



CITY OF MILWAUKIE

March 7, 2019

Land Use File(s): ZA-2018-002, CPA-2018-002

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie City Council on March 7, 2019.

Applicant(s):	I & E Construction, Inc.
Appellant (if applicable)	
Location(s):	5517-5525 SE Railroad Ave.
Tax Lot(s):	12E31DD0 2900, 3000, 3100 and 12E31DB01300
Application Type(s):	Zoning Map Amendment, Comprehensive Plan Map Amendment
Decision:	Approved
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• MMC 19.902 Amendments to Maps and Ordinances• MMC 19.1008 Type V Review
Neighborhood(s):	Linwood

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1008 Type V 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 Mary Heberling, Assistant Planner, at 503-786-7658 or heberlingm@milwaukieoregon.gov, if you wish to view this case file.

The amendments were adopted by Milwaukie City Council as Ordinance #2169 on March 5, 2019 for rezoning tax lots on Railroad Ave to moderate density. A copy of the final ordinance, which includes the amendments and findings in support of approval, is available at: <http://www.milwaukieoregon.gov/ordinance-2169-rezoning-tax-lots-railroad-avenue-moderate-density>

Appeals of Type V decisions are handled by the Oregon Land Use Board of Appeals (LUBA) at: 550 Capitol Street NE, Suite 235, Salem, Oregon 97301-2552, 503-373-1265, <http://luba.state.or.us>.

They can provide information regarding the timeline for filing an appeal and the proper forms and procedures.

Per MMC Subsection 19.1001.7.E, this land use approval expires unless the development utilizes its approvals within 4 years of land use approval. Extensions can be granted per MMC Section 19.908.

Exhibits

1. Findings in support of approval

cc: I&E Construction, Inc. (9550 SE Clackamas Rd, Clackamas, OR 97015)

Jeff Bolton (jbolton@mtengineering.net) (via email)

Planning Commission (via email)

Alma Flores, Community Development Director (via email)

Alex Roller, Engineering Technician II (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): Linwood (via email)

Interested Persons

Land Use File(s): ZA-2018-002, CPA-2018-002

Exhibit 1
Recommended Findings of Approval
File # ZA-2018-002, CPA-2018-002 (5517-5525 SE Railroad Ave)

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

1. The applicant, I&E Construction, Inc, has applied for approval of a zone change from R-7 to R-5 at 5517-5525 SE Railroad Ave and a Comprehensive Plan map amendment from Low Density (LD) to Moderate Density (MD). The site is made up of 4 contiguous lots and is zoned Low Density Residential R-7, later this year, with the approval of this zone change and Comprehensive Plan map amendment, the applicant intends to submit a subdivision application for tax lot 1231DD03000, one of the 4 lots that is vacant.
2. The zone change and Comprehensive Plan map amendment application was submitted on May 17, 2018. It was deemed complete by City staff on November 6, 2018.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 19.902 Amendments to Maps and Ordinances
 - MMC 19.1008 Type V ReviewThe application has been processed and public notice provided in accordance Section 19.1008 Type V Review. A public hearing was held on January 22, 2019, as required by law.

10. MMC 19.902 Amendments to Maps and Ordinances

- A. MMC 19.902.4.B establishes the approval criteria for Comprehensive Plan Map Amendments

Changes to the maps of the Milwaukie Comprehensive Plan shall be evaluated against the approval criteria in Subsection 19.902.3.B. A Legislative map amendment shall be approved if these criteria are met.

Changes to the Milwaukie Comprehensive Plan may be approved if the following criteria are met:

1. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan.

The proposed Comprehensive Plan map amendment would change the land use designation of the site from Low Density (LD) to Moderate Density (MD). This application would also change the zoning map from Residential R-7 to Residential R-5; the new land use designation corresponds to that of the Residential R-5 Zone. This amendment is necessary to maintain consistency between the Comprehensive Plan and Zoning Map. Per Land Use Objective #2, Policy #3, areas may be designated Moderate Density if the predominant housing type will be single family detached on moderate to small lots. The applicant proposes a future subdivision for taxlot 12E31DD03000 which will be developed with single family homes on lots ranging from 5,000 sq ft to 6,500 sq ft.

2. The proposed amendment is in the public interest with regard to neighborhood or community conditions.

The site is surrounded by residential development on 3 sides, with LD to the north, west, and east. Lot sizes in the neighborhood to the north are approximately 7,000 – 8,000 sq ft. To the north and northeast, there is a convalescent home. To the east and west of the site, lots are between 5,000 – 6,800 sq ft in size, less than the minimum 7,000 sq ft required in the Low Density, R-7 Zone. Industrial land is to the south across SE Railroad Ave as well as an active rail line. The MD land use designation reflects a slightly higher density single-family residential use that is still considered a low density residential zone in the zoning code. This change is consistent with the surrounding neighborhood as it contains predominantly single-family detached dwellings.

The Linwood NDA has provided comments and questions regarding the proposal, but has not recommended support or opposition to the proposal. Their questions have been answered in Section 11 below.

