



July 29, 2015

Land Use File(s): WG-2015-003

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on July 28, 2015.

Applicant(s): Linsey Forni
Applicant's Representative: Carter Case
Location(s): 10545 SE Riverway Ln
Tax Lot(s): 11E35AB00300
Application Type(s): Willamette Greenway Conditional Use Review
Decision: Approved with conditions
Review Criteria: Milwaukie Zoning Ordinance:

- MMC Section 19.302 High Density Residential Zones
- MMC Section 19.401 Willamette Greenway Zone
- MMC Section 19.905 Conditional Uses
- MMC Section 19.1006 Type III Review

Neighborhood(s): Historic Milwaukie

Appeal period closes: 5:00 p.m., August 13, 2015

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1006 Type III Review. The complete case file for this application is available for review between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Vera Koliass, Associate Planner, at 503-786-7654 or koliassv@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on August 13, 2015, which is 15 days from the date of this decision. 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

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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

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, Carter Case on behalf of Linsey Forni, has applied for conditional use approval in the Willamette Greenway Zone to extend the existing single-family home with a one-story addition with daylight basement at 10545 SE Riverway Ln. This site is in the Residential Zone R-2 and Willamette Greenway Zone WG, and requires Willamette Greenway Conditional Use approval. The land use application file number is WG-2015-003.
2. The proposed development will expand the existing home by 640 sf with a 0-ft front yard setback, as approved by VR-14-03.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.302 High Density Residential Zones
 - MMC Section 19.401 Willamette Greenway Zone
 - MMC Section 19.905 Conditional Uses
 - MMC Section 19.1006 Type III Review
4. The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held by the Planning Commission on July 28, 2015, as required by law.
5. MMC Section 19.302 High Density Residential Zones
 - a. MMC 19.302 establishes the development standards that are applicable to this site. Table 1 summarizes the existing and proposed conditions on the subject property with respect to the standards relevant to this proposal.

The construction of the proposed addition will result in a front yard setback of 0 ft from the public right-of-way as approved by VR-14-03.

Table 1. Compliance with relevant R-2 standards

R-2 Zone	Standards	Existing	Proposed
Lot Coverage	45% max.	Approx. 40%	Approx. 43%
Front Yard Setback	15 ft	20 ft	No change (house) 0 ft ¹

The Planning Commission finds that the proposed development meets all applicable standards of the Residential Zone R-2.

6. MMC Section 19.401 Willamette Greenway Zone
MMC 19.401 establishes standards for the Willamette Greenway overlay designation. The subject property is within the Willamette Greenway zone as shown on the City's zoning map.

¹ Variance approved by VR-14-03.

a. MMC Subsection 19.401.5 Procedures

MMC 19.401.5 establishes procedures related to proposed uses and activities in the Willamette Greenway zone. Development in the Willamette Greenway zone requires conditional use review, subject to the standards of MMC Section 19.905 and in accordance with the approval criteria established in MMC Subsection 19.401.6.

The project involves the substantial alteration of natural site characteristics and constitutes “development” as defined in MMC Subsection 19.401.4. The proposed development is subject to conditional use review standards of MMC 19.905 and the approval criteria of MMC 19.401.6.

b. MMC Subsection 19.401.6 Criteria

MMC 19.401.6 establishes the criteria for approving conditional uses in the Willamette Greenway zone.

(1) *Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan*

The State Willamette River Greenway Plan defines “lands committed to urban use” as “those lands upon which the economic, developmental and locational factors have, when considered together, made the use of the property for other than urban purposes inappropriate. Economic, developmental and locational factors include such matters as ports, industrial, commercial, residential or recreational uses of property; the effect these existing uses have on properties in their vicinity, previous public decisions regarding the land in question, as contained in ordinances and such plans as the Lower Willamette River Management Plan, the city or county comprehensive plans, and similar public actions.”

The subject property is zoned for R-2 high density residential use and is already developed with a single family home. The land is committed to an urban use.

