



CITY OF MILWAUKIE

November 30th, 2022

Land Use File(s):R-2022-003; VR-2022-010
Permit #: 601-22-001532-STR; 601-22-001472-ADU

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on November 30, 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):	Lance Nelson
Location(s):	4185 SE Filbert St .
Tax Lot(s):	1S1E25AD06800
Application Type(s):	Replat; Variance
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Municipal Code: <ul style="list-style-type: none">• MMC Title 17 Land Division• MMC 19.301 Moderate Density Residential (R-MD) Zone• MMC 19.500 Supplementary Development Regulations• MMC 19.700 Public Facility Improvements• MMC 19.911 Variances• MMC 19.1005 Type II Review
Neighborhood(s):	Ardenwald-Johnson Creek; Lewelling

Appeal period closes: 5:00 p.m., December 15, 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, Assistant Planner at 503-786-7661 or by email at dyarr@milwaukieoregon.gov if you wish to view this case file or visit the project webpage at <https://www.milwaukieoregon.gov/planning/r-2022-003>.

This decision may be appealed by 5:00 p.m. on December 15, 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 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.

Exhibits:

1. Findings in Support of Approval
2. Conditions of Approval

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

cc: Lance Nelson (via email)
Joseph Briglio, Community Development Director (via email)
Steve Adams, City Engineer (via email)
Engineering Development Review (via email)

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.

Milwaukie Building Department (via email)
Milwaukie Planning Commission (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Technician (via email)
Clackamas County Fire District #1 (via email)
NDA(s): Ardenwald-Johnson Creek ; Lewelling (via email)
Milwaukie NDA Program Manager
Clackamas County Engineering Development Review (via email)
Metro Land Use Review (via email)
NW Natural (via email)
Interested Persons:
 Courtney Johnson (via email)
Land Use File(s): R-2022-003; VR-2022-010

EXHIBIT 1
Findings in Support of Approval
File #R-2022-003; VR-2022-010, Replat and Variance for 4185 SE Filbert St

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, Lance Nelson, and Gemma Wilson have applied for approval to replat their property at 4185 SE Filbert St (the “subject property”) to partition their lot and create a total of two properties. The subject property is identified as Tax Lot 1S1E25AD06800 Clackamas County Tax Assessor map and is zoned Moderate Density Residential (R-MD).
2. The subject property is comprised of Lot 1 of the Thomas R. West Subdivision (subdivision platted in 1946). The proposal is to replat the subject property, which is approximately 15,197 sq ft (Milwaukie Maps lists the property as 15,056 sq ft), to create two standard rectangular lots. Parcel 1 would be approximately 6,460 sq ft with frontage along 42nd Ave and Parcel 2 would be approximately 8,737 sq ft and remain a corner lot with access along Filbert ST and 42nd Ave.
3. The proposed boundary adjustment involves the reconfiguration of a platted lot from a recorded subdivision and therefore constitutes a replat as per the definitions in Milwaukie Municipal Code (MMC) Chapter 17.08. The proposal is subject to the following provisions of the MMC:
 - MMC Title 17 Land Division, including:
 - MMC Chapter 17.12 Application Procedure & Approval Criteria
 - MMC Chapter 17.16 Application Requirements and Procedures
 - MMC Chapter 17.20 Preliminary Plat
 - MMC Chapter 17.28 Design Standards
 - MMC Chapter 17.32 Improvements
 - MMC Section 19.301 Moderate Density Residential Zone (R-MD)
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.911 Variances (Type II)
 - MMC Section 19.1005 Type II Review

The applicant is the property owner and has the authority to initiate the application per MMC Subsection 19.1001.6.A. The application was submitted on October 7th, 2022, and was deemed complete on November 1, 2022. The application has been processed in accordance with MMC Section 19.1005 Type II Review, with a decision by the Planning Director.

4. MMC Title 17 Land Division

MMC Title 17 establishes the standards and procedures for land division and property boundary changes.

