



CITY OF MILWAUKIE

February 6, 2023

Land Use File(s): VR-2023-001

Permit(s): 601-22-001284-STR

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on February 6, 2023.

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):	Daniel Tishchenko (Azov Group LLC)
Location(s):	4300 SE Logus Rd
Tax Lot(s):	1S2E30CC 01100
Application Type(s):	Variance Request
Decision:	Approved
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• Milwaukie Municipal Code (MMC) Section 19.301 Moderate Density Residential Zone (R-MD)• MMC Subsection 19.501.2 Yard Exceptions• MMC Section 19.502 Accessory Structures• MMC Section 19.911 Variances• MMC Section 19.1005 Type II Review
Neighborhood(s)	Lewelling

Appeal period closes: 5:00 p.m., February 21, 2023

Conditions of Approval

None

Other requirements

None

Findings in Support of Approval

The Findings for this application are included as Exhibit 1.

Case File

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 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 Kelver, Senior Planner, at 503-786-7657 or kelverb@milwaukieoregon.gov, if you wish to view this case file.

Appeal

This decision may be appealed by 5:00 p.m. on **February 21, 2023**, which is 15 days from the date of this decision.¹ 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.

Expiration

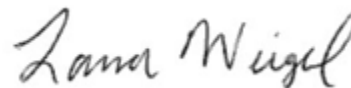
Per MMC Subsection 19.1001.7.E, this land use approval expires unless the applicant has: (1) obtained and paid for all necessary development permits and started construction within two years of land use approval, and (2) passed final inspection and/or obtained a certificate of occupancy within four years of land use approval. Extensions can be granted per MMC Section 19.908.

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

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
2. Approved site plan

cc: Daniel Tishchenko, applicant (via email)
Planning Commission (via email)
Joseph Briglio, Community Development Director (via email)
Steve Adams, City Engineer (via email)
Engineering Development Review (via email)
Patrick McLeod, Building Official (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Technician (via email)
Tim Salyers, Code Enforcement Coordinator (via email)
Jon Simkovic, Code Enforcement Officer (via email)
Land Use File(s): VR-2023-001
Permit File(s): 601-22-001284-STR
Address File(s): 4300 SE Logus Rd

EXHIBIT 1
Findings in Support of Approval
File #VR-2023-001, Street-side Setback Variance (4300 SE Logus Rd)

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

1. The applicant, Daniel Tishchenko (Azov Group LLC), has applied for a variance for the street-side setback for a proposed detached garage at 4300 SE Logus Rd. The subject property is 0.29 acres (approximately 12,600 sq ft) and is zoned Moderate Density Residential (R-MD). The land use application file number is VR-2023-001.
2. The subject property is located at the southeast corner of 43rd Avenue and Logus Road. The site is developed with a single detached dwelling, a combination of one- and two-story sections with a footprint of approximately 2,300 sq ft. The applicant is in the process of remodeling and updating the existing house and has proposed to add a 400-sq-ft detached garage between the house and the 43rd Avenue frontage (approved with permit #601-22-001284-STR). The new garage would be separated from the west side of the house by the minimum required 5 ft and was approved with a 15-ft street-side yard from the western property line along 43rd Avenue.

At the time of permit review for the new garage, the applicant and staff understood the lot width to be approximately 106 ft. However, after the permit was issued, a subsequent survey to confirm the approved setbacks clarified that the lot width was approximately 103 ft, making the street-side yard 3 ft short of the approved standard. The applicant has requested a Type II variance to reduce the street-side yard by 3 ft, less than 25% of the approved standard.

3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.301 Moderate Density Residential Zone (R-MD)
 - MMC Subsection 19.501.2 Yard Exceptions
 - MMC Section 19.502 Accessory Structures
 - MMC Section 19.911 Variances
 - MMC Section 19.1005 Type II Review

The application has been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review.

