



CITY OF MILWAUKIE

October 23, 2019

Land Use File(s): VR-2019-009

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on October 22, 2019.

Applicant(s):	Alex Belza
Location(s):	8949 SE 32 nd Ave
Tax Lot(s):	11E25BA20700
Application Type(s):	Variance
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Municipal Code: <ul style="list-style-type: none">• MMC Chapter 12.16 Access Management Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• MMC Section 19.301 Low Density Residential Zones• MMC Section 19.600 Off Street Parking and Loading• MMC Subsection 19.910.1 Accessory Dwelling Units• MMC Section 19.911 Variances• MMC Section 19.1006 Type III Review
Neighborhood(s):	Ardenwald-Johnson Creek

Appeal period closes: 5:00 p.m., November 7, 2019

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1006 Type III 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, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on November 7, 2019, which is 15 days from the date of this decision. (Note: Please arrive by 4:45 p.m. for appeal payment processing.) Only persons who submitted comments or made an appearance of record at the public hearing have standing to appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie City Council 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.

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. Reconstruct the north wing of the driveway approach to align with the driveway per MMC 19.607.1.E.
2. Reconstruct the south wing of the driveway approach to align with the edge of the widened driveway per MMC 19.607.1.E.



Dennis Egner, FAICP
Planning Director

Exhibits

1. Findings in Support of Approval

cc: Alex Belza, 8949 SE 32nd Ave., Milwaukie, OR 97222
Planning Commission (via email)
Leila Aman, Community Development Director (via email)
Justin Gericke, City Attorney (via email)
Steve Adams, City Engineer (via email)
Jennifer Backhaus, Engineering Tech II (via email)

Samantha Vandagriff, Building Official (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Technician (via email)
Tim Salyers, Code Compliance Coordinator (via email; for variances only)
Mike Boumann and Izak Hamilton, CFD#1 (via email)
NDA(s): Ardenwald-Johnson Creek (via email)
Interested Persons
Land Use File(s): VR-2019-009

Findings in Support of Approval
File #VR-2019-09, Alex Belza – 8949 SE 32nd Ave

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, Alex Belza, has applied for a variance to approve a driveway apron approximately 4.5 ft from the side property line at the subject property, 8949 SE 32nd Ave. The site is in the R-7 Zone. The land use application file number is VR-2019-09.
2. The subject property is approximately 6,947 sq ft (0.15 acres) in size and was vacant until the recently constructed detached single-family dwelling with a lower level accessory dwelling unit (ADU). The applicant recently completed construction of the new house and installed a driveway to the house and a second driveway to provide the required off-street parking space for the ADU utilizing an existing driveway approach. The resultant development is a driveway apron approximately 4.5 ft from the side property line, less than the minimum 7.5 ft required by Milwaukie Municipal Code (MMC) Subsection 12.16.040.C.3. The proposal to vary from this access management standard requires a variance, as established in MMC Section 12.16.050. A second variance is required to allow the property to access 32nd Ave (a collector street) without an on-site turnaround. A third variance is recommended by staff to allow the overall width of the driveway apron at the street to be 2.3 feet wider than the maximum 20-foot width allowed by City code.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.1006 Type III Review
 - MMC Chapter 12.16 Access Management
 - MMC Section 19.301 Low Density Residential Zones (including R-7)
 - MMC Section 19.600 Off Street Parking Standards and Loading
 - MMC Section 19.910 Accessory Dwelling Units
 - MMC Section 19.911 Variances

The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held on October 22, 2019, as required by law.

4. MMC Chapter 12.16 Access Management
 - a. MMC Section 12.16.040 Access Requirements and Standards

MMC 12.16.040 establishes standards for access (driveway) requirements, including location, number, and size.

 - (1) MMC Subsection 12.16.040.C Accessway Location

MMC 12.16.040.C.3 requires that the nearest edge of the driveway apron shall be at least 7.5 ft from the side property line in residential districts.

As proposed, the nearest edge of the driveway apron is approximately 4.5 ft from the nearest side property line. As conditioned with alterations, the driveway apron will be approximately 1.5 ft from the nearest side property line.

(2) MMC Subsection 12.16.040.F Accessway Size

MMC 12.16.040.F.2 requires that single-family detached residential uses shall have a minimum driveway apron width of 9 ft and a maximum width of 20 ft.

