



July 13, 2017

Land Use File(s): VR-2017-008

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on July 13, 2017.

**Applicant(s):** Lonnie Gilbertson  
**Location(s):** 10179 SE 43<sup>rd</sup> Ave.  
**Tax Lot(s):** 12E30CC03302  
**Application Type(s):** Variance  
**Decision:** Approved with Conditions  
**Review Criteria:** Milwaukie Zoning Ordinance:

- MMC Section 19.1005 Type II Review
- MMC Section 19.301 Low Density Residential Zones
- MMC Section 19.911 Variances
- MMC Section 19.700 Public Facility Improvements

**Neighborhood(s):** Lewelling

**Appeal period closes: 5:00 p.m., July 28, 2017**

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 Mary Heberling, Assistant Planner, at 503-786-7658 or [heberlingm@milwaukieoregon.gov](mailto:heberlingm@milwaukieoregon.gov), if you wish to view this case file or visit the project webpage at <http://www.milwaukieoregon.gov/planning/VR-2017-008>.

**This decision may be appealed by 5:00 p.m. on July 28, 2017, which is 15 days from the date of this decision.**<sup>1</sup> 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](mailto:planning@milwaukieoregon.gov).

<sup>1</sup> As per MMC Section 19.1010, if the 15<sup>th</sup> day falls on a weekend or legal holiday, the end of the appeal period shall be extended to the end of the next business day.

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, Lonnie Gilbertson, has applied for relief from the minimum rear yard setbacks to legalize the construction of a new rear 1,000 sq ft addition at 10179 SE 43rd Ave. This site is in the Residential R-7 Zone. The land use application file number is VR-2017-008.
2. The proposal requires a variance to the required 20-ft rear yard setback 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 19.700 Public Facility Improvements
  - MMC Section 19.911 Variances
  - MMC Section 19.1005 Type II Review
4. The application has been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review.
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.*

**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. 28.5%	Approx. 39.6%
<b>Front Yard Setback</b>	20 ft	20 ft	No change
<b>Rear Yard Setback</b>	20 ft	35 ft	15 ft <sup>2</sup>
<b>Side Yard Setback</b>	10/5 ft	25/10ft	No change
<b>Minimum Vegetation</b>	30%	Approx. 44%	34%
<b>Front Yard Vegetation</b>	40%	64%	No change

*The Planning Director finds that the proposal, with approval of the rear yard setback variance, complies with the applicable standards of the R-7 zone.*

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<sup>2</sup> The applicant is proposing a variance request for the rear yard setback.

6. MMC Chapter 19.700 Public Facilities Improvements

a. MMC 19.702 Applicability

For expansions or conversions of single-family residences that increase the combined gross floor area of all structures (excluding nonhabitable accessory structures or garages) by at least 200 sq ft, but not more than 1,499 sq ft, right-of-way dedication may be required pursuant to the street design standards and guidelines contained in Subsection 19.708.2.

*The proposed development consists of expansion of an existing single-family residential structure. Expansion of the gross floor area is greater than 200 sq ft, but not more than 1,499 sq ft. The proposed addition is 1,000 sq ft.*

*The right-of-way dedication standards of MMC Chapter 19.700 pursuant to the street design standards and guidelines of MMC Subsection 19.708.2 apply to the proposed development. The Engineering Department has determined that ROW currently meets City standards, therefore no dedication is required. Adequate public utilities are available to solve the proposed development pursuant to MMC Section 19.709.*

*The Planning Director finds that the proposal complies with the standards in 19.700.*

b. 19.708.1.D.3 Street Right-of-Way Dedication

Street right-of-way shall be dedicated to the public for street purposes in accordance with Subsection 19.708.2.

*The proposed development is subject to the right-of-way dedication standards of MMC Chapter 19.700. Right-of-way has already been dedicated in accordance with MMC Subsection 19.708.2, and is not required as part of this development.*

*MMC 19.708.1.D.3 does not apply to the proposed development.*

c. MMC 19.709 Public Utility Requirements

Public utility improvements shall be required for proposed development that would have a detrimental effect on existing public utilities, cause capacity problems for existing public utilities, or fail to meet standards in the Public Works Standards.

*The Engineering Director has determined that the existing public utilities are adequate to serve the proposed development.*

*The Planning Director finds that the proposed development complies with MMC Section 19.709.*

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 a proposed new addition located 15 ft from the rear property to remain. This request meets the allowable variance of 25% or 5 ft permitted through Type II review.*

*The Planning Director finds that the application is subject to Type II Variance review.*

b. MMC 19.911.4.B establishes criteria for approving Type II Variance applications.

An application for a Type II Variance shall be approved when all the criteria in 19.911.4.A 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.

*The site of the proposal is not in any natural resource overlay zone so there is no effect on natural resource areas. The proposed addition will be in the back of the house and will not cause any public health, safety, or welfare risks as the general public will not be aware of the proposed addition.*

*The proposal is a 25% or 5 ft difference to the rear yard setback of 20 ft in the R-7 zone. The extra 5 ft towards the rear property line will not have any detrimental effects on surrounding properties. The addition will be no taller than 1-story or 20 ft and an existing 6-ft fence separates the site from the abutting property to the rear yard of the site.*

*The Planning Director finds that the approval criteria are 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 that are impacted by the proposal.

*There have been no public transportation facilities or utilities in the adopted Transportation System Plan or Water Master Plan.*

*The Planning Director finds that this approval criteria is not applicable.*

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

*The proposed addition will be 1,000 sq ft and no taller than 1-story. The materials will match the single-family residence to provide consistency and enhance the existing building. The applicant has lived at the property for over 30 years and is requesting the setback variance to accommodate a larger building to meet the anticipated medical needs of the applicant's wife.*

*The Planning Director finds that the approval criteria are met.*

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

*The applicant will mitigate any impacts that may arise to the extent practicable. The 6-ft fence in the rear yard will provide visual screening for the adjacent property. A drywell is being required in the conditions of approval to handle the new impervious roof area.*

*The Planning Director finds that the approval criteria are met.*

*The Planning Director finds that the approval criteria for the Type II Variance is 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 construction within 2 years of land use approval (by July 13, 2019).

- b. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by July 13, 2021).
10. The application was referred to the following departments and agencies on June 23, 2017: Milwaukie Building Division; Milwaukie Engineering Department; Clackamas Fire District #1; Clackamas County, Metro, and the Lewelling Neighborhood District Association. Notice of the application was also sent to surrounding property owners within 300 ft of the site on June 23, 2017, and a sign was posted on the property on June 29, 2017. The following is a summary of the comments received by the City:
- Alex Roller, Engineering Technician II, City of Milwaukie Engineering Department: Provided comments on Engineering review of the application. Comments have been incorporated in the findings and conditions of approval.
  - Jason Rambo, Owner at 10115 SE 43<sup>rd</sup> Ave: Provided comments in support of the application. Did not find any issues with the proposal.

### **Conditions of Approval**

1. Prior to issuance of any building permit, the following shall be resolved:
  - a. Drywell will be constructed to handle the new impervious roof area.



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Dennis Egner, FAICP  
Planning Director

cc: Lonnie Gilbertson, 10179 SE 43<sup>rd</sup> Ave.  
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): Lewelling (*via e-mail*)  
Interested Persons  
Land Use File(s): VR-2017-008