



CITY OF MILWAUKIE

November 13, 2020

Land Use File(s): VR-2020-004, ADU-2020-005

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on November 10, 2020.

Traducciones de este documento e información sobre este proyecto están disponibles en español. Para solicitar información o preguntar en español, favor de email espanol@milwaukieoregon.gov.

Applicant(s):	Scott Avila
Location(s):	8809 SE 43 rd Ave.
Tax Lot(s):	12E30BB04200
Application Type(s):	Variance, Accessory Dwelling Unit (ADU)
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• MMC 19.301 Low Density Residential• MMC 19.700 Public Facilities Improvements• MMC 19.910.1 Accessory Dwelling Units (ADUs)• MMC 19.911 Variances• MMC 12 Streets, Sidewalks, and Public Places• MMC 19.1006 Type III Review
Neighborhood(s):	Lewelling

Appeal period closes: 5:00 p.m., November 28, 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 Laura Weigel, Planning Manager, at 503-786-7654 or weigell@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on November 28, 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 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

The Findings for this application are included as Exhibit 2.

cc: Scott Avila (8809 SE 43rd Ave) (via email)
Planning Commission (via email)
Leila Aman, Community Development Director (via email)
Christina Fadenrecht, Housing and Economic Development Assistant (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)
Tim Salyers, Code Enforcement Coordinator (via email) (variances only)
Mike Boumann and Matt Amos, CFD#1 (via email)
NDA(s): Lewelling (via email)
Interested Persons
Land Use File(s): VR-2020-004, ADU-2020-005

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.

EXHIBIT 1
Findings in Support of Approval
File #VR-2020-004, ADU-2020-005, 43rd Ave ADU

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, Scott Avila, has applied for approval to establish an Accessory Dwelling Unit (ADU) at 8809 SE 43rd Ave. This site is in the R-7 Zone. The land use application file numbers are VR-2020-004, ADU-2020-005.
2. The applicant proposes conversion of 200 sq ft of an existing accessory building into an accessory dwelling unit (ADU). The accessory building has a footprint of 840 sq ft where a maximum of 800 sq ft is permitted.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 19.301 Low Density Residential
 - MMC 19.700 Public Facilities Improvements
 - MMC 19.910.1 Accessory Dwelling Units (ADUs)
 - MMC 19.911 Variances
 - MMC 12 Streets, Sidewalks, and Public Places
 - MMC 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 November 10, 2020, as required by law.

4. MMC 19.301 Low Density Residential
 - 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 lot, and is set back approximately 30 feet from 43rd Ave. The lot is rectilinear in nature. The existing accessory building on the site is an 840 sq ft detached garage/shop and office on the south side of the lot approximately 92 ft from 43rd Ave. The lot size is 13,329 sq ft, which is on the larger side of the surrounding properties. Lots surrounding this property range from 7,200 sq ft to 20,000 sq ft. The property directly north of this subject property is over 19,000 sq ft and the lot directly south, behind the subject property is 7,997 sq ft.

The applicant has proposed to convert 200 sq ft of the existing 840 sq ft accessory building into an ADU. The existing structure is single-story. It is proposed behind the existing single-family residence in the back of the property and will be 92 ft from the front property line.

Table 1: Overview of Compliance with Development Standards

Residential Zone R-7 Development Standards			
Standard	Required	Proposed	Staff Comment
1. Lot Coverage	30% max.	1,710 sq ft 12.8% lot coverage	Complies with standard.
2. Minimum Vegetation	35% min.	2,887 sq ft of impervious area 78% vegetation	Complies with standard.
3. Front Yard Setback	20 ft	92 ft	Complies with standard
4. Side Yard Height Plane	a. Height above ground at minimum required side yard depth b. Slope of plane	a. 15 ft b. 45 degrees	Side yard height plane is met

The Planning Commission finds that the proposal complies with the applicable standards of the R-7 zone.

5. MMC 19.700 Public Facility Improvements

See Public Facilities Improvement findings below in Finding 9.

6. MMC 19.910.1 Accessory Dwelling Units

a. MMC 19.910.1 Accessory Dwelling Units

MMC 19.910.1 establishes the design and development standards that are applicable to ADUs. Table MMC 19.910.1.E.4.b summarizes the existing and proposed conditions on the subject property with respect to the standards relevant to this proposal.

The applicant has proposed a 200 sq ft ADU within an existing 840 sq ft accessory building located in southwest corner of the property. Given the structure’s proposed 15 ft height and 5-foot side yard setback, it is subject to the Type II standards in MMC 19.910.1.

