CITY OF MILWAUKIE

PLANNING COMMISSION MINUTES

City Hall Council Chambers
10722 SE Main Street
www.milwaukieoregon.gov

May 24, 2022

Present:	Lauren Loosveldt, Chair Greg Hemer Adam Khosroabadi Robert Massey Jacob Sherman	**Staff:**	Steve Adams, City Engineer Jennifer Backhaus, Engineering Technician III Justin Gericke, City Attorney Brett Kelver, Senior Planner Vera Kolias, Senior Planner Laura Weigel, Planning Manager
Absent:	Joseph Edge, Vice Chair Amy Erdt		

(00:15:21)
1.0 Call to Order — Procedural Matters*

Chair Loosveldt called the meeting to order at 6:30 p.m., read the conduct of meeting format into the record, and Native Lands Acknowledgment.

Commissioner Hemer shared a personal statement regarding the importance of life and requested the commission take a moment of silence to honor those who lost their lives in the recent mass shootings in Buffalo, NY and Uvalde, TX.

***Note**: The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at http://www.milwaukieoregon.gov/meetings.*

(00:18:00)
2.0 Meeting Minutes

(00:18:00)
2.1 April 12, 2022 Meeting Minutes

Commissioner Massey noted that although staff stated they did not recommend the applicants for VR-2021-012 meet with the applicable NDA it was later clarified that they did recommend that the applicants meet with the NDA during the preapplication conference.

The April 12, 2022 minutes were approved as written with a 5-0 vote.

(00:20:52)
3.0 Information Items

No information was presented for this portion of the meeting.

(00:21:03)
4.0 Audience Participation

No information was presented for this portion of the meeting.

(00:21:53)
5.0 Community Involvement Advisory Committee (CIAC)

Laura Weigel, Planning Manager, noted that NDA leaders agreed to allow a member of the CIAC to attend the quarterly NDA leadership meetings.

Commissioner Khosroabadi suggested that CIAC members attend regular NDA meetings in addition to the quarterly NDA leadership meetings. **Weigel** noted that CIAC members may voluntarily attend any NDA meeting but reiterated that members would represent the CIAC not the Commission at these meetings. **Commissioner Khosroabadi** noted that some NDA members are looking for clarification about the land use process. **Weigel** noted that city staff is in the process of creating and publishing material to help explain the land use process. Staff has already produced a land use 101 presentation and presented to NDA members as the first step in this process. **Commissioner Massey** explained that Commissioners are often asked about Commission business when attending NDA meetings and that he typically provides upcoming meeting infomation or summaries of past decisions when asked about Commission business. **Commissioner Hemer** noted that when he attends NDA meetings he often provides information regarding land use applications but nothing outside of what is included in city materials (e.g. staff reports and decision notices).

(00:29:50)
6.0 Hearing Items

(00:29:51)
6.1 VR-2021-012, 9285 SE 58th Dr

Vera Kolias, Senior Planner, shared the staff report, aerial and street views of where the site is located, and provided context of existing site conditions. The site is 0.08 acres, zoned for manufacturing use, was formerly used for storage by the adjacent Smith Rock business, and now sits vacant. Kolias reviewed the proposal details, the applicants propose a 1,848 sq ft manufacturing building with full improvements on 58th Dr. The proposal includes a parking modification request to allow for the one required on-site parking space to be an accessible space and variances to front yard setback, driveway spacing, and width of landscaping at parking area requirements. Staff did not identify any negative impacts from the application and believed the variance requests to be both reasonable and appropriate. Staff recommended approval of the proposed application with the recommended findings and conditions of approval.

Since the April 12, 2022 Planning Commission hearing, staff received the following public comments. **Robert Vancreveld** provided comments in opposition. **Michael Connors** provided comments stating there was not enough time to review the materials submitted for the April 12 hearing, summarized previous comments, and commented on the February 22 emails with Clackamas County. **Troy Lyver, a member of the Applicant Team,** provided comments related to Michael Connors testimony on the February 22 emails with Clackamas County. Lyver also submitted the Applicant's final written argument which summarized prior testimony and arguments.

Robert Price, a member of the Applicant Team, noted that some comments provided during the April 12 meeting by the property owners, Carol and Keith Phelps, regarding conversations between them and Smith Rock throughout the past 15 years were not included in the meeting minutes. **Justin Gericke, City Attorney,** noted that because the omitted comments were included in the applicant's final written argument they are still included in the official record. **Commissioner Sherman** suggested amending the April 12 minutes to accurately reflect the testimony provided by Carol and Keith Phelps. **Connors** noted that despite the record closing following the April 26 deadline for the applicant's final written argument, Robert Price introduced new information and therefore Connors requested a continuation of the hearing. Additionally, Connors noted that the final written argument should not contain new evidence and therefore cannot be the first time the comments in question are mentioned. On these grounds Connors raised a procedural objection.

The Commission took a 10-minute recess.

Connors asked for clarification about the hearing process and how staff and the Commission are addressing the procedural objection. **Kolias** responded that staff proposes to continue the hearing to June 28, 2022, where no additional testimony will be taken. The record will be left open for seven days, until May 31, for any additional testimony regarding the Carol and Keith Phelps comments from the April 12 hearing which were omitted from the meeting minutes. Any comments submitted for the May 31 deadline will be posted and responses to the testimony will be taken for an additional seven days, until June 7. The applicant team will have an additional seven days, until June 14, to submit their final written argument. **Connors** requested that the Commission leave the record open for fourteen days for any additional testimony regarding the omitted comments from Carol and Keith Phelps and afterwards close the public testimony portion of the hearing. **Gericke and Price** agreed to the alternative proposal from Connors on behalf of the City and the applicant respectively.

The Commission continued the hearing to a date certain of June 28, 2022, allowing fourteen days, until June 7, 2022, for additional evidence to be submitted by a 5-0 vote.

(01:32:14)

6.2 CSU-2022-003, 2301 SE Willard St

Brett Kelver, Senior Planner, presented the staff report and shared aerial images of the north side of Milwaukie High School, showing the area between 23rd Ave and the Adams St right-of-way (ROW). The purpose of the application is to modify a condition of approval from land use application CSU-2017-007. The request was initiated by the City Engineering department on behalf of the North Clackamas School District (NCSD). The modification requested is to condition 5(d), which called for NCSD to dedicate a "25-ft half right-of-way at the east end of Adams St to connect 23rd Ave to Adams St." The intention of this condition was to preserve the opportunity of a future street connection from Adams St to 23rd Ave, which can be accomplished through a public access easement instead. The request to modify condition 5(d) changes the required a 25-ft ROW dedication to a 25-ft public access easement. Staff recommended approval and believes an easement is better suited for this piece of land, as the City would not need to assume the maintenance responsibilities they would for a ROW dedication.

Chair Loosveldt asked about the fee in lieu of construction (FILOC) paid for the proposed stairs, which were intended to provide a pedestrian connection between Adams St and 23rd Ave. **Steve Adams, City Engineer,** responded that the stairs were unable to be built because of an existing water main that ran through the location of the proposed stairs. Alternative paths were not feasible because they would force people to exit the stairs into the Adams St ROW where no sidewalks exist, violating rules set forth in the Public Right-of-Way Accessibility Guidelines. The FILOC will be used to increase pedestrian infrastructure somewhere else in the neighborhood.

Commissioner Hemer reflected on the original application, CSU-2017-007, and noted that this proposed pedestrian connection received little to no attention throughout the application review process.

CSU-2022-003, 2301 SE Willard St, was approved by a 5-0 vote.

(01:53:26)

7.0 Planning Department Other Business/Updates

No information was presented for this portion of the meeting.

(01:53:42)

8.0 Planning Commission Committee Updates and Discussion Items

Weigel shared that City staff would like to set up small group meetings to discuss how the Commission conducts hearings and share ways City staff can be a resource to Commissioners.

Commissioner Massey asked whether the Commission as a whole could meet to have similar conversations. **Gericke** responded that the entire group cannot meet without providing public notice and meeting publicly but any number of Commissioners can meet as long as there is no quorum present. **Chair Loosveldt** requested that small groups contain Commissioners with a variety of experience levels.

(02:01:13)

9.0 Forecast for Future Meetings:

June 14, 2022	Canceled
June 28, 2022	1. Public Hearing: VR-2021-012, 9285 SE 58th Dr 2. Public Hearing: CSU-2022-004, Waldorf School Sign 1. Work Session: Code Amendments: High Density Zones – definitions

Meeting adjourned at approximately 8:20 p.m.

Respectfully submitted,

Will First, Administrative Specialist II

CITY OF MILWAUKIE

REVISED AGENDA

May 24, 2022

PLANNING COMMISSION

milwaukieoregon.gov

Hybrid Meeting Format: the Planning Commission will hold this meeting both in person at City Hall and through Zoom video. The public is invited to watch the meeting in person at City Hall, online through the City of Milwaukie YouTube page (https://www.youtube.com/channel/UCRFbfqe3OnDWLQKSB_m9cAw), or on Comcast Channel 30 within city limits.

If you wish to provide comments, the city encourages written comments via email at planning@milwaukieoregon.gov. Written comments should be submitted before the Planning Commission meeting begins to ensure that they can be provided to the Planning Commissioners ahead of time. To speak during the meeting, visit the meeting webpage (https://www.milwaukieoregon.gov/bc-pc/planning-commission-96) and follow the Zoom webinar login instructions.

1.0 Call to Order – Procedural Matters — 6:30 PM

1.1 Native Lands Acknowledgment

2.0 Planning Commission Minutes – Motion Needed

2.1 April 12, 2022

3.0 Information Items

4.0 Audience Participation — This is an opportunity for the public to comment on any item not on the agenda

5.0 Community Involvement Advisory Committee (CIAC)

6.0 Hearing Items

6.1 9285 SE 58th Dr

Summary:	Construct a 2-story 1,848-sq ft manufacturing/light industrial building.
Applicant:	Troy Lyver, Lyver Engineering and Design, LLC
Address:	9285 SE 58th Dr
File:	VR-2021-012 (principal file); DEV-2021-006
Staff:	Senior Planner Vera Kolias

6.2 2301 SE Willard St

Summary:	Request to modify a condition of approval from land use file #CSU-2017-007, which approved a major renovation of the Milwaukie High School campus.
Applicant:	Steve Adams, City of Milwaukie
Address:	2301 SE Willard St
File:	CSU-2022-003
Staff:	Senior Planner Brett Kelver

7.0 Planning Department Other Business/Updates

8.0 Planning Commission Committee Updates and Discussion Items — This is an opportunity for comment or discussion for items not on the agenda.

9.0 Forecast for Future Meetings

June 14, 2022	Canceled	
June 28, 2022	Hearing Item:	CSU-2022-004, Waldorf School Sign
	Work Session Item:	Code Amendments: High Density Zones - definitions

Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

1. **PROCEDURAL MATTERS.** If you wish to register to provide spoken comment at this meeting or for background information on agenda items please send an email to planning@milwaukieoregon.gov.
2. **PLANNING COMMISSION and CITY COUNCIL MINUTES.** City Council and Planning Commission minutes can be found on the City website at www.milwaukieoregon.gov/meetings.
3. **FORECAST FOR FUTURE MEETINGS.** These items are tentatively scheduled but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
4. **TIME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue an agenda item to a future date or finish the item.

Public Hearing Procedure

Those who wish to testify should attend the Zoom meeting posted on the city website, state their name and city of residence for the record, and remain available until the Chairperson has asked if there are any questions from the Commissioners. Speakers are asked to submit their contact information to staff via email so they may establish standing.

1. **STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
2. **CORRESPONDENCE.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
3. **APPLICANT'S PRESENTATION.**
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience but may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** Prior to the close of the first public hearing, *any person* may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice

The city is committed to providing equal access to public meetings. To request listening and mobility assistance services contact the Office of the City Recorder at least 48 hours before the meeting by email at ocr@milwaukieoregon.gov or phone at 503-786-7502. To request Spanish language translation services email espanol@milwaukieoregon.gov at least 48 hours before the meeting. Staff will do their best to respond in a timely manner and to accommodate requests. Most Council meetings are broadcast live on the city's YouTube channel and Comcast Channel 30 in city limits.

Servicios de Accesibilidad para Reuniones y Aviso de la Ley de Estadounidenses con Discapacidades (ADA)

La ciudad se compromete a proporcionar igualdad de acceso para reuniones públicas. Para solicitar servicios de asistencia auditiva y de movilidad, favor de comunicarse a la Oficina del Registro de la Ciudad con un mínimo de 48 horas antes de la reunión por correo electrónico a ocr@milwaukieoregon.gov o llame al 503-786-7502. Para solicitar servicios de traducción al español, envíe un correo electrónico a espanol@milwaukieoregon.gov al menos 48 horas antes de la reunión. El personal hará todo lo posible para responder de manera oportuna y atender las solicitudes. La mayoría de las reuniones del Consejo de la Ciudad se transmiten en vivo en el canal de YouTube de la ciudad y el Canal 30 de Comcast dentro de los límites de la ciudad.

Milwaukie Planning Commission:
Lauren Loosveldt, Chair
Joseph Edge, Vice Chair
Greg Hemer
Robert Massey
Amy Erdt
Adam Khosroabadi
Jacob Sherman

Planning Department Staff:
Laura Weigel, Planning Manager
Vera Kolias, Senior Planner
Brett Kelver, Senior Planner
Adam Heroux, Associate Planner
Ryan Dyar, Assistant Planner
Will First, Administrative Specialist II

CITY OF MILWAUKIE

PLANNING COMMISSION MINUTES

City Hall Council Chambers
10722 SE Main Street
www.milwaukieoregon.gov

April 12, 2022

Present: Lauren Loosveldt, Chair
Joseph Edge, Vice Chair
Amy Erdt
Greg Hemer
Adam Khosroabadi
Robert Massey
Jacob Sherman

Staff: Jennifer Backhaus, Engineering Technician III
Joseph Briglio, CD Director
Justin Gericke, City Attorney
Vera Kolias, Senior Planner

Absent:

(00:11:02)
1.0 Call to Order — Procedural Matters*

Chair Loosveldt called the meeting to order at 6:30 p.m., read the conduct of meeting format into the record, and Native Lands Acknowledgment.

***Note**: The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at http://www.milwaukieoregon.gov/meetings.*

(00:12:06)
2.0 Information Items

Vera Kolias, Senior Planner, noted that City Council will vote to adopt the Comprehensive Plan Code amendment package at the April 19, 2022 Regular Session.

(00:08:04)
3.0 Audience Participation

No information was presented for this portion of the meeting.

(00:09:10)
4.0 Community Involvement Advisory Committee (CIAC)

Kolias shared that there were eight attendees at the Land Use 101 training held March 31, 2022, the presentation will be posted on the City website and YouTube page. Staff is developing an in-depth land use training to accompany the Land Use 101 training.

Chair Loosveldt noted support for increasing interaction between the CIAC and

the NDAs. Loosveldt requested that staff explore ways that the CIAC members can become more involved with the neighborhood associations.

Commissioner Massey expressed support for further involvement between CIAC members and NDAs and noted preference for meeting the neighborhood associations at their own meetings rather than during Planning Commission meetings.

Commissioner Hemer noted that he regularly attends NDA meetings and encouraged other CIAC members to attend their NDA's meetings.
Commissioner Sherman requested that commissioners and staff be conscious of each of the commissioner's available time.

(00:19:56)
5.0 Hearing Items

(00:19:57)
5.1 9285 SE 58th Dr

Kolias shared the staff report, the applicants are proposing to develop the 0.08-acre lot at 9285 SE 58th Dr with a 1,848 square foot 2-story manufacturing building. The proposal includes full street improvements along 58th Drive, one on-site ADA accessible parking space, and a screened wall facing Johnson Creek Blvd. The proposal requires a parking modification and variances to reduce the setback along Johnson Creek Blvd, reduce perimeter landscaping, and to reduce the spacing between the accessway and the property line and to Johnson Creek Blvd. The proposed setback along Johnson Creek is 0 feet although the applicants are required to dedicate 20 feet along Johnson Creek Blvd for future frontage improvements. Staff has not identified any negative impacts, believes the application to be both reasonable and appropriate, and recommends approval of the application.

Commissioner Massey asked whether staff recommended that the applicant meet with the applicable neighborhood district association (NDA). **Kolias** responded no, staff did not recommend meeting with an NDA.

Commissioner Sherman asked for historical information regarding the creation of this undersized, irregular, lot. **Kolias** responded that the lot was platted in the Mullan Heights subdivision in 1923.

Commissioner Sherman asked for clarification regarding the frontage improvements along 58th Dr. **Jennifer Backhaus, Engineering Technician III,** responded that installation of a curb, sidewalk, and vegetation strip are included in the frontage improvements.

Commissioner Sherman asked what uses are permitted on the site. **Kolias** responded that warehousing, shipping, manufacturing, and production uses are

permitted and commercial, retail, and offices are permitted as accessory uses.

Commissioner Sherman asked for clarification regarding clear vision at the Johnson Creek intersection and whether the proposed 0-foot setback would obstruct vision. **Kolias** responded that an access study was conducted by the applicant and that the 0-foot setback is from the new property line, 20 feet away from Johnson Creek Blvd. **Backhaus** added that there is ample clear vision at the intersection due to the 20-foot dedication.

