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**CITY OF LA PINE PLANNING DIVISION**  
**Decision: Lot Line Adjustment and Conditional Use**

**PLANNING FILE: 01CU-23**

**OWNER/**

**APPLICANT:** Kim & Kathy Russell  
P.O. Box 2505  
La Pine, OR 97739

**LOCATION:** The subject property is located at 16350 2nd Street, La Pine, Oregon 97739. The Tax Lot number is 903 on Deschutes County Assessor’s Map 22-10-15AA.

**REQUEST:** The Applicant is requesting a Conditional Use Permit for a manufactured dwelling in the Traditional Commercial Zone.

**ZONING:** TC, Traditional Commercial Zone

**DECISION**

**DATE:** August 28, 2023

**I. APPLICABLE STANDARDS**

**PART III – CITY OF LA PINE DEVELOPMENT CODE**

**ARTICLE 3 - ZONING DISTRICTS**

**CHAPTER 15.22 - COMMERCIAL AND MIXED-USE ZONES**

- Sec. 15.22.200. - Characteristics of the commercial and mixed-use zones.
- Sec. 15.22.300. - Use regulations.
- Sec. 15.22.400. - Development standards.
- Sec. 15.22.200. - Additional standards.

**ARTICLE 4 – OVERLAY ZONES**

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- Sec. 15.36.010. - Purpose.
- Sec. 15.36.020. - Designated areas.
- Sec. 15.36.030. - Use regulations.
- Sec. 15.36.040. - Application for conditional use.
- Sec. 15.36.050. - Elevation certificate.
- Sec. 15.36.060. - Yard and setback requirements.
- Sec. 15.36.080. - Little Deschutes River/slough and stream setback.
- Sec. 15.36.100. - Dimensional standards.

**ARTICLE 7 – PROCEDURES**

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**CHAPTER 15.316 – CONDITIONAL USES**

Sec. 15.316.010. - Applicability.

Sec. 15.316.020. - Procedure type.

Sec. 15.316.030. - Submittal requirements.

Sec. 15.316.040. - Approval criteria.

Sec. 15.316.050. - Permits and improvements assurance.

**II. BACKGROUND INFORMATION**

**ZONING:** The property zoning is Industrial.

**PARCEL SIZE:** Parcel contains 2.0 acres.

**EXISTING DEVELOPMENT:** Each lot is rectangular in shape and undeveloped. The site is generally level and located near a designated flood hazard area. Both adjacent streets are undeveloped. A 6-inch water line is in Salzar Street while a sanitary sewer line is within an alley to the east of the lots.

**ADJACENT ZONING AND LAND USE:** Property to the north, east and south is also zoned TC while land to the west is zoned Residential Single Family. Property to the north and east is primarily developed with residences while the remaining adjacent land is vacant.

**III. AGENCY COMMENTS**

The Planning Division requested comments from area property owners and affected agencies. The City received the following comments:

1. City Engineer – The City Engineer noted both lots are platted and have access to Salzar Street and the adjacent alley to the east, while Lot fronts along 2<sup>nd</sup> Street. Neither street is improved, and the alley is gravel surfaced. Street improvements are not required; however, at the time of building permit, an access improvement meeting fire code requirements shall be required.

There is a 6” water main in Salzar and a 4” sanitary sewer main located in the alley that does not extend to the property frontages. At the time of building permit, a water service must be installed to serve the subject property and the extension of the sanitary sewer main line will also be required.

As part of the property line adjustment, the applicant shall file a new deed reflecting the consolidated property with the Deschutes County Clerk and shall file a record of survey reflecting the consolidated property with the Deschutes County Surveyor.

Regarding placement of the home, prior to building permit issuance, the developer must demonstrate that the residence is located outside of the FEMA Floodplain as depicted on 41017C1470E. This may be accomplished by an Elevation Certificate by a registered land surveyor indicating that the residence is located above the floodplain or alternatively a LOMA which indicates that the residence is outside of the floodplain.

2. State Fire Marshal – The Fire Marshal reviewed the proposal and offered no comment. No other agency responded.

#### IV. FINDINGS OF FACT

##### **PART III – CITY OF LA PINE DEVELOPMENT CODE**

##### **ARTICLE 3 - ZONING DISTRICTS**

##### **CHAPTER 15.22 - COMMERCIAL AND MIXED-USE ZONES**

##### ***Sec. 15.22.200. - Characteristics of the commercial and mixed-use zones.***

*Commercial zones accommodate a mix of commercial services, retail, and civic uses, along with residential uses permitted in some circumstances. Four commercial zones provide for the full range of commercial land uses within the city. The zoning district regulations are intended to promote the orderly development and improvement of walkable commercial areas; facilitate compatibility between dissimilar land uses; provide employment opportunities in proximity, and with direct connections, to housing; and to ensure efficient use of land and public facilities.*

- A. *Traditional Commercial Zone (C). The C zone allows the widest range of commercial uses and limits residential uses in order to preserve land for commercial needs and maintain compatibility between adjacent uses. A portion of the C zone is located in the Downtown La Pine Overlay Zone. The overlay zone restricts some uses and establishes additional design standards to facilitate the development of a pedestrian-oriented downtown area.*

**FINDING:** The subject property is zoned Traditional Commercial. The subject property is also in the Downtown Overlay Zone, but because the proposal is for a single family dwelling and it will not be located along a storefront street or a pedestrian-friendly street, compliance with the standards of the Downtown Overlay Zone are not required at this time.

