



CITY OF MILWAUKIE

January 25, 2023

Land Use File(s): CU-2022-006

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on January 24, 2023.

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):	Crystalyn Keating
Location(s):	11611 SE 33 rd Ave
Tax Lot(s):	11E36DB03600
Application Type(s):	Conditional Use
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• MMC Section 19.301 Moderate-Density Residential (R-MD)• MMC Section 19.905 Conditional Use• MMC Section 19.1006 Type III Review
Neighborhood(s):	Lake Road

Appeal period closes: 5:00 p.m., February 9, 2023

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 February 9, 2023, 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 development utilizes its approvals 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. 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.

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.

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.



Laura Weigel, AICP
Planning Manager

Exhibits

1. Findings in Support of Approval
- cc: Crystalyn Keating (3560 SW Troy St; Portland, OR 97219) via email
Planning Commission (via email)
Joseph Briglio, Community Development Director (via email)
Steve Adams, City Engineer (via email)
Engineering Development Review (via email)
Patrick McLeod, Building Official (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Technician (via email)
Shawn Olson, CFD#1 (via email)
NDA(s): Lake Road (via email)
Interested Persons
Land Use File(s): CU-2022-006

EXHIBIT 1
Findings in Support of Approval
File #CU-2022-006, 11611 SE 33rd Ave, 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, Crystalyn Keating, has applied for approval of a Conditional Use for a Vacation Rental at 11611 SE 33rd Ave. This site is in the R-MD Zone. The land use application file number is CU-2022-006.
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. Public hearings were held on January 10, 2023 and January 24, 2023, 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 1,178 sq ft in size and located on a 5,000-sq ft lot. The lot is fenced on three sides and the home includes a two-car attached garage and sufficient driveway space for two additional cars.

The physical characteristic of the property will not change. No significant 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 house rules include measures to ensure compatibility with nearby uses. The private off-street parking area accommodates four parked cars limiting any potential negative impacts to parking on the public street.

The Planning Commission finds that this criterion is met.

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

The house rules, which will be sent to guests and will be posted in the house include quiet hours, a no-smoking policy, maximum occupancy of the home, and as discussed above, ample off-street parking. The applicant's management company is available 24 hours a day and has staff who lives in the area 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 and no smoking inside or outside policies in the house rules. 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 5,000 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. There are currently five approved vacation rentals in the city.

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 four 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 December 7, 2022:

- Milwaukie Community Development Director
- Milwaukie Engineering Department
- Milwaukie Building Official
- Clackamas County Fire District #1
- Lake Road Neighborhood District Association Chairperson and Land Use Committee

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

Paul Hawkins from the Lake Road NDA submitted a comment stating no objections to the proposal. The following residents submitted comments in opposition to the proposal:

- Matthew Bullard, 11633 SE 33rd Ave
- David Drews, 11665 SE 33rd Ave
- Maren Kausch, 11607 SE 33rd Ave
- Lynnda Gage, 11665 SE 33rd Ave
- Paul Olson, 11614 SE 33rd Ave
- Joan Egloff-Olson, 11614 SE 33rd Ave
- Stephen Thorpe, 11562 SE 33rd Ave