



CITY OF MILWAUKIE

March 6, 2019

Land Use File(s): ADU-2019-001

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on March 6, 2019.

Location(s):	8615 SE 31 st Ave.
Tax Lot(s):	11E25BA07700
Application	ADU
Type(s): 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 19.1005 Type II Review• MMC 12 Streets, Sidewalks, and Public Places
Neighborhood(s):	Ardenwald-Johnson Creek

Appeal period closes: 5:00 p.m., March 21, 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-2019-001.

This decision may be appealed by 5:00 p.m. on March 21, 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: 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)
Land Use File(s): ADU-2019-001

EXHIBIT 1
Recommended Findings in Support of Approval
File #ADU-2019-001, 37th Ave ADU – 8615 SE 31st 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 has applied for approval to convert an existing detached garage into an accessory dwelling unit (ADU) in the back of the lot at 8615 SE 31st Ave. This site is in the Residential R-5 Zone. The land use application file number is ADU-2019-001.
2. The applicant has submitted an application for the conversion of an existing detached garage into a, 600 sq ft, ADU in the southwest corner of the backyard. The ADU will be accessed via the existing 70 ft long driveway.
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 19.1005 Type II review
 - MMC 12 Streets, Sidewalks, and Public Places
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 15 ft from 31st Ave. There is an existing detached garage to the southwest of the existing home and is approximately 70 ft from the front property line. The shape of the lot is rectangular, 50 ft wide and 95 ft deep.

The applicant has proposed to convert the existing, 600 sq ft, detached garage into an ADU located 70 ft from the front property line and 2 ft from the south property line (side property line), 16.9 ft from the north property line (side property line), and 6 ft from the west property line (rear property line).

Table 1. Compliance with relevant R-5 standards

R-5 Zone	Standards	Existing	Proposed
Lot Coverage	35% max.	Approx. 34%	No change
Minimum Vegetation	25% min.	Approx. 43%	No change

R-5 Zone	Standards	Existing	Proposed
Front Yard Setback	20 ft	16 ft (house, existing non-conforming)	No change (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-5 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 an existing 70 ft long driveway, beyond the front yard setback, to use as both off-street parking spaces. The driveway meets the dimensional standards for off-street parking spaces.

This standard is met.

7. MMC 19.700 Public Facility Improvements

See Public Facilities Improvement findings below in Finding 10.

8. 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 converting the existing 600 sq ft detached garage into an ADU located in the southwest 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	600 sq ft
Maximum Structure Height	15 ft, limited to 1 story	25 ft, limited to 2 stories	Approx. 12 ft

ADU	Type I	Type II	Proposed
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		Approx. 40 ft
Required Side and Rear Yard Setback	Base zone requirement	5 ft	2 ft (side, existing non-conforming) 6 ft (rear)
Design Standards	The conversion of an existing structure must meet all standards that apply to creation of a new detached accessory dwelling, except for the design standards in Subsection 19.910.1.E.4.c.		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.	Walls are 2 ft and 6 ft	
	(b) The wall is at an angle of 45 degrees or less to the lot line.	The wall is parallel to the side and rear property lines	
	(c) The wall faces an adjacent residential property.	The wall is adjacent to residential	
	<i>All the conditions apply and the ADU must meet the privacy standards listed below.</i>		
	<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	
	(b) Visual screening is in place along the portion of a property line next to the wall of the accessory dwelling	Existing 6 ft tall, opaque, vegetated screening	

ADU	Type I	Type II	Proposed
		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.	surrounds the garage/proposed ADU.

The Planning Director finds that the proposal complies with the applicable standards for a detached ADU in the R-5 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-5 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 development standards in Subsection 19.910.E and the proposed ADU complies with them.
The Planning Director finds that 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 would to convert the existing garage into an ADU in a manner that mirrors to the features of single-family residences with windows 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 garage is placed on the southwest corner of the property in the back yard. It is single-story with a height of less than 15 ft and does not overshadow into adjacent properties.

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. There is an existing, 6 ft, opaque, vegetated screening that surrounds the existing garage and the entire rear and side yard property lines.

The Planning Director 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.

9. MMC 12 Streets, Sidewalks, and Public Places

- a. MMC 12.08 – Street & Sidewalk Excavations, Construction, and Repair

MMC 12.08.020 establishes constructions standards for new sidewalks and alterations to existing sidewalks.

Per the findings in MMC 12.16.040, below, the applicant shall construct a new driveway approach. Any changes to the sidewalk for the new driveway approach will meet the standards in MMC 12.08.020. Standards include the need for a permit to do that work and requirements needed for the permit.

As conditioned, the standards are met.

- b. MMC 12.16.040 – Access Requirements and Standards

MMC 12.16.040 establishes standards for access (driveway) requirements. As conditioned, the standards are met as summarized below.

