



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

IN THE MATTER OF PLANNING COMMISSION FILE NO. VAR)
2022-001 LOCATED AT 232 WILLOW SPRINGS DRIVE [MAP NO.) ORDER
38-1W-23 AC TAXLOT 1300], THE CITY OF TALENT PLANNING)
COMMISSION FINDS THE FOLLOWING:)

1. The Planning Commission held a properly noticed public hearing on this matter on January 25, 2022;
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 35 foot floodway setback cannot be approved without jeopardizing the city of Talent’s community rating system for the city’s National Flood Insurance rates.
5. The Commission found that the proposed application, does not complied substantially with the criteria for approval in TMC 15.15.180.

IT IS HEREBY ORDERED THAT the Talent Planning Commission denies the requested variance to placement of a dwelling inside of the 35 foot greenway setback from the regulatory floodway 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.

Chapter 15.15 Flood Damage Prevention

15.15.060 Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the city of Talent, Oregon.

15.15.070 Basis for establishing the area of special flood hazard.

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for Jackson County, Oregon and Incorporated Areas,” dated May 3, 2011, with accompanying flood insurance rate maps, are hereby adopted by reference and declared

to be a part of this chapter. The flood insurance study is on file in the Talent community development department office. [Ord. 916 § 3.2, 2016; Ord. 859 § 1; Ord. 778 § 1; Ord. 752 § 3.2.]

Finding: The City of Talent manages our floodplain damage prevention by applying the established maps and criteria by FEMA and the City of Talent Municipal code for floodplain management. The applicant requested and was granted a Letter of Map Revision to be located out of the 100 year floodplain. According to the documents provided by FEMA LOMA Case NO 21.10-0998A a portion of the subject site has been removed from the Special Flood Hazard Area and now carries a Zone X with the lowest lot elevation of 1560.6. However, this did not change the floodway location and the proposed residential structure's distance from the Bear Creek floodway that is within 35 feet of the floodway.

15.15.150 Appeals and variances.

A. Appeals. The planning commission shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the floodplain manager in the enforcement or administration of this chapter. Those aggrieved by the decision of the floodplain manager, or any taxpayer, may appeal such decision to the planning commission. In considering an appeal of the decision of the floodplain manager, the planning commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and all of the following:

1. *The danger that materials may be swept onto other lands to the injury of others;*

Finding: The proposed project will not create a danger of material being swept onto other lands due to the property being determined to be out of the 100 year floodplain and out of the floodway.

2. *The danger to life and property due to flooding or erosion damage;*

Finding: It is also unlikely that there will be danger to life and property due to flooding or erosion damage since this project site has been studied and revised to outside of the floodplain by approximately 10 feet.

3. *The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;*

Finding: The recent survey and Letter of Map Revision demonstrates that the proposed building footprint is located outside the 100 year floodplain and will not create any potential for structural damage and damage on the individual owner.

4. *The importance of the services provided by the proposed facility to the community;*

Finding: The proposed facility is a residence that will provide a home for the individual that lost their home in the Alameda Fire.

5. *The necessity to the facility of a waterfront location, where applicable;*

Finding: The proposed residential structure will not have waterfront location.

6. *The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;*

Finding: The only alternative would be to construct the same house (size) that was originally on the lot and within the original footprint prior to the Alameda Fire.

7. *The compatibility of the proposed use with existing and anticipated development;*

Finding: The proposed use is a rebuild of a single family dwelling on the subject lot. The dwelling is compatible with the existing neighborhood and the surrounding lands which are zoned multi-family residential and greenway open space.

8. *The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;*

Finding: The proposed use meets the residential use outlined in the comprehensive plan, therefore this application is consistent with the comprehensive plan. The recent flood survey and LOMR has demonstrated that the property is outside of the 100 year floodplain but does not meet the 35 foot setback that the TMC Chapter 15 requires from the floodway.

9. *The safety of access to the property in times of flood for ordinary and emergency vehicles;*

Finding: Access safety to the site is not an issue for the proposed rebuild of the dwelling.

10. *The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site; and*

Finding: The LOMR has removed the 100 year floodplain, therefore this is not applicable to the project site.

11. *The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.*

Finding: The costs of providing governmental services during and after flood conditions are unknown however, the property has received a LOMR and is considered outside of the 100 year floodplain at this time.

