



May 20, 2016

Land Use File: VR-2015-004

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on May 20, 2016.

Applicant(s): Robert Sarkisian (Ruta, LLC)
Location(s): 11840 SE Beckman Ave
Tax Lot(s): 1S2E31DB00700
Application Type(s): Variance Request
Decision: Approved
Review Criteria: **Milwaukie Zoning Ordinance:**

- Section 19.1005 Type II Review
- Section 19.301 Low Density Residential Zones (including R-7)
- Subsection 19.504.8 Flag Lot Design and Development Standards
- Section 19.911 Variances

Neighborhood: Linwood

Appeal period closes: 5:00 p.m., June 6, 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 Brett Kelter, Associate Planner, at 503-786-7657 or kelterb@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on June 6, 2016, which is 15 days from the date of this decision.¹ 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.

¹ As per MMC 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 day which is not a weekend or legal holiday.

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

1. The applicant, Robert Sarkisian, has requested variances from the front and rear yard setback standards for two newly partitioned flag lots (“the subject properties”) located behind the property at 11840 SE Beckman Avenue. The applicant is the owner of Ruta, LLC, the company listed as the property owner, and therefore has authority to initiate the application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. The application was initially submitted on August 19, 2015, and deemed complete on the same date. The land use application file number is VR-2015-004.
2. The site is in the R-7 Low Density Residential zone and includes no zoning overlays or special areas as designated in MMC Chapter 19.400. The Comprehensive Plan Land Use Designation for the site is Low Density. The subject properties are flag lots with frontage on Beckman Avenue that were partitioned in 2015 through file #MLP-2015-001. The lots are currently unaddressed and undeveloped. The adjacent “parent lot” property at 11840 SE Beckman Ave (“Lot 1”) is developed with a new single-family detached dwelling. Surrounding properties are also zoned R-7 and developed with single-family detached dwellings.
3. The applicant proposes to construct a single-family detached dwelling on each of the subject properties (“Lot 2” and “Lot 3”). Lot 2 is adjacent to and east of Lot 1, is 15 ft wide where it accesses Beckman Avenue, and is approximately 7,700 sq ft in area within its developable “flag” portion (approximately 81 ft wide by 95 ft deep). Lot 3 is adjacent to and east of Lot 2, is 20 ft wide where it accesses Beckman Avenue, and is approximately 8,320 sq ft in area within its developable “flag” portion (approximately 104 ft wide by 80 ft deep).

For Lot 2, the applicant has requested a variance to reduce the flag lot rear yard width from 30 ft to 22.5 ft. For Lot 3, the applicant has requested variances to reduce the flag lot setbacks for both front and rear yard widths from 30 ft to 22.5 ft. Because the requested variances are no more than 25% of the minimum front and rear yard width standards, the variance requests are subject to the Type II review process.

4. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.911 Variances
 - MMC Section 19.301 Low Density Residential Zones (including R-7)
 - MMC Subsection 19.504.8 Flag Lot Design and Development Standards
 - MMC Section 19.1005 Type II Review

5. MMC Section 19.911 Variances

MMC Section 19.911 establishes the variance 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 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.

The applicant has requested a variance from the 30-ft rear yard setback standard for Lot 2, and variances from the 30-ft front and rear yard setback standards for Lot 3. The requests would not eliminate the restriction on a prohibited activity, change a required review type, allow a use not allowed outright in the R-7 zone, or otherwise produce any of the results listed in MMC Subsection 19.911.2.B. The requests are eligible for a variance as per MMC 19.911.2.

b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. Specifically, MMC Subsection 19.911.3.B allows for limited variations to numerical standards, including a variance of up to 25% to front and rear yard width standards. Such limited requests are subject to the Type II review process established in MMC Section 19.1005.

The applicant has requested a variance of 7.5 ft from the 30-ft rear yard width standard for Lot 2 and variances of 7.5 ft from the 30-ft front and rear yard width standards for Lot 3. The requests are for no more than a 25% variance from a front or rear yard width standard and, as per MMC 19.911.3, qualify for Type II review.

The application has been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review. Public notice was mailed to property owners and residents of lots within 300 ft of the subject property on August 26, 2015, with a minimum of 14 days to comment on the application. A notice of the application was posted on the subject property on August 26, 2015. No public comments were received regarding the proposed development.

c. MMC Subsection 19.911.4 Approval Criteria

MMC 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.

