



CITY OF MILWAUKIE

February 4, 2019

Land Use File(s): ADU-2018-003

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on February 4, 2019.

Applicant(s):	Jon Townsend
Location(s):	10165 SE 37 th Ave.
Tax Lot(s):	11E25DC00600
Application Type(s):	ADU
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Zoning Ordinance: <ul style="list-style-type: none">• MMC 19.301 Low Density Residential• MMC 19.600 Off-Street Parking and Loading• MMC 19.700 Public Facility Improvements• MMC 19.910.1 Accessory Dwelling Units• MMC 12.00 Streets, Sidewalks, and Public Places
Neighborhood(s):	Ardenwald-Johnson Creek

Appeal period closes: 5:00 p.m., February 19, 2019

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 www.milwaukieoregon.gov/planning/ADU-2018-003.

This decision may be appealed by 5:00 p.m. on February 19, 2019, 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.

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.

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.

Exhibits

1. Recommended Findings in Support of Approval
2. Recommended Conditions of Approval

Director's Declaration of Impartiality

I certify that neither I nor any member of my immediate family has a material, personal, or financial relationship with the applicant. I further certify that no other relationship, bias, or ethical conflict exists which would have prevented me from evaluating the land use application solely on its merits and in accordance with the Milwaukie Municipal Code.

Decision

- Approved
 Approved with Conditions
 Denied



Dennis Egner, FAICP
Planning Director

cc: Jon Townsend (10165 SE 37th Ave.)
Applicant's representative: Harry Hanna, Sentaur Inc. (via email, info@sentaur.com)
Planning Commission (via email)
Alma Flores, Community Development Director (via email)
Kelly Brooks, Acting Engineering Director (via email)
Alex Roller, Engineering Technician II (via email)
Samantha Vandagriff, Building Official (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Technician (via email)
Mike Boumann and Izak Hamilton, CFD#1 (via email)
NDA(s): Ardenwald-Johnson Creek (via email)
Interested Persons
Land Use File(s): ADU-2018-003

EXHIBIT 1
Recommended Findings in Support of Approval
File #ADU-2018-003, 37th Ave ADU – 10165 SE 37th Ave.

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, Jon Townsend, has applied for approval to construct a detached accessory dwelling unit (ADU) in the northwest back corner of the lot at 10165 SE 37th Ave. This site is in the Residential R-7 Zone. The land use application file number is ADU-2018-003.
2. The applicant has submitted an application for a new detached, 733 sq ft, ADU in the northwest corner of the backyard. The ADU will be accessed via a walkway.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 19.301 Low Density Residential Zones
 - MMC 19.607 Off-street Parking for Residential Areas
 - MMC 19.700 Public Facility Improvements
 - MMC 19.910.1.E.3 Standards for Attached Accessory Dwelling Units
 - MMC 19.1004 Type II review
4. 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 development standards that are applicable to this site. Table 1 summarizes the existing and proposed conditions on the subject property with respect to the standards relevant to this proposal.

The existing house is centered on the front half of the lot and is located a little more than 20 ft from 37th Ave. There is an existing detached garage to the southwest of the existing home and it is approximately 50 ft from the front property line. A detached storage structure is located directly behind the detached garage and is over 70 ft from the front property line.

The applicant has proposed a 733 sq ft detached ADU that will be located at least 40 ft from the front property line and 5 ft from the north property line (side property line) and 10 ft from the west property line (rear property line).

Table 1. Compliance with relevant R-7 standards

R-7 Zone	Standards	Existing	Proposed
Lot Coverage	30% max.	Approx. 13%	Approx. 19%
Minimum Vegetation	30% min.	Approx. 84%	Approx. 78%
Front Yard Setback	20 ft	20+ ft (house)	No change

R-7 Zone	Standards	Existing	Proposed
		50+ ft (existing detached garage) 70+ ft (existing storage structure)	(See ADU yard requirements in Finding 8)
Side Yard Height Plane	a. Height above ground at minimum required side yard depth b. Slope of plane	a. 20 ft b. 45 degrees	Side yard height plane is met

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

6. MMC 19.600 Off Street Parking and Loading

- a. MMC 19.605.1 establishes minimum and maximum off-street parking requirements for land uses.

Properties containing an ADU are required to have a minimum of 2 off-street parking spaces. Parking spaces must measure a minimum of 9 ft wide and 18 ft long.

