



CITY OF MILWAUKIE

September 26, 2018

Land Use File(s): VR-2018-005, NR-2018-002, DEV-2018-006

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on September 25, 2018.

- Applicant(s):** Steve Kay (representative for HPA 2, LLC)
- Location(s):** 6115 SE Harmony Rd
- Tax Lot(s):** 1S2E31D 02200
- Application Type(s):** Variance Request, Natural Resource review, Development Review (for multifamily design)
- Decision:** Approved with Conditions
- Review Criteria:** Milwaukie Zoning Ordinance (Milwaukie Municipal Code Title 19):
- Section 19.302 Medium & High Density Residential Zones (incl. R-2)
 - Section 19.402 Natural Resources
 - Chapter 19.500 Supplementary Development Regulations (incl. Subsection 19.505.3, Design Standards for Multifamily Housing)
 - Chapter 19.600 Off-Street Parking and Loading
 - Chapter 19.700 Public Facility Improvements
 - Section 19.906 Development Review (for multifamily design)
 - Section 19.911 Variances
 - Section 19.1006 Type III Review
- Neighborhood(s):** Linwood

Appeal period closes: 5:00 p.m., October 11, 2018

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 Kolver, Associate Planner, at 503-786-7657 or kolverb@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on October 11, 2018, which is 15 days from the date of this decision. Only persons who submitted comments or made an appearance of record at the public hearing have standing to appeal the decision by filing a written appeal. An appeal

of this decision would be heard by the Milwaukie City Council following the procedures of MMC Section 19.1010 Appeals. This decision will become final on the date above if no appeal is filed during the appeal period. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or planning@milwaukieoregon.gov.

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, HPA 2, LLC, has applied for approval to construct a 15-unit apartment building at 6115 SE Harmony Rd. The proposal includes 3 variance requests related to specific development standards, temporary and permanent disturbance of the designated natural resource area on the site (with accompanying mitigation), and a demonstration of consistency with the multifamily design guidelines. The land use application master file number is VR-2018-005, with NR-2018-002 and DEV-2018-006.
2. The subject property is approximately 1.33 acres in size and is undeveloped. The property is bisected by Minthorn Creek and a delineated wetland, which constitute a Water Quality Resource (WQR). The proposed development, including the apartment building, off-street parking area, and associated walkways and site amenities, will disturb approximately 10,000 sq ft of WQR (combined temporary and permanent disturbance). The applicant has requested variances to the following development standards: (1) front yard setback, (2) side yard height plane limit, and (3) parking lot landscaping. The proposed structure is also subject to the City's design guidelines for multifamily housing.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.302 Medium & High Density Residential Zones (incl. R-2)
 - MMC Section 19.402 Natural Resources
 - MMC Chapter 19.500 Supplementary Development Regulations (incl. Subsection 19.505.3, Design Standards for Multifamily Housing)
 - MMC Chapter 19.600 Off-Street Parking and Loading
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.906 Development Review (for multifamily design)
 - MMC Section 19.911 Variances
 - MMC Section 19.1006 Type III Review
4. MMC Section 19.1006 Type III Review
The application has been processed and public notice provided in accordance with MMC 19.1006. A public hearing was held on September 25, 2018, as required by law.
5. MMC Section 19.302 Medium & High Density Residential Zones (incl. R-2)
MMC 19.302 establishes standards for the medium- and high-density residential zones, including the R-2 zone. The subject property is zoned R-2.

a. MMC Subsection 19.302.2 Allowed Uses in Medium & High Density Residential Zones

MMC 19.302.2 lists the permitted and conditional uses in the R-2 zone. Multifamily residential uses are permitted outright in the R-2 zone.

The proposed multifamily development is allowed in the R-2 zone.

b. MMC Subsections 19.302.4 and 19.302.5 Development Standards

MMC 19.302.4 and 19.302.5 provide applicable development standards for the R-2 zone, summarized in Table 5-b:

Table 5-b Applicable R-2 Development Standards		
Standard	R-2 Requirement	Proposed Development
Front Yard	15 ft (not including special setback for Harmony Rd)	12 ft (See Finding 11 for discussion of requested variance from this standard.)
Side Yard	5 ft	5 ft and >50 ft
Rear Yard	15 ft	>180 ft
Maximum Building Height Height Exceptions (MMC 19.302.5.E)	3 stories or 45 ft (lesser of) Plus 1 additional story if an additional 10% of site area is retained in vegetation	4 stories, approx. 35 ft (including daylight basement) (Minimum vegetation is >60%, which allows an additional story.)
Side Yard Height Plane Limit (w/ slope of plane at 45 degrees)	25 ft	35 ft (See Finding 11 for discussion of requested variance from this standard.)
Maximum lot coverage	45%	<11%
Minimum vegetation (>50% of vegetation area must be suitable for outdoor recreation by residents)	15% (for 58,000-sq-ft site, at least 4,350 sq ft must be suitable for outdoor recreation)	>60% (See Finding 7-e for discussion of multifamily common open space.)
Density requirements	Min. = 15 units (@11.6 units/acre) Max = 23 units (@17.4 units/acre)	15 units
Front Yard Minimum Vegetation	40% (may provide less if vehicle turnaround area is needed onto collector or arterial street)	Approx. 41% (Front yard includes parking & maneuvering area for turnaround onto Harmony Rd, an arterial street)
Minimum site size for multifamily development	40,000 sq ft (5,000 sq ft for first unit; 2,500 sq ft/unit for additional units)	Approx. 58,000 sq ft

The Planning Commission finds that, as noted in the table above and per the requested variances addressed in Finding 11, the applicable development standards of the R-2 zone are met.

The Planning Commission finds that as proposed, and with approval of the relevant variance requests addressed in Finding 11, the development meets all applicable standards of MMC 19.302 for the underlying R-2 zone.

6. MMC Section 19.402 Natural Resources

MMC 19.402 establishes regulations for designated natural resource areas. The standards and requirements of MMC 19.402 are an acknowledgment that many of the riparian, wildlife, and wetland resources in the community have been adversely impacted by development over time. The regulations are intended to minimize additional negative impacts and to restore and improve natural resources where possible.

a. MMC Subsection 19.402.3 Applicability

MMC 19.402.3 establishes applicability of the Natural Resource (NR) regulations, including all properties containing Water Quality Resources (WQRs) and Habitat Conservation Areas (HCAs) as shown on the City's Natural Resource (NR) Administrative Map.

Minthorn Creek flows west to east across the middle of the subject property, and a small delineated wetland (approximately 0.12 acres) extends along the north side of the creek. The City's NR Administrative Map does not show any WQR designations on the subject property, but natural resources that meet the WQR parameters established in MMC Table 19.402.15 are considered to be WQR features and are subject to the regulations of MMC 19.402.

As presented in the applicant's submittal materials, the proposed development will temporarily disturb approximately 4,350 sq ft of WQR area and permanently disturb approximately 2,700 sq ft of WQR area, for a total of almost 7,100 sq ft. At that scale, the proposed activity is not listed as exempt according to the standards outlined in MMC 19.402.4.

The Planning Commission finds that the requirements of MMC 19.402 are applicable to the proposed activity.

b. MMC Subsection 19.402.7 Activities Requiring Type II Review

MMC 19.402.7 establishes that certain activities within a designated WQR and/or HCA are subject to Type II review in accordance with MMC 19.1005. As per MMC 19.402.7.E, this includes boundary verifications that propose substantial corrections to the NR Administrative Map, including identifying the precise location of wetlands, as required by MMC 19.402.15.A.

Although the applicant did not propose a correction to the NR Administrative Map, which showed no WQR or HCA designations on the subject property, the applicant's submittal materials identify primary protected water features in the form of Minthorn Creek and an adjacent delineated wetland. A Type II boundary verification is required to properly show

these WQR features on the NR Administrative Map. Since the proposed activity requires other applications that are being processed concurrently with Type III review, the boundary verification will be incorporated into that higher review as per MMC Subsection 19.1001.6.B.1, which provides that concurrent applications be processed according to the highest numbered review type, with a single decision to be issued that includes findings for all concurrent applications.

The Planning Commission finds that the necessary boundary verification for WQR features shall be processed concurrently with Type III review.

c. MMC Subsection 19.402.8 Activities Requiring Type III Review

MMC 19.402.8 establishes that certain activities within a designated WQR and/or HCA are subject to Type III review in accordance with MMC 19.1006. As per MMC 19.402.8.A.1, this includes activities allowed in the base zone that are not otherwise exempt or permitted as a Type I or II activity.

The scale of disturbance proposed within the identified WQR area on the subject property exceeds the levels allowed by Type I and II review, as provided in MMC 19.402.6 and 402.7, respectively. As such, the activity is subject to Type III review and the discretionary process established in MMC 19.402.12.

The Planning Commission finds that the proposed activity is subject to Type III review.

d. MMC Subsection 19.402.9 Construction Management Plans

MMC 19.402.9 establishes standards for construction management plans, which are required for projects that disturb more than 150 sq ft of designated natural resource area. Construction management plans must provide information related to site access, staging of materials and equipment, and measures for tree protection and erosion control.

The applicant's submittal materials include a preliminary grading and erosion control plan that provides the information required by MMC 19.402.9 and effectively serves as a construction management plan. As discussed in Finding 5-e, below, a condition has been established to require revisions to the plans to reflect actual WQR disturbance and tree removal, and the construction management plan will be adjusted accordingly.

As conditioned, the Planning Commission finds that the construction management plan provides sufficient information for natural resource protection.

e. MMC Subsection 19.402.11 Development Standards

MMC 19.402.11 establishes development standards for projects that impact a designated natural resource, including requirements to protect natural resource areas during development and general standards for required mitigation (e.g., plant species, size, spacing, and diversity).

