



June 16, 2017

Land Use File(s): VR-2017-004 & ADU-2017-001

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on June 13, 2017.

Applicant(s): Sarah Roller
Location(s): 11630 SE 27th Avenue
Tax Lot(s): 1S 1E 36CA 1800
Application Type(s): Variance and Accessory Dwelling Unit
Decision: Approve with conditions
Review Criteria: **Milwaukie Zoning Ordinance:**

- MMC 19.302 Medium and High Density Residential Zones
- MMC 19.403 Historic Preservation Overlay Zone
- MMC 19.600 Off-Street Parking and Loading
- MMC 19.700 Public Facility Improvements
- MMC 19.910.1 Residential Dwellings
- MMC 19.911 Variances
- MMC 19.1006 Type III Review

Neighborhood(s): Lake Road and Historic Milwaukie

Appeal period closes: 5:00 p.m., July 1, 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 Denny Egner, Planning Director, at 503-786-7654 or egnerd@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on July 1, 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.

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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, Sarah Roller, has applied for approval to establish an Accessory Dwelling Unit (ADU) at 11630 SE 27th Avenue. This site is in the R-2 Zone. The land use application file number is VR-2017-004 and ADU-2017-001.
2. Description of proposal. To convert an existing accessory building into an accessory dwelling unit with a building foot print of 880 square feet where a maximum of 800 square feet is permitted.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 19.302 Medium and High Density Residential Zones
 - MMC 19.403 Historic Preservation Overlay Zone
 - MMC 19.600 Off-Street Parking and Loading
 - MMC 19.700 Public Facility Improvements
 - MMC 19.910.1 Residential Dwellings
 - MMC 19.911 Variances
 - MMC 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 on June 13, 2017, as required by law.
5. MMC 19.302 Medium and High Density Residential Zones
 - a. MMC 19.302.2 establishes uses allowed in the R-2 zone. An accessory dwelling unit is a permitted use subject to a Type II for compliance with MMC 19.901.1 Accessory Dwelling Units.
 - b. MMC 19.302.4 has several applicable development requirements. The standards are met as shown in Table 1.

Table 1. Overview of Compliance with Development Standards

| Residential Zone R-2 Development Standards | | | |
|-----------------------------------------------------|----------------------------------------------|-------------------------------------------------------------------|---------------------------------|
| Standard | Required | Existing/Proposed | Staff Comment |
| 1. Minimum Lot Size | 7,000 sq. ft. (duplex) | Existing 26,000 sq. ft. parcel to remain | <i>Complies with standard.</i> |
| 2. Minimum Lot Width | 50 ft. (all other lots) | Existing 130 ft. width will remain | <i>Complies with standard.</i> |
| 3. Minimum Lot Depth | 80 ft. (all other lots) | Existing 200 ft. depth will remain | <i>Complies with standard.</i> |
| 4. Minimum Street Frontage (std. lot) | 35 ft. (standard lot) | Existing 130 ft. width will remain | <i>Complies with standard.</i> |
| 5. Minimum Yard Requirements for Primary Structures | Front: 15 ft. Side: 5 ft. Rear: 15 ft. | Front: >40 ft. Side: >15 ft. Rear: >80 ft. | <i>Complies with standards.</i> |
| 6. Maximum Building Height for Primary Structures | 3 stories or 45 ft. whichever is less | Existing house is 2 stories and less than 45 ft. | <i>Complies with standard.</i> |
| 7. Side Yard Height Plan Limit | 25 ft. at 5 ft. from side lot line | Existing building locations and heights to remain the same | <i>Complies with standard.</i> |
| 8. Maximum Lot Coverage | 45% | Existing building coverage for house and accessory structure <20% | <i>Complies with standard.</i> |
| 9. Minimum Vegetation | 15% | Vegetated area not devoted to buildings or driveway coverage >70% | <i>Complies with standard.</i> |
| 10. Density | 11.6-17.4 min./max. units per acre | Other than an ADU, no additional development is proposed. | <i>Legal, pre-existing use.</i> |

- c. MMC 19.302.5 B.3. allows for a 5% increase in the allowed lot coverage for Detached Accessory Dwelling Units. As noted in Table 1, the existing lot and buildings substantially exceed this minimum standard.

The Planning Commission finds that these criteria are met.

