



MILWAUKIE

Dogwood City of the West

To: Mary Dorman & Serah Breakstone, Angelo Planning Group
From: Li Alligood & Susan Shanks, City of Milwaukie Planning Staff
Through: Katie Mangle, City of Milwaukie Planning Director
Date: December 21, 2010
Subject: Task 6 City Deliverable – Code History Memo

The purpose of this memo is to provide an historical overview and current assessment of the City's standards for construction and remodeling of residential buildings. This memo includes a brief history of how the City created the current standards, highlighting key dates and policy decisions.

I. SUMMARY

Residential development in the City is guided by the policies of the Comprehensive Plan and implemented by the City's zoning ordinance ("the code"). At this time, most Comprehensive Plan policies relating to compatibility and design have not yet been implemented. The Residential Development Standards project will revise the zoning ordinance to better implement existing Comprehensive Plan policies.

Relevant Comprehensive Plan policies are found in Chapter 4 – Land Use, which addresses specific issues of balancing land uses within the City. Residential land use policy in the Comprehensive Plan is based on the concept that the City is, and will continue to be, composed primarily of single family neighborhoods. Current Comprehensive Plan policies strongly support City-wide design standards for single family and multifamily residential development; ensuring development compatible with existing single family neighborhoods; and provision of a variety of housing types to meet the needs of residents.

The code primarily implements the policies of the Comprehensive Plan through Milwaukie Municipal Code (MMC) Sections 19.301-309, the residential use zones, and MMC Chapter 19.400 Supplementary Development Regulations. The current zoning ordinance has been revised multiple times since its adoption in 1979, primarily to remain compliant with federal, state and Metro Functional Plan policies. There is longstanding tension between regional policies that encourage or require residential density within the Portland metropolitan area, and the local desire for low density single family development. This tension has resulted in residential standards that are fragmented, confusing, and at times contradictory.

Although design standards have been adopted for development in the Downtown Zones and for new single family residential construction, there are currently no design standards for multifamily housing or standards guiding the compatibility of infill development.

II. BACKGROUND

The residential standards update project is the result of a 2009 grant from the State of Oregon's Transportation and Growth Management (TGM) program, which funded a phased code review and revision project. The State contracted with Angelo Planning Group (APG) to review the City's residential standards. There are 9 residential zones within the City outside the downtown zones, including high-density (R-1), medium density (R-2, R-2.5 and R-3), moderate density (R-5), and low-density residential (R-7 and R-10), and two mixed-use zones (R-1-B and R-O-C).

A. Overview of Current Standards

The City's base zone development standards apply to all new residential development in the City. Those standards identify requirements for:

- Minimum lot size, setbacks, street frontage requirements,¹ and vegetation.
- Maximum building height and lot coverage.
- Minimum and maximum density.²
- Off-street parking.³
- Street and utility improvements.⁴
- Building separation of 6 ft between a dwelling and other buildings on the lot.

Some lot size, front yard, building height, and density exceptions apply in all zones:⁵

- No dwelling can be built on a lot with an area of less than 3,000 square feet, regardless of the zone (an exception is the R-2.5 zone, where attached dwellings require only 2,500 square feet).
- Only 1 building designed for dwelling purposes is permitted per lot in the R-10, R-7, R-5, and R-3 zones.
- Buildings sited along certain major streets are subject to additional front yard setbacks.
- Required front yards can be reduced if the adjacent yards are less than the minimum setback.
- In high-density residential zones, one additional story may be permitted in excess of the required minimum standard in exchange for additional vegetation.
- Additional density may be permitted for dedication of parkland or below average unit prices (i.e. affordable housing units) in a housing development.

Table 1 provides an overview of current residential development standards for each zone (outside of downtown) that allows residential development. Corner lots in residential zones are subject to additional side yard setbacks.

¹ Every lot shall abut a public street for at least 35 ft; lots for interior single-family attached and condominium unit shall abut a public street for at least 20 ft.

² Minimum and maximum density requirements are triggered by subdivision, planned development, mixed use development, and other Type III applications and are not addressed in this summary.

³ Subject to the requirements of MMC Chapter 19.500 Off-Street Parking and Loading.

⁴ Subject to the requirements of MMC Chapter 19.1400 Public Facility Improvements.

⁵ MMC Subsection 19.401 General Exceptions.

