

**FINDINGS OF FACT and FINAL ORDER
TYPE II VARIANCE PROPOSAL**

DATE:	November 22, 2023
FILE NO.:	23-043 VAR
PROJECT NAME:	Type II Variance – Lot 9 Future Home Site
NATURE OF APPLICATION:	Variances: #1 - Transit Street Setback #2 - Building Orientation Standards
APPLICANT/OWNER:	Holt Holding’s OR LLC
MAP/TAX LOT:	25E19AB01000
ADDRESS:	18670 Warm Springs Street
ZONING:	Single Family Residential (SFR)
STAFF CONTACT:	Patrick Depa, Senior Planner

BACKGROUND

This application involves two variances for the future home on Lot 9 in the Hood View Heights (AKA Cedar Creek Heights) Subdivision. The applicant describes the variances as Variance #1 and Variance #2. For purposes of this review, Hwy 26 is the transit street from which variances are applicable.

Variance #1 is a proposal to reduce the required transit street setback from 20 feet to 10 feet. The proposed placement of a future home, as requested in Variance #2, proposes the front façade to face towards Warm Springs Street instead of Hwy 26. Subsequently, one of the side façades would face Hwy 26 resulting in the transit street side setback of 10 feet. The proposed side yard setback is consistent with the minimum setback requirement for a property abutting a street in the Single-Family Residential District.

Variance #2 involves the building orientation standards for properties adjacent to transit streets. The applicant is proposing that the future home front Warm Springs Street instead of Hwy 26 as required. The City has already assigned Lot 9 a Warm Springs Street address as direct access to Hwy 26 is prohibited.

The above-referenced proposal was reviewed as a Type II Administrative Variance. The variances and relevant criteria are described in greater detail in Section 17.66.60., below. The following exhibits, findings of fact, and conditions of approval (bold text) explain the proposal.

EXHIBITS

Applicant’s Submissions:

- A. Application and Narrative
- B. Final Subdivision Plat
- C. Construction Plan Sheet
- D. Notice of Decision (File No. 21-012 SUB/FSH/TREE)

Agency Comments:

- E. Clackamas Fire District No. 1 (email)
- F. AJ Thorne, Assistant Public Works Director (email)
- G. Terre Gift, Building Official (email)

FINDINGS OF FACT

General

1. These findings are based on the applicant’s submittal materials received on October 24, 2023. The application was deemed complete on October 31, 2023.
2. The site has a comprehensive plan map designation of Low Density Residential and a zoning map designation of Single Family Residential (SFR).
3. Notification of the proposal was mailed to property owners within 300 feet of the subject property and affected agencies on November 6, 2023, requesting comments. No public comments were received by the deadline of November 20, 2023.
4. Agency comments were received from the Building Official, Clackamas Fire District No. 1, and Public Works all supporting the variances.
5. The subject site, 18670 Warm Springs Street, is in the Hood View Heights subdivision (aka Cedar Creek Heights) approved on June 15, 2021, (File no. 21-012 SUB/FSH/TREE) (Exhibit C).
6. The applicant meets all the other development standards of the SFR zoning district. The lot size comprises a total area of 8,158 sq. ft.
7. Hood View Heights subdivision is immediately adjacent to Hwy 26 but has no direct access from the highway to the subdivision.
8. The subdivision was platted to have all dwellings to take access from the interior streets of the subdivision due to the significant downslope of 40 percent to 50 percent down to Hwy 26. The applicant did not apply for variances at time of the subdivision submission so orientation to Hwy 26 was still required upon plat.

APPLICABLE CRITERIA

Chapter 17.34 - Single-Family Residential (SFR)

Section 17.34.10. - Permitted uses.

- A. Primary Uses Permitted Outright: 1. Single detached dwelling subject to design standards in Chapter 17.90; ... Section 17.34.30. - Development standards.

Response: The applicant does not request a variance to the standards of Section 17.34.30. These standards will be met.

The application involves two variances for Lot 9 of the approved and recorded Hood View Heights Subdivision, as outlined below. **Chapter 17.80 - Additional Setbacks on Collector and Arterial Streets**

Variance #1: The applicant is requesting a ten (10) foot side yard setback variance to Section 17.80.20 that requires a minimum twenty (20) foot setback to any arterial or collector street. This applies to applicable front, rear, and side yards.

