

EXHIBIT A



COMMUNITY
DEVELOPMENT

**CITY OF BEND PLANNING DIVISION
STAFF FINDINGS AND RECOMMENDATION
TO THE PLANNING COMMISSION**

PROJECT NUMBERS: PZ-18-0883 (Waterway Overlay Zone Application)
PZ-18-0884 (Class B Variance Application)

HEARING DATE: January 28, 2019 at 5:30 p.m.
City of Bend Council Chambers
710 NW Wall Street, Bend, OR 97703

REPORT DATE: January 18, 2019

**APPLICANTS/
OWNERS:** Fred & Tracey Lange
896 NW Stonepine Dr
Bend, OR 97703

**PRIMARY
CONTACT:** Jason Todd
1593 NW York Drive #200
Bend, OR 97703

**PROJECT
LOCATION:** 418 NW Columbia Street, Bend, OR 97703; Tax Lot 0201 on County
Assessor's Map 17-12-31DD; Lot 15, Block 8, Highland Addition

REQUEST: Type III Waterway Overlay Zone (WOZ) and Class B Variance application
for a single-family dwelling with a 5 foot front setback (standard of 20 feet;
75 percent reduction) in the Residential Standard Density (RS) Zone.

**STAFF
REVIEWER:** Nicolas Lennartz, Assistant Planner
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I. APPLICABLE STANDARDS, CRITERIA & PROCEDURES:

Bend Development Code

Chapter 2.1, Residential Districts (RS)

Chapter 2.7, Special Planned Districts

Section 2.7.600, Waterway Overlay Zone (WOZ)

Chapter 3.5, Other Design Standards

Section 3.5.200 Outdoor Lighting Standards

Chapter 4.1, Development Review and Procedures

Chapter 4.2, Minimum Development Standards Review, Site Plan Review & Design Review

Chapter 5.1, Variances

II. FINDINGS OF FACT:

- 1. LOCATION:** 418 NW Columbia Street, Bend, OR 97703; 17-12-31DD, TL 00201; Lot 15, Block 8, Highland Addition to Bend
- 2. ZONING:** The property is zoned Residential Standard Density (RS), and is designated Residential Standard Density (RS) on the Comprehensive Plan map. The property abuts the Deschutes River, and is within the Waterway Overlay Zone (WOZ).
- 3. SITE DESCRIPTION & SURROUNDING USES:** The subject property is located on the west side of the Deschutes River, downstream (north) of the Gilchrist Avenue footbridge and Columbia Park. The existing 1-story single-family dwelling was constructed in 1942, and it contains 1,148 square feet. Existing significant vegetation on the property includes a large Ponderosa Pine tree and a Fir tree within the WOZ, and a large Ponderosa Pine tree in the front yard.



There is no sidewalk along the frontage of the subject property, but there are curb-tight sidewalks abutting the site to the south. The site has a gravel driveway, and no curb or driveway apron to delineate the access. The site slopes gradually down toward the east, with a 10 ft. drop-off approximately 40 feet from the Ordinary High Water Mark (OHWM) with the Riparian Corridor Subzone boundary located 30 ft. from the OHWM. There is an existing deck and stairs leading down to the water's edge. The lot to the north contains a 1,580 square-foot, 1-story house constructed in 1945. The adjacent property to the south contains a 3,617 square foot residence constructed in 2009, and reviewed for WOZ compliance under City of Bend land use permit PZ 09-0023. The surrounding area is zoned Residential Standard Density (RS).

- 4. PROPOSAL:** Type III Waterway Overlay Zone (WOZ) and Class B Variance application for a 4,097 square foot single-family dwelling with a 5-foot front setback (standard of 20 feet; 75 percent reduction) within the WOZ and Residential Standard Density (RS) zone. The site is located in the Deschutes River Corridor Design Review Combining Subzone, the Flood Plain Subzone, and the Riparian Corridor Subzone.

5. **BACKGROUND:** The Waterway Overlay Zone was adopted by the City Council in 2002. The Bend Development Code regulates development within the Deschutes River Corridor to protect riparian areas and river canyons. WOZ reviews provide the opportunity to preserve natural areas through building setbacks, conservation easements, etc.
5. **PUBLIC NOTICE AND COMMENTS:** On December 12, 2018, the Bend Planning Division sent notice of the public hearing to the Land Use Chairs of the River West and Old Bend Neighborhood Associations, and to surrounding property owners of record within 250 feet of the subject property as shown on the most recent property tax assessment roll. As of the date of this report, one comment has been received in general support of the proposal, and no concerns have been raised. Staff also notified the Oregon Department of State Lands (DSL), the Oregon Department of Fish & Wildlife (DFW), the Oregon Parks & Recreation Department (PRD), and the Oregon Department of Environmental Quality (DEQ) as required by BDC 2.7.610(E)(1). The DSL requested the City to provide a Wetland Land Use Notice (WLUN) for the applicants' project, which staff submitted on December 6, 2018, even though the City's acknowledged Local Wetland Inventory (LWI) shows there are no mapped wetlands in the vicinity of the project.
6. **APPLICATION ACCEPTANCE DATE:** The application for this project was submitted on November 5, 2018 and the applicable fees were paid on November 8, 2018, at which time the application was accepted by the City. The application was initially deemed incomplete due to a missing project narrative, which was provided to the City on November 19, 2018. The application was formally accepted as complete on November 26, 2018 upon staff review of the application materials.

III. APPLICATION OF CRITERIA:

A. CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE

CHAPTER 2.1, RESIDENTIAL DISTRICTS

2.1.200 *Permitted Land Uses*

FINDING: The applicants propose to construct a 2-story single-family dwelling with an attached garage, which is a permitted use in the Residential Standard Density (RS) zone.

