



January 7, 2021

Land Use File(s): ADU-2020-008

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on January 7, 2021.

Applicant(s):	Larry Payne
Location(s):	10954 SE 60 th Ave
Tax Lot(s):	12E31AA08900
Application Type(s):	Accessory Dwelling Unit Review
Decision:	Approved
Review Criteria:	Milwaukie Municipal Code: <ul style="list-style-type: none">• MMC 12 Streets, Sidewalks, and Public Places Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• MMC 19.301 - Low density residential zones (including R-7)• MMC 19.700 - Public Facility Improvements• MMC 19.910.1 - Accessory Dwelling Units• MMC 19.1005 - Type II Review

Appeal period closes: 5:00 p.m., January 22, 2021.

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 Janine Gates, Assistant Planner, at 503-786-7627 or gatesj@milwaukieoregon.gov, if you wish to view this case file or visit the project webpage at <https://www.milwaukieoregon.gov/planning/adu-2020-008>.

This decision may be appealed by 5:00 p.m. on January 22, 2021, which is 15 days from the date of this decision.¹ (Note: Please arrive by 4:45 p.m. for appeal payment processing.) 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. 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.

Conditions of Approval

1. 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 60th Avenue.
 - b. Widen and improve existing asphalt from centerline of right-of-way to accommodate a 14-ft paved width.
 - c. Construct a driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA).
 - (1) In place the ADU waiver program 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 10-ft along 60th 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.

Other 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.

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.

- b. A right-of-way permit is required for all construction within public rights-of-way and to construct required public improvements listed in these conditions.

Findings in Support of Approval

The Findings for this application are included as Exhibit 1.

Case File

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1004 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 Janine Gates, Assistant Planner, at 503-786-7654 or gatesj@milwaukieoregon.gov, if you wish to view this case file.

Appeal

This decision may be appealed by 5:00 p.m. (please arrive by 4:45 for payment processing) on January 22, 2021 which is 15 days from the date of this decision.² 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.

Expiration

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.

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.

² 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.

Decision

- Approved
 Approved with Conditions
 Denied



Laura Weigel, AICP
Planning Manager

Exhibits

1. Findings in Support of Approval
- cc: Larry Payne, 10954 SE 60th Ave
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)

Land Use File(s): ADU-2020-008

EXHIBIT 1
Findings in Support of Approval
File #ADU-2020-008, 10954 SE 60th Ave ADU

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

2. The applicant, Larry Payne, has applied for approval to build a 796 sq ft detached accessory dwelling unit (ADU) at 10954 SE 60th Ave. This site is in the Residential R-7 Zone. The land use application file number is ADU-2020-008.
3. The applicant is finalizing the permit review and construction inspection process for a 796-sq ft detached ADU on the subject property.
4. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 19.301 - Low density residential zones (including R-7)
 - MMC 19.700 - Public Facility Improvements
 - MMC 19.910.1 - Accessory Dwelling Units
 - MMC 19.1004 - Type II Review
5. The application has been processed and public notice provided in accordance with MMC Section 19.1004 Type II Review.
6. MMC 19.301 Low Density Residential Zones

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 located nearly adjacent to the northern property line and is set back approximately 70 feet from 60th Ave. The lot is rectilinear in shape and has an area of nearly 22,000 sq ft which is much larger than the minimum lot size requirement of 7,000 sq ft and much larger than most of the area of surrounding properties, which range in size from 10,200 sq ft to over 25,000 sq ft.

The applicant has proposed to build a 796 sq ft detached ADU. The proposed detached ADU would be located on the southeastern part of the lot directly behind an existing metal pole barn. The proposed ADU would be more than 40 ft from the front property line.