##### ***Sec. 15.22.300. - Use regulations.***

Uses may be designated as Permitted, Limited, Conditional, or Prohibited in the commercial and mixed-use zones. As noted in Table 15.22-1, a use may also be subject to Special Use Standards of Article 6.

- C. *Conditional uses (CU).* Uses which are allowed if approved through the conditional use review process are listed in Table 15.22-1 with a "CU." These uses are allowed, provided they comply with the conditional use requirements of chapter 15.316, conditional uses. Uses listed with a "CU" that also have a footnote number in the table are subject to the regulations cited in the footnote.

**Table 15.22-1 — Use Regulations in the Commercial and Mixed-Use Zones**

Table 15.22-1. Use Regulations in the Commercial and Mixed-Use Zones					
Use Category	C	CRMX	CMX	CN	Special Use Standards
<i>Residential Use Categories</i>					
Household Living	—	—	—		—
- Single-family dwelling	CU	P	P	P	—
- Cottage cluster development	P	P	P	P	<a href="#">Section 15.104.050</a>
- Townhome	CU	P	P	P	<a href="#">Section 15.104.020</a>
- Duplex	P	P	P	P	<a href="#">Section 15.104.030</a>
- Multi-family development	P	P	P	P	<a href="#">Section 15.104.040</a>
- Manufactured dwelling	CU	P	P	P	—

**FINDING:** The use is identified as a manufactured dwelling. Per Table 15.22-1 a manufactured dwelling requires a Conditional Use Permit to operate in the Traditional Commercial Zone.

**Sec. 15.22.400. - Development standards.**

- A. *Purpose.* The development standards for commercial and mixed-use zones allow development flexibility, within parameters, that supports the intended characteristics of the specific zone. In addition, the regulations provide guidance to property owners, developers, and neighbors about the limits of what is allowed.
- B. *Development standards.* The development standards for commercial and mixed-use zones are presented in Table 15.22-2. Development standards may be modified as provided by Chapter 15.320, Variances. Additional standards may apply to specific zones or uses, see Section 15.22.500.

**Table 15.22-2 - Development Standards in the Commercial and Mixed-Use Zones**

*Table 15.22-2. Development Standards in the Commercial and Mixed-Use Zones*

<i>Standard</i>	C	CRMX	CMX	CN
Minimum lot width	None	None	None	25 feet
Minimum setbacks	—	—	—	—
- Front or street-side yard	20 feet	20 feet	20 feet	20 feet
- Side yard	None	10 feet: None for townhomes	10 feet: None for townhomes	10 feet: None for townhomes
- Rear yard	None	10 feet	10 feet	15 feet
Maximum building height	70 feet	45 feet	45 feet	45 feet
Maximum lot coverage	80%	60%	60%	50%
Minimum landscaped area	See <a href="#">15.18.500</a> and <a href="#">chapter 15.82</a>			
Minimum and maximum density	Residential and mixed-use developments are subject to the minimum and maximum density standards of the RMF zone (see <a href="#">section 15.18.500</a> ).			

**FINDING:** The site plan shows that the proposed manufactured dwelling will be 21 feet from the front property line. The lot coverage is approximately 11% which is well below the 80% maximum lot coverage in the Traditional Commercial Zone. The Applicant indicated in the Burden of Proof that the existing structure also complies with the 70 foot maximum height standard. The Applicant shall ensure compliance with all applicable development standards listed in Article 3 and Article 5 of the La Pine Development Code.

***Sec. 15.22.500. - Additional standards.***

- A. *Corner Lot Frontages. For commercial uses located on corner lots where one street is predominantly residential, and one street is predominantly commercial, any commercial structure shall front on the street that is predominantly commercial.*

**FINDING:** The proposal is for a dwelling, not a commercial use. Criterion does not apply.

- B. *Landscaping standard. Any portion of a lot developed for commercial uses which are not used for buildings, other structures, parking or loading spaces, or aisles, driveways, sidewalks, and designated storage areas shall be planted and maintained with grass or other all-season groundcover vegetation. Grass shall be kept neatly mowed. Landscaping with trees and shrubs is permitted and encouraged. See additional landscaping and buffering standards in Article 5.*

**FINDING:** The subject property will not be developed for commercial uses, the primary use will be residential. Criterion does not apply.

