



November 26, 2014

Land Use File(s): VR-14-02

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on November 25, 2014.

Applicant(s): Perry Nordby, Owner
Applicant's Representative: Ron Woodruff, Architect
Location(s): 9925 SE 37th Ave
Tax Lot(s): 11E25DC00100
Application Type(s): Variance Review
Decision: Approved, with conditions
Review Criteria: Milwaukie Zoning Ordinance:

- Section 19.301 Low Density Residential Zones
- Chapter 19.500 Supplementary Development Regulations
- Chapter 19.800 Nonconforming Uses and Development
- Section 19.911 Variances
- Section 19.1006 Type III Review

Neighborhood(s): Ardenwald-Johnson Creek

Appeal period closes: 5:00 p.m., December 11, 2014

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 Denny Egner, Planning Director, at 503-786-7654 or egnerd@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on December 11, 2014, 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.

COMMUNITY DEVELOPMENT
BUILDING • ECONOMIC DEVELOPMENT • ENGINEERING • PLANNING
6101 SE Johnson Creek Blvd., Milwaukie, Oregon 97206
P) 503-786-7600 / F) 503-774-8236
www.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, Ron Woodruff, on behalf of Perry Nordby, has applied for relief from the rear and street side yard setbacks and approval to extend the existing nonconforming single-family home by adding a second story within the required street side yard setback and construct a new covered patio at 9925 SE 37th Ave within the required street side yard and rear setbacks. This site is in the R-7 Zone. The land use application file number is VR-14-02.
2. Relief from the setbacks is required because the existing single-family dwelling is nonconforming in regard to the street side yard setback, and the applicant seeks to extend the nonconformity by adding a second story to the northern façade of the house. The proposal requires variances to the required 20 ft street side yard setback of the R-7 zone and the additional yard requirements of Harvey St between 32nd and 42nd Avenues, which requires a setback of 25 ft from the northern property line.
3. This proposal was reviewed and approved by the Planning Commission through VR-12-05. This variance review is required because the applicant proposes to extend the nonconformity approved through VR-12-05 by adding a second story to the dwelling. The proposed design does not substantially conform to the design approved through VR-12-05, and additional review is required.
4. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 1. MMC Section 19.301 Low Density Residential Zones
 2. MMC Subsection 19.501.2 Yard Exceptions
 3. MMC 19.700 Public Facility Improvements
 4. MMC Chapter 19.800 Nonconforming Uses and Development
 5. MMC Section 19.911 Variance Review
 6. MMC Section 19.1006 Type III Review
5. 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 November 25, 2014, as required by law.
6. MMC 19.301 Low Density Residential Zones
 - a. MMC 19.301 establishes the development standards that are applicable to this site. Table 1 summarizes the existing and proposed conditions on the subject property with respect to the standards relevant to this proposal.

The existing house is located at a slight angle to Harvey St, and the existing street side yard setbacks of the garage range from 14.95 ft to 15.95 ft, as approved by VR-12-05. The applicant has proposed retaining the existing garage setback of 14.95 - 15.95 ft and extending the nonconformity by adding a second story to the northern façade of the house.

The applicant has also proposed the addition of a covered 18 ft x 19 ft patio area to the west of the existing house, 18 ft from the rear lot line and 20 ft from the street side yard lot line.

Table 1. Compliance with relevant R-7 standards

R-7 Zone	Standards	Existing	Proposed
Lot Coverage	30% max.	Approx. 22%	Approx. 25%
Minimum Vegetation	30% min.	Approx. 60%	Approx. 57%
Street-Side Yard Setback	20 ft	14.95-15.95 ft (house) None (patio)	No change (house) 15 ft ¹ (patio)
Rear Yard Setback	20 ft	~34 ft	18 ft ¹
Building Height	2.5 stories or 35 ft (whichever is less)	1 story, 13 ft	2 stories, 21 ft

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

7. MMC Chapter 19.500 Supplementary Development Regulations
 - a. MMC 19.501.2 establishes additional setback requirements for buildings located along certain major streets.
 - b. MMC 19.501.2 establishes additional yard requirements for buildings along certain major streets. These additional yard requirements are measured from the centerline of the right-of-way to the closest point of any building, plus the yard requirement of the underlying zone. The additional yard requirement for Harvey St is 25 ft from centerline.

As proposed, the second-story addition would extend the nonconforming structure by adding a second story that is located 14.95 - 15.95 ft from the street side yard setback.

The proposed covered patio would be located 20 ft from the Harvey St property line, or 40 ft from the Harvey St centerline. The applicant has requested a variance to the street side yard setback requirement of 20 ft, proposing to reduce it to 15 ft. The proposed covered patio requires a variance from this standard.

Table 2 summarizes the existing and proposed conditions on the subject property with respect to the standards relevant to this proposal.

