



July 10, 2019

Land Use File(s): MLP-2018-001, VR-2019-007, VR-2019-008

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on July 9, 2019.

Applicant(s): Tony and Michelle DaRosa
Location(s): 10244 SE 43rd Ave
Tax Lot(s): 1S2E30CC 05200
Application Type(s): Minor Land Partition (Preliminary Plat), with Variance Requests (Type II & Type III)
Decision: Approved with Conditions
Review Criteria: Milwaukie Municipal Code (MMC) Chapter 12.16 Access Management

Milwaukie Land Division Ordinance

- MMC Chapter 17.12 Application Procedure & Approval Criteria
- MMC Chapter 17.16 Application Requirements and Procedures
- MMC Chapter 17.20 Preliminary Plat
- MMC Chapter 17.28 Design Standards
- MMC Chapter 17.32 Improvements

Milwaukie Zoning Ordinance

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

Neighborhood(s): Lewelling

Appeal period closes: 5:00 p.m., July 25, 2019

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 by appointment 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 Kelver, Associate Planner, at 503-786-7657 or kelverb@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on July 25, 2019, which is 15 days from the date of this decision. (Note: Please arrive by 4:45 p.m. for appeal payment processing.) 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.

Per MMC Subsection 17.04.050.A, this decision on the proposed land division shall expire 1 year after the date of approval. An extension of up to 6 months may be granted upon submission of a formal request to the original decision-making authority (the Planning Commission, in this case), subject to the provisions of MMC Subsection 17.04.050.B, which include the following:

- a. No changes are made on the original plan as approved;
- b. The applicant can show intent of recording the boundary change within the 6-month extension period; and
- c. There have been no changes in the ordinance provisions on which the approval was based.

Findings in Support of Approval

The Findings for this application are included as Exhibit 1. The preliminary plat and site plan is included as Exhibit 2.

Conditions of Approval

1. Prior to approval of the final plat, the following shall be resolved:
 - a. Provide a 5-ft-wide right-of-way (ROW) dedication on the 43rd Ave frontage of both parcels.
 - b. Construct a new driveway approach for the existing access on 43rd Ave that conforms to Milwaukie Public Works Standards 502F. The driveway approach shall meet all guidelines of the Americans with Disabilities Act (ADA), with the driveway approach apron between 9 ft and 20 ft in width. Per MMC Subsection 12.16.040.C.3, as the driveway is a shared driveway for Parcels 1 and 2, the spacing requirements from the side property line do not apply. Parcels 1 and 2 must provide maneuvering space on site to prevent vehicles from backing into the ROW.

- c. Ensure that the following half-street improvements are constructed along the 43rd Ave frontage of both parcels: 11-ft travel lane, 6-ft bicycle lane, standard curb and gutter, 5-ft landscape strip, and 6-ft set-back sidewalk. The existing asphalt has been determined by the City to be in good condition, so asphalt widening from the new curb and gutter is only required as needed to meet the existing asphalt. The applicant shall establish a clean edge on the existing asphalt.
- d. If needed (as discussed in Finding 11-f), provide access and utility easements for the benefit of Parcel 2 across Parcel 1.
- e. Relocate the existing fence on the 43rd Ave frontage to behind the resulting front property lines of Parcels 1 and 2 after the required right-of-way dedication.
- f. Remove all signs, structures, or vegetation in excess of 3 ft in height located in "vision clearance areas" at intersections of streets, driveways, and alleys fronting the proposed partition. Confirm the location of clear vision areas with the Engineering Department prior to removing any vegetation.

Other requirements

1. MMC Section 17.04.120 Recording

As per MMC Section 17.04.120, partition plats must be recorded by plat. An application for final plat shall be submitted to both the City Planning Department and the County Surveyor within 6 months of the date of this approval. Once approved by the County Surveyor, a copy of the recorded final plat shall be submitted to the City Planning Department.

2. Obtain a ROW permit for construction of the required driveway approach improvements listed in the conditions of approval.
3. Prior to final inspection for any building on the proposed development, connect all residential roof drains to a private drywell or other approved structure.



Dennis Egner, FAICP
Planning Director

Exhibits

1. Findings in Support of Approval
2. Preliminary Plat and Site Plan

cc: Tony & Michelle DaRosa (1001 SW Fifth Ave, Suite 1100, Portland, OR 97204)
Lindsey Sonnen, AKS Engineering & Forestry, LLC (applicant's representative) (via email)
Chris Goodell, AKS Engineering & Forestry, LLC (applicant's representative) (via email)
Planning Commission (via email)

Justin Gericke, City Attorney (via email)
Leila Aman, Community Development Director (via email)
Steve Adams, City Engineer (via email)
Engineering Development Review (via email)
Samantha Vandagriff, Building Official (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Technician (via email)
Mike Boumann and Izak Hamilton, CFD#1 (via email)
NDA(s): Lewelling (via email)
Interested Persons
Land Use File(s): MLP-2018-001, VR-2019-007, VR-2019-008

EXHIBIT 1
Findings in Support of Approval
Master File #MLP-2018-001 (revised proposal)

Sections of the Milwaukie Municipal Code (MMC) not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicants, Tony and Michelle DaRosa, have applied for approval of a partition to create 2 parcels at 10244 SE 43rd Ave (“the subject property”). The subject property is identified as Tax Lot ID 1S2E30CC05200 on the Clackamas County Tax Assessor map and is in the Residential R-7 Zone.

