



City of Sweet Home
Community and Economic Development Department- Planning Program
3225 Main Street, Sweet Home, OR 97386 541-367-8113

Staff Report Presented to the Planning Commission

REQUEST: The applicant is seeking a variance to allow for a six (6) foot fence in a front yard abutting a street and a six (6) foot fence in a side yard abutting a street. Fences and walls within a front yard abutting a street shall not exceed a maximum height of three and one-half feet when constructed with solid materials (i.e. wood fence) or four feet when constructed with open material (i.e. chain-link fence) [SHMC 17.08.033.E.1.a.(1)]. Fences and Wall on side and rear yards abutting a street, located less than three feet from a street property line shall not exceed a maximum height of three and one-half feet when constructed with solid materials (i.e. cedar fence) or four feet when constructed with open material (i.e. chain-link fence) [SHMC 17.08.033.E.1.a.(2)(A)]. Fence and walls located more than three feet from the street property line shall not exceed a maximum height of seven feet [SHMC 17.08.033.E.1.a.(2)(B)]. The property is in the Residential High Density (R-2) Zone.

APPLICANT: Henry Blomberg, President

PROPERTY OWNER: Spring Terrace Homeowners Association

FILE NUMBER: VR22-03

PROPERTY LOCATION: 4900 Mimosa Circle, Sweet Home, OR 97386; Identified on the Linn County Assessor's Map as 13S01E27CD Tax Lot 3100.

REVIEW AND DESIGN CRITERIA: Sweet Home Municipal Code Section(s) 17.88.030, 17.08.033.E

HEARING DATE & TIME: July 7, 2022

HEARING LOCATION: City Hall Council Chamber at 3225 Main Street, Sweet Home, Oregon 97386

STAFF CONTACT: Angela Clegg, Associate Planner
Phone: (541) 367-8113; Email: aclegg@sweethomeor.gov

REPORT DATE: May 30, 2022

I. PROJECT AND PROPERTY DESCRIPTION

ZONING AND COMPREHENSIVE PLAN DESIGNATIONS:

Property	Zoning Designation	Comprehensive Plan Designation
Subject Property	Residential High Density (R-2)	High Density Residential
Property North	Residential High Density (R-2)	High Density Residential
Property East	Residential High Density (R-2)	High Density Residential
Property South	Residential High Density (R-2)	High Density Residential
Property West	Residential Low Density (R-1)	Medium Density Residential

		High Density Residential
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Floodplain: Based on a review of the FEMA flood insurance rate map; Panel 41043C0914G, dated September 29, 2010, the subject property is not in the Special Flood Hazard Area.

Wetlands: The subject property does not show wetlands/waterways on the properties that are depicted on the Sweet Home Local Wetlands Inventory and the National Wetlands Inventory Map.

Access: The subject property has access from the 49th Avenue and Mimosa Circle.

Water and Sewer Services: The subject property has access to City water and sewer services.

TIMELINES AND HEARING NOTICE:

Application Received: May 11, 2022

Application Deemed Complete: May 17, 2022

Notice Distribution to Neighboring Property Owners Within 100 feet and Service Agencies: May 19, 2022

Notice Published in New Era Newspaper: May 25, 2022

Date of Planning Commission Hearing: July 7, 2022

120-Day Processing Deadlines: August 20, 2022

II. COMMENTS

Joe Graybill

CEDD Engineering: Regarding the proposed variance on the Mimosa Circle Stormwater Basin, the fence along Mimosa Circle appears to be within the Front Yard Setback required by SHMC 17.08.033 for a solid fence. The fence location in the Street Side Yard along 49th Ave is setback more than the required 3ft minimum to have up to a 7ft high solid fence. Variances are specifically used for physical circumstances requiring custom or unique accommodation. The CEDD-ES does not recommend approval of the request.

Trish Rice

Public Works Division: Public Works has no concerns with the request at this time.

Adam Leisinger

Building Division: The Building Program has no issues with this request for Variance.

Chief Barringer

Sweet Home

Fire District: Fencing from a fire standpoint has two factors. View for driving around the structure. The second is firefighter access which means we tear boards out of our way if there is not easy access through gates. The

height does not matter to us other than the view. It looks like the 45 degree angle helps with the view issue in my opinion.

Public Comments: See Attachment C.

III. REVIEW AND DESIGN CRITERIA

The review and decision criteria for a variance are listed below in bold. Findings and analysis are provided under each review and decision criterion.

