



CITY OF
West Linn
 PLANNING AND DEVELOPMENT

**STAFF REPORT
 PLANNING MANAGER DECISION**

DATE: November 28, 2016

FILE NO.: WAP-16-09

REQUEST: To build a single family home in a Water Resource Area (WRA) at 3588 Robin View Drive

PLANNER: Jennifer Arnold, Associate Planner

Planning Manager 

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GENERAL INFORMATION

OWNER: Jeff Parker
1800 Blankenship Road, Suite 200
West Linn, OR 97068

**APPLICANT/
CONSULTANT:** Bill Winkenbach
BC Custom Construction Inc.
410 High Street
Oregon City, OR 97045

SITE LOCATION: 3588 Robin View Drive

SITE SIZE: 42,300 square feet (.97 acres)

**LEGAL
DESCRIPTION:** Assessor's Map 2-1E-13CB Tax Lot 3000

**COMP PLAN
DESIGNATION:** Low Density Residential

ZONING: R-10, Single-Family Residential Detached (10,000 square foot minimum lot size)

**APPROVAL
CRITERIA:** Community Development Code (CDC) Chapter 32 (WRA)

120-DAY RULE: The application became complete on October 17, 2016. The 120-day period therefore ends on February 16, 2017.

PUBLIC NOTICE: Notice was mailed to property owners within 300 feet of the subject property and all neighborhood associations on October 31, 2016. A sign was placed on the property on October 31, 2016. The notice was also posted on the City's website. Therefore, public notice requirements of CDC Chapter 99 have been met.

EXECUTIVE SUMMARY

The application is for the construction of a single family home within a Water Resource Area (WRA). The WRA is Trillium Creek which flows through the south end of this property. The applicant will rely upon the hardship provisions of section 32.110. Those provisions make an allowance for development by the owners of properties that are either fully or partially within

the WRA boundary and where the absence of these provisions would constitute the denial of reasonable use of the property.

Public comments:

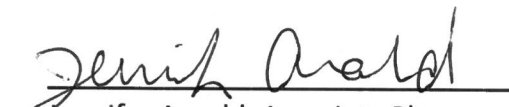
No comments have been received by the close of the public comment period on November 21, 2016.

DECISION

The Planning Manager (designee) approves this application (WAP-16-09), based on: 1) the findings submitted by the applicant, which are incorporated by this reference, and 2) supplementary staff findings included in the Addendum below. With these findings, the applicable approval criteria are met. The following conditions of approval shall apply:

1. The development shall conform to the "Tentative Site Plan" (sheet 2).
2. The applicant's mitigation and revegetation for the site shall conform to the "Water Resource Area Revegetation Plan" (Sheet 4). In addition, the applicant shall restore any graded areas to the original grade where that grading would exceed the maximum disturbed area of 5,000 square feet and restore native ground cover to these areas. **(See Staff Findings 2, 5, 12, and 15)**
3. A stamped geotechnical report shall demonstrate that the proposed storm water treatment and discharge facilities will not result in erosion or slope failure. **(See Staff Findings 2 and 6)**

The provisions of the Community Development Code Chapter 99 have been met.


Jennifer Arnold, Associate Planner

11/28/2016
DATE

Appeals to this decision must be filed with the West Linn Planning Department within 14 days of the mailing date listed below. The cost of an appeal is \$400. The appeal must be filed by an individual who has established standing by submitting comments prior to the date identified in the public notice. Appeals will be heard by City Council.

Mailed this 28th day of November, 2016.

Therefore, the 14-day appeal period ends at 5 p.m., on December 13, 2016.

**ADDENDUM:
STAFF FINDINGS IN RESPONSE TO APPROVAL CRITERIA**

Chapter 11 SINGLE-FAMILY RESIDENTIAL DETACHED, R-10

11.030 PERMITTED USES

The following are uses permitted outright in this zoning district

1. Single-family detached residential unit.

11.070 DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT AND USES PERMITTED UNDER PRESCRIBED CONDITIONS

Except as may be otherwise provided by the provisions of this code, the following are the requirements for uses within this zone:

(...)

- a. For the front yard, 20 feet; except for steeply sloped lots where the provisions of CDC 41.010 shall apply.
- b. For an interior side yard, seven and one-half feet.
- c. For a side yard abutting a street, 15 feet.
- d. For a rear yard, 20 feet.
6. The maximum building height shall be 35 feet, except for steeply sloped lots in which case the provisions of Chapter 41 CDC shall apply.
7. The maximum lot coverage shall be 35 percent. (...)
9. The floor area ratio shall be 0.45. (...)
10. The sidewall provisions of Chapter 43 CDC shall apply.

