



August 24, 2022

Land Use File(s): VR-2022-005
Permit #601-21-001099-STR

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on August 23, 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):	Kristina and Kevin Smith
Location(s):	2433 SE Dove St
Tax Lot(s):	2S1E01BB06700
Application Type(s):	Variance Request
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• Milwaukie Municipal Code (MMC) Section 19.301 Moderate Density Residential Zones (R-MD)• MMC Section 19.502 Accessory Structures• MMC Section 19.911 Variances• MMC Section 19.1006 Type III Review
Neighborhood(s):	Island Station

Appeal period closes: 5:00 p.m., September 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 Kelter, Senior Planner, at 503-786-7657 or kelterb@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on September 8, 2022, which is 15 days from the date of this decision.¹ (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.

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 proposed, remove the existing covered areas described in the submittal materials—existing attached carport, barbeque deck, and patio. As discussed in Finding 4, these structures must be removed prior to a final inspection for the new detached carport.

Other requirements

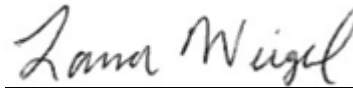
1. Stormwater Management

Submit a storm water management plan to the City of Milwaukie Engineering Department for review and approval. The plan must be prepared in accordance with Section 2 – Stormwater Design Standards of the City of Milwaukie Public Works Standards. Private properties may only connect to public storm systems if percolation tests show that infiltration cannot be obtained on site. In the event the storm management system contains underground injection control devices, submit proof of acceptance of the storm system design from the Department of Environmental Quality.

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.

Decision

- Approved
 Approved with Conditions
 Denied



Laura Weigel, AICP
Planning Manager

Exhibits

1. Findings in Support of Approval
- cc: Kristina and Kevin Smith, applicants (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, Fire Marshal, CFD#1 (via email)
NDA(s): Island Station (via email)
Interested Persons
Land Use File(s): VR-2022-005
Structural Permit: 601-21-001099-STR
Address File: 2433 SE Dove St

EXHIBIT 1
Findings in Support of Approval
File #VR-2022-005, Variances for Smith Carport

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, Kristina and Kevin Smith, have applied for approval of variances to the lot coverage and rear yard setbacks for their property at 2433 SE Dove St. The purpose of the request is to formalize the construction of detached carport structure that was established without first obtaining the necessary permits and review. The applicants have requested variances to the lot coverage standard of the underlying zone and to the rear yard setback standard for accessory structures. The need for an additional variance for the roof pitch of the new carport was identified after the application submittal and is addressed in these findings as well. The land use file number for the variance requests is VR-2022-005.
2. The subject property is approximately 15,000 sq ft in area and is zoned moderate density residential (R-MD). It is at the northwest corner of Dove Street and 25th Avenue. The property is comprised of three underlying lots (Lots 7, 9, and 11) from Block 37 of the Milwaukie Heights subdivision, platted in 1893. The site is developed with a single-unit house with extensive attached covered areas, a detached garage, and the detached carport that is the focus of this application.

County Assessor records indicate that the house was constructed in 1953, and historical aerial photos show that most of the covered areas were in place by 1996. The applicants purchased the property in 2006 and removed an in-ground swimming pool between 2015 and 2016. The applicants propose to remove several covered areas on the site but retain the newly constructed detached carport and get it properly permitted.

3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.301 Moderate Density Residential Zones (R-MD)
 - MMC Section 19.502 Accessory Structures
 - 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 August 23, 2022, as required by law.

4. MMC Section 19.301 Moderate Density Residential Zones (R-MD)

MMC 19.301 establishes standards for the Moderate Density Residential zone (R-MD), which allows single-unit detached dwellings as an outright permitted use. Development standards are provided in MMC Subsections 19.301.4 and 19.301.5. The applicable standards are addressed as described in Table 4 (Zoning Compliance) below.

