional shadowbox on the Washington Street elevation and 4 more windows on ground floor of the Washington Street elevation. At the continued September 12, 2017 hearing, the Commission accepted additional oral and written testimony related to the revised design. The Commission approved the applications on a vote of 5 members in support, 0 opposed. The Planning Commission Notice of Decision was mailed on September 14, 2017.

On September 26, 2017, Scott Churchill ("Appellant"), an identified Interested Party, timely filed a notice of appeal. Pursuant to MMC Table 19.1001.5 the City Council was identified as the Appeal Authority, and the City mailed written notice of the public hearing. On October 17, 2017, the City Council conducted a public hearing and designated a

record. At the end of the hearing, City Council voted unanimously with 5 Councilors in support, and 0 opposed, to tentatively affirm the Planning Commission's approval of the applications pending consideration of modified Findings and Conditions of Approval and subject to preparation of a final written decision. The City Council considered a draft final written decision on the appeal at its November 7, 2017 meeting. The City Council voted unanimously to approve the draft final written decision. This Order is the City's final written decision.

III. LIMITATIONS ON EVIDENCE

Under the City Council's standard of review for its appeal hearing, parties were limited to the evidence presented to the Commission, but were free to make new arguments to City Council regarding this evidence.

Comments were received from one property owner within 300 feet of the subject property, and from Interested Parties; those comments did not contain new facts and were therefore considered by the City Council.

IV. APPLICABLE CRITERIA AND FINDINGS AND CONDITIONS OF APPROVAL

1. The appeal application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing on the appeal was held on October 17, 2017, as required by law.

2. As findings supporting its decision, the City Council incorporates the September 14, 2017 Notice of Decision issued by the Planning Commission as modified through these supplementary findings and conclusions contained herein. The City Council also incorporates the August 15, 2017 Staff Report prepared for the Planning Commission hearing, and the October 9, 2017 Staff Report prepared for the City Council hearing. In the event of any inconsistency between the supplementary findings and conclusions herein and in the incorporated materials, the matter herein controls.

3. The following are the supplementary findings and conclusions of the City Council based upon its review of the record and the arguments and issues presented in the appeal process:

A. Step Back Variance

The City Council considered testimony and legal argument related to the requested variance from the MMC 19.304.5.B.2.d standard requiring a step back of 6 feet for any street-facing portion of the building above the base maximum height of the proposed building. MMC 19.911.2 allows an applicant to request a variance to any standard or regulation in Titles 17 or 19 of the MMC unless the standard or purpose of the variance is identified as an ineligible variance under MCC 19.991.2.B. The step back standard is not identified as an ineligible variance. Therefore, the City Council finds that a request for a variance from the identified standard is allowed under MMC Chapter 19.900.

The Appellant submitted both written and oral testimony suggesting that the bonus floors, floors 4 and 5 in this case, are allowed only if those floors are set back in compliance with the setback standard. The Applicant earned one bonus floor and associated height bonuses pursuant to MMC 19.304.5.B.3.a by devoting at least 1 story to residential uses, and earned the second bonus floor and associated height bonuses

pursuant to MMC 19.304.5.B.3.c by committing to receive certification under an ANSI-approved green building rating system.

The City Council does not accept the Appellant's argument that the bonus floors are allowed only if the bonus floors comply with the step back standard. In this case, the nondiscretionary height bonuses were earned by the Applicant pursuant to MMC 19.304.5.B.3. The 6-foot step back that is the subject of the variance request is included in the code as a separate standard, under a separate subsection at MMC 19.304.5.B.2. Subsection 2 addresses building height, as opposed to height bonuses. The step back standard applies to any street-facing portion of the building above the base maximum height. Therefore, it is the case that the step back applies to any earned bonus heights. However, the step back is not identified as a requirement for the height bonus under subsection 3. Therefore, the City Council finds that under the plain text and context of the code, the bonus height is not earned as a result of, or only if the step back is provided. Instead, the step back standard is a separate building height standard that, as discussed above, is eligible for a variance.

The City Council further rejects arguments that granting a variance in this instance will in any way set a precedent for future buildings that earn bonus height and are subject to the step back building height standard. Each variance request must be reviewed and considered on its own merits and requires a case-by-case evaluation of whether a particular variance request satisfies the applicable variance criteria. As described in the findings below, the City Council's conclusion that the discretionary relief variance criteria have been met for the step back standard in this instance is based on an evaluation of the variance requested and mitigation provided in this case for this building.

