



CITY OF MILWAUKIE

February 6, 2020

Land Use File(s): VR-2020-001

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on February 6, 2020.

Applicant(s): [REDACTED]
Appellant (if applicable)
Location(s): 6460 and 6564 SE Furnberg St
Tax Lot(s): 12E32CB02700
Application Type(s): Variance
Decision: Approved with conditions
Review Criteria: Milwaukie Zoning Ordinance:

- MMC Section 19.502 Accessory Structures
- MMC Section 19.911 Variances
- MMC Section 19.1005 Type II Review

Neighborhood(s): Linwood

Appeal period closes: 5:00 p.m., February 21, 2020

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, if you wish to view this case file or visit the project webpage at www.milwaukieoregon.gov/planning/vr-2020-001.

This decision may be appealed by 5:00 p.m. on February 21, 2020, which is 15 days from the date of this decision.¹ (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

¹ As per MMC Section 19.1010, if the 15th 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.

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.

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 proposed 6-ft fence must be installed no closer than the 15-ft setback as shown on the application materials received by the City on January 21, 2020.
2. At 6460 SE Furnberg St, the applicant must install additional landscaping between the new fence and the front property line the entire length of the new fence. The plants must be selected from the list of recommended "large shrubs" species from a list of recommended climate-forward plants maintained by the City of Milwaukie Public Works Department (See Exhibit 2). The new shrubs must be planted at a maximum spacing of 3 ft and they must be a minimum of 1 gallon/12 inches high in size at planting.
3. The installed fencing must conform to clear vision requirements per MMC 12.24.030.

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



Dennis Egner, FAICP
Planning Director

Exhibits

1. Findings in Support of Approval
2. City of Milwaukie list of climate-forward landscaping plants

cc: (6460 SE Furnberg St, Milwaukie, OR 97222)
Planning Commission (via email)
Leila Aman, 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)
Matt Amos, CFD#1 (via email)
NDA(s): Linwood (via email)
Interested Persons
Land Use File(s): VR-2020-001

EXHIBIT 1
Findings in Support of Approval
File #VR-2020-001, 6460 SE Furnberg St 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 applicants, [REDACTED] and [REDACTED], 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 6460 SE Furnberg St. The applicants are proposing to fence in a portion of their front yard, as shown in the application materials. This site is in the Residential R-7 Zone. The land use application file number is VR-2020-001.
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. The request meets the procedural requirements for a variance through the Type II review process.

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 street side yard for the home, which is oriented to the north, not toward the street which is to the east. The house is set back nearly 50 ft from the street, and the property includes a thick hedgerow of mature laurel at the 20-ft setback. The proposed 6-ft fence would be located at the 15-ft setback, in front of the laurel. The applicant proposes to plant additional landscaping in front of the fence to soften the appearance of the fence, thus preventing the front yard area from feeling fully walled-off from the street.

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.

Given the fence will be set back 15 ft from the property line, and approximately 28 ft from the edge of the street surface, the additional height does not have any detrimental effects on surrounding properties. The applicant also proposes to plant shrubs and other vegetation between the fence and the street to minimize any visual impacts of the fence.

As conditioned, to include additional landscaping in front of the fence between it and the property line (spaced at 3 ft – see Exhibit 2 for plant list), 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 application materials indicate that the proposed fence will be a typical residential cedar fence. The construction of the 6-ft fence in the eastern portion of the front yard would effectively contain the applicant's dog and providing a private space for the applicant's family.

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, if applicable:
 - a. Obtain and pay for all necessary development permits and start construction within 2 years of land use approval (by February 6, 2022).
 - b. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by February 6, 2024).
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 Linwood Neighborhood District Association. Notice of the application was also sent to surrounding property owners within 300 ft of the site on January 22, 2020, and a sign was posted on the property on January 23, 2020.

Exhibit 2.

Climate-forward landscaping plants

This document is intended to provide guidance for people selecting plants for private property and was created to provide a list of species which grow well now, and which should grow well in the future. However, it is not a comprehensive plant list.

