



# CITY OF MILWAUKIE

March 24, 2022

Land Use File(s): VR-2022-001

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on March 22, 2022.

*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>	Ann DiNucci and Mike Mendez
<b>Location(s):</b>	2807 SE Sherrett St
<b>Tax Lot(s):</b>	1S1E25BA02600
<b>Application Type(s):</b>	Variance Request
<b>Decision:</b>	Approved with Conditions
<b>Review Criteria:</b>	Milwaukie Zoning Ordinance: <ul style="list-style-type: none"><li>• Milwaukie Municipal Code (MMC) Title 12 Streets, Sidewalks, and Public Places</li><li>• MMC Section 19.301 Low Density Residential Zones (incl. R-5)</li><li>• MMC Chapter 19.500 Supplementary Development Regulations</li><li>• MMC Section 19.607 Off-Street Parking Standards for Residential Areas</li><li>• MMC Chapter 19.700 Public Facility Improvements</li><li>• MMC Section 19.911 Variances</li><li>• MMC Section 19.1006 Type III Review</li></ul>
<b>Neighborhood(s):</b>	Ardenwald-Johnson Creek

**Appeal period closes: 5:00 p.m., April 8, 2022**

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 Brett Kelver, Senior Planner, at 503-786-7657 or [kelperb@milwaukieoregon.gov](mailto:kelperb@milwaukieoregon.gov), if you wish to view this case file.

**This decision may be appealed by 5:00 p.m. on April 8, 2022, 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.

### **Conditions of Approval**

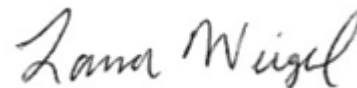
1. As per Finding 4, the applicant is required to construct a hard surface driveway apron and approach in conformance with Milwaukie Municipal Code (MMC) Chapter 12.16 and Milwaukie Public Works Standards. An issued Right-of-Way Permit is required prior to starting any work within the public right-of-way.
2. As per Finding 6, establish at least one off-street parking space that complies with the applicable standards of MMC Section 19.607, with a new accessway from the Sherrett Street frontage of the subject property.

### **Other requirements**

None.

### **Decision**

- Approved  
 Approved with Conditions  
 Denied



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Laura Weigel, AICP  
Planning Manager

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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.

**Exhibits**

1. Findings in Support of Approval

cc: Ann DiNucci and Mike Mendez, applicants (via email)  
Debbie Cleek, applicant's representative (via email)  
Tom Watton, applicant's representative (via email)  
Planning Commission (via email)  
Joseph Briglio, 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)  
Alex McGladrey, CFD#1 (via email)  
NDA(s): Ardenwald-Johnson Creek (via email)  
Interested Persons  
Land Use File(s): VR-2022-001

**EXHIBIT 1**  
**Findings in Support of Approval**  
**File #VR-2022-001, Sherrett Street Yard Setback Variances**

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, Ann DiNucci and Mike Mendez, have applied for approval of variances to the street-side and rear yard setbacks for their property at 2807 SE Sherrett St. The purpose of the request is to facilitate the construction of an addition to the existing single-unit house on the site. The land use file number for the variance request is VR-2022-001.
2. The subject property is approximately 4,900 sq ft in area and is zoned residential R-5. It is at the northeast corner of Sherrett Street and 28<sup>th</sup> Avenue. The property is comprised of two tax lots straddling the municipal border between Milwaukie and Portland and is developed with an existing house. Most of the house floor area is on the Milwaukie side of the boundary, though a small portion at the rear of the structure (a covered patio and upper story covered deck) is on the Portland side. A detached garage is located at the northwest corner of the property and provides an unimproved vehicle access onto the 28<sup>th</sup> Avenue frontage. At that location, 28<sup>th</sup> Avenue serves as a pedestrian/bicycle connection to the Springwater Trail corridor that runs southwest-northeast behind the subject property.

The applicants intend to demolish the detached garage and build an addition of approximately 1,260 sq ft onto the west side of the existing house. The proposed addition will be located within 5 ft of the street-side property line and within 5.25 ft of the rear property line. In the R-5 zone, the minimum required street-side yard setback requirement is 15 ft and the rear yard setback is 20 ft. The applicants have requested a variance from the setback standards to accommodate the proposed addition. With the removal of the detached garage and vehicle access to the site from 28<sup>th</sup> Avenue, a new driveway will be established from the Sherrett Street frontage at the east side of the house.