Response: This application addresses a variance to the 20-foot minimum setback for the side yard adjacent to Hwy 26, a major arterial. Instead, a 10-foot setback is proposed, which is the minimum side yard setback for a property abutting a street in the Single-Family Residential zoning district. This variance is necessary to address atypical site conditions, including lot orientation and the resultant building envelope, that significantly limit the area available for a new home and is discussed in greater detail below. The variance is to Hwy 26 as the separation in grade from Hwy 26 to Warm Springs Street is a significant buffer that more than makes up for the reduction to a ten (10) foot setback.

Chapter 17.82 - Special Setbacks on Transit Streets

Variance #2: The applicant is requesting a variance to the building orientation standards of Section 17.82.20(A)-(C). These standards are cited below. Subsection D is not applicable because the subject site does not have frontage on more than one transit street.

A. All residential dwellings shall have their primary entrances oriented toward a transit street rather than a parking area, or if not adjacent to a transit street, toward a public right-of-way or private walkway which leads to a transit street.

B. Dwellings shall have a primary entrance connecting directly between the street and building interior. A clearly marked, convenient, safe and lighted pedestrian route shall be provided to the entrance, from the transit street. The pedestrian route shall consist of materials such as concrete, asphalt, stone, brick, permeable pavers, or other materials as approved by the Director. The pedestrian path shall be permanently affixed to the ground with gravel subsurface or a comparable subsurface as approved by the Director.

C. Primary dwelling entrances shall be architecturally emphasized and visible from the street and shall include a covered porch at least 5 feet in depth.

D. If the site has frontage on more than one transit street, the dwelling shall provide one main entrance oriented to a transit street or to a corner where two transit streets intersect.

Response: Lot 9 has been assigned to take access from Warm Springs Street due to site characteristics, mainly topography, and because direct access to Hwy 26 is not allowed. The area between Lot 9 and Hwy 26, the designated transit street, has a significant downslope (40-50 percent) down to Hwy 26 creating unsafe pedestrian access to Lot 9. The City has already conceded that access should be from Warm Springs Street. Safe pedestrian access is designed by having the primary entrance connecting directly between the street and building interior but from Warm Springs Street rather than Hwy 26.

Chapter 17.66 - Adjustments and Variances

Section 17.66.00. Intent.

Adjustments and variances are procedures to vary development standards normally applied to a particular district.

Section 17.66.60. Variances.

Variances are a means of requesting a complete waiver or major adjustment to certain development standards. They may be requested for a specific lot or as part of a land division application. The Type II variance process is reserved for major adjustments on individual lots, while variances to development standards proposed as part of a land division are processed as a Type III application (requiring a public hearing).

This application is considered to contain major adjustments on individual lots, therefore the following criteria in Section 17.66.70 shall apply.

Section 17.66.70. Type II and type III variance criteria.

The authority to grant a variance does not include authority to approve a development that is designed, arranged, or intended for a use not otherwise approvable in the location. The criteria are as follows:

- A. The circumstances necessitating the variance are not of the applicant's making.

Variance #1: This variance is not of the applicant's making as Holt Holding's OR LLC did not apply for the subdivision land use application. Lot 9 is directly adjacent to the Hwy 26 right-of-way. Access to the subdivision is not viable via Hwy 26 due to steep slopes, a 10-foot grade difference along the south property line, and the inability to gain access from ODOT by means of a grant of access. Because of the topography of the subdivision, the final approved layout and design resulted in Lot 9 gaining access from Warm Springs Street and abutting up to Hwy 26.

The variance is necessary to allow for added building footprint area that creates a more practical lot that maximizes the use of available land. A ten-foot setback rather than twenty feet will allow for a more functional layout placing a garage on this side of the house to help buffer the noise from the highway.

Variance #1 meets criterion A.

Variance #2: The situation compelling this variance, building orientation, are not of the applicant's making as Holt Holding's OR LLC did not apply for the subdivision land use application. The subdivision's frontage on both Vista Loop Drive (collector) and Hwy 26 (arterial) constrained the layout and design. The intent of Chapter 17.82 is to provide for convenient, direct, and accessible pedestrian access to and from public sidewalks and transit facilities; provide a safe, pleasant, and enjoyable pedestrian experience by connecting activities within a structure to the adjacent sidewalk and/or transit street; and promote the use of pedestrian, bicycle, and transit modes of transportation.

Lot 9 abuts directly to Hwy 26 right-of-way which is the transit street the variance is applicable to. The grade difference between Lot 9 and Hwy 26 is well above 20 feet. Although there is a sidewalk along the Hwy 26 frontage it is not ideal for pedestrian access since Lot 9's main access is from Warm Springs Street where the applicant wants the house oriented towards. The variance is necessary to maintain consistency in the design, size, and layout in this development and maintain the intent of this chapter of the development code.