Kolias noted that additional testimony was received from Michael Connors, representing Smith Rock Inc. and from the Applicant Team responding to the clear vision and access questions raised by Michael Connors in an earlier letter submitted for the January 25 Planning Commission hearing.

The Applicant Team shared their presentation which showed the proposed site plans and building design. There is 6 inches of separation between the building and Right of Way (ROW) to account for the screened wall feature. The Applicant Team plans on adding a trellis to the wall with vegetation, but other screening options are being considered. Other options include decorative fencing, a wire trellis, or hanging vegetation.

Commissioner Sherman asked if the proposed wall screening will encroach in the ROW considering there is a 0-foot setback. **The Applicant Team** responded that the screened wall will be building-mounted and will not encroach into the ROW due to the 6-inch buffer between the building and ROW.

Commissioner Khosroabadi asked what the other wall screening alternatives are. **The Applicant Team** responded that a trellis is preferred by the applicant team but alternative options available include additional windows, metal screening, or different wall materials or colors.

Commissioner Khosroabadi asked whether there was communication between the applicant team and adjacent property owners. **The Applicant Team** responded that they have not communicated with any adjacent property owners.

Anthony Allen, a Milwaukie resident, expressed concern about the screened wall encroaching into the ROW and opposition to reduced perimeter landscaping.

Mike Connors, representing Smith Rock Inc, expressed opposition to the proposal and their belief that the applicants did not adequately address each approval criterion. Connors noted that developing a site does not sufficiently satisfy the public benefit approval criteria as the applicants argue. Connors stated that the property can be developed without the need for variances. Connors requested a continuance of the hearing to allow for time to review the traffic study and emails with Clackamas County regarding the Johnson Creek Blvd improvements

provided by the applicant on April 12, 2022.

Lew Smith, a Milwaukie resident, expressed opposition to the proposal and concern about potential impacts of development to the residential property north of the subject property specifically regarding solar access.

Chair Loosveldt asked for clarification regarding required perimeter landscaping and wall screening. **Kolias** responded that MMC 19.600 requires a minimum of 6 feet of perimeter landscaping around parking areas, the applicants are requesting a reduction to 3.5 feet. Kolias noted the screening options are being used to mitigate any adverse impacts of the variance to reduce the setback to 0 feet along Johnson Creek Blvd.

Commissioner Sherman asked whether the minimum perimeter landscaping requirement could be met if the proposed second story was not included in the building design. **Kolias** responded it is unclear whether it is possible to meet the requirement by removing the proposed second story.

Kolias discussed continuation options, to allow satisfactory time for additional testimony, staff proposes continuing the hearing to May 24, 2022 and allowing additional testimony, response to the additional testimony, and a final written response from the applicant.

The Planning Commission continued hearing VR-2021-012 to May 24, 2022 allowing one week for additional testimony (a deadline of April 19, 2022) an additional week for response to the April 19th testimony (April 26, 2022) and a final week to allow for the final written response from the applicant (May 3, 2022) by a 7-0 vote.

(00:36:27)

5.2 SB 458 Code Amendments

Kolias shared the staff report, the code amendment package ensures compliance with Oregon Senate Bill 458 (SB 458). SB 458 is a follow up to Oregon House Bill 2001 (HB 2001). SB 458 requires expedited land divisions for middle housing enabling units to be sold or owned individually on fee simple lots. SB 458 applies to all middle housing types but does not apply to accessory dwelling units (ADUs). SB 458 land divisions must result in one dwelling per lot with separate utilities for each dwelling, the bill does allow common areas to be located on separate lots or shared tracts. Additionally, all dwelling units must meet the requirements of the Oregon Residential Specialty Code. The bill requires an expedited review of qualifying land divisions which the City will meet through a Type II review with a compressed 63-day time frame.

Kolias continued, the City proposes to require street frontage improvements where applicable, preliminary and final plat approval, and building permits to ensure consistency with the City's current land review process. The City cannot

require street frontage for new lots or parking for each child lot although parking may be required in a shared space or easement. SB 458 prohibits the City from requiring child lots to comply with minimum lot size. Additionally, the City may not require additional review criteria or conditions of approval that are not expressly permitted through SB 458.

Kolias noted that additional language was added to the code package after the February 22, 2022 Planning Commission Work Session that specifies that parent lots will be used to ensure conformity with lot standards, definition of unit types, allowed number of dwelling units, and compliance with middle housing rules and statutes. This additional language ensures that lot standards are met, and lots will not be further divided.

Anthony Allen, a Milwaukie resident, asked whether the restrictions of the tree code apply to middle housing developments. **Kolias** responded yes, middle housing developments must comply with tree code restrictions.

Vice-Chair Edge and Commissioner Massey noted their support for the application.

ZA-2022-001, SB 458 Code Amendments, was recommended to City Council for approval by a 7-0 vote.

(02:50:53)

6.0 Planning Department Other Business/Updates

No information was presented for this portion of the meeting.

(02:52:49)

7.0 Planning Commission Committee Updates and Discussion Items

No information was presented for this portion of the meeting.

(02:53:53)

8.0 Forecast for Future Meetings:

April 26, 2022	1. Public Hearing: R-2021-004, 8-lot Subdivision Replat at 10586 & 10610 SE Home Ave

Meeting adjourned at approximately 9:24 p.m.

Respectfully submitted,

Will First, Administrative Specialist II

CITY OF **MILWAUKIE**

To: Planning Commission

Through: Laura Weigel, Planning Manager
Steve Adams, City Engineer

From: Vera Kolias, Senior Planner
Jennifer Backhaus, Engineering Technician III

Date: May 17, 2022, for May 24, 2022, Continued Public Hearing

Subject: **File:** VR-2021-012, DEV-2021-006, P-2021-003

Applicant: Troy Lyver

Address: 9285 SE 58th Dr

Legal Description (Map & Tax Lot): 12E30AD01500

NDA: Lewelling

ACTION REQUESTED

Approve applications VR-2021-012, DEV-2021-006 and adopt the recommended Findings and Conditions of Approval found in Attachments 1 and 2. This action would allow the construction of an 1,848-sq ft manufacturing building and associated improvements on the site.

BACKGROUND INFORMATION

The property is a small vacant lot located at the corner of Johnson Creek Blvd and 58th Dr (see Figures 1 and 2). The applicant proposes to construct a 2-story manufacturing building measuring 1,848 sq ft. Variances are requested to reduce the front yard setback on Johnson Creek Blvd to 0 ft, to reduce the perimeter parking area landscaping to 3.5 ft., and to modify the accessway location.

The Planning Commission hearing on April 12 concluded with a continuation of the hearing to May 24 and an opportunity for additional written testimony, response to submitted testimony, and the applicant's final written argument (see Attachment 4).

Figure 1. Site and vicinity

Figure 2. Street view of subject property

A. Site and Vicinity

The site is located at 9285 SE 58th Dr. The 0.08-acre (3,592 sq ft) site is vacant and was formerly used for storage of materials for the adjacent Smith Rock business. The surrounding area consists of small industrial/manufacturing uses and the Wichita Feed and Hardware store site across 58th Dr. Across Johnson Creek Blvd is the Springwater Corridor Trail. Although the R-7 zone is approximately 67 ft from the site, the closest residential property in the R-7 zone is approximately 127 ft away.

B. Zoning Designation

M Manufacturing Zone

C. Comprehensive Plan Designation

I - Industrial

D. Land Use History

City records do not indicate any previous land use activity on this site.

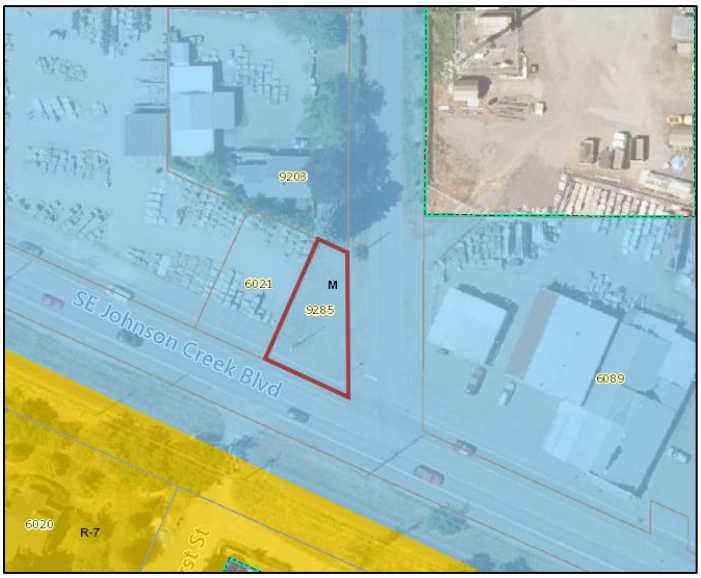

Figure 3. Zoning

E. Proposal

The proposed development includes a 2-story 1,848-sq ft manufacturing building, on-site landscaping (including a "living wall" or similar wall treatment) and parking, and street improvements on 58th Dr (See Figures 4 and 5). The applicant has not specified a tenant for the proposed building, but the site and user would have to comply with the permitted uses identified in MMC 19.309 as well as minimum parking requirements as identified in Table 19.605.1.

Figure 4. 3-D rendering of proposed building

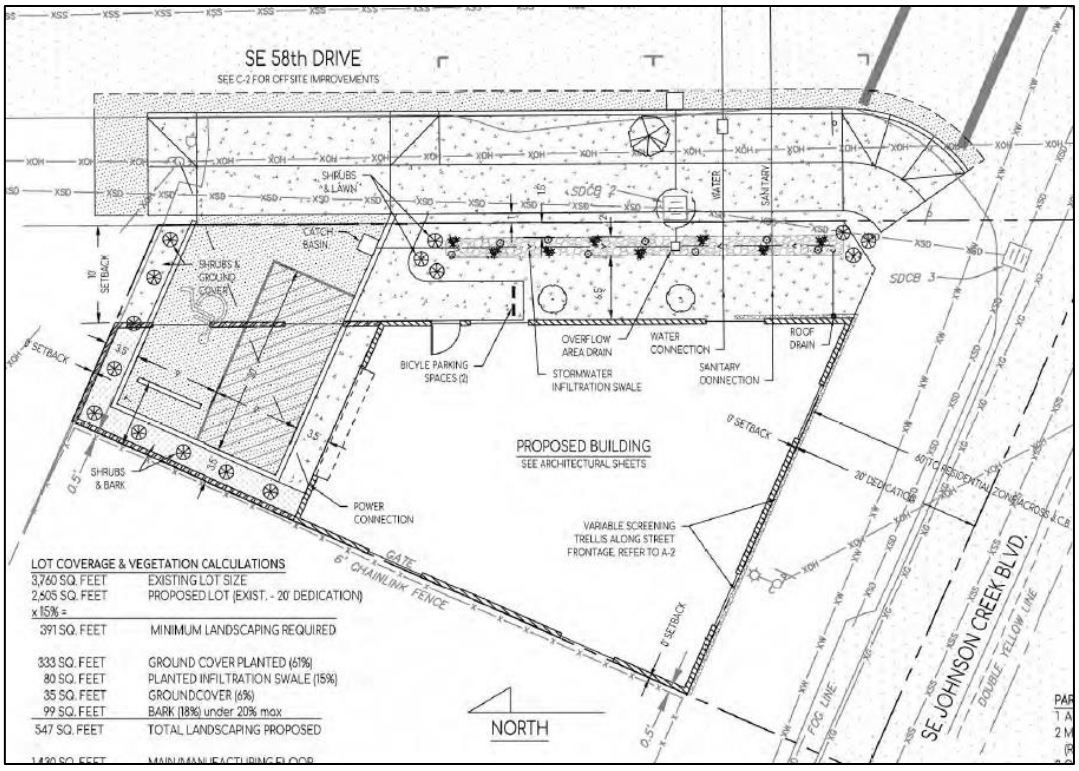

Figure 5. Proposed site plan.

Public improvements required for development on this vacant parcel are:

- 20-ft dedication on Johnson Creek Blvd for future street build out
- Full frontage improvements on 58th Dr (including parking, sidewalk, and planter strip)

The applicant is seeking land use approvals for the following:

1. A variance to reduce the minimum front yard setback to 0 ft on Johnson Creek Blvd. This request is subject to a Type III review.
2. A variance to reduce the width of parking area perimeter landscaping to 3.5 ft. This request is subject to a Type III review.
3. A variance to the accessway location requirements that would reduce the spacing between the driveway apron and the property line to 4 ft., and the distance from the intersection to 72 ft. This request is subject to a Type III review.
4. Parking modification to allow the required on-site parking space to be the accessible space and other parking to be located on-street. This request is subject to a Type II review.

The project requires approval of the following applications:

1. Type III Variances
2. Type II Development Review
3. Type II Parking Modification

KEY ISSUES

Summary

Staff has identified the following key issue for the Planning Commission's deliberation. Aspects of the proposal not listed below are addressed in the Findings (see Attachment 1) and generally require less analysis and discretion by the Commission.

Are the proposed variances and parking modification reasonable and appropriate?

Analysis

Are the proposed variances and parking modification reasonable and appropriate?

As noted in the application summary, the applicant proposes to construct a manufacturing building on the vacant site, as well as site improvements, such as an on-site accessible parking spot, full frontage improvements on 58th Dr., and site landscaping.

Variances

Variances are requested to allow a 0-ft setback on Johnson Creek Blvd, allow 3.5 ft of perimeter landscaping, allow a driveway apron spacing of 4 ft from the property line, and reduced spacing of the driveway distance from Johnson Creek Blvd.

The approval criteria for the variances are listed below and how the application meets the criteria.

- Provides an alternative analysis
  - 0-ft setback on Johnson Creek Blvd: the parcel is less than 4,000 sq ft and the required 20-ft dedication on Johnson Creek Blvd results in a lot size of 2,605 sq ft. Further, the shape of the lot is effectively a triangle, creating an additional development constraint. In addition to the required 10-ft setback on 58th Dr, parking, and landscaping, the developable area of the site is reduced by nearly 50%. The alternative to the variance would be to not develop the site, given the multitude of constraints, and the limited permitted uses in the Manufacturing zone. The applicant has submitted a narrative explaining that maintaining the 20-ft setback, in addition to all of the other requirements, would render the site undevelopable.
  - 4-ft spacing between driveway apron and property line, and 72-ft spacing from the intersection: As noted above, the small size of the site and its triangular shape limit the options for development on the site. Access from Johnson Creek Blvd is not permitted, so access from 58th Dr is the only option. To provide as much space between the driveway and the intersection with Johnson Creek Blvd, a reduction in the minimum spacing of 10 ft between the driveway apron and the property line is necessary. The applicant's narrative outlines the ramifications of requiring the 10 ft spacing, which would affect the internal circulation on the site and put the driveway even closer to the intersection. The applicant submitted an access study and an additional engineering analysis which confirmed that a spacing of 72 ft rather than the minimum required 100 ft will not result in impacts to safety or sight distance. The City Engineer has confirmed that there are no concerns about the safety of the proposed development relative to access spacing or sight distance.
  - 3.5-ft perimeter landscaping: As noted above, the small size of the site and its triangular shape limit the options for development on the site. Requiring the full 6 ft width of landscaping would further reduce an already very small building footprint on the site and render the site effectively undevelopable. The location of the lot and the proposed building would not be directly adjacent to the existing residence on the adjacent lot. The home is located approximately 25 ft from the property line at the closest point to the subject property.

- Avoids or minimizes impacts to surrounding properties

  The proposed variances avoid creating adverse impacts for surrounding properties. The site is a corner lot and has only two adjacent properties, both of which are commercial/industrial zoned properties (although the parcel directly north includes a residence). The 0-ft setback on Johnson Creek Blvd includes the required 20-ft dedication for future improvements to the street. The proposed design includes a "living wall" or similar treatment on the building to help soften the building when it is adjacent to the future sidewalk. The proposed driveway would be located as far as possible from the intersection with Johnson Creek Blvd to maximize safety, while still separating it from the adjacent property. The 3.5-ft area between the site driveway and the adjacent property is proposed to be landscaped. The reduction in the width of the landscaped perimeter is a reduction, not an elimination, and would still include landscaping and plants. The proposal minimizes impacts while still providing the ability to develop the site, which is now vacant and underutilized. As noted above, the applicant submitted both an initial access study and a follow-up analysis responding to testimony regarding the safety of the proposed design, concluding that the proposed design would not be detrimental to safety or sight distance. The City Engineer does not have any concerns about the proposed development.

- Has desirable public benefits

  The proposal will create a modest public benefit by taking a vacant, underutilized site and adding a productive use to the limited Manufacturing zone. Total relief from the landscaping requirement is not requested, as the site will include landscaping, a "living wall" or similar treatment on the building to improve its appearance, and the required frontage improvements include street trees, curb, and sidewalk on 58th Dr, none of which exist today.

- Responds to the existing built or natural environment in a creative and sensitive manner

  The existing built and natural environment will be improved by the development, via the proposed "living wall" or similar treatment, constructing a new building and site improvements on a vacant, underutilized site, and constructing frontage improvements on 58th Dr. The proposed building would be two stories and 1,848 sq ft in size. The design balances the need for a reasonably sized building while responding to site design requirements such as landscaping.

