

Attachment B: Proposed changes to the amendments including late changes

February 5, 2014

In order to minimize confusion potentially caused by multiple versions of the code amendments being in circulation, staff has refrained from any updates to the language since early December 2013. Since that date, a number of minor changes have been identified which should make the amendments clearer and less likely to require interpretation. Staff would request that these changes be considered and incorporated during the course of the Planning Commission hearing. (Additions are identified by underlined and highlighted text while deletions are identified by strikethroughs.)

Yellow highlighted staff notes explain the rationale or thought behind the change.

32.040...

C. Nonconforming Structures.

1. Expansion of the principal Non-Conforming Structure. Additions to the existing building footprint of a principal non-conforming structure within, or partially within, the WRA are exempt, and additionally exempt from Chapter 66, Non-Conforming Structures, as long as the addition(s) meets the following restrictions:
 - a. Re-vegetation of temporarily disturbed areas will be performed per Section 32.100 after the addition is completed;
 - b. There is no net increase in storm water runoff flowing toward the water resource as a result of the addition(s);
 - c. The addition ~~(including decks and other cantilevered designs, etc.)~~ **to the principal structure** is not closer to the water resource than the existing principal structure
 - d. If it is a lateral addition, it does not extend more than 25 feet laterally from the side of the existing principal structure,
 - e. The addition does not increase the footprint of the existing principal structure by more than 500 square feet, at any one time or incrementally.
 - f. **Lateral additions to decks cannot come closer to the water resource than the existing deck.**
 - g. Vertical additions to existing principal structures that comply with the maximum

height requirements of the underlying zone are exempt.

2. Repair, Replacement and Removal of Non-Conforming structures:
 - a. Interior remodeling of a non-conforming structure.
 - b. Repair, maintenance, rehabilitation and replacement of non-conforming structures, accessory structures, utilities and related components, roads, driveways, paths, trails, fences, and manmade water and storm water control facilities that do not expand the disturbed area or footprint. Re-vegetation of temporarily disturbed areas or corridors pursuant to 32.100 is required.
 - c. This section also applies in the event that a non-conforming structure burned down or was otherwise damaged by natural or other disaster. The structure could be re-built so long as the structure did not expand the original footprint and the original access driveway (PDA) was used.
 - d. Demolition and removal of non-conforming structure's impervious surfaces are exempt as long as the affected areas are restored with native vegetation pursuant to Section 32.100.

D. New Construction Activities allowed in the WRA.

1. Structures shall be located out of the WRA, except that eaves, balconies, decks, "pop outs," and similar additions, may cantilever over the outer boundary of the WRA a maximum of five feet. No vertical supports may extend down to grade within the WRA.
2. Construction of an accessory structure, less than 120 square feet in size and under 10 feet tall, may be constructed to within 50 feet of the water resource or **10 feet behind** the top of slope (ravine, per figure 32-4), whichever is greater. No more than one accessory structure is permitted in the WRA. Accessory structures in the WRA that existed prior to January 1, 2006 may remain in place and not count against the limitation in new accessory structures.
3. Construction ~~or repair~~ of a water permeable patio or deck within 30 inches of the original grade and construction of approved water permeable footpaths may be **built to within 50 feet of the water resource or 10 feet behind top of slope (ravine), whichever is greater.** ~~constructed behind the top of slope (ravine).~~
4. Fences may be built to within 50 feet of the water resource or behind the top of slope (ravine), whichever is greater.

(Staff note: This allows exemptions 2 and 3 to have consistent language. Keeping accessory structures, patios and low decks 10 feet back will reduce erosion potential.)