Variance #2 meets criterion A.

- B. The hardship does not arise from a violation of this Code, and approval will not allow otherwise prohibited uses in the district in which the property is located.

Variance #1: Lot 9 was created through the subdivision plat process. The subject subdivision property was constrained by existing topography, the location of two transit streets, and the triangular shape of the property. The hardship does not arise from a violation of this code, nor will an approval of this variance allow a use that is prohibited in the SFR district. The variance will allow for a more traditional interior streetscape that represents the code more than if the variance is not granted.

Variance #1 meets criterion B.

Variance #2: Lot 9 was created through the subdivision plat process. The subject subdivision property was constrained by the existing topography, the location of two transit streets, and the triangular shape of the property, not a violation of the code. The variance will position the front of the house towards the street it is addressed to which has greater access for pedestrians. Granting the variance for the proposed building orientation will not create a prohibited use to be in the district.

Variance #2 meets criterion B.

- C. Granting of the variance will not adversely affect implementation of the Comprehensive Plan.

Variance #1: No part of this variance request to transit street setback will intersect or interfere with the implementation of the Comprehensive Plan. The reduced setback will be more in line with the neighborhood design and support Variance #2 in contributing to pedestrian safety by keeping the primary access to the house facing Warm Springs Street rather than Hwy 26.

Variance #1 meets criterion C.

Variance #2:

No part of this variance request to the building orientation towards Warm Springs Street will conflict with the implementation of the Comprehensive Plan. Approval of the variance will assure that the future home can be designed and built in a manner that is commensurate with surrounding homes.

Variance #2 meets criterion C.

- D. The variance authorized will not be materially detrimental to the public welfare or materially injurious to other property in the vicinity.

Variance #1: The reduction of the transit street setback will not be materially detrimental to the public welfare or materially injurious to other property. The variance to bring the setback down from 20 feet to 10 feet along the Hwy 26 side of the lot will not affect any existing or future properties. This variance, accompanied with Variance #2, directs the primary entrance of the home to Warm Springs Street rather than Hwy 26. Granting this variance will benefit the homeowner by reducing any safety concerns along the steep slopes of the Hwy 26 frontage.

Both variance requests reduce their respective setbacks from Hwy 26 in half for the future home site. Due to the ambient noise generated by average daily traffic¹ along Hwy 26 reaching approximately 20,000 vehicles a day, the Planning Division is requiring concrete

¹ Oregon Department of Transportation Traffic Volume Tables for State Highways 2022

sound abatement fencing or wall structures six feet high along all property lines abutting Hwy 26.

For all future variance requests of a similar nature in this subdivision, the applicant shall maintain a uniform appearance using the same fencing material and the same style of material as used to fulfill this condition. Of the various styles of fencing available from the proposed Verti-Crete product, City staff finds that the Durango pattern adheres to the Sandy Style Design Standards the best. The applicant shall install the Durango pattern or submit an alternative pattern for staff review and approval.

Variance #1 meets criterion D if conditions are met.

Variance #2: The variance to change the building orientation from Hwy 26 to Warm Springs Street will mitigate the impractical orientation for the public by shifting the primary entrance to Warm Springs Street. There will be no vehicular access from Lot 9 to Hwy 26 nor on-street parking along the highway. Approval of the variance will assure that the future home is appropriately sited and oriented in a similar manner to other surrounding homes in the area. The variance is also necessary for clarification to fire and emergency services to identify access with the Warm Springs Street address rather than Hwy 26.

Variance #2 meets criterion D if conditions are met.

- E. The development will be the same as development permitted under this Code and City standards to the greatest extent that is reasonably possible while permitting some economic use of the land.

Variance #1: The variance request for development of a single-family home on Lot 9 will ultimately be the same as development permitted under the current standards due to the layout and the functionality of the streets within the subdivision. The only way to access Lot 9 by vehicle is from Warm Springs Street. The lot has a 2:1 ratio of lot depth to width and to grant this variance the lot could be developed as other lots in the subdivision and consistent with a typical building pad. By allowing the variance on Lot 9 the developer will have a reasonable economic use of the land.

Variance #1 meets criterion E.

Variance #2: Approval of this variance allows for the home to be built in compliance with the SFR zoning district regulations, but to also be built in a similar fashion as surrounding homes in the subdivision whose front doors will face the interior local streets. By allowing Warm Springs Street to be the lots primary entrance and to have its front door face the front yard instead of Hwy 26 will achieve a reasonable economic use of the land.

Variance #2 meets criterion E.