B. *Variations. A variance may be permitted by the planning commission based upon the consideration of the factors listed in subsections (A)(1) through (A)(11) of this section, and the variance criteria that follow. The planning commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.*

1. *The variance requested is a variance from the elevation standard for new construction or substantial improvements to be erected on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in subsections (A)(1) through (A)(11) of this section have been fully considered. As the lot size increases the technical justification required for issuing the variance increases; or*

Finding: The subject property is .23 acre the lot. Properties to the north and west of the subject property are located within the 100 year floodplain outlined on FEMA Map Panel 41029C2181F with several of those properties having the floodway bisecting their property and building footprint. These lots if destroyed by fire may be built "like for like" as determined in the TMC 15.15.180 C. Notwithstanding the foregoing subsection (A) of this section, a residential structure existing on September 7, 2020, which was destroyed or made uninhabitable by the Almeda Fire, may be replaced or substantially improved, so long as: (1) the reconstruction is not more nonconforming to subsection (A) of this section, in comparison to the structure existing on September 7, 2020; .

2. *The variance requested is for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the state inventory of historic places, without regard to the procedures set forth in this section; or*

Finding: This is not applicable to this variance request

3. *The variance requested is for a nonresidential building in very limited circumstances, the request is to allow a lesser degree of floodproofing than watertight or dry floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria in this subsection B, and otherwise complies with this chapter; and all of the following:*

a. *Variances shall not be issued within a designated floodway; and*

b. *The variance requested is the minimum necessary, considering the flood hazard, to afford relief; and*

c. *All of the following findings have been made:*

i. *Failure to grant the variance would result in exceptional hardship to the applicant.*

ii. *Granting the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, the creation of nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.*

Finding: This is criteria is not applicable to this variance request.

Chapter 18. 160 Variance

18.060.010 Authorization to grant or deny variances.

A. *The planning commission is delegated the authority to approve, approve with conditions, or disapprove any proposed variance from the provisions of this title. Where practical difficulties, unnecessary hardships, and results inconsistent with the general purposes of this title and the Talent comprehensive plan would result from the strict and literal interpretation and enforcement of the provisions of this title, variances may be granted as provided in this chapter.*

Finding: The applicant is requesting the planning commission grant approval of the proposed variance due to the revised FEMA mapping that occurred in 2011, after the Willow Springs Estates subdivision was approved and the dwelling was constructed on the subject property. This FEMA map revision in 2011 created a practical hardship and difficulty to reestablish a dwelling on the subject property. This map revision made the existing dwelling more non-conforming although as per the City of Talent TMC interpretation Memo and the EO, a home destroyed in the Almeda Fire could built as it once was prior to the fire. The proposed rebuild is not considered like for like, the proposed dwelling is proposed larger and being placed a few feet closer to the 35 feet setback from the floodway. As per TMC 15.15.180 A., *A structure existing within 35 feet of a floodway is a nonconforming structure, and no expansion or substantial improvement of a nonconforming structure is allowed, as established in Chapter 18.195 TMC.*

B. *No variances shall be granted to allow the use of property for a purpose not authorized within the zone in which such property is located.*

Finding: The applicant is requesting to reestablish a single family dwelling that is permitted in the residential medium density zone district.

C. *In granting a variance, the planning commission may attach conditions that it finds necessary to protect the best interests of the surrounding property or neighborhood and otherwise achieve the purposes of this chapter.*

Finding: The granting of this variance would create a more non-conforming project based on the increase in size of the proposed dwelling. Although it would not create any adverse impacts to the surrounding properties the granting of such a variance would place the home closer within the 35 foot setback from the floodway.

18.160.040 Required finding 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 shapes legally existing prior to the adoption of this chapter, topography, or other circumstances over which the applicant has no control;

Finding: The subject property was created and recorded with the County in 2004. FEMA has amended the flood hazard mapping for Bear Creek over time and with the recent mapping to be 2011. The original house was located in the 100 year floodplain and a portion of the house within the floodway. According to the documents provided by FEMA LOMR Case No. 21-10-0998A a portion of the subject site has been removed from the Special Flood Hazard Area and is considered Zone X. The only unusual circumstances or conditions are that the property was destroyed in the Almeda Fire along with other residence in the same neighborhood. As established in the TMC15.15.180 C, a structure existing within the 35 feet of a floodway is a nonconforming structure and no expansion or substantial improvement of a nonconforming structure is allowed. The applicant is requesting to expand further into the 35 feet setback from the floodway with the proposed new construction.

