



March 26, 2015

Land Use File(s): VR-2015-001; ADU-2015-001

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on March 24, 2015.

Applicant(s): Lyndon Murray
Location(s): 9908 SE Cambridge Ln
Tax Lot(s): 1S1E26DB01400
Application Type(s): Variance; Accessory Dwelling Unit
Decision: Approved with Conditions
Review Criteria: Milwaukie Zoning Ordinance:

- MMC Section 19.301 Low Density Residential Zones
- MMC Section 19.910.1 Accessory Dwelling Units
- MMC Section 19.911 Variances
- MMC Section 19.1006 Type III Review

Neighborhood(s): Historic Milwaukie

Appeal period closes: 5:00 p.m., April 10, 2015

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 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, Associate 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 April 10, 2015, which is 15 days from the date of this decision. 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

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, Lyndon Murray, has applied for relief from the minimum front yard setback for accessory structures and from the maximum size of an accessory dwelling unit (ADU) to construct a 1,105 sf accessory dwelling unit 25 ft from the front property line at 9088 SE Cambridge Ln. This site is in the R-10 Zone. The land use application file numbers are VR-2015-001 and ADU-2015-001.
2. The proposal requires variances to the required 40 ft front yard setback for an ADU in the R-10 zone and the maximum footprint of 800 sf for an ADU.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.301 Low Density Residential Zones
 - MMC Section 19.910.1 Accessory Dwelling Units
 - MMC Section 19.911 Variances
 - MMC Section 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. Per MMC 19.1001.6, the two applications are being reviewed concurrently according to the highest numbered review type required. A public hearing was held on March 24, 2015, as required by law.
5. MMC 19.301 Low Density Residential Zones
 - a. 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.
 - b. The existing house is centered in the lot and is located more than 200 ft from Cambridge Ln. The existing detached garage is legally nonconforming and is located with a 0.6 ft encroachment into the right-of-way.
 - c. The applicant has proposed a 1,105 sf ADU located 25 ft from the front property line, near the existing detached garage.

d. **Table 1. Compliance with relevant R-10 standards**

R-10 Zone	Standards	Existing	Proposed
Lot Coverage	30% max.	Approx. 4.5%	Approx. 5.6%
Front Yard Setback	20 ft	200+ ft (house) 0 ft (existing detached garage)	No change

The Planning Commission finds that the proposal complies with the applicable standards of the R-10 zone.

6. MMC Chapter 19.910.1 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 a 1,105 sf ADU located 25 ft from the front property line near the existing detached garage.

Table 2. Compliance with relevant ADU standards

ADU	Type I	Type II	Proposed
Maximum Structure Footprint	600 sf	800 sf	1,105 sf ¹
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		25 ft ²
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.	Entry is recessed 2 ft	
	(c) Roof eaves with a minimum projection of 12 in from the intersection of the roof and the exterior walls.	Eaves will project 12 in	
	(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.	n/a	
	(e) Window trim around all windows at least 3 in wide and 5/8 in deep.	n/a	
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.	>90 ft	
	(b) The wall is at an angle of 45	n/a	

¹ The applicant has requested a variance to the maximum structure footprint standards for an ADU.

² The applicant has requested a variance to the minimum front yard setback for an ADU in the R-10 zone.

ADU	Type I	Type II	Proposed
	degrees or less to the lot line.		
	(c) The wall faces an adjacent residential property.		n/a
	(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.		Complies with standard. Existing plantings (8' high hedge) provide screening.

Upon approval of the variance requests, the Planning Commission finds that the proposal complies with the applicable standards for a detached ADU in the R-10 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-10 zone. The Planning Commission 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 Commission 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 Commission finds that this criterion is met.

d. The development standards of Subsection 19.910.1.E are met.

Table 2 identifies all of the design and development standards in Subsection 19.910.E and how the proposed ADU complies with them. Structures are allowed to exceed any of the maximums associated with a Type II review with approval of a variance per Section 19.911. A variance application has been submitted.

The Planning Commission finds that, as conditioned, 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 is designed in a manner that mirrors to the features of the main house. 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 existing 8 ft high hedge along Cambridge Ln will be maintained to provide privacy. The ADU is positioned opposite the junction of Cambridge Ln and Eton Ln providing minimal sight lines into the property. No houses directly face the ADU and it is located more than 90 ft from the nearest side lot line.

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 heavily wooded; the southern lot line has a combination of 12 ft high hedges, large trees and shrubs. The view from the west is obscured by an 8 ft high hedge. Additional landscaping will be installed following construction.

The Planning Commission finds that this criterion is met.

7. MMC Chapter 19.911 Variances

- a. MMC 19.911.3 establishes the review process for variance applications.

The applicant has requested a variance to the required front yard setback for an ADU located 25 ft from the front property line rather than the required 40 ft. This request exceeds the allowable variance of 25% or 10 ft permitted through Type II review.

The applicant has also requested a variance to allow a 1,105 sf ADU rather than the maximum footprint of 800 sf.

The Planning Commission finds that the application is subject to Type III Variance review for the proposed construction of an ADU with a footprint of 1,105 sf located 25 ft from the front property line.