4. MMC Section 19.301 Moderate Density Residential Zone (R-MD)
MMC 19.301 establishes standards for the Moderate Density Residential (R-MD) zone. The application meets the applicable standards of this section as described below.

a. MMC Subsection 19.301.2 Allowed Uses

MMC 19.301.2 establishes the uses allowed outright in the R-MD zone, including single detached dwellings, middle housing types (duplexes, triplexes, quadplexes, townhouses, and cottage clusters), accessory dwelling units (ADUs), and residential homes. Accessory structures are allowed as per MMC Section 19.502.

The subject property is developed with a single detached dwelling. A permit has been issued for a new detached garage. The existing and proposed uses are permitted outright in the R-MD zone.

b. MMC Subsections 19.301.4 and 19.301.5 Development Standards

MMC 19.301.4 and 19.301.5 establish development standards for the R-MD zone. The applicable standards are addressed and met as described in Table 4-b below.

Table 4-b Applicable R-MD Development Standards (for lots 7,000 sq ft and larger)		
Standard	R-MD Requirement	Subject Property
Lot Area	7,000 sq ft	12,593 sq ft
Lot Width	60 ft	103 ft
Lot Depth	80 ft	119 ft
Public Street Frontage	35 ft	222 ft (combined frontages)
Front Yard	20 ft	38 ft
Side Yard	5 ft (interior side of corner lot)	12 ft
Street-Side Yard	25 ft (as per MMC 19.501.2, the net required setback for 43 rd Ave is 25 ft = 20 ft for R-MD zone, plus 5 ft to provide a 30-ft setback from the centerline of the 43 rd Avenue ROW, which is approximately 50 ft wide along the subject property frontage)	12 ft (see Findings 5-7 for discussions of the issues related to this requirement, including the requested variance)
Rear Yard	20 ft	10 ft (existing, no change)
Maximum lot coverage	30%	c.21%
Minimum vegetation	30%	>75%
Front Yard Minimum Vegetation	40%	>75%

As proposed and with the variance approved as discussed in Finding 7, the applicable development standards of these subsections are met.

As proposed and with the variance approved as discussed in Finding 7, the Planning Manager finds that the proposed development meets all applicable standards of MMC 19.301. This standard is met.

5. MMC Subsection 19.501.2 Yard Exceptions

MMC Subsection 19.501.2.A requires additional building setbacks from the centerline of several streets in the city, including 43rd Avenue (between Howe Street and King Road), which requires an additional yard area of 30 ft from centerline plus the applicable yard requirement.

The right-of-way along the subject property's 43rd Avenue frontage is 50 ft wide, with 25 ft in each direction from the centerline. For the proposed development, as per MMC Table 19.501.2.A, an additional setback of 5 ft is required beyond to the 20-ft street-side yard required in the R-MD zone for lots 7,000 sq ft and larger. Staff inadvertently did not recognize or apply this additional setback requirement prior to approving the proposed new garage. The applicant has requested a variance from the 15-ft street-side setback approved with the permit review, down to 12 ft. A discussion of this variance request is provided in Finding 7.

The Planning Manager finds that, with the variance request discussed and approved in Finding 7, the applicable standards of this subsection are met.

6. MMC Section 19.502 Accessory Structures

MMC 19.502 establishes standards for accessory structures. MMC Table 19.502.1.A.1.a requires that accessory structures no taller than 15 ft and no larger than 600 sq ft must provide minimum side (interior) and rear yards of 5 ft each. Regardless of size, accessory structures are not allowed in the front yard unless the structure is located at least 40 ft from the front lot line. As per MMC Subsection 19.502.1.E.1, accessory structures are subject to the minimum street-side yard requirements of the base zone. The underlying R-MD zone requires a 20-ft street-side yard for lots 7,000 sq ft or larger in area. In addition, MMC Subsection 19.502.A.1.b.(3) requires a minimum of 5 ft between the exterior wall of an accessory structure and the exterior wall of any other structure on the site.