 - a. MMC Chapter 17.12 Application Procedure and Approval Criteria
 - (1) MMC Section 17.12.020 Application Procedure

MMC Table 17.12.020 outlines the applicable review procedures for various types of land divisions and property boundary changes, including replats. As per MMC Table 17.12.020, a partition replat (i.e., a replat resulting in 3 or fewer lots) that does not modify a plat originally decided by the City's Planning Commission and is not a parcel consolidation is subject to Type II review. As per MMC Subsection 17.12.020.B.1, Type II review may be changed to Type I review upon finding that the proposal is consistent with applicable standards and criteria, that it is consistent with the basis and findings of the original approval, and that it does not increase the number of lots.

The subject property is comprised of Tract 6 from the Thomas R. West Subdivision (subdivision platted in 1946). The proposed reconfiguration of the underlying subdivision lot would create a new developable lot, which is a partition replat as per the definitions of MMC Chapter 17.08 and the guidance of MMC Table 17.12.020.

The original plat, Thomas R. West Subdivision, was platted and recorded in 1946 by Clackamas County; this was before the City's first subdivision ordinance was adopted in 1967. The proposed replat is not a parcel consolidation and is consistent with all applicable standards and criteria but would increase the number of lots from one to two.

The Planning Manager finds that the proposed replat is not a candidate for reduction to Type I review because it is increasing the total number of lots and so is subject to Type II review.

(2) MMC Section 17.12.030 Approval Criteria for Lot Consolidation, Property Line Adjustment, and Replat

MMC 17.12.030 establishes three approval criteria for a replat.

(a) The boundary change is compliant with Title 17 and Title 19.

As discussed in these findings, the proposed replat complies with all applicable standards of Titles 17 and 19.

(b) The boundary change will allow reasonable development of the affected lots and will not create the need for a variance of any land division or zoning standard.

As discussed in Findings 7, the applicant is requesting a variance to the rear yard setback standard on Parcel 1 to accommodate the location of an existing detached garage that is being converted to a single-unit dwelling. No further development is proposed for Parcel 2, which already contains a single-unit dwelling.

Notwithstanding the variance requested, the proposed lot configuration could easily accommodate development without this variance. The variance proposed with this application is intended to foster reinvestment in an existing building, which is consistent with the intent of MMC Section 19.911. The proposed configuration of Parcel 1 and Parcel 2 allows for reasonable development to occur without the need for a variance of any land division or zoning standard.

- (c) Boundary changes shall not reduce residential density below minimum density requirements of the zoning district in which the property is located.

The subject property is zoned for moderate-density residential development, with 0.35 acres and a minimum density of 2 single-dwelling units. As proposed, Parcel 1 would be approximately 0.15 acres, with a minimum and maximum density of 1 unit. Parcel 2, as proposed, would be approximately 0.20 acres, with a minimum density and maximum density of 1 unit. As proposed, each property would contain 1 single-dwelling unit. Parcel 1 would also contain an accessory dwelling unit; however, accessory dwelling units do not count toward density requirements per MMC 19.910. The minimum density requirements for the property remain unchanged. The proposed replat does not reduce the residential density below minimum density requirements.

The Planning Manager finds that the proposed replat meets the approval criteria established in MMC 17.12.030.

The Planning Manager finds that the proposed replat meets all applicable standards of MMC 17.12.

- b. MMC Chapter 17.16 Application Requirements and Procedures

MMC Section 17.16.050 establishes the application requirements for replat, including completed application forms and checklists, applicable fees, a narrative describing how the proposal meets approval criteria, and the applicable information specified for preliminary plat on the City's Preliminary Plat Checklist and in MMC Chapter 17.20 Preliminary Plat.

The applicant's submittal materials include the necessary forms, checklists, and fees, as well as a narrative, preliminary plat document, and other information sufficient to demonstrate compliance with the applicable standards and criteria.

As proposed, the Planning Manager finds that the application meets the applicable requirements for replat submittal.

- c. MMC Chapter 17.20 Preliminary Plat

MMC 17.20 establishes the information required for a preliminary plat, including general information to be shown on the plat and existing and proposed conditions.

The applicant's preliminary plat submittal is to scale and includes details about the vicinity, existing conditions, existing improvements on proposed Parcels 1 and 2, and the new configuration for both proposed parcels.

As proposed, the Planning Manager finds that the preliminary plat includes the relevant and necessary information as outlined in MMC 17.20.

d. MMC Chapter 17.28 Design Standards

(1) MMC Section 17.28.040 General Lot Design

MMC 17.28.040 establishes general design standards for lots, including standards for size, shape, compound lot line segments, and frontage.