(2) *Compatibility with the scenic, natural, historic, economic, and recreational character of the river*

The project area is at least 450 ft from the nearest point of the river, with a tier of residences between. The river is not visible from the project area. The proposed development presents no significant impacts to the character of the river and is compatible.

(3) *Protection of views both toward and away from the river*

The project area is not visible from the river, due to topography and the existence of residential development between the site and the river. The addition will not significantly affect visual corridors to the river.

(4) *Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable*

The project area is separated from the river by residential development, including homes, garages, landscaping, and fencing to the south.

(5) *Public access to and along the river, to the greatest possible degree, by appropriate legal means*

The subject property is not adjacent to the river and does not limit public access to the river.

(6) *Emphasis on water-oriented and recreational uses*

The site is at least 450 ft from the nearest point of the river. The existing residential use is not water-oriented and is not directed toward the river.

(7) *Maintain or increase views between the Willamette River and downtown*

The proposed development is not visible from the river and will have no effect on views between the river and downtown.

(8) *Protection of the natural environment according to regulations in Section 19.402*

The site does not contain any identified natural resources.

(9) *Advice and recommendations of the Design and Landmark Committee, as appropriate*

The proposed development is located outside of the downtown zones and is not subject to review by the Design and Landmarks Committee (DLC).

(10) *Conformance to applicable Comprehensive Plan policies*

The Willamette Greenway Element in the Milwaukie Comprehensive Plan includes policies related to land use, public access and view protection, and maintenance of private property. These policies include the requirement of a conditional use permit for new development and intensification of existing uses; encouragement for uses that are not water-dependent or water-related to be directed away from the river; evaluation of development impacts to visual corridors; and limitations on authorizing the unrestricted public use of private land.

The proposed development is being reviewed through the conditional use process. The existing approved use is not water-related and is not directed toward the river; the proposed development will not affect that status. No public access through the subject property is proposed, and no public access will be required as a condition of approval of the proposed development.

(11) *The request is consistent with applicable plans and programs of the Division of State Lands*

The proposed development is not inconsistent with any known plans or programs of the Department of State Lands.

(12) *A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C*

The subject property is more than 450 ft from the river, more than 400 ft beyond the 25-ft buffer prescribed by MMC 19.401.8.

The Planning Commission finds that the proposed development meets all relevant approval criteria provided in MMC 19.401.6.

The Planning Commission finds that the proposed development meets all applicable standards of the Willamette Greenway zone.

7. MMC Section 19.905 Conditional Uses

MMC 19.905 establishes regulations for conditional uses, including standards for reviewing modifications to existing conditional uses.

a. MMC Subsection 19.905.3 Review Process

MMC 19.905.3 establishes the process by which a new conditional use, or a major or minor modification of an existing conditional use, must be reviewed.

As noted in Finding 5-a, the proposed development is an activity within the Willamette Greenway Zone that requires review as a conditional use. The existing use on the subject property is a single family residence constructed in 1954 and is considered a defacto conditional use. The proposed development, which involves a 640 sf addition to the existing home, represents a major modification to the existing use.

MMC 19.905.3.A requires that a major modification of an existing conditional use be evaluated through the Type III review process per MMC Section 19.1006.

b. MMC Subsection 19.905.4 Approval Criteria

MMC 19.905.4.A establishes the general criteria for approval of a new conditional use or a major modification to an existing conditional use.

- (1) *The characteristics of the lot are suitable for the proposed use considering size, shape, location, topography, existing improvements, and natural features.*

The subject property is approximately 14,896 sq ft in size. The property is developed with a single family home approximately 2,450 sf in area. The proposed expansion of the western parking area will add 640 sf to the home.

The Planning Commission finds that this standard is met.

- (2) *The operating and physical characteristics of the proposed use will be reasonably compatible with, and have minimal impact on, nearby uses.*

The site is surrounded by residential development on three sides, with the Moda parking lot located to the east. The proposed development will not affect the existing site landscaping except for a low planting bed, and will extend 20 ft toward SE Riverway Ln.

