

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

DATE:	May 15, 2024
FILE NO.:	24-017 VAR
PROJECT NAME:	Type II Variance – Lot 35 Future Home Site
NATURE OF APPLICATION:	Variances – #1 - Building Orientation Standards #2 - Gate in the Rear-Yard Fence
APPLICANT/OWNER:	Holt Holding’s OR LLC
MAP/TAX LOT:	25E19AB03600
ADDRESS:	18600 Warm Springs Street
ZONING:	Single Family Residential (SFR)
STAFF CONTACT:	Patrick Depa, Senior Planner

BACKGROUND

This application request included two variances for the future home on Lot 35 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 the future home on Lot 35 face Warm Springs Street instead of Vista Loop Drive, as required. The City has already assigned Lot 35 a Warm Springs Street address.

Variance #2 from the applicant proposes to remove the requirement to install a gate in the rear-yard fence. Lot 35 abuts Vista Loop Drive and Warm Springs Street. In accordance with Chapter 17.10, the subject lot is a corner lot, not a through lot. With the approval of Variance #1 and the orientation of the future home on Lot 35 to Warm Springs Street, the rear yard would abut Lot 36, and the yard fronting Vista Loop Drive would be considered an exterior side yard. Therefore, the requirement in Section 17.74.40 (A)(7) does not apply to Lot 35.

The above-referenced proposal was reviewed as one Type II Administrative Variance as explained in this order. The variance 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 February 29, 2024, and March 4, 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. One public comment was received that requested that the City does not let the construction workers park along the street.
5. The subject site 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 application meets all the other development standards of the SFR zoning district.
7. The lot size comprises a total area of 8,995 sq. ft.
8. The 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 during the land use review, 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 one variance for Lot 35 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 access to Warm Springs Street. The applicant desires to orient the home on Lot 35 to the interior of the subdivision and have the side of the home face Vista Loop Drive. 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, as discussed herein, a new 6-foot fence with concrete posts is planned to be installed along this site's Vista Loop Drive frontage.

Lot 35 has been assigned to take access from Warm Springs Street even before any variances were approved. Lot 35 takes access from Warm Springs Street 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.

17.74 – Accessory Development -Additional Provisions and Procedures

Variance #2: Section 17.74.40(A)(7) Fences on Through Lots. Regardless of the fencing being on the exterior side yard, it remains the property owners' responsibility to maintain the area from the curb or edge of pavement to a proposed fence.

Response: Lot 35 abuts Vista Loop Drive and Warm Springs Street. In accordance with Chapter 17.10, the subject lot is a corner lot, not a through lot. With the approval of Variance #1 and the orientation of the future home on Lot 35 to Warm Springs Street, the rear yard

would abut Lot 36, and the yard fronting Vista Loop Drive would be considered an exterior side yard. Therefore, the requirement in Section 17.74.40 (A)(7) does not apply to Lot 35.

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 Warm Springs Street 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.

The variance 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 35 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 Warm Springs Street which 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.

The variance 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 Warm Springs Street 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.

The variance 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 Warm Springs Street 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 Warm Springs Street address rather than Vista Loop Drive.

By allowing the orientation of the house on Lot 35 towards a non-transit street, the exterior side yard 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 35 as required by Section 17.90.150 (E)(2).

The variance 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: 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 Warm Springs Street to be the primary entrance and to have its front door face the local street designation instead of Vista Loop Drive will help achieve a reasonable economic use of the land.

The variance 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.

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 Warm Springs Street, rather than facing Vista Loop 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.

The variance meets criterion F.

DECISION

For the reasons described above, the Planning Division has **approved** the requested variance **as modified by the conditions listed below for Lot 35 of Hood View Heights** to construct a dwelling that has its primary entrance facing Warm Springs Street instead of Vista Loop Drive.

CONDITIONS OF APPROVAL

- A. The applicant shall install a six-foot-high wood fence with six-foot-high cement posts along the property line abutting Vista Loop Drive. The six-foot-high fence shall be installed between six-foot-high concrete posts similar in color 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. The new fencing will reduce down to three feet high as it approaches Warm Springs Street 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 35 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 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.