Table 19.301.4 Residential Zone R-7 Development Standards			
Standard	Required	Proposed	Staff Comment
1. Minimum Lot Size	7,000 sq ft	21,765 sq ft	<i>Complies with standard.</i>
2. Lot Coverage	30% max.	23%	<i>Complies with standard.</i>
3. Minimum Vegetation	30% min.	55%	<i>Complies with standard.</i>

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

7. 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 to build a 796 sq ft detached ADU. Given the structure’s 796 sq ft footprint 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
Maximum Structure Footprint	600 sq ft	800 sq ft or 75% of the primary structure	796 sq ft
Maximum Structure 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	796 sq ft
Maximum Structure Height	15 ft, limited to 1 story	25 ft, limited to 2 stories	12.5 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 ~ 40 ft from front lot line
Required Side and Rear Yard Setback	Base zone requirement	5 ft	Side: 5 sq ft Rear: 5 sq 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.		

ADU	Type I	Type II	Proposed
	(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.		<i>A covered porch with 6 -7 ft deep is proposed.</i>
	(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.		<i>The proposed recessed entry meets the 2 ft minimum.</i>
	(c) Roof eaves with a minimum projection of 12 in from the intersection of the roof and the exterior walls.		<i>The proposed roof eaves meet the minimum of 12 inches.</i>
	(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.		<i>Applicant states "board and batten."</i>
	(e) Window trim around all windows at least 3 in wide and 5/8 in deep.		<i>The proposed design includes trim that meets the minimum of 3 in wide and 5/8 in deep</i>
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. 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.	<i>No walls are within 20 ft an adjacent residential property line.</i>	
	(b) The wall is at an angle of 45 degrees or less to the lot line.	<i>The wall is parallel to the front property line.</i>	
	(c) The wall faces an adjacent residential property.	<i>The wall faces an adjacent residential property.</i>	

The Planning Manager finds that the privacy standards do not apply to the proposal as the proposed ADU is located more than 20 ft from an adjacent property line.

The Planning Manager finds that the proposal complies with the applicable standards for a detached ADU in the R-7 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-7 zone.

The Planning Manager 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 Manager 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 Manager finds that this criterion is met.

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

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

The Planning Manager 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 has been constructed in a manner that mirrors the features of single-family residences in the area, with window trims, and roof eaves. The design is not incompatible with homes on adjacent lots.

The Planning Manager 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 a single-story and 12 ft high and is located in the back yard and no adjacent residential structures would be affected by its proposed location. Also, there are trees and vegetation providing privacy for all dwelling units near the ADU.

The Planning Manager finds that this criterion is met.

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 setback minimum is 5ft and the ADU meets this requirement.

The Planning Manager finds that this criterion is not applicable.

The Planning Manager finds that the standards of MMC 19.910.1 are met.

8. 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 for construction in the right-of-way.

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 existing driveway approach must be brought into conformance with the standards of 12.16.040.F to meet 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 between 9 ft and 20 ft.

Existing accessways are in conformance with this standard.

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 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.

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 construct a new 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 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.

Based on proportionality guidelines found in MMC 19.705.2, the applicant is found responsible for constructing half-street improvements along the site frontage.

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 and summarized below, the standards are met.

d. 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.

Accessway improvements must conform with MMC 12.16 as summarized above or a waiver must be obtained.

As conditioned, the standards are met.

e. MMC19.708.1.B – Clear Vision

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

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

f. MMC 19.708.1.D – Development in Non-Downtown Zones

The Milwaukie Transportation System Plan classify the fronting portions of SE 60th Ave as a local street. According to Table 19.708.2 Street Design Standards, the required right-of-way width for SE 60th is 50ft.

Existing right-of-way width fronting the property is 40-ft. The applicant must dedicate 10-ft of right-of-way to allow for full street design.

As conditioned, the standards are met.

g. MMC 19.708.2 Street Design Standards

MMC 19.708.2 establishes standards for street design and improvement.

The portion of 60th St fronting the property is classified as a local street with a street design containing: 14-foot paved half-street, curb and gutter, 5-foot landscape strip, and a 5-foot setback sidewalk.

As conditioned, this standard is met.

h. 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.

The applicant has applied for the city's ADU Waiver Program. If all program requirements are met, the above-noted improvements are not required to be met. The applicant must provide dedication for future street design. As conditioned, the standards of MMC 19.700 are met.