



**BEFORE THE TALENT PLANNING COMMISSION
STATE OF OREGON, CITY OF TALENT**

IN THE MATTER OF PLANNING COMMISSION FILE NO. VAR 2015-)
001 LOCATED AT 413 CREEL ROAD [MAP NO. 38-1W-25DC TAXLOT) ORDER
105], THE CITY OF TALENT PLANNING COMMISSION FINDS THE)
FOLLOWING:)

1. The Planning Commission held a properly noticed public hearing on this matter on October 22, 2015;
2. The Planning Commission asked the Community Development Director to present a staff report and a proposed final order with findings and recommendations;
3. At the public hearing evidence was presented and the public was given an opportunity to comment;
4. The Commission found that the requested variance to the side yard setbacks is necessary because exceptional and extraordinary circumstances apply to the property;
5. The Commission found that the proposed application, with conditions in all other respects complied substantially with the criteria for approval in 8-3L.4.

The Talent Planning Commission approves the Variance (VAR 2015-001) allowing a side yard setback of 8' 9" along the western boundary of the subject lot with the following conditions of approval:

ONGOING CONDITIONS OF APPROVAL:

1. The applicant shall continually provide turn-around access between the dwelling and western property line, to prevent backing out of the flag lot access.

IT IS HEREBY ORDERED THAT the Talent Planning Commission approves with conditions the requested variance to side yard setbacks based on the information presented in the Staff Reports and Findings of Fact below:

In the following, any text quoted directly from City codes appears in *italics*; staff findings appear in regular typeface.

8-3C.220 BUILDINGS AND USES PERMITTED SUBJECT TO A TYPE I PERMIT REVIEW

No building, structure or land shall be used, and no building or structure shall be hereafter erected, enlarged or structurally altered, except for the following uses:

- A. *Single-family detached dwellings.*

Finding: The subject parcel is zoned Single Family - Low Density (RS-5) and allows for the construction of a single family detached dwelling through a Type-I review. **The provisions of this section have been met.**

8-3C.260 DENSITY AND DIMENSIONAL REQUIREMENTS

E. Flag lot development standards. The following standards apply to development on flag lots:

- a. Setbacks (See Figure 630–1). Flag lots have required building setbacks that are the same along all lot lines, except that the setback on the pole portion side shall be at least 13 or 24 feet, as appropriate, plus an additional 20 feet for garage entrances, or more if there is a possibility the pole may someday become part of a larger public right-of-way. The City reserves the right to require greater setbacks in such cases for garages and/or entire structures. The required setbacks for primary structures, including houses and garages, are:*

<i>Zone</i>	<i>Setback</i>
<i>RS-5</i>	<i>15 feet</i>
<i>RS-7</i>	<i>10 feet</i>
<i>RS-MH</i>	<i>10 feet</i>
<i>RM-22</i>	<i>10 feet</i>

Finding: As shown on the proposed plot plan, the building envelope is set back fifteen (15) feet from the front (facing Creel to the north.) and fifteen (15) feet from the back and the east side. The building envelope is setback nearly nine (9) feet from the eastern property line. The proposed garage is setback is nearly thirty (30) feet, while the setback from the western edge of the building envelope is fifteen (15) feet. The setback on the eastern boundary is more difficult to achieve due to the location of the Cottonwood tree. The area adjacent to the Cottonwood tree is also needed to provide a vehicle turn-around location to prevent backing onto Creel Road. A setback of approximately six (6) feet on the eastern property line is being considered as part of this application and is addressed in the findings below for variances. **The provisions of this section have been met, subject to approval of the requested variance and other conditions of approval.**

8-3L.440 REQUIRED FINDINGS FOR GRANTING A VARIANCE

The Planning Commission shall not grant any variance unless all of the following findings are made:

- A. There are exceptional or extraordinary circumstances or conditions applying to the property or intended use that do not apply generally to other properties in the same zone or vicinity and which result from lot sizes or shape legally existing prior to the adoption of this chapter, topography, or other circumstances over which the applicant has no control;*

Finding: The subject lot was created as part of a flag lot partition in 2006, which provided the lot with sufficient space for a smaller building footprint typical of a two-story home. However, the findings from the 2006 partition preclude the development of a two-story home in order to provide consistency with adjacent single story residential development.

At the time the final orders were approved by the Planning Commission, no consideration was taken for the location of the existing Cottonwood tree, nor was a vehicle turn-around considered. The location of the Cottonwood tree and the requirement for only single story development applies an exceptional or extraordinary circumstance that would significantly limit the size of the home and the value of what could be built.

The proposed location of the 1,825 square foot single story home has been designed to keep the driveway and vehicle turn-around out of the drip zone of the tree to the greatest extent practicable and has been sited in a location that provides reasonable assurance that even with the requested variance, there is adequate separation between residential uses. **The provisions of this section have been met.**

B. *The variance is necessary for the preservation of a property right of the applicant which is substantially the same as is possessed by the owners of other property in the same zone or vicinity;*

Finding: All of the adjacent properties are zoned RS-5 and would be subject to the standard setbacks for the zone. Many of the lots in the vicinity are large enough to partition to the standard 8,000 square foot area or are already sized to the minimum zoning standards.

If any one of these standard sized properties were vacant and requested to build a dwelling, they would only need to meet the five (5) foot side yard setbacks. Without a side yard setback variance, it could be argued that the property rights of the subject property owner *are* substantially different than that of others in the vicinity. **The provisions of this section have been met.**

C. *The variance would not be detrimental to the purposes of this chapter, the objectives of any City development plan or policy, the goals, policies or text of the Comprehensive Plan, or other property in the zone or vicinity in which the property is located; and*

Finding: A variance would not be detrimental to the purpose of this chapter or the objectives of the policies of the City. No variance from the standard setbacks is being requested for the north, south or west sides of the parcel, so there is no negative impact along those property lines. In fact, the setbacks on the south side of the property exceed the minimum flag lot setbacks by nine (9) feet. An approved variance of six (6) feet on the eastern property line, adjacent would have less impact on the adjacent property owners than allowing a two-story dwelling that met all of the flag lot setbacks.

A variance of six (6) feet allows for 42 feet of separation between the dwelling to the east and the proposed subject dwelling, thirty-two (32) feet more than the standard setbacks for a single-story single family residential lot. **The provisions of this section have been met.**

D. *The variance requested is the minimum variance from the provisions and standards of this chapter, which will alleviate the hardship.*

Finding: The requested variance is the minimum variance from the provisions and standards of this chapter and will alleviate the hardship. The dripline for the Cottonwood tree is approximately the same distance as the setback required on the western boundary. Any reduction of the western property line setback could have a potential negative impact on the

health, safety and root system of the tree and would minimize the effectiveness of the vehicle turn-around. As an ongoing condition of approval, the applicant shall continually provide turn-around access between the dwelling and western property line, to prevent backing out of the flag lot access. **The provisions of this section have been met subject to conditions of approval.**

This approval shall become final 14 days from the date this decision and supporting findings of fact are signed by the Chair of the Talent Planning Commission, below. A Planning Commission decision may be appealed to the Hearing's Officer within 14 days after the final order has been signed and mailed. An appeal of the Hearing's Officer decision must be submitted to the Land Use Board of Appeals within 21 days of the Hearing Officer's decision becoming final.

Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the City to respond to the issue precludes an action for damages in circuit court.

Eric Heesacker
Chairperson

Date

ATTEST

Zac Moody
Community Development Director

Date