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: The property owner is permitted to construct the same size single family dwelling that was originally constructed and permitted in 2005. The zone permits the construction of a single family dwelling.

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: The recent LOMR provided by FEMA Case No. 21-10-0998A a portion of the subject site has been removed from the Special Flood Hazard Area and is considered Zone X. TMC 15.15 establishes a 35 foot greenway area setback from the floodway, this is more restrictive than the FEMA requirements.

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

In addition to the criteria in subsections (A) through (D) of this section, variances from access management standards are subject to the following additional standards:

Finding: This variance is requested to encroach into the 35 foot greenway setback from the floodway. The proposed building footprint is located 10 feet from the eastern floodway boundary, 24 feet from the southern floodway boundary and approximately 20 feet from the

northern floodway boundary. This request is considered a minimum variance from the 35 foot setback provision of the code.

E. The granting of the variance shall be in harmony with the purpose and intent of these regulations and shall not be considered until every feasible option for meeting access standards is explored.

Finding: The requested variance would deviate from the required 35 foot setback from the floodway however there are no access standards to the site that are of any issue to the proposed reconstruction of the single family dwelling.

F. Applicants for a variance must include proof that:

- 1. Indirect or restricted access cannot be obtained;*
- 2. No practical engineering or construction solutions can be applied to mitigate the condition;*
- 3. No alternative access is available from a street with a lower functional classification than the primary roadway.*

Finding: Access to the project site is not an issue for this variance request.

18.85.929 Floodplain – Parks – Greenway overlay zone

Description and Purpose.

2. Floodplain. The OFPG overlay zone may be laid over any other zoning district established by this title where the area is subject to inundation by flooding, as indicated on Federal Emergency Management Agency flood insurance rate map (FIRM) and floodway maps. That is, any area subject to a one percent chance of flooding in any given year, also referred to as the 100-year floodplain. Application of special development standards in floodplains is intended to minimize property loss, personal injury and health hazards.

Finding: The applicant requested and was granted a Letter of Map Revision to be located out of the 100 year floodplain. According to the documents provided by FEMA LOMA Case NO 21.10-0998A a portion of the subject site has been removed from the Special Flood Hazard Area and now carries a Zone X with the lowest lot elevation of 1560.6.

C. Standards. All development, including construction, reconstruction, extension, conversion or alteration of any structure or land occurring in the OFPG zone shall comply with the following standards:

- 1. Development within the 100-Year Floodplain.*
 - a. Development within the 100-year floodplain shall conform to the standards of this title and to those of Chapter 15.15 TMC, Flood Damage Prevention. At a minimum, development within the floodplain shall be consistent with development standards established for participation in the federal flood insurance program.*

Finding: The applicant requested and was granted a Letter of Map Revision to be located out of the 100 year floodplain. According to the documents provided by FEMA LOMA Case NO 21.10-0998A a portion of the subject site has been removed from the Special Flood Hazard Area and now carries a Zone X with the lowest lot elevation of 1560.6.

CONCLUSION

While the proposed development may be in conformance with the medium density residential intent and objectives of the RMD zone the proposal as submitted the is not in conformance with the specific requirements of the City of Talent Zoning Code outlined in Chapter 15, section 15.15.180 Floodway. The proposed project will create a dwelling that will be within

and closer to the 35 foot greenway setback from the floodway. The LOMR addresses the 100 year floodplain amendment and does not address the floodway for the project area. This variance does not preclude the applicant from constructing a dwelling in the original footprint. The city of Talent floodplain ordinance established strict floodplain management criteria to maintain our CRS rating that benefits all the citizens of talent within the floodplain. Should the Planning Commission deviate from this criteria, findings would need to be made to otherwise allow construction within the 35 foot setback from the regulatory floodway. Furthermore this could affect our NFIP rates that are administered base on our community rating system and the existing floodplain management codes.

This denial 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 City Council within 14 days after the final order has been signed and mailed. An appeal of the City Council decision must be submitted to the Land Use Board of Appeals within 21 days of the City Council'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.

Felicia Hazel
Chairperson

Date

ATTEST

Kristen Maze
Community Development Director

Date