In particular, Subsection 11-C establishes mitigation requirements for disturbance within WQRs. The requirements vary depending on the existing condition of the WQR, according to the categories established in MMC Table 19.402.11.C. For Class A "Good" WQR conditions, the table requires that the applicant submit a plan for

mitigating water quality impacts related to the development; for Class B “Marginal” and Class C “Poor” WQR conditions, the table requires restoration and mitigation with native species using a City-approved plan.

As proposed, the development will permanently impact approximately 5,650 sq ft and temporarily disturb approximately 4,365 sq ft within the WQR. Based on existing conditions, the portion of the WQR on the south side of Minthorn Creek is categorized as Class B (“Marginal”) and Class C (“Poor”). For both categories, the code requires restoration and mitigation with native species using a City-approved plan. The applicant has proposed to plant an area of approximately 7,400 sq ft on the south side of Minthorn Creek with native trees, shrubs, and ground cover. As proposed, the mitigation plantings will meet the minimum requirements established in Subsection 11-B.

ESA, the City’s consultant for on-call natural resource services, evaluated the applicant’s WQR Site Assessment and made several recommendations to ensure adequate mitigation. One suggestion was to increase the replacement ratio for permanently impacted WQR from the proposed 1.25:1 to 1.5:1 or 2:1. That is, for every 1 sq ft of WQR that will be permanently disturbed by development, 1.5 or 2 sq ft of area within the remaining WQR should be treated with mitigation measures. ESA also noted some discrepancies between the applicant’s revised plan sheets and the WQR Site Assessment that need to be reconciled with respect to the number and species of plantings proposed within the mitigation area. In addition, the density of proposed plantings is well under the standard recommended ratio of 5 trees and 25 shrubs per 500 sq ft of disturbance. ESA recommended installation of a split-rail fence to demarcate the remaining protected WQR, dense shrub plantings on the downslope to prevent off-trail use and potential damage to the WQR slope, and correction of an apparent mapping error that currently shows grading below the ordinary high-water line in one location. As per the discussion in Finding 6-f, below, conditions have been established to implement ESA’s recommendations by requiring revisions to the relevant plan sheets to provide appropriate protection of the WQR and adequate mitigation for the proposed disturbance.

As conditioned, the Planning Commission finds that the applicable development standards of MMC 19.402.11 are met.

f. MMC Subsection 19.402.12 General Discretionary Review

MMC 19.402.12 establishes the discretionary review process for activities that substantially disturb designated natural resource areas.

(1) MMC Subsection 19.402.12.A Impact Evaluation and Analysis

MMC 19.402.12.A requires an impact evaluation and alternatives analysis in order to determine compliance with the approval criteria for discretionary review and to evaluate alternatives to the proposed development. A technical report prepared by a qualified natural resource professional is required and should include the following components:

- Identification of ecological functions
- Inventory of vegetation
- Assessment of water quality impacts

- Alternatives analysis
- Demonstration that no practicable alternative method or design exists that would have a lesser impact on the resource and that impacts are mitigated to the extent practicable
- Mitigation plan

The applicant's submittal materials include a WQR Site Assessment, a technical report prepared by SWCA Environmental Consultants. SWCA is a nationwide environmental consulting firm providing a range of services, including natural resource assessment and mitigation. The WQR Site Assessment includes an assessment of ecological functions, inventory of vegetation and impact evaluation consistent with the required components listed above. The report also provides a mitigation plan for permanent and temporary impacts to the WQR.

The applicant's narrative discusses 3 alternatives to the proposed development configuration: (1) locating the apartment building in the southwest corner of the site, the parking area in the southeast corner of the site, and providing direct access from Harmony Rd; (2) locating the building in the southwest corner of the site, parking in the southeast corner, and extending the shared access driveway across the front of the site; and (3) providing access from Railroad Ave to the north and bridging the creek to access the southern portion of the site. The applicant's narrative concludes that the proposed development is the most practicable alternative that results in the least impact to the natural resources on the site.

ESA's peer review of the applicant's materials includes a note that the alternatives analysis did not provide estimates of potential WQR impacts for the various alternatives and did not address the possibility of reducing the footprint of off-street parking by locating some or all spaces beneath the proposed building. Staff notes that other alternatives for consideration include (1) further reducing the front yard setback to reduce WQR disturbance and (2) requesting a variance to exceed the maximum allowed building height to create a smaller footprint with a 4- or 5-story structure.

While acknowledging the points raised by ESA and staff, the Planning Commission finds that the applicant's materials provide a sufficient amount of information for evaluating alternatives and reviewing the proposed activity against the approval criteria of Subsection 12-B. This standard is met.

(2) MMC Subsection 19.402.12.B Approval Criteria

MMC 19.402.12.B provides the approval criteria for discretionary review as follows:

- Avoid – The proposed activity avoids the intrusion of development into the WQR and/or HCA to the extent practicable, and has less detrimental impact to the natural resource areas than other practicable alternatives.

The subject property has a number of significant constraints, with Minthorn Creek and the adjacent wetland bisecting the site, an active railway line along the northern boundary, and Harmony Rd along the southern boundary with limited

access as an arterial street. The southern half of the site is the most reasonable location for development, but given the extent of the WQR boundary there, it is difficult to configure a site plan that provides a building large enough to meet the minimum density requirement as well as the associated required parking without some WQR disturbance and/or a host of variances from other code standards.

- **Minimize** – If the applicant demonstrates that there is no practicable alternative to avoid disturbance of the natural resource, then the proposed activity shall minimize detrimental impacts to the extent practicable.

It is not reasonable or practicable to require the applicant to provide most or all of the required parking under the building, as the construction costs would appear to be prohibitive. Switching the building and parking locations would not result in any significant difference in disturbance. A building with a smaller footprint would need to be at least 1 or 2 stories taller, which significantly increases the complexity and cost of construction, in addition to presenting issues of building mass and compatibility with adjacent properties.

As per the discussion in Finding 11, the requested front yard setback of 12 ft strikes a reasonable balance between pulling the new building away from the WQR while maintaining some space for a potential future widening of Harmony Rd. However, ESA provided recommendations aimed at further reducing impacts to the WQR. These include revising the grading plan to clarify that no grading will occur below the ordinary high-water line and eliminating the looped aspect of the proposed pedestrian trail to limit encroachment into the WQR. Conditions have been established to incorporate these recommendations for minimizing impacts.

During the public hearing, the Planning Commission expressed a concern that the final calculations for stormwater management might require surface facilities for stormwater treatment, which could have further impacts on the WQR. The applicant agreed to a condition that any additional stormwater facilities that may be necessary shall be provided in such a way that does not result in new permanent WQR disturbance. A condition has been established to this effect.

- **Mitigate** – If the applicant demonstrates that there is no practicable alternative that will avoid disturbance of the natural resource, then the proposed activity shall mitigate for adverse impacts to the resource area. The applicant shall present a mitigation plan that demonstrates compensation for detrimental impacts to ecological functions, with mitigation occurring on the site of the disturbance to the extent practicable, utilization of native plants, and a maintenance plan to ensure the success of plantings.

As noted in Finding 6-e, above, the applicant's submittal includes a mitigation plan for the proposed WQR disturbance, with native trees, shrubs, and ground cover planted within an approximately 7,400-sq-ft area on the south side of Minthorn Creek. The plan presents a rationale for the selection of various species based on the site conditions and emphasizes the importance of removing invasive

plants within the mitigation area. The proposal estimates a temporary WQR disturbance of approximately 4,365 sq ft and permanent WQR impacts of approximately 5,650 sq ft.

According to ESA's review of the applicant's original WQR Site Assessment, the WQR boundary along the south side of Minthorn Creek was not originally calculated accurately where the slope of the bank exceeds 25%. The WQR actually extends farther south where the new building is proposed, with the result that a larger area of the WQR will be permanently disturbed than was understood at the time of the application submittal. A condition has been established to require revisions to the mitigation plan to account for this additional permanent disturbance. ESA also noted that the proposed picnic table and benches should be considered permanent disturbance and accounted for accordingly.

As noted earlier in Finding 6-e, ESA reported that a replacement ratio of 1.5:1 is a common mitigation requirement for permanent impacts to WQR areas. For the proposed permanent WQR disturbance of 5,650 sq ft, such a ratio would require a mitigation area of 8,475 sq ft elsewhere within the WQR. Temporary disturbances are usually mitigated on a 1:1 basis, so an additional 4,365 sq ft would be added to the mitigation tally, for a total of 12,840 sq ft.

As proposed, the mitigation planting area on the south side of Minthorn Creek is only 7,400 sq ft. Excluding the 4,365 sq ft of temporary WQR disturbance that should be restored anyway, this leaves only 3,035 sq ft of proposed mitigation area for 5,650 sq ft of permanent WQR impacts, which is a replacement ratio of only 0.5:1. Since the existing condition of the WQR area being impacted is categorized as only either "Marginal" or "Poor," and since the intent of mitigation is to restore WQR areas to "Good" conditions, it is reasonable to suggest that enhancement of temporary impact areas could be counted toward the 1.5:1 replacement mitigation ratio recommended for permanent impacts. Even with this allowance, the proposed 7,400-sq-ft mitigation planting area is less than the 8,475 sq ft recommended for 5,650 sq ft of permanent WQR disturbance alone. A condition has been established to expand the mitigation area as necessary to achieve a replacement ratio of 1.5:1 for permanent WQR disturbance, including installation of mitigation plantings in the WQR on the north side of Minthorn Creek as necessary.

As proposed, the number of mitigation plantings is well below the ratio of 5 trees and 25 shrubs per 500 sq ft of disturbed area. This is the planting density recommended in MMC Subsection 19.402.11.D.2 for HCAs and is understood to be a reasonable planting density for WQR areas as well. A condition has been established to require this planting density within the entire mitigation area, with more detail about what native species will be used where. Plant species shall be selected based on their appropriateness for specific site conditions (e.g., if below the ordinary high-water line, within the delineated wetland, in upland areas, etc.).

