



March 18, 2016

Land Use File(s): VR-2016-002

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on March 18, 2016.

Applicant(s): Dwayne and Patricia Wamsher
Location(s): 5909 SE Hazel Place
Tax Lot(s): 1S2E30DA05200
Application Type(s): Variance - Type II
Decision: Approved
Review Criteria: Milwaukie Zoning Ordinance:

- MMC 19.301 R10 zone
- MMC 19.911 Variances
- MMC 19.1005 Type II review

Neighborhood(s): Lewelling

Appeal period closes: 5:00 p.m., April 4, 2016

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, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Vera Koliass, Associate Planner, at 503-786-7653 or koliassv@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on April 4, 2016, which is 15 days from the date of this decision. 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.

Per MMC Subsection 19.1001.7.E, this land use approval expires unless the development utilizes its approvals within 4 years of land use approval. Extensions can be granted per MMC Section 19.908.

Findings in Support of Approval

1. The applicants, Dwayne and Patricia Wamsher, are proposing to construct a new home on the property located at 5909 SE Hazel Pl. The applicants are requesting relief from the minimum side yard setback to allow a side yard of 8'-6" rather than the minimum 10 ft required. This site is in the R-10 Zone. The land use application file number is VR- 2016-002.
2. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.1005 Type II Review
 - MMC Section 19.911 Variances
 - MMC Section 19.301 Low Density Residential Zones (R-10, R-7, R-5)

MMC sections that are not addressed in these findings are found to be not applicable criteria for the decision on this proposal.

3. MMC Section 19.911 Variances

MMC Section 19.911 establishes a process for seeking relief from specific code sections that have the unintended effect of preventing reasonable development or imposing undue hardship.

- A. MMC Subsection 19.911.2 establishes applicability standards for variance requests.

Variances may be requested to any standard of MMC Title 19 Zoning, provided the request is not specifically listed as ineligible in MMC Subsection 19.911.2.B.

The applicant has requested a variance to reduce the required side yard setback below the minimum standards of the R-10 zone (MMC Subsection 19.301.4.B.1). The proposed variance would allow the construction of a new home within 8'-6" of the side property line, a variance of 18 inches. The request would not eliminate the restriction on a prohibited activity, change a required review type, allow a use not allowed outright in the R-10 zone, or otherwise produce any of the results listed in MMC 19.911.2.B. The request is eligible for a variance as per MMC 19.911.2.

- B. MMC Subsection 19.911.3 establishes review processes for different types of variances. Specifically, MMC 19.911.3.B establishes the Type II review process for limited variations to numerical standards, including variances up to 25% for a front or street-side yard width standard.

The applicant has requested a variance to reduce the side yard setback by 15%, from 10 ft to 8'-6". As per MMC 19.911.3, the request is eligible for processing with Type II review pursuant to MMC Section 19.1005.

- C. MMC Subsection 19.911.4 establishes approval criteria for variance requests. Specifically, MMC Subsection 19.911.4.A provides the following approval criteria for Type II variances:

(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 existing homes in the neighborhood are 1-story on similarly-sized lots with similar or smaller setbacks than those proposed. The proposed new home will be 1-story and will meet all R-10 setbacks, except for the side yard, which is the subject of this variance application.

Reducing the setbacks for the proposed development does not negatively impact any surrounding properties or natural resource areas and does not present any detriment to public health, safety, or welfare. 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 subject property is adjacent to the public right-of-way for Hollywood Ave. The applicant is abiding by the City's recommendation to seek the 18-inch variance to the side yard, rather than this street-side yard in order to account for any future improvements to Hollywood Ave.

The proposed variance will not limit the future construction of any public transportation or utility improvements in the public right-of-way. 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 requested variance is for a new 1-story single-family house being constructed on the subject property, so there is no existing building or site design to consider for sustaining integrity. This criterion is not applicable.

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

The variance request is minor and involves a very small reduction in setbacks from the adjacent private property which is located in unincorporated Clackamas County. There are no perceptible impacts that require mitigation. This criterion is met.

The approval criteria for a Type II variance request, as provided in MMC 19.911.4.A, are met.

As proposed, the Planning Director finds that the requested variance is allowable as per the standards of MMC 19.911.

