



# CITY OF MILWAUKIE

April 10, 2019

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

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on April 9, 2019.

<b>Applicant(s):</b>	Jenifer and Tony Forni
<b>Appellant</b> (if applicable)	
<b>Location(s):</b>	10577 SE Riverway Ln
<b>Tax Lot(s):</b>	151E35AB00200
<b>Application Type(s):</b>	Willamette Greenway Conditional Use
<b>Decision:</b>	Approved
<b>Review Criteria:</b>	Milwaukie Zoning Ordinance: <ul style="list-style-type: none"><li>• MMC 19.401 Willamette Greenway Zone</li><li>• MMC 19.905 Conditional Uses</li><li>• MMC 19.1006 Type III Review</li></ul>
<b>Neighborhood(s):</b>	Historic Milwaukie

**Appeal period closes: 5:00 p.m., April 24, 2019**

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1006 Type III Review. The complete case file for this application is available for review by appointment 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](mailto:heberlingm@milwaukieoregon.gov), if you wish to view this case file.

**This decision may be appealed by 5:00 p.m. on April 24, 2019, which is 15 days from the date of this decision.** (Note: Please arrive by 4:45 p.m. for appeal payment processing.) Only persons who submitted comments or made an appearance of record at the public hearing have standing to appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie City Council following the procedures of MMC Section 19.1010 Appeals. This decision will become final on the date above if no appeal is filed during the appeal period.

Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or [planning@milwaukieoregon.gov](mailto: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**

The Findings for this application are included as Exhibit 1.



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Dennis Egner, FAICP  
Planning Director

### **Exhibits**

1. Findings in Support of Approval

cc: Jenifer and Tony Forni, 10577 SE Riverway Ln  
Applicant's Rep, Gregg Creighton, Creighton Architecture, (252 "A" Ave #300 Lake Oswego, OR 97034)  
Planning Commission (via email)  
Alma Flores, Community Development Director (via email)  
Kelly Brooks, Acting City Engineer (via email)  
Engineering Development Review (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): Historic Milwaukie (via email)  
Interested Persons  
Land Use File(s): WG-2019-001

**EXHIBIT 1**  
**Findings in Support of Approval**  
**File #WG-2019-001, Creighton Architecture -10577 Riverway SE**

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, Creighton Architecture on behalf of Jenifer and Tony Forni, has applied for conditional use approval in the Willamette Greenway Zone to demolish the existing residence and construct a new single-family residence on-site at 10577 Riverway SE. This site is in the Residential Zone R-2 and Willamette Greenway Zone WG, and requires Willamette Greenway Conditional Use Approval. The land use application file number is WG-2019-001.
2. The subject property is approximately 6,061 sq ft (0.14 acres) in size and is currently developed with a detached single-family dwelling. The property owners seek to demolish the existing dwelling and construct a new dwelling on the same property.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC 19.401 Willamette Greenway Zone
  - MMC 19.905 Conditional Uses
  - MMC Section 19.1006 Type III Review

The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held on April 9, 2019, as required by law.

4. MMC 19.401: Willamette Greenway Zone

MMC 19.401 establishes standards for the Willamette Greenway overlay designation. The subject property is within the Willamette Greenway zone as shown on the City's zoning map.

- a. MMC Subsection 19.401.5 Procedures

MMC 19.401.5 establishes procedures related to proposed uses and activities in the Willamette Greenway zone. Development in the Willamette Greenway zone requires conditional use review, subject to the standards of MMC Section 19.905 and in accordance with the approval criteria established in MMC Subsection 19.401.6.

*The project involves the alteration of natural site characteristics and constitutes "development" as defined in MMC Subsection 19.401.4. The proposed development is subject to conditional use review standards of MMC 19.905 and the approval criteria of MMC 19.401.6.*

- b. MMC Subsection 19.401.6 Criteria

MMC 19.401.6 establishes the criteria for approving conditional uses in the Willamette Greenway zone.

- (1) Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan

The Statewide Planning Goal 15 - Willamette River Greenway defines “lands committed to urban use” as “those lands upon which the economic, developmental and locational factors have, when considered together, made the use of the property for other than urban purposes inappropriate. Economic, developmental and locational factors include such matters as ports, industrial, commercial, residential or recreational uses of property; the effect these existing uses have on properties in their vicinity, previous public decisions regarding the land in question, as contained in ordinances and such plans as the Lower Willamette River Management Plan, the city or county comprehensive plans, and similar public actions.”

