



CITY OF MILWAUKIE

June 9, 2021

Land Use File(s): VR-2021-007

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on June 8, 2021.

Traducciones de este documento e información sobre este proyecto están disponibles en español. Para solicitar información o preguntar en español, favor de email espanol@milwaukieoregon.gov.

Applicant(s):	Stephen W. Klingman
Location(s):	5840 SE Morris St
Tax Lot(s):	12E30AD03600
Application Type(s):	Variance
Decision:	Approved
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• MMC Section 19.1006 Type III Review• MMC Section 19.301 Low Density Residential Zones (including R-7)• MMC Section 19.402 Natural Resources• MMC Section 19.502 Accessory Structures• MMC Section 19.911 Variances
Neighborhood(s):	Lewelling

Appeal period closes: 5:00 p.m., June 24, 2021

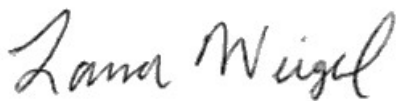
This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1006 Type III Review. The complete case file for this application is available for review by appointment between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Vera Koliass, Senior 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 June 24, 2021, which is 15 days from the date of this decision.¹ (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.



Laura Weigel, AICP
Planning Manager

Exhibits

1. Findings in Support of Approval

cc: Stephen Klingman, 5840 SE Morris St (via
Planning Commission (via email)
email Kelly Brooks, 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)

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.

Tim Salyers, Code Enforcement Coordinator (via email) (variances only)
Mike Boumann and Alex McGladrey, CFD#1 (via email)
NDA(s): Lewelling (via email)

Land Use File(s): VR-2021-007

**Findings in Support of Approval
File #VR-2021-007, Stephen Klingman – 5840 SE Morris St.**

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, Stephen Klingman, has applied for a variance to allow a shed approximately 43 inches from the primary structure on the subject property, 5840 SE Morris St. The site is in the R-7 Zone. The land use application file number is VR-2021-007.
2. The subject property is approximately 13,055 sq ft (0.29 acres) in size, contains mapped natural resources and the 100-year floodplain, and is developed with a single unit home. The applicant recently completed a remodeling project on the house and constructed a 192-sq ft shed 43 inches behind the house underneath a second-story deck. The shed was not on the original building permit plans and was not discovered until the final inspection process. Although a shed less than 200 sq ft does not require a building permit, it is still subject to Milwaukie Municipal Code (MMC) 19.502.2.A.1.b (3) which requires a minimum of 5 ft (60 inches) between the exterior wall of an accessory structure and the exterior wall of any other structure on a site. The proposal to vary from this separation standard to allow a separation of 43 inches rather than the minimum 60 inches.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.1006 Type III Review
 - MMC Section 19.301 Low Density Residential Zones (including R-7)
 - MMC Section 19.402 Natural Resources
 - MMC Section 19.502 Accessory Structures
 - 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 June 8, 2021, as required by law.

4. 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%	<10%
Minimum vegetation	30%	>80%

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

5. MMC Section 19.402 Natural Resources

- a. MMC Subsection 19.402.4.B establishes the limited exempt activities within a mapped HCA. Minor encroachments of up to 500 sq ft for accessory buildings and patios are permitted.

The work includes an enlarged deck and a shed with a total area of less than 250 sq ft.

As proposed, and with approval of the variance discussed in Finding 7, the Planning Commission finds that the applicable standards of MMC 19.402 are met.

As proposed, and with approval of the variance discussed in Finding 7, the Planning Commission finds that the applicable standards of MMC 19.402 are met.

6. MMC Section 19.502 Accessory Structures

- a. MMC Subsection 19.502.2 establishes the specific provisions for accessory structures on single-family properties.

The applicant has constructed a storage shed measuring 192 sq ft and less than 15 ft tall underneath the deck. As constructed, the shed is located 43 inches from the exterior wall of the primary structure, which is less than the minimum required 60 inches. A variance has been requested to allow the shed to remain in its current location.

As proposed, and with approval of the variance discussed in Finding 7, the Planning Commission finds that the applicable standards of MMC 19.502 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 the minimum spacing requirement between an accessory structure and any other structure on the property in MMC 19.502.2.A.1.b (3).

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 variance is 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 decision to construct the shed in its current location. It was not shown on the approved site plans, but because the shed is less than 200 sq ft, a building permit was not required, and the applicant did not inquire about any zoning requirements. The shed was constructed 43 inches from the house because that lined up with the break in the original deck and posts. Its design and location were carefully considered to minimize any disturbance to the property and to match the shed design to the house.

The only real alternative to the variance would be to shorten the shed by cutting it down by 17 inches. This would affect the vents, windows, and the door, and would require refitting the metal roof and gutter system. The cost to do this work would be approximately \$1,000.

There are no identified negative impacts related to the requested variance. The 43-inch spacing does not impact any other zoning requirements and is not in violation of the building code.

The Planning Commission finds that the applicant's submittal provides an adequate analysis of the impacts and benefits of the requested variance 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 separation of the shed from the house less than 60 inches would not result in any identified impacts to surrounding properties. The shed is located directly under the deck and the separation distance does not affect the surrounding properties at all. The shed is located essentially within the built area of the property, keeping it as far away as possible from Johnson Creek and within the impacted area of the HCA – it does not expanded the disturbance area. The 43-inch separation does not impact the natural resources or vegetated area of the property and is not in violation of any other section of the code. Keeping the shed nested underneath the deck minimizes the disturbance area.

Allowing the shed to remain as is would not result in any identified impacts to surrounding properties.

Staff has not identified any impacts as a result of the variance.

The Planning Commission finds that the requested variance is reasonable and appropriate and that it meets 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 variance.

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

The Planning Commission finds that the requested variance is allowable as per the applicable standards of MMC 19.911 and is therefore approved.

- 8. The application was referred to the following departments and agencies on April 26, 2021:

- Milwaukie Building Department
- Milwaukie Engineering Department
- Lewelling 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 May 19, 2021, and a sign was posted on the property on May 24, 2021.