



CITY OF MILWAUKIE

September 28, 2023

Land Use File(s): VR-2023-006

Permit(s): 601-22-001102-STR

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on September 28, 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):	Brian Watkins
Location(s):	3607 SE King Rd
Tax Lot(s):	1S1E25DC07400
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 Section 19.911 Variances• MMC Section 19.1005 Type II Review
Neighborhood(s)	Ardenwald-Johnson Creek

Appeal period closes: 5:00 p.m., October 13, 2023

Conditions of Approval

None

Other requirements

1. A setback verification is required prior to foundation inspection. The verification may be a hub and tack survey or another type of survey prepared by a professionally licensed surveyor clearly showing the distance from the foundation to the property lines.

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, City Hall, 10501 SE Main St. Please contact Ryan Dyar, Assistant Planner, at 503-786-7661 or dyarr@milwaukieoregon.gov, if you wish to view this case file.

Appeal

This decision may be appealed by 5:00 p.m. on **October 13, 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: Brian Watkins, applicant (via email)
Planning Commission (via email)
Joseph Briglio, Community Development Director (via email)
Jennifer Garbely, 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-2023-006
Permit File(s): 601-22-001102-STR
Address File(s): 3607 SE King Rd

EXHIBIT 1
Findings in Support of Approval
File #VR-2023-006, Rear Yard Setback Variance (3607 SE King Rd)

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, Brian Watkins, has applied for a variance for the rear yard setback for a proposed addition to the primary dwelling at 3607 SE King Rd. The subject property is 0.22 acres (approximately 9,464 sq ft) and is zoned Moderate Density Residential (R-MD). The land use application file number is VR-2023-006.
2. The subject property is located at the northeast corner of 36th Avenue and King Road. The site is developed with a detached garage and a single-unit detached dwelling. The applicant originally obtained a building permit (#601-22-001284-STR) to renovate the existing house—expanding the footprint by 1,229 sq ft. The work has begun, and the applicant is now seeking to modify the original approval. Under the revised plan the applicant will demolish the detached garage and expand the footprint of the dwelling by an additional 910 sq ft (a total footprint expansion of 2,139 sq ft).

The applicant has proposed that the new expansion be set back 16.41 ft from the rear property line, which does not comply with the 20 ft rear yard setback requirement for primary dwellings in the R-MD zone. The applicant has requested a Type II variance to reduce the rear yard by 3.58 ft, less than 25% of the approved standard. The applicant has also requested a variance to increase the lot coverage standard from 30% to 40%; however, as discussed under Finding 4, staff have determined that this variance is not required, as the proposal complies with the ten-percentage point by-right increase under MMC 19.301.5.B.

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 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.

The subject property is developed with a single detached dwelling and a detached garage which the applicant proposes to demolish. 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	9,464 sq ft
Lot Width	60 ft	104 ft
Lot Depth	80 ft	90 ft
Public Street Frontage	35 ft	194 ft (combined frontages)
Front Yard	20 ft	20 ft
Side Yard	5 ft (interior side of corner lot)	7 ft
Street-Side Yard	15 ft	20 ft
Rear Yard	20 ft	16.41 ft (Requested variance, see Finding 5 for discussion of setback reduction)
Maximum lot coverage	30%/40% The standard for lots greater than 7,000 sq ft is 30%; however, MMC 19.301.5.B permits a ten-percentage point increase to the standard provided that the portions of any structure(s) on the site that are more than 20 ft high are limited to the 30% lot coverage standard.	39% Total Single Story Portion = 1,559 sq ft (17%) Two Story Portion = 2,139 sq ft (22%)
Minimum vegetation	30%	> 40%
Front Yard Minimum Vegetation	40%	> 60%

As proposed and with the variance approved as discussed in Finding 5, the applicable development standards of these subsections are met.

As proposed and with the variance approved as discussed in Finding 5, the Planning Manager finds that the proposed development meets all applicable standards of MMC 19.301. This standard is met.

5. 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 rear 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 rear 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 20 ft down to 16.41 ft, a roughly 18% 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 existing house (built in 1957) is setback 16.41 ft from the rear property line. The existing detached garage that is proposed to be demolished is approximately 5 ft from the rear property line. The proposed reduction to the rear yard setback will ultimately create more distance between the rear property and improvements on the site. Moreover, the setback will mirror that of the existing structure, which means the house will be no closer to the rear property than it is currently. In summary, there is no evidence that reducing the rear yard setback for the addition will be detrimental to 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.

The variance request is to reduce the rear yard setback. The subject property abuts private property so the reduced setback will not interfere with any planned public improvements.

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.

As discussed, the existing dwelling was built in 1957 and has a rear yard setback of approximately 16.41 ft. The proposed variance will allow the dwelling addition to have the same setback, thereby sustaining the integrity of the existing improvement.

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 3.58 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 rear yard will not affect any trees on the site. Consequently, the standard is not applicable.

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

6. The application was referred to the following departments and agencies on September 5, 2023: Milwaukie Community Development Department, Milwaukie Engineering Department, Milwaukie Building Department, Milwaukie Public Works Department, City Attorney, Clackamas Fire District #1 (CFD), Ardenwald-Johnson Creek Neighborhood District Association, and NW Natural.