- A. A determination that the criteria have been met involves the balancing of competing and conflicting interests. The following considerations may be used as guidelines in the granting authority's deliberations.**
- a. Whether the situation that created a need for a variance was created by the person requesting the variance;**
 - b. The economic impact upon the person requesting the variance if the request is denied;**
 - c. An analysis of the physical impacts the development could have, such as visual, noise, traffic, and increased potential for drainage, erosion or landslide hazards;**
 - d. Preservation of native tree species such as Oregon White Oak and Pacific Madrone over eight inches in caliper or Douglas Fir, Willamette Valley Ponderosa Pine, Big Leaf Maple, Incense and Western Red Cedar over 12 inches in caliper, measured at four and one-half feet above grade on the uphill side;**
 - e. Whether the proposal impacts the aesthetics of the property. [SHMC 17.88.050(A through E)]**

Staff Findings: The applicant is seeking a variance to allow for a six (6) foot fence in a front yard abutting a street and a six (6) foot fence in a side yard abutting a street.

Per Application SD05-01, approved January 14, 2005; The detention pond on Lot 31 will be built by the developer during the public improvement construction and ultimately turned over to the Spring Terrace Homeowners Association. The Homeowners Association will own the land, pond and landscaping and maintain all of it.

The owners removed a hedge planted along the outside boundary of the detention pond leaving the detention pond open. Staff is unaware of when the owners removed the hedge. Attachment C shows the subject property with the hedge.

Staff finds that the applicant/owners created the need for a variance by removing the hedge. There would be no economic impact to the applicant/owners should the application be denied. The applicant/owners have not proposed to fill in the clear vision area, however a six-foot fence around the perimeter could impede motor vehicle and pedestrian vision entering and/or exiting 49th Avenue and/or Mimosa Circle. There are no native tree species on the subject property. One of the purposes of the fence criteria is aesthetics. Tall fences in front and street side setbacks are commonly seen as unattractive.

- B. The criteria that shall be used in approving, approving with conditions, or denying a requested variance will be based on findings with respect to compliance with each of the following criteria, if applicable.**

- a. **The development resulting from an approved variance will not be detrimental to public health or safety; [SHMC 17.88.040(A)]**

Staff Findings: Staff has not identified any reasons why the applicant's proposed variance would be detrimental to public health or safety.

With the above findings, the application complies with these criteria.

- b. **The request is not in conflict with the Comprehensive Plan; [SHMC 17.88.040(B)]**

Staff Findings: Staff has not identified any goals or policies of the Comprehensive Plan that would preclude the proposed variance.

With the above findings, the application complies with these criteria.

- c. **The request is the minimum variance necessary to make reasonable use of the property; [SHMC 17.88.040(C)]**

Staff Findings: The reasonable use of the property is as a detention pond. Staff finds that no variance is needed to make reasonable use of the property.

- d. **The requested variance is consistent with the purposes of the zone; [SHMC 17.88.040(D)]**

- i. **The purpose of the R-2 zone is to provide areas suitable and desirable for high-density residential development, and particularly for apartments, but where other types of residential and related public service uses are appropriate. The R-2 zone is most appropriate in areas which have been developed for high-density residential use or which are suitable for such use due to proximity to downtown Sweet Home and to highway-related commercial areas inside the city.**

Staff Findings: Per SHMC 17.08.033(E)(1) Fences and walls within a front yard abutting a street shall not exceed a maximum height of three and one-half feet when constructed with solid materials (i.e. wood fence) or four feet when constructed with open material (i.e. chain-link fence) [SHMC 17.08.033.E.1.a.(1)]. Fences and walls located less than three feet from a street property line shall not exceed a maximum height of three and one-half feet when constructed with solid materials (i.e. cedar fence) or four feet when constructed with open material (i.e. chain-link fence) [SHMC 17.08.033.E.1.a.(2)(A)]. Fence and walls located more than three feet from the street property line shall not exceed a maximum height of seven feet [SHMC 17.08.033.E.1.a.(2)(B)].

Staff finds that the requested variance for the front yard fence height is not consistent with the purposes of the Residential High Density (R-2) location and fence height criteria. The street side yard fence shall be consistent with the height of 6 feet if the fence is located more than 3 feet from the property line.

- e. **If more than one variance is requested or needed, the cumulative effect of the variances will result in a project that remains consistent with the purposes of the zone; [SHMC 17.88.040(E)]**

Staff Findings: The applicants are not requesting more than one variance.

- f. **Identified negative impacts resulting from the variance can be mitigated to the extent practical; [SHMC 17.88.040(F)]**

Staff Findings: Staff finds that a 6-foot fence could impede clear vision at the intersection of 49th Avenue and Mimosa Circle and could be an obstruction to the Sweet Home Fire District. The type of fencing could mitigate these issues. The applicants have not identified the type of fence that they would like to install. The Planning Commission could make the type of fence a Condition of Approval.

