

ORDINANCE NO. 2644

**AN ORDINANCE OF THE CITY OF LAKE OSWEGO AMENDING THE LAKE OSWEGO COMMUNITY DEVELOPMENT CODE SECTIONS LOC 50.01.006 NONCONFORMING STRUCTURES AND USES; LOC 50.04.003 EXCEPTIONS, PROJECTIONS, AND ENCROACHMENTS; LOC 50.05.007 LAKE GOVE VILLAGE CENTER OVERLAY DISTRICT; LOC 50.07 REVIEW AND APPROVAL PROCEDURES; LOC 50.08 ADJUSTMENTS, ALTERNATIVES AND VARIANCES; AND LOC 50.10.003 DEFINITIONS, IN ORDER TO UPDATE, STREAMLINE AND SIMPLIFY; AND ADOPTING FINDINGS (LU 14-0018).**

WHEREAS, the City Council commissioned a Code Audit in 2010 to establish a framework to create a more user-friendly and modernized Development Code and amendments to the Nonconforming Uses and Adjustments, Alternatives and Variance sections were recommended to be addressed by the Audit; and

WHEREAS, the Nonconforming Uses section does not address all the common types of nonconformities, uses a number of vague and inconsistent terms, and requires a high degree of staff interpretation because many nonconforming issues or topics are not covered; and

WHEREAS, the Adjustments, Alternatives and Variances section can be streamlined to increase understanding and reduce the complexity of administration by eliminating unused procedures, moving ministerial procedures to the Exceptions section, and consolidating the remaining procedures into three variance categories: Minor, Design and Major; and

WHEREAS, the Residential Infill Design (RID) review and tentative decision procedure, which is different from all other Minor Development applications, is confusing to the public and has not achieved the purpose of its difference; and

WHEREAS, notice of the public hearing for consideration of this Ordinance was duly given in the manner required by law; and

WHEREAS, the Planning Commission has recommended that LU 14-0018 be approved by the City Council; and

WHEREAS, a public hearing on LU 14-0018 was held before the City Council of the City of Lake Oswego on March 3, 2015.

The City of Lake Oswego ordains as follows:

**Section 1.** The City Council adopts the Findings and Conclusions (LU 14-0018) attached as Exhibit 1.

**Section 2.** The Lake Oswego Code is hereby amended by adding the new text shown in **bold, double-underlined** type and deleting text shown in ~~strikethrough~~ type in attached Exhibit 2.

[Type here]

**Section 3. Severability.** The provisions of this ordinance are severable. If any portion of this ordinance is for any reason held to be invalid, it shall not affect the validity of the remaining portions of this ordinance.

**Section 4. Effective Date.** As provided in section 35.D. of Chapter VIII of the Lake Oswego Charter, this ordinance shall take effect on the 30<sup>th</sup> day following enactment.

ENACTED at the meeting of the City Council of the City of Lake Oswego held on the 7<sup>th</sup> day of April, 2015.

AYES: Council President O'Neill, Gustafson, Manz, Buck, Gudman, Bowerman

NOES:

ABSENT:

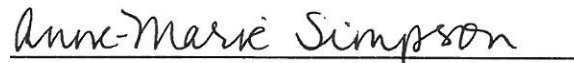
ABSTAIN:

EXCUSED:

  
\_\_\_\_\_  
Skip O'Neill, Council President

Dated: 4-8-15

ATTEST:

  
\_\_\_\_\_  
Anne-Marie Simpson, City Recorder

APPROVED AS TO FORM:


  
\_\_\_\_\_  
David Powell  
City Attorney

EXHIBIT 1

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BEFORE THE CITY COUNCIL  
OF THE CITY OF LAKE OSWEGO

A REQUEST FOR COMMUNITY DEVELOPMENT  
CODE AMENDMENTS TO CODE STANDARDS  
THAT ALLOW ADJUSTMENTS OR VARIANCES  
AND REGULATE NONCONFORMING USES AND  
STRUCTURES

LU 14-0018  
CITY OF LAKE OSWEGO  
FINDINGS, CONCLUSIONS & ORDER

**NATURE OF PROCEEDINGS**

This matter came before the Lake Oswego City Council on the recommendation of the Planning Commission for legislative amendments to LOC 50.01.006 Nonconforming Structures and Uses and LOC 50.08 Adjustments, Alternative and Variances, in order to update, streamline and simplify these code sections, making them easier to understand and administer. Related amendments are also proposed for the following code sections: LOC 50.04.003 Exceptions, Projections and Encroachments; LOC 50.05.007 Lake Grove Village Center Overlay District; LOC 50.07 Review and Approval Procedures; and LOC 50.10.003 Definitions.

**HEARINGS**

The Planning Commission held a public hearing and considered this application at its meetings of July 28 and August 25, 2014. The City Council held a study session on February 17, 2015 and a public hearing to consider the Planning Commission’s recommendation on March 3, 2015.

The following exhibits were submitted at the March 3 public hearing:

- Exhibit G-5 Testimony from Carol Ockert
- Exhibit G-6 Email from Carolyn Jones, dated March 3, 2015

**CRITERIA AND STANDARDS**

A. City of Lake Oswego Comprehensive Plan:

Land Use Planning Goal

**Development (Community Development Code)**

EXHIBIT 1

- 1 Policy A-1.b
- 2 Policy A-1.g
- 3 Policy A-2.a
- 4 Policy A-2.c

**Development Review**

- 5 Policy B-8
- 6 Policy B-9

**Land Use Administration**

- 7 Policy D-1

Community Culture Goal:  
**Civic Engagement**

- 8 Policy 1
- 9 Policy 2
- 10 Policy 3
- 11 Policy 4
- 12 Policy 5

Inspiring Places and Spaces Goal:  
 Goal 1: Policy 9

B. City of Lake Oswego Community Development Code:

- 13 LOC 50.07.003.16.a Legislative Decisions Defined
- 14 LOC 50.07.003.16.b Criteria for a Legislative Decision
- 15 LOC 50.07.003.16.c Required Notice to DLCD
- 16 LOC 50.07.003.16.d Planning Commission Recommendation Required
- 17 LOC 50.07.003.16.e City Council Review and Decision

C. Statewide Planning Goal or Administrative Rule Adopted Pursuant to ORS Chapter 197:

- 18 Goal 1 Citizen Involvement
- 19 Goal 2 Land Use Planning

**FINDINGS AND REASONS**

20 The City Council incorporates the staff report dated July 16, 2014, with all exhibits, as  
 21 support for its decision, supplemented by the following further findings and conclusions. In the  
 22 event of any inconsistency between the supplemental findings and the incorporated materials,  
 23 the supplemental findings control.

24 Following are the supplemental findings and conclusions of this Council:

Sensitive Lands

25 The City Council received testimony that the proposed references to nonconforming  
 26

## EXHIBIT 1

1 structures and landscaping in LOC 50.01.006.4.a.iii, relating to Sensitive Lands, should be  
2 excluded from Ordinance 2644 because this amendment would increase the regulatory burden  
3 for current Sensitive Lands owners and could interfere with their ability to finance their  
4 properties.

5 The City Council concurs with the Planning Commission's finding that the current  
6 Sensitive Lands chapter includes provisions for structures and landscaping that are  
7 nonconforming to Sensitive Lands regulations, and that the proposed code amendments simply  
8 add cross-references to these existing regulations. The cross-references do not expand or  
9 modify any existing Sensitive Lands regulations or increase regulatory burdens on property  
10 owners.

### 11 Lake Grove Village Center Overlay (LGVCO) Minor and Major Adjustments

12 The Council received testimony that the existing LGVCO minor adjustment criterion that  
13 requires the applicant to demonstrate that the adjustment is the "minimum necessary to  
14 alleviate the inability to comply with the applicable standards" is reasonable and should be  
15 carried over in the proposed Minor Variance criteria (LGVCO Minor Adjustments are proposed  
16 to be reclassified as Minor Variances). The concern was that removing this criterion would  
17 make it too easy for an applicant to obtain a Minor Variance in the LGVCO district and will not  
18 result in better design.

19 Five LGVCO standards are eligible for a Minor Variances, which are limited to 20 percent  
20 of the standard, or four feet, whichever is less. The Council finds that it is not necessary to  
21 require an applicant to also demonstrate that the requested variance is the minimum  
22 necessary, given the limited number of eligible LGVCO standards, the limited scope of the  
23 variance opportunity, and the requirement that the variance will not be materially injurious to  
24 properties within 300 feet of the site or injurious to the streetscape environment.

### 25 General Design Variance Criteria

26 The Council received testimony concerning the proposed general Design Variance

EXHIBIT 1

1 criterion in LOC 50.08.003.3.c.ii, which requires that “[a]ny significant impacts to properties  
2 within 300 feet of the applicant’s property resulting from the variance are mitigated to the  
3 extent practical through building or site design features on the site.” Concern was expressed  
4 that, if there are significant impacts to nearby properties, either the application should be  
5 reviewed as a Major Variance, which requires demonstration of hardships that make  
6 compliance impractical, or the impacts should be fully mitigated by the applicant. It was  
7 suggested that this criterion be replaced with the Minor Variance criterion in LOC  
8 50.08.002.3.a.ii, which requires that “[t]he granting of the variance will not be materially  
9 injurious to properties or improvements within 300 feet of the property.”

10 Staff clarified that the proposed criterion in LOC 50.08.003.3.c.ii would apply to Design  
11 Variances only in the R-DD (Old Town) and Foothills Mixed Use (FMU) zones and not to all  
12 Design Variances. The Council finds that the criterion should remain as proposed because LOC  
13 50.08.003.3.c.i, which also only applies to Design Variances in the R-DD and FMU zones,  
14 requires the applicant to show that the variance will not create incompatible relationships with  
15 the scale or character of the neighborhood and street frontage, or the privacy of properties  
16 within 300 feet of the site. The requirement that any significant impacts to properties or  
17 improvements within 300 feet of the property are mitigated to the extent practical would  
18 address any potential impacts beyond the scale, character, street frontage or privacy. The  
19 Council further finds that the only standards in the R-DD zone that can be reduced with a  
20 Design Variance are setbacks, which are limited to a reduction of between two and five feet.  
21 Therefore, it is unlikely that any significant impacts outside of scale, character, street frontage  
22 or privacy would occur. Additionally, the existing R-DD Administrative Modification standards  
23 do not address impacts beyond scale, character, street frontage or privacy. Therefore LOC  
24 50.08.003.3.c.i adds an additional layer of protection. To date no properties have an FMU zone  
25 designation. To rezone a property to FMU, an owner must first execute a development  
26 agreement with the City or the Lake Oswego Redevelopment Agency consistent with the

EXHIBIT 1

1 Foothills Special District Plan, and also must demonstrate that the proposed development will  
2 comply with the conceptual lot and street pattern in the Plan. LOC 50.07.003.15.d.ii(2). Further,  
3 the FMU zone standards have not been refined (LOC 50.11.007 Appendix G), and at this time  
4 there is no plan or budget allocation to pursue further work on implementing the zone. As a  
5 result, the FMU Design Variance is essentially a placeholder for the time being.

6 Classification and Purpose of Design Variances

7 Staff noted that the proposed language for Design Variances under Classification of  
8 Variances (LOC 50.08.001.1.a.ii) and the purpose statement for Design Variances in LOC  
9 50.08.003.1 contained an error that should be corrected. Both of the subsections included  
10 language that Design Variances allowed adjustments to certain standards of the Code where  
11 the resulting design would be “equal to or superior” than development in the neighborhood or  
12 to the purpose or objectives of the applicable zone or design district standards. Staff explained  
13 that the criteria for Design Variances actually require a showing that the resulting design would  
14 be better, not equal to, surrounding development or would better achieve the purpose or  
15 objectives of the zone or design district. Staff recommended that the language in both  
16 subsections be revised to remove references to “equal to” and to read that the development  
17 must be superior to development in the neighborhood or better achieve the purpose or  
18 objectives of the zone or design district. The Council concurs with the suggested revisions to the  
19 proposed code language in LOC sections 50.08.001.1.a.ii and 50.08.003.1.

20 CONCLUSION

21 The City Council concludes that LU 14-0018, as modified to be consistent with these  
22 findings and conclusions, complies with all applicable criteria and should be approved. The  
23 Council also concludes that proposed Ordinance 2644, which implements LU 14-0018 as  
24 modified, should be enacted.

