

**NOTICE OF DECISION
FLOODPLAIN DEVELOPMENT PERMIT CASE NO. 19-003**

APPLICATION: Application of Carter Living Trust for a floodplain permit to place a garage in the 100-year floodplain of Mill Creek on a 1.65 acre parcel in an IG (General Industrial) zone located at 3641 Boone Road SE, Salem (T8S; R2W; Section 7C; tax lot 1700).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Floodplain Development application subject to certain conditions.

EXPIRATION DATE: This Floodplain Development Permit is valid only when exercised by **May 8, 2021**. The effective period may be extended for an additional year subject to approval of an extension (form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well, and drain field replacement areas this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposal the applicant should contact the Building Inspection Division, (503) 588-5147.

All development in the floodplain is subject to federal, local and state regulations and standards at the time development is begun. These regulations and standards are in the process of being revised and the development proposed in this application may be subject to additional regulations and standards at the time construction of structures or placement of fill on the property begins.

Based on preliminary information provided by the National Marine Fisheries Service on April 14, 2016, federal law might only recognize as legal work on an existing permit that has begun prior to September 15, 2016 and is completed prior to March 15, 2017. Work begun after September 15, 2016 or completed after March 15, 2017 may be in violation of federal law and thus invalidate this local permit.

Construction related to this permit is approved only within the existing developed area of the property. Construction of new structures, fill or other development of the property should not occur outside the existing developed area without prior consultation with the Marion County Planning Division. Federal regulations may require additional approvals for development outside the existing developed area of the property.

Applicant is further advised that buildings constructed with below-grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction (the interior grade of the crawlspace is at or above the adjacent exterior grade).

This decision does not include approval of a building permit.

CONDITIONS: The following conditions must be met before a building permit can be obtained or the approved use established:

1. The applicant shall obtain all permits required by the Marion County Building Inspection Division.
2. Prior to construction of the project, the applicant shall sign and submit to the Planning Division a Declaratory Statement (enclosed) acknowledging that the property and the approved development are located within a floodplain. The applicant shall record this statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
3. Prior to issuance of building permits for a garage, a registered civil engineer shall certify the garage meets the requirements of Marion County Code:
 - MCC 16.19.130(D)
 - MCC 16.19.140(A)(8)
 - MCC 16.19.140(D), (E) and (F)

- MCC 16.19.140(K)(3)

4. An Elevation Certificate for the residence and any garage shall be supplied for the addition at the following times:
 - (a) Once the floor elevation can be determined (based on the building under construction), and
 - (b) Prior to occupancy (based on finished construction).
5. Prior to issuance of a building permit for the garage, the applicant shall record a declaratory statement as required in MCC 16.19.140(A)(8).

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect any covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, State or Federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying any restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #6 below be contacted to identify restrictions or necessary permits.

6. The applicant should contact the Salem Suburban Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.
7. Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited unless stored within a structure or on land elevated above the base flood level. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low-damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.
8. The applicant should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #5 below, that may be required.

APPEAL PROCEDURE: The Marion County Zone Code provides that certain applications be considered first by the Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) on the basis of new information subject to signing an extension of the 150 day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Requests for reconsideration, or consideration by a hearings officer, must be in writing and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **May 8, 2019**. If you have any questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **May 9, 2019** unless further consideration is requested.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which the decision was based are noted below.

1. The subject property is designated Industrial in the Salem Area Comprehensive Plan and correspondingly zoned IG (General Industrial) by Marion County. It is located within the identified 100 year floodplain of the Mill Creek.
2. The subject property is located approximately 400 feet east of the intersection of 36th Avenue SE and Boone Road SE. The property contains a dwelling. The property was the subject of previous land use case, Floodplain Case #11-006, which approved rock fill material to be placed on the property. The parcel is considered a legal lot for land use purposes.
3. Surrounding lands consist of properties being farmed and properties with industrial and employment uses in an IG zone. Property to the north and southwest are within the city limits of Salem.

4. The applicant proposes to locate a garage on the property for personal, residential use. A residential accessory structure may be constructed to wet-floodproofing standards consistent with county floodplain code. A commercial structure, however, would have to be elevated or constructed to dry-floodproofing standards.

