



CITY OF MILWAUKIE

March 13, 2019

Land Use File(s): VR-2019-002

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on March 12, 2019.

Applicant(s):	Steve Vukovich
Location(s):	5485 SE Harlene St
Tax Lot(s):	1S2E31AB 14800
Application Type(s):	Variance Request
Decision:	Approved, with Conditions
Review Criteria:	<u>Milwaukie Zoning Ordinance:</u> <ul style="list-style-type: none">• Section 19.1006 Type III Review• Chapter 12.16 Access Management• Section 19.301 Low Density Residential Zones (including R-7)• Section 19.607 Off-Street Parking Standards for Residential Areas• Section 19.911 Variances
Neighborhood(s):	Linwood

Appeal period closes: 5:00 p.m., March 28, 2019

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 by appointment 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 Kolver, Associate Planner, at 503-786-7657 or kolverb@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on March 28, 2019, which is 15 days from the date of this decision.¹ (Note: Please arrive by 4:45 p.m. for appeal payment processing.) 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

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.

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 development utilizes its approvals 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, Steve Vukovich, has applied for a variance to approve a 32-ft-wide driveway approach at the subject property, 5485 SE Harlene St. The site is in the R-7 Zone. The land use application file number is VR-2019-02.
2. The subject property is approximately 16,500 sq ft (0.37 acres) in size and is developed with a detached single-family dwelling as well as a detached garage and small shed located in the rear yard. The applicant recently improved the existing driveway, effectively widening it to 32 ft, in excess of the maximum 20-ft width allowed by Milwaukie Municipal Code (MMC) Subsection 12.16.040.F.2. The proposal to vary from this access management standard requires a variance, as established in MMC Section 12.16.050.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.1006 Type III Review
 - MMC Chapter 12.16 Access Management
 - MMC Section 19.301 Low Density Residential Zones (including R-7)
 - MMC Section 19.607 Off Street Parking Standards for Residential Areas
 - MMC Section 19.911 Variances

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 March 12, 2019, as required by law.

4. MMC Chapter 12.16 Access Management
 - a. MMC Section 12.16.040 Access Requirements and Standards

MMC 12.16.040 establishes standards for access (driveway) requirements, including location, number, and size.

 - (1) MMC Subsection 12.16.040.C Accessway Location

MMC 12.16.040.C.3 requires that the nearest edge of the driveway apron shall be at least 7.5 ft from the side property line in residential districts.

As proposed, the nearest edge of the driveway approach is approximately 8 ft from the nearest side property line.

(2) MMC Subsection 12.16.040.D Number of Accessway Locations

MMC 12.16.040.D.3 allows single-family residential lots with one street frontage to have one additional accessway where the driveway approaches can be spaced at least 50 ft apart.

Harlene St is a local street. The applicant has not proposed a second driveway approach, but it is noted that the subject property's frontage is approximately 100 ft in length and the existing driveway location on the far west side of the frontage would allow a second driveway to be located at least 50 ft away on the far east side.

(3) MMC Subsection 12.16.040.F Accessway Size

MMC 12.16.040.F.2 requires that single-family detached residential uses shall have a minimum driveway apron width of 9 ft and a maximum width of 20 ft.

A variance has been requested to allow the subject property driveway to exceed the maximum width of 20 ft, to a width of 32 ft (see Finding 7).

As proposed, and with approval of the variance discussed in Finding 7, the applicable standards of MMC 12.16.040 are met.

b. MMC 12.16.050 Variance

MMC 12.16.050 provides that relief from any access management requirement or standard of MMC 12.16.040 may be granted through a variance process, which requires submission and approval of a variance land use application pursuant to criteria and procedures of MMC Section 19.911.

The applicant has requested relief from the maximum driveway width standard of 20 ft, established in MMC 12.16.040.D.3. As required, the applicant has applied for a variance subject to the approval criteria of MMC 19.911, addressed in Finding 7.

As proposed, and with approval of the variance discussed in Finding 7, the Planning Commission finds that the applicable standards of MMC 12.16 are met.