## LOC 50.01: GENERAL PROVISIONS

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### 50.01.006 NONCONFORMING USES, STRUCTURES AND USESLOTS, AND SITE FEATURES

#### 1. NONCONFORMING USE, STRUCTURE DEFINED; RIGHTS GRANTED

##### a. Nonconforming Use or Structure; Illegal

i. A use or structure, lot, or site feature (e.g., landscaping, parking, etc.; see Sign Code, LOC Chapter 47 for nonconforming signs) is nonconforming if is considered a nonconforming use or structure if the use or structure, lot, or site feature was initially lawfully established but does not comply with or would not be permitted to exist under this Code due to a subsequent enactment or amendment to this Code, or due to annexation.

ii. An illegal use, structure, lot or site feature is one that was not lawfully established because it does not comply with or would not be permitted under this Code or any prior versions of this Code. A use, structure, lot or site feature that was lawfully established under a prior jurisdiction but did not comply with this Code at the time of annexation is not illegal. An illegal use, structure, or site feature is a violation of this Code and may be subject to abatement or penalties pursuant to LOC 50.09. An illegal lot may obtain legal status only if it meets the requirements set forth in LOC 50.01.003.5, Development Restricted on Illegal Lot.

##### b. Approved Variance

A use or structure, lot, or site feature for which a variance was granted under these code provisions is not considered nonconforming solely by the fact that **because** the characteristic of the use or structure, lot, or site feature for which the variance was granted fails to comply with the requirements of this Code. **However,** the existence of such **an approved** variance does not prevent the use or structure, lot, or site feature from being classified as nonconforming if **some as to another** characteristic of the use or structure **that** fails to comply with the requirements of this Code.

##### c. Expansion of Nonconforming Residential Structure

A residential structure which is classified as a nonconforming structure by this section may be enlarged or expanded in the following circumstances:

- i. The enlargement or expansion does not increase the degree of nonconformity; or
- ii. A change in roof pitch on the nonconforming portion of the structure may be permitted if the building height is not increased by more than six ft. and is less than the underlying zone height.

##### d. Continuation of Nonconforming Use or Structure



Subject to the provisions of this section, and except as otherwise provided by this Code, a nonconforming use or structure may be continued and maintained in reasonable repair so long as it remains otherwise lawful, but it shall not be altered in a manner to enlarge or expand or reconstruct the use or structure.

**c. Applicability to Approvals and Incomplete Construction**

**If a use, structure, or site feature that received final development approval becomes nonconforming within a year after approval, but before construction is completed, no change in plans, construction or use for which a final development approval was received is required. All rights granted by this section are extinguished if the development permit or building permit is revoked or becomes void. The structure, use, or site feature shall thereafter conform to all applicable provisions of this Code.**

**2. DISCONTINUANCE OF A NONCONFORMING USE**

If a nonconforming use is discontinued for a period of at least six months, further use of the property upon which the use was located shall conform to the requirements of this Code.

**2. CONTINUATION AND MAINTENANCE OF NONCONFORMITIES**

**a. Continuation of Nonconformity**

**Subject to the provisions of this section, and except as otherwise provided by this Code, a nonconforming use, structure, lot, or site feature may be continued in use so long as it remains otherwise lawful.**

**b. Maintenance**

**On any nonconforming structure or site feature, maintenance may be performed in a manner not in conflict with the other provisions of the City Code. Nothing in this Code shall be deemed to prevent the strengthening or restoring to a safe condition of any structure, or portion thereof, or site feature declared to be unsafe by any official charged with protecting the public safety, upon the order of that official.**

**3. APPLICABILITY TO APPROVALS, INCOMPLETED CONSTRUCTION**

This Code does not require any change in plans, construction or use of a nonconforming use or structure for which a final development approval was received prior to the date that the use or structure became nonconforming if construction of project structures, or completion of the development where no structures are involved, is completed and use established no later than one year after the date that the use or structure became nonconforming, or in accordance with an approved development schedule. All rights granted by this section are extinguished if the development permit or building permit is revoked or for any reason becomes void. The structure or use shall thereafter conform to all applicable provisions of this Code.

**4. DESTRUCTION, MOVEMENT, AND REPLACEMENT OF STRUCTURES**

**a. Single Family or Duplex Dwellings, Accessory Structures, and Historic Landmarks**

**i. Applicability**

~~Excluding structures within the Flood Management Area, this subsection 4.a is applicable to nonconforming:~~

- ~~(1) Single family (attached or detached) or duplex dwellings;~~
- ~~(2) Historic landmarks designated or listed upon the Landmark Designation List, and~~
- ~~(3) Nonconforming accessory structures to a single family dwelling, duplex dwelling, or historic landmark.~~

~~ii. Ability to Construct or Reconstruct Nonconforming Structure~~

~~Subject to the one-year time limitation provided below, when an applicable structure, or any portion thereof, is damaged or destroyed:~~

- ~~(1) By causes not under the control of the owner (including but not limited to fire, earthquake, flood, landslide, and wind or tree damage, but not including destruction due to lack of structural maintenance by the owner, reconstruction, remodeling, or new construction), the rebuilding or reconstruction of the nonconforming structure, or portion thereof, shall be exempt from the provisions of this Code to the extent that the structure failed to conform.~~
- ~~(2) By causes under the control of the owner, e.g., lack of structural maintenance by the owner, reconstruction, remodeling, or new construction, the portion of the nonconforming dwelling being rebuilt, reconstructed, or being newly constructed shall conform fully to City codes and standards.~~

~~iii. Time Limitation~~

~~In order to utilize the rights granted by subsection 4.a.ii of this section, the building permit for the construction or reconstruction must be issued within one year from the date of damage or destruction. If the building permit is not issued within the one-year period, or if issued, the building permit expires, the ability to construct or reconstruct an applicable nonconforming structure shall cease.~~

~~iv. Maintenance of Nonconforming Structure~~

~~Maintenance of a nonconforming structure that does not enlarge or expand the structure is permitted; maintenance that does enlarge or expand the structure is subject to subsection 4.a.v of this section.~~

~~v. Expansion of Nonconforming Structure in Conforming Manner~~

~~Applicable nonconforming structures may also be enlarged or expanded in a manner which does not increase the degree of nonconformity.~~

~~b. Structures Other Than Single Family or Duplex Dwellings, Accessory Structures, and Historic Landmarks~~

~~i. Applicability~~

~~This subsection 4.b is applicable to all structures other than listed in subsection 4.a.i of this section.~~

~~ii. Ability to Construct or Reconstruct Nonconforming Structure~~

~~Subject to the time limitation provided below, if a nonconforming structure is damaged or destroyed by any means to the extent that the cost of rebuilding the damaged portions would exceed 50% of the then current replacement cost of the entire building, the rebuilding shall conform fully to City Codes and Standards.~~

Determination of the rebuilding costs shall be made by the City Manager, who may utilize an appraisal or other suitable method to determine current replacement costs. If the damage is 50% or less of the current replacement costs, the rebuilding or reconstruction need not comply with the terms of this Code only to the extent that the destroyed portions of the structure failed to conform.

**iii. Time Limitation**

In order to utilize the rights granted by subsection 4.b.ii of this section, the building permit for the construction or reconstruction must be issued within one year from the date of damage or destruction. On demonstration that a good faith effort has been made by the owner to be able to apply for the building permit to construct or reconstruct the damaged or destroyed structure (including obtaining funding and completion of architectural work) and a written request for extension is submitted prior to expiration, the City Manager may extend the construction rights for an additional year. No more than two one-year extensions may be granted. If the building permit is not issued within the one-year period, or if issued, the building permit expires, the ability to construct or reconstruct an applicable nonconforming structure shall cease.

**5. EXPANSION OF NONCONFORMING INDUSTRIAL, MIXED USE, OR COMMERCIAL USES OR STRUCTURES**

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A nonconforming industrial or commercial use or structure located in a commercial, industrial, or mixed use zone may be altered, enlarged, or expanded after a conditional use permit has been issued for such activity.

**6. REPAIRS AND MAINTENANCE**

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On any nonconforming structure or portion of a structure containing a nonconforming use, normal repairs or replacement of nonbearing walls, fixtures, wiring, or plumbing may be performed in a manner not in conflict with the other provisions of the City Code. Nothing in this Code shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

**7. NONCONFORMING CHARACTERISTICS OF USE**

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Any matter regulated by this Code not directly related to a structure or type of use that does not conform to the requirements of this Code may continue, but shall not be increased, enlarged, expanded or reconstructed. Any changes in such characteristics of use must not increase the nonconformity, but may take place to decrease the nonconformity. The rights granted by this section do not apply to the matters regulated by LOC 50.06.011, Vision Clearance.

**3. EXPANSION OR CHANGE OF NONCONFORMITIES**

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**a. Nonconforming Structures**

**A nonconforming structure may only be expanded or changed in accordance with the provisions of this subsection.**

**i. Nonconforming structures may only be expanded if:**

- (1) The expansion does not increase the degree of any existing nonconformity;**  
**and**

(2) The expansion does not create any new nonconformity.

ii. Portions of a nonconforming structure that are not being altered as part of the expansion are not required to be brought into conformance with this Code.

iii. Extensions of nonconforming walls may be approved through the Minor Variance process set forth in LOC 50.08.002.2.k.

iv. For residential structures, a change in roof pitch on a nonconforming portion of the structure may be permitted if the roof height is not increased by more than six ft. and does not exceed the base zone height.

v. Use of Expansion Area

(1) If the building being expanded contains a permitted use, that use may also occupy the building expansion area.

(2) If the building being expanded contains a conditional use, that use may only be enlarged to also occupy the building expansion area with a modification of the conditional use permit.

(3) If the building being expanded contains a nonconforming use, that nonconforming use may be enlarged to also occupy the expanded area with a conditional use permit, but the conditional use criterion in LOC 50.07.005.3.a.i, Authorization to Permit or Deny Conditional Uses, as it relates to uses in the zone shall not apply.

b. Nonconforming Uses

i. A nonconforming use may only be expanded with a conditional use permit, but the conditional use criterion in LOC 50.07.005.3.a.i, Authorization to Permit or Deny Conditional Uses, as it relates to uses in the zone shall not apply.

ii. A nonconforming use with outdoor operations may only expand its outdoor operations to new areas of the property with a conditional use permit.

iii. A nonconforming use may only be changed to:

(1) A permitted use; or

(2) A conditional use, with a conditional use permit.

c. Nonconforming Site Features

i. If a property is nonconforming with respect to landscaping or open space and the expansion of a structure on the property is proposed, the applicant shall install new landscaping and/or open space in an amount equal to the lesser of:

(1) The footprint of the new building addition multiplied by the percentage of landscaping and/or open space prescribed by this Code; or

(2) The amount of landscaping and/or open space needed to bring the property into compliance with the minimum amounts of landscaping and/or open space required by this Code.

4. DAMAGE AND RECONSTRUCTION OF NONCONFORMING STRUCTURES

a. Single-family and Duplex Dwellings, Accessory Structures, and Historic Landmarks

This subsection is applicable to nonconforming single-family (attached or detached) and duplex dwellings, historic landmarks designated or listed upon the

Landmark Designation List, and accessory structures to a single-family dwelling, duplex dwelling, or historic landmark.

i. Nonconforming Structures Not Located in the Flood Management Area

Subject to the time limitation in subsection c. below, when all or any portion of a nonconforming structure listed above is damaged by any cause other than an intentional act of the owner, and no part of the structure is located in the Flood Management Area, the reconstruction of the nonconforming structure shall be exempt from the provisions of this Code to the extent that the damaged portions of the structure failed to conform.

ii. Nonconforming Structures Located in the Flood Management Area

Subject to the time limitation in subsection c. below, when all or any portion of a nonconforming structure is damaged by any cause other than an intentional act of the owner, and part of the structure is located in the Flood Management Area, the reconstruction of the nonconforming structure shall be exempt from the provisions of this Code to the extent that the damaged portions of the structure failed to conform, except that no part of the structure shall be reconstructed within the Flood Management Area.

iii. Nonconforming Single-Family or Duplex Dwelling or Landscaping Located in an RP or RC District or Construction Setback

(1) Nonconforming Structures

See LOC 50.05.010.4.a, Rebuilding Nonconforming Single-Family or Duplex Dwelling Located in RP or RC District or Construction Setback, and LOC 50.05.010.2.b and c, General and Specific Exceptions.

