



May 15, 2020

Land Use File(s): CU-2020-001

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on May 12, 2020.

Applicant(s):	Richard and Frances Sturgis
Location(s):	10707 SE Riverway Ln
Tax Lot(s):	1S1E35AA 04000
Application Type(s):	Conditional Use
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Municipal Code (MMC) (Title 19, Zoning Ordinance) <ul style="list-style-type: none">• MMC Section 19.302 High Density Residential Zones (incl. R-2)• MMC Section 19.401 Willamette Greenway Zone• MMC Section 19.402 Natural Resources• MMC Chapter 19.600 Off-Street Parking and Loading• MMC Chapter 19.700 Public Facility Improvements• MMC Section 19.905 Conditional Uses• MMC Section 19.1006 Type III Review
Neighborhood(s):	Historic Milwaukie

Appeal period closes: 5:00 p.m., June 1, 2020

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 by appointment 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 Brett Kelter, Associate Planner, at 503-786-7657 or kelterb@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on June 1, 2020, which is 15 days from the date of this decision.¹ (Note: Please arrive by 4:45 p.m. for appeal payment processing.) Only persons who submitted comments or made an appearance of record at the public hearing have standing

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.

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 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

Prior to commencing operation of a vacation rental at the subject property:

1. As per Finding 7-c, demonstrate that the condition of approval for file #DEV-2020-003 related to bringing the front yard parking area closer into conformance with the applicable standards of MMC Subsection 19.607.1.D has been met.
2. As per Finding 9-b, plant one new tree in the front yard of the subject property, on the east side of the existing driveway and south of the existing utility pole, to provide some screening of the driveway from the adjacent property.

Other requirements

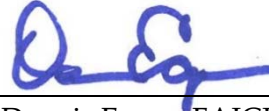
1. As per MMC Subsection 19.905.9.H, the following requirements must be met:
 - a. Prior to initial occupancy, the Building Official must verify that building code and fire code standards are satisfied.
 - b. With annual filing of MMC Title 5 Business Tax, the operator must send a notice to neighbors within 300 ft that includes the following information:
 - (1) Property owner contact information;
 - (2) Vacation rental operator and/or property manager contact information; and
 - (3) City of Milwaukie Police nonemergency telephone number.
2. Conditional Use Permit

As per MMC Subsection 19.905.6, the City will issue a conditional use permit upon the approval of this application to establish a conditional use. The conditional use permit will include the following information:

 - a. A description of the use that has been approved by the City.
 - b. Restrictions and/or conditions of approval placed upon the use.

- c. Ongoing responsibilities required for the operation of the conditional use.
- d. Allowance for the transfer of rights and responsibilities upon change in ownership of either the use or the property containing the use.
- e. Procedures for review, revisions, and suspension of the conditional use permit.

The applicant must 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.



Dennis Egner, FAICP
Planning Director

Exhibits

1. Findings in Support of Approval
- cc: Richard & Frances Sturgis, applicants (11330 Cranwood Cove, Roswell, GA 30075)
Jeff Sturgis, applicant's representative (via email)
Planning Commission (via email)
Leila Aman, Community Development Director (via email)
Justin Gericke, City Attorney (via email)
Steve Adams, City Engineer (via email)
Engineering Development Review (via email)
Samantha Vandagriff, Building Official (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Technician (via email)
Tim Salyers, Code Compliance Coordinator (via email)
Mike Boumann and Matt Amos, CFD#1 (via email)
NDA(s): Historic Milwaukie (via email)
Interested Persons
Land Use File(s): CU-2020-001, DEV-2020-003
Address File: 10707 SE Riverway Ln

EXHIBIT 1
Findings in Support of Approval
File #CU-2020-001, Sturgis Vacation Rental

