



CITY OF MILWAUKIE

February 27, 2019

Land Use File(s): VR-2018-013

Permit(s): 601-18-001229

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on February 27, 2019.

Applicant(s):	Shannon Henley
Location(s):	9371 SE 42 nd Ave
Tax Lot(s):	1S1E25AD 09900
Application Type(s):	Variance Request
Decision:	Approved
Review Criteria:	Milwaukie Municipal Code (MMC) Title 19 Zoning <ul style="list-style-type: none">• MMC Section 19.301 Low Density Residential Zones (incl. R-7)• MMC Section 19.911 Variances• MMC Section 19.1005 Type II Review
Neighborhood(s):	Ardenwald-Johnson Creek, Lewelling

Appeal period closes: 5:00 p.m., March 14, 2019

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 Brett Kelter, Associate Planner, at 503-786-7657 or kelterb@milwaukieoregon.gov, if you wish to view this case file or visit the project webpage at www.milwaukieoregon.gov/planning/VR-2018-013.

This decision may be appealed by 5:00 p.m. on March 14, 2019, 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, Shannon Henley, has applied for a variance to reduce the side yard setbacks for the property at 9371 SE 42nd Ave. As proposed, the side yard setback along the northern property line would be reduced from 10 ft to 6 ft and the side yard setback along the southern property line would be reduced from 5 ft to 4 ft. The subject property is identified as Tax Lot ID 1S1E25AD09900 on the Clackamas County Tax Assessor map and is in the Residential R-7 zone. The applicant is the property owner and has authority to initiate the application per MMC Subsection 19.1001.6.A. The land use application file number is VR-2018-013.
2. The subject property is developed with an existing single-family house and multiple detached accessory structures, including a 432-sq-ft single-story detached garage adjacent to the north side of the house. The applicant has proposed to construct an addition to the house that would connect it to the detached garage and extend further toward the rear of the property. Although the existing detached garage meets the minimum side yard setback for an accessory structure of its size (minimum of 5 ft, as per MMC Table 19.502.2A.1.a), once connected to the house it is subject to the R-7 setback standards for a primary structure, which are 5 ft on one side and 10 ft on the other. The south side yard is already less than 10 ft, so the north side is subject to the 10-ft setback standard.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.301 Low Density Residential Zones (incl. R-7)
 - MMC Section 19.911 Variances
 - MMC Section 19.1005 Type II Review

The application has been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review, with a decision by the Planning Director. The application was initially submitted on November 1, 2018, with a variance request for the north side yard setback. The application was deemed complete and public notice was sent to properties within 300 ft of the subject property on November 5, 2018, as required. Following the receipt of a comment from a neighboring property owner, the applicant obtained a survey of the subject property and expanded the application to include a

variance request for the south side yard setback. A new public notice was sent on January 14, 2019, with an additional 14-day comment period. No additional public comments were received.

4. MMC Section 19.301 Low Density Zones (incl. R-7)

MMC Subsection 19.301.4 establishes the development standards that are applicable to the subject property. Table 4 summarizes the existing and proposed conditions on the subject property with respect to the standards relevant to this proposal.

Table 4 Relevant R-7 Development Standards			
Standard	R-7 Requirement	Existing	Proposed
Minimum lot size	7,000 sq ft	9,814 sq ft	9,814 sq ft
Front Yard Setback	20 ft	41 ft (house) 62.5 ft (garage)	41 ft (no change)
Rear Yard Setback	20 ft	82 ft (garage) 92 ft (house)	57.5 ft
Side Yard Setback	5 ft/10 ft	6.5 ft (north side, garage) 4.8 ft (south side, house)	6 ft (north side) 4.5 ft (south side) (See Finding 5 for discussion of variance requests)
Maximum Building Height	2.5 stories or 35 ft (whichever is less)	1 story	1 story
Maximum Lot Coverage	30%	12.5%	27%
Minimum Vegetation	30%	64%	50%

As proposed, and with approval of the variances discussed in Finding 5, the Planning Director finds that the proposed development complies with the applicable standards of the R-7 zone as established in MMC 19.301. This standard is met.

5. MMC 19.911 Variances

a. MMC Subsection 19.911.2 Applicability

MMC 19.911.2 establishes applicability standards for variance requests.

