



CITY OF MILWAUKIE

February 8, 2019

Land Use File(s): VR-2019-001

Permit #: 601-19-000025

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on February 8, 2019.

Applicant(s):	Jennifer D. Smith
Location(s):	2024 SE Eagle St
Tax Lot(s):	11E35DA01300
Application Type(s):	Variance
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• MMC 19.301 R-5 Zone• MMC 19.502 Accessory Structures• MMC 19.911 Variances• MMC 19.1005 Type II Review
Neighborhood(s):	Island Station

Appeal period closes: 5:00 p.m., February 25, 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 Vera Kalias, Associate Planner, at 503-786-7653 or koliasv@milwaukieoregon.gov, if you wish to view this case file or visit the project webpage at www.milwaukieoregon.gov/planning/VR-2019-001.

This decision may be appealed by 5:00 p.m. on February 25, 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, Jennifer D. Smith, has applied for approval to construct a single-family home at 2024 SE Eagle St. This site is in the Residential R-5 Zone. The applicant is the property owner and has the authority to initiate the application per MMC 19.1001.6.A. The application was initially submitted on January 7, 2019 and was deemed complete on January 16, 2019. The land use application file number is VR-2019-001.
2. The applicant is proposing the construction of a new single-family home and is seeking approval for variances to allow the following: a 15-ft rear yard setback rather than 20 ft; minimum site vegetation of 22.5% rather than 25%; and a rear and side yard fence of 8 ft rather than 6 ft.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 19.301 R-5 Zone
 - MMC 19.502 Accessory Structures
 - MMC 19.911 Variances
 - MMC 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.

4. 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-5 standards

Table 19.301 Residential Zone R-5 Development Standards			
Standard	Required	Proposed	Staff Comment
1. Minimum Lot Size	5,000 sq ft	5,000	Complies with standard.
2. Front yard setback	20 ft	5 ft	VR-2017-005 provided a 10-ft front yard setback. Front porch proposed to encroach per MMC 19.501.2.C). Complies with standard.
3. Side yard setback	5 ft	5 ft/13.5 ft	Complies with standard.
4. Rear yard setback	20 ft	15 ft	Variance requested.
7. Lot Coverage	35% max.	39%	Per MMC 19.301.5.B.2, 2-story portion complies with standard. Remaining 4% is 1-story.
8. Minimum Vegetation	25% min.	22.5%	Variance requested.

The variance to the minimum front yard setback received per land use approval VR-2017-005 established a 10-ft front yard setback for this property. Per MMC 19.501.2, a covered porch on a single-family dwelling may extend up to 6 ft into a required front yard but the porch must be at least 5 ft from the front lot line. Therefore, based on a 10-ft setback, the porch may extend 5 ft into the setback resulting in a 5-ft front yard setback to the porch.

Subject to a Type II variance, the proposal complies with the applicable standards of the R-7 zone.

5. MMC 19.502 Accessory Structures

- a. MMC 19.502.2.B.1.a establishes the standards for fences in residential zones.

The applicant is proposing to construct an 8-ft fence in the side and rear yards of the property, which exceeds the maximum 6 ft allowed by the code.

Subject to a Type II variance, the proposal complies with the applicable standards of the standards for fences.

6. MMC 19.911 Variances

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

The applicant has requested variances for the following: to reduce the minimum rear yard setback from 20 ft to 15 ft; to reduce the minimum vegetation from 25% to 22.5%; and to allow an 8-ft fence in the side and rear yards rather than the maximum 6 ft. The requests meet the allowable variance of 25% to setbacks, up to 10% to

minimum vegetation standards, and the provisions for a fence variance permitted through Type II review.

The Planning Director finds that the application is subject to Type II Variance review for the requested variances.

- 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 following criteria 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 proposed variances will not be detrimental to surrounding properties, natural resource areas, or public health, safety or welfare.

The proposed variance to reduce the minimum rear yard setback to 15 ft will not be affect surrounding properties. The rear yard of the subject property is adjacent to the rear yards of the surrounding lots, 2 of which have accessory structures in the rear yard. The property directly south has a rear yard setback of over 40 ft, so a 15-ft rear yard for the subject property will not have a negative effect on it.

While the reduction in minimum vegetation amounts to 125 sq ft, there is a significant amount of impervious area on the property. Although the difference between 25% and 22.5% is small, given the proximity of the site to public open space across the street and a minimally developed public street, the planting of a coniferous street tree will help offset the stormwater implications of a nearly fully built site.

An 8-ft fence is proposed to increase privacy from neighboring properties. The property to the south of the subject property is approximately 10 ft higher, so the additional height for the rear yard fence will not be noticeable. The 2 properties to the west have vegetated back yards and accessory structures, so the additional fence height will not have a detrimental effect. The new home to the east has a 5-ft side yard setback and a large concrete patio at the front of the house. An 8-ft fence along the shared property line will not have a negative effect on the adjacent property and may result in additional privacy for both properties.

As conditioned, 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.

The proposed variances 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. Frontage improvements have already been constructed.

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

There are no existing improvements on the site – the site is vacant.

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

The stormwater impacts from the proposed variance to minimum planting can be mitigated with the planting of a coniferous street tree. No other impacts have been identified. All other development standards on the property will be met.

The Planning Director finds that the approval criteria have been met.

7. 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 21, 2021).

Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by February 21, 2023).

8. The application was referred to the following departments and agencies on January 18, 2019: 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 January 22, 2019, and a sign was posted on the property on January 18, 2019. No comments were received.

Conditions of Approval

1. Prior to the issuance of an occupancy permit, the applicant shall plant a coniferous street tree per the City of Milwaukie's street tree list and planting requirements.

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: Jenna Smith, 13621 SE Fair Oaks Dr. #B2, Milwaukie, OR 97222
Planning Commission (via email)
Alma Flores, Community Development Director (via email)
Kelly Brooks, Acting Engineering Director (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)
Mike Boumann and Izak Hamilton, CFD#1 (via email)
NDA(s): Island Station (via email)

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