Table 4 Zoning Compliance: Applicable R-MD Development Standards			
Standard	R-MD Requirement (for lots over 7,000 sq ft)	Existing	Proposed (removal of attached carport/patio, construction of new carport)
Maximum lot coverage	30%	36%	33%
Minimum vegetation	30%	36%	36%
Front Yard Minimum Vegetation	40%	64%	64%

Many of the R-MD development standards are applicable only to primary structures, and no changes are proposed to the existing house. As noted above in Table 4, the proposed new carport will impact the standards related to maximum lot coverage and minimum vegetation.

Excepting the proposed new carport, the existing development on the site includes the house and attached carport and covered barbeque deck and patio area (4,096 sq ft, 27.3% lot coverage) as well as a detached garage (1,274 sq ft, 8.5% additional coverage), for a total of 36% lot coverage. Prior to the City’s recent adoption of code amendments that established the R-MD zone (Ord. 2218, effective June 3, 2022), the subject property was zoned Residential R-5. The 35% coverage standard for the R-5 zone was introduced in the 1968 version of the zoning code. The house was built in 1953 but there is no available record of when the detached garage or attached covered areas were constructed.

In 2012, the code was amended to reduce the maximum lot coverage to 25% for lots more than two-and-a-half times larger than the minimum lot size (5,000 sq ft for the R-5 zone). An increase of 10 percentage points was allowed for portions of the primary structure no taller than one story or 20 ft. With the 2022 code changes, the lot coverage adjustments of MMC 19.301.5.B were revised to apply the 10-point reduction simply to lots over 10,000 sq ft (no reference to minimum lot size) and relate the 10-point increase only to the height of the added coverage (not the number of stories).

Because the existing development was established prior to the adoption of the previous lot coverage adjustments of MMC 19.301.5.B, and since the timing of construction of the various structures and covered areas in relation to one another is unclear, it is reasonable to consider the adjustments of MMC 19.301.5.B to cancel each other out and so accept the basic lot coverage percentage as the standard (previously 35% for the R-5 zone and now 30% for large lots in the R-MD zone). At 36% coverage, the existing development was previously nonconforming with the R-5 standard (35% coverage) and became more nonconforming with the adoption of the new R-MD standard (30% coverage).

The proposal to remove 1,376 sq ft of existing covered area (existing attached carport, barbeque deck, and patio) while adding only 968 sq ft for the new carport will result in a net decrease in lot coverage (from 36% to 33%). The more restrictive lot coverage requirement for large lots in the R-MD zone makes it necessary for the applicants to request a variance to the standard, though only for three percentage points, which is a 10% adjustment and therefore allowable as a Type II variance.

See Finding 6 for a discussion of this variance. A condition has been established to ensure that the structures proposed for removal are removed prior to final inspection for the new detached carport.

As proposed, as conditioned, and with approval of the lot coverage variance discussed in Finding 6, the Planning Commission finds that the applicable R-MD zone standards of MMC 19.301 are met.

5. MMC Section 19.502 Accessory Structures

MMC 19.502 establishes standards for accessory structures, which are structures that are incidental and subordinate to the main use of property and located on the same lot as the main use.

a. MMC Subsection 19.502.1 General Provisions

MMC 19.502.1 establishes general standards for accessory structures, including an allowance for multiple accessory structures as long as requirements for lot coverage and minimum vegetation are met. Accessory structures are subject to the street-side yard setback requirement of the underlying zone (20 ft for an R-MD lot over 7,000 sq ft, as per MMC Table 19.301.4).

The subject property is developed with an existing detached garage and the proposed new carport. As discussed in Findings 4 and 6, the minimum vegetation standard is met, and the applicants have requested an approvable variance to exceed the lot coverage standard. The proposed new carport is set back at least 25 ft from the subject property's street-side boundary along 25th Avenue.

As discussed in these findings and with the variance approved as noted in Finding 6, the applicable standards are met.

b. MMC Subsection 19.502.2 Specific Provisions for Accessory Structures

MMC 19.502.2 provides specific standards for accessory structures. These include height, footprint, and setbacks; a minimum 5-ft setback from the walls of other structures; design standards (including a prohibition on metal siding for structures over 10 ft in height or 200 sq ft in area); and a minimum roof pitch requirement of 4/12 for structures over 10 ft tall. For accessory structures over 600 sq ft in area and over 15 ft in height, the base zone setback standards apply (for an R-MD lot over 7,000 sq ft, 20 ft for the rear yard and 5 ft for the non-street-side yard). No accessory structure is allowed in an actual front yard unless at least 40 ft from the front lot line.