2.1.300 *Building Setbacks*

C. *Front Yard Setbacks.*

2. ***RS, RM-10, RM, and RH Districts. The minimum front setback is 10 feet. Garages and carports must be accessed from alleys where practical, otherwise garages and carports with street access must be set back a minimum of 20 feet from the front property line. In this instance, the term "practical" means that there is an existing or platted alley that could be used in its current condition or improved to provide access.***

FINDING: The proposed 3-story house with attached garage is set back 5 feet from the front property line. Since the front yard setback for the garage is 15 feet less than required (75 percent reduction from 20-feet), the applicants are requesting a Class B Variance. The approval criteria for a Class B Variance are reviewed below in Section III.D of this Staff Recommendation to the Planning Commission.

D. Rear Yard Setbacks.

- 2. RS, RM-10, RM and RH Districts. The minimum rear setback is five feet. When multifamily residential or nonresidential uses abut a detached single-family dwelling unit in the RS District, the rear setback abutting the RS District must increase one-half foot for each foot by which the building height exceeds 20 feet.**

FINDING: The rear yard setback of the proposed single-family dwelling with attached garage is greater than 5 feet as required by the code. Therefore, this standard is met. As previously noted, the subject property borders the Deschutes River. There are special setbacks required within the Waterway Overlay Zone, depending upon the location of the property along the river. These special setback requirements will be reviewed below in Section III.B of this Staff Recommendation to the Planning Commission.

E. Side Yard Setbacks.

- 2. RS, RM-10, RM and RH Districts. The minimum side setback is five feet. When multifamily residential or nonresidential uses abut a detached single-family dwelling unit in the RS District, the side setback abutting the RS District must increase one-half foot for each foot by which the building height exceeds 20 feet.**

FINDING: The minimum required side yard setback in the RS zone is 5 feet. The proposed side yard setback on the south is 5.5 feet, and the proposed side yard setback on the north is 5.4 feet. The subject property has a north-south lot dimension of 50 feet. The development is not subject to the additional step back setbacks for nonresidential uses. Therefore, this standard is met.

2.1.700 Maximum Lot Coverage

A. Maximum Lot Coverage. The following maximum lot coverage standards shall apply to all development within the Residential Districts as follow:

**Table 2.1.700
Residential Lot Coverage**

Residential Zone	Lot Coverage
<i>Standard Density Residential (RS), Medium-10 Density Residential (RM-10), and Medium Density Residential (RM)</i>	<i>50% for lots or parcels with single-story dwelling unit(s) and single-story accessory structures. 45% for all other lots or parcels. Exception. 60% for lots or parcels with attached single-family townhomes, duplexes, triplexes and multifamily in the RM District.</i>

FINDING: The maximum allowable lot coverage for this project is 45%. The site has a total area of 6,573 square feet. The proposed lot coverage is 2,253 square feet (34.2%), factoring in a 329 square foot exemption for decks and covered porches. Therefore, this standard is met.

2.1.800 Building Height

A. Standard.

- 1. Buildings within the UAR, RL, RS, RM-10 and RM Districts shall be no more than 30 feet in height.**

FINDING: The proposed single-family dwelling is a 3-story structure with a basement. The project narrative indicates the structure has an average height of 28 feet. However, upon review and measurement of the proposed building elevations, the average height measures approximately 30.5 feet, which is one-half foot higher than the maximum building height allowed in the RS zone. Fortunately, the applicants have agreed to alter the elevations slightly to comply with the maximum building height of 30 feet. Considering the proposed height exceeds the average maximum by only one-half foot, the changes will not be substantial. The applicants also noted that the 3rd story of their proposed home may be removed entirely, depending on cost once the project is put out for bids. Provided the remainder of the design stays materially identical, the changes would not require further land use review. Therefore, the following condition of approval is recommended to satisfy the code in either scenario:

The applicants must, before submission for building permits, update the building elevations to demonstrate a compliant building height (30 feet or less) per the City's definition and methodology of calculating building height in BDC Chapter 1.2.

B. CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE

CHAPTER 2.7, SPECIAL PLANNED DISTRICTS

2.7.600 Waterway Overlay Zone (WOZ)

FINDING: The Waterway Overlay Zone consists of four Sub Zones: the Riparian Corridor Sub Zone, the River Corridor Areas of Special Interest Sub Zone, the Flood Plain Combining Zone, and the Deschutes River Corridor Design Review Sub Zone. The subject property is located within all of these Sub Zones except for the River Corridor Areas of Special Interest Sub Zone. The applicable standards and criteria are addressed herein.

2.7.610 Purpose

C. WOZ Boundary Determination. The WOZ boundary is inclusive of all WOZ sub-zones, as specified in this section. Except for the River Corridor Areas of Special Interest and the Floodplain Sub-Zone, the boundary of all sub-zones shall be determined by distance measurement from the designated waterway. The boundary for the River Corridor Areas of Special Interest sub-zone is designated on the Bend Urban Area General Plan Map and shall be considered to be the outer (upland) edge

of the mapped boundary line. Unless otherwise provided for specific WOZ sub-zones, boundary measurements shall be made from the ordinary high water mark. Distance measurements shall be made horizontally and at right angles to the edge of the waterway.

FINDING: The applicants' submitted plans show the location of the Ordinary High Water Mark (OHWM), the 100-year Floodplain, the Riparian Corridor boundary (30 ft. from the OHWM), the minimum setback line for structures in the Deschutes River Corridor Design Review Sub Zone (40 ft. from the OHWM), and the Design Review Corridor boundary (100 ft. from the OHWM). The subject property is not located within a River Corridor Area of Special Interest (ASI).

