



CITY OF MILWAUKIE

October 30, 2020

Land Use File(s): ADU-2020-006

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on October 30, 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):	Yasha Shapiro
Location(s):	3815 SE Filbert St
Tax Lot(s):	1S1E25AD05800
Application Type(s):	Accessory Dwelling Unit: Detached ADU
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• Milwaukie Municipal Code (MMC) Section 19.301 Low Density Residential Zones (incl. R-7)• MMC Chapter 19.700 Public Facility Improvements• MMC Subsection 19.910.1 Accessory Dwelling Units• MMC Section 19.1005 Type II Review
Neighborhood(s):	Ardenwald-Johnson Creek

Appeal period closes: 5:00 p.m., November 16, 2020

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 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 or visit the project webpage at www.milwaukieoregon.gov/planning/ADU-2020-006.

This decision may be appealed by 5:00 p.m. on November 16, 2020, which is 15 days from the date of this decision.¹ Any person who is adversely affected or aggrieved by this decision may

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.

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. 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

1. If the applicant is not successful in receiving a waiver of the requirements through the City's ADU Waiver Program, the public street improvements outlined in Finding 6-c will be required.

Other requirements

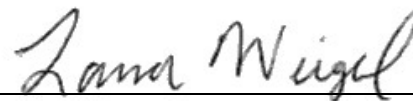
None

Manager'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



Laura Weigel, AICP
Planning Manager

Exhibits

1. Findings in Support of Approval

cc: Yasha Shapiro, applicant (via email)
Planning Commission (via email)
Leila Aman, Community Development Director (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)
Christina Fadenrecht, Housing & Economic Development Assistant (via email)
Tim Salyers, Code Enforcement Coordinator (via email)
Mike Boumann and Matt Amos, CFD#1 (via email)
NDA(s): Ardenwald-Johnson Creek (via email)
Land Use File(s): ADU-2020-006
Address File: 3815 SE Filbert St

EXHIBIT 1
Findings in Support of Approval
File #ADU-2020-006, Shapiro ADU (3815 SE Filbert St)

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, Yasha Shapiro, has applied for approval to establish an accessory dwelling unit (ADU) within an existing detached accessory structure at 3815 SE Filbert St. This site is in the Residential R-7 Zone. The land use application file number is ADU-2020-006.
2. The applicant has proposed to establish an existing 640-sq-ft detached accessory structure as an ADU. The existing accessory structure is located at the northwest corner of the existing house and extends into the rear yard. Entry to the ADU is provided through doors facing the back patio of the house.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.301 Low Density Residential Zones (incl. R-7)
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Subsection 19.910.1 Accessory Dwelling Units
 - MMC Section 19.1005 Type II Review
4. The application has been processed in accordance with MMC Section 19.1005 Type II Review, with a decision rendered by the Planning Manager. As allowed by MMC Subsection 19.1002.2.B.1, the requirement of MMC Subsection 19.1005.1 for a preapplication conference was waived by the Planning Manager. The application was deemed complete on October 13, 2020, and the public notice required by MMC Subsection 19.1005.3.B was mailed to surrounding property owners within 300 ft of the site on that same day. Public notice of the application was posted on the subject property on October 13, 2020, as required by MMC Subsection 19.1005.3.C.
5. MMC Section 19.301 Low Density Residential Zones (incl. R-7)

MMC 19.301 establishes standards for Low Density Residential zones, including the R-7 zone. The application meets the applicable standards of this section as described below.

 - a. MMC Subsection 19.301.2 Allowed Uses

MMC 19.301.2 establishes the uses allowed in the R-7 zone, including single-family detached dwellings, duplexes, and ADUs as outright permitted uses.

The primary use of the subject property is an existing single-family detached dwelling; the proposed development is an ADU. Both uses are allowed outright in the R-7 zone.

This standard is met.

b. MMC Subsections 19.301.4 and 19.301.5 Development Standards

MMC 19.301.4 and 19.301.5 establish development standards for the R-7 zone, including requirements for yard setbacks, maximum lot coverage, and minimum vegetation (including minimum front yard vegetation).

