



February 25, 2015

Land Use File(s): VR-14-03

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on February 24, 2015.

Applicant(s): Linsey Forni, Owner
Applicant's Representative: Carter Case
Location(s): 10545 SE Riverway Ln
Tax Lot(s): 11E35AB00300
Application Type(s): Variance Review
Decision: Approved, with conditions
Review Criteria: Milwaukie Zoning Ordinance:

- MMC Section 19.302 High Density Residential Zones
- MMC Chapter 19.700 Public Facility Improvements
- MMC Section 19.911 Variances
- MMC Section 19.1006 Type III Review

Neighborhood(s): Historic Milwaukie

Appeal period closes: 5:00 p.m., March 12, 2015

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1006 Type III 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, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Vera Kolas, Associate Planner, at 503-786-7654 or kolasv@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on March 12, 2015, which is 15 days from the date of this decision. Only persons who submitted comments or made an appearance of record at the public hearing have standing to appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie City Council 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.

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

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, Carter Case on behalf of Linsey Forni, has applied for relief from the front yard setback to extend the existing single-family home with a one-story addition with daylight basement within the required front yard setback at 10545 SE Riverway Ln. This site is in the R-2 Zone and Willamette Greenway Overlay. The land use application file number is VR-14-03.
2. The proposal requires a variance to the required 15 ft front yard setback of the R-2 zone. The development would also require Conditional Use Approval for development in the Willamette Greenway. The proposal of a 1-story addition with a daylight basement would likely be a Type I Minor Modification review. (Note: the applicant is aware of this subsequent land use application requirement, and has elected to submit only a variance application at this time.)
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.302 High Density Residential Zones
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.911 Variance Review
 - MMC Section 19.1006 Type III Review
4. The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held on February 10, 2015, as required by law.
5. MMC 19.302 High Density Residential Zones
 - a. MMC 19.302 establishes the development standards that are applicable to this site. The required front yard setback of the R-2 zone is 15 ft. The applicant has proposed an addition that would be 15 ft from the paved portion of SE Riverway Lane, but would be 0' from the deeded public right-of-way.

The Planning Commission finds that the proposal does not comply with the applicable standards of the R-2 zone and requires a variance.
6. MMC Chapter 19.700 Public Facility Improvements
 - a. MMC 19.702 establishes the applicability of this section

The applicant proposes an expansion of the existing home by 640 sq ft. The Engineering Department finds that MMC Chapter 19.700 is triggered by this variance application because the addition of habitable living space is greater than 200 sq ft.

The City has conducted a review to determine if the proposed development has a sufficient nexus and impacts to warrant the imposition of right-of-way dedication under the standards established by the US Supreme Court through *Koontz v. St. Johns River Water Management District* (2013) and other case law.

Although there is a sufficient *nexus* to warrant the imposition of right-of-way dedication relating to the expansion, it has been determined that the *impacts* do not warrant the imposition of right-of-way dedication.

The Planning Commission finds that this section is applicable, and there is sufficient *nexus* but insufficient impacts to require right-of-way dedication and no right-of-way dedication will be required.

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 extend the existing home into the front yard setback by adding a 640 sq ft addition, resulting in a 0-ft front yard setback from the deed public right-of-way. This request exceeds 25% and is less than the minimum 15 ft, and must be processed through Type III review.

The Planning Commission finds that the application is subject to Type III review for the proposed addition.

- b. MMC 19.911.4.B establishes criteria for approving Type III Variance applications.

An application for a Type III Variance shall be approved when all of the criteria in either 19.911.4.B.1 or 2 have been met. An applicant may choose which set of criteria to meet based upon the nature of the variance request, the nature of the development proposal, and the existing site conditions.

The applicant has chosen to address the criteria of 19.911.4.B.1 Discretionary Relief Criteria.

- (1) *The applicant's alternatives analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.*

The applicant has not identified any impacts from the proposal. The applicant has stated that if any impacts occur they would be minimal and would be mitigated.

The alternatives analysis does not discuss the possible development alternatives that could avoid the need for a variance. The subject property is regularly shaped and large enough that an addition could be accommodated in compliance with the required setbacks on other sides of the structure. The alternatives analysis also does not provide a proposal for a smaller addition that would provide some setback from the property line. The applicant has stated that in order to take advantage of the views of the river and not impact adjacent properties, the proposed location is optimal.

