



May 25, 2016

Land Use File: WG-2016-001

NOTICE OF DECISION

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

Applicant: Tim Austin, LLC
Location: 11906 SE 19th Avenue
Tax Lot: 1S1E35DA02400
Application Type: Willamette Greenway Review
Decision: Approved
Review Criteria: Milwaukie Zoning Ordinance:

- MMC Section 19.1006 Type III Review
- MMC Section 19.401 Willamette Greenway Zone WG
- MMC Section 19.905 Conditional Uses
- MMC Section 19.301 Low Density Residential Zones (including R-5)
- MMC Section 19.502 Accessory Structures

Neighborhood(s): Island Station

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 Brett Kelter, Associate Planner, at 503-786-7657 or kelterb@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.

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, Tim Austin, LLC, on behalf of the property owners (Terrance and Esperanza Martin), has applied for approval to construct a detached residential accessory structure on the subject property. The subject property is a single tax lot located at 11906 SE 19th Avenue and is zoned Residential R-5, with Natural Resource and Willamette Greenway overlays. The proposed development triggers land use review against the applicable standards of the Willamette Greenway section of the zoning code. The land use application file number is WG-2016-001.
2. The proposed development is a new detached garage, 20 ft by 24 ft in size, which will replace an existing smaller shed located in the southeast corner of the subject property. The site is on the southeast corner of 19th Avenue and Eagle Street and is developed with a single-family detached dwelling. Another existing detached garage is situated in the northern corner of the property and will remain. The existing house faces 19th Avenue, the existing garage is accessed from Eagle Street, and the proposed new garage will be accessible from an existing driveway to 19th Avenue. The surrounding properties are developed with detached single-family dwellings, except where Clackamas County's Kellogg Creek Water Pollution Control Plant property (including park space) is situated to the north across Eagle Street.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.1006 Type III Review
 - MMC Section 19.401 Willamette Greenway Zone WG
 - MMC Section 19.905 Conditional Uses
 - MMC Section 19.301 Low Density Residential Zones (including R-5)
 - MMC Section 19.502 Accessory Structures

The subject property includes a designated Habitat Conservation Area (HCA) along the 19th Avenue frontage on the western edge of the site. Although the proposed development will not disturb any portion of the HCA, the project area is within 100 ft of the HCA and so triggers the need for a construction management plan as per MMC Subsection 19.402.9. The construction management plan will be reviewed in conjunction with the building permit for the new garage and is not addressed in these findings.

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 by the Planning Commission on May 24, 2016, as required by law.
5. MMC Section 19.401 Willamette Greenway Zone

MMC 19.401 establishes standards for the Willamette Greenway overlay designation. The subject property is entirely within the Willamette Greenway zone as shown on the City's zoning map.

 - a. MMC Subsection 19.401.5 Procedures

MMC 19.401.5 establishes procedures related to proposed uses and activities in the Willamette Greenway zone. Development in the Willamette Greenway zone requires

conditional use review, subject to the standards of MMC Section 19.905 and in accordance with the approval criteria established in MMC Subsection 19.401.6.

The construction of a new accessory structure constitutes “development” as defined in MMC Subsection 19.401.4 and is subject to the conditional use review standards of MMC 19.905 and the approval criteria of MMC 19.401.6.

b. MMC Subsection 19.401.6 Criteria

MMC 19.401.6 establishes the criteria for approving conditional uses in the Willamette Greenway zone.

(1) *Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan*

The State Willamette River Greenway Plan defines “lands committed to urban use” in part as “those lands upon which the economic, developmental and locational factors have, when considered together, made the use of the property for other than urban purposes inappropriate.”

The subject property has been developed for private residential use since at least 1930, when the existing house was built. The land is committed to an urban use.