The subject property has a detached garage providing 1 parking space. It also has 25 ft of the existing driveway, outside of the front yard setback, to use as the second off-street parking space. The driveway meets the dimensional standards for off-street parking spaces.

This standard is met.

7. MMC 19.700 Public Facility Improvements

- a. MMC 19.702 Applicability

MMC 19.702.E establishes the applicability of the provisions of MMC 19.700, including a new dwelling unit, any increase in gross floor area, land divisions, 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 is proposing to construct a new ADU, which is considered a new dwelling unit. MMC 19.700 applies to the proposed development.

- b. MMC 19.703 Review Criteria

MMC 19.703.3 establishes approval criteria for procedures, transportation facility improvements, and safety and functionality standards. The required development permit and/or land use application shall demonstrate compliance with that approval criteria.

Through conditions, the applicant will be required to pay a fee in lieu of construction for street frontage improvements. No system related impacts

have been identified and therefore no system improvements or fees are required

As conditioned, the proposed development is consistent with MMC 19.703.

c. MMC 19.704 Transportation Impact Evaluation

MMC 19.704 requires submission of a transportation impact study documenting the development impacts on the surrounding transportation system.

All trips for this proposed development affect SE 37th Ave, a local street. The new trips generated from the development are not significant enough to require direct mitigation and improvements to SE 37th Ave or its intersections. Rather, the impacts of new trips on SE 37th Ave will be addressed under MMC 19.708 below.

The Engineering Director determined that a transportation impact study was not required as the existence of impacts on the transportation system was evident.

MMC 19.704 does not apply to the proposed development.

d. MMC Section 19.705 Rough Proportionality

MMC 19.705 requires that transportation impacts of the proposed development be mitigated in proportion to its potential impacts.

The proposed development does trigger mitigation of impacts on the system.

MMC 19.705 does not apply to the proposed development.

e. MMC Section 19.708 Transportation Facility Requirements

MMC 19.708 establishes the City's requirements and standards for improvements to public streets, including pedestrian, bicycle, and transit facilities. The City's street design standards are based on the street classification system described in the City's Transportation System Plan (TSP).

1) MMC 19.708.1 General Requirements and Standards

- a) MMC 19.708.1.A establishes that all development subject to Chapter 19.700 shall comply with the access management standards contained in Chapter 12.16. Per 12.16.040.E.1, driveway approaches shall meet all applicable standards of the Americans with Disabilities Act and Milwaukie Public Works Standards.

All frontage improvement requirements (see the response to MMC 19.708.2 below) will be addressed through the building permit for the construction of the primary dwelling.

As conditioned, the standards are met.

- b) MMC 19.708.1.B establishes that clear vision requirements shall comply with the clear vision standards contained in Chapter 12.24.

Clear vision standards will be met per Chapter 12.24.

As conditioned, the standards are met.

- c) MMC 19.708.1.D states that development outside of the downtown zones is subject to the street requirements of the Milwaukie Public Works Standards.

The Milwaukie Transportation System Plan (TSP) and Transportation Design Manual classify the fronting portions of SE 37th Ave a local street. According to Table 19.708.2 Street Design Standards, the required right-of-way width for a local street is between 20 ft and 68 ft depending on the required street improvements. The required right-of-way needed for the required street improvements is 50 ft and the existing SE 37th Ave ROW is approximately 55 ft. Therefore, the applicant is not required to provide any dedication on the SE 37th Ave frontage.

The proposed development is consistent with MMC 19.708.1.D.

- 2) MMC 19.708.2 Street Design Standards

MMC 19.708.2 establishes standards for street design and improvements.

With new development, the City Public Works standards for a local street such as 37th Ave require improvement of a 5-ft sidewalk, a 5-ft landscape strip, curb and gutter, and street surface improvements. The requirement for these improvements is subject to an analysis that examines whether improvements are proportional to the impact of the development. In this case, the impact of a new ADU does not justify the full improvement of the entire 100-ft frontage of the site. Rather than require a partial improvement of the frontage, the City can accept a fee-in-lieu of construction as set forth in MMC 13.32.020.E. A condition for payment of a fee-in-lieu of construction of partial frontage improvements is being required.

As conditioned MMC 10.708.2 Street Design Standards is met.

- 3) MMC 19.708.3 Sidewalk Requirements and Standards

MMC 19.708.3.A.2 requires that sidewalks be provided on the public street frontage of all development and those sidewalks shall conform to ADA standards.

Per Finding #7.e.2), the applicant will provide a fee in lieu of construction for the required frontage improvements.