Table 2: Detached ADU Development and Design Standards

Development and Design Standards for Detached Accessory Dwelling Units			
ADU	Type I	Type II	Proposed
Maximum Structure Footprint	600 sq ft	800 sq ft or 75% of the primary structure	840 sq ft <i>The applicant has requested a variance</i>
Maximum ADU Floor Area	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	200 sq ft
Maximum Structure Height	15 ft, limited to 1 story	25 ft, limited to 2 stories	15 ft, 1 story
ADU Front Yard Setback	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 ~ 92 ft from front lot line
Required Side and Rear Yard Setback	Base zone requirement	5 ft	Side: 5 ft Rear: 68 ft
Design Standards	(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.		n/a
	(c) Roof eaves with a minimum projection of 12 in from the intersection of the roof and the exterior walls.		Yes, roof eaves meet standard
	(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.		Yes, lap siding is horizontal
	(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
Privacy Standards	(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.		

Development and Design Standards for Detached Accessory Dwelling Units			
ADU	Type I	Type II	Proposed
	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.		
	(a) The wall is within 20 ft of a side or rear lot line.		Walls are 5 ft from side 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
	<i>All the conditions apply and the ADU must meet the privacy standards listed below.</i>		
	(2) A detached accessory dwelling unit meets the privacy standard if either of the following standards is met.		
	(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.		An existing 6 ft fence and vegetation screening surrounds the proposed ADU

Upon approval of the variance request, the Planning Commission finds that the proposal complies with the applicable standards for a detached ADU in the R-7 zone.

b. MMC 19.910.1.D.2 Approval Standards and Criteria for a Type II ADU

MMC 19.910.1.D.2 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 criteria in Subsection 19.910.1.D.1 are met as followed.

- (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-7 zone. 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. This criterion is met.

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

This is the only ADU proposed on the subject property. 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 upon approval of the variance request the proposed ADU complies with them. 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 existing accessory structure has been constructed in a manner that mirrors the features of single-family residences in the area, with window trims, horizontal siding, and lap siding; which are all design standards for single-family residences. The design is not incompatible with homes on adjacent lots.

The Planning Commission 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 as a single-story structure and 15 ft high, which will provide privacy for adjacent properties. Windows will not be facing into nearby single-family residences.

The Planning Commission 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 fence and opaque, vegetated screening that surrounds the area of the proposed ADU and extends along the entire side and rear yard property lines.

The Planning Commission finds that this criterion is met.

Upon approval of the variance request, the Planning Commission finds that the standards of MMC 19.910.1 for Accessory Dwelling Units are met.

7. MMC Chapter 19.911 Variances

- a. MMC 19.911.3 establishes the appropriate review process for variance applications.

The applicant proposes to increase the maximum allowable building footprint for an ADU of 800 sq ft to 840 sq ft. This MMC section requires a Type III Variance review for this kind of modification to the standards.

The Planning Commission finds that the request is subject to a Type III Variance review.

- b. MMC 19.911.4 establishes criteria for approving a variance request.

The applicant has chosen to address the discretionary relief criteria of MMC 19.911.4.B.1.

(1) Discretionary relief criteria

- (a) The applicant's alternatives analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.

The existing detached accessory building to have 200 sq ft converted to a detached ADU has an 840 sq ft footprint. The applicant has shown that reducing the size of the existing building to meet the 800 sq ft standard would be difficult and costly. A variance would enable the creation of a new ADU at a reasonable cost. Because of the low profile of the existing building, which has been on the property for many years, its conversion to an ADU is expected to be compatible with surrounding development. This criterion is met.

- (b) The proposed variance is determined by the Planning Commission to be both reasonable and appropriate, and it meets one or more of the following criteria:

- (i) The proposed variance avoids or minimizes impacts to surrounding properties.

The proposed variance avoids creating adverse impacts for surrounding properties. The proposed ADU meets the building height, setback, and lot coverage requirements of the R-7 Zone. The change in use of the existing building to convert 200 sq ft into an ADU will have no appreciable change in the character of activity on the property. This criterion is met.

- (ii) The proposed variance has desirable public benefits.

The proposal will create a modest public benefit by providing additional housing opportunity and by meeting the current density requirements of the R-7 Zone. This criterion is met.

- (iii) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

The existing built and natural environment will not be affected by this proposal because the building, driveway, and parking will not be changed and all landscaped areas will be unaffected. This criterion is met.

- (c) Impacts from the proposed variance will be mitigated to the extent practicable.

As noted herein, the building and site improvements are already in place. In addition, the use of the building will be minor in terms of activities on the property and traffic. The applicant has proposed to use it as a short-term rental, which is allowed in the R-7 zone. This criterion is met.

The Planning Commission finds that these criteria are met.

8. MMC 12 Streets, Sidewalks, and Public Place

- 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.

The applicant must not engage in any work in the right-of-way without first obtaining City permit, including any activity resulting in alteration of the surface of the right-of-way or their access to the right-of-way. The applicant has applied for the city’s ADU Waiver Program, if all program requirements are met, no work in the right-of-way is expected.

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 as set forth in the Public Works Standards.

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 proposed development has an existing nonconforming driveway approach design. The applicant has applied for the city’s ADU Waiver Program, if all program requirements are met, no improvement is necessary.

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 has an existing driveway apron width in conformance with this standard.

