



June 17, 2015

Land Use File(s): NR-2015-001, VR-2015-002

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on June 9, 2015.

**Applicant(s):** Jeff and Shauna Walker  
**Appellant** (if applicable)  
**Location(s):** 5256 SE Winsor Ct  
**Tax Lot(s):** 1S2E30DB 03107  
**Application Type(s):** Natural Resources, Variance  
**Decision:** Approved, with Conditions  
**Review Criteria:** Milwaukie Zoning Ordinance:

- MMC Section 19.301 Low-Density Residential Zones
- MMC Section 19.402 Natural Resources
- MMC Section 19.700 Public Facility Improvements
- MMC Section 19.911 Variances

**Neighborhood(s):** Lewelling

**Appeal period closes: 5:00 p.m., July 2, 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 Li Alligood, Senior Planner, at 503-786-7627 or [alligoodl@milwaukieoregon.gov](mailto:alligoodl@milwaukieoregon.gov), if you wish to view this case file.

**This decision may be appealed by 5:00 p.m. on July 2, 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](mailto: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 applicants, Jeff and Shauna Walker, have applied for approval to build a 280 sq ft addition to their home. The expansion will disturb the water quality resource (WQR) and the proposed location of the addition requires a variance to the minimum street side yard setback.
2. The applicants propose to build a 10 ft by 28.7 ft (287 sq ft) addition to the west façade of the existing house. The site is located adjacent to mapped wetlands to the west and south, and these wetlands, along with an associated 50 ft vegetated corridor, are designated Water Quality Resources (WQR). The proposed addition would be located 14.76 ft from the street side yard setback, which is less than the required street side yard setback of 20 ft, and a variance the street side yard setback standard is required. The land use application file numbers are NR-2015-001 and VR-2015-002.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC Section 19.301 Low-Density Residential Zones
  - MMC Section 19.402 Natural Resources
  - MMC Section 19.700 Public Facility Improvements
  - MMC Section 19.911 Variances
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 June 9, 2015, as required by law.
5. MMC Section 19.301 Low-Density Residential Zones
  - a. MMC 19.301.4 establishes standards for development in the R-7 Zone. Table 1 summarizes the existing and proposed conditions on the subject property with respect to the standards relevant to this proposal.

**Table 1. Compliance with relevant R-7 standards**

<b>Residential Zone R-7 Development Standards</b>			
<b>Standard</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>
Minimum Setbacks	20 ft (front, rear, street side)	22.16 ft (front) 24.76 ft (street side) 27.64 ft (rear)	No change (front) 14.76 (street side) No change (rear)
Height Restriction	2½ stories or 35 ft	20 ft	20 ft
Lot Coverage	30% max.	20%	24%
Minimum Vegetation	35% min.	69%	65%

Upon approval of the variance requests, the Planning Commission finds that the proposal complies with the applicable standards of the R-7 zone.

6. MMC Section 19.402 Natural Resources

a. MMC 19.402 establishes regulations for designated natural resource areas.

The standards and requirements of MMC 19.402 are an acknowledgment that many of the riparian, wildlife, and wetland resources in the community have been adversely impacted by development over time. The regulations are intended to minimize additional negative impacts and to restore and improve natural resources where possible.

- (1) MMC 19.402.3 establishes applicability of the Natural Resource (NR) regulations, including all properties containing Water Quality Resources (WQRs) and Habitat Conservation Areas (HCAs) as shown on the City's NR Administrative Map. Specifically, MMC 19.402.3.G requires the submittal of a construction management plan for projects that will disturb more than 150 sq ft of WQR and/or HCA.

