



August 12, 2016

Land Use File(s): VR-2016-006

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on August 9, 2016.

Applicant(s): Paula Anderson
Appellant (if applicable)
Location(s): 10541 SE 55th Ave
Tax Lot(s): 12E30DC05700
Application Type(s): Variance
Decision: Approved with Conditions
Review Criteria: Milwaukie Zoning Ordinance:

- MMC Section 19.301 Low Density Residential Zones
- MMC Section 19.504.8 Flag Lot Design and Development Standards
- MMC Section 19.911 Variances
- MMC Section 19.1006 Type III Review

Neighborhood(s): Linwood

Appeal period closes: 5:00 p.m., August 29, 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 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 August 29, 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.

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, Paula Anderson, has applied for relief from the minimum rear yard setback to allow the placement of a new manufactured home on an existing concrete foundation and to allow the existing shared driveway to remain as is. This site is a flag lot and is in the Residential R-7 Zone. The land use application file number is VR-2016-006.
2. The proposal requires a variance to the required 30 ft rear yard setback for a primary structure on a flag lot in the R-7 zone and a variance to the required minimum width of a shared driveway.
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 19.504.8 Flag Lot Design and Development Standards
 - 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 August 9, 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 foundation, installed and permitted with a new manufactured home and garage in 1996, is located to the rear of the flag portion of the flag lot and is proximate to the existing garage. The previous home was installed on this foundation with a 10-ft rear yard setback rather than the current minimum requirement of 30 ft established by a 2003 zoning code amendment.

The applicant has proposed to re-use the existing foundation, utility connections, and driveway to construct a new 1-story manufactured home.

Table 1. Compliance with relevant R-7 standards

R-7 Zone	Standards	Existing	Proposed
Lot Coverage	40% max.	Approx. 7.5%	Approx. 15.5%

R-7 Zone	Standards	Existing	Proposed
Front Yard Setback – flag lot	30 ft	n/a	62 ft
Rear Yard Setback – flag lot	30 ft	n/a	10 ft ¹
Side Yard Setback – flag lot	10 ft	n/a	44 ft/51.57 ft

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

6. MMC Chapter 19.504.8 Flag Lot Design and Development Standards

- a. MMC 19.504.8.A states that flag lots in all zones are subject to the development standards of MMC 19.504.8. The subject property is a flag lot that was created in the County in 1978 prior to being annexed into the City in 1986.
- b. MMC 19.504.8.B contains development standards for flag lots.
 - 1) MMC 19.504.8.B.1 states that the areas contained within the accessway or pole portion of the lot shall not be counted toward meeting the minimum lot area requirement. The subject property has 16,338 sf in area outside of the accessway and complies with the minimum lot area requirement for the R7 zone.
 - 2) MMC 19.504.8.B.2 establishes yard setbacks of for flag lot development and requires a minimum 30-ft front and rear yard and 10-ft side yards. This application is requesting a variance from the minimum rear yard setback to allow a 10-ft setback rather than the minimum 30 ft required.
- c. MMC 19.504.8.C prohibits variances of lot area, lot width, and lot depth standards. There are no such variances requested.
- d. MMC 19.504.8.D establishes standards for flag lot frontage, accessway, and driveway design.
 - 1) MMC 19.504.8.D.1 requires that flag lots shall have frontage and access on a public street and that the minimum width of the accessway and street frontage is 25 ft. The subject property has an accessway and frontage of 25 ft.
 - 2) MMC 19.504.8.D.2 requires that abutting flag lots shall have a combined frontage and accessway of 35 ft. The subject parcel and the adjacent parcel (#10557) each have an accessway and frontage measuring 25 ft. The combined accessway width is 50 ft.
 - 3) MMC 19.504.8.D.3 contains standards for driveway design and emergency vehicle access. The existing driveway is located on the adjacent parcel. As conditioned, access to both lots shall be provided via an access

¹ The applicant has requested a variance to this development standard to allow the placement of a new manufactured home on an existing foundation.

easement as was required in 1996 for final approval of the original manufactured home on the subject property.

1. MMC 19.504.8.D.3.a requires that driveways shall be designed and constructed in accordance with Chapters 12.16 and 12.24 and the Public Works Standards. This application requests a variance to allow the existing driveway to remain as is.
 2. MMC 19.504.8.D.3.b requires that driveways serving 2 flag lots shall have a minimum paved width of 16 ft. This application requests a variance to allow the existing approximately 10-ft wide driveway to remain as is.
 3. MMC 19.504.8.D.3.c requires that driveways shall be centered within the accessway to minimize impacts on adjoining lots except when otherwise warranted to preserve existing vegetation or meet the intent of this subsection. The proposed driveway is centered within the accessway of the adjacent parcel.
 4. MMC 19.504.8.D.3.d requires that a paved turnaround area, or other provisions intended to provide emergency vehicle access and adequate maneuvering area, may be required. Clackamas Fire District #1 (CFD) reviewed the application and had no comments regarding the proposed project.
 5. MMC 19.504.8.D.3.e requires that driveways serving 2 flag lots shall be consolidated and have a minimum shared driveway width of 16 ft. This application requests a variance to allow the existing approximately 10-ft driveway to remain as is.
 6. MMC 19.504.8.D.3.f requires that the flag lot driveway shall be consolidated with the driveway on the parent lot to the greatest extent practicable. The proposed project is on an existing flag lot with an existing driveway serving 2 flag lots.
 7. MMC 19.504.8.D.3.g requires that design standards for shared driveways serving more than 3 lots shall be specified by the Engineering Director after consultation with the Fire Marshal. The proposal is for the placement of a new manufactured home on an existing flag lot. This standard does not apply.
 8. MMC 19.504.8.D.3.h requires that parking along any portion of the driveway within the accessway is prohibited unless the driveway is suitably sized to meet the combined needs of parking and emergency access requirements. The existing driveway is not suitably sized to allow the combined needs of parking and emergency access requirements.
- 4) MMC 19.504.8.E contains standards for protection of adjoining properties for flag lot development. Flag lots must be screened in accordance with this subsection to minimize potential adverse impacts to abutting properties. Fencing and screening must conform to the clear vision standards of Chapter 12.24. Fencing shall conform to the standards of Subsection 19.502.2.B.
1. MMC 19.504.8.E.1 requires that planting and screening must be provided at the time of development. Installation of required screening

