

PLANNING DEPARTMENT
 6101 SE Johnson Creek Blvd
 Milwaukie OR 97206
 503-786-7630
 planning@milwaukieoregon.gov

Application for Land Use Action

Master File #: _____

Review type*: I II III IV V

CHOOSE APPLICATION TYPE(S):

Variance: Variance

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...

...

...

Use separate application forms for:

- Annexation and/or Boundary Change
- Compensation for Reduction in Property Value (Measure 37)
- Daily Display Sign
- Appeal

RESPONSIBLE PARTIES:

APPLICANT (owner or other eligible applicant—see reverse): Antonio J. Da Rosa and Michelle D. Da Rosa

Mailing address: 10244 SE 43rd Avenue, Milwaukie, OR Zip: 97222

Phone(s): Please Contact Applicant's Consultant Email: Please Contact Applicant's Consultant

APPLICANT'S REPRESENTATIVE (if different than above): AKS Engineering & Forestry, LLC - Chris Goodell

Mailing address: 12965 SW Herman Road, Suite 100 Zip: 97062

Phone(s): (503) 563-6151 Email: chrisg@aks-eng.com

SITE INFORMATION:

Address: 10244 SE 43rd Avenue Map & Tax Lot(s): 12ES30CC 5200

Comprehensive Plan Designation: LD Zoning: R-7 Size of property: +/-0.61 Acres

PROPOSAL (describe briefly):

This application includes Type II and Type III Variances. Please refer to written memorandum.

SIGNATURE:

ATTEST: I am the property owner or I am eligible to initiate this application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. If required, I have attached written authorization to submit this application. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by: _____ Date: _____

IMPORTANT INFORMATION ON REVERSE SIDE

*For multiple applications, this is based on the highest required review type. See MMC Subsection 19.1001.6.B.1.

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

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

Type V applications may be initiated by any individual.

PREAPPLICATION CONFERENCE:

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

REVIEW TYPES:

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

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

THIS SECTION FOR OFFICE USE ONLY:

FILE TYPE	FILE NUMBER	FEE AMOUNT*	PERCENT DISCOUNT	DISCOUNT TYPE	DEPOSIT AMOUNT	DATE STAMP
Master file		\$			\$	
Concurrent application files		\$			\$	
		\$			\$	
		\$			\$	
		\$			\$	
SUBTOTALS		\$			\$	

TOTAL AMOUNT RECEIVED: \$

RECEIPT #:

RCD BY:

Associated application file #s (appeals, modifications, previous approvals, etc.):

Neighborhood District Association(s):

Notes:

*After discount (if any)

Date: 6/17/2019
To: Brett Kelter, City of Milwaukie
From: Tony and Michelle Da Rosa
Project: SE 43rd Avenue Partition (Land Use File: MLP-2018-001)
Site Location: 10244 SE 43rd Avenue (Clackamas County Assessor's Map 1 2 E 30 CC Tax Lot 5200)

Subject: **Modification to Preliminary Partition Plat/Site Plan**

An application (Land Use File: MLP-2018-001) was submitted to the City of Milwaukie for the creation of two units of land (Parcel 1 and Parcel 2) on the Applicant's property. A Notice of Decision was issued by the City's Planning Director (dated December 31, 2018), which approved the land use application with conditions including a 20-foot-wide public right-of-way dedication along the subject site's northern property line (Condition 1.a.(1)) for the City's potential future extension of SE White Lake Road from the east. Subsequently, the Planning Director's Decision was appealed by neighbors in opposition to the 20-foot wide right-of-way dedication requirement (the "ROW Dedication") but otherwise supportive of the proposed partition. A public hearing was held on February 12, 2019 and was continued to March 12, 2019. The hearing was continued once again at the March 12th public hearing held with the Planning Commission directing the Applicant to submit a modified preliminary partition plat and site plan omitting the ROW Dedication. Based on subsequent correspondence with City staff, it is understood that a Type II Variance and three Type III Variances are necessary for approval of the Modified Preliminary Partition Plat/Site Plan. The Type II Variance is related to minimum lot width standard for Parcel 1 per Section 19.301(A)(2) of the City's Zoning Ordinance. The Type III Variances are necessary to retain the property's existing access onto SE 43rd Avenue (Section 12.16.040(C)(2)), to retain the existing block perimeter (Section 19.708.1(F)(5)), and for intersection spacing and (Section 19.708.1(F)(6)). Based on Section 19.911.1, variances may be granted for the purpose of fostering reinvestment in existing buildings, allowing for creative infill development solutions, and avoiding environmental impacts. The variance applications included with this memorandum are necessary to accommodate the Modified Preliminary Partition Plat/Site Plan and to provide needed infill housing (a duplex on Parcel 2 and an Accessory Dwelling Unit (ADU) on Parcel 1) supporting the purpose of the City of Milwaukie Municipal Code.