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicants, Richard and Frances Sturgis, have applied for approval of a vacation rental as a conditional use within the duplex located at 10707 SE Riverway Ln. The subject site is in the Residential R-2 Zone. The land use application file number is CU-2020-001.
2. The applicants recently completed the development review process to convert the single-family home on the subject property into a duplex (file #DEV-2020-003). The applicants are seeking approval to establish a vacation rental in the main level of the newly established duplex as a conditional use.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.302 Medium and High Density Residential Zones (incl. R-2)
 - MMC Section 19.401 Willamette Greenway Zone
 - MMC Section 19.402 Natural Resources
 - MMC Chapter 19.600 Off-Street Parking and Loading
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.905 Conditional Uses
 - MMC Section 19.1006 Type III Review

The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held on May 12, 2020, as required by law.

4. MMC Section 19.302 Medium and High Density Residential Zones (including R-2)

The subject property is zoned Residential R-2. MMC 19.302 establishes the allowable uses and development standards for the residential R-2 zone.

a. Permitted Uses

As per MMC Table 19.302.2, vacation rentals are considered conditional uses (CUs) and are allowed within the R-2 zone subject to the provisions of MMC Section 19.905.

The applicants propose to establish a vacation rental in the main level of the newly established duplex on the subject property. The proposed vacation rental is a conditional use and is subject to the provisions of MMC 19.905.

b. Development Standards

MMC Table 19.302.4 establishes development standards for the R-2 zone, including minimum lot size, density, and minimum vegetation.

The subject property is approved for use as a duplex, and the establishment of a vacation rental in one of the duplex units would not affect minimum lot size or density. No changes to the existing building are proposed in order to accommodate the vacation rental use, so there would be no impacts on landscaping or minimum vegetation. The off-street parking requirements are addressed in Finding 7.

No other R-2 development standards are applicable to the proposed vacation rental.

The Planning Commission finds that the proposed development meets the applicable standards of the underlying R-2 zone. This standard is met.

5. MMC Section 19.401 Willamette Greenway

MMC 19.401 establishes regulations to protect, conserve, enhance, and maintain the natural, scenic, historic, economic, and recreational qualities of lands along the Willamette River and major courses flowing into the Willamette River. MMC Subsection 19.401.5.B.10 provides that Willamette Greenway review is not required for a change of use of a building that does not substantially alter or affect the land or water upon which it is situated.

Establishment of the proposed vacation rental does not involve physical changes to the existing building or subject property and so would not substantially alter or affect the land or water upon which it is situated. As per MMC 19.401.5.B.10, Willamette Greenway review is not required for the proposed vacation rental.

The Planning Commission finds that the proposed development is exempt from review under MMC 19.401.

6. MMC Section 19.402 Natural Resources

MMC 19.402 regulates development that may adversely affect natural resource areas including riparian, wildlife, and wetland resources. MMC Subsection 19.402.4 designates activities that are exempt from natural resource review, including changes of use of existing legal structures that do not change the location or increase the footprint of any building within an HCA or WQR.

The proposed vacation rental represents a change in use in an existing legal structure. However, no physical changes to the dwelling or site are proposed and there would be no impacts to the designated HCA and WQR areas on the property. As per MMC Subsection 19.402.4.A.9, the regulations of MMC 19.402 are not applicable to the proposed vacation rental.

The Planning Commission finds that the proposed development is exempt from review under MMC 19.402.

7. MMC Chapter 19.600 Off-Street Parking and Loading

MMC 19.600 regulates off-street parking and loading areas on private property outside the public right-of-way. The purpose of these requirements includes providing adequate space for off-street parking, minimizing parking impacts to adjacent properties, and minimizing environmental impacts of parking areas.

a. MMC Section 19.602 Applicability

MMC 19.602 establishes the applicability of the provisions of MMC 19.600. In particular, MMC Subsection 19.602.3 requires existing off-street parking areas to be brought closer into conformance with the applicable standards of MMC 19.600 when changes of use occur.

