



# CITY OF MILWAUKIE

December 31, 2018

Land Use File(s): MLP-2018-001

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on December 31, 2018.

- Applicant(s):** Tony and Michelle DaRosa
- Location(s):** 10244 SE 43<sup>rd</sup> Ave
- Tax Lot(s):** 1S2E30CC 05200
- Application Type(s):** Minor Land Partition (Preliminary Plat)
- Decision:** Approved with Conditions
- Review Criteria:** 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 Chapter 19.1200 Solar Access Protection
  - MMC Section 19.1005 Type II Review
- Milwaukie Municipal Code
- MMC Chapter 12.16 Access Management
- Neighborhood(s):** Lewelling

**Appeal period closes: 5:00 p.m., January 15, 2019**

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1005 Type II Review. The complete case file for this application is available for review between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Brett Kelter, Associate Planner, at 503-786-7657 or [kelterb@milwaukieoregon.gov](mailto:kelterb@milwaukieoregon.gov), if you wish to view this case file or visit the project webpage at <https://www.milwaukieoregon.gov/planning/mlp-2018-001>.

**This decision may be appealed by 5:00 p.m. on January 15, 2019, which is 15 days from the date of this decision.**<sup>1</sup> Any person who is adversely affected or aggrieved by this decision may appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie Planning Commission 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](mailto: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 Director, 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**

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 43<sup>rd</sup> 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. The land use application file number is MLP-2018-001.

2. The proposal is for a partition of the subject property to create 2 separate developable parcels. The existing house would remain on Parcel 1, which would be approximately 11,550 sq ft; Parcel 2 would be vacant, with an area of approximately 10,060 sq ft. An existing detached garage and covered area that straddle the boundary between Parcels 1 and 2 is proposed to be removed.

As discussed in Finding 10, a 20-ft-wide dedication along the length of the northern boundary of the subject property is required to allow for a future right-of-way connection to White Lake Rd to the east. Because additional right-of-way does not currently exist adjacent to the subject property, an actual connection is not currently possible. The newly dedicated White Lake Rd right-of-way will remain undeveloped for the time being. In the

---

<sup>1</sup> As per MMC Section 19.1010, if the 15<sup>th</sup> day falls on a weekend or legal holiday, the end of the appeal period shall be extended to the end of the next business day.

meantime, an existing covered patio and outdoor fireplace within the dedication area on Parcel 1 are proposed to remain.

3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):

- MMC Section 19.1005 Type II Review
- 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 Chapter 12.16 Access Management
- MMC Chapter 19.1200 Solar Access Protection

The application has been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review. Public notice was mailed to property owners and residents of lots within 300 ft of the subject property on November 15, 2018, with a minimum of 14 days to comment on the application. A notice of the application was posted on the subject property on November 19, 2018, as required by law.

4. 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.

*As discussed in Finding 10-e, the proposed partition requires a 20-ft-wide dedication along the length of the northern boundary of the subject property to allow for a future right-of-way connection to White Lake Rd. Because additional right-of-way does not currently exist adjacent to the subject property, an actual connection is not possible at present. However, the location and dimension of the required dedication will allow a future street connection to match the alignment of White Lake Rd to the east. 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 Director finds that the preliminary plat meets the applicable criteria.*

5. 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 Director finds that the application meets the applicable requirements for submittal of a preliminary plat.*

6. 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 Director finds that the proposed preliminary plat includes the relevant and necessary information as outlined in MMC 17.20.*

7. 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.

*The proposed parcels meet the minimum area and dimensional requirements for the underlying R-7 zone. With the required dedication for a future connection to White Lake Rd, Parcel 1 will become a corner lot that has the option of orienting toward either 43<sup>rd</sup> Ave or to the future White Lake Rd. Development on Parcel 2 will be oriented toward the future White Lake Rd, although in the interim the site access will be from 43<sup>rd</sup> Ave through the Parcel 1 driveway. Both parcels conform to the relevant standards of the R-7 zone as described in Finding 9 and to other applicable standards of Title 19 as described elsewhere in these findings.*

- 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. For Parcel 1, the side lot lines run at right angles to 43<sup>rd</sup> Ave and the rear lot line is parallel to 43<sup>rd</sup> Ave. For Parcel 2, the side lot lines run at right angles to the future White Lake Rd and the rear lot line is parallel to the future White Lake Rd.*

- c. MMC Subsection 17.28.040.C limits compound lot lines for side or rear lot lines.

