

# PRE-APPLICATION CONFERENCE MEETING Notes

December 6, 2012

SUBJECT: Water Resource Area (WRA) permit to construct additions to an existing house at 3847 Mapleton Drive.

ATTENDEES: Applicant: Rich Farrington, Kate Farrington

Review Staff: Peter Spir (Associate Planner)

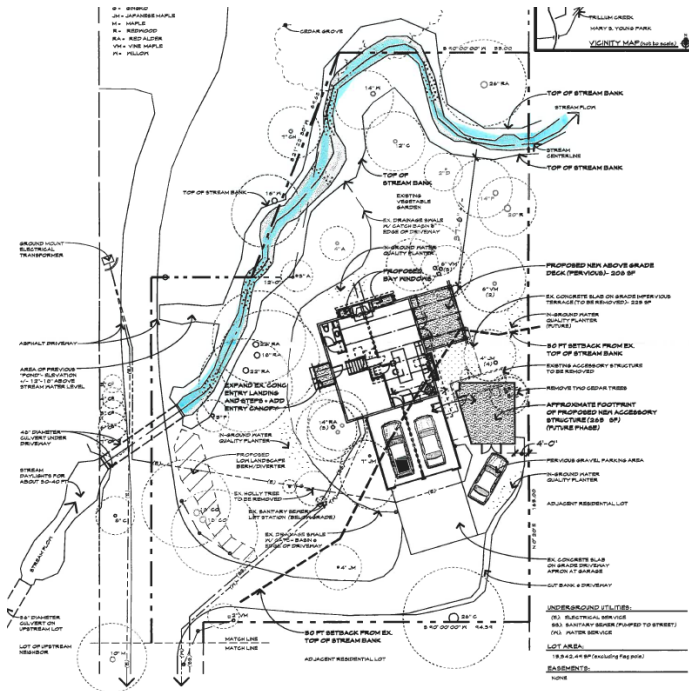
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***The following is a summary of the meeting discussion provided to you from staff meeting notes. Additional information may be provided to address any "follow-up" items identified during the meeting. These comments are PRELIMINARY in nature. Please contact the Planning Department with any questions regarding approval criteria, submittal requirements, or any other planning-related items. Please note disclaimer statement below.***