Variances may be requested to any standard of MMC Title 19, provided the request is not specifically listed as ineligible in MMC Subsection 19.911.2.B. Ineligible variances include requests that result in any of the following: change of a review type, change or omission of a procedural step, change to a definition, increase in density, allowance of a building code violation, allowance of a use that is not allowed in the

base zone, or the elimination of restrictions on uses or development that contain the word “prohibited.”

The applicant has requested the following variances:

- *reduce the north side yard setback from the required 10 ft down to 6 ft;*
- *reduce the south side yard setback from the required 5 ft down to 4.5 ft.*

The requested variances meet the eligibility requirements established in MMC 19.911.2.

b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. Subsection 3-B establishes the Type II review process for limited variations to certain numerical standards. Subsection 3-C establishes the Type III review process for larger or more complex variations to standards that require additional discretion and warrant a public hearing.

MMC 19.911.3.B establishes that a side yard setback may be reduced by up to 40% through the Type II review process. The applicant has requested variances to reduce the minimum side yard setbacks from 10 ft to 6 ft on one side and from 5 ft to 4.5 ft on the other side. Both requested variances are for reductions of no more than 40% in the required side yard width and are therefore both subject to the Type II review process and the approval criteria established in MMC Subsection 19.911.4.A.

c. MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes approval criteria for variance requests. Specifically, MMC Subsection 19.911.4.A establishes the following criteria for approving Type II variances:

- (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.

North Side Yard: The adjacent property to the north (9323 SE 42nd Ave) is developed with a single-family dwelling and a couple of detached accessory structures, including a small one near the common boundary and the proposed addition. That small adjacent accessory structure does not present any windows to the subject property, and, together with existing large shrub vegetation on the adjacent property, effectively screens much of 9323 SE 42nd Ave from the proposed addition. Only 1 new window is proposed on the side of the addition that would face 9323 SE 42nd Ave and the addition would not be adjacent to the neighboring primary structure, so there would be little impact to privacy. There are no designated natural resource areas on or near the site, and the proposed north side setback reduction would not be detrimental to public health, safety, or welfare.

South Side Yard: Two properties are adjacent to the south, 9393 SE 42nd Ave and 4145 SE Olsen St, but the location of the proposed addition is adjacent only to the wide side yard of 4145 SE Olsen St. One new window and 1 door are proposed on the south side of the addition, and with the neighboring primary structure on 4145 SE Olsen St located

west of the proposed addition, there would be little impact to privacy. As with the proposed north side setback reduction, no designated natural resource areas would be impacted, and the south side setback reduction would not be detrimental to public health, safety, or welfare.

The Planning Director finds that this criterion is met for both requested variances.

- (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.

Neither of the requested variances would interfere with planned future improvements to any public transportation facility or utility identified in an officially adopted plan.

The Planning Director finds that this criterion is met for both requested variances.

- (3) Where site improvements already exist, the proposed variance will sustain the integrity of, or enhance, an existing building or site design.

The proposed development is an addition to the existing single-family dwelling that would connect it to the existing detached garage on the site. The garage was permitted in 2006 and met the applicable setback requirements in place at that time; the proposal to connect it to the primary structure requires it to meet the setback requirements for a primary structure. The existing house was built in 1942 and is nonconforming with respect to the required 5-ft setback on its southern side. The proposed development would simply extend the existing building lines of the north side of the garage and the south side of the house, which would maintain the integrity of the building design by avoiding the need to introduce a jog in both building lines.

The Planning Director finds that this criterion is met for both requested variances.

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

North Side Yard: *One comment was received in response to the proposed variance, from Robert and Bettie Gass, the owners of 9323 SE 42nd Ave, the adjacent property to the north. Among various questions about the proposed addition, the Gass comments raised concerns about potential impacts to privacy and the potential loss of sunlight in their backyard. They also requested a survey to verify the common boundary line in light of questions about the location of an existing fence.*

The applicant provided a survey of the subject property, which was shared with the Gasses to address the uncertainty expressed about the common boundary location (see Exhibit 1). Given the assessment of impacts discussed in Finding 5-c(1), the Planning Director finds that no mitigation is necessary for the requested north side yard variance.

