



PLANNING DEPARTMENT
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Appeal of Land Use Decision

File #AP- 2018-002

RESPONSIBLE PARTIES:

APPELLANT: Michael Martin & Benjamin Brody	
Mailing address: 2725 SE Lake Road, Milwaukie, OR	Zip: 97222
Phone(s):	E-mail:
APPELLANT'S REPRESENTATIVE (if different than above): Bill Kabeiseman	
Mailing address: Bateman Seidel, 888 SE 5th Ave, Portland, OR	Zip: 97204
Phone(s): 503-972-9968	E-mail: billkab@batemanseidel.com

APPEAL INFORMATION:

Appeal of File #: CSU-2018-001 VR2018-003, P2018-001	Review Type of Appealed Decision:	<input type="checkbox"/> I	<input type="checkbox"/> II	<input checked="" type="checkbox"/> III
Site Address: 2905 SE Lake Rd & 11250 SE 27th Ave. Map & Tax Lot(s): 1S1E36CA 01200 & 1S1E36BD 05500				
Comprehensive Plan Designation: ...	Zoning: ...	Size of property:	...	

STANDING FOR APPEAL (check applicable box):

- Applicant or applicant's representative from Type I, II, or III decision
- Person or organization adversely affected or aggrieved by Type II decision
- Person or organization that participated or provided testimony or evidence on the record for Type III decision. List the date and briefly describe the form of participation, testimony, or evidence:

BASIS OF APPEAL (attach a detailed statement describing the basis of the appeal):

Identify which approval criterion or development standard is believed to have been overlooked or incorrectly interpreted or applied and/or which aspect of the proposal is believed to have been overlooked or incorrectly evaluated.

For appeal of a Type II decision, identify either an error as described above or the manner in which the person filing the appeal was adversely impacted or aggrieved by the decision.

SIGNATURE:

ATTEST: I have standing to appeal the land use decision identified on this application and have provided the necessary items and information for filing an appeal per Milwaukie Municipal Code (MMC) Subsection 19.1010.1. To the best of my knowledge, the information provided within this appeal package is complete and accurate.

Submitted by: 

Date: 5/24/18

IMPORTANT INFORMATION ON REVERSE SIDE

SUBMIT

Attach required statement describing basis of appeal.

RESET

WHO IS ELIGIBLE TO SUBMIT A LAND USE APPLICATION (excerpted from MMC Subsection 19.1001.6.A):

Type I, II, III, and IV applications may be initiated by the property owner or contract purchaser of the subject property, any person authorized in writing to represent the property owner or contract purchaser, and any agency that has statutory rights of eminent domain for projects they have the authority to construct.

Type V applications may be initiated by any individual.

PREAPPLICATION CONFERENCE:

A preapplication conference may be required or desirable prior to submitting this application. Please discuss with Planning staff.

REVIEW TYPES:

This application will be processed per the assigned review type, as described in the following sections of the Milwaukie Municipal Code:

- Type I: Section 19.1004
- Type II: Section 19.1005
- Type III: Section 19.1006
- Type IV: Section 19.1007
- Type V: Section 19.1008

THIS SECTION FOR OFFICE USE ONLY:

FILE TYPE	FILE NUMBER	FEE AMOUNT*	PERCENT DISCOUNT	DISCOUNT TYPE	DEPOSIT AMOUNT	DATE STAMP
Master file	AP-2018-002	\$ 1,000			\$	RECEIVED MAY 24 2018 CITY OF MILWAUKIE PLANNING DEPARTMENT
Concurrent application files		\$			\$	
		\$			\$	
		\$			\$	
		\$			\$	
SUBTOTALS		\$		\$		
TOTAL AMOUNT RECEIVED: \$			RECEIPT #:		RCD BY:	
Associated application file #s (appeals, modifications, previous approvals, etc.): CSU-2018-001						
Neighborhood District Association(s): HISTORIC MILWAUKIE						
Notes:						

*After discount (if any)

RECEIVED
MAY 24 2018
CITY OF MILWAUKIE
PLANNING DEPARTMENT

Bateman Seidel

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May 24, 2018

BASIS OF APPEAL

Major Modification to Community Service Use,
Variance Request and Parking Determination
(CSU-2018-001/VR-2018-003/P-2018-001)

The appellants in this matter, Michael Martin and Benjamin Brody, are immediate neighbors to the Lake Road Sports Complex, which the North Clackamas School District (NCSD) proposes to significantly modify. To be clear, the modifications approved in the final decision of the Planning Commission (the "Final Decision") are not minor; with the installation of artificial turf and lighting, they will transform the neighborhood facility to a regional facility and ensure that the facility is used every evening and weekend throughout the entire year, rather than the historic intermittent use dictated by the grass surface and lack of lighting.

Moreover, the appellants are not opposed to the transformation; as the parents of two active and athletic children who have attended Milwaukie Elementary, the eldest of which will be attending Rowe Middle School this fall, the appellants understand the need for children to have access to athletic facilities. However, as proposed, the facility is inadequate in that it does not provide sufficient parking, does not provide adequate pedestrian access and has too many impacts on the neighborhood. The appellants wish that they could fully support this application, but the inadequacies of the application, coupled with the history of non-compliance on this site by NCSD, requires them to appeal this decision by the Planning Commission.