(2) Nonconforming Landscaping

See LOC 50.05.010.5.c.iii(8)(e), Landscaping in an RC district, and LOC 50.05.010.6.c.ii(1)(a)(v), Landscaping in an RP district.

iv. Damage to a Nonconforming Structure by an Intentional Act of an Owner

When all or any portion of a nonconforming structure is damaged by an intentional act of the owner, all reconstruction of the structure shall conform to this Code.

b. Structures Other Than Single-Family or Duplex Dwellings, Accessory Structures, and Historic Landmarks

i. Applicability

This subsection is applicable to structures other than those listed in subsection 4.a., above.

ii. Ability to Construct or Reconstruct Nonconforming Structure

(1) Damage to Nonconforming Structures of Less than 50% of the Structure Replacement Cost

Subject to the time limitation in subsection c. below, if a nonconforming structure is damaged from any cause to the extent that the cost of rebuilding the damaged portions is less than 50% of the current replacement cost of the entire building, the rebuilding may be reconstructed to the extent that it was nonconforming, except that no portion of the structure shall be reconstructed in the Flood Management Area.

**(2) Damage to Nonconforming Structures of More than 50% of the Structure Replacement Cost**

**Subject to the time limitation in subsection c. below, if a nonconforming structure is damaged from any cause to the extent that the cost of rebuilding the damaged portions is 50% or more of the current replacement cost of the entire building, the rebuilding shall conform to City Codes and Standards.**

**c. Time Limitation**

- i. In order to use any rights to reconstruct a damaged nonconforming structure without full compliance with this Code, above, the building permit for the new construction or reconstruction must be issued within one year from the date of damage. If the building permit is not issued within the one-year period, or if the building permit is issued but later expires, the ability to reconstruct a nonconforming structure not in compliance with this Code shall cease.**
- ii. On demonstration that a good faith effort has been made by the owner to be able to apply for the building permit to reconstruct the damaged structure (including obtaining funding and completion of architectural work) and a written request for extension is submitted prior to expiration, the City Manager may extend the construction rights for an additional year. Construction shall be completed within two years of the issuance of the building permit or extension granted by the City Manager.**
- iii. The time limitations in subsections c.i and c.ii, above, may be extended by the City Manager if the owner can demonstrate that the reconstruction of a damaged nonconforming structure is pending review under an insurance claim or litigation. Construction shall be completed within two years of the settlement date or decision of the insurance claim or litigation.**

**5. NONCONFORMING LOTS**

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**a. Development Permitted**

**A nonconforming lot that does not meet the minimum size or dimensional requirements of the zone in which it is located may be developed as permitted in that zone, provided that (i) the structure complies with all applicable Code standards or (ii) the applicant obtains a variance pursuant to LOC 50.08, Variances.**

**b. Lot Line Adjustment**

**Lot lines may be adjusted provided that the degree of any existing nonconformity is not increased and no new nonconformity is created on any of the lots involved as a result of the adjustment.**

**6. DISCONTINUATION OF NONCONFORMING USE**

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**a. One-Year Time Limit**

**If a nonconforming use is discontinued for a period of at least one year, the nonconforming use may not be restarted and future use shall comply with the requirements of this Code. For the purpose of this standard, "discontinued" means the use has vacated or ceased operation on the site.**

b. One Year Extension

Up to two one-year extensions may be granted by the City Manager if the owner demonstrates that they are actively marketing the property for continuation of the nonconforming use but have been unable to find a buyer or tenant for that use. The owner shall file each request for a one-year extension separately. After three years, the nonconforming use may not be restarted, and any future use of the structure shall comply with the requirements of this Code.

.....  
**LOC 50.04 DIMENSIONAL STANDARDS**  
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**50.04.003 EXCEPTIONS, PROJECTIONS, AND ENCROACHMENTS**

**1. ADDITIONAL DIMENSIONAL EXCEPTIONS**

The following section may include exceptions to the dimensional standards of LOC 50.04.001.

**a. Adjustments**

The setbacks set forth in LOC 50.04.001 may be adjusted or excepted by LOC 50.05.010.4.b (Sensitive Lands Setback Modifications), LOC 50.04.003.3 (General Exceptions to Yard Requirements), LOC 50.04.003.6 (Special Determination of Yards and Yard Requirements), LOC 50.04.003.8 (General Exceptions for Building Projections, Decks, and Walkways and Pathways to Setbacks), and LOC 50.03.004.2.b (Accessory Structures), ~~and LOC 50.08.001.3 (Solar Access)~~. Structures which are permitted within the Oswego Lake setback (LOC 50.04.003.7) are similarly permitted within the setbacks in LOC 50.04.001 to the extent the setback area is co-terminus with the Oswego Lake setback.

\*\*\*\*

**3. GENERAL EXCEPTIONS TO YARD REQUIREMENTS**

\*\*\*\*

**c. R-DD Yard Setback Adjustment**

For exterior modifications of a single-family detached dwelling in the R-DD zone built before 1960, minimum setbacks may be reduced by two ft. if the modification maintains at least 50% of the exterior walls (measured by sq. ft.) and does not increase height by more than 100%.

**d. Solar Access Yard Setback Adjustment**

In any zone district, side yard setbacks may be reduced by up to 50% and/or the front or rear yard setbacks by up to 25% if the construction of a proposed structure that complies with either the shade point height standard in LOC 50.06.007.2.c, the allowed shade on a solar feature standard in LOC 50.06.007.2.d, or the solar balance point standard in LOC 50.06.007.2.e is not possible without that reduction.

\*\*\*\*

**8. GENERAL EXCEPTIONS FOR BUILDING PROJECTIONS, DECKS, AND WALKWAYS AND PATHWAYS TO SETBACKS**

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\*\*\*\*

**c. Access Walkways and Pathways, Driveway Bridges, Trams and Staircase**

- i. Walkways and pathways, regardless whether on grade or elevated, that provide principal access from the adjacent public right-of-way to a dwelling or as a public entrance(s) to a commercial, industrial, or public facility building are permitted in the required yard, so long as (a) the elevation of the walkway or pathway is at or below the elevation of the driveway or parking area for the dwelling or building, or (b) if the walkway or pathway is elevated, it shall be the most direct route practicable.

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## **LOC 50.05 OVERLAY AND DESIGN DISTRICTS**

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### **50.05.004 DOWNTOWN REDEVELOPMENT DESIGN DISTRICT**

\*\*\*\*

**3. RELATIONSHIP TO OTHER DEVELOPMENT STANDARDS**

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\*\*\*\*

- c. The parking standards (LOC 50.06.002) apply in full, but the requirements may be modified as provided in LOC 50.05.004.9, and exceptions may be granted as provided in LOC 50.08.0053.2.b, Downtown Redevelopment Design District Variance~~Exceptions to Standards~~.

\*\*\*\*

**13. CLEAR AND OBJECTIVE HOUSING STANDARDS FOR APPROVAL**

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\*\*\*\*

**c. Relationship to Other Development Standards**

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- ii. LOC 50.05.004.8 shall apply in addition to the requirements of LOC 50.06.004.1, Landscaping, Screening and Buffering, but exceptions to the requirements of LOC 50.06.004.1 may be granted as provided in LOC 50.08.0053.2.b, Downtown Redevelopment Design District Variance~~Exceptions to Standards~~.
- iii. The parking standards (LOC 50.06.002) apply in full, but the requirements may be modified as provided in LOC 50.05.004.9, and exceptions may be granted as provided in LOC 50.08.0053.2.b, Downtown Redevelopment Design District Variance~~Exceptions to Standards~~.

\*\*\*\*

## 50.05.007 LAKE GROVE VILLAGE CENTER OVERLAY DISTRICT

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### 3. APPLICABILITY

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#### c. Applicability by Type of Development

##### i. New Construction/Redevelopment

All standards of this section apply to new building(s) **and alterations to existing buildings that do not meet the definition of “remodel” in subsection c.ii, below,** ~~and~~ site improvements on any vacant or redeveloped site and to new building(s) and related site improvements on any partially developed or developed site.

##### ii. Remodeled Buildings, Building Expansion, and Site Improvements

The standards of this section apply to any remodeling, building expansion, or site improvement project on a partially developed or developed site, except as expressly provided below:

**For the purpose of this subsection, “remodel” means less than 50% of the exterior wall are removed or are no longer a necessary and integral structural component of the overall building. Elements of the exterior wall include columns, studs, or similar vertical load-bearing elements and associated footings. However, existing exterior walls supporting a roof that is being modified to accommodate a new floor level or roofline shall continue to be considered necessary and integral structural components, provided the existing wall elements remain in place and provide necessary structural support to the building upon completion of the roofline modifications. For buildings not principally supported by exterior bearing walls, “remodel” means less than 50% of the principal support structure including columns, structural frames and other similar primary structural elements, is removed or no longer a necessary and integral structural component of the overall building. Alterations that are undertaken solely to bring an existing building into compliance with the Building Code are not counted towards the 50% measurement.**

\*\*\*\*

**d. Nonconforming Uses**

This section supersedes ~~all of the following sections of~~ LOC 50.01.006, Nonconforming ~~Uses, Structures, Lots, and Uses~~ Site Features, except the following subsections:

- i. ~~LOC 50.01.006.1.e, Expansion of Nonconforming~~ Defined; Rights Granted Residential Structure;
- ii. ~~LOC 50.01.006.42.a Continuation of Nonconformity~~ Destruction, Movement, and Replacement of Structures; and
- iii. ~~LOC 50.01.006.56 Discontinuation of Nonconforming Use~~ Expansion of Nonconforming Industrial or Commercial Uses or Structures; and,
- iv. ~~LOC 50.01.006.6, Repairs and Maintenance.~~

\*\*\*\*

**8. ADJUSTMENTS LAKE GROVE VILLAGE CENTER OVERLAY DISTRICT DESIGN VARIANCE**

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See LOC 50.08.006 3.2.d: LGVC Adjustments.

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**50.05.010 SENSITIVE LANDS OVERLAY DISTRICTS**

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**4. GENERALLY APPLICABLE STANDARDS FOR RP AND RC**

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**b. Modifications to Dimensional Standards and Setbacks of the Underlying Zone**

- i. Except as provided in subsections 4.b.ii and iii of this section, an applicant for development subject to environmental review may vary from the lot dimensional standards (building setbacks, lot size, lot width, and lot depth) otherwise applicable without a formal variance pursuant to LOC Article 50.08, ~~Adjustments, Alternatives, and Variances,~~ if the applicant demonstrates that:

\*\*\*\*

- ii. An application to vary from standards other than the dimensional standards above or that does not comply with the criteria contained in subsection 4.b.i of this section may qualify for a variance under LOC Article 50.08, ~~Adjustments, Alternatives, and Variances,~~ or other applicable article or section for modification or exception.

\*\*\*\*

**LOC 50.06 DEVELOPMENT STANDARDS**

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**50.06.007 SOLAR ACCESS**

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2. SOLAR BALANCE POINT

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f. Yard Setback Adjustment

A yard setback may be adjusted for solar access according to the provisions of LOC 50.084.0013.d, Solar Access Yard Setback Adjustment.