The required off-street parking for the site and its existing use as a duplex is provided by a two-car garage with a large driveway and turnaround area in the front yard. The proposed vacation rental represents a change of use on the subject property. The proposed development is subject to review against the applicable provisions of MMC 19.600.

b. MMC Section 19.605 Vehicle Parking Quantity Requirements

MMC 19.605 establishes standards to ensure that development provides adequate vehicle parking (off-street) based on estimated parking demand.

MMC Table 19.605.1 establishes the minimum and maximum off-street parking quantity requirements for various uses. Although vacation rentals are not specifically mentioned in MMC Table 19.605.1, they are similar to bed and breakfast establishments and are subject to the same minimum and maximum off-street parking quantity requirements as that use.

For the proposed vacation rental unit, a minimum of one off-street parking space is required and a maximum of two off-street parking spaces are allowed. At least one additional parking space is required for the other residential unit within the duplex on the property, but there is no limit on the number of off-street parking spaces for the duplex as a whole. The applicants propose that each unit of the duplex would have a designated space in the existing two-car garage. The garage and large driveway provide adequate parking to support the proposed development.

c. MMC Section 19.607 Off-Street Parking Standards for Residential Areas

MMC Subsection 19.607.1 establishes standards for residential driveways and vehicle parking areas, including a limit on the percentage of front yard area used for parking (maximum of 50%) and a limit on the number of parking spaces allowed in the front yard (maximum of three).

The applicants' submittal materials state that the existing parking area in the front yard can accommodate four to six cars, and the existing driveway and parking area accounts for over 50% of the required front yard area. However, the development review application that formally established the existing single-family house as a duplex (file #DEV-2020-003) was approved with a condition requiring that the front yard area be brought closer into conformance with the applicable standards of MMC 19.607.1.D. A condition has been established to ensure that this condition of approval for DEV-2020-003 related to the front yard parking area is met prior to commencing operation of a vacation rental at the subject property.

As conditioned, this standard is met.

The Planning Commission finds that, as conditioned, the proposed development is consistent with the applicable standards of MMC 19.600. This standard is met.

8. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 is intended to ensure that development, including redevelopment, provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts. MMC Section 19.702 establishes the applicability of MMC 19.700, including intensifications of use that result in a projected increase in the number of vehicle trips. MMC Section 19.708 establishes requirements for transportation facilities, including street design standards.

MMC Subsection 19.702.1 establishes that the provisions of MMC 19.700 apply to intensifications of use that result in a new dwelling unit, an increase in gross floor area, or any projected increase in vehicle trips. The current proposal seeks to establish a vacation rental in an existing dwelling unit and does not include any physical changes to the existing structure. The operation of a vacation rental use is not projected to result in a higher number of vehicle trips than would be generated by the duplex use that allowed outright in the R-2 zone.

The Planning Commission finds that the regulations of MMC 19.700 are not applicable to the current application.

9. MMC Section 19.905 Conditional Uses

MMC 19.905 establishes a process for evaluating certain uses that may be appropriately located in some zoning districts, if appropriate for the specific site on which they are proposed. Although conditional uses may provide needed services or functions in the community, they are subject to conditional use review because they may adversely change the character of an area or adversely impact the environment, public facilities, or adjacent properties. The conditional use review process allows for the establishment of conditional uses when they have minimal impacts or when identified impacts can be mitigated through conditions of approval. The review process also allows for denial when concerns cannot be resolved or impacts cannot be mitigated.

Approval of a conditional use does not constitute a zone change and is granted only for the specific use requested. Approval is subject to such modifications, conditions, and restrictions as may be deemed appropriate by the review authority.

MMC Subsection 19.905.2.A provides that the provisions of Section 19.905 apply to uses identified as a conditional use in the base zone in Chapter 19.300. MMC Subsection 19.905.3.A provides that the establishment of a new conditional use must be evaluated through a Type III review per Section 19.1006.