- g. **The location, size, design characteristics and other features of the proposal shall have minimal adverse impacts on property values, livability of the development in the surrounding area, and the natural environment; [SHMC 17.88.040(G)]**

Staff Findings: Other than the aesthetic impact, staff has not identified any characteristics or features of the variance proposal that would have an adverse impact on property values, livability of the development in the surrounding area or the natural environment.

With the above findings, the application complies with these criteria.

- h. **The property has a physical circumstance or condition that makes it difficult to develop. The request complies with the requirements of the underlying zone or overlay zone, city codes, state and federal laws. [SHMC 17.88.040(H)]**

Staff Findings: The property is already developed as a detention pond. Staff finds that this criterion is not applicable.

- C. **A variance shall be void one year, or other time specifically set by the Planning Commission, after the date of the Planning Commission approval if the development has not been substantially established within that time period. [SHMC 17.88.060]**

Staff Findings: As required under this section, if this application is approved, the variance shall be void one (1) year after the date of the Planning Commission approval if the use has not been substantially established, as defined under SHMC 17.88.060, within that time period.

IV. STAFF RECOMMENDATION

Staff finds the applicant has not met the criteria listed above in Section III. As a result, staff recommends denial of VR22-03. Staff has not recommended any Conditions of Approval.

V. PLANNING COMMISSION ACTION

The Planning Commission will hold a public hearing at which it may either approve or deny the application. If the application is denied, the action must be based on the applicable review and decision criteria.

Appeal Period: Staff recommends that the Planning Commission's decision on this matter be subject to a 12-day appeal period from the date that the decision is mailed.

Order: After the Planning Commission makes a decision, staff recommends that the Planning Commission direct staff to prepare an Order that is signed by the Chairperson of the Planning Commission. The Order shall memorialize the decision and provide the official list of conditions (if any) that apply to the approval; if the application is approved.

Motion:

After opening of the public hearing and receiving testimony, the Planning Commission's options include the following:

1. Move to approve application VR22-03 and thereby permit the variance for Tax Lot 3100, located at 4900 Mimosa Circle, Sweet Home, OR 97386; Identified on the Linn County Assessor's Map as 13S01E27CD Tax Lot 3100; adopting the Findings of Fact listed in Section III of the staff report, the setting of a 12-day appeal period from the date of the mailing of the decision, and hereby direct Staff to prepare an order to be signed by the Chair to memorialize this decision.
2. Move to deny application VR22-03 and thereby deny the request for a variance for Tax Lot 3100, located at 4900 Mimosa Circle, Sweet Home, OR 97386; Identified on the Linn County Assessor's Map as 13S01E27CD Tax Lot 3100; adopting the following Finding of Fact (specify), the setting of a 12-day appeal period from the date of the mailing of the decision, and hereby direct Staff to prepare an Order to be signed by the Chair to memorialize this decision.
3. Move to continue the public hearing to a date and time certain (specify); or
4. Other

VI. ATTACHMENTS

- A. Subject Property Map
- B. Previous Landscaping Photos
- C. Public Comments
- D. Application

The full record is available for review at the City of Sweet Home Community and Economic Development Department Office located at City Hall, 3225 Main Street, Sweet Home, Oregon 97386. Regular business hours are between 7:00 AM and 5:00 PM, Monday through Friday, excluding holidays.



1 inch = 42 feet

ATTACHMENT B







ATTACHMENT C

From: dianeblomberg42@gmail.com
To: [Angela Clegg](#)
Subject: File VR22-03
Date: Sunday, May 22, 2022 10:58:07 AM

Angela Clegg
Associate Planer

I am taking this opportunity to urge the Planning Commission to approve the fencing variance for Spring Terrace Homeowner's Association.

The lot in question is not a buildable lot. It is a retention pond. I have personally watched boys climbing into the inlet pipe, riding their bikes in the pond, and throwing rocks in the direction of the surrounding houses. I have also observed a drunk teenage girl climbing on the brick planter. We have also heard complaints from neighbors concerning homeless camping, used needles and litter in and around the retention pond.

Decisions of and by the City carry obligations and responsibilities for the consequences of those decisions. I believe the City should consider the legal ramifications of a variance denial to the Homeowner's of Spring Terrance. Accordingly, I feel the city, in the event of a variance denial, should agree to a Hold Harmless Agreement as the residents of Spring Terrance are attempting to resolve a potentially dangerous situation.