*No compound lot lines are proposed for the side or rear lot lines on either parcel.*

- 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, Parcel 1 has almost 96 ft of frontage along 43<sup>rd</sup> Ave and 121 ft of frontage along the future White Lake Rd; Parcel 2 has 106 ft of frontage along the future White Lake Rd. Although both lots will take access from 43<sup>rd</sup> Ave in the interim until White Lake Rd is improved, both provide the 35-ft minimum public street frontage required in the R-7 zone.*

*As proposed, the Planning Director finds that the new parcels presented in the applicant's preliminary plat meet the applicable design standards established in MMC 17.28.*

8. 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 10, no physical improvements are required as a result of the proposed partition, due to an analysis of rough proportionality of impacts. The applicant will dedicate property to the existing public right-of-way along 43<sup>rd</sup> Ave and will dedicate property to create public right-of-way for a future connection to White Lake Rd. The required dedications are sufficient mitigation for new impacts from the partition.*

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

9. 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 will remain. The applicant has indicated that a new house will be constructed on Parcel 2 and that ADUs will be developed on both lots. Single-family dwellings and ADUs are allowed uses in the R-7 zone. At the time of future development, all actual proposed uses will be reviewed for compliance with the applicable standards of the R-7 zone and other relevant sections of the municipal code.*

*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.

<b>Table 9-b Applicable R-7 Development Standards</b>			
<b>Standard</b>	<b>R-7 Requirement</b>	<b>Parcel 1</b>	<b>Parcel 2</b>
Lot Area	7,000 sq ft	11,547 sq ft	10,061 sq ft
Lot Width	60 ft	>95 ft	106 ft
Lot Depth	80 ft	121 ft	>95 ft
Public Street Frontage	35 ft	>95 ft (on 43 <sup>rd</sup> Ave) 121 ft (on White Lake Rd)	106 ft

Front Yard	20 ft (For 43 <sup>rd</sup> Ave, setback is 22.5 ft = 20 ft for R-7 zone, plus 2.5 ft for special 30-ft setback from centerline of 43 <sup>rd</sup> Ave right-of-way, as per MMC 19.501.2)	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) 20 ft (street side)	13.6 ft (interior, south) 50 ft (street side, north)	TBD
Rear Yard	20 ft	>60 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%	>63%	TBD
Front Yard Minimum Vegetation	40%	>84%	TBD
Density requirements	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)	Sized for 1 primary unit	Sized for 1 primary unit

*As proposed, the applicable standards of this subsection are met.*

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

10. 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 10-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 10-d and 10-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 Engineering Director 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 10-e addresses the required dedications to the public right-of-way along the subject property's frontage on 43<sup>rd</sup> Ave as well as to provide for the future extension of White Lake Rd. A rough analysis of proportionality shows that right-of-way dedication is proportional to the anticipated impacts of 1 new lot sized for single-family residential development; the construction of physical improvements is not proportional. The surrounding transportation system will continue to operate at the level of service as before the proposed action. The proposed partition does not trigger mitigation of impacts beyond the required right-of-way dedication, unless access modification cannot be justified in accordance with MMC Subsection 12.16.040.B.2.d.*

*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 rights-of-way, streets, sidewalks, necessary public improvements, and other public transportation facilities located in the public right-of-way 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. 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 the fronting portions of 43<sup>rd</sup> Ave as a Collector street. As established in MMC Table 19.708.2, the required right-of-way width for a Collector street is between 40 ft and 74 ft depending on the required street improvements. The existing right-of-way width of 43<sup>rd</sup> Ave fronting the subject property is 50 ft, so the required right-of-way needed for these street improvements is 60 ft. The applicant is responsible for 5 ft of right-of-way dedication along 43<sup>rd</sup> Ave fronting the subject property.*