ESA noted that the mitigation plan does not explain how temporary grading impacts within the WQR will be restored, nor does it provide much discussion of potential stormwater impacts to the creek. Although the plan emphasizes the removal of invasive plants within the mitigation area itself, ESA has recommended that invasive plants be removed within a 10-ft buffer outside the boundary of all mitigation planting areas, to improve the chances of mitigation success. ESA also recommended the installation of a split-rail fence along the edge of the adjusted pathway and dense shrub plantings on the downslope to prevent off-trail use and potential damage to the WQR slope. Conditions have been established to address these issues and incorporate ESA's recommendations, including a requirement for boosted plantings and ground cover below the proposed stormwater outfall to prevent erosion.

With the revisions required by the established conditions of approval, the proposed mitigation will adequately compensate for detrimental impacts to ecological functions resulting from the temporary and permanent disturbance of the WQR.

As conditioned, the Planning Commission finds that the proposed development meets the approval criteria for discretionary review as established in MMC 19.402.12.B.

The Planning Commission finds that, as conditioned, the proposed development meets the applicable discretionary review standards of MMC 19.402.12.

g. MMC Subsection 19.402.15 Boundary Verification and Map Administration

MMC 19.402.15 establishes standards for verifying WQR and HCA boundaries and for administering the City's Natural Resource (NR) Administrative Map.

WQR locations are determined based on the provisions of MMC Table 19.402.15. For streams, the WQR includes the feature itself and a vegetated corridor that extends 50 ft from the ordinary high-water mark or 2-year recurrence interval flood elevation. Where the slope exceeds 25% for less than 150 ft, the vegetated corridor is measured with a 50-ft width from the break in the 25% slope. For wetlands, a wetland delineation report prepared by a professional wetland specialist and approved by the Department of State Lands (DSL) is required.

For HCAs, the City's NR Administrative Map is assumed to be accurate with respect to location unless challenged by the applicant, using the procedures outlined in either MMC Subsection 19.402.15.A.1 or MMC Subsection 19.402.15.A.2.b.

The WQR Site Assessment prepared by SWCA includes a detailed topographic map showing the boundaries of the WQR using the provisions of MMC Table 19.402.15. In addition, the submittal materials include a wetland delineation report prepared in accordance with DSL standards as well as a formal letter of concurrence by DSL.

As noted in Finding 6-f, above, according to ESA's review, the WQR boundary along the south side of Minthorn Creek that was presented in the applicant's original submittal materials was not accurately calculated where the slope of the bank exceeds 25%. The result is that the WQR extends farther south where the new building is proposed. A condition has been established to require revisions to the mitigation plan and other relevant plan sheets to reflect

the correct WQR boundary, so the City's NR Administrative Map can be updated to show the correct location of the designated natural resources on the subject property.

The NR Administrative Map does not show any HCA on the subject property. The applicant is not challenging the map's accuracy with respect to the HCA designation and the City does not have the authority to initiate a detailed HCA as part of this land use application. The NR Administrative Map will continue to show no HCA designation on the subject property.

As conditioned, the Planning Commission finds that the City's NR Administrative Map will be adjusted to reflect the accurate location of the WQR on the site, based on the detailed information provided by the applicant with respect to the delineated wetland and the ordinary high-water line and adjacent slopes along Minthorn Creek.

The Planning Commission finds that, as conditioned, the proposed development, including disturbance of the designated natural resource area on the subject property, meets all applicable standards of MMC 19.402.

7. MMC Chapter 19.500 Supplementary Development Regulations

MMC 19.500 provides additional standards for a variety of development types and locations. The applicable portions of this section are addressed below.

a. MMC Subsection 19.501.2 Yard Exceptions

MMC Subsection 19.501.2.A requires additional building setbacks from the centerline of several streets in the city, including Harmony Rd, which requires an additional yard area of 40 ft from centerline plus the applicable yard requirement.

The right-of-way width along the subject property's Harmony Rd frontage is 60 ft, or 30 ft in each direction from the centerline. For the proposed development, an additional building setback of 10 ft is required, added on to the 15-ft front yard setback required in the R-2 zone. The applicant has requested a variance from these combined setbacks and has proposed a building setback of 12 ft. A discussion of this variance request is provided in Finding 11.

With the approved variance request as discussed in Finding 11, this standard is met.

b. MMC Subsection 19.504.1 Clear Vision Areas

MMC 19.504.1 refers to clear vision area requirements in MMC Chapter 12.24.

The proposal will not have any negative impact on the current vision clearance conditions along Harmony Rd because no new access is proposed and the only significant landscaping changes along this frontage involve the removal of vegetation.

As proposed, the applicable clear vision requirements are met.

c. MMC Subsection 19.504.7 Minimum Vegetation

MMC 19.504.7 requires that no more than 20% of the required vegetation area may be covered with bark mulch.

As proposed, over half the subject property will be vegetated, including mitigation plantings consisting of native species trees, shrubs, and ground cover. Very little of the vegetation areas on the site will be covered with bark mulch.

This standard is met.

d. MMC Subsection 19.504.9 On-Site Circulation and Walkways

MMC 19.504.9 is applicable to all development subject to MMC Chapter 19.700, except single-family and multifamily residential development.

This subsection is not directly applicable to the proposed multifamily residential development.

e. MMC Subsection 19.505.3 Multifamily Housing

MMC 19.505.3 establishes design standards for multifamily housing, to facilitate the development of attractive housing that encourages multimodal transportation and good site and building design. The requirements of this subsection are intended to achieve the principles of livability, compatibility, safety and functionality, and sustainability. The design elements, established in MMC Subsection 19.505.3.D, are applicable to all new multifamily housing developments with 3 or more units.

MMC Subsection 19.505.3.C provides both an objective and a discretionary review process for multifamily housing development, requiring either Type I or Type II development review, respectively, pursuant to MMC Section 19.906. However, a project can be reviewed using only one of the two review processes and may not use some of the objective standards and some of the discretionary guidelines in one application.

The proposed 15-unit multifamily housing development is subject to review against the design elements established in MMC 19.505.3. Because the proposed design does not meet all of the clear and objective design standards, the applicant has opted to use the discretionary Type II review process to demonstrate the proposal’s consistency with the design guidelines, summarized in Table 7-e:

**Table 7-e
 Design Guidelines—Multifamily Housing**

Design Element	Guideline	Findings
<p>1. Private Open Space</p>	<p>The development should provide private open space for each dwelling unit, with direct access from the dwelling unit and visually and/or physically separate from common areas.</p> <p>The development may provide common open space in lieu of private open space if the common open space is well designed, adequately sized, and functionally similar to private open space.</p>	<p><i>Fourteen (14) of the 15 proposed units each have a private patio or balcony at least 85 sq ft in size. In lieu of a private open space for the 1 studio apartment, the proposed development includes a common open space area with a walking path, picnic table, and benches. This common open space is designed to protect the WQR mitigation area while providing an opportunity for residents to walk, sit, or passively recreate outside.</i></p> <p><i>The proposed design is consistent with this guideline.</i></p>

Table 7-e
Design Guidelines—Multifamily Housing

Design Element	Guideline	Findings
<p>2. Public Open Space</p>	<p>The development should provide sufficient open space for the purpose of outdoor recreation, scenic amenity, or shared outdoor space for people to gather.</p>	<p><i>The design includes a common open space approximately 7,650 sq ft in area. The open space is almost entirely within the WQR along the south side of Minthorn Creek and includes the mitigation planting area, along with a walking path, picnic table, and benches. Although much of this open space is only visually available to users (in order to protect the WQR and mitigation plantings), it does provide an important scenic amenity and a place for people gather in some fashion. The proposed design is consistent with this guideline.</i></p>
<p>3. Pedestrian Circulation</p>	<p>Site design should promote safe, direct, and usable pedestrian facilities and connections throughout the development. Ground-floor units should provide a clear transition from the public realm to the private dwellings.</p>	<p><i>Sidewalks and walkways are shown throughout the development to provide access between buildings, open space, parking, and the street. As discussed below in the finding for Design Element 10 (Recycling), a condition has been established to require the striping of a pedestrian walkway in the shared accessway to connect the new building with the shared garbage/recycling facility on the adjacent apartment property to the west. A clear transition from the public realm to the ground-floor units by locating unit entrances within the building lobby, providing a railing around private open space areas, and locating landscaping areas between walkways and the front of the building. The proposed design is consistent with this guideline.</i></p>
<p>4. Vehicle and Bicycle Parking</p>	<p>Vehicle parking should be integrated into the site in a manner that does not detract from the design of the building, the street frontage, or the site. Bicycle parking should be secure, sheltered, and conveniently located.</p>	<p><i>To minimize impacts to the WQR, the on-site parking area is located to the side of the proposed development and not between the building and Harmony Rd, with access provided through a shared drive off to the side. The original proposal was to designate a bicycle parking area inside each unit, which would be secure and sheltered. However, as discussed in Finding 8-e, to ensure that the required bicycle parking is conveniently located, a condition has been established to require the provision of bicycle parking somewhere other than the interior of each unit, with at least half of the spaces covered or enclosed and with all spaces meeting the applicable standards of MMC Section 19.609. As conditioned, the proposed design is consistent with this guideline.</i></p>

