



# CITY OF MILWAUKIE

June 20, 2024

Land Use File(s): VR-2024-004

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on June 20, 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](mailto:espanol@milwaukieoregon.gov).*

**Applicant(s):** Kaitlyn Landfield and Kyle Sullivan  
**Location(s):** 5397 SE Rainbow Ln  
**Tax Lot(s):** 1S2E30AC03902  
**Application Type(s):** Variance  
**Decision:** Approved  
**Review Criteria:** Milwaukie Municipal Code:

- MMC 19.502 Accessory Structures
- MMC 19.911 Variances
- MMC 19.1005 Type II

**Neighborhood(s):** Lewelling

**Appeal period closes: 5:00 p.m., July 5, 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, Milwaukie, OR 97222. Please contact Ryan Dyar at 503.786.7661 or [dyarr@milwaukieoregon.gov](mailto:dyarr@milwaukieoregon.gov) if you wish to view this case file or visit the project webpage at <https://www.milwaukieoregon.gov/planning/vr-2024-004>.

**This decision may be appealed by 5:00 p.m. on July 5, 2024, which is 15 days from the date of this decision.**<sup>1</sup> (Note: Please arrive by 4:45 p.m. for appeal payment processing.) Any person who is adversely affected or aggrieved by this decision may appeal the decision by filing a

<sup>1</sup> As per MMC Section 19.1010, if the 15<sup>th</sup> 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.

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. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or [planning@milwaukieoregon.gov](mailto: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**

None.

### **Other requirements**

None.

### **Manager'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



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Laura Weigel, AICP  
Planning Manager

### **Exhibits**

1. Findings in Support of Approval

2. Approved Site Plan

cc: Kaitlyn Landfield and Kyle Sullivan (applicants) (via email)  
Planning Commission (via email)  
Joseph Briglio, Community Development Director (via email)  
Jennifer Garbely, 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)  
Tim Salyers, Code Enforcement Coordinator (via email)  
Shawn Olson, CFD#1 (via email)  
NDA(s): Lewelling (via email)  
Interested Persons:  
- Jess Gibson and Dylan McCann (via email)  
- Greg Sutton (via email)

Land Use File(s): VR-2024-004

**EXHIBIT 1**  
**Findings in Support of Approval**  
**File #VR-2024-004, 5397 SE Rainbow Ln**

Sections of the Milwaukie Municipal Code (MMC) not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicants, Kaitlyn Landfield and Kyle Sullivan, have applied for approval to maintain a fence that is 8 ft tall in the rear and side yards of 5387 SE Rainbow Ln. The fence was installed before the applicants became aware of the city’s fence regulations and is anchored to a previously existing 8-ft-tall chain-link fence. The fence is made of vertical cedar pressure-treated pickets. This site is in the Moderate Density Residential (R-MD). The land use application file number is VR-2024-004.
2. The proposal requires a variance to the 6 ft maximum height of a fence in the side and rear yards.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC Section 19.502 Accessory Structures
  - MMC Section 19.911 Variances
  - MMC Section 19.1005 Type II Review
4. The application has been processed and public notice provided per MMC Section 19.1005 Type II Review.
5. MMC Chapter 19.502.2.B Accessory Structures – Fences, Walls and Plantings
  - a. MMC 19.502.2.B.1.a Residential Zones and Residential Uses in All Zones

Maximum height is 6 ft for the rear, street side, and side yards; 42 in for front yards, except that for flag lots fences in the front yard may be 6 ft. No electrified, barbed, or razor wire fencing is permitted.

