



# CITY OF MILWAUKIE

July 3, 2019

Land Use File(s): ADU-2019-003

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on July 3, 2019.

**Applicant(s):** Lindley Bynum  
**Location(s):** 12626 SE Boss Ln  
**Tax Lot(s):** 21E01AA0190D  
**Application Type(s):** ADU  
**Decision:** Approved with Conditions  
**Review Criteria:** Milwaukie Zoning Ordinance:

- MMC 19.301 Low Density Residential
- MMC 19.600 Off-Street Parking and Loading
- MMC 19.700 Public Facility Improvements
- MMC 19.910.1 Accessory Dwelling Units
- MMC 19.1005 Type II Review
- MMC 12 Streets, Sidewalks, and Public Places

**Neighborhood(s):** Lake Road

**Appeal period closes: 5:00 p.m., July 18, 2019**

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 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 Mary Heberling, Assistant Planner, at 503-786-7658 or [heberlingm@milwaukieoregon.gov](mailto:heberlingm@milwaukieoregon.gov), if you wish to view this case file or visit the project webpage at [www.milwaukieoregon.gov/planning/ADU-2019-001](http://www.milwaukieoregon.gov/planning/ADU-2019-001).

**This decision may be appealed by 5:00 p.m. on July 18, 2019, which is 15 days from the date of this decision.**<sup>1</sup> Any person 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.

<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.

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.

**Exhibits**

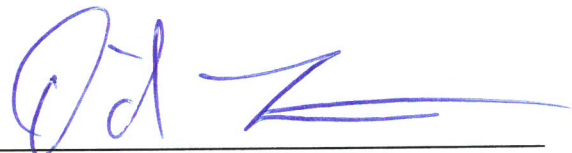
1. Recommended Findings in Support of Approval
2. Recommended Conditions of Approval

**Director'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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David Levitan, AICP  
Acting Planning Director

cc: Lindley Bynum (1562 SE Tacoma St, Portland, OR 97202, [lindleybynum@gmail.com](mailto:lindleybynum@gmail.com)) (via email and mail)  
Planning Commission (via email)  
Leila Aman, Interim Community Development Director (via email)  
Steve Adams, City Engineer (via email)  
Dalton Vodden, Associate Engineer (via email)  
Samantha Vandagriff, Building Official (via email)  
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)  
Harmony Drake, Permit Technician (via email)  
Mike Boumann and Izak Hamilton, CFD#1 (via email)  
NDA(s): Lake Road (via email)  
Land Use File(s): ADU-2019-003

**EXHIBIT 1**  
**Recommended Findings in Support of Approval**  
**File #ADU-2019-003, Boss Ln ADU – 12626 SE Boss Ln.**

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 has applied for approval to build a new, detached accessory dwelling unit (ADU) in the back of the lot at 12626 SE Boss Ln. This site is in the Residential R-10 Zone. The land use application file number is ADU-2019-003.
2. The applicant has submitted an application to construct a new, detached, 800 sq ft ADU in the northeast corner of the property. The ADU will be accessed via existing pedestrian walkways.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC 19.301 Low Density Residential Zones
  - MMC 19.607 Off-street Parking for Residential Areas
  - MMC 19.700 Public Facility Improvements
  - MMC 19.910.1.E.3 Standards for Attached Accessory Dwelling Units
  - MMC 19.1005 Type II review
  - MMC 12 Streets, Sidewalks, and Public Places
4. The application has been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review.
5. MMC 19.301 Low Density Residential Zones
  - a. MMC 19.301 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 existing house is centered on the west side of the lot, and is set back approximately 20 feet from Boss Ln. The lot is rectilinear in nature except for a triangular area in the northeast corner of the lot, which is the location of the proposed ADU. There is an existing detached shed that will be demolished where the ADU is proposed to be constructed. Another small detached shed will continue to be located slightly to the southwest of the proposed ADU. There are other small, detached sheds on the property, as well as a large tree on the south side of the property and a concrete pond. The lot size is 18,204 sq ft, which is on the larger side of the surrounding properties. Lots surrounding this property range from 8,000 sq ft to 15,000 sq ft.*

