



CITY OF MILWAUKIE

June 20, 2018

Land Use File(s): AP-2018-001

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie City Council on June 19, 2018.

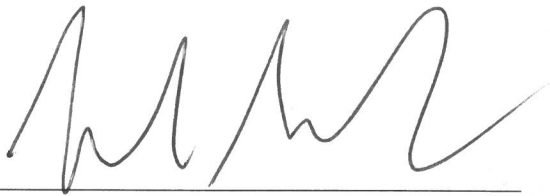
Applicant(s):	Tyler Nishitani, Hacker Architects Leila Aman, City of Milwaukie Development Project Manager
Appellant (if applicable)	Tom Madden (on behalf of the Historic Milwaukie Neighborhood District Association)
Location(s):	10660 SE Harrison St.
Tax Lot(s):	11E36BB 01800
Application Type(s):	Appeal
Decision:	Appeal denied (AP-2018-001); Planning Commission decision affirmed (CSU-2018-002; DR-2018-001; NR-2018-001; P-2018-002)
Review Criteria:	<u>Milwaukie Zoning Ordinance:</u> <ul style="list-style-type: none">• MMC 19.304 Downtown Zones• MMC 19.402 Natural Resources• MMC 19.508 Downtown Site and Building Design Standards• MMC 19.605 Vehicle Parking Quantity Requirements• MMC 19.700 Public Facility Improvements• MMC 19.904 Community Service Uses• MMC 19.907 Downtown Design Review• MMC 19.1006 Type III Review
Neighborhood(s):	Historic Milwaukie

The Milwaukie City Council held a public hearing and deliberated on June 5, 2018 to consider the appeal application submitted by Tom Madden, on behalf of the Historic Milwaukie NDA of the Planning Commission's decision to approve Master land use file #CSU-2018-002, for a proposed new library and associated improvements at 10660 SE Harrison St. The City Council met and adopted its final order affirming the Planning Commission decision on June 19, 2018.

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 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 21st day of June, 2018



Mark Gamba
Mayor

cc: City Council (via email)
Planning Commission (via email)
Denny Egner, Planning Director (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)
NDA(s): Historic Milwaukie (via email)
Interested Persons
Land Use File(s): AP-2018-001

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

In the appeal of an application to approve a Major Modification to a Community Service Use, Downtown Design Review, Natural Resources Review, and Parking Modification for Hacker Architects and the City of Milwaukie

File Nos. AP-2018-001 (appeal), CSU-2018-002; DR-2018-001; NR-2018-001; P-2018-002 (proceedings below)

LAND USE ORDER

I. INTRODUCTION AND PROJECT BACKGROUND

This land use order documents the Milwaukie City Council action regarding an appeal of a decision by the Milwaukie Planning Commission (“Commission”) approving an application filed by Tyler Nishitani, Hacker Architects on behalf of the City of Milwaukie (“Applicant”) for Major Modification to a Community Service Use, Downtown Design Review, Natural Resources Review, and Parking Modification approval for a new library building and associated improvements on the property located at 10660 SE Harrison St in the Downtown Mixed Use Zone.

II. HEARINGS AND PROCESS

The City of Milwaukie (“City”) set the application for a public meeting with the Design and Landmarks Committee on March 5, 2018 (“Committee”). At the meeting, the Committee received oral testimony from the Applicant. The Committee recommended approval of the application with several additional considerations, including a recommendation to add additional windows or other façade elements to the west facing façade of the structure.

On April 10, 2018, the Planning Commission held a public hearing on the set of 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 approved the applications on a vote of 5 members in support, and 1 opposed. The Planning Commission Notice of Decision was mailed on April 13, 2018.

On April 30, 2018, Tom Madden, on behalf of the Historic Milwaukie NDA (“Appellant”), an identified Interested Party, within the required timeframe allowed for appeals 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 June 5, 2018, 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 and directed staff to prepare a final written decision. The City Council considered a draft final written decision on the appeal at its June 19, 2018 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.

Written comments and oral testimony were received from a 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 June 5, 2018, as required by law.

2. As findings supporting its decision, the City Council incorporates the April 13, 2018 Notice of Decision issued by the Planning Commission. The City Council also incorporates the April 3, 2018 Staff Report prepared for the Planning Commission hearing, and the May 25, 2018 Staff Report prepared for the City Council hearing.

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. 2016 Ballot Measure

The Appellant submitted both written and oral testimony suggesting that the language of the 2016 ballot measure to fund the library project is inconsistent with the proposed demolition and construction of a new library. The appellant argues that the ballot measure language was for improvements and repairs rather than a new structure.

The City Council does not accept the Appellant's argument that the Planning Commission did not have the authority to approve the land use applications for the proposed project. The ballot measure language is not germane to the outcome of the land use review process and the Council does not have jurisdiction over this aspect of the process. The ballot measure identifies a funding mechanism, which is not related to land use review. Further, the documentation submitted in the appeal application related to the ballot measure is new evidence. Therefore, the City Council finds that as the materials are not in the record and that the argument is not related to land use review, it cannot be considered.

B. Off-Street Parking

The Appellant submitted both written and oral testimony suggesting that the proposed off-street parking is insufficient. The City Council does not accept this argument, as the Planning Commission findings for approval of a Parking Modification per MMC 19.605.2 show that the proposed parking exceeds the maximum quantity required by Chapter 19.600 of the zoning code for the proposed library and that the excess parking will be available to accommodate potential use of the adjacent Scott Park site. The zoning code does not require off-street parking for parks, and as the proposal already exceeds the maximum number of off-street parking spaces for the proposed library, the proposal meets the zoning code requirement.

4. 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:

- Rebecca Banyas, 2157 SE Sparrow St: in support of the application
- Stephanie Pino-Heiss, 10606 SE Main St: in opposition to the application
- Leslie Schockner, Milwaukie: in support of the application
- Tammie Painter, Milwaukie: in support of the application
- David Anderson, Milwaukie: in support of the application

The following persons provided oral testimony at the June 5, 2018 City Council Hearing:

- Scott Mannhard, Hacker Architects, the Applicant
- Leila Aman, on behalf of the City of Milwaukie
- Ann Ober, on behalf of the City of Milwaukie
- William Silva, on behalf of the Applicant
- Erin Lee, in support of the application
- Robin Chedister, in support of the application
- Ed Zumwalt, in support of the application
- Melissa Perkins, in support of the application
- Damon Talbot, in support of the application
- Tom Madden, the Appellant, in opposition to the application
- Lisa Gunion-Rinker, neutral testimony

V. CONDITIONS OF APPROVAL

The City Council has not requested or required any modifications to the conditions of approval identified in the Commission's decision. Therefore, the City Council incorporates by reference the conditions of approval included in the Planning Commission's Notice of Decision dated April 13, 2018.

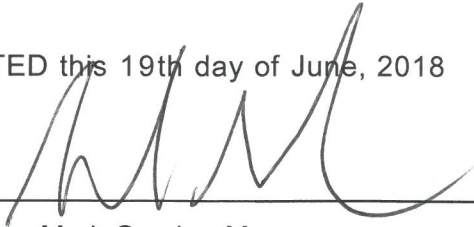
VI. CONCLUSION

The City Council concludes that land use files CSU-2018-002, DR-2018-001, NR-2018-001, and P-2018-002 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 land use files CSU-2018-002, DR-2018-001, NR-2018-001, and P-2018-002 are approved.

DATED this 19th day of June, 2018



Mark Gamba, Mayor

ATTEST



Ann Ober, City Manager

APPROVED AS TO FORM:

Jordan Ramis PC



City Attorney