A vacation rental is allowed as a conditional use in the R-2 zone. The proposal to establish a vacation rental within one of the existing dwelling units on the subject property is subject to Type III review as a conditional use.

a. MMC Subsection 19.905.4 Approval Criteria

MMC Subsection 19.905.4.A establishes the following approval criteria for establishment of a new 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 0.44 acres (18,400 sq ft) and fronts on a private dead-end street. The property is located within close proximity to downtown Milwaukie and major transit connections such as McLoughlin Boulevard and OR 224. The back yard of the existing dwelling abuts the Willamette River, and WQR and HCA designations overlay natural resource areas on the property.

As proposed, the establishment of a vacation rental would not require any external renovations or physical changes to the existing main structure and would therefore not disturb the natural resources on the property. The site's proximity to the Willamette River, downtown Milwaukie, and major transit connections make it a desirable location for vacation renters who are seeking access to both Milwaukie and the Portland Metro region.

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

Nearby uses include single-family and multifamily residential dwellings, as well as offices. The site is located to the south of the Moda campus, which was formerly the site of Pendleton Woolen Mills.

Establishment of a vacation rental on the subject property may lead to a larger number of individuals coming to and from the property over time. However, the amount of off-street parking available on the site should ensure that neighbors are not affected by visitors parking on the street. The proposed vacation rental would be used by short-term renters for residential purposes and would not significantly affect the largely residential character of the area. Existing fences on the property's side lot lines also provide some privacy for the adjacent properties. The project would have no construction-related impact on nearby uses, as no external changes to the existing structure are proposed.

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

No significant physical impacts are expected as a result of the proposed development. The establishment of a vacation rental within the existing duplex is not projected to create an increase in vehicle trips. Operation of the proposed vacation rental may draw visitors to the site in a more irregular fashion than would regular tenants, but the applicants have proposed a number of measures to ensure that the vacation rental would remain consistent with the residential character of the site.

The applicants have indicated that the property would be monitored and cared for by the long-term resident(s) in the lower level of the duplex, as well as by family members who live locally. Monitoring of the property via wi-fi cameras would give local family

members the ability to quickly respond to any negative impacts that might be result from the proposed vacation rental. The applicants note that they have established relationships with contractors that would respond to any needs for maintenance and cleaning on the property. As mentioned previously, fences along the side lot lines provide privacy for the adjacent properties.

- (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 applicants have proposed to place limitations on the number of individuals who can occupy the vacation rental at any given time. They have also proposed to place limitations on the number of cars allowed on the property at any given time, as well as to prohibit vacation renters from hosting parties or large events on the property. With these limitations, it is not anticipated that the proposed vacation rental would generate any noise, odors, or vibrations that would be greater than those resulting from other nearby residential uses.

- (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 discussed throughout these findings, the proposed development complies with all applicable development standards and relevant requirements.

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

There are no specific Comprehensive Plan policies or objectives that provide clear guidance regarding whether a newly recognized vacation rental should be permitted within a given zone. Rather, the policies and objectives speak generally about maintaining the residential character of existing neighborhoods and opportunities for employment and home occupations.

Neighborhood Element:

The Neighborhood Element Goal Statement: “To preserve and reinforce the stability and diversity of the City’s neighborhoods in order to attract and retain long-term residents and ensure the City’s residential quality and livability.”

- Objective #1 –Policy #2: Improve standards for home occupations to ensure adequate parking and other compatibility measures are provided.

Economic Base and Industrial/Commercial Land Use Element:

- Objective #2 – Employment Opportunity: To continue to support a wide range of employment opportunities for Milwaukie citizens.

- Objective #2 – Policy #4: The City will support home occupations (income-producing activities in the home) as long as these activities do not detract from the residential character of the area.