5. MMC Section 19.301 Low Density Residential Zones (including R-7)

MMC 19.301 establishes standards for the low-density residential zones, including the R-7 zone. The subject property is zoned R-7. MMC Subsections 19.301.4 and 19.301.5 provide applicable development standards for the R-7 zone, summarized in Table 5:

Standard	R-7 Requirement	Subject Property
Maximum lot coverage	30%	<24%
Minimum vegetation	30%	>60%
Front yard minimum vegetation	40%	>68%

The Planning Commission finds that approval of the requested variance would not cause the subject property to fail to comply with the applicable R-7 development standards. This standard is met.

6. MMC Section 19.607 Off-Street Parking Standards for Residential Areas

MMC Subsection 19.607.1 establishes standards for residential driveways and vehicle parking areas, including a limit on the percentage of front yard area used for parking (maximum of 50%), a limit on the number of parking spaces allowed in the front yard (maximum of 3), and a requirement that the on-site driveway align with the driveway approach.

As proposed, the widened driveway area occupies less than 32% of the front yard, with room for 3 parking spaces. With approval of the variance as discussed in Finding 7, the on-site driveway would align with the driveway approach as required.

As proposed, and with approval of the variance discussed in Finding 7, the Planning Commission finds that the applicable standards of MMC 19.607 are met.

7. MMC Section 19.911 Variances

MMC Section 19.911 establishes the variance process for seeking relief from specific code sections that have the unintended effect of preventing reasonable development or imposing undue hardship.

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. In addition, MMC Section 12.16.050 allows requests for relief from the City's access management requirements to be processed according to the procedures and criteria of MMC 19.911. 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 a variance from one of the access management standards of MMC 12.16.050.

The requested variance meets 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.

The requested variance is not identified in MMC 19.911.3.B as being eligible for Type II review. Therefore, the requested variance is subject to the Type III review process and the approval criteria established in MMC Subsection 19.911.4.B.

c. MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes approval criteria for variance requests.

The applicant has elected to address the criteria of 19.911.4.B.1 Discretionary Relief Criteria.

MMC Subsection 19.911.4.B.1 provides the following approval criteria for Type III variances where the applicant elects to utilize the 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 submittal materials outlined the pre-existing conditions that led to the expansion of the accessway, including the age of the original driveway approach and its degradation due to stormwater runoff and by vehicles using it as an informal turnaround. The applicant also noted that, due to its location at the end of a dead-end street with only a 30-ft turnaround radius in the public right-of-way (ROW) instead of the standard 45-ft radius, vehicles sometimes encroach onto the property.

The applicant reported that the previous driveway approach width of 20 ft required continual maintenance with a laying of gravel to alleviate negative impacts from stormwater runoff from the street onto the subject property. The applicant also recounted property damage resulting from the driveway's use as an informal turnaround and asserted that a requirement to reduce the driveway approach to the standard maximum width of 20 ft would likely lead to additional negative impacts to the property.

The applicant noted that MMC Subsection 12.16.040.D.3.b allows for an additional accessway if the two driveways can be located at least 50 ft apart. The 100-ft width of the subject property's frontage on Harlene St and the location of the existing driveway on the far west side of the lot would allow a second driveway 50 ft away on the far east side of the lot. If the proposed driveway widening were not allowed and a second driveway were to be constructed on the east side of the lot, the reduction in front yard vegetation and the addition of stormwater runoff would be no greater than what is proposed with the requested variance.

The applicant provided evidence that widening the driveway approach would not hinder the property's compliance with the minimum front yard vegetation requirement. There are no other identified negative impacts related to the requested variance.

The Planning Commission finds that the applicant's submittal provides an adequate analysis of the impacts and benefits of the requested variance compared to the baseline requirements. 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.
 - (b) The proposed variance has desirable public benefits.
 - (c) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

The widened driveway approach would not result in any identified impacts to surrounding properties. Harlene St is currently a dead-end street and is not improved with curbs or sidewalks; pedestrians are required to walk in the street itself, which, although not ideal, in this case means that there is at least no increase in potential conflict between pedestrians and vehicles using the wider driveway approach.