D. Tree Removal.

- 1. Removal. Consistent with the purposes of this section, and because trees contribute to the overall health of the riparian corridor, removal of existing trees greater than 4 inches in diameter within the WOZ is prohibited, except as follows:**
 - a. Where necessary to accommodate an approved development activity; or**
 - b. Where the tree is determined by a qualified professional to be diseased or hazardous; or**
 - c. Where necessary to mitigate potential fire hazard in accordance with the Fire Protection Act of 1997.**

FINDING: The submitted site plan indicates that the deciduous tree (12" at DBH) located at the SE corner of the proposed residence is 'to be removed'. The landscaping plan submitted with the application labels this same tree as 'to remain', making the plans conflict with one another. The tree is in a location that appears to not restrict development of the single-family home, although the submitted narrative states that the location of the home will 'significantly impact the root system of the tree'. Provided a certified professional confirms that the tree and/or root system will be severely harmed by construction or fail to survive once the house is built, the removal is permissible. Therefore, Staff recommends the following conditions of approval:

The applicants shall retain the 12" deciduous tree as shown on the submitted Landscape Plan unless a certified arborist or other qualified tree professional confirms the tree will fail to survive, be severely harmed, or present a safety hazard following establishment of the single-family home.

The following measures of BDC 3.2.200(D)(1) shall be taken for trees which are to be preserved in order to ensure protection during construction:

- a. Barriers.** *Erect physical barriers around all trees to be retained or groups of trees around the work site. Barriers that extend beyond the drip line of the tree are preferred.*
- b. Soil Compaction.** *If barriers are not feasible to keep away vehicles and foot traffic, use 6-8 inches of wood chips spread over the root zone or bridge root area overlaid by plates of steel or other suitable material.*

- c. Grade Changes.** *If a grade change is unavoidable, retaining walls shall be used to protect the root system.*
- d. Severing Roots.** *Avoid cutting anchoring roots if possible. Tunneling for smaller household utility lines may be an option for tree preservation. When root cuts are unavoidable, the cuts shall be made with a pruning saw.*
- e. Aboveground Injuries to Trees.** *Do not use trees for posting signs, electrical wires and pulleys. Keep trees free of nails, screws, and other fastening devices.*
- f. Soil Contamination.** *Altering the soil chemistry can result in weakened trees, making them more susceptible to insects and disease. Prevent adverse effects on soil chemistry by spreading heavy plastic tarping where concrete is to be mixed or sheet rock cut; do not clean paintbrushes and tools over tree roots; dispose of chemical wastes properly and do not drain onto soil.*

Section 2.7.620 Riparian Corridor Sub Zone

A. Riparian Corridor Boundary. *The width of the Riparian Corridor Sub Zone adjacent to various waterway segments is specified in Tables 2.7.620A, B and C. Boundary distances shall be measured from the ordinary high water mark, or from the upland edge of any designated wetlands, whichever is more landward.*

Table 2.7.620A - West Side Riparian Corridor Boundary: Deschutes River

<i>Deschutes River – West Side</i>	<i>Distance</i>
<i>From the north boundary of McKay Park to the Tumalo Irrigation District intake (south boundary of Block 15, Awbrey Heights Subdivision)</i>	<i>30 feet</i>

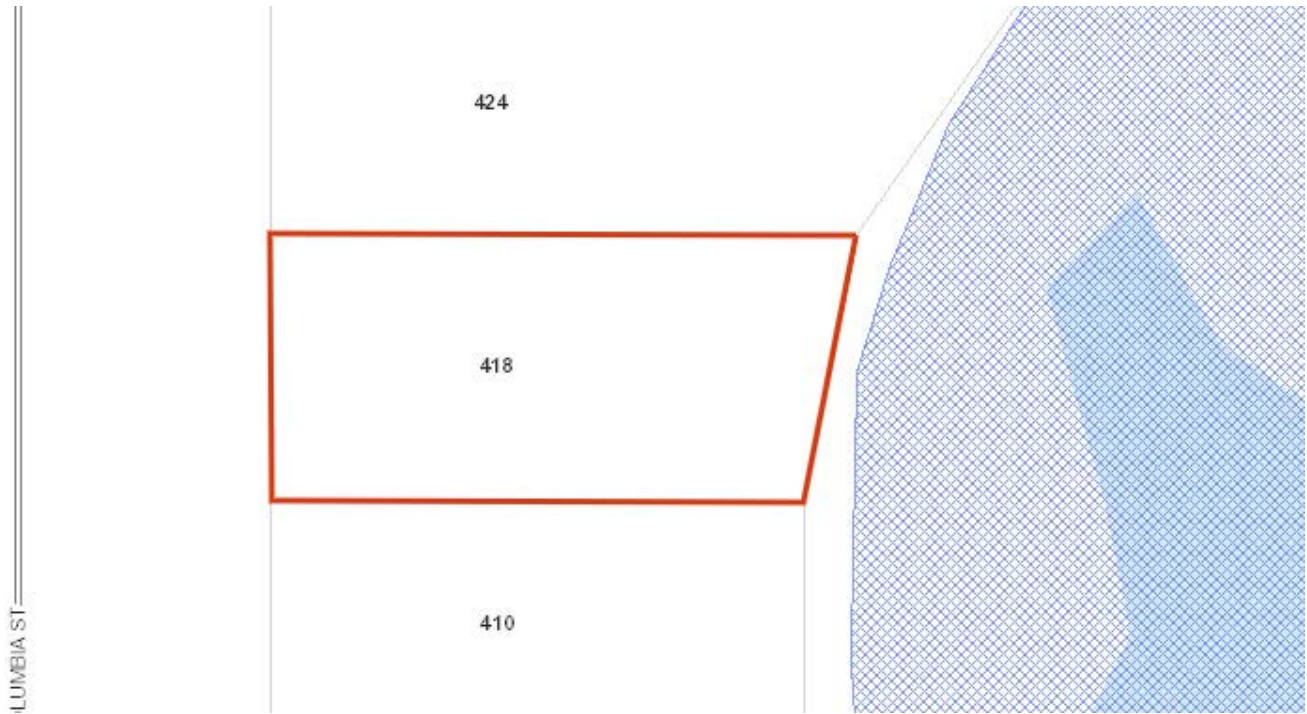
FINDING: The riparian corridor extends onto the property 30 feet from the Ordinary High Water Mark (OHWM).