Table 32-1: Summary of where development and activities may occur in areas subject to this chapter

Type of Development or Activity	In Water Resource	Water Resource Area
New House, Principal Structure(s)	No	No, except by hardship section 32.100. Geotechnical study may reduce WRA width per table 32-2 (footnote 5).
Additions to Existing House, Principal Structure(s) and replacement in kind. (Replacement in kind does not count against the 500 sq. ft. limit so long as it remains within the existing footprint.)	No	Yes, so long as it gets no closer to the WRA than building footprint that existed Jan. 1, 2006. Max. 500 sq. ft. of addition(s) to side or 500 sq. ft. to rear of building footprint. No limit on vertical additions within existing footprint. (See 32.030 (C)). Geotechnical study may reduce the WRA width per table 32-2 (footnote 5).
New cantilevered decks (over 30-inches), balconies, roof overhangs and pop outs towards the WRA from Existing House or Principal Structure(s)	No	Yes, but only 5 ft. into the WRA. Foundation or supports of structure cannot extend vertically to grade in the WRA. Geotechnical study may reduce the WRA width per table 32-2 (footnote 5).
Decks within 30-inches of grade, at grade patios.	No	Yes, but only to within 50 feet of the water resource or 10 feet behind the top of slope (ravine), whichever is greater. ¹ Geotechnical study may reduce the WRA width per table 32-2 (footnote 5).
New Accessory Structure under 120 sq. ft. and 10 ft. tall	No	Yes, but only if it is a minimum of 50 feet from the water resource or 10 feet behind the top of slope (ravine), whichever is greater. ¹

32.110...

F. Development allowed under Section 32.110(A) may use the following provisions:

1. Setbacks required by the underlying zoning district may be reduced up to 50% where necessary to avoid construction within the WRA, as long as the development would otherwise meet the standards of this Chapter. However, front loading garages shall be setback a minimum of 18 feet, while side loading garages shall be setback a minimum of three feet.
2. Landscaping and parking requirements may be reduced for hardship properties but only if all or part of the WRA is dedicated pursuant to CDC 32.060(C) or if a restrictive deed covenant is established. These reductions shall be permitted outright and, to the extent that the practices are inconsistent with other provisions or standards of the West Linn CDC, this section is given precedence so that no variance is required. The allowable reductions include:
 - a. Elimination of landscaping for the parking lot interior.⁴
 - b. Elimination of the overall landscape requirement (e.g. 20% for commercial uses).⁴
 - c. Elimination of landscaping between parking lots and perimeter non-residential properties.⁴
 - d. Landscaping between parking lots and the adjacent right-of-way may be reduced to 8 feet. This 8-foot wide landscaped strip may be used for vegetated storm water detention or treatment.

- e. A 25% reduction in total required parking is permitted to minimize or avoid intrusion into the WRA.
- f. Adjacent improved street frontage with curb and sidewalk may be counted towards the parking requirement at a rate of one parking space per 20 lineal feet of street frontage adjacent to the property, subject to City Engineer approval based on the street width and classification.
- g. The current compact and full sized parking mix may be modified to allow up to 100% compact spaces and no full sized spaces. However, any required ADA compliant spaces shall be provided.

(Staff note: The footnotes ⁽¹⁾ used to reference bioswales but those are already required by building and engineering standards.)

32.120 WRA MAP

A. The WRA Map, dated September 2013, is adopted as the official WRA map. It is intended to identify WRA water features (wetlands, streams, ephemeral streams and riparian corridors). It is not intended to delineate the exact WRA boundaries or water feature alignment. That task will be carried out by staff in the course of site visits where the provisions of table 32-2 shall apply.

B. Amendments to the WRA Map may be made in accordance with the provisions of CDC Chapters 98 and 99. Copies of all map amendments shall be dated with the effective date of the document adopting the map amendment and shall be maintained without change, together with the adopting documents, on file in the Planning Department.

C. The Planning Director shall maintain in his office, and available for public inspection, an up-to-date copy of the WRA Map.

(Staff note: There is currently no explanation of the WRA map, its purpose and amendment procedures.)