*The applicants are seeking approval of a variance to maintain a solid cedar fence in the rear and side yards, which exceeds the 6-ft height maximum allowance.*

*A variance application has been submitted to allow the applicants to keep an 8-ft-tall fence in the side and rear yards. The fence was constructed before the applicants became aware of the city’s standards for fencing. Subject to the approval of the variance, the Planning Manager finds that this criterion is met.*
6. MMC Chapter 19.911 Variances
  - a. MMC 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 in 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 applicants have requested to allow a fence height of 8 ft in the side and rear yards. The request is not listed as an ineligible variance and is specifically called out as being eligible for Type II review per Subsection 19.911.2.B.8.*

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

*The applicants have requested a variance to the maximum height of a fence in the side and rear yards. The variance would permit the applicants to maintain an 8-ft-tall fence that has already been constructed. The request meets the procedural requirements for a variance through the Type II review process.*

*The Planning Manager finds that the application is subject to Type II Variance review for exceeding the 6-ft maximum height standard for fences in the side and rear yards.*

- 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 the criteria in 19.911.4.A 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 variance would permit the applicants to maintain an existing 8-ft-tall cedar fence that they attached to an existing non-conforming 8-ft-tall chain-link fence, the legal status of which cannot be confirmed. The fence screens the applicants house from a non-conforming commercial use to the north. There are no inventoried natural resources on the property and no comments were provided indicating the increased height is detrimental to the public health, safety, or welfare. The two public comments that were submitted indicated that the fence beautified the property and was appropriate considering the non-conforming use located to the north. Cumulatively, the facts support that allowing a taller fence in this area will not be detrimental to public health, safety, natural resources, or surrounding properties.*

*The Planning Manager finds that the approval criteria are 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 Engineering Department has confirmed that the fence will not interfere with any future right-of-way improvements.*

*The Planning Manager finds that this approval 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.

*As mentioned, the owners have erected a solid cedar fence on top of an existing 8-ft-tall chain link fence. There is no evidence that this addition degrades the existing building or site design. Additionally, the city received public comment from two neighbors arguing that the fence enhances the beauty of the property.*

*The Planning Manager finds that the approval criteria are met.*

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

*No impacts from the proposed variance have been identified.*

*The Planning Manager finds that the approval criteria are met.*

- (5) The proposed variance would allow the development to preserve a priority tree or trees, or provide more opportunity to plant new trees to achieve 40% canopy, as required by Chapter 16.32 (when applicable).

*The fence has already been established and did not require the removal of any trees. Additionally, the planting requirements of MMC 16.32 are not applicable to the proposal, as per MMC 16.32.042.A.*

*The Planning Manager finds that the criterion does not apply.*

*The Planning Manager finds that the approval criteria for the Type II Variance are met.*

7. As per MMC 19.906.2.C, the proposed development is exempt from the requirement to submit a development review application and the other requirements of MMC 19.906 Development Review. However, the proposal must still comply with all applicable development standards.
8. As per MMC 19.1001.7.E, this variance request shall expire and become void unless the proposed development completes the following steps, if applicable:
- Obtain and pay for all necessary development permits and start construction within 2 years of land use approval (by June 20, 2026).
  - Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by June 20, 2028).

*In this instance, development permits are required to establish the fence. The applicant has applied for a building permit (building permit #601-24-000549-STR). The applicant is advised that the permit must be finalized before June 20, 2028, or the variance approval is void (the applicant should also be aware the building permits expire on a different timeline from land-use approvals).*

9. The application was referred to the following departments and agencies on June 7, 2024: Milwaukie Engineering Department; Milwaukie Building Department; Clackamas Fire District #1; and the Lewelling Neighborhood District Association. Notice of the application was also sent to surrounding property owners within 300 ft of the site on June 7, 2024, and a sign was posted on the property on June 6, 2024.

*No comments were received from internal departments or partner agencies. Two comments were received from nearby neighbors, both writing in support of the variance.*

- *Greg Sutton (5285 SE Brookside Dr) provided comments in support of the variance, stating that the circumstances support the additional height.*
- *Jess Gibson and Dylan McCann (5384 SE Rainbow Ln) also provided comments in support, stating that they appreciate how the cedar fence has beautified the property.*



**Exhibit 2. Site Plan**

Section of fence approved to be 8 ft tall per VR-2024-004.

Section of front yard fence in ROW approved through ROW encroachment permit. Front yard fence limited to 42-in max allowance per MMC 19.502.

Fence line for Type II variance permit

Fence line for Rights of Way Encroachment permit

City of Milwaukie Oregon, Esri Community Maps Contributors, Oregon Metro, Oregon State Parks, State of Oregon GEO, @ OpenStreetMap, Microsoft, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA, City of Milwaukie GI