Table 1. Residential Development Standards

Zone	Min. lot size	Max. Height⁶	Max. Lot coverage	Min. Lot Dimensions	Min. Setbacks
Residential-Business Office-Commercial Zone R-1-B	5,000 sf for 1 du; 1,400 sf per du over 1	3 stories or 45'	50%	50' width; no min. depth 30' width for interior attached	15 ft front, 5 ft side (15 ft corner), 15 ft rear
Residential-Office-Commercial Zone R-O-C	5,000 sf for 1 du; 1,400 sf per du over 1	3 stories or 45'	50%	50' x 80' 30' width for interior attached	15 ft front, 5 ft side (15 ft corner), 15 ft rear
Residential Zone R-1	5,000 sf for 1 du; 1,400 sf per du over 1	3 stories or 45'	45%	50' x 80' 30' width for interior attached	15 ft front, 5 ft side (15 ft corner), 15 ft rear
Residential Zone R-2	5,000 sf for 1 du; 2,500 per du over 1	3 stories or 45'	45%	50' x 80' 30' width for interior attached	15 ft front, 5 ft side (15 ft corner), 15 ft rear
Residential Zone R-2.5	3,000 sf for 1 du; 2,500 sf for attached du	35'	40%	SFR: 40' x 75' Attached: 25' x 75'	15 ft front, 5 ft side (15 ft corner), no rear
Residential Zone R-3	5,000 sf for 1 unit; 3,000 sf attached du	2.5 stories or 35'	40%	50' x 80' 30' width for interior attached	15 ft front, 5 ft side (15 ft corner), 15 ft rear
Residential Zone R-5	5,000 sf per du	2.5 stories or 35'	35%	50' x 80' 30' width for interior attached	20 ft front, 5 ft side (15 ft corner), 20 ft rear
Residential Zone R-7	7,000 sf per du	2.5 stories or 35'	30%	60' x 80' 30' width for interior attached	20 ft front, 5 ft/10 ft side (20 ft corner), 20 ft rear
Residential Zone R-10	10,000 sf per du	2.5 stories or 35'	30%	70' x 100' 30' width for interior attached	20 ft front, 10 ft side (20 ft corner), 20 ft rear

APG conducted an assessment of the City's residential standards⁷ and identified 4 areas that needed improvement:

- Single-family residential design standards
- Compatibility standards for residential infill and redevelopment
- Multi-family design standards
- Housing type variety, including accessory dwelling units

⁶ Building height is measured from the adjoining street centerline grade to the mean height level between the eaves and ridge for a gable, hip, or gambrel roof. Maximum height is in stories or feet, whichever is less.

⁷ Angelo Planning Group, "August 2009 Final Report: City of Milwaukie Code Assessment."

The current base zone development requirements are the result of incremental revisions since the adoption of the City's first zoning ordinance in 1946. The establishment of each requirement is detailed below.

III. HISTORY OF RESIDENTIAL POLICY DEVELOPMENT

A. Zoning Ordinance History

The City's zoning ordinance has undergone four complete revisions since its adoption in 1946. Each revision is noted below and then followed by a more detailed summary.

1. 1946: The City's first zoning ordinance established 4 use zones (2 residential, 1 commercial, and 1 industrial) and residential development standards.⁸
2. 1968: Repealed the 1946 ordinance and established 6 residential zones, supplementary regulations, and off-street parking and loading provisions.⁹
3. 1975: Repealed the 1968 ordinance and adopted minimal revisions to residential standards and permitted uses.¹⁰
4. 1977: Substantial revisions, including adoption of minimum vegetation requirements.¹¹
5. 1979: Repealed the 1975 ordinance and all amendments to that ordinance. Added the minor quasi-judicial Transition Area Review (TAR) process, revised existing residential zones, revised housing type definitions and options, and adopted 2 new high density residential zones.¹²

In addition to the revisions described above, the Code was reformatted and digitized in 1991.¹³ Revisions to the Code have occurred in piecemeal fashion since 1979 through the City's amendment process.

Though the City's zoning ordinance addresses all types of development in the City, this review focuses on provisions relating to residential standards. Significant amendments to residential use and development standards are noted below.

1. 1946 Zoning Ordinance

The first ordinance was adopted in 1946, apparently to implement the newly-adopted Uniform Building Code.¹⁴ Although the adoption of both ordinances coincided with the end of World War II, there was no City Council discussion about housing shortages or anticipated development pressures as a reason for adopting a zoning ordinance.

The ordinance established 4 use zones, including 2 residential zones: Single Family Residential Zone 3-R-1 and Multifamily Residential Zone 3-R-2. This ordinance established:

- Minimum lot size, setbacks, and street frontage requirements.
- Maximum building height.

⁸ Ordinance 481, adopted June 24, 1946.

⁹ Ordinance 1183, adopted October 17, 1968.

¹⁰ Ordinance 1316, adopted July 7, 1975.

¹¹ Ordinance 1370, adopted August 1, 1977.

¹² Ordinance 1438, adopted November 5, 1979.

¹³ Ordinance 1712, adopted October 15, 1991 (File #ZA-91-02).

¹⁴ Ordinance 465, adopted August 13, 1945.

- Front yard exceptions.
- Restriction of 1 building designed as a dwelling per lot.

Accessory structures were permitted with very few restrictions:

- On any residential lot when located at least 50 feet from the front lot line and no less than 20 feet from any street frontage, or attached to or within the primary structure.
- Maximum height of 1.5 stories.