The proposed new carport is 968 sq ft and is not in the front yard or within 5 ft of the non-street-side yard (the western property boundary, in this case). As discussed in Finding 6, the applicants have applied for a variance to allow the new carport to be within 5 ft of the rear property line. The proposed new carport is 5 ft from the adjacent detached garage and is approximately 13 ft in height, with a low-sloping roof that matches the mid-century modern design of the existing house but does not meet the 4/12 pitch requirement. Staff did not identify this issue until after the application was deemed complete and so has addressed the variance criteria for it in Finding 6.

As discussed in these findings and with the variances approved as noted in Finding 6, the applicable standards are met.

The Planning Commission finds that, as proposed and with the variances approved as noted in Finding 6, the applicable standards of this section are met.

6. 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 applicants have requested variances to the lot coverage standard of the underlying R-MD zone and to the rear yard setback standard for accessory structures. In addition, staff identified a need for a variance to the roof pitch standard for accessory structures. Although the new carport already exists and was constructed without obtaining the necessary permits and review, there is no building code violation, as the structure is being retroactively reviewed and will demonstrate compliance with the applicable building code requirements.

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 10% for lot coverage standards and up to 25% for front, rear, or street-side yard setbacks. 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-MD zone, the maximum allowed lot coverage is 30%; the applicants are proposing 33% lot coverage, which is a 10% increase. For accessory structures over 600 sq ft, the required rear yard setback is 20 ft; the applicants are proposing a 5-ft rear setback. The requested lot coverage variance qualifies for Type II review; the requested accessory structure rear yard setback variance exceeds the 25% limit and so is subject to the Type III review process. There is no Type II variance option related to accessory structure roof pitch, so that variance requires Type III review.

As per MMC Subsection 19.1001.6.B.1, applications are processed according to the highest numbered review type. As per MMC Subsection 19.911.3.A.3, each variance request must be addressed separately, which includes addressing the applicable approval criteria.

c. MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes approval criteria for Type II and Type III variance requests.

The requested variance for lot coverage is subject to the Type II approval criteria. The requested variances for accessory structure rear yard setback and roof pitch are subject to the Type III approval criteria, and the applicants have elected to address the criteria for discretionary relief instead of those for economic hardship.

(1) MMC Subsection 19.911.4.A Approval Criteria for Type II Variances

- (a) 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 proposal to increase lot coverage from 30% to 33% will not have any effect on surrounding properties or public health, safety, or welfare. There are no designated natural resources on or near the subject property.

- (b) 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.

Lot coverage is not an element that will impact any future public improvements.

- (c) Where site improvements already exist, the proposed variance will sustain the integrity of, or enhance, an existing building or site design.

The proposed lot coverage increase will allow a new carport structure over an existing driveway, providing weather protection for a portion of the existing parking area. The large overhangs of the new carport mirror the mid-century modern design of the existing house. The requested variance facilitates the removal of an older attached carport on the west side of the property that extends to the property line; its removal will eliminate a nonconforming setback issue there and will provide more separation between the existing house and the adjacent property to the west. With the proposed removal of several other covered areas, the net result will be a reduction in the existing nonconforming lot coverage, from 36% to 33%.

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

There are no real impacts from the proposed lot coverage variance, which is part of a proposal to remove other existing covered areas on the site. The concurrent removal of coverage will provide more space for potential landscaping and represents a net reduction in the existing nonconforming lot coverage (from 36% to 33%). The requested variance will facilitate the removal of an older attached carport on the west side of the property, which will provide more open space and separation between the existing house and the adjacent property to the west. No vegetation will be removed for the new carport, and the applicants have proposed

to plant three cherry trees on the interior side of the driveway near the new carport.

- (e) The proposed variance would allow the development to preserve a priority tree or trees, or provide more opportunity to plant new trees to achieve 40% canopy, as required by Chapter 16.32.