*The project area is adjacent to mapped wetlands to the west and south. As per MMC Table 19.402.15, the wetlands are primary protected water features and their associated vegetated corridor constitutes a WQR on the site. The City's Natural Resource (NR) Administrative Map also shows a small amount of designated HCA on site, though not within the project area.*

*As evidenced by the applicant's submittal materials, the proposed development will disturb approximately 280 sq ft of WQR area. The proposed development is not listed as exempt according to the standards outlined in MMC 19.402.4.*

*The Planning Commission finds that the requirements of MMC 19.402 are applicable to the project area, including the requirement to provide a construction management plan according to the standards of MMC 19.402.9.*

- (2) MMC 19.402.8 establishes that certain activities within a designated WQR and/or HCA, including development activities allowed in the base zone, are subject to Type III review (MMC 19.1006) and the general discretionary review criteria provided in MMC 19.402.12.

*The proposed expansion of an existing building within a WQR is not exempt from the provisions of MMC 19.402, nor is it permitted as a Type I or Type II activity.*

*The Planning Commission finds that the proposed development is subject to Type III review according to the procedures provided in MMC 19.1006. The Commission finds that the general discretionary review criteria of MMC 19.402.12 apply to the proposed disturbance of the WQR.*

- (3) MMC 19.402.9 establishes standards for construction management plans, which are required for projects that disturb more than 150 sq ft of natural resource area. Construction management plans must provide information related to site access, staging of materials and equipment, and measures for tree protection and erosion control.

*As noted in Finding 6.a.1, a construction management plan is required prior to commencement of the proposed development activity. A construction management plan was included with the application submittal.*

*The Planning Commission finds that this standard is met.*

- (4) MMC 19.402.11 establishes development standards for projects that impact a natural resource.
- (a) MMC 19.402.11.A provides standards for protecting natural resource areas during development, including requirements to mark work areas, flag WQRs and HCAs that are to remain undeveloped, and conduct all work in accordance with an approved construction management plan.

*The proposed project is subject to all relevant standards in MMC 19.402.11.A. A condition is established to ensure that all project work is performed in accordance with the approved construction management plan.*

*As conditioned, the Planning Commission finds that this standard is met.*

- (b) MMC 19.402.11.B establishes general standards for required mitigation, including requirements related to items such as plant species, size, spacing, and diversity, as well as location of mitigation area, removal of invasive vegetation, and plant survival.

*The applicant has provided a mitigation plan for the proposed disturbance to the WQR within the project area. The plan includes information about species, size, spacing, and survival within the designated mitigation area. As proposed, the existing lawn within the development area will be removed and mitigation plantings will be installed along the perimeter of the site and maintained for 2 years as required. Bare or open soil areas will be planted with wood strawberry ground cover during the next planting season after construction. A condition has been established to ensure that all mitigation plantings are installed and maintained per the mitigation plan.*

*As conditioned, the Planning Commission finds that this standard is met.*

- (c) MMC 19.402.11.C establishes mitigation requirements for disturbance within WQRs. The requirements vary depending on the existing condition of the WQR, according to the categories established in MMC Table 19.402.11.C. For Class C "Poor" WQR conditions, MMC Table 19.402.11.C requires that the applicant submit a plan to mitigate the disturbance with the vegetative composition that would naturally occur on the site.

*Aerial photos show that there is no tree, shrub, ground cover, or canopy coverage on the site. MMC Table 19.402.11.C categorizes any area with less than 80% trees, shrubs, and ground cover and/or less than 25% canopy coverage as Class C "Poor."*

*Within the WQR, the proposed development will permanently disturb approximately 287 sq ft. The applicant has not identified any temporary disturbance area, as excavation for a foundation will not be conducted. As mitigation for permanent disturbance to the WQR, the applicant has proposed to restore approximately 360 sq ft within or adjacent to the WQR area on the subject property.*

*As conditioned, the Planning Commission finds that this standard is met.*

*The Planning Commission finds that, as conditioned, the proposed development meets the applicable standards of MMC 19.402.11.*

- (5) MMC 19.402.12 establishes a discretionary process for analyzing the impacts of development on WQRs and HCAs.
- (a) MMC 19.402.12.A requires a report presenting an evaluation of impacts and analysis of alternatives for the proposed development. The report must be prepared and signed by a qualified natural resource professional. At the Planning Director's discretion, the requirement to provide such a report may be waived for small projects that trigger discretionary review but can be evaluated without professional assistance.

