



August 21, 2017

Land Use File(s): ADU-2017-003

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on August 21, 2017.

Applicant(s): Michael Hall
Appellant (if applicable): Lloyd Martindale
Location(s): 4327 SE Mason Ln
Tax Lot(s): 12E30BC00603
Application Type(s): Accessory Dwelling Unit (ADU)
Decision: Approved with Conditions
Review Criteria: Milwaukie Zoning Ordinance:

- MMC 19.301 Low Density Residential Zones
- MMC 19.600 Off-Street Parking and Loading
- MMC 19.700 Public Facility Improvements
- MMC 19.910.1 Accessory Dwelling Units
- MMC 19.1005 Type II Review

Neighborhood(s): Lewelling

Appeal period closes: 5:00 p.m., September 5, 2017

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1005 Type II 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 Mary Heberling, Assistant Planner, at 503-786-7658 or heberlingm@milwaukieoregon.gov, if you wish to view this case file or visit the project webpage at <http://www.milwaukieoregon.gov/planning/ADU-2017-003>.

This decision may be appealed by 5:00 p.m. on September 5, 2017, which is 15 days from the date of this decision.¹ Any person who is adversely affected or aggrieved by this decision may appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie Planning Commission 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

¹ As per MMC Section 19.1010, if the 15th day falls on a weekend or legal holiday, the end of the appeal period shall be extended to the end of the next business day.

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, Michael Hall, has applied for the approval of a proposed Accessory Dwelling Unit (ADU). This site is in the Residential R-7 Zone. The land use application file number is ADU-2017-003.
2. The proposal is for a 678 sq ft Type II ADU at the rear of the property. A single-family residence exists on the property currently.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.301 Low Density Residential Zones
 - MMC Chapter 19.600 Off-Street Parking and Loading
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Chapter 12 Streets, Sidewalks, and Public Places
 - MMC Subsection 19.910.1 Accessory Dwelling Units
 - MMC Chapter 19.1000 Review Procedures

4. MMC 19.1005 Type II Review

The application has been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review.

5. MMC 19.301 Low Density Residential Zones

A. MMC 19.301 establishes the uses and development standards that are applicable to this site.

(1) MMC 19.301.2 Allowed Uses in Low Density Residential Uses

Accessory Dwelling Units are permitted in the R-7 zone as a Type I or Type II process.

The Planning Director finds that the proposed ADU is permitted.

(2) MMC 19.301.4 Development Standards

Table 1 summarizes the existing and proposed conditions on the subject property with respect to the standards relevant to this proposal.

Table 1. Compliance with Relevant R-7 Standards

R-7 Zone	Standards	Existing	Proposed ADU
Lot Coverage	30% maximum	Approx. 19%	Approx. 27%

R-7 Zone	Standards	Existing	Proposed ADU
Minimum Vegetation	<i>30% minimum</i>	<i>Approx. 61%</i>	<i>53%</i>

The Planning Director finds that the proposal complies with the applicable development standards of the R-7 zone.

6. MMC 19.605 Vehicle Parking Quantity Requirements

The purpose of this section is to ensure that development provides adequate, but not excessive, vehicle parking based on their estimated parking demand.

A. MMC 19.605.1 Minimum and Maximum Requirements

For Accessory Dwelling Units (ADU), Type I or Type II, the property containing an ADU and primary dwelling must have 2 off-street parking spaces for the minimum. There is no maximum.

The site of the proposed ADU has 2 off-street parking spaces per the 2-car garage attached to the primary structure.

The Planning Director finds that the standard is met.

7. MMC 19.700 Public Facility Improvements

MMC 19.700 applies to partitions, subdivisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that result in any projected increase in vehicle trips or any increase in gross floor area on the site.

The applicant proposes to construct an accessory dwelling unit. The modification triggers the requirements of MMC 19.700.

MMC 19.700 applies to the proposed development.

A. MMC 19.702.1 establishes standards for applicability

The proposed development is a new dwelling unit.

The Planning Director finds that the standards of 19.700 apply to the proposal.

B. MMC 19.703 Review Process

a. MMC 19.703.1 Preapplication Conference

The requirement for a preapplication conference has been waived.

The Planning Director has approved the waiver for the preapplication conference.

b. MMC 19.703.2 Application Submittal

The engineer director has determined that the development will not require a Transportation Impact Evaluation in Accordance with MMC 19.704.1. Therefore, a Transportation Facilities Review in accordance with MMC 19.703.2 will not apply.

The Planning Director finds that this standard is met.

c. MMC 19.703.3 Approval Criteria

For all proposed development that is subject to Chapter 19.700 per Section 19.702, the required development permit and/or land use application shall demonstrate compliance with the following approval criteria at the time of submittal.