It should be noted that the ROW Dedication and the future extension of SE White Lake Road does not feature in the City's Transportation System Plan and thus is not included in the City's plans for additional connectivity as further discussed on Page 14 below. Additionally, the Modified Partition Plat/Site Plan omitting the ROW Dedication and the variance applications included with this memorandum should be approved because the original partition configuration with the ROW Dedication fails the rough proportionality test that is set forth in *Dolan v. City of Tigard* and subsequent citing Oregon cases that tests the proportionality of an exaction to the anticipated impact of a proposed development, and the essential nexus text that is set forth in *Nollan v. California Coastal Commission* and subsequent citing Oregon cases that requires a logical nexus between the exaction as a remedy for the anticipated impact of a proposed development. These tests provide the appropriate test for the constitutionality of exactions as conditions of land use approvals. The ROW Dedication would constitute a taking of 18% of the parent

parcel and significantly reduce the buildable area of the new parcels, as discussed on Page 13 below. Please refer to the applicant’s testimony at the February 12, 2019 and March 12, 2019 public hearings.

Please refer to the Modified Preliminary Plat/Site Plan and discussion provided below which otherwise supports approval of the application.

CITY OF MILWAUKIE MUNICIPAL CODE

TITLE 19 ZONING

CHAPTER 19.300 BASE ZONES

19.301 LOW DENSITY RESIDENTIAL ZONES

The low density residential zones are Residential Zone R-10, Residential Zone R-7, and Residential Zone R-5. These zones implement the Low Density and Moderate Density residential land use designations in the Milwaukie Comprehensive Plan.

19.301.2 Allowed Uses in Low Density Residential Zones

Uses allowed, either outright or conditionally, in the low density residential zones are listed in Table 19.301.2 below. Similar uses not listed in the table may be allowed through a Director’s Determination pursuant to Section 19.903. Notes and/or cross references to other applicable code sections are listed in the “Standards/Additional Provisions” column.

See Section 19.201 Definitions for specific descriptions of the uses listed in the table.

Table 19.301.2 - Low Density Residential Uses Allowed		
Use	R-7	Standards/Additional Provisions
Single-family detached dwelling	P	Subsection 19.505.1 Single-Family Dwellings and Duplexes
Accessory dwelling unit	P/II	Subsection 19.910.1 Accessory Dwelling Units
P = Permitted. II= Type II review required.		

Response: The subject site currently supports an existing single-family home, a detached accessory building (garage), and detached accessory structures (covered patio/fireplace). This project includes a land division (partition) to create two separate units of land (parcels), one of which is intended to retain the existing home and another which is planned to accommodate a future duplex. In the future, the Applicant also plans to build an ADU on Parcel 1. To accommodate the partition, planned future duplex, and planned future ADU, the existing detached garage is planned to be removed. All this is considered appropriate and permitted in the R-7 zone.

19.301.4 Development Standards

In the low density residential zones, the development standards in Table 19.301.4 apply. Notes and/or cross references to other applicable code sections are listed in the “Standards/Additional Provisions” column. Additional standards are provided in Subsection 19.301.5.

See Sections 19.201 Definitions and 19.202 Measurements for specific descriptions of standards and measurements listed in the table.

Table 19.301.4 - Low Density Residential Development Standards			
Standard	R-7	Standards/ Provisions	Additional
A. Lot Standards			
1. Minimum Lot Size (sq. ft) a. Single-family detached	7,000	Subsection 19.501.1 Lot Size Exceptions	
2. Minimum lot width (ft.)	60		
3. Minimum lot depth (ft)	80		
4. Minimum street frontage requirements (ft) a. Standard lot b. Flag lot c. Double flag lot	35 25 35		
B. Development Standards			
1. Minimum yard requirements for primary structures (ft.) a. Front yard b. Side yard c. Street side yard d. Rear yard	20 5/10 20 20	Subsection 19.301.5.A Side Yards Subsection 19.501.2 Yard Exceptions Subsection 19.504.8 Flag Lot Design and Development Standards	
2. Maximum building height for primary structures	2.5 stories or 35 ft, whichever is less	Subsection 19.501.3 Building Height and Side Yard Height Plane Exceptions	
3. Side yard height plane limit a. Height above ground at minimum required side yard depth (ft) b. Slope of plane (degrees)	20 45	Subsection 19.501.3 Building Height and Side Yard Height Plane Exceptions	
4. Maximum lot coverage (percent of total lot area)	30%	Section 19.201 "Lot coverage" definition Subsection 19.301.5.B Lot Coverage	
5. Minimum vegetation (percent of total lot area)	30%	Subsection 19.301.5.C Front Yard Minimum Vegetation Subsection 19.504.7 Minimum Vegetation	
C. Other Standards			
1. Density requirements (dwelling units per acre) a. Minimum b. Maximum	5.0 6.2	Subsection 19.301.5.D Residential Densities Subsection 19.501.4 Density Exceptions	

Response: As illustrated on the Modified Preliminary Partition Plat/Site Plan (attached), the two-parcel partition conforms to the low-density residential development standards provided in Table 19.301.4 above, with the exception of the minimum lot width. Due to the existing geometry of the parent property, the lot width (\pm 116 feet), does not allow two 60-foot wide parcels. The two-parcel partition results in one parcel (Parcel 1) that is slightly less than 60 feet wide (58 feet) measured in accordance with Figure 19.201-3 Lot Width; therefore, a Type II Variance is necessary and the applicable approval criteria are addressed in Section 19.911.3 (p.9).