6. MMC 19.403 Historic Preservation Overlay Zone

The Historic Preservation Overlay Zone is applied to the subject property on the city's zoning map. However, only the residence is designated as an historic resource – not the detached accessory structure.

The alteration and development requirements in MMC 19.403.5 only apply to the historic and not other development on the property.

This portion of the MMC does not apply to the proposed ADU in the existing accessory building.

The Planning Commission finds that these criteria are not relevant to the ADU application.

7. MMC Chapter 19.600 Off-Street Parking and Loading

- a. MMC 19.605.1 (Table 19.605.1) a property containing an ADU and primary dwelling must have 2 spaces. There is no maximum standard.

The property has sufficient paved space adjacent to the driveway for a minimum of 4 vehicles. This criterion is met.

The Planning Commission finds that these criteria are met.

8. MMC 19.700 Public Facility Improvements

- a. MMC 19.702 establishes standards for applicability.

The proposed ADU is a new dwelling unit, and therefore, the provisions of MMC 19.700 apply.

- b. MMC 19.703.1 requires a preapplication conference. However, if the Engineering Director determines the application is not complex, this requirement may be waived.

The preapplication conference was waived.

- c. MMC 19.703.2 requires a Transportation Impact Evaluation. However, because of the minor nature of this proposal, Engineering Director determined in accordance with MMC 19.704.1 that such an evaluation is not warranted.

The Transportation Impact Evaluation requirement was waived.

- d. MMC 19.703.3 provides the approval criteria pertaining to necessary transportation and infrastructure to support new development.

The Engineering director has determined that the proposed ADU is sufficiently served to satisfy the requirements in this MMC section, with the exception of current sidewalk and ADA standards. These will be satisfied through compliance with recommended Conditions of Approval 2.c. and 2.d.

- e. MMC 19.705 requires provision of transportation facility improvements, which are “roughly proportional” to the potential impacts of the development, and that the Engineering Director shall conduct this analysis.

The Engineering Director has determined that the only improvements necessary relate to bringing the existing public sidewalk and driveway apron along the property frontage into to compliance with current city standards.

The requirements of this MMC section will be met as required by recommended Conditions of Approval 2.c. and 2.d.

- f. MMC 19.705 requires provision of transportation facility improvements, which are “roughly proportional” to the potential impacts of the development, and that the Engineering Director shall conduct this analysis.

The Engineering Director has determined that the only improvements necessary relate to bringing the existing public sidewalk and driveway apron along the property frontage into to compliance with current city standards. The requirements of this

MMC section will be met as required by recommended Conditions of Approval 2.c. and 2.d.

- g. MMC 19.708.1 requires compliance with general street design standards. Of the standards in this section, the relevant subsections are addressed below:
- (1) MMC 19.708.1.A. Access Management requires compliance with MMC 12.16.040 by reference. This MMC section has requirements for accessway design, location, and number.
 - (2) MMC 19.708.1.B. Clear Vision requires compliance with MMC 12.24 by reference.

The Engineering Directors finds that with the exception of needing ADA design for the driveway apron (addressed by Conditions of Approval 2.d and 2.e), the existing accessway satisfies MMC standards for location, spacing, and vision clearance as required by MMC 19.708.1, 12.16, and 12.24.

- h. MMC 19.708.2 establishes street design and improvement standards.

The Engineering Director has determined that the applicable standards are met with the exception of the sidewalk, which will be addressed by Conditions of Approval 2.c. and 2.d.

The requirements of this MMC section will be met as required by recommended Conditions of Approval 2.c. and 2.d.

- i. MMC 19.708.3 requires sidewalks along public street frontages. Subsection MMC 19.708.3.A.2 requires sidewalks to comply with Americans with Disabilities Act (ADA) requirements.

The Engineering Director has determined that the existing sidewalk and driveway apron will need to be replaced in order to meet city and ADA requirements. The requirements of this MMC section will be met as required by recommended Condition of Approval C.

- j. MMC 19.708.4 establishes bicycle facility standards.

The Engineering Director has determined that bicycle facilities are not required on this portion of SE 27th Avenue.

- k. MMC 19.708.5 establishes standards for pedestrian and bicycle paths.

The property is not within a designated path corridor, and therefore, this MMC section does not apply.

- l. MMC 19.708.6 establishes standards for transit facilities.