(a) MMC Subsection 17.28.040.A Size and Shape

MMC 17.28.040.A requires that the lot size, width, shape, and orientation shall be appropriate for the location and the type of use contemplated. Minimum lot standards shall conform to Title 19.

As addressed in Findings 5 and 6, the proposed replat would result in parcels that both have adequate size and dimensions for development and uses allowed in the underlying R-MD zone and conform to the standards of Title 19.

(b) MMC 17.28.040.B Rectilinear Lots Required

MMC 17.28.040.B requires that lot shape shall be rectilinear, except where not practicable due to location along a street radius, or existing lot shape. The sidelines of lots, as far as practicable, shall run at right angles to the street upon which the lots face. As far as practicable, the rear lot line shall run parallel to the street.

As proposed, both Parcel 1 and Parcel 2 would be rectilinear in shape, with sidelines running at right angles to the street and front and rear lot lines running parallel to the street.

MMC 17.28.040.C Limits on Compound Lot Line Segments

MMC 17.28.040.C discourages cumulative lateral changes in direction of a side or rear lot line exceeding 10% of the distance between opposing lot corners along a given lot line. Changes in direction shall be measured from a straight line drawn between opposing lot corners.

As proposed, both Parcel 1 and Parcel 2 are rectilinear in shape and do not contain lateral changes in the side or rear lot lines.

(c) MMC 17.28.040.D Adjustments to Lot Shape Standard

MMC 17.28.040.D provides that lot shape standards may be adjusted subject to Section 19.911 Variances.

No adjustment to lot shape standards has been requested or proposed.

(d) MMC 17.28.040.E Limits on Double and Reversed Frontage Lots

MMC 17.28.040.E limits double and reversed frontage lots except where essential to provide separations of residential development from railroads, traffic arteries, or adjacent nonresidential uses, or to overcome specific disadvantages of topography and orientation.

The proposed replat would not result in any double or reversed frontage lots.

(e) MMC 17.28.040.F Measurement of Required Frontage

MMC 17.28.040.F requires that required frontage be measured along the street upon which the lot takes access.

As proposed, Parcel 1 would take access from SE 42nd Ave and contains approximately 76 ft of frontage. Parcel 2 will continue to take access from Filbert St and contains approximately 70 ft of frontage.

The Planning Manager finds that the proposed replat complies with all applicable design standards of MMC 17.28.040.

e. MMC Chapter 17.32 Improvements

MMC 17.32 establishes procedures for public improvements, including a requirement that all work conforms to the standards and specifications of the Public Works Standards and MMC Chapter 19.700.

The frontage along 42nd Ave and a portion of the frontage along Filbert St already contain a curb-tight sidewalk. Therefore, a fee-in-lieu of construction is not required as part of this development. There is no dedication required and no alterations to either driveway are proposed as part of the development.

The Planning Manager finds that the applicable standards of MMC 17.32 are met.

As conditioned, the Planning Manager finds that the proposed replat meets all applicable standards of MMC Title 17.

5. MMC Section 19.301 Moderate-Density Residential Zone (R-MD)

a. MMC Subsection 19.301.2 Allowed Uses

MMC 19.301.2 establishes the uses allowed in the R-MD zone. Various types of residential uses are permitted by right, including single-unit dwellings, duplexes, triplexes, quadplexes, townhouses, and cottage cluster developments.

As proposed, the existing house will remain on Parcel 2, and Parcel 1 is large enough and has appropriate dimensions to accommodate various permitted housing types allowed in the R-MD zone. Future development on Parcel 1 will be reviewed for compliance with the applicable standards of the R-MD zone and other relevant sections of the municipal code at that time.

An accessory use is allowed only when there is a primary use on the site, so the existing accessory structures that would be on Parcel 1 cannot remain without a conforming use being established. The applicant has proposed to convert the existing detached garage on Parcel 1 into a single-unit dwelling and the shed into an accessory dwelling unit. A condition has been established to clarify the timing of that required action.

As conditioned, the standard is met.

b. MMC Subsection 19.301.4 and 19.301.5 Development Standards

MMC Table 19.301.4 establishes development standards for the R-MD zone. Table 1 provides the applicable standards for development in the R-MD zone with respect to both lots resulting from the proposed replat.