As conditioned, MMC 19.708.3 is met.

- 4) MMC 19.708.4 Bicycle Facilities

MMC 19.708.4 establishes standards for bicycle facilities.

The portion of SE 37th Ave fronting the proposed development is not classified as a bike route in the Milwaukie TSP. The applicant is not responsible for bike lane construction.

The proposed development is consistent with MMC 19.708.4.

8. MMC 12.00 Streets, Sidewalks, and Public Places

a. MMC 12.08 Street and Sidewalk Excavations, Construction, and Repair

MMC 12.08 establishes construction standards for streets and sidewalks.

These standards will apply to all construction that is completed in the right-of-way. If the existing driveway is modified, or if a second driveway is desired, all construction will meet the requirements of MMC 12.08.020.

b. MMC 12.16 Access Management

MMC 12.16.040 establishes standards for access (driveway) requirements.

If the existing driveway is modified, or if a second driveway is desired, all construction will meet the requirements of MMC 12.16.040.

9. MMC 19.910 Accessory Dwelling Units

a. MMC 19.910.1 establishes the design and development standards that are applicable to ADUs. Table 2 summarizes the existing and proposed conditions on the subject property with respect to the standards relevant to this proposal.

The applicant has proposed a 733 sq ft detached ADU located in the northwest corner of the backyard of the property.

Table 2. Compliance with relevant ADU standards

ADU	Type I	Type II	Proposed
Maximum Structure Footprint	600 sq ft	800 sq ft or 75% of the primary structure	733 sq ft
Maximum Structure Height	15 ft, limited to 1 story	25 ft, limited to 2 stories	12 ft
ADU Front Yard Setback	10 ft behind front yard (10' behind front façade of the primary dwelling) unless located at least 40' from the front lot line		At least 40 ft
Required Side and Rear Yard Setback	Base zone requirement	5 ft	5 ft (side) 10 ft (rear)
Design Standards	(1) 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.		

ADU	Type I	Type II	Proposed
	(a) 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.		A 10 ft deep covered porch is being proposed
	(b) 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.		n/a
	(c) Roof eaves with a minimum projection of 12 in from the intersection of the roof and the exterior walls.		n/a
	(d) Horizontal lap siding between 3 to 7 in wide (the visible portion once installed). The siding material may be wood, fiber-cement, or vinyl.		Horizontal lap siding is being proposed
	(e) Window trim around all windows at least 3 in wide and 5/8 in deep.		n/a
Privacy Standards	<p>(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.</p> <p>Privacy standards are required on or along wall(s) of a detached accessory dwelling unit, or portions thereof, that meet all of the following conditions.</p>		
	(a) The wall is within 20 ft of a side or rear lot line.		5 and 10 ft, yes
	(b) The wall is at an angle of 45 degrees or less to the lot line.		Yes, the wall is parallel to the side and rear property lines
	(c) The wall faces an adjacent residential property.		yes
	<p>(2) A detached accessory dwelling unit meets the privacy standard if either of the following standards is met.</p>		
	(a) All windows on a wall shall be placed in the upper third of the distance between a floor and ceiling.		n/a

ADU	Type I	Type II	Proposed
		(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.	Applicant has stated they will comply with the visual screening standard. As conditioned, the applicant will provide visual screening. It will be opaque and at least 6 ft tall.

As conditioned, the Planning Director finds that the proposal complies with the applicable standards for a detached ADU in the R-7 zone.

- b. MMC 19.910.1.D establishes the criteria for approving a Type II accessory dwelling unit.

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

- (1) The standards in Subsection 19.910.1.D.1 are met.
 - a. 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 in the R-7 zone.
The Planning Director finds that this criterion is met.
 - b. The primary use of property for the proposed accessory dwelling unit is a single-family detached dwelling.
The primary use of the subject property is a single-family dwelling.
The Planning Director finds that this criterion is met.
 - c. One accessory dwelling unit per lot is allowed.
This is the only ADU proposed on the subject property.
The Planning Director finds that this criterion is met.
 - d. The development standards of Subsection 19.910.1.E are met.

Table 2 identifies all of the design and development standards in Subsection 19.910.E and, as conditioned, the proposed ADU complies with them.

The Planning Director finds that, as conditioned, this criterion is met.

- (2) 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 colors.

The proposed ADU is designed in a manner that mirrors to the features of single-family residences with a covered front porch and horizontal lap siding. The design is not incompatible with homes on adjacent lots.

