



October 16, 2013

Land Use File(s): VR-13-02, NR-13-08

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on October 16, 2013.

**Applicants:** Greg and Shirlene McGowan  
**Location:** 4915 SE Brookside Dr  
**Tax Lot:** 1S2E30BD 01400  
**Application Type:** Type II Variance and Construction Management Plan Review  
**Decision:** Approved with Conditions  
**Review Criteria:** Milwaukie Zoning Ordinance:

- Milwaukie Municipal Code (MMC) Section 19.301 Low Density Residential Zones
- MMC Section 19.402 Natural Resources
- MMC Section 19.911 Variances
- MMC Section 19.1005 Type II Review

**Neighborhood:** Lewelling

**Appeal period closes: 5:00 p.m., October 31, 2013**

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

**This decision may be appealed by 5:00 p.m. on October 31, 2013, which is 15 days from the date of this decision.** Any person who is adversely affected or aggrieved by this decision may appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie Planning Commission following the procedures of MMC Section 19.1010 Appeals. This decision will become final on the date above if no appeal is filed during the appeal period. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov).

Per MMC Subsection 19.1001.7.E, this land use approval expires unless the applicant has: (1) obtained and paid for all necessary development permits and started construction within 2 years

of land use approval, and (2) passed final inspection and/or obtained a certificate of occupancy within 4 years of land use approval. Extensions can be granted per MMC Section 19.908.

### **Findings in Support of Approval**

1. Greg and Shirlene McGowan (the applicant and property owners) have submitted a variance application (File # VR-13-02) requesting relief from the minimum side and rear yard width requirements of the Residential R-7 zone. The applicant proposes to build a 1-story addition of approximately 575 sq ft on the northeast side of the existing single-family residence at 4915 SE Brookside Drive. The application materials were submitted on August 28, 2013.
2. The subject property is a residential lot zoned Residential R-7 in the Lewelling neighborhood. The property is approximately 7,600 sq ft in area and is developed with a single-family detached dwelling built in 1965. The existing house meets the R-7 minimum side yard width standard of 5 ft on the west side but is nonconforming with the minimum side yard width standard of 10 ft on the east side (the existing east side setback is only 9 ft). The northern half of the existing house is within 100 ft of the designated Water Quality Resource (WQR) and Habitat Conservation Area (HCA) features associated with Johnson Creek further to the north, though there are no WQR or HCA features on the subject property itself.
3. The proposal is subject to the following provisions of the Milwaukie Zoning Ordinance (Milwaukie Municipal Code Title 19):
  - Milwaukie Municipal Code (MMC) Subsection 19.301 Low Density Residential Zones
  - MMC Section 19.402 Natural Resources
  - MMC Section 19.911 Variances
  - MMC Section 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 Section 19.1005. The application was deemed complete on September 3, 2013. As required by MMC Subsection 19.1005.3.B, public notice was mailed to surrounding property owners within 300 ft of the site on September 4, 2013, within 7 days after the application was deemed complete. As required by MMC Subsection 19.1005.3.C, public notice was posted on the subject property on September 5, 2013, within 7 days after the application was deemed complete.
5. MMC Section 19.301 Low Density Residential Zones  
MMC Subsection 19.301.4 establishes standards for development in low density residential zones, including 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	4915 SE Brookside Dr	
		Existing	Proposed
<b>Lot Area</b>	7,000 sq ft	7,600 sq ft	(no change)
<b>Lot Coverage</b>	30% max.	approx. 24%	Approx. 31% <sup>1</sup>
<b>Minimum Vegetation</b>	30% min.	approx. 55%	approx. 48%
<b>Front Yard Setback</b>	20 ft	approx. 20 ft	(no change)
<b>Side Yard Setback</b>	5 ft / 10 ft	5 ft / 9 ft	(no change) <sup>2</sup>
<b>Rear Yard Setback</b>	20 ft	43.75 ft	19.75 ft <sup>3</sup>
<b>Off-Street Parking</b>	1 space outside of required front yard	1 space in garage	(no change)

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 Section 19.301.

6. MMC Section 19.402 Natural Resources

MMC 19.402 establishes standards for protecting designated natural resources, both Water Quality Resources (WQRs) and Habitat Conservation Areas (HCAs).

A. MMC Subsection 19.402.3 provides criteria for determining whether the natural resource regulations are applicable to a proposed activity.

(1) MMC 19.402.3.J outlines the applicability of the requirements of MMC 19.402, including whether a construction management plan is required.

The proposed activity will not directly disturb a designated WQR or HCA but does not fall into any of the exempt categories listed in MMC Subsection 19.402.4.

The proposed development is exempt from review against all of the standards of MMC 19.402 except those related to the requirement to provide a construction management plan.

(2) MMC 19.402.3.K identifies the level of review necessary for those activities that are subject to the natural resource regulations.

The proposed development triggers the requirement to provide a construction management plan, which is subject to Type I review and the procedures outlined in MMC Section 19.1004.

The natural resource regulations established in MMC 19.402 are applicable to the proposed development only with the requirement to provide a construction management plan, which is subject to Type I review.