- Impacts from the proposed variance will be mitigated to the extent practicable

  As noted above, any impacts from the proposed variances will be mitigated via a "living wall" or similar building treatment, smaller (but not eliminated) perimeter landscaping, and a reasonable spacing between the driveway apron and the intersection that is still safe. The combination of requested variances allows productive use of a very small vacant and underutilized site, while still

adhering to the intent and purpose of the design and development standards in the Manufacturing zone.

The applicant and the circumstances of this case have demonstrated that the effect of strict compliance with the setback, perimeter landscaping, and driveway spacing standards would be a site that is effectively undevelopable. Given the proposed improvements to the site and to 58th Dr, staff believes granting the variances are reasonable and appropriate.

Parking Modification

The applicant also requests a parking modification to allow for the design which has one accessible parking space on the site and two newly constructed parking spaces on 58th Dr adjacent to the site.

MMC 19.605.D provides information on how to calculate minimum and maximum parking requirements: Where the calculation of minimum parking spaces does not result in a whole number, the result shall be rounded down to the next whole number. Where the calculation of maximum parking spaces does not result in a whole number, the result shall be rounded to the nearest whole number. The minimum off-street parking requirements for the proposed building are, when calculated per the code, one off-street space:

Use	**Min/Max**	**Proposed sq ft**	**Total spaces required**
Manufacturing	1 space/1,000 sq ft 2 spaces/1,000 sq ft	1,430 sq ft	1.43 = 1 space
Office	2 space/1,000 sq ft 3.4 spaces/1,000 sq ft	418 sq ft	0.84 = 0 spaces
		Total	**1 space**

If rounded up then the site would require two off-street spaces, one of which would be required to be an ADA accessible space. Given the constraints on the site, the request to provide one accessible space on site and provide two on-street spaces as part of the required frontage improvements is reasonable. The proposal would meet the intent of the parking requirements for a manufacturing building with an associated office space for the business.

Approval of this modification effectively limits the permitted uses on the site to those that would comply with the off-street parking requirements. For example, although some retailers are permitted in the Manufacturing zone, the site would have to provide 3 parking spaces for a retail use.

Because the site is separated from the R-7 zone by both Johnson Creek Blvd and the Springwater Corridor, staff believes that the small size of the building, design of the site,

and compliance with other aspects of the code (such as noise ordinance) are sufficient to address proximity of the development to residentially-zoned properties.

CONCLUSIONS

Staff recommendation to the Planning Commission is as follows:

1. Approve the variances. This will result in a building with a 0-ft setback on Johnson Creek Blvd, 3.5-ft parking area perimeter landscaped areas, and a driveway spacing of 3.5 – 4 ft to the adjacent property line and 72 ft from the intersection with Johnson Creek Blvd.
2. Approve the parking modification. This will result in a site with one accessible parking space on site and two on-street spaces as part of the required frontage improvements.
3. Adopt the attached Findings and Conditions of Approval.

CODE AUTHORITY AND DECISION-MAKING PROCESS

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

- MMC 12.16 Access Management
- MMC 19.309 Manufacturing Zone (M)
- MMC 19.600 Off Street Parking and Loading
- MMC 19.700 Public Facility Improvements
- MMC 19.906 Development Review
- MMC 19.911 Variances

This application is subject to Type III review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above. In Type III reviews, the Commission assesses the application against review criteria and development standards and evaluates testimony and evidence received at the public hearing.

The Commission has 4 decision-making options as follows:

A. Approve the application subject to the recommended Findings and Conditions of Approval.

B. Approve the application with modified Findings and Conditions of Approval. Such modifications need to be read into the record.

C. Deny the application upon finding that it does not meet approval criteria.

D. Continue the hearing.

The original date for the final decision on these applications, which includes any appeals to the City Council, was April 6, 2022, in accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance. However, the applicant has waived the time period in which the

application must be decided to accommodate the extended review time resulting from the continuations to the public hearings.

COMMENTS

Notice of the proposed changes was given to the following agencies and persons: City of Milwaukie Engineering Department, Building Official, Lewelling Neighborhood District Association (NDA), Clackamas County Engineering Review, Metro, TriMet, and the Clackamas Fire District #1. A public notice was sent on January 5, 2022 to all property owners within 300 ft of the site. Comments received for the April 12 hearing were included with that packet. Additional written testimony submitted following the April 12 hearing can be found in Attachment 4.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

		Early PC Mailing	PC Packet	Public Copies	Packet
1.	Recommended Findings in Support of Approval	☐	☒	☒	☒
2.	Recommended Conditions of Approval	☐	☒	☒	☒
3.	Applicant's supplementary information received on April 12, 2022	☐	☒	☒	☒
4.	Testimony submitted, including Applicant's final written argument	☐	☒	☒	☒

Key:
Early PC Mailing = paper materials provided to Planning Commission at the time of public notice 20 days prior to the hearing.
PC Packet = paper materials provided to Planning Commission 7 days prior to the hearing.
Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.
Packet = packet materials available online at https://www.milwaukieoregon.gov/bc-pc/planning-commission-88.

ATTACHMENT 1
Recommended Findings in Support of Approval
File #VR-2021-012; DEV-2021-006; P-2021-003, 58th Dr Manufacturing Building

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, Troy Lyver, on behalf of the property owners, has applied for approval to construct a manufacturing building and associated site improvements at 9285 SE 58th Dr. This site is in the Manufacturing M Zone. The land use application file numbers are VR-2021-012, DEV-2021-006, and P-2021-003.

2. The applicant proposes to construct a 2-story 1,848-sq ft building, site landscaping and parking, and frontage improvements. The proposed development requires variances to minimum front yard setbacks, width of parking area perimeter landscaping, and minimum spacing standards between a driveway apron and a property line and to the nearest intersection. The application proposes to have the required on-site parking space be the accessible space and provide other parking on-street.

3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
    - MMC 12.16 Access Management
    - MMC 19.309 Manufacturing Zone (M)
    - MMC 19.600 Off Street Parking and Loading
    - MMC 19.700 Public Facility Improvements
    - MMC 19.906 Development Review
    - MMC 19.911 Variances

    The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. Public hearings were held on January 25, 2022, April 12, 2022, and May 24, 2022 as required by law.

4. MMC 19.309 Manufacturing

    a. MMC 19.301 establishes the development standards that are applicable to this site. Table 1 summarizes the existing and proposed conditions on the subject property with respect to the standards relevant to this proposal.

        The proposal is a 2-story building for light manufacturing uses with office space.

Table 1: Overview of Compliance with Development Standards

Manufacturing Zone - M Development Standards			
Standard	Required	Proposed	Staff Comment
1. Setbacks Front Side Rear Street side	Min. 20 ft None None 10 ft	 0 ft 0 ft 0 ft 10 ft	A variance has been requested.
2. Building Height	45 ft (max.)	28 ft-10 in	Complies with standard.
3. Landscaping	15% min.	Approx. 20%	Complies with standard.

Subject to approval of the requested variance, the Planning Commission finds that the proposal complies with the applicable standards of the M zone.

5. MMC Chapter 19.600 Off-Street Parking and Loading

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

a. MMC Section 19.602 Applicability

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

The proposed development is an 1,848-sq ft manufacturing building and is required to conform fully to the requirements of MMC 19.600.

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

b. MMC Section 19.605 Vehicle Parking Quantity Requirements

MMC 19.605 establishes standards to ensure that development provides adequate vehicle parking (off-street) based on estimated parking demand.

The proposed manufacturing building would be 1,848 sq ft.

As per MMC Table 19.605.1, the minimum/maximum number of required off-street parking spaces for a manufacturing use is 1/2 spaces per 1,000 sq ft of floor area; for an office use the number is 2/3.4 per 1,000 sq ft. According to MMC Table 19.605.1, the proposed development should provide a minimum of 1 space and would have a maximum of 4 spaces allowed. As proposed, the development would provide 1 accessible (ADA) space on-site and 2 on-street spaces.

Subject to approval of the requested parking modification, the Planning Commission finds that this standard is met.

c. MMC Subsection 19.605.2 Quantity Modifications and Required Parking Determinations

(1) MMC Subsection 19.605.2 A. allows for the modification of minimum and maximum parking ratio standards as calculated per Table 19.605.1.

The applicant has requested a modification to the minimum required parking for the development and proposes to provide an on-site accessible parking space and 2 on-street spaces for the development. This allows the required accessible space to be located as close to the building entrance as possible and provides 2 on-street parking spaces as part of the required frontage improvements on 58th Dr.

(2) MMC Subsection 19.605.2 C.1. contains the approval criteria for granting a parking modification, including a demonstration that the proposed parking quantities are reasonable based on (1) existing parking demand for similar uses in other locations, (2) quantity requirements from other jurisdictions, and (3) professional literature. In addition to this criterion, a request for modifications to decrease the amount of minimum required parking must meet the following criteria:

(a) The use of transit, parking demand management (TDM) programs, and/or special characteristics of the site users will reduce expected vehicle use and parking space demand for the proposed use or development, as compared with the standards in Table 19.605.1.

(b) The reduction of off-street parking will not adversely affect available on-street parking.

(c) The requested reduction is the smallest reduction needed based on the specific circumstances of the use and/or site.

A small manufacturing building like the one proposed would have a very low parking demand. The total number of onsite employees will be small. The site would provide the required parking space, but it would be the required ADA accessible space. The site is close by a Trimet transit stop and the Springwater Corridor Trail, so alternative modes of travel are possible to the site. No formal on-street parking is currently available on 58th Dr.; the proposed development includes frontage improvements which would provide two on-street parking space.

The Planning Commission finds that the applicant has adequately addressed the criteria for a parking modification to allow for the required accessible space to be provided on-site, with non-accessible spaces provided on-street.

d. MMC Section 19.606 Parking Area Design and Landscaping

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

(1) MMC Subsection 19.606.1 Parking Space and Aisle Dimension

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

The parking areas shown on the Planned Development plan have been laid out conceptually based on the standards of Table 19.606.1 using a 9-ft wide and 18-ft long parking space. Full compliance with these standards will be shown at the time of development.

(2) MMC Subsection 19.606.2 Landscaping

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

(a) MMC Subsection 19.606.2.C Perimeter Landscaping

In all but the downtown zones, perimeter landscaping areas must be at least 6 ft wide where abutting other properties and at least 8 ft wide where abutting the public right-of-way. At least 1 tree must be planted for every 30 lineal ft of landscaped buffer area, with the remainder of the buffer planted with grass, shrubs, ground cover, mulch, or other landscaped treatment. Parking areas adjacent to residential uses must provide a continuous visual screen from 1 to 4 ft above the ground to adequately screen vehicle lights.

The perimeter parking lot landscaping adjacent to the property line has been designed at 3.5-ft wide.

Subject to the approval of the requested variance, this standard is met.

As conditioned, the Planning Commission finds that the applicable standards of MMC 19.606.2 are met.

(3) MMC Subsection 19.606.3 Additional Design Standards

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

(a) MMC Subsection 19.606.3.A Paving and Striping

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

The plans submitted indicate that the parking area will be paved and striped.

This standard is met.

(b) MMC Subsection 19.606.3.B Wheel Stops

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

The plans submitted indicate that the parking area will meet this standard.

This standard is met.

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

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

The plans submitted indicate that the parking area will meet this standard.

This standard is met.

6. MMC 19.700 Public Facility Improvements

See Public Facilities Improvement findings below in Finding 9.

7. MMC Chapter 19.911 Variances

a. MMC 19.911.3 establishes the appropriate review process for variance applications.

The applicant proposes to: reduce the front yard setback to 0 ft; reduce the perimeter landscaping to 3.5 ft; and reduce the minimum accessway spacing standards.

The Planning Commission finds that the request is subject to a Type III Variance review.

b. MMC 19.911.4 establishes criteria for approving a variance request.

The applicant has chosen to address the discretionary relief criteria of MMC 19.911.4.B.1.

(1) Discretionary relief criteria

(a) The applicant's alternatives analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.

- *0-ft setback on Johnson Creek Blvd: the parcel is less than 4,000 sq ft and the required 20-ft dedication on Johnson Creek Blvd results in a lot size of 2,605 sq ft. Further, the shape of the lot is effectively a triangle, creating an additional development constraint. In addition to the required 10-ft setback on 58th Dr, parking, and landscaping, the developable area of the site is reduced by nearly 50%. The alternative to the variance would be to not develop the site, given the multitude of constraints. The applicant has submitted a narrative explaining that maintaining the 20-ft setback, in addition to all of the other requirements, would render the site undevelopable.*

- *Spacing between driveway and property line and to the intersection with Johnson Creek Blvd: As noted above, the small size of the site and its triangular shape limit the options for development on the site. Access from Johnson Creek Blvd is not permitted, so access from 58th Dr is the only option. In order to provide as much space between the driveway and the intersection with Johnson Creek Blvd, a reduction in the minimum spacing of 10 ft between the driveway apron and the property line is necessary. The applicant's narrative outlines the ramifications of requiring the 10 ft spacing, which would affect the internal circulation on the site and put the driveway even closer to the intersection. Per Finding 8.b, the submitted access study and additional engineering analysis confirm that a spacing of 72 ft rather than the minimum required 100 ft will not result in impacts to safety or sight distance.*

- *3.5-ft perimeter landscaping: As noted above, the small size of the site and its triangular shape limit the options for development on the site. Requiring the full 6 ft width of landscaping would further reduce an already very small building footprint on the site and render the site effectively undevelopable.*

This criterion is met.

(b) The proposed variance is determined by the Planning Commission to be both reasonable and appropriate, and it meets one or more of the following criteria:

(i) The proposed variance avoids or minimizes impacts to surrounding properties.

The proposed variances avoid creating adverse impacts for surrounding properties. The site is a corner lot and has only two adjacent properties, both of which are commercial/industrial properties. The 0-ft setback on Johnson Creek Blvd includes

the required 20-ft dedication for future improvements to the street. The proposed design includes a "living wall" on the building to help soften the building when it is adjacent to the future sidewalk. The proposed driveway would be located as far as possible from the intersection with Johnson Creek Blvd to maximize safety, while still separating it from the adjacent property. The 3.5-ft space is proposed to be landscaped. The reduction in the width of the landscaped perimeter is a reduction, not an elimination, and would still include landscaping and plants. The proposal minimizes impacts while still providing the ability to develop the site, which is now vacant and underutilized. The spacing between the driveway and the intersection with Johnson Creek Blvd would still provide 72 ft of distance which will not impact surrounding properties. The City Engineer agrees that the proposed design will not result in any safety issues.

This criterion is met.

(ii) The proposed variance has desirable public benefits.

The proposal will create a modest public benefit by taking a vacant, underutilized site and adding a productive use to the limited Manufacturing zone. Total relief from the landscaping requirement is not requested, as the site will include landscaping, a "living wall" on the building to improve its appearance, and required improvements include street trees, curb, and sidewalk on 58th Dr, none of which exist today.

This criterion is met.

(iii) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

The existing built and natural environment will be improved by the development, via the proposed "living wall", constructing a new building and site improvements on a vacant, underutilized site, and constructing frontage improvements on 58th Dr.

This criterion is met.

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

As noted above, any impacts from the proposed variances will be mitigated via a "living wall", smaller (but not eliminated) perimeter landscaping, and a reasonable spacing between the driveway apron and the intersection that is still safe. The combination of requested variances allows productive use of a very small vacant and underutilized site, while still adhering to the intent and purpose of the design and development standards in the Manufacturing zone.

This criterion is met.

The Planning Commission finds that these criteria are met.

8. MMC 12 Streets, Sidewalks, and Public Places

   a. MMC 12.08 – Street & Sidewalk Excavations, Construction, and Repair

      MMC 12.08.020 establishes constructions standards for new sidewalks and alterations to existing sidewalks.

      The applicant must not engage in any work in the right-of-way without first obtaining City permit, including any activity resulting in alteration of the surface of the right-of-way or their access to the right-of-way.

      As conditioned, the standards are met.

   b. MMC 12.16.040 – Access Requirements and Standards

      MMC 12.16.040 establishes standards for access (driveway) requirements. As conditioned, the standards are met as summarized below.

      (1) MMC 12.16.040.A – Access

         MMC 12.16.040.A requires that all properties provide street access with the use of an accessway as set forth in the Public Works Standards.

         The proposed development shall construct a new accessway per the Public Works Standards.

         As conditioned, standard is met.

      (2) MMC 12.16.040.C – Accessway Location

         MMC 12.16.040.C requires that all driveway approaches in non-residential districts must be 10 ft from the side property line, and at least 100 feet away from the nearest intersection.

         The applicant has requested a variance to construct the new driveway 4 ft from the north side property line and approximately 72 ft from the intersection. Per the submitted Access Spacing Study, this location will not result in impacts to safety or sight distance.

         Subject to approval of the Accessway Location variance, the standard is met.

      (3) MMC 12.16.040.E – Accessway Design

         MMC 12.16.040.E requires that all driveway approaches meet Americans with Disabilities Act (ADA) standards and Milwaukie Public Work Standards.

         The applicant has proposed to construct a new driveway that will conform with the Americans with Disabilities Act (ADA) standards and the Milwaukie Public Works Standards.

         As conditioned, the standard is met.