The Planning Director finds that this criterion is met.

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

The ADU structure has been placed on the northwest corner of the property in the back yard. It is single-story with a 12 ft height and does not overshadow adjacent properties.

An adjacent property owner expressed concerns that their backyard will be visible from the ADU (see Finding #9 for a summary of the comments). As conditioned the applicant will provide a visual screen that is opaque and at least 6ft in height. It is required to be opaque to mitigate any negative impacts to privacy of adjacent neighbors.

As conditioned, the Planning Director finds that this criterion is met.

- (4) 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 lot is currently landscaped and vegetated. However, the vegetation is not opaque and concerns around privacy have been noted. As demonstrated in Finding #9, the proposed structure must provide privacy screening due to it being adjacent to a residential property. As conditioned, the applicant will provide visual screening per the privacy standards. The screening will be opaque and at least 6 ft high.

As conditioned, the Planning Commission finds that this criterion is met.

- c. MMC 19.910.1.F.1 establishes an additional provision for ADUs.

Either the primary or accessory dwelling unit shall be occupied by the owner of the property. At the time an accessory dwelling unit is established, the code requires that the owner record a deed restriction on the property with the Clackamas County Recording Division that 1 of the dwellings on the lot shall be occupied by the property owner.

A condition of approval requiring this deed restriction has been included.

As conditioned, this standard is met.

As conditioned, the Planning Director finds that the standards of MMC 19.910.1 are met.

10. Public notice of this application was posted on site and mailed to parties as identified in the Milwaukie Municipal Code. The applications were referred for comment to the following: Milwaukie Building Division; Milwaukie Engineering Department; Clackamas Fire District #1; Clackamas County; Metro; and the Linwood Neighborhood District Association Chairperson and Land Use Committee. The responses received are summarized below. Agencies did not respond if a response is not listed below.

- **Milwaukie Engineering Department** – Engineering comments have been incorporated in the findings under 19.700 and 12.00.

A public notice was also sent to all property owners and residents within 300 ft of the property. Comments received have been summarized below:

- **Mary Quinn, 10164 SE 36th Ave** – Mary had concerns regarding privacy and lack of vegetated screening currently on the site between her backyard and the ADU property. Her property is directly behind the ADU site. She provided pictures showing that there are gaps in the existing vegetated screening.

Staff Response: A condition of approval has been provided stating that the applicant must provide opaque screening that is at least 6 ft tall either through vegetation or a fence.

Exhibit 2
Recommended Conditions of Approval
File #ADU-2018-003, 37th Ave ADU

Conditions

1. At the time of submission of any building permit application, the following shall be resolved:
 - a. Provide on plans visual screening that is opaque, 6 ft tall, and meets the other privacy standards in MMC 19.910.E.4.d.(2).(b).
 - b. Final plans submitted for building permit review shall be in substantial conformance with plans approved by this action, which are the plans stamped “received” by the City on December 5, 2018.
 - c. Provide a narrative describing any changes made after the issuance of this land use decision that are not related to these conditions of approval.
2. Prior to issuance of building permits the following shall be resolved:
 - a. Pay fee in lieu of construction that is proportional to the impact created by the construction of the ADU.
 - b. Provide an erosion control plan and obtain an erosion control permit.
 - c. Obtain a right-of-way permit if existing driveway is modified or a second driveway is constructed.
3. Prior to final inspection of any building permit, the following shall be resolved:
 - a. Visual screening meeting MMC 19.910.E.4.d.(2).(b) shall be installed. If vegetation is used for visual screening, newly planted shrubs for privacy screening shall be no less than 5 ft above grade at time of planting, and they shall reach 6 ft high within 1 year.
 - b. Per MMC 19.910.F, either the primary or accessory dwelling unit shall be occupied by the owner of the property. At the time an accessory dwelling unit is established, the owner shall record a deed restriction on the property with the Clackamas County Recording Division that 1 of the dwellings on the lot shall be occupied by the property owner. A copy of the recorded deed restriction shall be provided to the Milwaukie Planning Department.

Additional 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. 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(I).

2. Prior to certificate of occupancy the following shall be resolved:
 - a. Connect all roof drains to private drywell or other approved structure.
 - b. Clear vision areas shall be maintained at all driveways and accessways. Remove all signs, structures, or vegetation in excess of three feet in height located, except approved street trees, in “vision clearance areas” at driveways fronting the proposed development.