



# CITY OF MILWAUKIE

October 27, 2021

Land Use File(s): VR-2021-014; PLA-2021-002

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on October 26, 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](mailto:espanol@milwaukieoregon.gov).*

<b>Applicant(s):</b>	David Benjamin Henzel
<b>Location(s):</b>	2215 SE Harrison St
<b>Tax Lot(s):</b>	12E25CC0900
<b>Application Type(s):</b>	Variance; Property Line Adjustment
<b>Decision:</b>	Approved
<b>Review Criteria:</b>	Milwaukie Zoning Ordinance: <ul style="list-style-type: none"><li>• MMC Section 19.1006 Type III Review</li><li>• MMC Section 19.302 Medium and High Density Residential Zones (including R-1-B)</li><li>• MMC Section 19.911 Variances</li></ul> Milwaukie Land Division Ordinance: <ul style="list-style-type: none"><li>• MMC Section 17.12.030 Approval Criteria for Lot Consolidation, Property Line Adjustment and Replat</li><li>• MMC Section 17.28.040 General Lot Design</li></ul>
<b>Neighborhood(s):</b>	Historic Milwaukie

**Appeal period closes: 5:00 p.m., November 11, 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

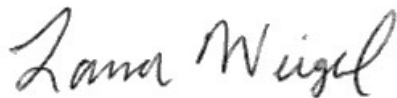
Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Vera Koliass, Senior Planner, at 503-786-7653 or [koliassv@milwaukieoregon.gov](mailto:koliassv@milwaukieoregon.gov), if you wish to view this case file.

**This decision may be appealed by 5:00 p.m. on November 11, 2021, which is 15 days from the date of this decision.**<sup>1</sup> (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](mailto: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.



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Laura Weigel, AICP  
Planning Manager

### **Exhibits**

1. Findings in Support of Approval

cc: D. Ben Henzel (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)

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<sup>1</sup> As per MMC Section 19.1010, if the 15<sup>th</sup> 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.

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)  
Valere Liljefelt, CFD#1 (via email)  
NDA(s): Historic Milwaukie (via email)

Land Use File(s): VR-2021-014; PLA-2021-002

**Findings in Support of Approval**  
**File #VR-2021-014, David Benjamin Henzel – 2215 SE Harrison 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, David Benjamin Henzel, has applied for a variance to allow a property line adjustment between his property and the adjacent property at 10565 SE 23<sup>rd</sup> Ave that does not meet the standards of MMC 17.28.040.C – Limits on Compound Lot Line Segments. The address of the site is 2215 SE Harrison St and it is in the R-1-B Zone. The land use application file number is VR-2021-014.
2. The site is the former city-owned Pond House and is located at 2215 SE Harrison St. The site is made up of two tax lots and has a combined area of approximately 11,653 sq ft (0.26 acres) and contains an office building. The surrounding area consists of the Ledding Library, Waldorf School, attorney's offices, and multi-unit dwellings. The applicant has proposed a property line adjustment (PLA) on the northern property line (side property line). The PLA is requested to resolve a concern regarding potential encroachments, provide additional area for a landscape buffer, and is designed to preserve mature vegetation and an existing stacked rock wall. The proposed lot line shape does not meet the standard that limits compound lot line segments in MMC 17.28.040 and requires a variance.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC Section 19.1006 Type III Review
  - MMC Section 19.302 High Density Residential Zones (including R-1-B)
  - MMC Section 17.28.040 General Lot Design
  - MMC Section 17.12.030 Approval Criteria for Lot Consolidation, Property Line Adjustment, and Replat
  - 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 26, 2021, as required by law.

4. MMC Section 19.302 High Density Residential Zones (including R-1-B)

MMC 19.302 establishes standards for the high-density residential zones, including the R-1-B zone. The subject property is zoned R-1-B.

