



CITY OF MILWAUKIE

July 7, 2022

Land Use File(s): VR-2022-004

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on July 7, 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.

Applicant(s):	Kyle Smith
Location(s):	3126 SE Washington St
Tax Lot(s):	11E36AC01200
Application Type(s):	Variance
Decision:	Approved
Review Criteria:	Milwaukie Municipal Code: <ul style="list-style-type: none">• MMC 12.24 Clear Vision at Intersections• MMC 19.502 Accessory Structures• MMC 19.911 Variances• MMC 19.1005 Type II
Neighborhood(s):	Lake Road

Appeal period closes: 5:00 p.m., July 22, 2022

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 Ryan Dyar at 503.786.7661 or dyarr@milwaukieoregon.gov if you wish to view this case file or visit the project webpage at <https://www.milwaukieoregon.gov/planning/vr-2022-004>.

This decision may be appealed by 5:00 p.m. on July 22, 2022, 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

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.

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

Exhibits

1. Findings in Support of Approval

cc: Kyle Smith (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)
Shawn Olson, CFD#1 (via email)
NDA(s): Lake Road (via email)
Interested Persons
Land Use File(s): VR-2022-004

EXHIBIT 1
Findings in Support of Approval
File #VR-2022-004, 3126 SE Washington St Fence Variance

Sections of the Milwaukie Municipal Code (MMC) not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicant, Kyle Smith, has applied for approval to install a new black chain-link fence that is 60 in tall in the front yard of 3126 SE Washington St. This site is in the Moderate Density Residential (R-MD). The land use application file number is VR-2022-004.
2. The proposal requires a variance to the 42-in 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 12.24.030 Requirements

- (1) MMC 12.24.030.C The clear vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding three (3) feet in height, measured from the street centerline grade. Open wire fencing that does not obscure sight more than ten percent (10%) is allowed to a maximum height of six (6) feet.

b. 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 City Engineer 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 to replace an existing fence with a black chain-link fence that measures 60 in in height in the front yard on two street frontages, Washington Ave and 32nd Ave. Along the Washington Ave frontage, the fence will be located approximately 4 ft from the property line and approximately 11 ft from Washington Ave. Along 32nd Ave, the fence will be located approximately 3 ft from the property line. Because 32nd Ave terminates in a cul-de-sac where it abuts the property, the distance between the street and the proposed fence location varies from approximately 12 ft to 34 ft. Since the fence does not obscure sight by more than 10%, and the property takes vehicular access from 32nd St, the City Engineer has determined that there is no clear vision issue.

A variance application has been submitted to allow a 60-in fence in the front yard at 3126 SE Washington St. Subject to the 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 to allow for the installation of a black chain-link fence in the front yard that exceeds the maximum 42-in height standard.

A variance application has been submitted to allow for the construction of a fence up to 60 in. Subject to the 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 for the construction of a fence up to 60 in tall. 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 exceeding the 42-in height standard for fences in the front yard.

c. 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-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 proposed fence will match in height and appearance a portion of an existing fence that abuts SE Washington St. Due to the placement and orientation of the house, that section of fence is in the property’s side yard. The open design of the black chain-link fence allows for clear vision between the house and the street and will not create a “walled-in” effect. Moreover, the area where the taller fence is proposed abuts the southwest corner of a three-way intersection —where SE Oak St meets SE Washington St. There is no evidence that allowing a taller fence in this area will be detrimental to surrounding properties, as the adjacent property from which the fence is visible is mostly right-of-way.

The subject property is unusual in that the house is placed very close to the rear property line, leaving almost no rear yard. The owner is seeking a variance to erect a fence for his dog. The fence does not cause any public health safety or welfare risks as the fence does not encroach into the public right-of-way. Moreover, the fence may improve safety by limiting access to the intersection of SE Oak St and SE Washington St, thereby reducing the likelihood that the owner’s dog will enter the 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.

As mentioned, the owner is proposing to replace an existing fence with a new black chain link fence that will be consistent with the appearance and height of a pre-existing black chain-link fence that currently abuts SE Washington St. In replacing the fence with a style of fence that is identical to a section of fence already on the property, the proposal sustains the integrity of the existing site design.

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.

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:
 - a. Obtain and pay for all necessary development permits and start construction within 2 years of land use approval (by July 15, 2024).
 - b. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by June 2, 2025).

In this case, staff do not believe development permits are required to establish the fence; however, the applicant should confirm with the Milwaukie Building Department at the time of construction. The applicant is advised that the fence must be established before July 15, 2024, or the approval is void.

10. The application was referred to the following departments and agencies on June 15, 2022: Milwaukie Engineering Department; Milwaukie Building Department; Clackamas Fire District #1; and the Lake Road Neighborhood District Association. Notice of the application was also sent to surrounding property owners within 300 ft of the site on June 15, 2022, and a sign was posted on the property on June 16, 2022. One comment received recommended denial based on the appearance of the fence. The city also received two comments supporting the variance.