A variance is required to allow the constructed driveway apron with a width of 22.3 ft to remain as constructed. As addressed in Finding 7, staff believes this to be a reasonable variance given the likelihood of vehicles driving over the area of driveway that would need to be removed in order to comply. The minimal additional width accommodates access to both garage and to the ADU parking area. Approval of this variance includes a condition requiring reconstruction of both wings to align the approach with the edge of the wider apron.

As conditioned, and with approval of the variances discussed in Finding 7, the applicable standards of MMC 12.16.040 are met.

b. MMC 12.16.050 Variance

MMC 12.16.050 provides that relief from any access management requirement or standard of MMC 12.16.040 may be granted through a variance process, which requires submission and approval of a variance land use application pursuant to criteria and procedures of MMC Section 19.911.

The applicant has requested relief from the minimum distance between a driveway apron and the side property line standard of 7.5 ft, established in MMC 12.16.040.C.3. As required, the applicant has applied for a variance subject to the approval criteria of MMC 19.911, addressed in Finding 7.

As conditioned, and with approval of the variances discussed in Finding 7, the Planning Commission finds that the applicable standards of MMC 12.16 are met.

5. MMC Section 19.301 Low Density Residential Zones (including R-7)

MMC 19.301 establishes standards for the low-density residential zones, including the R-7 zone. The subject property is zoned R-7.

MMC Subsections 19.301.4 and 19.301.5 provide applicable development standards for the R-7 zone, summarized in Table 5:

Table 5 R-7 Lot and Development Standards		
Standard	R-7 Requirement	Subject Property
Maximum lot coverage	30%	<20%
Minimum vegetation	30%	>68%
Front yard minimum vegetation	40%	>60%

The Planning Commission finds that approval of the requested variances would not cause the subject property to fail to comply with the applicable R-7 development standards. This standard is met.

6. MMC Section 19.600 Off-Street Parking and Loading

- a. MMC Subsection 19.605.1 establishes the minimum and maximum number of off-street parking spaces for various uses, including single-family dwellings and ADUs (a property containing a primary dwelling and an ADU must have two off-street spaces).

As proposed, the property includes two off-street parking spaces as required: one in the attached garage and one to north in the side yard of the house. Both parking spaces are accessed via the same driveway approach, which is less than the required minimum distance from the side property line. With approval of the variance as discussed in Finding 7, the driveway apron would meet the minimum distance standard.

As proposed, and with approval of the variance discussed in Finding 7, the Planning Commission finds that the applicable standards of MMC 19.605 are met.

- b. MMC Subsection 19.607.1.E establishes the standards for residential driveways and parking areas, including the requirement that properties that take access from streets designated as collectors must provide a turnaround on site that allows vehicles to enter the right-of-way in a forward motion.

This property was vacant until the single-family dwelling and ADU were constructed. The property does not provide a turnaround, and the requirement was inadvertently not identified during the building permit review process. A variance from this requirement is required. The subject property is in a school zone on 32nd Ave, with a posted speed limit on of 25 mph, which is the same speed as permitted on a neighborhood or local street. Staff has not identified any significant that would result from the variance to the requirement of a turnaround. The driveway and its lack of a turnaround is consistent with virtually every other residential property on 32nd Ave. In addition, the slow posted speed limit in the area reduces any risk or problem with cars backing into 32nd Ave. The subject property is in a location on 32nd Ave that functions in a way that is similar to nearby local neighborhood streets.

As proposed, and with approval of the variances discussed in Finding 7, the Planning Commission finds that the applicable standards of MMC 19.607.1.E are met.

As conditioned, and with approval of the variances discussed in Finding 7, the Planning Commission finds that the applicable standards of MMC 19.600 are met.

7. MMC Section 19.911 Variances

MMC Section 19.911 establishes the variance process for seeking relief from specific code sections that have the unintended effect of preventing reasonable development or imposing undue hardship.

a. MMC Subsection 19.911.2 Applicability

MMC 19.911.2 establishes applicability standards for variance requests.

Variances may be requested to any standard of MMC Title 19, provided the request is not specifically listed as ineligible in MMC Subsection 19.911.2.B. In addition, MMC Section 12.16.050 allows requests for relief from the City’s access management requirements to be processed according to the procedures and criteria of MMC 19.911. Ineligible variances include requests that result in any of the following: change of a review type, change or omission of a procedural step, change to a definition, increase in density, allowance of a building code violation, allowance of a use that is not allowed in the base zone, or the elimination of restrictions on uses or development that contain the word “prohibited.”

The applicant has requested a variance from two of the access management standards of MMC 12.16.040 and from the driveway standard in MMC 19.607.1.E.2.