19.301.5 Additional Development Standards

A. Side Yards

In the R-7 Zone, one side yard shall be at least 5 ft and one side yard shall be at least 10 ft, except on a corner lot the street side yard shall be 20 ft.

Response: Parcel 1 and Parcel 2 are both planned to have 5-foot side yard setbacks and 10-foot side yard setbacks. The side yard setbacks are depicted on the Modified Preliminary Partition Plat/Site Plan (attached). Additionally, the subject site is not considered to be a corner lot. This criterion is met.

B. Lot Coverage

The lot coverage standards in Subsection 19.301.4.B.4 are modified for specific uses and lot sizes as described below. The reductions and increases are combined for properties that are described by more than one of the situations below.

1. Decreased Lot Coverage for Large Lots

Response: As a result of this two-parcel partition, the two parcels are not 2.5 times larger than the minimum lot size in Subsection 19.301.4.A.1. Therefore, this criterion does not apply.

2. Increased Lot Coverage for Single-Family Detached Dwellings

Response: Increasing the maximum lot coverage is not included in this application. Therefore, this criterion does not apply.

A. Type II variance per Subsection 19.911.4.A, to further increase this lot coverage allowance, is prohibited.

3. Increased Lot Coverage for Duplexes

4. Increased Lot Coverage for Detached Accessory Dwelling Units

Response: Increasing the maximum lot coverage is not included in this application. This criterion does not apply. That said, an increase in lot coverage could be considered in the future.

C. Front Yard Minimum Vegetation

At least 40% of the front yard shall be vegetated. The front yard vegetation area required by this subsection counts toward the minimum required vegetation for the lot. A property may provide less than the 40% of the front yard vegetation requirement if it is necessary to provide a turnaround area so that vehicles can enter a collector or arterial street in a forward motion.

Response: As illustrated on the Modified Preliminary Partition Plat/Site Plan, Parcel 1 contains existing landscaping and vegetation which meet the minimum requirements listed above, and is planned to continue to meet the front yard minimum vegetation requirements. In addition, Parcel 1 has an existing driveway/turnaround that provides access to SE 43rd Avenue (collector). As conceptually illustrated on the Modified Preliminary Partition Plat/Site Plan, Parcel 2 also complies with the front yard minimum vegetation requirement. Therefore, these criteria are satisfied.

D. Residential Densities

The minimum and maximum development densities in Subsection 19.301.4.C.1 are applicable for land divisions and replats that change the number of lots.

If a proposal for a replat or land division is not able to meet the minimum density requirement—due to the dimensional requirements for lot width, lot depth, or lot frontage—the minimum density requirement shall instead be equal to the maximum number of lots that can be obtained from the site given its dimensional constraints. The inability of new lot lines to meet required yard dimensions from existing structures shall not be considered as a basis for automatically lowering the minimum density requirement.

Response: Density calculations are provided on the Modified Preliminary Partition Plat/Site Plan which demonstrate the planned two-parcel partition conforms to the residential density requirements in Subsection 19.301.4.C.1. Therefore, this criterion is met.

E. Accessory Structure Standards
Standards specific to accessory structures are contained in Section 19.502.

Response: These standards are applicable to potential future accessory structures and compliance with these standards is to be addressed at the time of building permit review.

F. Number of Dwelling Structures
In the low density residential zones, 1 primary building designed for dwelling purposes shall be permitted per lot. See Subsection 19.504.4.

Response: As illustrated on the Modified Preliminary Partition Plat/Site Plan, the partition is planned to create two units of land. The subject site contains one existing single-family home (primary building), which is planned to be retained on Parcel 1. The Applicant also intends to construct an ADU on Parcel 1 in the future. Parcel 2 is intended to accommodate the future construction of a duplex (primary building). Therefore, this criterion is satisfied.

G. Off-Street Parking and Loading
Off-street parking and loading is required as specified in Chapter 19.600.

Response: Per Table 19.605.1, one off-street parking space per dwelling unit is required. As illustrated on the Modified Preliminary Partition Plat/Site Plan (attached), the existing house and associated off-street parking (provided by existing driveway on Parcel 1) meet the minimum off-street parking requirements. Also illustrated on the Modified Preliminary Partition Plat/Site Plan is a conceptual collective garage on Parcel 1, which is planned to be constructed in the future to provide additional off-street parking. Additionally, the minimum required off-street parking associated with the future duplex on Parcel 2 and future ADU on Parcel 1 is to be addressed at the time of building permit review. Therefore, the standards included in Chapter 19.600 are met, as applicable.

H. Public Facility Improvements
Transportation requirements and public facility improvements are required as specified in Chapter 19.700.

