



# CITY OF MILWAUKIE

July 10, 2019

Land Use File(s): VR-2019-006

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on July 10, 2019.

<b>Applicant(s):</b>	Maureen and Keith Lane
<b>Appellant</b> (if applicable)	
<b>Location(s):</b>	11770 SE 33 <sup>rd</sup> Ave
<b>Tax Lot(s):</b>	11E36DB07000
<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 Section 19.502 Accessory Structures</li><li>• MMC Section 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., July 25, 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-2019-006](http://www.milwaukieoregon.gov/planning/vr-2019-006).

**This decision may be appealed by 5:00 p.m. on July 25, 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 applicant shall construct the fence as proposed – with an open wire frame on the top section.

### **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

cc: Maureen and Keith Lane (11772 SE 33<sup>rd</sup> Ave, Milwaukie, OR 97222)  
Planning Commission (via email)  
Leila Aman, Interim Community Development Director (via email)  
Steve Adams, 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)  
Interested Persons  
Land Use File(s): VR-2019-006

**ATTACHMENT 1**  
**Recommended Findings in Support of Approval**  
**File #VR-2019-006, 11770 SE 33<sup>rd</sup> Ave Fence Variance**

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, Maureen and Keith Lane, have applied for a variance for the maximum height of a fence in the front yard to install a fence with a height of 6 ft at 11770 SE 33<sup>rd</sup> Ave. This site is in the Residential R-5 Zone. The land use application file number is VR-2019-006.
2. The proposal requires a variance to the 42-inch maximum height of a fence in the front yard.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC Section 19.502 Accessory Structures
  - MMC Section 19.911 Variances
  - MMC Section 19.1005 Type II Review
4. The application has been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review.
5. MMC Chapter 19.502.2.B Accessory Structures – Fences, Walls and Plantings
  - a. MMC 19.502.2.B.1.a Residential Zones and Residential Uses in All Zones  
Maximum height is 6 ft for rear, street side, and side yards; 42 in for front yards, except that for flag lots fences in the front yard may be 6 ft. No electrified, barbed, or razor wire fencing is permitted.  
  
*The applicant is seeking approval of a variance for a proposed fence that measures 6 ft in height in the front yard.*  
  
*A variance has been submitted allow for the construction of the proposed 6-ft fence. Subject to approval of the variance, the Planning Director finds that this criterion is met.*
6. MMC Chapter 19.911 Variances
  - a. MMC 19.911.3 establishes the review process for variance applications.  
  
*The applicant has requested a variance to the maximum height of a fence in the front yard to allow a fence up to 6 ft in height. This request meets the allowable variance of a fence up to 6 ft in the front yard through Type II review.*  
  
*The Planning Director finds that the application is subject to Type II Variance review for the proposed new 6-ft fence in the front yard.*

- a. MMC 19.911.4.A establishes criteria for approving Type II Variance applications.

An application for a Type II Variance shall be approved when all the criteria in 19.911.4.A 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 intent of the 42-inch maximum front yard fence height is to maintain visibility between structures and the street and to prevent fences from “walling off” the street.*

*The front yard of this site is effectively the side yard for the street-facing duplex unit. The proposed fence is a solid fence at the 42-inch height, with an open wire frame section for the remaining height to 6 ft, thus preventing the front yard area from feeling fully walled-off.*

*The proposed fence does not cause any public health safety or welfare risks as the fence does not encroach into the public right-of-way.*

*The additional height does not have any detrimental effects on surrounding properties.*

*As conditioned, to construct the fence as proposed with an open wire frame on the top section, the Planning Director finds that the approval criteria are 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 Engineering Department has confirmed that the fence will not interfere with any future right-of-way improvements.*

*The Planning Director finds that this approval 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 applicant states that the proposed fence is a typical residential fence constructed of cedar. The construction of the 6-ft fence in the western portion of the front yard would effectively contain the applicant’s dog, increasing safety for both occupants and passersby, while maintaining transparency.*

*The Planning Director finds that the approval criteria are met.*

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

*No impacts from the proposed variance have been identified.*

*The Planning Director finds that the approval criteria are met.*

*The Planning Director finds that the approval criteria for the Type II Variance are met.*

7. 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.

8. 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 July 10, 2021).
  - b. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by July 10, 2023).
9. The application was referred to the following departments and agencies on June 19, 2019: Milwaukie Building Division; Milwaukie Engineering Department; Clackamas Fire District #1; and the Lake Road Neighborhood District Association. Notice of the application was also sent to surrounding property owners within 300 ft of the site on June 19, 2019, and a sign was posted on the property on June 19, 2019.