The applicants are the property owners and have authority to initiate the application per MMC Subsection 19.1001.6.A. The application was initially submitted on October 24, 2018, and deemed complete on November 14, 2018. As allowed by MMC Subsection 19.1001.7.C, the applicant extended the 120-day decision requirement by an additional 120 days, to July 12, 2019.

On June 17, 2019, the applicant amended the application, revising the proposed parcel configuration and adding 4 variance requests. The land use application master file number is MLP-2018-001; variance applications were added for the revised proposal, with the file numbers VR-2019-007 and VR-2019-008.

2. The proposal is for a partition of the subject property to create 2 separate developable parcels, both with street frontage on 43rd Ave. The existing house would remain on Parcel 1, which would be approximately 10,340 sq ft; Parcel 2 would be vacant, with an area of approximately 15,810 sq ft. An existing detached garage and covered area that straddle the boundary between Parcels 1 and 2 are proposed to be removed.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Chapter 12.16 Access Management
 - MMC Chapter 17.12 Application Procedure & Approval Criteria
 - MMC Chapter 17.16 Application Requirements and Procedures
 - MMC Chapter 17.20 Preliminary Plat
 - MMC Chapter 17.28 Design Standards
 - MMC Chapter 17.32 Improvements
 - MMC Section 19.301 Low Density Residential Zones (including R-7)
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.911 Variances
 - MMC Section 19.1006 Type III Review
 - MMC Chapter 19.1200 Solar Access Protection

The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. Public notice of the amended application was mailed to property owners and residents of lots within 300 ft of the subject property on June 19, 2019; a notice of the amended application was posted on the subject property on June 24, 2019. A public hearing with the Planning Commission was held on July 9, 2019, as required by law.

4. MMC Chapter 12.16 Access Management

MMC 12.16 regulates access from private property onto public streets, with specific requirements and standards provided in MMC Section 12.16.040.

MMC Subsection 12.16.040.A states that access to private property shall be permitted with the use of driveway curb cuts, that driveways shall meet all applicable guidelines of the Americans with Disabilities Act (ADA), and that driveway approaches shall be improved to meet the requirements of the City's Public Works Standards. MMC Subsection 12.16.040.B governs the spacing of accessways (driveways), requiring a minimum of 300 ft for spacing between accessways on collector streets. MMC Subsection 12.16.040.C regulates accessway location, including a prohibition of individual single-family accessways on collector streets. An individual driveway may be approved by the City Engineer only if there is no practicable alternative to access the site, shared access is provided by easement with adjacent properties, and the accessway is designed to contain all vehicle backing movements on the site and provide shared access with adjacent properties.

As addressed in Finding 12, the applicant has requested a variance from the standard prohibiting individual single-family accessways on collector streets. As proposed, both new parcels have frontage on 43rd Ave and would take access through the existing driveway on Parcel 1.

A condition has been established to require improvements to the existing driveway approach on 43rd Ave to bring it into compliance with the applicable City standards.

As conditioned, and with the variance approved as discussed in Finding 12, the Planning Commission finds that the proposed partition meets the applicable access management standards of MMC 12.16.

5. MMC Chapter 17.12 Application Procedure and Approval Criteria

MMC Section 17.12.040 establishes the approval criteria for preliminary plat. The proposed preliminary plat meets these criteria as described below.

- a. MMC Subsection 17.12.040.A.1 requires that the proposed preliminary plat complies with Title 19 Zoning and other applicable ordinances, regulations, and design standards.

As demonstrated by the applicant's submittal materials and evidenced by these findings, the proposed preliminary plat complies with the applicable ordinances, regulations, and design standards. As proposed, this criterion is met.

- b. MMC Subsection 17.12.040.A.2 requires that the proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.

The proposed partition will provide sufficient area on both parcels to accommodate future development in accordance with the standards of the underlying R-7 zone. The parcels do not have physical constraints or dimensional limitations that would necessitate the need for a variance. As proposed, this criterion is met.

- c. MMC Subsection 17.12.040.A.3 requires that the proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).

The proposed plat is a partition plat; therefore, this criterion is not applicable.

- d. MMC Subsection 17.12.040.A.4 requires that the streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.

Adjacent to the subject property, the existing public right-of-way (ROW) on 43rd Ave, which is functionally classified as a collector street in the City's Transportation System Plan, is 50 ft wide. As discussed in Finding 11, a 5-ft dedication is required but no changes to the layout of the existing street are proposed. As proposed, this criterion is met.

- e. MMC Subsection 17.12.040.A.5 requires a detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.

The applicant's submittal materials include a detailed narrative demonstrating compliance with all applicable standards and criteria. As proposed, this criterion is met.

As proposed, the Planning Commission finds that the preliminary plat meets the applicable criteria.

6. MMC Chapter 17.16 Application Requirements and Procedures

MMC Section 17.16.060 establishes the application requirements for preliminary plat, including completed application forms and checklists, applicable fees, and the information specified in MMC Chapter 17.20 Preliminary Plat.

The applicant's submittal materials include the necessary forms, checklists, and fees, as well as sufficient information to demonstrate compliance with the applicable standards and criteria.