South Side Yard: *A revised notice of the proposed addition was sent to surrounding properties after the south side yard variance request was added to the application, and no comments were received about this aspect. The proposed reduction to the south side yard is no more than 1 ft, and the closest area of potential impact is the wide side yard of 4145 SE Olsen St. The Planning Director finds that no mitigation is necessary for the*

requested south side yard variance. In fact, given the very slight angle of the side of the existing house with respect to the south side property line, it is allowable for the south side yard setback to be reduced to as little as 4 ft (instead of the proposed 4.5 ft) if necessary to maintain the existing building line in the proposed addition.

The Planning Director finds that this criterion is met for both requested variances.

As proposed, the Planning Director finds that the approval criteria are met for both requested variances.

The Planning Director finds that variances to reduce the north side yard setback from 10 ft to 6 ft and the south side yard setback from 5 ft to 4 ft are approvable.

6. The application was referred to the following departments and agencies on November 5, 2018: Milwaukie Building Department; Milwaukie Engineering Department; Clackamas Fire District #1 (CFD#1); and the Ardenwald-Johnson Creek and Lewelling Neighborhood District Associations, Clackamas County Department of Transportation & Development, Metro, and North Clackamas School District. Notice of the application was also sent to surrounding property owners within 300 ft of the site on November 5, 2018, for the original north side yard variance. A sign was posted on the property on November 6, 2018. Notice of the application was sent again to surrounding property owners on January 14, 2019, for the added south side yard variance. Comments received are as follows:

- **Robert and Bettie Gass, property owners of 9323 SE 42nd Ave (adjacent property to north):** Assertion that the existing fence represents the common boundary between theirs and the subject property; request for an official survey to confirm the location of the shared property line. Will the proposed addition exceed the allowable lot coverage? Will it result in increased stormwater runoff? Will the proposed addition be used for any commercial purposes or create a new dwelling unit? The proposed addition and reduced setback will result in a loss of privacy and will also reduce the amount of sunlight entering the back yard. What mitigating measures will be implemented? How will the proposed addition affect water usage on the subject property? Will it result in an increase in peak hour trips or generate a need for more on-site or on-street parking?

Conditions of Approval

None

Other requirements

1. As per MMC Subsection 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 development of the site within 2 years of land use approval.
 - b. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval.

2. As established in MMC Table 19.502.2.A.1.a, for “Type A” accessory structures (200 sq ft or less, no taller than 10 ft), the minimum required setback for side and rear yards is 3 ft. As per the survey of the subject property provided by the applicant, both the existing shed in the northwest corner and the chicken house in the southwest corner are less than 3 ft from the rear property line. These structures should be relocated as necessary to comply with this standard and avoid action for code compliance. (According to the applicant, a small shed has already been removed from in front of the house because it was not at least 40 ft from the front property line.)