Discretionary Relief Criteria

MMC 19.911.4.B establishes criteria for approving Type III Variance applications.

An application for a Type III Variance shall be approved when all of the criteria in either 19.911.4.B.1 or 2 have been met. An applicant may choose which set of criteria to meet based upon the nature of the variance request, the nature of the development proposal, and the existing site conditions.

The Applicant elected to meet the Discretionary Relief Criteria at MMC 19.911.4.B.1. Consequently, the City Council applied and considered whether the proposed variance to the 6-foot step back satisfies the applicable criteria for a discretionary relief variance.

MCC 19.911.4.B.1 provides the Discretionary Relief Criteria for a discretionary variance.

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

As discussed in the August 15, 2017 Staff Report, incorporated herein by reference as stated above, the Applicant addressed this criterion in the application materials by identifying the benefits of the variance proposal, including the quality and design of the building that effectively reduces the perceived height and bulk of the building. Specifically, the Applicant highlighted the tripartite façade division of base, middle, and

top with an overhanging cornice, the differentiation of the 5th floor from the body of the building through the use of different materials. The Applicant also addressed the impacts of the baseline code requirements by explaining that strict compliance with the step back on the three street frontages would result in a loss of leasable area and residential units. The Applicant also stated that the step back requirements would increase the development costs and provided a list of additional construction requirements.

The City Council received and heard arguments from the Appellant that the Applicant's alternative's analysis was deficient for 5 reasons. The Appellant first argued that the Applicant did not identify the adverse impacts of granting the variance, which the applicant identifies as detracting from the pedestrian experience, depriving surrounding properties of solar access¹, and granting a special privilege to a single property that is not available to other properties in the zoning district.

The City Council agrees that the Applicant did not directly address the impacts identified by the Appellant in the original application. However, the City Council finds that the Applicant did address those impacts and other perceived impacts identified by the Applicant and other project opponents through the Committee meeting process, the Commission hearing process, and the City Council hearing process. The City Council finds that the Applicant adequately considered and addressed perceived variance impacts identified by both project opponents and decision makers for purposes of satisfying the minimum alternatives analysis requirements. As discussed in more detail in the findings below, the City Council further finds that the identified impacts are limited, and are either avoided or minimized through the building design and other mitigation.

The Appellant next argued that the Applicant did not identify the benefits of complying with the baseline code requirements, which according to the Appellant include a design that is compatible with surrounding properties, that will enhance the pedestrian experience, and will allow solar access to surrounding properties.

The City Council agrees that the Applicant did not address those identified benefits of complying with the baseline step back standard in the application. However, the City Council finds that the Applicant considered the benefits identified by the Applicant through the Committee meeting process, the Commission hearing process, and the City Council hearing process. The City Council finds that the Applicant adequately considered identified benefits of the step back for purposes of satisfying the minimum alternatives analysis requirements. As discussed in more detail in the findings below, the City Council further finds that the building, with the mitigating design features and lowered height, will provide benefits to the pedestrian experience, will be compatible with surrounding properties, and will have limited, if any, additional impacts beyond the baseline impacts on the solar access of neighboring properties.

The third and fourth arguments made by the Appellant under the alternatives analysis criterion relate to economic impacts of compliance with the step back standard. The City Council does not accept the Appellant's argument that economic impacts to the Applicant could only be grounds for granting a variance under MMC 19.911.4.B.2, Economic Hardship Criteria. The MMC expressly states that an applicant may choose

¹ While there was some testimony on the record related to the shadow impacts of the building, the specific claim that granting the variance would deprive surrounding properties of solar access was raised for the first time at the City Council hearing. While the City accepted the new argument under its standard of review on appeal, there was not an opportunity for any party to offer new evidence in response to the argument.

which set of criteria to meet, the discretionary relief criteria or the economic hardship criteria. In this case, the City Council finds that the MCC19.911.4.B.1 discretionary relief criteria have been satisfied. The fact that the Applicant could have chosen an alternative set of criteria based solely on economic hardship criteria is not relevant to its decision.