Designers, developers, and others should consult a proper regional plant manual, and other sources of information, such as local growers, in addition to this list. As new plants are used in the local landscape, this list will be updated with any knowledge gained.

<i>Species selected should be hardy to USDA zone 8, Sunset zone 6, or 7</i>		Characteristics				
Botanic Name	Common name	CA/OR Native	Evergreen	Expected Height	Sunlight	Watering regime
Herbaceous Plants						
<i>Achillea millefolium</i>	Yarrow	Y		2'	Full	Occasional
<i>Agapanthus</i> spp. (evergreen)	Lily-of-the-Nile		Y	1' - 3'	Full/part	Occasional
<i>Agastache</i> spp.	Hummingbird mint			2' - 3'	Full/part	Regular/ Occasional
<i>Asclepias fascicularis</i> or <i>A. speciosa</i>	Milkweed	Y		1' - 4'	Full	Occasional
<i>Bergenia cordifolia</i> and <i>B. crassifolia</i>	Bergenia		Y	1' - 1.5'	Shade	Regular
<i>Brodiaea</i> spp.	Brodiaea	Most		0 - 1'	Full	Summer dry
<i>Calamintha nepeta</i>	Calamint			1' - 2'	Full/part	Occasional
<i>Camassia</i> spp.	Camas	Most		0 - 3'	Full	Occasional
<i>Carex praegracilis</i>	Field sedge	Y	Y	0 - 1'	Full	Regular
<i>Echinacea pupurea</i>	Cone flower			2' - 4'	Full	Regular
<i>Epilobium canum</i>	California fuchsia, Zauschneria	Y			Full	Occasional
<i>Erigeron glaucus</i> or <i>E. speciosus</i>	Fleabane	Y	Y	1' - 2'	Full/part	Regular/ Occasional
<i>Eriophyllum lanatum</i>	Woolly sunflower	Y		0 - 2'	Full	Summer dry
<i>Eschscholzia californica</i>	California poppy	Y		0 - 1'	Full	Summer dry
<i>Iris chrysophylla</i> or <i>I. douglasiana</i>	wild Iris	Y	Y	0 - 1'	Full	Occasional
<i>Kniphofia</i> spp.	Red-hot poker		Y	1' - 5'	Full	Regular/ Occasional
<i>Liriope muscari</i> and <i>L. spicata</i>	Lily turf		Y	0 - 1.5'	Part/Shade	Regular
<i>Lupinus</i> spp.	Lupine	Some		0 - 4'	Full	Occasional
<i>Penstemon</i> spp. and cultivars	Penstemon	Some		1' - 3'	Full	Occasional
<i>Perovskia atricpicifolia</i>	Russian sage			1' - 4'	Full	Occasional
<i>Phlomis fruticosa</i>	Jerusalem sage		Y	3' - 4'	Full	Occasional
<i>Rudbeckia</i> spp. and cultivars	Orange coneflower	Some		1' - 3'	Full	Regular/ Occasional
<i>Santolina</i> spp.	Santolina		Y	2' - 3'	Full	Occasional
<i>Sidalcea</i> spp.	Checker mallow	Y		1' - 3'	Full	Regular/ Occasional
<i>Solidago californica</i> and <i>S. canadensis</i>	Goldenrod	Y		3' - 4'	Full	Regular/ Occasional

