



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

IN THE MATTER OF PLANNING COMMISSION FILE NO. VAR)
2023-001 LOCATED AT OAK VALLEY PLANNED COMMUNITY,) ORDER
THE CITY OF TALENT PLANNING COMMISSION FINDS THE)
FOLLOWING:)

1. The Planning Commission held a properly noticed public hearing on this matter on February 28, 2023;
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 TMC 18.90.030(B)(5), allowing an unenclosed patio and patio cover (roof or canopy) to extend five feet (5') into the required ten foot (10') rear setback in the Oak Valley Planned Community, complies substantially with the criteria for approval in TMC 18.160.

IT IS HEREBY ORDERED THAT the Talent Planning Commission approves the requested variance to rear setbacks for patio and patio covers in the Oak Valley Planned Community based on the information presented in the Staff Report and Findings of Fact below, with the following conditions of approval:

1. The proposed variance to TMC 18.90.030(B)(5) shall apply to the entire Oak Valley Planned Community.
2. The extended eave of the patio cover may encroach not more than 12 inches further than the five feet (5') allowance for the patio into the required rear setback.
3. This variance request shall not allow for the patio or patio cover to encroach into the required 35' greenway protected area or the wetland/riparian setbacks established in TMC 18.85.030.

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

18.90.030 SETBACK REQUIREMENTS

Except as provided in this section, every required setback shall be open and unobstructed.

A. Setback Measurements. All setback measurements shall be made from the property line to the building or nearest projection thereof and shall be unobstructed from the ground upward, except as specifically provided herein.

B. Projections into Required Setbacks and Exceptions to Setback Requirements. Every part of a required setback shall be open and unobstructed from the ground upward, except for the following:

5. Open, unenclosed porch or paved terrace or platform, not covered by roof or canopy, projecting not more than eight feet into a required front setback or four feet into a required side or rear setback.

Finding: The applicant is asking for a variance to TMC 18.90.030(B)(5), setback requirements, which allows an open, unenclosed patio, not covered by roof or canopy, to extend no more than four-feet (4') into the required ten-foot (10') rear setback. This request is to allow an unenclosed patio *and* a patio cover (roof or canopy) to extend five feet (5') into the required ten-foot (10') rear setback in the Oak Valley Planned Community.

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.

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.

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.

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 Oak Valley Community was originally approved as a mobile home park in 2003, but re-zoned to high density residential in 2004 and built entirely of stick-built, single-family homes. When the community was platted out, Oak Valley lots were sized for a single-volume manufactured home with few modulations in the shape of the footprint, typically positioned with the longer dimension facing the street. Additionally, the garage setback for the

manufactured home at the time of this development was 20 feet (20'), same as the front of the home, whereas the yard requirements for the newly changed zone were 20' for front and 24' for garage, requiring greater modulation along the front façade. As a result of the lot size and shape, most of the homes in the Oak Valley Community have very small, shallow back yards with little to no room for an extended, covered back patio. As temperatures in the region continue to rise, functional outdoor space will increasingly require shelter from the sun, especially for heat vulnerable populations. Oak Valley residents, aged 55 years and up, are limited in their ability to have sheltered outdoor space in their yards due to lot sizes and shapes that legally existed prior to ownership. **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: Because most of the lots in the Oak Valley Community are subject to the same constraint, staff feels that this variance should be applied to the entire subdivision in order to allow all of the residents the same ability to improve their back yards in a manner that is equal to owners of lots in the high density zone that have been sized with consideration for the larger, more complicated footprint of a stick-built home. **The provisions of this section can be met subject to conditions of approval.**

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: This variance would not be detrimental to policies and goals of the comprehensive plan or other property in the zone or vicinity in which the property is located. **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. 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 allow an unenclosed patio to extend five feet (5') rather than four feet (4') into the rear setback, and to allow the unenclosed patio to have a roof or canopy cover for shade. As proposed, the patio would still have a five-foot (5') setback to the rear property line, providing space for landscaping, maintenance, and an optional buffer. **The provisions of this section can be met subject to conditions of approval.**

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 is in harmony with the purpose and intent of setback regulations, as the structural setback of ten feet (10') would be strictly observed while allowing a covered but unenclosed patio to extend into the setback by five feet (5'). **The provisions of this section have been met.**

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.

18.85.020 Floodplain – Parks – Greenway overlay zone (OFPG).

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.*
 - b. *No new construction, including the placement of mobile homes, is allowed in any designated floodway or within the bed and banks of any stream, except for those uses, such as bridges, that are associated with greenway access or other public facilities. Any such use shall be subject to approval by the Oregon Department of Fish and Wildlife, Division of State Lands, and any other state or federal agency with a jurisdictional interest in the waters of the state.*
2. *Yard Setbacks along Greenway Areas. The greenway protected area is the 35-foot-wide strip of land extending the length of, and on both sides of, the designated floodway. Structural setbacks, as prescribed for the underlying zone, shall be measured from the outer edge of the 35-foot strip. Where a floodway line has not been mapped, the floodway shall be determined by a registered professional engineer at the property owner's expense prior to approval of development permits. Establishment of floodway boundary lines is further regulated by Chapter 15.15 TMC, Flood Damage Prevention. This setback provision is in addition to the wetland/riparian setbacks established in TMC 18.85.030. Where there is a conflict between the two setbacks, the stricter standard shall apply.*

Finding: This variance request shall not include an allowance for the patio or patio cover to encroach into the required 35' greenway protected area. All development in the Oak Valley Community shall adhere to yard setbacks along the Greenway Areas in addition to the wetland/riparian setbacks established in TMC 18.85.030. **The provisions of this section can be met with conditions of approval.**

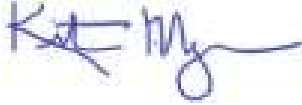
This approval shall become final 14 days from the date this decision and supporting findings of fact are signed by the Chair of the Talent Planning Commission, below. A Planning Commission decision may be appealed to the City Council within 14 days after the final order has been signed and mailed. An 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.

Derek Volkart
Chairperson

Date

ATTEST



Kristen Maze
Community Development Director

February 28, 2023

Date