A 1962 amendment added provisions to allow accessory structures to be built within 5 feet of the lot lines under certain conditions: the structure must be at least 20 feet from any street frontage; all surrounding property owners must give written consent; and the structure's walls must be fire resistive for 4 hours.¹⁵

There were several amendments to the 1946 zoning ordinance regarding special uses in the residential zones, specifically duplex dwellings in the 3-R-1 zone.

2. 1968 Zoning Ordinance

The 1968 zoning ordinance was developed in conjunction with the City's first Comprehensive Plan,¹⁶ and repealed and replaced the 1946 ordinance. This zoning ordinance created 6 new residential zones: Residential Zone R-10; Residential Zone R-7; Residential Zone R-5; Apartment Zone A-3; Apartment Zone A-2; and Apartment-Business Office-Residential Zone A-1-B.¹⁷

Generally, the new residential zones permitted the following residential uses outright:

- R-10, R-7, and R-5 zones: Detached single family homes; in a "transitional" area, a duplex. The R-7 zone permitted "a use permitted outright in the R-10 zone," and the R-5 zone permitted "a use permitted outright in the R-7 zone."
- A-3 zone: Uses permitted in the R-10, R-7, and R-5 zones, duplexes, and apartments with fewer than 4 units.
- A-2 zone: Uses permitted in the A-3 zone and apartments with more than 4 units.
- A-1-B zone: Uses permitted in the A-2 zone.

The following residential uses were allowed conditionally, with Planning Commission approval:

- R-10, R-7, and R-5 zones: Duplexes, which required approximately 1/3 additional lot area. For example, a SFR in the R-10 zone required a 10,000 sf lot, while a duplex required a 13,500 sf lot.
- A-3 zone: Conditional uses permitted in the R-10, R-7, and R-5 zones; boarding, lodging, or rooming houses.
- A-2 zone: Conditional uses permitted in the A-3 zone; trailer park.
- A-1-B zone: Conditional uses permitted in the A-2 zone.

In addition to the provisions established by the 1946 ordinance, the 1968 ordinance

¹⁵ Ordinance 961, adopted July 9, 1962.

¹⁶ Resolution 2-1970, adopted January 12, 1970.

¹⁷ Ordinance 1183, adopted October 17, 1968.

established provisions for:

- Design review of new construction or substantial remodeling within design districts through Design Zone D (described in Section 3.G.2 below).
- Maximum lot coverage.
- Yard exceptions for lots abutting a major street.
- Lot size exceptions.
- Off-street parking.
- Transitional areas. Transitional uses such as duplexes and offices were permitted outright within transitional areas, which were defined as an area within a residential zone, abutting a boundary of a commercial or industrial zone, and extending not more than 100 ft into the residential zone.
- Buffer area review. Any use other than a single family dwelling adjacent to the R-10, R-7, R-5, or A-3 zone required buffer area review by the Planning Commission.
- Increased the permitted height accessory structures to 2.5 stories or 35 feet, whichever was less.
- Expanded the situations in which accessory structures were permitted with a reduced setback of 3 feet to include the following conditions:
 - Separated from other buildings by 5 feet or more.
 - Set back at least 60 feet from a public street.
 - May not exceed 1 story in height or 450 square feet in size.

There were no revisions to the zoning ordinance until its repeal and replacement in 1975.

3. 1975 Zoning Ordinance

The 1975 zoning ordinance repealed and replaced the 1968 zoning ordinance. It was adopted in response to the 1975 Oregon Supreme Court case *Baker v. City of Milwaukie*, which determined that the local comprehensive plan was the controlling land use document, and land use zoning and regulations must be consistent with it. In May of 1975, City Council adopted an interim ordinance which applied a moratorium on development in areas where a potential conflict existed between the Comp Plan and Zoning Ordinance maps.¹⁸ The 1975 ordinance was adopted 3 months later.

Changes to the residential provisions were minimal. Generally, allowed uses within transitional areas were more clearly described (i.e. “offices of doctors and dentists” rather than “offices”), and buffer area review was expanded to include the A-3 zone.

Provisions to allow accessory structures with a 3-foot setback were retained, and additional restrictions were added:

- Increased the required building separation to 6 feet.
- Increased the allowable size to 480 square feet.

¹⁸ Ordinance 1311, adopted May 19, 1975.

4. 1977 Amendments

The 1977 zoning ordinance revision retained most of the 1975 provisions regarding residential uses and standards, and established new provisions in all residential zones for:

- Minimum vegetation requirements.

