



CITY OF MILWAUKIE

July 7, 2025

Land Use File(s): MOD-2025-001; VR-2025-008

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on July 7, 2025.

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):	Jonathan Heppner on behalf of Barbara Allen
Location(s):	11972 SE 35 th Ave
Tax Lot(s):	1S1E36DB09600
Application Type(s):	Modification to Existing Approval; Variance
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• MMC Section 19.301 Moderate Density Residential Zone• MMC Section 19.909 – Modifications to Existing Approvals• MMC Section 19.911 Variances• MMC Section 19.1005 – Type II Review

Appeal period closes: 5:00 p.m., July 22, 2025

Conditions of Approval

1. Except as modified through this decision, all conditions of approval of the original land use review (Primary File #MLP-07-01) remain in effect.
2. Prior to approval of development permits, the applicant shall record a document with Clackamas County removing the no-build zone from Partition Plat No. 2008-105. The document must be approved by the city before recording.

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, Associate 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. (please arrive by 4:45 for payment processing) on July 22, 2025, 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

The original land use approval for MLP-07-01 did not include an expiration date and was substantially completed with the recording of Partition Plat 2008-105.

As per MMC 19.1001.7.E, the variance request shall expire and become void unless the proposed development completes the following steps, if applicable:

- Obtain and pay for all necessary development permits and start construction within 2 years of land use approval (by July 7, 2027).
- Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by July 7, 2029).

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.

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.

Decision

- ☐ Approved
☒ Approved with Conditions
☐ Denied



Laura Weigel, AICP
Planning Manager

Exhibits

1. Findings in Support of Approval

cc: Jonathan Heppner, Applicant Representative (via email)
Barbara Allen, Applicant (via email)
Lake Road Neighborhood District Association: Land Use Committee (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)
Derek Wildermuth, Building Inspector/Plans Examiner II (via email)
Harmony Drake, Permit Coordinator (via email)

Land Use File(s): MOD-2025-001

Recommended Findings in Support of Approval File #MOD-2025-001

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's representative, Jonathan Heppner, on behalf of the property owner, Barbara Allan, has submitted a request to modify a previously approved land use decision. The original approval, issued in 2007 under file #MLP-07-01, authorized a two-lot minor land partition that created the property located at 11972 SE 35th Avenue. This application seeks to modify that approval and includes a request for a variance to the minimum lot width requirement. The subject property is zoned Moderate Density Residential (R-MD). The primary land use application file number is MOD-2025-001.

Since the partition was approved, multiple text amendments have been made to the Milwaukie Municipal Code and changes have been made to the city's zoning map. Notably for this application, in 2022, the former R-7 zone applicable to this property was consolidated with other low-density zones to create the current Moderate Density Residential (R-MD) zone.

2. The applicant proposes to remove a condition of approval included in MLP-07-01, which established a no-build zone on the westerly portion of 11972 SE 35th Avenue. This condition was required due to the irregular shape of the lot and its noncompliance with the minimum lot width standard along its entire length.

At the time of the original partition, the property contained a detached garage, which the applicant now proposes to demolish and replace with a new single detached dwelling. Because no development plans were submitted at the time of partition, the no-build restriction was added to the final plat and recorded with Clackamas County to ensure future compliance with the lot width requirement. The applicant now seeks to modify the 2007 approval by moving the no-build zone 2 feet, 8 inches, to the west (toward 35th Avenue). Instead of establishing a new no-build zone, the city is recommending removal of the no-build zone altogether, as its function is duplicative of the lot width standard in the Milwaukie Municipal Code.

In conjunction with this modification, the applicant also requests a Type II variance to reduce the minimum lot width standard from 60 feet to 57 feet, 10 inches.

3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 19.301 Moderate Density Residential Zone
 - MMC 19.909 Modifications to Existing Approvals
 - MMC 19.911 Variances
 - MMC 1005 Type II Review

The application has been processed in accordance with MMC Section 19.1005 Type II Review.

4. MMC Section 19.909 Modifications to Existing Approvals

MMC 19.909 establishes a review process for modifying approved land use applications after approvals have been obtained but prior to the issuance of development permits.

a. MMC Subsection 19.909.3 Review Process

MMC 19.909.3 establishes general provisions for modification requests. The Planning Manager determines whether the modified proposal substantially conforms to the approved plans, as well as whether the modification is minor or major in nature. This determination is not a land use decision and is not subject to appeal. A modification is considered major if the changes require substantial changes to the findings from the original proposal. For major modifications of approvals that were originally approved through a Type II review, the subsection states that the modification shall be evaluated through a Type II review process.

The Planning Manager has determined that the proposed request to reduce the size of the no-build zone is major in nature since the original approval (file #MLP-07-01) was based on the establishment of the no-build zone. Instead of meeting the minimum lot width standard, the applicant is now requesting a variance. As such, the proposed modification would require substantial changes to the findings. The Planning Manager has determined that Type II review is appropriate for the proposed modification to the original Type II approval.

b. MMC Subsection 19.909.4 Approval Criteria

MMC 19.909.4 establishes approval criteria for modifications to existing approvals. Specifically, MMC Subsection 19.909.4.B provides the following approval criteria for major modifications:

- (1) The proposed modification complies with all applicable development standards and requirements, except as modified by the original approval.