- C. *Screening requirements.*

1. *Outdoor activities. Any business, servicing, or processing shall be conducted within a completely enclosed building, except for parking and loading facilities and for "drive-in" type establishments offering goods or services to customers waiting in parked motor vehicles.*

2. *Outdoor storage. All areas of a site containing or proposed to contain outdoor storage of materials, equipment, and vehicles, and areas containing junk, salvage materials, or similar contents, shall be screened from view from adjacent rights-of-way and residential uses by a sight-obscuring fence, wall, landscape screen, or combination of screening methods. See additional buffering and fence standards in Article 5.*
3. *Outdoor merchandise display. The outdoor display of merchandise for sale is not required to be screened from view, provided that all merchandise is located behind building setback lines unless otherwise approved by the City (e.g., to allow sidewalk sales).*

**FINDING:** The proposal is for a dwelling, not a commercial use. Criterion does not apply.

- D. *Vehicle Access. Access driveways and entrances shall be permitted in a number and locations in which sight distance is adequate to allow safe movement of traffic in or out of the driveway or entrance, the free movement of normal highway traffic is not impaired, and the driveway or entrance will not create a hazard or an area of undue traffic congestion on highways to which it has access. The City may require the permit applicant to submit engineering data and/or traffic analyses to support its proposed plan of access driveways and entrances. See additional access and circulation standards in Article 5.*

**FINDING:** Prior to occupancy, a driveway access permit shall be required. The location of the driveway is acceptable as it is 70+ feet north of the Salzer/2<sup>nd</sup> intersection. Any road access improvement must comply with Fire District standards. As the proposed development is for a single-family home a traffic impact analysis is not required. Staff concludes the proposal complies.

- E. *Emissions. No use shall emit any noxious, toxic, or corrosive fumes or gases nor shall it emit any offensive odors.*

**FINDING:** As a single-family residence, the use is not expected to generate any noxious, toxic, or corrosive fumes or gases or offensive odors. The request complies.

- F. *Noise. All uses shall provide necessary shielding or other protective measures against interference occasioned by mechanical equipment or uses or processes with electrical apparatus.*

**FINDING:** Again, as a single-family residence, the home does not include mechanical equipment or involve processes that require noise shielding. The request complies.

- G. *Lighting. All exterior lighting shall be so placed and shielded so as not to create a nuisance for adjacent properties.*

**FINDING:** The Development Code does not regulate lighting for single-family residences. However, as a residence it is unlikely to present an issue compared to possible alternative commercial uses. The request complies.

#### **ARTICLE 4 – OVERLAY ZONES**

##### **CHAPTER 15.36 – FLOOD PLAIN OVERLAY ZONE (FP)**

###### **Sec. 15.36.000. - Intent.**

*The Flood Plain zone includes all areas designated as "Special Flood Hazard Areas" in a study prepared locally using local rainfall and geologic information. Flood hazard areas are shown on maps prepared by the federal government in 1988 as a result of the county's participation in the National Flood Insurance Program. Deschutes County is one of many organizations and agencies responsible for development in the flood plain. For example, lending institutions require property owners to obtain flood insurance before any loan is given for development in a flood plain. If you are considering buying a lot or building in the FP zone, you should first consult with a planner so that you are aware of special requirements involved.*

###### **Sec. 15.36.010. - Purpose.**

*The purposes of the flood plain overlay zone are to implement the comprehensive plan; to protect the public from the hazards associated with flood plains; to conserve important riparian areas along river/sloughs and streams for the maintenance of the fish and wildlife resources; and to preserve significant scenic and natural resources while balancing the public interests with those of individual property owners in the designated areas.*

###### **Sec. 15.36.020. - Designated areas.**

*The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "Flood Insurance Study for Deschutes County, Oregon and Incorporated Areas" revised September 28, 2007, with accompanying flood insurance rate maps is hereby adopted by reference and incorporated herein by this reference. The flood insurance study is on file at the Deschutes County Community Development Department. The flood plain zone shall include all areas designated as "Special Flood Hazard Areas" by the flood insurance study for Deschutes County. When base flood elevation data has not been provided in the flood insurance study, the city will obtain, review and reasonably utilize any base flood elevation or floodway data available from federal, state or other sources, in determining the location of a flood plain or floodway.*

###### **Sec. 15.36.030. - Use regulations.**

C. *Conditional uses permitted.*

*The following uses and their accessory uses may be allowed subject to applicable sections of this chapter:*

*(\*\*\*)*

3. *Single-family dwelling, or a manufactured home on an individual lot. In addition to the other requirements of this Development Code, single-family dwellings proposed to be sited in areas of the flood plain overlay zone designated agriculture on the comprehensive plan map may be approved. Single-family dwellings proposed to be sited in areas of the flood plain zone designated forest on the comprehensive plan map may be approved and are subject to the applicable provisions of this chapter.*

**FINDING:** The request is for a single-family manufactured home on an individual lot, therefore the use is subject to a conditional use review and the applicable criteria have been addressed in this report. The request complies.

