



CITY OF MILWAUKIE

June 12, 2024

Land Use File(s): VR-2024-003

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on June 11, 2024.

Traducciones de este documento e información sobre este proyecto están disponibles en español. Para solicitar información o preguntar en español, favor de email espanol@milwaukieoregon.gov.

Applicant(s):	Kristina Fedorovskiy
Location(s):	11932 SE 35 th Ave
Tax Lot(s):	11E36DB09500
Application Type(s):	Variance
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• MMC 19.301 Moderate Density Residential Zone• MMC Chapter 19.700 Public Facility Improvements• MMC Section 19.804 Nonconforming Uses and Development• MMC Section 19.911 Variances• MMC Section 19.1006 Type III Review Milwaukie Municipal Code: <ul style="list-style-type: none">• MMC Title 12: Streets, Sidewalks, and Public Places
Neighborhood(s):	Lake Road

Appeal period closes: 5:00 p.m., June 27, 2024

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 by appointment between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, City Hall, 10501 SE Main St. Please contact Vera Kolias, Senior Planner, at

503-786-7653 or koliasv@milwaukieoregon.gov, if you wish to view this case file or visit the project webpage at <https://www.milwaukieoregon.gov/planning/vr-2024-003>.

This decision may be appealed by 5:00 p.m. on June 27, 2024, 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 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 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

The Findings for this application are included as Exhibit 1.

Conditions of Approval

1. At the time of submittal of the associated development permit application(s), the following must be resolved:
 - a. Final plans submitted for development permit review must be in substantial conformance with the plans and drawings approved by this action, which are the plans and drawings received by the City on April 29, 2024, except as otherwise modified by these conditions of approval.
 - b. Final plans submitted for development permit review must include a 6-ft sight-obscuring fence along the new addition along the affected side property line, per MMC 19.502.2.B.
 - c. Provide a narrative describing all actions taken to comply with these conditions of approval. In addition, describe any changes made after the issuance of this land use decision that are not related to these conditions of approval.

Additional Requirements

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements contained in the Milwaukie Municipal Code (MMC) and Public Works Standards that are required at various points in the development and permitting process.

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.

1. Prior to commencement of any earth-disturbing activities, the applicant must obtain a City erosion control permit.



Laura Weigel, AICP
Planning Manager

Exhibits

1. Findings in Support of Approval

cc: Kristina Fedorovskiy, 11932 SE 35th Ave
Planning Commission (via email)
Joseph Briglio, Community Development Director (via email)
Jennifer Garbely, City Engineer (via email)
Jeff Tolentino, Assistant City Engineer (via email)
Engineering Development Review (via email)
Patrick McLeod, Building Official (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Technician (via email)
Shawn Olson, CFD#1 (via email)
Code Enforcement (via email)
NDA(s): Lake Road (via email)
Interested Persons

Land Use File(s): VR-2024-003

ATTACHMENT 1
Findings in Support of Approval
File # VR-2024-003 – Fedorovskiy Addition

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, Kristina Fedorovskiy, has applied for approval to construct an addition to the existing attached garage on the property located at 11932 SE 35th Ave. This site is in the R-MD Zone. The land use application primary file number is VR-2024-003.
2. The proposal is to construct a one-story, 13-ft addition to the existing attached garage. The existing home has a pre-existing nonconforming side yard setback of 0.5 ft rather than the minimum 10 ft required. A variance is requested to allow the extension of the nonconforming side yard setback.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Title 12: Streets, Sidewalks, and Public Places
 - MMC Section 19.301 Moderate Density Residential Zone
 - MMC Chapter 19.700 Public Improvements
 - MMC Section 19.804 Nonconforming Uses and Development
 - MMC Section 19.9111 Variances
 - MMC Section 19.1006 Type III Review

The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing with the Planning Commission was held on June 11, 2024, as required by law.

4. MMC Title 12 Streets, Sidewalks, and Public Places
 - a. MMC Chapter 12.08 – Street & Sidewalk Excavations, Construction, and Repair

This will apply to all construction that is completed in the right of way including, but not limited to, all public utilities, accessways, and all pedestrian/bicycle facilities including those located within public sidewalk easements. The public improvement process will follow MMC 12.08.020.

No changes to the existing sidewalk are proposed as part of this development.

