

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

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<b>DATE:</b>	May 9, 2024
<b>FILE NO.:</b>	24-015 VAR
<b>PROJECT NAME:</b>	Type II Variance – Lot 26 Future Home Site
<b>NATURE OF APPLICATION:</b>	Variances - #1 - Gate in the Rear-Yard Fence #2 - Building Orientation Standards
<b>APPLICANT/OWNER:</b>	Holt Holding’s OR LLC
<b>MAP/TAX LOT:</b>	25E19AB02700
<b>ADDRESS:</b>	41555 Metolius Avenue
<b>ZONING:</b>	Single Family Residential (SFR)
<b>STAFF CONTACT:</b>	Patrick Depa, Senior Planner

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**BACKGROUND**

This application involves two variances for the future home on Lot 26 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, Vista Loop Drive is the transit street from which variances are applicable.

Variance #1 involves the building orientation standards for properties adjacent to transit streets. The applicant is proposing that future homes face Metolius Avenue instead of Vista Loop Drive, as required. The City has already assigned Lot 26 a Metolius Avenue address.

Variance #2 proposes to remove the requirement to install a gate in the rear-yard fence. Lot 26 is a through lot that abuts Vista Loop Drive and Metolius Avenue. The proposed placement of a future home is being proposed to face towards Metolius Avenue instead Vista Loop Drive where rear yard pedestrian access is 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 13,135 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.

**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 26 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. 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:*** This lot has vehicular access to Metolius Avenue, but not to Vista Loop Drive. The applicant desires to orient the home on Lot 26 to the interior of the subdivision instead of the rear of the home facing Metolius Avenue. Orienting the house to the interior of the subdivision will likely create a more cohesive neighborhood as all the houses will face one another.

Additionally, a new 6-foot fence with concrete posts is planned to be installed along this site's Vista Loop Drive frontage. Thus, the combination of the aforementioned reasons renders the residential dwelling orientation standards ineffective. For these reasons, the future building elevation facing Metolius Avenue will provide the primary entrance for the dwelling.

Lot 26 has been assigned to take access from Metolius Avenue even before any variances were approved. Lot 26 takes access from Metolius Avenue because the City had agreed with the developer that access from the transit street is not practical given that there is no access allowed from Vista Loop Drive since it is a collector street. Approving the variances for lots 9, and 11-25 enables the front of the houses on those lots to face Metolius Avenue. Lots 26 and 27 should have their primary access be from Metolius Avenue rather than Vista Loop Drive where the front yards of both sides of Metolius Avenue face each other rather than the unconventional backyard of another house.

## **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:** The circumstances necessitating the variance for building orientation, are not of the applicant's making. 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 for the SFR District, this lot has a rear yard adjacent to Vista Loop Drive (Exhibit A). This makes it extremely challenging to conform to the building orientation standards without compromising its 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. To minimize these constraints but still keep up with maintenance, two pedestrian paths provide access from the interior of the subdivision to the sidewalk along Vista Loop Drive. For these reasons, the need for individual gates in rear yard fences for most lots is negated.

Furthermore, 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.

## **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, 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.

The ideal pedestrian access, primary and safest access is from Metolius Avenue which is a local street with interior sidewalks. Orienting the house to the interior of the subdivision will likely create a more cohesive neighborhood as all the houses will face one another. 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 #1 meets criterion A.***

**Variance #2:** Lot 26 is adjacent to Metolius Avenue and Vista Loop Drive. Access to the subdivision for Lot 26 is convenient via either Wood River Street less than 60 feet from its west property line and directly adjacent to the 22-foot-wide pedestrian path along its east property line. Because of the topography of the subdivision and because Vista Loop Drive is designated a collector street, the final approved layout and design resulted in Lot 26 gaining access from Metolius Avenue.