SE 27th Avenue is not classified as a transit route, and therefore, this MMC section does not apply.

The Planning Commission finds that the relevant criteria are met.

9. MMC 19.910.1 Residential Dwellings

- a. MMC 19.910.1 establishes the review process and standards for ADU applications.

The applicant proposes convert an existing detached accessory building with a building footprint of 880 square feet into a detached ADU.

The Planning Commission finds that the request is subject to a Type II review, which is applicable to detached ADU applications. This is being reviewed in conjunction with the Type III review of the variance application to exceed the maximum ADU building footprint of 800 square feet.

- b. MMC 19.910.1 D. 2. establishes criteria for approving a detached ADU request through a Type II review.

- (1) The standards in Subsection 19.910.1.D.1. are met

These criteria are addressed in report Section 7. c. below.

- (2) The ADU is compatible with the existing development on the site, and on adjacent lots, in terms of architectural style, materials, and colors.

This criterion is met because the building proposed to house the ADU has been on the property for years. The exterior siding, architectural style, and color are consistent with the house on the property. Due to the substantial setbacks from surrounding homes and its ability to satisfy all MMC standards (except for the 800 sq. ft. maximum footprint), the proposed ADU will be compatible with surrounding residences and development.

- (3) The massing of the ADU and its placement on the site maximizes privacy for, and minimizes impacts to, adjacent properties.

This criterion is met because the proposed ADU is a 1-story building, and the closest adjoining residence to the north is over 40 feet away.

- (4) There will be an appropriate level of screening for nearby yards and dwellings

This criterion is met because there is a significant distance between the proposed ADU and the closest residential property to the north. In addition, there is significant mature vegetation on the subject property and adjoining property to provide visual screening.

- c. MMC 19.910.1 D. 1. includes supplemental criteria to MMC 19.910.1.D.2 for approving a detached ADU request through a Type II review.

- (1) An ADU is an allowed use in the base zone and any applicable overlay zones or special areas.

This criterion is met because an ADU is permitted in the R-2 Zone, and there are no overlay zones that prohibit ADUs.

- (2) The primary use of property for the proposed ADU is a single-family detached dwelling

This criterion is met because the property has one single-family residence as the primary use.

- (3) One ADU per lot is allowed.

This criterion is met because the proposed ADU would be the only one on the subject property.

- (4) The standards in Subsection 19.910.1.E are met

These criteria are addressed in report Section 9.d. below.

- (5) The proposal complies with all other applicable standards of this title.

This criterion is satisfied because it meets or exceeds all applicable standards as demonstrated in the findings of this report. The one standard, which is not met, pertaining to maximum building footprint is addressed under the variance provisions in MMC 19.911.

- d. MMC 19.910.1 E. 4. establishes criteria for approving a detached ADU request.

Table 2. Detached ADU Standards Summary

| Detached ADU Standards (from MMC Table 19.910.1.E.4.b.) | | | |
|----------------------------------------------------------------|-------------------------------------------------------------------|-------------------|------------------------------------------------------|
| Standard | Required | Proposed | Staff Comment |
| 1. Maximum Structure Footprint | 800 sq. ft. | 880 sq. ft. | <i>Exceeds standard requiring variance approval.</i> |
| 2. Maximum Structure Height | 25 ft. | 1 story / <25 ft. | <i>Complies with standard.</i> |
| 3. Required Side and Rear Yard | 5 ft. | >40 ft. | <i>Complies with standard.</i> |
| 4. Required Front Yard | 10 ft. behind front yard or minimum of 40 ft. from front lot line | >40 ft. | <i>Complies with standard.</i> |

- e. MMC 19.910.1 E. 4.c. contains 5 design standards of which a detached ADU must comply with 2 of them.

Because this a conversion of an existing structure established prior to December 1, 2012, MMC 19.910.1.E.4.e. is excused from meeting the design standards. The design standards do not apply in this case.

- f. MMC 19.910.1.E.4.d. contains privacy standards.

This ADU is not subject to the privacy standards in MMC 19.910.1.E.4.d.(2) because it is over 20 feet away from side and rear lot lines (MMC 19.910.1.E.4.d.(2)). This criterion is met.

The Planning Commission finds that the relevant criteria are met.

