



CITY OF MILWAUKIE

October 9, 2024

Land Use File(s): VR-2024-007

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on October 9, 2024.

Traducciones de este documento e información sobre este proyecto están disponibles en español. Para solicitar información o preguntar en español, favor de email espanol@milwaukieoregon.gov.

| | |
|-----------------------------|---|
| Applicant(s): | Jennifer Lindsay |
| Location(s): | 9509 SE Wichita Ave |
| Tax Lot(s): | 12E30DA01200 |
| Application Type(s): | Variance |
| Decision: | Approved with Conditions |
| Review Criteria: | Milwaukie Municipal Code: <ul style="list-style-type: none">• MMC Title 12 Streets, Sidewalks, and Public Places• MMC Section 19.301 Moderate Density Residential Zone (R-MD)• MMC Chapter 19.700 Public Facility Improvements• MMC Subsection 19.910.1 Accessory Dwelling Units• MMC Section 19.911 Variances• MMC Section 19.1005 Type II Review |
| Neighborhood(s): | Lewelling |

Appeal period closes: 5:00 p.m., October 24, 2024

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 by appointment between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, 10501 SE Main St, City Hall. Please contact Vera Kolias at 503.786.7653 or

koliasv@milwaukieoregon.gov if you wish to view this case file or visit the project webpage at <https://www.milwaukieoregon.gov/planning/vr-2024-007>.

This decision may be appealed by 5:00 p.m. on October 24, 2024, which is 15 days from the date of this decision.¹ (Note: Please arrive by 4:45 p.m. for appeal payment processing.) 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 period. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or planning@milwaukieoregon.gov.

Findings in Support of Approval

The Findings for this application are included as Exhibit 1.

Conditions of Approval

1. Prior to issuing building permits, the following must be resolved:
 - a. The following is required according to MMC 19.703.4.D – Fee In Lieu of Construction (FILOC):
 - (1) Pay FILOC for the entire frontage of the property at \$94 per linear foot. Coordinate with the Engineering Department during the permitting stage to pay this fee.
2. Prior to final occupancy, the following must be resolved:
 - a. The following is required according to the MMC 12.24 – Clear Vision at Intersections
 - (1) Clear vision areas must be maintained at all driveways and accessways and on the corners of all property adjacent to an intersection. All signs, structures, or vegetation more than 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, the applicant must confirm with the Engineering Department the location of clear vision areas and if the vegetation removal is required to comply with clear vision standards.

Expiration

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

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.

occupancy within 4 years of land use approval. Extensions can be granted per MMC Section 19.908.

Manager’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, AICP
Planning Manager

Exhibits

1. Findings in Support of Approval
- cc: Jennifer Lindsay (via email)
Don R Titus, Residential Architect LLC (via email)
Planning Commission (via email)
Joseph Briglio, Community Development Director (via email)
Jeff Tolentino, Assistant City Engineer (via email)
Engineering Development Review (via email)
Partick McLeod, Building Official (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Coordinator (via email)
Emilie Bushlen, Permit Technician (via email)
Tim Salyers, Code Compliance Coordinator (via email)
Jon Simkovic, Code Compliance Specialist (via email)
Shawn Olson, CFD#1 (via email)
NDA(s): Lewelling (via email)

Land Use File(s): VR-2024-007

EXHIBIT 1
Findings in Support of Approval
File #VR-2024-007
ADU Structure Footprint Variance—9509 SE Wichita 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, Jennifer Lindsay, has applied for a variance to the maximum structure footprint for a proposed accessory dwelling unit (ADU) at 9509 WE Wichita Ave. The subject property is 0.69 acres (approximately 29,956 sq ft) and is zoned Moderate Density Residential (R-MD). The land use application file number is VR-2024-007.
2. The subject property is developed with a single detached dwelling and a detached garage with an existing footprint of approximately 775 sq ft. The applicant has proposed to construct an addition of approximately 118 sq ft off the rear of the garage as well as a 77 sq ft porch. The overall new footprint of the garage would be 893 sq ft in addition to the porch. The purpose of the project is to create a 410-sq ft ADU with the remaining area to be used as a garage. Because the footprint of the structure would exceed the maximum 800 sq ft, the applicant has requested a Type II variance to allow the additional 118 sq ft.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Title 12 Streets, Sidewalks, and Public Places
 - MMC Section 19.301 Moderate Density Residential Zone (R-MD)
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Subsection 19.910.1 Accessory Dwelling Units
 - MMC Section 19.911 Variances
 - MMC Section 19.1005 Type II Review

