



# CITY OF MILWAUKIE

April 5, 2024

Land Use File(s): VR-2024-001

Permit(s): 601-24-000300-STR

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on April 5, 2024.

*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>	Emily Asa
<b>Location(s):</b>	5607 SE Waymire St
<b>Tax Lot(s):</b>	1S2E31AD, lot 7700
<b>Application Type(s):</b>	Variance request (Type II administrative)
<b>Decision:</b>	Approved with Conditions
<b>Review Criteria:</b>	Milwaukie Zoning Ordinance: <ul style="list-style-type: none"><li>• Milwaukie Municipal Code (MMC) Section 19.301 Moderate Density Residential Zone (R-MD)</li><li>• MMC Subsection 19.501.2 Yard Exceptions</li><li>• MMC Chapter 19.700 Public Facility Improvements</li><li>• MMC Section 19.911 Variances</li><li>• MMC Section 19.1005 Type II Review</li></ul>
<b>Neighborhood(s):</b>	Linwood

**Appeal period closes: 5:00 p.m., April 22, 2024**

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, City Hall, 10501 SE Main St. Please contact Brett Kelter, Senior Planner, at 503-786-7657 or [kelterb@milwaukieoregon.gov](mailto:kelterb@milwaukieoregon.gov), if you wish to view this case file or visit the project webpage at [www.milwaukieoregon.gov/planning/vr-2023-001](http://www.milwaukieoregon.gov/planning/vr-2023-001).

**This decision may be appealed by 5:00 p.m. on April 22, 2024, 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**

1. Either payment of a fee in lieu of construction (FILOC) for the entire width of the Waymire Street frontage, or construction of frontage improvements as described in Finding 6-e. The City is recommending payment of FILOC rather than requiring the applicant to construct isolated frontage improvements.

### **Other Requirements**

1. Note that the proposal to remove trees that are 6 inches or greater diameter at breast height is subject to the provisions of the residential tree code (MMC Section 16.32.042). Because the proposed development does not involve the establishment of a dwelling unit, the proposed removal will require a non-development tree permit. Contact the Urban Forester ([urbanforest@milwaukieoregon.gov](mailto:urbanforest@milwaukieoregon.gov)) for more information.
2. The proposed development includes new walkways extending to the street at 56<sup>th</sup> Avenue from both the new side entry and the rear of the new addition. Note that a right-of-way (ROW) permit will be required for all work proposed within the public ROW. Contact the Engineering department ([engineering@milwaukieoregon.gov](mailto:engineering@milwaukieoregon.gov)) for more information.

### **Manager's Declaration of Impartiality**

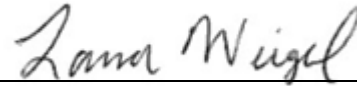
I certify that neither I nor any member of my immediate family has a material, personal, or financial relationship with the applicant. I further certify that no other relationship, bias, or ethical conflict exists which would have prevented me from evaluating the land use application solely on its merits and in accordance with the Milwaukie Municipal Code.

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<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.

**Decision**

- Approved  
 Approved with Conditions  
 Denied



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Laura Weigel, AICP  
Planning Manager

**Exhibits**

1. Findings in Support of Approval
- cc: Emily Asa, applicant (via email)  
Roger Groth, applicant's representative (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)  
Shawn Olson, Fire Marshal, CFD#1 (via email)  
NDA(s): Linwood (via email)  
Interested Persons  
Land Use File(s): VR-2024-001  
Address File(s): 5607 SE Waymire St