Table 1 Lot and Development Standards			
Standard	R-MD Requirement	Parcel 1	Parcel 2
Minimum lot size	5,000 sq ft (for a single-unit dwelling)	6,460 sq ft	8,737 sq ft
Minimum lot width	Lots 5,000-6,999 sq ft = 50 Lots > 7,000 sq ft = 60	75.83 ft	70 ft
Minimum lot depth	80 ft	85 ft	88.47 ft
Minimum street frontage	35 ft	76.14 ft	70 ft
Front yard	20 ft	32.6 ft	27.4 ft
Side yard(s)	Lots 5,000-6,999 sq ft = 5 Lots > 7,000 sq ft = 5/10	5.9 ft (to proposed ADU) 23.3 ft (to the proposed single-unit dwelling)	22.5 ft / 11.7 ft (to existing single-unit dwelling)
Rear yard	20 ft	16 ft	20 ft
Minimum density	Lots 5,000-6,999 sq ft = 7.0 units/ acre (1 Unit) Lots > 7,000 sq ft = 5.0 units/acre (1 Unit)	1 unit	1 unit
Maximum density	Lots 5,000-6,999 sq ft = 8.7 units/ acre (1 Unit) Lots > 7,000 sq ft = 6.2 units/acre (1 Unit)	1 unit	1 unit

The Planning Manager finds that, with approval of the variance, the proposed replat meets all applicable development standards of MMC 19.301 for both parcels.

6. MMC 19.700 Public Facility Improvements

MMC 19.700 is intended to ensure that development, including redevelopment, 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 the provisions of MMC 19.700, including partitions, subdivisions, replats, new construction, modification of existing structures, and changes or intensifications in use.

The applicant proposes to replat the subject property to create a new developable lot. The proposed replat triggers the requirements of MMC 19.700.

b. MMC Section 19.703 Review Process

MMC 19.703 establishes the review process for development that is subject to MMC 19.700, including requiring a pre-application conference, establishing the type of application required, and providing approval criteria.

The applicant had a pre-application conference on July 28, 2022. As noted in Finding 6-c, the proposed replat does not trigger a Transportation Impact Study (TIS), so the proposal's compliance with MMC 19.700 has been evaluated as part of the replat review, as per MMC Subsection 19.703.2.B.

The City Engineer has determined that no improvements are required for this development due to pre-existing improvements.

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 establishes the process and requirements for evaluating development impacts on the surrounding transportation system, including determining when a formal TIS is necessary and what mitigation measures will be required.

The City Engineer has determined that the proposed replat (which involves the creation of a new developable lot) would not trigger a significant increase in trip generation and therefore does not require a TIS.

d. MMC Section 19.705 Rough Proportionality

MMC 19.705 requires that transportation impacts of the proposed development be mitigated in proportion to its potential impacts.

The proposed replat would create 1 new developable lot (Parcel 1). As stated, the applicant is proposing to convert a detached garage on that lot into a single-dwelling unit and a shed into an accessory dwelling unit. Proposed parcels 1 and 2 already have driveways and no new access is proposed with this development. The City Engineer has determined that no additional frontage improvements are required as part of this development, as 42nd Ave has an existing curb and sidewalk. No public utility upgrades are required as part of this development.

No public facility improvements are required, as the existing facilities are sufficient.

e. MMC Section 19.707 Agency Notification and Coordinated Review

MMC 19.707 establishes provisions for coordinating land use application review with other agencies that may have some interest in a project that is in proximity to facilities they manage.

The subject property is within 200 ft of a designated collector, SE 42nd Ave. Consistent with MMC 19.707, the application was referred to Clackamas County Engineering Development Review and Metro on November 8th, 2022.

f. 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.

(1) MMC Subsection 19.708.1 General Street Requirements and Standards

MMC 19.708.1 provides general standards for streets, including for access management, clear vision, street layout and connectivity, and intersection design and spacing.

As discussed above, the City Engineer has determined that no public improvements are required as part of this development. Parcels 1 and 2 are currently served by driveways, and 42nd Ave is developed with a sidewalk and curb. The proposed replat is consistent with the applicable standards of MMC 19.708.1.

The Planning Manager finds that the proposed replat will meet all applicable standards of MMC 19.708.