*Given the small scale of the project, the degraded condition of the mapped WQR on site, and the actual location of the protected resource off-site, the Planning Director has waived this requirement.*

- (b) MMC 19.402.12.B establishes criteria for approving disturbances to the WQR and/or HCA.
- (i) MMC 19.402.12.B.1.a requires that the proposed development avoid intrusion into the WQR and/or HCA to the extent practicable and that it be the least impactful alternative.

*The applicant has analyzed 5 alternatives:*

- A. *Proposal: add a 287 sq ft addition to the west side of the house*  
*The proposal would have minimal impact to the WQR, as the protected wetland is located off-site. The addition would disturb existing lawn.*
- B. *Reducing the size of the addition to reduce impact to the WQR*  
*Reducing the size of the addition would not reduce impact to the WQR, as the protected wetland is located off-site.*
- C. *Locating the addition in the rear yard rather than the side yard*  
*This location is nearer to the mapped wetland than the proposed street side yard location.*
- D. *Locating the addition outside of the mapped WQR*  
*This would require placing the addition in front of the house, which would require significant interior renovation and a variance to the front yard setback.*
- E. *Adding another story to the dwelling*  
*The maximum height in the R-7 Zone is 35 ft or 2.5 stories. The existing home is almost 2 stories tall; adding an additional story would not be permitted in this zone.*

*Alternatives A and B are equally impactful, though Alternative A is the most practicable. Alternative C would be more impactful. Alternatives D and E are not practicable.*

*As proposed, this criterion is met.*

- (ii) MMC 19.402.12.B.1.b requires that the proposed development minimize detrimental impacts to the WQR and/or HCA to the extent practicable.

*No grading will be required for the foundation, which will be a raised foundation rather than a slab. The soil disturbed by the construction of the foundation will be distributed on site. There are no anticipated impacts on water resources as they are located off site and any erosion or runoff from the development will be managed on site. Access to the site will be restricted to the existing paved driveway.*

*The proposed development is subject to all applicable development standards, including measures to protect areas within the WQR and HCA that will not be disturbed by the proposed development. A condition is established to ensure that all project work is performed in accordance with the approved construction management plan.*

*As conditioned, this criterion is met.*

- (iii) MMC 19.402.12.B.1.c requires that the proposed development mitigate for detrimental impacts to the WQR and/or HCA. Mitigation shall be on site, use native plants, be done in accordance with allowable windows for in-water work, and follow a mitigation maintenance plan.

*As proposed, the applicant will mitigate for permanent impacts to the WQR by restoring a portion of the remaining WQR within the project area per MMC 19.402.11.B-C. The total disturbance area is approximately 287 sq ft, and the area proposed for mitigation is approximately 360 sq ft.*

*All existing trees will remain. The mitigation plantings will consist of selections from the Milwaukie Native Plant List: 160 sq ft of Wild Strawberry ground cover along the northern fence line; 200 sq ft of Wild Strawberry ground cover along the east side of the house; and 1 Bitter Cherry tree in the southwestern corner of the site.*

*As proposed, this criterion is met.*

*The Planning Commission finds that, as conditioned, the proposed development meets the approval criteria established in MMC 19.402.12.B.*

*The Planning Commission finds that, as conditioned, the proposed development meets the applicable standards of MMC 19.402.12.*

- (6) MMC 19.402.15 establishes standards for verifying the boundaries of WQRs and HCAs and for administering the City's Natural Resource (NR) Administrative Map. The Planning Director may waive the requirement for official wetland delineation, depending on the specific circumstances of the site and the proposed activity.