B. Activities Subject to Review and Approval. *Within the Riparian Corridor sub-zone, permanent alteration by grading, removal of native vegetation, excavation or fill of soils or rocks, or by placement of structures or impervious surfaces is prohibited, except as provided below in subsections C, E, F and G.*

FINDING: The applicants are not proposing any new structures or impervious surfaces, major grading, vegetation removal, or site work within the Riparian Corridor. As shown on the submitted Landscape Plan, they are proposing to add native terracing to a small portion of the riparian corridor nearest the north side, comprised of Woods’s Rose, Douglas Spiraea, Sedges and Tufted Hair Grass. No other changes are proposed. These improvements will not necessitate significant grading, fill or removal of any native vegetation.

Section 2.7.640 Flood Plain Combining Zone

FINDING: The 100-year flood plain is depicted below as a crisscross blue pattern. It coincides roughly with the east property line of the subject property, and the proposed 3-story house is located well above the base flood elevation.



Section 2.7.650 Deschutes River Corridor Design Review Combining Zone

A. Purpose. *It is the purpose of the Deschutes River Corridor Design Review Zone to ensure compliance with the objectives of the code and the goals and policies relating to the Deschutes River in the Bend Area General Plan. The purpose shall also be to:*

- *Recognize and respect the unusual natural beauty and character of the Deschutes River.*
- *Conserve and enhance the existing riparian zone along the Deschutes River.*
- *Allow the community flexibility in reviewing development proposals within the Areas of Special Interest that are designated on the Bend Area General Plan.*
- *Maintain the scenic quality of the canyon and rimrock areas of the Deschutes River.*
- *Conserve and enhance property values.*
- *Preserve, protect and enhance water quality.*
- *Encourage development, preservation and enhancement of reasonable public access to the river for recreational use and visual enjoyment.*

E. Minimum Standards. *Within the Deschutes River Corridor, the following minimum standards shall apply:*

1. ***Building and Parking Setbacks.***

- a. **One-Hundred-Foot Foot Setback Area.** For the areas described below, the setback for all new buildings, parking lots and loading areas shall be a minimum of 100 feet from the ordinary high water mark unless the Bend Urban Area Planning Commission approves a lesser setback. In no case shall the setback be less than 40 feet from the ordinary high water mark of the Deschutes River.
- i. The east and west bank from the Arizona/Commerce Street line to the southern boundary of the Bend Area General Plan map;
 - ii. The east bank from the southern property line of Magill's Landing Subdivision to the northern property line of the Bend Riverside Motel;
 - iii. The east bank from the southern property line of Sawyer Park to the southern boundary of the Rimrock West Subdivision;
 - iv. The east and west banks from the northern boundary of the Rimrock West subdivision to the northern boundary of the Bend Area General Plan map and
 - v. The west bank north of the Park District property known as "Flume Park" to the southern boundary of the Rimrock West Subdivision.
- b. **Commercial Property.**
- c. **Other Areas.** For the areas not described in Subsection (E)(1)(a) or (b) of this section, all buildings, parking lots, and loading areas shall be 40 feet from the ordinary high water mark of the Deschutes River. In no case shall the setback be less than 40 feet from the ordinary high water mark of the Deschutes River.

FINDING: The subject site is not located in any of the areas described in subsections (a) or (b) above. Therefore, the required building setback from the Ordinary High Water Mark for this site is 40 feet, as described in subsection (c). The submitted site plan shows no new buildings, parking lots, or loading areas within the 40 ft. setback from the Ordinary High Water Mark of the Deschutes River.

4. **Building Heights.** Maximum structure height shall be limited to 30 feet at the minimum setback line. The Bend Urban Area Planning Commission may allow increases in building heights up to the allowed height in the underlying zone the farther the building sets back from the river. The Bend Urban Area Planning Commission may limit building height the closer to the river a building is allowed. The building height shall be measured from the lowest natural grade facing the river to the highest measurable point on or projecting from the roof of the structure.

FINDING: The proposed 3-story structure will be located more than 40 feet back from the Ordinary High Water Mark, and will be compliant with the height standard of the underlying (RS) zone following the alteration of the proposed elevations. As reviewed above, the proposed height is currently at 30.5 feet, however, staff recommends allowing the applicants flexibility in either removing the top (3rd) story of the home or slightly altering the height of each floor to stay at or under the 30-foot threshold. Provided the aforementioned condition of approval is established, this standard will be met.