5. 1979 Zoning Ordinance—the current version

The next, and final, complete revision of the zoning ordinance occurred in 1979.¹⁹ The ordinance was adopted concurrently with the 1979 Comprehensive Plan,²⁰ which had been revised and adopted to comply with the 1973 Statewide Planning Goals. The City's first subdivision ordinance, including flag lot design and development regulations, was adopted a month later.²¹

Generally, the revisions contained in the ordinance focused on increased housing densities through the permitting of more single family attached dwellings and the introduction of the town house as a new multifamily housing type. The ordinance retained the existing single family residential zones R-10, R-7, and R-5, renamed 3 existing zones, and introduced 2 new zones:

- Residential Zone R-3 (formerly A-3 zone)
- Residential Zone R-2 (formerly A-2 zone)
- Residential Zone R-1-B (formerly A-1-B)
- Residential Zone R-1: Permitted all residential types; conditionally permitted various civic, office and commercial uses.
- Residential-Office-Commercial Zone R-O-C: Permitted residential, commercial, and office uses. Provided some flexibility in lot size.

The 1979 Comp Plan and zoning ordinance made the following revisions to increase residential density:

- Established the “moderate density” land use designation (in addition to low density, medium density, and high density) and assigned the R-3 zone to that density.
- Expanded the definition of single-family attached dwellings to include both duplexes and triplexes.
- Expanded the definition of multifamily dwellings to include 4 or more units (previously 3 or more units).
- Added 2 new definitions:
 - “Dwelling, Townhouse:” 4 or more houses, usually 2 story and each occupied by 1 family, sharing common structural walls. Each dwelling and lot was under single ownership (i.e. fee simple) or lots were under joint ownership.
 - “Dwelling, interior single family attached, interior townhouse,

¹⁹ Ordinance 1438, adopted November 5, 1979.

²⁰ Ordinance 1437, adopted November 5, 1979.

²¹ Ordinance 1440, adopted December 3, 1979.

interior multifamily condominium.” the dwelling unit or units that were interior to the whole residential structure and did not include the dwelling units that were on the ends of the structure facing the lot lines.

- Added additional building height provisions in exchange for additional vegetation in multifamily residential zones.
- Added provisions for additional density in exchange for dedication of parkland or below average unit prices (i.e. affordable housing units) in a housing development.
- Revised the 1968 transitional area standards and buffer review to remove outright permitted transitional uses and require Type III transition area review (TAR) for townhouse, multifamily, commercial, or industrial projects were proposed within 100 ft of areas designated for lower density. The TAR replaced buffer review in the development standards of the R-3, R-2, R-1, R-1-B, and R-O-C zones.

The 1979 subdivision ordinance adopted flag lot development standards, including:

- Required access strip of at least 20 feet.
- If 2 flag lots had abutting access strips, the combined required width was 30 feet.
- Development of 3 or 4 flag lots permitted with Planning Commission variance review.
- Required lot sizes equal to the base zone standards, exclusive of the “pole” and paved turnaround area.

A 1980 amendment adopted the following revisions to eliminate inconsistencies between the Comp Plan text and zoning map:²²

- Duplex uses were added as outright permitted use in the R-5 zone. The Comp Plan identified the R-5 zone as a moderate-density residential zone, which was to be composed primarily of single family detached and attached dwellings.
- Multifamily dwellings were added as Conditional Uses in the R-3 zone. The Comp Plan identified the R-3 zone as a medium-density residential zone, and directed multifamily units to be allowed based on location criteria.

III. MAJOR RESIDENTIAL POLICY CHANGES TO THE CURRENT ZONING ORDINANCE

A. Overview

The current zoning ordinance has been revised multiple times since its adoption in 1979, primarily to remain compliant with federal, state and Metro Functional Plan policies. The 9 existing residential use zones are those the City adopted in 1968, 1979 and 1984; the residential development standards are substantially similar to those adopted in 1968; and the residential use standards are substantially similar to those adopted in 1979.

Significant changes to the zoning ordinance since 1979 include:

²² Ordinance 1447, adopted February 3, 1980.

1. 1984: Adoption of Accessory Dwelling Unit (ADU) provisions.²³
2. 1984: Adoption of the R-2.5 zone.²⁴
3. 1994: Adoption of Chapter 19.1400 (street improvement regulations).²⁵
4. 1994: Revised dwelling type definitions.²⁶
5. 2002: Revisions to flag lot design standards.²⁷
6. 2002: Adoption of accessory structure development and design standards.²⁷
7. 2002: Adoption of single family residential design standards.²⁷

Each of these changes is described in detail below.

1. Accessory Dwelling Units (ADUs)

Provisions for ADUs were adopted in 1984 to allow people to better utilize their property through conversion of existing space. According to the staff report and City Council worksession minutes, the provisions were in response to a number of requests from elderly residents to convert portions of existing houses or accessory buildings to secondary dwellings. Another likely reason was the requirement to comply with Statewide Planning Goal 10 – Housing.

The Planning Commission supported restrictions on unit size and visibility, and recommended approval of both detached and attached ADUs with a maximum size of 800 sf. The City Council removed the provision for detached ADUs due to concerns about Comprehensive Plan compliance and density. Attached ADUs were adopted as a conditional use in all zones that permitted single family residential uses outright.