*The proposed partition is also responsible for 20 ft of dedication along the northern boundary of the subject property to create right-of-way for a future extension of White Lake Rd as a Local street. Spacing between King Rd and Rhodesa St is larger than the required 600-ft spacing between intersections on a Collector street. Dedication of the future White Lake Rd brings intersection spacing on 43<sup>rd</sup> Ave further into conformance.*

*In the case of 43<sup>rd</sup> Ave, a requirement for half-street improvements would require construction of a 17-ft-wide half-street asphalt road along the 43<sup>rd</sup> Ave frontage of the subject property. To establish a functional roadway on White Lake Rd, 2/3-street frontage improvements would be required along the new White Lake Rd frontage. However, as noted in Finding 10-d, the proposed partition’s impacts are minimal. Therefore, only right-of-way dedication is anticipated to be required for the proposal as submitted.*

*The dedicated land in the new White Lake Rd right-of-way can remain in its current form until the construction of White Lake Rd occurs. All existing structures and vegetation may remain unchanged. There are no requirements for additional fencing or signage. A condition has been established to require a right-of-way encroachment permit that formalizes the revocable permission for the existing structures to be in the White Lake Rd right-of-way and includes language that the structures must be removed when an improvement is constructed. Access to this new right-of-way will be controlled by the City of Milwaukie. The only access that will be permitted to 43<sup>rd</sup> Ave is through an access modification in accordance with MMC Subsection 12.16.040.B.2.*

*The City will be constructing sidewalks on 43<sup>rd</sup> Ave, so the existing fencing that is located in the 43<sup>rd</sup> Ave right-of-way will not be allowed to remain through an encroachment permit. 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 43<sup>rd</sup> 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.*

*As conditioned, 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 in Finding 10-e, the proposed partition is required to dedicate a 20-ft right-of-way for future White Lake Rd construction, and a condition has been established accordingly. The only right-of-way frontage for Parcel 2 is the new White Lake Rd right-of-way. Utilities for Parcel 2 can be either constructed to City standards, with a full-size water and sewer main, or can be taken via an easement through Parcel 1. This requirement stands for vehicular access as well. 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 partition meets the standards of MMC 19.709.*

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

11. 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.1 governs the spacing of accessways (driveways), requiring a minimum of 300 ft for spacing between accessways on collector streets and prohibiting the creation and/or modification of single-family accessways.

*As discussed in Finding 10, the proposed partition includes dedication of right-of-way for the future extension of White Lake Rd. Both new parcels have frontage on White Lake Rd and will be required to obtain permanent access from White Lake Rd once it is constructed. Forty-third (43<sup>rd</sup>) Ave is a Collector street, with a minimum access spacing requirement of 300 ft. An existing driveway approach on 43<sup>rd</sup> Ave serves Parcel 1 and will provide access to Parcel 2 through a shared access easement. A new access onto 43<sup>rd</sup> Ave is not permitted without approval of an accessway modification in accordance with MMC Subsection 12.16.040.B.2. The applicant has not requested a modification to this access standard. Parcel 2's access to 43<sup>rd</sup> Ave is a temporary access and will be moved to White Lake Rd when that street is constructed. The final approval of this modification is by the Engineering Director. A condition has been established to require improvements to the existing driveway approach on 43<sup>rd</sup> Ave to bring it into compliance with the applicable City standards.*

*As conditioned, the Planning Director finds that the proposed partition meets the applicable access management standards of MMC 12.16.*

12. 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 11-b, 11-c, and 11-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.

*The parcels created by the proposed partition each have a north-south dimension of 90 ft or more, and the front lot line of Parcel 2 is oriented directly on an east-west axis. Although Parcel 1 is currently developed with a house that fronts on 43<sup>rd</sup> Ave and therefore does not orient the front lot line along an east-west access, Parcel 1 is a corner lot and the proposed partition does not preclude Parcel 1 from being oriented toward the north and thus having a front lot line oriented to a true east-west axis. However, as discussed in Findings 13-c and 13-d, no exemptions or adjustments are necessary.*

*As proposed, the solar design standards are met.*

- 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 11-b, the proposed partition meets 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 noted in Finding 11-b, the proposed partition meets the solar design standards. No adjustments are necessary.*

*As proposed, the Planning Director finds that both parcels meet the solar design standards of MMC 19.1203.3 and that the proposed partition therefore meets the applicable solar access provisions established in MMC 19.1200.*

13. As described in Finding 3, public notice of the application was posted on site and mailed as required by the Type II review process established in MMC 19.1005. The application was referred for comment to the following departments and agencies on November 15, 2018:

- 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 and Land Use Committee
- Clackamas County Department of Transportation & Development
- Metro
- North Clackamas School District

In addition, public notice of the application with an invitation to comment was sent on November 15, 2018, to property owners and residents within 300 ft of the subject property.