The City Council does not agree that there is insufficient evidence in the record related to the economic impact of the complying the step back standard. The Applicant specifically identified activities that would contribute to increased construction costs in the application and in written and oral testimony at the Commission and City Council Hearings, provided detailed plan sets to illustrate the additional construction and engineering requirements associated with the step back. The Applicant also identified the specific square footage and residential unit that would be lost. There is no competing evidence on the record that challenges the adequacy or accuracy of the evidence provided by the Applicant related to cost. Furthermore, as discussed below, the City Council considered the economic impact that the Applicant claimed would result from compliance with the step back standard. However, the economic impact is not the sole, or even the primary basis for the City Council's conclusion that the applicable discretionary relief criteria have been met.

The Appellant's final claim under the alternatives analysis criterion is that the Applicant did not consider all alternatives. The City Council rejects the claim that an applicant must consider "all" alternatives in order to satisfy the MMC 19.991.4.B.1.a alternatives analysis criterion. The plain text requires a comparison of the variance proposed to the baseline code requirements, at a minimum. Analysis of additional alternatives is allowed, and did in fact occur through the Committee and Commission review processes in this case. However, there is no support in the text of the code for the Appellant's argument that an applicant must consider all alternatives. The City Council also rejects the claim that the Applicant only considered the baseline alternative and the full variance for both the 4th and 5th floors. Instead, and as discussed above, the Applicant considered and responded to the alternative of a 4-foot setback on the 5th story that the Committee recommended the Commission consider. The Applicant also modified the building design in response to design alternatives suggested by the Commission.

The City Council finds that MCC 19.911.4.B.1.a is met.

(2) The proposed variance is determined by the City Council to be both reasonable and appropriate, and it meets one or more of the following criteria:

The City Council finds that the requested step back variance is both reasonable and appropriate. The request is reasonable and appropriate because the applicant has proposed a thoughtful and creatively designed building that creates visual interest through varied materials and building planes using high quality materials. The three-dimensional design features, including the shadowboxes, gives the perception of a step back at the top of the building, and the Applicant has limited the overall height of the building to 8 feet below the maximum allowed height. The building meets the dual goals of provided needed housing and green building certification, and as designed will contribute to and help realize the goal of a vibrant urban center. Furthermore, the City Council finds that it is appropriate for the Applicant to request a variance to the step back because the project promises to be a crucial catalyst in an un-tested real estate market.

The City Council does not accept the Appellant's argument that the variance is not reasonable or appropriate because of the claim it does not meet the purpose and intent of

variances at MMC 19.911. Specifically, the Appellant cites the portion of the variance purpose statement at MMC 19.911.1 that states that variances shall not be granted if they would be detrimental to the public health, safety, or welfare. The Appellant provided no specific explanation of how the step back variance would be detrimental to the public health, safety, or welfare in the written argument submitted to the City Council during the hearing. However, the City Council considered the argument offered during the hearing that a variance to the step back would be detrimental to the public welfare because it would negatively impact the pedestrian experience. The City Council finds this argument to be without merit. As discussed below, the City Council finds that any impact to the pedestrian experience is largely avoided or minimized and that any impacts on pedestrians are appropriately mitigated through building design and limited height. Consequently, the City Council does not agree that the variance would be detrimental to public welfare or public health and safety.

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

The City Council heard testimony related to concerns about the impacts on surrounding properties as well as testimony from downtown businesses in support of the project. The Commission concluded that no impacts on surrounding properties were identified. After considering the testimony and the evidence in the record related to impacts on surrounding properties, the City Council does not necessarily agree that no impacts were identified. However, under the plain text of code, the criterion is satisfied even if there would be impacts to surrounding properties provided the impacts are minimized. The City Council finds that the step back variance either avoids or minimizes impacts to surrounding properties through the building design, height and configuration.

The Appellant argued that the step back variance does not avoid or minimize impacts to surrounding properties and specifically identified three claimed adverse impacts. The Appellant first contends that the variance adversely affects the pedestrian experience. None of the Appellant testimony details the specific effects to the pedestrian experience that would be created by the variance other than arguing that the bulk and mass of the building would be increased. While the overall bulk and mass of the building along the top floor façades would be increased over strict compliance with the step standard, the design elements of the building, including the design elements along the 4th and 5th floor facades, effectively minimize any impact created by an overall increase in mass. Specifically, the City Council finds that the proposed building is not a monolithic structure. Instead, the building provides varied façade materials and planes, including the shadowboxes and bay windows, to create visual interest that enhances the pedestrian experience. While the shadowboxes may technically increase the overall mass of the building, the City Council finds, that the architectural effect will enhance the pedestrian experience. The building also exceeds several design standards, including the window and glazing standards, which further improves the pedestrian experience. Finally, the Applicant provided evidence that complying with step back standard would necessarily result in a 2-foot and 2-inch increase in the overall height of the building. Therefore, the variance further minimizes any impacts to the pedestrian experience that would be created by the overall size of the building. The City Council therefore finds that the variance avoids or minimizes adverse effects on the pedestrian experience.