      (4) MMC 12.16.040.F – Accessway Size

         MMC 12.16.040.F requires that industrial uses shall have a minimum driveway apron width of 15 ft and a maximum of 45 ft.

The applicant has proposed a new driveway apron width of 20 ft which is in conformance with this standard.

As conditioned, this standard is met.

c. MMC 12.24 – Clear Vision at Intersections

MMC 12.24 establishes standards to maintain clear vision areas at intersections in order to protect the safety and welfare of the public in their use of City streets. The clear vision area for all street and driveway or accessway intersections is the area within 20 ft radius from where the lot line and the edge of a driveway intersect. The provisions of this chapter relate to safety. They shall not be modified through variance and are not subject to appeal.

The applicant must maintain or remove all trees, shrubs, hedges or other vegetation in excess of three feet in height, measured from the street center grade from the clear vision area. Trees exceeding this height may remain in this area; provided, all branches and foliage are removed to the height of eight feet above the grade.

This standard is met.

As conditioned, and subject to the approval of the Access Spacing variance, the Planning Commission finds the standards in MMC 12 are met.

9. MMC 19.700 Public Facility Improvements

a. MMC 19.702 Applicability

MMC 19.702.E establishes the applicability of the provisions of MMC 19.700, including a new dwelling unit, any increase in gross floor area, 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 is proposing to construct a 2-story manufacturing building measuring 1,848 sq ft. MMC 19.700 applies to the proposed development.

b. MMC Section 19.705 Rough Proportionality

MMC 19.705 requires that transportation improvements be in proportion to impacts of a proposed development. Mitigation of impacts, due to increased demand for transportation facilities associated with the proposed development, must be provided in rough proportion. Guidelines require consideration of a ½ mile radius, existing use within the area, applicable TSP goals, and the benefit of improvements to the development property.

Based on proportionality guidelines found in MMC 19.705.2, the applicant is found responsible for constructing half street improvements along 58th Drive. This includes management of stormwater generated from new impervious surface, on-street parking, and a pedestrian ramp to provide connectivity traveling east along 58th Drive at the intersection of Johnson Creek Boulevard.

As conditioned, this standard is met.

c. 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. The City's street design standards are based on the street classification system described in the City's Transportation System Plan (TSP).

As conditioned, the proposal meets the standards of MMC 19.708, as summarized below.

(1) MMC 19.708.1.A – Access Management

All development subject to 19.700 shall comply with the access management standards contained in Chapter 12.16.

As mentioned in 8.b above, the applicant proposes to construct a new driveway in full compliance with the access management standards contained in Chapter 12.16 and the Public Works Standards.

(2) MMC 19.708.1.B – Clear Vision

All development subject to 19.700 shall comply with Clear vision requirements in Chapter 12.24.

As mentioned in 8.c, the proposed development is required to maintain and remove all obstructions within the clear vision area.

(3) MMC 19.708.1.D – Development in Non-Downtown Zones

Transportation improvements must be constructed in accordance with the Milwaukie Transportation System Plan and Transportation Design Manual street classification. The development fronts a portion of 58th Drive with local street classification.

As conditioned, the standards are met.

d. MMC 19.708.2 Street Design Standards

MMC 19.708.2 establishes standards for street design and improvements.

Development standards for 58th Drive require the construction of a 5 ft sidewalk, a 5 ft landscape strip, a 6 ft parking strip, and curb and gutter.

As conditioned, this standard is met.

e. MMC 19.708.3 – Sidewalk Requirements and Standards

MMC 19.708.3.A.2 requires that sidewalks be provided on the public street frontage of all development in conformance to ADA standards.

The applicant must construct and maintain ADA compliant 5 ft wide setback sidewalks.

As conditioned, this standard is met.

As conditioned, the Planning Commission finds the standards in MMC 19.700 are met.

10. The application was referred to the following departments and agencies on December 10, 2021:
    - Milwaukie Building Division
    - Milwaukie Engineering Department
    - Clackamas County Fire District #1
    - Lewelling Neighborhood District Association Chairperson and Land Use Committee

    Notice of the application was also sent to surrounding property owners and residents within 300 ft of the site on January 5, 2022, and a sign was posted on the property on January 7, 2022.

    Comments were received from the following persons:

- **Milwaukie Engineering Department** – Engineering comments have been incorporated in the Findings under 19.700 and Chapter 12.
- **TriMet** – Comments related to the adjacent bus stop on Johnson Creek Blvd when improvements are made.

A public notice was sent on January 5, 2022 to all property owners within 300 ft of the site. The following comments were received:

- **E. Michael Connors** (representing Smith Rock)
- **Evan Geist and Kimberlee Morris, 9203 SE 58th Dr**
- **Jen Procter Andrews**
- **Tim and Jen Andrews**
- **Michelle Wyffels, TriMet**

EXHIBIT 2
Conditions of Approval
File #VR-2021-012; 58th Dr Manufacturing Building

Conditions

1. The site shall be used in a manner as proposed and approved through this land use action and as submitted in materials received by the City on June 15, 2021 and revised on December 8, 2021, and supplemental information received by the City on March 30, 2022.
2. Prior to start of any site work or earth removal, a fenced tree protection zone (TPZ) must be established on the subject property for the large blue spruce located on the adjacent property at 9208 SE 58th Dr. The TPZ is defined as the tree canopy drip line. The TPZ must be maintained with a 4 ft – 6 ft tall fence around the perimeter of the TPZ; signage is required on the fencing stating that no one, and no equipment, is allowed to enter or disturb the area. Fencing required to be installed prior to any earth-disturbing activity and must be maintained throughout the project. An inspection of the TPZ fencing is required prior to any earth-disturbing activity.
3. Site landscaping must be maintained in good and healthy condition.
4. Prior to the certificate of occupancy, the following shall be resolved:
    a. All required landscaping must be installed.
    b. Construct a 5-ft setback sidewalk, a 5-ft landscape strip (or water quality facility), a 6-ft parking strip, and curb and gutter fronting the proposed development property along SE 58th Drive. An issued Right-of-Way permit is required prior to the start of any work within the public right-of-way.
    c. Construct a driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA). An issued Right-of-Way permit is required prior to the start of any work within the public right-of-way.
    d. Install stormwater detention and water quality treatment facilities. Stormwater plan review and approval by the Engineering Department required before issuance of building permit and prior to the start of construction.

Additional Requirements

1. Prior to issuance of building permits, the following shall be resolved:
    a. Provide an erosion control plan and obtain an erosion control permit, if needed. Consult with the Engineering Department to determine if an erosion control permit is needed for the driveway and frontage improvements.

Received by Planning Department on April 12, 2022.

ARD ENGINEERING
21370 SW Langer Farms Pkwy
Suite 142, Sherwood, OR 97140

Technical Memorandum

To: Carol and Keith Phelps

From: Michael Ard, PE

Date: January 25, 2022

Re: SE Johnson Creek Boulevard at SE 58th Drive Industrial Site – Response to Connors Comments

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This memorandum is written in response to opposition testimony provided by attorney E. Michael Connors of Hathaway Larson dated January 25, 2022. The opposition raises several questions and objections related to sight distance and safety for the proposed development at 9285 SE 58th Drive (VR-2021-012, DEV-2021-006 & P-2021-003) on behalf of Smith Rock, Inc.

Allegation 1

"The Applicant is also requesting a significant reduction in the access drive spacing from the Johnson Creek Blvd./SE 58th Dr. intersection that has safety implications."

Response:

The proposed development is located on a small lot which fronts on both SE Johnson Creek Boulevard and SE 58th Drive. As described in our memorandum dated June 14, 2021, MMC Section 12.16.040.C.1 requires that access shall be provided first from the street with the lower classification. In this instance, SE Johnson Creek Boulevard is classified by Clackamas County as a Minor Arterial, while SE 58th Drive is classified by the City of Milwaukie as a Local Street. Based on these classifications, access is required to be taken from SE 58th Drive.

The access is located as far north on SE 58th Drive as possible, thus complying with the requirement to take access to the lower classification street and maximizing the access spacing to SE Johnson Creek Boulevard. No other point of access exists on the property which would provide greater access spacing. Further, no potential point of access exists on SE Johnson Creek Boulevard which would provide greater access spacing. Accordingly, the proposed development has maximized access spacing to the maximum extent possible while providing driveway access to the site.

Further, Mr. Connors errs in his assertion that there are safety implications associated with the proposed reduction in access spacing. As detailed in our memorandum dated June 14, 2021, the available sight distances from the proposed access location are in excess of the minimum required stopping sight distances. As such, drivers have sufficient sight distances to see and respond to conflicts by slowing and/or stopping prior to reaching the driveway location. Although there may be minor interruptions to the smooth flow of traffic when vehicles slow or stop, these constitute a minor operational delay not a safety concern. And

since SE 58th Drive is classified as a Local Street, slowing or stopping at access driveways is normal and acceptable.

Based on the review, no safety implications are associated with the requested access spacing variance.

Allegation 2

"Contrary to the Applicant's claim, there will be adverse impacts to adjacent and surrounding properties that the Applicant has not accounted for. The lack of any front yard setback along Johnson Creek Blvd. will make it difficult and unsafe for vehicles (mostly trucks) existing [sic] the Smith Rock property onto Johnson Creek Boulevard onto Johnson Creek Blvd. due to the visual obstruction of a two-story building right on the street."

Mr. Connors assertion appears to be founded on the mistaken impression that the lack of a front yard setback means that the building will be constructed at the edge of the traveled way. This is incorrect. The building will actually be set back significantly from the near edge of the traveled way on SE Johnson Creek Boulevard since the public right-of-way extends well beyond the edge of the travel lane.

Based on the 35-mph speed zone, a minimum of 390 feet of intersection sight distance is required for the existing Smith Rock Driveway on SE Johnson Creek Boulevard. A diagram showing this required sight line over an aerial (Google Earth) image is attached to this memorandum. The actual sight line projected following completion of the proposed development will remain similar to existing conditions and will be in excess of 650 feet.

Based on the review of sight lines, the proposed building will not obstruct sight lines for the existing Smith Rock access on SE Johnson Creek Boulevard, and adequate sight distance for safe and efficient operation will remain available at this location.

Allegation 3

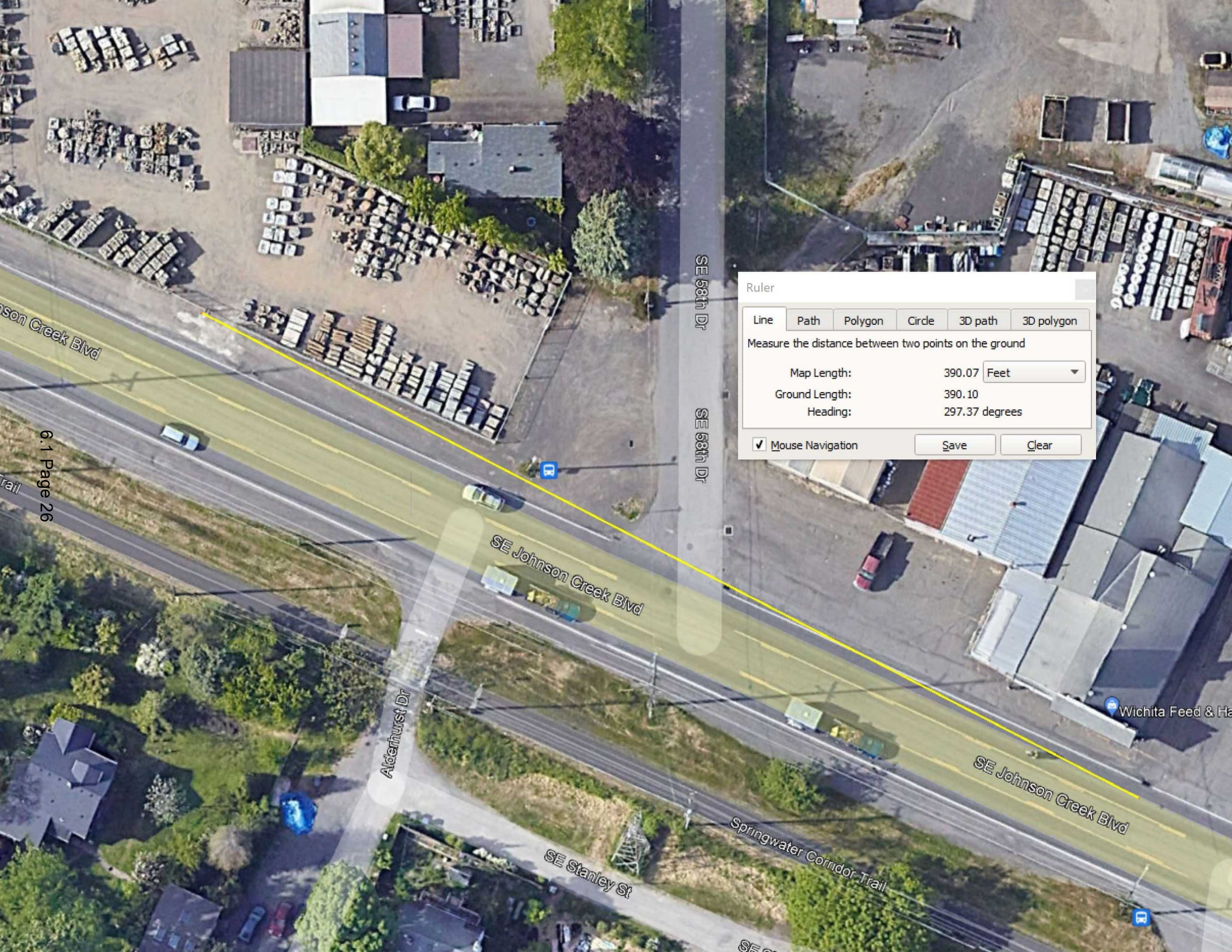
"Although the Applicant is providing a 20-foot dedication along Johnson Creek Blvd., this does not appear to be sufficient room to accommodate the additional travel lane, bike lanes and sidewalk proposed on the north side of the road adjacent to the proposed development."

Here, Mr. Connors errs in asserting that a lane will be added to SE Johnson Creek Blvd at the site of the proposed development. However, the existing cross-section along SE Johnson Creek Blvd. at SE 58th Drive already includes a three-lane cross section with a center left-turn lane. Although there exists a segment of SE Johnson Creek Boulevard which requires lane widening, it begins 750 feet west of the subject property. A 20-foot dedication is more than adequate to accommodate the addition of a bike lane and a sidewalk. As such, the proposed development will not conflict with this planned improvement project.

CONCLUSIONS

Based on the detailed review of the transportation safety and building setback concerns raised by Mr. Connor, the proposed development maximizes access spacing to the extent physically possible with the site, provides adequate sight lines for safe operation of the proposed site access, maintains adequate sight lines for the Smith Rock driveway, and accommodates the right-of-way needs associated with the future Johnson Creek Blvd. Road Improvement Project.

If you have any questions regarding this analysis, please feel free to contact me at (503)537-8511 or by email at mike.ard@gmail.com.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Heading:
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SE 58th Dr
SE 58th Dr
SE Johnson Creek Blvd
SE Johnson Creek Blvd
SE Johnson Creek Blvd
Aldernurst Dr
SE Stanley St
Springwater Corridor Trail
Wichita Feed & Ha

Jenai Fitzpatrick <jenai@fdgpnw.com>

58th Drive & Johnson Creek Blvd

4 messages

Jenai Fitzpatrick <jenai@fdgpnw.com> Sun, Jan 30, 2022 at 8:00 AM
To: JHowie@clackamas.us
Bcc: Jenai Fitzpatrick <jenai@fdgpnw.com>

Joel,

We have a project at 58th Drive & Johnson Creek Blvd. A notice was sent to the County as part of our LU application. We have taken the county's planned improvements to JCB into consideration with our site and 58th Drive improvements, refer to sheets C-2 & C-3 attached.

Could you please confirm that your pending design for this section of improvements to JCB match that which we were informed last June?

Also one of the concerns from neighbors at the meeting is the lack of safe crossings to the SpringWater Corridor from the uphill residential neighborhoods. Any potential plans or crossing locations I may pass on in my response so they feel heard would be greatly appreciated.

Thank you for your time,

Jenai Fitzpatrick
jenai@fdgpnw.com
Fitz Design Group
DBE ~ ESB ~ WBE Certification #11726
Land Use Planning | Civil Design | Architectural Drafting | ArcGIS Analysis
971.236.1604 : Happy Valley, Oregon : www.fdgpnw.com

Need to schedule a meeting? In person and Zoom meetings can be scheduled here

2021.12.03_Sheet_C1-02_SiteStreetPlan.pdf
2256K

Howie, Joel <JHowie@clackamas.us> Fri, Feb 4, 2022 at 12:55 PM
To: Jenai Fitzpatrick <jenai@fdgpnw.com>

Hi Jenai,

Thanks for your email and sorry for not getting back to you sooner. I received your voicemail as well. As you mentioned, we haven't started our design yet but in this location, our roadway cross section plan is 12'center turn lane, 12' travel lanes, 5' or 6' bicycle lanes/shoulder and a 6' sidewalk on the north side. Additionally, there is a 0.5' curb not included in the sidewalk width.