Reducing front and/or rear yard setbacks for flag lots by no more than 25% (to 22.5 ft) results in front and rear yards that are still deeper than those required for conventional lots in the R-7 zone (20 ft). No variances are requested to side yard setbacks or to the side yard height plane limit for either lot. The proposed variances present no impacts to surrounding properties or to public health, safety, or welfare. There are no designated natural resources on the site or in the immediate vicinity.

- (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 proposed variances will not have any effect on existing or planned future improvements to any public transportation facility or utility.

- (3) Where site improvements already exist, the proposed variance will sustain the integrity of, or enhance, an existing building or site design.

The subject properties are both currently undeveloped. The proposed variances will allow reasonable development on each site with single-family detached dwellings that match the depth and dimensions of other existing houses in the vicinity.

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

As noted in Finding 7, the standards of MMC Subsection 19.504.8.E require planting and screening on flag lots to protect adjoining properties, in conjunction with new development. That required mitigation is sufficient to address any negative impacts to surrounding properties from the requested variances.

The Planning Director finds that the approval criteria for a Type II variance request, as provided in MMC 19.911.4.A, are met.

The Planning Director finds that the proposed variances are allowable as per the standards of MMC 19.911.

6. MMC Section 19.301 Low Density Residential Zones (including R-7)

MMC 19.301 establishes standards for Low Residential zones, including the R-7 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 in the R-7 zone, including single-family detached dwellings as outright permitted uses.

The applicant proposes to develop each of the subject properties with a single-family detached dwelling.

This standard is met.

b. MMC Subsection 19.301.4 Development Standards

MMC 19.301.4 establishes development standards for low density residential zones, including the R-7 zone.

Table 1 presents the R-7 standards that are relevant to consideration of the requested variances. Most of the R-7 development standards will be addressed at the time of development. The specific standards for flag lot yard widths (particularly those that relate to the requested variances) are addressed in Finding 7.

Table 1 – Zoning Compliance R-7 Zone—Development Standards			
Standard	Required	Lot 2	Lot 3
Lot Width	60 ft	81 ft	95 ft
Lot Depth	80 ft	104 ft	80 ft

As proposed, the applicable development standards of MMC 19.301.4 are met.

As proposed, the Planning Director finds that the applicable standards of MMC 19.301 for the R-7 zone are met.

7. MMC Subsection 19.504.8 Flag Lot Design and Development Standards

MMC 19.504.8 establishes design and development standards for flag lots, regardless of the underlying zone designation.

- a. MMC Subsections 19.504.8.B and 8.D provide specific standards related to calculating lot area, yard setbacks, and frontage.

Table 2 presents the applicable flag lot development standards related to the requested variances.

Table 2 – Zoning Compliance Flag Lot Development Standards			
Standard	Required	Lot 2	Lot 3
Buildable Lot Area*	7,000 sq ft for single-family detached (in R-7 zone)	7,700 sq ft	8,320 sq ft
Front Yard	30 ft	30 ft	22.5 ft**
Rear Yard	30 ft	22.5 ft**	22.5 ft**
Side Yard	10 ft	10 ft & 30 ft	10 ft & 10 ft
Public Street Frontage	35 ft (combined, for abutting flag lots, with neither frontage less than 15 ft)	15 ft	20 ft

* Not including the area of the accessway or “pole.”

** A variance has been requested from this standard.

As proposed, and with approval of the requested variances as discussed in Finding 5, the applicable standards are met.

- b. MMC Subsection 19.504.8.E establishes requirements for screening to minimize potential adverse impacts from flag lots to abutting properties. These requirements include utilizing landscaping and fencing along flag lot boundaries with abutting lots, to be installed in conjunction with development and maintained in good and healthy condition.

Compliance with the requirements to screen the subject properties from adjoining lots that are not part of the parent lot (Lot 1) from which the flag lots (Lots 2 & 3) were created will be determined and enforced at the time of development review for each lot.

As proposed, and with approval of the requested variances as discussed in Finding 5, the Planning Director finds that the applicable standards of MMC 19.504.8 for flag lot design and development are met.

Conditions of Approval

None



Dennis Egner, FAICP
Planning Director

cc: Robert Sarkisian (Ruta, LLC—15295 SE Mistwood Way, Clackamas, OR 97015)
Richard Georgescu, P.E. (applicant’s representative) *(via e-mail)*
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: Linwood (*via e-mail*)
Interested Persons
Land Use File(s): VR-2015-004; MLP-2015-001