Response: As previously described, the Applicant was directed to submit a Modified Preliminary Partition Plat/Site Plan for the planned two-parcel partition without the 20-foot wide right-of-way dedication for the potential future extension of SE White Lake Road (by the City Planning Commission). Based on subsequent conversations with City staff, it is understood that two Type III Variances to standards included in Chapter 19.700 are

necessary for the Modified Preliminary Partition Plat/Site Plan (the third variance pertains to Section 12.16.040(C)(2)). The approval criteria for Section 19.708.1(F)(5) and Section 19.708.1(F)(6) are addressed below in Section 19.911.4 (p.13). That said, the planned public facility improvements are illustrated on the Modified Preliminary Partition Plat/Site Plan.

I. Additional Standards

Depending upon the type of use and development proposed, the following sections of Chapter 19.500 Supplementary Development Regulations may apply. These sections are referenced for convenience, and do not limit or determine the applicability of other sections within the Milwaukee Municipal Code.

- 1. Subsection 19.504.4 Buildings on the Same Lot
- 2. Subsection 19.504.8 Flag Lot Design and Development Standards
- 3. Subsection 19.505.1 Single-Family Dwellings and Duplexes
- 4. Subsection 19.505.2 Garages and Carports
- 5. Subsection 19.506.4 Manufactured Dwelling Siting and Design Standards, Siting Standards

Response: These standards are relevant to potential future site improvements and are to be addressed and satisfied when applicable at the time of building permit review.

19.906.4 Approval Criteria

The criteria in this subsection are the approval criteria for Type I and Type II development review applications. The criteria are based on a review of development standards throughout Title 19 Zoning. Not all of the standards within the chapters listed below are applicable to a proposal, and the City will identify the applicable standards through the development review process. Though the criteria are the same for Type I and Type II development review, the standards evaluated in a Type I review will be clear and objective or require limited professional judgment, while the Type II review will involve discretionary standards and/or criteria.

An application for Type I or Type II development review shall be approved when all of the following criteria have been met:

- A. The proposal complies with all applicable base zone standards in Chapter 19.300.

Response: As previously demonstrated in the responses above, this partition application complies with the standards in Chapter 19.300, with the exception of the minimum lot width. Due to the existing geometry of the parent property, the Modified Preliminary Partition Plat/Site Plan results in one parcel (Parcel 1) that is slightly less than 60 feet in width; therefore, a Type II Variance is necessary and the applicable approval criteria are addressed below in Section 19.911.4 (p.9). Therefore, this criterion is satisfied.

- B. The proposal complies with all applicable overlay zone and special area standards in Chapter 19.400.

Response: The subject site is not located within an overlay zone or special area. Therefore, this partition application is not subject to the standards in Chapter 19.400. This criterion is not applicable.

- C. The proposal complies with all applicable supplementary development regulations in Chapter 19.500.

Response: As demonstrated in the responses above, this application involves a two-parcel partition. The applicable supplementary development regulations subsections provided above are to be applied to the future duplex and ADU at the time of building permit review. Therefore, the subsections provided above do not apply at this time.

D. The proposal complies with all applicable off-street parking and loading standards and requirements in Chapter 19.600.

Response: As demonstrated in the response above, the applicable off-street parking and loading standards and requirements in Chapter 19.600 are met.

E. The proposal complies with all applicable public facility standards and requirements, including any required street improvements, in Chapter 19.700.

Response: As described above, the Applicant was directed to submit a Modified Preliminary Partition Plat/Site Plan without a 20-foot wide right-of-way dedication for the future extension of SE White Lake Road. Based on conversations with City staff, two Type III Variances to standards included in Chapter 19.700 (the third variance pertains to Section 12.16.040(C)(2)), are necessary for the Modified Preliminary Partition Plat/Site Plan, which excludes a 20-foot wide right-of-way dedication to the City. The approval criteria to Section 19.708.1(F)(5) and Section 19.708.1(F)(6) are addressed below in Section 19.911.4 (p.13).

F. The proposal complies with all applicable conditions of any land use approvals for the proposal issued prior to or concurrent with the development review application.

Response: Previous land use approvals/conditions for this property do not exist; therefore, this criterion is not applicable.

17.28.040 GENERAL LOT DESIGN

This section does not apply to units of land that are created for purposes other than land development including parks, natural areas, right-of-way dedications, or reservations of a similar nature. Lots and tracts created for cottage cluster housing development, per Subsection 19.505.4, are also exempt from the requirements of this section.

A. Size and Shape

Lot size, width, shape, and orientation shall be appropriate for the location and the type of use contemplated. Minimum lot standards shall conform to Title 19.

Response: As previously noted, the subject site is designated R-7 and the intended future use involves an existing single-family home and the future construction of an ADU on Parcel 1, and the future addition of a duplex on Parcel 2. The Modified Preliminary Partition Plat/Site Plan demonstrates the parcel size, width, shape, and orientation are appropriate for this land use and conform with Title 19, with exception to the minimum lot width standard for Parcel 1 (Section 19.301.4(A)(2)). The Modified Preliminary Partition Plat/Site Plan results in one parcel (Parcel 1) that is less than 60 feet in width; therefore, a Type II Variance is necessary for Parcel 1 and the applicable approval criteria are addressed in Section 19.911.4 (p.13).

