



February 15, 2018

Land Use File(s): VR-2017-013
601-17-000134

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on February 13, 2018.

Applicant(s): Ann and Bodo Heiliger
Appellant (if applicable)
Location(s): 5047 SE Jackson St
Tax Lot(s): 12E31BA01000
Application Type(s): Variance
Decision: Approved
Review Criteria: Milwaukie Zoning Ordinance:

- MMC 19.301 Low Density Residential Zones
- MMC 19.607 Off Street Parking Standards for Residential Areas
- MMC 19.00 Public Facility Improvements
- MMC 19.911 Variances

Neighborhood(s): Hector Campbell

Appeal period closes: 5:00 p.m., March 2, 2018

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 Kolas, Associate Planner, at 503-786-7653 or kolasv@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on March 2, 2018, 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, Dan Jensen, on behalf of Ann and Bodo Heiliger, has applied for a variance to allow the required off-street parking space in a residential zone to remain within the required front yard at 5047 SE Jackson St. This site is in the Residential R-5 Zone. The land use application file number is VR-2017-013.
2. The proposal requires a variance from the residential off-street parking standards.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 12.16 Access Management
 - MMC 19.301 Low Density Residential Zones
 - MMC 19.607 Off Street Parking Standards for Residential Areas
 - MMC 19.911 Variances
4. The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held on February 13, 2018, as required by law.
5. MMC 12.16 Access Management
 - a. MMC 12.16.040 establishes standards for access requirements. Per MMC 12.16.040.A “private property shall be provided street access with the use of accessways. Driveway approaches shall be constructed as set forth in the Milwaukie Public Works Standards”.

This property currently does not have the required driveway approach. Construction of the required driveway approach will bring the property closer to conforming to minimum transportation standards.

This property currently does not have the required driveway approach. Construction of the required driveway approach will bring the property closer to conforming to minimum transportation standards.

This criterion is met through the Engineering requirement that the approach be built consistent with the Public Works Standards.
6. MMC 19.301 Low Density 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-5 standards

<i>R-7 Zone</i>	<i>Standards</i>	<i>Existing</i>	<i>Proposed</i>
<i>Front Yard Setback</i>	<i>20 ft</i>	<i>12 ft (approx.)</i>	<i>12 ft (approx.)</i>

The home was constructed in 1957. The Planning Commission finds that the proposal complies with the applicable standards of the R-5 zone as a pre-existing non-conforming development.

7. MMC 19.607 Off-Street Parking Standards for Residential Areas

- a. MMC 19.607 establishes the standards for residential driveways and vehicle parking areas. MMC 19.607.1.B.2 requires that no portion of the required parking space be within the required front yard or within 15 ft of the front lot line, whichever is greater.

A variance has been requested from this standard. As conditioned, this criterion is met.

8. MMC 19.911 Variances

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

The applicant has requested a variance from the off-street parking standard to allow the existing off-street parking space to remain in the required front yard. This request is not permitted via Type II review.

The Planning Commission finds that the application is subject to Type III Variance review for the location of the required off-street parking space.

- 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.

The applicant's materials outline the cost and effort of constructing a new driveway on the west side of the property in order to comply with the standard. There are no identified negative impacts related to the variance proposal and the situation has existed for approximately 10 years. 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 allowing the existing driveway and access to remain, site work is minimized which avoids the typical impact of construction on surrounding properties. The applicant is aware of the requirement to improve the driveway access to come closer into conformance with construction standards.

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.

The Planning Commission finds that the requested variance is both reasonable and appropriate as it maintains the residential property as it has existed for over 10 years and there are no identified impacts to surrounding properties.

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

As noted in Finding 8.b (1), the Commission finds there are no negative impacts; applicant will improve the driveway access to come closer into conformance with construction standards.

The Planning Commission finds that this criterion is met.

The Planning Commission finds that the criteria of MMC 19.911.4.B.1 are met.

9. As per MMC 19.1001.7.E, this variance request shall expire and become void unless the proposed development completes the following steps:

Obtain and pay for all necessary development permits and start development of the site within 2 years of land use approval (by February 13, 2020).

Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by February 13, 2022).

10. The application was referred to the following departments and agencies on December 20, 2017: Milwaukie Building Division; Public Works 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 January 24, 2018, and a sign was posted on the property on January 23, 2018. Comments in support of the application were submitted by Justin and Tomoyo Wells, 5038 SE Jackson St.

Conditions of Approval

None

Other requirements

1. While not a condition of approval of this variance, MMC 12.16.040.A requires that driveway approaches to be constructed as set forth in the Milwaukie Public Works Standards, including a paved surface. The final Engineering approval of the open building permit on this property will require this improvement.
2. 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: Ann and Bodo Heiliger (5047 SE Jackson St, Milwaukie, OR 97222)
Dan Jensen (14300 SW 150th Ave, Tigard, OR 97224)
Planning Commission (*via email*)
Alma Flores, Community Development Director (*via email*)
Chuck Eaton, Engineering Director (*via email*)
Alex Roller, Engineering Technician II (*via email*)
Samantha Vandagriff, Building Official (*via email*)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (*via email*)
Mike Boumann and Matt Amos, CFD#1 (*via email*)
NDA(s): Hector Campbell (*via email*)
Interested Persons
Land Use File(s): VR-2017-013