*The subject property is zoned for R-2 high density residential use and is already developed with a single-family home. The land is committed to an urban use.*

- (2) Compatibility with the scenic, natural, historic, economic, and recreational character of the river

*The site is not adjacent to the Willamette River. The river (at the nearest point of the lot) lies approximately 420 ft south. The proposed development presents no significant impacts to the character of the river and is compatible.*

- (3) Protection of views both toward and away from the river

*Only one portion of the project area is visible from the river and is more than 420 ft from the river. The proposed building height is 24 ½ ft, and while the existing dwelling has a lower height of approximately 15 ft. Views to and from the river will not be affected by the proposed development due to the lack of viewshed existing from any dwellings or public rights-of-way nearby or adjacent to the proposed development. Due to a multi-story multifamily condominium complex west of the site – Shoreside East Condominiums - the single-story residences in the area currently have no views of the river. Further north of the site is a multifamily unit, Waverley Greens, that has limited views toward the river, which will not be further affected with the proposed development since the complex is sited at a higher elevation. The property directly to the east of the site is the MODA office building, a large office building with pre-existing hedges that limit the views from the building toward the river. Therefore the proposed development will not significantly affect visual corridors to the river for any of the adjacent properties.*

- (4) Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable

*The project area is separated from the river by residential development, including homes, garages, and landscaping.*

- (5) Public access to and along the river, to the greatest possible degree, by appropriate legal means

*The subject property is separated from the river to the south by a multifamily unit and a single-family privately-owned parcel. The subject property is not adjacent to the river and does not limit public access to the river.*

- (6) Emphasis on water-oriented and recreational uses

*The site is over 420 ft from the nearest point of the river. The existing residential use is not water-oriented and is not directed toward the river.*

- (7) Maintain or increase views between the Willamette River and downtown

*The proposed development is located north of downtown and will therefore have no effect on views between the Willamette River and downtown.*

- (8) Protection of the natural environment according to regulations in Section 19.402

*The site does not contain any identified natural resources.*

- (9) Advice and recommendations of the Design and Landmark Committee, as appropriate

*The proposed development is not subject to review by the Design and Landmarks Committee.*

- (10) Conformance to applicable Comprehensive Plan policies

The Willamette Greenway Element in the Milwaukie Comprehensive Plan includes policies related to land use, public access and view protection, and maintenance of private property. The applicable policies are:

- Intensification of uses, changes in use, or development of new uses are permitted only when consistent with the City's adopted Willamette Greenway Element, the Greenway Design Plan, the Downtown and Riverfront Land Use Framework Plan, and the Town Center Master Plan.
- Within the Willamette Greenway Boundary, a Willamette Greenway Conditional Use Permit must be obtained prior to any new construction or intensification of an existing use.
- The City will evaluate all proposals within the vicinity of the Greenway for their effect on access to the visual corridors to the Willamette River and Kellogg Lake.

As noted, these policies include the requirement of a conditional use permit for new development and intensification of existing uses; encouragement for uses that are not water-dependent or water-related to be directed away from the river; evaluation of development impacts to visual corridors; and limitations on authorizing the unrestricted public use of private land.

*The proposed development is being reviewed through the conditional use process. The existing approved use is not water-related and is not directed toward the river; the proposed development will not affect that status. No public access through the subject property is proposed, and no public access will be required as a condition of approval of the proposed development.*

- (11) The request is consistent with applicable plans and programs of the Division of State Lands

*None of the proposed developments will occur along the riverbank or within the Willamette River. Therefore, the proposed development is not inconsistent with any known plans or programs of the Department of State Lands.*

- (12) A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C

*The subject property is more than 420 ft from the river, more than 395 ft beyond the 25-ft buffer prescribed by MMC 19.401.8.*

*The Planning Commission finds that the proposed development meets all relevant approval criteria provided in MMC 19.401.6.*

*The Planning Commission finds that the proposed development meets all applicable standards of the Willamette Greenway zone.*

5. MMC 19.905: Conditional Uses

MMC 19.905 establishes regulations for conditional uses, including standards for reviewing modifications to existing conditional uses.

a. MMC Subsection 19.905.3 Review Process

MMC 19.905.3 establishes the process by which a new conditional use, or a major or minor modification of an existing conditional use, must be reviewed.

*As noted in Finding 5-a, the proposed development is an activity within the Willamette Greenway zone that requires review as a conditional use. The existing use on the subject property is a single-family residence constructed in 1960 and is considered a de facto conditional use.*

*The proposed development, which involves demolishing the existing residence and constructing a new single-family residence represents a major modification to the existing use.*

MMC 19.905.3.A requires that a major modification of an existing conditional use be evaluated through the Type III review process per MMC Section 19.1006.

b. MMC Subsection 19.905.4 Approval Criteria

MMC 19.905.4.A establishes the general criteria for approval of a new conditional use or a major modification to an existing conditional use.

