



CITY OF MILWAUKIE

February 26, 2025

Land Use File(s): VR-2025-002

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on February 26, 2025.

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 Erickson and Ncholas Staropoli
Location(s): 4128 SE Jefferson St
Tax Lot(s): 1S1E36AA07400
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): Hector Campbell

Appeal period closes: 5:00 p.m., March 13, 2025

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 if you wish to view this case file or visit the project webpage at <https://www.milwaukieoregon.gov/planning/vr-2025-002>.

This decision may be appealed by 5:00 p.m. on March 13, 2025, 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 who is adversely affected or aggrieved by this decision may appeal the decision by filing a

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.

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

None.

Other requirements

1. Any fence taller than 7-ft is required to obtain a building permit from the Milwaukie Building Division. In accordance with the expiration limitation in MMC 19.1001.7.E, mentioned above, the applicant is required to obtain and pay for a development permit and begin construction within two years of the date of this notice (by February 26, 2027).

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: Kristina Erickson and Nicholas Staropoli (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)
NDA(s): Hector Campbell (via email)

Interested Persons:

- John Austin Kuck and Bitia Motamedi (via email)
- Casey Doyle (via email)
- Cindi Anker (via email)
- Rowland Horst (via email)

Land Use File(s): VR-2025-002

EXHIBIT 1
Findings in Support of Approval
File #VR-2025-002, 4128 SE Jefferson 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, Kristina Erickson and Nicholas Staropoli, have applied for approval to build a fence that is 8 ft tall in the rear and side yards of 4128 SE Jefferson St. The fence would be made of wood, and it is proposed to provide additional privacy for the applicant's home occupation. This site is in the Moderate Density Residential (R-MD). The land use application file number is VR-2025-002.
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 build a solid wood fence in the rear and side yards that is 8-ft in height, 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.

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, 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 build an 8-ft-tall fence. 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 establish an 8-ft-tall wood fence. The fence is proposed to provide additional screening for the applicant's home occupation, a home sauna business; the applicant recently erected a detached structure that includes a sauna (building permit #601-24-000269-STR). The sauna can be rented by private individuals and small groups for limited periods of time. The business is subject to the home occupation standards in MMC 19.507. As part of the building permitting process, some site grading was required that slightly elevated the structure and surrounding area. This change reduced privacy for the applicant and nearby properties.

There is no evidence that the additional fence height would be detrimental to the surrounding properties, natural resources, public health, safety, or welfare. There are no inventoried natural resources on the property and no comments were provided indicating the increased height is detrimental to public health, safety, or welfare. The four public comments that were submitted indicated that the fence provided desired screening for adjacent property owners and would not negatively impact neighborhood character.

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.

The proposed fence would enclose the property's rear and side yards. The property is developed with a single detached dwelling and the detached accessory structure containing a storage area and a spa. Properties abutting the subject parcel are also developed with single-detached dwellings and accessory structures. There is no evidence that the addition degrades the existing building or site design. Additionally, the city received public comments from four neighbors arguing that the fence was desirable and would not negatively impact their properties or the character of the neighborhood. No comments were received in opposition.

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. For a fence variance, adjacent property owners have the greatest potential to be impacted by the variance. Many adjacent property owners provided comments in support of the proposed variance, and none provided comments in opposition.

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 would 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:
- a. Obtain and pay for all necessary development permits and start construction within 2 years of land use approval (by February 26, 2027).
 - b. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by February 26, 2029).

In this instance, development permits are required to establish the fence. The applicant is advised that the permit must be applied for by February 26, 2027, and must be finalized before February 26, 2029, 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 February 11, 2025: Milwaukie Engineering Department; Milwaukie Building Department; Milwaukie Community Development; and the Hector Cambell Neighborhood District Association. Notice of the application was also sent to surrounding property owners within 300 ft of the site and a sign was posted on the property on February 11, 2025.

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

- *John Austin Kuck and Bitia Motamedi (4142 SE Jefferson St) provided comments in support of the variance, stating that the additional fence height would provide additional needed privacy for both parties and that the additional height would not impact the look or character of the neighborhood.*
- *Casey Doyle (4116 SE Jefferson St) provided comments in support, stating that they thought the taller fence would increase privacy and not alter the aesthetic or character of the neighborhood.*
- *Cindi Anker (4135 SE Jefferson St) provided comments in support, stating that they thought the taller fence is appropriate and would not alter the look or feel of the neighborhood.*
- *Rowland Horst (4116 SE Jefferson St) provided comments in support, stating that the addition of the taller fence would not negatively affect their property.*

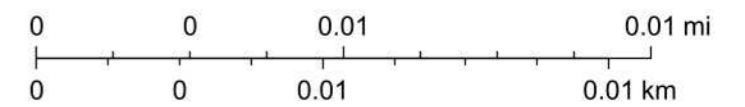


1/29/2025, 4:25:12 PM

- Outside Milwaukie
- Taxlots
- Addresses
- Milwaukie City Limits

KEY: Red lines indicate where we are requesting a variance to the standard 6 foot fence, to an 8 foot fence.

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