4. MMC Section 19.301 Low Density Residential Zones (R-10, R-7, R-5)

MMC Section 19.301 establishes standards for the residential zones designated for Low Density and Moderate Density in the Milwaukie Comprehensive Plan (R-10, R-7, and R-5). Specifically, MMC Subsection 19.301.4 establishes standards for development in low density residential zones, including the R-10 zone. Table 1 summarizes the proposed conditions on the subject property with respect to the standards relevant to this proposal.

Table 1 – Compliance with R-10 standards

	R-10 Zone Standards	Proposed for 5909 SE Hazel PI
Lot Area	10,000 sq ft	6,249 sq ft ¹
Lot Coverage	30% max.	Approx. 20%
Minimum Vegetation	30% min.	Approx. 35%
Front Yard Setback	20 ft	20 ft
Side Yard Setback	10 ft	8.5 ft
Street-Side Yard Setback	20 ft	20 ft
Rear Yard Setback	20 ft	20 ft
Building Height	2.5 stories or 35 ft (whichever is less)	1 story, 32 ft
Off-Street Parking	1 space outside of required front yard	1 space in garage

Upon approval of the variance request, the Planning Director finds that the project complies with all applicable standards for the underlying R-10 zone as per MMC Section 19.301.

5. The application has been reviewed in compliance with the Type II review process described in MMC Section 19.1005. A pre-application conference was held on February 4, 2016. The application was deemed complete on March 1, 2016. As required by MMC Subsection 19.1005.3.B, public notice was mailed to surrounding property owners within 300 ft of the site on March 3, 2016, within 7 days after the application was deemed complete. As required by MMC Subsection 19.1005.3.C, public notice was posted on the subject property on March 5, 2016, within 7 days after the application was deemed complete. The application was referred the following departments and agencies on March 3, 2016: Milwaukie Building Division; Milwaukie Engineering Department; Clackamas Fire District #1; and the Lewelling Neighborhood District Association Chairperson and Land Use Committee. The following is a summary of the comments received by the City.

- **Chrissy Dawson, Engineering Tech II:** Recommended conditions of approval, which have been incorporated into this decision.
- **Christina Cole, 5905 SE Hazel PI, Milwaukie, OR:** Ms. Cole expressed the following concerns: 1) as her house is only 2 ft from the property line with the subject property, she is worried about potential fire damage; 2) as her property is a pre-existing 25-foot wide lot, she is concerned that construction of a new home would be denied due to the close proximity of the homes from one another; 3) that the reduced side yard setback will negatively impact the value of her property; and 4) that some of the tenants of the subject property in the past have been "less than neighborly" and having the homes closer together could be an issue.

Staff Response: 1) Per the building code, for fire separation purposes a structure must be a minimum of 3 ft from the property line, so the proposed 8'-6" side yard setback exceeds the building code minimum requirements; 2) Ms. Cole's property is a pre-existing non-conforming lot located in unincorporated Clackamas County and any development or redevelopment of the property would be subject to the County's development regulations. The subject property's requested variance does

¹ The subject property was annexed into the City in 2010 as a non-conforming residential lot.

not have a direct impact on this situation; 3) The requested variance would result in a side yard setback that is in keeping with setbacks on surrounding properties in the neighborhood and staff does not believe that it would negatively impact the property value of Ms. Cole's property; 4) The issue of tenants on the property is a matter for Ms. Cole and the Wamsher's to discuss cooperatively and not a matter for the requested variance application.

Conditions of Approval

Prior to final inspection of building permit, the following shall be required:

1. Construct a new driveway approach at the existing driveway onto SE Hazel Place in accordance with City of Milwaukie Public Works Standards prior to final inspection. The driveway approach apron shall be between 9 feet and 20 feet in width, at least 7.5 feet from the side property line.
2. Construct a private storm management system (e.g. drywell) on the proposed development property for runoff created by the proposed development. Connect all rain drains to the private storm management system.



Dennis Egner, AICP
Planning Director

cc: Dwayne and Patricia Wamsher (26420 NE Butteville Rd., Aurora, OR 97002)
Planning Commission (*via e-mail*)
Alma Flores, Community Development Director (*via e-mail*)
Chuck Eaton, Engineering Director (*via e-mail*)
Chrissy Dawson, Engineering Technician II (*via e-mail*)
Samantha Vandagriff, Building Official (*via e-mail*)
Bonnie Lanz, Permit Specialist (*via e-mail*)
Mike Boumann and Matt Amos, CFD#1
NDA(s): Lewelling (*via e-mail*)
Interested Persons
Land Use File(s): VR-2016-002