The existing built environment constraints might require us to go with 11' travel lanes to go with 6' bicycle lanes/shoulder. If I am reading our proposed cross section would be pretty close to what you are showing except the 0.5' curb. It likely will be challenging to construct the sidewalk with the trellis at the back of it. We might need to temporarily remove the trellis and put back in place after the sidewalk is constructed.

Our project doesn't include any enhanced pedestrian crossings. However, Steve Adams from the City of Milwaukie reached out to me to express citizen concerns they received and I have shared with our Traffic Engineering group and will be following up for further discussion.

Can you let me know who you have been working with at the county related to the land use process?

Regards,

Joel Howie, PE Civil Engineering Supervisor

Clackamas County Department of Transportation and Development | 150 Beavercreek Road | Oregon City | OR 97045 | ☎ W: 503-742-4658 c: 971-378-0581

My office hours: Monday thru Thursday, 7:30AM-6PM.

From: Jenai Fitzpatrick <jenai@fdgpnw.com>
Sent: Sunday, January 30, 2022 8:00 AM
To: Howie, Joel <JHowie@clackamas.us>
Subject: 58th Drive & Johnson Creek Blvd

Warning: External email. Be cautious opening attachments and links.

[Quoted text hidden]

Jenai Fitzpatrick <jenai@fdgpnw.com> Tue, Feb 8, 2022 at 5:27 PM
To: "Howie, Joel" <JHowie@clackamas.us>

Joel,

I have not been in contact with anyone at Clackamas County on this project to date, nor did anyone from the county respond to the land use mailing.

So if I'm understanding you correctly, due to existing constraints, the area between the future back of walk and the ROW line may move from 12" to 6", correct?

What is the anticipated construction date of this section of JCB? It might prove useful to just install trellis after completion, if the city will allow the delay.

Thank you,

Jenai Fitzpatrick
jenai@fdgpnw.com
Fitz Design Group
DBE ~ ESB ~ WBE Certification #11726
Land Use Planning | Civil Design | Architectural Drafting | ArcGIS Analysis
971.236.1604 : Happy Valley, Oregon : www.fdgpnw.com

Need to schedule a meeting? In person and Zoom meetings can be scheduled here

[Quoted text hidden]

Howie, Joel <JHowie@clackamas.us> Wed, Feb 9, 2022 at 5:12 PM
To: Jenai Fitzpatrick <jenai@fdgpnw.com>

Hi Jenai,

Yes, you are understanding me correctly and the area between the future back of walk and the ROW line may move from 12" to 6". The anticipated construction date of this section is likely in 2024, which is likely too long to delay. Let's keep in touch and thank you for reaching out to me.

Regards,

Joel

[Quoted text hidden]

From: Robert Vancreveld
To: Vera Kolias; planning@milwaukieorego.gov
Subject: Re: Comments for VR-2021-012 (9285 SE 58th Dr)
Date: Monday, April 18, 2022 16:58:11

This Message originated outside your organization.

Dear planning commission
As a close neighbor (of many years)to the proposed manufacturing facility I feel the need to respond.
The proposed use of the site is inappropriate due to the parcels small size.
Variance from the setback rules will result in congestion and accidents at this site.
A single onsite parking place(ada) is inadequate. Zero lot line will result in vehicles parking in the street. Delivery and pickup will be parking in the street.
The traffic study is a joke. This site will generate a great deal more traffic than shown.
Sight lines will be jeopardized by a blocky building. Years ago a small boulder was placed on the corner and it blocked the sight lines to on coming traffic on jcb.

Robert and Barbara vancreveld
5730 se westfork
541-270-6592

HATHAWAY LARSON

Koback · Connors · Heth

April 19, 2022

VIA EMAIL (koliasv@milwaukieoregon.gov & planning@milwaukieoregon.gov)

Planning Commission
City of Milwaukie
6101 S.E. Johnson Creek Blvd.
Milwaukie, OR 97206

Re: Variance & Development Review Applications – 9285 SE 58th Dr.
Application File Nos. VR-2021-012, DEV-2021-006 & P-2021-003
My Client – Smith Rock, Inc.

Dear Commissioners:

This firm represents Smith Rock, Inc. ("Smith Rock"), who operates a business located at 6001 SE Johnson Creek Boulevard which is adjacent to the property subject to the above-referenced applications (the "Applications") filed by Lyver Engineering and Design, LLC (the "Applicant"). At the April 12, 2022 hearing, the Planning Commission continued the hearing until May 24, 2022 and established a post-hearing submission process. Smith Rock is submitting this letter as its initial post-hearing submission.

A. No new evidence or argument.

Smith Rock requested the continuance of the April 12 hearing because the Applicant waited until a few hours before the hearing to submit the Ard Engineering Technical Memorandum, dated January 25, 2022, and Smith Rock did not have sufficient time to evaluate it and consult with a traffic engineer. It is not clear why the Applicant waited so long to provide this information to the City and other parties. We were hoping the Planning Commission would continue the hearing to a later date as it did when the Applicant requested a continuance at the January 25, 2022 hearing, as opposed to establish a post-hearing submission process that required Smith Rock to respond in seven (7) days. Unfortunately, seven (7) days was not sufficient time for us to retain our own traffic engineer to review and comment on the Ard Engineering Technical Memorandum. Therefore, we are not submitting any new evidence at this stage.

We summarized the reasons why the Planning Commission should deny the Application in Section B below so it is easier to understand our position. This summary is based on previous legal

E. Michael Connors
1331 NW Lovejoy Street, Suite 950
Portland, OR 97209
mike@hathawaylarson.com
(503) 303-3111 direct
(503) 303-3101 main

arguments we have already made on the record and does not rely on any new evidence. Therefore, the Applicant is not entitled to submit any rebuttal evidence in response to this letter because it does not contain any new evidence or argument. ORS 197.763(6)(c) & MMC 19.1009.11.D. To the extent the Applicant attempts to submit rebuttal evidence in response to this letter, we intend to file procedural objections.

B. Summary of reasons to deny the Application.

As we previously explained in our letters and testimony at the April 12 hearing, there are multiple reasons why the Planning Commission should deny the Application due to the Applicant's failure to demonstrate compliance with several applicable approval criteria. The following is a summary of those reasons.

The Applicant applied for the variances under the discretionary relief criteria as opposed to the economic hardship criteria because the variances are not necessary to allow reasonable economic use of the property. Therefore, these variances are not necessary to develop the property but rather are the Applicant's development preferences. The Applicant failed to justify these development preferences.

The Applicant failed to demonstrate that "the proposed variance has desirable public benefits" as required by MMC 19.911.4.B.1.b.2. The Applicant relies exclusively on the purported benefit of developing a vacant site and producing jobs, taxes, etc., but that claim is dubious and irrelevant because the property can be reasonably developed without these variances.

The Applicant failed to provide an alternative analysis "of the impacts and benefits of the variance proposal as compared to the baseline code requirements" as required by MMC 19.911.4.B.1.a. The Applicant did not submit anything comparing the proposed development with the variances to the development option using the baseline code requirements.

The Applicant failed to demonstrate that "the proposed variance avoids or minimizes impacts to surrounding properties" as required by MMC 19.911.4.B.1.b.1. Several surrounding neighbors raised legitimate concerns about the impact of the development and proposed variances. The Applicant made no effort to reach out to affected neighbors and unfairly dismissed their concerns as speculative and unfounded. The neighbors' concerns about access safety, damage to the large blue spruce tree near the property line, lack of a sufficient landscaping buffer to mitigate impacts on the adjacent residence and the location of the access drive on SE 58th Dr. are legitimate concerns the Applicant should have made some efforts to address.

The Applicant cannot satisfy the Transition Area Standards in MMC 19.309.6.F because it failed to provide any information regarding the manufacturer who will operate on this site. MMC 19.309.6.F requires consideration of several characteristics of the proposed use, including noise, lighting, hours of operation, delivery and shipping, and provides that the "review authority may attach conditions to reduce any potentially adverse impacts to residential properties." This

requirement is important since there is an adjacent residence less than 25 feet from the site and residential zoned properties less than 70 feet from the site. The Applicant cannot satisfy this approval criteria as a matter of law because it doesn't know who will operate on the site.

The Applicant cannot satisfy the Quantity Modifications and Required Parking Determinations standards in MMC 19.605.2.B.1 because it failed to provide any information regarding the manufacturer who will operate on this site. MMC 19.605.2.B.1 requires the Applicant to provide information about "the size and types of the uses on site, and information about site users (employees, customers, etc.)" so the parking demands can be determined. The Applicant cannot satisfy this approval criteria as a matter of law because it doesn't know who will operate on the site.

The Applicant failed to address several applicable approval criteria in MMC Chapter 19.500, including MMC 19.504.1 (Clear Vision Areas), 19.504.5 (Distance from Property Line), 19.504.6 (Transition Area Measures), 19.504.9 (On-Site Walkways and Circulation) and 19.505.8 (Building Orientation to Transit).

The Applicant's February 2022 email exchange with Clackamas County confirms there will be conflicts with the Johnson Creek Blvd. road improvement project based on the zero front yard setback for the building. The County confirmed "[i]t likely will be challenging to construct the sidewalk with the trellis at the back of it" and the Applicant suggested it can simply delay installing the trellis. At the April 12 hearing, the Applicant suggested it will abandon the trellis altogether and put the onus on the City to tell it what it should do instead. The Applicant has not been transparent about this conflict and failed to develop a contingency plan to address this conflict.

The Applicant's project plans are preliminary and still in flux. The Applicant still has no idea what manufacturer will operate in the building. Although the City staff specifically requested that the Applicant use a trellis structure with plants (in addition to windows and other design features) to soften the impacts of the zero front yard setback, the Applicant testified that it has no idea if the trellis is feasible or what it will propose in lieu of the trellis. The Applicant indicated it will look to the City to provide those answers, not understanding that it is the Applicant's project and burden to demonstrate compliance with the approval criteria. The Applicant should be required to wait until its project plans are more complete and have been properly vetted before the City approves the project.

C. Conclusion.

We respectfully request that the Planning Commission deny the Application due to the Applicant's failure to comply with multiple approval criteria. The Applicant is proposing an undefined industrial use that requires multiple variances from the standard development requirements and will impact the surrounding uses. Variances are disfavored because they deviate from the standard requirements and should only be allowed when truly necessary. The Applicant failed to justify the variance requests, address all of the relevant approval criteria or respond to the legitimate concerns raised by the neighbors. Therefore, the Application should be denied.

Very truly yours,

HATHAWAY LARSON LLP

/s/
E. Michael Connors

EMC/ep

Cc: Smith Rock, Inc.

LYVER ENGINEERING AND DESIGN
7950 SE 106th, Portland, Oregon 97266
Ph: 503.705.5283 Fax: 503.482.7449 TroyL@Lyver-EAD.com www.Lyver-EAD.com

April 26, 2022

Redacted document related to inappropriately submitted comments.

Ms. Vera Kolias
Senior Planner
6101 SE Johnson Creek BLVD
Milwaukie, OR 97206

Reference: 9285 SE 58th Drive
New Proposed Development
Permit# VR-2021-012, DEV-2021-006, and P-2021-003

LEAD Project No: 19-043

Subject: Responses to Written Response to Letter from Mike Conners,

Dear Ms. Kolias-

The following are responses to comments provided in writing by attorney Mike Conners in his letter dated April 19, 2022.

[redacted]

[redacted]

[redacted]

Finally, Mr. Conners continues to argue that the Johnson Creek Blvd. Road Improvement Project by Clackamas County will conflict with the proposed project along the JCB frontage, without understanding that the JCB Improvement Project has yet to reach the final design stage, at which time any conflicts will be specifically identified and addressed. Any argument at this time about conflicts with the JCB Improvement Project is premature and inappropriate.

[redacted]

We trust that the responses we have prpvided are sufficient for the planning commission to approve our proposal.

Sincerely,

Troy D. Lyver, PE/SE.
Lyver Engineering and Design, llc

LYVER ENGINEERING AND DESIGN
7950 SE 106th, Portland, Oregon 97266
Ph: 503.705.5283 Fax: 503.482.7449 TroyL@Lyver-EAD.com www.Lyver-EAD.com

May 3rd, 2022

Reference: Phelps Industrial/ Light Manufacturing Bldg
9289 SE 58th Drive, Milwaukie, OR 97206
LU application #VR-2021-012;DEV-2021-006

LEAD Project No: 19-042

Subject: Applicants Final Statement

Herein the applicant provides their final statement prior to the May 24th public hearing process appealing to the Planning Commission for approval of the proposed land use application. Based on the staff review of the applicant's combined applications for variances and parking modification, the criteria have been satisfied. See Planning Commission Staff Report dated 4/5/22 Item 5.1 page 5 to page 8 under "Key Issues", staff discusses at length the various criteria including but maybe not limited to:

- *Are the proposed variances and parking modification reasonable and appropriate?* Staff analysis illustrates how the applicants have met the criteria through the alternative analysis (page 6); avoiding or minimizing impacts to surrounding properties (page 6-7); has desirable public benefits (page 7); responds to the existing built or natural environment in a creative and sensitive manner (page 7); and, impacts from the proposed variance will be mitigated to the extent practicable (page 7).

  As part of the Staff Report under "Conclusions" on page 8, staff makes the following recommendations:

  1. *Approve the variances*
  2. *Approve the parking modification, and*
  3. *Adopt the attached Findings and Conditions of Approva*l.

Under the "*Code Authority and Decision-Making Process*" on page 8, Staff identifies the various Code sections that are applicable, including MMC c12.16, MMC 19.309, MMC 19.600, MMC 19.700, MMC 19.906 and MMC 19.911. Based on its review of the application materials, staff concludes that the applicant has met the required burden by suitably addressing all of the above Code sections.

Comments received from the Milwaukie Engineering Department and TriMet indicate that comments have either been incorporated into the Findings under 19.700, Chapter 12, or, in the case of TriMet, comments are related to the site when improvements are made.

Attachment 1 within the Staff Report of 4/5/22 beginning on page 12 includes the staff statement that "*Subject to approval of the requested variance, the Planning Commission finds that the proposal complies with the applicable standards of the M zone.*" On page 14 staff states *"The Planning Commission finds that the applicant has adequately addressed the criteria for a parking modification to allow for the required accessible space to be provided on-site, with non-accessible spaces provided on-street."*

Regarding MMC 19.606.2, Landscaping, staff finds that "*As conditioned, the Planning Commission finds that the applicable standards of MMC 19.606.2 are met."* This pertains to Perimeter Landscaping (19.606.2.C) as well (page 15). It should be noted that the reduction in perimeter landscaping is in direct correlation to the required reduction of space between the intersection, the driveway and the northern property line as discussed by traffic engineer Mike Ard. One can not be increased without negatively impacting safety sight distance.

With regard to the "discretionary relief criteria" (19.911.4.B.1) staff has determined that the applicant meets these criteria including:

(a) The applicants alternative analysis provides, at a minimum, an analysis of the impacts and benefits of the variances proposed as compared to the baseline Code requirements." While also noting that "*The alternative to the variance would be to not develop the site, given the multitude of constraints*."

(b) The proposed variances avoid creating adverse impacts for surrounding properties. . . . . This criterion is met. This includes a finding that the proposed variances avoids or minimizes impacts to surrounding properties, has desirable benefits, and the proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

(c) Impacts from the proposed variance will be mitigated to the extent possible. This criterion does not require that the proposed development may have impacts on the surrounding properties, but those impacts are mitigated to the extent possible. This criterion does not require that there be NO impacts, only that any impacts be mitigated to the extent possible, which the applicant has done for every issue. It is noted in the Staff Report that "<u>The Planning Commission finds that these criteria are met</u>."

For other criteria and requirements, staff finds that the applicant has met the standards for "*Street & Sidewalk Excavations, Construction and Repair", "Access Requirements and Standards" including Access, Accessway Location, Accessway Design, Accessway Size, as well as Clear Vision at Intersections.* As part of staff review, no adverse comments were received from Milwaukie Engineering, Clackamas County or TriMet. For all of these criteria and requirements, staff finds that "as conditioned", the standards and requirements are met.

With regard to the Johnson Creek Blvd. (JCB) Improvement Project, Clackamas County staff identified only the "trellis" as being a possible conflict. At the south facing walls "screened" conception city staff noted they had no idea when/if JCB would even be improved. As such the trellis potential was seen with optional

ground, wall, or roof mounted plantings as the preferred design option holding the alternative lower window, stepped facade, or material and color facade design options as secondary. However, because the JCB project has yet to enter the final design phase, this issue can be best managed between Clackamas County, City of Milwaukie and the applicant during the building permit process.

(c) MMC 19.708, Transportation Facility Requirements, including *Access Management, Clear Vision, Development in Non-Downtown Zones,* as well as *Street Design Standards, Sidewalk requirements and Standards* have all been satisfactorily addressed, with staff noting that "as conditioned", these standards are met.

Staff notes that on Dec. 10, 2021, Milwaukie Building Division, Milwaukie Engineering Department, Clackamas County Fire District #1, and Lewelling Neighborhood District Association were all notified in writing of the applicant's proposal and NONE of those agencies or organizations provided any negative comments to the Planning Department.

Attachment 2 within the Staff Report of 4/5/22 contains "Conditions of Approval" that have been reviewed by the applicant and found to be acceptable. While some remaining neighborhood concerns are not required to be resolved during land use they will however meet or exceed the requirements during building permits. In doing so it is anticipated that many will benefit surrounding properties as well.