Thank you.

Diane Blomberg
4918 Mimosa Circle

Re: Angela Clegg, Associate Planner

File number: VR22-03

Applicant: Henry Blomberg, President

Property Owner: Spring Terrace Homeowners Association

Per request by applicant for variance to allow for fencing:

We live on Mimosa circle and feel that installing the fence is imperative. This is a safety hazard, and the fence is needed to keep young children and adults out of the detention pond and the tunnel that drains the water. We also feel that it will be more aesthetically appealing for the neighborhood and the city of Sweet Home. Our Homeowners Association will maintain the fence. Our Homeowners Association works hard to make sure that our neighborhood is clean, well-kept and safe.

Please feel free to contact us if you have any questions

Pamela & Stosh Jarecki

4906 Mimosa Circle, Sweet Home, OR 97386

661-917-7317

SPRING TERRACE HOMEOWNERS

NOTICE OF HEARING FOR VARIANCE FENCE AT 49TH AVE AND MIMOSA CIR.
SWEET HOME, OREGON

CITY OF SWEET HOME FILE # VR22-03

We, the undersigned, agree with the approval of the fencing variance and strongly urge the Planning Committee to approve the requested variance.

NAME	ADDRESS	YES	NO
<u>Susan Songer</u>	<u>4916 Mimosas Cir</u>	<u>X</u>	<u> </u>
NAME	ADDRESS	YES	NO
<u>Jawny Spelman</u>	<u>4913 Mimosas Cir</u>	<u>X</u>	<u> </u>
NAME	ADDRESS	YES	NO
<u>Thomas Coops</u>	<u>4910 Mimosas Cir</u>	<u>X</u>	<u> </u>
NAME	ADDRESS	YES	NO
<u>Tom GROESBECK</u>	<u>4909 MIMOSA CIR</u>	<u>X</u>	<u> </u>
NAME	ADDRESS	YES	NO
<u>Terrri Horning</u>	<u>4907 Mimosas Cir</u>	<u>X</u>	<u> </u>
NAME	ADDRESS	YES	NO
<u>Pamela Grueck</u>	<u>4906 Mimosas Circle</u>	<u>X</u>	<u> </u>
NAME	ADDRESS	YES	NO
<u>Fred Wyff</u>	<u>4904 MIMOSA CIR</u>	<u>X</u>	<u> </u>
NAME	ADDRESS	YES	NO
<u>Janet McInerney</u>	<u>4919 Mimosas Cir</u>	<u>X</u>	<u> </u>
NAME	ADDRESS	YES	NO
<u>Caleen Craun</u>	<u>4919 MIMOSA Cir</u>	<u>X</u>	<u> </u>

NAME	ADDRESS	YES	NO
<u>Juan L. Vandehei</u>	<u>4931 MIMOSA CIR</u>	<u>X</u>	<u> </u>

NAME	ADDRESS	YES	NO
	<u>97386</u>		

<u>MANUEL CASTRUITA</u>	<u>4670 MIMOSA CIRCLE</u>	<u>X</u>	<u> </u>
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NAME	ADDRESS	YES	NO
<u>Yahel Ernest</u>	<u>4968 MIMOSA CIR</u>	<u>✓</u>	<u> </u>

NAME	ADDRESS	YES	NO
<u>José Collins</u>	<u>4960 MIMOSA CIR</u>	<u>✓</u>	<u> </u>

NAME	ADDRESS	YES	NO
<u>MANNY + VIRGINIA</u>	<u>4962 MIMOSA CIR</u>	<u>✓</u>	<u> </u>

NAME	ADDRESS	YES	NO
<u>Shirley Jack</u>	<u>4960 MIMOSA CIRCLE</u>	<u>✓</u>	<u> </u>

NAME	ADDRESS	YES	NO
<u>Shirley Jack</u>	<u>4960 MIMOSA CIRCLE</u>	<u>✓</u>	<u> </u>

NAME	ADDRESS	YES	NO
<u>Jane E Dean</u>	<u>4905 MIMOSA CIRCLE</u>	<u>✓</u>	<u> </u>

NAME	ADDRESS	YES	NO
<u>David Nichols</u>	<u>4959 MIMOSA CIRCLE</u>	<u>✓</u>	<u> </u>