The 1984 ADU provisions remained in effect until 1999, when the City adopted amendments to comply with Metro Functional Plan Title 1 Housing and Employment Accommodation.²⁸ These amendments revised the ADU standards and levels of review as follows:

- Established 2 types of ADUs: Type 1 and Type 2. Type 1 ADUs are limited to 600 sf in area and 40 percent of the gross floor area of the primary structure; Type 2 ADUs are limited to 800 sf in area and 50 percent of the gross floor area of the primary structure.
- Amended the ADU provisions to allow Type 1 ADUs in all zones that permitted single family detached dwellings through a staff level review process. Required Type 2 ADUs to obtain conditional use approval from the Planning Commission.

2. Residential Zone R-2.5

The Residential Zone R-2.5 was also established in 1984. Its intent was to allow smaller lots sizes than the existing minimum of 3,000 sf; attached zero lot line town houses were allowed on 2,500 sf lots. These smaller lot sizes were intended to

²³ Ordinance 1561, adopted May 3, 1984 (File #ZA-84-01).

²⁴ Ordinance 1569, adopted October 16, 1984 (File #ZA-84-04).

²⁵ Ordinance 1762, adopted May 17, 1994 (File #ZA-94-02A).

²⁶ Ordinance 1773, adopted October 18, 1994 (File #ZA-94-06).

²⁷ Ordinance 1907, adopted August 20, 2002 (File #ZA-02-02).

²⁸ Ordinance 1854, adopted April 6, 1999 (File #ZA-98-02-A).

encourage affordable housing and respond to the fact that many lots in the City had been platted at 2,500 sf.

The R-2.5 zone allowed a variety of housing types and provided a second moderate-density residential zone (along with the existing R-3 zone). The zone was to be applied at the request of individual property owners, which may explain its application to only 2 properties in the City to date.

3. Street Improvement Regulations

Chapter 19.1400 was adopted in 1994 to comply with OAR 660-12-055 and 660-12-045, which established standards for pedestrian, bicycle, and transit opportunities in new developments or redevelopment of property. This chapter established requirements for street improvements to mitigate the transportation impacts of new development and required applicants to submit an additional land use application, which the City used to evaluate and condition development projects that triggered the requirements of the new chapter.²⁹

Street improvement regulations can have a significant impact on new residential development proposals in the City; current regulations are triggered by partitions, subdivisions, replats, new construction, and modification or expansion of an existing structure. The required street and sidewalk improvements include:

- Expansions of less than 200 square feet: None.
- Expansions between 200 and 1499 square feet: Right-of-way dedication if needed.
- Expansions of more than 1500 square feet (including construction or establishment of a new dwelling unit): Half-street improvement, including pavement, gutters, curbs, planting strip, and sidewalk.

Because much of Milwaukie's street network is incomplete, most new development is required to construct street and sidewalk improvements at the time of construction.

4. Revised Dwelling Type Definitions

The dwelling unit definition update adopted in 1994 revised the City's definitions in order to comply with the universal building code (UBC) and the Council of American Building Officials (CABO) definitions. The ordinance implemented the following revisions:

- Removed definitions of town house and interior town house and removed town houses from the list of permitted uses in zones allowing residential uses. There were no revisions to site development standards.
- Revised the multifamily residential dwelling definition from a structure containing 4 or more dwelling units to a structure containing 3 or more dwelling units.
- Revised the single family attached dwelling definition from a structure containing 3 dwelling units (triplex) to a structure containing 2 dwelling units (duplex).

According to staff reports and Planning Commission discussion minutes, the assumption guiding the removal of the "town house" definition was that without the ownership component, townhouses would be automatically included in the

²⁹ Changed to Transportation Facilities Review in 2009.

multifamily dwelling definition if they included 3 or more units.³⁰

Previously, attached zero lot line dwellings on fee simple lots were permitted in many residential zones. With the deletion of the “townhouse” definition, it became unclear whether and where provisions regarding interior single family attached and condominium units are applicable. Current multifamily dwelling definitions specify that dwelling units are contained within a single structure; questions about whether zero lot line developments such as townhouses should be permitted remain unresolved, so the City has effectively not allowed townhouses to be constructed outside of downtown.

5. Flag Lot Design Standards

The City adopted its current flag lot design standards in 2002, but they represent a culmination of more than 20 years of revisions. The current development and design standards include:

- Minimum accessway width of 25 feet.
- Front and rear yard setbacks of 30 feet, side yard setbacks of 10 feet regardless of zone.
- No more than 2 flag lots may be created in any partition.
- Landscaping requirements include a perimeter planting requirement and accessway buffer/planting standards.
- The lot area included in the accessway (or “pole”) is excluded from being counted in minimum lot area.
- Flag lots are prohibited in subdivisions.

Flag lot design standards were established in 1979 with the adoption of the City’s first subdivision ordinance. The standards remained unchanged until 1994, when an amendment adopted the following changes:³¹

- Reduced the minimum access strip width from 20 feet to 15 feet.
- Reduced the combined required driveway width from 30 feet to 20 feet in the case of abutting access strips.