The Hood View Heights subdivision was approved with two pedestrian paths and access points platted to provide access from the interior of the subdivision to the sidewalk along Vista Loop Drive and Hwy 26. Because the intent of Section 17.74.40(A)(7) is no longer practical for Lot 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 26 was created through the subdivision plat process. The subject property that was platted was constrained by the layout, design, 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 and is part of the internal street network that makes up the neighborhood. Granting the variance for the proposed building orientation will not create a situation for a prohibited use to be in the SFR zoning 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 26 was created through the subdivision plat process. The subject property that was platted was constrained by the layout, design, and the shape of the property, not a violation of the code. 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 zoning 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 the building orientation towards Metolius Avenue will be in conflict with the implementation of the Comprehensive Plan. Approval of the variance will ensure 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 will intersect or interfere with the implementation of the Comprehensive Plan. Paved pedestrian access to the area behind the lots adjacent to Vista Loop Drive will be installed which will be more in line with the neighborhood design and support pedestrian safety by keeping the primary access to the house facing Metolius Avenue, an internal local street.

*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 Vista Loop Drive to Metolius Avenue will mitigate safety concerns and higher traffic volumes by shifting the primary entrance to Metolius Avenue. Approval of the variance will ensure 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 Vista Loop Drive.

By allowing the orientation of the house on Lot 26 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.

The Planning Commission has been very consistent when faced with variance requests addressing building orientation towards the interior 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 fence six feet high along all property lines abutting Vista Loop Drive.**

**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.**

**In addition to the fence/wall conditions, the applicant shall install at least 10 percent window glazing and three design features on each additional street facing façade (Vista Loop Drive) for the house on Lot 26 as required by Section 17.90.150 (E)(2).**

*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 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.

A variance to the standard for requiring a gate in a rear-yard fence on through-lots will not adversely affect implementation of the Comprehensive Plan nor will it be detrimental to the public welfare or injurious to other property in the vicinity. This lot does not abut properties outside of Hood View Heights, and as discussed herein, a new fence and landscaping are planned to be installed along the site's Vista Loop Drive frontage that will provide visual interest. Approval of the variance will ensure that the future home can be designed and built in a manner that is commensurate with surrounding homes.

*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 with front doors facing the interior local streets. By allowing Metolius Avenue to be the primary entrance and to have its front door face the front yard instead of 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 #1 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. Access to Vista Loop Drive for maintenance is easily accomplished through the aforementioned adjacent pedestrian easement and via Wood River Street, one lot to the west. Because the intent of Section 17.74.40(A)(7) is not necessary for certain lots adjacent to Vista Loop Drive, the variance is warranted.

*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:** With a variance to the building orientation standards, the applicant can construct a dwelling with a primary entrance and front door oriented towards the front yard on Metolius Avenue, rather than a rear yard facing and providing access to Vista Drive, a collector street that is designed to accommodate vehicular traffic traveling at a higher speed than a local street. Approval of the variance to Section 17.82.020(A)-(C) will allow the future home to be built without compromising functional use and design, while still following the SFR zoning regulations. Also, as described in (A) above, these constraints were not of the applicant's making and are circumstances of which the applicant has no control other than to obtain a variance. Approval of this variance would grant relief to these unique site attributes.

***Variance #1 meets criterion F.***

**Variance #2:** The triangular shape and narrow width (sandwiched between collector and arterial roadways) of the parent property on Vista Loop Drive (collector) and Hwy 26 (arterial) constrained the original subdivision design. As a result, the lot has a lot line adjacent to Vista Loop Drive and a lot line adjacent to Metolius Avenue, resulting in a through lot, as defined in the Sandy Development Code. The Timber Grove HOA will provide all maintenance between the rear property line and the edge of the pavement of Vista Loop Drive. Additionally, a pedestrian path and two internal streets will provide access from the interior of the subdivision to the sidewalk along Vista Loop Drive. For these reasons, the need for an individual gate in the rear-yard fence of Lot 26 is negated and a variance to the standard is appropriate. As described in (A) above, these constraints were not of the applicant's making and are circumstances of which the applicant has no control other than to obtain a variance. 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 26 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.



## CONDITIONS OF APPROVAL

- A. The applicant shall install a concrete sound abatement fence with six foot high cement posts along the property line abutting Vista Loop Drive. The new fencing will reduce down to three feet high as it approaches a pedestrian path and the two internal streets for visibility and safety.**

**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 on the concrete post supporting the fencing or submit an alternative pattern for staff review and approval.**

**In addition to the fence/wall conditions, the applicant shall install at least 10 percent window glazing and three design features on each additional street facing façade (Vista Loop Drive) for the house on Lot 26 as required by Section 17.90.150 (E)(2).**

- 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](mailto: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.



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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.