NAME	ADDRESS	YES	NO
<u>Rodriguez</u>	<u>4957 MIMOSA CIRCLE</u>	<u>✓</u>	<u> </u>

NAME	ADDRESS	YES	NO
<u>Mike Gomez</u>	<u>4997 Maple Dr.</u>	<u>✓</u>	<u> </u>

NAME	ADDRESS	YES	NO
<u>Marlene Lopez</u>	<u>4998 Maple Dr</u>	<u>✓</u>	<u> </u>

NAME	ADDRESS	YES	NO
<u>Julia</u>	<u>4993 Maple Dr Surber</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NAME	ADDRESS	YES	NO
<u>W. V. V. V.</u>	<u>4933 Maple</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NAME	ADDRESS	YES	NO
<u>Theresa Clay</u>	<u>4918 MAPLE</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NAME	ADDRESS	YES	NO
<u>Shelly Menzies</u>	<u>4946 Mimosa Cir</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NAME	ADDRESS	YES	NO
<u>Joe Cook</u>	<u>4953 Mimosa</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NAME	ADDRESS	YES	NO
<u>Rebecca Smith</u>	<u>4965 MIMOSA</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NAME	ADDRESS	YES	NO
<u>B. J. Clay</u>	<u>4923 Mimosa Circle</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NAME	ADDRESS	YES	NO
<u>Emily S. Poulas</u>	<u>29840 Berlin Rd</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NAME	ADDRESS	YES	NO
_____	_____	_____	_____
NAME	ADDRESS	YES	NO
_____	_____	_____	_____
NAME	ADDRESS	YES	NO
_____	_____	_____	_____
NAME	ADDRESS	YES	NO
_____	_____	_____	_____

ATTACHMENT D

**City of Sweet Home**

Community and Economic Development Department- Planning Program
3225 Main Street, Sweet Home, OR 97386 541-367-8113

Application for a Land Division VarianceDate Received: 05.11.22Date Complete: 05.17.22File Number: VR22-03Application Fee \$: \$590.00Receipt #: 4869Hearing Date: 07.07.22**Applicant's Name:**

Henry Blomberg President

Applicant's Address:

4918 Mimosa Cir, Sweet Home, Oregon 97386

Applicant's Phone and e-mail:

458-201-0597 hankblomberg0855@comcast.net

Subject Property Address:

4900 Mimosa Circle, Sweet Home, Oregon 97386

Subject Property Assessor's Map and Tax Lot:

13S01E27CD / 03100

Subject Property Size:

7,737.08

Subject Property: Zoning Classification

R-2

Property Owner:

Spring Terrace Homeowners Association

Owner's Address:

4900 Mimosa Cir, Sweet Home, Oregon 97386

Owner's Phone and email:

458-201-0597 hankblomberg0855@comcast.net

Nature of Applicants Request**Variance Request from Sweet Home Municipal Code Sections:**

City code 17.08.033 E. Location and Height. 1)Front Yard Abutting Street, 2)Side and Rear Yards Abutting Street b) Fence and Walls located more than three feet from street property line.

Narrative describing the proposed variations from the stated code sections. Brief Description on this form and attach extra sheets if needed.

Fences on Mimosa Cir and 49th Ave to be 6' in height. Fence location on Mimosa Cir to be 8'6" from edge of sidewalk, 49th to be 13' from sidewalk

See map page 6A,

Description of the alternatives considered and the reason for the choices made.

Lot is a detention pond with sloping sides and a 3'6" berm on three sides. Spring Terrace HOA CCR 4.25.11 Wood Fence. requires 6' fence.

See attached pages 1A. and 2A. Legal requirements for Attractive Nuisance and Legal Definition. See pages 3A. and 3B. and 4A and 4B.

Detention Pond is a public safety, legal liability and health issue for Spring Terrace Homeowners.

A brief review of how the application meets the review criteria. Attach sheets if needed.

Please see attached page 5A.

Submittal Requirements

The checklist on the other side of this application lists the required items must be submitted with this application and the Criteria the request must meet. Please address all items that apply to this request.

I certify that the statements contained on this application, along with the submitted materials, are in all respects true and are correct to the best of my knowledge and belief.

Applicant's Signature:

Date: 05-11-22**Property Owner's Signature:**

Date: 5-11-22

Within 30 days following the filing of this application, the City Planner will make a determination of completeness regarding the application. If deemed complete, the application will be processed.

LINN County Assessor's Summary Report

Real Property Assessment Report

FOR ASSESSMENT YEAR 2021

May 3, 2022 9:31:33 am

Account # 907918
Map # 13S01E27CD 03100
Code - Tax # 05501-907918

Tax Status ASSESSABLE
Acct Status ACTIVE
Subtype NORMAL

Legal Descr Metes & Bounds - See legal report for full description.