*(\*\*\*)*

D. *Limitations on conditional uses.*

*The following limitations shall apply to all uses allowed by this chapter:*

1. *No new construction of a dwelling (including manufactured housing), accessory structure or farm use structure shall be allowed in the floodway of any river/slough or stream except for replacement in conformance with the applicable provisions of a dwelling lawfully in existence as of the effective date of [this] chapter.*
2. *No new construction of a dwelling (including manufactured housing), accessory structure or farm use structure shall be located in the flood plain unless it can be demonstrated by the applicant that no alternative exists on the subject property which would allow the structure to be placed outside of the flood plain.*
3. *No subdivision or partition shall be allowed which creates the potential for additional residential dwellings in the flood plain.*
4. *All necessary federal, state, and local government agency permits shall be obtained.*

**FINDING:** The dwelling will not be located in the floodway of any river/slough or stream. The applicant has demonstrated through their “Documentation of the Base Flood Level” document that the development will be located outside of the flood plain. The request does not include a subdivision or



partition. A condition of approval is included stating that all necessary federal, state, and local government agency permits shall be obtained. The request complies.

**Sec. 15.36.040. - Application for conditional use.**

**A. Contents of an application.**

*All records of any application for a conditional use permit and all certification of elevations shall be maintained in the records of the city for public inspection. An application for a conditional use permit in the flood plain overlay zone shall, at a minimum, contain the following information:*

- 1. A detailed explanation of why it is necessary to conduct the proposed use in the flood plain overlay zone. Where base flood elevation data is not available from the flood insurance study or from another authoritative source, it shall be generated and submitted with the application for subdivision proposals and other proposed developments which contain at least 50 lots or five acres (whichever is less).*
- 2. A site plan, drawn to scale and accompanied by drawings, sketches and descriptions which describe and illustrate the proposed use. This site plan shall include, at a minimum, existing and proposed site contours in relation to the base flood elevation, existing and proposed structures, drainage facilities, and an explanation of how erosion will be dealt with during and after construction of the use.*
- 3. The location of the property relative to the channel of the river/slough or stream.*
- 4. The location of existing and proposed diking or abutments, if any.*
- 5. The elevation of the lowest habitable floor and of any basement floor for any dwelling unit or structure.*
- 6. The elevation to which the structure is to be floodproofed, if applicable.*
- 7. Elevations on the site plan shall be established by a licensed surveyor or engineer, and shall be in relation to mean sea level.*
- 8. Certification by a registered professional engineer or architect that the floodproofing methods for any structure meet the floodproofing criteria established by the Federal Emergency Management Agency and the applicable standards of this chapter.*
- 9. All other elements or information which will assist in the evaluation of the proposed development and conformance with the applicable criteria.*

**FINDING:** The application submitted for review contained all of the required elements listed above. The request complies.

*B. Criteria to evaluate conditional uses.*

1. *A conditional use permit in a flood plain overlay zone shall not be approved unless all standards established by the Federal Emergency Management Agency and this chapter are addressed and findings are made by the city that each of the standards and criteria are satisfied.*
2. *Approval to alter or relocate a water course shall require notification to adjacent communities, the department of land conservation and development and department of state lands, prior to any such alteration or relocation and submit evidence to the Federal Insurance Administration. Maintenance shall be provided within the altered and relocated portion of said water course so that the flood carrying capacity is not diminished.*
3. *A conditional use permit shall be based upon findings which relate to the property and existing and proposed structure(s). They shall not pertain to the property owner, inhabitants, economic or financial circumstances.*

**FINDING:** The city has reviewed the proposal in accordance with all standards established by the Federal Emergency Management Agency and this chapter. The proposal will not alter or relocate a water course. The review has been based on the applicants proposed manufactured home, not the owner, inhabitants economic or financial circumstances. The request complies.

4. *All structures in the flood plain shall meet the following standards:*
  - a. *Anchoring.*
    - (1) *All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.*
    - (2) *All manufactured homes must be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.*
  - b. *Construction materials and methods.*
    - (1) *All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.*
    - (2) *All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.*

(3) *Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.*

c. *Utilities.*

(1) *All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.*

(2) *New and replacement sanitary systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from the system into flood waters.*

(3) *On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.*

d. *Below-grade crawlspace is allowed, subject to the standards in FEMA Technical Bulletin 11-01.*

**FINDING:** The standards listed above related to anchoring, construction materials and methods, and utilities relate to structural standards provided at the time of submitting for building permits. A condition of approval is included stating that at the time of submitting building permits, the applicant shall provide plans to the Building Department addressing the standards of Sec. 15.36.040(B)(4). The request complies.