The proposed development is the conversion of an existing accessory structure into an ADU. No physical changes to the site are proposed, including no changes that would affect the lot coverage, minimum vegetation, or other development standards of the R-7 zone.

This standard is met

The Planning Manager finds that the proposed development meets all applicable development standards of MMC 19.301.

6. 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.

a. MMC Section 19.702 Applicability

MMC 19.702 establishes the applicability 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.

The applicant is proposing to convert an existing detached accessory structure into an ADU, increasing the intensity of use on 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, must be provided in rough proportionality to the transportation impacts of the proposed development.

The City's Engineering Department has identified the impacts of ADUs to public infrastructure to be 65% of single-family detached residences. Using this factor and numbers from the Institute of Transportation Engineers (ITE) trip generation manual, new ADUs are expected to result in an average new trip generation rate of 6.12 daily trips or 0.65 new PM-peak trips. The proposed development triggers mitigation of impacts due to the intensification of the use and the increased demand for and impact on public transportation facilities.

To mitigate the impacts, frontage improvements are required as detailed in Finding 6-c. The subject property has approximately 85 ft of frontage on Filbert Street. Based on the proportionality guidelines provided in MMC Subsection 19.705.2, it is proportionate to require improvements along the subject property's Filbert Street frontage.

The applicant has applied to participate in the City's ADU waiver program, which would waive the requirement for public street improvements. A condition has been established to acknowledge that, if the applicants' proposal does not meet the requirements of the waiver program, the frontage improvements discussed in Finding 6-c will be required.

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).

The subject property has frontage on Filbert Street. The City's TSP and Transportation Design Manual classify Filbert Street as a local street. According to MMC Table 19.708.2 Street Design Standards, the required right-of-way width for a local street is between 20 ft and 68 ft, depending on the required street improvements.

For the Filbert Street frontage, the required half-street design consists of a 14-ft paved half street, curb and gutter, 5-ft landscape strip, and 5-ft setback sidewalk. The right-of-way needed for the required street design is 50 ft, which is the width of the existing right-of-way. No additional right-of-way dedication is necessary to achieve the required half-street design.

As noted above in Finding 6-b, improvements along the Filbert Street frontage are proportionate and therefore required for the proposed development.

As noted above, the applicant has applied to participate in the City's ADU waiver program, which would waive the requirement for public street improvements. A condition has been established to acknowledge that, if the applicant's proposal does not meet the requirements of the waiver program, the frontage improvements discussed in this finding will be required.

As conditioned, this standard is met.

As conditioned, the Planning Manager finds that the applicable standards of MMC 19.700 are met.

7. MMC Subsection 19.910.1 Accessory Dwelling Units

MMC 19.910.1 establishes standards for Accessory Dwelling Units (ADUs), including approval criteria and development standards, both for attached and detached units.

a. MMC Subsection 19.910.1.D Approval Standards and Criteria

MMC 19.910.1.D establishes the approval criteria for ADUs, with the following criteria for an ADU reviewed through Type II review:

(1) The standards in MMC Subsection 19.910.1.D.1 (for Type I ADUs) are met:

- (a) An ADU is an allowed use in the base zone, and any applicable overlay zones or special areas, where the ADU would be located.

The subject property is zoned Residential R-7, which allows ADUs subject to Type I or Type II review. There are no special overlays on the subject property. This standard is met.

- (b) The primary use of property for the proposed ADU is a single-family detached dwelling.

The primary use of the subject property is an existing single-family detached house. This standard is met.

- (c) One ADU per single-family home or per lot is allowed.

The subject property is currently in use only by the existing primary structure (house); an ADU does not currently exist on the site. The proposed ADU would be the one allowed for the subject property. This standard is met.

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

Finding 7-b demonstrates compliance with the applicable ADU standards.

