

SECTION 10.1500 VARIANCE AND ADJUSTMENT PROCEDURES

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General

10.1501 Purpose

Variance and adjustment procedures are intended to allow modification of specific standards contained in the Community Development Code. A variance or adjustment may be permitted if the approval authority finds the applicant has satisfactorily addressed all the approval criteria. If a variance or adjustment request is approved, the approval authority may attach conditions to the final order to mitigate adverse impacts which might result from the approval.

10.1502 Exceptions

The following regulations of the Community Development Code may not be varied:

- A. The uses permitted in the land use district.
- B. Definitions.
- C. The minimum and maximum residential development density allowed in a land use district.
- D. Restrictions on uses or development that contain the word "prohibited."
- E. The floodway provisions of **Section 5.0121**.

Type II Variances

10.1510 Type II Minor Variance Provisions

The Type II procedure shall be used to process a minor variance request involving a 20 percent reduction or 20 percent increase from a quantitative provision of the Community Development Code, with the exception that all variances to maximum height in the GBSV District shall be reviewed under the Type III process described in **Section 10.1530**, and all variances from the Floodplain Overlay District shall be reviewed under the Floodplain Variance process described in **Section 10.1511**. The Manager shall grant a variance if all of the following criteria are satisfied:

- A. The need for the variance does not result from prior actions of the applicant or owner, or from personal circumstances of the applicant or owner, such as financial circumstances.
- B. To meet the need, the request is the minimum necessary variation from the Community Development Code requirement.
- C. There are development constraints associated with the property, or the present use or permitted use of the property, which make development of a permitted use impractical; or the variance is needed to allow the applicant to enjoy a substantial property right possessed by a majority of property owners in the same vicinity.
- D. The purposes of the Community Development Code and the applicable policies of the Community Development Plan would be equally met or advanced by a variation from the development requirement.

10.1511 Type II Variance Provisions to the Floodplain Overlay District Standards

The Manager shall grant a variance if all of the criteria identified in **Section 10.1510** and a determination can be made that the granting of a variance shall only be issued by a community upon a showing of good and sufficient cause, that failure to grant the variance would result in exceptional hardship to the applicant, and that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

A community shall notify the applicant in writing that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance and increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

Type II Adjustments

10.1520 Reduction in Minimum Street Frontage

Intent. The City's transportation policies assure public street connectivity in general, and specifically require public street frontage and access for residential parcels.

Adjustment. However, the Manager under a Type II procedure may reduce the minimum street frontage required if 1) such reduction is necessary to satisfy neighborhood circulation and/or future street plan provisions (**Section 9.0700**), and 2) Associated findings show either condition (A) or condition (B) exists, and condition (C) exists:

- A. Topographical constraints preclude the application of the minimum standard; or
- B. The land division is part of an infill process where the application of the minimum street frontage standard would prohibit the division of the parcel. Infill development within LDR-5, LDR-7, TLDR and TR shall also be subject to the standards of **Section 4.0138**; and
- C. It is not feasible to extend the public street system to provide local circulation and the minimum street frontage. For purposes of the section “not feasible” shall mean that there is no reasonable connection to another public street; or that the property configuration or physical constraints preclude connection; or lotting patterns surrounding the site or development patterns preclude street extensions, and/or an adopted Future Street Plan affects the site.

10.1521 Modification of Regulations

- A. Under the Type II procedure, the Manager may modify standards in the Community Development Code regarding public facilities, parking requirements, building lot coverage, yard setbacks, building height, and landscaping if any one of the following criteria is satisfied:
 - 1. The site design reduces the need for major alterations of the site, such as excavations, retaining walls, steep road cuts and fill, and extensive grading;
 - 2. The site design has provisions for major recreational facilities such as playgrounds, swimming pools, tennis courts, and similar facilities;
 - 3. There is a maximum retention of natural topographic features, such as drainage swales, slopes, ridge lines, rock outcroppings, vistas, natural plant formations, and trees;
 - 4. The street system is designed in an east/west alignment to maximize solar orientation. Attached dwellings on a single lot include solar space heating or water heating devices, or insulation beyond the minimum standards of the Building Code.
- B. Upon a finding that the applicant's plan substantially achieves any of the preceding criteria, the Manager may modify the identified standards within the following prescribed limits:
 - 1. Front, side, and rear yards may be reduced to zero when in compliance with the Oregon State Structural Specialty Code.
 - 2. The requirements for the installation of sidewalks may be modified if provisions are made to provide off-street parking in addition to that required in the off-street parking section of this code, as follows:
 - a. Detached dwellings - two additional off-street parking spaces.
 - b. Attached dwellings - for each unit, one-half additional off-street parking space for each bedroom in addition to the first bedroom. In cases where a one-half space occurs in a total figure, the standards shall be increased to the next whole figure.
 - 3. Height limitations may be increased, provided the additional height does not exceed 45 feet in a residential district. Additional height cannot be approved under **Section 10.1521** in the GBSV District.
 - 4. Building lot coverage may be increased provided the additional coverage does not exceed 50 percent.
 - 5. Parking requirements may be reduced by 10 percent.