As proposed, this development meets the requirements of MMC 12.08.
 - b. MMC Chapter 12.16.040 – Access Requirements and Standards

MMC Section 12.16.040 establishes standards for access (driveway) requirements, including accessway design. New or updated accessways must meet all applicable standards of the Americans with Disabilities Act, and the Public Works Standards.

No changes to the existing accessway is proposed as part of this development. Any changes, upgrades, or repairs to the existing shared accessway would require conformance to MMC 12.16.

As proposed, the Planning Commission finds that the proposed development is consistent with the applicable standards of MMC 12.16.

5. MMC Section 19.301 Moderate Density Residential Zone (R-MD)

MMC 19.301 establishes standards for the Moderate Density Residential (R-MD) zone. The application meets the applicable standards of this section as described below.

a. MMC Subsection 19.301.2 Allowed Uses

MMC 19.301.2 establishes the uses allowed outright in the R-MD zone, including single detached dwellings, middle housing types (duplexes, triplexes, quadplexes, townhouses, and cottage clusters), accessory dwelling units (ADUs), and residential homes.

The subject property is developed with a single detached dwelling with an attached garage. The existing and proposed uses are permitted outright in the R-MD zone.

b. MMC Subsections 19.301.4 and 19.301.5 Development Standards

MMC 19.301.4 and 19.301.5 establish development standards for the R-MD zone. The applicable standards are addressed and met as described in Table 4-b below.

Table 4-b Applicable R-MD Development Standards (for lots 7,000 sq ft and larger)		
Standard	R-MD Requirement	Subject Property
Lot Area	7,000 sq ft	7,160
Lot Width	60 ft	62.67 ft
Lot Depth	80 ft	114.11 ft
Public Street Frontage	35 ft	62.67 ft
Front Yard	20 ft	24.7 ft
Side Yard	5 ft/10 ft	5 ft/0.5 ft (Requested variance, see Finding 8 for discussion of setback reduction)
Rear Yard	20 ft	48.4 ft
Maximum lot coverage	30%	28%

Minimum vegetation	30%	> 50%
Front Yard Minimum Vegetation	40%	> 60%

As proposed and with the variance approved as discussed in Finding 8, the applicable development standards of these subsections are met.

As proposed and with the variance approved as discussed in Finding 8, the Planning Commission finds that the proposed development meets all applicable standards of MMC 19.301. This standard is met.

6. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 is intended to ensure that development, including redevelopment, provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts.

a. MMC Section 19.702 Applicability

MMC 19.702.2 establishes the applicability of the provisions of MMC 19.700 for single detached residential expansions based on the combined gross floor area of all structures.

The proposed addition has a combined gross floor area of all structures by less than 800 square feet. Per MMC 19.702.2 none of Chapter 19.700 applies.

As proposed, the development does not trigger any public facility improvements of MMC 19.700.

The Planning Commission finds that the proposed development meets the applicable public facility improvement standards of MMC 19.700.

7. MMC Section 19.804 Alteration of Nonconforming Uses and Development

MMC Chapter 19.800 establishes requirements for the continuation, alteration, and rebuilding of nonconforming uses and development. Nonconforming uses and development are uses and development that do not conform to the City’s current land use and development regulations, either because they were established prior to the regulations’ enactment or because they conformed when they were established but the applicable regulations have since changed.

Most nonconforming uses and development may be maintained, but may not be altered, without land use review. Nonconforming uses and development may be rebuilt if destroyed in some instances. In general, however, nonconforming uses and development shall be brought into conformance with applicable land use and development regulations when redevelopment occurs.

MMC 19.804 establishes provisions related to the alteration of nonconforming uses and development, with MMC Subsection 19.804.2 specifically applicable to nonconforming development.

a. MMC Subsection 19.804.2.A Provisions

Alterations or expansions that increase or extend the nonconformity are not allowed unless a variance is approved pursuant to Section 19.911.

As noted above in Finding 5, the existing single detached home has a pre-existing nonconforming side yard setback of 0.5 ft rather than the minimum 10 ft. The applicant is proposing to extend the attached garage toward the street by 13 ft. The proposed development is an extension of the nonconforming development, so land use review is required.

The applicant has requested a Type III variance to allow the addition to be constructed following the existing wall line with a side yard setback of 0.5 ft.