B. Rectilinear Lots Required

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.

Response: The subject property is a rectilinear lot, ±116 feet by ±232 feet, and ±0.61 acres (per deed and survey) with frontage on SE 43rd Avenue to the west. As shown on the Modified Preliminary Partition Plat/Site Plan, the two parcels created from the partition are also designed to be generally rectangular and appropriate in size and shape to retain the existing single-family home, the future construction of an ADU on Parcel 1, and the future construction of a duplex on Parcel 2. Additionally, the rear lot line of each parcel is oriented to run parallel to the street (SE 43rd Avenue). Therefore, the criteria are met.

C. Limits on Compound Lot Line Segments

Changes in direction along side and rear lot lines shall be avoided. Cumulative lateral changes in direction of a side or rear lot line exceeding 10% of the distance between opposing lot corners along a given lot line is prohibited. Changes in direction shall be measured from a straight line drawn between opposing lot corners.

Response: As illustrated on the Modified Preliminary Partition Plat/Site Plan, the two planned parcels are designed so that changes in direction along rear lot lines are avoided. The minor lateral change in direction between the southern property line of Parcel 2 and the northern property line of Parcel 1 is less than 10% (± 22.7 feet) of the distance between opposing parcel corners along the property line, consistent with the provision above. Therefore, this criterion is satisfied.

D. Adjustments to Lot Shape Standard

Lot shape standards may be adjusted subject to Section 19.911 Variances.

Response: As noted above, Parcels 1 and 2 are in conformance with the lot shape standards, except for the minimum lot width, as shown on the Modified Preliminary Partition Plat/Site Plan and detailed in the sections above. Therefore, the approval criteria for a variance to the minimum lot width standards (Section 19.301.4(A)(2)) for Parcel 1 are addressed below in Section 19.911.4 (p.9).

E. Limits on Double and Reversed Frontage Lots

Double frontage and reversed frontage lots should be avoided, except where essential to provide separations of residential development from railroads, traffic arteries, or adjacent nonresidential uses, or to overcome specific disadvantages of topography and orientation.

Response: As illustrated on the Modified Preliminary Partition Plat/Site Plan (attached), Parcels 1 and 2 are planned to have frontage along SE 43rd Avenue. The subject site is surrounded by properties improved with single-family and multi-family dwellings; other existing streets do not surround the site. Therefore, double and reverse frontage lots are avoided. This criterion is satisfied.

F. Measurement of Required Frontage

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.

Response: As demonstrated on the Modified Preliminary Partition Plat/Site Plan (attached), Parcels 1 and 2 are planned to take access from SE 43rd Avenue and the required minimum frontage (35 feet) is measured along SE 43rd Avenue. Therefore, this criterion is satisfied.

19.911.3 REVIEW PROCESS

A. General Provisions

1. Variance applications shall be evaluated through either a Type II or III review, depending on the nature and scope of the variance request and the discretion involved in the decision-making process.

Response: A variance application to the minimum lot width requirement (Section 19.301.4(A)(2)) is to be processed through a Type II Review. This Type II Variance application supplements the existing land use application (Land Use File: MLP-2018-001) considering the Modified Preliminary Partition Plat/Site Plan. The applicable criteria for the variance are addressed Section 19.911.4 (p.9).

2. Variance applications may be combined with, and reviewed concurrently with, other land use applications.

Response: This provision is understood.

3. One variance application may include up to three variance requests. Each variance request must be addressed separately in the application. If all of the variance requests are Type II, the application will be processed through a Type II review. If one or more of the variance requests is Type III, the application will be processed through a Type III review. Additional variance requests must be made on a separate variance application.

Response: This provision is understood.

B. Type II Variances

Type II variances allow for limited variations to numerical standards. The following types of variance requests shall be evaluated through a Type II review per Section 19.1005:

4. A variance of up to 10% to lot width or depth standards.

Response: The Modified Preliminary Partition Plat/Site Plan (attached) results in a minimum lot width (the horizontal distance between side lot lines measured at the building line of the primary structure) of less than 60 feet for Parcel 1. The minimum lot width required in the R-7 is 60 feet. Parcel 1 is slightly under the minimum lot width standard, which is planned to be ±58 feet, and within 10% of the minimum lot width standard. Therefore, a variance to the minimum lot width standard is to be evaluated through a Type II review.

19.911.4 APPROVAL CRITERIA

A. Type II Variances

An application for a Type II variance shall be approved when all of the following criteria have been met:

1. 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.

Response: Per Section 19.301.4(A)(2), the minimum lot width required in the R-7 zone is 60 feet. The existing width of the property is approximately 116 feet. Due to this existing site constraint, the subject property does not allow for a partition that results in two parcels that each have 60-foot widths. The Modified Preliminary Partition Plat/Site Plan results in the lot width of Parcel 1 being slightly under (± 58 feet) the minimum lot width standard required, which is less than 10% of the minimum lot width standard. This reduction to the lot width for Parcel 1 is insignificant and expected to have little to no impact the surrounding properties, public health, safety, or welfare and otherwise complies with the lot shape standards of Title 19. Additionally, natural resources are not present on the subject site. Therefore, this approval criterion is met.