Staff Response 1: The applicant is proposing a single family detached home which is permitted outright in the R-10 zone. The lot is 42,300 square feet which exceeds the minimum lot size of 10,000 square feet. The lot frontage is 91 feet which exceeds the minimum lot width of 35 feet and the minimum average lot width of 50 feet. The proposed location of the home, environmental constraints, and slope do not allow for further division, thus a redevelopment plan was not required.

The proposed house will meet the front and rear 20 foot setback requirements with setbacks of 28 feet and over 120 feet respectively. The proposed 10.5 and 14.5 foot side setback meets the required side setback for an interior lot of 7.5 feet.

The final house plans will not be prepared until after this land use permit is approved. In the building plan review phase, the proposed house height will be required to meet the 35 foot limit. Lot coverage will be reviewed at the time of building plan review and will meet the 35 percent requirement. Floor Area Ratio will be reviewed at the time of building plan review and will meet the allowed 45 percent. The criteria is met.

11.090 OTHER APPLICABLE DEVELOPMENT STANDARDS

- A. The following standards apply to all development including permitted uses:

1. Chapter 34 CDC, Accessory Structures, Accessory Dwelling Units, and Accessory Uses.
2. Chapter 35 CDC, Temporary Structures and Uses.
3. Chapter 38 CDC, Additional Yard Area Required; Exceptions to Yard Requirements; Storage in Yards; Projections into Yards. (...)
5. Chapter 41 CDC, Structures on Steep Lots, Exceptions.
6. Chapter 42 CDC, Clear Vision Areas.
7. Chapter 44 CDC, Fences.
8. Chapter 46 CDC, Off-Street Parking, Loading and Reservoir Areas.
9. Chapter 48 CDC, Access, Egress and Circulation.
10. Chapter 52 CDC, Signs.
11. Chapter 54 CDC, Landscaping.

Staff Response 2: No accessory structures, temporary structures or temporary uses are proposed so the criteria of Chapter 34 and 35 does not apply. No additional yard area is required to transition between residentially developed properties per Chapter 38.

Chapter 41 explains how building height is calculated and includes provisions for steep lots. In the building plan review phase, the proposed house height will be required to meet the standards of this chapter.

The clear vision area provisions of Chapter 42 apply to properties at intersections and would not apply here. No fences are proposed with this application so the Chapter 44 criteria is not applicable. Single family homes are required to have one off street parking space. The applicant will provide at least one uncovered parking space plus a garage to meet the requirement of Chapter 46. The access requirements are met by the proposed driveway which will meet the minimum width of 10 feet per Chapter 48. Chapter 52 does not apply since no signs are proposed with this application. Chapter 54 does not require landscaping for detached single family homes and does not apply. (However, the vegetative mitigation required per Chapter 32 will apply and are met by this application.) In total, the criteria is met.

Chapter 28

WILLAMETTE AND TUALATIN RIVER PROTECTION

28.030 APPLICABILITY

Staff Response 3: Chapter 28 is not applicable because the applicant does not propose construction of a structure in the mapped HCA. A portion of the subject property contains HCA land near Trillium Creek towards the rear of the property. The proposed home site is adjacent to Robin View Court and no land will be permanently disturbed in the HCA. The applicant will install storm water lines leading to the HCA designated area, and will be a temporary disturbance in the HCA. The land will be replanted with native vegetation per the Vegetation Mitigation Plan required per CDC chapter 32 standards (See applicant submitted WRA

Revegetation Plan). No Willamette and Tualatin River Protection permit is required with this application.

32.060 APPROVAL CRITERIA (STANDARD PROCESS)

No application for development on property containing a WRA shall be approved unless the approval authority finds that the proposed development is consistent with the following approval criteria, or can satisfy the criteria by conditions of approval:

A. WRA protection/minimizing impacts.

1. Development shall be conducted in a manner that will avoid or, if avoidance is not possible, minimize adverse impact on WRAs.

Staff Response 4: 41,160 square feet of this property is within the Trillium Creek WRA (See applicant submittal 'WRA Revegetation Plan' sheet 4). Even with reduced setbacks as allowed by the hardship provisions of section 32.110, most of the developable area is within the WRA. Avoidance of the WRA is not possible. The applicant has positioned the house as close to the front property line as possible, while maintaining front setback requirements.

