



May 11, 2017

Land Use File(s): WG-2017-001

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on May 9, 2017.

Applicant(s): Carter Case, Applicant's Representative
Owner(s) Rodger and Melody Forni
Location(s): 10663 SE Riverway Ln
Tax Lot(s): 11E35AB00400
Application Type(s): Willamette Greenway Conditional Use Review
Decision: Approved with Conditions
Review Criteria: Milwaukie Zoning Ordinance:

- MMC Section 19.302 High Density Residential Zones
- MMC Section 19.401 Willamette Greenway Zone
- MMC Section 19.905 Conditional Uses
- MMC Section 19.1006 Type III Review

Neighborhood(s): Historic Milwaukie

Appeal period closes: 5:00 p.m., May 26, 2017

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 Kolias, Associate Planner, at 503-786-7653 or koliasv@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on May 26, 2017, 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, Carter Case on behalf of Rodger and Melody Forni, has applied for conditional use approval in the Willamette Greenway Zone to expand the existing single-family home with 2 one-story additions and a garage addition at 10663 SE Riverway Ln. This site is in the Residential Zone R-2 and Willamette Greenway Zone WG, and requires Willamette Greenway Conditional Use approval. The land use application file number is WG-2017-001.
2. The proposed development will expand the existing home by 2,031 sq ft with all setbacks meeting minimum dimensional standards.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.401 Willamette Greenway Zone
 - MMC Section 19.905 Conditional Uses
 - 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. A public hearing was held by the Planning Commission on May 9, 2017, 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 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 project involves the alteration of natural site characteristics and constitutes "development" as defined in MMC Subsection 19.401.4. The proposed development is subject to 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 Statewide Planning Goal 15 - Willamette River Greenway defines “lands committed to urban use” 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. Economic, developmental and locational factors include such matters as ports, industrial, commercial, residential or recreational uses of property; the effect these existing uses have on properties in their vicinity, previous public decisions regarding the land in question, as contained in ordinances and such plans as the Lower Willamette River Management Plan, the city or county comprehensive plans, and similar public actions.”

The subject property is zoned for R-2 high density residential use and is already developed with a single family home. The land is committed to an urban use.

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

A portion of the project area, at the rear of the home, is at least 185 ft from the nearest point of the river and is an 8-ft expansion into the rear yard and will mimic the existing facade. The other addition to the east of the home is not visible from the river. The proposed development presents no significant impacts to the character of the river and is compatible.

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

Only 1 portion of the project area is visible from the river and is more than 185 ft from the river. The addition will not significantly affect visual corridors to the river for any of the adjacent properties. The other additions are not visible from the river.

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

The project area is separated from the river by residential development, including homes, garages, landscaping, and fencing to the south.

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

The subject property is separated from the river to the south by a vacant privately-owned parcel. The subject property is not adjacent to the river and does not limit public access to the river.

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

The site of the 2 additions is at least 185 ft from the nearest point of the river. The garage addition is on the other side of the house away from the river. The existing residential use is not water-oriented and is not directed toward the river.

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

The proposed development has limited visibility from the river and will have no effect on views between the river and downtown.

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

The site does not contain any identified natural resources.

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

The proposed development is not subject to review by the Design and Landmarks Committee (DLC).

(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. The applicable policies are:

- Intensification of uses, changes in use, or development of new uses are permitted only when consistent with the City's adopted Willamette Greenway Element, the Greenway Design Plan, the Downtown and Riverfront Land Use Framework Plan, and the Town Center Master Plan.
- Within the Willamette Greenway Boundary, a Willamette Greenway Conditional Use Permit must be obtained prior to any new construction or intensification of an existing use.
- The City will evaluate all proposals within the vicinity of the Greenway for their effect on access to the visual corridors to the Willamette River and Kellogg Lake.

As noted, these policies include the requirement of a conditional use permit for new development and intensification of existing uses; encouragement for uses that are not water-dependent or water-related to be directed away from the river; evaluation of development impacts to visual corridors; and limitations on authorizing the unrestricted public use of private land.

The proposed development is being reviewed through the conditional use process. The existing approved use is not water-related and is not directed toward the river; the proposed development will not affect that status. No public access through the subject property is proposed, and no public access will be required as a condition of approval of the proposed development.

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

The proposed development is not inconsistent with any known plans or programs of the Department of State Lands.

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

The subject property is more than 185 ft from the river, more than 150 ft beyond the 25-ft buffer prescribed by MMC 19.401.8.

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

The Planning Commission finds that the proposed development 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.

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 5-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 single family residence constructed in 1967 and is considered a defacto conditional use. The proposed development, which involves 2 additions to the home and an addition to the garage totaling 2,031sq ft to the existing home, 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 general criteria for approval of 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 approximately 24,450 sq ft in size. The property is developed with a single-family home approximately 2,435 sq ft in area. The proposed expansions to the north, east and south will add 2,031 sq ft to the home, with the largest addition being to the garage on the north side of the structure. All required setbacks will be met.

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 site is surrounded by residential development on three sides, with the MODA parking lot located to the east. The proposed development will not affect the existing site landscaping except for a low planting bed, and will extend 6 ft toward SE Riverway Ln.

The Planning Commission finds that this standard is met.

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

No impacts have been identified by the proposed development.

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 addition will not have unmitigated nuisance impacts greater than what is normal for a residential development, which is an allowed use in the R-2 zone.

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.*

As noted in previous findings, the proposed development will comply with all applicable development standards, requirements of the underlying R-2 zone and other applicable overlay zones, and the 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 policies 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 does not have impacts that need to be mitigated beyond the standard requirements for a construction management plan and erosion control permit for work within 100 ft of a mapped water quality resource area. 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.

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 March 23, 2017:

- Milwaukie Building Department
- Milwaukie Engineering Department
- Clackamas Fire District #1
- Milwaukie Environmental Services Coordinator

- Oregon Parks and Recreation Department
- Oregon Department of Transportation
- Oregon Department of State Lands
- Oregon Marine Board
- Oregon Department of Fish and Wildlife
- Historic Milwaukie NDA

Comments received are as follows:

- Matt Amos, Clackamas Fire District:** No comments on this proposal.
- Rob Livingston, Environmental Services Coordinator:** The applicant for the project at 10663 SE Riverway Lane will need to submit a plan for controlling erosion from soil disturbing activities and obtain an erosion control permit. The proposed addition is 2,031 sq ft, which exceeds the 500 sq ft threshold for the erosion control permit per MMC 16.28.020(C).

Conditions of Approval

At the time of submittal of the associated development permit application(s), the following shall be resolved:

- Final plans submitted for development permit review shall be in substantial conformance with plans approved by this action, which are the plans stamped revised on March 27, 2017.
- 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.
- The work is within the 100-ft compliance area, but outside the water quality resource area. A construction management plan is required.
- The proposed additions total 2,031 sq ft, which exceeds the 500 sq ft threshold for an erosion control permit per MMC 16.28.020(C). A plan for controlling erosion from soil disturbing activities is required to obtain an erosion control permit.

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. 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(I).

3. 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.



David Levitan, AICP
Acting Planning Director

cc: Rodger and Melody Forni (10663 SE Riverway Ln, Milwaukie, OR 97222)
Carter Case, Applicant's Representative (232 SE Oak, Portland, OR 97214)
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 (*via e-mail*)
Interested Persons
Land Use File(s): WG-2017-001