



# CITY OF MILWAUKIE

May 24, 2019

Land Use File(s): VR-2019-005

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on May 24, 2019.

<b>Applicant(s):</b>	Justin Stangel
<b>Appellant</b> (if applicable)	
<b>Location(s):</b>	11805 & 11817 SE 28 <sup>th</sup> Ave
<b>Tax Lot(s):</b>	11E36CA 03700 and 03701
<b>Application Type(s):</b>	Variance
<b>Decision:</b>	Approved
<b>Review Criteria:</b>	Milwaukie Zoning Ordinance: <ul style="list-style-type: none"><li>• MMC 19.301 R-7 Zone</li><li>• MMC 19.911 Variances</li><li>• MMC Section 19.1005 Type II Review</li></ul>
<b>Neighborhood(s):</b>	Lake Road

**Appeal period closes: 5:00 p.m., June 10, 2019**

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1005 Type II Review. The complete case file for this application is available for review by appointment 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 Vera Koliass, Associate Planner, at 503-786-7653 or [koliassv@milwaukieoregon.gov](mailto:koliassv@milwaukieoregon.gov), if you wish to view this case file or visit the project webpage at [www.milwaukieoregon.gov/planning/vr-2019-005](http://www.milwaukieoregon.gov/planning/vr-2019-005).

**This decision may be appealed by 5:00 p.m. on June 10, 2019, which is 15 days from the date of this decision.**<sup>1</sup> (Note: Please arrive by 4:45 p.m. for appeal payment processing.) Any person who is adversely affected or aggrieved by this decision may appeal the decision by filing a

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

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**

The Findings for this application are included as Exhibit 1.

### **Conditions of Approval**

1. The reduced setback of 6 ft is to be applied to the property lines abutting neighboring properties. The required 5 ft setback is to be applied to the shared property line between the lots of the subject property.
2. In addition to any required street tree plantings, the applicant shall plant two canopy trees from a list of recommended species maintained by the City of Milwaukie Public Works Department on property #11805 SE 28<sup>th</sup> Ave (See Exhibit 2). New on-site trees shall be a minimum of 2-inch caliper at planting.

### **Other requirements**

The submitted site plan currently shows both driveways 6 ft from the side property lines. MMC 12.16.040.C.3 requires residential driveways to be 7.5 ft from the side property line. The planned garages can remain in the same location, but the driveway would be 7.5 ft from the side property line where it meets the front property line, then it can angle towards the garage location.

### **Director's Declaration of Impartiality**

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

**Decision**

- Approved  
 Approved with Conditions  
 Denied



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Dennis Egner, FAICP  
Planning Director

**Exhibits**

1. Findings in Support of Approval
2. Suggested Yard Canopy Tree List

cc: Justin and Jamie Stangel (3422 SE Flat Tail Ln, Milwaukie, OR 97267)  
Planning Commission (via email)  
Alma Flores, Community Development Director (via email)  
Kelly Brooks, Acting City Engineer (via email)  
Engineering Development Review (via email)  
Samantha Vandagriff, Building Official (via email)  
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)  
Harmony Drake, Permit Technician (via email)  
Mike Boumann and Izak Hamilton, CFD#1 (via email)  
NDA(s): Lake Road (via email)

Land Use File(s): VR-2019-005

**EXHIBIT 1**  
**Recommended Findings in Support of Approval**  
**File #VR-2019-005 Jamie Stangel**

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, Jamie Stangel, on behalf of Justin Stangel, has applied for approval to reduce the required 10 ft side yard setback by 40% to 6 ft on two lots: 11805 SE 28<sup>th</sup> Ave (Taxlot 11E36CA03700) and 11817 SE 28<sup>th</sup> Ave (Taxlot 3701) and to increase lot coverage by 10% on #11805. These lots are within the R-7 Zone. The land use application file number is VR-2019-005.
2. The subject tax lots are Lots 3 and 4 of the Hoesly's Lakeside Addition subdivision, dated 1923. The applicant has requested three variances for the subject lots, which have recently been created into two tax lots by re-establishing the underlying lot line. Each lot measures 50 ft in width and 118.5 ft in depth. The new lots are undersized for the R-7 zone, both in lot area and lot width. Due to the narrow lot width, the applicant is seeking a variance to the required minimum 10 ft side yard setback in the R-7 zone for both lots so that future dwelling designs would have more design flexibility.

The applicant is also requesting a separate variance to increase the maximum lot coverage on #11805 by 10% in order to build a detached guesthouse in the rear of the property.

3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC 19.301 R-7 Zone
  - MMC 19.911 Variances
  - MMC Section 19.1005 Type II Review

The application has been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review with a decision by the Planning Director.