3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC Chapter 12.16 Access Management
  - MMC Section 19.301 Low Density Residential Zones (incl. R-5)
  - MMC Section 19.607 Off-Street Parking Standards for Residential Areas
  - MMC Chapter 19.700 Public Facility Improvements
  - MMC Section 19.911 Variances
  - MMC Section 19.1006 Type III Review

The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held by the Planning Commission on March 22, 2022, as required by law.

4. MMC Chapter 12.16 Access Management

MMC 12.16 regulates access from private property onto public streets, with specific requirements and standards provided in MMC Section 12.16.040.

MMC Subsection 12.16.040.A states that access to private property is permitted with the use of driveway curb cuts, that driveways must meet all applicable guidelines of the Americans with Disabilities Act (ADA), and that the driveway approaches must be improved to meet the requirements of the City’s Public Works Standards.

MMC Subsection 12.16.040.C governs the location of accessways (driveways), requiring a minimum of 7.5 ft from the side property line in residential districts.

MMC Subsection 12.16.040.F.2 states that single-unit residential uses must have a minimum driveway apron width of 9 ft and a maximum width of 20 ft.

*The applicants are required to construct a hard-surface (asphalt or concrete) driveway approach on Sherrett Street in compliance with City of Milwaukie Public Works Standards. A condition has been established to ensure that this standard is met.*

*As conditioned, the Planning Commission finds that this standard is met.*

5. MMC Section 19.301 Low Density Residential Zones (including R-5)

MMC 19.301 establishes standards for Low Density Residential zones, including the R-5 zone, with development standards provided in MMC Subsections 19.301.4 and 19.301.5. The applicable standards are addressed as described in Table 5 (Zoning Compliance) below.

Standard	R-5 Requirement	Existing House	Proposed (with new addition)
Front Yard	20 ft	17 ft (to front porch) 21 ft (to house)	17 ft (to front porch) 21 ft (to house)
Side Yard (interior)	5 ft	22.5 ft (east side)	22.5 ft (east side)
Street-Side Yard	15 ft	23.33 ft (4 ft to detached garage)	5 ft (see Finding 8 for discussion of variance)
Rear Yard	20 ft	10.67 ft (0 ft to detached garage)	5.25 ft (see Finding 8 for discussion of variance)
Maximum lot coverage	35%	23.5%	32.5%
Minimum vegetation	25%	c.65%	59%
Front Yard Minimum Vegetation	40%	c.94%	c.81.5%

*As proposed, and with approval of the variances discussed in Finding 8, the Planning Commission finds that the applicable R-5 zone standards of MMC 19.301 are met.*

6. MMC Section 19.607 Off-Street Parking Standards for Residential Areas

MMC Subsection 19.607.1 establishes standards for residential driveways and vehicle parking areas, including a requirement for providing at least one off-street parking space for the property that is not located in the required front or street-side yard. The parking space must be at least 9 ft wide by 18 ft deep. No more than 50% of the front yard area can be used for parking, with no more than three parking spaces allowed in the front yard.

*Currently, the only off-street parking on the subject property is the detached garage located in the street-side yard adjacent to 28<sup>th</sup> Avenue, which constitutes a nonconforming situation. As proposed, the garage will be demolished to make room for the proposed house addition and vehicle access to the subject property from 28<sup>th</sup> Avenue will be closed. The applicants have proposed to establish a conforming off-street parking space on the east side of the property's Sherrett Street frontage, with a new 9-ft-wide driveway leading to a 12-ft by 19-ft parking area along the east side of the house. The proposed parking location is just beyond the 20-ft front yard setback, occupies well under 50% of the front yard area, and provides only one parking space in the front yard. In accordance with the applicability provisions of MMC Subsection 19.602.3, a condition has been established to ensure that the existing nonconforming parking situation is improved as proposed in conjunction with the proposed development.*

*As conditioned, the Planning Commission finds that the applicable standards of MMC 19.607 are met.*

7. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 is intended to ensure that development, including expansions, provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts.

a. MMC Section 19.702 Applicability

MMC 19.702 establishes the applicability of MMC 19.700, including a new dwelling unit, any increase in gross floor area, land divisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that result in any projected increase in vehicle trips.