5. Public Works Land Development and Engineering Permits commented:

Requirements:

“A. In accordance with Marion County Code 11.10, driveways must meet sight distance, design, spacing, and safety standards. The following numbered sub-requirements pertain to access:

- 1) At the time of application for building permits for the proposed garage that includes a secondary direct access to Boone Road, an Access Permit will be required. The applicant shall be required to construct any improvements required by the permit.
- 2) Under the Access Permit, Applicant shall re-establish drainage conveyance along the Boone Road property frontage to include placement of a culvert in the existing access, and the installation of a culvert under the requested new western access. Culvert sizing will be determined at the time of permit issuance.
- 3) Since the existing access supports industrial storage aside from the residential use, under the Access Permit it shall be paved back a minimum 50’ back from the edge of pavement with hot mix asphalt.”

Advisories:

“B. The Applicant is advised that PW Engineering plan survey records from a fairly recent City of Salem Boone Road project identified the subject property septic tank to be situated just to the west of the home, very close to where the application site plan depicts the proposed garage driveway. Therefore, the tank location should be confirmed so that it is not adversely impacted, meaning driven over. Relevant exact dimensions will need to be provided to the County Sanitarian at the time of application for building permits.

C. The declared use of the proposed garage is personal storage. If it is determined by Marion County or declared by the Applicant or his successor in the future that this building is being utilized in a commercial capacity, then design, permitting and construction of ¼- street urban frontage improvements, or the recording of a Non-Remonstrance Agreement for same, may be required at that time.”

Salem Suburban Fire Department commented on access and water supply.

6. Because the proposal is to replace a garage in the floodplain, a floodplain permit is required. The purpose of the Floodplain Overlay Zone is to promote public health, safety and general welfare to minimize public and private losses due to flood conditions. In order to ensure that the development is reasonably safe from flooding, the County requires the development comply with the criteria and standards listed in Section 16.19 of the Marion County Code (MCC).
7. The property is shown on Marion County Flood Insurance Rate Map #41047C0363H, dated January 2, 2003 in a flood zone ‘AO-Depth 1’ where the Base Flood Elevation (BFE) is 1 foot above the highest adjacent grade within five feet of the building site.
8. Marion County Code (MCC) 16.19.130 requires:

C. *Prior to obtaining a building permit the owner shall be required to sign and record in the deed records for the county a declaratory statement binding the landowner, and the landowner’s successors in interest, acknowledging that the property and the approved development are located in a floodplain.*

This can be made a condition of any approval.

D. *Prior to obtaining a building permit, commencing development or placing fill in the floodplain, the applicant shall submit a certification from a registered civil engineer demonstrating that a development or fill will not result in an increase in floodplain area on other properties and will not result in an increase in erosive velocity of the stream that may cause channel scouring or reduce slope stability downstream of the development or fill.*

This can be made a condition of any approval.

9. MCC 16.19.130 (E) requires:

The applicant shall provide an elevation certificate signed by a licensed surveyor or civil engineer certifying that the actual elevations of all new or substantially improved manufactured homes, dwellings and structures meet the requirements of MCC 16.19.140(A), (B) and (C) where applicable, as follows:

- 1. Prior to construction (based on construction drawings); and*
- 2. Once the floor elevation can be determined (based on the building under construction); and*
- 3. Prior to occupancy (based on finished construction).*

An elevation certificate based on construction drawings was provided with the application. The provision of other elevation certificates can be made a condition of any approval.

10. MCC 16.19.140 contains additional standards for development in the floodplain:

- A. *Dwellings, Manufactured Homes and Related Accessory Structures. New residential construction, substantial improvement of any residential structures, location of a manufactured home on a lot or in a manufactured home park or park expansion approved after adoption of this title shall:*
8. *A detached residential accessory structure may be constructed to wet floodproofing standards; provided, that:*
- a. The accessory structure shall be located on a property with a dwelling;*
 - b. The accessory structure shall meet the criteria for a variance in MCC 16.19.170;*
 - c. The accessory structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;*
 - d. The accessory structure shall be constructed with unfinished materials, acceptable for wet floodproofing to two feet above the base flood elevation or, where no BFE has been established, to two feet above the highest adjacent grade;*
 - e. The accessory structure shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must comply with the following standards:*
 - i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;*
 - ii. The bottom of all openings shall be no higher than one foot above grade;*
 - iii. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters;*
 - f. Electrical, heating, ventilation, plumbing, and air conditioning equipment shall be elevated to one foot above the level of the base flood elevation. Where the base flood elevation is not available, the electrical, heating, ventilation, plumbing and air conditioning equipment shall be elevated to one foot above the highest adjacent natural grade (within five feet) of the building site;*
 - g. The accessory structure shall be limited to vehicle parking and storage of items having low damage potential when submerged by water (no workshops, offices, recreation rooms, etc.);*
 - h. The accessory structure shall not be used for human habitation;*
 - i. A declaratory statement is recorded requiring compliance with the standards in subsections (A)(8)(d) through (h) of this section.*