The Planning Commission finds that this standard is met.

- (3) *All identified impacts will be mitigated to the extent practicable.*

No impacts have been identified by the proposed development.

The Planning Commission finds that this standard is met.

- (4) *The proposed use will not have unmitigated nuisance impacts, such as from noise, odor, and/or vibrations, greater than usually generated by uses allowed outright at the proposed location.*

The proposed addition will not have unmitigated nuisance impacts greater than what is normal for a residential development, which is an allowed use in the R-2 zone.

The Planning Commission finds that this standard is met.

- (5) *The proposed use will comply with all applicable development standards and requirements of the base zone, any overlay zones or special areas, and the standards in Section 19.905.*

As noted in previous findings, the proposed development will comply with all applicable development standards, requirements of the underlying R-2 zone and other applicable overlay zones, and the standards of MMC 19.905.

The Planning Commission finds that this standard is met.

- (6) *The proposed use is consistent with applicable Comprehensive Plan policies related to the proposed use.*

As addressed in Finding 5-b-10, the proposed development is consistent with all relevant polices in the Comprehensive Plan.

The Planning Commission finds that this standard is met.

- (7) *Adequate public transportation facilities and public utilities will be available to serve the proposed use prior to occupancy pursuant to Chapter 19.700.*

The Engineering Department has reviewed the proposal and confirmed that existing public transportation facilities and public utilities are adequate to serve the proposed development.

The Planning Commission finds that this standard is met.

The Planning Commission finds that the proposed development meets all of the approval criteria outlined in MMC 19.905.4.A for a major modification to an existing conditional use.

- c. MMC Subsection 19.905.5 Conditions of Approval

MMC 19.905.5 establishes the types of conditions that may be imposed on a conditional use to ensure compatibility with nearby uses. Conditions may be related to a number of issues, including access, landscaping, lighting, and preservation of existing trees.

The Planning Commission finds that, as proposed, that the new development is compatible with nearby uses and no additional conditions are necessary.

- d. MMC Subsection 19.905.6 Conditional Use Permit

MMC 19.905.6 establishes standards for issuance of a conditional use permit, including upon approval of a major modification of an existing conditional use. The provisions include a requirement to record the conditional use permit with the Clackamas County Recorder's Office and provide a copy to the City prior to commencing operations allowed by the conditional use permit. A condition has been established to ensure that this standard is met.

The Planning Commission finds that the proposed development is consistent with the relevant standards established in MMC 19.905 for conditional uses.

8. The application was referred to the following departments and agencies on June 16, 2015:
- Milwaukie Building Department
 - Milwaukie Engineering Department
 - Clackamas Fire District #1

Comments received are as follows:

- a. **Matt Amos, Clackamas Fire District:** No comments on this proposal.

Conditions of Approval

1. Prior to final inspection for the associated development permit, the following shall be resolved:
 - a. The applicant shall record the conditional use permit issued by the City upon approval of the proposed development. The conditional use permit shall be recorded with the Clackamas County Recorder's Office, and a copy of the recorded permit shall be provided to the Planning Director.

Other requirements

1. Development activity on the site shall be limited to 7 a.m. to 10 p.m. Monday through Friday and 8 a.m. to 5 p.m. Saturday and Sunday, per MMC Subsection 8.08.070(l).



Li Alligood, AICP, for Dennis Egner, AICP
Planning Director

cc: Linsey Forni (10545 SE Riverway Ln, Milwaukie, OR 97222)
Carter Case, Applicant's Representative (232 SE Oak, Portland, OR 97214)
Planning Commission (*via e-mail*)
Alma Flores, Community Development Director (*via e-mail*)
Brad Albert, Civil Engineer (*via e-mail*)
Samantha Vandagriff, Building Official (*via e-mail*)
Bonnie Lanz, Permit Specialist (*via e-mail*)
Matt Amos, CCFD#1
NDA(s): Historic Milwaukie (*via e-mail*)
Interested Persons
Land Use File(s): WG-2015-003