**LOC 50.07 REVIEW AND APPROVAL PROCEDURES**

**50.07.001 SUMMARY PROCEDURE TABLE**

TABLE 50.07.001-1: SUMMARY PROCEDURES TABLE										
Type of Decision	Code Section	Pre-Application Conference Required?	Neighborhood Meeting Required?	Notice Required?	Public Hearing Required?	Authority R = Recommendation; D = Decision; A = Appeal				
						City Manager	Planning Commission	DRC	HRAB	City Council
Article 50.07, Review and Approval Procedures										
Ministerial Development	50.07.003.13	No	No	No	No	D				
Minor Development [2]	50.07.003.14									
Subdivision or Planned Development		Yes	Yes	Yes	Yes	R		D		A
Development Review		Yes	[1]	Yes	Yes [3]	R/D		D/A		A
Development in the R-DD Zone		Yes	[1]	Yes	Yes	R		D		A
<b>Historic Reviews:</b>										
<ul style="list-style-type: none"> <li>Designation or removal of a historic resource or district;</li> <li>Establishment, modification or abolishment of a historic district; and,</li> <li>Demolition or moving of a landmark [4]</li> </ul>		No	No	Yes	Yes	R			D	A
<ul style="list-style-type: none"> <li>Alterations of historic resources defined as a minor development (historic preservation) in LOC 50.10.003.2</li> <li>Moving or demolition of a contributing resource;</li> <li>Alterations or additions of 30% or more floor area to noncontributing resources; and</li> <li>Minor developments on or to a</li> </ul>		Yes	[1]	Yes	No	D		A		A

TABLE 50.07.001-1: SUMMARY PROCEDURES TABLE

Type of Decision	Code Section	Pre-Application Conference Required?	Neighborhood Meeting Required?	Notice Required?	Public Hearing Required?	Authority R = Recommendation; D = Decision; A = Appeal				
						City Manager	Planning Commission	DRC	HRAB	City Council
landmark or within a historic district [4]										
All other Minor Development		Yes	[1]	Yes	No	R/D		D/A		A
Major Development	50.07.003.15									
Mixed Use ODPS		Yes	Yes	Yes	Yes	R	D			A
Single Use ODPS		Yes	Yes	Yes	Yes	R		D		A
Major Development on or to a historic resource, and Major Development within a historic district		Yes	[1]	Yes	Yes	R		D	R	A
All others		Yes	Yes	Yes	Yes	R		D		A
Legislative	50.07.003.16		No	No	Yes	Yes		R		
Article 50.08 Adjustments, Alternatives, and Variance Procedures										
Adjustments [5]	50.08.001	Yes	[1]	Yes	No	R/D		D/A		A
Minor Variance	50.08.002	Yes	[1]	Yes	No [2]	R/D		D/A		A
Hardship Variance	50.08.003	Yes	[1]	Yes	No	R		D/A		A
Reasonable Accommodation Variance	50.08.004	Yes	[1]	Yes	No	R/D		D/A		A
<b>Design Variance</b>										
• <b>R-DD Design</b>	<b>50.08.003.2.a</b>	<b>Yes</b>	<b>[1]</b>	<b>Yes</b>	<b>Yes</b>	<b>R</b>		<b>D</b>		<b>A</b>
• <b>Downtown Redevelopment Design District DRDD-District Exceptions to Standards</b>	<b>50.08.003.2.b</b> 50.08.005	Yes	[1]	Yes	Yes	R		D		A
• <b>Foothills Mixed Use District</b>	<b>50.08.003.2.c</b>	<b>Yes</b>	<b>[1]</b>	<b>Yes</b>	<b>Yes</b>	<b>R</b>		<b>D</b>		<b>A</b>
• <b>Lake Grove Village Center Overlay District LGVCO-District Adjustments</b>	<b>50.08.003.2.d</b> 50.08.006	Yes	[1]	Yes	Yes	R		D		A
• Residential Infill Development <b>Design (RID) Review</b> Process	<b>50.08.003.2.e</b> 50.08.007	Yes	[1]	Yes	No [2]	R/D		D/A		A
<b>Major Variance</b>	<b>50.08.004</b>	<b>Yes</b>	<b>[1]</b>	<b>Yes</b>	<b>Yes</b>	<b>R</b>		<b>D</b>		<b>A</b>
<b>All other Minor Development</b>		<b>Yes</b>	<b>[1]</b>	<b>Yes</b>	<b>No [2]</b>	<b>R/D</b>		<b>D/A</b>		<b>A</b>
<b>Major Development</b>	<b>50.07.003.15</b>									
<b>Mixed Use ODPS</b>		<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>R</b>	<b>D</b>			<b>A</b>

TABLE 50.07.001-1: SUMMARY PROCEDURES TABLE

Type of Decision	Code Section	Pre-Application Conference Required?	Neighborhood Meeting Required?	Notice Required?	Public Hearing Required?	Authority R = Recommendation; D = Decision; A = Appeal				
						City Manager	Planning Commission	DRC	HRAB	City Council
<u>Single Use ODPS</u>		<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>R</u>		<u>D</u>		<u>A</u>
<u>Major Development on or to a historic resource; and Major Development within a historic district</u>		<u>Yes</u>	[1]	<u>Yes</u>	<u>Yes</u>	<u>R</u>		<u>D</u>	<u>R</u>	<u>A</u>
<u>All others Major Development</u>		<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>R</u>		<u>D</u>		<u>A</u>
<u>Legislative</u>	<u>50.07.003.16</u>	<u>No</u>	<u>No</u>	<u>Yes</u>	<u>Yes</u>		<u>R</u>			<u>R/D</u>

Notes:

[1] Neighborhood meeting required for a partition and subdivision. The City Manager may require a neighborhood meeting prior to the filing of an application for any other development permit if the City Manager deems neighborhood contact to be beneficial.

[2] Per LOC 50.07.003.14.d.i, the City Manager may refer a minor development application directly to a hearing body.

[3] Depending on the scope of the proposed development, a decision on an application for development review may be referred to the City Manager. Typically, applications referred to the City Manager involve minor alterations or other small-scale projects.

[4] At the discretion of the City Manager, an application for a major alteration of a duplex or single-family home designated as a landmark may be referred to HRAB for hearing and decision.

[5] Does not include Solar Access Yard Setback Adjustments, which are reviewed ministerially (LOC 50.08.001.3).

**50.07.002 LIST OF DECISION-MAKERS**

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**4. DEVELOPMENT REVIEW COMMISSION**

\*\*\*\*

- c. Requests for ~~major adjustments~~ Design Variances within the Downtown Redevelopment District, LGVC Overlay, and the FMU District, and
- d. Minor development in the R-DD zone; and
- e. Major Variances.

\*\*\*\*

**50.07.003 REVIEW PROCEDURES**

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### 3. PUBLIC NOTICE/OPPORTUNITY FOR PUBLIC COMMENT

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#### a. Written and Posted Notice for Minor Development

Except as set forth in LOC 50.07.003.3.b, ~~p~~Prior to making a final decision on a minor development permit application or a legislative decision, notice of the opportunity to comment upon an application and, if applicable, the date of a public hearing upon the application, shall be given as follows:

##### i. Notice to Property Owners

The City Manager shall provide written notice to property owners within 300 ft. of the entire contiguous site for which the application is made. **Except for Residential Infill Design Review (RID) applications,** if there are fewer than 50 properties (excluding City-owned properties) within 300 ft. of the site, the notice area shall be expanded by ten-ft. increments outward from the 300-ft. boundary until at least 50 properties (excluding City-owned properties) are included in the notice area. The list shall be compiled from the most recent property tax assessment roll.

\*\*\*\*

#### ~~b. Written and Posted Notice for Residential Infill Design Review~~

~~For development processed through the residential infill design review process (LOC 50.08.007), the City Manager shall provide written notice of a preliminary decision as follows:~~

##### ~~i. Notice to Property Owners~~

~~Notice to property owners within 300 ft. of the entire contiguous site for which the application is made shall be given. The list shall be compiled from the most recent property tax assessment roll.~~

##### ~~ii. Notice to Neighborhood Associations~~

~~Notice shall be given to recognized neighborhood associations listed in LOC 50.07.003.3.a.ii.~~

##### ~~iii. Notice to Oregon Department of Transportation and the Affected Railroad Company~~

~~Notice shall be given to the Oregon Department of Transportation and the affected railroad company if the application indicates that a railroad-highway crossing provides or will provide the only access to land that is the subject of the application.~~

##### ~~iv. Posted Notice~~

~~Notice shall be posted upon the subject property in the same manner as LOC 50.07.003.3.a.iv.~~

##### ~~v. Contents of Notice~~

~~The notice of preliminary decision shall:~~

~~(1) Include the file number, date of the preliminary decision, and the name and address of the applicant.~~

~~(2) Include an easily understood geographical description of the property and a map, if applicable.~~

- ~~(3) Briefly summarize the decision-making process and the preliminary decision made.~~
- ~~(4) State that a copy of the preliminary decision and all evidence relied on by the applicant are available for review and that copies can be obtained at cost.~~
- ~~(5) State that issues which may provide the basis for an appeal to the Land Use Board of Appeals shall be raised with sufficient specificity to enable the City to respond to the issue.~~
- ~~(6) List, by commonly used citation, the applicable criteria for a decision.~~
- ~~(7) Include the name and phone number of the City Manager or such other City staff person as may be assigned by the City Manager to review the application.~~
- ~~(8) State the place, date and time that comments are due.~~
- ~~(9) State that if no written comments are received within the 14-day comment period, the decision will become final.~~
- ~~(10) Describe the appeal process following finalization of the decision.~~

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## **7. APPEALS**

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### **b. Appeal of Minor Development Decision**

- i. ~~Except for a residential infill design review preliminary decision pursuant to LOC 50.07.003.14.d.iii(2), A~~ a final decision of the City Manager on a minor development application may be appealed to a hearing body by the applicant or any person aggrieved by the decision. An appeal shall be made by filing a written request for a hearing with the City Recorder within 15 calendar days of the date of decision.

For decisions made by the City Manager on historic resources, the applicant or any person aggrieved by the decision may appeal that decision. (If notice of the application was given, the person must have participated in the process leading to the Manager's decision in order to appeal.) The City Manager shall determine if the Development Review Commission or Historic Resources Advisory Board is the appropriate hearing body based upon the nature of the decision appealed, the notice of appeal, and the expertise of the Commission and Board.

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## **13. MINISTERIAL DEVELOPMENT DECISIONS**

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### **a. Ministerial Development Classification**

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#### **ii. Ministerial Development Types**

- (1) Exterior modification of single-family detached dwellings (including exterior modifications that reduce setbacks pursuant to LOC 50.084.0013.23.ec), a

single duplex on a lot or zero lot line dwellings or modification of an accessory structure in the R-DD zone.

- (2) Construction or exterior modification of a detached single-family dwelling, a single duplex on a lot, zero lot line dwelling or a structure accessory to such structures which:
  - (a) Is not processed through the residential infill design review process pursuant to LOC 50.08.0073.2.e;

\*\*\*\*

## 14. MINOR DEVELOPMENT DECISIONS

---

### a. Minor Development Classification

\*\*\*\*

- ii. "Minor development" under subsection a.i.(1) of this section includes:

- (1) In the R-DD zone:

\*\*\*\*

- (c) Any exterior modification of a single-family detached dwelling that reduces setbacks pursuant to LOC 50.08.0013.2.ba, R-DD Administrative Modification.

\*\*\*\*

- (15) Outright permitted residential dwellings or accessory structures in residential zones, other than in the R-DD zone, Downtown Redevelopment Design District, and Lake Grove Village Overlay District, when processed through the residential infill ~~development~~ design review process (LOC 50.08.0073.2.e).
- (16) Minor variances, design variances, and hardship major variances, and ~~reasonable accommodation variances~~.

\*\*\*\*

### d. Review and Decision

#### i. Review by City Manager

Except for applications for a minor development in the R-DD zone, ~~major adjustments in the Lake Grove Village Center Overlay~~ Downtown Redevelopment, LGVCO, and FMU District Design Variances (LOC 50.08.003.2.a through d), Major Variances, and appeals of a decision of the City Manager regarding a minor development application, minor development permit applications shall be reviewed and decided by the City Manager. In the alternative, the City Manager may refer a minor development application directly to a hearing body for public hearing and decision pursuant to LOC 50.07.003.4, Hearings.

Minor development in the R-DD zone, ~~and~~ Design Variances in the Downtown Redevelopment, LGVCO, and FMU Districts, and Major Variances ~~major adjustments in the Lake Grove Village Center Overlay~~ shall be reviewed by the Development Review Commission pursuant to LOC 50.07.003.4, Hearings.



\*\*\*\*

iii. Final Decision

\*\*\*\*

~~(2) Final RID Application~~

~~For development processed through the residential infill design review process (LOC 50.08.007), the City Manager's preliminary decision will become final if no written comments are received within the 14-day comment period, and no opportunity for appeal shall exist. In such cases, no additional notice of a final decision will be required. If written comments are received within the 14-day comment period, the City Manager shall then make a final decision and provide notice in accordance with subsections 14.d.iii(1) and (3) of this section.~~

(23) Notice of Final Decision

The City Manager shall send notice of a final decision on a minor development application to the applicant, all persons and neighborhood associations entitled to notice of the application pursuant to LOC 50.07.003.3, Public Notice/Opportunity for Public Comment and any other persons who submitted comments during the comment period. The notice of decision shall:

- (a) Include the file number, date of the decision, and the name and address of the applicant;
- (b) Include an easily understood geographical description of the property and a map, if applicable;
- (c) Briefly summarize the decision-making process and the decision made;
- (d) State that a copy of the decision is available for review, and that a copy can be obtained at cost; and
- (e) State that the decision may be appealed by filing a written request for a hearing before the appropriate hearing body with the City Recorder within 15 calendar days of the date of the final decision. In addition, the notice shall contain the requirements for requesting a hearing pursuant to LOC 50.07.003.7.b. The name, address and phone number of the City Recorder shall be included in the notice.