As noted above, the proposed variance does not involve the removal of any existing vegetation and is in conjunction with a proposal to remove some existing covered areas, which will provide more space for potential landscaping. The applicants have also proposed to plant three cherry trees on the interior side of the driveway near the new carport.

As proposed, the Planning Commission finds that the requested variance for lot coverage meets the approval criteria established in MMC 19.911.4.A for Type II variances.

- (2) MMC Subsection 19.911.4.B.1 Approval Criteria for Type III Variances--
Discretionary Relief Criteria

- (a) 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.

Rear yard setback – The applicants are proposing to reduce the rear yard setback for the new carport from 20 ft to 5 ft. The subject property is a corner lot, with a driveway providing access to 25th Avenue that is located very near the rear property line. This makes the rear boundary function more like an interior-side line, which would require only a 5-ft setback if 25th Avenue was the property's actual front lot line. The proposed setback variance would also allow the northern edge of the new carport, which is proposed to be within 5 ft of the rear property line, to remain aligned with the northern edge of the 25th Avenue driveway.

Roof pitch – The proposed new carport is 13 ft tall and has a very low-slope roof (less than 2/12 pitch), well under the 4/12 pitch requirement for accessory structures over 10 ft in height. Given that the purpose of the carport includes storing a large recreational vehicle (RV), the building height would need to be increased to accommodate the RV and provide the minimum required roof pitch. Although accessory structures over 600 sq ft in area are allowed to be up to 25 ft in height, they are limited to the height of the primary structure (or 15 ft, regardless of primary structure height). The existing house is a single-story structure and has a similar style low-pitch roof; increasing the new carport height to achieve the minimum required roof slope would make the accessory structure taller than the existing house and greater than 15 ft in height.

The applicants have provided a sufficient analysis of impacts and benefits of the requested variances. This criterion is met.

- (b) 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 proposed variance would allow the development to preserve a priority tree or trees, or provide more opportunity to plant new trees to achieve 40% canopy, as required by Chapter 16.32.

Rear yard setback – The requested setback variance is reasonable and appropriate because the subject property’s driveway onto 25th Avenue makes the rear lot line function more like an interior side lot line, which would require a setback of only 5 ft. The 5-ft setback still provides some separation of the new carport from the adjacent property to the north, and it allows the carport to be aligned with the existing driveway, which is approximately 5 ft from the northern boundary. At this location, 25th Avenue is a short dead-end street with very little traffic, so the new carport and its location have very little impact.

Roof pitch – The proposed roof pitch variance allows the new carport to match the same low-slope style of roof that matches the mid-century modern style of the nearly flat roof of the existing house. The applicants’ interest in maintaining a similar architectural style for the property is reasonable and appropriate, and there are no negative impacts from allowing the lower roof pitch.

The requested variances are reasonable and appropriate and meet one or more of the criteria provided in MMC Subsection 19.911.B.1.b. This criterion is met.

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

Rear yard setback – The requested setback variance will not result in any impacts that require mitigation. The new carport will be 5 ft from the adjacent property to the north, which is appropriate for the interior-side-lot-line feel of the subject property’s rear lot line. No conditions requiring specific mitigation are necessary.

Roof pitch – There are no impacts from the proposed roof pitch variance that require mitigation. The lower roof pitch will not impact neighboring properties and will not prevent the necessary management of stormwater runoff from the new roof.

The requested variances do not have any impacts that require mitigation. This criterion is met.

As proposed, the Planning Commission finds that the requested variances to the rear yard setback and roof pitch requirements for the new carport 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 meet the approval criteria for Type II or Type III variances as applicable.

The Planning Commission finds that the requested variances are allowable as per the applicable standards of MMC 19.911.

7. The application was referred to the following departments and agencies on July 13, 2022:
- Milwaukie Community Development Department
 - Milwaukie Engineering Department
 - Milwaukie Building Department
 - Milwaukie Code Compliance
 - City Attorney
 - Island Station Neighborhood District Association (NDA) Chairperson and Land Use Committee (LUC)
 - Clackamas Fire District #1 (CFD #1)
 - NW Natural

The responses received are summarized as follows:

- **Ashly Hoffman, member of Island Station NDA LUC:** Support for the requested variances.