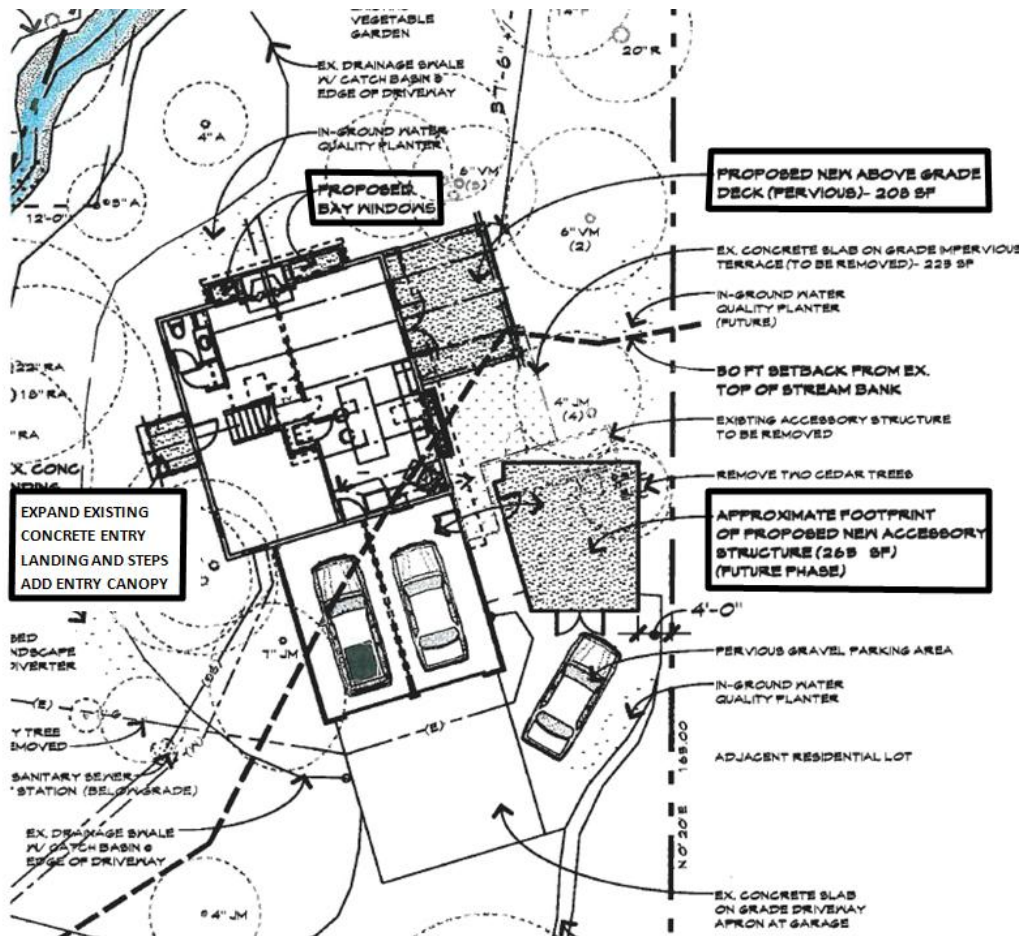
## **Project Summary**

The applicant proposes exterior additions on three sides of an existing house located adjacent to Trillium Creek which wraps around the west and north edges of the property. The additions include a small deck (within 30-inches of grade) on the east side of the house, two bay windows on either side of the chimney on the north side, installing a canopy over an expanded existing front entryway on the west side, and a small freestanding accessory structure to the south east of the house.





21 PARTIAL SITE PLAN @ LOT FLAG 11-22-07



Trillium Creek carries a year round flow of water. On the property to the west, the creek is buried in a pipe but it daylights briefly then is piped again under the driveway serving the subject and a neighboring property before re-emerging. From that point, (see photo below) as an open channel, it arches in a northeasterly direction. The distance from the house to the creek ranges from 20 feet at the northwest corner to 48 feet at the northeast corner.



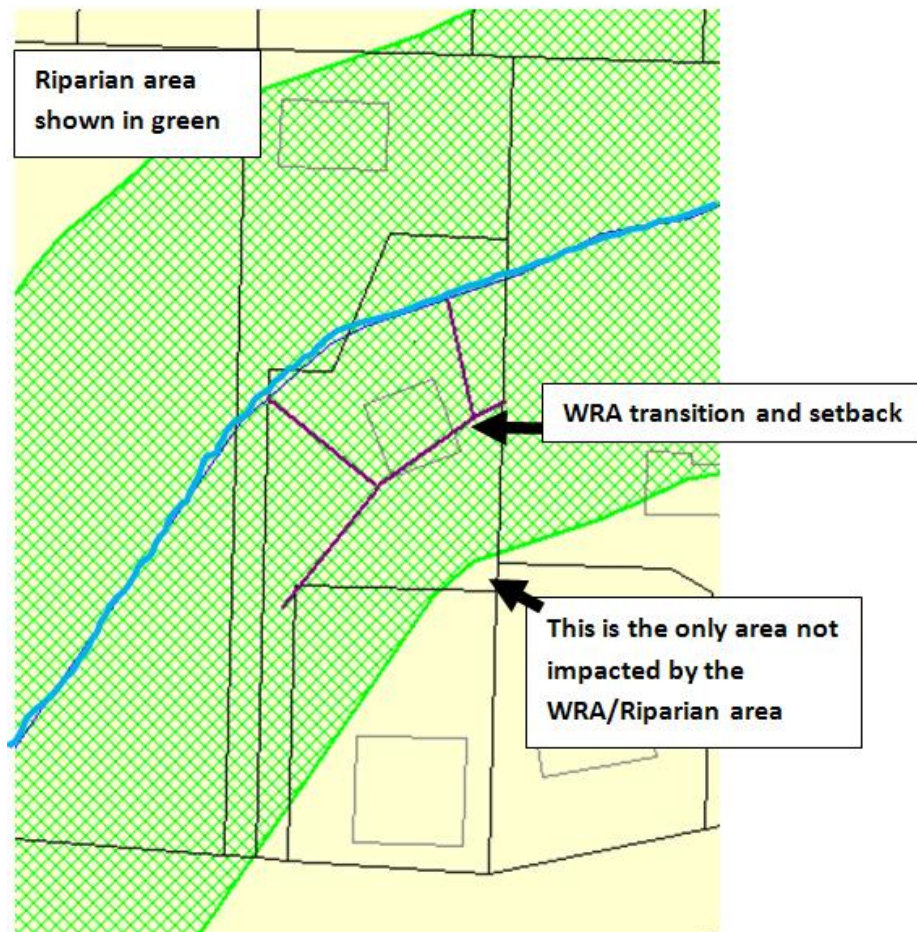
The Community Development Code (CDC) Chapter 32 protects water resource areas (WRAs) like Trillium Creek and establishes setbacks that vary depending on the slopes adjacent to the creek. Since the slope here is 0-5% the required transition from the creek to any building is 50 feet plus an additional setback of 7.5 to 15 feet depending on whether the side or front/rear of the house is involved. In cases such as at this where there is a variety of trees, groundcover and bushes that offer habitat areas, the property is further protected by riparian area designation which requires a 100 foot transition plus the 7.5 to 15 foot setback. The net effect is that the entire parcel is within the WRA/riparian area except for a small 15 X 15 foot area in the southeast corner of the lot.

