



CITY OF MILWAUKIE

May 27, 2021

Land Use File(s): VR-2021-009

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on May 27, 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):	Jennifer Murphy
Location(s):	10744 SE 29 th Ave.
Tax Lot(s):	11E36BA00600
Application Type(s):	Variance – fence height
Decision:	Approved
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• MMC Section 19.502 Accessory Structures• MMC Section 19.911 Variances• MMC Section 19.1005 Type II Review
Neighborhood(s):	Historic Milwaukie

Appeal period closes: 5:00 p.m., June 11, 2021

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 Mary Heberling, Assistant Planner, at 503-786-7658 or heberlingm@milwaukieoregon.gov, if you wish to view this case file or visit the project webpage at www.milwaukieoregon.gov/planning/VR-2021-009

This decision may be appealed by 5:00 p.m. on June 11, 2021, 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 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 development utilizes its approvals 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.

Manager'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



Laura Weigel, AICP
Planning Manager

Exhibits

1. Findings in Support of Approval

cc: Jennifer Murpy (via email)
Kelly Brooks, Interim Community Development Director (via email)
Steve Adams, City Engineer (via email)
Engineering Development Review (via email)
Tim Salyers, Code Enforcement Coordinator (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.

NDA(s): Historic Milwaukie (via email)
Interested Persons
Land Use File(s): VR-2021-009

EXHIBIT 1
Findings in Support of Approval
File #VR-2021-009, 10744 SE 29th 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, Jennifer Murphy, has applied for a variance for the maximum height of a fence in the front yard to install a fence with a height of 48 inches at 10744 SE 29th Ave. The applicant is proposing to fence in a portion of their front yard, as shown in the application materials. This site is in the Residential R-2 Zone. The land use application file number is VR-2021-009.
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 inches 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 48 inches in height in the front yard.

A variance has been submitted allow for the construction of the proposed 48-inch fence. Subject to approval of the variance, the Planning Manager 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 48 inches in height. The request meets the procedural requirements for a variance through the Type II review process.

The Planning Manager finds that the application is subject to Type II Variance review for the proposed new 48-inch 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 applicant is proposing a 48-inch white, iron fence. The proposed fence design includes iron rods with space between them creating transparency between the front yard and the street. The transparency of the design prevents the “walled off” feel and maintains visibility with the height increase.

The design allows the fence, with a height increase, to meet the intent of the 42-inch maximum height requirement. This variance request is for this specific design and height only. The applicant cannot build another 48-inch fence without another variance request unless the design is the same.

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 Planning Manager 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 Manager 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 white, iron fence; a residential design that is common for front yards.

The Planning Manager 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 Manager finds that the approval criteria are met.

The Planning Manager 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 May 27, 2023).
 - b. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by May 27, 2025).
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 May 6, 2021, and a sign was posted on the property on May 3, 2021.

Two public comments were received:

- Richard Baker (10702 SE 28th Ave): wrote in support of the variance
- Jacob Lupton (10799 SE 28th Ave): wrote in opposition of the variance