Soon afterwards, a 1995 amendment changed the flag lot dimensional standards to allow:

- Inclusion of the “flag pole” portion of the lot and the required turnarounds in calculations of the minimum area of a buildable lot.³²

According to the staff report, this was in response to a large number of variance requests due to property owner difficulty meeting minimum lot size requirements while excluding the access strips and paved turnarounds in the calculation.

In 1998, City Council adopted amendments intended to “address inconsistencies between the City’s development ordinances and the neighborhood visions for acceptable infill development,” specifically the large number of administrative variances that had been granted for flag lot size reductions and development standards. The amendment adopted the following changes:

³⁰ Planning Commission staff report for September 23, 1994, work session.

³¹ Ordinance 1769, adopted July 19, 1994 (File #ZA-94-05).

³² Ordinance 1775, adopted February 7, 1995 (File #ZA-94-07).

- Adopted new definition for “flag lot” that included both the “flag” and the “pole.”
- Adopted landscape screening and buffering provisions along the “pole.”
- Required lot sizes equal to the zoning standards exclusive of the “pole” (reversing the 1995 provision).
- Increased the minimum access strip width from 15 feet to 20 feet (reversing the 1994 provision).

The flag lot development and design standards remained unchanged until 2002, when the current subdivision ordinance repealed and replaced the 1979 ordinance. The key changes adopted in 2002 were:

- Increased minimum accessway width from 20 feet to 25 feet.
- Increased front and rear setbacks beyond those required in the underlying zone.
- Reduced the number of flag lots allowed in any partition.
- Added landscaping buffering requirements along the pole.
- Prohibited flag lots in subdivisions.

The flag lot design and development standards have not been amended since 2002.

6. Accessory Structure Standards

Accessory structure standards were established with the 1946 zoning ordinance, which allowed accessory structures with very few restrictions. The 1968 zoning ordinance increased the maximum height of all structures, including accessory structures.

Between 1968 and 2002, accessory structures were allowed to have a maximum height of 2.5 stories or 35 feet tall, and could be built with reduced setbacks as long as they were set back from the street 60 feet or more. There were no limits to the square footage of an accessory structure; its height in comparison to the size of the primary dwelling; or the siding or roofing materials of an accessory structure. These regulations resulted in a number of very large, accessory structures that were perceived to be incompatible with surrounding houses.

Accessory structure standards remained unchanged until 2002, when the current accessory structure design standards were adopted:

- 500 square foot maximum area for lots less than 10,000 square feet, and an 850 square foot maximum area for lots greater than 10,000 square feet.
- No metal siding on structures greater than 120 square feet.
- Accessory structures greater than 120 square feet required exterior building materials similar to residential structures.
- Maximum height of 15 feet.
- Prohibition against flat roof for structures with an interior height greater than 9 feet.
- For accessory structures with other than a flat or shed roof (i.e. with an interior height greater than 9 feet), the minimum roof pitch is 4:12.

In addition, the amendments:

- Removed the allowance for reduced setback provisions for certain accessory structures.
- Prohibited accessory structures located within the required front yard, with the exception of fences, pergolas, arbors, or trellises.
- Allowed the existence of multiple accessory structures, subject to the building separation, lot coverage, and minimum vegetation requirements of the underlying zone.

The Planning Commission and City Council were very supportive of accessory structure regulations. Public testimony focused primarily on the flag lot design standards included in the zoning ordinance.

7. Residential Standards

i. Single Family Residential Design Standards

The City's first single family residential design standards were adopted in 2002 in response to concerns about increased flag lot development and infill construction. These standards regulate main entrance orientation, street-facing windows, and require at least 3 of 12 building elevation features such as bay windows, recessed entry, porches, roof eaves, and certain exterior building materials. The current design standards do not apply to new additions or renovations of single family homes, and do not require consideration of the height and mass of adjacent development. They do not regulate the placement or design of garages, but give preference for including attached garages (which qualify as one of the 12 required building elevation features).

The design standards apply in addition to the site development standards contained in the individual use zone sections of Chapter 19.300.

ii. Compatibility Standards for Residential Infill and Redevelopment

Generally, the City's Code has focused primarily on permitted uses and site development standards, rather than building design or compatibility. However, there have been some exceptions to this rule.

A 1966 emergency ordinance added a provision to allow two-family dwellings in the 3-R-1 Zone with requirements that new buildings "conform with, harmonize with, and/or complement by design, appearance, and standards of maintenance, the abutting properties and general areas."³³ This is the first mention of concerns about compatibility with existing development.

The 1968 zoning ordinance established several compatibility-oriented provisions: the Design Zone D; transitional areas; and buffer areas.

- The Design Zone D was an overlay zone that provided for the establishment of design districts, within which development would require Planning Commission review for compatibility and site design.
- A transitional area was defined as an area within a residential zone, abutting a commercial or industrial zone, and extending not more than 100 ft into the residential zone. Transitional uses, such as duplexes and offices, were permitted outright in transitional areas.