(2) *Compatibility with the scenic, natural, historic, economic, and recreational character of the river*

The project area is not adjacent to the Willamette River and is separated from the river by 19th Avenue, other residential properties to the west, and the Kellogg wastewater treatment plant property to the north and northwest. The proposed new garage will match the style of the existing house and will be located in the southeastern corner of the subject property, as far from the river as possible. The proposed development presents no significant impacts to the character of the river and is compatible with it.

(3) *Protection of views both toward and away from the river*

The project area is not adjacent to the Willamette River. The location of the proposed new garage is the southeastern corner of the subject property, about as far from the river as is possible for this site. Existing vegetation and structures on the subject property, as well as those on adjacent properties across 19th Avenue to the west and the wastewater treatment plant to the north and northwest, allow only minimal views of the river. The proposed development does not affect views toward and away from the river.

(4) *Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable*

The proposed development will not affect existing landscaping, vegetation, open space, or any aesthetic enhancement between the location of the new detached garage and the river.

(5) *Public access to and along the river, to the greatest possible degree, by appropriate legal means*

The subject property is a private residential property and does not provide public access to the Willamette River. Public access to the river is available through

the park west of the Kellogg wastewater treatment plant, which is located adjacent to the subject property across Eagle Street to the north and northwest.

(6) *Emphasis on water-oriented and recreational uses*

The site is a private residential property and has no direct access to the Willamette River. Water-oriented and recreation uses are available in the public park behind the Kellogg wastewater treatment plant, adjacent to the subject property across Eagle Street to the north and northwest.

(7) *Maintain or increase views between the Willamette River and downtown*

The subject property is approximately a quarter mile from the nearest portion of downtown Milwaukie located on the east side of McLoughlin Boulevard (Highway 99E), though it is only approximately 250 ft from the Kellogg wastewater treatment plant property, a majority of which is zoned for Downtown Mixed Use. The proposed new garage will be located on the opposite side of the subject property from the wastewater plant site, where it will not be very visible behind the other existing garage on the subject property. The other existing structures and vegetation in the general area already block most views between the river and the downtown-zoned portion of the wastewater treatment plant site. The proposed development will have no effect on views between the river and downtown-zoned areas.

(8) *Protection of the natural environment according to regulations in Section 19.402*

As noted in Finding 3, above, the subject property includes a designated Habitat Conservation Area (HCA) along the 19th Avenue frontage on the western edge of the site. The proposed development will not disturb any portion of the HCA, though the project area is within 100 ft of the HCA and so triggers the need for a construction management plan as per MMC Subsection 19.402.9. The applicant's construction management plan will be reviewed in conjunction with the building permit for the new garage to ensure that the HCA is adequately protected.

(9) *Advice and recommendations of the Design and Landmarks Committee, as appropriate*

The subject property is not within a downtown zone and the proposed activity does not require review by the Design and Landmarks Committee.

(10) *Conformance to applicable Comprehensive Plan policies*

The Willamette Greenway Element in the Milwaukie Comprehensive Plan includes policies related to land use, public access and view protection, and maintenance of private property. These policies include the requirement of a conditional use permit for new development and intensification of existing uses, evaluation of development impacts to visual corridors, and limitations on authorizing the unrestricted public use of private land.

The Natural Hazards Element includes policies that prohibit development in known areas of natural disasters and hazards without appropriate safeguards. The Open Spaces, Scenic Areas, and Natural Resources Element includes policies to conserve open space and protect and enhance natural and scenic resources.

The proposed development is being reviewed through the Willamette Greenway conditional use process as provided in MMC Subsection 19.401.5. The project will not impact visual corridors. The proposed development is on private property and does not involve any changes to public access to the river over private land. The project area is outside the 100-year floodplain. A construction management plan has been submitted and will be reviewed in conjunction with the building permit for the new garage to ensure that the designated HCA on the site is adequately protected.

(11) *The request is consistent with applicable plans and programs of the Division of State Lands*

The proposed activity is not inconsistent with any known plans or programs of the Department of State Lands (DSL).

