

FINDINGS OF FACT and FINAL ORDER TYPE II VARIANCE PROPOSAL

DATE:	May 2, 2024
FILE NO.:	24-013 VAR
PROJECT NAME:	Type II Variance – Lot 24 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:	25E19AB02500
ADDRESS:	41590 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 24 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 and Vista Loop Drive are the transit streets from which variances are applicable.

Variance #1 involves the building orientation standards for properties adjacent to transit streets. The applicant is proposing that the future home faces Metolius Avenue instead of Hwy 26 or Vista Loop Drive, as required. The City has already assigned Lot 24 a Metolius Avenue address as direct access from Hwy 26 or Vista Loop Drive is prohibited.

Variance #2 proposes to remove the requirement to install a gate in the rear-yard fence. Lot 24 is a through lot that abuts Hwy 26, Vista Loop Drive, and Metolius Avenue. The proposed placement of a future home is being proposed to face towards Metolius Avenue instead of Hwy 26 where vehicle access is prohibited and Vista Loop Drive where exterior rear yard pedestrian access is unnecessary and less desirable.

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. 21-023 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 February 29, 2024, and March 11, 2024. The application was deemed complete on March 12, 2024.
2. Agency comments were received from the Building Official, Clackamas Fire District No. 1, and Public Works all in support of the variances.
3. The site has a comprehensive plan map designation of Low Density Residential and a zoning map designation of Single Family Residential (SFR).
4. Notification of the proposal was mailed to property owners within 300 feet of the subject property and affected agencies on March 19, 2024, requesting comments. No public comments were received by the deadline of April 4, 2024.
5. The subject site is in the Hood View Heights subdivision (aka Cedar Creek Heights) approved on June 15, 2021 (File No. 21-023 SUB/FSH/TREE) (Exhibit D).
6. The applicant meets all the other development standards of the SFR District.
7. The lot size comprises a total area of 12,133 sq. ft.
8. Hood View Heights subdivision is immediately adjacent to Hwy 26 but has no direct access from the highway to the subdivision.
9. The subdivision was designed, but not approved, to have all dwellings be oriented towards interior streets due to the significant 40-50 percent downslope 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 24 of the approved and recorded Hood View Heights Subdivision, as outlined below.

Chapter 17.82 - Special Setbacks on Transit Streets

Variance #1: The applicant is requesting a variance to the building orientation standards of Section 17.82.20(A)-(D). These standards are cited below.

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 24 has been assigned to take access from Metolius Avenue due to site characteristics, mainly topography, with no legal access to Hwy 26.

The area adjacent to Lot 24 and Hwy 26, one of the designated transit streets, has a significant downslope (40-50%) to Hwy 26, creating unsafe pedestrian access. The 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.

By facing the house towards Vista Loop Drive, the transit street, Lot 24's frontage is interrupted by a twenty-two (22) foot wide access easement that runs through Lot 24 from Metolius Avenue to Lot 25. Lot 24 will have a limited front yard and will have to be setback far enough from Vista Loop that the intent of the special setback on transit streets will not be realized. The special setback's intent is to create traditional neighborhood development (TND) design with the house facing a primary street, parking on the street, reduced front setback, and direct access to the front door with a covered porch.

The applicant has committed to building a concrete wall along Hwy 26 and a cedar fence with concrete posts along Vista Loop Drive for sound abatement due to the proximity to Hwy 26. The cedar fence with concrete posts along Vista Loop Drive will have a 20-foot-wide break that is a pedestrian access easement to the neighborhood located at the end of Metolius Avenue where Lot 24's driveway meets the right-of-way. The cedar fence with concrete posts will reduce down to three (3) feet along the driveway where the street and driveway intersect for sight visibility.

The City has conceded that access from both transit streets is not practical nor allowed and has given Lot 24 the address, 41590 Metolius Avenue. Safe pedestrian access is designed by having the primary entrance connecting directly between the street and building interior and Metolius Avenue is the most practical alternative rather than from Vista Loop Drive or Hwy 26.

Chapter 17.74 – Accessory Development -Additional Provisions and Procedures

Variance #2: 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 24 is a through lot and requires a rear yard gate in the fence. Lot 24 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 24 and Hwy 26, the designated transit street, has a significant downslope (40-50%) to Hwy 26 creating unsafe pedestrian access to Lot 24. The existing topography in this location consists of a five (5) foot elevation change from where the homes in the subdivision will be built, including Lot 24, 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 permanent pedestrian paths were included in the plat and will provide access from the interior of the subdivision from Metolius Avenue to the sidewalk along Hwy 26. For these reasons, the need for individual gates in rear yard fences is negated.

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: The situation compelling this variance, building orientation, is not of the applicant's making. The subdivision's frontage on both Vista Loop Drive (collector) and Hwy 26 (arterial) is constrained by the subdivision layout, topography, vehicle access, 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.

Lot 24 is only one of two lots in the subdivision where the lot abuts two transit streets. This variance request to Lot 24 includes a variance from both Hwy 26 and Vista Loop Drive.