As proposed, the Planning Commission finds that the application meets the applicable requirements for submittal of a preliminary plat.

7. MMC Chapter 17.20 Preliminary Plat

MMC 17.20 establishes the information required for a preliminary plat, including general information to be shown on the plat and existing and proposed conditions.

The applicant's preliminary plat submittal is to scale and includes a vicinity map, existing conditions, contour lines, structures on surrounding properties, minimum setbacks for future development, and concepts for future development.

As proposed, the Planning Commission finds that the proposed preliminary plat includes the relevant and necessary information as outlined in MMC 17.20.

8. MMC Chapter 17.28 Design Standards

MMC 17.28, particularly MMC Section 17.28.040, establishes standards for lot design for land divisions and boundary changes.

- a. MMC Subsection 17.28.040.A requires that the lot size, width, shape, and orientation shall be appropriate for the location and the type of use contemplated, as well as that minimum lot standards shall conform to Title 19.

As discussed in Finding 10, the proposed parcels meet the minimum area and dimensional requirements for the underlying R-7 zone, except for lot width. The applicant has requested a variance to the lot width standard for both parcels, with the approval criteria discussed in Finding 12-c(1). As proposed, and with the variance approved as discussed in Finding 12, this standard is met.

- b. MMC Subsection 17.28.040.B requires that lot shape shall be rectilinear, except where not practicable due to location along a street radius, or existing lot shape. The sidelines of lots, as far as practicable, shall run at right angles to the street upon which the lots face. As far as practicable, the rear lot line shall run parallel to the street.

The proposed parcels are both rectilinear in shape and have frontage on 43rd Ave. The side lot lines of both parcels run at right angles to 43rd Ave and the rear lot lines are parallel to 43rd Ave. As proposed, this standard is met.

- c. MMC Subsection 17.28.040.C limits compound lot lines for side or rear lot lines. Cumulative lateral changes in direction exceeding 10% of the distance between opposing lot corners along a given lot line may only be permitted through the variance provisions of MMC Subsection 19.911.

As proposed, a compound line would separate the parcels along their common boundary, with a cumulative lateral change in direction of 20 ft. The distance between opposing lot corners is approximately 228 ft, so the change in direction is allowable without need of a variance. As proposed, this standard is met.

- d. MMC Subsection 17.28.040.D allows lot shape standards to be varied pursuant to MMC 19.911.

No variance to the lot shape standards is requested in this application.

- e. MMC Subsection 17.28.040.E limits double frontage and reversed frontage lots, stating that they should be avoided except in certain situations.

Neither of the proposed parcels is a double frontage or reversed frontage lot.

- f. MMC Subsection 17.28.040.F requires that, pursuant to the definition and development standards contained in Title 19 for frontage, required frontage shall be measured along the street upon which the lot takes access. This standard applies when a lot has frontage on more than one street.

As proposed, both parcels would take access from 43rd Ave. Each parcel has approximately 58 ft of public street frontage and so provide the 35-ft minimum required in the R-7 zone. As proposed, this standard is met.

As proposed, and with the variances approved as discussed in Finding 12, the Planning Commission finds that the new parcels presented in the applicant's preliminary plat meet the applicable design standards established in MMC 17.28.

9. MMC Chapter 17.32 Improvements

MMC 17.32 establishes procedures for public improvements, including a requirement that work shall not begin until plans have been approved by the City.

As discussed in Finding 11, the applicant would dedicate property to the existing public right-of-way along 43rd Ave and construct physical improvements along the frontage of both parcels.

As proposed, the Planning Commission finds that the applicable standards of MMC 17.32 are met.

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

MMC 19.301 contains standards for Low Density Residential zones, including the R-7 zone. The application meets the applicable standards of this section as described below.

a. MMC Subsection 19.301.2 Allowed Uses

MMC 19.301.2 establishes the uses allowed in the R-7 zone, including single-family detached dwellings, duplexes, and accessory dwelling units (ADUs) as outright permitted uses.

As proposed, the existing house on Parcel 1 would remain. Parcel 2 would be large enough to allow development of either a single-family detached house or a duplex, both of which are allowed uses in the R-7 zone. Any actual proposed use will be reviewed for compliance with the applicable standards of the R-7 zone and other relevant sections of the municipal code at the time of future development.

As proposed, this standard is met.

b. MMC Subsections 19.301.4 and 19.301.5 Development Standards

MMC 19.301.4 and 19.301.5 establish development standards for the R-7 zone. The applicable standards are addressed and met as described in Table 9-b (Zoning Compliance) below.