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**50.07.007 LAND DIVISIONS**

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**2. FLAG LOTS**

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\*\*\*\*

**b. Exceptions**

The reviewing authority may allow exceptions to this section without the need to obtain a formal variance pursuant to LOC Article 50.08, ~~Adjustments, Alternatives, and Variances~~, in one or more of the following circumstances:

\*\*\*\*

e. **Building and Site Design Standards**

\*\*\*\*

v. **Setback Requirements**

- (1) The standard front yard setback of the zone shall be superseded by the following front yard requirement: A minimum ten-ft. front yard setback is required from the access lane, except that a 20-ft. setback is required from the access lane to the front of a garage or carport when the garage or carport opening faces the access lane. For flag lot partitions that receive a minor variance to the determination of the front yard, per LOC 50.08.002.32.0m, the setbacks from the access lane described above shall apply. For purposes of this standard, the access lane shall include the projected extension of the access lane through the property as illustrated in Figure 50.07.007-B: Access Lane.

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4. **PLANNED DEVELOPMENT OVERLAY**

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\*\*\*\*

c. **Procedures**

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iii. **Following Approval of a PD Overlay:**

- (1) A subsequent request for modification from the underlying zone requirements for any lots within the planned development shall be processed in the following manner:

**(a) PD Modified at Least One Lot Requirement in Subdivision**

If any modifications were made to the above zone requirements, then any subsequent request for modification to these zone requirements shall be processed either as:

- (i) A planned development modification, pursuant to LOC 50.07.003.11; no variance (LOC 50.08.002 or 50.08.0034) is permitted); or
- (ii) A residential infill development design review (RID), pursuant to LOC 50.08.0073.2.e; to the extent RID permits exceptions to certain zone standards, no planned development permit modification is required.

**(b) PD Modified None of the Lot Requirements in Subdivision**

If no modifications were made from the zone requirements, then any subsequent request for modification to the zone requirements shall be processed as:

- (i) A variance pursuant to LOC 50.08.002 or 50.08.0034; or
- (ii) For qualified residential developments, processed according to the provisions of LOC 50.08.0073.2.e, RID.

\*\*\*\*

d. **Authorization**

\*\*\*\*

## ii. Dimensional Exceptions

\*\*\*\*

### (3) Side Yard Setback Exceptions

The reviewing authority may grant exceptions to the minimum side yard setbacks of the underlying zone, without the necessity of meeting the requirements of LOC Article 50.08, ~~Adjustments, Alternatives, and Variances~~, if the requirements of subsection 4.d.ii of this section are met, and:

\*\*\*\*

## **LOC 50.08 ~~ADJUSTMENTS, ALTERNATIVES, AND VARIANCES~~**

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### **50.08.001 ~~ADJUSTMENTS-INTRODUCTION~~**

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#### **1. ~~R-6 ADMINISTRATIVE MODIFICATION~~**

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- ~~a. Notwithstanding LOC 50.08.002 and 50.08.003 the City Manager may grant an administrative modification to the lot coverage, front, and garage yard setback requirements of a development in an R-6 zone, in the following amounts:
  - ~~i. Lot coverage: Up to 200 sq. ft.~~
  - ~~ii. Front yard setback: Up to two ft.~~
  - ~~iii. Garage front yard setback: Up to ten ft.~~~~
- ~~b. The granting authority may grant an administrative modification if:
  - ~~i. The proposed development makes desirable visual linkages between surrounding buildings by repeating or incorporating similar ridge lines, eaves, window and door openings; or~~
  - ~~ii. The requested modification results in a development that is designed more compatibly with the topography and/or physical limitations of the site; or~~
  - ~~iii. The requested modification will enhance or better protect a significant natural feature(s) on the site (RC or RP overlay districts); or~~
  - ~~iv. The proposed development provides visual continuity and cohesiveness with any abutting historic landmarks through the incorporation of style features, proportions and massing of the landmark structure.~~~~
- ~~c. An administrative modification shall be processed as a minor development pursuant to the review procedures for minor development contained in LOC 50.07.003.14.~~

#### **2. ~~R-DD ADMINISTRATIVE MODIFICATION~~**

---

- ~~a. The reviewing authority may reduce required minimum setbacks for the exterior modification of a single family detached dwelling in the R-DD zone built prior to 1960 by two ft. if the modification maintains at least 50% of the exterior walls (measured by sq. ft.) and does not increase height by more than 100%. All applicable City Codes and Standards for the R-DD zone apply.~~

- b. ~~The reviewing authority may reduce required minimum setbacks by greater than two ft. but not exceeding five ft. for the exterior modification of a single-family detached dwelling unit in the R-DD zone built prior to 1960 if the modification maintains at least 50% of the exterior walls (measured by sq. ft.), does not increase height by more than 100%, and the setback reduction will not result in an incompatible, negative relationship between the proposed expansion and:
  - i. ~~The scale and character of the neighborhood;~~
  - ii. ~~The scale and character of the street, such that the safety or the experience of a pedestrian using the street is diminished; and~~
  - iii. ~~The scale, character and privacy to properties within 300 ft. of the property.~~~~

All applicable City codes and standards for the R-DD zone apply.

### **3. SOLAR ACCESS YARD SETBACK ADJUSTMENT**

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The City Manager shall grant a ministerial adjustment to the side yard setback requirement(s) by up to 50% and/or the front or rear yard setback requirement(s) by up to 25% if necessary to build a proposed structure so it complies with either the shade point height standard in LOC 50.06.007.2.c, the allowed shade on a solar feature standard in LOC 50.06.007.2.d, or the solar balance point standard in LOC 50.06.007.2.e as provided herein. This adjustment is not intended to encourage reductions in available solar access or unnecessary modification of setback requirements, and shall apply only if necessary for a structure to comply with the applicable provisions of this section.

#### **1. CLASSIFICATION OF VARIANCES**

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**a. There are three different types of variances:**

**i. Minor Variances**

**Minor variances allow small adjustments from certain standards of this Code where the change would have little or no impact on the streetscape or surrounding properties and where no demonstration of hardship is required.**

**ii. Design Variances**

**Design variances allow adjustments of certain standards of this Code where the resulting design would be superior to development in the surrounding neighborhood or would better achieve the purpose/objectives of the applicable zone or design district and design standards. No demonstration of hardship is required.**

**iii. Major Variances**

**Major variances are more significant adjustments from certain standards of this Code where, owing to special circumstances or conditions beyond the applicant's control, application of the Code standards would result in undue and/or unique hardship.**

#### **2. VARIANCES NOT ALLOWED**

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**No variance shall be granted for the following:**

- a. **To permit a use not permitted in the applicable zoning district (unless that variance is required by state or federal law based on the special rights of the occupant).**

- b. To increase the allowable residential density in any zoning district.
- c. To vary a Code standard that has already been modified by a Planned Development approval, except that zone standards applicable to a Planned Development may be varied through the Residential Infill Design Review process.
- d. To modify review and approval procedures.
- e. To a setback required under LOC 50.05.010, Sensitive Lands Overlay Districts. This provision does not prevent modification of protected riparian areas or setbacks as permitted in that section.

## **50.08.002 MINOR VARIANCES**

### **1. PURPOSE**

The purpose of a minor variances is to allow development not in conformance with the requirements of the Community Development Code relating to the property except as provided in LOC 50.08.002.4: small adjustments to certain standards of this Code that generally have little or no impact on surrounding properties or users or on the streetscape.

### **2. VARIANCE STANDARDS**

- a. The reviewing authority may grant a minor variance from the requirements of this Code, except as expressly prohibited, if it is established that:
  - i. The granting of the variance will not be detrimental to the public health or safety, or materially injurious to properties or improvements within 300 ft. of the property.
  - ii. The proposed development will not adversely affect existing physical and natural systems such as traffic, drainage, Oswego Lake, hillsides, designated sensitive lands, historic resources, or parks, and the potential for abutting properties to use solar energy devices any more than would occur if the development were located as specified by the requirements of the zone.

### **3. MINOR VARIANCE CLASSIFICATIONS OF VARIANCES**

A variance which would allow development not in conformance with the requirements of the development standards may be granted. The City Manager shall decide the classification of any variance application.

Minor variances are small changes from the Code requirements and which will have little or no effect on adjacent property or users. Minor variances include:

- a. A variance of 20% or less from front, rear, side, and street side yard setbacks requirements of the zone and from the or the Oswego Lake setback for a single-family dwelling, zero lot line dwelling, or an associated accessory structures that does not comply with the three criteria set forth in LOC 50.03.004.2.b.i(1) through (3),  
**Reduction of Side or Rear Yard Setbacks for Accessory Structures, provided:**
  - i. Twenty percent, or less, provided the resulting side yard setback is not less than five ft. in width; or
  - ii. If located in the R-6 zone, a minor variance to front yard setbacks shall be limited to two feet or less; or
  - iii. If the request is the minimum necessary to preserve a tree and both:

(1) The request is the minimum necessary to preserve the tree; and

- (12) The resulting yard setback is not less than 50% of ~~standard~~the required ~~standard~~by the zone; and:
  - (23) Side yards are not reduced to less than five ft., and if located in the R-6 zone, the required front yard setback is not reduced by more than two ft.
- b. A variance from yard setbacks requirements for a structure other than those described in LOC 50.08.002.3.a, of a single-family dwelling, zero lot line dwelling, or associated accessory structures up to:
- i. Side or front yards: Two ft. or less in side or front yards;
  - ii. Rear yards: Five ft. or less in rear yards; or
  - iii. Fifty percent or less of the required setback if necessary to preserve a tree and the resulting side yard setback is no less than five feet provided: The request is the minimum necessary to preserve a tree and both:
    - (1) The request is the minimum necessary to preserve the tree; and
    - (2) The resulting yard setback is not less than 50% of the required standard required by the zone.; and
    - (23) Side yards are not reduced to ~~not~~ less than five ft., and if located in the R-6 zone, the required front yard setback is not reduced by more than two ft.
- c. A variance from minimum lot width or depth of five ft. or less.
- d. ~~Variations in lot coverage on lots which have the same boundaries as when platted and which were platted with an area less than current zoning requirement for single-family residential dwellings and accessory structures of up to and including 15% of the maximum allowed lot coverage.~~
- ed. A variance in to the maximum floor area for single-family residential development, homes of up to a maximum 15% increase in floor area, subject to the following lot size limitations provided that the lot in question has at least the following minimum lot area:

Zone	Minimum Lot Size Required
R-5	10,000 sq. ft.
R-6	12,000 sq. ft.
R-7.5	15,000 sq. ft.
R-10	15,000 sq. ft.
R-15	22,500 sq. ft.

- fe. A variance from maximum fence or retaining wall height restrictions pursuant to LOC 50.06.004.2.
- gf. A variance Variation to the maximum grade of a private street or driveway.
- hg. A variance for construction of a dormer that does not exceed the height of the roof ridge in which the dormer is being constructed in an existing single-family detached dwelling that is nonconforming relative to lot coverage or setbacks.
- ih. A variance to distance of driveway from intersections (LOC 50.06.003.2.b).
- ii. A variance to street frontage (LOC 50.06.003.1.e) at the time of creation of subdivision lots (LOC 50.06.003.1.c).

~~ki.~~ **A v** Variances to driveway and access lane width for flag lots (LOC 50.07.007.2.c).

~~l.~~ Variances for elevated walkway or pathway within setback or yard.

~~mk.~~ **A v** Variances to yard requirements for extension of existing nonconforming walls, provided:

i. The square footage of any new encroachment into the setback does not exceed the square footage of the existing nonconforming, encroaching portion of the structure.

ii. The resulting structure complies with the floor area, lot coverage and other setback requirements.

iii. The variance shall not reduce the yard setback by more than 50% **and shall not reduce any side yard setback to less than five feet.**

iv. No previous variance has been granted for an extension of the subject nonconforming wall.

v. The expansion area shall be defined by the extension of two or more existing exterior walls.