4. MMC 19.301 Low Density Residential Zones
  - 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.

**Table 1. Compliance with relevant R-7 standards**

<b>Table 19.301 Residential Zone R-7 Development Standards</b>			
Standard	Required	Proposed	Staff Comment
1. Minimum Lot Size	7,000 sq ft	5,925 sq ft (per lot)	Prior to re-establishing the underlying lot line, the lot was over 10,000 sq ft in size. The new lots have less than the minimum 7,000-sq ft lot area in the R-7 zone.
2. Minimum Lot Width	60 ft	50 ft (per lot)	1923 platted lots
3. Minimum Lot Depth	80 ft	118.5 ft (per lot)	Complies with standard.
4. Front yard setback	20 ft	20 ft (per lot) (approximate)	Will comply with standard during permitting.
5. Side yard setback	5ft/10 ft	#11817: 6 ft (north side) and 5ft (south side)  #11805: 5 ft (north side) and 6 ft (south side)	Variances requested for both lots.
6. Rear yard setback	20ft	20 ft	Complies with standard.
7. Lot Coverage	30% max.	#11817: 30%  #11805: 40%	#11817 complies with standard.  Variance requested for #11805.

*Subject to a Type II variance, the proposal complies with the applicable standards of the R-7 zone.*

5. MMC 19.911 Variances

- a. MMC 19.911.3 establishes the review process for variance applications.
- b. MMC 198.911.4.A establishes criteria for approving Type II Variance applications.

An application for a Type II Variance shall be approved when all of the following criteria have been met:

- (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 variances will not be detrimental to surrounding properties, natural resources areas, or public health, safety, or welfare.*

*Properties in the surrounding neighborhood are similarly sized lots as the subject properties, with existing side yard setbacks varying between 5 ft and 10 ft. As proposed, the variance to the required 10 ft side yard setback to allow a 6 ft setback would be applied to the lot line shared between the two newly partitioned lots. However, in order to address the reduced setback its impact to the neighboring properties, a condition is included that would require the reduced setback of 6 ft to be applied to the property lines abutting neighboring properties. The required 5 ft setback would be applied to the shared property line between the lots of the subject properties.*

*The surrounding neighborhood is developed with a variety of one-story and one and one-half story homes, many without accessory structures and with mature vegetation. The proposed variance to increase lot coverage by 10% to allow for the development of a detached guesthouse in the rear yard of #11805 will not have a significant effect on the abutting properties and will not have a negative effect on existing neighbors' health, safety, welfare, or privacy. However, in order to offset the additional lot coverage on this undersized lot, a condition is included that would require the planting of two canopy trees to address the City's goal for its urban tree canopy.*

*As conditioned, 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.

*The proposed variances 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.*

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

*There are no existing improvements on the site – the site has been recently cleared of all structures.*

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

*As conditioned, to have the reduced 6 ft side yard setback apply to the property lines shared with neighboring properties, and to plant two canopy trees to offset the additional lot coverage of lot #11805, the impacts from the proposed variances are mitigated.*

*As conditioned, the Planning Director finds that the approval criteria have been met.*

6. As per MMC 19.1001.7.E, this variance request shall expire and become void unless the proposed development completes the following steps:

Obtain and pay for all necessary development permits and start development of the site within 2 years of land use approval (by May 23, 2021).

Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by May 23, 2023).

7. The application was referred to the following departments and agencies on May 2, 2019:
  - Milwaukie Building Division
  - Milwaukie Engineering Department
  - Clackamas County Fire District #1
  - Lake Road Neighborhood District Association

## Suggested Yard Canopy Trees

Botanic name	Common name	Native/Evergreen	Climate forward
<i>Abies grandis</i>	Grand fir	Native/Evergreen	
<i>Acer macrophyllum</i>	Big-leaf maple	Native	
<i>Arbutus menziesii</i>	Madrone	Native/Evergreen	Y
<i>Chrysolepis chrysophylla</i>	Golden chinquapin	Native/Evergreen	Y
<i>Cupressus arizonica</i>	Arizona cypress	Evergreen	Y
<i>Cupressus bakeri</i>	Baker cypress	Native/Evergreen	Y
<i>Juglans hindsii</i>	California walnut		
<i>Notholithocarpus densiflorus</i>	Tanoak	Native/Evergreen	Y
<i>Pinus jeffreyi</i>	Jeffrey pine	Native/Evergreen	Y
<i>Pinus ponderosa</i> Willamette Valley variety	Ponderosa pine	Native/Evergreen	Y
<i>Platanus racemosa</i>	California sycamore		
<i>Pseudotsuga menziesii</i>	Douglas-fir	Native/Evergreen	Y
<i>Quercus chrysolepsis</i>	Canyon live oak	Native/Evergreen	Y
<i>Quercus garryana</i>	Oregon oak	Native	Y
<i>Quercus kelloggii</i>	Black oak		
<i>Sequoia sempervirens</i>	Coast redwood	Native/Evergreen	
<i>Sequoiadendron giganteum</i>	Giant sequoia	Evergreen	
<i>Taxodium distichum</i>	Bald cypress		
<i>Taxus baccata</i>	Pacific yew	Native/Evergreen	
<i>Torreya californica</i>	California nutmeg	Evergreen	Y
<i>Umbellularia californica</i>	Oregon myrtle	Native/Evergreen	Y