The proposed new garage is 400 sq ft in size and 15 ft tall. As proposed, the garage would be behind the front face of the house, almost 70 ft from the east side lot line (separated from that boundary by the house), and just over 58 ft from the rear lot line. The subject property is approximately 12,600 sq ft in area and so requires a minimum 20-ft street-side yard. During the permit review for the proposed new garage, staff inadvertently did not recognize this requirement for large R-MD lots and inadvertently applied a 15-ft street-side setback requirement instead. After the permit was issued, a subsequent survey to confirm the approved setbacks clarified that the lot width was 3 ft shorter than previously understood (approximately 103 ft instead of 106 ft), reducing the proposed street-side yard to 12 ft instead of 15 ft (the approved standard). As discussed in Finding 7, the applicant has requested a Type II variance to reduce the approved street-side yard by 3 ft. A distance of 5 ft is proposed between the side wall of the new garage and the nearest wall of the house.

With approval of the variance as discussed in Finding 7, the Planning Manager finds that the applicable standards of MMC 19.502 are met.

7. MMC Chapter 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 any of the following: change in 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 adjust the street-side yard requirement.

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 19.911.3.B establishes the Type II review process for limited variations to certain numerical standards, including varying a street-side yard width by up to 25%. 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 requested variance is to reduce the approved street-side yard width of 15 ft down to 12 ft, a 20% reduction. The requested variance is eligible for Type II review.

c. MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes the approval criteria for variances, with the following criteria for Type II variance applications provided in MMC Subsection 19.911.4.A:

- (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 subject property is a corner lot, and the new garage would be located between the existing house and 43rd Avenue and just over 58 ft from the nearest neighboring property boundary to the south. There would be over 90 ft between the garage's western wall and the front porch of the property directly across the street at 10011 SE 43rd Ave. The proposed reduction of the street-side setback would not affect any surrounding properties. There are no designated natural resource areas in the vicinity and no anticipated impacts to public health, safety or welfare.

The Planning Manager finds that this criterion is 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.

In a capital improvement project completed in late 2022, the City constructed street improvements along 43rd Avenue, including new curb and sidewalk along the frontage of the subject property. No additional public improvements are planned at this location, and there is no anticipated need for dedication to the public right-of-way along the subject property's 43rd Avenue frontage.

The Planning Manager finds that this 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.

The new garage will improve the overall appearance of the existing house façade, helping with the flow of the roof lines and slopes. With its slight setback in relation to the front façade of the house, it will emphasize and augment the main house structure. The proposed variance will allow the new garage to remain the size it was approved, which will allow it to retain its proportions, looks, and usability as originally designed.

The Planning Manager finds that this criterion is met.

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

As discussed above, the proposal to reduce the street-side setback by 3 ft will not generate any impacts, so no mitigation is necessary.

The Planning Manager finds that this criterion is met.

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

The proposed reduction of the street-side yard will not affect any of the mature trees on the site. With over 75% of the lot area available for landscaping, the subject property provides ample room for any tree planting that may be necessary to achieve the 40% canopy standard.

The Planning Manager finds that the approval criteria for a Type II variance are met.

