



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 07/23/2025

REQUESTER: Home Creations, Inc.

PRESENTER: Jason Murphy, Stormwater Program Manager

ITEM TITLE: CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF BOA-2526-2: HOME CREATIONS, INC., APPEALS THE DENIAL OF FLOODPLAIN PERMIT APPLICATION NO. 716 FOR THE PROPOSED BURN PIT IN THE BISHOP CREEK FLOODPLAIN NEAR EAGLE CLIFF WEST SUBDIVISION.

APPELLANT Home Creations, Inc.

FLOODPLAIN PERMIT APPLICATION NO. 716

ACTION BEING APPEALED Denial of a Floodplain Permit on June 2, 2025

SUPPORTING DATA Floodplain Map

FPP Staff Report

FPP Application & Attachments

FPPC Minutes 6/2/25

FPPC Denial Letter

BACKGROUND: This application is an appeal of the administrative decision made by the Floodplain Permit Committee (FPPC). The Zoning Ordinance, Chapter 36, provides in Section 533(f)(7):

Appeals from any decision of the Floodplain Permit Committee may be taken by any person . . . aggrieved by any decision of the Committee, to the Board of Adjustment. The Board of Adjustment shall consider the appeal at a regular or special meeting as soon as practicable and make its decision on the suitability of the proposed use in relation to the flood hazard. Any person or persons aggrieved by the decision of the Board of Adjustment may appeal such decision to a court of competent jurisdiction. At least two members of the Board of Adjustment shall have

successfully completed the (8) eight-hour basic floodplain training offered by the Oklahoma Water Resource Board or equivalent training or education.

Home Creations, Inc. requests an appeal of the denial of its Floodplain Permit Application NO. 716. The appeal application is attached.

Chapter 36, Section 570(c)(1) provides that the Board of Adjustment (BOA) has the power to hear and decide appeals where it is alleged there is error in any administrative order, requirement, decision or determination in the enforcement of Chapter 36, the Zoning Ordinance. Section 570 (f) provides that “an administrative official shall forthwith transmit to the [BOA] all papers constituting the record upon which the action appealed from was taken.” Staff has therefore attached the packet and minutes of the Floodplain Permit Committee for review by the Board.

STAFF COMMENTS:

Staff Description and Background of the Home Creations, Inc. FP Permit Application

On March 13, 2025, a floodplain notice of violation was sent to the applicant regarding illegal fill in the Bishop Creek floodplain near Eagle Cliff West Subdivision. An estimated 15,000 cubic yards of material, including trees and vegetative material had been cleared for the development and had been discarded into the adjacent floodplain. A complaint was filed by two different groups of inspectors who discovered the violation during routine inspections. Home Creations, Inc. staff met with City staff to discuss a remedy. Staff recommended removal of the fill from the floodplain and disposal of the material offsite outside of the floodplain. The applicant indicated removal of the material from the floodplain was not possible and proposed to burn the fill on site using an air curtain incinerator in a 10’ wide by 30’ long and 10’ deep burn pit. Air curtain incineration involves the use of a forced air “curtain” that contains smoke and particulates and recirculates the material and re-burns it, reducing smoke and emissions significantly. According to the applicant’s engineer, this process leaves little to no remaining material and will effectively remove the fill from the floodplain and satisfy the requirements of the notice of violation. The applicant indicated, despite their application site plan showing a single burn pit near the fringe of the floodplain, that multiple pits would be required in various locations. The burning process is weather dependent and likely to take several months to complete. The applicant contacted the Norman Fire Marshall and began the process of obtaining a burn permit for this work.

Aerial images from multiple years indicate this area is regularly inundated with water where a significant amount of the material is currently located. The applicant indicated a plan to move the material north, to the burn pit on the site plan, within the regulatory floodplain. The applicant indicated additional pits would likely be required but was unable to provide a location for where those pits would be located. Staff recommended the work be performed outside of the regulatory floodplain, negating the need for the floodplain permit to address the existing violation.

On June 2, 2025, the Floodplain Permit Committee voted against the application with a vote of 0 in favor, 6 against (with 1 absent). Because of its failure to get the five required favorable votes, the application was denied. Significant reasons for the denial were included in the permit denial letter. The major concerns included:

- the availability of alternative locations not subject to flooding or erosion damage for the proposed work;
- the ambiguity of the number of proposed pits (the permit application only included one pit location, not the unspecified number of pits indicated by the applicant during the meeting);
- the lack of analysis of the effect of multiple pits on the floodplain; and
- the impacts the proposed work would have on maintaining the open space and natural values of the floodplain, specifically native vegetation, which were not adequately addressed.

Home Creation's Appeal and Arguments

Please see the attached memo from the applicant's representative justifying the appeal.