5. *Subdivision and partition proposals.*

a. *All subdivision and partition proposals shall be consistent with the need to minimize flood damage.*

b. *All subdivision and partition proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.*

c. *All subdivision and partition proposals shall have adequate drainage provided to reduce exposure to flood damage.*

**FINDING:** The proposal does not involve a subdivision or partition. Criterion does not apply.

6. *Review of building permits. Where elevation data is not available either through the flood insurance study or from another authoritative source, applications for building permits shall be reviewed to ensure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past*

*flooding, etc., where available. (Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.)*

**FINDING:** Staff utilized the local FRIM map data and were provided a base flood evaluation from the applicant. Criterion does not apply.

7. *Specific standards. In the flood plain overlay zone, the following requirements must be met:*

a. *Residential construction.*

(1) *New construction, including replacement, and substantial improvement of any residential structure shall have the lowest floor of the entire structure, including basement, elevated at least one foot above base flood elevation.*

(2) *Fully enclosed areas below the lower floor that are subject to flooding are prohibited unless they are 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 satisfy the standards in FEMA Technical Bulletin 11-01 and must either be certified by a registered professional engineer or architect and must meet or exceed the following criteria:*

- *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.*
- *The bottom of all openings shall be no higher than one foot above grade.*
- *Openings may be equipped with screens, louvers or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.*

(\*\*\*)

c. *Manufactured homes. All manufactured homes to be placed or substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at least one foot above the base flood elevation. Such manufactured homes shall be securely anchored to an adequately anchored foundation system.*

d. *Parking facilities. No parking facility shall be located within 20 feet (measured at right angles) of the ordinary high-water mark (OHM).*

**FINDING:** The above criteria requires the lowest floor of the structure to be at least one foot above the base flood elevation, the entry and exit of flood waters along with standards to allow for the flow of flood waters, and manufactured home standards. The proposal does not include parking facilities. To ensure compliance, a condition is included stating that prior to occupancy, the as built inspection shall demonstrate that the lowest floor of the manufactured home is at least one foot above the base flood elevation. The manufactured home shall also be securely anchored to an adequately anchored foundation system. The request complies.

8. *Floodways. In floodways the following provisions shall apply:*
  - a. *Encroachments, including fill and removal, replacement of a dwelling lawfully in existence on the effective date of this chapter and other development are prohibited unless certification by a registered professional engineer is provided demonstrating that the proposed encroachments will not result in any increase in flood levels during a base flood discharge.*
  - b. *The applicant must demonstrate that all necessary federal, state and local government agency permits have been or can be obtained and that all other applicable sections of this Development Code have been satisfied.*
  - c. *Replacement of a dwelling shall not increase the square footage or footprint of the structure by more than 20 percent of the square footage or footprint of such dwelling as of the effective date of this chapter.*
  - d. *No replacement of a dwelling shall be allowed if the use of the preexisting dwelling has been abandoned or otherwise terminated for a period of over one year.*

**FINDING:** The proposed manufactured home will not be located within a floodway. Criterion does not apply.

***Sec. 15.36.050. - Elevation certification.***

*Elevation of all new construction, including replacement and substantial improvements, relative to mean sea level of the lowest floor shall be documented before the framing inspection with a survey certified by a State of Oregon registered professional engineer or land surveyor.*

**FINDING:** The applicant submitted a “Documentation” report which was completed in 2006, one year prior to the adoption of the new flood hazard map. Therefore, the report’s information and conclusions may, or may not, remain valid given the updated FIRM. Regarding placement of the home, previous findings noted the residence may need to be relocated. To ensure compliance, a condition of approval is included stating that prior to building permit issuance, the developer must demonstrate the residence is located outside of the FEMA Floodplain as depicted on FIRM #41017C1470E. This may be accomplished by an Elevation Certificate by a registered land surveyor indicating that the residence is located above the floodplain (elevation) or alternatively a Letter of Map Amendment (LOMA) which indicates that the

residence is outside of the floodplain. With that condition, the request complies.

**Sec. 15.36.060. - Yard and setback requirements.**

*In an FP zone, the following yard and setback requirements shall be maintained:*

- A. *The front setback shall be a minimum of 20 feet from a property line fronting on a local street, 30 feet from a property line fronting on a collector and 50 feet from an arterial.*
- B. *There shall be a minimum side yard of ten feet for all uses.*
- C. *The minimum rear yard shall be 20 feet.*
- D. *The minimum yard setback for a nonfarm use from the property line adjacent to a farm use not owned by the applicant shall be 100 feet.*
- E. *In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the city shall be met.*

**FINDING:** As evidenced by the site plan submitted, the request complies with the identified setbacks listed above. No farm uses exist adjacent to the property. The request complies.