~~n.~~ **A v** Variances to dimensional requirements that ~~are~~ **is** necessary due to prior errors in land surveying. Prior errors in land surveying are errors that were made before the applicant acquired the property or gained control of the property.

~~om.~~ **A variance to a D**etermination of the front yard ~~for flag lots~~ (LOC 50.07.007.2.d) **and orientation of the front of the house for flag lots [LOC 50.07.007.2.e.i(1)].**

~~pn.~~ **A variance to the H**limitation on maximum height of solar system (panels) **in**; LOC 50.04.003.4.b.ii.

**A variance to a standard of this Code required to comply with state or federal law based on the rights of the occupant, where the application identifies the state or federal law granting the right.**

**A variance to one or more of the following standards established by the Lake Grove Village Center Overlay District (LGVCO) or a base zone district underlying the LGVCO by up to 20% or four feet, whichever is less:**

vi. **Yard setbacks in LOC 50.05.007.4.d, but not including Village Transition yard setbacks adjacent to residential zones or residential uses;**

vii. **Build-to line (LOC 50.05.007.4.e.i);**

viii. **Minimum street frontage (LOC 50.05.007.4.e.ii);**

ix. **Parking facility edge landscaping requirement [LOC 50.05.007.6.e.viii(5)]; or**

v. **Buffering area and screening requirements adjacent to R-7.5 or R-10 parcels [LOC 50.05.007.6.f.i(1)].**

#### ~~4.~~ **VARIANCES NOT ALLOWABLE**

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~~a.~~ No minor variance shall be granted that will permit a use not permitted in the applicable zoning district or that will increase the allowable residential density in any zone.

- ~~b. No minor variance to a zone requirement for which an exception was granted pursuant to LOC 50.07.007.4.d.ii, Dimensional Exceptions, shall be granted to a lot within a planned development where an exception to the zone requirement was granted from the underlying zone requirements by the planned development overlay approval.~~
- ~~c. No minor variance shall be granted to a setback required under LOC 50.05.010, Sensitive Lands Overlay Districts. This provision does not prevent modification of protected riparian areas or setbacks as permitted in that section.~~

### 3. MINOR VARIANCE CRITERIA

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#### a. General

Except as provided in subsection b, below, the reviewing authority may grant a minor variance from the requirements of this Code if the following criteria are met:

- i. The granting of the variance will not be detrimental to the public health or safety;
- ii. The granting of the variance will not be materially injurious to properties or improvements within 300 ft. of the property;
- iii. The granting of the variance will have little or no negative impact on the streetscape (e.g., pedestrian environment or other aspects of the public realm that contribute to the neighborhood character); and
- iv. The proposed development will not adversely affect existing physical and natural systems such as traffic, drainage, Oswego Lake, hillsides, designated sensitive lands, historic resources, or parks, and the potential for abutting properties to use solar energy devices any more than would occur if the development were located as specified by the requirements of the zone.

#### b. Compliance with State or Federal Law

If the applicant asserts that a variance is necessary to comply with a state or federal law based on the rights of the occupant, and the reviewing authority determines that the request may be related to a state or federal legal right, the reviewing authority may grant a minor variance from the requirements of this Code if:

- i. The applicant and proposed use meet the qualifications for applicability under a state or federal law that may require the City to waive, adjust, or reasonably accommodate land use regulations; and
- ii. The requested variance is necessary to comply with state or federal law requirements for adjustment, waiver, or reasonable accommodation of land use regulations, e.g., federal Fair Housing Act, Americans with Disabilities Act, Rehabilitation Act, Religious Land Use and Institutionalized Persons Act; and
- iii. The variance is the minimum necessary to comply with the applicable state or federal law.

### 4. RECORDATION AND TERMINATION OF MINOR VARIANCE

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- a. If a minor variance pursuant to LOC 50.08.002.2.o (a variance based on a specific state or federal legal right of the occupant) is approved, notice of the conditions or



events that will terminate the variance shall be recorded in the County deed records as follows:

- i. Variances that allow use of a lot not otherwise permitted by this Code but required under state or federal law shall expire upon termination of the occupancy of the lot by the activity, use, or individual/entity qualifying for the use variance under state or federal law.
- ii. Variances relating to the placement of the structure, the dimensional standards of the lot, or other variances relating to the structure (other than to the use of the structure) shall expire when the portion of the structure that received the variance is damaged or destroyed and occupancy of the lot by the activity, use, or individual/entity qualifying for the variance under state or federal law has ceased.

## **50.08.003 HARDSHIP VARIANCES**

### **1. PURPOSE**

The purpose of hardship variances is to allow development not in conformance with the requirements of the Community Development Code relating to the property.

### **2. CLASSIFICATION OF VARIANCE**

Hardship variances are significant changes from the Code requirements and are likely to create impacts on adjacent property or users. The City Manager shall decide the classification of any variance application. Hardship variances include:

- a. Variances from setback requirements for a single-family dwelling of more than 20% or where the resulting side yard setback is less than five ft. in width.
- b. Variance from yard setback requirements for an associated accessory structure to a single-family dwelling that does not comply with the three criteria set forth in LOC 50.03.004.2.b.i(1) through (3), Setback Reduction for Accessory Structures, of more than 20%.
- c. Variances from the minimum lot width or depth of more than five ft.
- d. Variances from setback requirements for structures other than those described in LOC 50.08.002.3.a of more than two ft. in side and front yards and more than five ft. in rear yards or where the resulting side yard setback is less than five ft. in width.
- e. Variances from the lot coverage or floor area for other than a single-family residential dwelling or its associated accessory structures.
- f. Variances to building height.
- g. Variance to fence, wall, and retaining wall requirements, other than height.
- h. Variances to any other requirement of this Code except as classified as a minor variance above, and applicable to a development.

### 3. ~~VARIANCE STANDARDS~~

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The reviewing authority may grant a variance from the requirements of this Code, except as expressly prohibited, if it is established that:

#### ~~a. Hardship Variance Standards~~

- ~~i. The request is necessary to prevent unnecessary hardship; and~~
- ~~ii. Development consistent with the request will not be injurious to the neighborhood in which the property is located or to property established to be affected by the request; and~~
- ~~iii. The request is the minimum variance necessary to make reasonable use of the property; and~~
- ~~iv. The request is not in conflict with the Comprehensive Plan.~~

#### ~~b. Hardship Variance Factors and Considerations~~

- ~~i. In evaluating whether a particular request is to be granted, the granting authority shall consider the following, together with any other relevant facts or circumstances:
  - ~~(1) Relevant factors to be considered in determining whether a hardship exists include:
    - ~~(a) Physical circumstances related to the piece of property involved.~~
    - ~~(b) Whether a reasonable use similar to like properties can be made of the property without the variance.~~
    - ~~(c) Whether the hardship was created by the person requesting the variance.~~
    - ~~(d) The economic impact upon the person requesting the variance if the request is denied.~~~~
  - ~~(2) Relevant factors to be considered in determining whether development consistent with the request is injurious include:
    - ~~(a) An analysis of the physical impacts such development will have, such as visual, noise, traffic and the increased potential for drainage, erosion and landslide hazards.~~
    - ~~(b) The perceptions of residents and owners of property in the neighborhood concerning the incremental impacts occurring as a result of the proposed variance.~~~~~~
- ~~ii. A determination of whether the standards set forth in subsection 4.b.i of this section are satisfied necessarily involves the balancing of competing and conflicting interests. The considerations listed in subsection 4.b.i(2) of this section are not~~

standards and are not intended to be an exclusive list of considerations. The considerations are to be used as a guide in the granting authority's deliberations.

#### **4. VARIANCE NOT ALLOWABLE**

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- a. No hardship variance shall be granted that will permit a use not permitted in the applicable zoning district or that will increase the allowable residential density in any zone.
- b. No hardship variance to a zone requirement for which an exception was granted pursuant to LOC 50.07.007.4.d.ii, Dimensional Exceptions, shall be granted to a lot within a planned development where an exception to the zone requirement was granted from the underlying zone requirements by the planned development overlay approval.
- c. No hardship variance shall be granted to a setback required under LOC 50.05.010, Sensitive Lands Overlay Districts. This provision does not prevent modification of protected riparian areas or setbacks as permitted by that section.

### **50.08.003 DESIGN VARIANCES**

#### **1. PURPOSE**

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The purpose of a design variance is to allow adjustments of certain standards of this Code where the resulting design would be superior to development in the surrounding neighborhood or would better achieve the purpose/objectives of the applicable zone or design districts and design standards.

#### **2. DESIGN VARIANCE CLASSIFICATIONS**

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##### **a. R-DD Design**

For exterior modifications of a single-family detached dwelling in the R-DD zone built before 1960, minimum setbacks may be reduced between two ft. and five ft. if the modification maintains at least 50% of the exterior walls (measured by sq. ft.) and does not increase height by more than 100%. Minimum setback adjustments of two ft. or less are exceptions to the R-DD district standards pursuant to LOC 50.04.003.3.c.

##### **b. Downtown Redevelopment Design District**

A variance from any standard of this Code, unless prohibited by LOC 50.08.001.2.

##### **c. Foothills Mixed Use District**

A variance from the FMU zone standards except height and floor area ratio standards (50.11.007, Appendix G).

##### **d. Lake Grove Village Center Overlay District**

A variance from any standard of this Code that cannot be approved through a minor variance pursuant to LOC 50.08.002.2.p, but not including variances to:

- i. Maximum building height limit (LOC 50.05.007.4.b);
- ii. Maximum lot coverage (LOC 50.05.007.4.c);

iii. Village transition area yard setbacks adjacent to R-7.5 and R-10 parcels (LOC 50.05.007.4.d.ii); or

iv. Any matter prohibited by LOC 50.08.001.2, Variances Not Allowed.

e. Residential Infill Design (RID) Review

Except for properties located in the R-DD zone or a design district, variances from any of the following standards for residential dwellings and accessory structures where those standards prevent development that is otherwise compatible with the character of the neighborhood and surrounding residential development:

i. Floor area;

ii. Lot coverage;

iii. Building height;

iv. Yard setbacks;

v. Street Front setback plane;

vi. Side yard setback plane;

vii. Side yard appearance and screening;

viii. Garage appearance and location;

ix. Accessory structure standards;

x. Oswego Lake setbacks; and

xi. Oswego Lake setback height and footprint requirements in LOC 50.04.003.7.b, provided that no accessory structure may exceed 18 ft. in height and no boathouse footprint may exceed 800 sq. ft.

3. GENERAL DESIGN VARIANCE CRITERIA

The reviewing authority shall only approve a design variance if it determines that the following criteria have been met.

a. The applicant demonstrates that:

i. Compliance with the applicable standard is not practicable due to the physical characteristics of the site or existing structure; or

ii. An alternative design will better accomplish the purposes, goals, or objectives of the base district and any adopted plan or overlay district applicable to the property.

b. The proposed variance will result in a project that is exceptional in the quality of detailing, appearance and materials or creates a positive unique relationship to other nearby structures, views or open space.

c. If the subject property is not located in the Downtown Redevelopment Design District or Lake Grove Village Center Overlay District, and is not the subject of a RID application:

i. The variance will not create an incompatible relationship between the proposed structure and the scale or character of the neighborhood, the scale or character of the street frontage, or the privacy of properties within 300 ft. of the subject property; and

- ii. Any significant impacts to properties within 300 ft. of the applicant's property resulting from the variance are mitigated to the extent practical through building or site design features on the site.

**4. DOWNTOWN REDEVELOPMENT DESIGN DISTRICT DESIGN VARIANCE CRITERIA**

The reviewing authority shall approve a variance to the design requirements in LOC 50.05.004.5 through 50.05.004.7 if it determines that the application meets criteria 3.a and 3.b above and the applicant demonstrates that the variance is necessary to create a complimentary relationship with a viable existing structure on an abutting lot that is not designed in the Lake Owego Style.