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

4. 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.

The property frontage on Wichita Avenue does not have an existing sidewalk. The applicant is not required to construct sidewalk improvements provided the Fee In Lieu Of Construction (FILOC) is paid per MMC Section 19.703.4.D.

As conditioned, this standard is met.
 - b. MMC 12.16.040 – Access Requirements and Standards

MMC 12.16.040 establishes standards for access (driveway) requirements.

(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 property has an existing non-conforming driveway on Wichita Ave which will be used to provide street access.

This standard is met.

c. MMC 12.24 – Clear Vision at Intersections

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

The existing driveway approach must conform to the clear vision requirements.

As conditioned, the standard is met.

5. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 is intended to ensure that development, including redevelopment, provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts.

a. MMC Section 19.702 Applicability

MMC 19.702 establishes the applicability 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.

The applicant is proposing to establish an ADU utilizing an existing detached structure, increasing the intensity of use on the subject property. MMC 19.700 applies to the proposed development.

b. MMC Section 19.703.4.D Fee In Lieu of Construction (FILOC)

MMC 19.703.4.D establishes that the applicant may pay a fee in lieu of constructing the required transportation facility improvements. The City Engineer will approve or deny such requests using the criteria for making FILOC determinations found in MMC 13.32.

The City Engineer is recommending the applicant pay FILOC for the entire frontage of the property, minus the width of the driveway approach. The fee will be established at \$94 per linear foot of frontage and the final frontage distance will be confirmed during permit review.

As conditioned, the standard is met.

c. MMC Section 19.705 Rough Proportionality

MMC 19.705 requires that the mitigation of transportation impacts due to increased demand for transportation facilities associated with the proposed development must be provided in rough proportionality to the transportation impacts of the proposed development.

The City's Engineering Department has identified the impacts of ADUs to public infrastructure to be 65% of single-family detached residences. Using this factor and numbers from the Institute of Transportation Engineers (ITE) trip generation manual, new ADUs are expected to result in an average new trip generation rate of 6.12 daily trips or 0.65 new PM-peak trips. The proposed development triggers mitigation of impacts due to the intensification of the use and the increased demand for and impact on public transportation facilities.

To mitigate the impacts, frontage improvements are required as detailed in Finding 5-a. The subject property has approximately 100 ft of frontage on Wichita Ave. Based on the proportionality guidelines provided in MMC Subsection 19.705.2, it is proportionate to require improvements along the subject property's Wichita Avenue frontage.

The applicant is recommended to apply to pay a fee in lieu of constructing frontage improvements as noted in Finding 5-b.

As conditioned, this standard is met.

d. 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).

The subject property has frontage on 37th Avenue, which the City's TSP and Transportation Design Manual classify as a local street. According to MMC 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.

As noted above, the applicant may apply to pay a Fee In Lieu Of Construction rather than construct the required frontage improvements.

As conditioned, this standard is met.

As conditioned, the Planning Manager finds that the applicable standards of MMC 19.700 are met.

6. MMC Section 19.301 Moderate Density Residential Zone (R-MD)

MMC 19.301 establishes standards for the Moderate Density Residential (R-MD) zone. The application meets the applicable standards of this section as described below.

a. MMC Subsection 19.301.2 Allowed Uses

MMC 19.301.2 establishes the uses allowed outright in the R-MD zone, including single detached dwellings, middle housing types (duplexes, triplexes, quadplexes,

townhouses, and cottage clusters), accessory dwelling units (ADUs), and adult foster/care homes.