B. MMC Subsection 19.402.9 establishes the standards for a construction management plan, including the requirement to provide a description of the work to be done as well as information about staging areas and erosion control measures.

<sup>1</sup> MMC 19.301.5.B.2 allows 10 percentage points of increased lot coverage for single-story additions to single-family residences in low density residential zones.

<sup>2</sup> The existing setback for the east side yard is nonconforming at only 9 ft. The applicant proposes to extend the existing nonconforming line of the building and has requested a variance from the side yard setback standard of the R-7 zone.

<sup>3</sup> The applicant has requested a variance from the rear yard setback standard of the R-7 zone.

The applicant's submittal includes a site plan as well as a narrative description of the proposed activity. The submittal indicates that silt fencing will be installed between the northern property boundary and the project area and soil stockpile area to control erosion and avoid disturbance to the WQR and HCA features on the adjacent property to the north. The flat topography of the site, the existence of hedges and fences along the eastern and western property boundaries, two existing raised planter beds between the project area and the northern property boundary, and the proposed silt fencing all function to limit the potential for erosion impacts to the nearby WQR and HCA area.

The requirement to provide a construction management plan, with sufficient information to demonstrate that the nearby WQR and HCA areas will not be impacted by the proposed activity, is met.

As proposed, the Planning Director finds that the applicable standards of MMC 19.402 are met.

#### 7. MMC Chapter 19.700 Public Facility Improvements

The following complies with the applicable criteria of MMC 19.700.

##### A. MMC Section 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 Subsection 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 Section 19.709.

##### B. MMC Section 19.708 Transportation Facility Requirements

###### (1) 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.

###### (2) MMC 19.708.2 Street Design Standards

The existing right-of-way width of SE Brookside Drive fronting the subject property is 50 ft. The Milwaukie Transportation System Plan classifies the fronting portion of Brookside Dr as a local road. The Engineering Director has determined the required right-of-way width for Brookside Dr fronting the proposed development is 50 ft. The applicant is not responsible for any additional right-of-way dedication.

As proposed, this standard is met.

##### C. MMC Section 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 proposed, the proposed development is consistent with all applicable standards of MMC 19.700.

8. MMC Section 19.911 Variances

A. MMC Subsection 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 reduce the required side and rear yard widths below the minimum standards of the R-7 zone (MMC 19.301.4.B.1). 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 Subsection 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 40% to a side yard width standard and up to 25% for a rear yard width standard.

The applicant has requested a variance to allow the new addition to reduce the side yard width on the east side of the property by 10%, from 10 ft to 9 ft. The applicant has also requested a variance to allow the new addition to reduce the rear yard width by 1.25%, from 20 ft to 19 ft 9 in. As per MMC 19.911.3, the request is eligible for processing with Type II review pursuant to MMC Section 19.1005.

C. MMC Subsection 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 addition of floor area to an existing single-family dwelling. The new addition will extend into the required side yard to the east and into the required rear yard to the north. The existing house is nonconforming to the 10-ft minimum required side yard width standard, with a side yard of only 9 ft. The proposed addition will maintain the line of the existing house; it will extend but will not increase the nonconformity.

The adjacent property to the east (4925 SE Brookside Dr) is developed with a single-family dwelling, with an in-ground swimming pool in the rear yard nearest the proposed addition. A mature arborvitae hedge exists on the shared property line between the subject property and 4925 SE Brookside Dr and will provide substantial screening of the proposed addition from the existing swimming pool. The adjacent property to the north (4611 SE Brookside Dr) is developed with multifamily housing (Brookside Apartments), including one building located approximately 55 ft from the northwest corner of the subject property.

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.

- (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 Milwaukie Transportation System Plan, the portion of Brookside Dr in front of the subject property 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 7-B(2), the existing public right-of-way on Brookside Dr in front of the subject property is 50 ft wide, which is adequate for a local street and 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.

- (3) *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.

- (4) *Impacts from the proposed variance will be mitigated to the extent practicable*

The variance request is minor and 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.

9. The application was forwarded to the following City departments and related entities for review and comment on September 4, 2013: City of Milwaukie Building and Engineering Departments, Clackamas Fire District #1, and the Lewelling 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 September 5, 2013, 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.
- **Shawn Olson, Clackamas Fire District #1:** No comments on the proposal.
- **Brad Albert, 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.

10. As per MMC Subsection 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.

### **Conditions of Approval**

1. As part of the building permit submittal for the proposed development, the applicant shall submit the approved construction management plan (Exhibit 1-c) for final review by the City's erosion control specialist. If the City's erosion control specialist determines that additional elements must be added to the plan to adequately address erosion control issues associated with the proposed development, those final review comments from the City's erosion control specialist shall be incorporated into a revised construction management plan, which shall serve as the guide for inspections for the duration of the project.