The Appellant next argues that an increase in size and mass of the building would reduce solar access for surrounding properties. It is inevitable that a 5-story building will cast significant shadow on surrounding properties during certain times of the day.

However, the focus for this variance criterion must be on any additional shadow created by a variance to the step back. The Applicant provided evidence that complying with step back standard would result in a 2-foot and 2-inch increase in the overall height of the building. There is not sufficient evidence in the record for the City Council to conclude whether reducing the height by 2-feet and 2-inches avoids all solar impacts on surrounding properties created by the step back variance. However, even if the solar impact on surrounding properties is not avoided the City Council finds that the step back variance results in a minimum height reduction of over two feet, which in turn minimizes any solar impacts on surrounding properties.

Finally, the Appellant argues that the variance would grant a special benefit to the site that is not available to other properties that must comply with the step back standards. However, any property owner subject to the step back standard could elect, as the Applicant has in this case, to request a variance and go through the variance process. While the variance criteria must be satisfied in order for the variance to be granted, the variance request itself is available to any property owner. Therefore, the City Council rejects the argument that the variance grants a special benefit to the subject site that is not available to other properties.

The City Council finds that the step back variance avoids or minimizes impacts to surrounding properties.

(b) The proposed variance has desirable public benefits.

The City Council finds that the step back variance has several desired public benefits. First, one of the primary public benefits of the project overall is providing needed residential units in the downtown area, and particularly in such close proximity to the light rail system and other transit opportunities. This is further emphasized by Metro's support for the project. The Applicant testified that compliance with the step back standard would result in the elimination of 16 residential units. Therefore, the City Council finds that the variance has the related desirable public benefits of allowing 16 residential units, and providing an appropriate level of residential density in close proximity to transit opportunities.

Second, one of the purposes of the Downtown Mixed-Use Zone is creation of a vibrant urban center. The record includes testimony from project proponents that the downtown area currently lacks development that satisfies this purpose. The subject project promises to be a crucial catalyst in an un-tested real estate market. The City Council finds that the building, as designed with the variance, will be a critical first step in creating a vibrant urban center which has desirable public benefits.

The City Council finds that the proposed variance has desirable public benefits.

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

This criterion encourages flexibility in site planning and development when the existing built or natural environment provide challenges to standard development or site planning.

The City Council agrees with the Planning Commission that this criterion is not applicable.

For the reasons set forth above, the City Council finds that the step back variance is both reasonable and appropriate, and finds that the variance meets two of the three identified criteria. Because it is only necessary to meet one of the identified criterion in order to satisfy MMC 19.911.4.B.1.b, the City Council finds that the criterion has been met.

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

The City Council heard and considered testimony about potential impacts from the step back variance, as well as mitigation of impacts. The City Council finds that identified real or perceived impacts from the variance will be mitigated to the extent practicable.

The building design provides multiple forms of mitigation that either eliminate or reduce impacts on pedestrians and surrounding properties that could be created by the variance. First, the building provides a high-quality and creative design that acts to visually minimize the mass and bulk of the building. The design creates visual interest through distinct visual breaks and three-dimensional massing. A specific example provided by the Applicant during the testimony is the use of shadowboxes to create the perception of a step back. At the request of the Commission, the Applicant added a shadowbox to the Washington Street façade that helps further mitigate any impacts from the step back variance on pedestrians walking on Washington Street or properties located north of the building. Another example is the use of bay windows and the cornice at the top of the building. The overall bulk and mass of the building is further mitigated by the use of varied materials and textures used on the façade. Finally, the unique L-shape of the building and the outdoor patios and common areas serve to further mitigate the overall mass and bulk of the building, particularly along the southern and western façades.

Second, the earned bonuses allow a building that is up to 65 feet in height on the site. However, the Applicant has proposed a compact design for a 5-story building that limits the height to 57 feet, thereby reducing the overall height of the building by 8 feet over the maximum allowed. By limiting the height, the Applicant has mitigated impacts related to the overall size and mass of the building with the variance in place to the maximum extent practicable.

