



February 1, 2012

File: VR-11-02

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on February 1, 2012.

Applicant: McDonald's Corporation (Jeff Chapman)
Location: 10907 SE Oak St
Tax Lot: 11E36AC11201
Application Type: Type II Variance
Decision: Approved
Review Criteria: Milwaukie Zoning Ordinance:

- MMC 19.314 Community Shopping Commercial C-CS
- MMC 19.911 Variances
- MMC 19.1005 Type II review

Neighborhood: Historic Milwaukie
Lake Road

This notice is issued in accordance with Milwaukie Municipal Code Section 19.1005 Type II Review. The complete case file for this application is available for review between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Li Alligood, Assistant Planner, at 503-786-7627 or alligoodl@ci.milwaukie.or.us, if you wish to view this case file.

Any person who is adversely affected or aggrieved by this decision may appeal the decision by filing a written appeal within 15 days of the date on this notice of decision. An appeal of this decision would be heard by the Milwaukie Planning Commission. The period during which an appeal can be filed expires on the date shown below. This decision becomes final on the date below if no appeal is filed during the appeal period.

Appeal period closes: 5:00 p.m., February 16, 2012

Appeals to the Planning Commission must follow the procedures of Milwaukie Municipal Code Section 19.1010 Appeals. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or planning@ci.milwaukie.or.us.

COMMUNITY DEVELOPMENT
BUILDING • ECONOMIC DEVELOPMENT • ENGINEERING • PLANNING
6101 SE Johnson Creek Blvd., Milwaukie, Oregon 97206
P) 503-786-7600 / F) 503-774-8236
www.cityofmilwaukie.org

Findings in Support of Approval

1. McDonald's Corporation, represented by Jeff Chapman ("the applicant") has submitted a Variance application (File # VR-11-02) requesting relief from the Hwy 224 setback standards of the Community Shopping Commercial Zone C-CS. The applicant proposes to construct a 63 sq ft cash booth addition to the southern façade of the existing building. The application materials were submitted on December 28, 2011.
2. The subject property is part of the Milwaukie Marketplace development in the Community Shopping Commercial Zone C-CS. The site is approximately 47,465 sq ft in area and is located in the Milwaukie Business Industrial neighborhood. The subject property is developed with a restaurant with a drive-through facility. The Milwaukie Marketplace development was approved through File #CSC-87-01. A building permit has been submitted for the cash booth addition (BP #601-11-000242), and the proposal was reviewed and approved with conditions by File #DEV-11-06.
3. The proposal is subject to the following provisions of the Milwaukie Zoning Ordinance (Milwaukie Municipal Code Title 19):
 - Milwaukie Municipal Code (MMC) Subsection 19.314 Community Shopping Commercial C-CS
 - MMC 19.911 Variances
 - MMC 19.1005 Type II Review

MMC Sections that are not addressed in these findings are found to not be applicable decision criteria for the development proposal.

4. The application has been reviewed in compliance with the Type II review process described in MMC 19.1005. The application was deemed complete on January 12, 2012. As required by MMC 19.1005.3.B, public notice was mailed to surrounding property owners within 300 ft of the site on January 13, 2012, within 7 days after the application was deemed complete. As required by MMC 19.1005.3.C, public notice was posted on the subject property on January 19, 2012, within 7 days after the application was deemed complete.
5. MMC 19.314 Community Shopping Commercial Zone C-CS

MMC 19.314.5 establishes standards for development in the C-CS zone. The applicant has requested a variance to the minimum setback standard from Hwy 224, from 30 ft to 27 ft 4 in, a reduction of 1%. The approval criteria for the variance request are addressed in Finding 6, below.

Upon approval of the variance request, the Planning Director finds that the project complies with all applicable standards for the underlying C-CS zone as per MMC 19.314.

6. MMC 19.911 Variances

- A. MMC 19.911.2 establishes applicability standards for variance requests.

The applicant has requested a variance to the Hwy 224 setback standard of the C-CS zone (MMC 19.314.5.A.1). The request is eligible for a variance as per MMC 19.911.2.

- B. MMC 19.911.3 establishes review processes for different types of variances.

Specifically, MMC 19.911.3.B establishes a Type II review process for requests to vary the underlying zone front, rear, or street yard setback standard by up to 25%. The applicant has requested a variance to the Hwy 224 (rear) setback of the C-CS zone by approximately 1%, for a setback of 27 ft 4 in. The request is eligible for processing with Type II review per MMC 19.1005.