- (1) The characteristics of the lot are suitable for the proposed use considering size, shape, location, topography, existing improvements, and natural features.

*The new development will be approximately 3,096 sq ft in size. The existing property is developed with a single-family home approximately 1,051 sq ft in area. The applicant proposes to keep the character of the lot the same with very little change to the grading. The new single-family home will be placed in the same location as the existing home that will be demolished. No existing improvements will be retained. The landscaping will be changed and new landscape materials will be installed. No natural resources are located on the site.*

*The Planning Commission finds that this standard is met.*

- (2) The operating and physical characteristics of the proposed use will be reasonably compatible with, and have minimal impact on, nearby uses.

*The site is surrounded by residential development on three sides and the MODA parking lot located to the east. The MODA office building and adjoining parking lot do not have a view of the river due to pre-existing landscaping on site. Single-family residential development near the proposed site also have little-to-no view toward the river due to pre-existing buildings between them and the river. While the proposed site may be in the viewshed of Waverley Greens, a multifamily complex north of the site, it is not blocking the views of the river specifically.*

*The proposed development will change the current landscaping on the site. Planting beds will be added to each corner of the lot. The plantings in the southeast corner extend west 7.5 ft from the eastern property line and extend from the south property line – adjacent to SE Riverway Ln - 34 ft north, adjacent to the proposed driveway. Additional shallow planting beds will be added to the southwest corner of the property extending from the property line fronting SE Riverway Ln approximately 15 ft north adjacent to the western property line. No plantings over 3 ft will be within the vision clearance circle of the driveway. The plantings abutting the rear of the lot will not impact uses that may occur on the single-family lot to the north.*

*The Planning Commission finds that this standard is met.*

- (3) All identified impacts will be mitigated to the extent practicable.

*No impacts have been identified by the proposed development.*

*The Planning Commission finds that this standard is met.*

- (4) The proposed use will not have unmitigated nuisance impacts, such as from noise, odor, and/or vibrations, greater than usually generated by uses allowed outright at the proposed location.

*The proposed addition will not have unmitigated nuisance impacts greater than what is normal for a residential development, which is an allowed use in the R-2 zone.*

*The Planning Commission finds that this standard is met.*

- (5) The proposed use will comply with all applicable development standards and requirements of the base zone, any overlay zones or special areas, and the standards in Section 19.905.

*As noted in previous findings, the proposed development will comply with all applicable development standards, requirements of the underlying R-2 zone and other applicable overlay zones, and the standards of MMC 19.905.*

*The Planning Commission finds that this standard is met.*

- (6) The proposed use is consistent with applicable Comprehensive Plan policies related to the proposed use.

*As addressed in Finding 4-b, the proposed development is consistent with all relevant policies in the Comprehensive Plan.*

*The Planning Commission finds that this standard is met.*

- (7) Adequate public transportation facilities and public utilities will be available to serve the proposed use prior to occupancy pursuant to Chapter 19.700.

*The Engineering Department has reviewed the proposal and confirmed that existing public transportation facilities and public utilities are adequate to serve the proposed development.*

*The Planning Commission finds that this standard is met.*

c. MMC Subsection 19.905.5 Conditions of Approval

MMC 19.905.5 establishes the types of conditions that may be imposed on a conditional use to ensure compatibility with nearby uses. Conditions may be related to a number of issues, including access, landscaping, lighting, and preservation of existing trees.

*The Planning Commission finds that, as proposed, the new development sufficiently mitigates any negative impacts as proposed and that no additional conditions are necessary to ensure compatibility with nearby uses.*

*The Planning Commission finds that this standard is met.*

d. MMC Subsection 19.905.6 Conditional Use Permit

MMC 19.905.6 establishes standards for issuance of a conditional use permit, including upon approval of a major modification of an existing conditional use. The provisions include a requirement to record the conditional use permit with the Clackamas County Recorder's Office and provide a copy to the City prior to commencing operations allowed by the conditional use permit.

*The Planning Commission finds that this standard is met.*

6. The application was referred to the following departments and agencies on February 22, 2019:



- Milwaukie Building Division
- Milwaukie Engineering Department
- Clackamas County Fire District #1
- Historic Milwaukie Neighborhood District Association Chairperson and Land Use Committee

Notice of the application was also sent to surrounding property owners and residents within 300 ft of the site on March 20, 2019, and a sign was posted on the property on February 20, 2019.

No comments were received for this application.