East Elevation

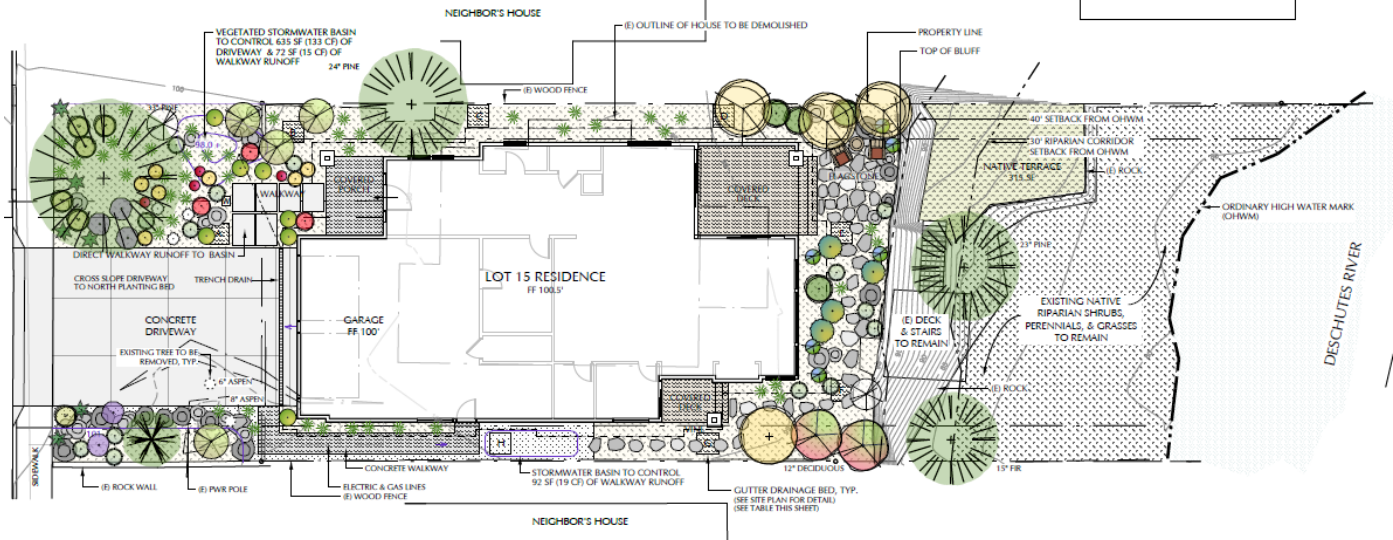


F. Site and Design Review Criteria. *In addition to the minimum standards above, the Bend Urban Area Planning Commission shall review the development using the following design criteria:*

- 1. Conservation of natural features.** *Major rock outcrops, stands of trees, riparian areas, or other prominent natural features are an important part of the visual character and quality of the community. The Bend Urban Area Planning Commission shall review the applicant's proposal for impacts on these resources and may limit the amount of removal, require additional screening, or moving or reducing in size the development addition or structure in order to preserve to the greatest extent possible, existing natural features.*

FINDING: The applicants have sited the proposed house in a location that preserves most of the significant trees on the site, and the existing riparian areas along the river. As shown in the Landscape Plan below, the existing rock outcroppings between the new house and the river will also be preserved. Therefore, this criterion is met.

Landscape Plan



2. Compatibility with existing area. The Bend Urban Area Planning Commission shall consider the relationship of the proposed development with the existing surroundings, in terms of building bulk, height, location, separation, shape, parking areas, lighting, fences, landscaping, open space, visual and physical corridors to the river and adjacent land use.

FINDING: The surrounding homes are mostly 2-story, and the proposed home is slightly larger than the typical home in this area, but not significantly so. The home to the south was approved for a similar design with a height of just over 28 feet and a larger floor area of 4,858 square feet (approved via PZ 09-0023 in 2009). The front setback variance of 5 feet may make the garage appear slightly closer to the street than other homes, but the large right of way width (80 feet) and concrete driveway access slightly masks the appearance of a variance to front setbacks.

Bulk and Separation: The proposed house has been designed so that its predominant bulk is near the center of the residence with the third story footprint much smaller than the two lower floors, allowing sunlight and air circulation for the subject property and abutting properties. The home has also been sited outside of the 40-foot setback in order to reduce the appearance of bulk to the greatest extent reasonable. The location of the third story is also setback much further than the easterly wall of the second floor, masking the appearance of bulk as viewed from the river. The setbacks of approximately 5.5 feet on each side slightly exceed the 5-foot standard side setback in the RS zone. The landscaping proposed on the east side of the residence will also provide privacy for both abutting properties.

Height: The height of the home as proposed is approximately 30.5 feet tall, exceeding the standards of the RS zone. Provided a condition of approval is established to require minor alterations to the elevations, a 30-foot height can be achieved with relative ease. A 30-foot tall structure is permissible in the RS zone, and there are similar residence including the property to the south that was approved with a 28-foot height. The location of the third story, with a smaller footprint and further setback of approximately 85 feet to the OHWM, reduces the appearance of height.

Location/Visual & Physical Corridors: The location of the proposed house was determined primarily by the existing significant trees on the site and the rock ridge that runs through the property. The location of the rock ridge forces the home to be placed further than the 40-foot setback from the OHWM to the west, and the significant trees on the west and north side of the property constrained the home placement in those areas as well. The proposed location retains the natural characteristic of the river corridor, and the approval of the 5-foot variance would alleviate even further the appearance of the residence from the river. The rock outcropping is a valuable amenity that is not impacted by the proposed residence.

Shape: The home has been designed such that the massing has been broken down, with varying planes and rooflines. The first and second floors are approximately 1,500 square feet each, while the third story “crow’s nest” is only 246 square feet. This stepping down in floor area allows the home to provide varied shapes and visual interest.

Parking: There are two parking spaces in the garage. The proposed concrete driveway may also accommodate two parked cars, although the parking is in the right of way, and cannot be formally recognized.

Fences: The existing wood fences on the north and south property lines are intended to remain. No additional fencing is proposed.

Landscaping/Open Space: The landscaping plan indicates native vegetation is to be used to improve the site within the riparian corridor. Outside of the riparian corridor and above the rock outcropping, ornamental high-desert specific plants are to be used to enhance the site. Evergreen and deciduous shrubs are to be planted around the residence to reduce the appearance of size. Ornamental grasses and perennials will be used to create visual interest and seasonal color throughout the property. Small flowering multi-trunk trees are proposed, per the burden of proof, to frame views to the house as well as from the house.