10. MMC Chapter 19.911 Variances

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

The applicant proposes to increase the maximum allowable building footprint for an ADU of 800 square feet to 880 square feet. This MMC section requires a Type III Variance review for this kind of modification to the standards.

The Planning Commission finds that the request is subject to a Type III Variance review.

- b. MMC 19.911.4 establishes criteria for approving a variance request.

The applicant has chosen to address the discretionary relief criteria of MMC 19.911.4.B.1.

- (1) Discretionary relief criteria

- (a) 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 existing detached accessory building to be converted to a detached ADU has an 880-square foot footprint. The applicant has shown that reducing the size of the existing building to meet the 800-square foot standard would be difficult and costly. A variance would enable the creation of a new ADU at a reasonable cost. Because of the low profile of the existing building, which has been on the property for many years, its conversion to an ADU is expected to be compatible with surrounding development. This criterion is met.

- (b) 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:

- (i) The proposed variance avoids or minimizes impacts to surrounding properties.

The proposed variance avoids creating adverse impacts for surrounding properties. The proposed ADU easily exceeds the building height, setback, and lot coverage requirements of the R-2 Zone. The change in use of the existing building from a guest house and office to an ADU will have no appreciable change in the character of activity on the property. This criterion is met.

- (ii) The proposed variance has desirable public benefits.

The proposal will create a modest public benefit by providing additional housing opportunity and by meeting the current density requirements of the R-2 Zone. This criterion is met.

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

The existing built and natural environment will not be affected by this proposal because the building, driveway, and parking will not be changed and all landscaped areas will be unaffected. This criterion is met.

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

As noted herein, the building and site improvements are already in place. In addition, the use of the building will be minor in terms of activities on the property and traffic. This criterion is met.

The Planning Commission finds that these criteria are met.

11. MMC Chapter 19.1006 Type III

Notice has been provided in accordance with MMC Subsection 19.1006.3 Type III Public Notice. A public hearing was held on June 13, 2017 as required by law.

The Planning Commission finds that the appropriate procedure has been followed for this application.

12. The application was referred to the following departments and agencies on May 4, 2017:

- Milwaukie Building Division
- Milwaukie Engineering Department
- Milwaukie Community Development Director
- Clackamas County Fire District #1
- Lake Road and Historic Milwaukie Neighborhood District Association Chairpersons

The comments received are summarized as follows:

- Paul Hawkins indicated via email that the proposal appeared to be appropriate, and he supports the application.
- The Milwaukie Engineering Department memorandum dated May 25, 2017 (attached). The Engineering Department supports the application subject to conditions.

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 11, 2017. This includes:
 - a. Conversion of the existing detached accessory building into an accessory dwelling unit.
 - b. Not expanding the building footprint of the accessory dwelling unit to be larger than 880 square feet.
2. Prior to occupancy permit approval for the accessory dwelling unit, the following shall be resolved in coordination with the Engineering Department:
 - a. Obtain a right-of-way permit for construction of all required public improvements listed in these recommended conditions of approval.
 - b. Pay all required fees for the public improvements.
 - c. Replace all existing sidewalk not in conformance with the American with Disability Act (ADA) in accordance with the City of Milwaukie Public Works Standards.
 - d. Construct a driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA) in conformance with the City of Milwaukie Public Works Standards.
 - e. Remove all signs, structures, or vegetation in excess of three feet in height located in “vision clearance areas” at intersections of streets, driveways, and alleys fronting the proposed development, unless otherwise approved.
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 Subsection 19.1001.7.E, this land use approval will expire if not utilized within 4 years from the date of approval.
5. Prior to final inspection of any building permit, the following shall be resolved:
 - a. Provide a narrative describing all actions taken to comply with these conditions of approval.

- 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.
 - c. Construct and receive Engineering Department inspection for all required public improvements.
6. The level of use approved by this action shall be permitted only after issuance of a certificate of occupancy.

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.

7. Prior to commencement of any earth-disturbing activities, the applicant shall obtain an erosion control permit.
8. 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, FAICP
Planning Director

- cc: Sarah Roller, 2679 SE Davis Ct Milwaukie OR 97267
Planning Commission (*via e-mail*)
Alma Flores, Community Development Director (*via e-mail*)
Chuck Eaton, Engineering Director (*via e-mail*)
Richard Nasiombe, Associate 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): Lake Road and Historic Milwaukie (*via e-mail*)
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