



May 25, 2016

Land Use File: NCU-2016-001

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on May 24, 2016.

**Applicant:** Daniel Hallock, Dynasty Construction  
**Location:** 2926 SE Washington Street  
**Tax Lot:** 1S1E36BD01700  
**Application Type:** Nonconforming Use Alteration  
**Decision:** Approved  
**Review Criteria:** Milwaukie Zoning Ordinance:

- MMC Section 19.305 Neighborhood Commercial Zone C-N
- MMC Section 19.804 Alteration of Nonconforming Uses and Development
- MMC Section 19.1006 Type III Review

**Neighborhood(s):** Historic Milwaukie and Lake Road

**Appeal period closes: 5:00 p.m., June 9, 2016**

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 Denny Egner, Planning Director, at 503-786-7654 or [egnerd@milwaukieoregon.gov](mailto:egnerd@milwaukieoregon.gov), if you wish to view this case file.

**This decision may be appealed by 5:00 p.m. on June 9, 2016, 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](mailto: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, Daniel Hallock, Dynasty Construction, has applied for approval to expand a legal nonconforming use (single family residence) with an addition to the existing house. This site is in the Commercial Neighborhood Zone C-N. The land use application file number is NCU-2016-01.
2. The project site is 2926 SE Washington St, Tax Lot 1S1E 36BD 01700. The site is an approximately 5,530 square-foot parcel developed with a 960 square-foot, one-story residence. The building was constructed in 1950 and first occupied when the zoning for the parcel was residential. The Commercial neighborhood Zone C-N was adopted in 1968. The current use is therefore a legal nonconforming use.
3. The base zone of the site is Commercial Neighborhood Zone C-N, and the Comprehensive Plan land use designation is C Commercial.
4. The site has been in use as a residence since 1950, prior to the adoption of the Commercial Neighborhood Zone C-N in 1968, when the use became a legal nonconforming use.
5. The applicant proposes to construct a 570 square-foot addition in the rear yard and continue to use the building for residential purposes.
6. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC 19.305 Neighborhood Commercial C-N
  - MMC 19.804 Alteration of Nonconforming Uses and Development
  - MMC 19.1006 Type III Review
7. MMC 19.804 Alteration of Uses and Development
  - A. MMC19.804.1.A establishes three provisions for approving an alteration to a nonconforming use:
    1. *MMC 19.804.1.A.1 states that a nonconforming use shall not be moved, in whole or in part, to any portion of the site other than that occupied by the nonconforming use, except as allowed per Subsection 19.804.1.B.1.*

The applicant is not proposing to move the existing structure or use. Expansion of the building is proposed, however, the 5,530 square-foot parcel is entirely devoted to residential use, and the building addition does not constitute moving the use to another portion of the site, which is not devoted to residential use. The Planning Commission finds that MMC 19.804.1.A.1 is satisfied.
    2. *MMC 19.804.1.A.2 states that no additional development or physical alterations associated with the nonconforming use shall occur, except as allowed per Subsection 19.804.1.B.1.*

The applicant is proposing an expansion, which is addressed under Subsection 19.804.1.B.1. The Planning Commission finds that MMC 19.804.1.A.2 is satisfied as noted under Subsection 19.804.1.B.1.
    3. *MMC 19.804.1.A.3 states that no intensification of the nonconforming use shall occur, except as allowed per Subsection 19.804.1.B.1. Alterations that decrease the intensity of the nonconforming use are allowed.*

The proposed addition will provide some additional living space for the residence, but it will not intensify the use because it will continue to be one single family home. The Planning Commission finds that provision 19.804.1.A.3 has been met.

- B. MMC 19.804.1.B establishes the requirement for a land use review and that the application meet the following criteria for approval of an alteration to a nonconforming use:

1. *MMC 19.804.1.B.1 states that a nonconforming use shall not be moved, altered, or intensified unless it is approved by the Planning Commission through a Type III review. The applicant shall demonstrate the proposed alteration would be no more detrimental to surrounding properties than the one it is replacing.*

For a use to be conforming in this zone, the property would need to have a commercial use. The existing building was designed and built as a single family residence. The building's lot placement, design, and infrastructure are such that the current building and its relatively small lot size are not particularly well-suited for conversion to commercial use. The Planning Commission finds that this criterion is met.

2. *MMC 19.804.1.B.2 also states that the applicant shall demonstrate the new nonconforming use would be no more detrimental to surrounding properties than the one it is replacing.*

The applicant is not proposing to change the use. Therefore, the Planning Commission finds that this criterion is not applicable.