| Table 9-b Applicable R-7 Development Standards | | | |
|---|--|---|--|
| Standard | R-7 Requirement | Parcel 1 | Parcel 2 |
| Lot Area | 7,000 sq ft | 10,340 sq ft | 15,809 sq ft |
| Lot Width | 60 ft | 58 ft (see Finding 12 for discussion of the variance requested) | 58 ft (see Finding 12 for discussion of the variance requested) |
| Lot Depth | 80 ft | 227 ft | 227 ft |
| Public Street Frontage | 35 ft | 58 ft | 58 ft |
| Front Yard | 20 ft (as per MMC 19.501.2, the required setback for 43 rd Ave is 22.5 ft = 20 ft for R-7 zone, plus 2.5 ft for special 30-ft setback from centerline of 43 rd Ave ROW) | 13.7 ft (existing nonconforming development, further reduced by dedication to ROW) | To Be Determined at time of development (TBD) |
| Side Yard | 5 ft / 10 ft (interior yards) | 13.6 ft (south) c.12 ft (north) | TBD |
| Rear Yard | 20 ft | >165 ft | TBD |
| Maximum Building Height | 2 stories or 35 ft (lesser of) | 2 stories, <35 ft | TBD |
| Maximum lot coverage | 30% | Approx. 11% | TBD |
| Minimum vegetation | 30% | >65% | TBD |
| Front Yard Minimum Vegetation | 40% | >75% | TBD |
| Density requirements | Total lot area is 0.5 acres (after ROW dedications) Min. density = 2 units (@5.0 units/acre) Max. density = 3 units (@6.2 units/acre) | 1 dwelling unit (single-family house) | Sized for duplex (2 dwelling units) |

As proposed, the applicable development standards of these subsections are met.

As proposed, the Planning Commission finds that the applicable R-7 zone standards of MMC 19.301 are met.

11. MMC Chapter 19.700 Public Facility Improvements

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

a. MMC Section 19.702 Applicability

MMC 19.702 establishes the applicability of the provisions of MMC 19.700, including land divisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that result in any projected increase in vehicle trips or any increase in gross floor area on the site.

The applicant proposes to partition the subject property into 2 distinct parcels. The proposed partition triggers the requirements of MMC 19.700.

MMC 19.700 applies to the proposed development.

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 establishing approval criteria.

The applicant had a preapplication conference with City staff on January 4, 2018, prior to application submittal. The proposed action does not trigger a Transportation Impact Study (TIS) (as addressed in Finding 11-c), but it does require a preliminary plat application. The proposal's compliance with MMC 19.700 is being reviewed as part of the preliminary plat application and a separate Transportation Facilities Review (TFR) application is not necessary. As addressed in Findings 11-d and 11-e, the applicant will provide mitigation in rough proportion to the potential impacts of the proposed partition.

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 requires submission of a TIS documenting the development impacts on the surrounding transportation system.

The City Engineer has determined that a transportation impact study was not required, as the impacts of the proposed partition on the transportation system were minimal and evident.

d. MMC Section 19.705 Rough Proportionality

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

Finding 11-e addresses the required dedications to the public right-of-way along the subject property's frontage on 43rd Ave. A rough analysis of proportionality shows that right-of-way dedication and the construction of street improvements are proportional to the anticipated impacts of creating 1 new parcel sized for residential development of a duplex. With the required dedication and improvements, the surrounding transportation system will continue to operate at the level of service as before the proposed action.

The proposed development is consistent with MMC 19.705.

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. MMC Subsection

19.708.1 points to MMC Chapter 12.16 and establishes general requirements and standards for streets, including access management, clear vision, street design, connectivity, and intersection design and spacing standards. MMC Table 19.708.2 provides more specific street design standards for various street classifications, including for collector and local streets. The City's street design standards are based on the street classification system described in the City's Transportation System Plan (TSP).

All streets, sidewalks, necessary public improvements, and other public transportation facilities located in the public ROW and abutting the development site shall be adequate at the time of development or shall be made adequate in a timely manner. Driveway approach aprons shall be between 9 ft and 20 ft in width and least 7.5 ft from the side property line, though shared driveways may straddle property lines. In addition, all signs, structures, or vegetation over 3 ft in height shall be removed from "vision clearance areas" at intersections of streets, driveways, and alleys.

The Milwaukie TSP and Transportation Design Manual (TDM) classify of 43rd Ave as a collector street. As established in MMC Table 19.708.2, the required ROW width for a collector street is between 40 ft and 74 ft depending on the required street improvements. For this section of 43rd Ave, the Engineering Department has determined that the required ROW width is 60 ft, to allow for a half-street cross-section consisting of an 11-ft travel lane, 6-ft bicycle lane, standard curb and gutter, 5-ft landscape strip, and 6-ft set-back sidewalk. The existing ROW width of 43rd Ave fronting the subject property is 50 ft, so the applicant is responsible for dedicating half (5 ft) of the remaining 10 ft needed for the ROW along 43rd Ave fronting the subject property. And given that the only existing half-street improvement along the subject property frontage is a 12-ft travel lane, the remaining improvements noted above will be required. The existing asphalt has been determined by the City to be in good condition, so asphalt widening from the new curb and gutter is only required as needed to meet the existing asphalt. Conditions have been established to ensure that the needed ROW dedication and street improvements are provided.

The City will be constructing sidewalks on 43rd Ave within the next 2 years, so the existing fencing that is located in the 43rd Ave right-of-way will not be allowed to remain. A condition has been established to require the applicant to relocate this fence onto the private property.

As proposed, Parcel 2 will share access to 43rd Ave through the existing driveway on Parcel 1, which will remain. A condition of approval has been established to ensure that the driveway approach for Parcel 1 is reconstructed with a standard asphalt driveway approach that meets all guidelines of the Americans with Disabilities Act (ADA) as well as all other applicable requirements and standards for accessways.

