



CITY OF MILWAUKIE

November 10, 2021

Land Use File(s): VR-2021-015; ADU-2021-003

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on November 9, 2021.

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):	John Sena
Location(s):	3521 SE Filbert
Tax Lot(s):	11E25AC08600
Application Type(s):	Variance; Accessory Dwelling Unit
Decision:	Approved
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• MMC Section 19.1006 Type III Review• MMC Section 19.301 Low Density Residential Zones (including R-7)• MMC 19.910.1 Accessory Dwelling Units (ADUs)• MMC Section 19.911 Variances Milwaukie Municipal Code: <ul style="list-style-type: none">• MMC Title 12 Streets, Sidewalks, and Public Places
Neighborhood(s):	Ardenwald-Johnson Creek

Appeal period closes: 5:00 p.m., November 25, 2021

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 Vera Koliass, Senior Planner, at 503-786-7653 or koliassv@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on November 25, 2021, 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

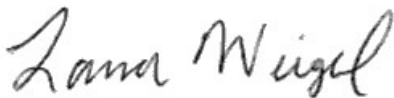
1. The site shall be used in a manner as proposed and approved through this land use action and as submitted in materials date stamped by the City on August 31, 2021. This includes:
 - a. The conversion of the existing detached accessory building into an accessory dwelling unit.
 - b. Not expanding the building footprint of the accessory dwelling unit to be larger than 850 sq ft.
2. Prior to the certificate of occupancy, the following shall be resolved:
 - a. Construct a 6-ft curb-tight sidewalk fronting the proposed development property along SE Filbert Street. An issued Right-of-Way permit is required prior to the start of any work within the public right-of-way.
 - (1) In place of item (a) above, a fee-in-lieu of construction (FILOC) may be applied for; payment must be made prior to issuance of development permits. The FILOC rate for this development is \$53 per linear foot. The total FILOC for 78.02 linear feet of frontage is \$4,135.06.

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. Construct a driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA). An issued Right-of-Way permit is required prior to the start of any work within the public right-of-way.
 - (1) In place of item (b) above, applicant may leave the existing non-conforming accessway as is. Any modifications or improvements to the approach or apron within the right-of-way will require a fully compliant accessway to be constructed.
- c. Clear vision areas shall be maintained at all driveways and accessways and on the corners of all property adjacent to an intersection. All signs, structures, or vegetation in excess of 3 – 8 ft in height located in “vision clearance areas” at intersections of streets, driveways, and alleys fronting the proposed development must be removed. Prior to the removal of any vegetation, applicant shall confirm with the Engineering Department the location of clear vision areas and if the vegetation removal is required to comply with clear vision standards.

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.



Laura Weigel, AICP
Planning Manager

Exhibits

1. Findings in Support of Approval
- cc: John Sena (via email)
Planning Commission (via email)
Kelly Brooks, Interim 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)
Tim Salyers, Code Enforcement Coordinator (via email)
Valere Liljefelt, CFD#1 (via email)
NDA(s): Ardenwald-Johnson Creek (via email)

Land Use File(s): VR-2021-015; ADU-2021-003

ATTACHMENT 1
Findings in Support of Approval File
#VR-2021-015, ADU-2021-003, Filbert St 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, John Sena, has applied for approval to establish an Accessory Dwelling Unit (ADU) at 3521 SE Filbert St. This site is in the R-7 Zone. The land use application file numbers are VR-2021-015, ADU-2021-003.
2. The applicant proposes conversion of an existing accessory building into an accessory dwelling unit (ADU). The accessory building has a footprint of 850 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 9, 2021, 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 situated toward the street and is set back approximately 20 feet from Filbert St. The lot is rectilinear in nature. The existing accessory building on the site is an 850 sq ft detached garage/shop located in the rear yard approximately 155 ft from Filbert St. The lot size is 15,580 sq ft, typical of the surrounding properties.

The applicant has proposed to convert the existing 850 sq ft accessory building, built in 2003, into an ADU. The existing structure is single-story.

Table 1: Overview of Compliance with Development Standards

Residential Zone R-7 Development Standards			
Standard	Required	Proposed	Staff Comment
1. Lot Coverage	30% max.	Approx. 17 %	Complies with standard.
2. Minimum Vegetation	35% min.	Approx. 44%	Complies with standard.
3. Front Yard Setback	20 ft	155 ft (accessory structure) 20 ft (primary structure)	Complies with standard

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 to convert an existing 850 sq ft accessory building located in the rear yard into an ADU.

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	850 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	850 sq ft <i>The applicant has requested a variance</i>
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		>10 ft behind front yard and ~ 155 ft from front lot line

Development and Design Standards for Detached Accessory Dwelling Units			
ADU	Type I	Type II	Proposed
	located at least 40' from the front lot line		
Required Side and Rear Yard Setback	Base zone requirement	5 ft	Side: 15 ft/29 ft Rear: 20 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.		
	(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. 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 15 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>		

Development and Design Standards for Detached Accessory Dwelling Units			
ADU	Type I	Type II	Proposed
	(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 trim and siding which are 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 in an existing single-story structure 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 850 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 proposed to be converted into an ADU has a footprint of 850 sq ft. 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 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.

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. Should the applicant wish to modify or update any portion of the driveway approach or apron in the right-of-way. Any modifications will require compliance with current code and Public Works Standards.

As conditioned, the standards are met.

(3) MMC 12.16.040.F – Accessway Size

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

The applicant 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 850 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 sidewalk improvements along SE Filbert Street. Curb repair and/or replacement is not required. Fee In Lieu of Construction (FILOC) may be applied for.

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 has an existing nonconforming driveway approach. Improvements or modifications made to the approach or apron within the right-of-way will require full compliance with the access management standards contained in Chapter 12.16 and the Public Works Standards.

(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 in accordance with the Milwaukie Transportation System Plan and Transportation Design Manual street classification. The development fronts a portion of SE Filbert Street with local street classification.

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 Filbert Street require the construction of a 6-ft sidewalk. The applicant has 78.02-ft of frontage along adjacent right-of-way (Filbert St). 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 78.02 lineal ft of transportation facility improvements or pay a Fee In Lieu of Construction (FILOC).

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 6'ft wide sidewalks or pay FILOC.

As conditioned, this standard is met.

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

10. The application was referred to the following departments and agencies on October 1, 2021:

- Milwaukie Building Division

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

Notice of the application was also sent to surrounding property owners and residents within 300 ft of the site on October 20, 2021, and a sign was posted on the property on October 19, 2021.

No comments were received.