MMC Subsections 19.302.4 provides applicable development standards for the R-1-B zone, summarized in Table 1:

Table 1 R-1-B Lot and Development Standards		
Standard	R-1-B Requirement	Subject Property
Minimum side yard setback	5 ft	5 ft (standard met)

*The existing development on the subject property meets the minimum side yard setback. The proposed PLA does not bring the property out of conformance with this standard. The Planning Commission finds that approval of the requested variance meets the applicable R-1-B development standards. This standard is met.*

5. MMC Section 17.28.040 General Lot Design

- a. MMC Subsection 17.28040.C establishes the specific provisions for compound lot line segments and states that changes in direction alongside and rear lot lines shall be avoided.

*The applicant’s proposed PLA contains several changes in direction because the new lot line will follow an existing stacked rock wall and will preserve existing mature vegetation. A variance has been requested to allow the proposed lot line adjustment as designed.*

*As proposed, and with approval of the variance discussed in Finding 7, the Planning Commission finds that the applicable standards of MMC 17.28.040 are met.*

6. MMC Section 17.12.030 Approval Criteria for Lot Consolidation, Property Line Adjustment, and Replat

MMC Subsection 17.12.030.A establishes the approval criteria for a property line adjustment.

- a. Compliance with this title and Title 19 of this code.

*As described here and elsewhere in these findings, the proposed PLA complies with applicable sections of Title 17 and Title 19.*

- b. The boundary change will allow reasonable development of the affected lots and will not create the need for a variance of any land division or zoning standard.

*The PLA does not alter the zoning of either parcel of real property, does not change the comprehensive plan designation of either parcel, and does not result in either parcel failing to meet applicable land use and zoning standards. Both affected lots will remain legal in size and use. No additional development would result from this proposed lot line adjustment.*

*Approval of the proposed lot line adjustment will resolve concerns regarding the encroachment of improvements on the subject property, provide additional landscape screening, and allow productive use of a presently unproductive surplus portion of the real property owned by the adjoining property owner.*

- c. Boundary changes shall not reduce residential density below minimum density requirements of the zoning district in which the property is located.

*The adjoining property located at 10565 SE 23rd Ave will transfer approximately 330 square feet to the property located at 2215 SE Harrison St as a result of the proposed PLA. The reduction in property will not make the 10565 SE 23rd Ave parcel less than the required minimum lot size in the R-1-B zone, which is 5,000 square feet, or reduce the lot width below code requirements, which is fifty feet.*

*The Planning Commission finds that the proposed property line adjustment meets the requirements of MMC 17.12.030. The criteria 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 17.28.040 allows requests for relief from the compound lot line standard 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 to allow a new side property line to include numerous changes in direction.*

*The requested variance meets 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 described the proposal. The adjoining property owner has agreed to the lot line adjustment to address concerns regarding a possible encroachment and to allow additional landscape screening in an otherwise unproductive portion of the adjoining property. A straight lot line would have been preferable to the applicant, but the adjoining property owners were not agreeable to such a straight lot line because it could not accommodate the full preservation of existing vegetation and an existing stacked rock wall. Given the limited scope of the affected area, and the small likelihood that subsequent development, approval of a variance to the compound lot line requirement is reasonable and supportable.*

*There are no identified negative impacts related to the requested variance.*

*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 reason the Applicant seeks a lot line adjustment which contains lateral changes to the side property line is to minimize impact to the adjoining property owner. Use of a lot line as proposed by the applicant preserves existing mature vegetation and an existing stacked rock wall and ensures these elements are retained under the control and preservation of the adjoining property owner.*

*The preservation of the mature vegetation and the stacked rock wall allow the adjoining property owner to preserve these elements of the historic property for the benefit of the public, a cause to which the adjoining property owner is passionate and committed.*

*The proposed lot line is designed specifically to preserve an existing stacked rock wall and existing mature vegetation on the adjoining property on which it is presently located. The owner of the adjoining property is enthusiastic about historic preservation and has a strong desire to preserve the existing vegetation and the existing stacked rock wall.*

*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 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. There will be no ongoing work or impacts and the variance will permit the preservation of the mature vegetation and the stacked rock wall.*

*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 August 23, 2021:

- Milwaukie Building Department
- Milwaukie Engineering Department
- Historice Milwaukie 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 6, 2021, and a sign was posted on the property on October 7, 2021.

No comments were received.