**EXHIBIT 1**  
**Findings in Support of Approval**  
**File #VR-2024-001**  
**Street-side Setback Variance—5607 SE Waymire 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 applicant, Emily Asa, has applied for a variance for the street-side yard setback for a proposed addition to the existing house at 5607 SE Waymire St. The subject property is 0.22 acres (approximately 9,760 sq ft) and is zoned Moderate Density Residential (R-MD). The land use application file number is VR-2024-001.
2. The subject property is located at the northeast corner of Waymire Street and 56<sup>th</sup> Avenue. The site is developed with a single-story single detached dwelling with an existing footprint of approximately 1,220 sq ft. The applicant has proposed to construct an addition of approximately 1,750 sq ft off the rear of the existing structure, for purposes of establishing an adult foster/care home (currently in review with permit #601-24-000300-STR). Most of the proposed addition would be 18.5 ft from the street-side property line along 56<sup>th</sup> Avenue, with the exception of a new side porch, which would be set back only 15 ft. The applicant has requested a Type II variance to adjust the street-side yard setback by 25%, from 20 ft down to 15 ft.
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 Chapter 19.700 Public Facility Improvements
  - 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 adult foster/care homes.

*The subject property is developed with a single detached dwelling. A permit application has been submitted for an addition to the primary structure as part of an effort to convert the single detached dwelling into an adult foster/care home. 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.

<b>Table 4-b Applicable R-MD Development Standards (with proposed addition)</b>			
<b>Standard</b>	<b>R-MD Requirement</b> <small>(for lots 7,000 sq ft and larger)</small>	<b>Subject Property</b>	
		<b>Existing</b>	<b>Proposed</b>
<b>Lot Width</b>	<b>60 ft</b>	63.5 ft	
<b>Lot Depth</b>	<b>80 ft</b>	156.5 ft	
<b>Public Street Frontage</b>	<b>35 ft</b>	63.5 ft (Waymire St) 156.5 ft (56 <sup>th</sup> Ave)	
<b>Front Yard</b>	<b>20 ft</b>	25 ft	25 ft (no change)
<b>Side Yard</b>	<b>5 ft</b> <small>(interior side of corner lot)</small>	5.1 ft (existing house)	7 ft (new addition)
<b>Street-Side Yard</b>	<b>20 ft</b>	8.6 ft (existing house)	15 ft (covered porch for new addition—see Finding 7 for variance discussion)
<b>Rear Yard</b>	<b>20 ft</b>	106.6 ft (existing house)	48.6 ft (covered patio for new addition)
<b>Maximum lot coverage</b>	<b>30%</b> <small>(40% for single-story additions under 20 ft)</small>	12.5%	33%
<b>Minimum vegetation</b>	<b>30%</b>	82%	59%
<b>Front yard minimum vegetation</b>	<b>40%</b>	66%	66% (no change)

*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.B allows architectural features such as cornices, eaves, canopies, sunshades, gutters, steps, unroofed landings, and flues to project up to 2 ft into a required side yard or up to 3 ft into a required front or rear yard.

*The proposed addition includes a covered porch on the street-side elevation, with the porch supports set back 15 ft from the street-side property line. As discussed in Finding 7, an administrative variance has been requested to reduce the street-side setback from the required 20 ft down to 15 ft. The porch covering will extend an additional 2 ft into the street-side setback area.*

*As allowed by this subsection and with the variance approved as discussed in Finding 7, the Planning Manager finds that the applicable standards of this subsection are met.*

6. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 is intended to ensure that development, including expansions, 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 MMC 19.700, including a new dwelling unit, any increase in gross floor area, land divisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that result in any projected increase in vehicle trips. As per MMC Subsection 19.702.2, expansions to single detached dwellings that add 1,500 sq ft or more floor area trigger the applicability of all of MMC 19.700.

*The applicant is proposing to construct a 1,750-sq-ft addition to the existing single detached dwelling and convert it into an adult foster/care home. The proposed development triggers the full 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 preapplication conference, establishing the type of application required, and establishing approval criteria.

*The requirement for a preapplication conference with City staff was waived by the Planning Manager for this proposal. As noted in Finding 6-c, a transportation impact study (TIS) is not required; therefore, an application for transportation facilities review is not necessary.*

*This standard is met.*

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 establishes that the City Engineer will determine whether a proposed development has impacts on the transportation system by using existing

transportation data. If the City Engineer cannot properly evaluate a proposed development's impacts without a more detailed study, a TIS will be required to evaluate the adequacy of the transportation system to serve the proposed development and determine proportionate mitigation of impacts.