Lighting: The applicants have indicated in the submitted burden of proof that the outdoor light fixtures are to be shielded and directed downward. Therefore, all new outdoor lighting will comply with BDC 3.5.200(C)(1).

As of the date of this staff report, no surrounding property owners have submitted any concerns regarding the design of the proposed 3-story house and front setback variance, with the one submitted comment in support of the applicants’ design and variance. Staff finds that the proposed single-family dwelling with attached garage will be compatible with the existing residences in the surrounding neighborhood.

- 3. Colors and Materials. The Bend Urban Area Planning Commission shall consider colors and materials. The Bend Urban Area Planning Commission may require new structures and additions to existing structures to be finished in muted earth tones that blend with and reduce contrast with the surrounding vegetation and landscape of the building site or colors that are compatible with adjacent buildings.***

FINDING: As of the date of this report, the applicants have not proposed a particular color for the residence or roofing. The burden of proof states that the applicants understand the muted earth tones desired, and they are entertaining a range of stone-gray colors to compliment the neighborhood, river and surrounding area, characteristic of Central Oregon. The burden of proof also states that wood finishes with tongue and groove will be added to the design and offer a natural finish to the residence. Roofing is to be standing seam aluminum with a muted earth tone color, while siding is anticipated to be fiber cement lap with accent siding of vertical tongue and groove wood siding.

- 4. No large areas, including roofs, shall be finished with bright or reflective materials. Metal roofing material is permitted if it is non-reflective and of a color which blends with the surrounding vegetation and landscape.**

FINDING: The proposed colors and materials are not bright or reflective. The roofing will be a standing-seam aluminum panel system, painted with a muted earth-tone color.

- 5. The Bend Urban Area Planning Commission may establish increased setbacks, limitations of building heights, and limitations on the bulk and length of buildings, limitations on lighting, landscaping, fences, size and shape of windows facing the river, size and location of parking, and outdoor storage areas and any other improvement or use listed in Section 2.7.650.E above in order to carry out the purpose of this ordinance.**

FINDING: Based on the above findings, no increased setbacks, building height limits, or other additional restrictions on the proposed 3-story house, on-site parking areas, outdoor storage, or other proposed improvements are needed in order to carry out the purpose of this ordinance.

- 6. For projects proposing development within the setback area, the Bend Urban Planning Commission may consider the degree to which the project provides public access along the riverfront, and may require the dedication of public access on an individualized determination that the required access is reasonably related to the project, and that the required dedication is also roughly proportional to the impact of the proposed project.**

FINDING: The project is not located within the minimum 40 ft. setback area.

- 7. For projects incorporating a setback less than 100 feet, the Bend Urban Area Planning Commission may require enhanced site landscaping, minimum corridors between buildings, variations in building setbacks, size or bulk of facades and may impose any other conditions of approval reasonably required to meet the purposes of this ordinance.**

FINDING: The proposed house is within 100 feet of the river. However, it complies with the minimum required 40 ft. setback, and the riparian vegetation and rock outcroppings on the site will remain undisturbed with the exception of additional native vegetation in the Riparian Corridor as detailed above. Plant material above the rock outcropping and outside of the

riparian corridor will be ornamental, high-desert adapted plant species. Most of the existing trees on the site will be preserved, and shrubs will be planted around the foundation to reduce the scale of the house. Staff finds that no additional conditions of approval are needed to meet the purposes of the Bend Development Code.

**C. CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE
CHAPTER 4.2, MDS REVIEW, SITE PLAN REVIEW AND DESIGN REVIEW**

4.2.400 Minimum Development Standards Review

A. Minimum Development Standards Review for Single-Family Detached Dwellings, Single-Family Attached Townhomes, Accessory Dwelling Units and Duplex Dwellings.

1. Applicability. This section applies to the construction of a new single-family detached dwelling, single-family attached townhome, accessory dwelling unit or duplex dwelling. Dwellings shall also be considered new if new construction is equal to or greater than 50 percent of the square footage of the existing dwelling (including partial to full demolition replaced with new square footage).

3. Approval Criteria. The Review Authority shall approve, approve with conditions, or deny an application for Minimum Development Standards Review based upon the criteria listed below.

a. The proposed land use is a permitted or conditionally permitted use in the zoning district.

FINDING: The proposed single-family dwelling is a permitted use in the RS zone.

b. In addition to the standards below, conditionally permitted uses require approval of a Conditional Use Permit and shall meet the criteria in BDC 4.4.400.

FINDING: The propose uses is a permitted use, so a Conditional Use Permit is not required.

c. The following standards are met:

i. The land use, building/yard setback, lot area, lot dimensions, density, lot coverage, building height, design review standards and other applicable standards of the underlying zoning district are met.

FINDING: As previously determined, the WOZ design review standards and the development standards of the RS zone are met.

ii. Single-family attached townhomes, accessory dwelling units and duplexes shall comply with the corresponding standards of BDC Chapter 3.6, Special Standards and Regulations for Certain Uses.

FINDING: The applicants are not proposing any uses that are subject to BDC Chapter 3.6, Special Standards and Regulations for Certain Uses.

iii. Where available, public water and sewer mains shall be extended through the length of the property frontage with services provided to the dwelling unit(s).

FINDING: Public water and sewer mains exist in Columbia Street. Service lines to the proposed single-family dwelling already exist. Therefore, this standard is met.

v. When an existing public sidewalk exists within 600 feet of the front property line on the same side of the street of any of the frontages, sidewalks shall be constructed along all frontage(s) of the site. A corner lot or parcel has two or more front property lines and frontages.