2. 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.

Response: A variance to the minimum lot width standard is not expected to interfere with planned future improvements to any public transportation facility or utility identified on the Transportation System Plan or Water Master Plan. Frontage improvements for 43rd Avenue are planned through a funded future City project. Therefore, this approval criterion is met.

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

Response: The intent of the variance to Section 19.301.4(A)(2), the minimum lot width standard, is to retain the existing single-family home located on Parcel 1 and accommodate the future construction of a duplex on Parcel 2. Therefore, a variance to reduce the minimum lot width for Parcel 1 by ± 2.3 feet creates a parcel size and shape which sustains the integrity of the existing single-family home. The integrity of the planned two-parcel partition is enhanced by establishing two parcels that are appropriate in design to retain the existing single-family home and construct a future ADU on Parcel 1 and future duplex on Parcel 2. This approval criterion is met.

4. Impacts from the proposed variance will be mitigated to the extent practicable.

Response: The insignificant reduction (± 2.3 feet) to the minimum lot width is not expected to create impacts that warrant mitigation. Therefore, mitigation measures are not anticipated to be necessary. This approval criterion is met.

19.911.3 REVIEW PROCESS

A. General Provisions

1. Variance applications shall be evaluated through either a Type II or III review, depending on the nature and scope of the variance request and the discretion involved in the decision-making process.

Response: A variance application to the access location limitations standard (Section 12.16.040(C)(2)), the maximum block perimeter standard (Section 19.708.1(F)(5)), and the maximum intersection spacing standard (Section 19.708.1(F)(6)), is to be processed through a Type III Review. This Type III Variance application supplements the existing land use application (Land Use File: MLP-2018-001) considering the Modified Preliminary Partition Plat/Site Plan. The applicable approval criteria for these variances are addressed in Section 19.911.4 (p.13).

2. Variance applications may be combined with, and reviewed concurrently with, other land use applications.

Response: This provision is understood.

3. One variance application may include up to three variance requests. Each variance request must be addressed separately in the application. If all of the variance requests are Type II, the application will be processed through a Type II review. If one or more of the variance requests is Type III, the application will be processed through a Type III review. Additional variance requests must be made on a separate variance application.

Response: This provision is understood.

C. Type III Variances

Type III variances allow for larger or more complex variations to standards that require additional discretion and warrant a public hearing consistent with the Type III review process. Any variance request that is not specifically listed as a Type II variance per Subsection 19.911.3.B shall be evaluated through a Type III review per Section 19.1006.

Response: Based on correspondence with City staff, it is understood that variances to the standards previously described and listed/discussed in further detail below are to be evaluated through a Type III review. The approval criteria are addressed in Section 19.911.4 (p.13).

CHAPTER 12.16 ACCESS MANAGEMENT

12.16.040 ACCESS REQUIREMENTS AND STANDARDS

C. Accessway Location

2. Location Limitations

Individual access to single-family residential lots from arterial and collector streets is prohibited. An individual accessway may be approved by the Engineering Director 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.

Response: In this case, the subject site has an existing home that is planned to be retained while partitioning the property to accommodate an expected future duplex. The existing driveway is planned to be utilized as a shared access from SE 43rd Avenue (collector street) for the project common to both the existing home and the planned future duplex. Therefore, individual access to single-family lots is not included in the application. That said, based on correspondence with City staff, it is understood that a variance is required to allow the shared access to SE 43rd Avenue.

19.708 TRANSPORTATION FACILITY REQUIREMENTS

19.708.1 General Street Requirements and Standards

F. Intersection Design and Spacing

- 5. Minimum and maximum block perimeter standards are provided in Table 19.708.1.
- 6. Minimum and maximum intersection spacing standards are provided in Table 19.708.1.

Table 19.708.1 Street/Intersection Spacing			
Street Classification	Minimum Distance Between Street Intersections	Maximum Distance Between Street Intersections	Maximum Block Perimeter
Arterial	530'	1,000'	2600'
Collector	300'	600'	1800'

Response: The subject site is located along a perimeter block that includes a collector, local, and an arterial street. Per Section 19.708.1(F)(5), the maximum block perimeter length on a collector street is 2,600 feet. The existing perimeter block length is approximately 3,000 feet. A variance is necessary to preserve the existing perimeter block length.

Per Section 19.708.1(F)(6), the maximum intersection spacing on a collector street is 600 feet. A variance is necessary to preserve the existing intersection spacing allowing the existing driveway to remain. Approval of these two variances relating to intersection design and spacing standards would accommodate the two-parcel partition, omitting the 20-foot wide right-of-way dedication, as illustrated on the Modified Preliminary Partition Plat/Site Plan. Therefore, the variance approval criteria are addressed directly below in Section 19.911.4 (p.13).