The comments received are summarized as follows:

- **William Schwindt, property owner at 4468 White Lake Rd:** No objection to the partitioning of the subject property to create another developable lot. However, residents of the area just east of the subject property do not want to see White Lake Rd extended to connect to 43<sup>rd</sup> Ave, not even for pedestrian or bicycle traffic. Neighbors do not want increased traffic, and another east-west connection through the area is not needed. More tax dollars should be spent on mass transit and not on building more roads.
- **Dana Stearns, property owner at 4459 SE White Lake Rd:** Objection to the requirement for right-of-way dedication for a future connection to White Lake Rd, signed by 5 other neighboring owners/residents. An extension of White Lake Rd is not desired for automobile, bicycle, or pedestrian traffic, as connections to the neighborhood are already provided on nearby streets.
- **Daniel Barela, property owner at 10194 SE 43<sup>rd</sup> Ave:** Concerns about the White Lake Rd right-of-way dedication, with questions about how the dedication will be accomplished and how his property and neighboring properties will be affected.
- **Izak Hamilton, Fire Inspector, CFD #1:** Standard comments related to fire access and water supply.
- **Stephan Lashbrook, Chair, Lewelling NDA:** The NDA appreciates the applicant's commitment to retain the large existing tree on the property.

- **Alex Roller, Engineering Technician II, City of Milwaukie Engineering Department:** Comments in the form of findings for MMC Chapter 19.700 Public Facility Improvements, which have been incorporated into these findings.

### **Conditions of Approval**

1. Prior to approval of the final plat, the following shall be resolved:
  - a. Right-of-way Dedications:
    - (1) Provide 20-ft-wide right-of-way dedication on north side of property, for the future White Lake Rd.
    - (2) Provide 25-ft radius in the northwest corner of the parent lot (Parcel 1), for future construction of ADA ramps.
    - (3) Provide 5-ft-wide right-of-way dedication on the 43<sup>rd</sup> Ave frontage.
  - b. Obtain an encroachment permit for the existing arbor, fireplace, and covered patio that will be located in the White Lake Rd right-of-way.
  - c. Construct a new driveway approach for the existing access on 43<sup>rd</sup> 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 and least 7.5 ft from the side property line.
  - d. If needed (as discussed in Finding 10-f), provide access and utility easements for the benefit of Parcel 2 across Parcel 1.
  - e. Relocate the existing fence on the 43<sup>rd</sup> Ave frontage to behind the resulting front property line of Parcel 1 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.

### **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 right-of-way 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.

**Director's Declaration of Impartiality**

I certify that neither I nor any member of my immediate family has a material, personal, or financial relationship with the applicant. I further certify that no other relationship, bias, or ethical conflict exists which would have prevented me from evaluating the land use application solely on its merits and in accordance with the Milwaukie Municipal Code.

**Decision**

- Approved
- Approved with Conditions
- Denied



---

Dennis Egner, FAICP  
Planning Director

**Exhibits**

None

- cc: Tony & Michelle DaRosa (1001 SW Fifth Ave, Suite 1100, Portland, OR 97204)  
Lindsey Sonnen, AKS Engineering & Forestry, LLC (applicant's representative) (via email)  
Planning Commission (via email)  
Alma Flores, Community Development Director (via email)  
Kelly Brooks, Acting Engineering Director (via email)  
Dalton Vodden, Associate Engineer (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)  
Izak Hamilton, CFD#1 (via email)  
NDA(s): Lewelling (via email)  
Interested Persons  
Land Use File(s): MLP-2018-001  
Address File