10.1522 Modification of Dedications and Other Requirements

Under the Type II procedure, the Manager may reduce or eliminate a dedication of land or other requirement if the requirement, as determined by the Manager, does not meet the requirements of the Fifth Amendment to the United States Constitution.

Type III Variances

10.1530 Type III Major Variance Provisions

The Type III procedure shall be used to process a major variance request involving more than a 20 percent reduction or 20 percent increase from a quantitative development standard or a request to deviate from a qualitative standard or a request to deviate from the maximum height requirements in the GBSV District as outlined in **Section 10.1532**. Except for applications for a variance to maximum height in the GBSV District, where additional criteria apply, the hearing body shall grant the variance if all of the criteria identified in **Section 10.1510** and one of the following criteria is met:

- A. The circumstances that apply to the site or to the present or permitted use of the site do not typically apply to other properties in the same vicinity or land use district and are unique or unusual; or,
- B. It would be more detrimental to the public safety or more injurious to the public welfare to apply the development standard than to grant the proposed variance.

10.1531 Private Residential Access for New Dwellings under Unit Ownership

Private residential access to a public street for new dwellings under unit ownership may be authorized under the Type III procedure, if the proposal is consistent with the following criteria:

- A. The proposed access shall not eliminate or make impractical the establishment of a planned public street or continuation of an existing public street. The public circulation needs of the area within one-quarter mile shall be accommodated without a public street through the site.
- B. Additional off-street parking shall be provided to dwellings served by an access in order to replace the lost on-street parking.

10.1532 Type III Major Variance Provisions to Maximum Height in the GBSV District

- A. The Planning Commission is the decision authority.
- B. Applicants must address the criteria located in **Section 10.1510** and one of the criteria outlined in **Section 10.1530** and comply with **Section 10.1532.C.1** or **Section 10.1532.C.2** as described below.
- C. The structure shall not be visible from any parcels outside of the GBSV District. Demonstration of compliance with this standard must be provided as noted in **Section 10.1532.C.1** or **Section 10.1532.C.2**.
 - 1. A site plan and elevations documenting that:
 - a. The structure is no taller than the existing evergreen canopy as measured from the downslope side, or

- b.** The structure is topographically screened by its placement behind a hill, is located in a ravine or is screened by other natural features.
- 2.** Submittal of a photo simulation from parcels outside of the GBSV District using 3D Analyst or another program as approved by the Manager accompanied by an analysis of the contrast rating of the proposed structure using the Bureau of Land Management’s Manual 8431-Visual Contrast Rating or other tool approved by the Manager.

The structure must meet the Class I or Class II Objectives found in Appendix 2 of the Bureau of Land Management’s Manual 8431-Visual Resource Contrast Rating when the structure is observed from viewpoints outside of the GBSV District.

If other approved tools are used, the analysis of the siting of the structure shall determine that, when the structure is observed from viewpoints outside of the GBSV District:

- a.** The existing character of the landscape is preserved. The level of change to the character of Gresham Butte is very low and does not attract attention away from the forested landscape of Gresham Butte, or
 - b.** The existing character of the landscape is retained. The level of change is low and changes must blend into the predominant natural features of the landscape.
- 3.** If vegetation used for screening is removed through natural circumstances such as disease or fire, replacement vegetation must be planted within 6 months of the event and be of a species that will grow to an equal or greater size, height, and canopy spread as the vegetation that was removed. Replacement plantings must be a minimum of 2.5 caliper inches for deciduous trees and a minimum of 8 feet in height for evergreen trees.