Development is severely restricted.

## **EXCEPTION OPTION**

There are, however, provisions in Chapter 32.020(D)(8)(a) which allow for minor additions so long as it does not bring the development closer to the creek:

- 1) *A lateral extension of an existing building footprint by up to 10 feet is allowed if the lateral extension does not encroach any further into the water resource area than the portion of the existing footprint immediately adjacent; and*
- 2) *An addition to the existing structure on the side opposite of the existing water resource area shall be allowed.*



Because these exceptions do not require a WRA permit, the applicant should consider them first.

The exceptions of 32.080(D) (8) (a) (1): *“A lateral extension of an existing building footprint by up to 10 feet is allowed if the lateral extension does not encroach any further into the water resource area than the portion of the existing footprint*

*immediately adjacent*” would be useful for the entryway cover, the bay windows and east deck but only conditionally.

Specifically, the front entry can be expanded southwards 10 feet since that would be away from the creek and not bring the entry improvements closer to the creek. This would result in an asymmetrical front entry design but the functional needs of a covered entry could be accomplished. No WRA permit would be needed if this exception was used.

Similarly, the bay windows on either side of the chimney are in the WRA. An addition to the east side of the chimney would be allowed since it would not get closer to the creek. The bay window could not extend further than the existing chimney towards the creek. Up to 10 feet of lateral bay windows could be added. The proposed bay window on the west side of the chimney would not be allowed since it would come closer to the creek.

The proposed deck may extend 10 feet laterally from the house but the north portion of the deck cannot come closer to the creek than the northeast corner of the house. The deck design would have to be modified.

The proposed accessory structure cannot be accommodated by the exception provisions since it is not attached to the house. All detached additions must meet the WRA/Riparian Area transitions and setbacks which is impossible here.

A practical option would be to attach the accessory structure to the house and limit it to a west to east dimension of 10 feet. So long as the addition was attached on the east side, away from the west portion of the creek, it could have a north to south dimension equal to the existing garage.





## **HARDSHIP OPTION**

In addition to the exception provisions, there are hardship provisions for those cases where an applicant is severely restricted by the WRA transitions and setbacks. These hardship provisions require a WRA permit.

### ***32.090 REDUCTION IN STANDARDS FOR HARDSHIP***

*The purpose of this section is to ensure that compliance with this chapter does not cause unreasonable hardship. To avoid such instances, the requirements of this chapter may be reduced. Reductions are also allowed when strict application of this chapter would deprive an owner of all economically viable use of land. The decision-making authority may impose such conditions as are deemed necessary to limit any adverse impacts that may result from granting relief.*

*B. Lots located partially inside the water resource area. A reduction to avoid the loss of all economically viable use of a vacant lot recorded with the County Assessor's Office on or before the effective date of the*

*ordinance codified in this chapter that is partially inside the water resource area is permitted. Development on such lots shall not disturb more than 5,000 square feet of the water resource area, including access roads and driveways, subject to the erosion and sediment control standards of Chapter 31 CDC. Applicants must demonstrate the following:*

*1. Without the proposed reduction, the applicant would be denied economically viable use of the subject property. To meet this criterion, the applicant must show that no other application could result in permission for an economically viable use of the subject property. Evidence to meet this criterion shall include a list of uses allowed on the subject property.*

*2. The proposed intrusion is the minimum necessary to allow economically viable use of the subject property.*

The challenge associated with the hardship provisions is that they require that the applicant demonstrate that the proposed intrusion into the WRA is the minimum needed to accommodate an economically viable use. It could be argued that since the applicant already has a home on the property then the minimum economically viable use has already been provided for. Alternately, the applicant could introduce the fact that the house has a smaller footprint than the average home footprint along Mapleton Drive. (Notwithstanding the fact that, at 1,953 square feet of interior space, not counting the garage, the house is bigger than the square footage of many nearby homes.)

Also on the subject of the hardship provisions, the maximum disturbed area allowed is 5,000 square feet. An important note: the 5,000 square feet is the maximum area allowed so the Planning Director may determine that a smaller footprint is appropriate. Secondly, the 5,000 square feet of allowed disturbance area includes the existing house, all accessory structures, area that is disturbed temporarily during construction, all on-site driveways, non-native vegetation (including raised vegetable beds), storm water treatment and detention facilities, all buried underground utilities, etc.