As part of the applicant's application and follow up materials, the site is zoned M (Manufacturing) which is the primary use category for the site. The site has been zoned M for several years, and is also shown on the Comprehensive Plan as being "Industrial". The proposed development meets all of the requirements of the M zone. While no specific tenant has been identified for the subject site, once developed, nor is there a requirement in the Milwaukie Code that requires a "tenant" of the completed site be identified.

Similarly, SE 58th Drive north of Johnson Creek Blvd. is designated as "Local Street" which, based on the definition of the Local Street in the Transportation System Plan (TSP), is appropriate. Local streets may carry not just residential traffic but traffic for sites (whether residential, commercial, industrial or institutional). There is no stated limitation on Local Streets NOT being used for site based industrial traffic. In addition, other users of SE 58th Drive north of Johnson Creek Blvd. that are not residential are already using SE 58th Drive for access to their properties. Memos provided to the record by Michael Ard, P.E. dated June 14, 2021 and a rebuttal statement by Mr. Ard dated January 25, 2002 provide true and accurate information regarding traffic, both present and in the future, in the immediate vicinity. Potential conflicts are minimal and can be effectively mitigated.

Other specific issues that were raised regarding the proposed development include concern for the blue spruce located on the adjacent property. This was investigated at length with the city staff, including the city engineer and forester, prior to initial hearing. The conclusion was that the proposed development would not conflict with the continued growth of the tree.

It must be noted that the applicants did, in fact, communicate with the owner of the adjacent property regarding future plans for the site. Carol Phelps testified that she and husband Keith had, in fact, had discussions with Lew Smith about the future of the subject site. In fact, Lew Smith (Smith Rock) rented the subject property from the Phelps for over 15 years and they even discussed the possibility of the Phelps developing the property for Mr. Smith. As such, owners of the adjacent property have no claim that they did not know the site would be developed with an industrial use.

It has been claimed that MMC 19.309.6.F *requires consideration of several characteristics of the proposed use, including noise, lighting, hours of operation, delivery and shipping, and provides that the 'review authority may attach conditions to reduce any potentially adverse impacts to residential properties.*" This requirement does not state that such considerations must be met before any approval is granted. It states only that several characteristics be considered and not used as a standard for approval or denial. These characteristics will be considered at the Development Review/Building Permit stages of the process. Further, some of the issues, while considered by the Planning Commission, need *not be finally decided* in terms of impacts until the building permit stage. Staff has not determined that any of these factors will definitely have an impact on the surrounding properties. The operation will take place within an enclosed building which will maintain within limits any affiliated noise, light and glare, dust and particulate, along with impacts of hours of operation.

It has been claimed, by the proposals opponents, that variances are in "disfavor" to the city and its citizens. Nothing could be further from the truth. If the City of Milwaukie considered variances to be in "disfavor", it is likely that variances would not be allowed anywhere in Milwaukie and under any conditions. Variances are designed for use at such sites as the subject property, which is small, oddly shaped, and difficult to develop. While the variances for reduction in setbacks and landscaping will help to see the site developed, they are the only means by which this site can be developed as proposed.

It must also be noted that the dwelling located on the adjacent property is a "non-conforming use". It is a residential use in an industrial zone. The M zone does not promote residential development, except under certain conditions, and the subject dwelling on the adjacent property does not have any of those "certain conditions". The review process for a dwelling in the M zone is more detailed and restrictive. As such, the applicants are proposing an industrial development in keeping with the M zone. While the dwelling is allowed to continue to exist, it creates the conflicts with the proposed use, not the other way around. The M zone is primarily an industrial zone and should be used that way.

The M zone has a maximum building height of 45 feet which is significantly taller than the 29 foot tall building being proposed by the applicant. The dwelling on the adjacent property is 25 feet away and approximately 20 feet in height. This nine (9) foot difference will not create a situation where the proposed building "overpowers" the dwelling in any meaningful sense. Keeping in mind that the M zone is an industrial zone, the dwelling may need to coexist with industrial uses, just as it is currently doing with the Smith Rock operation going on around the dwelling on the adjacent property.

With regard to traffic, Mr. Ard's two memos state the facts and conclusions regarding site generated traffic. With minimal impacts from site generated traffic projected, the Planning Commission needs to keep in mind that Smith Rock operates on the adjacent property in an industrial manner, creating far more traffic, noise, and dust than anticipated for the future user of the subject site. Further, the Johnson Creek Blvd. Improvement Project will address some of the issues raised regarding traffic, site distances, and other traffic related issues.

The proposed development of this industrial site will not be a "mixed use" just because it contains some office space. This office space will be for administration of the goings on down on the production floor. Administrative office space within the building does not make it a "mixed use" building. It will be an industrial building throughout.

The technical review, by both project professionals and city staff, have been thorough and ongoing in a cooperative fashion since its conception. At no point has a suggestion of said professionals implied that this project could not work within set parameters or should not be approved. We trust that the responses we have provided are sufficient for the planning commission to approve our proposal and look forward to answering any further questions at the May 24th hearing.

Sincerely,

Troy D. Lyver, PE/SE.
Lyver Engineering and Design, llc

CITY OF **MILWAUKIE**

To: Planning Commission

Through: Laura Weigel, Planning Manager

From: Brett Kelver, Senior Planner

Date: May 17, 2022, for May 24, 2022, Public Hearing

Subject: **File:** CSU-2022-003
Applicant: Steve Adams, City Engineer
Owner: North Clackamas School District
Address: 2301 SE Willard St
Legal Description (Map & Tax Lot): 1S1E36BC05600
NDA: Historic Milwaukie

ACTION REQUESTED

Approve application CSU-2022-003 and adopt the recommended Findings in Support of Approval found in Attachment 1. This action would allow for modification of two conditions of approval from file #CSU-2017-007 related to the public rights-of-way of Adams Street and 23rd Avenue on or near the high school campus.

BACKGROUND INFORMATION

A. Site and Vicinity

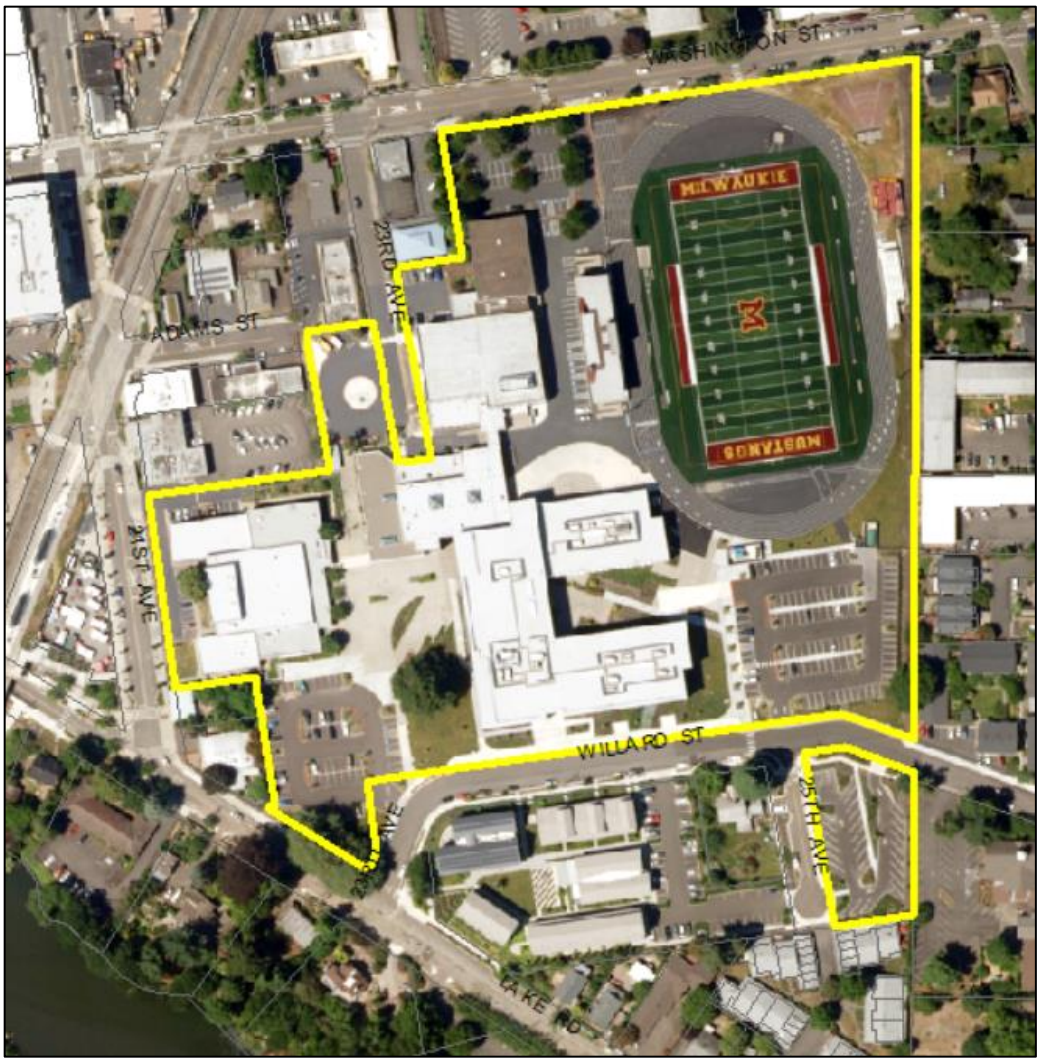
The site, which is located at 2301 SE Willard St, is the campus of Milwaukie High School and is approximately 14.7 acres. The site is developed with a main classroom building, commons building, and performing arts center on the southern half of the property, as well as a gymnasium, track and athletic field, and grandstand on the northern half. There are off-street parking lots in the northwest, southwest, and southeast corners of the site.

The site has frontage on multiple public streets— Adams Street, Lake Road, 21st Avenue, 23rd Avenue, 25th Avenue, Washington Street, and Willard Street. Access is provided from driveways on each of those streets except Adams Street and Lake Road.

As shown in Figure 1, the land uses and development adjacent to the site are mixed and include institutional (schools, churches), multifamily residential dwellings (apartments and condominiums), single-unit residential and duplex dwellings, and office buildings.

The surrounding properties range from small single-family lots to multiple-acre school and church grounds.

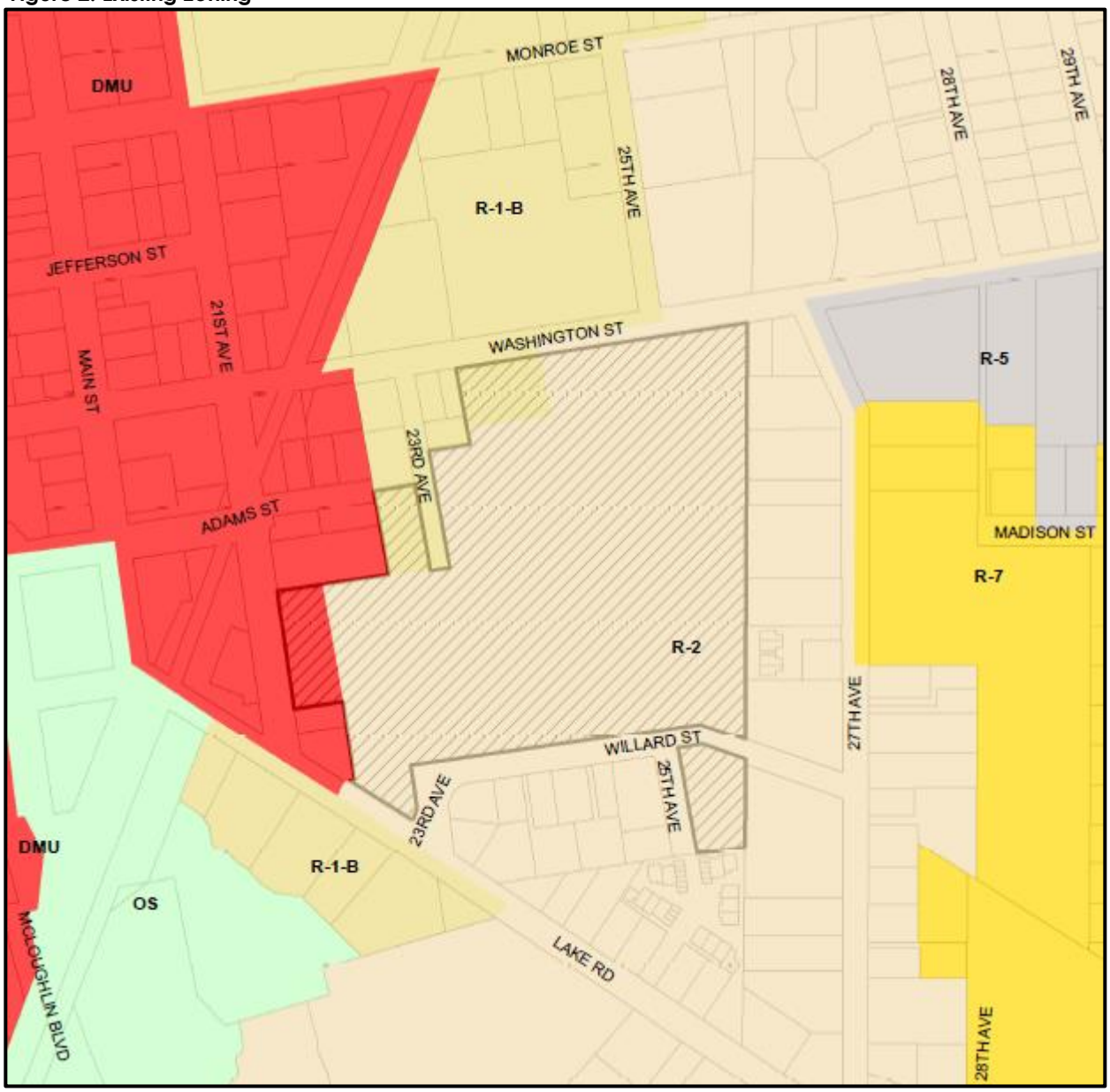
Figure 1. Aerial Photo



B. Zoning Designation

The school property is primarily zoned Residential R-2. This district allows medium- and high-density residential development. The northwestern and western portions of the site are zoned Residential-Business Office (R-1-B) and Downtown Mixed-Use (DMU), respectively. Schools are allowed subject to community service use (CSU) approval. East and south of the site are properties also zoned R-2, with properties to the north zoned a combination of R-2 and R-1-B. Properties to the west are zoned DMU. The zoning in the vicinity of the school is shown in Figure 2.

Figure 2. Existing Zoning



C. Comprehensive Plan Designation

The primary land use designation of the site is Public (P), though it also includes small portions designated Town Center (TC), High Density (HD), and Mixed Use (C/HD).

D. Land Use History (significant items)

- **Original development:** The main classroom building of Milwaukie High School was first constructed in 1925. A grandstand and athletic fields were added in 1938. The gymnasium was rebuilt after a fire destroyed the original in 1963. The fine arts

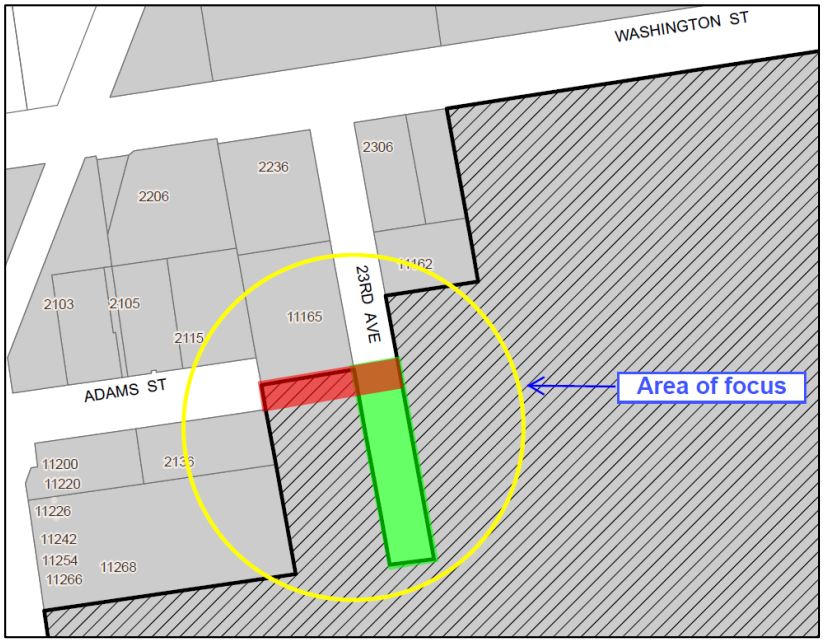
building was built in 1970-71 when the high school itself was remodeled to meet current fire and safety codes.