The lot abuts directly up to Hwy 26; however, the 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. Therefore, having the entrance to a home facing an arterial street where you can't gain access is not practical.

The grade difference between Lot 24 and Hwy 26 is roughly 5-7 feet. Although there is a sidewalk along the Hwy 26 frontage, the primary access point is from Metolius Avenue which is a local street. The variance is necessary to maintain consistency in the design, size, and layout in this development with the homes facing each other along the interior streets.

Variance #1 meets criterion A.

Variance #2: Lot 24 is abuts the Hwy 26 right-of-way. Direct access to the subdivision is not viable via Hwy 26 due to the highway being a major arterial and because of ODOT restricting access. Because of the topography of the subdivision, the final approved layout and design resulted in Lot 24 gaining access from Metolius Avenue.

By facing the house towards Vista Loop Drive, the transit street, Lot 24's frontage is interrupted by a twenty-two (22) foot wide access easement that runs through Lot 24's front yard from Metolius Avenue to Lot 25. Lot 24 will have limited front yard and will have to be setback far enough from Vista Loop that the intent of the special setback on transit streets will not be realized.

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 abutting Hwy 26, the variance is warranted.

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 24 was created through the subdivision plat process. The subject property that was platted is 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 pedestrians. 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 #1 meets criterion B.

Variance #2: Lot 24 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. Waving the requirement to install a gate 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. Lot 24 will still have access to the sidewalks and landscape areas to maintain two pedestrian paths/access points into the subdivision to provide access from the interior of the subdivision to the sidewalks along Hwy 26 and Vista Loop Drive.

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 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 #1 meets criterion C.

Variance #2: 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 and Vista Loop Drive 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 #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 change the building orientation from Hwy 26 or Vista Loop Drive 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 or Vista Loop Drive. The variance will make Lot 24 consistent with the other homes with addresses listed as Metolius Avenue.

By allowing the orientation of the house on Lot 24 towards a non-transit street, the rear façade will not be fully exposed due to a larger than normal setbacks to other properties and because the house on Lot 25 will partially block the view of the home on Lot 24.

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.

Due to the ambient noise generated by average daily traffic along Vista Loop Drive, the Planning Division is requiring a combination cedar fencing/concrete post sound abatement fencing six feet high along all property lines abutting Vista Loop Drive and Hwy 26.

Verti-Crete is a company that specializes in concrete sound abatement fencing and wall structures and is being proposed by the applicant. 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 and shall be installed along Vista Loop Drive.

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.

Variance #1 meets criterion D if conditions are met.

Variance #2: 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 #1, directs the primary entrance of the home to Metolius Avenue rather than Hwy 26 or Vista Loop Drive. Granting this variance will benefit the homeowner by reducing any safety concerns along the steep slopes of the Hwy 26 frontage and crossing an access drive to arrive at a front door.

Variance #2 meets criterion D.

- 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: 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 or Vista Loop Drive will help achieve a reasonable economic use of the land.

Variance #1 meets criterion E.

Variance #2: 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 or crossing a 22-foot-wide access drive and maintaining a uniform appearance with an installation of a six-foot high concrete wall and concrete/cedar fencing. The landscaped area along Vista Loop Drive side will still have access for maintenance from the 22 foot wide pedestrian pathway where Metolius Avenue and Lot 24 meet.

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: 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.

The site geometry of the parent property's frontage on both Vista Loop Drive (collector) and Hwy 26 (arterial) constrained the subdivision design. Despite meeting the applicable dimensional requirements and with approval of the building orientation variance included in this application, this lot has a rear yard adjacent to Hwy 26 and a side yard adjacent to Vista Loop Drive. This makes it extremely challenging to conform to the building orientation standards without compromising the functional use and design of the future home. The variance is necessary to allow for a more efficient and practical design that maximizes the use of the available land while ensuring compliance with other applicable regulations.

Variance #1 meets criterion F.

Variance #2: Lot 24 has multiple special circumstances that are not generally experienced or are unique to individual residential lots. Lot 24 has three street frontages, Metolius Avenue, Vista Loop Drive and Hwy 26, which multiple development code standards apply

that don't typically apply to all lots. Lot 24 is directly adjacent to Hwy 26 that triggered additional requirements including the applicant's desire to apply for 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 slopes and pedestrian access easements designed for connection to areas requiring maintenance. 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 for Lot 24 of Hood View Heights** to construct a dwelling that has its primary entrance facing Metolius Avenue instead of Vista Loop Drive and the elimination of a gate in the rear yard fence abutting Vista Loop Drive.

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 fence or wall structure six feet high along all property lines abutting Hwy 26 and Vista Loop Drive.**

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.

For the yards that abuts Vista Loop Drive, a six-foot-high cedar fence shall be installed between six-foot-high concrete posts similar to those used in the sound barrier wall installed along 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 and post materials used to fulfill this condition.

- 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 (23) 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.