Table 7-e
Design Guidelines—Multifamily Housing

Design Element	Guideline	Findings
<p>5. Building Orientation and Entrances</p>	<p>Buildings should be located with the principal façade oriented to the street or a street-facing open space such as a courtyard. Building entrances should be well-defined and protect people from the elements.</p>	<p><i>The primary building entrance faces Harmony Rd, and the 85-ft width of the front façade is more than 50% of the 164-ft lot width. The primary ground-floor entrance is emphasized between 2 columns and leads into a lobby area that protects all unit entrances from the elements.</i></p> <p><i>The proposed design is consistent with this guideline.</i></p>
<p>6. Building Façade Design</p>	<p>Changes in wall planes, layering, horizontal & vertical datums, building materials, color, and/or fenestration should be incorporated to create simple and visually interesting buildings</p> <p>Windows and doors should be designed to create depth and shadows and to emphasize wall thickness and give expression to residential buildings.</p> <p>Windows should be used to provide articulation to the façade and visibility into the street.</p> <p>Building facades should be compatible with adjacent building facades.</p> <p>Garage doors shall be integrated into the design of the larger façade in terms of color, scale, materials, and building style.</p>	<p><i>The building elevations show a variety of trim elements and changes in materials to highlight the building entrance, demarcate the different floors, and provide overall visual interest. Windows and doors are inset within trim to provide depth, shadows, and expression. The windows on the front façade provide articulation and allow visibility to the street. The general design has some similarity to the recently constructed apartment building adjacent to the west. The door of the attached garage is oriented to face the side of the parking area and will be painted a color to match the rest of the building.</i></p> <p><i>The proposed design is consistent with this guideline.</i></p>
<p>7. Building Materials</p>	<p>Buildings should be constructed with architectural materials that provide a sense of permanence and high quality, incorporating a hierarchy of building materials that are durable.</p> <p>Street-facing facades should consist predominantly of a simple palette of long-lasting materials such as brick, stone, stucco, wood siding, and wood shingles.</p> <p>Split-faced block and gypsum reinforced fiber concrete (for trim elements) should only be used in limited quantities.</p> <p>Fencing should be durable, maintainable, and attractive.</p>	<p><i>The design utilizes durable materials to provide a sense of permanence and quality, including Hardi Board lap siding and paneling, with corner trim and architectural comp shingles. A stone veneer that was originally proposed has been removed and replaced with a simple, clean panel. A high-quality black metal fencing has been proposed to replace the chain-link fencing that was part of the original submittal.</i></p> <p><i>The proposed design is consistent with this guideline.</i></p>

Table 7-e
Design Guidelines—Multifamily Housing

Design Element	Guideline	Findings
<p>8. Landscaping</p>	<p>Landscaping should be used to provide a canopy for open spaces and courtyards, and to buffer the development from adjacent properties. Existing, healthy trees should be preserved whenever possible. Landscape strategies that conserve water should be included. Hardscapes should be shaded where possible, as a means of reducing energy costs (heat island effect) and improving stormwater management.</p>	<p><i>The planting area for mitigation of WQR impacts, which also serves as the common open space, will be planted with native trees and shrubs sufficient to provide canopy coverage for well over 33% of the open space. Unfortunately, the location of the few existing trees within the project area prevents the preservation of most of them, due to conflicts with the building footprint or parking area. New trees along the western perimeter of the parking area will provide some shade, and as discussed in Finding 11-c, a condition has been established to require the provision of additional interior landscaping to shade the parking area.</i></p> <p><i>As conditioned, the proposed design is consistent with this guideline.</i></p>
<p>9. Screening</p>	<p>Mechanical equipment, garbage collection areas, and other site equipment and utilities should be screened so they are not visible from the street and public or private open spaces. Screening should be visually compatible with other architectural elements in the development.</p>	<p><i>As proposed, all mechanical and communications equipment will be screened from the street, private open space areas, and the common open space. The new building will share the existing garbage/recycling facility on the adjacent apartment property to the west, which is enclosed by a sight-obscuring fence.</i></p> <p><i>The proposed design is consistent with this guideline.</i></p>
<p>10. Recycling Areas</p>	<p>Recycling areas should be appropriately sized to accommodate the amount of recyclable materials generated by residents. Areas should be located such that they provide convenient access for residents and for waste/recycling haulers. Recycling areas located outdoors should be appropriately screened or located so they are not prominent features viewed from the street.</p>	<p><i>Due to the constrained parking and maneuvering area, which does not provide adequate turnaround room for a collection vehicle, the new apartment building will share the existing garbage/recycling facility on the adjacent apartment property to the west. The applicant has proposed to increase the frequency of collection from once a week to twice a week to accommodate the anticipated increase in volume. In consideration of the considerable walking distance from the new building to the shared garbage/recycling facility and the need to ensure pedestrian safety, a condition has been established to require that a striped pedestrian walkway be established from the southern end of the new parking area through the shared access drive to the shared garbage/recycling collection.</i></p> <p><i>As conditioned, the proposed design is consistent with this guideline.</i></p>

Table 7-e
Design Guidelines—Multifamily Housing

Design Element	Guideline	Findings
11. Sustainability	<p>Development should optimize energy efficiency by designing for building orientation for passive heat gain, shading, day-lighting, and natural ventilation. Sustainable materials, particularly those with recycled content, should be used whenever possible. Sustainable architectural elements should be incorporated to increase occupant health and maximize a building's positive impact on the environment.</p> <p>When appropriate to the context, buildings should be placed on the site giving consideration to optimum solar orientation. Methods for providing summer shading for south-facing walls, and the implementation of photovoltaic systems on the south-facing area of the roof, are to be considered.</p>	<p><i>Although solar panels are not proposed at this time, the proposed roof design does not preclude the installation of solar panels in the future. The building has been oriented to provide as much solar exposure as possible. The proposed windows within the units will be operable, and sun shades will be provided.</i></p> <p><i>The proposed design is consistent with this guideline.</i></p>
12. Privacy Considerations	<p>Development should consider the privacy of, and sight lines to, adjacent residential properties, and should be oriented and/or screened to maximize the privacy of surrounding residences.</p>	<p><i>There are no residential structures within 30 ft of the new building. The proposed patios and balconies are not oriented toward either of the adjacent properties on either site of the subject property. The landscaping proposed along the western perimeter of the parking area and along the rear of the east side of the building will provide additional screening and privacy for the adjacent residential properties.</i></p> <p><i>The proposed design is consistent with this guideline.</i></p>
13. Safety	<p>Development should be designed to maximize visual surveillance, create defensible spaces, and define access to and from the site. Lighting should be provided that is adequate for safety and surveillance, while not imposing lighting impacts to nearby properties. The site should be generally consistent with the principles of Crime Prevention Through Environmental Design (CPTED):</p> <ul style="list-style-type: none"> • Natural Surveillance • Natural Access Control • Territorial Reinforcement 	<p><i>The building elevations and floor plans demonstrate consistency with CPTED principles. The placement and frequency of windows on all sides of the building will allow views of the public sidewalk, parking lot, and common open space area. The locations of fencing and walkways will naturally control access to and from the site. Parking lot lighting and attached building lighting will enhance safety and surveillance.</i></p> <p><i>The proposed design is consistent with this guideline.</i></p>

The Planning Commission finds that, as conditioned, the proposed development is consistent with the design guidelines for multifamily housing as established in MMC 19.505.3.

As proposed and conditioned, the Planning Commission finds that the applicable standards of MMC 19.500 are met.

8. MMC Chapter 19.600 Off-Street Parking and Loading

MMC 19.600 regulates off-street parking and loading areas on private property outside the public right-of-way. The purpose of these requirements includes providing adequate space for off-street parking, minimizing parking impacts to adjacent properties, and minimizing environmental impacts of parking areas.

a. MMC Section 19.602 Applicability

MMC 19.602 establishes the applicability of the provisions of MMC 19.600, and MMC Subsection 19.602.3 establishes thresholds for full compliance with the standards of MMC 19.600. Development of a vacant site is required to provide off-street parking and loading areas that conform fully to the requirements of MMC 19.600.

The proposed development includes construction of a 15-unit apartment building and associated off-street parking, which is required to conform fully to the requirements of MMC 19.600.

The Planning Commission finds that the provisions of MMC 19.600 are applicable to the proposed development as discussed above.

b. MMC Section 19.605 Vehicle Parking Quantity Requirements

MMC 19.605 establishes standards to ensure that development provides adequate vehicle parking based on estimated parking demand. The section establishes processes for modification and determination of parking requirements, exemptions and reductions to the required ratios, and provisions for shared parking.

(1) MMC Subsection 19.605.1 Minimum and Maximum Requirements

MMC Table 19.605.1 provides minimum and maximum quantity requirements for multifamily dwellings containing 3 or more dwelling units. Minimum requirements are based on the size of the units: those with 800 sq ft of floor area or less require at least 1 space per unit, and those with more than 800 sq ft of floor area require at least 1.25 spaces per unit. The maximum allowance is 2 spaces per unit, regardless of unit size. As per Subsection 1-D, where the calculation of minimum parking spaces does not result in a whole number, the result is rounded down to the next whole number; where the calculation of maximum parking does not result in a whole number, the result is rounded to the nearest whole number.

One studio apartment and three 1-bedroom apartments are proposed with less than 800 sq ft of floor area each, requiring a minimum of 4 off-street parking spaces. Eleven 2-bedroom units are proposed with more than 800 sq ft of floor area each, requiring a minimum of 13 spaces (rounding down from 13.75 as per Subsection 1-D). A minimum total of 17 spaces are required; a maximum total of 30 spaces are allowed.

The proposed development includes 21 regular parking spaces, 1 ADA parking space, and 1 loading space, for a total of 23 spaces.

(2) MMC Subsection 19.605.3 Exemptions and By-Right Reductions to Quantity Requirements

MMC 19.605.3 establishes certain exemptions and reductions to the quantity requirements of MMC 19.605.1, including reductions for proximity to public transit. Specifically, for multifamily uses, Subsection 3-B-2(b) allows required parking to be reduced by up to 20% if the development is within 500-ft walking distance of a transit stop with a peak hour service frequency of 30 minutes or less.