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



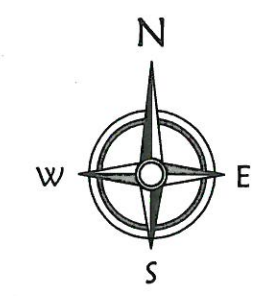
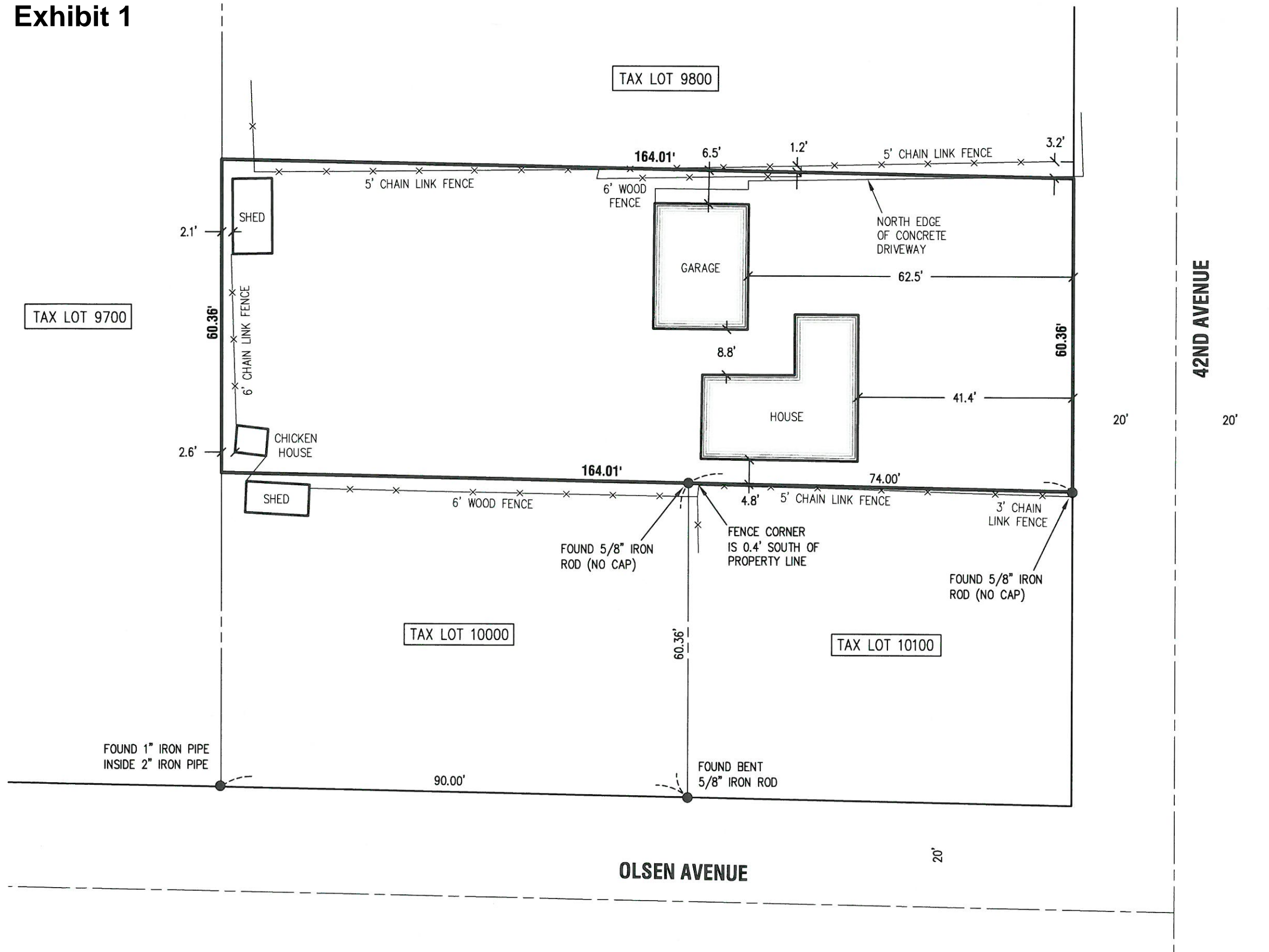
Dennis Egner, FAICP
Planning Director

Exhibits

1. Property Survey for 9371 SE 42nd Ave

cc: Shannon Henley, applicant (9371 SE 42nd Ave, Milwaukie, OR 97222)
Planning Commission (via email)
Alma Flores, Community Development Director (via email)
Kelly Brooks, Acting Engineering Director (via email)
Dalton Vodden, Associate Engineer (via email)
Alex Roller, Engineering Technician II (via email)
Samantha Vandagriff, Building Official (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Technician (via email)
Izak Hamilton, Fire Inspector, CFD#1 (via email)
Tim Salyers, Code Compliance Coordinator (via email)
NDA(s): Ardenwald-Johnson Creek, Lewelling (via email)
Interested Persons
Land Use File(s): VR-2018-013

Exhibit 1



Scale: 1" = 20'



REGISTERED
PROFESSIONAL
LAND SURVEYOR

Michael A. Rademacher

OREGON
JULY 16, 1987
MICHAEL A. RADEMACHER
2303

DATE OF SIGNATURE: 1-2-19
EXPIRES: 12/31/2020

SITE MAP

DRAWN	MMM	CHECK	MAR
SCALE	1" = 20'	DATE	12/28/2018
PLAN	8171 Site.dwg		

CMPASS Land Surveyors
4107 SE International Way, Suite 705
Milwaukie, Oregon 97222 503-653-9093

SHANNON HENLEY
9371 SE 42ND AVENUE
MILWAUKIE, OREGON 97222

9371 SE 42ND AVENUE
TAX LOT 9900, MAP 1-1E-25AD
CITY OF MILWAUKIE
CLACKAMAS COUNTY, OREGON