The proposed development is consistent with the applicable subsections of 19.703.3 by constructing a 5-ft setback sidewalk in conformance with the American with Disabilities Act (ADA) the full width of development property in accordance with the City of Milwaukie Public Works Standards. The applicant will also need to construct a driveway approach to meet all guidelines of the ADA in conformance with the City of Milwaukie Public Works Standards.

As conditioned, the Planning Director finds that the approval criteria is met.

C. MMC 19.705 Rough Proportionality

This section requires that transportation impacts be mitigated in proportion the effects the development has on the transportation system.

The proposed development does not trigger mitigation of impacts beyond the required frontage improvements for a 5-ft setback sidewalk and a driveway approach.

As conditioned, the Planning Director finds that the standard is met.

D. MMC 19.708.1 General Street Requirements and Standards

This section requires all development shall comply with access management, clear vision, street design, connectivity, and intersection design and spacing standards.

a. MMC 19.708.1.A Access Management

All development subject to Ch 19.700 shall comply with access management standards contained in Ch. 12.16 access management standards address driveway spacing and width.

The existing driveway conforms to the requirements of MMC Chapter 12.16. No changes to the existing driveway are proposed.

As conditioned, the Planning Director finds that the standard is met.

b. MMC 19.708.1.B Clear Vision

All development subject to Chapter 19.700 shall comply with clear vision standards contained in Ch 12.24.

The proposed development will require removal of all signs, structures, or vegetation in excess of 3 ft in height located in “vision clearance areas” at intersections of streets, driveways, and alleys fronting the proposed development, unless otherwise approved.

As conditioned, the Planning Director finds that the standard is met.

E. MMC 19.708.3 Sidewalk Requirements and Standards

This section requires sidewalks to be provided on the public street frontage of all development per the requirements of this chapter.

The proposed development has a curb along the entire frontage, but no sidewalk. The applicant will be required to construct a 5-ft setback sidewalk. The ADA requirements for public sidewalks shall apply where there is a conflict with city standards.

As conditioned, the Planning Director find that this standard is met.

As conditioned, the Planning Director finds that the standards in 19.700 are met.

8. MMC Chapter 12 – Streets, Sidewalks, and Public Places

A. MMC Chapter 12.08 – Street & Sidewalk Excavations, Construction, and Repair

This will apply to all construction that is completed in the right-of-way.

The public improvement process will follow MMC 12.08.020.

The proposed development, is consistent with MMC 12.08.020

B. MMC Chapter 12.16 – Access Management

a. MMC 12.16.040 establishes standards for access (driveway) requirements.

1. MMC 12.16.040.A requires that all properties be provided street access with the use of accessway.

The proposed development is consistent with MMC 12.16.040.A.

The Planning Director finds that this standard is met.

2. MMC 12.16.040.C Access Way Locations

- i. MMC 12.16.040.C.1 Double Frontage

This section does not apply.

- ii. MMC 12.16.040.C.2 Limiting Driveway Access from Arterials and Collectors

This section does not apply.

- iii. MMC 12.16.040.C.3 Distance from the Property Line

The proposed development is consistent.

- iv. MMC 12.16.040.C.4 Distance from Intersection

The proposed development is 550 ft from the intersection and complies with the required 45 ft accessway spacing from intersections.

The Planning Director finds the standards for accessway locations are met.

3. MMC 12.16.040.D Number of Accessway Locations

- MMC 12.16.040.D.1 Safe Access

The applicant is proposing a single accessway location.

The Planning Director finds that this standard is met.

The Planning Director finds that the standards in MMC Chapter 12 are met.

9. MMC 19.910.1 Accessory Dwelling Units

A. MMC 19.910.1.D Approval Standards and Criteria

An application for an ADU reviewed through a Type II review shall be approved if the following criteria are met.

- a. The standards in Subsection 19.910.1.D.1 are met.

The standards for 19.910.1.D.1 are met through:

1. 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 outright in the R-7 zone. There are no applicable overlay zones or special areas.

2. The primary use of property for the proposed accessory dwelling unit is a single-family detached dwelling.

The site of the proposed ADU does have an existing single-family detached dwelling that is being used at the primary use of the property. The applicant lives in that existing single-family dwelling.

3. One accessory dwelling unit per lot is allowed.

The applicant is only proposing one ADU.

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

See Finding 9.B below that shows these development standards are met.

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

See Finding 9 to see how these development standards are met.

The Planning Director finds that the standards of 19.910.1.D.1 are met.

- b. 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 color.

