



CITY OF MILWAUKIE

October 5, 2018

Land Use File(s): VR-2018-009

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on October 5, 2018.

Applicant(s): Nikolas Bottkol
Location(s): 1980 SE Bluebird St.
Tax Lot(s): 11E35DA03901
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., October 20, 2018

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, if you wish to view this case file or visit the project webpage at <https://www.milwaukieoregon.gov/planning/vr-2018-009>.

This decision may be appealed by 5:00 p.m. on October 20, 2018, which is 15 days from the date of this decision.¹ Any person who is adversely affected or aggrieved by this decision may

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.

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.

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, Nikolas Bottkol, has applied for a variance for the maximum height of a fence in the front yard to install a fence with a height of 6-ft-0-in at 1980 SE Bluebird St. This site is in the Residential R-5 Zone. The land use application file number is VR-2018-09.
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 19.502.2.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 a proposed fence that measures 6 ft-0 inches in height in the front yard.

A variance has been submitted allow for the construction of the proposed 6-ft fence. 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-0 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-0 inch fence in the front yard.

- a. MMC 19.911.4.A 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 intent of the 42-inch maximum front yard fence height is to maintain visibility between structures and the street and to prevent structures from feeling “walled-off” from the street and vice versa.

The front yard of this site features a series of hedges that essentially act as a fence and are taller than 42 inches, constituting an existing non-conforming situation. The cumulative effect of these non-conforming tall hedges combined with the addition of the 6-ft tall fence would have the effect of walling off the front yard of the site. However, the applicant has removed these hedges. The removal of the non-conforming hedges will increase visibility between the house and the street and would result in the proposed 6-ft fence in the western portion of the front yard being the only perimeter structure over the standard 42-inch limit, thus preventing the front yard area from feeling fully walled-off.

The proposed 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.

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 applicant states that the proposed fence is a typical residential fence constructed of cedar. The removal of the non-conforming tall hedges will enhance the street visibility of the existing house. The construction of the 6-ft fence in the western portion of the front yard would effectively contain the applicant's dog, increasing safety for both occupants and passerby. The proposed fence is compatible in height and materiality with the neighboring fence which it would abut.

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 October 4, 2020).
 - b. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by October 4, 2022).
9. The application was referred to the following departments and agencies on September 20, 2018: 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 September 20, 2018, and a sign was posted on the property on September 17, 2017.

Other requirements

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 October 4, 2020).
- b. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by October 4, 2022).
- c. If the fence will be built in the public right-of-way, a right-of-way permit will be required from the City.



Dennis Egner, FAICP
Planning Director

cc: Nikolas Bottkol (1980 SE Bluebird St., Milwaukie, OR 97222)
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): Island Station (via email)
Interested Persons
Land Use File(s): VR-2018-009