Although the applicant states that it is unlikely that SE Riverway Ln would ever change, nevertheless the City must preserve its ability to use the public right-of-way for utility placement and access in the future. This is particularly true given that the zoning in this area is R-2, a high density residential zone. Although the existing residences on Riverway Ln are single-family homes, provisions must be made to ensure that infrastructure is in place should the area redevelop. A structure located 0' from the public right-of-way could significantly impact the City's ability to construct additional roadway width, a sidewalk, etc. in the public right-of-way. The Engineering Director has submitted comments in opposition to the proposed variance. Without having grade information, it appears as though the proposed development would harm the City's ability to construct necessary

roadway improvements. More precisely, constructing the addition up to the right-of-way could prevent the City's ability to construct the pedestrian facilities associated with roadway construction in the future. In this case, a retaining wall adjacent to the right-of-way is needed.

In order to mitigate these impacts, specific construction standards are required.

The Planning Commission finds that, as conditioned, this criterion is met.

- (2) *The proposed variance is determined by the Planning Commission to be both reasonable and appropriate, and it meets one or more of the following criteria:*

- (a) *The proposed variance avoids or minimizes impacts to surrounding properties.*

The proposed variance will affect the eastern façade of the home, which is not adjacent to any other property. Property owners to the north and south of the subject property have expressed support for the variance.

The Planning Commission finds that this criterion is met.

- (b) *The proposed variance has desirable public benefits.*

"Public benefits" are typically understood to refer to benefits to be enjoyed by members of the general public as a result of a particular project, or preservation of a public resource. Aesthetic improvements of a specific and limited nature do not typically constitute a public benefit.

The Planning Commission finds that this criterion is not applicable.

- (c) *The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.*

This criterion encourages flexibility in site planning and development when the existing built or natural environment provide challenges to standard development or site planning. The site is slightly sloped and rectilinear and is developed with a conventional single-family dwelling. The slope may impact future improvement within the right-of-way. With conditions, the impacts can be mitigated.

The Planning Commission finds that, as conditioned, this criterion is met.

- (3) *Impacts from the proposed variance will be mitigated to the extent practicable.*

The applicant has not identified any impacts from the proposed project, but states that any impacts would be minimal and would be mitigated. However, staff has identified an impact to the City's ability to use the public right-of-way in the future (See 7.b (1) above).

The Planning Commission finds that there are impacts to be mitigated and, as conditioned, this criterion is met.

The Planning Commission finds that, as conditioned, these criteria are met.

8. The application was referred to the following departments and agencies on December 31, 2014: Milwaukie Building Division; Milwaukie Engineering Department; Clackamas Fire District #1; and the Historic Milwaukie Neighborhood District Association Chairperson and Land Use Committee. Notice of the application was also sent to surrounding property owners within 300 ft of the site on January 21, 2015, and a sign was posted on the property on January 26, 2015. The following is a summary of the comments received by the City.

- **Jason Rice, Engineering Director:** Opposes the application.
- **Gary Klein, 10795 SE Riverway Ln, Milwaukie, OR:** Supports the application.
- **Jeanne Garst, 1400 SE Lave Drive, #33, Milwaukie, OR:** Opposes the application.

Conditions of Approval

1. This approval of a 0'-0" front yard setback is based on the specific characteristics of the proposal at this location and is applicable only to the existing single family home.
2. At the time of submission of any building permit application, the following shall be required:
 - a. Final plans submitted for building permit review shall include structural drawings for the structure stamped by a Professional Engineer registered in the State of Oregon. The structure (including walls, foundation, and footing) shall be designed and constructed such that it does not rely on the soil within the right-of-way for structural stability as it may not exist in the future as it does today. Furthermore, the City will require a signed statement by the property owner that in building the structure so close to the right-of-way, the City will not be held liable for damages to the private property within 15 ft of the property line if and when the City needs to perform construction within the public right-of-way.
 - b. No encroachment into the public right-of-way shall be permitted, including but not limited to: building walls, eaves, foundation footings, etc.
3. Prior to final inspection of any building permit, the following shall be resolved:
 - a. Provide a narrative describing any changes made after the issuance of this land use decision that are not related to these conditions of approval.

Other requirements

1. Development activity on the site shall be limited to 7 a.m. to 10 p.m. Monday through Friday and 8 a.m. to 5 p.m. Saturday and Sunday, per MMC Subsection 8.08.070(l).



Dennis Egner, AICP
Planning Director

cc: Linsey Forni (10545 SE Riverway Ln, Milwaukie, OR 97222)
Carter Case, Applicant's Representative (232 SE Oak, Portland, OR 97214)
Planning Commission (*via e-mail*)
Jason Rice, Acting Community Development Director; Engineering Director (*via e-mail*)
Brad Albert, Civil Engineer (*via e-mail*)
Samantha Vandagriff, Building Official (*via e-mail*)
Bonnie Lanz, Permit Specialist (*via e-mail*)
Matt Amos, CCFD#1
NDA(s): Historic Milwaukie (*via e-mail*)
Interested Persons
Land Use File(s): VR-14-03