



CITY OF MILWAUKIE

September 15, 2022

Land Use File(s): VR-2022-008

Permit # 601-22-000557-STR

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on September 13, 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):	Margaret and Thomas Nolan
Location(s):	11925 SE 70th Ave
Tax Lot(s):	1S2E32CA03000
Application Type(s):	Variance Request
Decision:	Approved
Review Criteria:	Milwaukie Municipal Code: <ul style="list-style-type: none">• MMC Section 19.301 Moderate-Density Residential (R-MD)• MMC Section 19.911 Variances• MMC Section 19.1006 Type III Review
Neighborhood(s):	Linwood

Appeal period closes: 5:00 p.m., September 30, 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 Ryan Dyar, Assistant Planner, at 503-786-7661 or dyarr@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on September 30th, 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

None.

Other Requirements

None.

Decision

- Approved
- Approved with Conditions
- Denied



Laura Weigel, AICP
Planning Manager

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.

Exhibits

1. Findings in Support of Approval

cc: Margaret and Thomas Nolan (via email)
Ed Paget (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): Linwood (via email)
Interested Persons
Land Use File(s): VR-2022-008
Structural permit: 601-22-000557-STR
Address File: 11925 SE 70th Ave

ATTACHMENT 1
Recommended Findings in Support of Approval
Primary File #VR-2022-008, Nolan rear yard setback reduction

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

1. Ed Paget on behalf of Margaret and Thomas Nolan (owners) has applied to reduce the rear yard setback for their property at 11925 SE 70th Ave from 20 ft to 10 ft. The purpose of the request is to accommodate a new attached and unenclosed patio cover for an existing concrete pad. The primary land use file number for the variance request is VR-2022-008.
2. The subject property is approximately 6,989 sq ft and is at the northwest corner of 70th Ave. and Plum Dr. in the southeastern portion of the Linwood Neighborhood. The property was created as Lot 9 of the Cedarcrest No.4 Subdivision (platted June 4, 1966). It is developed with a single-detached dwelling and a garden shed. The property and the properties in the immediate vicinity are zoned Moderate Density Residential (R-MD). County Assessor records indicate that the house was constructed in 1968 and was constructed to the 20 ft rear setback line.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.301 Moderate Density Residential (R-MD)
 - 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 September 13, 2022, as required by law.

4. MMC Section 19.301 Moderate Density Residential Zone (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 1 (Zoning Compliance) below.

Table 1 Zoning Compliance: Applicable R-MD Development Standards			
Standard	R-MD Requirement (for lots over 5,000-6,999 sq ft)	Existing	Proposed (Add attached and unenclosed patio cover over existing concrete pad.)
Maximum lot coverage	35%	26%	28%
Minimum vegetation	25%	36%	No changes (patio slab pre-existing)
Rear Yard Setback	20 ft	20 ft	10 ft
Side Yard Setback	5 ft / 5 ft	29 ft / 19 ft	No changes
Maximum height	35 ft	–	Cover Peak at 11 ft 6 in

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

5. 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 a variance to the rear yard setback standard for primary structures in the R-MD zone. The rear yard setback standard is not identified as ineligible for a variance under MMC Subsection 19.911.2.B. The patio cover would be used by the occupants of the existing residence. A single-detached residence is permitted by right in the R-MD. The applicant is not proposing to alter a definition in the MMC. Granting this request would not increase the allowed density. The applicant has applied for building permits for the patio cover.

The Planning Commission finds that 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 Subsection 19.911.3.B establishes the Type II review process for limited variations to

certain numerical standards, not including building height. 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 applicant has proposed to reduce the required rear yard setback from 20 ft to 10 ft, a 50% reduction. This exceeds the 25% allowed under MMC 19.911.3.B. The Planning Commission finds that the requested reduction is 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.

MMC Table 19.301.4 requires that a primary structure be set back a minimum of 20 ft from the rear property line. The applicant is requesting to reduce the required setback to 10 ft to accommodate an unenclosed patio cover that is attached to the single-detached dwelling. The application statement contains a description of the alternatives considered and the benefits of granting the variance to the base zone setback requirement.

The property was previously shaded by a large tree on a neighbor's property, which was removed due to infestation. With global temperatures rising, scientists are predicting warmer summers in the Pacific Northwest. The applicant discusses that a patio cover would shield their rear door from sunlight—proving energy savings in the form of reduced cooling costs. It would also provide increased health and comfort in the form of outdoor space that's protected from direct UV radiation.

The applicant discusses the drawbacks of alternatives considered, such as the limited durability and functionality of a canvas structure. Adding a detached structure was also considered, as an accessory structure of the size proposed can be located within 5 ft of the rear property line under the existing code; however, this would not provide the energy conservation that an attached structure provides. Moreover, the impacts would be similar if not greater, as the structure would likely be closer to the abutting rear property, 6915 SE Plumb Dr. Lastly, the applicant considered requesting a 5 ft reduction to the rear yard setback to accommodate a smaller patio cover; this could have been accomplished through a Type II variance; however, the cost to construct the structure would have been similar to constructing the larger one but the functionality would have been greatly reduced.

The Planning Commission finds that the analysis of the impacts and benefits of the requested variance 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 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.

The applicant's request is limited to a 10 ft reduction. They're not proposing to eliminate the setback entirely. As noted, the applicant is responding to the removal of a significant tree that previously provided shade for their yard and house. The applicant considered other options that might have been permitted by right but more impactful to their rear neighbor—a similar sized detached structure. The applicant also indicates that the covered area will allow them to socialize with neighbors more safely during a global pandemic—a notable change in their environment. Finally, the applicant indicates that they plan to mitigate any impacts to the rear property by adding greenery along the rear fence line.

The Planning Commission finds that the requested variance is reasonable and appropriate and that it meets 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.

To the extent there are any, the impacts from the proposed variance are likely to be minor. As mentioned above, the impacts of the proposed variance—which will permit an attached structure—are potentially less than what might be permitted by right under the base zone standards. Additionally, the applicant is offering to mitigate any impact to the rear property owner through additional plantings along the rear fence line.

The Planning Commission finds that the requested variance would result in little to no impact to surrounding properties and that the applicant is appropriately mitigating any impacts that might occur by planting additional greenery along the rear fence line. This criterion is met.

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.

6. The application was referred to the following departments and agencies on August 15, 2022:

- Milwaukie Community Development Department
- Milwaukie Engineering Department
- Milwaukie Building Department
- Milwaukie Neighborhood District Association Program Manager
- Milwaukie Community Development Director
- Linwood Neighborhood District Association (Chair and Land Use Committee Members)
- City Attorney
- Clackamas Fire District #1 (CFD #1)

In addition, public notice was provided as required by MMC Subsection 19.1006.3 on August 24, 2022. The responses received are summarized as follows:

- **Harold Richard Mandell and Rochelle Goldbloom, neighbors of Nolan household:** Support for the requested variance.