



PLANNING COMMISSION MEETING STAFF REPORT

DATE OF MEETING: April 12, 2022
NAME OF APPLICANT: Jeremy Clark, representative for Cari Lane LLC
AGENDA ITEM: Code Text Amendment of Title 16.14.8

ITEM: 2

Jeremy Clark, representative for Cari Lane LLC, is proposing an amendment to Chapter 16.14.8: Streams, Waterways, and Ditches. The proposed amendment would impact how close a proposed building envelope could be built to a designated flood zone.

BACKGROUND:

The purpose of this item is to review a code text amendment request to the land use ordinance regarding setbacks for structures from a delineated floodplain boundary as shown on the Flood Insurance Rate Maps (FIRM) and Midway City Floodplain Overlay Maps (MCFOM) for small scale and large-scale subdivisions. The applicant, Jeremy Clark, owns property that Snake Creek and its floodplain overlay resulting in a reduced buildable area on a parcel that he hopes to develop into a building lot one day. On the property that he owns, the floodplain widens out over a portion of his property, likely due to a less channelized stream channel, impacting the area where he would like to construct a future home. To be clear, staff is not aware of a building right currently on the property, and the current requirement does not appear to eliminate a future buildable area, but does prevent the applicant from building in the area where they would like to and also pushes them closer to their eastern property line that they would like to be.

FEMA regulations only preclude building in the mapped or delineated floodplain. Midways ordinance goes beyond that by requiring an additional buffer between the mapped boundaries and areas where a structure can be built. It is staff's opinion that this is for a few different reasons including protecting the floodway from encroachment,

minimizing damage to property owners in the event there is a flood event, but also protecting the environmental and open space assets that make Midway what it is.

Below is the current code language that the applicant is proposing to revise. We have provided the whole section for context, but the two sections proposed for revision are highlighted in blue:

16.14.8: Streams, Waterways, and Ditches

C. Boundary delineations: All construction or development on a parcel or lot that includes any delineated flood zones as per FEMA Flood Insurance Rate Maps (FIRM) and any parcel or lot that includes area in any Midway City Floodplain Overlay Maps (MCFOM) must meet the requirements of the Flood Damage Prevention ordinance found in the Midway Municipal Code and meet the following requirements:

1. Lots of record and previously platted lots: Any residential construction within 50 feet of a delineated flood zone shall have the lowest floor, including basements, elevated 18 inches above the base flood elevation as shown on the FIRM. The elevation must be certified by a licensed engineer or licensed surveyor and marked on site before the building inspector allows construction to commence.
2. Small-scale subdivision: Lots may be approved within delineated boundaries of FIRM and MCFOM but the lowest floor of any residential construction, including basements, shall be elevated 18 inches above the base flood elevation as shown on the FIRM. The elevation must be certified by a licensed engineer or licensed surveyor and marked on site before the building inspector allows construction to commence. Substantial efforts must be made to create building envelopes that are 50 feet from any delineated flood zones, though the lots themselves may encroach in the flood area.
3. Large-scale subdivisions: Lots may be approved within delineated boundaries of the FIRM and the MCFOM but building envelopes are required for all large-scale subdivisions and must be set back 50 feet from any flood zones to assure no residential buildings are constructed within 50 feet of any flood zones.
4. PUDs: All building footprints in a PUD shall have a 50-foot setback from any delineated flood zones.

The applicant is proposing that subsection 2 and 3, which governs small- and large-scale subdivisions, is amended to allow for a lesser distance between the edge of the delineated floodplain and a residential structure if certain conditions exist. Specifically, the applicant is proposing the following language is added to both sections:

“If the flood risk is mitigated by a 2’ rise or barrier, dwellings can be built 5’ from the 100 year floodplain boundary, but no closer than 50’ from a creek, lake, or other waterway”

We have included as an attachment portions of the applicants application that provides both their justification for the proposal as well as the positive and negative impacts they identified.

