



CITY OF MILWAUKIE

July 12, 2024

Land Use File(s): VR-2024-005

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on July 12, 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):	Debra and Roger Espinor
Location(s):	2122 SE Sparrow St
Tax Lot(s):	1S1E35DD05400, 1S1E35DD05501, 1S1E35DD05600
Application Type(s):	Variance
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Municipal Code: <ul style="list-style-type: none">• MMC 12.24 Clear Vision at Intersections• MMC 19.502 Accessory Structures• MMC 19.911 Variances• MMC 19.1005 Type II
Neighborhood(s):	Island Station

Appeal period closes: 5:00 p.m., July 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, 10501 SE Main St, City Hall. Please contact Ryan Dyar at 503.786.7661 or dyarr@milwaukieoregon.gov if you wish to view this case file or visit the project webpage at <https://www.milwaukieoregon.gov/planning/vr-2024-005>.

This decision may be appealed by 5:00 p.m. on July 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.) Any person

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.

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. 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. This variance expires upon redevelopment of lot 1S1E35DD05400. Any fencing associated with redevelopment of lot 1S1E35DD05400 or lot 1S1E35DD05501, including fencing located in the required front yard, must comply with the standards for fencing established in MMC 19.502.2.

Other requirements


1. The applicant shall not place sight-obscuring slats in the chain link fence or take any other action that would compromise the clear vision requirements established in MMC 12.24.

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



Laura Weigel, AICP
Planning Manager

Exhibits

1. Findings in Support of Approval
2. Approved site plan

cc: Debra and Roger Espinoza (via email)
Planning Commission (via email)
Joseph Briglio, Community Development Director (via email)
Jennifer Garbely, City Engineer (via email)
Engineering Development Review (via email)
Partick McLeod, Building Official (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Technician (via email)
Tim Salyers, Code Compliance Coordinator (via email)
Jon Simkovic, Code Compliance Specialist (via email)
Shawn Olson, CFD#1 (via email)
NDA(s): Island Station (via email)
Interested Persons
- Shirley A. H. Hamilton (via mail to 2125 SE Sparrow St)

Land Use File(s): VR-2024-005

EXHIBIT 1
Findings in Support of Approval
File #VR-2024-005, 2122 SE Sparrow St

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, Debra and Roger Espinor, have applied for approval to establish a new 60-in tall fence in the required front yard at 2122 SE Sparrow St. The property is currently comprised of three tax lots, 1S1E35DD05600, 1S1E35DD05501, and 1S1E35DD05400. The residence is located on lot 1S1E35DD05600, the applicant's driveway on lot 1S1E35DD05501, and lot 1S1E35DD05400 is undeveloped. The new fence is proposed to be located on Tax Lot 1S1E35DD05400 and will connect to a newly constructed gate on 1S1E35DD05501. This site is in the Moderate Density Residential (R-MD) Zone. The land use application file number is VR-2024-005.
2. The proposal requires a variance to the standard established in MMC 19.502.2.B, which limits the height of fences located in a required front yard to a maximum height of 42 in.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 12.24 Clear Vision at Intersections
 - 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 12.24 Clear Vision at Intersections

The purpose of this chapter is to maintain clear vision areas at intersections in order to protect the safety and welfare of the public in their use of city streets.

a. MMC 12.24.030 Requirements

- (1) MMC 12.24.030.C – A clear vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction, except for an occasional utility pole or tree, exceeding three (3) feet in height, measured from the top of the curb, or where no curb exists, from the street centerline grade. Trees exceeding this height may be located in this area; provided, all branches and foliage are removed to the height of eight (8) feet above the grade. Open wire fencing that does not obscure sight more than ten percent (10%) is allowed to a maximum height of six (6) feet.

b. MMC 12.24.040 Computation

- (1) MMC 12.24.040.A – The clear vision area for all driveway accessways to streets, street intersections and all street and railroad intersections shall be that area described in the most recent edition of the “AASHTO Policy on Geometric Design of Highways and Streets.”
- (2) MMC 12.24.040.B – Modification of this computation may be made by the City Engineer after considering the standards set forth in the most recent edition of the “AASHTO Policy on Geometric Design of Highways and Streets” and taking into consideration the type of intersection, site characteristics, types of vehicle controls, vehicle speed, and traffic volumes adjacent to the clear vision area.