and planting is required prior to final inspections and occupancy of the site unless a bond or other surety acceptable to the City Attorney is provided. Screening and landscaping shall be installed within 6 months thereafter or the bond will be foreclosed. The property owner shall maintain required screening and planting in good and healthy condition. The requirement to maintain required screening and planting is continuous.

As conditioned, planting and screening required pursuant to this subsection will be required prior to final inspection and occupancy of the proposed structure.

2. MMC 19.504.8.E.2 requires that impacts to neighboring lots due to use of the flag lot driveway shall be mitigated to the greatest extent practicable through screening and planting. Continuous screening along lot lines of the flag lot abutting any neighboring lot that is not part of the parent lot from which the flag lot was created is required as described in MMC 19.504.8.E.2.a – c. Perimeter fencing and vegetation already existing on the subject property. The applicant proposes to add new sight impervious vegetation along the rear property line.
3. MMC 19.504.8.F requires that all trees 6 in or greater in diameter, as measured at the lowest limb or 4 ft above the ground, whichever is less, shall be preserved. Where trees are required to be removed for site development, at least 1 evergreen or deciduous tree, of a species known to grow in the region, shall be replanted for each tree removed. At planting, deciduous trees shall be a minimum of 2-in caliper and evergreen trees shall be a minimum of 5 ft tall.

No trees are proposed for removal as part of this project.

4. MMC 19.504.8.G requires that a landscaping plan shall be submitted to the Planning Director prior to issuance of a building permit for new construction. The applicant's submittal materials include a landscaping plan.

7. 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 the use of an existing foundation located 10 ft from the rear property line for a new manufactured home. This request exceeds the allowable variance of 25% or 7.5 ft permitted through Type II review.

The applicant has also requested a variance to the minimum paved width of a shared driveway for adjacent flag lots to allow the existing approximately 10-ft wide driveway to remain rather than the required 16 ft.

The Planning Commission finds that the application is subject to Type III Variance review for a 10-ft rear yard setback rather than the minimum 30 ft required.

- 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.*

A manufactured home was placed and a shop was constructed on the subject property in 1996; the home was removed, but the shop, driveways, and utility connections remain. The proposal is to re-use the existing foundation and utility connections to place a new 1-story manufactured home on the property as well as to allow the existing 10-foot wide shared driveway to remain as is. Re-using the foundation replicates the original site development and the relationship of the house to the garage and eliminates the very costly need to remove the existing concrete and utility lines and relocate them. No construction impacts are anticipated, save for the installation of the home.

Allowance of the existing shared driveway eliminates the need to install additional pavement and remove a large amount of concrete for the existing driveways.

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.*

By utilizing the existing foundation, site work is minimized which avoids the typical impact of the construction of a new home on surrounding properties. Additional landscaping is proposed to ensure that all perimeter buffer code requirements are met. The proposed home is 1-story and the other setbacks are large (front yard = 62 ft; side yards = 44ft/51.57 ft) and exceed the minimum requirements.

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 does not apply.

- (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 does not apply.

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

As noted in Finding 7.b (1), the Commission finds there are no negative impacts; applicant has proposed additional landscaping to complete the rear yard screening requirement.

The Planning Commission finds that this criterion is met.

The Planning Commission finds that these criteria are met.

8. 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.
9. 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 development of the site within 2 years of land use approval (by August 9, 2018).
 - B. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by August 9, 2020).
10. The application was referred to the following departments and agencies on June 29, 2016: Milwaukie Building Division; Milwaukie Engineering Department; Clackamas Fire District #1; and the Linwood Neighborhood District Association. Notice of the application was also sent to surrounding property owners within 300 ft of the site on July 20, 2016, and a sign was posted on the property on July 20, 2016. The following is a summary of the comments received by the City.
 - Jesse Tremblay, Land Use Chair, Linwood NDA: Expressed that the proposed project has limited impact on surrounding properties due to using an existing mobile home pad.

Conditions of Approval

1. Parking along the driveway in the access pole portion of the lot is not permitted.
2. Planting and screening as shown on the approved plans received on June 10, 2016 shall be installed prior to final inspection and occupancy of the proposed structure.
3. 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 10, 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.
4. An easement allowing TL5700 to access the driveway on TL5701, creating the shared driveway, shall be in place prior to final inspection and occupancy of the proposed structure.

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. 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, FAICP
Planning Director

cc: Paula Anderson (10557 SE 55th Ave, Milwaukie, OR 97222)
Planning Commission (*via e-mail*)
Alma Flores, Community Development Director (*via e-mail*)
Chuck Eaton, Engineering Director (*via e-mail*)
Alex Roller, 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): Linwood (*via e-mail*)
Interested Persons
Land Use File(s): VR-2016-006