- b. MMC 19.911.4.B establishes criteria for approving Type III Variance applications.

An application for a Type III Variance shall be approved when all of the criteria in either 19.911.4.B.1 or 2 have been met. An applicant may choose which set of criteria to meet based upon the nature of the variance request, the nature of the development proposal, and the existing site conditions.

The applicant has chosen to address the criteria of 19.911.4.B.1 Discretionary Relief Criteria.

(1) *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 additional 305 sf over the maximum 800 sf footprint, as well as the 25 ft rather than 40 ft setback, will have a negligible impact given the size of the property, existing screening, distance from property lines, and the fact that there are no neighbors directly opposite the proposed location of the ADU. The ADU will be used for reasonable accommodation for relatives and/or a means for additional income for the property owners. It is accessory to the primary structure and has been designed to ensure no impact to neighbors and privacy both for the ADU residents and adjacent properties.

The impacts and benefits of the proposal are the same as those that would occur with the baseline code requirements, and there are no negative impacts related to the variance proposal. The Planning Commission finds that this criterion is met.

(2) *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:*

(a) *The proposed variance avoids or minimizes impacts to surrounding properties.*

As the site is heavily wooded and landscaped, the ADU will have minimal impact on the single-family character of the neighborhood. Its location takes advantage of an existing curb cut and driveway apron, minimizing the need to remove trees and other vegetation.

The existing 8 ft hedge along Cambridge Ln will be maintained. The ADU will be positioned such that there will be minimal sight lines into the property. No houses would directly face the ADU and it is located more than 90 ft from the nearest side lot line. The applicant's materials state that additional landscaping will be added following construction.

The Planning Commission finds that this criterion is met.

(b) *The proposed variance has desirable public benefits.*

"Public benefits" are typically understood to refer to benefits to be enjoyed by members of the general public as a result of a particular project, or preservation of a public resource. Aesthetic improvements of a specific and limited nature do not typically constitute a public benefit.

The Planning Commission finds that this criterion is not applicable.

(c) *The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.*

This criterion encourages flexibility in site planning and development when the existing built or natural environment provide challenges to standard development or site planning.

The proposed design of the ADU is in keeping with the architecture of both the existing home and the existing detached garage.

The Planning Commission finds that this criterion is met.

(3) Impacts from the proposed variance will be mitigated to the extent practicable.

As noted in Finding 7.b (1), the Commission finds there are no negative impacts and no mitigation is needed.

The Planning Commission finds that this criterion is met.

The Planning Commission finds that these criteria are met.

8. As per MMC 19.906.2.C, the proposed development is exempt from the requirement to submit a development review application and the other requirements of MMC 19.906 Development Review. However, the proposal must still comply with all applicable development standards and will be reviewed during the building permit review process.
9. As per MMC 19.1001.7.E, this variance request shall expire and become void unless the proposed development completes the following steps:
 - A. Obtain and pay for all necessary development permits and start construction within 2 years of land use approval (by March 24, 2017).
 - B. Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by March 24, 2019).
10. The application was referred to the following departments and agencies on February 9, 2015: Milwaukie Building Division; Milwaukie Engineering Department; Clackamas Fire District #1; and the Historic Milwaukie Neighborhood District Association. Notice of the application was also sent to surrounding property owners within 300 ft of the site on March 4, 2015, and a sign was posted on the property on March 4, 2015. The following is a summary of the comments received by the City.
 - **Rob Roberts, 10000 SE Cambridge Ln, Milwaukie: Supports the application.**

Conditions of Approval

1. At the time of submission of any building permit application, the following shall be submitted:
 - a. Final plans submitted for building permit review shall be in substantial conformance with plans approved by this action, which are the plans stamped “received” by the City on January 8, 2015.
 - b. Provide a narrative describing any changes made after the issuance of this land use decision that are not related to these conditions of approval.

2. Prior to final inspection of any building permit, the following shall be submitted:
 - a. Provide a narrative describing any changes made after the issuance of this land use decision that are not related to these conditions of approval.

Other requirements

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements contained in the Milwaukie Municipal Code and Public Works Standards that are required at various point in the development and permitting process.

1. Development activity on the site shall be limited to 7 a.m. to 10 p.m. Monday through Friday and 8 a.m. to 5 p.m. Saturday and Sunday, per MMC Subsection 8.08.070(l).



Dennis Egner, AICP
Planning Director

cc: Lyndon Murray (9908 SE Cambridge Ln, Milwaukie, OR 97222)
Marty Buckenmeyer (2517 NE 47th Ave, Portland, OR 97213)
Planning Commission (*via e-mail*)
Jason Rice, Acting Community Development Director; Engineering Director (*via e-mail*)
Brad Albert, Civil Engineer (*via e-mail*)
Samantha Vandagriff, Building Official (*via e-mail*)
Bonnie Lanz, Permit Specialist (*via e-mail*)
Mike Boumann and Matt Amos, CFD#1
NDA(s): Historic Milwaukie (*via e-mail*)
Interested Persons
Land Use File(s): VR-2015-001; ADU-2015-001