Ferns						
<i>Dryopteris arguta</i>	Wood fern	Y	Y	3'	Shade	Summer dry
<i>Polypodium</i> spp.	Polypody	Y	Y	0 - 1'	Part/Shade	Summer dry
<i>Polystichum munitum</i>	Sword fern	Y	Y	3' - 5'	Part/Shade	Regular/ Occasional
Low Shrubs 0' - 3' Starred * species require pruning to keep shape and stay small						
<i>Agave parryi</i>	Parry's agave		Y	2' - 3'	Full	Low
* <i>Arctostaphylos</i> spp. and cultivars	Manzanita	Most	Y	0 - 6'	Full	Occasional/ Summer dry
* <i>Artemisia</i> spp., Sagebrush	Wormwood	Some	Y	3' - 5'	Full	Occasional/ Summer dry
<i>Baccharis pilularis</i> and cultivars	Coyote brush	Y	Y	1' - 2'	Full	Occasional/ Summer dry
* <i>Cistus</i> spp. and cultivars	Rockrose		Y	3' - 6'	Full	Occasional/ Summer dry
* <i>Erica arborea</i> var. <i>alpina</i>	Tree heath		Y	4' - 6'	Full	Occasional
<i>Euonymus japonicus</i> 'Microphyllus'	Box-leaf euonymus		Y	1' - 3'	Part	Occasional
* <i>Frangula californica</i>	Coffeeberry	Y	Y	4' - 6'	Full	Occasional
<i>Ilex crenata</i> low cultivars	Japanese holly		Y	3'	Full/part	Regular
<i>Juniperus communis</i> and cultivars	Common juniper	Y	Y	0 - 3'	Full	Occasional
<i>Juniperus sabina</i> and cultivars	Savin juniper		Y	1' - 3'	Full	Occasional
* <i>Lavandula</i> spp. varieties and cultivars	Lavender		Y	1' - 3'	Full	Summer dry
* <i>Lavatera (Malva) maritima</i> and <i>L. thuringiaca</i>	Tree mallow		Y	3' - 8'	Full	Regular/ Occasional
* <i>Lepechinia fragrans</i>	Pitcher sage	Y	Y	3' - 5'	Full/part	Occasional
<i>Mahonia repens</i>	Creeping oregon grape	Y	Y	1' - 2'	Full/part	Occasional/ Summer dry
* <i>Myrtus communis</i> ssp. <i>tarantina</i> , or cultivars 'Andy Van', 'Anne McDonald'	Myrtle		Y	3' - 6'	Full	Occasional
<i>Nandina domestica</i> low cultivars	Nandina		Y	1' - 3'	Full/Shade	Occasional
<i>Pinus mugo</i> low varieties and cultivars	Swiss mountain pine		Y	1' - 3'	Full	Occasional
<i>Podocarpus lawrencei</i> and <i>P. nivalis</i> and varieties	Podocarp		Y	1' - 3'	Full/part	Regular
<i>Quercus vaccinifolia</i>	Huckleberry oak	Y	Y	3' - 4'	Full	Summer dry
<i>Rubus hayata-koidzumii</i>	Crinkle-leaf creeper		Y	0 - 1'	Part	Occasional
* <i>Salvia</i> spp. evergreen varieties	Sage	Some	Y	1' - 3'	Full	Regular/ Occasional
<i>Sarcococca hookerana humilis</i>	Sweet box		Y	1' - 2'	Part/shade	Regular
<i>Senecio cineraria</i>	Dusty miller		Y	2' - 3'	Full	Occasional
* <i>Taxus baccata</i> 'Repandens'	Spreading yew		Y	2' - 3'	Full/shade	Regular
<i>Trachelospermum asiaticum</i> and <i>T. jasminoides</i>	Star jasmine		Y			Regular