- **1986:** Land use file #CSO-86-04, community service overlay approval for additional off-street parking.
- **1993:** CSO-93-02, approval to construct a new commons area.
- **1999:** CSO-99-05, approval to remodel the entire school.
- **2007:** CSU-07-05, approval to significantly upgrade the fine arts building, gymnasium, and athletic fields.
- **February 2018:** HR-2017-002, Historic Review approval to delete the Milwaukie High School site from the City's inventory of historic properties. This application was approved by the City Council on February 20, 2018 (Ord. 2159).
- **March 2018:** CSU-2017-007, approval of a major renovation of the school campus, including demolition and replacement of the main classroom building as well as replacement of the softball field (southeast part of campus) with off-street parking.
- **2019:** CSU-2019-002, approval to replace the pre-existing tennis courts in the southeast corner of the campus with off-street parking (constructed as part of the larger campus renovation).
- **March 2022:** CSU-2021-005, a Type III CSU sign application for an electronic reader board sign as newly allowed by ZA-2021-003.

E. Proposal

The City is applying on behalf of the School District to modify Condition 5-d from CSU-2017-007, which required a 25-ft-wide right-of-way (ROW) dedication to extend Adams Street east to connect to 23rd Avenue (see Figure 3). The City Engineer asserts that the requirement for ROW dedication is not practical due to existing development in that location that will make a future full-street connection unlikely. This requires a modification of both Condition 5-d, which requires the ROW dedication for Adams Street, and Condition 5-f, which relates to how much of the existing 23rd Avenue ROW should be vacated in that area. A narrative description of the proposal, a map of the area in

Figure 3. Project area



question, and the conditions of approval from CSU-2017-007 are included in the applicant's submittal materials (see Attachment 3).

ANALYSIS

The rationale behind the proposed modification

In March 2018, the Milwaukie Planning Commission approved primary file #CSU-2017-007, an application for a significant renovation to the Milwaukie High School campus. After building permits were issued and construction started, the School District began working through the list of conditions of approval and identified several items that appeared impractical in light of the realities of existing site conditions. One was Condition 6-g, which required the construction of stairs and a pedestrian connection from the end of 23rd Avenue (the section that extends south from Washington Street into the campus) to the east end of Adams Street. The significant grade change at that location and the presence of a public water main made it infeasible to construct a stairway and landing that would safely connect to Adams Street. The applicant requested to pay a fee in lieu of construction instead to satisfy the condition of approval, and the City Engineer granted the request.

Condition 5-d required a 25-ft-wide ROW dedication to extend Adams Street east to connect to 23rd Avenue. The City Engineer, who did not hold that position in 2017-18 when the land use application was reviewed and approved, finds that the requirement for ROW dedication is not practical due to existing development on that part of the campus (a parking area and bus turnaround) that make a future full-street connection infeasible. (An existing building is located within the adjacent northern 25 ft of ROW that would also need to be acquired to provide a full-width extension of Adams Street.)

With a low likelihood of significant redevelopment of that part of the high school campus anytime soon, it would be preferable for the City not to take on the liability and maintenance responsibilities for the existing improvements that would remain in the newly dedicated ROW. The City Engineer is suggesting that a better solution is to simply require a public access easement, which will preserve the possibility of providing at least a pedestrian connection along the Adams Street alignment in the future. Since the ROW dedication was a condition of approval from the 2017-18 Planning Commission decision, a major modification to the high school's community service use (CSU) approval is required.

With all this in mind, the proposal is to revise Condition 5-d to read as follows:

d. ~~Dedicate right-of-way to achieve~~ Record a 25-ft-wide public access easement ~~a 25-ft half right-of-way~~ at the east end of Adams St to connect 23rd Ave to Adams St.

This change also affects Condition 5-f, which references an accompanying vacation of existing 23rd Avenue ROW. If the requirement for ROW dedication to extend Adams Street is eliminated, Condition 5-f also needs to be modified to accurately reflect the northern edge of the 23rd Avenue ROW vacation area:

f. Provide for right-of-way vacation of that portion of 23rd Ave, south of ~~Adams St~~Tax lot 1S1E36BC 04801 (addressed as 11165 SE 23rd Ave). The northerly 25 ft of this vacated right-of-way will be part of the public access easement noted in Condition 5-d. Easements will be maintained for utilities and vehicular turnaround.

Staff believes the proposed modifications are in the spirit and intent of the original CSU approval from 2017-18 and are approvable as proposed.

CONCLUSIONS

Staff recommendation to the Planning Commission is as follows:

1. Approve the proposed modifications to the conditions of approval of CSU-2017-007. This will allow the School District to meet the final remaining conditions in a reasonable way while still meeting the intent of the approval.
2. Adopt the attached Findings in Support of Approval.

CODE AUTHORITY AND DECISION-MAKING PROCESS

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

- MMC Section 19.904 Community Service Uses
- MMC Section 19.1006 Type III Review MMC

This application is subject to Type III review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above. In Type III reviews, the Commission assesses the application against review criteria and development standards and evaluates testimony and evidence received at the public hearing.

The Commission has four decision-making options as follows:

A. Approve the application subject to the recommended Findings in Support of Approval.

B. Approve the application with modified Findings in Support of Approval. Such modifications need to be read into the record.

C. Deny the application upon finding that it does not meet approval criteria.

D. Continue the hearing.

The final decision on these applications, which includes any appeals to the City Council, must be made by September 1, 2022, in accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance. The applicant can waive the time period in which the application must be decided.

COMMENTS

Notice of the proposed changes was given to the following agencies and persons: City of Milwaukie Engineering and Public Works Departments, Historic Milwaukie Neighborhood

District Association (NDA), Clackamas Fire District #1 (CFD), and North Clackamas Parks and Recreation Department (NCPRD).

No comments were received.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	Public Copies	E-Packet
1. Recommended Findings in Support of Approval	☐	☒
2. Applicant's Submittal Materials (received May 4, 2022, unless otherwise noted))		
a. Application Forms	☒	☒
b. Narrative	☒	☒
c. Project Area Map	☒	☒
d. Conditions of Approval from CSU-2017-007	☒	☒

Key:
Public Copies = materials posted online to application website (https://www.milwaukieoregon.gov/planning/csu-2022-003).
E-Packet = meeting packet materials available one week before the meeting, posted online at https://www.milwaukieoregon.gov/bc-pc/planning-commission-96.

ATTACHMENT 1
Recommended Findings in Support of Approval
File #CSU-2022-003
Modification of MHS approval CSU-2017-007

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 applicant, Steve Adams (City Engineer), on behalf of the North Clackamas School District, has applied for approval to modify the conditions of approval from CSU-2017-007, related to renovations at Milwaukie High School at 2301 SE Willard St. The subject property is primarily zoned Residential R-2, though a small portion of the Performing Arts Center (southwest portion of campus) is zoned Downtown Mixed Use (DMU) and some of the parking and maneuvering areas at the northwest corner of the campus is zoned Residential-Business Office (R-1-B). The school is an approved community service use (CSU). The land use application file number is CSU-2022-003.

2. The applicant proposes to modify Condition 5-d, which required a 25-ft-wide right-of-way (ROW) dedication to extend Adams Street east to connect to 23rd Avenue. The City Engineer asserts that the requirement for ROW dedication is not practical due to existing development in that location that will make a future full-street connection unlikely. This requires a modification of both Condition 5-d and Condition 5-f, which relates to how much of the existing 23rd Avenue ROW should be vacated in that area.

3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
   - MMC Section 19.904 Community Service Uses
   - MMC Section 19.1006 Type III Review

   The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held by the Planning Commission on May 24, 2022, as required by law.

4. MMC Section 19.904 Community Service Uses

   MMC 19.904 provides standards and procedures for review of applications for community service uses (CSUs). These are uses that are not specifically allowed outright in most zoning districts but that address a public necessity or otherwise provide some public benefit. CSUs include schools and accompanying sports facilities.

   a. MMC Subsection 19.904.2 Applicability

      MMC 19.904.2 establishes applicability of the CSU regulations, including a requirement for review to establish or modify a CSU.

      The application is for modifications to the conditions of approval for an approved CSU.

      The Planning Commission finds that the standards of MMC 19.904 are applicable to the proposed development.

b. MMC Subsection 19.904.3 Review Process

MMC 19.904.3 establishes the review process for CSUs. Except for wireless communication facilities and minor modifications to existing CSUs, applications for CSUs are subject to Type III review (MMC 19.1006).

The proposal is for a modification to conditions of approval established by the Planning Commission for CSU-2017-007 and does not qualify as a minor modification to the existing CSU as per MMC Subsection 19.904.5.C. The proposal constitutes a major modification of CSU-2017-007.

The Planning Commission finds that the proposed modification is subject to the procedures for Type III review.

c. MMC Subsection 19.904.4 Approval Criteria

MMC 19.904.4 establishes the following approval criteria for CSUs:

(1) The building setback, height limitation, and off-street parking and similar requirements governing the size and location of development in the underlying zone are met. Where a specific standard is not proposed for a CSU, the standards of the underlying zone must be met.

The proposed modification does not affect building setbacks or other development standards.

This criterion is not applicable.

(2) Specific standards for the proposed uses as found in MMC 19.904.7-11 are met.

The proposed modifications are subject to the standards provided in MMC Subsection 19.904.7 for schools. The only specific standard of MMC 19.904.7 that applies to the proposed modification is the requirement of MMC Subsection 19.904.7.C for walkways (both on and off the site) as necessary for safe pedestrian access to schools subject to the requirements and standards of MMC Chapter 19.700 (Public Facility Improvements).

The conditions in question relate to providing a public connection between the current end of Adams Street and 23rd Avenue, which would be used by various modes including pedestrians. The proposed modification would not alter the overall benefit of the requirement to provide for a future pedestrian connection through the school site.

This criterion is met.

(3) MMC Subsection 19.904.4.C requires the hours and levels of operation of the proposed use to be reasonably compatible with surrounding uses.

The proposed modification does not affect the hours and levels of operation of the school.

This criterion is not applicable.

(4) MMC Subsection 19.904.4.D requires that the public benefits of the proposed use be greater than the negative impacts, if any, on the neighborhood.

By adjusting Condition 5-d to require a public access easement instead of public ROW dedication, the school (rather than the City) will retain clear ownership and maintenance responsibility for the area in question and its existing improvements (parking spaces and bus turnaround). The City will not assume undue liability and maintenance for the easement area but will retain the right to improve it in the future as needed to provide a public connection as needed.

This criterion is met.

(5) MMC Subsection 19.904.4.E requires the location to be appropriate for the type of use proposed.

The proposed modification does not impact the location of the area that will provide future public access.

This criterion is met.

As proposed, the Planning Commission finds that the modification meets the approval criteria of MMC 19.904.4.

The Planning Commission finds that the proposed modification to conditions of approval for CSU-2017-007 meets all applicable standards of MMC 19.904 to be approved as a major modification of a CSU. The following conditions are therefore modified as follows:

- *Condition 5-d: ~~Dedicate right-of-way to achieve~~ Record a 25-ft-wide public access easement ~~a 25-ft half right-of-way~~ at the east end of Adams St to connect 23rd Ave to Adams St.*
- *Condition 5-f: Provide for right-of-way vacation of that portion of 23rd Ave, south of ~~Adams St~~Tax lot 1S1E36BC 04801 (addressed as 11165 SE 23rd Ave). The northerly 25 ft of this vacated right-of-way will be part of the public access easement noted in Condition 5-d. Easements will be maintained for utilities and vehicular turnaround.*

5. The application was referred to the following departments and agencies on May 4, 2022:
   - Milwaukie Engineering Department
   - Milwaukie Public Works Department
   - Historic Milwaukie Neighborhood District Association (NDA) Chairperson and Land Use Committee (LUC)
   - Clackamas Fire District #1 (CFD)
   - North Clackamas Parks and Recreation District (NCPRD)

   No comments were received.

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

Application for Land Use Action

Master File #: CSU-2022-003

Review type*: ☐ I ☐ II ■ III ☐ IV ☐ V

CHECK ALL APPLICATION TYPES THAT APPLY:

- ☐ Amendment to Maps and/or Ordinances:
  - ☐ Comprehensive Plan Text Amendment
  - ☐ Comprehensive Plan Map Amendment
  - ☐ Zoning Text Amendment
  - ☐ Zoning Map Amendment
- ☐ Code Interpretation
- ☐ Community Service Use
- ☐ Conditional Use
- ☐ Development Review
- ☐ Director Determination
- ☐ Downtown Design Review
- ☐ Extension to Expiring Approval
- ☐ Historic Resource:
  - ☐ Alteration
  - ☐ Demolition
  - ☐ Status Designation
  - ☐ Status Deletion
- ☐ Land Division:
  - ☐ Final Plat
  - ☐ Lot Consolidation
  - ☐ Partition
  - ☐ Property Line Adjustment
  - ☐ Replat
  - ☐ Subdivision
- ☐ Miscellaneous:
  - ☐ Barbed Wire Fencing
- ☐ Mixed Use Overlay Review
- ☐ Modification to Existing Approval
- ☐ Natural Resource Review**
- ☐ Nonconforming Use Alteration
- ☐ Parking:
- ☐ Quantity Determination
  - ☐ Quantity Modification
  - ☐ Shared Parking
  - ☐ Structured Parking
  - ☐ Planned Development
- ☐ Residential Dwelling:
- ☐ Accessory Dwelling Unit
  - ☐ Duplex
  - ☐ Manufactured Dwelling Park
  - ☐ Temporary Dwelling Unit
  - ☐ Sign Review
- ☐ Transportation Facilities Review
- ☐ Variance:
- ☐ Use Exception
  - ☐ Variance
  - ☐ Willamette Greenway Review
- ☐ Other: _____
- ☐ **Use separate application forms for:**

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

Daily Display Sign
- Appeal
- Appeal

RESPONSIBLE PARTIES:

APPLICANT (owner or other eligible applicant—see reverse): Steve Adams, City Engineer

Mailing address: 6101 SE Johnson Creek Blvd, Milwaukie, OR 97206 State/Zip:

Phone(s): 503-786-7605 Email: adamss@milwaukieoregon.gov

Please note: The information submitted in this application may be subject to public records law.

APPLICANT'S REPRESENTATIVE (if different than above):

Mailing address: State/Zip:

Phone(s): Email:

SITE INFORMATION:

Address: 2301 SE Willard St Map & Tax Lot(s): 1S1E36BC 05600

Comprehensive Plan Designation: Public (P) Zoning: R-2 (w/ R-1-B & Size of property: 14.6 acres

PROPOSAL (describe briefly):

Modify a condition of approval from file #CSU-2017-007 (major renovation of MHS campus) to require a public access easement instead of right-of-way dedication between Adams St & 23rd Ave.

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: May 4, 2022

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

****Note**: Natural Resource Review applications **may require a refundable deposit.** Deposits require completion of a Deposit Authorization Form, found at www.milwaukieoregon.gov/building/deposit-authorization-form.

THIS SECTION FOR OFFICE USE ONLY:

FILE TYPE	FILE NUMBER	AMOUNT (after discount, if any)	PERCENT DISCOUNT	DISCOUNT TYPE	DATE STAMP
Master file	CSU-2022-003	$ 0	100%	City-initated application	RECEIVED MAY 04 2022 CITY OF MILWAUKIE PLANNING DEPARTMENT
Concurrent application files		$			
		$			
		$			
		$			
Deposit (NR only)				☐ **Deposit Authorization Form received**	
TOTAL AMOUNT RECEIVED: $0			**RECEIPT #:**		**RCD BY:**
Associated application file #s (appeals, modifications, previous approvals, etc.):					
Neighborhood District Association(s): Historic Milwaukie					
Notes:					

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

Submittal Requirements

For all Land Use Applications
(except Annexations and Development Review)

All land use applications must be accompanied by a signed copy of this form (see reverse for signature block) and the information listed below. The information submitted must be sufficiently detailed and specific to the proposal to allow for adequate review. Failure to submit this information may result in the application being deemed incomplete per the Milwaukie Municipal Code (MMC) and Oregon Revised Statutes.

Contact Milwaukie Planning staff at 503-786-7630 or planning@milwaukieoregon.gov for assistance with Milwaukie's land use application requirements.

1. **All required land use application forms and fees**, including any deposits.

   Applications without the required application forms and fees will not be accepted.

2. **Proof of ownership or eligibility to initiate application** per MMC Subsection 19.1001.6.A.

   Where written authorization is required, applications without written authorization will not be accepted.

3. **Detailed and comprehensive description** of all existing and proposed uses and structures, including a summary of all information contained in any site plans.

   Depending upon the development being proposed, the description may need to include both a written and graphic component such as elevation drawings, 3-D models, photo simulations, etc. Where subjective aspects of the height and mass of the proposed development will be evaluated at a public hearing, temporary onsite "story pole" installations, and photographic representations thereof, may be required at the time of application submittal or prior to the public hearing.

4. **Detailed statement** that demonstrates how the proposal meets the following:

   A. All applicable development standards (listed below):

      1. **Base zone standards** in Chapter 19.300.
      2. **Overlay zone standards** in Chapter 19.400.
      3. **Supplementary development regulations** in Chapter 19.500.
      4. **Off-street parking and loading standards and requirements** in Chapter 19.600.
      5. **Public facility standards and requirements**, including any required street improvements, in Chapter 19.700.

   B. All applicable application-specific approval criteria (check with staff).

   These standards can be found in the MMC, here: www.qcode.us/codes/milwaukie/

5. **Site plan(s), preliminary plat, or final plat** as appropriate.

   See Site Plan, Preliminary Plat, and Final Plat Requirements for guidance.

6. **Copy of valid preapplication conference report**, when a conference was required.