Table 2 – Compliance with Yard Exceptions

	Yard Standards	Existing <small>Error! Bookmark not defined.</small>	Proposed (Patio)
Additional Setback	45 ft from street centerline	N/A	40 ft

¹ The applicant has requested a variance to the street side yard and rear yard setback standards of the R-7 zone.

Upon approval of the variance requests, the Planning Commission finds that the proposal complies with the applicable standards of MMC 19.500.

8. 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 280 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.

9. MMC Chapter 19.800 Nonconforming Uses and Development

a. MMC 19.804.2 establishes provisions for approving the alteration or expansion of nonconforming development.

The existing structure is nonconforming in regards to the street side yard setback. The applicant proposes to extend the height of the existing garage by approximately 13 ft. Per MMC 19.804.2.A, alterations or expansions that increase or extend the nonconformity are not allowed unless a variance is approved pursuant to MMC 19.911.

The Planning Commission finds adding a second story to the existing dwelling is an extension of the nonconformity, and that MMC 19.911 is applicable to that component of this application.

10. 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 nonconforming street side yard setback, by adding a second story to the northern façade of the house. As approved by VR-12-05, the minimum street side yard width standard of 20 ft was reduced to 13.95 ft, a variance of 30%. The request for the minimum street side yard width standards exceed 25%, and must be processed through Type III review.

The applicant has also requested a variance of 20% to the minimum street side yard setback and 10% to the minimum rear setback to construct a new covered patio.

The Planning Commission finds that the application is subject to Type II review for the proposed construction of a covered patio, and Type III review for the proposed addition of a second story.

b. MMC 19.011.4.A establishes criteria for approving Type II Variance applications.

An application for a Type II Variance shall be approved when all of the following criteria 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*

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 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 street-side yard faces Harvey St, which is classified as a “neighborhood route” in the Milwaukie Transportation System Plan where adjacent to the subject property. As noted in Finding 6.b, Harvey St requires an additional 25-ft setback measured from the centerline of the right-of-way, plus the standard 20-ft setback of the R-7 zone. No right-of-way dedication is required along the Harvey St frontage at the time of this proposal; additional right-of-way width may be needed for future improvements to the street. However, the existing and proposed development is set back a sufficient distance from Harvey St to avoid interference with planned future improvements to Harvey St.

The proposed variance will not limit the future construction of any public transportation or utility improvements in the public right-of-way.

The Planning Commission finds that 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 proposed variance is intended to both sustain the integrity of and enhance the existing building design. Over the past several years, the property owner has converted the home from a 1940s bungalow to an Arts and Crafts design. The proposed expansion and addition will continue this conversion.

The Planning Director finds that this criterion is met.

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

As noted in Finding 10.c (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.

- c. 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 applicant has identified the following benefits of the variance proposal: Adding a gable dormer can be seen as adding interest and variation to the overall Craftsman Style of the house.

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 northern 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 criteria (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 10.c (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.

11. As per MMC 19.906.2.C, the proposed development is exempt from the requirement to submit a development review application and the other requirements of MMC 19.906 Development Review. However, the proposal must still comply with all applicable development standards and will be reviewed during the building permit review process.

12. As per MMC 19.1001.7.E, this variance request shall expire and become void unless the proposed development completes the following steps:
 - A. Obtain and pay for all necessary development permits and start construction within 2 years of land use approval (by November 25, 2016).
 - B. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by November 25, 2018).
13. The application was referred to the following departments and agencies on October 15, 2014: Milwaukie Building Division; Milwaukie Engineering Department; Clackamas Fire District #1; and the Ardenwald-Johnson Creek 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 November 5, 2014, and a sign was posted on the property on November 12, 2014. The following is a summary of the comments received by the City.
 - **Brad Albert, Civil Engineer:** Although Chapter 19.700 is triggered by this application, the Engineering Director has determined that there are insufficient impacts to require the dedication of public right-of-way along Harvey St. Recommends a condition of approval related to the provision of an ADA-compliant driveway approach.

Staff Response: The required for the provision of an ADA-compliant driveway approach was triggered by expansion of the garage, as approved by VR-12-05. Installation of an ADA-compliant driveway approach is an outstanding condition of approval for that application, and will be required prior to final inspection and approval of the renovations.

- **Dolores Julien, 3725 SE Harvey St, Milwaukie, OR:** Supports the application.

Conditions of Approval

1. At the time of submission of any building permit application, the following shall be resolved:
 - a. 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 June 3, August 4, and September 4, 2014, except as otherwise modified by these conditions.
 - 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.
2. 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: Perry Nordby (9925 SE 37th Ave, Milwaukie, OR 97222)
Ron Woodruff, Architect (1225 SE Mall St, Portland, OR 97202)
Planning Commission (*via e-mail*)
Steve Butler, Community Development Director (*via e-mail*)
Jason Rice, 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*)
Mike Boumann and Shawn Olson, CCFD#1
NDA(s): Ardenwald-Johnson Creek (*via e-mail*)
Interested Persons
Land Use File(s): VR-14-02, VR-12-05