The subject property is developed with a single detached dwelling. The primary use of the subject property is an existing single-family detached dwelling; the proposed development is an ADU. Both uses are allowed outright in the R-MD zone.

This standard is met.

b. MMC Subsections 19.301.4 and 19.301.5 Development Standards

MMC 19.301.4 and 19.301.5 establish development standards for the R-MD zone. The applicable standards are addressed and met as described in Table 4-b below.

MMC 19.301.4 and 19.301.5 establish development standards for the R-MD zone, including requirements for maximum lot coverage and minimum vegetation. The maximum allowed lot coverage is 30% of the lot area. A minimum of 30% of the lot area must be vegetated.

The proposed development involves an addition to the existing detached garage located in the back yard of the subject property. Finding 7 addresses the development standards for detached ADUs that correspond with or supersede most of the applicable R-MD development standards. The only applicable standards that are not addressed elsewhere in these findings are those for lot coverage and minimum vegetation.

According to the applicant's site plan, the subject property is approximately 29,956 sq ft in area and is currently developed with a single-family house and a detached garage. The total current lot coverage is approximately 2,458 sq ft, or 8% lot coverage. The existing residential accessory structure is 775 sq ft and the proposal is to construct a 118-sq ft addition and a 77-sq ft porch and to convert 410 sq ft of the structure into an ADU. The final lot coverage for the lot would be 8.9%, well under the 30% figure allowed for R-MD lots with a detached ADU.

Including the existing house detached garage, driveway, front walkway, and rear patio, there is approximately 4,799 sq ft of non-vegetated area on the site, leaving approximately 25,157 sq ft of vegetated area. This equates to roughly 84% of the lot being left for vegetation, well exceeding the 30% minimum vegetation standard.

This standard is met.

The Planning Manager finds that the proposed development meets all applicable development standards of MMC 19.301.

7. MMC Subsection 19.910.1 Accessory Dwelling Units

MMC 19.910.1 establishes standards for Accessory Dwelling Units (ADUs), including approval criteria and development standards, both for attached and detached units.

a. MMC Subsection 19.910.1.D Approval Standards and Criteria

MMC 19.910.1.D establishes the approval criteria for ADUs, with the following criteria for an ADU reviewed through Type I review:

(1) The standards in MMC Subsection 19.910.1.D.1 (for Type I ADUs) are:

(a) An ADU is an allowed use in the base zone, and any applicable overlay zones or special areas, where the ADU would be located.

The subject property is zoned Residential R-MD, which allows ADUs by right. There are no special overlays on the subject property.

This standard is met.

(b) The primary use of property for the proposed ADU is a single detached dwelling.

The primary use of the subject property is an existing single-dwelling detached house.

This standard is met.

(c) Two ADUs per single detached dwelling or per lot is allowed.

The subject property currently has only one single detached house; an ADU does not currently exist on the site. The proposed ADU would be allowed for the subject property.

This standard is met.

(d) The development standards of MMC Subsection 19.910.1.E are met.

Finding 8-b demonstrates compliance with the applicable ADU standards.

(e) The proposal complies with all other applicable standards of this title.

As discussed in Finding 6, the proposed development is consistent with all applicable standards of the R-MD zone that are not addressed elsewhere in these findings. As discussed in Finding 5, a condition has been established to require a fee in lieu of frontage improvements consistent with the standards of MMC Chapter 19.700.

As conditioned, this standard is met.

b. MMC Subsection 19.910.1.E Standards

MMC 19.910.1.E establishes standards for ADUs, including an allowance for conversion of an existing structure. In the event of a conflict between the standards of MMC 19.910.1.E and other portions of the zoning code, the more restrictive provisions apply, except where specifically noted.