Finally, the Applicant has mitigated impacts on the pedestrian experience, by creating active street fronts that will create space for retail use. The building exceeds the minimum window and glazing standards which will enhance the pedestrian experience. Finally, the building incorporates art that will enhance the pedestrian experience along Washington Street and on the southern façade of the building.

In the written testimony, the Appellant offered two specific reasons that the variance will not be mitigated. The Appellant opines that the shadowboxes do not create an effective illusion of a step back. The City Council does not agree with the Appellants opinion on that point, and finds that the shadowboxes create effective visual breaks and the perception of a step back. The Appellant also argues that the Applicant does not propose any mitigation to the proposed reduction in solar access. However, the City Council finds that the overall reduction in height of 8 feet below the maximum allowed

height mitigates the reduction in solar access to surrounding properties that could be created by the step back variance. Additionally, as discussed above, complying with the step back standard would require a minimum increase in height of 2 feet and 2 inches. That minimum height reduction also mitigates solar impacts.

The City Council finds that as required by MMC 19.911.4.B.1.c, the impacts from the proposed variance will be mitigated to the extent practicable.

The City Council finds that the applicable discretionary relief criteria at MMC 19.911.4.b.1 have been met for the step back variance and the variance shall be approved.

B. Traffic Impacts

The City Council received one written comment that raised general concerns about increased traffic congestion and the potential for the project to contribute to downtown gridlock. The comment did not identify a specific approval standard or explain the relevance of the comment to the City Council's land use decision. Nonetheless, the City Council finds that the Project Galaxy – Transportation Impact Analysis prepared by Kittelson & Associates dated May 5, 2017 included in the application adequately addresses total traffic operations expected from the mixed-use building, as well as anticipated traffic impacts from the garage entrance location. Based upon the results of the Transportation Impact Analysis, the City Council finds that the applicant has provided sufficient evidence that the mixed-use project can be developed with the requested variances while maintaining acceptable levels of service at the study intersections.

1. As described in Finding 1, public notice of the appeal hearing was mailed to parties as identified in the Milwaukie Municipal Code: properties within 300 ft. of the subject site, Interested Persons, the Appellant, the Applicant, the Planning Commission, the Design and Landmarks Committee, and the Historic Milwaukie Neighborhood District Association. Written responses were received as follows:

- Elvis Clark, Ardenwald neighborhood: in opposition to the step-back variance
- Matt Menely: in opposition to the step-back variance
- Megan Gibb, Metro: in support of the application
- J. Wallace Walker, 2306 SE Washington St: in support of the application
- Mike Miller, 4206 SE Somewhere Dr: in opposition to the step back variance
- Ed Zumwalt: in opposition to the step back variance and traffic concerns
- Seth J. King, legal counsel for the Appellant: in opposition to the step back variance

The following persons provided oral testimony at the October 17, 2017 City Council Hearing:

- Kurt Schultz, the Applicant
- Thomas Brenneke, on behalf of Guardian Development, LLC
- Jim Bernard, in support of the application
- Scott Churchill, the Appellant, in opposition to the step back variance
- Seth King, legal counsel for the Appellant
- Nathaniel Taylor, in opposition to the step back variance
- Renee France, legal counsel for the Applicant

V. CONDITIONS OF APPROVAL

The City Council has not requested or required any modifications to the conditions of approval identified in the Commissions' decision. Therefore, the City Council incorporates by reference the conditions of approval included in the Planning Commission's Notice of Decision dated September 14, 2017.

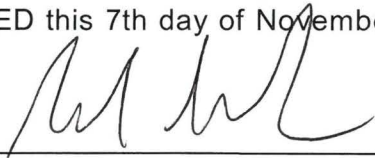
VI. CONCLUSION

The City Council concludes that DR-2017-001 and VR-2017-007 meet all applicable approval criteria and should be approved.

VII. ORDER

Based upon the findings set forth above, the Milwaukie City Council orders that the decision of the Planning Commission be affirmed, the appeal denied, and DR-2017-001 and VR-2017-007 are approved, subject to the identified conditions of approval.

DATED this 7th day of November, 2017.



Mark Gamba, Mayor

ATTEST



Ann Ober, City Manager

APPROVED AS TO FORM:

Jordan Ramis PC



City Attorney