



# CITY OF MILWAUKIE

February 6, 2023

Land Use File(s): VR-2023-002

## 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](mailto:espanol@milwaukieoregon.gov).*

<b>Applicant(s):</b>	Don Jensen, Jensen Construction LLC
<b>Location(s):</b>	11523 SE 44 <sup>th</sup> Ave
<b>Tax Lot(s):</b>	12E31BC12130
<b>Application Type(s):</b>	Variance
<b>Decision:</b>	Approved
<b>Review Criteria:</b>	Milwaukie Zoning Ordinance: <ul style="list-style-type: none"><li>• MMC 19.505.2 Specific Provisions for Accessory Structures</li><li>• MMC 19.911 Variances</li><li>• MMC 19.1005 Type II</li></ul> Milwaukie Municipal Code: <ul style="list-style-type: none"><li>• MMC 12.24 Clear Vision at Intersections</li></ul>
<b>Neighborhood(s):</b>	Hector Campbell

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

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 Vera Koliass, Senior Planner, at 503-786-7653 or [koliassv@milwaukieoregon.gov](mailto:koliassv@milwaukieoregon.gov), if you wish to view this case file or visit the project webpage at <https://www.milwaukieoregon.gov/planning/vr-2023-002>.

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

### **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

---

<sup>1</sup> As per MMC Section 19.1010, if the 15<sup>th</sup> 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.

cc: Don Jensen, Jensen Construction (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) (variances only)  
Shawn Olson, CFD#1 (via email)  
NDA(s): Hector Campbell (via email)

Land Use File(s): VR-2023-002

**EXHIBIT 1**  
**Findings in Support of Approval**  
**File #VR-2023-002, 11523 SE 44th Ave Fence Variance**

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, Don Jensen of Jensen Construction, has applied for a variance to the maximum height of a fence in the front yard to allow the existing wood frame fence with a height of 6 feet inches at 11523 SE 44<sup>th</sup> Ave to remain. This site is in the Residential R-MD Zone. The land use application file number is VR-2023-002.
2. The proposal requires a variance to the 42-inch 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 for a wood frame fence that measures 6 feet in height in a portion of the front yard at the corner of Railroad Ave and 44<sup>th</sup> Ave. The fence has been installed on the retaining wall at the back of the multiuse path along Railroad Ave and approximately 6 in from the back of the sidewalk along 44<sup>th</sup> Ave. A clear vision inspection was conducted at the site by engineering staff. Based on the Right-of-Way width outside of the paved area and the 35-mph speed on Railroad Avenue, the fence was determined to be outside the clear vision area.*

*A variance application has been submitted to allow the 6-ft fence. Subject to 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 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 the existing front yard fence, which has been installed in a small portion of the front yard at the corner of Railroad Ave and 44<sup>th</sup> Ave, to remain. The fence is 6 feet tall with a wood frame design.*

*A variance application has been submitted to allow the existing fence. Subject to 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 the existing 6-foot fence located in a portion of the front yard to remain. 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 the 6-foot tall fence in the front yard.*

- c. 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 subject property is a corner lot located at the corner of Railroad Ave and 44<sup>th</sup> Ave. The home faces 44<sup>th</sup> Ave and is sited such that the “side yard” facing Railroad Ave, a collector street, is effectively the back yard for the home. The intent of the 6-ft fence is to create a slightly larger usable yard for the home along 44<sup>th</sup> Ave. The total 44<sup>th</sup> Ave frontage for the property is over 115 ft, but only 30 ft of that frontage (closest to Railroad Ave) is fenced with the 6-ft fence. The portion of the front yard that has been fenced with the 6-ft fence is not in front of the house, so visibility between the home and the street has been maintained.*

*The fence does not cause any public health safety or welfare risks as the fence does not encroach into the public right-of-way.*

*Given that the fence is limited to only the setback from Railroad Ave, the additional height does not have any detrimental effects on 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.

*The fence was installed at the same time as the new home was built and identifies the property line of the property.*

*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 and will be reviewed during the building permit review process.
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 February 3, 2025).

- b. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by February 3, 2027).
10. The application was referred to the following departments and agencies on January 20, 2023: Milwaukie Engineering Department; Clackamas Fire District #1; and the Hector Campbell Neighborhood District Association. Notice of the application was also sent to surrounding property owners within 300 ft of the site on January 20, 2023, and a sign was posted on the property on January 20, 2023. No comments were received.