- (e) The proposal complies with all other applicable standards of this title

As the proposal is to establish an ADU by converting an existing structure, there are no physical changes to the site, including no changes that would affect compliance with the lot coverage, minimum vegetation, or other development standards of the R-7 zone. As discussed in Finding 6, a condition has been established to require frontage improvements consistent with the standards of MMC Chapter 19.700, if the applicant's proposal does not comply with the requirements of the City's ADU waiver program. As conditioned, this standard is met.

As conditioned, this standard 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 structure where the proposed ADU will be established is finished with the same style and color of horizontal lap siding as the primary structure (main house); the roof is also similar in style and color to the main house. The proposed ADU is compatible in style, material, and color with existing development on the site and on adjacent lots.

This standard 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 existing structure where the proposed ADU will be established is a single-story building (approximately 15 ft in height) located near the boundary with an adjacent residential property to the west (3803 SE Filbert St). An existing detached garage is the nearest structure on the lot at 3803 SE Filbert St, and there are nearly 40 ft between the

nearest wall of the ADU and the nearest point of the house. The proposed ADU structure is over 90 ft from the residential property adjacent to the rear.

An existing 6-ft fence extends along a portion of the ADU's western wall and provides privacy from two of the existing windows. The fence turns a 90-degree angle to return from the property line to the ADU wall near the front of the structure, where a third window is visible to the adjacent residential property at 3803 SE Filbert St. The applicant's submittal materials indicate that the area next to the ADU structure and outside of the fence is a "shared space" that is accessible to the neighbor; she has requested that the privacy requirement not be imposed in order to preserve this shared space. No comments in opposition have been received from the neighbor at 3803 SE Filbert St and, given the current use of that space as described, it is reasonable to conclude that privacy is not an issue in that particular area and that there will be minimal (if any) impact to the adjacent property.

This standard 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.

As noted above in Finding 7-a-(3), the existing 6-ft fence provides adequate screening for the adjacent property to the west. No additional screening is necessary.

This standard is met.

As conditioned, the applicable approval criteria for a Type II ADU, as established in MMC 19.910.1.D, are met.

b. MMC Subsection 19.910.1.E Standards

MMC 19.910.1.E establishes standards for ADUs, including an allowance for conversion of an existing structure, addition to an existing structure, or construction of a new structure. In the event of a conflict between the standards of MMC 19.910.1.E and other portions of the zoning code, the more restrictive provisions apply, except where specifically noted.

MMC Subsection 19.910.1.E.4 establishes the following standards for detached ADUs:

- (1) MMC Subsection 19.910.1.E.4.a Maximum Allowed Floor Area

MMC 19.910.1.E.4.a sets the limit on floor area for detached ADUs at 800 sq ft or 75% of the floor area of the primary structure, whichever is less.

The primary structure is approximately 1,100 sq ft in floor area. The proposed ADU is 640 sq ft, or approximately 58% of the size of the primary structure.

This standard is met.

(2) MMC Subsection 19.910.1.E.4.b Footprint, Height, and Required Yards

MMC Table 19.910.1.E.4.b establishes two categories of detached ADU (Type I and Type II), with different limitations on footprint, height, and required yards for each as outlined in Table 7-b-(2) below.

Table 7-b-(2) Footprint, Height, and Required Yards for Detached ADUs			
Standard	Type I ADU	Type II ADU	Proposed
Maximum Structure Footprint	600 sq ft	800 sq ft	640 sq ft
Maximum Structure Height	15 ft (limited to 1 story)	25 ft (limited to 2 stories)	Approx. 15 ft (1 story)
Required Side & Rear Yard	Base zone standard (R-7 zone = 5 ft/10 ft side, 20 ft rear)	5 ft	>6 ft
Required Front Yard	10 ft behind front yard, unless located at least 40 ft from front lot line		>15 ft behind front yard
Required Street Side Yard	Base zone requirement		Not applicable

The proposed ADU meets the applicable standards for a Type II detached ADU.