C. MMC 19.911.4 establishes approval criteria for variance requests. Specifically, MMC 19.911.4.A provides the following approval criteria for Type II variances:

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

The proposed variance will allow the southeast corner of the building to extend to 27 ft 8 in from the Hwy 224 right-of-way. The addition will be visually undetectable from the Milwaukie Marketplace, and minimally visible from the property to the north and from Hwy 224. The reduced setback would not reduce on-site landscaping or vegetated area. The subject property does not include any designated natural resource areas, and the proposed cash booth will provide for more efficient service of drive-through customers. This criterion is met.

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

In the City's Transportation System Plan, Hwy 224 has a designation of "regional route." The public right-of-way on Hwy 224 is approximately 130 ft wide, and it is not a street that requires additional yard setbacks for future widening as per MMC Table 19.501.2. The existing right-of-way width provides adequate space for accommodating any appropriate future improvements. The proposed variance will not limit the future construction of any public transportation or utility improvements in the public right-of-way. This criterion is met.

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

The new cash booth is part of a whole building "refresh," which includes a new color scheme and roofline. The addition design is integrated into the design of the existing restaurant. This criterion is met.

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

The variance request is small enough that there are no perceptible impacts to mitigate. This criterion is met.

The Planning Director finds that the approval criteria for a Type II variance request, as provided in MMC 19.911.4.A, are met.

The Planning Director finds that, as proposed, the requested variance is allowable as per the standards of MMC 19.911.

7. The application was forwarded to the following City departments and related entities for review and comment on January 13, 2012: City of Milwaukie Building and Engineering Departments; Clackamas County Fire District #1; Clackamas County; Metro; the Oregon Department of Transportation; TriMet; and the Historic Milwaukie and Lake Road Neighborhood District Associations (NDAs). As noted in Finding 4, public notice of the application was also sent to surrounding property owners within 300 ft of the site on January 13, 2012, with 14 days to provide comments.

The following is a summary of the comments received by the City:

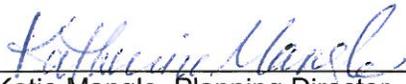
- **Tom Larsen, City of Milwaukie Building Official:** No comments on the proposal.

- **Brad Albert, City of Milwaukie Engineering Department:** The proposed variance is not subject to the requirements of MMC 19.700 Public Facility Improvements.
 - **Paul Hawkins, Land Use Chair for Lake Road NDA:** No objections.
 - **Ray Bryan, Land Use Committee Member for Historic Milwaukie NDA:** Concerns about additional traffic resulting from the addition. Request for traffic mitigation at the Oak St/Hwy 224 intersection, and additional waste receptacles on site.
 - **Heather Boll, TriMet:** No comment on this application.
 - **Gail Curtis, ODOT:** No objections.
8. As per MMC 19.906.2.A, the proposed development is subject to the requirements of MMC 19.906 Development Review. The applicant submitted a development review application on October 18, 2011 (File #DEV-11-06). The application was reviewed in accordance with MMC 19.1004 Type I Review, and approved with conditions on November 9, 2011. This variance request and approval satisfy Condition #1.A of DEV-11-06.
9. As per MMC 19.1001.7.E, this variance request shall expire and become void unless the proposed development completes the following steps:
- A. Obtain and pay for all necessary development permits and start construction within 2 years of land use approval (i.e., by February 3, 2014).
 - B. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (i.e., by February 3, 2016).

Exhibits

Exhibits are not attached to the decision but are available for viewing upon request.

1. Applicant's Materials
 - a. Narrative
 - b. Plan set
2. Public Comments
 - a. Ray Bryan, Land Use Committee Member for Historic Milwaukie NDA



Katie Mangle, Planning Director

cc: Applicant
Katie McGough, Freiheit + Ho Architects (5209 Lake Washington Blvd NE, Ste 200, Kirkland, WA 98033)
Katie Mangle, Planning Director (via e-mail)
Gary Parkin, Engineering Director (via e-mail)
Brad Albert, Civil Engineer (via e-mail)
Tom Larsen, Building Official (via e-mail)
Bonnie Lanz, Permit Specialist (via e-mail)
Doug Whiteley, Lieutenant Deputy Fire Marshal
NDAs: Historic Milwaukie, Lake Road
Interested Persons
Files: VR-11-02, DEV-11-06