

BEFORE THE CITY COUNCIL
CITY OF SUMAS, WASHINGTON

IN RE Critical Areas Variance Application)
of:)

REPORT OF DECISION

Tim Vander Meulen)
515 Mitchell Street)
Sumas, WA 98295)

Adopted September 12, 2022

The matter having come before the City Council of the City of Sumas for public hearing on September 12, 2022, the Council having duly considered all matters in the record and all testimony given for and against the application, makes the following Findings of Fact, Conclusions of Law, and Decision:

FINDINGS OF FACT

1. The Applicant is Tim Vander Meulen.
2. The Applicant is proposing to construct a two-story accessory structure within the 100-year floodplain with the lowest floor below the FEMA base flood elevation (the "Project"). The proposed structure would be accessory to an existing single-family residence and would include a garage on the lowest floor and an office with a half-bath on the second floor.
3. The site address is 515 Mitchell Street, Sumas WA (the "Site"). The Site contains approximately 0.2 of an acre.
4. The Site is situated in the SE ¼ of the SW ¼ of Section 35, Township 41 North, Range 04 East of W.M. and is identified under the following Whatcom County Assessor's parcel number: 410435 153055.
5. The Site's zoning designation is Residential, High-Density, which is consistent with the site's designation within the *City of Sumas Comprehensive Plan*. Development of the Site is subject to the zoning regulations set forth in Chapter 20.32 of the Sumas Municipal Code (SMC).
6. The Site currently contains a single-family residence. Construction of an accessory structure is a permitted use in the Residential, High-Density zoning district.
7. The Project includes construction of two-story accessory structure with the lowest floor below the FEMA base flood elevation. Section 14.30.135 SMC allows one-story accessory structures less than 400 square feet in size that have the lowest floor below the FEMA base flood elevation to be constructed with approval of a floodplain development permit (no variance required), but requires approval of a floodplain development permit variance for accessory structures with the lowest floor below the FEMA base flood

elevation that exceed the above size thresholds. Therefore, the Applicant has submitted an application for a floodplain development permit variance.

Procedural Requirements

8. On July 20, 2022, the Applicants submitted an application for a floodplain development permit and floodplain development permit variance.
9. The application was accompanied by supporting documentation, including an analysis of Project consistency with applicable variance criteria set forth in Chapter 14.30 SMC, Flood Damage Prevention.
10. The application was processed as a Class III action pursuant to the provisions of Chapter 20.08 SMC. The application was determined to be complete on August 5, 2022, at which time the City issued a *Letter of Completeness*. A *Notice of Application and Public Hearing* was issued by the City on August 10, 2022.
11. A public comment period was open from August 10 through August 25, 2022. No comments were received during the comment period.
12. Pursuant to WAC 197-11-800, the subject variance is exempt from review under the State Environmental Policy Act (SEPA), RCW 43.21C.
13. In accordance with state law and City ordinance, notice of the public hearing was given to neighboring property owners and to the public as part of the initial notice of application.
14. A public hearing before the City Council was held on September 12, 2022 where opportunity for public comment was provided and public testimony was received.

Public Record

15. The public record for this application includes the following documents:
 - A. Application and supporting information received from the Applicant on July 20, 2022.
 - B. Letter of Completeness issued by the City on August 5, 2022.
 - C. Notice of Application and Public Hearing issued by the City on August 10, 2022.
 - D. E-mail correspondence with the Washington Department of Ecology received on August 23, 2022.
 - E. Supplemental information regarding consistency of the Project with Section 14.30.135 SMC received from the Applicant on August 24, 2022.
 - F. Building plans and elevation drawings submitted by the Applicant during the public hearing on September 12, 2022.
 - G. Draft report of decision identified as September 12, 2022 DRAFT.

Zoning Requirements

16. The construction of an accessory structure is permitted pursuant to SMC 20.32.020 (2) and (4).
17. The Project conforms to the applicable front, side and rear yard setbacks in the Residential, High-Density zoning district.
18. The Project is consistent with the requirements set forth in Title 20 SMC, Zoning.

Accessory Structure in the Floodplain

19. Section 14.30.135 SMC from the City's Flood Damage Prevention ordinance establishes the following regulations in relation to construction of an accessory structure:

Accessory structures constructed or substantially improved within the SFHA shall conform to the requirements set forth in this section.

(1) Accessory structures located in the SFHA with the lowest floor below the BFE may be wet floodproofed in lieu of being elevated or dry floodproofed without a variance, under the following conditions:

- (A) The accessory structure should be small, one story and four hundred square feet or less in area, and represent a minimal investment; provided, that accessory structures of any size may be considered for a variance;
- (B) The accessory structure must meet the definition of "structure," for floodplain management purposes, where "walled and roofed" shall be interpreted as having two outside rigid walls and a fully secured roof;
- (C) The accessory structure must be anchored to resist flotation, collapse, and lateral movement;
- (D) The portions of the accessory structure located below the BFE must be constructed with flood-resistant materials;
- (E) Mechanical and utility equipment for the accessory structure must be elevated or dry floodproofed to one foot or more above the BFE;
- (F) Where applicable, the accessory structure must comply with the special flood risk zone, special flood corridor and floodway encroachment provisions of this chapter;
- (G) The accessory structure must be wet floodproofed to protect the structure from hydrostatic pressure. The design must meet the NFIP design and performance standards for openings as set forth in Section [14.30.130](#) and must allow for the automatic entry and exit of floodwaters without manual operation or the presence of a person (or persons);
- (H) If the accessory structure is converted to another use, it must be brought into full compliance with the standards governing such use set forth in this chapter; and

(I) The structure shall not be used for human habitation.