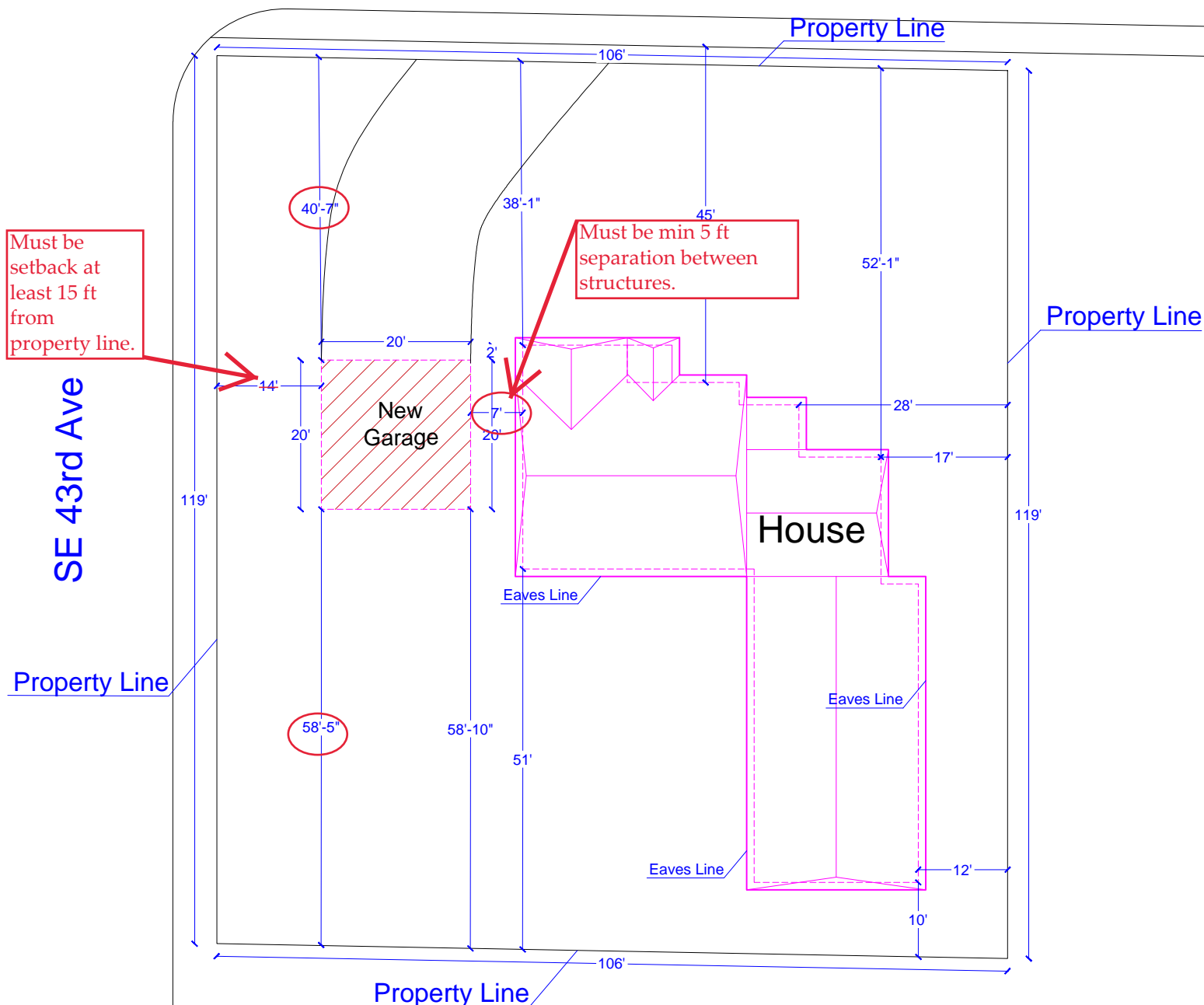
8. The application was referred to the following departments and agencies on January 19, 2023: Milwaukie Community Development Department, Milwaukie Engineering Department, Milwaukie Building Department, Milwaukie Public Works Department, City Attorney, Clackamas Fire District #1 (CFD), Clackamas County Department of Transportation & Development, Metro, Lewelling Neighborhood District Association, and NW Natural. Notice of the application was also sent to surrounding property owners within 300 ft of the site on January 19, 2023; public notice signs were posted on the property that same day.

No comments were received regarding this application.

Exhibit 2



SE Logus Rd



APPROVED
 CITY OF MILWAUKIE
 AS NOTED
 BY *Anna Dyer* DATE 9/29/2022
 PLANNING DEPARTMENT

Approved by Planning, 9/29/22. Street-side setback must be min 15 ft. Separation between garage and dwelling must be min 5 ft. A setback verification is required prior to the foundation inspection. Verification may be in the form of a foundation survey or another survey prepared by a professionally licensed surveyor.

Land: 0.29 AC
 House: 2300 SF
 Garage: 400 SF

4300 SE Logus Rd
 Milwaukie, OR 97222 USA
 scale: 1" = 20'