The requested variances meet the eligibility requirements established in MMC 19.911.2.

b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. Subsection 3-B establishes the Type II review process for limited variations to certain numerical standards. Subsection 3-C establishes the Type III review process for larger or more complex variations to standards that require additional discretion and warrant a public hearing.

The requested variances are not identified in MMC 19.911.3.B as being eligible for Type II review. Therefore, the requested variances are subject to the Type III review process and the approval criteria established in MMC Subsection 19.911.4.B.

c. MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes approval criteria for variance requests.

The applicant has elected to address the criteria of 19.911.4.B.1 Discretionary Relief Criteria.

MMC Subsection 19.911.4.B.1 provides the following approval criteria for Type III variances where the applicant elects to utilize the Discretionary Relief Criteria:

- (1) The applicant’s alternatives analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.

The applicant’s submittal materials describe the conditions that led to the development of the second required driveway and that the property uses an existing driveway approach. The applicant also noted that although the driveway apron does not meet the minimum distance standard, the driveway for the adjacent property to the north is located at the north end. There is approximately 40 ft between the two driveway aprons, so the intent of the standard is met.

Upon review, staff discovered that a second variance was required. MMC 19.607.1.E.2 requires that properties that take access from streets other than local streets must provide a turnaround so that vehicles can enter the right-of-way in a forward motion. The property does not provide a turnaround, and the requirement was inadvertently not identified during the building permit review process. The alternative to a variance would be to move the new house. As identified in Finding 6b, the lack of a turnaround is consistent with other properties in the area.

As discussed in Finding 4, an additional variance to the maximum width of a driveway would allow the 22.3-ft-wide driveway apron as constructed to remain. The alternative would be to remove a section of the driveway concrete, creating a notch within the driving area.

There are no identified negative impacts related to the requested variances.

The Planning Commission finds that the applicant's submittal provides an adequate analysis of the impacts and benefits of the requested variances compared to the baseline requirements. This criterion is met.

- (2) The proposed variance is determined by the Planning Commission to be both reasonable and appropriate, and it meets one or more of the following criteria:
 - (a) The proposed variance avoids or minimizes impacts to surrounding properties.
 - (b) The proposed variance has desirable public benefits.
 - (c) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

The distance of the driveway apron less than 7.5 ft would not result in any identified impacts to surrounding properties, particularly because the spacing of the apron from those of the adjacent properties is more than 40 ft. In this case this means that there is no increase in potential conflict between pedestrians and vehicles using the driveway apron closer to the side property line.

As identified in Finding 4a, the maximum width of a driveway apron serving a single-family home is 20 ft. The constructed driveway apron is 22.3 ft; allowing it to remain as is would not result in any identified impacts to surrounding properties.

As identified in Finding 6b, the subject property is in a school zone on 32nd Ave, with a posted speed limit on of 25 mph, which is the same as on a neighborhood or local street. Staff has not identified any significant impacts to the variance to the requirement of a turnaround because its lack of a turnaround is consistent with virtually every other residential property on 32nd Ave as well as the slow posted speed limit in the area.

The Planning Commission finds that the requested variances are reasonable and appropriate and that they meet one or more of the criteria provided in MMC Subsection 19.911.B.1.b. This criterion is met.

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

Currently, there are no identified impacts resulting from the requested variances.

As proposed, the Planning Commission finds that the requested variances meet the approval criteria established in MMC 19.911.4.B.1 for Type III variances seeking discretionary relief.

As conditioned, the Planning Commission finds that the requested variances are allowable as per the applicable standards of MMC 19.911 and are therefore approved.

8. The application was referred to the following departments and agencies on September 18, 2019:

- Milwaukie Building Department
- Milwaukie Engineering Department
- Milwaukie Public Works Department (including Streets, Stormwater, and Environmental Services Divisions)
- Ardenwald Neighborhood District Association (NDA) Chairperson & Land Use Committee
- Clackamas Fire District #1

Notice of the application was also sent to surrounding property owners and residents within 300 ft of the site on October 2, 2019, and a sign was posted on the property on October 3, 2019.

The following persons presented testimony at the October 22, 2019 public hearing:

- **Rex Thomas, 8945 SE 32nd Ave:** Mr. Thomas expressed concern about how close the on-site driveway was to the shared property line.
- **Trisha Campbell, 8925 SE 32nd Ave:** Ms. Campbell expressed concern about the proximity of the on-site driveway to the shared property line with 8945 SE 32nd Ave.

Staff Response: The code does not require a minimum setback for driveways on residential properties.