



CITY OF MILWAUKIE

August 22, 2024

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

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie City Council on August 20, 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.

Applicant(s):	Barbara Allan
Location(s):	11932 SE 35 th Ave
Tax Lot(s):	11E36DB09500
Application Type(s):	Appeal
Decision:	Appeal of land use file #VR-2024-003 denied; Approval of application with modifications
Review Criteria:	Milwaukie Municipal Code: <ul style="list-style-type: none">• MMC 12 Streets, Sidewalks, and Public Places Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• MMC 19.301 Moderate Density Residential Zone• MMC 19.401 Willamette Greenway Zone• MMC 19.700 Public Facility Improvements• MMC 19.804 Nonconforming Uses and Development• MMC 19.911 Variances• MMC 19.1006 Type III Review• MMC 19.1010 Appeals
Neighborhood(s):	Lake Road

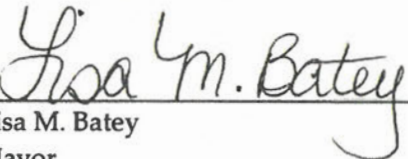
This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1010 Appeals.

The Milwaukie City Council held a public hearing and deliberated on August 6, 2024, to consider the appeal application submitted by Barbara Allan and the Lake Road Neighborhood District Association, of the Planning Commission's decision to approve land use file #VR-2024-003, for a proposed one-story 13-ft addition to the existing single detached home located at 11932 SE 35th Ave. The City Council met and made a decision to deny the appeal and approve the application with modified findings and conditions of approval, submitted pursuant to Oregon Revised Statutes (ORS) 197.522, for a side yard setback variance on the subject property. The City Council met on August 20, 2024, to confirm the final order.

Please contact Vera Kolias, Senior Planner, at 503-786-7653 or koliasv@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed to the Oregon Land Use Board of Appeals (LUBA) at: 775 Summer Street NE, Suite 330, Salem, Oregon 97301-1283, 503-373-1265, <https://www.oregon.gov/luba/Pages/default.aspx> pursuant to state rules and statutes. They can provide information regarding the timeline for filing an appeal and the proper forms and procedures.

Mailed this 22nd day of August, 2024.



Lisa M. Batey
Mayor

cc: Kristina Fedorovskiy, 11932 SE 35th Ave
Barbara Allan, 11974 SE 35th Ave
City Council (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 Coordinator (via email)
Shawn Olson, CFD#1 (via email)
NDA(s): Lake Road (via email)
Interested Persons
Land Use File(s): AP-2024-001

Exhibits

1. Final Order

BEFORE THE CITY COUNCIL OF THE CITY OF MILWAUKIE
COUNTY OF CLACKAMAS, STATE OF OREGON

In the appeal of an application to
approve a Variance for Kristina
Fedorovskiy

File No. AP-2024-001 (proceedings below)

FINAL ORDER

I. INTRODUCTION AND PROJECT BACKGROUND

This Final Order documents the Milwaukie City Council decision on August 6 on the appeal of a decision by the Milwaukie Planning Commission ("Commission"). This Final Order approves the application filed by Kristina Fedorovskiy ("Applicant") for a Type III Variance to the minimum side yard setback for a one-story 13-ft addition to the existing attached garage on the property located at 11932 SE 35th Ave in the Moderate Density Residential Zone.

II. HEARINGS AND PROCESS

On June 11, 2024, the Planning Commission held a public hearing on the application. The Commission received oral and written testimony from the Applicant and from persons opposed to the application. The Commission approved the application on a vote of 4 members in support, and 1 abstention. The Planning Commission Notice of Decision was issued on June 12, 2024.

On June 24, 2024, Barbara Allan of 11974 SE 35th Ave and Teresa Bresaw, on behalf of the Lake Road NDA ("Appellant"), an identified Interested Party, within the required timeframe allowed for appeals filed a notice of appeal. Pursuant to MMC Table 19.1001.5, the City Council was identified as the Appeal Authority, and the City mailed written notice of the public hearing on July 17, 2024.

On August 6, 2024, the City Council held a public hearing and designated a record. At the end of the hearing, City Council voted 4-1 to approve the requested variance with modifications to the Planning Commission's approval of the application as set forth below and directed staff to prepare a Final Order. The City Council considered the Final Order at its August 20 meeting and confirmed that it reflects the decision reached at the August 6, 2024 hearing. This Final Order is the City's final written decision.

III. LIMITATIONS ON EVIDENCE

Under the City Council's standard of review for its appeal hearing, parties were limited to the evidence presented to the Commission but were free to make new arguments to City Council regarding this evidence.

As detailed below, written comments and oral testimony were received from the appellant and applicant, a member of the Lake Road Neighborhood District Association, a property owner

within 300 feet of the subject property, and from a resident of Portland; those comments did not contain new evidence and were therefore considered by the City Council.