The proposed modification would result in a single detached dwelling that's approximately 2 ft-8in closer to 35th Ave than what was approved under MLP-07-01. The applicant has requested to modify MLP-07-01 to alter the no-build zone and has requested a variance to reduce the minimum lot width standard. The city is opting to remove the no-build zone altogether and instead let the existing standards in the Milwaukie Municipal Code guide future development. No other changes are proposed to MLP-07-01.

The applicant has provided a narrative that demonstrates how the proposal complies with the requirements for the Moderate Density Residential Zone found in MMC 19.301, garage standards in MMC 19.502.2, design standards in MMC 19.505, and the and off-street parking for residential development found in MMC 19.607.

The development will be comprehensively reviewed again for compliance with the applicable development standards and requirements through the building permitting process.

The Planning Manager finds that this criterion is met.

- (2) The proposed modification will continue to meet all applicable approval criteria upon which the original approval was based.

The original approval was to allow for the partitioning of an existing lot. The partitioning was substantially completed through the recording of Partition Plat #2008-105. To be approved at the time, the proposal was required to comply with the dimensional standards for the R-7 Zone; this included a minimum lot width standard of 60 ft. The applicant is now requesting to modify that decision in a manner that would result in the proposal no longer meeting the minimum lot width standard; however, in addition to modifying the original approval, the applicant has requested a variance to reduce the minimum lot width standard (See Finding5).

With approval of the variance, the Planning Manager finds that the proposed modification will continue to meet all the applicable approval criteria upon which the original approval was based.

5. MMC Chapter 19.911 Variances

a. MMC 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, 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 to reduce a minimum lot width standard. The request is not listed as an ineligible variance and is specifically called out as being eligible for Type II review per Subsection 19.911.2.B.4.

- b. MMC 19.911.3 establishes the review process for variance applications. Type II variances allow for limited variations to numerical standards. Through a Type II review, an applicant may request to reduce the lot width standard by up to ten percent of the requirement.

The applicant has requested a variance to reduce the lot width standard from 60 ft to 57.83 ft, a 3.6% reduction.

The Planning Manager finds that the application is subject to a Type II Variance review for reducing the lot width standard.

- 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 applicant is proposing to reduce the lot width from 60 ft to 57.83 ft. Under MMC 19.201, lot width is defined as the horizontal distance between side lot lines measured at the building line. The subject property is irregular in shape due to its location along a dog-legged street. The western segment is narrower than the eastern segment. For this reason, a condition of approval was placed on the land-division application that created the lot, limiting the buildable area to where the lot width would equal 60 ft.

This variance seeks to allow the development to encroach slightly into the no build area by reducing the lot width requirement. Approval would not in any way alter the configuration of the property lines. Nearby property owners were notified of the proposal. Only one comment was received in response; that comment was submitted in support of the proposal to reduce the lot width standard on behalf of the Lake Road Neighborhood District Association. There are no inventoried natural resources areas on or near the site.

Cumulatively, the facts support that the reduced lot width will not be detrimental to public health, safety, natural resources, or 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 variance would allow the proposed development to be setback 57.83 ft from the front property line. This setback is considerably larger than the 20 ft front yard setback generally required in the Moderate Density Residential Zone.

There is no evidence that reducing the lot width standard will interfere with any public transportation facility or utility improvements identified in any planning document.

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.

As discussed in the applicant's narrative, the proposed variance would allow the front of the proposed house to align with the existing house at 11932 SE 32nd Avenue; this creates a "street wall" that frames the public space and enhances the overall visual quality of the streetscape. The proposal consequently sustains the integrity of the existing built environment.

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.

6. The original land use approval for MLP-07-01 did not include an expiration date and was substantially completed with the recording of Partition Plat No. 2008-105.

As per MMC 19.1001.7.E, the variance request shall expire and become void unless the proposed development completes the following steps, if applicable:

- Obtain and pay for all necessary development permits and start construction within 2 years of land use approval (by July 7, 2027).
 - Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by July 7, 2029).
7. The application was referred to the following departments and agencies on June 18, 2025: Milwaukie Building Division; Milwaukie Engineering Department; Milwaukie Public Works Director; Milwaukie NDA Program Manager; Milwaukie City Attorney; and the Lake Road Neighborhood District Association. Notice of the application was also sent to surrounding property owners within 300 ft of the site on June 18, 2025, and a sign was posted on the property on June 24, 2025.

One comment was received in support of the proposal from the Lake Road Neighborhood District Association.

- **Teresa Bresaw, Lake Road Land Use Committee:** no objections to reducing the minimum lot width, as the home will align with the house directly to the north and still comply with the minimum front yard setback. Development will be a positive addition to the neighborhood.