19.911.4 APPROVAL CRITERIA

B. Type III Variances

An application for a Type III variance shall be approved when all of the criteria in either Subsection 19.911.4.B.1 or 2 have been met. An applicant may choose which set of criteria to meet based upon the

nature of the variance request, the nature of the development proposal, and the existing site conditions.

2. Economic Hardship Criteria

- 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.
- b. The proposed variance is the minimum variance necessary to allow for reasonable economic use of the property.
- c. Impacts from the proposed variance will be mitigated to the extent practicable.

Response: Compliance with the City standards listed above is constrained by the existing physical infrastructure surrounding the site, the location and orientation of the subject property, and the existing site geometry. The variances included are the minimum necessary to allow for the partition application and thus allow for reasonable economic use of the property. Mitigation is not expected to be necessary especially in light of testimony received by Planning Commission. The subject site meets the economic hardship criteria for these three variances as demonstrated below and the following statements support the approval of these variances:

- Most notably, the buildable area of the subject property would be reduced by approximately 25-percent if a right-of-way dedication is required by the City on the subject property. Additionally, when comparing the buildable area of Parcel 2 on the Modified Preliminary Plat/Site Plan to the buildable area of Parcel 2 that would remain after a 20-foot wide right-of-way dedication, the buildable area of Parcel 2 would be reduced by approximately 50-percent. The reduction to the subject property's buildable area created by a 20-foot wide right-of-way dedication would be significant. The potential loss in buildable area would also limit the future improvements (i.e. location, design, size, etc.) the Applicant can construct.
- As previously described the existing driveway, which is intended to become a shared access, becomes compliant with the accessway location standards. The Modified Preliminary Partition Plat/Site Plan (attached) illustrates that the shared driveway access (with a turnaround to ensure safety of vehicles) is consistent with Section 12.16.040(D)(2), which states 'The number of accessways on collector and arterial streets shall be minimized whenever possible through the use of shared accessways and coordinated on-site circulation patterns...'. Additionally, shared access is permitted onto an arterial street per Section 12.16.040(D)(4). Evidently, preserving the existing driveway access on the subject property to provide a shared access to Parcels 1 and 2 meets the City Municipal Code standards relating to shared access onto a collector street.

- In regard to the intersection spacing and design standards, the existing perimeter block length is approximately 3,000 feet (measured along SE 43rd Avenue, SE Rhodessa Street, SE 45th Avenue, and SE King Road). If SE White Lake Road were to be constructed in the future, the perimeter block length would be approximately 2,600 feet (approximately 400 feet less than the existing perimeter block length), which still does not meet the maximum block perimeter length on an arterial street (1,800 feet). Modifying the existing perimeter block length to approximately 400 feet less would not provide a noticeable benefit to the surrounding area. Moreover, the distance between the two existing intersections on SE 43rd Avenue between SE Rhodessa Street and SE King Street is approximately 660 feet, a slightly longer distance than the maximum distance between street intersections allowed on a collector street (600 feet). Based on existing conditions, if SE White Lake Road were to be extended through to SE 43rd Avenue, the intersection spacing between the existing driveway access on the subject property and SE White Lake Road (± 215 feet) would no longer comply with Section 12.16.040(C)(4)(c). Per Section 12.16.040(C)(4)(c) at least 300 feet for collectors, or beyond the end of queue of traffic during peak hour conditions, whichever is greater, is required to protect the safety and capacity of street intersections, the minimum distance from the nearest intersecting street face of curb to the nearest edge of driveway apron shall be maintained. If the City required a right-of-way dedication at this location, it would trigger the need for a variance to Section 12.16.040(C)(4)(c). Additionally, based on the City of Milwaukie Transportation System Plan (Figure 8-4), neither SE White Lake Road nor any other potential or proposed future street extension is designated within the parameters of the existing city block.
- With respect to the subject property's existing site constraints and the potential impacts to surrounding properties, the city block where the subject site resides is surrounded by properties that support single-family and multi-family homes with access onto arterial and collector streets, including the adjacent property to the south of the subject site (a multi-family residential building) with one shared access onto SE 43rd Avenue. Additionally, the existing improvements, the timeline, and physical alterations that would be required to redevelop the subject property and surrounding properties to force the potential future construction/extensions of SE White Lake Road, mean the City would have to engage in condemnation of neighboring property that would be politically and economically impracticable and expensive for the City. Because the extension of SE White Lake Road is not part of the City's Transportation System Plan, and as omitted not a connectivity project that is approved for funding, it does not make sense to require the current property owner (Applicant) to dedicate land that immediately impacts their ability to attain reasonable economic use and value of their property in comparison to surrounding properties. The variances previously described are not expected to impact the surrounding area. The probable impacts to the surrounding properties in the foreseeable future created by the conceptual future construction/extension of SE White Lake Road is arguably greater than the

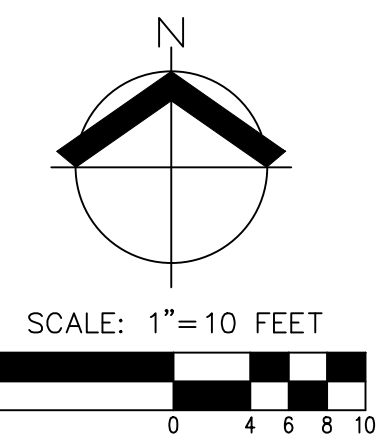
minimal (if any) impacts created by preserving the existing driveway, intersection spacing, and perimeter block length; therefore, mitigation measures are not anticipated to be necessary for these variances.