The existing duplex would continue to exist in its current form and maintain its residential character, which is consistent with the surrounding homes and properties. No commercial elements such as signage or equipment operation are associated with the proposed vacation rental. The applicants have proposed measures to preserve the residential character of the site and to provide privacy for the neighboring properties. The site has sufficient parking to support the vacation rental in conjunction with normal residential use of the other duplex unit. The vacation rental also allows the opportunity for the applicants to generate a stream of income while they are away from the property. For these reasons, the proposal is consistent with the following goals, objectives, and policies of the Comprehensive Plan:

- (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 existing water and sewer utilities that serve the subject property are sufficient to support the proposed uses within the dwelling on the site. Existing transportation facilities are also sufficient to support the proposed use.

The Planning Commission finds that the proposed vacation rental meets the approval criteria for conditional uses as established in MMC 19.905.4.A. This standard is met.

b. MMC Subsection 19.905.5 Conditions of Approval

MMC 19.905.5 outlines the types of conditions that may be imposed by the Planning Commission as suitable and necessary to assure compatibility of the proposed use with other uses in the area and to minimize and mitigate potential adverse impacts. These include options such as limits on the hours, days, place, and manner of operation; additional yard requirements; requiring additional landscaping or screening of off-street parking areas; requiring screening or landscaping for the protection of surrounding properties.

As noted in Finding 7-c, parking and maneuvering areas currently account for over 50% of the front yard area and provide four to six parking spaces where only three are allowed. However, a condition of approval for the development review application that formalized the conversion of the existing house into a duplex (DEV-2020-003) required that the front yard area be brought closer into conformance with the standards of MMC 19.607.1.D. Although that requirement would do something to preserve the residential character of the subject property by reducing the front yard area available for parking, it would not necessarily result in additional screening of the new parking activity that would result from the proposed vacation rental. A condition has been established to require the planting of one new tree in the front yard of the subject property, on the east side of the existing driveway and south of the existing utility pole, to provide some screening of the driveway from the adjacent property.

As conditioned, the Planning Commission finds that the proposed vacation rental would be compatible with other uses in the area and that any potential adverse impacts would be sufficiently mitigated.

The Planning Commission finds that no additional conditions beyond those addressed here and elsewhere in these findings are necessary for approval of the proposed vacation rental.

c. MMC Subsection 19.905.9 Standards Governing Conditional Uses

As per MMC 19.905.9, a conditional use must comply with the standards of the base zone, and any overlay zones or special areas, in which it is located, except as these standards have been modified by the Planning Commission when authorizing the conditional use and as otherwise modified by the standards in this subsection.

In particular, MMC Subsection 19.905.9.H establishes the following specific requirements for vacation rentals:

- (1) Prior to initial occupancy, the Building Official must verify that building code and fire code standards are satisfied.
- (2) With annual filing of MMC Title 5 Business Tax, the operator must send a notice to neighbors within 300 ft that includes the following information:
 - (a) Property owner contact information;
 - (b) Vacation rental operator and/or property manager contact information; and
 - (c) City of Milwaukie Police nonemergency telephone number.

Compliance with the requirements established by MMC 19.905.9.H is an ongoing obligation for the applicants.

As proposed, and as conditioned elsewhere in these findings, the Planning Commission finds that the proposed vacation rental meets the applicable standards of MMC 19.905.9.

The Planning Commission finds that, as conditioned, the proposed vacation rental meets the applicable standards of MMC 19.905 and is approvable as a conditional use.

10. The application was referred to the following departments and agencies on March 12, 2020:
 - Milwaukie Building Department
 - Milwaukie Engineering Department
 - Milwaukie Public Works Department
 - Milwaukie Police Department
 - Milwaukie City Attorney
 - Historic Milwaukie Neighborhood District Association (NDA), Chairperson and Land Use Committee (LUC)
 - Clackamas Fire District #1 (CFD#1)
 - NW Natural

In addition, public notice of the application with an invitation to comment was sent on April 22, 2020, to property owners and residents within 300 ft of the subject property.

The comments received are summarized as follows:

- **Matt Amos, Fire Inspector, CFD#1:** No comments on the proposal, as it does not involve modifications to access or firefighting water supply.