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 clear vision area for all street and driveway or accessway intersections is the area within 20 ft radius from where the lot line and the edge of a driveway intersect. The provisions of this chapter relate to safety. They shall not be modified through variance and are not subject to appeal.

The applicant must remove all trees, shrubs, hedges or other vegetation in excess of three feet in height, measured from the street center grade from the clear vision area. Trees exceeding this height may remain in this area; provided, all branches and foliage are removed to the height of eight feet above the grade.

As conditioned, this standard is met.

As conditioned, the Planning Commission finds the standards in MMC 12 are met.

9. 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 convert 200 sq ft of an existing accessory building into an ADU, increasing the number of dwelling units on the property. MMC 19.700 applies to the proposed development.

b. MMC Section 19.705 Rough Proportionality

MMC 19.705 requires that transportation improvements be in proportion to impacts of a proposed development. Mitigation of impacts, due to increased demand for transportation facilities associated with the proposed development, must be provided in rough proportion. Guidelines require consideration of a ½ mile radius, existing use within the area, applicable TSP goals, and the benefit of improvements to the development property.

Based on proportionality guidelines found in MMC 19.705.2, the applicant is found responsible for constructing remaining half-street improvements along SE 43rd Ave and a grind and overlay of existing pavement. The applicant must mitigate development impacts through constructing public transportation facilities or obtain a waiver.

As conditioned, this standard is 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 subject to 19.700 shall comply with the access management standards contained in Chapter 12.16.

As mentioned in 8.b above, the applicant is required to construct improvements within the right-of-way or obtain a waiver.

(2) MMC 19.708.1.B – Clear Vision

All development subject to 19.700 shall comply with Clear vision requirements in Chapter 12.24.

As mentioned in 8.c, the proposed development is required to remove all obstructions within the clear vision area. This includes vegetation within the clear vision area along the north, east and south property lines adjacent to driveways and property corners.

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

Transportation improvements must be constructed and street dedication provided in accordance with the Milwaukie Transportation System Plan and Transportation Design Manual street classification. The development fronts a portion of SE 43rd Ave with local street classification.

The required right-of-way width for the adjacent portion of SE 43rd Ave ROW is 50 ft. A 5ft dedication is required from the proposed development.

As conditioned, the standards are met.

d. MMC 19.708.2 Street Design Standards

MMC 19.708.2 establishes standards for street design and improvements.

Development standards for SE 43rd Ave require additional street surface improvements and construction of 5-ft sidewalk, 5-ft landscape strip, curb and gutter, and street surface improvements. The applicant has 66 ft of frontage along adjacent right-of-way (43rd Ave).

Limiting improvements to the adjacent stretch of right-of-way will maximize benefits to the property and was not found to be disproportionate to impacts.

The applicant must construct 66 lineal ft of transportation facility improvements or obtain a waiver.

As conditioned, this standard is met.

e. MMC 19.708.3 – Sidewalk Requirements and Standards

MMC 19.708.3.A.2 requires that sidewalks be provided on the public street frontage of all development in conformance to ADA standards.

The applicant must construct and maintain ADA compliant sidewalks or obtain a waiver.

As conditioned, this standard is met.

As conditioned, the Planning Commission finds the standards in MMC 19.700 are met.

10. The final decision on these applications, which includes any appeals to the City Council, must be made by January 26, 2021, in accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance.

11. The application was referred to the following departments and agencies on October 1, 2020:

- Milwaukie Building Division
- Milwaukie Engineering Department
- Clackamas County Fire District #1
- Lewelling Neighborhood District Association Chairperson and Land Use Committee

Milwaukie Building Department – no comments

Milwaukie Engineering Department – Engineering comments have been incorporated in the findings under 19.700 and Chapter 12.

Clackamas County Fire District #1 – no comments

EXHIBIT 2
Conditions of Approval
File #VR-2020-004, ADU-2020-005, 43rd Ave ADU

Conditions

1. The site shall be used in a manner as proposed and approved through this land use action and as submitted in materials date stamped by the City on September 14, 2020. This includes:
 - a. The conversion of 200 sq ft of the existing detached accessory building into an accessory dwelling unit.
 - b. Not expanding the building footprint of the accessory dwelling unit to be larger than 840 sq ft.
2. Prior to the certificate of occupancy, the following shall be resolved:
 - a. Construct a 5-foot wide setback sidewalk fronting the proposed development property along SE 43rd Avenue.
 - b. Widen and improve existing asphalt from centerline of right-of-way to accommodate an 8-foot travel lane and a 7-foot parking lane.
 - c. Construct a driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA).
 - (1) In place of the items a, b, and c above, a fee-in-lieu of construction may be applied for, payment must be made prior to issue of development permits or
 - (2) Apply and receive an ADU waiver prior to the issue of development permits
 - d. Additional right-of-way dedication of 5-ft along 43rd Avenue to accommodate final street design.
 - e. 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

1. 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.