### **Exhibits**

*Unless otherwise noted, exhibits are not attached to the decision but are available for viewing upon request.*

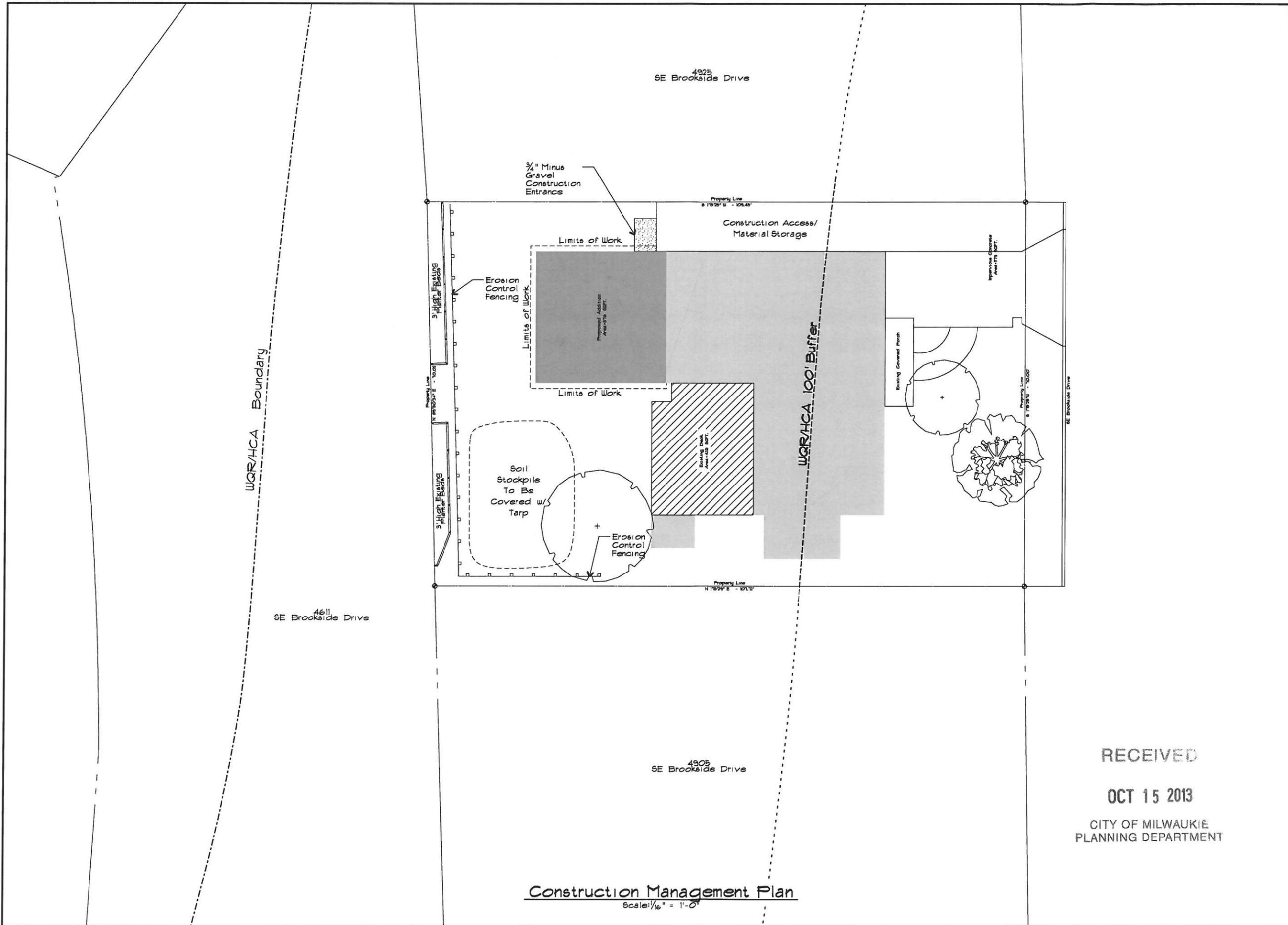
1. Applicant's Materials
  - a. Narrative
  - b. Plan Set (Sheets S1, S3, and S4, plus aerial photo sheet)
  - c. Revised Sheet S2 (stamped received on October 15, 2013) – attached



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Stephen C. Butler, FAICP  
Community Development Director /  
Interim Planning Director

cc: Greg and Shirlene McGowan (4915 SE Brookside Dr, Milwaukie, OR 97222)  
Brett Kelter, Associate Planner (*via e-mail*)  
Jason Rice, 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*)  
Rob Livingston, Erosion Control Specialist (*via e-mail*)  
Mike Boumann and Shawn Olson, CFD#1 (*via e-mail*)  
NDA: Lewelling (*via e-mail*)  
Land Use File: VR-13-02, NR-13-08  
Address File: 4915 SE Brookside Dr



**Construction Management Plan**  
Scale: 1/8" = 1'-0"

RECEIVED  
OCT 15 2013  
CITY OF MILWAUKIE  
PLANNING DEPARTMENT

<b>Construction Management Plan</b> 4915 SE Brookside Drive Portland, Oregon DATE: 7.30.2013 PROJECT MANAGER: Dave Green DRAWN BY: GMM SECTION:																	
REVISIONS <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">DATE</th> <th style="width: 80%;">DESCRIPTION</th> <th style="width: 10%;">BY</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>			DATE	DESCRIPTION	BY												
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