



CITY OF MILWAUKIE

July 2, 2021

Land Use File(s): VR-2021-011

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on July 2, 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):	Callen Keizur
Location(s):	4405 SE Howe Ln
Tax Lot(s):	12E30CB05700
Application Type(s):	Variance
Decision:	Approved
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• MMC 12.24 Clear Vision at Intersections• MMC 19.505.2 Specific Provisions for Accessory Structures• MMC 19.911 Variances• MMC 19.1005 Type II
Neighborhood(s):	Lewelling

Appeal period closes: 5:00 p.m., July 17, 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 Vera Koliass, Senior 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-2021-011.

This decision may be appealed by 5:00 p.m. on July 17, 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 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

None.

Other requirements


None.

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

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.

Exhibits

1. Findings in Support of Approval

cc: Callen Keizur, 4405 SE Howe Ln (via email)
Planning Commission (via 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)
Tim Salyers, Code Enforcement Coordinator (via email)
Mike Boumann and Alex McGladrey, CFD#1 (via email)
NDA(s): Lewelling (via email)
Interested Persons
Land Use File(s): VR-2021-011

EXHIBIT 1
Findings in Support of Approval
File #VR-2021-011, 4405 SE Howe Ln 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, Callen Keizur, has applied for a variance for the maximum height of a fence in the front yard to allow a solid wood fence with a height of 6 ft at 4405 SE Howe Ln. This site is in the Residential R-7 Zone. The land use application file number is VR-2021-011.
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 12.24 Clear Vision at Intersections
 - 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 12.24 Clear Vision at Intersections

The purpose of this chapter is to maintain clear vision areas at intersections in order to protect the safety and welfare of the public in their use of City streets.

- a. MMC 12.24.040 Computation
 - (1) MMC 12.24.040.A The clear vision area for all street intersections and all street and railroad intersections shall be that area described in the most recent edition of the "AASHTO Policy on Geometric Design of Highways and Streets." The clear vision area for all street and driveway or accessway intersections shall be that area within a twenty (20)-foot radius from where the lot line and the edge of a driveway intersect.
 - (2) MMC 12.24.040.B Modification of this computation may be made by the Engineering Director after considering the standards set forth in the most recent edition of the "AASHTO Policy on Geometric Design of Highways and Streets" and taking into consideration the type of intersection, site characteristics, types of vehicle controls, vehicle speed, and traffic volumes adjacent to the clear vision area.

The applicant is seeking approval of a variance for a solid wood fence that measures 6 ft in height in the front yard. It is located approximately 16 ft from the edge of the street. Based on

the low travel speeds and volume on Howe Ln, which has a local street classification, and that the location of the fence exceeds the AASHTO minimum standard of 14.5 ft from the edge of the traveled way, the City Engineer has determined that a modification of the clear vision computation is warranted.

A variance application has been submitted to allow the 6-ft fence. Subject to approval of the variance, the Planning Manager finds that this criterion is met.

6. 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 solid wood fence that measures 6 ft in height in the front yard.

A variance application has been submitted to allow the 6-ft fence. Subject to approval of the variance, the Planning Manager finds that this criterion is met.

7. 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 Manager finds that the application is subject to Type II Variance review for the new 6-ft fence in the front yard.

b. 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 subject property is a corner lot and the fence is located on the east side of the house only, for a length of approximately 40 ft. The fence is located approximately 16 ft from the edge of the street and approximately 6 ft back from the property line behind some existing trees and does not dominate the front yard and does not create a “walled-in” effect at the street.

The 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 is set back 6 ft from the property line, and approximately 16 ft from the edge of the street surface, the additional height does not have any detrimental effects on surrounding properties.

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 fence is a typical residential cedar fence. The construction of the 6-ft fence in the eastern portion of the front yard provides a private space in the back yard for the applicant's family.

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.

8. 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.
9. 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:
- Obtain and pay for all necessary development permits and start construction within 2 years of land use approval (by July 1, 2023).
 - Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by July 1, 2025).
10. The application was referred to the following departments and agencies on June 16, 2021: Milwaukie Engineering Department; Clackamas Fire District #1; and the Lewelling Neighborhood District Association. Notice of the application was also sent to surrounding

property owners within 300 ft of the site on June 16, 2021, and a sign was posted on the property on June 21, 2021.