³³ Ordinance 1131, adopted October 24, 1966.

- Buffer area review applied to high-density residential, commercial, and industrial development within 100 ft of lower-density residential or commercial uses and required review by the Planning Commission. These buffer area requirements included additional setbacks, landscaping, or other screening as found appropriate by the Planning Commission.

The D zone was introduced in 1968 and remained in the zoning ordinance until 1991; however, it was never applied to any properties in the City because no design districts were ever established. In response to increased development in the City, an emergency interim site design review ordinance was adopted in 1975, and required Planning Director or Planning Commission review of any new commercial, industrial, or multifamily construction within the City. The approval criteria included evaluation of site planning, architectural design, and compatibility of new and existing development.³⁴

In order to implement this ordinance, a Design Review Board (DRB) and Design Review guidelines were established in 1976.³⁵ The DRB was short-lived; it was dissolved and the enabling ordinance repealed in 1978 due to the failure of the City's budget measure on the ballot.³⁶ The D zone was eliminated as part of a reformatting of the code in 1991.³⁷

In 1979, the transitional area and buffer area review were combined into Transition Area Review (TAR), which remains in effect today.

iii. Multifamily Design Standards

Since the repeal of the 1975 site design review ordinance, the Code has not included multifamily design standards or guidelines. The current design standards do not apply to multifamily housing developments. In rare cases, multifamily developments are subject to TAR, the minor quasi-judicial review process established by the 1979 zoning ordinance. TAR applies to development in situations where multifamily, commercial, or industrial projects are proposed for construction within 100 ft of low density residential areas. The TAR process considers density, screening, and building separation, but is a weak tool that doesn't address site or building design and applies only when the proposed development is located in a zone adjacent to a lower-density residential zone.

IV. SUMMARY OF ALLOWED HOUSING TYPES

A. Overview

The City's zoning ordinance allows the following housing types:

- Single family detached dwelling
- Single family attached dwelling, which is two dwelling units sharing a common wall on the same lot (duplex)
- Multifamily, which is either a condominium or apartment structure with 3 or more units on the same lot

³⁴ Ordinance 1326, adopted October 20, 1975.

³⁵ Ordinance 1344, adopted August 16, 1976.

³⁶ Ordinance 1397, adopted July 6, 1978.

³⁷ Ordinance 1712, adopted October 15, 1991 (File #ZA-91-02).

- Type 1 and 2 ADUs, which are considered incidental and subordinate to a detached single-family dwelling

Each allowed housing type is described in detail below.

1. Single Family Detached

Single family detached (SFR) dwellings are permitted outright in all residential zones.

2. Single Family Attached (Duplex)

Single family attached dwellings are defined as 2 dwelling units, each occupied as a housekeeping unit, sharing structural walls (i.e. a duplex). Duplexes are permitted in the R-10 and R-7 zones as conditional uses, and permitted outright in the remaining residential zones. Duplex uses were added as an outright permitted use in the R-5 zone in 1980 in order to eliminate inconsistencies between the Comp Plan text and map. The Comp Plan identified the R-5 zone as a moderate-density residential zone, which was to be composed primarily of single family detached and attached dwellings.

3. Multifamily

Multifamily dwellings (MFR) are permitted outright in high density residential districts, and as conditional uses in medium density districts. Although the definition of MFR was intended to include town house development, town homes are not listed as permitted uses in any residential zones.

Multifamily dwellings were added as a conditional use in the R-3 zone in 1980 in order to eliminate inconsistencies between the Comp Plan text and map. The Comp Plan identified the R-3 zone as a medium-density residential zone, which was to be composed primarily of single family attached and townhouse units, with multifamily units to be allowed based on location criteria as specified in the zoning ordinance.

4. Type 1 and Type 2 Accessory Dwelling Units

Accessory dwelling units (ADUs) are divided into Type 1 ADUs, which require Type II review, and Type 2 ADUs, which are a Conditional Use and require Type III review. The ADU must be part of or attached to the main structure, and current residential standards do not permit the construction of detached ADUs (for example, above a detached garage). Type 1 ADUs are permitted in all residential zones; Type 2 ADUs are permitted as Conditional Uses in the R-2, R-3, R-5, R-7, and R-10 zones.

Accessory dwelling units have been permitted in the city since 1984. A 1999 amendment established 2 types of ADUs with different review types: Type 1 ADU and Type 2 ADU.

A Type 1 ADU is an ADU of not less than 225 sf or more than 600 sf, and not more than 40 percent of the gross area of the primary dwelling. A Type 2 ADU is an ADU of not less than 250 sf or more than 800 sf, and not more than 50 percent of the existing structure. Both types of ADUs require City review and approval. There are some minimal design standards specific to ADUs, including restrictions on the location of entrances and fire escapes.

Table 2 provides an overview of permitted housing types in residential zones.