The Planning Manager finds that, as conditioned, the proposed replat meets the applicable public facility improvement standards of MMC 19.700.

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 reduce the rear yard setback to accommodate the location of an existing detached garage that will be converted into a single-unit dwelling. The MMC, Subsection 19.911.3, allows applicants to request a reduction of up to 25% of a rear yard width standard through a Type II review process. 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 to reduce the rear yard setback to 16 ft

b. 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 proposed variance will not be detrimental to surrounding properties. The applicant's narrative discusses that the variance is being pursued to convert an existing outbuilding into a single-unit dwelling. Reinvestment in existing buildings and allowing for creative infill development solutions are primary intents of the variance provision in the MMC. The evidence suggests that permitting the variance will primarily have a positive impact on surrounding properties, public health, safety, and welfare by providing needed housing, using land more efficiently, and creating less waste in the development process. There are no identified natural resources nearby.

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 setback reduction will not interfere with any future right-of-way improvements. The building is preexisting, setback roughly 32 ft from the right-of-way, and the variance is to reduce the rear yard setback.

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 proposal is to convert an existing detached garage into a single-unit dwelling. The variance permits the owner to reinvest in an existing structure, or in other words, enhance an existing building.

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. The setback reduction is limited to the proposed single-unit dwelling and any future development must meet the setback standards in the Milwaukie Municipal Code unless a separate variance is pursued and granted.

8. The application was referred to the following departments and agencies on November 8, 2022:

- Milwaukie Building Department
- Milwaukie Community Development Director
- Milwaukie Engineering Department
- Milwaukie Public Works Department
- Milwaukie Planning Manager
- Milwaukie NDA Program Manager
- Ardenwald-Johnson Creek Neighborhood District Association (NDA), Chairperson and Land Use Committee (LUC)
- Lewelling Neighborhood District Association (NDA), Chairperson and Land Use Committee (LUC)
- NW Natural
- Clackamas County Engineering Development Review
- Metro Land Use Notifications
- Clackamas Fire District #1 (CFD#1)

In addition, notice of the public hearing was mailed to owners and residents of properties within 300 ft of the subject property on November 8, 2022.

The comments received are summarized as follows:

Courtney Johnson (neighbor): Supportive of the variance because it is consistent with MMC 19.911 by fostering reinvestment in an existing building. The commenter also sought clarification that approving the variance would reduce the rear setback only for the proposed single-unit dwelling and would not apply to future development on the property.

Exhibit 2
Conditions of Approval
Nelson Replat – 4185 SE Filbert St; File #: R-2022-003; VR-2022-010

Conditions

1. A formalized 10 ft Public Utility Easement (PUE) is required to be shown on the final plat along the frontage of both SE 42nd Ave and SE Filbert St.
2. Prior to the City signing the final plat, the applicant is required to either remove the existing accessory structures from proposed Lot 1 or establish deed restrictions to ensure that the existing accessory structures will be removed within 24 months of final plat approval unless one of the following conditions is satisfied:
 - a. Building permits for a primary dwelling unit(s) be sited on Parcel 1 are applied for and obtained within the 24-month period, with construction commencing within three months of permit receipt and final inspection for the primary dwellings being concluded within 12 months of permit receipt.
 - b. Parcels 1 and 2 are maintained in mutual ownership and Parcel 2 continues to contain a primary structure. The two parcels will remain in mutual ownership unless a primary dwelling is constructed on Parcel 1 per Condition 2-a above.

Additional Requirements

Additional requirements are items that the applicant will be required to complete as their project progresses. They are included with the conditions so that applicants and staff have a clear understanding of what is required at various points in the development and permitting process. Typical examples are items like stormwater management plans, limits on the hours of construction, and other inspections and permits required by Building, Engineering, or Public Works.

1. MMC Section 17.04.120 Recording
 - a. As per MMC Subsection 17.04.120.A, the recording instruments for boundary changes must be submitted to the County Surveyor within 6 months of City approval.
 - b. As per MMC Subsection 17.04.120.B, prior to recording a replat the applicant must submit the recording instruments to the Planning Manager for a determination of consistency with the City Code and required approvals.
 - c. As per MMC Subsection 17.04.120.E, a copy of the recording instruments must be submitted to the Planning Manager no later than 15 days after filing with the County Surveyor.