*The applicant is proposing to construct an addition between 200 sq ft and 1,499 sq ft. As per MMC Subsection 19.702.2.B, frontage improvements are not proportional to this development; however, right-of-way dedication may be required pursuant to the street design standards and guidelines contained in MMC 19.708.2.*

*This standard is met.*

b. MMC Section 19.708 Transportation Facility Requirements

MMC 19.708 establishes the City's requirements and standards for improvements to public streets, including pedestrian, bicycle, and transit facilities. The City's street

design standards are based on the street classification system described in the City's Transportation System Plan (TSP).

*The subject property has frontage on Sherrett Street, which the City's TSP and Transportation Design Manual classify as a local street. According to MMC Table 19.708.2 Street Design Standards, the required right-of-way width for a local street is between 20 ft and 68 ft, depending on the required street improvements.*

*The existing right-of-way is approximately 51.74 ft. Right-of-way dedication is not required for this frontage.*

*This standard is met.*

*As proposed, the Planning Commission finds that the applicable standards of MMC 19.700 are met.*

8. MMC Section 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 a 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 variances to the minimum street-side and rear yard requirements for the R-5 zone, established in MMC Table 19.301.4.B.1.*

*The requested variances meet the eligibility requirements.*

b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. MMC Subsection 19.911.3.B establishes the Type II review process for limited variations to certain numerical standards, including a variance of up to 25% for street-side and rear yard width standards. 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.

*For the R-5 zone, the minimum required street-side yard setback is 15 ft and the required rear yard setback is 20 ft. The applicant has proposed to reduce the street-side yard setback to 5 ft and the rear yard setback to 5.25 ft. Both proposed reductions exceed the 25% limit for Type II review and so are subject to the Type III review process.*

c. MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes approval criteria for variance requests. For Type III variances, MMC Subsection 19.911.4.B.1 provides approval criteria related to

discretionary relief and MMC Subsection 19.911.4.B.2 provides approval criteria related to economic hardship.

*The applicant has elected to address the discretionary relief criteria for the requested variance.*

- (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 existing detached garage is nonconforming with respect to the street-side and rear yard setbacks. It is within 4 ft of the 28<sup>th</sup> Avenue right-of-way boundary and exactly on or just over the rear lot line adjacent to the Springwater Trail corridor property. The proposed development involves removing the detached garage and replacing it with the daylight basement portion of the addition at 5 ft from the boundary with 28<sup>th</sup> Avenue and 5.25 ft from the rear boundary, which represents an improvement of the current nonconforming situation.*

*From the subject property's rear boundary, the Springwater Trail pathway itself is almost 50 ft downslope, so the requested variance for the rear yard will have no practical impact on that facility. Along 28<sup>th</sup> Avenue, the edge of the paved street is approximately 5 ft from the street-side boundary. This portion of 28<sup>th</sup> Avenue functions primarily as a connection to the trail for bicycles and pedestrians rather than as a regular local street, and there are no plans for widening or other improvements within the existing right-of-way. The requested variance for the street-side yard would provide at least 10 ft of separation between the new addition and the street, which is 1 ft more than at present.*

*Approval of the requested variances facilitates the removal of the existing nonconforming detached garage and will at least slightly increase the separation between on-site improvements and the 28<sup>th</sup> Avenue trail connection. By removing the existing vehicle access to the garage, it will also eliminate one of two remaining points of conflict for vehicles and bicycles and pedestrians accessing the Springwater Trail on 28<sup>th</sup> Avenue (the other being a driveway on the west side of 28<sup>th</sup> Avenue serving 8555 SE 28<sup>th</sup> Ave). The resulting shift of the subject property's driveway to the eastern side of its frontage on Sherrett Street will reduce the potential for vehicle conflicts at the intersection with 28<sup>th</sup> Avenue.*

*Requiring the applicants to meet the minimum setback standards would significantly limit the space available for the applicants to utilize that part of the site that is most valuable for them and most useful given the floorplan of the existing house. It would push the addition to the eastern side of the house and require a significant reconfiguration of the existing floor plan. It would also remove much of the incentive to demolish the existing nonconforming detached garage.*

*The Planning Commission finds that the analysis of the impacts and benefits of the requested variances compared to the baseline requirements is acceptable. This criterion is met.*



- (2) The proposed variance is determined to be both reasonable and appropriate, and it meets one or more of the following criteria:
- The proposed variance avoids or minimizes impacts to surrounding properties.
  - The proposed variance has desirable public benefits.
  - The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