The applicant has requested variances to the maximum block perimeter standard of MMC Subsection 19.708.1.F(5) and the maximum intersection spacing standard of MMC Subsection 19.708.1.F(6). These variances are discussed in Finding 12.

As conditioned, and with the variances approved as discussed in Finding 12, the proposed partition meets all the applicable standards of MMC 19.708.

f. MMC Section 19.709 Public Utility Requirements

MMC 19.709 establishes the City's requirements and standards to ensure the adequacy of public utilities to serve development.

As discussed above in Finding 11-e, the proposed partition is required to dedicate 5 ft along the 43rd Ave frontage. In addition, the applicant has proposed to have Parcel 2 share access to 43rd Ave through the existing driveway on Parcel 1, and a condition has been established to ensure that the driveway approach is reconstructed to meet applicable standards. Connections to utilities for Parcel 2 can be made directly to existing services in the ROW along the parcel's frontage on 43rd Ave or via an easement through Parcel 1. If the applicant elects to take the utility and access easement approach, then these easements will need to be identified on the plat. A condition has been established to ensure this requirement will be met if needed.

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

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

12. 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 4 variances: (1) from the lot width standards of the R-7 zone for both parcels, as established in MMC Subsection 19.301.4.A(2); (2) from the maximum block perimeter standard of MMC Subsection 19.708.1.F(5); (3) from the maximum intersection spacing standard of MMC Subsection 19.708.1.F(6); and (4) from the limitation on individual access for Parcel 2 as a new lot, as established in MMC Subsection 12.16.040.C(2) .

The requested variances meet the eligibility requirements established in MMC 19.911.2.

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.

The variance requested to the R-7 lot width standard falls within the 10% allowance for Type II review. However, the other 3 variances are not identified in MMC 19.911.3.B as being eligible for Type II review and so are subject to the Type III review process. The lot width variance is subject to the Type II approval criteria established in MMC Subsection 19.911.4.A; the other 3 variances must show compliance with the Type III approval criteria established in MMC Subsection 19.911.4.B.

c. MMC Subsection 19.911.4 Approval Criteria

(1) MMC 19.911.4.A establishes approval criteria for Type II variance requests.

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

The minimum required lot width for the R-7 zone is 60 ft; the proposed width of both Parcels 1 and 2 is 58 ft, or 2 ft below the standard. The requested adjustment represents a difference of approximately 3% from the minimum, which is not significant and would not be detrimental to surrounding properties or public health, safety, or welfare. There are no designated natural resource areas on the subject property.

This criterion is met.

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

The City has a Capital Improvement Project scheduled to construct curbs, landscape strips, and set back sidewalks on 43rd Ave within the next 2 years. The requested minor adjustment to the lot width of both parcels would not interfere with these or any other planned improvements.

This criterion is met.

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

The proposed variance to reduce the width of both parcels by 2 ft would not have any negative impact on existing buildings. As noted in Finding 10-b, the existing house that would remain on Parcel 1 will meet the minimum required side yard setbacks for the R-7 zone.

As per the definition provided in MMC Section 19.201, lot width is measured at the building line. Given that the proposed partition includes a compound line

segment that results in Parcel 2 being 78 ft wide in the back half of the lot where the applicant has indicated interest in locating the new primary structure, it is possible that the actual width of Parcel 2 will meet the minimum standard. Regardless, the 58-ft width of Parcel 2 at the front lot line would allow development of a primary structure that could easily meet the 5-ft and 10-ft side-yard setback standards of the R-7 zone.

This criterion is met.

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

As discussed above, the proposed 2-ft reduction in lot width is not significant and should not result in any negative impacts that require mitigation.

This criterion is met.

As proposed, the Planning Commission finds that the variance requested to the R-7 lot width standard meets the approval criteria established in MMC 19.911.4.A for Type II variances. The variance to the lot width standard is approved for both parcels.

- (2) MMC 19.911.4.B establishes approval criteria for Type III variance requests, including discretionary relief criteria and economic hardship criteria. The applicant may choose which set of criteria to meet based upon the nature of the request, the development proposal, and the existing site conditions.

The applicant has elected to address the economic hardship criteria for each of the Type III variances, which are provided in MMC Subsection 19.911.4.B(2). These 3 variances are all related to the issue of providing for a future connection to White Lake Rd and are discussed collectively in the context of the approval criteria below.

- (a) Due to unusual site characteristics and/or other physical conditions on or near the site, the variance is necessary to allow reasonable economic use of the property comparable with other properties in the same area and zoning district.

As per MMC Table 19.708.1, the minimum distance between intersections on designated collector streets like 43rd Ave is 300 ft and the maximum distance is 600 ft. Along 43rd Ave, Rhodesa St is approximately 210 ft north of the nearest point of the subject property and approximately 620 ft from the intersection of 43rd Ave with King Rd. The location of the subject property makes a variance from one or the other of the intersection spacing standards necessary, whether or not the applicant proposed ROW dedication for a future connection to White Lake Rd. With the dedication, a variance would be needed from the minimum spacing standard because Rhodesa St would be less than 300 ft away; without the dedication, a variance from the maximum spacing standard would be required because King Rd and Rhodesa St would remain more than 600 ft apart.