**Sec. 15.36.080. - Little Deschutes River/slough and stream setback.**

*To permit better light, air, vision, stream and pollution control, to protect fish and wildlife areas and to preserve the natural scenic amenities along streams and lakes, the following setbacks shall apply:*

- A. *All sewage disposal installations such as septic tanks or septic drain fields shall be setback from the ordinary high water mark along all river/sloughs and streams a minimum of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet, and the county sanitarian finds that a closer location will not endanger public health or safety, a setback exception may be permitted to locate these facilities closer to the stream or lake, but in no case closer than 25 feet.*
- B. *All structures, buildings or similar permanent fixtures shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles from the ordinary high water mark.*

**FINDING:** The proposed manufactured home will not be within the vicinity of the Little Deschutes River/slough and stream. Criteria does not apply.

**Sec. 15.36.100. - Dimensional standards.**

*In an FP zone, the following dimensional standards shall apply:*

- A. *Lot coverage. The main building and accessory buildings located on any building site or lot shall not cover in excess of 30 percent of the total lot area.*
- B. *Building height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed through an exception.*
- C. *Minimum lot size. Minimum lot size shall be ten acres for all areas which have received an exception to the statewide planning goals for resource uses. Areas which have not received an exception to the statewide planning goals shall have a minimum lot size of 80 acres.*

**FINDING:** As mentioned earlier, the total lot coverage will be 11%. The request does not involve a land division, therefore the minimum lot size standard does not apply. To ensure compliance, a condition of approval is included stating that the manufactured home shall not 30 feet in height, unless allowed through an exception. The request complies.

## **ARTICLE 7 – PROCEDURES**

### **CHAPTER 15.204 – APPLICATION PROCEDURES**

#### **Sec. 15.204.020. - Type II procedure (administrative review with notice)**

The Planning Official performs Administrative Staff Reviews through the Type II procedure. Type II decisions are made by the Planning Official with public notice and an opportunity for appeal to the Planning Commission. Alternatively, the Planning Official may refer a Type II application to the Planning Commission for its review and decision in a public meeting.

- A. Application requirements.
  - 1. Application forms. Applications for projects requiring Administrative Review shall be made on forms provided by the Planning Official.
  - 2. Submittal information. The Planning Official shall advise the applicant on application submittal requirements. At a minimum, the application shall include all of the following information:
    - a. The information requested on the application form;
    - b. Plans and exhibits required for the specific approval(s) being sought;
    - c. A written statement or letter explaining how the application satisfies each and all of the relevant criteria and standards in sufficient detail;

- d. Information demonstrating compliance with prior decision(s) and conditions of approval for the subject site, as applicable; and
- e. The required fee.

**FINDING:** The Applicant submitted an application, site plan, fee, and supporting materials for Type II review for a Conditional Use Permit. These criteria have been met.

B. Notice of pending administrative decision (notice of application).

- 1. The purpose of the Notice of Pending Administrative Decision is to give nearby property owners and other interested people and agencies the opportunity to submit written comments on the application before the Planning Official issues the decision. Within 10-days of receipt of a complete application for a Type II land use action, the Planning Official shall mail notice of a pending Type II decision to the following individuals and agencies.

**FINDING:** The City mailed notice of the pending administrative decision to nearby property owners and the standard agency list, providing the opportunity to submit written comments on the application.

- 2. The comment period shall be at least 14 days duration from the date notice was mailed or a longer as specified in the notice. The deadline for submitting written comments must be at least 14 days prior to the scheduled decision date or, as applicable, the scheduled Planning Commission meeting date where an application is referred to the Commission for review.

**FINDING:** The City provided a comment period for at least 14 days from the date the notice was mailed, in compliance with this standard.

- 3. All of the following individuals and agencies shall be notified. However, the failure of a property owner to receive mailed notice shall not invalidate any land use approval if the Planning Official can show by affidavit that such notice was given.
  - a. The applicant;
  - b. Owners of record of property as shown on the most recent property tax assessment roll of property located within 100 feet of the property that is the subject of the notice where any part of the subject property is within an urban growth boundary;
  - c. The owner of a public use airport if the airport is located within 10,000 feet of the subject property;
  - d. The Planning Commission;



- e. Any neighborhood or community organization formally recognized by the City Council, whose boundaries include the site;
- f. Any person who submits a written request to receive a notice; and
- g. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies. At a minimum, the City Planning Official shall notify the road authority if different than the City of La Pine. The failure of another agency to respond with written comments on a pending application shall not invalidate an action or permit approval made by the City under this Code.