(3) MMC Subsection 19.910.1.E.4.c Design Standards

MMC 19.910.1.E.4.c establishes design standards for detached ADUs, including a requirement that an ADU with a floor-to-ceiling height of 9 ft or more is required to have a roof with a minimum 4/12 pitch. In addition, detached ADUs must include at least two design details from the following list: covered porch (at least 5 ft deep and 5 ft wide), recessed entry area at least 2 ft deep and 5 ft wide, roof eaves with a minimum projection of 12 in, horizontal lap siding between 3 to 7 in wide, and/or window trim around all windows (at least 3 in wide and 5/8 in deep).

As discussed in Finding 7-b-5, below, the proposed ADU involves the conversion of an existing structure and is not subject to the design standards of this subsection.

This standard is not applicable.

(4) MMC Subsection 19.910.1.E.4.d Privacy Standards

MMC 19.910.1.E.4.d establishes privacy standards for detached ADUs. These standards are required for ADUs processed with Type I review; for ADUs processed with Type II review, the inclusion of privacy elements may be required to meet the approval criteria established in MMC Subsection 19.910.1.D.2.

Privacy standards are required on or along walls of a detached ADU (or portions thereof) where the wall is (1) within 20 ft of a side or rear lot line, (2) at

an angle of 45 degrees or less to the lot line, and (3) the wall faces an adjacent residential property. To meet the privacy standard, either all windows on an applicable wall must be located in the upper third of the distance between floor and ceiling, or visual screening must be in place along that portion of the property line next to an applicable wall as well as an additional 10 lineal ft beyond the corner of the wall. Screening must be opaque; at least 6 ft high; and may consist of a fence, wall, or evergreen shrubs. Newly planted shrubs must be no less than 5 ft above grade in height at the time of planting and must reach a 6-ft height within one year.

The west wall of the proposed ADU structure is parallel to and within approximately 6 ft of the western boundary with the adjacent residential property at 3803 SE Filbert St. An existing 6-ft fence extends along a portion of the ADU's western wall and provides privacy from two of the existing windows; the fence turns a 90-degree angle to return from the property line to the ADU wall near the front of the structure, where a third window is visible to the adjacent residential property.

The applicant's submittal materials indicate that the area next to the ADU structure and outside of the fence is a "shared space" that is accessible to the neighbor; she has requested that the privacy requirement not be imposed in order to preserve this shared space. No comments have been received from the adjacent neighbor at 3803 SE Filbert St and, given the current use of that space as described, it is reasonable to not require the inclusion of privacy elements.

This standard is met as proposed.

(5) MMC Subsection 19.910.1.E.4.e Conversion of Existing Structure

MMC 19.910.1.E.4.e establishes standards for the conversion of an existing structure into an ADU. For an existing structure that was established on or after December 1, 2012 (the date that the current ADU rules were established), the structure must meet all applicable standards for a new detached ADU; for an existing structure that was legally established prior to that date, the design standards of this subsection are not applicable.

There is no record on file of an original building permit for the existing detached accessory structure that is proposed to be converted into an ADU. According to historical aerial photos on file with the City, the structure has been in place since at least 1967, prior to the 1968 adoption of the ordinance that established the City's contemporary zoning code. The original zoning ordinance (adopted in 1946) allowed accessory buildings if located at least 50 ft from the front lot line. The existing structure is located an average of 50 ft from the curving front line and so generally conforms to that standard. For purposes of this review, the structure is understood to have been legally established prior to December 2012. Therefore, the design standards of this subsection are not applicable.

This standard is not applicable.

As proposed, the applicable design standards of this subsection are met.

The Planning Manager finds that, as conditioned, the proposed detached ADU meets all applicable standards of MMC 19.910.1.

8. As described in Finding 4, public notice of the application was posted on site and mailed to property owners within 300 ft of the site as required. The application was referred for comment to the following entities: Milwaukie Engineering Department, Milwaukie Building Department, Milwaukie Public Works Department, Milwaukie Community Development Department, NW Natural, North Clackamas School District, and the Ardenwald-Johnson Creek Neighborhood District Association.

No comments were received.