The siding materials and style are proposed to be similar to the existing home on the site and the surrounding homes in the neighborhood. The existing home is single story, but a variety of single story and two-story homes are within the neighborhood. The ADU is compatible with their architectural style and materials.

The Planning Director finds that this criterion is met.

- c. The massing of the accessory dwelling unit and its placement on the site maximizes privacy for, and minimizes impacts to, adjacent properties.

The proposed height of the ADU is 18 ft, which is below the maximum height standard for a Type II ADU. The ADU will have a rear yard setback of 22 ft, which is greater than the minimum required 20-ft rear yard setback for a Type II ADU. The side yard setback is 5 ft, which is allowed for Type II ADUs. The reason for the 5 ft side yard setback is to make it easier for future residents to access the ADU with their car and be able to visually see Mason Ln without being blocked by the existing home on the site.

The Planning Director finds that this criterion is met.

- d. 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 property has an existing fence that provides screening for the rear yard neighbors and side yard neighbors. There is also vegetated screening on the side yard where the proposed ADU will be closest as well. The proposed ADU design does not have a window on the second floor that faces the rear yard so that privacy for the neighbors to rear of the property can be ensured.

The Planning Director finds that this criterion is met.

The Planning Director finds that the approval criteria for a Type II ADU is met.

B. MMC 19.910.1.E.4 Standards for Detached Accessory Dwelling Units

Table 2 summarizes the standards and proposed conditions on the subject property.

Table 2. Compliance with Relevant Type II ADU Standards

R-7 Zone	Standards	Proposed ADU
Maximum Structure Floor Area	800 sq ft or 75% of the main dwelling	678 sq ft (75% of 905 sq ft)
Maximum Structure Footprint	800 sq ft	564 sq ft
Maximum Structure Height	25 ft, limited to 2 stories	18.8 ft
Required Side Yard Setback	5 ft	5 ft
Required Rear Yard Setback	Minimum 20 ft	22 ft
Required Front Yard	10 ft	55 ft

The Planning Director finds that the standards are met.

b. MMC 19.910.1.E.4.c Design Standards

- a. 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.
 - i. 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.
 - ii. 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.
 - iii. Roof eaves with a minimum projection of 12 in from the intersection of the roof and the exterior walls.
 - iv. Horizontal lap siding between 3 to 7 in wide (the visible portion once installed). The siding material may be wood, fiber-cement, or vinyl.
 - v. Window trim around all windows at least 3 in wide and 5/8 in deep.

The proposed ADU meets 2 of the design standards listed above. The proposal provides roof eaves with a minimum projection of 12 in. It also is proposing window trim around all windows at least 3 in wide and 5/8 in deep.

The Planning Director finds that the proposal meets the design standards requirement.

- b. MMC 19.910.1.E.4.d states that an accessory dwelling unit structure with a floor-to-ceiling height of 9 ft or more is required to have a roof pitch of at least 4/12.

The proposed ADU is providing a 4/12 roof pitch.

The Planning Director finds that this standard is met.

2. MMC 19.910.1.E.4.d Privacy Standards

A detached accessory dwelling unit meets privacy standards if either are met:

- a. All windows on a wall shall be placed in the upper third of the distance between a floor and ceiling.
- 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.

The site of the proposed ADU has an existing fence that has privacy slats. The fence is located on the side and rear property line where the ADU is closest the adjacent property. The proposed ADU design does not have windows on the second floor that would provide views from the ADU residents into the property to the rear of the site.

The Planning Director finds that this standard is met.

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

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

As per MMC Subsection 19.1001.7.E.2.b, land use approvals shall expire unless both steps noted above have been completed or unless the review authority specifies a different expiration date in the land use decision to accommodate large, complex, or phased development projects.

11. The application was referred to the following departments and agencies on 3/24/17:

- Milwaukie Building Division
- Milwaukie Engineering Department
- Clackamas County Fire District #1
- Hector/Campbell Neighborhood District Association Chairperson and Land Use Committee
- Clackamas County
- Metro
- Trimet

12. Public Comment

Public notice was sent to all property owners within 300 ft of the site, as well as, signage at the site. Below are the comments received by the public about the application.

Brian and Kate Kurzbein, Property Owners at 4422 SE Mason Hill Dr:

The comments received from the Kurzbein's expressed concern over the ability to keep the neighborhood low-density with the addition of an ADU. They feel that it may make the area feel more crowded and cramped with more people. They are directly to the rear of the applicant's property and the ADU would be closer to their rear property line than existing the house of the applicant's property.