The applicant has not requested any by-right reduction to parking quantity and has in fact proposed to provide more than the minimum number of required spaces, as noted in Finding 8-b(1), above. The subject property is not close enough to a transit stop to qualify for a by-right reduction to parking quantity requirements.

The Planning Commission finds that the off-street parking area proposed as part of the proposed development meets the vehicle parking quantity requirements of MMC 19.605.

c. MMC Section 19.606 Parking Area Design and Landscaping

MMC 19.606 establishes standards for parking area design and landscaping, to ensure that off-street parking areas are safe, environmentally sound, and aesthetically pleasing, and that they have efficient circulation.

(1) MMC Subsection 19.606.1 Parking Space and Aisle Dimension

MMC 19.606.1 establishes dimensional standards for required off-street parking spaces and drive aisles. For 90°-angle spaces, the minimum width is 9 ft and minimum depth is 18 ft, with a 9-ft minimum curb length and 22-ft drive aisles. Parallel spaces require with 22-ft lengths and a width of 8.5 ft.

The applicant has submitted a parking plan that satisfies these dimensional standards.

(2) MMC Subsection 19.606.2 Landscaping

MMC 19.606.2 establishes standards for parking lot landscaping, including for perimeter and interior areas. The purpose of these landscaping standards is to provide buffering between parking areas and adjacent properties, break up large expanses of paved area, help delineate between parking spaces and drive aisles, and provide environmental benefits such as stormwater management, carbon dioxide absorption, and a reduction of the urban heat island effect.

(a) MMC Subsection 19.606.2.C Perimeter Landscaping

In all but the downtown zones, perimeter landscaping areas must be at least 6 ft wide where abutting other properties and at least 8 ft wide where abutting the public right-of-way. At least 1 tree must be planted for every 40 lineal ft of landscaped buffer area, with the remainder of the buffer planted with grass, shrubs, ground cover, mulch, or other landscaped treatment. Parking areas adjacent to residential uses must provide a continuous visual screen from 1 to 4 ft above the ground to adequately screen vehicle lights.

Perimeter landscaping is required along the western and southern boundaries of the proposed parking area, though site constraints make it difficult to meet the

applicable standards. The configuration of the shared access driveway from the adjacent property to the west, as well as the location of a gated access from Harmony Rd for emergency vehicles, intrude into the area where perimeter landscaping would otherwise provide an 8-ft-wide buffer from the Harmony Rd right-of-way.

The new apartment building, which is sized to meet the minimum density requirement of the underlying zone, is located at the minimum 5-ft setback along the eastern property line to maximize the developable portion of the subject property. The adjacent off-street parking area, which provides 2 rows of 90°-angle stalls separated by a drive aisle, is sized to meet the minimum dimensional requirements and to preserve as much of the required 6-ft-wide perimeter landscaping area as possible. However, the proposed site configuration leaves only approximately 3.5 ft as the landscaping buffer along the western perimeter.

The applicant has requested a variance from the parking lot landscaping standards, including from the standards for perimeter landscaping. The variance request is discussed in Finding 11, which provides findings and establishes conditions for approval.

The applicant's submittal does not include planting details for the proposed perimeter landscaping areas, but it acknowledges that sufficient detail will be provided as part of the building permit review process. An existing 6-ft chain link fence with sight-obscuring slats runs along the common property boundary at the western edge of the parking area, and it is assumed that the applicant controls the fence, as the owner of the adjacent property to the west. A condition has been established to ensure that the applicable perimeter landscaping and screening standards are met.

As conditioned, and as per the variance request discussed in Finding 11, this standard is met.

(b) MMC Subsection 19.606.2.D Interior Landscaping

At least 25 sq ft of interior landscaped area are required for each parking space. Planting areas must be at least 120 sq ft in area, at least 6 ft in width, and dispersed throughout the parking area. For landscape islands, at least 1 tree shall be planted per island, with the remainder of the buffer planted with grass, shrubs, ground cover, mulch, or other landscaped treatment.

The proposed development includes 21 standard parking spaces, 1 ADA space, and 1 loading space. For the total of 23 spaces, a minimum of 575 sq ft of interior landscaping is required. As proposed, the site plan provides approximately 325 sq ft of interior landscaping, so the applicant has requested a variance from this standard. The variance request is discussed in Finding 11 and has been approved, though with a condition requiring revisions to the plans to provide a minimum of 475 sq ft of interior landscaping, with no additional WQR disturbance and with at least 2 separate planting areas.

As per the variance request discussed in Finding 11 and as conditioned, this standard is met.

(c) MMC Subsection 19.606.2.E Other Parking and Landscaping Provisions

Preservation of existing trees in off-street parking areas is encouraged and may be credited toward the total number of trees required. Parking area landscaping must be installed prior to final inspection, unless a performance bond is posted with the City. Required landscaping areas may serve as stormwater management facilities, and pedestrian walkways are allowed within landscape buffers if the buffer is at least 2 ft wider than required by MMC 19.606.2.C and 19.606.2.D.

The plans submitted show that 4 existing trees will be removed because they are either directly within the parking lot footprint or would have their critical root zones damaged by construction. Proper and complete installation of landscaping will be confirmed as part of the subsequent Development Review and final inspection. No pedestrian walkways or stormwater facilities are proposed within the parking lot landscaping.

This standard is met.

As conditioned, and as per the variance request discussed in Finding 11, the Planning Commission finds that the applicable standards of MMC 19.606.2 are met.

(3) MMC Subsection 19.606.3 Additional Design Standards

MMC 19.606.3 establishes various design standards, including requirements related to paving and striping, wheel stops, pedestrian access, internal circulation, and lighting.

(a) MMC Subsection 19.606.3.A Paving and Striping

Paving and striping are required for all required maneuvering and standing areas, with a durable and dust-free hard surface and striping to delineate spaces and directional markings for driveways and accessways.

The plans submitted indicate that all parking areas will be paved and striped.

This standard is met.

(b) MMC Subsection 19.606.3.B Wheel Stops

Parking bumpers or wheel stops are required to prevent vehicles from encroaching onto public rights-of-way, adjacent landscaped areas, or pedestrian walkways. Curbing may substitute for wheel stops if vehicles will not encroach into the minimum required width for landscape or pedestrian areas.

The plans submitted indicate that wheel stops will be installed to prevent vehicles from encroaching into pedestrian walkways and perimeter landscaping areas.

This standard is met.

(c) MMC Subsection 19.606.3.C Site Access and Drive Aisles

Accessways to parking areas shall be the minimum number necessary to provide access without inhibiting safe circulation on the street. Drive aisles shall meet the dimensional requirements of MMC 19.606.1, including a 22-ft minimum width for drive aisles serving 90°-angle stalls and a 16-ft minimum width for drive aisles not abutting a parking space. Along collector and arterial streets, no parking space shall be located such that its maneuvering area is in an ingress or egress aisle within 20 ft of the back of the sidewalk. Driveways and on-site circulation shall be designed so that vehicles enter the right-of-way in a forward motion.

The proposed development will take access from Harmony Rd through a shared driveway on the adjacent apartment property to the west. The proposed drive aisles meet the minimum applicable dimensional requirements. Although 2 of the parking spaces are located with their maneuvering areas in the drive aisle within 20 ft of the back of sidewalk along Harmony Rd, the parking area will be separated from the sidewalk by a metal fence and gate for emergency access. The parking lot's design, together with the shared driveway arrangement, will effectively require vehicles to enter the right-of-way in a forward motion.

This standard is met.

(d) MMC Subsection 19.606.3.D Pedestrian Access and Circulation

Pedestrian access shall be provided so that no off-street parking space is farther than 100 ft away, measured along vehicle drive aisles, from a building entrance or a walkway that is continuous, leads to a building entrance, and meets the design standards of MMC Subsection 19.504.9.E.

As proposed, no off-street parking space is farther than 100 ft away from a building entrance or walkway that meets the standards of this subsection.

This standard is met.

(e) MMC Subsection 19.606.3.E Internal Circulation

The Planning Director has the authority to review the pedestrian, bicycle, and vehicular circulation of the site and impose conditions to ensure safe and efficient on-site circulation. Such conditions may include, but are not limited to, on-site signage, pavement markings, addition or modification of curbs, and modification of drive aisle dimensions.

The Planning Director has reviewed the plans and concluded that, given the proposal to have the new building share the existing garbage/recycling collection facility on the adjacent apartment property to the west, an additional improvement is necessary to promote pedestrian safety. A condition has been established to require that a striped pedestrian walkway be established from the southern end of the new parking area through the shared access drive to the shared garbage/recycling collection facility.

As conditioned, this standard is met.

(f) MMC Subsection 19.606.3.F Lighting

Lighting is required for parking areas with more than 10 spaces and must have a cutoff angle of 90° or greater to ensure that lighting is directed toward the parking surface. Lighting shall not cause a light trespass of more than 0.5 footcandles measured vertically at the boundaries of the site and shall provide a minimum illumination of 0.5 footcandles for pedestrian walkways in off-street parking areas.

The applicant's submittal does not include planting lighting details for the parking area, but it acknowledges that sufficient detail will be provided as part of the building permit review process. A condition has been established to ensure that this standard is met.

As conditioned, this standard is met.

As conditioned, the Planning Commission finds that the applicable standards of MMC 19.606.3 are met.

As conditioned, the Planning Commission finds that the applicable design and landscaping standards of MMC 19.606 are met.

d. MMC Section 19.608 Loading

MMC 19.608 establishes standards for off-street loading areas and empowers the Planning Director to determine whether loading spaces are required. For development with fewer than 50 dwelling units on a site that abuts a local street, no loading space is required; otherwise, 1 space is required. Loading spaces shall be at least 35 ft long and 10 ft wide, with a height clearance of 13 ft, and located where not a hindrance to drive aisles or walkways.