Subject to approval of the requested variance, the Planning Commission finds that this standard is met.

The Planning Commission finds that the proposed development meets the applicable standards of MMC 19.804 for alteration of a nonconforming use.

8. MMC Section 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 a variance from the minimum side yard setback to allow for the construction of an addition to the existing single detached dwelling.

The requested variance meets the eligibility requirements.

b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. MMC Subsection 19.911.3.B establishes the Type II review process for limited variations to certain numerical standards. MMC Subsection 19.911.3.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 eligible for Type II review; it is subject to the Type III review process.

c. MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes approval criteria for variance requests. For Type III variances, MMC Subsection 19.911.4.B.1 provides approval criteria related to

discretionary relief and MMC Subsection 19.911.4.B.2 provides approval criteria related to economic hardship.

(1) MMC Subsection 19.911.4.B.1 Discretionary Relief Criteria

- (a) 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 variance requested is for a reduction to the minimum required side yard setback of 10 ft. The existing home was built with a 0.5 ft side yard setback; the proposed addition would extend that nonconformity by 13 ft.

The existing home has a side yard setback of 0.5 ft. Building an addition that meets the minimum 10 ft setback would not be possible given the layout of the existing home. The purpose of the one-story addition is to remodel a portion of the existing garage into living space and add the smallest amount needed to maintain a usable one-car garage.

Without the variance, the garage space would not accommodate a vehicle after the remodel. This side of the existing home is adjacent to the neighbor's driveway; the neighbor's home is set back approximately 40 ft from the street, so there are no impacts to the neighbor's home or use of the front yard area.

The Planning Commission finds that the analysis of the impacts and benefits of the requested variance compared to the baseline requirements is adequate. This criterion is met.

- (b) The proposed variance is determined to be both reasonable and appropriate, and it meets one or more of the following criteria:
- The proposed variance avoids or minimizes impacts to surrounding properties.
 - The proposed variance has desirable public benefits.
 - The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

The proposed one-story addition extends an existing nonconforming 0.5-ft side yard setback by 13 ft. The addition would match the front wall of the house, with a front yard setback of 24.7 ft, which is larger than the minimum of 20 ft. The proposed addition would be located on a portion of the existing driveway, so no landscaping will be removed to accommodate the construction. The adjacent property is developed with a single detached home with a 40-ft front yard setback, and a driveway is located adjacent to the subject property. Therefore, the proposed addition would not impact the use and enjoyment of the neighboring property. The proposed addition can be built without needing to access the adjacent property, so construction impacts would be minimized.

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.

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

The proposed 13-ft addition is modestly sized; it is one-story and would align with the front wall of the house, resulting in a larger than required front yard setback of 24.7 ft. The addition would be located on a portion of the existing driveway, so no landscaping will be removed. The proposed addition would be adjacent to the neighbor's driveway and side yard landscaping, so there would be no impacts to the neighbor's use and enjoyment of the front yard area. The neighbor's home is set back approximately 40 ft, and is fronted by a garage, not living space, there would be no impacts on the home by the proposed addition. The proposed addition provides for usable garage space for one vehicle, thereby maintaining two parking spaces on the subject property.

If necessary, a new 6-ft sight-obscuring fence could be constructed to replace the existing 3-ft fence to provide a buffer between the proposed addition and the neighbor's driveway.

The Planning Commission finds that the requested variance could result in a visual impact to the abutting property. A condition requiring a fence is required as mitigation. This criterion is met.

As proposed, the Planning Commission finds that, as conditioned, 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.

9. The application was referred to the following departments and agencies on January 24, 2024:
- Milwaukie Engineering Department
 - Milwaukie Building Department
 - Milwaukie Public Works Department
 - Lake Road Neighborhood District Association (NDA) Chairperson and Land Use Committee (LUC)
 - Clackamas Fire District #1 (CFD)
 - NW Natural

Public notice was sent to all properties within 300 ft of the site on January 24, 2024. Comments in objection to the requested variance were received from:

- **Lake Road NDA**
- **Barbara Allan, 11972-11974 SE 35th Ave**

- **Mary Kay Doane, 11973 SE 35th Ave**
- **Matthew Baxter**
- **Margueritte Kosovich, 12012 SE 35th Ave**
- **Paul Hawkins, Lake Road NDA**