**FINDING:** The City provided notice to all parties entitled to notice, as noted above.

- 4. The notice of pending Administrative Decision, at a minimum, shall contain all of the following information:
  - a. The deadline for submitting written comments, which must be at least 14 days prior to the scheduled decision date or, as applicable, the scheduled Planning Commission meeting date where an application is referred to the Commission for review;
  - b. A summary of the proposal and the relevant approval criteria in sufficient detail to help the public identify and locate applicable code requirements;
  - c. The address and City contact person for submitting written comments; and the date, time, and location the City Planning Official or Planning Commission, as applicable, is scheduled to make a decision on the application;
  - d. The street address or other easily understandable reference to the location of the proposed use or development;
  - e. Disclosure statement indicating that if any person fails to address the relevant approval criteria with enough detail, he or she may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue, and that only comments on the relevant approval criteria are considered relevant evidence;
  - f. Statement that all evidence relied upon by the City Planning Official or Planning Commission, as applicable, to make its decision is in the record and is available for public review. Copies of this evidence can be obtained at a reasonable cost from the City; and
  - g. Statement that after the comment period closes, the City will issue its decision and the decision shall be mailed to the applicant and to anyone

else who submitted written comments or who is otherwise legally entitled to notice.

**FINDING:** The notice provided by the City included this minimum required information, in compliance with this procedure.

C. Decision.

1. At the conclusion of the comment period, the City Planning Official shall review the comments received and prepare a decision notice approving, approving with conditions, or denying the application based on the applicable Code criteria. Alternatively, the City Planning Official may transmit all written comments received, if any, along with a copy of the application to the Planning Commission for review and decision at its next regularly scheduled meeting.

**FINDING:** Staff reviewed all comments received and prepared this decision after review of the comments. This decision was prepared based on the City's required criteria and comments submitted not related to this criteria were not incorporated. The City provides these findings and the associated decision in accordance with this procedural requirement, documenting all applicable criteria and the facts relied upon to determine how/whether the Applicant's request meets the criteria and standards. Therefore, the requirements of this section have been met.

2. Where the City Planning Official refers an application subject to Administrative Review to the Planning Commission, the Planning Commission shall approve, approve with conditions, or deny the application through the Type II procedure based on the applicable Code criteria. The Planning Commission may continue its review to the next meeting to allow the applicant time to respond to questions, provided that the Commission makes a final decision within the time period prescribed under state law (ORS 227.178) and as described in Section 15.202.020 of this Code. Alternatively, the applicant may voluntarily waive his or her right to a final decision within the required timeframe and the Commission may decide to accept oral and written testimony in a public hearing review of the application, pursuant to Section 15.204.030; in which case, a new public notice must be mailed to those who received the original notice indicating the change to a quasi-judicial (public hearing) review procedure.

**FINDING:** The application was not referred to the Planning Commission and is being decided administratively, with findings and conditions herein.

D. Notice of decision.

1. Within seven days of a Type II decision, the City Planning Official shall prepare a notice of decision and mail it to the applicant, property owner (if different), the Building Official, those who provided written comments on the proposal, and those who requested a copy of the decision. If the decision is not a limited land use decision as defined in ORS 197.015(12), notice shall also be sent to all persons entitled to notice under Subsection B.

2. The City Planning Official shall cause an affidavit of mailing the notice to be prepared and made a part of the file. The affidavit shall show the date the notice was mailed and shall demonstrate that the notice was mailed to the parties above and was mailed within the time required by law.
3. The Administrative Notice of Decision shall contain all of the following information:
  - a. A description of the applicant's proposal and the City's decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval in the record;
  - b. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area (a copy of assessor's map may be used);
  - c. A statement of where the City's decision can be obtained;
  - d. The date the decision shall become final, unless appealed; and
  - e. A statement that all persons entitled to notice may appeal the decision to City Council pursuant to Subsection F.

**FINDING:** Notice of this decision will be prepared and mailed by the City in accordance with these requirements.

- E. Effective date of decision. Unless the conditions of approval specify otherwise, an Administrative Decision becomes effective 12 days after the City mails the decision notice, unless the decision is appealed pursuant to Subsection F or the decision is called up for review by the City Council pursuant to Subsection G. No building permit shall be issued until a decision is final. Appeal of a final decision to LUBA does not affect the finality of a decision at the local level for purposes of issuing building permits.

## **ARTICLE 8 – APPLICATIONS AND REVIEWS**

### **CHAPTER 15.316 – CONDITIONAL USES**

#### **Sec. 15.316.010. - Applicability.**

*Conditional uses may be permitted, enlarged or otherwise altered when authorized in accordance with the standards and procedures set forth in this chapter. In the case of a use listed as conditional existing prior to the effective date of this Development Code, a change in use, enlargement or alteration of such use shall conform with the provisions of a conditional use if so classified. Any new or transferred owner or assign is required to*

*abide by the authorized permit. An application for a conditional use permit may be approved, modified, approved with conditions or denied by the city.*

**FINDING:** The proposed manufactured home is being reviewed in accordance with the flood plain criteria. This use is a conditional use in the flood plain overlay zone, and requires a Conditional Use Permit.

