

ORDINANCE NO. 4473

AN ORDINANCE AMENDING ORDINANCE NO. 2050, THE DEVELOPMENT CODE,
TA 2007-0008, CHAPTER 40 PROCESS IMPROVEMENT 3 (PI3) AMENDMENT

WHEREAS, in August 2007, the City of Beaverton Community Development Department staff submitted a proposed text amendment to Chapter 40 (Applications) to lower the level of review for selected development applications; and

WHEREAS, the Planning Commission conducted public hearings on November 14, 2007, December 12, 2007, January 9, 2008, and January 16, 2008 to consider the proposed amendments to Chapter 40 (Applications); and

WHEREAS, the Planning Commission received and considered the submitted staff report, exhibits, and staff recommended approval of this Development Code text amendment as amended by the Planning Commission; and

WHEREAS, on January 16, 2008, the Planning Commission conducted a public hearing at the conclusion of which the Planning Commission reached a determination to recommend to the Beaverton City Council to adopt the proposed amendments to the Development Code as summarized in Planning Commission Land Use Order No. 2041; and

WHEREAS, no appeal of the Planning Commission recommendation was filed with the City; and

WHEREAS, the Council adopts and incorporates herein the Development Services Division Staff Report dated November 7, 2007, December 5, 2007, January 2, 2008, January 10, 2008, and Planning Commission Land Use Order No. 2041 as the applicable criteria and finding which constitute an adequate factual basis for this ordinance. Now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

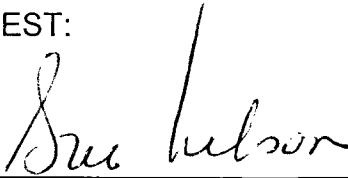
Section 1. Ordinance No. 2050, the Development Code Chapter 40, is amended to read as set out in Appendix "A" to this Ordinance attached to and incorporated herein by this reference.

First reading this 11th day of February, 2008.

Passed by the Council this 25th day of February, 2008.

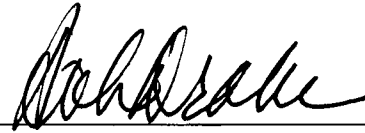
Approved by the Mayor this 26th day of February, 2008.

ATTEST:



SUE NELSON, City Recorder

APPROVED:



ROB DRAKE, Mayor

1 **Section 1: The Development Code, Ordinance No. 2050, Chapter 40 –**
2 **Applications, Section 40.10.15, ADJUSTMENTS, is amended to read as**
3 **follows with deleted matter in strikethrough and new matter in highlight:**

4
5 **40.10.15. Application.**

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7 *****

8
9 **1. Minor Adjustment.**

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11 *****

12
13 C. Approval Criteria. In order to approve a Minor Adjustment
14 application, the decision making authority shall make findings
15 of fact based on evidence provided by the applicant
16 demonstrating that all the following criteria are satisfied:

- 17
18 1. The proposal satisfies the threshold requirements for a
19 Minor Adjustment application.
20
21 2. The application complies with all applicable submittal
22 requirements as specified in Section 50.25.1 and includes
23 all applicable City application fees. ~~related to the~~
24 ~~application under consideration by the decision making~~
25 ~~authority have been submitted.~~
26
27 3. Special conditions or circumstances exist on the site that
28 make it physically difficult or impossible to meet the
29 applicable development standard for an otherwise
30 acceptable proposal. ~~which are unique to the land,~~
31 ~~structure, or building involved.~~
32
33 4. The special conditions and circumstances do not result
34 from the actions of the applicant and such conditions and
35 circumstances do not merely constitute financial hardship
36 or inconvenience.
37
38 ~~4. Granting the adjustment will result in a project that~~
39 ~~equally or better meets the regulation to be modified.~~
40
41 5. Granting the adjustment as part of the overall project
42 proposal will not obstruct pedestrian or vehicular
43 movement.
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6. ~~The adjustment will allow~~ City designated scenic resources, natural areas, significant trees and/or historic resources, if present, ~~to~~ will be preserved.
 7. If more than one adjustment is being requested concurrently, the cumulative effect of the adjustments will result in a proposal project which is still consistent with the overall purpose of the applicable ~~zone~~ zoning district.
 8. Any adjustment granted shall be the minimum necessary to permit ~~that will make possible~~ a reasonable use of land, buildings, and structures.
 9. The proposal incorporates building, structure, or site design features or some combination thereof that compensate for the requested adjustment ~~adjusting the Site Development Requirement.~~
 10. The proposal is consistent with all applicable provisions of Chapter 20 (Land Uses) unless the applicable provisions are modified by means of one or more ~~are subject to an~~ Adjustment, Variance, Planned Unit Development applications that already have been ~~shall be approved or~~ are considered concurrently with the subject proposal.
 11. The proposal is consistent with all applicable provisions of Chapter 60 (Special Requirements) and that all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Requirements) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.
 12. Adequate means are provided or can be provided to ensure continued periodic maintenance and necessary normal replacement of the following private common facilities and areas: drainage ditches, roads and other improved rights-of-way, structures, recreation facilities, landscaping, fill and excavation areas, screening and fencing, ground cover, garbage and recycling storage areas and other facilities, not subject to periodic maintenance by the City or other public agency.

