



November 14, 2022

Land Use File(s): CU-2022-003

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on November 14, 2022.

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):	Justine Syck
Location(s):	4843 SE Barbara Lynn Way
Tax Lot(s):	2S2E06BA01403
Application Type(s):	Conditional Use
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Municipal Code: <ul style="list-style-type: none">• MMC Subsection 19.301 Moderate Density Residential Zone (R-MD)• MMC Subsection 19.905 Conditional Uses• MMC Subsection 19.1006 Type III Review
Neighborhood(s):	Lake Road

Appeal period closes: 5:00 p.m., November 29, 2022

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 Ryan Dyar, Assistant Planner, at 503-786-7661 or dyarr@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on November 29, 2022, 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. Prior to issuance of the conditional-use permit, the applicant shall provide the City with an amended rental agreement that is substantively comparable to the “Sample Rental Agreement” received by the city on August 15, 2022, but reflects the amendments listed below. This rental agreement shall be used while operating the vacation rental.
 - a. The agreement shall stipulate that the maximum number of occupants shall not exceed 10 people. The clause stating that a child in a crib does not count towards maximum occupancy shall be stricken from the agreement.
 - b. The agreement shall remove the language stating that there is a no-pets policy, as the owner/operator stated during the public hearing on November 8, 2022, that pets are permitted.
 - c. The agreement shall include a provision stating that visitors shall respect the privacy of neighbors by not peering over or climbing on fences or retaining walls on the premises. The rental agreement shall maintain the provision that prohibits visitors from using on-street parking.
2. Prior to issuance of the conditional-use permit, the applicant shall post signs on the two perimeter fences and the retaining wall in the rear yard instructing visitors that they shall not climb on the fences or wall.
3. Prior to issuance of the conditional-use permit, the applicant shall plant mature vegetation (no shorter than 2 ft) along the top of the retaining wall in the rear yard to dissuade visitors from climbing on the wall.

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.

Other requirements

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

2. Conditional Use Permit

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

- a. A description of the use that has been approved by the City.
- b. Restrictions and/or conditions of approval placed upon the use.
- c. Ongoing responsibilities required for the operation of the conditional use.
- d. Allowance for the transfer of rights and responsibilities upon change in ownership of either the use or the property containing the use.
- e. Procedures for review, revisions, and suspension of the conditional use permit.

The applicant must record the conditional use permit with the Clackamas County Recorder's Office and provide a copy to the City prior to commencing operations allowed by the conditional use permit.

Decision

- Approved
 Approved with Conditions
 Denied



Laura Weigel, AICP
Planning Manager

Exhibits

1. Findings in Support of Approval

cc: Justine Syck (via email)

Planning Commission (via email)

Joseph Briglio, Community Development Director (via email)

Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)

Harmony Drake, Permit Technician (via email)

Tim Salyers, Code Enforcement Coordinator (via email)

NDA(s): Lake Road (via email)

Interested Persons:

- Charles Olsen (via email)
- Lynne Shoemaker (via email)
- Michelle Fusco (via email)
- Nancy Debord (via email)
- Andrew Smidt (via mail)
- Winifred Smidt (via mail)
- Bruce Evans (via mail)
- Chad Hamel (via email)
- Cheryl Sarantis (via email)
- Larry Hodak (via mail)
- Steve Weber (via mail)
- Carol Bruneau (via email)
- Julie Likkel (via email)

Land Use File(s): CU-2022-003

EXHIBIT 1
Findings in Support of Approval
File #CU-2022-003, 4843 SE Barbara Lynn Way, Vacation Rental

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

1. The applicant, Justine Syck, has applied for approval of a Conditional Use for a Vacation Rental at 4843 SE Barbara Lynn Way. This site is in the R-MD Zone. The land use application file number is CU-2022-003.
2. The applicant is proposing to use the single-detached dwelling on the property as a Vacation Rental.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Subsection 19.301 Moderate Density Residential Zone (R-MD)
 - MMC Subsection 19.905 Conditional Uses
 - MMC Subsection 19.1006 Type III Review
4. 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 8th, 2022, as required by law.
5. MMC 19.301 Moderate Density Residential Zone
 - a. MMC 19.301.2 establishes allowed uses for the Moderate Density Residential Zone. Vacation rentals are allowed in the R-MD zone per approval through the Conditional Use process.

The applicant does not reside at the property and is proposing to use the single-detached dwelling on the site as a vacation rental. The applicant has applied for Conditional Use approval.

The Planning Commission finds that this standard is met.
6. MMC 19.905 Conditional Uses

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

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

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

- a. MMC 19.905.4.A establishes approval criteria for approving a new conditional use.

The applicant is proposing to establish a new conditional use with a vacation rental for the home. It meets the approval criteria as follows:

- 1) The characteristics of the lot are suitable for the proposed use considering size, shape, location, topography, existing improvements, and natural features.

The existing home is 2,520 sq ft in size and located on a 7,900-sq ft lot. The lot is fenced on all sides and the home includes a three-car attached garage and sufficient driveway space for three additional cars.

The physical characteristic of the property will not change. No improvements are proposed to the lot or the home. The Vacation Rental use will not change the residential character of the lot or building.

The Planning Commission finds that this criterion is met.

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

The physical characteristic of the property will not change. No improvements are proposed to the home. The applicant intends to use the home as a vacation rental.