2. Mitigation and re-vegetation of disturbed WRAs shall be completed per CDC 32.090 and 32.100 respectively.

Staff Response 5: The applicant will provide both mitigation and revegetation upon completion of this house per the submitted "Water Resource Area Revegetation Plan" (Sheet 4). By satisfying condition of approval 2, the criteria are met.

B. Storm water and storm water facilities.

1. Proposed developments shall be designed to maintain the existing WRAs and utilize them as the primary method of storm water conveyance through the project site unless:

a. The surface water management plan calls for alternate configurations (culverts, piping, etc.); or

b. Under CDC 32.070, the applicant demonstrates that the relocation of the water resource will not adversely impact the function of the WRA including, but not limited to, circumstances where the WRA is poorly defined or not clearly channelized.

Re-vegetation, enhancement and/or mitigation of the re-aligned water resource shall be required as applicable.

2. Public and private storm water detention, storm water treatment facilities and storm water outfall or energy dissipaters (e.g., rip rap) may encroach into the WRA if:

- a. Accepted engineering practice requires it;
- b. Encroachment on significant trees shall be avoided when possible, and any tree loss shall be consistent with the City’s Tree Technical Manual and mitigated per CDC 32.090;
- c. There shall be no direct outfall into the water resource, and any resulting outfall shall not have an erosive effect on the WRA or diminish the stability of slopes; and
- d. There are no reasonable alternatives available.

A geotechnical report may be required to make the determination regarding slope stability.

Staff Response 6: The applicant proposes a rain garden to treat storm water. From the rain garden, water overflow will go into a storm line and energy dissipaters (e.g. rip rap) towards the creek. There will be no direct discharge into the creek. The discharge design requires that a geotechnical report be prepared to demonstrate that it will not result in erosion or slope instability. By addressing condition of approval 3, the criterion is met.

D. WRA width. Except for the exemptions in CDC 32.040, applications that are using the alternate review process of CDC 32.070, or as authorized by the approval authority consistent with the provisions of this chapter, all development is prohibited in the WRA as established in Table 32-2 below:

Table 32-2. Required Width of WRA

Protected WRA Resource (see Chapter 2 CDC, Definitions)	Slope Adjacent to Protected Water Resource ^{1, 3}	Starting Point for Measurements from Water Resource ^{1, 3}	Width of WRA on Each Side of the Water Resource
D. Riparian Corridor	Any	OHW	100 feet

- 1 The slope is the average slope in the first 50 feet as measured from bankfull stage or OHW.
- 2 Where the protected water resource is confined by a ravine or gully, the top of slope is the location (30-foot minimum) where the slope breaks to less than 15 percent for at least 50 feet.
- 3 At least three slope measurements along the water resource, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending upon topography, the width of the protected corridor may vary.

4 The 50-foot distance may be reduced to 25 feet if a geotechnical study by a licensed engineer or similar accredited professional demonstrates that the slope is stable and not prone to erosion.

Staff Response 7: The slope adjacent to Trillium Creek is over 25 percent, and Trillium Creek is identified as a Riparian Corridor which has a setback of 100 feet per the Table 32-2 above. When that setback is imposed upon the subject property it extends beyond Robin View Drive. The applicant submitted a geotechnical engineering report to support the reduced 25 foot reduction to the setback (see “Geotechnical Engineering Report” dated July 25, 2016).

H. The following habitat friendly development practices shall be incorporated into the design of any improvements or projects in the WRA to the degree possible:

1. Restore disturbed soils to original or higher level of porosity to regain infiltration and storm water storage capacity.
2. Apply a treatment train or series of storm water treatment measures to provide multiple opportunities for storm water treatment and reduce the possibility of system failure.
4. Landscape with rain gardens to provide on-lot detention, filtering of rainwater, and groundwater recharge.
5. Use multi-functional open drainage systems in lieu of conventional curb-and-gutter systems.
8. Disconnect downspouts from roofs and direct the flow to vegetated infiltration/filtration areas such as rain gardens.
9. Use pervious paving materials for driveways, parking lots, sidewalks, patios, and walkways.
11. Use shared driveways.
16. Minimize the building, hardscape and disturbance footprint.
17. Consider multi-story construction over a bigger footprint.

Staff Response 8: The proposed design incorporates a number of these habitat friendly development practices including H. 1, 2, 4, 5, 8, 9, 11, 16 and 17 which should make this house/development more sensitive and appropriate within the WRA.

