



CITY OF MILWAUKIE

October 18, 2018

Land Use File(s): VR-2018-010

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on October 18, 2018.

Applicant(s):	Fish Construction NW
Appellant (if applicable)	
Location(s):	5730 SE Front St.
Tax Lot(s):	12E30AD03400
Application Type(s):	Variance
Decision:	Approved
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• MMC 19.301 - Low Density Residential Zones• MMC 19.911 - Variances
Neighborhood(s):	Lewelling

Appeal period closes: 5:00 p.m., November 2, 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 www.milwaukieoregon.gov/planning/VR-2018-010.

This decision may be appealed by 5:00 p.m. on November 2, 2018, 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.

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.

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, Fish Construction NW, has applied for a variance to allow a rear yard setback of 16 ft. The site is in the Residential R-7 zone. The land use application file number is VR-2018-010.
2. The proposal requires a variance from the R-7 development standards.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 19.301 Low Density Residential Zones
 - MMC 19.911 Variances
4. The application has been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review. A public notice was sent to property owners and residents within 300 ft of the site on September 28, 2018. No comments were received.
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

<i>R-7 Zone</i>	<i>Standard</i>	<i>Existing</i>	<i>Proposed</i>
<i>Rear Yard Setback</i>	<i>20 ft</i>	<i>N/A</i>	<i>16 ft</i>

The existing site is vacant and 3,517 sq ft. The applicant is proposing the 16 ft rear yard setback to better fit a new single-family residence on a small lot.

A variance has been requested from this standard.

6. MMC 19.911 Variances
 - a. MMC 19.911.3.B establishes the limited variations to numerical standards.
 - (1) MMC 19.911.3.B.2 allows a variance up to 25% from the rear yard standard for a Type II variance.

The R-7 rear yard setback is 20 ft. 25% of 20 ft is 5 ft. A 16 ft rear yard setback is within the Type II variance allowance.

The Planning Director finds that the application is subject to Type II Variance review for the rear yard setback.

- b. 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 of the criteria in 19.911.4.B have been met. The approval criteria are listed below:

- (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 rear setback adjustment will have a minimal effect on backyard living/recreational spaces. The single-family residence directly south of the site is approximately 40 ft from the rear property line and this variance will not negatively affect the property. Also, the proposed design of the back of the house on the property will be staggered and will be more than 20 ft in places. There are no natural resource zones on the site.

The Planning Director finds that this criterion is 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.

There are no planned future improvements that would be affected by the reduced setback. The setback variance affects the rear yard only.

The Planning Director finds that this 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 frontage and road to the lot is already improved. The rear yard setback variance will not affect those improvements. The lot is currently vacant and will not affect existing buildings on the site. Due to the small nature of the lot, the applicant proposes that this adjustment will allow for a modest size home that will fit well on the lot.

The Planning Director finds that this criterion is met.

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

Due to the proposed staggered building design, the rear setback is met in several places. The actual space off the back door is more than 20 ft. The single-family residence directly south of the site is about 40 ft from the rear property line.

The Planning Director finds that this criterion is met.

The Planning Director finds that the approval criteria are met.

Director's Declaration of Impartiality

I certify that neither I nor any member of my immediate family has a material, personal, or financial relationship with the applicant. I further certify that no other relationship, bias, or ethical conflict exists which would have prevented me from evaluating the land use application solely on its merits and in accordance with the Milwaukie Municipal Code.

Decision

- Approved
- Approved with Conditions
- Denied



Dennis Egner, FAICP
Planning Director

cc: Applicant: Fish Construction NW (6401 NE 33rd Ave)
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): Lewelling (via email)

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