



July 31, 2017

Land Use File(s): VR-2017-009

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on July 31, 2017.

Applicant(s): Denise Jones
Location(s): 9041 SE 29th Ave
Tax Lot(s): 11E25BD01001
Application Type(s): Variance
Decision: Approved
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 19.502 Accessory Structures

Neighborhood(s): Ardenwald-Johnson Creek

Appeal period closes: 5:00 p.m., August 16, 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 Vera Koliass, Associate Planner, at 503-786-7653 or koliassv@milwaukieoregon.gov, if you wish to view this case file or visit the project webpage at <http://www.milwaukieoregon.gov/planning/VR-2017-009>.

This decision may be appealed by 5:00 p.m. on August 16, 2017, which is 15 days from the date of this decision.¹ 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.

¹ As per MMC Section 19.1010, if the 15th 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, Denise Jones, has applied for a variance for the maximum height of a fence in the front yard to legalize the installation of a 6-ft fence at 9041 SE 29th Ave. This site is in the Residential R-7 Zone. The land use application file number is VR-2017-009.
2. The proposal requires a variance to the 42-inch maximum height of a fence in the front yard.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.502 Accessory Structures
 - 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 Chapter 19.502.B Accessory Structures – Fences. Walls and Plantings
 - a. MMC 19.502.2.B.1.a Residential Zones and Residential Uses in All Zones

Maximum height is 6 ft for rear, street side, and side yards; 42 in for front yards, except that for flag lots fences in the front yard may be 6 ft. No electrified, barbed, or razor wire fencing is permitted.

The applicant is seeking approval of a variance for an existing fence that measures up to 6 ft in height in the front yard. Photographs supplied by the Applicant, in addition to staff research, shows that a 6-ft lattice fence was on the site as early as in the 1980s, but by 2007 various sections had been removed.

A variance has been submitted to allow the new fence to remain. Subject to approval of the variance, the Planning Director finds that this criterion is met.
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 maximum height of a fence in the front yard to allow a fence up to 6 ft in height. This request meets the allowable variance of a fence up to 6 ft in the front yard through Type II review.

The Planning Director finds that the application is subject to Type II Variance review for the proposed new 6-ft fence in the front yard.
 - a. 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.

Although sections have been removed, the property has had, in the past, a fence of similar height over the past 30 years. The new fence is not taller than the previous fence and is of higher quality construction. The fence will not cause any public health safety or welfare risks as the fence is constructed in the same location as the previous fence and does not encroach into the public right-of-way.

The property has a swimming pool, which must be fenced, so the fence is also serving a safety purpose. The additional height will not have any detrimental effects on surrounding properties as it replaces a previously-installed fence.

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.

29th Ave is identified as a Neighborhood Greenway in the adopted Transportation System Plan. However, the location of the fence will not interfere with the development of the Greenway. The right-of-way is currently 50 ft wide, which is sufficient for the proposed greenway and the fence is located on the property line.

The Planning Director finds that this approval criteria 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 fence is a typical residential fence constructed of cedar and replaces a redwood lattice fence. The applicant has lived at the property for over 30 years and is requesting the fence variance to allow for the replacement of an old fence for privacy and safety due to the swimming pool on the property.

The Planning Director finds that the approval criteria are met.

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

No impacts from the proposed variance have been identified.

The Planning Director finds that the approval criteria are met.

The Planning Director finds that the approval criteria for the Type II Variance 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 August 1, 2019).
 - b. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by August 1, 2021).

9. The application was referred to the following departments and agencies on July 17, 2017: Milwaukie Building Division; Milwaukie Engineering Department; Clackamas Fire District #1; and the Ardenwald Neighborhood District Association. Notice of the application was also sent to surrounding property owners within 300 ft of the site on July 14, 2017, and a sign was posted on the property on July 21, 2017. No comments were received about this application.



Dennis Egner, FAICP
Planning Director

cc: Denise Jones, 9041 SE 29th Ave., Milwaukie, OR 97222
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): Ardenwald-Johnson Creek (*via e-mail*)
Interested Persons
Land Use File(s): VR-2017-009