As per MMC Table 19.708.1, the maximum block perimeter measured from a collector street is 1,800 ft. For the subject property, the existing perimeter of the block extending from 43rd Ave to King Rd to 46th Ave to White Lake Rd to 45th Ave to Rhodessa St and back to 43rd Ave is approximately 2,900 ft. A variance to the block perimeter standard is necessary to allow the subject property to be redeveloped as would be a comparable property in the area.

Finally, the subject property has a single existing access on 43rd Ave. As per MMC Subsection 12.16.040.C.2, individual access to a collector street is prohibited unless the City Engineer finds there is no practicable alternative to access the site, shared access is provided by easement with adjacent properties, and the accessway is designed to contain all backing movements on site. Although a future connection to White Lake Rd is physically possible, public testimony by nearby neighbors indicates little public support for the connection, and the pattern of existing development in the area does not facilitate the additional actions necessary to actualize such a connection. With that in mind and given that the applicant has proposed that both parcels share the existing driveway access onto 43rd Ave (which is adequately situated to contain all backing movements on site), a variance to the standard limiting access to a collector street is necessary to allow reasonable redevelopment of the subject property.

The Planning Commission finds that the requested variances are necessary to allow reasonable economic use of the property. This criterion is met.

- (b) The proposed variance is the minimum variance necessary to allow for reasonable economic use of the property.

The applicant has proposed that both parcels share the existing access onto 43rd Ave and that no new individual access would be opened onto that collector street. Given the finding discussed above that ROW dedication for a future connection to White Lake Rd is not publicly supported or highly likely, there is no other alternative to allow for reasonable economic use of the property than to grant the requested variances.

The Planning Commission finds that the requested variances are the minimum necessary to allow for reasonable economic use of the property. This criterion is met.

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

Given the findings discussed above that ROW dedication for a future connection to White Lake Rd is not publicly supported or highly likely, there is no alternative to the requested variances. The primary impact is less connectivity for the surrounding neighborhood, although a connection to White Lake Rd would shorten the walking trip to the nearby King Road Shopping Center for only approximately 14 houses and by only 50-100 ft for many of them.

The Planning Commission finds that the requested variances would have no significant impacts that require mitigation.

The Planning Commission has assessed the merits of requiring dedication of ROW to make a future connection to White Lake Rd. Having heard public testimony from owners and residents of nearby properties to the north and east of the subject property in opposition to a future street connection, noting that the surrounding area is already developed and presents little opportunity for redevelopment, and concluding that no properties depend on a through connection to White Lake Rd for redevelopment, the Planning Commission finds that the actualization of a future street connection to White Lake Rd is highly unlikely.

As proposed, the Planning Commission finds that the requested variances meet the approval criteria established in MMC 19.911.4.B(2) for Type III variances based on economic hardship.

As proposed, the Planning Commission finds that the requested variances meet the applicable Type III variance approval criteria established in MMC 19.911.4.

The Planning Commission finds that the requested variances are allowable as per the applicable standards of MMC 19.911 and are therefore approved.

13. MMC Chapter 19.1200 Solar Access Protection

A primary purpose of MMC 19.1200 is to orient new lots and parcels to allow utilization of solar energy. In particular, MMC Section 19.1203 establishes solar access provisions for new development.

- a. MMC Subsection 19.1203.2 establishes the applicability of MMC Subsection 19.1203.3 as for applications to create lots in single-family zones. Exceptions are allowable to the extent the Planning Director finds that the applicant has shown one or more of the conditions listed in MMC Subsections 19.1203.4 and 19.1203.5 exist and that exemptions or adjustments are warranted.

The proposed partition will create new parcels in the R-7 zone, which allows single-family residences. As discussed in Findings 13-b, 13-c, and 13-d, the solar design standards of MMC 19.1203.3 are applicable, and no exemptions or adjustments are necessary.

- b. MMC 19.1203.3 establishes solar design standards, including basic requirements for north-south dimension and front-lot-line orientation with respect to a true east-west axis. There are two other options for compliance, for either establishing a protected solar building line or demonstrating a particular level of performance with respect to protection from shading.

Neither of the parcels created by the proposed partition have a north-south dimension of 90 ft or more or front lot lines that are oriented within 30° of a true east-west axis. As discussed in Finding 13-d, the Planning Director has reduced the percentage of lots that must comply with this standard to 0.

As proposed, the solar design standards are not applicable.

- c. MMC 19.1203.4 establishes exemptions from the standards of MMC 19.1203.3, including where an off-site structure and/or vegetation produces a shadow pattern that would affect allowable development on the site.

As noted in Finding 13-d, both parcels resulting from the proposed partition have been exempted from compliance with the solar design standards. No exemptions are necessary.

- d. MMC 19.1203.5 establishes provisions for adjustments to the percentage of lots that must comply with the solar design standards of MMC 19.1203.3, including cases in which the application of the solar design standards would reduce the density or increase the on-site development costs.

As discussed in Finding 12, dedication of public ROW for a future street connection to White Lake Rd has been deemed impractical, so the proposed parcels are both be oriented with a long east-west axis to take access from 43rd Ave and with north-south dimensions well under 90 ft. The existing configuration of the subject property in relation to the 43rd Ave ROW makes it impossible to configure the proposed parcels to meet the solar design standards of MMC 19.1203.3. The Planning Director has reduced the percentage of lots that must comply with the solar design standards to 0.