The proposed parking lot design includes 1 designated loading space measuring 10 ft wide and 35-ft long. The loading space is situated with no height obstructions and is located alongside the rear of the new building, where it will not hinder drive aisles or walkways.

The Planning Commission finds that this standard is met.

e. MMC Section 19.609 Bicycle Parking

MMC 19.609 establishes standards for bicycle parking for new development of various uses, including multifamily housing. For multifamily development with 4 or more units, MMC Subsection 19.609.2 requires a minimum of 1 bicycle parking space per unit, with at least 50% of the spaces covered and/or enclosed (in lockers or a secure room). MMC Subsection 19.609.3.A provides that each bicycle parking space shall have minimum dimensions of 2 ft by 6 ft, with 5-ft-wide aisles for maneuvering. MMC Subsection 19.609.4 requires bike racks to be located within 50 ft of a main building entrance.

For the proposed 15-unit multifamily housing development, a minimum of 15 bicycle parking spaces is required, with 8 of them covered or enclosed. The applicant has proposed to designate

an area within each unit for bicycle parking, in addition to 5 spaces in the covered area outside the units on the first floor and 1 space in the covered area outside the units in the daylight basement. However, the proposal for designated spaces within each unit presents a number of difficulties, including conflicts with interior furnishings (especially in wet weather conditions) and the challenge of carrying a bicycle up to and down from the 2nd or 3rd floor.

A more reasonable bicycle parking scenario could include spaces available in the open corridor on the ground-floor level, with additional spaces in the landings of the other floors as needed. Another option could be to utilize a portion of the attached garage for secure bicycle parking. Or there may be a location(s) outside the building near a pedestrian walkway where a bicycle rack could be installed for use by residents or visitors. A condition has been established to require revisions to the relevant plan sheets to demonstrate that a minimum of 15 bicycle parking spaces are located somewhere other than the interior of the dwelling units, with at least 8 of the spaces covered or enclosed and with all spaces meeting the applicable standards of MMC 19.609.

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

f. MMC Section 19.610 Carpool and Vanpool Parking

MMC 19.610 establishes carpool parking standards for new industrial, institutional, and commercial development.

The proposed development is for multifamily housing. This standard is not applicable.

As conditioned, and as per the variance request discussed in Finding 11, the Planning Commission finds that the proposed development meets all applicable standards MMC 19.600 for off-street parking.

9. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 is intended to ensure that development, including redevelopment, 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 new construction.

The applicant proposes to develop multifamily housing on a vacant site. The proposed new construction 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 on November 2, 2017, prior to application submittal. The proposed development does not trigger a Transportation Impact Study (as addressed in Finding 9-c). The proposal's compliance with MMC 19.700 has been evaluated as part of the concurrent review of variance requests, natural resource disturbance,

and multifamily design standards. Finding 9-f addresses the proposal's compliance with the approval criteria established in MMC Subsection 19.703.3, particularly the required transportation facility improvements.

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.

The subject property is zoned for medium residential density and no new direct access to the site from its frontage on Harmony Rd, an arterial street, is proposed. Therefore, the Engineering Director has determined that a formal TIS is not required.

d. 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 application was referred to the Oregon Department of Transportation (ODOT), Clackamas County Department of Transportation and Development (DTD), TriMet, and Metro for comment. The section of Harmony Rd fronting the subject property is under the jurisdiction of Clackamas County. The County has regulatory authority where transportation impacts and improvement standards are concerned, and the County DTD provided comments that have been incorporated into these findings and the associated conditions of approval.

e. 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. However, the subject property's public street frontage is along Harmony Rd, which is currently under the jurisdiction of Clackamas County. Where the City has more restrictive standards than the County for certain elements, it is the City's practice to defer to the County standards when the proposed development demonstrates that there is no practicable alternative and that the proposal presents the minimum exception necessary to provide a safe and functional design. Such situations are evaluated at the time of development permit review.

Note: If the City annexes the Harmony Rd right-of-way along the subject property's frontage and takes jurisdiction of the road for maintenance prior to the proposed development acquiring the necessary development permits, the applicable City standards from MMC Chapter 19.700 (Public Facility Improvements), MMC Title 12 (Streets, Sidewalks, and Public Places), and the City Public Works Standards will take precedence over the following requirements set forth for County road access approval and frontage improvements.

The following findings provided by the County DTD address the County's requirements for such elements as access management, clear vision, street design, and bicycle and pedestrian facilities; and provide the principal basis for related conditions of approval.

- (1) *The applicant has proposed construction of a 15-unit multifamily development on the north side of Harmony Rd. Harmony Rd is a major arterial roadway under the jurisdiction of Clackamas County.*
- (2) *Clackamas County has adopted roadway standards that pertain to the structural section, construction characteristics, minimum required right-of-way widths and access standards for major arterial roadways. Development applications are required to improve one half of the street cross section along the entire site frontage.*
- (3) *Based on access and driveway spacing standards, a shared access has been required for the properties along this portion of Harmony Rd. Access to the project site will be provided through a shared access with the property to the west to an existing driveway approach onto Harmony Rd.*
- (4) *Minimum frontage improvements on the Harmony Rd frontage include, but are not necessarily limited to, up to a half-street improvement, maintaining the existing curb off-set, and storm drainage facilities. In addition, standard curb or curb and gutter when curb line slope is less than 1%, a minimum 6-ft-wide unobstructed sidewalk behind a minimum 5-ft-wide landscape strip with street trees.*
- (5) *The applicant shall comply with County Roadway Standards clear zone requirements in accordance with Roadway Standards Section 245 along the entire Harmony Rd site frontage.*

Conditions have been established in response to these County findings, to ensure that the proposed development will meet all applicable standards of MMC 19.708, the Clackamas County Roadway Standards, and any other applicable County requirements.

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

10. MMC Section 19.906 Development Review

MMC 19.906 establishes a review process to ensure that new development complies with the applicable standards and provisions of the City's land use regulations. As per MMC Subsection 19.505.3.C, multifamily housing development is required to utilize the development review process established in MMC 19.906 to evaluate consistency with the design elements for multifamily housing provided in MMC Subsection 19.505.3.D.

MMC Subsection 19.906.4 establishes the approval criteria for development review applications, which include compliance with all applicable standards from MMC Chapters 19.300, 19.400, 19.500, 19.600, and 19.700. In addition, a proposal must show compliance with all applicable conditions of any land use approval for the proposal issued prior to or concurrent with the development review application.

The review of the proposal's consistency with the multifamily housing design elements is presented in Finding 8-e. The proposed development's compliance with all applicable chapters of Title 19

Zoning is presented in this larger documentation of findings. Since the proposal is for new development on the previously undeveloped subject property there are no prior land use approvals, and the proposed development is subject to all conditions established as part of the current land use review.

The Planning Commission finds that the proposed development has appropriately utilized the discretionary development review process to confirm the proposal's consistency with the multifamily housing design guidelines as discussed in Finding 7-e.

11. 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 has requested 3 variances: (1) to reduce the front yard setback, (2) to exceed the side yard height plane limit, and (3) to reduce the dimension and amount of required parking lot landscaping.

The applicant has proposed a front yard setback of 12 ft where 25 ft is required by combining the R-2 standard with the requirement of MMC Subsection 19.501.2 for an additional setback from Harmony Rd (discussed in Finding 7-a). The applicant has proposed a building height of 35 ft at the minimum side yard depth, where the R-2 zone sets the side yard height plane limit at 25 ft. And the applicant has proposed to reduce or eliminate the width of the required perimeter parking lot landscaping area and to reduce the area of interior parking lot landscaping provided.

The requested variances meet the eligibility requirements.

b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. Subsection 3-B establishes the Type II review process for limited variations to certain numerical standards. Subsection 3-C establishes the Type III review process for larger or more complex variations to standards that require additional discretion and warrant a public hearing.

MMC 19.911.3.B allows up to a 25% reduction in the required front yard setback. As noted in Finding 11-a, above, the applicant has proposed a front yard setback of 12 ft where 25 ft would be required. The request to vary the standard by 13 ft is more than the 25% allowance

for Type II review. The variance requests for side yard height plane limit and parking lot landscaping are also not eligible for Type II variance review. Therefore, the requested variances are subject to the Type III review process and must address the 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. Specifically, 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:

- (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.

Front Yard Setback: The applicant's narrative notes the impacts of shifting the building to meet the 25-ft setback, including additional permanent impacts to the WQR. The area of permanent disturbance would be shifted closer to Minthorn Creek, and the building would intrude into an area of >25% slopes near the ordinary high water line. This would also reduce the width of the vegetated buffer area between the building and the creek. Reducing the front yard setback as proposed would avoid those impacts to the WQR, while maintain a building footprint that is adequately sized for enough dwelling units to meet the minimum density standard.

Side Yard Height Plane Limit: The applicant's narrative and supplemental materials discuss the benefits of allowing the east elevation of the building to exceed the side yard height plane limit, which include allowing construction of a daylight basement and maintaining a smaller building footprint to minimize WQR impacts and still provide enough units to meet the minimum density standard. The applicant notes that the adjacent property to the east is developed with a carport and single-family house that are 20 ft and 36 ft, respectively, from the nearest point of the proposed new apartment building. Complying with the side yard height plane limit would impact the number of units provided and/or would require a larger building footprint and thus more disturbance to the WQR.

Parking Lot Landscaping: The applicant's narrative and supplemental materials discuss the benefits of reducing the width of the required landscaping area along the western and southern perimeters of the parking lot and reducing the area of interior landscaping provided. Reducing the perimeter width allows the development of a parking area that meets the dimensional requirements for spaces and drive aisles with room for a building footprint sized to provide units that meet the minimum required density. The variance also allows room for the construction of a retaining wall that reduces the amount of grading necessary in the WQR.