Table 2. Permitted Housing Types in Residential Zones

Zone	Permitted	Conditional Uses	Not Permitted
Residential-Business Office-Commercial Zone R-1-B Residential-Office-Commercial Zone R-O-C Residential Zone R-1	Single Family Detached (SFR) Single Family Attached (Duplex) Multifamily Residential (MFR) Type 1 ADU	None	None
Residential Zone R-2	SFR Duplex MFR Type 1 ADU	Type 2 ADU	None
Residential Zone R-2.5	SFR Duplex Type 1 ADU	MFR	None
Residential Zone R-3	SFR Duplex Type 1 ADU	MFR Type 2 ADU	None
Residential Zone R-5	SFR Duplex Type 1 ADU	Type 2 ADU	MFR
Residential Zone R-7 Residential Zone R-10	SFR Type 1 ADU	Duplex Type 2 ADU	MFR

V. CODE ASSESSMENT

A. Evaluation

The August 2009 Final Report: City of Milwaukie Code Assessment prepared by Angelo Planning Group (APG) identified a number of issues with the City’s existing residential standards.

1. Residential Design Standards

- The location of garages is not currently regulated in Milwaukie’s code and can result in “snout house” development in which the garage dominates the street-facing elevation, both in bulk and in proximity.
- Staff has indicated that developers frequently choose not to provide roof eaves (which are one of the optional design features in Milwaukie’s existing design standards) because the current definition of lot coverage requires that eaves be counted towards the maximum lot coverage standard. In order to maximize lot coverage, developers choose to omit roof eaves, which results in development that is typically considered less aesthetic and not visually compatible with surrounding homes.
- The existing lot coverage standards for the lower density residential zones (R-10, R-7, and R-5) may be overly restrictive in terms of allowable building footprint. In order to maximize building square footage within a small building footprint, builders may be compelled to construct taller buildings that may be out of character with surrounding development.
- Currently, the residential design standards only apply to new single family

development and not to exterior remodels or expansions of existing homes or to multifamily development.

2. Residential Infill Standards

The City's existing transition area (TAR) provisions do not address compatibility between existing residential development and new infill or remodel development within the same zone. Under the current code, developers tend to maximize the allowable building envelope which can result in new infill structures that do not "fit in" with surrounding development in terms of both bulk and design.

3. Multifamily Design Standards

Multifamily development is permitted as a conditional use in the R-3 and R-2.5 zones and as an outright permitted use in the R-2, R-1, R-1-B, and R-O-C zones. Multifamily developments tend to have larger building sizes, different architectural styles, taller building heights, different site layouts, and more parking when compared to single family or duplex developments. As such, new multifamily development located in an established single family neighborhood can be inconsistent with its surroundings in terms of bulk and aesthetics.

The transition area provisions mentioned above only apply when the multifamily development is in a different, adjacent zone; therefore, they are not effective at regulating compatibility between developments in the same zone, specifically the R-2 zone, the majority of which is developed at single-family residential densities.

4. Housing Type and ADU Standards

- In the lower density zones (R-10, R-7, and R-5), the required lot sizes for duplex dwellings are excessive and may make duplex development infeasible. For example, in the R-7 zone, the minimum required lot size for a single-family detached home is 7,000 square feet. For a duplex, the lot size must be an average of at least 7,000 square feet per unit. This requires a fairly large lot for duplex development. Also, even if lot size is met, duplexes require conditional use approval in the R-7 and R-10 zones.
- Outside of the downtown zones, there are no provisions for attached, zero lot line houses (town homes or row houses). This type of housing is not defined in the definitions section of the code, and is not addressed in any of the residential use lists in Chapter 19.300.
- Type 1 ADUs are not listed as permitted uses in the residential use zones. The language in Section 19.404 states that they are permitted in all residential zones, subject to the standards contained in that section, but the use zones do not reference this section so it is not immediately clear that these types of ADUs are, in fact, outright allowed.
- Type 1 ADUs are permitted through a Type II Administrative Review, which requires public notice with the option of a public hearing if requested. This may be an excessive amount of review and act as a deterrent for home owners who may otherwise like to construct an ADU on their property.
- Type 2 ADUs are permitted as a conditional use in all residential zones except the R-2.5, R-1, and the mixed-use zones (R-1-B and R-O-C). It is unclear if Type 2 ADUs were intentionally left out of these zones, or if this was done in error.
- Requiring conditional use approval for a Type 2 ADU may act as a disincentive

for property owners due to cost, time needed for review, and the ability of the Planning Commission to impose additional conditions on the ADU.

- The language in Section 19.602.10, which contains standards for Type 2 ADUs, states that they are “allowed in conjunction with a detached single-family dwelling by conversion of existing space, or by means of an addition”. This implies that Type 2 ADUs must be attached to a single family dwelling, rather than be a stand-alone structure. Again, this may serve as a disincentive to property owners who would like to build an ADU that is not attached to the primary residence (like above a detached garage).