The Planning Commission finds that both lots in the proposed partition are exempt from the solar design standards of MMC 19.1203.3. As proposed, the applicable provisions of the solar access standards established in MMC 19.1200 are met.

14. As described in Finding 3, public notice of the application was posted on site and mailed as required by the Type III review process established in MMC 19.1006. The application was referred for comment to the following departments and agencies on June 20, 2019:

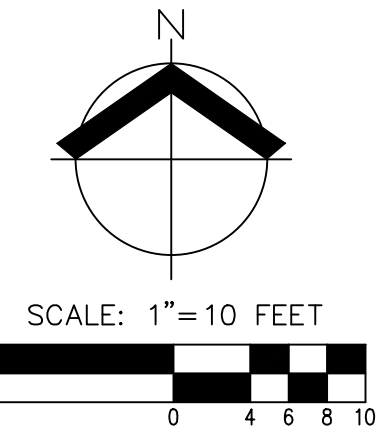
- Milwaukie Engineering Department
- Milwaukie Building Department
- Milwaukie Public Works Department
- Milwaukie Police Department
- Clackamas Fire District #1 (CFD #1)
- Lewelling Neighborhood District Association (NDA) Chairperson & Land Use Committee
- Hector Campbell NDA Chairperson & Land Use Committee
- Clackamas County Department of Transportation & Development
- Metro

In addition, public notice of the application with an invitation to comment was sent on June 19, 2019, to property owners and residents within 300 ft of the subject property.

The comments received are summarized as follows:

- **David Aschenbrenner, Chair, Hector Campbell Neighborhood District Association (NDA):** The site is not within the NDA boundary, so they defer to the other NDAs but request that all trees be preserved (or as many as possible) and that there be a requirement to plant more trees.

Exhibit 2



- NOTES:**
- STORM DRAINAGE FROM NEW IMPERVIOUS SURFACES TO BE INFILTRATED BY AN ON-SITE DRY WELL.
 - FRONTAGE IMPROVEMENTS FOR 43RD AVENUE ARE PLANNED THROUGH A FUNDED FUTURE CITY PROJECT.
 - FRONTAGE IMPROVEMENTS FOR SE WHITE LAKE ROAD ARE NOT INCLUDED WITH THIS PROJECT.