The applicants are seeking approval of a variance to establish a 60-in tall chain-link style fence in the required front yard of lot 1S1E35DD05400. The fence is proposed to be set back 1 ft from the front property line, which abuts Sparrow Street, and will connect to a gate located on lot 1S1E35DD05501. The gate is proposed to be setback 20 ft from the front property line. There is roughly 10 to 15 ft between the edge of the paved portion of Sparrow Street and the front property line of lot 1S1E35DD05400 and lot 1S1E35DD05501. Due to the combination of fence style and proposed location, Engineering staff did not identify any clear vision issues.

The Planning Manager finds that this criterion is met.

6. 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 establish a 60-in tall fence in the required front yard of lot 1S1E35DD05400, along the front property line. This exceeds the 42-in height maximum allowance.

Subject to the approval of the variance, the Planning Manager finds that this criterion is met.

7. 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 60 in in the front yard. 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 42-in maximum fence height standard for fences located in a required front yard. The variance would permit the applicants to establish a 60-in tall fence in the required front yard of lot 1S1E35DD05400. The fence will connect to a gate located on lot 1S1E35DD05501. 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 42-in maximum height standard for fences in the required front yard.

- 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 establish a 60-in fence in the required front yard of lot 1S1E35DD05400, which is currently undeveloped. The fence will connect to a gate located on lot 1S1E35DD05501. There are no inventoried natural resource areas on this property and there is no evidence suggesting that that the increased fence height would be detrimental to the public health, safety, or general welfare of the surrounding community. The lot is fully undeveloped, and the applicants are requesting a taller fence to deter trespassing and prevent dumping on the lot.

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 (ROW) or utility improvements in the area. There is undeveloped ROW abutting the applicant's property to the east; however, the variance application for increased fence height is limited to lot 1S1E35DD05400 and the portion of fence connecting to the gate located on lot 1S1E35DD05501. No fences shall be constructed in the right-of-way without first obtaining necessary permits, including a right-of-way encroachment permit.

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.

The site is currently undeveloped. The applicants recently removed an asphalt parking lot that previously served an onsite restaurant that has since been converted into the applicant's residence. There is no evidence that suggests the increased fence height will detract from integrity of the site. As stated, the applicants are proposing the taller fence to better maintain the cleanliness of the site.

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 applicants are not pursuing a variance to preserve a priority tree and there are no trees where the fence is proposed. The 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.

8. 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.
9. 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 July 12, 2026).
 - Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by July 12, 2028).

In this instance, staff do not believe development permits are required to establish the fence; however, the applicant should confirm with the Milwaukie Building Department at the time of construction. The applicant is advised that the fence must be established before July 12, 2026, or the approval is void.

10. The application was referred to the following departments and agencies on June 17, 2024: Milwaukie Engineering Department; Milwaukie Building 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 June 17, 2024, and a sign was posted on the property on June 21, 2024.

No comments were received from city departments or external agency partners.