FINDING: There is no curb along the property frontage, nor sidewalks or a landscape strip; only a gravel driveway leading to the garage. The applicants indicate they intend on constructing sidewalks with the establishment and construction of the residence, as there is existing sidewalk in each direction along NW Columbia Street. As a condition of approval, the applicants shall construct a new curb, sidewalk, and driveway apron prior to final occupancy for the home. This work shall be performed by a City-approved contractor, and it requires a Work in the Right of Way Permit from the Private Development Engineering Division.

vi. Driveways and required parking areas shall be paved with asphalt, concrete or comparable surfacing; a durable nonpaving material (e.g., grass-crete, eco-stone) may be used to reduce surface water runoff and to protect water and air quality. Gravel is not allowed. Driveway apron design and location shall conform to City of Bend Standards and Specifications and the City's adopted accessibility standards for sidewalks and walkways.

FINDING: Based on the submitted plans, the proposed driveway and parking area will be paved with concrete. Therefore, this standard will be met.

**D. CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE
CHAPTER 5.1, VARIANCES**

5.1.300 Class B Variances.

B. Class B Approval Criteria. The City shall approve, approve with conditions, or deny an application for a variance based the following criteria:

- 1. The proposed variance will not be materially detrimental to the stated purposes of the applicable Code requirements listed herein and to other properties in the same land use district or vicinity;***

FINDING: The purpose of Building Setbacks in Residential Zones is stated in Section 2.1.300(A) of the Bend Development Code, as follows:

“Purpose. Building setbacks provide private outdoor living space, building separation for fire protection/security, building maintenance, and sun light and air circulation. The building setback standards encourage placement of residences close to the street for public safety and neighborhood security.”

The proposed reduction of the front setback to 5 feet will not be materially detrimental to the stated purposes of the setback requirement. The home meets the side and rear setbacks, so there is separation for fire protection and security, private outdoor living space needs are met, and there will be adequate sun light and air circulation between the neighboring homes.

The part of the purpose statement that is particularly relevant to the front yard setback encourages placement of residences close to the street, so the requested reduction of the setback to 5 feet meets this purpose. Moreover, there are reasons why a 5-foot setback to the garage makes sense in this particular location. Columbia Street, which is identified as a local street in the Transportation System Plan, contains 80 feet of right of way. The street is developed with 30 feet of pavement, curbs, and sidewalks on the west side of the right of way. The typical right of way for local streets is only 60 feet. The abutting right of way improvements are located approximately 35 feet away from the front property line. The applicants will be installing a new curb tight sidewalk, which will be approximately 30 feet from the property line. This means the garage and house will be located 35 feet from the sidewalk, even with the reduction of the front yard setback. This will provide an appropriate setback, given the nature of the street and how the surrounding area has developed. In fact, requiring a 20-foot setback for the garage would result in the building being 55 feet from the sidewalk, and would be contrary to the stated purpose of the setback that encourages placement of residences close to the street for public safety and security.

The variance will not be materially detrimental to the other properties in the vicinity, and the Engineering Division has no objections to the reduced setback based on the pattern of development in the immediate area. Approving the variance will allow the proposed house to be located in such a manner to reduce potential impacts to the river corridor to the west, and arguably, to abutting properties north and south. The house will be sited in a consistent manner with the surrounding properties. At least five other garages on the same block have been granted variances to the minimum front yard setback, including 334 NW Columbia (5-foot setback), 356 NW Columbia (5-foot setback), 400 NW Columbia (5-foot setback), 410 NW Columbia (5-foot setback), and 322 NW Columbia (10-foot setback). The proposed house at 418 NW Columbia is also similar in size to other recently constructed and neighboring houses. This criterion is satisfied.

2. A hardship exists that is peculiar to the nature of the requested use, lot size or shape, topography, sensitive lands, or other similar circumstances related to the property or use over which the applicant has no control, and which are not applicable to other properties in the vicinity (e.g., the same land use district);

FINDING: The rock outcroppings and drop-off located on the east end of the subject property constitute development constraints. Furthermore, Columbia Street has an 80-foot right of way, which is 20 feet wider than a typical local street. The applicants have no control over the subject property’s topography, its proximity to the river, and Columbia Street’s unusually wide

right of way for a local street. Moreover, although some lots along this block have similar topographical constraints that justified variances, such constraints are not similar to other properties in the RS zoning district. Thus, other typical lots in the RS district lack unique circumstances to justify a front yard setback variance. In this case, denying the requested variance would cause greater visual impacts on the surrounding area and the river corridor than approving the variance. This criterion has been satisfied.

3. *The use proposed is permitted within the underlying zoning district, and City standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land;*

FINDING: The proposed use is a permitted use within the RS zoning district, and all other City standards will be met. The requested variance will allow the applicants to build a reasonably sized home that is consistent with the size of other homes in the neighborhood, and will permit reasonable economic use of the land. This criterion is satisfied.

4. *Existing physical and natural systems, such as but not limited to, traffic, drainage, natural resources, and parks, will not be adversely affected any more than would occur if the development occurred in compliance with the subject Code standard;*

FINDING: Due to the excessive width of the Columbia Street right of way (80 feet instead of the minimum 60 feet for local streets), the proposed 15-foot front yard setback reduction will not adversely affect traffic any more than if the proposed house complied with the minimum required 20-foot front yard setback for garages. The placement of the garage still provides enough room for cars to park in front of the garage door without encroaching on the proposed curb-tight sidewalk. The applicants will also install a 5-foot wide curb-tight sidewalk and concrete driveway apron, along with curbs along the property frontage. Comments from the City of Bend Engineering Division indicate that a rock retaining wall in the right of way is to be removed with the work in the right of way. As a condition of approval, this rock wall must be removed. The work will require a Right of Way Permit. These items shall be completed prior to occupancy for the proposed residence, and required as a condition of approval.

