



CITY OF MILWAUKIE

September 30, 2020

Land Use File(s): ADU-2019-002

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on September 30, 2020.

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| Applicant(s): | Sadie Gordon |
| Location(s): | 10190 SE 37 th Ave. |
| Tax Lot(s): | 11E25DD03700 |
| 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 19.1005 Type II Review• MMC 12 Streets, Sidewalks, and Public Spaces |
| Neighborhood(s): | Ardenwald-Johnson Creek |

Appeal period closes: 5:00 p.m., October 15, 2020

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-2019-002.

This decision may be appealed by 5:00 p.m. on October 15, 2020, 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

Laura Weigel
Laura Weigel (Sep 25, 2020 16:21 PDT)

Laura Weigel
Planning Manager

cc: Sadie Gordon (10190 SE 37th Ave) & via email
Planning Commission (via email)
Leila Aman, Community Development Director (via email)
Steve Adams, City Engineer (via email)
Dalton Vodden, Associate Engineer (via email)
Samantha Vandagriff, Building Official (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Tim Salyers, Code Enforcement Officer (via email)
Matt Amos, CFD#1 (via email)
NDA(s): Ardenwald-Johnson Creek (via email)
Land Use File(s): ADU-2019-002

EXHIBIT 1

Recommended Findings in Support of Approval

File #ADU-2019-002, Gordon ADU – 10190 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 has applied for approval to convert an existing detached garage into an accessory dwelling unit (ADU) in the back of the lot at 10190 SE 37th Ave. This site is in the Residential R-7 Zone. The land use application file number is ADU-2019-002.
2. The applicant has submitted an application for the conversion of an existing accessory structure into a 597 sq ft ADU in the southeast corner of the property. The ADU will be accessed via the existing 100 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 east side of the lot and is located north of the proposed ADU. There is an existing attached shed to the proposed ADU. The lot is an "L" shape or could be called a flag lot with a large "flag" portion. The property is significantly large for this neighborhood and zone at approximately 24,567 sq ft. Lots surrounding this range from 7,000 sq ft to 10,000 sq ft.

The applicant has proposed to convert the existing, two-story accessory structure, into an ADU. The 597 sq ft first floor is being converted to be used as an ADU while the rest of the structure will continue to exist as an accessory

structure. No changes are being proposed to the size and location of the structure. It is over 150 ft from the front property line.

Table 1. Compliance with relevant R-7 standards

| R-7 Zone | Standards | Existing | Proposed |
|-------------------------------|---|---------------------------|--|
| Lot Coverage | 30% max. | Approx. 11% | No change |
| Minimum Vegetation | 30% min. | Approx. 21% | No change |
| Front Yard Setback | 20 ft | Approx. 150 ft | No change <i>(See ADU yard requirements in Finding 8)</i> |
| 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 19.607.1.A establishes the dimensions of residential off-street parking areas.

Off-street vehicle parking for residential properties shall be 9 ft wide by 18 ft deep.

Any off-street parking for the subject ADU and/or property will adhere to the dimension requirements.

As conditioned, this standard is met.

b. MMC 19.607.1.B establishes location of residential off-street parking areas.

Off-street vehicle parking for residential properties shall be located on the same lot as the associated dwelling, unless shared parking is approved. No portion of the required parking space is allowed within the required front yard

or within 15 ft of the front lot line, whichever is greater or a required street side yard.

Any off-street parking for the subject ADU and/or property will adhere to the location guidelines. The applicant will provide one off-street parking space measuring at a minimum of 9 ft wide and 18 ft long on a durable and dust-free hard surface out of the front yard setback.

As conditioned, this standard is met.

- c. MMC 19.607.1.C establishes parking surface materials for residential off-street parking areas.

Parking of vehicles shall only be allowed on surfaces that have a durable and dust-free hard surface, and shall be maintained for all-weather use. The use of pervious concrete, pervious paving, driveway strips, or an in-ground grid or lattice surface is encouraged to reduce stormwater runoff.

Any off-street parking for the subject ADU and/or property will adhere to the surface materials requirements.

As conditioned, this standard is met.

As conditioned, the Planning Director finds these standards 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, 597 sq ft first floor of an accessory structure into an ADU located in the southeast corner 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 | 597 sq ft |
| Maximum Structure Floor Area | 800 sq ft or 75% of the floor area of the primary structure | 800 sq ft or 75% of the floor area of the primary structure | 730 sq ft |
| Maximum Structure Height | 15 ft, limited to 1 story | 25 ft, limited to 2 stories | 20.5 ft, 2 stories |
| 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. 150 ft |
| Required Side and Rear Yard Setback | Base zone requirement | 5 ft | Side: 5 ft Rear: 6 ft |
| 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. | | The wall are 5 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 |

| ADU | Type I | Type II | Proposed |
|---|---|---------|---|
| | (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> | | | |
| | | | |
| | (2) A detached accessory dwelling unit meets the privacy standard if either of the following standards is met. | | |
| | (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 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. | | Existing vegetated visual screening is 6 ft tall, opaque, and surrounds the accessory structure/proposed ADU. |

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.

- 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.