*The City Engineer has determined that a TIS is not required, as the proposed increase in vehicle trips for an adult foster/care home is not significant in comparison to the trips generated by a single detached dwelling or middle housing plex development.*

*This standard is met.*

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.

*As discussed in Finding 6-e, the impacts of the proposed increase in floor area will be mitigated by either a fee in lieu of construction (FILOC) assessed for the Waymire Street frontage of the subject property, or construction of complete frontage improvements along the Waymire Street frontage. The Waymire Street frontage is the one that provides access to the site and is the shorter of the two frontages (63.5 ft on Waymire Street versus 156.5 ft on 56<sup>th</sup> Avenue), so requiring construction of frontage improvements or assessing the FILOC based on the Waymire Street frontage is appropriate and proportional to the minimal impacts of the proposed development.*

*This standard is met.*

e. 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. MMC Subsection 19.708.1 requires compliance with MMC Chapter 12.16 and establishes general requirements and standards for streets, including access management, clear vision, street design, connectivity, and intersection design and spacing standards. MMC Table 19.708.2 provides more specific street design standards for various street classifications, including for arterial and neighborhood routes. All streets, sidewalks, necessary public improvements, and other public transportation facilities located in the public ROW and abutting the development site must be adequate at the time of development or must be made adequate in a timely manner. The City's street design standards are based on the street classification system described in the City's Transportation System Plan (TSP).

*The subject property is a corner lot that takes access from Waymire Street (63.5 ft of frontage) and has 156.5 ft of additional frontage on 56<sup>th</sup> Avenue. Both streets are designated as local streets and are improved only with curb along the subject property frontage. The addition of more than 1,500 sq ft of floor area to the existing structure triggers the requirement to ensure that at least one of the property's frontages is fully developed to current standards, including sidewalk, updated concrete accessway, and landscape strip with street trees.*

*Because there is currently no public sidewalk on Waymire Street, the City Engineer has determined that the proposed development is suitable to pay a fee in lieu of construction (FILOC) as per MMC Section 13.32 rather than construct isolated improvements.*

*A condition has been established to require either full frontage improvements or payment of FILOC for the length of the Waymire Street frontage.*

*As conditioned, this standard is met.*

f. MMC Section 19.709 Public Utility Requirements

MMC 19.709 establishes the City's requirements and standards to ensure the adequacy of public utilities to serve development.

*The proposed development does not present significant new impacts to existing public utilities, which are adequate to serve the proposed use.*

*This standard is met.*

*As conditioned, the Planning Manager finds that the applicable standards of MMC 19.700 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 required street-side yard width of 20 ft down to 15 ft, a 25% 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, with its main entrance facing Waymire Street. The proposed building addition would extend 46 ft from the rear of the existing house structure, with a new side entrance facing 56<sup>th</sup> Avenue and a new covered patio at the rear. The existing house is approximately 8.5 ft from the property line along 56<sup>th</sup> Avenue and is nonconforming with the street-side yard setback standard of 20 ft. The addition will be 18.5 ft from the street-side boundary, except where the new covered porch side entrance would be set back only 15 ft.*

*The requested reduction of the street-side setback will not diminish clear vision at the intersection and will not impact 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.