Mailing Name SWEET HOME SPRING TERRACE HOMEOWNER
Agent
In Care Of C/O HOMEOWNERS ASSOCIATION
Mailing Address PO BOX 688
 FOSTER, OR 97345

Deed Reference # See Record
Sales Date/Price See Record
Appraiser BRYAN, ALAIRE

Prop Class 010 **MA** **SA** **NH** **Unit**
RMV Class 100 04 03 008 64123-1

Situs Address(s)	Situs City
ID# 1 4900 MIMOSA CIR	SWEET HOME

Code Area	RMV	MAV	Value Summary AV	RMV Exception	CPR %
05501 Land	0			Land	0
Impr.	0			Impr.	0
Code Area Total	0	0	0		0
Grand Total	0	0	0		0

Code Area	ID#	RFPD	Ex	Plan Zone	Value Source	Land Breakdown		Size	Land Class	Trended RMV
05501	1	<input checked="" type="checkbox"/>			Market	TD%	LS	7,737.00		0
						Grand Total		7,737.00		0

Code Area	ID#	Yr Built	Stat Class	Description	Improvement Breakdown	TD%	Total Sq. Ft.	Ex%	MS Acct #	Trended RMV
								0		0
Grand Total								0		0

Comments: EV 2006-42: Cons 715934&772979 to 772961; Map transfer; then segs to Lots 1 thru Lot 49 for new map13-1E-27CD (Spring Terrace); 715934 & 772979 dead; Numerous new accounts created for Lots 1 thru 49 and 772961; Lot 31, is acct #907918 Detention Pond—Common Property—No separate assess ORS 94-728.
 PHOTO 11/2/2003 of taxlot
 Has "Spring Terrace" Entrance and water feature....SQ 06MX.
 Common Property—No separate assessment per ORS 94.728
 2021 CYCLE REAPPRAISAL. AB 7/21

FOR ASSESSMENT AND
TAXATION ONLY

S.E. 1/4 S.W. 1/4 SEC. 27 T. 13S. R. 1E. W.M.
Linn County
1" = 100'

13S01E27CD
SWEETHOME

SEE MAP 13 1E 27C

5000
TRACT "A"

SEE MAP 13 1E 27C

49TH AVENUE

SEE MAP 13 1E 27C

SEE MAP 13 1E 27C

55-1

SEE MAP 13 1E 27C

SEE MAP 13 1E 34G

13S01E27CD
SWEETHOME
4/22/2016

49TH AVE

MIMOSA CIR



1 inch = 18 feet

4900 Mimosa Court

Date: 2/1/22

After recording, return to:
Spring Terrace HOA
P.O. Box 688
Foster, OR 97345

1A

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR
SPRING TERRACE**

X

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS for Spring Terrace ("Declaration") is made by The Spring Terrace Homeowners Association dated June 12, 2017 dba Spring Terrace HOA ("Declarant").


RECITALS:

- A. Declarant represents the communal interests of owners of all the real property and improvements thereon located in Linn County, Oregon, as more particularly described in the attached Exhibit A (the "Property" and sometimes "Spring Terrace").
- B. Declarant intends to maintain Spring Terrace as a planned community and desires to impose these mutually beneficial covenants, conditions, restrictions, easements, assessments, and liens on the Property, under a comprehensive general plan of improvement and development for the benefit of all Lots and Common Areas in Spring Terrace.
- C. Declarant has deemed it desirable for the efficient preservation of the value and amenities in Spring Terrace to create a nonprofit corporation, to which will be delegated and assigned the powers and authority to own, maintain, and administer the Common Area and facilities, to administer and enforce the covenants, conditions, and restrictions of this Declaration, and to collect and disburse the assessments and charges hereinafter created. Expenses for the maintenance and enhancement of the Association shall be assessed to all owners equally.

NOW THEREFORE, Declarant declares that the Property shall be held, transferred, sold, conveyed, and occupied subject to the following covenants, conditions, restrictions, easements, charges, and liens, which shall run with the land, which shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof, and which shall inure to the benefit of the Association and of each Owner.

25

4.25.10.4 Brick. Each residential unit shall include brick or rock as part of and in the front of such dwelling, to be approved by the ARC. There shall be a minimum of 100 square feet measured by the pLinn of the brickwork showing on the exterior of the front of the residential unit; however, an exception may be made by the ARC when the Lot frontage is such that a narrow home front elevation is required, limiting pLinns available for application of the accent material. In that instance, a minimum of 80 square feet will be required.

