



# CITY OF MILWAUKIE

October 19, 2021

Land Use File(s): VR-2021-016

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on October 19, 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>	Amanda Foley & Steve Gemmell
<b>Location(s):</b>	2244 SE Lake Rd
<b>Tax Lot(s):</b>	1S1E36CB02200
<b>Application Type(s):</b>	Variance (Fence Height)
<b>Decision:</b>	Approved
<b>Review Criteria:</b>	Milwaukie Zoning Ordinance: <ul style="list-style-type: none"><li>• Milwaukie Municipal Code (MMC) Subsection 19.502.2.B Specific Provisions for Accessory Structures (Fences)</li><li>• MMC 19.911 Variances</li><li>• MMC 19.1005 Type II Review</li></ul>
<b>Neighborhood(s):</b>	Historic Milwaukie

**Appeal period closes: 5:00 p.m., November 3, 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 Brett Kelter, Senior Planner, at 503-786-7657 or [kelterb@milwaukieoregon.gov](mailto:kelterb@milwaukieoregon.gov), if you wish to view this case file or visit the project webpage at [www.milwaukieoregon.gov/planning/vr-2021-016](http://www.milwaukieoregon.gov/planning/vr-2021-016).

**This decision may be appealed by 5:00 p.m. on November 3, 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.) Any person who is adversely affected or aggrieved by this decision may appeal the decision by filing

<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.

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](mailto: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.

### **Conditions of Approval**

None

### **Other requirements**

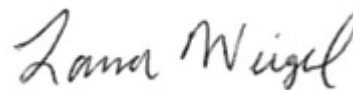
None

### **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



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Laura Weigel, AICP  
Planning Manager

### **Exhibits**

1. Findings in Support of Approval

cc: Amanda Foley & Steve Gemmell (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)  
NDA(s): Historic Milwaukie (via email)  
Interested Persons  
Land Use File(s): VR-2021-016

**EXHIBIT 1**  
**Findings in Support of Approval**  
**File #VR-2021-016, Fence Height Variance (2244 SE Lake Rd)**

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, Amanda Foley and Steve Gemmell, have applied for a variance for the maximum front yard fence height to allow two fence panels with a height of 6 ft each at 2244 SE Lake Rd. The subject property is 0.67 acres (approximately 29,370 sq ft), is zoned Residential-Business Office (R-1-B), and is currently developed with a single-unit dwelling (house). The land use application file number is VR-2021-016.
2. The subject property fronts on Lake Road, an arterial street. It is located on the south side of Lake Road at the intersection of 23<sup>rd</sup> Avenue to the north, which serves as a primary entrance to Milwaukie High School. A crosswalk from the east corner of 23<sup>rd</sup> Avenue across Lake Road lands in the middle of the subject property's frontage and directs the attention of southbound pedestrians in the crosswalk to the front yard and front façade of the house. Until recently, a landscaped hedge in the public right-of-way along the front property line provided a dense privacy screen from activity at Milwaukie High School, including southbound vehicle traffic on 23<sup>rd</sup> Avenue and pedestrians using the crosswalk. The proposed fence panels would restore some of the privacy that was impacted by the City's recent removal of the hedge as part of a public improvement project.
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. MMC Section 19.502 Accessory Structures

MMC 19.502 establishes provisions and standards for accessory structures, including fences. MMC Subsection 19.502.1.G allows fences in yards (including the front yard) in all residential zones. MMC Subsection 19.502.2.B provides specific standards for fences, walls, and plantings, including maximum heights—6 ft for rear, street-side, and side yards and 42 in for front yards. No electrified, barbed, or razor wire fencing is permitted.

*The applicant is proposing to install two fence-like panels in the front yard, to serve as privacy screens where previously existing landscaping in the public right-of-way was removed for a City public improvement project. The proposed fence panels would be two lumber-framed metal screens approximately 6 ft tall and 8 ft wide, installed along the front property line in conjunction with new on-site landscaping plantings. A variance has been requested to allow the proposed fence panels to exceed the 42-in front-yard height limit for fencing.*

*With approval of the variance as discussed in Finding 5, the Planning Manager finds that the applicable standards of MMC 19.502 are met.*

5. MMC Chapter 19.911 Variances

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. Ineligible variances include requests that result in any of the following: change in 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 exceed the maximum allowed front-yard fence height.*

*The requested variance meets the eligibility requirements.*

b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. MMC 19.911.3.B establishes the Type II review process for limited variations to certain numerical standards, including varying fence height up to a maximum of 6 ft for front yard fences. MMC Subsection 19.911.3.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 to exceed the front yard fence height standard of 42 in to allow 6-ft-tall fence panels. The requested variance is eligible for Type II review.*

c. MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes the approval criteria for variances, with the following criteria for Type II variance applications provided in MMC Subsection 19.911.4.A:

- (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-in maximum front yard fence height is to maintain visibility between structures and the street and to prevent fences from "walling off" the street. The two proposed fence panels would be installed with some separation between them (approximately 8 ft) to present a visual screen without a wall effect.*

*The subject property backs onto Kellogg Creek, and a designated Habitat Conservation Area (HCA) extends onto the property to a point within approximately 28 ft of the front property line. The proposed fence panels will be within 1 to 2 ft of the front property line and so will not disturb the HCA and do not present any impact to nearby properties or to public health, safety, or welfare.*

*The Planning Manager finds that this criterion is 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.

*As proposed, the fence panels will not encroach into the public right-of-way and will not interfere with any future right-of-way improvements. The City recently completed a project to improve the adjacent portion of Lake Road with sidewalks, bike lanes, stormwater facilities, and similar roadway elements — no additional public improvements are planned at this location.*

*The Planning Manager finds that this 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 proposed fence panels are part of the applicants' larger effort to re-landscape the front yard and will be complemented by new plantings amidst existing trees and shrubs. The applicants have proposed to use decorative metal screens as the central part of the panels, to provide a pleasant and interesting aesthetic in addition to privacy.*

*The Planning Manager finds that this criterion is met.*

- (4) Impacts from the proposed variance will be mitigated to the extent practicable.

*As proposed, the fence panels will not impact clear vision between the existing driveway and the adjacent sidewalk and street. No impacts needing mitigation have been identified.*

*The Planning Manager finds that this criterion is met.*

*The Planning Manager finds that the approval criteria for the Type II variance are met.*

6. The application was referred to the following departments and agencies on September 30, 2021: Milwaukie Engineering Department, Milwaukie Building Department, Clackamas Fire District #1 (CFD), Clackamas County Department of Transportation & Development, Metro, TriMet, Northwest Natural, Historic Milwaukie Neighborhood District Association, North Clackamas School District, and NW Natural. Notice of the application was also sent to surrounding property owners within 300 ft of the site on September 30, 2021; a sign was posted on the property on September 30, 2021.

The comments received are summarized as follows:

- **Georges Birenbaum, owner of 2419 SE Lake Rd:** No objection to the proposed fence panels.