(12) *A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C*

The subject property is not immediately adjacent to the Willamette River and does not include a vegetation buffer area as described in MMC Subsection 19.401.8.A.

The Planning Commission finds that the proposed activity meets all relevant approval criteria provided in MMC 19.401.6.

The Planning Commission finds that the proposed activity meets all applicable standards of the Willamette Greenway zone.

6. MMC Section 19.905 Conditional Uses

MMC 19.905 establishes regulations for conditional uses, including standards for reviewing modifications to existing conditional uses. As noted in Finding 5-a and as provided in MMC Subsection 19.401.5.A, activities within the Willamette Greenway zone that trigger Willamette Greenway review are subject to the provisions of Section 19.905 as conditional uses.

a. MMC Subsection 19.905.3 Review Process

MMC 19.905.3 establishes the process by which a new conditional use, or a major or minor modification of an existing conditional use, must be reviewed.

As noted in Finding 6-a, the proposed development is an activity within the Willamette Greenway zone that requires review as a conditional use. The existing use on the subject property is a private residence, which is an allowed use in the underlying residential R-5 zone. The proposed development involves construction of a new detached accessory structure, which represents a major modification to the existing use.

MMC 19.905.3.A requires that a major modification of an existing conditional use be evaluated through the Type III review process per MMC Section 19.1006.

b. MMC Subsection 19.905.4 Approval Criteria

MMC 19.905.4.A establishes the approval criteria for a new conditional use or a major modification to an existing conditional use.

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

The subject property is a residential lot approximately 10,000 sq ft in area. The property is developed with a detached single-family dwelling, two detached accessory structures, and accompanying landscaped areas. The site provides adequate area for replacement of one of the existing detached accessory structures (a small shed) with the proposed new accessory structure (a detached garage).

The Planning Commission finds that this standard 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 subject property is adjacent to other single-family residential properties on all sides except the north, where the Kellogg wastewater treatment plant is located across Eagle Street from the site. The proposed development involves replacing an existing small shed with a detached garage that will meet all applicable yard setbacks. Views toward and from the river in the project area are already minimal, and the proposed development's impacts on nearby uses will be negligible.

The Planning Commission finds that this standard is met.

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

The proposed development presents no significant impacts.

The Planning Commission finds that this standard 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 proposed development will not result in any different use of the subject property than currently exists and will not generate any unmitigated nuisance impacts.

The Planning Commission finds that this standard 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.*

The subject property is in the Residential R-5 zone, with development standards provided in MMC Section 19.301. The applicable development standards are those for lot coverage (maximum of 35% of lot area) and minimum vegetation (minimum of 25% of lot area). Currently, the 10,000-sq-ft lot is covered by approximately 3,000 sq ft of structural footprint (30% lot coverage) and another approximately 1,000 sq ft of non-vegetated area (60% minimum vegetation). The proposed development will slightly expand the footprint of existing structures to approximately 3,400 sq ft (34% lot coverage) and will increase the amount of non-vegetated area to approximately 1,400 sq ft (52% minimum vegetation), leaving the site well over the minimum thresholds for compliance with both applicable standards.

In addition, the new garage is subject to the standards for accessory structures provided in MMC Section 19.502. Specifically, the proposed new garage falls into the "Type B" category in MMC Table 19.502.2.A.1.a for residential accessory structures, which allows a maximum building height of 15 ft,

maximum structural footprint of 600 sq ft, and side and rear setbacks of 5 ft. The proposed new garage has an average roof height of less than 14 ft, is 480 sq ft in area, and will be located 5 ft from the side and rear property lines. The new structure will be approximately 8 ft from the existing house on the site, exceeding the 5-ft minimum requirement established in MMC Subsection 19.502.2.A.1.b(3).

As addressed in Finding 5, the proposed activity will comply with the relevant standards of the Willamette Greenway overlay zone. As addressed elsewhere in Finding 6, the proposed activity is compliant with the other standards of MMC 19.905.