IV. APPLICABLE CRITERIA AND FINDINGS AND CONDITIONS OF APPROVAL

1. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 12 Streets, Sidewalks, and Public Places
 - MMC 19.301 Moderate Density Residential Zone
 - MMC 19.700 Public Facility Improvements
 - MMC 19.804 Nonconforming Uses and Development
 - MMC 19.911 Variances
 - MMC 19.1006 Type III Review
 - MMC 19.1010 Appeals
2. The appeal application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing on the appeal was held on August 6, 2024, as required by law.
3. As findings supporting its decision, the City Council incorporates the June 12, 2024 Notice of Decision issued by the Planning Commission with a modification to the Type III Variance Approval Criteria as identified below in Section 4. The City Council also incorporates the June 4, 2024 Staff Report prepared for the Planning Commission hearing, and the August 2, 2024 Staff Report prepared for the City Council hearing.
4. The following are the findings and conclusions of the City Council based upon its review of the record and the arguments and issues presented in the appeal process:
 - a. MMC Section 19.911 Variances
 - (1) MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes approval criteria for variance requests. For Type III variances, MMC Subsection 19.911.4.B.1 provides approval criteria related to discretionary relief and MMC Subsection 19.911.4.B.2 provides approval criteria related to economic hardship.

 - (a) MMC Subsection 19.911.4.B.1 Discretionary Relief Criteria
 - (i) The proposed variance is determined to be both reasonable and appropriate, and it meets one or more of the following criteria:
 - **The proposed variance avoids or minimizes impacts to surrounding properties.**
 - The proposed variance has desirable public benefits.
 - The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

The proposed one-story addition extends an existing nonconforming 0.5-ft side yard setback by 13 ft. The addition would match the front wall of the house, with a front yard setback of 24.7 ft, which is larger than the minimum of 20 ft. The proposed addition would be located on a portion of the existing driveway, so no landscaping will be removed to accommodate the construction. The adjacent property is developed with a single detached home with a 40-ft front yard setback, and a driveway is located adjacent to the subject property. Therefore, the proposed addition would not impact the use and enjoyment of the neighboring property. The proposed addition can be built without needing to access the adjacent property, so construction impacts would be minimized. Given the existing design and construction of the house, it would be effectively impossible to construct the addition and still meet the required 10-ft setback. The proposed addition is modest in size, maintains the existing front yard setback, and would be adjacent to the neighbor's driveway – not adjacent to their home or usable yard space. Without the variance, the garage space would not accommodate a vehicle after the remodel. This side of the existing home is adjacent to the neighboring uninhabited property; the neighbor's home on the next lot to the south is set back approximately 26 ft from the street, so there are no impacts to the appellant's home or use of the front yard area.

The City Council finds that the requested variance is reasonable and appropriate and that it avoids or minimizes impacts to surrounding properties. Therefore, the requested variance meets one or more of the criteria provided in MMC Subsection 19.911.B.1.b.

5. CONDITIONS OF APPROVAL

The City Council modified the conditions of approval identified in the Commission's decision by removing the condition requiring that a 6 ft sight impervious fence be installed along the wall of the proposed addition. The remainder of the conditions remain in effect. Therefore, the City Council incorporates by reference the conditions of approval included in the Planning Commission's Notice of Decision dated June 12, 2024 with the identified modification.

6. As described in Finding 2, public notice of the appeal hearing was mailed to parties as identified in the Milwaukie Municipal Code: properties within 300 ft of the subject site, Interested Persons identified in VR-2024-003, the Appellant, the Applicant, the Planning Commission, and the Lake Road Neighborhood District Association. Written responses in support of the appeal and in opposition of the variance were received as follows:

- Teresa Bresaw, Lake Road NDA
- Karen Kersey

- Margueritte Kosovich, 12012 SE 35th Ave, Milwaukie
- Debby Patten, 11880 SE 34th Ave, Milwaukie
- Jonathan Heppner, 3815 NE 8th Ave, Portland
- Mara Indra, 3815 NE 8th Ave, Portland

The following persons provided oral testimony at the August 6, 2024 City Council Hearing:

- Kristina Fedorovskiy, 11932 SE 35th Ave
- Barbara Allan, 11972-11974 SE 35th Ave
- Teresa Bresaw, Lake Road NDA
- Paul Hawkins, Lake Road NDA
- Mara Indra, 3815 NE 8th Ave, Portland
- Matthew Baxter, [REDACTED]

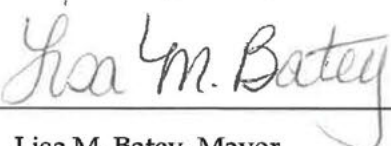
7. CONCLUSION

The City Council decided on a vote of 4-1 that land use file VR-2024-003 meets the applicable approval criteria and is therefore approved.

8. ORDER

Based upon the findings set forth above, the Milwaukie City Council orders that the decision of the Planning Commission be modified, the appeal denied, and land use file VR-2024-003 is approved as reflected in this Final Order.

DATED this 20th Day of August, 2024



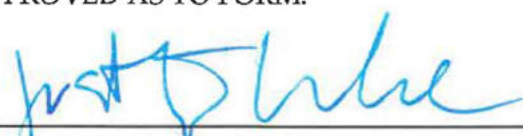
Lisa M. Batey, Mayor

ATTEST



Emma Sagor, Acting City Manager

APPROVED AS TO FORM:



Justin D. Gericke, City Attorney