*The applicant has proposed to construct a new, detached ADU. The new structure will be single-story and have a footprint of 800 sq ft. It is proposed behind the existing single-family house in the back of the property, and will be 100 ft from the front property line.*

**Table 1. Compliance with relevant R-10 standards**

<b>R-10 Zone</b>	<b>Standards</b>	<b>Existing</b>	<b>Proposed</b>
<b>Lot Coverage</b>	30% max.	Approx. 11%	19%
<b>Minimum Vegetation</b>	35% min.	Approx. 75%	66%
<b>Front Yard Setback</b>	20 ft	N/A	100 ft
<b>Side Yard Height Plane</b>	a. Height above ground at minimum required side yard depth b. Slope of plane	a. 20 ft b. 45 degrees	Side yard height plane is met

*The Planning Director finds that the proposal complies with the applicable standards of the R-10 zone.*

6. MMC 19.600 Off Street Parking and Loading

- a. MMC 19.605.1 establishes minimum and maximum off-street parking requirements for land uses.

Properties containing an ADU are required to have a minimum of 2 off-street parking spaces. Parking spaces must measure a minimum of 9 ft wide and 18 ft long.

*The existing single-family house has a 2-car garage that can accommodate the required off-street parking space for both the proposed new ADU and the existing single-family residence.*

*This standard is met.*

7. MMC 19.700 Public Facility Improvements

*See Public Facilities Improvement findings below in Finding 10.*

8. MMC 19.910 Accessory Dwelling Units

- a. MMC 19.910.1 establishes the design and development standards that are applicable to ADUs. Table 2 summarizes the existing and proposed conditions on the subject property with respect to the standards relevant to this proposal.

*The applicant has proposed a new, detached, 800 sq ft ADU located in the northeast corner of the property. Given the structure's proposed 800 sf footprint and 5-foot side and rear yard setbacks, it is subject to the Type II standards in MMC 19.910.1.*

**Table 2. Compliance with relevant ADU standards**

ADU	Type I	Type II	Proposed
<b>Maximum Structure Footprint</b>	600 sq ft	800 sq ft or 75% of the primary structure	800 sq ft
<b>Maximum Structure Floor Area</b>	800 sq ft or 75% of the floor area of the primary structure	800 sq ft or 75% of the floor area of the primary structure	800 sq ft
<b>Maximum Structure Height</b>	15 ft, limited to 1 story	25 ft, limited to 2 stories	13 ft, 1 story
<b>ADU Front Yard Setback</b>	10 ft behind front yard (10' behind front façade of the primary dwelling) unless located at least 40' from the front lot line		>10 ft behind front yard and ~ 100 ft from front lot line
<b>Required Side and Rear Yard Setback</b>	Base zone requirement	5 ft	Side: 5 ft Rear: 5 ft
<b>Design Standards</b>	(1) A detached accessory structure shall include at least 2 of the design details listed below. An architectural feature may be used to comply with more than 1 standard.		
	(a) Covered porch at least 5 ft deep, as measured horizontally from the face of the main building façade to the edge of the deck, and at least 5 ft wide.		n/a
	(b) Recessed entry area at least 2 ft deep, as measured horizontally from the face of the main building façade, and at least 5 ft wide.		Yes, entry area is recessed 10 ft
	(c) Roof eaves with a minimum projection of 12 in from the intersection of the roof and the exterior walls.		Yes, roof eaves meet minimum of 12 inches
	(d) Horizontal lap siding between 3 to 7 in wide (the visible portion once installed). The siding material may be wood, fiber-cement, or vinyl.		n/a
	(e) Window trim around all windows at least 3 in wide and 5/8 in deep.		Yes, trim meets minimum of 3 in wide and 5/8 in deep

