



CITY OF MILWAUKIE

December 2, 2022

Land Use File(s): VR-2022-011

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on December 2, 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.

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| Applicant(s): | Geoffrey Kuhrts |
| Location(s): | 3992 SE Lake Rd |
| Tax Lot(s): | 11E36DD06000 |
| 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., December 17, 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-2022-011>.

This decision may be appealed by 5:00 p.m. on December 17, 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

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.

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.

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: Geoffrey Kuhrts (via email)
Planning Commission (via email)
Joseph Briglio, Community Development Director (via email)
Steve Adams, City Engineer (via email)
Engineering Development Review (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)
Land Use File(s): VR-2022-011

EXHIBIT 1
Findings in Support of Approval
File #VR-2022-011, 3992 SE Lake Rd 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, Geoffrey Kuhrts, has applied for approval to install a new fence that is six feet tall in the front yard of 3992 SE Lake Rd; the fence will be made of vertical cedar fence pickets with treated four-by-four posts and stained with natural wood finish. The fence will line up with the next-door neighbor's fence to the east. This site is in the Moderate Density Residential (R-MD). The land use application file number is VR-2022-0011.
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 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 place a six-foot tall fence in the front yard along Lake Rd. The fence will be setback at least 25 ft from the front property line. Since the fence does not obscure sight, the City Engineer has determined that there is no clear vision issue.

A variance application has been submitted to allow a six-foot tall fence in the front yard at 3992 SE Lake Rd. 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 the 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 solid cedar fence in the front yard, which exceeds the 42-in height standard.

A variance application has been submitted to allow for the construction of a fence up to six feet tall. 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 six feet 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.

- 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 intent of the 42-inch 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 of the next-door neighbor's fence. The fence is proposed just in a portion of the eastern side of the front yard and will not be located directly in front of the house. Therefore, approving the variance will not result in a "walled-in" effect for the property. Moreover, the fence will be setback approximately 25 ft from the front property line and will align with the next-door neighbor's existing fence, which is located closer to Lake Rd because the neighbor's house is located closer to the road. The neighbor's fence is in their side yard and appears to conform with the requirements in MMC 19.502; although, this decision does not constitute a determination of conformity for the neighbor. Cumulatively, the facts support that allowing a taller fence in this area will not be detrimental to public health, safety, natural resources, or surrounding properties.

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 erect a solid cedar fence in a portion of the front yard. The fence will align with the next-door neighbor's fence to the east and will match in style other portions of the fence on the property located in the side and rear yards. 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 December 2, 2024).

- b. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by December 2, 2026).

In this instance, 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 December 2, 2024, or the approval is void.

10. The application was referred to the following departments and agencies on November 14, 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 November 15, 2022, and a sign was posted on the property on November 15, 2022.

Paul Hawkins (Lake Road NDA) provided comments about the area context with regards to slope, existing development, and was supportive of the proposal.