- In conclusion, the approval of the variances in support of the Modified Preliminary Partition Plat/Site Plan offers a more achievable alternative to the proposed ROW Dedication on the subject property and provides two parcels suitable for residential in-fill development. The approval of these variances is the minimum necessary to allow reasonable economic use (needed housing in the City of Milwaukie) of the subject property, also in comparison to surrounding properties in the R-7 zone as demonstrated above. It is evidenced that an economic hardship is the consequence of the requirement of a 20-foot wide right-of-way dedication. Therefore, a right-of-way dedication on the subject site for the potential future construction/extension of SE White Lake Road (by others) is not feasible or warranted. The approval criteria are met for the Modified Preliminary Partition Plat/Site Plan.

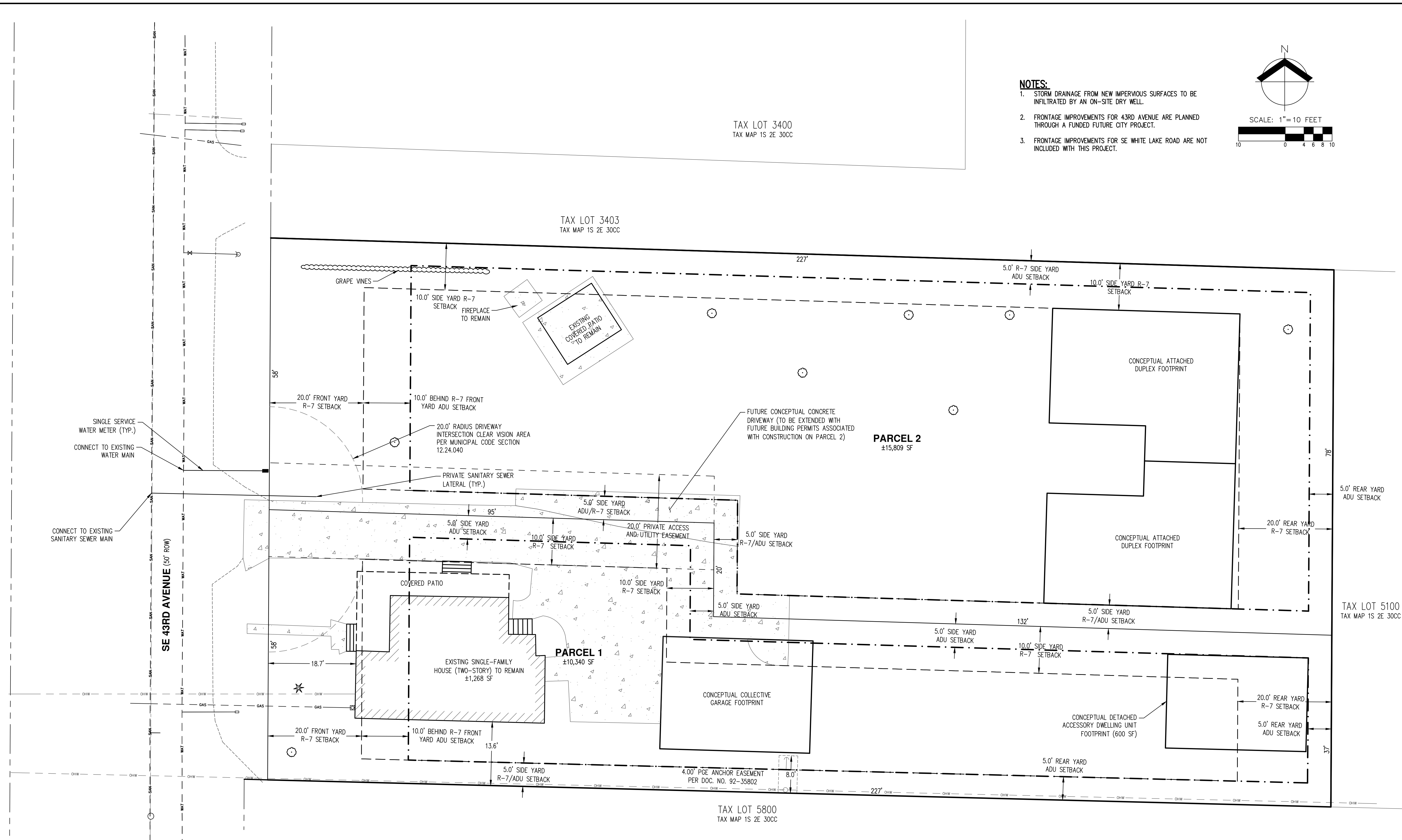
Enclosures:

Additional City Application Form

Modified Preliminary Partition Plat/Site Plan (22 inches x 34 inches)



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



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