ADU	Type I	Type II	Proposed
<b>Privacy Standards</b>	<p>(1) A detached accessory dwelling unit permitted through a Type II review may be required to include privacy elements to meet the Type II review approval criteria.</p> <p>Privacy standards are required on or along wall(s) of a detached accessory dwelling unit, or portions thereof, that meet all of the following conditions.</p>		
	(a) The wall is within 20 ft of a side or rear lot line.		Walls are 5 ft from side or rear lot line
	(b) The wall is at an angle of 45 degrees or less to the lot line.		The wall is parallel to the rear property lines
	(c) The wall faces an adjacent residential property.		The wall is adjacent to residential
<p><i>All the conditions apply and the ADU must meet the privacy standards listed below.</i></p>			
	<p>(2) A detached accessory dwelling unit meets the privacy standard if either of the following standards is met.</p>		
	(a) All windows on a wall shall be placed in the upper third of the distance between a floor and ceiling.		n/a
	(b) Visual screening is in place along the portion of a property line next to the wall of the accessory dwelling unit, plus an additional 10 lineal ft beyond the corner of the wall. The screening shall be opaque; shall be at least 6 ft high; and may consist of a fence, wall, or evergreen shrubs. Newly planted shrubs shall be no less than 5 ft above grade at time of planting, and they shall reach 6 ft high within 1 year. Existing features on the site can be used to comply with this standard.		Existing 6 ft tall fence surrounds the proposed ADU

*The Planning Director finds that the proposal complies with the applicable standards for a detached ADU in the R-10 zone.*

- b. MMC 19.910.1.D establishes the criteria for approving a Type II accessory dwelling unit.

An application for an accessory dwelling unit reviewed through a Type II review shall be approved if the following criteria are met.

- (1) The standards in Subsection 19.910.1.D.1 are met.

- a. An accessory dwelling unit is an allowed use in the base zones, and any applicable overlay zones or special areas, where the accessory dwelling unit would be located.

*ADUs are permitted in the R-10 zone.*

*The Planning Director finds that this criterion is met.*

- b. The primary use of property for the proposed accessory dwelling unit is a single-family detached dwelling.

*The primary use of the subject property is a single-family dwelling.*

*The Planning Director finds that this criterion is met.*

- c. One accessory dwelling unit per lot is allowed.

*This is the only ADU proposed on the subject property.*

*The Planning Director finds that this criterion is met.*

- d. The development standards of Subsection 19.910.1.E are met.

*Table 2 identifies all of the development standards in Subsection 19.910.E and the proposed ADU complies with them.*

*The Planning Director finds that this criterion is met.*

- (2) The accessory dwelling unit is not incompatible with the existing development on the site, and on adjacent lots, in terms of architectural style, materials, and colors.

*The proposed ADU would be constructed in a manner that mirrors the features of single-family residences in the area, with window trims, roof eaves, and a recessed entry. The design is not incompatible with homes on adjacent lots.*

*The Planning Director finds that this criterion is met.*

- (3) The massing of the accessory dwelling unit and its placement on the site maximizes privacy for, and minimizes impacts to, adjacent properties.

*The ADU is proposed to be single-story and 13 ft high, which will provide privacy for adjacent properties. Windows will not be facing into backyards or nearby single-family residences.*

*The Planning Director finds that this criterion is met.*

- (4) There will be an appropriate level of screening for nearby yards and dwellings, provided by the design of the accessory dwelling unit and existing and proposed vegetation and other screening.

*The lot is currently landscaped and vegetated. There is an existing, 6 ft, opaque, fence that surrounds the area of the proposed ADU and extends along the entire rear and side yard property lines.*

*The Planning Director finds that this criterion is met.*

- c. MMC 19.910.1.F.1 establishes an additional provision for ADUs.

Either the primary or accessory dwelling unit shall be occupied by the owner of the property. At the time an accessory dwelling unit is established, the code requires that the owner record a deed restriction on the property with the Clackamas County Recording Division that 1 of the dwellings on the lot shall be occupied by the property owner.