(2) Accessory structures located in the SFHA with the lowest floor below the BFE that do not meet all of the conditions set forth in subsection (1) of this section shall require approval of a variance; provided, that any such accessory structure shall conform to the requirements set forth in subsections (1)(B) through (1)(H) of this section.

20. The Applicant has submitted supplemental information demonstrating that the Project will be consistent with all of the above criteria, subject to approval of a floodplain development permit variance to allow construction of a two-story accessory structure. The conditions of approval set forth in Appendix A ensure that the Project will be constructed consistent with all requirements set forth in Chapter 14.30 SMC, Flood Damage Prevention.

Floodplain Development Permit Variance

21. Subsection 14.30.180(d) SMC establishes the following criteria that are applicable to the approval of a floodplain development permit variance:

In passing upon such applications, the Sumas city council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

- (1) The danger that materials may be swept on other lands to the injury of others;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) The safety of access to the property in time of flood for ordinary and emergency vehicles;

- (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, expected at the site; and
- (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
22. Section 14.30.190 SMC establishes the following additional conditions that are applicable to the approval of a floodplain development permit variance:
- (a) Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acres or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in Sections [14.30.180\(d\)\(1\)](#) through (11) have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.
- (b) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth this section, provided the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (c) Variances shall not be issued within the special flood risk zone if any increase in flood levels during the base flood damage would result.
- (d) Variances shall only be issued upon a determination that the variance is the minimum necessary.
- (e) Variances shall only be issued upon:
- (1) A showing of good and sufficient cause;
- (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant;
- (3) A determination that 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 as identified in Section [14.30.180\(d\)](#), or conflict with existing local laws or ordinances.
- (f) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

(g) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except subsection (a) of this section and otherwise complies with Sections [14.30.120](#)(1) and (2).

(h) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

23. The Applicant submitted responses to the criteria and conditions set forth in Sections 14.30.180 and 14.30.190 SMC indicating that the Project is consistent with these criteria.
24. Comments received from the Washington Department of Ecology indicate that the state does not have any issues of concern in relation to the subject application and requested variance.
25. Based on consideration of the information presented by the Applicant, the information included in the public record, and the conditions of approval set forth in Appendix A, the Council finds that the Project is consistent with the criteria for approval of a floodplain development permit variance set forth under Sections 14.30.180 and 14.30.190 SMC.
26. Approval of the subject application will allow reasonable use of the Site, consistent with applicable zoning requirements, while avoiding and minimizing risks associated with development in the 100-year floodplain.

CONCLUSIONS OF LAW

1. With the mitigation measures incorporated in the Application and in Conditions 1 through 7 from Appendix A, the Application is consistent with the Sumas Comprehensive Plan and with Titles 14 and 20 SMC.
2. With the mitigation measures incorporated in the Application and in Conditions 1 through 7 from Appendix A, the Project is consistent with the criteria for approval of a floodplain development permit variance established under Sections 14.30.180 and 14.30.190 SMC.
3. The conditions of approval set forth in Appendix A are adopted under authority of Title 14 SMC as measures necessary to reach Conclusion 2, above.
4. Any conclusion of law that is also a finding of fact is hereby adopted as such. Any finding that is deemed a conclusion is hereby adopted as such.

DECISION

Based upon the aforementioned findings of fact and conclusions of law, the floodplain development permit variance is **APPROVED**, subject to the Conditions of Approval established in Appendix A.

City of Sumas, Washington


Bruce Bosch, Mayor

9/14/22
Date

METHOD OF APPEAL

There is no administrative appeal of the Council's decision. Pursuant to Chapter 36.70C Revised Code of Washington, any land use petition challenging the decision regarding the subject application must be filed with the superior court of Whatcom County and served on the following parties within twenty-one days of the issuance of the decision:

City of Sumas
P.O. Box 9
433 Cherry Street
Sumas, WA 98295

Tim Vander Meulen
515 Mitchell Street
Sumas, WA 98295

APPENDIX A TO RE PORT OF DECISION

CONDITIONS OF APPROVAL VANDER MEULEN FLOODPLAIN DEVELOPMENT PERMIT VARIANCE

1. All mitigation measures described in the Application are hereby incorporated as conditions of the Project, unless specifically excluded below. All permits and approvals required for the construction of the Project from either the City of Sumas or other agencies shall be obtained prior to the issuance of building permits by the City for the Project. All permits and approvals required for the operation of the Project from either the City of Sumas or other agencies shall be obtained in conformance with the requirements of such agencies. The Applicant shall provide to the City copies of all plans and reports prepared under the regulatory requirements of other regulatory agencies, if any.
2. The Project shall be constructed to meet all applicable requirements set forth in Chapter 14.30 SMC, Flood Damage prevention.
3. Those portions of the structure below the FEMA base flood elevation shall be constructed of flood-resistant materials.
4. All mechanical equipment shall be elevated at least one foot above the FEMA base flood elevation.
5. The lowest floor of the proposed accessory structure shall be used solely for parking of vehicles and limited storage and shall not be used for human habitation.
6. The second floor of the proposed structure shall not be used as a dwelling unit without prior written approval from the City of Sumas.
7. Any finding of fact or conclusion of law that is also a condition of approval is hereby adopted as such.