Recommended Condition of Approval: Prior to occupancy for the residence, the applicants must construct a concrete driveway apron and install a 5-foot wide curb-tight sidewalk with curb along the entire frontage of the subject property. The applicants must also remove the rock retaining wall from the right of way. Prior to construction of the required curbing, driveway apron, sidewalk and other work, the applicants shall apply for and obtain a Right of Way Permit from the Private Development Engineering Division.

In regards to drainage, the applicants' submitted plans indicate that all stormwater drainage will be retained on-site drain beds in at least 5 locations around the proposed residence. Final grading and drainage review will be required as part of the building permit review process.

Based on the submitted plans and supporting materials, no other physical or natural systems, including but not limited to natural resources and public parks, will be adversely affected by the proposed single-family dwelling any more than would occur if the project conformed to the

minimum required 20 ft. front yard setback for garages in the RS zone. Placing the proposed house closer to the street actually allows for greater protection of the Deschutes River and its riparian areas. Therefore, this criterion is met.

5. *The hardship is not self-imposed and such conditions and circumstances do not merely constitute pecuniary hardship or inconvenience; and*

FINDING: The subject property abuts the Deschutes River, including the Riparian Corridor, Deschutes River Design Review Corridor, and the Flood Plain, all of which constrain development and encourage reduced visual impact on the river. Furthermore, the subject property contains significant rock outcrops above the banks of the river. The outcroppings, regulatory constraints, and necessary protection of the river and the sensitive riparian area together limit the area on the property which can be developed, and create a hardship over which the applicants have no control. The circumstances do not constitute pecuniary hardship or inconvenience, but rather are site-related, and the reduced setback will have positive impacts on the aesthetics of the river and its riparian areas. Overall, the variance will have positive impacts on the river, and will allow development that is consistent with the surrounding area. The reduction in the setback will have no adverse impact on the streetscape because of the unusual width of the right of way and the fact that other existing houses along the roadway have developed at similar setbacks with similar variance approvals. This criterion is satisfied.

6. *The variance requested is the minimum variance that would alleviate the hardship.*

FINDING: The submitted burden of proof does not address how a lesser variance of 10 feet would constrain the design of the project. However, provided the context with the design and dimensions of NW Columbia Street, and the WOZ overlay zone standards that apply to the property, consideration should be given to the viability of the variance. It is conceivable that the home could be constructed similarly with a 10-foot front setback. However, the impact would only increase with regards to the river, riparian corridor, and applicable WOZ standards. Therefore, this criterion is found to be satisfied.

IV. RECOMMENDATION:

Staff recommends that the Planning Commission approve PZ-18-0883, a Waterway Overlay Zone application for a new single-family dwelling at 418 NW Columbia, and PZ-18-0884, a Class B Variance application to reduce the minimum front yard setback for the attached garage from 20 feet to 5 feet, subject to the staff recommended conditions of approval.

RECOMMENDED CONDITIONS OF APPROVAL:

1. Approval is based on the materials and plans submitted in November 2018. Any substantial alterations of the approved plans, other than those that may be required to comply with any conditions of this approval, will require a new application.
2. The applicants shall retain the 12" deciduous tree as shown on the submitted Landscape Plan unless a certified arborist or other qualified tree professional confirms the tree will fail

to survive, be severely harmed, or present a safety hazard following establishment of the single-family home.

3. The applicants must, before submission for building permits, update the building elevations to demonstrate a compliant building height (30 feet or less) per the City's definition and methodology of building height in BDC Chapter 1.2.
4. The following measures of BDC 3.2.200(D)(1) shall be taken for trees which are to be preserved in order to ensure protection of the trees during construction:
 - a. Barriers. Erect physical barriers around all trees to be retained or groups of trees around the work site. Barriers that extend beyond the drip line of the tree are preferred.
 - b. Soil Compaction. If barriers are not feasible to keep away vehicles and foot traffic, use 6-8 inches of wood chips spread over the root zone or bridge root area overlaid by plates of steel or other suitable material.
 - c. Grade Changes. If a grade change is unavoidable, retaining walls shall be used to protect the root system.
 - d. Severing Roots. Avoid cutting anchoring roots if possible. Tunneling for smaller household utility lines may be an option for tree preservation. When root cuts are unavoidable, the cuts shall be made with a pruning saw.
 - e. Aboveground Injuries to Trees. Do not use trees for posting signs, electrical wires and pulleys. Keep trees free of nails, screws, and other fastening devices.
 - f. Soil Contamination. Altering the soil chemistry can result in weakened trees, making them more susceptible to insects and disease. Prevent adverse effects on soil chemistry by spreading heavy plastic tarping where concrete is to be mixed or sheet rock cut; do not clean paintbrushes and tools over tree roots; dispose of chemical wastes properly and do not drain onto soil.
5. Prior to occupancy for the residence, the applicants must construct a concrete driveway apron and install a 5-foot wide curb-tight sidewalk with curb along the entire frontage of the subject property. The applicants must also remove the rock retaining wall from the right of way. Prior to construction of the required curbing, driveway apron, sidewalk and other work, the applicants shall apply for and obtain a Right of Way Permit from the Private Development Engineering Division.

DURATION OF APPROVAL: The duration of the Planning Commission's approval shall be governed by the procedures established in Section 4.1.1310(c) of the Bend Development Code.

THE PLANNING COMMISSION'S DECISION BECOMES FINAL TWELVE (12) DAYS AFTER THE DATE MAILED, UNLESS APPEALED BY A PARTY OF INTEREST.

WRITTEN BY: 
Nicolas Lennartz, Assistant Planner

Reviewed by: Aaron Henson
Aaron Henson, AICP, Senior Planner