*A condition of approval requiring this deed restriction has been included.*

*As conditioned, this standard is met.*

As conditioned, the Planning Director finds that the standards of MMC 19.910.1 are met.

9. MMC 12 Streets, Sidewalks, and Public Places

- a. MMC 12.08 – Street & Sidewalk Excavations, Construction, and Repair

MMC 12.08.020 establishes constructions standards for new sidewalks and alterations to existing sidewalks.

*Per the findings in MMC 12.16.040, below, the applicant shall construct a new driveway approach. Any changes to the sidewalk for the new driveway approach will meet the standards in MMC 12.08.020. Standards include the need for a permit to do that work and requirements needed for the permit.*

*As conditioned, the standards are met.*

- b. MMC 12.16.040 – Access Requirements and Standards

MMC 12.16.040 establishes standards for access (driveway) requirements. As conditioned, the standards are met as summarized below.

- (1) MMC 12.16.040.A – Access

MMC 12.16.040.A requires that all properties provide street access with the use of an accessway.

*The proposed development is consistent with the standards and provides street access with an existing driveway.*

*The standards are met.*

- (2) MMC 12.16.040.E – Accessway Design

MMC 12.16.040.E requires that all driveway approaches meet Americans with Disabilities Act (ADA) standards and Milwaukie Public Work Standards.

*The changes to the driveway approach to meet the standards of 12.16.040.F will meet the ADA and Milwaukie Public Works Standards.*



*As conditioned, the standards are met.*

(3) MMC 12.16.040.F – Accessway Size

MMC 12.16.040.F requires that single-family and detached residential uses shall have a minimum driveway apron width of 9 ft by 20 ft.

*The applicant shall construct a new driveway approach to meet the driveway apron width standards.*

*As conditioned, the standard is met.*

c. MMC 12.24 – Clear Vision at Intersections

MMC 12.24 establishes standards to maintain clear vision areas at intersections in order to protect the safety and welfare of the public in their use of City streets.

*The new driveway approach shall conform to the clear vision requirements.*

*As conditioned, the standard is met.*

10. MMC 19.700 Public Facility Improvements

a. MMC 19.702 Applicability

MMC 19.702.E establishes the applicability of the provisions of MMC 19.700, including a new dwelling unit, any increase in gross floor area, land divisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that result in any projected increase in vehicle trips or any increase in gross floor area on the site.

*The applicant is proposing to construct a new ADU, which is an additional dwelling unit to the property. MMC 19.700 applies to the proposed development.*

b. MMC Section 19.705 Rough Proportionality

MMC 19.705 requires that transportation impacts of the proposed development be mitigated in proportion to its potential impacts. Mitigation of impacts, due to increased demand for transportation facilities associated with the proposed development, shall be provided in rough proportionality to the transportation impacts of the proposed development.

*The proposed development does trigger mitigation of impacts due to the intensification of the use and the increased demand for transportation facilities. An ADU has a peak hour trip generation of 1 trip and approximately 5-6 trips per day. The trips from the proposal of an ADU, in addition to the primary single-family residence, will trigger mitigation to the transportation facilities.*

*Per MMC 12.16, to mitigate the impacts, the driveway apron will need to be brought up to width standards and any parts of the affected sidewalks may need to be brought up to meet ADA standards. Additionally, frontage improvements will be required to mitigate the impact of a new dwelling unit on the property.*

*As conditioned, the standards are met.*

c. MMC Section 19.708 Transportation Facility Requirements

MMC 19.708 establishes the City's requirements and standards for improvements to public streets, including pedestrian, bicycle, and transit facilities. The City's street design standards are based on the street classification system described in the City's Transportation System Plan (TSP).

*As conditioned, the proposal meets the standards of MMC 19.708, as summarized below.*

(1) MMC 19.708.1.A – Access Management

All development shall comply with the access management standards contained in Chapter 12.16. Per 12.16.040.E.1, driveway approaches shall meet all applicable standards of the Americans with Disabilities Act and Milwaukie Public Works Standards.