 **4.25.11 Wood Fencing.** All fencing (including gates), except as otherwise set forth herein, shall be designed to be 6 feet tall with an optional 1-foot lattice trim at the top of the fence (6 feet total height) with 1"x 6" cedar vertical boards and 4"x4" treated posts, maximum 8-foot sections. Fences and gates shall be all wood and treated only with natural preservatives (no paint). No fence or gate shall protrude past the front of the residential unit including screening fencing. ARC approval is required prior to construction.

4.25.12 Storage Sheds. All storage sheds or accessory buildings shall not exceed 200 square feet and located in the back yard. Such storage sheds must meet all current City of Sweet Home building codes then in effect and be approved by the City of Sweet Home. Roof pitch (6/12), siding, and color of storage shed must be the same as the residential unit. Maximum inside wall height shall not exceed 8 feet in height. ARC approval is required prior to construction.

ARTICLE 5 COMMON AREA

5.1 Use of Common Areas. Use of the Common Area is subject to the provisions of the Declaration, Bylaws Articles, and the Rules and Regulations adopted by the Board. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area without the prior consent of the Board. The Common Area owned by the Association consists solely of Tract A which contains landscaping and irrigation and Lot 31 which contains a stormwater detention pond, landscaping and irrigation.

There shall be no activities allowed on Tract A or Lot 31 without the prior written approval of the Association or the City of Sweet Home, as appropriate.

5.2 Maintenance of Common Area. The Association shall be responsible for maintenance, repair, replacement, and upkeep of the Common Area at the equal expense of the Owners of all Lots. The Association shall keep the Common Area in good condition and repair, provide for all necessary services, and cause all acts to be done that may be necessary or proper to assure the maintenance of the Common Area.

5.3 Alterations to Common Area. Only the Association shall construct, reconstruct, or alter any improvement located on the Common Area. A proposal for any construction of or alteration, maintenance, or repair to any such improvement may be made at any Board meeting. The Board may adopt a proposal, subject to the limitations contained in the Bylaws, and this Declaration; provided, however, no improvements may

Attractive Nuisance Law and Legal Definition

Attractive nuisance is a defense to trespass by children used in tort law. The doctrine of attractive nuisance is premised on the belief that one who maintains a dangerous condition which is likely to attract children on their property is under a duty to post a warning or take affirmative action to protect children from the dangers of that attraction. It imposes a duty to be sensitive to potentially dangerous conditions which are likely to attract children. The attractive nuisance doctrine typically doesn't apply to adults. However, if a child is in danger due to an attractive nuisance and an adult attempts to rescue the child, the attractive nuisance doctrine may hold the landowner responsible for the rescuer's injuries in addition to the child's injuries.

It is an exception to the general rule that no particular care required of property owners to safeguard trespassers from harm. An attractive nuisance may be unenclosed pools, machinery or stacks of building materials -- that present both an irresistible lure and hidden danger to young children. Most natural conditions, such as a lake or a naturally steep bank, are not considered attractive nuisances. To be liable for injury, an owner must create or maintain the harmful object.

A person's ability to recover for an injury on another's property, specifically in the case where the injury occurred in a pool, lake, pond, etc., depends on the category in which a court places the injured person. If a court categorizes a person as a trespasser, the law generally protects a property owner from liability in all cases where the trespasser sustains an injury, except when the owner acts "wantonly or willfully." An exception to this rule, however, exists in the case of young children. For guests, or licensees, of a property owner, establishing liability for injury or death resulting from the use of a pool rests on the property owner's failure to warn guests of dangers that the guests would otherwise not discover themselves. Some states' courts have found that the danger of drowning or injuring oneself diving or swimming in a pool is "open and obvious."

In evaluating whether a landowner is liable for an attractive nuisance a court may weigh:

1. whether the landowner knew or had reason to know that children could trespass near the hazard;
2. the type of hazard on the property and whether the hazard poses an unreasonable risk of death or serious bodily harm to children;
3. whether the children, due to their youth, could appreciate the risk involved;
4. the importance to the landowner of maintaining the hazardous condition;
5. how the burden of eliminating the hazard compares to the risk of harm involved; and

property owner had reason to believe that a child is likely to trespass.

If a property owner as something on their premises which could attract a child to it (swimming pools, hot tubs, treehouse, swing set, trampoline, etc.), then the property owner has a duty to properly secure the premises to ensure the child cannot get to the "attractive nuisance."

An attractive nuisance does not necessarily have to be something the child would regularly want to play with.

Abandoned cars, construction equipment, old buildings, and more can all be a draw for children. Property owners should predict that any of these could present enticements for children to enter the property and take steps to prevent access.