3. The public need is best satisfied by this particular proposed amendment.

The MD land use designation reflects a higher density single-family residential use that is consistent with existing lot sizes in the surrounding neighborhood. The proposed zoning will allow smaller minimum lot sizes on this site and will provide more opportunity for the development of additional housing. The rezoning of this Low Density area does not create compatibility conflicts given the surrounding land use pattern and density. Areas with a Low Density designation make up over 52% of the City (including right-of-way), the largest residential land use designation in the City. By comparison, Moderate Density comprises just over 10% of the land area.

Further, the 2016 Housing Needs Assessment (HNA), which assesses the city's 20-year housing and residential land needs, projects the need for 1,150 new housing units by 2036. Designating the site for a higher density land use and the accompanying zoning amendment, will provide the opportunity for more housing units than allowed under the current designation. Although the HNA acknowledges no new need for housing in the middle of the pricing spectrum (\$240,000 - \$490,000), there can be an assumption that the homes built on R-5 lots will be smaller and less expensive than those built on R-7 lots. The proposal responds to an identified need for additional housing supply.

4. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The MD land use designation reflects a slightly higher density single-family residential use as compared to the LD land use designation. This is consistent with Metro Urban Growth Management Functional Plan (UGMFP) and relevant regional policies. Title 1 of the UGMFP states that plan amendments and zone changes cannot have the

effect of lowering density. This proposal increases density on the property, which is not in conflict with Title 1.

5. The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed land use map amendment from LD to MD still identifies single-family home development as the predominant land use type and is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule. The proposal addresses Goal 10 – Housing, by proposing residential development at a higher density. The 2016 Housing Needs Assessment (HNA), which assesses the city’s 20-year housing and residential land needs projects the need for 1,150 new housing units by 2036. Designating the site with a higher density land use and the accompanying zoning amendment, will provide the opportunity for more housing units than allowed under the current designation.

Goal 12 – Transportation is addressed as the number of new dwelling units and the associated trips will not impact the functional classification of SE Railroad Ave or SE Stanley Ave, both of which are collector streets. Transportation is addressed as the number of new dwelling units and the associated trips will not impact the functional classification of SE Railroad Ave or SE Stanley Ave, both of which are collector streets. An additional 12-15 dwelling units with a zone change will have a minor impact on the local street system. Possible future development’s access will connect to Stanley Ave, a collector street, which can accommodate 5,000-10,000 trips per day.

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

B. MMC 19.902.6.B establishes the approval criteria for Zoning Map amendments.

The proposed zoning map amendment would rezone the site from Residential R-7 to Residential R-5.

Changes to the Zoning Map shall be evaluated against the following approval criteria. A quasi-judicial map amendment shall be approved if the following criteria are met:

1. The proposed amendment is compatible with the surrounding area based on the following factors:
 - a. Site location and character of the area.
 - b. Predominant land use pattern and density of the area.
 - c. Expected changes in the development pattern for the area.

The zone change proposal is appropriate given the characteristics of the surrounding area. To the east across SE Stanley Avenue is an area zoned R-7 PD with a Low Density designation in the Comprehensive Plan. To the south across SE Railroad Avenue is an area zoned Business Industrial (BI) with an Industrial designation in the Comprehensive Plan. In the adjacent R-7 and R-7 PD zoned areas to the east and

west, many of the lots are sub-standard for the R-7 zone and less than 7,000 sq ft. Although the R-5 zone and the Moderate Density land use designation reflect a higher density single-family residential use, they are similar in density with the surrounding neighborhood. Further, smaller minimum lot sizes will provide more opportunity for the development of additional housing over the R-7 zone. The R-7 zone is also the largest zone in the city, comprising over 52% of the land area (including right of way). By comparison, R-5 comprises just over 10% of the land area.

The Linwood Neighborhood District Association had no objections to the proposal.

2. The need is demonstrated for uses allowed by the proposed amendment.

The R-5 zone will provide the opportunity to build additional single-family homes on the site. The R-5 zone is considered a Low Density Residential Zone in the zoning code, with the same permitted uses. There is demonstrated need for additional housing in the city and in the greater region, illustrated by the Council's declaration of a housing emergency. Further, the 2016 Housing Needs Assessment (HNA), which assesses the city's 20-year housing and residential land needs, projects the need for 1,150 new housing units by 2036. Designating the site with a higher density land use and the accompanying zoning amendment, will provide the opportunity for more housing units than allowed under the current designation.

3. The availability is shown of suitable alternative areas with the same or similar zoning designation.

This criterion is intended to ensure that the proposed site is better suited for this proposed use than other properties with the same base zone designation. The R-7 zone is the largest zone in the city, comprising over 52% of the land area (including right of way). By comparison, R-5 comprises just over 10% of the land area. The size of the parcels are between 0.71 acres to 2.88 acres. There is a scarcity of parcels of similar size in the R-5 zone. Only 11% of R-5 parcels in the City are 0.71 acres or above.