**5. LAKE GROVE VILLAGE CENTER OVERLAY (LGVCO) DESIGN VARIANCE CRITERIA**

The reviewing authority shall only approve a design variance in the LGVCO District if it determines that the application meets criteria 3.a and 3.b, above, and also meets the following criteria:

- a. The variance will not adversely affect existing physical and natural systems such as traffic, access, circulation, connectivity, drainage, designated sensitive lands, historic resources, or parks, and the potential for abutting properties to use solar energy devices any more than would occur if the development fully met the LGVCO standards; and
- b. The applicant shall present an analysis of alternative designs in relation to variances from LGVCO standards requested to demonstrate that the application avoids the need for variances to the degree practicable; and
- c. The proposed design achieves the listed policies of the Lake Grove Village Center Plan better than would result if the LGVCO standards were fully met after considering each of the following goals and policies, as applicable:

<b><u>TABLE 50.08.006-1: GOALS CONSIDERED FOR VARIANCE</u></b>	
<b><u>Goal Title</u></b>	<b><u>Policies</u></b>
<u>Enhance the Pedestrian Environment and Connectivity Within the Village Center</u>	<u>3.1, 3.2, 3.3, 3.4</u>
<u>Strengthen the Lake Grove Sense of Place and Community</u>	<u>5.1, 5.4</u>
<u>Enhance Village Character</u>	<u>6.1, 6.2, 6.3, 6.4, 6.5</u>
<u>Protect the Residential Character of Adjoining Neighborhoods</u>	<u>7.1, 7.2</u>
<u>Protect Natural Resources and Enhance the Natural Environment Within the Village Center</u>	<u>8.1, 8.2, 8.4, 8.5, 8.6</u>
<u>Support Businesses in the Village Center</u>	<u>9.3, 9.4, 9.6</u>

- d. For variances to setbacks or site perimeter landscaping and buffering standards, the applicant shall demonstrate that:
  - i. If the requested variance is for a setback or landscaping or buffering required at the perimeter of the site that is adjacent to R-7.5 or R-10 zones, the applicant considered alternative site plans that adjusted internal landscaping or other dimensional standards internal to the site and there is no practicable alternative to the requested variance at the perimeter of the site.
  - ii. If the requested variance is to a landscaping and buffering standard required around the perimeter of the site and is adjacent to any zone other than R-7.5 or

R-10, the applicant considered alternative site plans to adjust internal landscaping and there is no practicable alternative to the requested variance at the perimeter of the site.

**6. RESIDENTIAL INFILL DESIGN (RID) REVIEW VARIANCE CRITERIA**

The reviewing authority may grant a Residential Infill Design (RID) variance for a residential dwelling or accessory structure in a residential zone if it determines that the criteria in subsection 3.a and 3.b above and the additional criteria below have been met. In making these determinations, the reviewing authority shall consider the pattern and character of development of all lots within 300 ft. of the subject site and shall also consider any neighborhood design objectives or guidelines for residential development that have been adopted by the local neighborhood association.

**a. Residential Dwelling or Accessory Structure Size**

A variance to the following standards may be approved when a more compatible, positive relationship between the size of a proposed residential dwelling or accessory structure and the scale and character of a neighborhood can be demonstrated in other ways:

Floor area;

Lot coverage;

Yard setbacks;

Building height;

Accessory structures;

Boathouse footprint in the Lake Oswego setback; and

Height of accessory structures in the Oswego Lake setback (except as limited by LOC 50.08.003.2.e.xii).

That relationship shall be evaluated by considering the degree to which a proposed design offers features that diminish the perceived scale and improve the perceived character of greater size. That review will include consideration of:

i. Distance and visibility from street and adjoining properties;

ii. Topography;

iii. Building number (more smaller versus one larger, for example);

iv. Building form(s), massing and orientation; and

v. Landscaping.

**b. Relationship to the Street**

A variance to the following standards may be approved when a more compatible, positive relationship between a proposed design and the scale and character of the street can be demonstrated in other ways:

Front yard setback;

Front setback plane; and

Garage door openings.

That relationship will be evaluated by considering the degree to which a proposed design offers features that enhance the perceived scale and character of the street from a pedestrian's perspective. While the scale and character will vary from neighborhood to neighborhood and from street to street, a positive contribution is typically one that enhances the safety and experience of a pedestrian using the street. That review will include consideration of:

- i. Distance and visibility from street;
- ii. Prevailing patterns of front yard setback, building alignment and spacing (rhythm);
- iii. Topography;
- iv. Preservation of existing trees and features of perceived value to the street;
- v. Perceived building form, proportion, massing and orientation relative to the street;
- vi. Porch and/or entry location and treatment relative to the street;
- vii. Garage distance and visibility from the street;
- viii. Perceived size and scale of garage doors from the street;
- ix. Perceived area and scale of driveways and parking areas from the street;
- x. Fencing or screens; and
- xi. Landscaping.

c. Relationship to the Neighbors

A variance to the following standards may be approved when a more compatible, positive relationship between a residential dwelling or accessory structure and the scale, character and privacy of its neighbors can be demonstrated in other ways:

- Side yard setback;
- Side yard setback plane; and
- Side yard appearance and screening.

That relationship will be evaluated by considering the degree to which a proposed design offers features that enhance perceived scale, character and privacy relative to adjoining properties. While the scale, character and privacy of one building relative to another will vary from street to street, and from lot to lot, a positive contribution is typically one that adjusts the location and perceived scale, character and views from or to a new residential dwelling or accessory structure to avoid visual conflict with neighbors. That review will include consideration of:

- i. Distance and visibility from adjoining properties;
- ii. Preservation of existing trees and features of perceived value to adjoining properties;
- iii. Topography;
- iv. Perceived building height, form, proportion, massing and orientation relative to adjoining properties;
- v. Treatment of elevations exposed to adjoining properties;

- vi. Perceived sight lines to and from windows, decks and outdoor living spaces;
- vii. Fencing or screening; and
- viii. Landscaping.

## **50.08.004 REASONABLE ACCOMMODATION VARIANCE (ADA, FHA)**

### **1. CLASSIFICATION OF VARIANCE**

- ~~a. Reasonable accommodation variances are variances to any requirement of this Code required by state or federal law based on the special needs of the occupant.~~
- ~~b. An applicant must specifically designate a request for a reasonable accommodation variance in the application.~~

### **2. VARIANCE STANDARDS**

~~The reviewing authority may grant a variance from the requirements of this Code, except as expressly prohibited, if it is established that:~~

- ~~a. The applicant and proposed use meet the qualifications for applicability under a state or federal law that may require the City to waive, adjust, or reasonably accommodate land use regulations.~~
- ~~b. The requested variance is necessary to comply with state or federal law requirements for adjustment, waiver, or reasonable accommodation of land use regulations, e.g., federal Fair Housing Act, Americans with Disabilities Act, Rehabilitation Act, Religious Land Use and Incarcerated Persons Act.~~
- ~~c. The variance is the minimum necessary to comply with the applicable state or federal law.~~

### **3. NOTICE OF DURATION OF REASONABLE ACCOMMODATION VARIANCES; EXPIRATION**

- ~~a. Notice of the condition(s)/event(s) that would terminate the reasonable accommodation variance shall be recorded in the County deed records.~~
- ~~b. Reasonable accommodation variances that allow use of a lot not otherwise permitted by this Code but required under state or federal law shall expire upon termination of the occupancy of the lot by the activity, use, or individual/entity qualifying for the use variance under state or federal law.~~
- ~~c. Reasonable accommodation variances relating to the placement of the structure, the dimensional standards of the lot, or other variances relating to the structure (other than to the use of the structure), shall expire when the portion of the structure that received the variance is damaged or destroyed and occupancy of the lot by the activity, use, or individual/entity qualifying for the variance under state or federal law has ceased.~~

## **50.08.004 MAJOR VARIANCES**

### **1. PURPOSE**

The purpose of a major variance is to allow more significant adjustments to the standards of this Code when, owing to special circumstances or conditions beyond the applicant's control, application of the Code standards would result in undue and unique hardship, or that failure to grant a variance would result in Code standards



applicable to the property creating a taking of private property without compensation under state and federal law.

2. MAJOR VARIANCE CLASSIFICATION

A Variance to any other requirement of this Code that is not eligible for approval through the minor variance or design variance process, unless expressly prohibited by LOC 50.08.001.2, Variances Not Allowed.

3. MAJOR VARIANCE CRITERIA

a. Major Variance Criteria

The reviewing authority may grant a major variance from the requirements of this Code if:

i. The request is necessary to prevent unnecessary hardship based on the following considerations:

- (1) The physical circumstances of the property involved;
- (2) Whether a hardship was created by the person requesting the variance;
- (3) The economic impact on the applicant if the variance is denied; and
- (4) Other factors deemed relevant by the reviewing authority.

ii. Development consistent with the request will not be injurious to the neighborhood in which the property is located or to property affected by the request based on the following considerations:

- (1) An analysis of the physical impacts such development will have, such as visual, noise, traffic and the increased potential for drainage, erosion and landslide hazards;
- (2) The perceptions of residents and owners of property in the neighborhood concerning the incremental impacts occurring as a result of the proposed variance; and
- (3) Other factors deemed relevant by the reviewing authority.

iii. The request is the minimum variance necessary to make reasonable use of the property.

**50.08.005 DOWNTOWN REDEVELOPMENT DISTRICT EXCEPTIONS TO STANDARDS**

1. APPLICABILITY

The reviewing authority may allow exceptions to LOC 50.05.004, Downtown Redevelopment Design District, and to other Lake Oswego Community Development Code provisions that are applicable to the downtown redevelopment design district without the need to obtain a formal variance in one or more of the following circumstances:

- i. The applicant demonstrates that the physical characteristics of the site or existing structure make compliance impractical; or
- ii. New buildings or substantial remodels may vary from the design requirements in LOC 50.05.004.5 through 50.05.004.7 if:

~~(1) The applicant demonstrates that the design should vary in order to create a complimentary relationship with an abutting viable existing structure that is not designed in the Lake Oswego Style; and~~

~~(2) The applicant demonstrates that the alternative design is exceptional in the quality of detailing, appearance or materials and/or creates a positive unique relationship to other structures, views or open space in a manner that accomplishes the purpose of the Downtown Redevelopment District Design Standards; or~~

~~iii. The applicant demonstrates that the alternative design accomplishes the purpose of the Urban Design Plan in a manner that is equal or superior to a project designed pursuant to this standard.~~

## ~~2. APPLICATION PROCESS~~

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~~A request for exception under this provision may be processed as part of the underlying application or separately as a major development.~~

## **50.08.006 LGVC ADJUSTMENTS**

### ~~1. PURPOSE~~

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~~The regulations in LOC 50.05.007, Lake Grove Village Center Overlay District, are designed to implement the goals and policies of the Lake Grove Village Center Plan. These standards apply to the entire Lake Grove Village Center Overlay District. However, due to the district's diversity, some sites are not able to be developed in compliance with all applicable district standards, or through application it may be found that various district standards conflict when applied to a general class of property, or the district generally. Adjustment reviews provide the opportunity for flexibility in unusual situations or in the event of code conflict and allow the district standards to be modified if the proposed development continues to meet the intended purpose of the regulation or of the policies of the Lake Grove Village Center Plan.~~

### ~~2. STANDARDS SUBJECT TO ADJUSTMENT~~

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#### ~~a. Eligible Standards~~

~~Except as listed in LOC 50.08.006.2.b, the standards in the Lake Grove Village District overlay district code may be modified using the adjustment review process.~~

#### ~~b. Ineligible Standards~~

~~Adjustments are prohibited for the following:~~

- ~~i. Standards addressing the permitted or conditional uses allowed on the property;~~
- ~~ii. Standards and requirements relating to review procedures;~~
- ~~iii. LOC 50.05.007.4.b, Structure Height;~~
- ~~iv. LOC 50.05.007.4.c, Lot Coverage; or~~
- ~~v. LOC 50.05.007.4.d.ii, Village Transition yard setbacks adjacent to R-7.5 and R-10 parcels.~~

### **3. MINOR ADJUSTMENTS**

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Minor adjustments are available to provide flexibility in circumstances where application of the Lake Grove Village District Overlay code results in the inability to meet all applicable quantitative code requirements. A project may involve one or more minor adjustments. The following Lake Grove Village Center Overlay District code standards involving quantitative requirements may be adjusted by 20% or four ft., whichever is less:

#### **a. Site Dimensional Standards**

- i. LOC 50.05.007.4.d, Yard Setbacks, not including Village Transition yard setbacks adjacent to R-7.5 and R-10 parcels; and
- ii. LOC 50.05.007.4.e, Streetfront Environment standards, (i) Build-To-Line and (ii) Minimum Street Frontage.