As conditioned, the Planning Commission finds that the applicable provisions of MMC 19.804.1 have been met.

8. MMC 19.305 Neighborhood Commercial Zone C-N

MMC 19.305 establishes criteria for both uses and development in the C-N Zone.

- A. *MMC 19.305.1 indicates there are no outright permitted uses in the C-N Zone.*
- B. *MMC 19.305.2 lists conditional uses in the C-N Zone, which include commercial uses, such as convenience stores and restaurants. Residential uses are not permitted.*

The current use is a legal nonconforming use, which was allowed at the site when the residence was built, and as such may continue operations until such time that it has ceased operations for a year.

Approval of the land use application NCU-2016-01 would allow the expansion of the existing residence, consistent with the setback and other development standards of the C-N Zone. As proposed, the Planning Commission finds that this criterion is met.

- C. MMC 19.305.3 sets development standards for development of property in the C-N Zone. The applicable standards are contained in Subsections A through K are met or are not applicable as noted below:

- Lot size: The 5,530 square-foot lot meets the 5,000 square-foot minimum lot size standard.
- Front yard: The existing house has a setback of over 20 feet satisfying the 15-foot minimum front setback.
- Side yard: The existing house has setbacks of 14.6 feet and 9 feet, and the proposed addition will have the same setbacks, meeting the 5-foot standard.

- Rear yard: The house addition will maintain a 33-foot rear yard setback meeting the 10-foot standard.
- Off-street parking and loading: MMC 19.600 is satisfied because the house will continue to have two parking spaces under the carport and the driveway. MMC Table 19.605.1 shows that one parking space is required for a single family residence.
- Height restriction: The existing building and proposed addition are or will be one story, satisfying this standard.
- Lot coverage: With the addition, the lot coverage will be under 30%, satisfying the 40% maximum coverage standard.
- Minimum vegetation: The house, carport, and driveway total less than 50% of the total lot area, and the remainder is landscaped, easily meeting the minimum 20% landscaped area standard.
- Screening: This is not applicable because it relates to screening for commercial uses.
- Frontage requirements: This standard is met because the property has frontage on a public street.
- Transportation requirements: No transportation improvements are required.

The Planning Commission finds that these standards are met.

9. Public notice has been provided in accordance with MMC Subsection 19.1006.3 Type III Public Notice. A public hearing was held on May 24, 2016, as required by law.
10. The application was referred to the following departments and agencies on April 28, 2016:
  - Milwaukie Building Division
  - Milwaukie Engineering Department
  - Milwaukie City Manager
  - Clackamas County Fire District #1
  - Lake Road and Historic Milwaukie Neighborhood District Associations

The comments received are summarized as follows:

- **Matt Amos, Clackamas Fire District #1:** Indicated the district had no comments.
- **Chrissy Dawson, Engineering Technician, City of Milwaukie Engineering Department:** The Engineering Department concluded that MMC Chapter 19.700 is not triggered with this application. The department does note that the existing sanitary sewer line, which is shared with the property to the east must be changed to have separate service to each property.

### **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 April 4, 2016. This includes:
  - a. A remodel of the entire house.
  - b. An addition to the rear of the house not to exceed 600 square feet.
  - c. Compliance with the development standards in MMC 19.305.3.

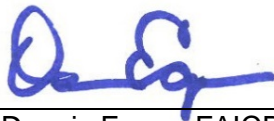
2. Prior to final inspection for any building on the proposed development, the following shall be resolved:

A wastewater service “party line” connection exists between this property and the property directly east, The Little Store. This means that the wastewater service line for this property and the wastewater service line for The Little Store connect to each other before connecting to the City of Milwaukie wastewater main. These two service lines shall be disconnected from each other to make two separate connections to the wastewater main.

3. The site and use shall be modified from the original proposal only as described in these conditions of approval. All other modifications shall be through a formal modification process per MMC 19.804.
4. Pursuant to MMC 19.1001.7.E, this land use approval will expire if not utilized within 4 years from the date of approval.

**Other requirements**

1. Any signs on-site must comply with the standards of MMC 14.16.060 Downtown Zones. Permanent or daily display signs require sign permits; permanent signs may require land use review.



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Dennis Egner, FAICP  
Planning Director

- cc: Daniel Hallock (Dynasty Construction), applicant (7670 SE McBride St, Milwaukie, OR 97222)  
Planning Commission (*via e-mail*)  
Alma Flores, Community Development Director (*via e-mail*)  
Chuck Eaton, Engineering Director (*via e-mail*)  
Alex Roller, Engineering Technician II (*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 and Lake Road (*via e-mail*)  
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