The operating characteristics and residential character of the home will remain unchanged. The rental agreement includes measures to ensure compatibility with nearby uses. The private off-street parking area accommodates six parked cars limiting any potential negative impacts to parking on the public street. While three of those off-street parking spaces are in a garage that contains entertainment amenities (a sauna, and tabletop games) it is possible to remove those items which currently impede parking in the garage should parking become an issue. The applicant agreed during the public hearing on November 8, 2022, that she is amenable to removing the amenities if necessary. Furthermore, a condition has been added to require that the rental agreement include a provision stating that visitors are not allowed to park on the street.

The Planning Commission finds that this criterion is met.

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

The proposed use will have an age restriction of 25 and limits the rental party size to 10 individuals. The sample rental agreement—which will be required to be used as a condition of approval—also has quiet hours, a no-smoking policy, and as discussed above, ample off-street parking. The applicant lives close by and can conveniently address any problems.

As discussed below, the applicant will be required to notify properties within 300 ft of the subject parcel of the vacation rental. The notification will include the contact information for the property owners, any property managers, and the City of Milwaukie Police non-emergency line.

The Planning Commission finds that this criterion is met.

- 4) The proposed use will not have unmitigated nuisance impacts, such as from noise, odor, and/or vibrations, greater than usually generated by uses allowed outright at the proposed location.

The residential character of the site will stay the same and will continue to have no greater unmitigated nuisance impacts than what is currently allowed outright. The visitors to the Vacation Rental would be using the unit as a residential property; consequently, impacts should be similar in nature to what is permitted by right. As stated above, the applicant also has strict quiet hours, age limitations for renters, and no smoking inside or outside policies in the rental agreement. Moreover, the applicant has demonstrated that these policies will be enforced through monitoring technology and that the applicant has the capacity to address concerns in a timely fashion.

The Planning Commission finds that this criterion is met.

- 5) The proposed use will comply with all applicable development standards and requirements of the base zone, any overlay zones or special areas, and the standards in Section 19.905.

There are no proposed changes to the existing house or lot. As it currently exists, the home is an existing single-detached dwelling in the R-MD zone on a 7,900 sq ft lot. There are no overlay zones or special areas and the standards are met in Section 19.905 as demonstrated in the findings.

The Planning Commission finds that this criterion is met.

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

The following goal under the housing section of the Comprehensive Plan is found to be applicable to the proposal. Goal 7.2 [Housing] Affordability and Policy 7.2.9 in the Comprehensive Plan speak directly to vacation rentals

- Goal 7.2 [Housing] Affordability

Provide opportunities to develop housing that is affordable at a range of income levels.

- Policy 7.2.9: Monitor and regulate vacation rentals to reduce their impact on the availability and long-term affordability of housing.

Section 7 of the Comprehensive Plan, Housing Goals and Policies, speaks to monitoring and regulating vacation rentals to reduce their impact on the availability and long-term affordability of housing. By requiring vacation rentals to obtain a conditional-use permit in the Moderate Density Residential Zone, the City can monitor the prevalence of vacation rentals, and if appropriate, adopt additional regulations to further the goal of housing affordability.

The Planning Commission finds that through the acquisition of a conditional-use permit, the proposed use is consistent with the Comprehensive Plan and the criterion is met.

- 7) Adequate public transportation facilities and public utilities will be available to serve the proposed use prior to occupancy pursuant to Chapter 19.700.

There are adequate public transportation facilities and public utilities for the site. Renters for the proposed use will generally have a personal/rented vehicle that they can park on the property. The applicants have an off-street parking area that can accommodate six vehicles and prevents the need for any renters to park on the public street.

The Planning Commission finds that this criterion is met.

The Planning Commission finds that the approval criteria for a conditional use are met with this proposal.

b. MMC Subsection 19.905.9 Standards Governing Conditional Uses

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

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

- 1) Prior to initial occupancy, the Building Official must verify that building code and fire code standards are satisfied.
- 2) With annual filing of MMC Title 5 Business Tax, the operator must send a notice to neighbors within 300 ft that includes the following information:

- a. Property owner contact information;
- b. Vacation rental operator and/or property manager contact information;
and
- c. City of Milwaukie Police nonemergency telephone number.

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

As proposed, the Planning Commission finds that the proposed vacation rental meets the applicable standards of MMC 19.905.9.

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

7. The application was referred to the following departments and agencies on September 20, 2022:
 - Milwaukie Community Development Director
 - Milwaukie Building Official
 - Clackamas County Fire District #1
 - Lake Road Neighborhood District Association Chairperson and Land Use Committee

The Lake Road Neighborhood District Association member, Teresa Bresaw asked questions about the rent and mitigation measures the applicant would employ to limit any impacts to nearby properties. The land-use committee officer, Paul Hawkins, also acknowledged receipt of the application referral. Both email exchanges are included in the record.

A public notice was mailed to all residents and property owners within 300 ft of the site.

The responses are summarized as follows:

Andrew and Winifred Smidt: Object to the proposed vacation rental due to concerns regarding the impact on property values, and the lack of control over the number of renters and parking. Have additional concerns that approval would set a precedent for approving similar requests in the future. Amenable to a long-term rental to provide the owner with a source of income for the property.

Lynne Shoemaker and Michelle Fusco: Opposed to the proposed vacation rental due to concerns about privacy and safety. Expressed a desire to know their neighbors and not live next to a property where different people are coming and going. Discuss having a bad experience with the vacation rental regarding privacy, parking, and noise. Amendable to long-term rental for a single-family.

Nancy Debord: Protesting the application for a vacation rental because of safety concerns, property values, parking, privacy concerns, duration of the tenancy, and the economic character of the neighborhood.

Charles Olsen: Asked clarifying questions at the public hearing on November 8, 2022, about the nature of a conditional-use application and clarified that the City does not have the ability to enforce Declarations of Covenants, Conditions, and Restrictions (CC&Rs).