*The site is located within the 50-ft vegetated buffer of mapped wetlands to the west and south of the site. Because the site itself does not contain any wetlands, the Planning Director has waived this requirement.*

*The Planning Commission finds that, as conditioned, the proposed development meets all applicable standards of MMC 19.402.*

7. MMC Section 19.700 Public Facility Improvements

- a. MMC 19.702.2 establishes the applicability of this section for single-family residential expansions.

*The applicant is proposing to increase the gross floor area of the existing structure by 287 sq ft. Per MMC 19.702.2.B, for expansions of more than 200 sq ft, right-of-way dedication may be required pursuant to the street design standards and guidelines contained in Subsection 19.708.2.*

*The Engineering Department finds that the necessary right of way dedication was performed with the development of the subdivision in 1991.*

*The Planning Commission finds that the requirements of MMC Chapter 19.700 have been met.*

8. MMC Section 19.911 Variances

- a. MMC 19.911.3 establishes the review process for variance applications.

*The applicant has requested a variance to extend the western façade of the house by 10 ft and to reduce the street side yard setback from 20 ft to 14.76 ft. The request for the variance to the minimum street side yard width standards exceed 25%, and must be processed through Type III review.*

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

- 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.

*Neither staff nor the applicant has identified any negative impacts of the variance proposal.*

*The Planning Commission finds that 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 western façade of the home, which is not adjacent to any other property.*

*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 flat and rectilinear and is developed with a conventional single-family dwelling.*

*The Planning Commission finds that this criterion is not applicable.*

*The Planning Commission finds that the applicant has demonstrated that the project meets criterion 2.a within this subsection, and therefore this subsection is satisfied.*

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

*As noted in Finding 8.b.1, neither staff nor the applicant has identified any potential negative impacts.*

*The Planning Commission finds that there are no impacts to be mitigated, and this criterion is met.*

*The Planning Commission finds that these criteria are met.*

9. As per MMC 19.1001.7.E, this approval shall expire and become void unless the proposed development completes the following steps:
- Obtain and pay for all necessary development permits and start construction within 2 years of land use approval.
  - Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval.
10. The application was referred to the following departments and agencies on May 11, 2015:
- Milwaukie Building Division
  - Milwaukie Engineering Department
  - Clackamas County Fire District #1
  - Lewelling Neighborhood District Association Chairperson and Land Use Committee

The comments received are summarized as follows: No comments received.

### **Conditions of Approval**

- At the time of submission of any building permit application, the following shall be resolved:
  - Final plans submitted for building permit review shall be in substantial conformance with plans approved by this action, which are the plans stamped received by the City on March 12, April 8, and May 21, 2015, except as otherwise modified by these conditions.



- b. All work shall be performed in accordance with the construction management plan and mitigation plan approved by this action.
  - c. Provide a narrative describing any changes made after the issuance of this land use decision that are not related to these conditions of approval.
2. Prior to final inspection of any building permit, the following shall be resolved:
- a. Implement the final mitigation plan for disturbances to the WQR, including the following tasks:
    - (1) Remove all invasive nonnative vegetation and any debris or noxious material from within designated mitigation planting areas.
    - (2) Install trees, shrubs, and ground cover according to the details provided in the final mitigation plan and in accordance with the standards provided in MMC 19.402.11.B. This includes standards for plant size, spacing, and survival.
    - (3) Provide a signed statement from the responsible party identified in the approved mitigation plan, stating that all mitigation plantings have been installed according to the final mitigation plan.
  - b. 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**

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements contained in the Milwaukie Municipal Code and Public Works Standards that are required at various point in the development and permitting process.

1. The proposed work is subject to the relevant development standards in MMC 19.402.11.A.
2. 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(I).



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Dennis Egner, AICP  
Planning Director

cc: Jeff and Shauna Walker (5256 SE Winsor Ct)  
Planning Commission (*via e-mail*)  
Alma Flores, Community Development Director (*via e-mail*)  
Jason Rice, Engineering Director (*via e-mail*)  
Brad Albert, Civil Engineer (*via e-mail*)  
Chrissy Dawson, Engineering Tech 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): NR-2015-001