MMC Subsection 19.910.1.E.4 establishes the following standards for detached ADUs:

(1) MMC Subsection 19.910.1.E.4.a Maximum Allowed Floor Area

MMC 19.910.1.E.4.a sets the limit on floor area for detached ADUs at 800 sq ft.

The proposed ADU would be 410 sq ft.

This standard is met.

(2) MMC Subsection 19.910.1.E.4.b Footprint, Height, and Required Yards

MMC Table 19.910.1.E.4.b establishes the development standards for detached ADUs. Structures that exceed any of the maximums associated with an ADU require Type II review.

| Table 19.910.1.E.4.b | | |
|--------------------------------------|---|--|
| Standard | ADU | Proposed |
| Maximum Structure Footprint | 800 sq ft | 893 sq ft +77 sq ft porch (Variance requested) |
| Maximum Structure Height | 25 ft (limited to 2 stories) | Approx. 13 ft-10 1/2" (1 story) |
| Required Side & Rear Yard | 5 ft | 12 ft to nearest side lot line; 129.25 ft to rear lot line |
| Required Front Yard | Base zone requirement for front yard | 131.5 ft |
| Required Street Side Yard | Not applicable | |

Subject to approval of the structure footprint variance, the proposed ADU meets the applicable standards for a detached ADU.

(3) MMC Subsection 19.910.1.E.4.c Design Standards

MMC 19.910.1.E.4.c establishes design standards for detached ADUs, including a requirement that an ADU with a floor-to-ceiling height of 9 ft or more is required to have a roof with a minimum 4/12 pitch. In addition, detached ADUs must include at least two design details from the following list: covered porch (at least 5 ft deep and 5 ft wide), recessed entry area at least 2 ft deep and 5 ft wide, roof eaves with a minimum projection of 12 in, horizontal lap siding between 3 to 7 in wide, and/or window trim around all windows (at least 3 in wide and 5/8 in deep).

As proposed, the ADU structure has a floor-to-ceiling height of less than 9 ft, a covered porch that is 9 ft in depth, roof eaves that project 18 inches, lap siding that will be between 3 and 7 inches wide, and window trim that is 3 inches wide and 5/8 inches deep.

These standards are met.

(4) MMC Subsection 19.910.1.E.4.d Privacy Standards

MMC 19.910.1.E.4.d establishes privacy standards for detached ADUs. These standards are required for ADUs processed with Type I review; for ADUs processed with Type II review, the inclusion of privacy elements may be required to meet the approval criteria established in MMC Subsection 19.910.1.D.2.

Privacy standards are required on or along walls of a detached ADU (or portions thereof) where the wall is (1) within 20 ft of a side or rear lot line, (2) at an angle of 45 degrees or less to the lot line, and (3) the wall faces an adjacent residential property. To meet the privacy standard, either all windows on an applicable wall must be in the upper third of the distance between floor and ceiling, or visual screening must be in place along that portion of the property line next to an applicable wall as well as an additional 10 lineal ft beyond the corner of the wall. Screening must be opaque; at least 6 ft high; and may consist of a fence, wall, or evergreen shrubs. Newly planted shrubs must be no less than 5 ft above grade in height at the time of planting and must reach a 6-ft height within one year.

The proposed ADU structure is a single-story building (approximately 13 ft in height) located 12 ft from the property to the north. As proposed, the window facing the abutting property to the north will be on the upper third of the wall.

The standards are met.

(5) MMC Subsection 19.910.1.E.4.e Conversion of Existing Structure

MMC 19.910.1.E.4.e establishes standards for the conversion of an existing structure into an ADU. For an existing structure that was established on or after December 1, 2012 (the date that the current ADU rules were established), the structure must meet all applicable standards for a new detached ADU; for an existing structure that was legally established prior to that date, the design standards of this subsection are not applicable.

The proposal involves converting a residential accessory structure that existed prior to June 3, 2022.

As proposed, the applicable design standards of this subsection are met.