MCC 16.19.170 contains the criteria for approving a variance to wet floodproofing standards:

- 1. There is a good and sufficient cause;*
- 2. Failure to grant the variance would result in exceptional hardship to the applicant;*
- 3. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws;*
- 4. The variance is the minimum necessary, considering the flood hazard, to afford relief;*
- 5. The variance will be consistent with the intent and purpose of the provision being varied;*

6. *There has not been a previous land use action approved on the basis that variances would not be allowed; and*
7. *The new construction or substantial improvement is not within any designated regulatory floodway, or if located in a floodway, no increase in base flood discharge will result.*

Allowing a detached residential accessory structure to be wet-floodproofed instead of elevated or dry-floodproofed will realize a significant cost savings for the property owners without causing a significant increase in the risk to damage of life or property or increase in flood insurance claims. The structure would be limited to the uses of parking vehicles and limited storage of personal items and implements that are able to get wet and dry out without causing more than cosmetic damage to the contents. Requiring the structure to be elevated would make it significantly harder to access and may require fill dirt be placed in the floodplain to create a ramp to the structure, which could impact flooding in the area. In the event of a flood, the structure and contents would get wet and then dry out without requiring intervention or the rescuing of people (as from a residence). The applicant will be required to demonstrate that the proposal will not increase flood heights or shift flooding onto other properties by this development, as required by the county floodplain code. Granting of a variance will not result in threats to public safety, extraordinary public expense, create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws.

Allowing the structure to be wet-floodproofed is the minimum variance required for the structure; all the other requirements for construction in the floodplain will be required to be met. The variance would allow the property owners to construct a useful building, without construction costing a significant amount beyond the value of the structure, the use of which is consistent with the uses allowed in the zone. There have been no previous land use actions that were approved on the basis that a future variance would not be allowed on the property. The proposed structure is not within a floodway.

The proposal meets the criteria for granting a variance to allow the residential accessory structure to be built to wet-floodproofing standards.

Additionally, requiring the certifications for the garage, and the recording of a declaratory statement, can be made a condition of any approval.

D. Anchoring.

1. *All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.*

E. Construction Materials and Methods.

1. *All new construction and substantial improvements below base flood level shall be constructed with materials and utility equipment resistant to flood damage, and the design and methods of construction are in accord with accepted standards of practice based on an engineer's or architect's review of the plans and specifications.*
2. *All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damages.*

F. Utilities.

1. *All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system as approved by the State Health Division.*
2. *New and replacement sanitary sewage systems including on-site waste disposal systems shall be designed and located to minimize floodwater contamination consistent with the requirements of the Oregon State Department of Environmental Quality.*
3. *Electrical, heating, ventilation, plumbing, and air conditioning equipment shall be elevated to one foot above the level of the base flood elevation. Where the base flood elevation is not available, the electrical, heating, ventilation, plumbing and air conditioning equipment shall be elevated to one foot above the highest adjacent natural grade (within five feet) of the building site.*

Requiring these certifications for any development can be made a condition of any approval.

- H. *Storage of Materials and Equipment. Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.*

Compliance with this standard can be made a condition of any approval.

- K. *Standards for Shallow Flooding Areas (AO Zones). Shallow flooding areas appear on FIRMs as AO zones with depth designations. The base flood depths in these zones range from one to three feet where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas, the following provisions apply:*
1. *New construction and substantial improvements of residential structures within AO zones shall have the lowest floor (including basement) elevated above the highest adjacent grade (within five feet) of the building site, to two feet above the depth number specified on the FIRM or three feet if no depth number is specified.*
 2. *New construction and substantial improvements of nonresidential structures within AO zones shall either:*
 - a. *Have the lowest floor (including basement) elevated above the highest adjacent grade (within five feet) of the building site, to two feet above the depth number specified on the FIRM or three feet if no depth number is specified; or*
 - b. *Together with attendant utility and sanitary facilities, be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as in subsection (E) of this section.*
 3. *Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.*

The applicant chose to seek a variance and construct a garage to the wet-flood proofing standards in MCC 16.19.140 (A)(8). The standards in K (1) and (2) for developing in an AO zone do not apply to this request. The standard in K(3) can be made a condition of any approval.

11. Based on the above findings, it has been determined that the proposal complies, or can be conditioned to comply, with the criteria in the Marion County Code and is, therefore, APPROVED, subject to conditions.

Joe Fennimore
Planning Director

Date: April 23, 2019

If you have any questions regarding this decision contact Brandon Reich at (503) 588-5038.

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.