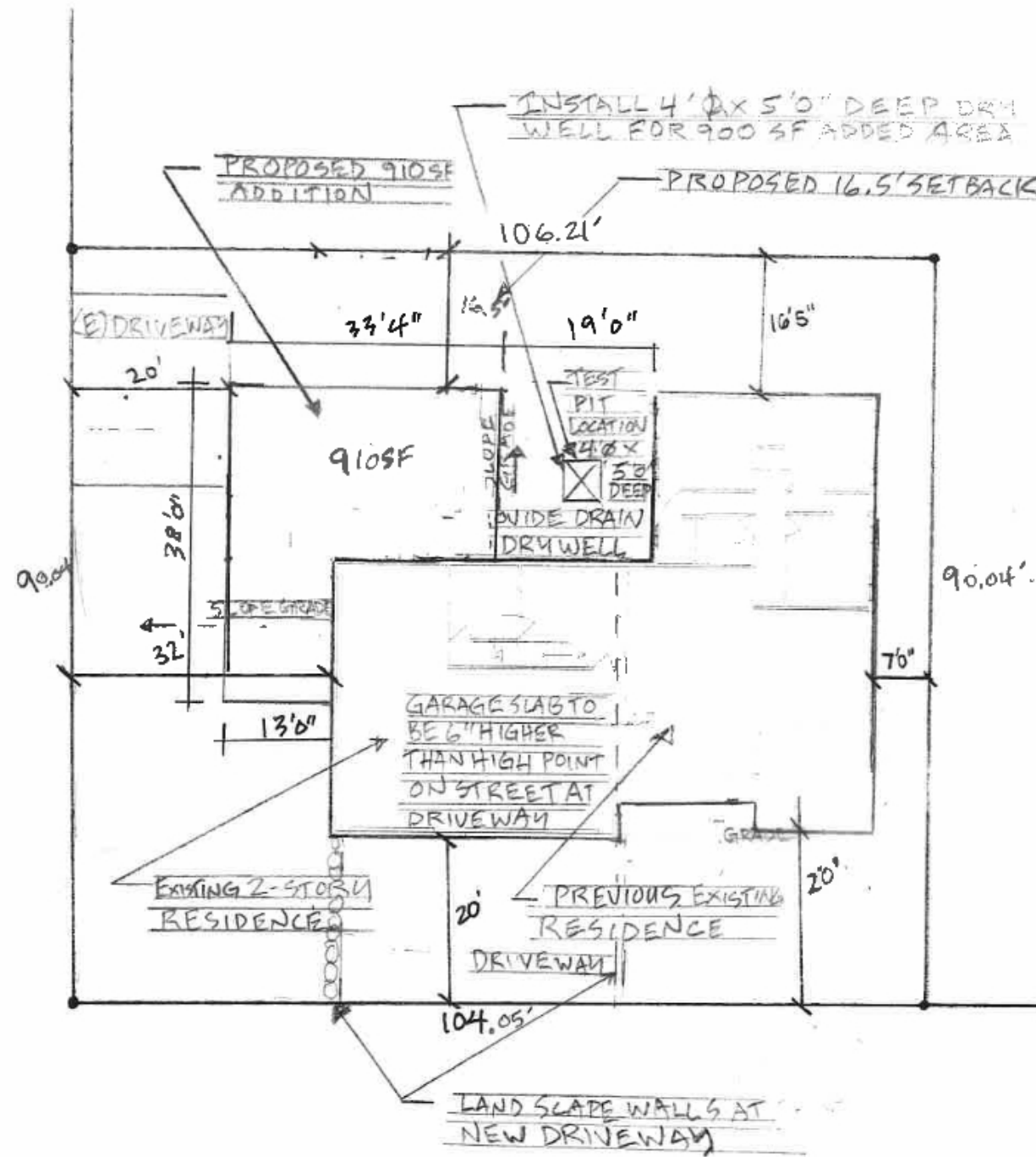
Notice of the application was also sent to surrounding property owners within 300 ft of the site on September 5th, 2023; public notice signs were posted on the property that same day. Staff inadvertently failed to upload all the applicant's materials to the application webpage, and consequently extended the public comment period an additional week to allow for adequate review time.

The responses are summarized as follows:

Lisa Gunion Rinker, Land Use Chair, Ardenwald-Johnson Creek Neighborhood District

Association: Asked clarifying questions about the proposal, the variance process generally, phased construction, and the implementation of the residential tree code. Comments were also provided in opposition to certain aspects of the project but not the specific variance request; those challenges included phased construction, the unpermitted removal of trees on private property, the impacts of ongoing construction on the neighborhood, and not having all the necessary information at the beginning of the construction project.

Lane Rollins: Opposed the variance due to concerns about the phased nature of the project, the duration of the construction period, the size of the home, and that the builder/owner was potentially living in an RV onsite.



LOT AREA
 $106.21 (90.04)/2 = 4781.6 \text{ SF}$
 $104.05 (90.04)/2 = 4684.3 \text{ SF}$
 TOTAL 9466 SF

LOT COVERAGE (ALLOWABLE)
 $(0.40) 9466 = 3786 \text{ SF}$

HOUSE AREA
 $35.25 (35.5) = 1251.4 \text{ SF}$
 $54.16 (31) - 3.35 (7) - 4 (20) = 1541$
 $1251.4 + 1541 = 2792.4 \text{ SF}$

PROPOSED ADDITION
 $20.5 (33.3) + 17.5 (13) = 910.25 \text{ SF}$
 TOTAL $2792.4 + 910.2 = 3704.6$
 $3704.6 < 3786 \text{ SF } 40\%$
 LOT COVERAGE

SITE PLAN
 1" = 20'0"

**CONTRACTOR TO FIELD
 VERIFY ALL DIMENSIONS**

SCALES NOTED ON DRAWINGS ARE FOR
 11"X17" SHEET SCALE ACCORDINGLY
 FOR DIFFERENT SIZE SHEET

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WATKINS RESIDENCE REMODEL
 BRIAN WATKINS
 3607 SE KING RD
 MILWAUKIE, OR 97222

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SHEET TITLE:
SITE PLAN

SHEET NO:
C-1.0