As long as Harlene St remains a dead-end street, the proposed widened driveway approach would provide the benefit of a wider hard-surface turnaround area for vehicles turning around in that section of Harlene St. Given that the existing driveway is reportedly already used for vehicle turnaround movements, it is reasonable to construct a wider approach that would lessen the impact to the existing built and natural environment by providing a better surface for turning movements and reducing the instances of mud or other debris being tracked into the roadway.

The Planning Commission finds that the requested variance is reasonable and appropriate and that it meets one or more of the criteria provided in MMC Subsection 19.911.B.1.b. This criterion is met.

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

Currently, there are no identified impacts resulting from the requested variance. However, it is likely that Harlene St will be extended through to Wood Ave at some point in the future, given that a narrow strip of public ROW already extends west from the subject property all the way to Wood Ave, and all 4 of the properties in between are large enough to redevelop. At that point, the need for a turnaround at the current dead end would be eliminated and there might be some momentum for constructing curbs, sidewalks, and similar street improvements on Harlene St.

If Harlene St were to be extended further west and curbs and sidewalks were to be constructed, it would be preferable to reduce the width of the driveway approach on the subject property back to the allowable range (9 ft to 20 ft). This would help reduce conflicts between pedestrians on the sidewalk and vehicles entering or exiting the public ROW at that location. A condition has been established to require that the applicant sign a formal agreement to narrow the driveway approach at such time in the future as street improvements (e.g., curb, sidewalk, etc.) are constructed along the subject property's Harlene St frontage.

As conditioned, the Planning Commission finds that future impacts from the requested variance will be mitigated to the extent practicable.

As proposed, the Planning Commission finds that the requested variance meets the approval criteria established in MMC 19.911.4.B.1 for Type III variances seeking discretionary relief.

The Planning Commission finds that the requested variance is allowable as per the applicable standards of MMC 19.911 and is therefore approved.

8. The application was referred to the following departments and agencies on January 25, 2019:

- Milwaukie Building Department
- Milwaukie Engineering Department
- Milwaukie Public Works Department (including Streets, Stormwater, and Environmental Services Divisions)
- Milwaukie Code Compliance
- Milwaukie City Attorney
- Linwood Neighborhood District Association (NDA) Chairperson & Land Use Committee
- Clackamas Fire District #1 (CFD#1)

Notice of the application was also sent to surrounding property owners and residents within 300 ft of the site on February 20, 2019, and a sign was posted on the property on February 22, 2019.

The comments received are summarized as follows:

- **Jesse Temblay, Chair, Land Use Committee of Linwood NDA:** Supportive of applicant's project, which can only help the difficult turnaround created by the lack of useable cul-de-sac on the dead-end street.

Conditions of Approval

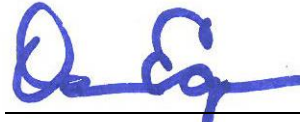
1. Within 3 months of this approval, the applicant shall sign a formal agreement to not object to a narrowing of the driveway approach to comply with the code requirements in place at such time as curbs and/or sidewalks are constructed on Harlene St along the subject property frontage. The agreement shall be recorded with the Clackamas County Recorder and shall bind the current and any future owner of the property. The agreement shall include a provision acknowledging that, when the driveway is narrowed as required, the contemporary property owner shall be responsible for modifying the on-site driveway as needed to comply with the applicable residential off-street parking standards related to driveway width and alignment with the driveway approach.

Other requirements

None

Decision

- Approved
 Approved with Conditions
 Denied



Dennis Egner, FAICP
Planning Director

Exhibits

1. None

cc: Steve Vukovich, applicant (5485 SE Harlene St, Milwaukie, OR 97222)
Planning Commission (via email)
Alma Flores, Community Development Director (via email)
Kelly Brooks, Acting Engineering Director (via email)
Justin Gericke, City Attorney (via email)
Tim Salyers, Code Compliance Coordinator (via email)
Alex Roller, Engineering Technician II (via email)
Peter Passarelli, Public Works Director (via email)
Ronelle Sears, Public Works Supervisor, Streets Division (via email)
Shane Hart, Public Works Supervisor, Stormwater Division (via email)
Jere Sonne, Environmental Services Coordinator (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): Linwood (via email)
Land Use File(s): VR-2019-002
Address File