APPLICATION PREPARATION REQUIREMENTS:

- Five hard copies of all application materials are required at the time of submittal. Staff will determine how many additional hard copies are required, if any, once the application has been reviewed for completeness. Provide an electronic version, if available.
- All hard copy application materials larger than 8½ x 11 in. must be folded and be able to fit into a 10- x 13-in. or 12- x 16-in. mailing envelope.
- All hard copy application materials must be collated, including large format plans or graphics.

ADDITIONAL INFORMATION:

- Neighborhood District Associations (NDAs) and their associated Land Use Committees (LUCs) are important parts of Milwaukie's land use process. The City will provide a review copy of your application to the LUC for the subject property. They may contact you or you may wish to contact them. Applicants are strongly encouraged to present their proposal to all applicable NDAs prior to the submittal of a land use application and, where presented, to submit minutes from all such meetings. NDA information: www.milwaukieoregon.gov/citymanager/what-neighborhood-district-association.
- By submitting the application, the applicant agrees that City of Milwaukie employees, and appointed or elected City Officials, have authority to enter the project site for the purpose of inspecting project site conditions and gathering information related specifically to the project site.
- Submittal of a full or partial electronic copy of all application materials is strongly encouraged.

As the authorized applicant I, (print name) _____, attest that all required application materials have been submitted in accordance with City of Milwaukie requirements. I understand that any omission of required items or lack of sufficient detail may constitute grounds for a determination that the application is incomplete per MMC Subsection 19.1003.3 and Oregon Revised Statutes 227.178. I understand that review of the application may be delayed if it is deemed incomplete.

Furthermore, I understand that, if the application triggers the City's sign-posting requirements, I will be required to post signs on the site for a specified period of time. I also understand that I will be required to provide the City with an affidavit of posting prior to issuance of any decision on this application.

Applicant Signature: _____

Date: 5/4/2022

Official Use Only

Date Received (date stamp below):

RECEIVED
MAY 04 2022
CITY OF MILWAUKIE
PLANNING DEPARTMENT

Received by: _____

question and its existing improvements (parking spaces and bus turnaround). The City will not assume undue liability and maintenance for the easement area but will retain the right to improve it in the future as needed to provide a public connection as needed. This criterion is met.

E. The location is appropriate for the type of use proposed.

The proposed modification does not impact the location of the area that will provide future public access. This criterion is met.

Project Narrative
Modification to a Condition of Approval for CSU-2017-007

Background and Proposal

In March 2018, the Milwaukie Planning Commission approved primary file #CSU-2017-007, an application for a significant renovation to the Milwaukie High School campus at 2301 SE Willard St. The project involved the demolition and replacement of the main classroom building, development of new off-street parking areas in the southeastern corner of the site, remodeling of various buildings, and other site improvements. The project was reviewed as a major modification to the existing community service use (CSU) for the high school and was approved with several conditions.

At some point after building permits were issued and construction started, the North Clackamas School District (the applicant) began working through the list of conditions and identified several items that were proving to be impractical. For example, Condition 6-g[1] required the construction of stairs and a pedestrian connection from the end of 23rd Avenue (the northern frontage of that street) west to the east end of Adams Street. After a City water main was found to conflict with the initial location for the stairs, no other acceptable alternative location could be identified. The applicant team asserted that the significant grade change at that location made it impractical to construct a stairway and landing that would safely connect to Adams Street. The applicant requested to pay a fee in lieu of construction (FILOC) instead to satisfy the condition of approval, and the City Engineer granted the request.

Condition 5-d required a 25-ft-wide right-of-way (ROW) dedication to extend Adams Street east to connect to 23rd Avenue. The City Engineer, who had not held that position in 2017-18 when the land use application was reviewed and approved, asserted that the requirement for ROW dedication was not practical in that location due to existing development (high school parking area and bus turnaround). In addition, an existing building is located within the adjacent northern 25 ft of ROW that would also need to be acquired to provide a full street connection. With a low likelihood of that part of the high school campus redeveloping in the near future, it would be preferable for the City not to take on the liability and maintenance responsibilities for the existing improvements that would remain in the newly dedicated ROW. The City Engineer suggested that a better solution would be to simply require a public access easement for future use.

Since the ROW dedication was a condition of approval from the Planning Commission, a major modification to the high school CSU is required. Therefore, on behalf of the applicant, the City Engineer is proposing to revise Condition 5-d to read as follows:

d. ~~Dedicate right-of-way to achieve~~ Record a 25-ft-wide public access easement ~~a 25-ft half right-of-way~~ at the east end of Adams St to connect 23rd Ave to Adams St.

[1] The conditions were inadvertently misnumbered, with the first condition being labeled as Condition 2 instead of Condition 1, and so forth.

This change also affects Condition 5-f, which references an accompanying vacation of existing 23rd Avenue ROW. If the requirement for ROW dedication to extend Adams Street is eliminated, Condition 5-f also needs to be modified to accurately reflect the northern edge of the 23rd Avenue ROW vacation area:

f. Provide for right-of-way vacation of that portion of 23rd Ave, south of ~~Adams St~~Tax lot 1S1E36BC 04801 (addressed as 11165 SE 23rd Ave). The northerly 25 ft of this vacated right-of-way will be part of the public access easement noted in Condition 5-d. Easements will be maintained for utilities and vehicular turnaround.

See Attachment 1 for a map of the project area and Attachment 2 for the conditions of approval from CSU-2017-007.

Response to Applicable Criteria

The proposed revision to a condition of approval represents a major modification of a CSU. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):

- MMC Section 19.904 Community Service Uses
- MMC Section 19.1006 Type III Review

Specifically, the proposal is subject to the approval criteria established in MMC Subsection 19.904.4 for new CSUs and major modifications to CSUs:

A. The building setback, height limitation, and off-street parking and similar requirements governing the size and location of development in the underlying zone are met. Where a specific standard is not proposed in the CSU, the standards of the underlying zone are met.

The proposed modification does not affect building setbacks or other development standards. This criterion is not applicable.

B. Specific standards for the proposed uses as found in Subsections 19.904.7-11 are met.

MMC Subsection 19.904.7 establishes specific standards for schools, including a requirement for walkways both on and off the site as necessary to provide safe pedestrian access to schools subject to the requirements and standards of MMC Chapter 19.700 (Public Facility Improvements). The condition in question relates to providing a public connection between the current end of Adams Street and 23rd Avenue, which would be used by various modes including pedestrians. The proposed modification would not alter the overall benefit of the requirement to provide for a future pedestrian connection through the school site. This criterion is met.

C. The hours and levels of operation of the proposed use are reasonably compatible with surrounding uses.

The proposed modification does not affect the hours and levels of operation of the school. This criterion is not applicable.

D. The public benefits of the proposed use are greater than the negative impacts, if any, on the neighborhood.

By adjusting Condition 5-d to require a public access easement instead of public right-of-way dedication, the school will maintain clear ownership and maintenance responsibility for the area in question and its existing improvements (parking spaces and bus turnaround). The City will not assume undue liability and maintenance for the easement area but will retain the right to improve it in the future as needed to provide a public connection as needed. This criterion is met.

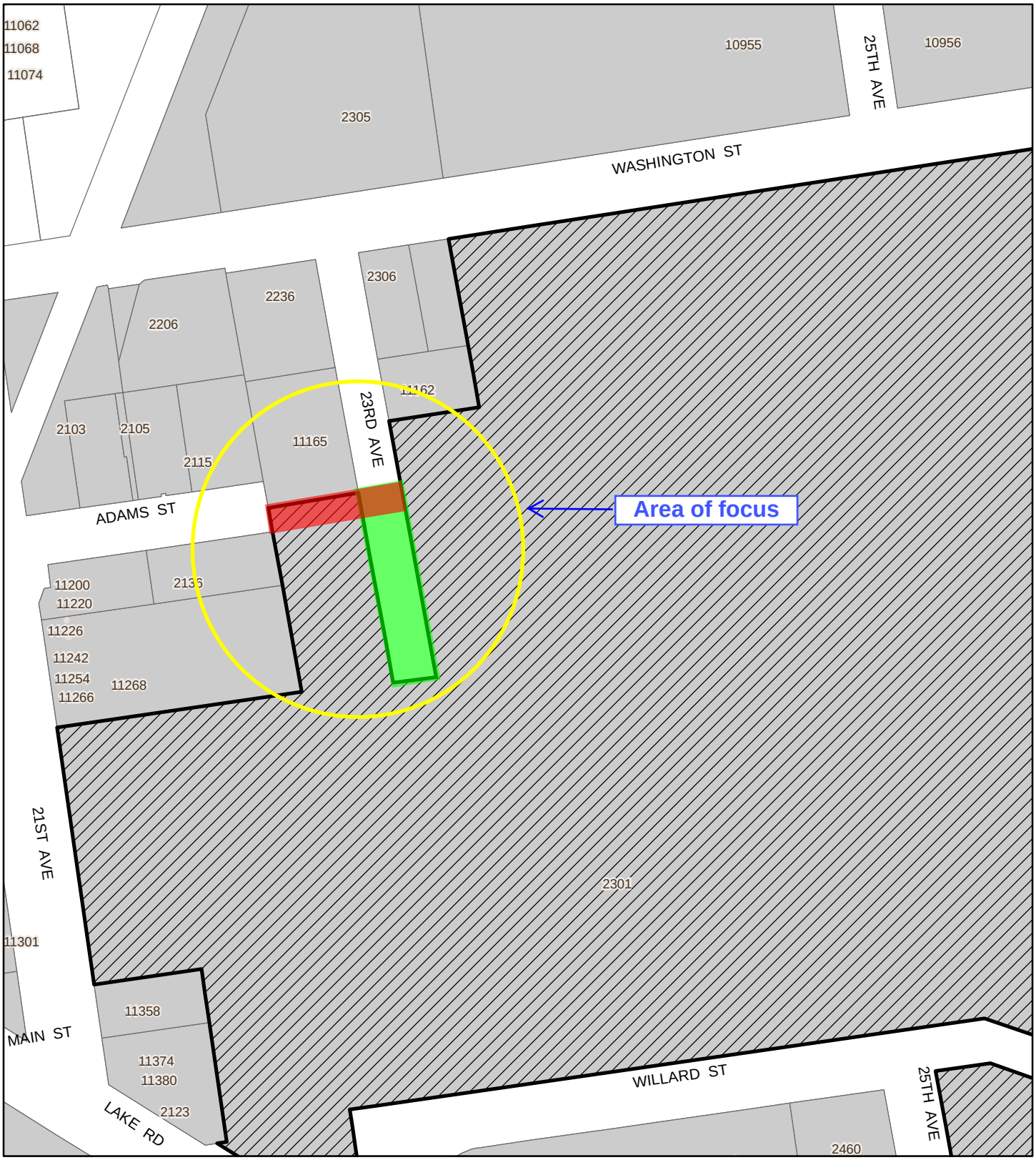
E. The location is appropriate for the type of use proposed.

The proposed modification does not impact the location of the area that will provide future public access. This criterion is met.

Attachments

1. Project Area Map
2. Conditions of Approval from CSU-2017-007

Attachment 1



Project Area Map
2301 SE Willard St
(Tax Lot 1S1E36BC 05600)
File #CSU-2022-003

Legend

- CSU-2022-003 site
- Area of public access easement to Adams St
- Area of partial vacation of 23rd Ave right-of-way

North

0 37.5 75 150 225 300 Feet

- Impacts related to new parking lot proposed in southeast corner of site (screening of headlights, garbage/recycling area, invasive species on eastern hillside)
- Questions about nature and function of proposed loading area on Willard St (stormwater management, landscaping, pedestrian crossings) and transition of new street improvements to existing conditions beyond school frontage on Willard St
- Nature of improvements on Lake Rd (bike lanes, landscape strip, tree preservation)
- Traffic impacts and opportunities to improve pedestrian and bicycle safety
- Concern about accuracy of assumptions in transportation memo
- Recommendations for good-neighbor agreement during construction period and storage of emergency-response equipment and supplies

- **Thomas Bachhuber, Jr., DMD, business/property owner at 2236 SE Washington St:** Concerns related to potential impacts to nearby medical and dental offices on 23rd Ave and Washington St during construction, primarily the need to maintain safe, ADA-compliant access to those sites 24 hours a day, 7 days a week.
- **Alex Roller, Engineering Tech II, Milwaukie Engineering Department:** Findings related to the proposal's compliance with MMC Chapter 19.700 Public Facility Improvements and Title 12 Streets, Sidewalks, and Public Places, with relevant recommended conditions of approval and additional requirements.
- **Joshua Brooking, Planner, ODOT Region 1:** No comments on the proposal.

Conditions of Approval

2. At the time of submittal of the associated development permit application(s), the following shall be resolved:

   a. Final plans submitted for development permit review shall be in substantial conformance with plans approved by this action, which are the plans stamped received by the City on January 25, 2018; and modified by the stormwater management plan received on February 13, 2018; except as otherwise modified by these conditions of approval.

   b. Provide a narrative describing all actions taken to comply with these conditions of approval. In addition, describe any changes made after the issuance of this land use decision that are not related to these conditions of approval.

   c. The modifications required by these conditions of approval include the following revisions to all relevant plan sheets:

(1) As per Finding 8-e(2), provide a detailed final landscaping plan that provides more information regarding plant materials, particularly for landscaping areas related to new and modified parking areas.

(2) As per Finding 8-e(3)(d), revise the plans for the southeastern parking lot to provide walkways that meet the standards of MMC Subsection 19.606.3.D.

3. As per Finding 10-c(2), update the school's Transportation Demand Management (TDM) plan, with review and approval by the Planning Commission within the first month of the new school year after construction begins. One criterion for approval will be evidence of carpooling activity.

4. Prior to issuance of a certificate of occupancy the following shall be resolved:

   a. As per Finding 5-c(4), remove all invasive species vegetation from the landscaping areas along the eastern boundary of the subject property.

5. Right-of-way Requirements

   a. Dedicate right-of-way on the south frontage of Willard St fronting the subject property to align with existing right-of-way or to provide for 50 ft of right-of-way, whichever is greater, with appropriate offset radius and sufficient radius on the intersection of Willard St and 25th Ave to accommodate an ADA ramp(s).

   b. Dedicate sufficient right-of-way on the south end of 25th Ave to accommodate a turnaround meeting the Public Works Standards (60-ft right-of-way).

   c. Dedicate right-of-way to achieve a 36.5-ft half right-of-way on the Lake Rd frontage, and sufficient radius at the intersection of Lake Rd and 23rd Ave to accommodate school buses and an ADA ramp(s).

   d. Dedicate right-of-way to achieve a 25-ft half right-of-way at the east end of Adams St to connect 23rd Ave to Adams St.

   e. Provide for right-of-way vacation of that portion of 23rd Ave/Willard St to provide for a 50-ft right-of-way.

   f. Provide for right-of-way vacation of that portion or 23rd Ave, south of Adams St. Easements will be maintained for utilities and vehicular turnaround.

6. Frontage Improvements

   a. Construct the frontage improvement proposed along Willard St/23rd Ave.

   b. Construct a 6-ft curb-tight sidewalk, curb and gutter, and 18-ft half-street travel way for the remaining portion of Willard St along the north side to 27th Ave.

   c. Construct a 5-ft set-back sidewalk, minimum 3-ft planter strip, curb and gutter, and 32-ft full street for the 23rd Ave frontage between Lake Rd and Willard St.

d. Construct an 8-ft curb-tight sidewalk, curb and gutter, and varying width roadway that will accommodate a left turn lane for the intersection of 23rd Ave and Lake Rd along the Lake Rd frontage.

e. Construct 5-ft set-back sidewalks, 4-ft planter strips, curb and gutter, and 28-ft full street for the 25th Ave frontage.

f. Construct a turnaround meeting the Public Works Standards (60-ft right-of-way) at the south end of 25th Ave.

g. Construct stairs and a pedestrian connection from the end of 23rd Ave (the northern frontage of 23rd Ave on the subject property) to the east end of Adams St.

7. Construct landing pads in accordance with TriMet standards at the existing TriMet bus stop on Washington St.

8. Remove ADA barriers and reconstruct noncompliant sidewalk access ramps along the applicant's frontage on Washington St and 23rd Ave.

9. Align the new driveway serving the new southeastern parking lot with the approved alignment of 25th Ave.

Other requirements

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements contained in the Milwaukie Municipal Code and Public Works Standards that are required at various points in the development and permitting process.

1. Prior to issuance of building permits, the following shall be resolved:

   a. Provide an erosion control plan and obtain an erosion control permit. One permit will cover on-site as well as right-of-way work. If the total disturbed area is over 5 acres, that applicant must obtain a 1200C from the Oregon Department of Environmental Quality (DEQ).

   b. Submit a stormwater management plan to the City of Milwaukie Engineering Department for review and approval. The plan shall be prepared in accordance with Section 2 – Stormwater Design Standards of the City of Milwaukie Public Works Standards. Private properties may only connect to public storm system if percolation tests show that infiltration cannot be obtained on site. In the event the storm management system contains underground injection control devices, submit proof of acceptance of the storm system design from DEQ.

   c. Submit full-engineered plans for construction of all required public improvements, reviewed and approved by the Engineering Department; or provide a performance guarantee for all required public improvements, reviewed and approved by the Engineering Department.