



May 16, 2012

File: VR-12-03

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on May 16, 2012.

Applicant: Brett Schulz (on behalf of property owner)
Location: 9020 SE 39th Ave
Tax Lot: 1S1E25AD 01201
Application Type: Type II Variance
Decision: Approved with Conditions
Review Criteria: Milwaukie Zoning Ordinance:

- MMC 19.302 Residential zone R-7
- MMC 19.911 Variances
- MMC 19.1005 Type II review

Neighborhood: Ardenwald-Johnson Creek

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 Brett Kelter, Associate Planner, at 503-786-7657 or kelterb@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. 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., May 31, 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.

Findings in Support of Approval

1. Brett Schulz (applicant's representative), on behalf of Tom Chamberlain (property owner), has submitted a Variance application (File # VR-12-03) requesting relief from the lot coverage standard of the Residential R-7 zone. The applicant proposes to build a 1-story

addition of approximately 315 sq ft on the north side of the existing single-family residence at 9020 SE 39th Avenue. The application materials were submitted on April 19, 2012.

2. The subject property is a residential lot zoned Residential R-7 in the Ardenwald-Johnson Creek neighborhood. The property is approximately 7,300 sq ft in area and is developed with a single-family detached dwelling built in 1924. Approval to partition a flag lot from the rear of the property was granted in 1978 (land use file #M-78-36), though it appears the partition was not completed at that time. A similar partition was approved in 1980 (file #M-80-013). The property includes a detached 2-car garage in the southeast corner of the lot.
3. The proposal is subject to the following provisions of the Milwaukie Zoning Ordinance (Milwaukie Municipal Code Title 19):
 - Milwaukie Municipal Code (MMC) Subsection 19.302 Residential Zone R-7
 - MMC 19.911 Variances
 - MMC 19.1005 Type II Review

MMC sections that are not addressed in these findings are found to be not 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 April 25, 2012. As required by MMC 19.1005.3.B, public notice was mailed to surrounding property owners within 300 ft of the site on April 27, 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 April 27, 2012, within 7 days after the application was deemed complete.
5. MMC 19.302 Residential Zone R-7

MMC 19.302.3 establishes standards for development in the R-7 zone. Table 1 summarizes the existing and proposed conditions on the subject property with respect to the standards relevant to this proposal.

Table 1 – Compliance with R-7 standards

| | R-7 Zone Standards | 9020 SE 39 th Ave | |
|---------------------------|--|--|--|
| | | Existing | Proposed |
| Lot Area | 7,000 sq ft | 7,284 sq ft | 6,934 sq ft ¹ |
| Lot Coverage | 30% max. | approx. 26.3% | 32.9% ² |
| Minimum Vegetation | 30% min. | approx. 62% | 54% |
| Front Yard Setback | 20 ft | 17 ft | 12 ft ³ |
| Side Yard Setback | 5 ft / 10 ft | 17 ft / 14.5 ft | 8.75 ft / 14.5 ft |
| Rear Yard Setback | 20 ft | 41.5 ft | 41.5 ft |
| Off-Street Parking | 1 space outside of required front yard | 2 spaces on driveway, 2 spaces in garage | 2 spaces on driveway, 2 spaces in garage |

¹ The proposed addition triggers the requirement of MMC 19.702.2.B to dedicate property to the public right-of-way. As per MMC 19.504.2, right-of-way dedication is one justification for reducing lot area below the minimum standard.

² The applicant has requested a variance from the lot coverage standard of the R-7 zone.

³ The existing house is nonconforming with respect to the front yard setback. The new addition will meet the minimum front yard requirement of 20 ft, although the required right-of-way dedication will further reduce the front yard setback to the existing house. As per MMC 19.504.2, right-of-way dedication is an allowable justification for reducing yard setbacks below the minimum standards.

Upon approval of the variance request, the Planning Director finds that the project complies with all applicable standards for the underlying R-7 zone as per MMC 19.302.

6. MMC 19.700 Public Facility Improvements

A. MMC 19.702 Applicability

MMC 19.700 applies to partitions, subdivisions, 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 proposed development consists of expansion of an existing single-family residential structure. Expansion of the gross floor area is greater than 200 sq ft, but not more than 1,499 sq ft.

The right-of-way dedication standards of MMC 19.700, pursuant to the street design standards and guidelines of MMC 19.708.2, apply to the proposed development. Adequate public utilities as determined by the Engineering Department shall be provided by the proposed development, pursuant to MMC 19.709.

B. MMC 19.708 Transportation Facility Requirements

i) MMC 19.708.1 General Street Requirements and Standards

As per MMC 19.708.1.D.3, the proposed development is subject to the right-of-way dedication standards of MMC 19.700.