*The subject property is irregularly shaped, due to the way 28<sup>th</sup> Avenue was platted at an angle along its western boundary and with the Springwater Trail corridor (which follows an old railroad line) running at a northeast-to-southwest angle along its northern boundary. The area is gently sloped, dropping approximately 7 ft from west to east across the subject property and offering views of the west hills at a distance across the Willamette River. The existing house is located near the middle of the property, but the focus of the site is toward the west and northwest, where an existing outdoor patio area and several windows take advantage of the privacy and views enhanced by the topography and surrounding development.*

*The east side of the property offers the best opportunity to add on to the existing house without needing a variance from any setbacks. But the east side of the house does not provide the views and privacy of the west side and is adjacent to another residential property. There are no residential properties immediately adjacent to the western (street-side) or northern (rear) boundaries.*

*The descending grade to the west of the existing house provides an opportunity to expand the floor area through a daylight basement with a rooftop deck. The applicants have opted to bring the main-floor portion of the proposed addition no closer to the western boundary than the minimum 15-ft street-side setback—only the daylight basement and rooftop deck portion will encroach into the street-side yard, which will limit the mass of the building where closest to 28<sup>th</sup> Avenue.*

*As noted above, the proposed development includes removal of the existing vehicle access to the garage. That action will also eliminate one of the two remaining points of conflict for vehicles and bicycles and pedestrians accessing the Springwater Trail on 28<sup>th</sup> Avenue. The applicants have also proposed to shift the subject property's driveway to the eastern side of its frontage on Sherrett Street, which will reduce the potential for vehicle conflicts at the intersection with 28<sup>th</sup> Avenue.*

*The Planning Commission finds that the requested variances are reasonable and appropriate and that they both meet one or more of the criteria provided in MMC Subsection 19.911.B.1.b.*

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

*The requested variances will allow the proposed addition to be closer to the northern and western property boundaries. As noted above, the actual pathway of the Springwater*

*Trail is approximately 50 ft from the northern property boundary and is at least 7 to 8 ft lower than the subject property, so the requested variance poses no significant impact. An existing 6-ft fence along the rear property line will provide some additional visual buffering.*

*Along the western boundary at 28<sup>th</sup> Avenue, the removal of the detached garage and vehicle access will eliminate one of two remaining points of conflict between vehicles and bicycles and pedestrians accessing the trail. The area between the street and the subject property includes some existing vegetation that provides some screening and buffering. The garage removal will open more space for additional vegetation between the street and the addition.*

*The Planning Commission finds that the requested variances would result in little to no impact to surrounding properties or access to the trail and that no conditions requiring specific mitigation are necessary. This criterion is met.*

*As proposed, the Planning Commission finds that the requested variances meet 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 variances are allowable as per the applicable standards of MMC 19.911.*

9. The application was referred to the following departments and agencies on February 7, 2022:
- Milwaukie Community Development Department
  - Milwaukie Engineering Department
  - Milwaukie Building Department
  - Milwaukie Public Works Department (including Environmental Services)
  - Milwaukie Police Department
  - Milwaukie Code Compliance
  - City Attorney
  - Ardenwald-Johnson Creek Neighborhood District Association (NDA) Chairperson and Land Use Committee (LUC)
  - Clackamas Fire District #1 (CFD #1)
  - Metro
  - Portland Parks and Recreation
  - NW Natural

The responses received are summarized as follows:

- **Alex McGladrey, Deputy Fire Marshal, CFD:** No comments.
- **Jeremy Lorence, East Metro Engineer, NW Natural:** No comments.
- **Lisa Gunion-Rinker, LUC Chair for Ardenwald-Johnson Creek NDA:** Acknowledged that removing the existing driveway on 28th Avenue was good and appreciated that the large tree at the southwest corner of the site would be retained.

Expressed concerns about maintaining safe access to the Springwater Trail corridor for bicyclists and pedestrians during and after construction. Questioned whether a 10-ft street-side yard setback would provide a safer situation. Once staff provided more detailed information about the existing conditions, the concerns were withdrawn, and it was noted that the NDA had no opposition to the variance requests.

- **Kimberly Tallant, Land Use Services Division Manager, Portland Bureau of Development Services:** The rear portion of the subject property is outside the City of Portland Plan District that requires larger landscaped setbacks; however, it is still valuable to maintain the larger City of Milwaukie setbacks in that portion of the property. The Springwater Corridor serves as a transportation, recreation, and scenic amenity, and reducing the setback would impact the appearance of the area and the corridor as a scenic amenity. Additionally, the owners are advised that the apparent encroachment of developed yard area beyond the rear property line into the corridor should be remedied.