The Planning Manager finds that, as conditioned, the proposed detached ADU meets all applicable standards of MMC 19.910.1.

8. MMC Chapter 19.911 Variances

a. MMC Subsection 19.911.2 Applicability

MMC 19.911.2 establishes applicability standards for variance requests.

Variances may be requested to any standard of MMC Title 19, provided the request is not specifically listed as ineligible in MMC Subsection 19.911.2.B. Ineligible variances

include requests that result in any of the following: change in review type, change or omission of a procedural step, change to a definition, increase in density, allowance of a building code violation, allowance of a use that is not allowed in the base zone, or the elimination of restrictions on uses or development that contain the word "prohibited."

The applicant has requested a variance to exceed the maximum structure footprint by 93 ft plus a 77 sq ft porch.

The requested variance meets the eligibility requirements.

b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. MMC 19.911.3.B establishes the Type II review process for limited variations to certain numerical standards. Per MMC 19.910.1.E.4.b, structures that exceed any of the maximums associated with an ADU require Type II review. MMC Subsection 19.911.3.C establishes the Type III review process for larger or more complex variations to standards that require additional discretion and warrant a public hearing.

The requested variance is to exceed the maximum structure footprint for an ADU by 83 sq ft plus a 77 sq ft porch. The requested variance is eligible for Type II review.

c. MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes the approval criteria for variances, with the following criteria for Type II variance applications provided in MMC Subsection 19.911.4.A:

- (1) The proposed variance, or cumulative effect of multiple variances, will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare.

The subject property is large (0.66 acres) and more than 84% vegetated. The proposed addition to the existing detached garage, including the porch, is only 118 sq ft and maintains the existing 12 ft side yard setback. The rear yard setback would be over 129 ft.

The proposed addition is modest and will not impact surrounding properties. There are no designated natural resource areas in the vicinity and no anticipated impacts to public health, safety or welfare.

The Planning Manager finds that this criterion is met.

- (2) The proposed variance will not interfere with planned future improvements to any public transportation facility or utility identified in an officially adopted plan such as the Transportation System Plan or Water Master Plan.

No public improvements are planned at this location, and there is no anticipated need for dedication to the public right-of-way along either of the subject property's street frontages.

The Planning Manager finds that this criterion is met.

- (3) Where site improvements already exist, the proposed variance will sustain the integrity of, or enhance, an existing building or site design.

The proposed 118 sq ft addition is sized to allow the creation of a modest ADU will maintaining approximately 450 sq ft for garage space. The detached structure will remain one story with the same roof pitch.

The Planning Manager finds that this criterion is met.

- (4) Impacts from the proposed variance will be mitigated to the extent practicable.

As discussed above, the proposal to exceed the maximum ADU structure footprint by 83 sq ft plus a 77 sq ft porch will not generate any impacts, so no mitigation is necessary.

The Planning Manager finds that this criterion is met.

- (5) The proposed variance would allow the development to preserve a priority tree or trees or would provide more opportunity to plant new trees to achieve 40% canopy, as required by Chapter 16.32.

The subject property includes two trees within the footprint proposed addition. Two new trees are proposed to be planted to replace these trees. The proposed development will result in a new dwelling unit and so is subject to the development part of the residential tree code in Section 16.32.042. The Urban Forester will review the proposed development during permit review for the proposed ADU.

The Planning Manager finds that the approval criteria for a Type II variance are met.

9. The application was referred to the following departments and agencies on September 23, 2024:

- Milwaukie Community Development Department
- Milwaukie Engineering Department
- Milwaukie Building Department
- Milwaukie Public Works Department, including Urban Forester
- Clackamas Fire District #1 (CFD#1)
- Lewelling Neighborhood District Association (NDA) and Land Use Committee (LUC)
- NW Natural

In addition, notice of the application was mailed to property owners and residents within 300 ft of the subject property on September 24, 2024. Public notice signs were posted on the property on September 24, 2024.

No comments were received.