Right-of-way shall be dedicated in accordance with MMC 19.708.2 as part of the proposed development.

ii) 19.708.2 Street Design Standards

The existing right-of-way width of 39th Ave fronting the subject property is 40 ft. The Milwaukie Transportation System Plan (TSP) classifies the fronting portion of 39th Ave as a local road. The Engineering Director has determined the required right-of-way width for 39th Ave fronting the proposed development is 50 ft. The applicant is responsible for dedication of half the required right-of-way width. The applicant shall dedicate 5 ft of right-of-way to the public on 39th Ave fronting the subject property. A condition has been established to ensure that this standard is met.

As conditioned, the proposed development complies with MMC 19.708.2.

iii) 19.709 Public Utility Requirements

The Engineering Director has determined that the existing public utilities are adequate to serve the proposed development.

The proposed development complies with MMC 19.709.

As conditioned, the proposed development is consistent with all applicable standards of MMC 19.700.

7. MMC 19.911 Variances

A. MMC 19.911.2 establishes applicability standards for variance requests.

Variances may be requested to any standard of MMC Title 19 Zoning, provided the request is not specifically listed as ineligible in MMC 19.911.2.B.

The applicant has requested a variance to exceed the lot coverage standard of the R-7 zone (MMC 19.302.3.G) by no more than 10% of the standard. The request would not eliminate the restriction on a prohibited activity, change a required review type, allow a use not allowed outright in the R-7 zone, or otherwise produce any of the results listed in MMC 19.911.2.B. 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 the Type II review process for limited variations to numerical standards, including variances of up to 10% of lot coverage standards.

The applicant has requested a variance to allow a total lot coverage of 32.9%, which exceeds the 30% lot coverage standard of the R-7 zone by approximately 9.6%. The request is eligible for processing with Type II review as 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:

- i) 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 addition of floor area to an existing house. The new addition will extend into the existing side yard to the north but will continue to meet the minimum requirement for side yards in the R-7 zone. The two adjacent properties to the north, nearest the new addition, are both flag lots with driveways adjacent to the subject property. Existing landscaping along the northern property line provides substantial screening from the flag lot driveways. The residential structure nearest the new addition is approximately 80 ft away and will not be impacted. The additional lot coverage allowed by the variance will be visually undetectable by surrounding properties. Approximately 54% of the subject property will remain vegetated, well above the 30% minimum required in the R-7 zone. Granting the proposed variance is not detrimental to surrounding properties. There are no designated natural resource areas on the site and the new addition does not present any detriment to public health, safety, or welfare. This criterion is met.

- ii) 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 Milwaukie TSP, 39th Ave has a functional classification of "local" street. It is not a street that requires additional yard setbacks for future widening as per MMC Table 19.501.2. As noted in Finding 6-B(ii), the existing public right-of-way on 39th Ave in front of the subject property is 40 ft wide, when it should be 50 ft wide. As per MMC 19.702.2 and 19.708.2, the new addition triggers the requirement to dedicate 5 ft, which will accommodate any appropriate future street 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.

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

The new addition is designed to complement the architectural style of the existing house, matching its roofline, siding materials, and overall aesthetic. The variance will

enable the property owner to modestly expand the floor area of the existing house and improve its floor plan and interior layout. This criterion is met.

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

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

The approval criteria for a Type II variance request, as provided in MMC 19.911.4.A, are met.

As proposed and conditioned, the requested variance is allowable as per the standards of MMC 19.911.

8. The application was forwarded to the following City departments and related entities for review and comment on April 27, 2012: City of Milwaukie Building and Engineering Departments, Clackamas County Fire District #1, and the Ardenwald-Johnson Creek Neighborhood District Association (NDA). As noted in Finding 4, public notice of the application was also sent to surrounding property owners within 300 ft of the site on April 27, 2012, 2011, 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.
- **Zach Weigel, City of Milwaukie Engineering Department:** Comments related to the requirements of MMC 19.700 Public Facility Improvements have been incorporated into the Notice of Decision.
- **Mary King, Land Use Chair for Ardenwald-Johnson Creek NDA:** No objections to the proposal.
- **Mike Boumann, Clackamas Fire District #1:** No comments on the proposal.

9. As per MMC 19.906.2.C, the proposed development is exempt from the requirement to submit a development review application and the other requirements of MMC 19.906 Development Review. However, the proposal must still comply with all applicable development standards and will be reviewed during the building permit review process.

10. 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 (by May 16, 2014).
- B. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by May 16, 2016).

Conditions of Approval

1. Prior to issuance of any building permit, the following shall be resolved:
 - A. Dedicate 5 ft of right-of-way on 39th Ave fronting the proposed development property.

Exhibits

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

1. Applicant's Materials
 - a. Narrative
 - b. Plan set (8 sheets: A0-A6, G1)

The application and related materials can be accessed online at
<http://www.ci.milwaukie.or.us/planning/current-land-use-applications>.



Katie Mangle
Planning Director

cc: Brett Schulz (applicant's representative)
Tom Chamberlain (applicant / property owner)
Zach Weigel, 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 (via e-mail)
NDA: Ardenwald-Johnson Creek
Land Use File: VR-12-03