32.010 PURPOSES.....

- E. Protect and improve the following functions and values of WRAs that enhance the value of fish and wildlife habitat:
 - 1. Natural stream corridors that provide habitat and habitat connectivity for terrestrial wildlife,
 - 2. Microclimate habitats that support species adapted to those conditions,
 - 3. Shade to maintain healthy stream temperatures,

4. Vegetation to absorb and filter pollution and sediment that would otherwise contaminate the water body,
5. Sources of organic material that support the food chain,
6. Recruitment of large wood that enhances the habitat of fish bearing streams, and
7. Moderation of stream flow by storing and delaying storm water runoff, and ~~vegetated areas surrounding wetlands that, together with the wetland, provide vital habitat for birds, amphibians, and other species.~~
8. **Vegetated areas surrounding wetlands that, together with the wetland, provide vital habitat for birds, amphibians, and other species.**

(Staff note: Item 8 was originally part of item 7 and made no sense in that context.)

32.060...

G. Daylighting Piped Streams

1. As part of any application, covered or piped stream sections shown on the WRA Map are encouraged to be “daylighted” or opened. Once it is daylighted, the WRA will be limited to 15 feet **on each side of the stream.** Within that WRA, water quality measures are required which may include a storm water treatment system (e.g. vegetated bioswales), continuous vegetative ground cover (e.g. native grasses) at least 15 feet in width that provides year round efficacy, or a combination thereof.

CDC Chapter 33, STORMWATER QUALITY AND DETENTION

33.040 APPROVAL CRITERIA

- D. **Storm water detention and treatment facilities. may be installed in Water Resource Areas (WRAs) per section 32.060(B) and consistent with Habitat Friendly provisions of 32.060(H).**

~~Stormwater detention and treatment facilities shall encroach no further than 25 feet into the outside boundary of a water quality resource area. The area of encroachment must be replaced by adding an equal area to the water quality resource area on the subject property.~~

- F. **E.** Emergency Activities. Actions authorized by the City Manager that must be taken immediately or within a period of time too short to fully comply with this Chapter, to:
1. Prevent immediate danger to life or property,
 2. Prevent immediate threat of serious environmental degradation,
 3. Restore existing utility service, or

4. Reopen a public thoroughfare to traffic.

However, after the emergency has passed any disturbed area shall be restored, pursuant to Section 32.100.

G. F. Exempt Areas

1. The Tualatin or Willamette rivers are regulated by Chapter 28 and are not subject to this chapter. However, wetlands and buffers, regardless of their proximity to these rivers, are subject to this chapter. In areas where there is overlap with Chapter 28, this chapter shall prevail.
2. Existing enclosed or piped sections of streams, including any development at right angles to the enclosed or piped sections.
3. Isolated areas. If a topographic feature or legally established road, other linear facility, or barrier physically separates and functionally isolates a portion of the WRA from the main portion of the WRA, including the associated water resource, the approval authority may exclude the isolated area from the WRA and the permitting procedure.

(Staff note: there was no 32.040 (E), it skipped from (D) to (F).)

Chapter 2: DEFINITIONS

Section 02.030 SPECIFIC WORDS AND TERMS

Temporarily Disturbed Areas (TDA): Area impacted by clearing, grubbing, grading, excavation, storage of building materials, building equipment, construction activity or other temporary activity whereby the area is modified from its original state but is subsequently fully restored in terms of soil character and grades and re-vegetated. TDAs will not have any new structures or other physical improvements built on them, but they may have buried utilities approved consistent with Chapter 32. The TDA definition is distinct and separate from disturbed areas, PDAs and MDAs. TDA's shall not include significant trees or wetlands that cannot be replicated in a timely way through restoration.

(Staff note: this change was proposed by Commissioner Russ Axelrod and supported by staff.)

32.110 HARDSHIP PROVISIONS

The purpose of this section is to ensure that compliance with this chapter does not ~~cause unreasonable hardship or~~ deprive an owner of reasonable use of land. To avoid such instances, the requirements of this chapter may be reduced. The decision-making authority may impose such conditions as are deemed necessary to limit any adverse impacts that may result from granting relief.

