

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

DATE:	November 22, 2023
FILE NO.:	23-044 VAR
PROJECT NAME:	Type II Variance – Lot 11 Future Home Site
NATURE OF APPLICATION:	Variances - #1 - Gate in the Rear-Yard Fence #2 - Building Orientation Standards
APPLICANT/OWNER:	Holt Holding’s OR LLC
MAP/TAX LOT:	25E19AB01200
ADDRESS:	41460 Metolius Avenue
ZONING:	Single Family Residential (SFR)
STAFF CONTACT:	Patrick Depa, Senior Planner

BACKGROUND

This application involves two variances for the future home on Lot 11 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 proposes to remove the requirement to install a gate in the rear-yard fence. Lot 11 is a through lot that backs up to Hwy 26. The proposed placement of a future home is being proposed to face towards Metolius Avenue instead of Hwy 26 where vehicle access is denied, and rear yard pedestrian access is less desirable.

Variance #2 involves the building orientation standards for properties adjacent to transit streets. The applicant is proposing that the future home front onto Metolius Avenue instead of Hwy 26 as required. The City has already assigned Lot 11 a Metolius Avenue address as direct access from Hwy 26 is prohibited.

The above-referenced proposal was reviewed as two Type II Administrative Variances. 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 explain the proposal.

EXHIBITS

Applicants Submittal:

- 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, 41460 Metolius Avenue, is in the Hood View Heights subdivision (aka Cedar Creek Heights) approved on June 15, 2021, (File No. 21-012 SUB/FSH/TREE) (Exhibit D).
6. The applicant meets all the other development standards of the SFR District. The lot size comprises a total area of 10,343 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 be oriented towards interior streets due to the significant downslope of 40-50 percent down to Hwy 26.

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 11 of the approved and recorded Hood View Heights Subdivision, as outlined below.

Chapter 17.74 – Accessory Development -Additional Provisions and Procedures

Variance #1: Section 17.74.40(A)(7) Fences on Through Lots. Gates are required in rear-yard fences on through-lots since it remains the property owners' responsibility to maintain the area from the curb or edge of pavement to a proposed fence.

Response: Lot 11 is a through lot and requires a rear yard gate in the fence. Lot 11 has been assigned to take access from Metolius Avenue due to site characteristics, mainly topography, and because direct access to Hwy 26 is not allowed. The area between Lot 11 and Hwy 26, the designated transit street, has a significant downslope (40-50%) down to Hwy 26 creating unsafe pedestrian access to Lot 11. The existing topography in this location consists of a twenty (20) foot elevation change from where the homes in the subdivision will be built, including Lot 11, to the edge of pavement on Hwy 26.

Section 17.74.40(A)(7) states that the purpose of a gate in the rear yard fence of a through lot is for the maintenance of the area between the edge of pavement and the proposed fence. The homeowner's association (HOA) will provide the property maintenance with the subdivision (including the area between the fence and the edge of pavement along Hwy 26). If the HOA ceases to exist the maintenance responsibility will be the burden of the individual property owners, and if maintenance is not achieved then City code enforcement will contact individual property owners. Finally, two pedestrian paths and access points will provide access from the interior of the subdivision to the sidewalk along Hwy 26. For these reasons, the need for individual gates in rear yard fences is negated.

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 11 has been assigned to take access from Metolius Avenue due to site characteristics, mainly topography and no legal access to Hwy 26. The area between Lot 11 and Hwy 26, the designated transit street, has a significant downslope (40-50%) down to Hwy 26 creating unsafe pedestrian access to Lot 11. Oregon Department of Transportation (ODOT) and the City of Sandy classify Hwy 26 as an arterial road with limited access and no on street parking at this location. The City has conceded that access from the transit street is not practical nor allowed and has given Lot 11 the address, 41460 Metolius Avenue. Safe pedestrian access is designed by having the primary entrance connecting directly between the street and building interior, but from Metolius Avenue 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 be followed.

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: Lot 11 is directly adjacent to the Hwy 26 right-of-way. Access to the subdivision is not viable via Hwy 26 due to steep slopes and a 10-foot to 20-foot grade difference along the south property line. Because of the topography of the subdivision, the final approved layout and design resulted in Lot 11 gaining access from Metolius Avenue and abutting up to Hwy 26.

The Hood View Heights subdivision was approved, and the City and Oregon Department of Transportation (ODOT) came to an agreement that no access from Hwy 26 would be allowed. However, two pedestrian paths and access points were platted to provide access from the interior of the subdivision to the sidewalk along Hwy 26. Because of the intent of Section 17.74.40(A)(7) is not practical for the lots adjacent to Hwy 26, the variance is warranted.

Variance #1 meets criterion A.

Variance #2: The situation compelling this variance, building orientation, are not of the applicant's making. 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 11 abuts directly up to Hwy 26 which is the transit street the variance is taken from. The grade difference between Lot 11 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 as the primary access from Lot 11 is from Metolius Avenue 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 to 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 11 was created through the subdivision plat process. The subject property that was platted was constrained by topography, two transit streets, and the 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.