32.110 HARDSHIP PROVISIONS

The purpose of this section is to ensure that compliance with this chapter does not 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. The burden shall be on the applicant to demonstrate that the standards of this chapter, including Table 32-2, Required Width of WRA, will deny the applicant "reasonable use" of his/her property.

- A. 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.

Staff Response 9: This property is a lot of record, part of the Riverside Park subdivision, which was originally platted in 1948 and, as such, is eligible for the hardship provisions. The lot also meets the minimum lot size and dimensions of the base zone: R-10. Therefore, the criteria are met.

B. For lots described in subsection A of this section 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. The MDA shall be the greater of:

- 1. Five thousand square feet of the WRA; or
- 2. Thirty percent of the total area of the WRA.

Staff Response 10: The applicant proposes to use the 5,000 square foot allowance for the Maximum Disturbed Area (MDA) and therefore the criteria are met.

C. The MDA shall be located as follows:

- 1. In areas where the development will result in the least square footage encroachment into the WRA.
- 2. The applicant shall demonstrate, through site and building design, that the proposed development is the maximum practical distance from the water resource based on the functional needs of the proposed use.
- 3. The minimum distance from a water resource shall be 15 feet.
- 4. Access driveways shall be the minimum permitted width; select an alignment that is least impactful upon the WRA; and shall share use of the driveway, where possible.

Staff Response 11: The distance from the house to the top of the bank of Trillium Creek will be 116 feet which exceeds the minimum standard of 15 feet. The house design is reasonable

and consistent with the functional needs of a single family home and with the footprint and size of nearby homes. Most of the driveway and parking area is outside of the WRA and, as a result, will have very little impact on the WRA.

D. The MDA shall include:

1. The footprints of all structures, including accessory structures, decks and paved water impermeable surfaces including sidewalks, driveways, parking pads, paths, patios and parking lots, etc. Only 75 percent of water permeable surfaces at grade shall be included in the MDA.
2. All graded, disturbed or modified areas that are not subsequently restored to their original grade and replanted with native ground cover per an approved plan.

Staff Response 12: The applicant's submittal acknowledges that all development within the WRA will count against the MDA. Once construction has been completed the applicant will be required by Condition of Approval 2 to restore the original grade and replant the area with native ground cover prior to issuance of a final occupancy permit.

E. The MDA shall not include:

1. Temporarily disturbed areas (TDAs) adjacent to an approved structure or development area for the purpose of grading, material storage, construction activity, trenched or buried utilities and other temporary activities so long as these areas are subsequently restored to the original grades and soil permeability, and re-vegetated with native plants per CDC 32.100, such that they are at least equal in functional value to the area prior to the initiation of the permitted activity;
2. Bay windows and similar cantilevered elements (including decks, etc.) of the principal or secondary structure so long as they do not extend more than five feet towards the WRA from the vertical plane of the house, and have no vertical supports from grade;
3. PDAs that are not built upon as part of the development proposal will not count in the MDA (e.g., use of an existing access driveway). (Conversely, PDAs that are built upon as part of the development proposal will count in the MDA.);
4. The installation of public streets and public utilities that are specifically required to meet either the transportation system plan or a utility master plan so long as all trenched public utilities are subsequently restored to the original grades and soil permeability, and revegetated with native plants per CDC 32.100, such that they are at least equal in functional value to the area prior to the initiation of the permitted activity. All areas displaced by streets shall be mitigated for.

Staff Response 13: Staff review of the applicant's submittal indicates that the MDA is properly calculated. The storm line will temporarily disturb the land within the WRA, but

once construction has been completed the applicant will be required by Condition of Approval 2 to restore the original grade and replant the area with native ground cover. There are no public streets or public utilities proposed in this application.

F. Development allowed under subsection A of this section may use the following provisions:

1. Setbacks required by the underlying zoning district may be reduced up to 50 percent 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 set back a minimum of 18 feet, while side loading garages shall be set back a minimum of three feet.

Staff Response 14: The applicant is not seeking a setback reduction to the underlying zoning requirements.

H. Mitigation and re-vegetation of disturbed WRAs shall be completed per CDC 32.090 and 32.100 respectively.

Staff Response 15: The applicant will provide re-vegetation and mitigation per CDC 32.090 and 32.100 and as required by Condition of Approval 2. These measures should have the effect of enhancing the function and value of the existing WRA which had extensive amounts of non-native vegetation.