- c. One accessory dwelling unit per lot is allowed.

This is the only ADU proposed on the subject property.

- 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 these criteria are 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 convert the existing accessory structure 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 southeast corner of the property in the back yard. It is a two-story structure, but the first floor will be used as the proposed ADU. The ADU floor will have a height less than 15 ft and will 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 accessory structure and the entire rear and side yard property lines.

The Planning Director finds that this criterion is met.

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 construction standards for new sidewalks and alterations to existing sidewalks.

The applicant must not engage in any work in the right-of-way without first obtaining City permit, including any activity resulting in alteration of the surface

of the right-of-way. The applicant has applied for the city's ADU Waiver Program, if all program requirements are met, no work in the right-of-way is expected.

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 as set forth in the Public Works Standards.

The proposed development's existing access is through an accessway inconsistent with the Public Works Standards.

Improvements must be made to bring the accessway into conformance as set forth in the Public Works Standards or a waiver must be obtained to waive right-of-way improvements.

(2) MMC 12.16.040.C Regulates accessway locations.

The proposed development's existing access does not meet the seven and one-half foot required offset from the side property line in residential areas.

Improvements must be made to bring the accessway into conformance or a waiver must be obtained to waive right-of-way improvements.

(3) 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 existing driveways does not meet design guidelines set forth in applicable ADA standards and the Public Works Standards.

The applicant must construct an approved accessway or obtain a waiver for right-of-way improvements.

(4) 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 existing accessway does not have an apron.

The applicant must construct a compliant driveway apron or obtain a waiver from right-of-way improvements.

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 clear vision area for all street and driveway or accessway intersections is the area within 20 foot radius from where the lot line and the edge of a driveway intersect. The provisions of this chapter relate to safety. They shall not be modified through variance and are not subject to appeal.

The applicant must remove all trees, shrubs, hedges or other vegetation in excess of three feet in height, measured from the street center grade from the clear vision area. Trees exceeding this height may remain in this area; provided, all branches and foliage are removed to the height of eight feet above the grade.

As conditioned, this 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 improvements be in proportion to impacts of a proposed development. Mitigation of impacts, due to increased demand for transportation facilities associated with the proposed development, must be provided in rough proportion. Guidelines require consideration of a ½ mile radius, existing use within the area, applicable TSP goals, and the benefit of improvements to the development property.

The proposed development does trigger mitigation of impacts due to the intensification of the use and the increased demand for transportation facilities. An ADU increases peak hour trips by almost 1 trip and daily trips by over 6 trips.

The applicant must mitigate development impacts through constructing public transportation facilities or obtaining a waiver.

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 subject to 19.700 shall comply with the access management standards contained in Chapter 12.16.

As mentioned in 9.b above, the applicant is required to construct improvements within the right-of-way or obtain a waiver.

(2) MMC 19.708.1.B – Clear Vision

All development subject to 19.700 shall comply with Clear vision requirements in Chapter 12.24.

As mentioned in 9.c, the proposed development is required to remove all obstructions within the clear vision area.

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

Transportation improvements must be constructed and street dedication provided in accordance with the Milwaukie Transportation System Plan and Transportation Design Manual street classification. The development fronts a portion of SE 37th Avenue with local street classification.

The required right-of-way width for the adjacent portion of SE 37th Ave ROW is 50 ft. No dedication is required from the proposed development.

The standards are met.

d. MMC 19.708.2 Street Design Standards

MMC 19.708.2 establishes standards for street design and improvements.

Development standards for SE 37th Ave require additional street surface improvements and construction of 5-ft sidewalk, 5-ft landscape strip, curb and gutter, and street surface improvements. The applicant has 54.4 ft of frontage along adjacent right-of-way. Limiting improvements to the adjacent stretch of right-of-way will maximize benefits to the property and was not found to be disproportionate to impacts.

The applicant must construct 54.4 lineal ft of transportation facility improvements or obtain a waiver.

e. 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 in conformance to ADA standards.

The applicant must construct and maintain sidewalks or obtain a waiver.

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 and Chapter 12.

Exhibit 2
Recommended Conditions of Approval
File #ADU-2019-002, Gordon ADU – 10190 SE 37th Ave

Conditions

1. Prior to the certificate of occupancy, the following shall be resolved:
 - a. Any off-street parking for the subject ADU and/or property will adhere to the off-street parking requirements listed below:
 - (1) Off-street vehicle parking dimensions shall be 9ft wide by 18 ft deep
 - (2) Off-street vehicle parking surfaces shall be a durable, dust-free hard surface. The use of pervious concrete, pervious paving, driveway strips, or an in-ground grid or lattice surface is encouraged to reduce stormwater runoff.
 - (3) Any off-street vehicle parking space shall not be located within the front yard setback, which is 20 ft from the front property line.
 - b. Unless a waiver is obtained, 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.
 - c. Unless a waiver is obtained, construct 54.4 lineal ft of transportation facility improvements according the MMC 19.708.2 Street Design Standards and 19.708.3 Sidewalk Requirements and Standards. Coordinate with Engineering Department for determination on the transportation facility improvements.
 - d. 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.