Large Shrubs 3' - up						
<i>Camellia</i> spp. and cultivars	Camellia		Y	3' - 12'	Part/shade	Regular
<i>Carpenteria californica</i>	Bush anemone	Y	Y	4' - 8'	Full/part	Occasional
<i>Ceanothus</i> spp. and cultivars	Blue blossom	Y	Y	3' - 12'	Full	Summer dry
<i>Choisya ternata</i> and cultivars	Mexican orange	Y	Y	6' - 8'	Full/part	Occasional
<i>Daphne</i> spp. and cultivars	Daphne		Y	2' - 10'	Part/shade	Regular
<i>Dendromecon rigida</i>	Bush poppy	Y	Y	4' - 8'	Full	Occasional
<i>Garrya elliptica</i> and <i>G. fremontii</i>	Silktassel	Y	Y	8' - 20'	Full/part	Regular/ Occasional
<i>Hesperaloe parviflora</i>	Red yucca	Y	Y	3' - 4'	Full	Occasional
<i>Heteromeles arbutifolia</i>	Toyon	Y	Y	8' - 15'	Full	Occasional/ Summer dry
<i>Holodiscus discolor</i>	Oceanspray	Y		3' - 10'	Full/shade	Regular/ Occasional
<i>Ilex crenata</i> and cultivars	Japanese holly		Y	3' - 10'	Full/part	Regular
<i>Leptospermum scoparium</i>	New Zealand Tea Tree		Y	3' - 8'	Full	Occasional
<i>Mahonia</i> spp.	Mahonia	Some	Y	3' - 10'	Full	Regular/ Occasional
<i>Myrica californica</i>	Pacific wax myrtle	Y	Y	10' - 30'	Full	Regular
<i>Notholithocarpus densiflorus</i> var. <i>echinoides</i>	Shrub tan oak	Y	Y	3' - 4'	Full/part	Summer dry
<i>Osmanthus</i> spp. and cultivars	Osmanthus		Y	6' - 20'	Full/part	Regular
<i>Photinia</i> spp. and cultivars	Photinia		Y	10' - 20'	Full	Regular
<i>Pinus mugo mugo</i>	Swiss mountain pine		Y	4' - 8'	Full	Occasional
<i>Pittosporum</i> spp. varieties and cultivars	Pittosporum		Y	5' - 20'	Full/part	Regular
<i>Podocarpus macrophyllus</i>	Big-leaf podocarp		Y	6' - 15'	Full/part	Regular
<i>Quercus berberidifolia</i>	Scrub oak	Y	Y	3' - 12'	Full	Summer dry
<i>Quercus sadleriana</i>	Sadler oak	Y	Y	3' - 10'	Full	Summer dry
<i>Rhaphiolepis indica</i> , and <i>R. umbellata</i>	Rhaphiolepis		Y	4' - 8'	Full	Occasional
<i>Rosmarinus officinalis</i> and cultivars	Rosemary		Y	1' - 8'	Full	Summer dry
<i>Sarcococca ruscifolia</i>	Sweet box		Y	4' - 6'	Part/shade	Regular
<i>Taxus</i> spp. shrub cultivars	Yew		Y	3' - 15'	Part/shade	Regular
<i>Viburnum tinus</i>	Laurustinus		Y	6' - 12'	Full	Summer dry
<i>Yucca</i> spp. and <i>Hesperoyucca</i> spp. (trunkless)	Yucca	Y	Y	2' - 4'	Full	Low

Small Trees						
<i>Acca sellowiana</i>	Pineapple guava		Y	8' - 16'	Full	Occasional
<i>Arbutus unedo</i>	Strawberry tree		Y	15' - 30'	Full	Occasional
<i>Cercis occidentalis</i>	Western redbud	Y		12' - 20'	Full/part	Regular
<i>Cercocarpus spp.</i>	Mountain mahogany	Y	Y	5' - 20'	Full	Occasional/ Summer dry
<i>Cupressus sempervirens</i>	Italian cypress		Y	30' - 50'	Full	Occasional
<i>Laurus nobilis</i> varieties and cultivars	Grecian laurel		Y	12' - 40'	Full	Regular/ Occasional
<i>Olea europaea</i> 'Frantoio' or 'Arbequina'	European olive		Y	6' - 16'	Full	Summer dry
<i>Pinus pinea</i>	Italian stone pine		Y	30' - 40'	Full	Summer dry
<i>Quercus hypoleucoides</i>	Silverleaf oak		Y	25' - 30'	Full/part	Summer dry
<i>Trachycarpus fortunei</i>	Windmill palm		Y	10' - 30'	Full	Regular