The Kurzbein's were also concerned about privacy with the new ADU being 22 ft away from their rear property line and fence. They feel that it would be easy to see into their yard and the proposal does not include any remedy for their loss of privacy. They feel that it is the responsibility of the applicant to provide a more private fence line to maintain their privacy and to abide by the code requirement.

The final concern was regarding the public notice signage for the application. They felt that it wasn't visible for vehicles driving Westbound on Mason Ln and only could be seen driving Eastbound due to the color of the sign. They stated it was not possible to read the sign from the street.

Staff Response

The size of the lots, including the applicant's site, surrounding the proposal site are typically around 7,000 to 8,000 sq ft. Lots in the R-7 zone must be 7,000 sq ft at a minimum. The lots surrounding the proposed site for the ADU are all zoned R-7. The size of the lots are consistent with the low-density R-7 zone, which allows by-right on a single lot, both a single-family home and an ADU.

ADUs are permitted in low-density zones like R-7, but must meet setback standards and height and size restrictions to limit impacts to surrounding properties. Since the proposed ADU is over 600 sq ft and over 15 ft high, it is being reviewed through a Type II process which requires the City to notify surrounding property owners regarding the proposal.

Per MMC 19.910.4.d.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." The walls of an ADU that face adjacent residential property would be meet privacy standards if visual screening is in place along the portion of the property line next to the wall, plus an additional 10 lineal ft beyond the corner of the wall. Acceptable visual screening is required to be opaque and at least 6 ft high. It may consist of a fence, a wall or evergreen shrubs. Existing features on the site can be used to comply with this standard. The rear yard fence is around 6 ft high and has privacy slats. The proposed ADU is also 22 ft away from the rear yard fence and has purposefully not included any windows on the second floor of the ADU facing the rear property to provide privacy for neighbors and the residents of the ADU. There is also vegetated visual screening for the property to the side of the ADU. According to the existing features on the property, the applicant's proposal meets the privacy standards for ADUs.

The staff also had the applicant move the public notice sign to be close to the street for more visibility for vehicle drivers and pedestrians. The public comment period was then re-opened for another 2 weeks until August 16, 2017.

Brian and Kate Kurzbein, Property Owners at 4422 SE Mason Hill Dr.
Carl Schmidt, Property Owner at 4413 SE Mason Hill Dr.
Mr. Crawford, Property Owner at 4464 SE Mason Hill Dr.
Property Owner at 4390 SE Mason Hill Dr.

This joint comment was received after the comment period was extended 2 more weeks. The main concern in this comment was around the height and size of the proposed ADU. They believe it does not conform to the restrictions outlined in the Approval Standards and Criteria, MMC 19.910.1.D.2.b and 19.910.1.D.2.c. The proposed ADU is 227 sq ft less than the 905 sq ft home on the existing property and they feel this is too large for an ADU. They also feel that the height of the ADU at two stories is incompatible with the style of the existing single level home on the site. They feel the height and size of the proposed ADU would negatively impact the quality of the neighborhood and significantly reduce privacy for all adjacent neighbors. They would like to propose a more modest single level ADU that is more compatible with the existing house.

Staff Response

A Type II ADU is allowed in an R-7 zone, at maximum height of 25 ft and is limited to 2 stories. The applicant is proposing a height of 18 ft and 2 stories. The proposed height is allowed per the Type II standards for Detached ADUs. MMC 19.910.1.D.2.b provides the approval standards and criteria for Type II ADUs. This particular approval criterion says, *“The ADU is not incompatible with the existing development on the site, and on adjacent lots, in terms of architectural style, materials, and colors.”* The existing house on the site is single story, however, there is a mix of single story and two story homes on both Mason Ln and Mason Hill Dr. The architectural style and material also matches the existing home on the site and the homes in the neighborhood. Based on these facts, the proposed ADU meets the approval criteria for a Type II ADU.

The maximum allowed floor area for ADUs is 800 sq ft or 75% of the floor area of the primary structure, whichever is less. Since the existing house on the site is 905 sq ft, 75% of 905 is 678 sq ft, which is the proposed floor area for the ADU. The applicant is meeting the standards for its maximum allowed floor area. As mentioned in the staff response above, the proposed ADU also meets setback requirements and is purposefully designed to create more privacy for the surrounding neighbors and future residents of the ADU.

Conditions of Approval

1. 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. Construct a 5-ft setback sidewalk 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.
2. 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.

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. Prior to commencement of any earth-disturbing activities, the applicant shall obtain an erosion control permit.
2. 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: Michael Hall (4327 SE Mason Ln)
Lloyd Martindale (3560 NE 120th Ave)
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): Lewelling (*via e-mail*)
Interested Persons
Land Use File(s): ADU-2017-003