***Sec. 15.316.020. - Procedure type.***

*Applications for conditional use approval are subject to Type II review in accordance with the procedures in article 7 unless elevated by the city planning official to a Type III review.*

**FINDING:** This Conditional Use Permit is subject to a Type II review in accordance with the procedures in Article 7 listed herein.

***Sec. 15.316.030. - Submittal requirements.***

*Applications for conditional use approval, if not submitted concurrently with an application for site plan review, shall, at a minimum, include the materials required for a Type II review as specified in article 7 as well as a site analysis diagram (see 15.312.040.B) and a site development plan (see 15.312.040.D). An application for a conditional use permit shall also contain a narrative report or letter responding to the applicable approval criteria in section 15.316.040. The city may require studies or exhibits prepared by qualified professionals to address specific site features or project impacts (e.g., traffic, noise, environmental features, natural hazards, etc.), as necessary to determine a proposal's conformance with this Development Code.*

**FINDING:** This Conditional Use Permit application was concurrently submitted with a Site Plan Review application. The request complies.

***Sec. 15.316.040. - Approval criteria.***

*In determining whether or not a conditional use proposal shall be approved or denied, it shall be determined that the following criteria are either met or can be met through compliance with specific conditions of approval:*

- A. *The proposal is in compliance with the requirements set forth by the applicable primary zone, by any applicable overlay zone, and other provisions set forth by this Development Code that are determined applicable to the subject use.*
- B. *That, for a proposal requiring approvals or permits from other local, state and/or federal agencies, evidence of the approval or permit compliance is established or can be assured prior to final approval.*

- C. *The proposal is in compliance with specific standards, conditions and limitations set forth for the subject use in the applicable zone, this section and this Development Code.*
- D. *That no approval be granted for any use which is or [is] expected to be found to exceed resource or public facility carrying capacities, including, but not limited to, transportation water, sewer, and utility systems.*
- E. *For any use which is found to require compliance with air, water, land, solid waste and/or noise pollution standards, that the compliance be a condition of approval and compliance therewith shall be a continuing condition.*

**FINDING:** As determined earlier in this report, the use was found to be in compliance with the required criteria for the underlying zoning, overlay zone, and all other applicable portions of the code. Conditions of approval throughout this report ensure that all other local, state and/or federal agency approvals or permits are established prior to final approval. No comments were received from any party stating that the use would exceed resource or public facility carrying capacities, including, but not limited to, transportation water, sewer, and utility systems. The proposal is for a manufactured dwelling, and will not require compliance with air, water, land, solid waste, and/or noise pollution standards. The request complies.

***Sec. 15.316.050. - Permit and improvements assurance.***

*An applicant for a conditional use permit may be required to furnish the city with a performance bond or other form of assurance in an amount equal to the estimated value of required improvements and other aspects of a proposed use as deemed necessary to guarantee development in compliance with the standards and conditions set forth in the approval of a conditional use.*

**FINDING:** The proposal is for a manufactured home in the commercial zone. No performance bond or other form of assurance is required. Criteria does not apply.

## **V. DECISION**

Approved, subject to the conditions of approval identified below.

## **VI. CONDITIONS OF APPROVAL**

1. The approval shall be limited to the placement of the proposed manufactured home. Any changes or modifications as to the use of the site may require a new land use application.
2. Prior to the issuance of a building permit, the developer shall demonstrate the residence is located outside of the FEMA Floodplain (FIRM #41017C1470E). This shall be accomplished by either an Elevation Certificate by a registered land surveyor indicating that the residence is located above the floodplain; or, alternatively a Letter of Map Amendment indicating that the residence is outside of the floodplain.

3. Prior to the issuance of a building permit, the developer shall present evidence the access improvements comply with the Fire District standards. Construction shall not proceed until the required improvements are constructed.
4. Prior to occupancy of the dwelling, the developer shall connect to the adjacent water and sanitary sewer services. Connections shall comply with City Public Works Standards and the developer shall be responsible for all related permit costs.
5. Unless otherwise modified or amended by this decision, development of the site shall comply with applicable requirements of the La Pine Development Code and City Public Works requirements.
6. Compliance with these conditions as well as other Federal, State or Local regulations that may apply shall be the sole responsibility of the applicant.

**THIS DECISION BECOMES FINAL TWELVE (12) DAYS AFTER THE DATE MAILED, UNLESS APPEALED BY THE APPLICANT OR A PARTY OF INTEREST IN ACCORDANCE WITH ARTICLE 7 OF THE CITY OF LA PINE LAND DEVELOPMENT CODE.**



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Date: August 28, 2023

City of La Pine

Date Mailed: August 28, 2023