BOA Authority and Standard of Review

The Board of Adjustment's authority for review in this instance is broad:

In exercising the above-mentioned powers, the Board of Adjustment shall reverse or affirm, wholly or in part, shall modify the order, requirement, decision, or determination appealed from, shall make such order, requirement, decision, or determination as ought to be made, so long as such action is in conformity with the terms of this chapter, and to that end shall have the powers of an administrative official from whom the appeal is taken.

Chapter 36, Section 570(d)(1) of the Norman Municipal Code.

In the case that the Board of Adjustment, considering Home Creations, Inc. arguments, finds there was "an alleged error in any order, requirement, decision or determination" of the Floodplain Permit Committee's review of Floodplain Permit Application NO. 716, the Board of Adjustment may make and vote upon such motion as "ought to be made" in conformity with the Zoning Ordinance, to provide the applicant redress. The BOA's authority on appeal is broad, and the BOA has and may exercise the "powers of [the] administrative [body] from whom the appeal is taken."

In determining whether to approve or deny a floodplain permit request, the following relevant factors should be considered:

1. The danger to life and property due to flooding or erosion damage;
2. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
3. The danger that materials may be swept onto other lands to the injury of others;
4. The compatibility of the proposed use with existing and anticipated development;
5. The safety of access to the property in times of flood for ordinary and emergency vehicles;

6. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
7. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
8. The necessity to the facility of a waterfront location, where applicable;
9. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

10. The relationship of the proposed use to the City's adopted land use plan for that area.

In considering a floodplain permit request, the Floodplain Permit Committee also has the power to "attach such conditions ... as it deems necessary to further the purposes of the chapter." Such conditions include:

- a. Modification of waste disposal and water supply facilities.
- b. Limitations on periods of use and operation.
- c. Imposition of operational controls, sureties, and deed restrictions.
- d. Requirements for construction of channel modifications, dikes, levees, and other protective measures.
- e. Floodproofing measures such as the following shall be designed consistent with the flood protection elevation for the particular area, flood velocities, durations, rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the base flood. The following floodproofing measures, among others, may be required:
 1. Anchorage to resist flotation and lateral movement;
 2. Installation of watertight doors, bulkheads, and shutters, or similar methods of construction;
 3. Reinforcement of walls to resist water pressures;
 4. Use of paints, membranes, or mortars to reduce seepage of water through walls;
 5. Addition of mass or weight to structures to resist flotation;
 6. Installation of pumps to lower water levels in structures;
 7. Construction of water supply and waste-treatment systems so as to prevent the entrance of floodwaters;
 8. Installation of pumping facilities or comparable practices for subsurface drainage systems for buildings to relieve external foundation wall and basement flood pressures;

9. Construction to resist rupture or collapse caused by water pressure or floating debris;
10. Installation of valves or controls on sanitary and storm drains which will permit the drains to be closed to prevent back-up of sewage and stormwaters into the buildings or structures. Gravity draining of basements may be eliminated by mechanical devices;
11. Location of all electrical equipment, circuits, and installed electrical appliances in a manner which will ensure they are not subject to flooding and to provide protection from inundation by the regulatory flood;
12. Location of any structural storage facilities for chemicals, explosives, buoyant materials, flammable liquids, or other toxic materials which could be hazardous to public health, safety, and welfare in a manner which will ensure that the facilities are situated at elevations above the height associated with the base flood elevation or are adequately floodproofed to prevent flotation of storage containers, or damage to storage containers which could result in the escape of toxic materials into floodwaters.

The purposes of the City of Norman's Flood Hazard District are stated as follows:

Statutory Authorization. Description and purpose. The Legislature of the State of Oklahoma has in the Oklahoma Floodplain Management Act, Sections 1601 through 1620.1 of Title 82 of the Oklahoma Statutes, delegated the responsibility, and authorized local governments, to adopt and enforce regulations designed to minimize flood losses within this Flood Hazard District . . . The City thus declares that it is the purpose of this Flood Hazard District to exercise this delegated authority, to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. Protect human life and health;
2. Minimize expenditure of public money for costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business interruptions;
5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
6. Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas;
7. Control in special flood hazard areas, uses such as fill dumping, storage of materials, structures, buildings and any other works which, acting alone or in combination with other existing or future uses, would cause damaging flood heights or erosive velocities by obstructing flows and reducing floodplain storage;

8. Ensure that potential buyers are notified that property is in a floodprone area;
9. Meet the needs of the streams to carry floodwaters and protect the creek channels and floodplains from encroachment so that flood heights and flood damage will not be increased;
10. Enhance existing protections for residents, structures, and public facilities from flood damage;
11. Preserve floodplain areas for their open space and natural habitat values; and
12. Establish provisions and procedures that will provide additional protections for floodplain areas with no net loss of allowable density on affected lots and parcels.

City Staff will be present to provide any additional information the BOA may require in evaluating the attached application.

CONCLUSION: Staff forwards Home Creations, Inc.'s appeal of the Floodplain Permit Committee's denial of Floodplain Permit Application NO. 716 and BOA-2526-2 to the Board of Adjustment for consideration.