- A. 1. The right to obtain a hardship allowance is based on the existence of a lot of record recorded with the County Assessor's Office on, or before, January 1, 2006. The lot of record may have been, subsequent to that date, modified from its original platted configuration but must meet

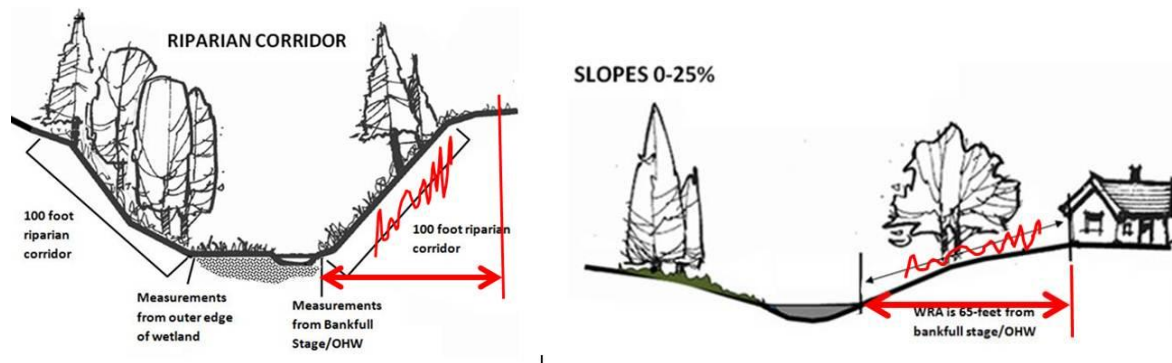
the minimum lot size and dimensional standards of the base zone or be a legal non-conforming lot of record.

2. The right to obtain a hardship allowance is limited to lots, described in (A) (1) above, that are unoccupied by a principal structure (e.g. house).

- B. ~~1.~~ For lots described in 32.110(A) that are located completely or partially inside the WRA, development is permitted, consistent with this section. The Maximum Disturbed Area (MDA) of the WRA shall be determined on a per lot basis and shall be:
- a. 5,000 square feet; or,
 - b. A maximum of 30% of the total area of the WRA; whichever is greater, and consistent with 32.110(C) below.

(Staff note: Staff proposes to delete the reference to “unreasonable hardship” since that term is not defined, whereas “reasonable use” is defined. Reference to a “legal non-conforming lot of record” was added.

Section 32.110(A) is not clear as to who can apply under the hardship provisions. Historically, it was understood that they were reserved for vacant properties since occupied properties with homes on them were already deemed to be enjoying reasonable use of the land. The following language is proposed: **2. The right to obtain a hardship allowance is limited to lots, described in (A) (1) above, that are unoccupied by a principal structure (e.g. house).**”



(Staff note: Commissioner Axelrod wants to see the graphics shown with measurements on the horizontal plane. Staff agrees.)

32.020 APPLICABILITY

- A. This chapter applies to all non-exempted development, activity or uses within WRAs identified on the WRA Map. It also applies to all verified, unmapped WRAs. The WRA Map shall be amended to include the previously unmapped WRAs.

(Staff note: this should make it clear that if you develop within the WRA you will need a permit; and if you develop outside the WRA or propose an exempt use, per 32.040, you will not need a WRA permit.)

32.040 EXEMPTIONS

The following development, activities and uses are exempt from a WRA permit but must conform to any applicable requirements of this section.

(Staff note: This explains what is meant by the heading “Exemptions”.)

Chapter 2: DEFINITIONS

Section 02.030 SPECIFIC WORDS AND TERMS

Water resource (or feature): Any stream or wetland identified on the West Linn WRA Map.

(Staff note: Chapter 32 references to both “water features” and “water resources”. Either water features need to be defined (as shown above) or all references to “water features” need to be replaced by “water resources”. The latter approach makes the most sense.)