Reducing the required landscaping width along the southern perimeter, on both the subject property and on the adjacent property to the west (5989 SE Harmony Rd), allows use of a shared access from Harmony Rd. This reduces the need for additional variances or exemptions related to proposing direct access and avoids creating operational or safety issues on an arterial street.

The Planning Commission finds that the applicant's submittal provides an adequate analysis of the impacts and benefits of the requested variances compared to the baseline requirements. This criterion is met.

- (2) The proposed variance is determined to be both reasonable and appropriate, and it meets one or more of the following criteria:
 - (a) The proposed variance avoids or minimizes impacts to surrounding properties.
 - (b) 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.

Front Yard Setback: The requested variance is reasonable and represents a sensitive response to the existing natural environment by minimizing the permanent impacts to the WQR close to Minthorn Creek, keeping the building farther from the >25% slopes near the ordinary high water line, and providing a wider vegetated buffer area between the building and the creek. The variance also allows the applicant to construct a building sized adequately for meeting the minimum density standard for the site, which is important given the City's focus on facilitating the development of more housing units.

In addition, maintaining a 12-ft front yard setback as proposed leaves the nearest point of the building at least 23 ft from the curb on Harmony Rd, taking into consideration the improved 6-ft-wide sidewalk and 5-ft-wide landscape strip required by Clackamas County (see Finding 9). Due to the angled nature of the Harmony Rd right-of-way, only the southeastern corner of the building will be within 12 ft of the front property line, as the rest of the front façade pulls away from Harmony Rd moving east to west. The City's Engineering Department has indicated that the additional 10 ft needed to provide 40 ft from centerline (as discussed in Finding 7-a) is sufficient for future anticipated improvements on Harmony Rd. If a 10-ft right-of-way dedication is required in the future, there will still be at least 2 ft between the nearest point of the building and any public improvements.

Side Yard Height Plane Limit: The topography of the subject property drops from the front to the rear of the proposed new building. This presents the applicant with a choice to either step down the height at the rear or shift the building footprint farther from the minimum yard setback on the east side, if the height plane standard is to be met. The requested variance reasonably allows the applicant to minimize impacts on the WQR area while still developing enough units to meet the minimum density standard. In addition, the distance of existing structures on the adjacent property to the east from the new building provides a buffer that can be augmented with vegetated screening as proposed.

Parking Lot Landscaping: The physical constraints of the site are considerable, with Minthorn Creek and the adjacent delineated wetland cutting off access to the northern half of the property and covering much of the southern half with the WQR designation as a protected natural resource. The applicant has developed a site plan that responds to

the existing natural environment with a building that provides the minimum required number of units as well as an associated off-street parking area with slightly more than the minimum number of required spaces.

Given that Harmony Rd is an arterial street without on-street parking, it is reasonable that the proposed parking area would be sized to provide more than the minimum number of spaces. The site layout represents an appropriate effort to reduce impacts to the WQR. The western perimeter landscaping area remains wide enough for tree planting as required, which will provide some screening from the adjacent apartment property. And the applicant has proposed a 42-in metal fence and gate along the southern perimeter to eliminate conflicts between the parking area and adjacent public sidewalk.

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

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

Front Yard Setback: The primary result from a reduction in the front yard setback is that the units on the front side of the building will be closer to Harmony Rd. Traffic noise and a reduction in privacy are likely to result. Landscaping would provide some mitigation for these impacts, though a future widening of Harmony Rd would likely require removal of most landscaping in front of the building. The applicant has proposed to plant street trees within the landscape strip required along the Harmony Rd frontage as required, so visual screening will be provided that will also help dampen noise. No additional mitigation is deemed practicable or necessary.

Side Yard Height Plane Limit: As proposed, the additional massing presented by the proposed new building is mitigated in a couple of ways. The carport on the adjacent property is 20 ft from the nearest point of the proposed new building. It acts as a buffer for the single-family house it is attached to, which is an additional 16 ft away. In addition, the applicant has proposed to retain the 1 significant existing tree between the new building and the eastern property line and to plant an evergreen hedge along the rear half of the new building, where the impact of the massing is greatest. These factors present adequate mitigation for the impacts of the requested variance.

Parking Lot Landscaping: Despite the request to reduce perimeter width and interior area, the applicant has proposed to plant all parking lot landscaping areas as required by MMC Subsection 19.606.2. While this satisfies some of the purpose of the parking lot landscaping standards, it would leave a large portion of the parking area unshaded and exposed to the heat-island effect.

The applicant has proposed to provide only approximately 325 sq ft of interior landscaped area where a minimum of 575 sq ft are required. Although there is no on-street parking on Harmony Rd and off-street spaces are an important amenity for the site, providing more shade for the new parking area is important enough to warrant the potential replacement of a parking space (approximately 150 sq ft) with interior landscaping. A condition has been established to require that the applicant revise the

parking plan in such a way as to provide a total of at least 475 sq ft of interior landscaping, without additional impact to the WQR and with at least 2 separate planting areas, to bring the proposal closer to conformance with the standard and provide additional shade for the parking area.

The Planning Commission finds that the requested variances for front yard setback and side yard height plane limit will not result in any impacts that require further mitigation. As conditioned, the Planning Commission finds that impacts from the requested parking lot landscaping variance will be sufficiently mitigated.

As conditioned, the Planning Commission finds that the requested variances meet the approval criteria established in MMC 19.911.4.B.1 for Type III variances seeking discretionary relief.

The Planning Commission finds that, as conditioned, the requested variances are allowable as per the applicable standards of MMC 19.911.

12. The application was referred to the following departments and agencies on August 16, 2018:

- Milwaukie Engineering Department
- Milwaukie Building Department
- Milwaukie Public Works Department
- Milwaukie Police Department
- Linwood Neighborhood District Association (NDA) Chairperson and Land Use Committee (LUC)
- Clackamas Fire District #1
- Clackamas County Department of Transportation & Development
- Metro
- ODOT
- TriMet
- North Clackamas School District

The comments received are summarized as follows:

- **Matt Amos, Fire Inspector, CFD #1:** No comments
- **Michelle Wyffels, Planner II, TriMet:** No comments
- **Sarah Hartung, Senior Biologist, ESA (City's on-call natural resources consultant):** Peer review of the applicant's Water Quality Resource Site Assessment was provided in a memo dated September 11, 2018, with a supplemental note provided on September 14, 2018.
- **Hideo Adam Sakuma, Inside Sales Representative, Waste Management:** Provided turning-radius information for collection vehicles.
- **Elise Scolnick, Development Review Planner, ODOT:** Advisory note on potential for noise from traffic and trains, with recommendation for builder to provide

mitigation. Advisory note on fencing along northern property boundary adjacent to existing rail line.

- **Ken Kent, Senior Planner, Clackamas County Engineering Division:** Provided findings and recommended conditions of approval related to public street improvements along the Harmony Rd frontage, which is under the jurisdiction of Clackamas County.
- **Richard Shankle, Manager, Crossing Safety Unit, ODOT Rail Division:** Confirmation of Elise Scolnick’s advisory comments related to noise and fencing—fencing is recommended, not required.
- **Alex Roller, Engineering Technician II, City of Milwaukie Engineering Department:** The City defers to the County for comments related to required improvements along the Harmony Rd frontage. Provided additional requirements related to access management and stormwater.
- **Jesse Tremblay, Land Use Chair, Linwood NDA:** In favor of adding more rental housing to the current supply. Some concerns about potential traffic impacts on the already congested intersection of Harmony Rd, Railroad Ave, and Linwood Ave.

Conditions of Approval

1. At the time of submittal of the associated development permit application(s), the following shall be resolved:
 - a. Final plans submitted for development permit review shall be in substantial conformance with the plans approved by this action, which are the plans stamped received by the City on August 3, 2018; and with amended materials stamped received by the City on September 5, 2018, and September 17, 2018; except as otherwise modified by these conditions of approval.
 - b. The modifications required by these conditions of approval include the following revisions to all relevant plan sheets:
 - (1) As per Finding 6-g, accurately show the Water Quality Resource (WQR) boundary, particularly where slopes exceed 25% on the south side of Minthorn Creek.
 - (2) As per Finding 6-f, make the following revisions to the mitigation plan and related plan sheets:
 - (a) Recalculate the area of required mitigation planting based on permanent disturbance of the WQR, using a replacement ratio of 1.5:1. (Note that the area occupied by features such as picnic tables and benches shall be considered permanent disturbance.) Identify the adjusted mitigation planting area(s) within the WQR, including on the north side of Minthorn Creek if necessary.
 - (b) Revise the mitigation planting list to reflect a planting density of 5 trees and 25 shrubs per 500 sq ft of disturbance area, in addition to ground cover. Provide more detail about which species will be used where,

selecting plant species based on their appropriateness for specific site conditions (e.g., if below ordinary high water line, within the delineated wetland, in upland areas, etc.). Provide enhanced plantings and ground cover below the stormwater outfall to prevent erosion.

- (c) Revise the alignment of the decomposed granite walkway within the common open space and mitigation planting area, removing the looped configuration and providing a more linear alignment along the southern boundary of the mitigation planting area (closer to the building and parking area) that limits encroachment into the WQR. Install a split-rail fence along the edge of the adjusted walkway and dense shrub plantings on the downslope to prevent off-trail use and potential damage to the WQR slope.
 - (d) With final stormwater calculations, ensure that any new stormwater treatment facility does not result in new permanent WQR disturbance.
- (3) As per Finding 7-e, provide a striped pedestrian walkway from the southern end of the new parking area through the shared access drive to the shared garbage/recycling collection facility on the adjacent apartment property to the west.
- (4) As per Finding 8-c, make the following revisions to the plans related to the off-street parking area:
- (a) Provide a detailed parking lot landscaping plan, sufficient to demonstrate compliance with the standards of MMC Subsection 19.606.2.C. This includes confirmation that the necessary visual screening from the adjacent residential building will be provided.
 - (b) Provide a total of 475 sq ft of interior parking lot landscaping with no additional WQR disturbance and with at least 2 separate planting areas, as per the variance discussed in Finding 11.
 - (c) Demonstrate that the parking area lighting will meet the standards of MMC Subsection 19.606.3.F, while limiting light spill into the WQR as per MMC Subsection 19.402.11.
- (5) As per Finding 8-e, demonstrate that a minimum of 15 bicycle parking spaces are located somewhere other than the interior of the dwelling units, with at least half of the spaces covered or enclosed and with all spaces meeting the applicable standards of MMC 19.609.
- c. Provide a narrative describing all actions taken to comply with these conditions of approval. In addition, describe any changes made after the issuance of this land use decision that are not related to these conditions of approval.
2. As per Finding 9-f, the following items are project requirements from the Development Engineering Division of the Clackamas County Department of Transportation and Development (DTD).