#### **b. Site Planning Standards**

- i. LOC 50.05.007.6.e.viii(5), Landscape Requirements: Parking Facility Edge Requirements, and
- ii. LOC 50.05.007.6.f.i(1), Buffer Area and Screening, Requirements Adjacent to Low Density Residential.

### **4. MAJOR ADJUSTMENTS**

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Major adjustments are available to any eligible standards, as listed in LOC 50.08.006.2.a, including minor adjustments which exceed the quantitative minor adjustment threshold.

### **5. ADJUSTMENT APPROVAL CRITERIA**

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#### **a. Criteria for Minor and Major Adjustments**

Except as provided in LOC 50.08.006.5.b, both minor adjustments and major adjustments applications shall satisfy all of the following criteria:

- i. Granting the adjustment results in a site plan or building design that equally or better meets the purpose of the standard(s) being adjusted;
- ii. The property has special circumstances or conditions involving site configuration, natural or topographic features, existing improvements, or relationships to abutting or adjacent properties which would result in the inability of the applicant to comply if the standards were applied to the property without an adjustment;
- iii. The adjustment is the minimum necessary to alleviate the inability to comply with the applicable standards;
- iv. The adjustment will not adversely affect existing physical and natural systems such as traffic, access, circulation, connectivity, drainage, designated sensitive lands, historic resources, or parks, and the potential for abutting properties to use solar energy devices any more than would occur if the development fully met the standards of the overlay district; and
- v. Any significant impacts resulting from the adjustment are mitigated to the extent practical through building or site design features on the site.

#### **b. Additional Criteria for Major Adjustments**

Major adjustments shall either:

- i. Satisfy the following additional criteria, in addition to all of the criteria in LOC 50.08.006.5.a: The applicant shall demonstrate through an alternatives analysis how a site plan or building design cannot reasonably be proposed, which complies with all applicable Lake Grove Village Center Overlay District standards; or
- ii. Satisfy the following additional criteria, in addition to the criteria in LOC 50.08.006.5.a.iii through v:
  - (1) The applicant shall demonstrate that without an adjustment, the application of the conflicting standards would constitute a "regulatory taking" under state and federal Constitutions, and
  - (2) The request results in a design that achieves the listed policies of the Lake Grove Village Center Plan in a manner that is better than what would result if the Lake Grove Village Center Overlay District standards were fully met. If applicable to the proposed development, the policies to be considered are:

<b>TABLE 50.08.006-1: GOALS CONSIDERED FOR ADJUSTMENT</b>	
<b>Goal Title</b>	<b>Policies</b>
Enhance the Pedestrian Environment and Connectivity Within the Village Center	3.1, 3.2, 3.3, 3.4
Strengthen the Lake Grove Sense of Place and Community	5.1, 5.4
Enhance Village Character	6.1, 6.2, 6.3, 6.4, 6.5
Protect the Residential Character of Adjoining Neighborhoods	7.1, 7.2
Protect Natural Resources and Enhance the Natural Environment Within the Village Center	8.1, 8.2, 8.4, 8.5, 8.6
Support Businesses in the Village Center	9.3, 9.4, 9.6

**e. Reviewing Authority Consideration**

When applying the above approval criteria, the reviewing authority shall consider the following:

- i. To the extent practicable, standards for landscaping and buffering at the perimeter of a site and setback requirements adjacent to R-7.5 and R-10 zones shall have the highest priority for retention.
- ii. Site planning standards for internal landscaping and other internal dimensional standards shall be considered for adjustment prior to any adjustment of perimeter landscaping and buffering standards.
- iii. For a major adjustment, the thoroughness of alternative designs and overlay district code analysis presented. Priority consideration shall be given in the alternatives analysis to achieve designs which eliminate the need for major adjustment.

## **50.08.007 RESIDENTIAL INFILL DEVELOPMENT (RID)**

### **1. PURPOSE**

The purpose of this section is to:

- a. Provide an alternative process for the review of building permits for construction or alteration of outright permitted residential dwellings and accessory structures in residential zones where the clear and objective development standards of the Code conflict with or prevent development that may otherwise be compatible with the character of the neighborhood and surrounding residential development.
- b. Ensure that new development is consistent with the character of development envisioned for neighborhoods in Lake Oswego.
- c. Ensure that new development is compatible with existing, surrounding residential development.

### **2. APPLICABILITY**

This standard is applicable to minor developments listed in LOC 50.07.003.14.a.ii(15) where an applicant has requested approval of an alternative design that does not meet the clear and objective development standards of the Code but may otherwise be compatible with the character of the neighborhood and surrounding residential development.

### **3. AUTHORIZATION AND CRITERIA**

- a. In considering an application for residential infill design review, the City Manager shall apply the building height, lot coverage, floor area, yard setback, Oswego Lake setback, front setback plane, side yard setback elevation requirements, garage appearance and location and accessory structure requirements of the underlying zone, and the height and footprint requirements in the Oswego Lake setback (LOC 50.04.003.7), including such requirements created or modified by a planned development overlay.
- b. The City Manager may grant exceptions to the applicable requirements listed in LOC 50.08.007.3.a if the applicant demonstrates that the proposed residential dwelling or accessory structure design results in development that is equal to or better than development that would meet the clear and objective standards listed in LOC 50.08.007.3.a for the applicable zone. In making this determination, the City Manager shall consider the following:

#### **i. Residential Dwelling or Accessory Structure Size**

##### **(1) Intent**

Compatible infill is ensured through a mix of standards addressing lot dimensions and maximum allowable floor areas. These standards are intended to reflect the size of building(s) that can be reasonably located and shaped to suit the scale and character of a neighborhood. The Code establishes that maximum allowable floor area and its location on a lot through the following standards:

- (a) Floor area;
- (b) Lot coverage;
- (c) Yard setbacks;

- ~~(d) Building height;~~
- ~~(e) Accessory structures;~~
- ~~(f) Boathouse footprint; and~~
- ~~(g) Height of accessory structures in the Oswego Lake setback.~~

**~~(2) Criteria~~**

~~The City Manager may permit a residential dwelling or accessory structure design to exceed or vary from the standards listed in subsection 3.b.i(1) of this section, when a more compatible, positive relationship between the size of a proposed residential dwelling or accessory structure and the scale and character of a neighborhood can be demonstrated in other ways. The City Manager will evaluate that relationship by considering the degree to which a proposed design offers features that diminish the perceived scale and improve the perceived character of greater size. That review will include consideration of:~~

- ~~(a) Distance and visibility from street and adjoining properties;~~
- ~~(b) Topography;~~
- ~~(c) Building number (more smaller versus one larger, for example);~~
- ~~(d) Building form(s), massing and orientation; and~~
- ~~(e) Landscaping.~~

**~~(3) Oswego Lake Setback Exception Limitations~~**

~~For accessory structures in the Oswego Lake setback, no height exception shall be granted above 18 ft. and no boathouse footprint exception shall be granted to allow more than 800 sq. ft.~~

**~~ii. Relationship to the Street~~**

**~~(1) Intent~~**

~~Compatible infill is development that makes a positive contribution to the scale and character of a neighborhood's streetscape. While this scale and character will vary from neighborhood to neighborhood and from street to street, a positive contribution is typically one that enhances the safety and experience of a pedestrian using the street. The Code establishes the relationship of a building's location and form relative to the street through the following standards:~~

- ~~(a) Front yard setback;~~
- ~~(b) Front setback plane; and~~
- ~~(c) Garage door openings.~~

**~~(2) Criteria~~**

~~The City Manager may permit a residential dwelling or accessory structure design to exceed or vary from the standards listed in subsection 3.b.ii(1) of this section when a more compatible, positive relationship between a proposed design and the scale and character of the street can be demonstrated in other ways. The City Manager will evaluate that relationship by considering the degree to which a proposed design offers features that enhance the perceived scale and character of the street from a pedestrian's perspective. That review will include consideration of:~~

- ~~(a) — Distance and visibility from street;~~
- ~~(b) — Prevailing patterns of front yard setback, building alignment and spacing (rhythm);~~
- ~~(c) — Topography;~~
- ~~(d) — Preservation of existing trees and features of perceived value to the street;~~
- ~~(e) — Perceived building form, proportion, massing and orientation relative to the street;~~
- ~~(f) — Porch and/or entry location and treatment relative to the street;~~
- ~~(g) — Garage distance and visibility from the street;~~
- ~~(h) — Perceived size and scale of garage doors from the street;~~
- ~~(i) — Perceived area and scale of driveways and parking areas from the street;~~
- ~~(j) — Fencing or screens; and~~
- ~~(k) — Landscaping.~~

**iii. — Relationship to the Neighbors**

**(1) — Intent**

~~Compatible infill does not diminish the scale, character or privacy of neighboring residences. While the scale, character and privacy of one building relative to another will vary from street to street, and from lot to lot, a positive contribution is typically one that adjusts the location and perceived scale, character and views from or to a new residential dwelling or accessory structure to avoid visual conflict with neighbors. The Code establishes the relationship of a building's location and form relative to its neighbors through the following standards:~~

- ~~(a) — Side yard setback; and~~
- ~~(b) — Side wall elevation.~~

**(2) — Criteria**

~~The City Manager may permit a residential dwelling or accessory structure design to exceed or vary from the standards listed in subsection 3.b.iii(1) of this section when a more compatible, positive relationship between a residential dwelling or accessory structure and the scale, character and privacy of its neighbors can be demonstrated in other ways. The City Manager will evaluate that relationship by considering the degree to which a proposed design offers features that enhance perceived scale, character and privacy relative to adjoining properties. That review will include consideration of:~~

- ~~(a) — Distance and visibility from adjoining properties;~~
- ~~(b) — Preservation of existing trees and features of perceived value to adjoining properties;~~
- ~~(c) — Topography;~~
- ~~(d) — Perceived building height, form, proportion, massing and orientation relative to adjoining properties;~~

- ~~(e) Treatment of elevations exposed to adjoining properties;~~
- ~~(f) Perceived sight lines to and from windows, decks and outdoor living spaces;~~
- ~~(g) Fencing or screening; and~~
- ~~(h) Landscaping.~~

~~e. When applying the criteria for compatibility of residential dwelling or accessory structure size, relationship to the street, and relationship to neighbors as set forth in LOC 50.08.007.3.b, the City Manager shall consider the pattern and character of development of all lots within 200 ft. of the subject site. The City Manager shall also consider any neighborhood design objectives or guidelines for residential development that have been adopted by the local neighborhood association.~~

## **50.08.008 Foothills Mixed Use Exceptions to Standards**

### **1. Applicability**

The reviewing authority may allow exceptions to FMU zone standards except use, height and floor area ratio standards, without the need to obtain a formal variance when the applicant demonstrates that:

- ~~a. The proposed adjustment equally or better meets the purpose of the standard to be modified; and~~
- ~~b. The proposed adjustment continues to meet the overall purpose of the FMU zone found in LOC 50.02.002.1.k and the Foothills Special District Plan of the Comprehensive Plan.~~

### **2. Application Process**

A request for exception under this provision may be processed as part of the underlying application or separately as a minor development

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## **LOC 50.10 DEFINITIONS AND RULES OF MEASUREMENT**

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### **50.10.003 DEFINITIONS**

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#### **1. DEFINITION OF TERMS**

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##### **Alter**

To change or modify the construction or occupancy of a building, or structure, site feature, or use of land.



\*\*\*\*

**Damaged**

**A building or site feature, or part of a building or site feature, that has been ruined or destroyed by intentional or unintentional actions of persons or inanimate objects, or by natural forces, so that its function and usefulness have been impaired, or its value has been diminished so that it needs to be reconstructed or repaired to restore its functionality and value. Damage does not include dismantling of a building or site feature or portion of a building or site feature in the course of voluntary reconstruction or repairs.**

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**Intentional act**

**An act that is deliberate, done on purpose and not by accident.**

\*\*\*\*

**Maintenance**

**Upkeep or repair of any structure or site feature necessary to keep the structure or site feature in good and safe condition. Maintenance does not include structural alteration unless that structural alteration is required to remedy a condition declared to be unsafe by any official charged with protecting the public safety, upon the order of that official.**

\*\*\*\*

**Owner**

Where used in relationship to real property, "owner" means the legal owner of record or easement holder, or, where there is a recorded land sales contract in effect, the purchaser ~~thereunder~~**under that contract. An act or omission to act by an agent of the Owner are deemed to be the act or omission by the Owner.**