- F. Special circumstances or conditions apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape (legally existing prior to the effective date of this Code), topography, or other circumstances over which the applicant has no control.

As described in (A)-(E) above, special circumstances and conditions apply to the subject property that necessitate approval of the two identified variances.

Variance #1: Lot 9 has multiple special circumstances that are not typical or are unique to individual residential lots. Lot 9 has two street frontages, Warm Springs Street and Hwy 26, which multiple development code standards apply to it that don't typically apply to all lots. Lot 9

is directly adjacent to Hwy 26 which triggered additional requirements related to building orientation and additional setbacks, which led to the application of this variance.

Lot 9 cannot gain access to Hwy 26 due to an elevation change of roughly 20 feet and the inability to gain access from ODOT by means of a grant of access. Lot 9 is also encumbered by an eight (8) foot public utility easement (PUE) along the south property line. In addition, there will be no on-street parking along the highway. Approval of this variance would grant relief to these unique site attributes.

Variance #1 meets criterion F.

Variance #2: This variance request encounters the same hardships as Variance #1, including double street frontage, steep slopes, no vehicular access to Hwy 26, no on-street parking along the highway, and a PUE running parallel to the transit street property line. Approval of this variance would grant relief to these unique site attributes.

Variance #2 meets criterion F.

DECISION

For the reasons described above, the Planning Division has **approved** the requested variances **as modified by the conditions listed below** to construct a dwelling that has its primary entrance facing Warm Springs Street instead of Hwy 26 and the reduction of the required transit street setback from 20 feet to 10 feet along the property line abutting Hwy 26.

CONDITIONS OF APPROVAL

- A. Due to the ambient noise generated by average daily traffic along Hwy 26 of approximately 20,000 vehicles a day, the Planning Division is requiring concrete sound abatement fencing or wall structures six feet high along all property lines abutting Hwy 26.**

For all future variance requests of a similar nature in this subdivision, the applicant shall maintain a uniform appearance using the same material and the same style of fencing material as used to fulfill this condition. Of the various styles of fencing available from the proposed Verti-Crete product, City staff finds that the Durango pattern by Verti-Crete adheres to the Sandy Style Design Standards the best. The applicant shall install the Durango pattern or submit an alternative pattern for staff review and approval.

- B. Prior to any onsite grading or earthwork, the applicant shall complete the following:**

1. Submit and obtain a grading and erosion control permit and request and obtain an approved inspection of installed devices prior to any onsite grading. The grading and erosion control plan shall include a re-vegetation plan for all areas disturbed during construction. All erosion control and grading shall comply with Chapter 15.44 of the Municipal Code.

- C. Prior to issuance of building permits, the applicant shall:**

1. Submit all pertinent permit applications (building, mechanical, plumbing (electrical goes through Clackamas County)) along with all required submittal documents for review and approval.

Contact building@cityofsandy.com for submittal requirements or questions. Also, submit height details for the accessory structure in compliance with the definition of height in Chapter 17.10.

D. General Conditions of Approval:

1. Variance approval shall be void after two (2) years per Section 17.66.190 from the date of the Final Order unless the applicant has submitted plans for building permit review.
2. Comply with all other conditions or regulations imposed by the Clackamas Fire District, county, state, and federal agencies. Compliance is made a part of this approval and any violations of these conditions and/or regulations may result in the review of this approval and/or revocation of approval.



Patrick Depa
Senior Planner

RIGHT OF APPEAL

A decision on a land use proposal or permit may be appealed to the Planning Commission by an affected party by filing an appeal with the Director within twelve (12) calendar days of notice of the decision. Any person interested in filing an appeal should contact the city to obtain the form, “*Notice of Appeal*”, and Chapter 17.28 of the Sandy Development Code regulating appeals. All applications for an appeal shall indicate the nature of the interpretation that is being appealed and the matter at issue will be a determination of the appropriateness of the interpretation of the requirements of the Code.

An application for an appeal shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision;
2. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings;
3. The specific grounds relied upon for review;
4. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Section 17.28.50;
5. Payment of required filing fees. Payment of required filing fees is jurisdictional and must accompany an appeal at the time it is filed;
6. The name and mailing address of the person or entity appealing the decision; and
7. List and two sets of mailing labels for property owners within 300 feet of the subject property (for appeal of a Type I decision), 500 feet of the subject property for appeal of a Type II, III, or IV decision, or 1,000 feet for appeal of an annexation request. The property owner list and labels shall be obtained from a Title Company no more than seven days prior to submitting the appeal.