4. The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment.

This area is adequately served by public utilities and transportation infrastructure. There is a 15-inch sewer main and a 12-inch water line in SE Railroad Ave which are adequate to serve new homes. Within the public rights-of-way that will serve the proposed development, new water and sanitary sewer mains will be constructed as per City standards and will be maintained by the City.

5. The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700.

Both Railroad Ave and Stanley Ave are classified as collector streets and additional development in the area is not expected to have a negative impact on the existing

transportation network. A proposed subdivision on one of the vacant lots, tax lot 12E31DD03000, has not been reviewed yet, however, due to minimal increase in trips at peak time on collector streets (Railroad Ave and Stanley Ave) with the zone change, the Engineering Department will not require a transportation impact study.

6. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, including the Land Use Map.

The proposed Comprehensive Plan map amendment would change the land use designation of the site from Low Density LD to Moderate Density MD. The application requests a zoning map amendment from Residential R-7 to Residential R-5; the new land use designation corresponds to that of the Residential R-5 Zone. This amendment is necessary to maintain consistency between the Comprehensive Plan and Zoning Map. Per Land Use Objective #2, Policy #3, areas may be designated Moderate Density if the predominant housing type will be single family detached on moderate to small lots.

Natural Resources Objective #2, Policy #1 states the City shall protect designated natural resources and their associated values through preservation, intergovernmental coordination, conservation, mitigation, and acquisition of resources. Policy #2 in the same objective states that the City shall provide protection to important wetland and water body areas through designation of riparian area buffers between natural resources and other urban development activities and restrict non-water depended development within the riparian buffer area. One of the vacant parcels has a wetland, water quality resources, and habitat conservation areas. The City has been working with the application to protect those natural resources and the zoning code protects those resources by preventing development in those areas and providing mitigation. Any development in those natural resource areas will trigger a natural resource review in the land use code.

7. The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The proposed zoning map amendment from R-7 to R-5 is still within the City's low density residential zones and is consistent with the Metro Urban Growth Management Functional Plan. The MD land use designation reflects a slightly higher density single-family residential use as compared to the LD land use designation, which is consistent with Metro Urban Growth Management Functional Plan (UGMFP) and relevant regional policies. Title 1 of the UGMFP states that plan amendments and zone changes cannot have the effect of lowering density. This proposal increases density on the property, which is not in conflict with Title 1.

8. The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed zoning map amendment from R-7 to R-5 is still within the City's low density residential zones and is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed land use map amendment from LD to MD still identifies single-family home development as the predominant land use type and is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule. The proposal addresses Goal 10 – Housing, by proposing residential development at a higher density. The 2016 Housing Needs Assessment (HNA), which assesses the city's 20-year housing and residential land needs projects the need for 1,150 new housing units by 2036. Designating the sites with a higher density land use and the accompanying zoning amendment, will provide the opportunity for 12-15 more dwelling units than allowed under the current designation.

Goal 12 – Transportation is addressed as the number of new dwelling units and the associated trips will not impact the functional classification of SE Railroad Ave or SE Stanley Ave, both of which are collector streets. An additional 12-15 dwelling units with a zone change will have a minor impact on the local street system. Possible future development's access will connect to Stanley Ave, a collector street, which can accommodate 5,000-10,000 trips per day.

The Planning Commission finds that this criterion is met.

11. As described in Finding 3, public notice of these applications was posted on site and mailed to parties as identified in the Milwaukie Municipal Code. The applications were referred for comment to the following: Milwaukie Building Division; Milwaukie Engineering Department; Clackamas Fire District #1; Clackamas County; Metro; and the Linwood Neighborhood District Association Chairperson and Land Use Committee. The responses received are summarized below. Agencies did not respond if a response is not listed below.

Milwaukie Building Department – no comment

Milwaukie Engineering Department – “The zone change will provide for an additional 12 15 dwelling units. With the required right-of-way dedication, the net increase will be closer to 10 dwelling units. This will result in an additional 10, pm peak trips. These trips will be accessing SE Stanley and Railroad Avenues, which are both Collector Streets. A traffic impact study is not required to analyze this minimal increase in trips. Existing sewer, storm and water systems do not have any identified deficiencies and can accommodate the increased demand.”

Metro – Felt the proposal was consistent with the Metro Functional Plan and did not have other comments to submit.

Linwood NDA – Questions were submitted on 1/14/2019, they are summarized below with a staff response:

1. Why was a Transportation Impact Study (TIS) not ordered for this proposal? How many new trips will be generated with this zone change?

Staff Comment: With the zone change, redevelopment of these lots would provide 12-15 more dwelling units when right-of-way dedication on these properties are not considered. The Engineering Department found that with right-of-way dedication, net increase will be closer to 10 dwelling units. This will result in an additional 10, pm peak trips. The Engineering Department found that this minimal increase in trips on collector streets Stanley Ave and Railroad Ave would not require a TIS.