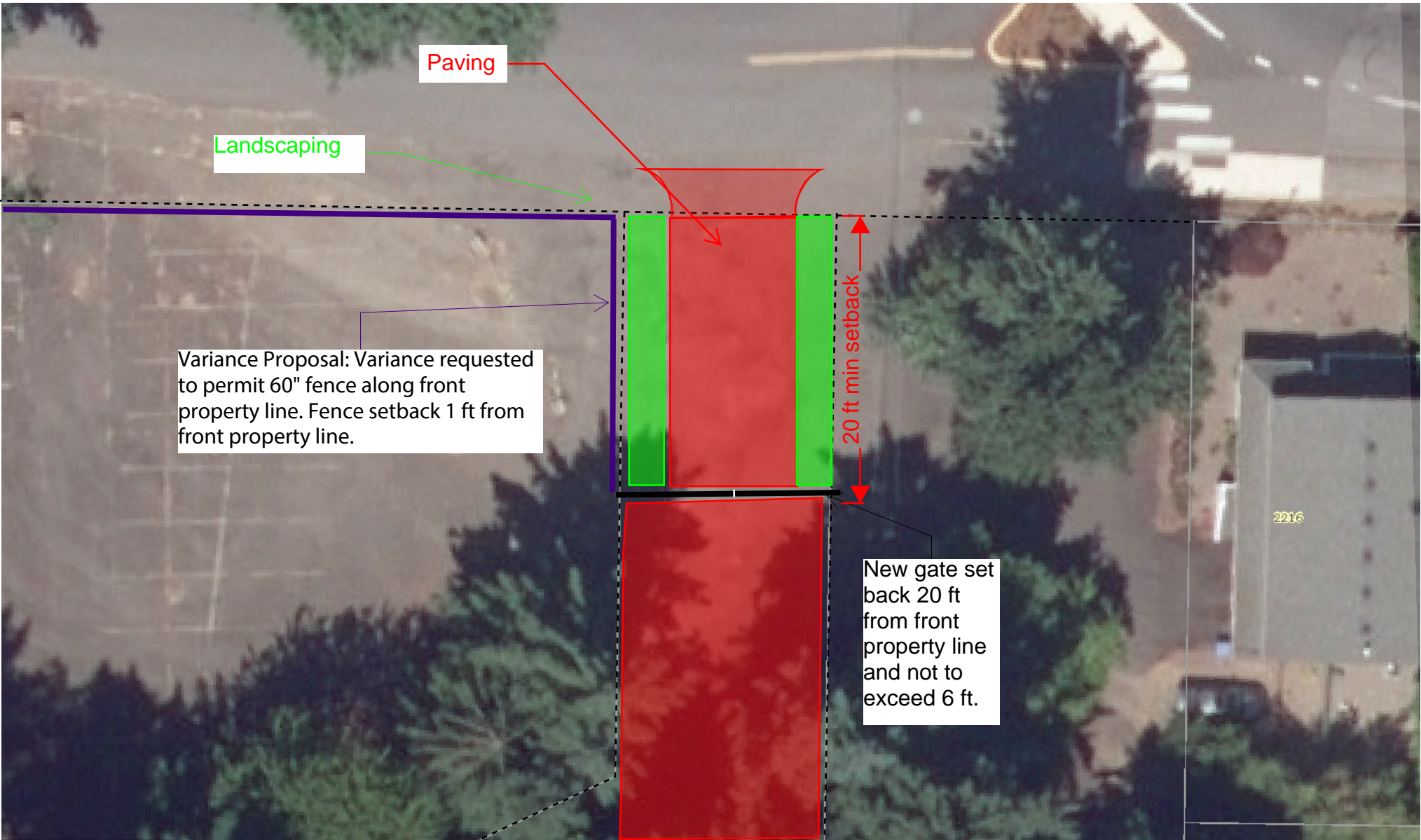
Two comments were received in response to the public notice:

- ***Shirley A. H. Hamilton (2125 SE Sparrow St.):*** *provided comments in support of the variance proposal.*
- ***Island Station NDA:*** *provided a comment questioning the appropriateness of the additional fence height. The letter also asked staff a question regarding the removal of the asphalt parking lot, the recent grading of the site, and about the possibility of future development on the property.*

Exhibit 2.
Site Plan p.1 of 2
Site Overview



Exhibit 2.
Site Plan p.2 of 2
Proposed Fence Location



Paving

Landscaping

Variance Proposal: Variance requested to permit 60" fence along front property line. Fence setback 1 ft from front property line.

20 ft min setback

New gate set back 20 ft from front property line and not to exceed 6 ft.

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