*No public improvements are planned at this location, and there is no anticipated need for dedication to the public right-of-way along either of the subject property's street frontages.*

*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 proposed new addition is sized to allow the creation of five new bedrooms and a living room area, as part of the conversion of the existing house into an adult foster/care home. The proposed dimensions provide for an interior hallway that is wide enough to comfortably accommodate wheelchairs or other mobility assistance if needed. Like the existing house, the addition will be single-story but with a slightly steeper roof pitch and higher roofline to provide a more spacious interior ceiling. The proposed variance will allow a new covered porch on the street-side façade without reducing the interior usable space for residents.*

*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 up to 5 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 subject property includes two large evergreen trees within a few feet of the proposed addition. Although the proposed development will significantly increase the footprint of the existing structure, it will not result in a new dwelling unit and so is subject to the non-development part of the residential tree code in Section 16.32.042. The Urban Forester has reviewed the proposed development and confirmed that, even without the proposed adjustment to the required street-side setback, the root zones of both trees would be significantly impacted by the excavation for the proposed addition and the trees would have to be removed. The proposed variance will not allow either of the trees to be preserved, but it will also not necessitate the removal of those trees any more than development allowed at the required minimum setback.*

*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 March 4, 2024:

- Milwaukie Community Development Department
- Milwaukie Engineering Department
- Milwaukie Building Department
- Milwaukie Public Works Department
- Milwaukie Code Compliance
- Milwaukie Police Department
- Milwaukie City Attorney
- Clackamas Fire District #1 (CFD#1)
- Linwood Neighborhood District Association (NDA) and Land Use Committee (LUC)
- NW Natural

In addition, notice of the application was mailed to property owners and residents within 300 ft of the subject property on March 6, 2024. Public notice signs were posted on the property on March 5, 2024.

The comments received are summarized as follows:

- **Anna Jeter, owner of 11473 SE 56<sup>th</sup> Ave:** Concerned that the reduced setback from 56<sup>th</sup> Avenue will limit clear vision at the intersection of 56<sup>th</sup> Avenue and Waymire Street. Cites existing safety concerns (vehicle speeds) and calls for a neighborhood traffic study and improvements to both streets.

*Staff Response: The existing house is set back approximately 8.5 ft from the street-side property line along 56<sup>th</sup> Avenue and is closer to the intersection with Waymire Street than the proposed addition. As proposed, the new addition will be set back 18.5 ft along most of the 46-ft-long façade facing 56<sup>th</sup> Avenue (an 8-ft-wide covered porch will be set back 15 ft) and will not affect clear vision at the intersection. As discussed in Finding 6-c, the proposed development does not warrant a traffic impact study.*

- **Janet Benson, owner of 11366 SE 56<sup>th</sup> Ave (adjacent to subject property to north) and 11627 SE 56<sup>th</sup> Ave, with 50% ownership in large field to north on 56<sup>th</sup> Avenue:** Concerned about impacts to visibility at the intersection of 56<sup>th</sup> Avenue and Waymire Street. Notes the lack of sidewalks on east side of 56<sup>th</sup> Avenue and cites existing concerns about vehicle speeds for people walking in the street, especially with increased on-street parking resulting from the proposed adult foster/care home and its new visitor entry on 56<sup>th</sup> Avenue. Concerned about neighboring driveway approaches on 56<sup>th</sup> Avenue being used for vehicles turning around, since 56<sup>th</sup> Avenue dead-ends approximately one block north of the subject property. Wonders how fire trucks will turn around. Concerned that the proposed adult foster/care home will disrupt the existing harmonious living environment.

*Staff Response: As noted in the staff response to Anna Jeter (above), the proposed addition will not affect clear vision at the intersection of 56<sup>th</sup> Avenue and Waymire Street. An adult foster/care home is an outright permitted use in the underlying Moderate Density Residential (R-MD) zone. As discussed in Finding 6-c, the proposed adult foster/care home will not generate significantly more vehicle trips than a single detached dwelling and does not warrant a traffic impact study or any special mitigation. Driveway approaches within the public right-of-way are available to vehicles for turn-around movements. Since 56<sup>th</sup> Avenue is a dead-end street that does not terminate in a fully built-out cul de sac bulb, fire trucks use the 56<sup>th</sup>/Waymire intersection (not residential driveways) to turn around if needed. The proposed use is not the subject of the requested variance.*