These injuries can lead to major expenses

Injuries that occur on another person's property can be severe. It is not uncommon for an Oregon premises liability attorney to help clients who have sustained the following:

Broken and dislocated bones

Severe lacerations

Internal organ damage

Internal bleeding

4A

(503) 226-6361

Are Oregon Property Owners Liable To Trespassers?

POSTED ON FEBRUARY 4, 2020 IN PREMISES LIABILITY

In most cases, property owners have a duty to ensure the safety of those who are legally allowed to be on their premises. However, what happens if someone is injured well trespassing on another person's property? Does the property owner have a duty to care for someone that is illegally on their premises?

Understanding premises liability law can be complicated, particularly when it comes to trespassers. Here, we want to discuss whether or not the property owner can be held liable for trespasser injuries.

What is premises liability?

Generally, property owners have a duty to maintain their premises to a certain standard. These laws are designed to protect people from unnecessary injury, and they apply to private as well as public properties. Premises liability laws are why you can generally expect safety when you go to places like the grocery store, public parks, banks,

government buildings, and more.

4b

These laws are designed to protect those who have permission to be on the other person's property, such as licenses, invitees, and social guests. However, while trespassers may be on somebody's property without their permission, they are sometimes afforded protections.

Are trespassers protected under premises liability laws?

Generally, trespassers will not be afforded much protection under the law. Property owners do not have a legal duty to exercise reasonable care to keep trespassers safe. However, a property owner cannot intentionally take actions to cause harm to trespassers, such as setting traps on the premises.

If a property owner knows that people are trespassing often, they could be held accountable if a trespasser is seriously injured due to a situation the property owner created and hid from the trespasser. For example, if a homeowner knows that school children frequently cross their backyard in the mornings to get to school, they cannot dig deep holes and then cover them with leaves as booby traps.

What is an attractive nuisance in Oregon?

Another exception to trespassers when it comes to premises liability in Oregon concerns children and what are called attractive nuisances. It is generally understood that property owners can be held liable for injuries caused to children on their property, even if that child was trespassing at the time of the incident. This is particularly the case if the

Sweet Home , Municipal Code 16.28.030 Criteria used in granting a Variance

ONE.

Lot is Common Property and is listed on tax roles as a Detention Pond, which has sloping side and berm for surface water retention. Pond includes a 16" inlet and 2' x 3' outlet, water level can be up to 6 to seven inches during a heavy rain.

- A. Lot cannot be built on (ORS 94-728)
- B. Set back of fence on Mimosa Circle would under city code (17.08.033 Fences, Hedges, and Walls.) put the Mimosa fence in the pond and would not fence the inlet pipe or outlet pipe.
- C. Spring Terrace HOA, CCR's require 6' cedar fences, outline on 4.25.11 Wood Fencing. pages 1A and 2A.
Oregon Tort Law, Attractive Nuisance, requirements see pages 3A.,3B., and 4A., 4B...

TWO.

Fences are replacing the existing fences and hedges that were removed due to condition and safety issues.

- A. New fences will follow and meet current CC&Rs for fences in Spring Terrace.
- B. Safety issues will stop homeless using the area and drug use. The corner of 49th and Mimosa Cir which is a school bus stop; children require a safe area to use the bus.

THREE.

Fences on Mimosa Circle and 49th Ave will match existing fences in Spring Terrace per CCR 4.25.11 Wood Fences. see pages 1A., 1B. Proposed fences will not interfere with or hinder traffic flow.

FOUR.

The location of the fences on Mimosa Cir and 49th Ave. as requested would both solve a required (A.)Topography and (B.) Public Safety problem for Attractive Nuisance.

- (A.) Requested location of the fence is due to the slope of the pond and location of the inlets and outlet pipe.
- (B.) Attractive Nuisance Law and current Tort Law in the State of Oregon which requires the property owner to take affirmative action to protect children from the dangers of the pond.

The Spring Terrace HOA Board has a legal obligation to protect the Homeowners from any and all liability. The requested fences will better protect the Homeowners of the HOA from any liability.

Spring Terrace is on notice that the following has occurred at 4900 Mimosa Circle.

Board member found a child crawling up the 16" inlet pipe.

Children riding bicycles up and down the slope and into the water.

Needles have been ***used to inject unknown substances...***

Homeless persons have used the retention pond area.

The corner of Mimosa Circle and 49th Ave is a school bus stop for K-12 children which bring unsupervised children to the pond area.

The City Permit office advised notifying police of illegal or unsafe activities; however, this course of action will not negate the homeowner's liability exposure or financial costs.