Variance #1 meets criterion B.

Variance #2: Lot 11 was created through the subdivision plat process. The subject property that was platted was constrained by topography, the two transit streets, and the 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 from which has greater access for pedestrian safety. Granting the variance for the proposed building orientation will not create a situation for a prohibited use to be in the district. The variance will allow for a more traditional interior streetscape that represents the code more than if the variance is not granted.

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 eliminate a rear yard gate for maintenance to the Hwy 26 right-of-way will intersect or interfere with the implementation of the Comprehensive Plan. Pedestrian access to the area behind the lots adjacent to Hwy 26 will be installed which 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 Metolius Avenue rather than Hwy 26.

Variance #1 meets criterion C.

Variance #2: No part of this variance request to the building orientation towards Metolius Avenue will be in 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 variance to eliminate the requirement to install a rear yard gate to access to the area between the required sidewalk and the edge of payment for required maintenance will not be materially detrimental to the public welfare or materially injurious to other property.

This variance, accompanied with Variance #2, directs the primary entrance of the home to Metolius Avenue 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.

Variance #1 meets criterion D.

Variance #2: The variance to change the building orientation from Hwy 26 to Metolius Avenue will mitigate safety concerns to the public by shifting the primary entrance to Metolius Avenue. 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 necessary for clarification to fire and emergency services to identify with the Metolius Avenue address rather than Hwy 26.

By allowing the orientation of the house on Lot 11 towards a non-transit street the rear façade is exposed to other properties in the vicinity and does not adhere to the requirements of Chapter 17.90 Design Standards.

Section 17.90.150. Residential design standards.

A. *Intent:* These design standards are intended to:

- Enhance the appearance of Sandy through the creation of attractively designed houses and streetscapes;
- Ensure there is a physical and visual connection between the living area and entrance of the dwelling and the street;
- Improve public safety for residents and visitors and provide opportunities for community interaction;
- Provide guidelines for good design at reasonable costs and with multiple options to achieve the purposes of this chapter.

- B. *Applicability:* These standards apply to the street facing facades of all new single-family dwellings and each half of duplexes with or without a garage including additions or alterations.

Since there are not specific requirements to enhance the rear façade in these situations, and apply the various elements put forth in Section 17.90.150(F), screening the rear façade to an acceptable extent is the best remedy.

The Planning Commission has been very consistent when faced with variance requests addressing building orientation towards the inside of a subdivision rather than a transit street. In three recent subdivision approvals, Jewelberry Ridge, Marshall Ridge, and Timberline Estates, the Commission conditioned their approvals with having the applicant maintain a uniform appearance for lots with rear yards facing outside the subdivision. The final order for these three subdivisions mandated that these lots use the same fencing material and the same style of material to fulfill the intent of the development code.

In addition, 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 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 #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 is a byproduct of Variance #2 requesting that the building orientation is towards an interior public right-of-way rather than a transit street. The variance will allow for a more traditional interior streetscape that represents the code more than if the variance is not granted while ensuring the same level of economic use.

Granting this variance will benefit the homeowner by reducing any safety concerns along the steep slopes of the Hwy 26 frontage and maintaining a uniform appearance with an installation of a six-foot concrete fence. Because the intent of Section 17.74.40(A)(7) is not practical for the lots adjacent to Hwy 26, the variance is warranted.

Variance #1 meets criterion E.

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

Variance #2: Approval of this variance allows for the home to be built in compliance with the SFR zoning 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 Metolius Avenue to be the lots primary entrance and to have its front door face the front yard instead of Hwy 26 this will help 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.

Response: 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 11 has multiple special circumstances that are not generally experienced or are unique to individual residential lots. Lot 11 has two street frontages, Metolius Avenue and Hwy 26, which multiple development code standards apply to it that don't typically apply to all lots. Lot 11 is directly adjacent to Hwy 26 that triggered additional requirements including this variance. A variance to install a gate in the rear yard fence for access for the maintenance of the area in the Hwy 26 right-of-way is unnecessary and impractical due to the adjacent steep slope topography.

Furthermore, Lot 11 cannot gain access to Hwy 26 due to an elevation change of roughly 15-20 feet which is compounded by its 40-50 percent slope. Lot 11 is also encumbered by an eight (8) foot public utility easement (PUE) along the south property line where sidewalk, overhead lines, and pedestrian lights are occupying that compromises the buildable footprint and lay out of the future home site. 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, double street frontage, steep slopes, and a PUE across 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 Metolius Avenue instead of Hwy 26 and the elimination of a gate in the rear yard fence abutting Hwy 26.

CONDITIONS OF APPROVAL

- A. Since there are not typical opportunities to enhance the rear façade with the various elements put forth in Section 17.90.150(F), screening the rear façade to an acceptable extent seems to be the best remedy. The applicant shall install a 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 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.

- 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.

- 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.