In reviewing the proposed code text amendment, staff reviews the Midway General Plan to see whether the proposed amendment helps accomplish its goals and policies. In 2016/2017, the current General Plan was revised and adopted. Two goals that were highlighted in that revision was to promote open space and to preserve the rural character of Midway. These two goals were developed as a response to the City's General Plan survey that was conducted in 2016. In that survey, information was gathered regarding the residents' preferences of the vision they have for Midway. 66% of the 483 responses to that survey stated the rural atmosphere was very important to them. 88% felt that preserving open space was very important. Midway is currently in the process of reviewing and updating the general plan once again. From an early review of the public feedback received, it appears that promoting open space and maintaining the rural character of Midway is still a high priority for residents.

Below are some examples from the General plan that staff feels relate to the request:

Environment and Sensitive Land Element

Midway is characterized by valuable open space resources that contribute to the community's character and overall quality of life. Open spaces hold value for ecological, agricultural, cultural and recreational qualities, and these lands are worthy of careful planning and conservation.

GOAL 1: Environmental resources of the City should be protected including water quality, air quality, wildlife habitat, scenic quality, hillsides, ridge lines, prime agriculture land, open space, soils, vegetation, wetlands, riparian corridors and flood plains.

Objective 1: Protect all of the environmental and natural resources of the City by requiring development to occur in a manner and location which respects sensitive environmental lands: wetlands, flood plains and natural drainage patterns, steep slopes, productive agricultural lands, geologically unstable areas, critical wildlife areas, vegetation and important scenic features such as ridge lines hillsides and view corridors.

Guideline 3: Prohibit development or construction below any historic high-water line of all streams and rivers or whenever it will significantly alter the natural drainage patterns of the land. Development in a flood plain is strongly discouraged and if occurs shall specifically comply with all applicable Federal Emergency Management Agency regulations.

Objective 2: Protect water quality, including watershed areas, and ensure that there are adequate quantities of water for all residents of Midway.

Guideline 4: Adequate buffers from development should be provided along all water ways and wetlands in Midway.

Objective 5: Manage development, minimize damage and hazards, and protect life and property in areas subject to risk from natural hazards such as seismic activity, unstable soils, flooding conditions, and other geologic hazards.

Guideline 3: Promote open space and recreational uses in identified flood zones unless the hazard can be adequately mitigated.

Guideline 5: Midway should require the protection of all wetlands, streams and other waterways and other environmentally sensitive lands from construction impacts and runoff from parking lots, roads and other impervious surfaces

Community Vision Element

- *Effective planning through clustering, setbacks, Transfer Development Rights and animal/agriculture ordinances will help Midway to preserve its view corridors, maintain open spaces and reinforce a country/rural feeling.*
- *Midway is characterized by valuable open space resources that contribute to the community's character and overall quality of life. Open spaces hold value for ecological, agricultural, cultural and recreational qualities, and these lands are worthy of careful planning and conservation.*

Goal 1: To be a beautiful, organized small-town community based on its distinct history of agriculture, open space and recreation.

Guideline 5: Encourage the preservation of prime agricultural land and open space within Midway and the surrounding valley.

Land Use Element

Development Vision: To have a well planned community with land uses that enhance its unique characteristics by providing:

- *High-quality, well-planned residential areas with open spaces that support and complement the unique rural quality and character of the City;*
- *Open space areas, while preserving sensitive lands.*

Open Space Element

CREATE LOCAL NEIGHBORHOOD "OPENESS"

A sense of spaciousness in residential communities is provided by large setbacks, establishment of view corridors through restriction on view obstructing fences or

structures, small community use areas (playgrounds, etc.), larger lot size zoning, and density regulations. For the most part, these features are required by city code, and not realized by open space acquisition. Recent revisions to city code have supported this objective, and further revisions can assist in its further realization.