Although the County does not have land use jurisdiction over the proposed development, the County does have jurisdiction over access and improvements along Harmony Rd. The following recommended conditions reflect the County's minimum standards. Where the City's standards are greater and do not otherwise conflict with the County's storm drainage standards and maintenance practices, the City's standards are acceptable.

If the applicant is advised to or chooses to modify the proposal in terms of access location and/or design, the County DTD requests an opportunity to review and comment on such changes prior to such a decision being made.

Note: If the City annexes the Harmony Road right-of-way along the subject property's frontage and takes jurisdiction of the road for maintenance prior to the proposed development acquiring the necessary development permits, the applicable City standards from MMC Chapter 19.700 (Public Facility Improvements), MMC Title 12 (Streets, Sidewalks, and Public Places), and the City Public Works Standards will take precedence over the following requirements set forth for County road access approval and frontage improvements.

- a. All frontage improvements in or adjacent to Clackamas County right-of-way shall be in compliance with *Clackamas County Roadway Standards*.
- b. Prior to commencement of site work, a Development Permit and a Utility Placement Permit are required and must be obtained from Clackamas County for all work performed in the road right-of-way.
- c. The applicant shall verify by a professional survey that adequate right-of-way width exists along the entire site frontage on the northerly side of Harmony Rd to permit construction of the required roadway and frontage improvements or shall dedicate additional right-of-way as necessary to provide it. A minimum of 6 in shall be provided between the back of sidewalk and right-of-way.
- d. All dedications or easements for Harmony Rd shall be by separate document unless provided on a recorded plat. The applicant will need to have their surveyor prepare the required exhibits to provide to Sharan Hams-LaDuca in DTD Engineering for review. They can be emailed to SHamsLaDuca@co.clackamas.or.us. Examples of the exhibits are available from Sharan.
- e. The applicant shall grant an 8-ft-wide public easement for signs, slopes, sidewalks and public utilities along the entire Harmony Rd site frontage.
- f. Access to the project site shall be limited to the existing driveway approach on Tax Lots 12E31D 02000 and 02100 (5989 SE Harmony Rd). No direct access to Harmony Rd shall be permitted along the site frontage other than gated emergency vehicle access.
- g. The applicant shall design and construct improvements along the entire site frontage of Harmony Rd. These improvements shall consist of:
 - (1) Up to an 18-ft-wide half-street improvement shall be constructed along the entire site frontage to arterial roadway standards. The structural section for

Harmony Rd improvements shall consist of 7.5 in of asphalt concrete, per *Clackamas County Roadway Standards* Standard Drawing C100.

- (2) Standard curb, or curb and gutter if curblin slope is less than 1%. The existing curb offset shall be maintained
 - (3) Adjacent to the curb, a 5-ft landscape strip, including street trees shall be constructed along the entire site frontage.
 - (4) A minimum 6-ft-wide unobstructed sidewalk shall be constructed along the entire site frontage, per Standard Drawing S960. The transition from curb-tight sidewalk to set-back sidewalk shall include panels at no greater than 45 degrees to the main direction of travel.
 - (5) The concrete driveway approach to the gated emergency vehicle access shall be constructed with a mountable curb, per Standard Drawing S180. The Fire District shall approve the gate and access design.
 - (6) The existing driveway drop shall be removed and replaced with curb and landscape strip.
 - (7) Drainage facilities in conformance with *Clackamas County Roadway Standards* Chapter Four.
 - (8) The applicant shall comply with *Clackamas County Roadway Standards* clear zone requirements in accordance with *Roadway Standards* Section 245 along the entire Harmony Rd site frontage.
3. Prior to final inspection of the required building permit and issuance of a certificate of occupancy, the following shall be resolved:
- a. Provide a narrative describing all actions taken to comply with these conditions of approval. In addition, describe any changes made after the issuance of this land use decision that are not related to these conditions of approval.
 - b. Submit documentation from the project landscape designer attesting that all required site plantings have been completed in conformance with the approved site plans and with City standards. The documentation shall demonstrate that all invasive plants have been removed from within a 10-ft buffer outside the boundary of all mitigation planting areas.
 - c. Demonstrate consistency with what was proposed regarding the design elements addressed in Finding 7-e (e.g., window and door trim, building materials and colors, operable windows, sun shades, etc.).
 - d. Demonstrate that all required improvements related to the revisions listed in Condition 1-b have been completed.

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 (MMC) and Public Works Standards that are required at various points in the development and permitting process.

1. Development Review

An application for Type I development review is required in conjunction with the submittal of the associated development permit application(s).

2. Prior to issuance of any development permit, the following shall be resolved:

- a. Submit a final stormwater management plan for on-site facilities 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. If the stormwater management system contains underground injection control devices, submit proof of acceptance of the stormwater system design from the Department of Environmental Quality.
- b. Verify that the applicant is working within Clackamas County's process for reviewing, approving, and constructing all required street improvements.

3. Prior to commencement of any earth-disturbing activities, the applicant shall obtain an erosion control permit.

4. Limitations on Development Activity

Development activity on the site shall be limited to 7:00 a.m. to 10:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. Saturday and Sunday, as per MMC Subsection 8.08.070(I).

5. Mitigation Plantings

General standards for required mitigation are established in MMC Subsection 19.402.11.B, including requirements for plant size and spacing, as well as for survival and monitoring.

- a. For trees, the minimum mitigation tree size is 0.5-in caliper for all species except oak and madrone (1-gallon minimum). Note that the originally submitted mitigation planting plan showed only 1- or 2-gallon tree sizes for most proposed tree species, so the applicant is advised to ensure that the 0.5-in-caliper standard is met.
- b. A minimum of 80% of the trees and shrubs shall remain alive on the second anniversary of the date the mitigation planting is completed. Monitoring is the ongoing responsibility of the property owner. Plants that die shall be replaced in kind as needed to ensure the minimum 80% survival rate. An annual report on the survival rate of all plantings shall be submitted for 2 years.

6. Prior to final inspection of any building permit and issuance of a certificate of occupancy, the following shall be resolved:

- a. Construct a private stormwater management system on the proposed development property for runoff created by the property. The private stormwater management system shall be constructed to the requirements of the approved stormwater management plan.

- b. Install all public underground utilities, including private stubs for utility service, prior to construction of new curb, sidewalk, and final street surface.
- c. Confirm that all improvements required by Clackamas County have been constructed to meet County requirements, preferably by demonstrating approval of final inspections by the County.
- d. Upon completion of building and site utilities, submittal of a private stormwater maintenance agreement is required. This agreement shall be recorded with Clackamas County.

The recorded document will ensure that maintenance of the on-site storm facilities is properly maintained. This agreement will cover the maintenance requirements of the storm cartridge system, as well as the maintenance requirements of existing utility easements on site.

There are two utility easements on the development site that contain City of Milwaukie sewer mains. One is located on the north side of the property and the other is located on the east side of the property. The construction of the building will limit access to the sewer manhole located near the east property line north of the proposed building. There is currently access to this manhole, but with the construction of the building only pedestrian access will be provided. City crews will need access to the downstream manhole, which is located on the north property line. The property owner will be responsible for maintaining an 8-ft-wide pathway clear of vegetation to provide access for City crews to regularly clean and inspect the sewer main lines located on site. Final language of maintenance requirements will be finalized with the maintenance agreement upon completion of building construction.

- e. Remove all signs, structures, or vegetation in excess of 3 ft in height located in "clear vision areas" at intersections of streets, driveways, and alleys fronting the proposed development.

7. Expiration of Approval

- a. As per MMC Subsection 19.1001.7.E.1.a, proposals requiring any kind of development permit must complete both of the following steps:
 - (1) Obtain and pay for all necessary development permits and start construction within two (2) years of land use approval.
 - (2) Pass final inspection and/or obtain a certificate of occupancy within four (4) years of land use approval.
- b. As per MMC Subsection 19.1001.7.E.2.b, land use approvals shall expire unless both steps noted above have been completed or unless the review authority specifies a different expiration date in the land use decision to accommodate large, complex, or phased development projects.

8. Ongoing Maintenance of Off-Street Parking Areas

As per MMC Subsection 19.602.2, property owners shall comply with the regulations of Chapter 19.600 by ensuring conformance with the standards of Chapter 19.600 related to ongoing maintenance, operations, and use of off-street parking and loading areas.

Exhibits

None



Dennis Egner, FAICP
Planning Director

- cc: Ed Williams, applicant (c/o HPA2 LLC, 10117 SE Sunnyside Rd #545, Clackamas, OR 97015)
Steve Kay, applicant's representative (c/o Cascadia Planning & Development Services,
P.O. Box 1920, Silverton, OR 97381)
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)
Mike Boumann and Matt Amos, CFD#1 (via email)
Ken Kent, Senior Planner, Clackamas County Engineering Division (via email)
Sarah Hartung, Senior Biologist, ESA (via email)
NDA(s): Linwood (via email)
Interested Persons
Land Use File(s): VR-2018-005 (master file)