The Planning Commission finds that this standard is met.

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

As addressed in Finding 5-b-10, the proposed development is consistent with all relevant polices in the Comprehensive Plan.

The Planning Commission finds that this standard 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.*

The Engineering Department has reviewed the proposal and confirmed that existing public transportation facilities and public utilities are adequate to serve the proposed development.

The Planning Commission finds that this standard is met.

The Planning Commission finds that the proposed development meets all of the approval criteria outlined in MMC 19.905.4.A for a major modification to an existing conditional use.

c. MMC Subsection 19.905.5 Conditions of Approval

MMC 19.905.5 establishes the types of conditions that may be imposed on a conditional use to ensure compatibility with nearby uses. Conditions may be related to a number of issues, including access, landscaping, lighting, and preservation of existing trees.

The Planning Commission finds that, as proposed, the new development sufficiently mitigates any negative impacts as proposed and that no additional conditions are necessary to ensure compatibility with nearby uses.

d. MMC Subsection 19.905.6 Conditional Use Permit

MMC 19.905.6 establishes standards for issuance of a conditional use permit, including upon approval of a major modification of an existing conditional use. The provisions include a requirement to 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.

An advisory note has been included with the conditions of approval to outline the conditional use permit process.

The Planning Commission finds that the proposed development is consistent with the relevant standards established in MMC 19.905 for conditional uses.

7. The application was referred to the following departments and agencies on April 21, 2016:

- Milwaukie Building Department
- Milwaukie Engineering Department
- Milwaukie Operations Department (Stormwater Division)
- Clackamas Fire District #1
- Island Station Neighborhood District Association (NDA) Chairperson and Land Use Committee (LUC)
- Oregon Parks and Recreation Department
- Oregon Department of State Lands (DSL)
- Oregon Department of Fish and Wildlife
- Oregon State Marine Board
- Oregon Department of Transportation (ODOT)

The comments received are summarized as follows:

- a. **Chrissy Dawson, Engineering Tech II, Milwaukie Engineering Department:** MMC Chapter 19.700 Public Facility Improvements is not applicable to the proposed development.
- b. **Pam Denham, LUC Chair for Island Station NDA:** No objections to the application.

Conditions of Approval

1. At the time of submittal of the associated development permit application(s), the following shall be resolved:
 - a. Final plans submitted for development permit review shall be in substantial conformance with plans approved by this action, which are the plans stamped received by the City on April 8, 2016.
 - b. As needed, 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. Conditional Use Permit

As per MMC Subsection 19.905.6, the City will issue a conditional use permit upon approval of an application to allow major modification of an existing conditional use (including Willamette Greenway conditional uses). 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.

2. Construction Management Plan

The project area is within 100 ft of a designated Habitat Conservation Area (HCA). Although the proposed development will not disturb any portion of the HCA, the proximity of the project area to the HCA triggers the need for a construction management plan as per MMC Subsection 19.402.3.J. A construction management plan consistent with the

requirements of MMC Section 19.402.9 shall be submitted for review with the building permit application for the new structure.

3. Limitations on Development Activity

Development activity on the site shall be limited to 7:00 a.m. to 10:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. Saturday and Sunday, as per MMC Subsection 8.08.070(l).

4. Expiration of Approval

As per MMC 19.1001.7.E.1.a, proposals requiring any kind of development permit must complete both of the following steps:

- a. Obtain and pay for all necessary development permits and start construction within two (2) years of land use approval.
- b. Pass final inspection and/or obtain a certificate of occupancy within four (4) years of land use approval.



Dennis Egner, FAICP
Planning Director

cc: Tim Austin, LLC, applicant (637 SE Paropa Pl, Gresham, OR 97080)
Terrance & Esperanza Martin, property owners (11906 SE 19th Ave, 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: Island Station (*via e-mail*)
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