Additionally, in Chapter 16.14 - Sensitive Lands Overlay Zone, the purpose section states that the standards and guidelines in this chapter are for the protection of natural resources and features. It includes a list of various purposes for the standards, some of which are:

- *Encourage development designed to reduce risks associated with natural hazards from stormwater runoff and erosion by requiring drainage facilities and the minimal removal of vegetation.*
- *Preserve natural features, wildlife habitat and open space.*
- *Preserve public access to mountain areas and natural drainage channels.*
- *Retain natural topographical features such as drainage channels, streams, ridgelines, rock outcroppings, vistas, trees and other natural plant formations.*
- *Establish land use management criteria that will encourage protection of natural features while allowing a harmonious and high-quality residential environment.*
- *Encourage location, design and development of building sites to provide maximum safety and human enjoyment while adapting the development to the best use of natural terrain.*
- *Identify and protect environmentally sensitive areas of the City.*
- *Protect these areas from flooding, erosion, storm water damage or fire hazard.*
- *Protect the public safety and public costs thereof.*
- *Protect the scenic and natural character and views of these areas*

Staff feels that the protection of floodplains serve various purposes and that the general plan supports maintaining the current 50' buffer as stated and not approving an adjustment. While the 50' buffer beyond a delineated floodplain boundary is over and above what FEMA requires, there may be value in maintaining these buffers, especially when there appears to be a city wide appetite for maintain open space and the rural character of the city, which staff believes these buffers help foster.

POSSIBLE FINDINGS:

- Various sections of the general plan support measures that will increase open space and protect the natural features of the city, including stream corridors
- Reducing the setback requirement will impact various properties differently but will ultimately allow some properties to build closer to a stream corridor than is currently be allowed.

ALTERNATIVE ACTIONS:

1. Recommendation of Approval. This action can be taken if the Planning Commission finds that the proposed language is an acceptable addition to the City's Municipal Code.
 - a. Accept staff report
 - b. List accepted findings

2. Continuance. This action can be taken if the Planning Commission would like to continue exploring potential options for the amendment.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for continuance
 - i. Unresolved issues that must be addressed
 - d. Date when the item will be heard again

3. Recommendation of Denial. This action can be taken if the Planning Commission finds that the proposed amendment is not an acceptable revision to the City's Municipal Code.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial

Exhibits

**Exhibit 1 – Applicants Explanation for Code Text
Amendment**

Exhibit 1

Reason and Justification for the Amendment: This section indicates building envelopes and houses must be 50' from the FEMA flood plain. The flood plain is often right at or near the edge of the creek on steep banks. The amendment seeks to maintain the minimum 50' from the creek or waterway, while allowing a dwelling to be built near the flood plain if the flood plain already extends 50' away from the waterway.

The amendment increases distance between homes, promotes open space, and provides more enjoyment of Midway's natural environment in a friendlier atmosphere.

Waterways remain protected and homes maintain protection from flooding.

BACKGROUND: In most areas of Midway, the FEMA FIRM maps show the 100 yr floodplain as the creek bank or near the creek bank. However, in areas of flat topography, the floodplain extends far away from Snake Creek and other waterways. The issue in these areas is not protecting the waterway itself, but reducing the risk of flooding for a residential home.

- Federal statutes from FEMA do not restrict a residential home built right at the floodplain.

- Midway requires a 50' boundary from the floodplain, which appears to have been instituted within the past 15-20 years as evidenced by the many existing homes much closer to Snake Creek.

- When the floodplain is already more than 50' from the waterway, the additional distance can hurt the community by forcing homes closer together, without notable additional protection of the waterway.

POSITIVE IMPACT: The proposal enhances the City's Vision of small town character and natural environment by allowing new residences further away from existing homes. It improves open space and view corridors and satisfies

neighbors while still protecting waterways.

NEGATIVE IMPACT: No clear negative impact. This proposal maintains a minimum 50' protective boundary from all waterways, which preserves a wide swath of open space.

The proposal supports the City's General Plan goals. Specifically, Goal 1 identifies open space as a component of our community's history. Goal 3 encourages a friendly community. Less impact on existing homes from new construction helps maintain that friendly atmosphere.

Proposed added language to end of 16.14.8.C.2 and/or C.3:

If the flood risk is mitigated by a 2' rise or barrier, dwellings can be built 5' from the 100 yr floodplain boundary, but no closer than 50' from a creek, lake, or other waterway.