The site currently disturbs an estimated 3,724 square feet with most of that (2,400 square feet) attributable to the access driveway. That would leave a maximum addition or disturbed area of 1,276 square feet. A detailed inventory of the actual disturbed area would have to be undertaken as part of the submittal.

WRA permits are decided by the Planning Director.

## **VARIANCE OPTION**

A final option, when it is clear that the exceptions and hardship provisions of chapter 32 either do not make reasonable accommodation for the proposed changes or the 5,000 square feet has been exceeded, is to apply for a Class II Variance. Class II Variances are decided by the Planning Commission.

## **WAIT FOR CODE CHANGE OPTION**

Staff noted that changes to Chapter 32 are being proposed. These changes have been in the works since 2010. They are currently being reviewed by city staff with the hope that they could be introduced to the public in spring 2013 and brought forward to the Planning Commission and City Council by fall 2013. This raises the question if there are any changes that could be favorable to this application.

Under exceptions, the standards would limit the size of lateral additions to 300 square feet but they could extend 15 feet laterally. For additions at the rear or opposite side of the house the square footage would be limited to 500 square feet. For people using the hardship provisions, the 5,000 square foot limit would remain at 5,000 square feet but would not count temporarily disturbed areas during construction. New driveways of permeable surfaces would be assessed at half the square footage. Instead of demonstrating that the restrictions deprive the applicant of "all economically viable use" of the land, the new language would only ask that the applicant demonstrate that "reasonable use" of the land has been denied.

Accessory structures that do not need building permits could go in the WRA setback areas.

There is also a proposed provision that would allow property owners to pay for a wetland specialist to make a determination that reduced transitions and setbacks are appropriate in that they will maintain the function and quality of the WRA at this particular location.

Since there is nothing really new as it relates to this property and given the fact that the code changes are so far off and subject to change, this an option that staff would not encourage.

## **PROCESS**

### **Water Resource Area (WRA) permit**

At the pre-application conference, the applicant stated he will not try to use the "exceptions option" of 32.080 since those provisions would not give the applicant a



product that would meet his functional and aesthetic needs. Instead, the applicant will apply for a WRA permit and pursue a hardship allowance of up to 5,000 square feet of disturbed area.

In the event that the applicant discovers that the 5,000 square foot allowance has already been exceeded, the applicant will have to apply for a Class II Variance as well as a WRA permit.

The cost of a WRA permit is a fee of \$2,600. The submittal requirements are found in section 32.040, 32.060, 32.070 and 32.080. The approval criteria are found in 32.050. The hardship provisions are found in 32.090. "N/A" is not an acceptable response to criteria. Please explain why it is N/A.

### **Class II Variance**

A Class II variance is decided by the Planning Commission. A WRA permit would still be required too. The Planning Commission would hear them jointly.

The focus of variances is illustrated by section 75.060(D): *"The variance request is the minimum variance which would alleviate the exceptional and extraordinary circumstance."* The applicant should be prepared to show how alternate designs were not feasible and that the proposed disturbance area is the minimum needed to reasonably accommodate those changes.

The cost of a Class II variance is a fee of \$2,900. The submittal requirements and approval criteria are found in CDC Chapter 75.

Submittal requirements and approval criteria for both permits may be waived per 99.035(B), but the applicant must first identify the specific submittal requirement or approval criteria and request, in letter form, that it be waived by the Planning Director and must identify the specific grounds for that waiver. The waiver may or may not be granted by the Planning Director. The Planning Director's waiver may be subsequently overturned by the Planning Commission.

Once the submittal is deemed complete, the staff will, in the event that only a WRA permit is applied for, schedule a decision date by the Planning Director or, if a Class II Variance is applied for, schedule a hearing with the Planning Commission. Public notice will be sent out 14 days before the Planning Director's decision or 20 days before the Planning Commission hearing. Both decisions may be appealed to City Council by the applicant or anyone with standing.

Pre-application notes are void after 18 months. After 18 months with no application approved or in process, a new pre-application conference is required.

***Typical land use applications can take 6-10 months from beginning to end.***

**DISCLAIMER:** This summary discussion covers issues identified to date. It does not imply that these are the only issues. The burden of proof is on the applicant to demonstrate that all approval criteria have been met. These notes do not constitute an endorsement of the proposed application. Staff responses are based on limited material presented at this pre-application meeting. New issues, requirements, etc. could emerge as the application is developed. Thus, there is no “shelf life” for pre-apps.