*Per MMC 12.16, the driveway apron requires improvements to meet the driveway apron width.*

*As conditioned, the standards are met.*

(2) MMC 19.708.1.B – Clear Vision

Clear vision requirements shall comply with the clear vision requirements in Chapter 12.24.

*As conditioned, the proposal shall meet the clear vision requirements.*

(3) MMC 19.708.1.D – Development in Non-Downtown Zones

The Milwaukie Transportation System Plan and Transportation Design Manual classify the fronting portions of SE Boss Lane a local street. According to Table 19.708.2 Street Design Standards, the required right-of-way width for a local street is between 20 feet and 68 feet depending on the required street improvements.

*The required right-of-way needed for a local street is 50 feet. Boss Ln, at this property, has 45 ft of right-of-way (ROW). A dedication of 5 ft for ROW was already provided by this property before the proposal for the new ADU, most likely when additional development happened previously on the property. Additional dedication for this proposal will not be required.*

*The standards are met.*

d. MMC 19.708.2 Street Design Standards

MMC 19.708.2 establishes standards for street design and improvement.

*Per MMC 19.705, frontage improvements will be required to be constructed. The fully improved standard for the fronting portion of SE Boss Ln includes 8-ft travel lanes, 6-ft parking strips, curb and gutter, 5-ft landscape strips including engineered stormwater planters, and 5-ft setback sidewalks.*

*As conditioned, this standard is met.*

e. MMC 19.708.3 – Sidewalk Requirements and Standards

MMC 19.708.3.A.2 requires that public sidewalks shall conform to ADA standards.

*The construction of sidewalks along the proposed development property abutting all public ROW is included in the street frontage requirements per MMC 19.708.2. All constructed public sidewalks shall conform to ADA standards.*

*As conditioned, the standards are met.*

11. Public notice of this application was posted on site and mailed to parties as identified in the Milwaukie Municipal Code. The applications were referred for comment to the following: Milwaukie Building Division; Milwaukie Engineering Department; Clackamas Fire District #1; and the Lake Road Neighborhood District Association Chairperson and Land Use Committee. The responses received are summarized below. Agencies did not respond if a response is not listed below.
- **Milwaukie Building Department** – no comment
  - **Milwaukie Engineering Department** – Engineering comments have been incorporated in the findings under 19.700 and Chapter 12.

**Exhibit 2**  
**Recommended Conditions of Approval**  
**File #ADU-2019-003, Boss Ln ADU – 12626 SE Boss Ln.**

**Conditions**

1. Prior to the certificate of occupancy, the following shall be resolved:
  - a. Construct new driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA) and Milwaukie’s Public Works Standards. The driveway approach apron shall be between 9 ft and 20 ft in width and least 7.5 ft from the side property line.
  - b. Construct frontage improvements proportional to development to meet local street design standards:
    - (1) 8-foot travel lanes
    - (2) 6-foot parking strips with curb
    - (3) 5-foot landscape strips – with stormwater planters as needed
    - (4) 5-foot setback sidewalks
  - c. Clear vision areas shall be maintained at all driveways and accessways and on the corners of all property adjacent to an intersection. All signs, structures, or vegetation in excess of 3 – 8 ft in height located in “vision clearance areas” at intersections of streets, driveways, and alleys fronting the proposed development must be removed. Prior to the removal of any vegetation, applicant shall confirm with the Engineering Department the location of clear vision areas and if the vegetation removal is required to comply with clear vision standards.

**Additional Requirements**

2. Prior to issuance of building permits, the following shall be resolved:
  - a. Provide an erosion control plan and obtain an erosion control permit, if needed. Consult with the Engineering Department to determine if an erosion control permit is needed for the driveway improvements.
  - b. Obtain a right-of-way permit for construction of all required public improvements listed in these Conditions of Approval.