(1) MMC 12.16.040.A – Access

MMC 12.16.040.A requires that all properties provide street access with the use of an accessway.

The proposed development is consistent with the standards and provides street access with an existing driveway.

The standards are met.

(2) MMC 12.16.040.E – Accessway Design

MMC 12.16.040.E requires that all driveway approaches meet ADA standards and Milwaukie Public Work Standards.

The changes to the driveway approach to meet the standards of 12.16.040.F will meet the ADA and Milwaukie Public Works Standards.

As conditioned, the standards are met.

(3) MMC 12.16.040.F – Accessway Size

MMC 12.16.040.F requires that single-family and detached residential uses shall have a minimum driveway apron width of 9 ft by 20 ft.

The applicant shall construct a new driveway approach to meet the driveway apron width.

As conditioned, the standard is met.

c. MMC 12.24 – Clear Vision at Intersections

MMC 12.24 establishes standards to maintain clear vision areas at intersections in order to protect the safety and welfare of the public in their use of City streets.

The new driveway approach shall conform to the clear vision requirements.

As conditioned, the standard is met.

10. 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 convert an existing garage into an ADU; increasing the intensity of the use for that structure. MMC 19.700 applies to the proposed development.

b. 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. Mitigation of

impacts, due to increased demand for transportation facilities associated with the proposed development, shall be provided in rough proportionality to the transportation impacts of the proposed development.

The proposed development does trigger mitigation of impacts due to the intensification of the use and the increased demand for transportation facilities. An ADU has a peak hour of 1 trip and approximately 5-6 trips per day. The trips from the proposal of an ADU, in addition to the primary single-family residence, will trigger mitigation to the transportation facilities.

Per MMC 12.16, to mitigate the impacts, the driveway apron will need to be brought up to width standards and any parts of the affected sidewalks may need to be brought up to meet ADA standards.

As conditioned, the standards are met.

c. 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).

As conditioned, the proposal meets the standards of MMC 19.708, as summarized below.

(1) MMC 19.708.1.A – Access Management

All development 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.

Per MMC 12.16, the driveway apron requires improvements to meet the driveway apron width.

As conditioned, the standards are met.

(2) MMC 19.708.1.B – Clear Vision

Clear vision requirements shall comply with the clear vision requirements in Chapter 12.24.

As conditioned, the proposal shall meet the clear vision requirements.

(3) MMC 19.708.1.D – Development in Non-Downtown Zones

The Milwaukie Transportation System Plan and Transportation Design Manual classify the fronting portions of SE 31st Avenue 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 feet and 68 feet depending on the required street improvements.

The required right-of-way needed for a local street is 50 feet. 31st Ave has a 50 ft right-of-way (ROW) in front of the subject property. The

applicant is not required for any dedication on the SE 31st Avenue frontage.

The standards are met.

d. MMC 19.708.3 – Sidewalk Requirements and Standards

MMC 19.708.3.A.2 requires that public sidewalks shall conform to ADA standards.

A site visit measured the existing sidewalk at 4-ft wide, which is ADA compliant width. The applicant will be responsible for replacing any sidewalk panels that are above the required 2% cross slope. Non-compliant sidewalk will be identified at the time of building permit.

As conditioned, the standards are met.

11. 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; and the Ardenwald 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 Building Department** – no comment
- **Milwaukie Engineering Department** – Engineering comments have been incorporated in the findings under 19.700.

Exhibit 2
Recommended Conditions of Approval
File #ADU-2019-001, 37th AVE ADU – 8615 SE 31st Ave.

Conditions

1. Prior to the certificate of occupancy, the following shall be resolved:
 - a. Construct new driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA) and Milwaukie’s Public Works Standards. The driveway approach apron shall be between 9 ft and 20 ft in width and least 7.5 ft from the side property line.
 - b. Reconstruct any portion of sidewalk that is not ADA compliant, including sidewalk that is crossing driveway approaches. Coordinate with Engineering Department for determination on non-compliant sidewalk.
 - c. Clear vision areas shall be maintained at all driveways and accessways and on the corners of all property adjacent to an intersection. All signs, structures, or vegetation in excess of 3 – 8 ft in height located in “vision clearance areas” at intersections of streets, driveways, and alleys fronting the proposed development must be removed. Prior to the removal of any vegetation, applicant shall confirm with the Engineering Department the location of clear vision areas and if the vegetation removal is required to comply with clear vision standards.

Additional Requirements

2. Prior to issuance of building permits, the following shall be resolved:
 - a. Provide an erosion control plan and obtain an erosion control permit, if needed. Consult with the Engineering Department to determine if an erosion control permit is needed for the driveway improvements.
 - b. Obtain a right-of-way permit for construction of all required public improvements listed in these Conditions of Approval.