



September 7, 2017

Land Use File(s): VR-2017-011

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on September 7, 2017.

Applicant(s): Rebecca Banyas
Location(s): 2157 SE Sparrow St.
Tax Lot(s): 11E35DD05301
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): Island Station

Appeal period closes: 5:00 p.m., September 22, 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-2017-011>.

This decision may be appealed by 5:00 p.m. on September 22, 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, Rebecca Banyas, has applied for a variance for the maximum height of a fence in the front and street side yards to legalize the installation of a fence that varies in height up to 6-ft-4-in at 2157 SE Sparrow St. This site is in the Residential R-5 Zone. The land use application file number is VR-2017-011.
2. The proposal requires a variance to the 42-inch maximum height of a fence in the front yard and the 6-ft maximum height of a fence in the street side 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 6 ft in height in the front yard and up to 6 ft-4 inches in height in the street side yard.

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 and street side yards to allow a fence up to 6 ft-4 inches 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 and 6 ft-4 inch fence in the street side 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.

The subject property sits below grade of both 22nd Avenue and Sparrow St, so the taller height of the fence is not apparent. The fence does not cause any public health safety or welfare risks as the fence does not encroach into the public right-of-way.

The additional height does not have any detrimental effects on surrounding properties, particularly as the site is a corner property.

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.

The Engineering Department has confirmed that the fence will not interfere with any future right-of-way improvements.

The Planning Director finds that this approval 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 fence is a typical residential fence constructed of cedar. The property is below street grade, so the additional fence height is not apparent from the pedestrian level.

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).

The fence has already been installed and has been in place since 2016. This requirement does not apply.

9. The application was referred to the following departments and agencies on August 18, 2017: Milwaukie Building Division; Milwaukie Engineering Department; Clackamas Fire District #1; and the Island Station Neighborhood District Association. Notice of the application was also

sent to surrounding property owners within 300 ft of the site on August 18, 2017, and a sign was posted on the property on August 17, 2017.

On August 31, 2017, the City received a letter from the Island Station NDA Land Use Committee expressing support for approval of the variance. In addition, the Committee requested that Ms. Banyas' application fee be refunded. No other comments were received about this application.



Dennis Egner, FAICP
Planning Director

cc: Rebecca Banyas, 2157 SE Sparrow St., 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 *(via email)*
NDA(s): Island Station Land Use Committee *(via e-mail)*
Interested Persons
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