



June 15, 2016

Land Use File(s): VR-2016-004

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on June 14, 2016.

**Applicant(s):** Darren Smith  
**Location(s):** 10922 SE 42<sup>nd</sup> Ave  
**Tax Lot(s):** 12E31BB12300  
**Application Type(s):** Variance  
**Decision:** Approved with Conditions  
**Review Criteria:** Milwaukie Zoning Ordinance:

- MMC Section 19.301 Low Density Residential Zones
- MMC Section 19.911 Variances
- MMC Section 19.1006 Type III Review

**Neighborhood(s):** Hector Campbell

**Appeal period closes: 5:00 p.m., June 30, 2016**

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 Kolias, Associate Planner, at 503-786-7653 or [koliasv@milwaukieoregon.gov](mailto:koliasv@milwaukieoregon.gov), if you wish to view this case file.

**This decision may be appealed by 5:00 p.m. on June 30, 2016, 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 applicant, Darren Smith, has applied for relief from the minimum front yard and rear yard setbacks to legalize the existing rear addition and to construct a 384-sq ft attached garage at 10922 SE 42nd Ave. This site is in the Residential R-7 Zone. The land use application file number is VR-2016-004.
2. The proposal requires variances to the required 20 ft front and rear yard setbacks for a primary structure in the R-7 zone.
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 19.911 Variances
  - 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. Per MMC 19.1001.6, the two applications are being reviewed concurrently according to the highest numbered review type required. A public hearing was held on June 14, 2016, as required by law.
5. 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 centered on the lot and was constructed in 1954 with a front yard setback of 17.8 ft rather than the minimum 20 ft required. The rear addition was constructed without permits at some point in the last 20 years with a rear yard setback of 7.2 ft. An existing 150-sq ft accessory structure will be removed from the property.

The applicant has proposed to replace the existing carport with a 384-sq ft attached garage.

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

<b>R-7 Zone</b>	<b>Standards</b>	<b>Existing</b>	<b>Proposed</b>
<b>Lot Coverage</b>	40% max.	Approx. 37.6%	Approx. 31.15%
<b>Front Yard Setback</b>	20 ft	17.8 ft (existing)	No change <sup>1</sup>
<b>Rear Yard Setback</b>	20 ft	7.2 ft (existing)	No change <sup>2</sup>
<b>Side Yard Setback</b>	5 ft	17.7 ft	No change

<sup>1</sup> The applicant has requested a variance to this development standard in order to construct an attached garage.

<sup>2</sup> The applicant has requested a variance to the development standard to allow an existing addition to remain.

R-7 Zone	Standards	Existing	Proposed
Street Side Yard Setback	20 ft	24.9 ft	No change <sup>3</sup>

The Planning Commission finds that the proposal complies with the applicable standards of the R-7 zone.

6. MMC Chapter 19.911 Variances

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

The applicant has requested a variance to the required rear yard setback to allow an existing addition located 7.2 ft from the rear property to remain. This request exceeds the allowable variance of 25% or 5 ft permitted through Type II review.

The applicant has also requested a variance to the required front yard setback for an attached garage located 17.8 ft from the front property line rather than the required 20 ft.

The Planning Commission finds that the application is subject to Type III Variance review for the existing addition located 7.2 ft from the rear property line.

- 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.*

Over the past 20 years or so, improvements were made to the property without permits. The home was originally built in 1954 on a 6,074-sq ft lot, which is less than the current minimum lot size of 7,000 sq ft in the R-7 zone. The property was part of the Keil Heights subdivision approved by Clackamas County in 1952. The existing addition, resulting in a 7.2-ft rear yard setback has a negligible impact on the abutting property, particularly with the existing vegetation on the property. Further, as this is a corner lot, the siting of the home facing 42nd Ave resulted its rear yard adjacent to the abutting property's side yard. Demolition of the addition would, according to the applicant's narrative, result in a home too small for typical family needs and necessitate the demolition of the entire structure and the construction of a new 2-story home.

Allowance of the attached garage with a 17.8-ft front yard setback matches the existing setback for the home. The garage would replace the existing carport that was built without permits.

The goal of this project is to maintain the footprint of the existing property and completely remodel the home to bring it up to current code without changing its outward appearance in order to maintain the existing neighborhood street line.

<sup>3</sup> The applicant proposes to replace the existing carport with an attached garage.

- c. There are no identified negative impacts related to 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.*

Other than completely remodeling the existing home, the sole changes to the property are the replacement of the existing carport with an attached garage and the demolition of the existing large dilapidated shed. The footprint of the home will remain intact thereby minimizing the impact of the construction of a new home on surrounding properties. No mature vegetation will be disturbed to accommodate the construction of the garage.

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 Planning Commission finds that this criterion is not applicable.

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

As noted in Finding 6.b (1), the Commission finds there are no negative impacts and no mitigation is needed.

The Planning Commission finds that this criterion is met.

The Planning Commission finds that these criteria are met.

- 7. 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.
- 8. 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 June 14, 2018).
  - B. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by June 14, 2020).

9. The application was referred to the following departments and agencies on April 29, 2016: Milwaukie Building Division; Milwaukie Engineering Department; Clackamas Fire District #1; and the Hector Campbell Neighborhood District Association. Notice of the application was also sent to surrounding property owners within 300 ft of the site on May 25, 2016, and a sign was posted on the property on May 23, 2016. The following is a summary of the comments received by the City.

- **Lars Campbell, Land Use Chair, Hector Campbell NDA:** Expressed that the land use officers were in support of the variance provided that there is a thorough inspection of the non-permitted sections of the house to assure that everything meets current code.

### **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 April 13, 2016.
  - 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 building permit, the following shall be required:
  - a. Code Section 12.16.040.D.3. states that one (1) accessway per property is allowed for single-family residential uses. One existing driveway shall be removed, or the two existing driveways combined to a width not to exceed 20 feet, to bring property accessway into conformance with the Milwaukie Municipal Code and the Milwaukie Public Works Standards.

### **Additional 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. 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).



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Dennis Egner, AICP  
Planning Director

cc: Darren R. Smith (19500 Hidden Springs Rd. #20, West Linn, OR 97068)  
Planning Commission (*via e-mail*)  
Chuck Eaton, Engineering Director (*via e-mail*)  
Alex Roller, 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): Hector Campbell (*via e-mail*)  
Land Use File(s): VR-2016-004