What follows is an identification of the approval criterion or development standard that were overlooked or incorrectly interpreted or applied and the aspects of the proposal that have been overlooked or incorrectly evaluated. However, consistent with MMC Section 19.1010.3.B, the appellants reserve the right to make additional arguments and raise additional issues as a part of this appeal.

BASIS OF APPEAL
Major Modification to Community Service Use,
Variance Request and Parking Determination
(CSU-2018-001/VR-2018-003/P-2018-001)

1. 19.606.3.D – Pedestrian Access & Circulation.

The Final Decision correctly requires NCSD to build a sidewalk connection along the driveway between Lake Road and the proposed parking lot. However, the City should take steps to ensure that this condition is met as NCSD has failed to comply with previous approvals that require the construction of a sidewalk. The use was initially approved in 1971 and that decision required NCSD to provide a separate curbed sidewalk on the east side of the SE 28th driveway, however that condition was never complied with. In addition, both the 2009 (VR 09-01) and 2014 (CSU 13-15) approvals required NCSD to re-stripe the walkway along the paved access point, and NCSD did not comply with either of those conditions. Finally, the City should clarify that the sidewalk that is required must be ADA compliant.

2. 19.600 – Off-Street Parking and Loading.

The Final Decision wrongly concludes that MMC 19.602.3 does not apply; Under MMC 19.602.3.B.1, the proposed major modification will increase the structure footprint by over 100% - the proposal will result in the construction of a new indoor locker rooms for two teams, full concession stand, storage buildings, six concrete dugouts, three backstops, restrooms, and other facilities. Accordingly, the standard in MMC 19.602.3 should have been applied.

More importantly, the Final Decision improperly determined the amount of required parking. The Appellants introduced evidence into the record regarding the parking standard from another jurisdiction, the City of Portland, but the decision references standards from Hillsboro and Happy Valley that only vaguely referenced those standards and that are not part of the record.

As noted above, the Appellants reserve the right to raise new issues or arguments as a part of this appeal consistent with the provisions of the Milwaukie Municipal Code.

3. 19.904.4 – Approval Criteria for Community Services Use.

- A. “The building setback, height limitation, and off-street parking and similar requirements governing the size and location of development in the underlying zone are met.”

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In this case, as discussed further below, NCSD has not provided sufficient off-street parking for the proposed use. In addition, the as also discussed further below, the variance to the height limitation was not properly granted.

- B. “Specific standards for the proposed uses as found in Subsections 19.904.7-11 are met.”

The Final Decision incorrectly found that the proposal is subject to the “Specific Standards for Institutions,” in MMC 19.904.9 rather than the “Specific Standards for Schools” in MMC 19.904.7, because this proposal is specifically for the school district and provides fields for school uses.

This is important because the redevelopment of the current elementary school ball field with dugouts and concrete based bleachers seating 200 (neither of which are currently at that field) will reduce the site area/pupil ratio. By converting the site for use exclusively by high school students, it will take the Milwaukie Elementary/El Puente schools further out of compliance with the site area/pupil ratio.

- C. “The hours and levels of operation of the proposed use are reasonably compatible with surrounding uses.”

The hours of operation of the proposed facility included in the final decision do not match the discussion of the Planning Commission and are not reasonably compatible with the surrounding residential uses. In particular, NCSD proposed very specific limitations on the time of use of the field. Those limitations can be found on page 3 of the final decision, section 2.i. However, the conditions of approval of the final decision do not address hours of operation, but simply limit the use of lights. The limitations proposed by NCSD should be incorporated into the conditions of approval by specific conditions.

- D. “The public benefits of the proposed use are greater than the negative impacts, if any, on the neighborhood.”

The use as approved by the Planning Commission results in too many negative impacts on the neighborhood to balance the benefits of the proposed use. Those impacts can be mitigated through the conditions addressing the following impacts:

1. Limiting the hours of operation to the hours proposed by NCSD
2. Requiring NCSD to provide an parking attendant at the facility, particularly 28th Avenue, to ensure parking by facility patrons does not negatively impact the neighborhood.
3. Reducing the light pollution overflow by requiring lower bollard style lamps to light the pathways instead of overhead, broadcast lighting.

In addition, the Final Decision relies on a Transportation Demand Management (TDM) program to ensure that this criterion will be met. However, NCSD has not provided a TDM program for review and there is way to tell what the TDM program will include, or not include. Without that information, it is impossible to determine if the TDM program will ensure that this criterion is met. At the very least, the city should require notice and opportunity to comment on the TDM program when it comes before the Planning Commission for review.

4. 19.911.4 – Approval Criteria for Variances.

The Final Decision improperly allowed a variance to the maximum height for the light poles. In particular, the Final Decision improperly interpreted 19.911.4.B.1.b(1) and (3) (“The proposed variance avoids or minimizes impacts to surrounding properties.” and “The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.”). In the first instance, as noted above, the Final Decision erred by reviewing the proposal under the Specific Standards for Institutions,” rather that the “Specific Standards for Schools,” thus it improperly allowed a maximum height of 50 feet. Moreover, the increase in height to up to 80 feet does little to minimize impacts to surrounding properties – the light poles will tower over the rest of the structures in the neighborhood and they do not, in any way, respond to the built or natural environment. The light poles could use various techniques to blend in better, including painting or coloring, but none was required.