TAX LOT 3400
 TAX MAP 1S 2E 30CC

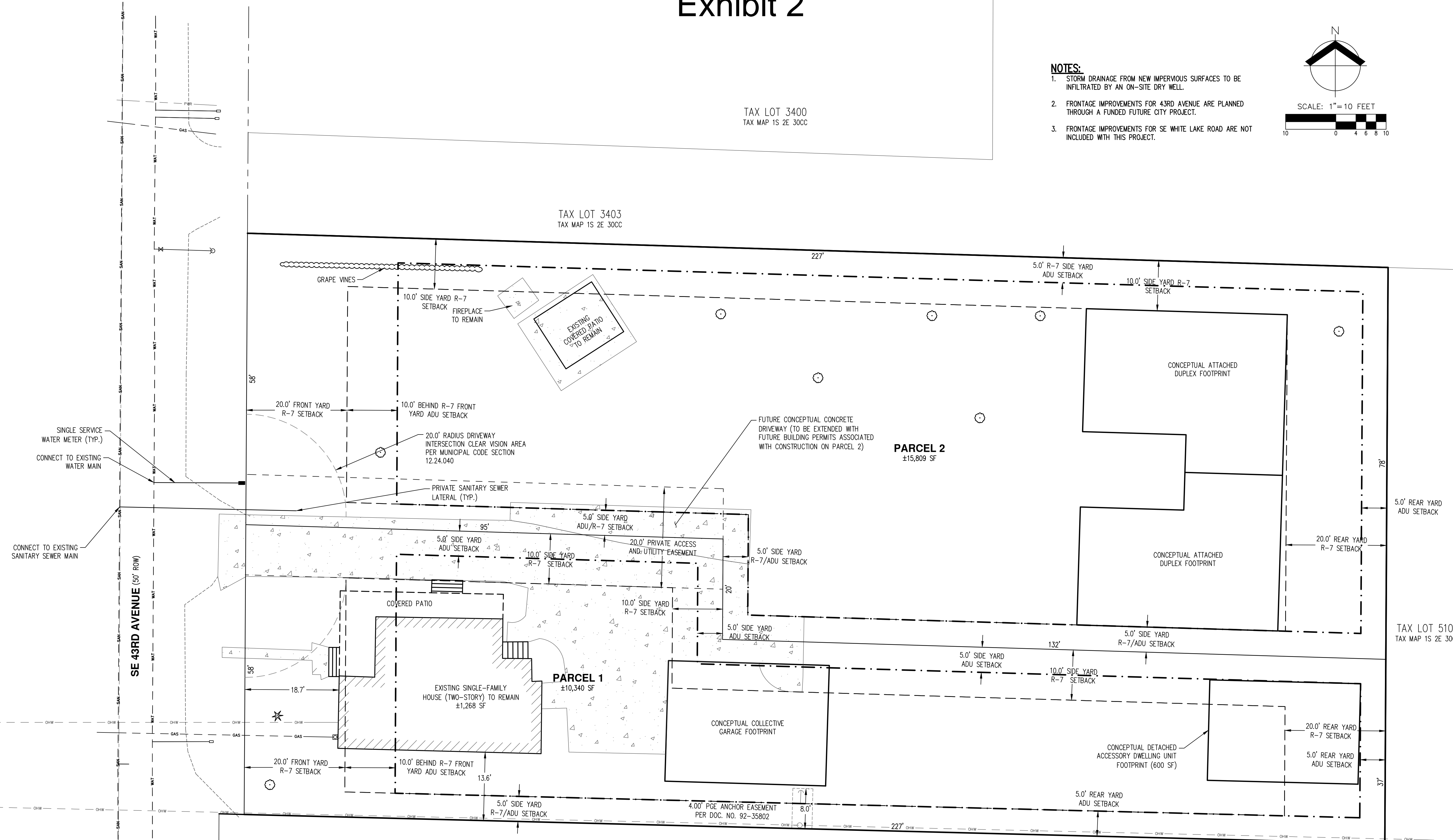
TAX LOT 3403
 TAX MAP 1S 2E 30CC

PARCEL 2
 ±15,809 SF

PARCEL 1
 ±10,340 SF

TAX LOT 5800
 TAX MAP 1S 2E 30CC

TAX LOT 5100
 TAX MAP 1S 2E 30CC



DEVELOPMENT STANDARD CALCULATIONS

R-7 ZONE STANDARDS

| | |
|-------------------------------|-----------|
| MINIMUM LOT SIZE | 7,000 SF |
| MINIMUM LOT WIDTH | 60' |
| MINIMUM LOT DEPTH | 80' |
| MAXIMUM LOT COVERAGE | 35% W/ADU |
| -MAX ADU FOOTPRINT | 600 SF |
| MINIMUM VEGETATION | 30% |
| MINIMUM FRONT YARD VEGETATION | 40% |
| MINIMUM STREET FRONTAGE | 35' |

PARCEL 1

| | |
|---------------------------|------------------|
| PARCEL SIZE | ±10,340 SF |
| PARCEL WIDTH | 58' |
| PARCEL DEPTH | 227' |
| PARCEL COVERAGE | ±26% (±2,668 SF) |
| -EXISTING HOUSE FOOTPRINT | 1,268 SF |
| -GARAGE FOOTPRINT | 800 SF |
| -ADU FOOTPRINT | 600 SF |
| VEGETATION | ±55% (±5,729 SF) |
| FRONT YARD | 1,151 SF |
| FRONT YARD VEGETATION | ±74% (±848 SF) |
| STREET FRONTAGE | 58' |

PARCEL 2

| | |
|-------------------------|------------------|
| PARCEL SIZE | ±15,809 SF |
| PARCEL WIDTH | 78' |
| LOT DEPTH | 227' |
| *LOT COVERAGE | ±19% (±3,000 SF) |
| -HOUSE/GARAGE FOOTPRINT | ±2,400 SF |
| -ADU FOOTPRINT | 600 SF |
| *VEGETATION | 30% (4,847 SF) |
| *FRONT YARD | 1,161 SF |
| *FRONT YARD VEGETATION | 40% (±464 SF) |
| STREET FRONTAGE | 58' |

* - ANTICIPATED FUTURE CONDITION

MINIMUM REQUIRED R-7 SETBACK SUMMARY

| | |
|------------|--------------------|
| 20.0' | FRONT YARD SETBACK |
| 20.0' | REAR YARD SETBACK |
| 10.0'/5.0' | SIDE YARD SETBACK |

MINIMUM REQUIRED ADU DETACHED TYPE II SETBACK SUMMARY

| | |
|-------|--|
| 10.0' | BEHIND FRONT YARD SETBACK UNLESS LOCATED AT LEAST 40.0' FEET FROM THE FRONT LOT LINE |
| 5.0' | REAR YARD SETBACK |
| 5.0' | SIDE YARD SETBACK |

DENSITY CALCULATIONS

R-7 ZONE
 MINIMUM DENSITY=5.0 DU/AC
 MAXIMUM DENSITY=6.2 DU/AC

TOTAL GROSS AREA=±0.496 ACRES

MINIMUM UNITS=5.0 DU/AC X ±0.496 ACRES=2.48 UNITS
 =2.0 UNITS (ROUNDING PER MUNICIPAL CODE SECTION 19.202.4B)

MAXIMUM UNITS=6.2 DU/AC X ±0.496 ACRES=3.08 UNITS
 =3.0 DU (ROUNDING PER MUNICIPAL CODE SECTION 19.202.4B)

*DU/AC: DWELLING UNITS PER ACRE

10244 SE 43RD AVENUE
PARTITION
MILWAUKIE
OREGON
 TAX LOT 5200

MODIFIED PRELIMINARY
PARTITION PLAT / SITE
PLAN EXHIBIT

DESIGNED BY: JDR
 DRAWN BY: JDR
 CHECKED BY: CG
 SCALE: AS NOTED
 DATE: 06/17/2019

REGISTERED PROFESSIONAL ENGINEER
 STATE OF OREGON
 NO. 12345
 COIN D. RAUGUS

RENEWAL DATE: 12/31/20

REVISIONS

JOB NUMBER
5042

SHEET
1 OF 1