13. ~~The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code. [ORD 4265; September 2003]~~

13.14. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

2. Major Adjustment.

A. Threshold. An application for Major Adjustment shall be required when one or more of the following thresholds apply:

1. Involves an adjustment of more than 10% and up to and including 50% adjustment from the numerical Site Development Requirement specified in Chapter 20 (Land Uses).

2. Involves an adjustment of more than 10% and up to and including 50% adjustment from the numerical Development Standards for Grading specified in Section 60.15.15.05, Land Division, Grading standards of this Code. [ORD 4397; July 2006]

3. Any change from the numerical requirements contained in Section 60.30 (Off-Street Parking).

C. Approval Criteria. In order to approve a Major Adjustment application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a Major Adjustment application.

2. The application complies with all applicable submittal requirements as specified in Section 50.25.1 and includes all applicable City application fees, related to the application under consideration by the decision making authority have been submitted.

EXHIBIT A

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3. Special conditions or circumstances exist on the site that make it difficult or impossible to meet the applicable development standard for an otherwise acceptable proposal, which are unique to the land, structure, or building involved.
4. The special conditions or circumstances do not result from the actions of the applicant and such conditions and circumstances do not merely constitute financial hardship or inconvenience.
- ~~4. Granting the Major Adjustment will result in a project that equally or better meets the regulation to be modified.~~
5. Granting the adjustment as part of the overall proposal will not obstruct pedestrian or vehicular movement.
6. ~~The adjustment will allow~~ City designated scenic resources, natural areas, significant trees and/or historic resources, if present, ~~to~~ will be preserved.
7. If more than one adjustment is being requested concurrently, the cumulative effect of the adjustments will result in a proposal project which is still consistent with the overall purpose of the applicable zone zoning district.
8. Any adjustment granted shall be the minimum necessary to permit adjustment that will make possible a reasonable use of land, buildings, and structures.
- ~~9. The proposal incorporates building, structure, or site design features which compensate for adjusting the Site Development Requirement.~~
9. Either it can be demonstrated that the proposed modification equally or better meets the intent of the standard to be modified or the proposal incorporates building, structure, or site design features or some combination thereof that compensate for the requested adjustment.

10. The proposal is consistent with all applicable provisions of Chapter 20 (Land Uses) unless the applicable provisions are modified by means of one or more ~~are subject to an Adjustment, Variance, Planned Unit Development applications that already have been~~ shall be approved or are considered concurrently with the subject proposal.

11. The proposal is consistent with all applicable provisions of Chapter 60 (Special Requirements) and that all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Requirements) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.

12. Adequate means are provided or can be provided to ensure continued periodic maintenance and necessary normal replacement of the following private common facilities and areas: drainage ditches, roads and other improved rights-of-way, structures, recreation facilities, landscaping, fill and excavation areas, screening and fencing, ground cover, garbage and recycling storage areas and other facilities, not subject to periodic maintenance by the City or other public agency.

~~13. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code.~~

13.14. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

Section 2: The Development Code, Ordinance No. 2050, Chapter 40 – Applications, Section 40.15, CONDITIONAL USE, is amended to read as follows with deleted matter in strikethrough and new matter in highlight:

40.15.05. Purpose

The purpose of a Conditional Use application is to allow uses on a case-by-case basis which warrant special review uses that may be compatible in the underlying zoning district but because of their size, operation, or other characteristics require review on a case-by-case basis. These uses are subject

1 to the conditional use regulations in this Section because they may, but do
 2 not necessarily, cause result in significant adverse effects upon the
 3 environment, overburden public services, change alter the character of an
 4 area, create or foster nuisances. A review of these uses is necessary due to
 5 the potential individual or cumulative impacts these uses may have on the
 6 surrounding area or neighborhood. The conditional use review provides an
 7 opportunity to allow the use when there are minimal impacts, to allow the
 8 use but impose conditions specifying mitigation measures to address
 9 identified impacts, or to deny the use if the impacts are substantial and the
 10 impacts cannot be mitigated., or create nuisances. Conditional uses may be
 11 approved, approved with site-specific conditions designed to minimize or
 12 mitigate identified adverse impacts, or denied. A Preliminary, Final, or both
 13 Planned Unit Development is a special kind of Conditional Use that permits
 14 the modification of the development standards in the underlying zoning
 15 district to achieve innovative design, preserve natural resources, reduce
 16 energy consumption and/or otherwise address unique site opportunities and
 17 constraints. Such approval may allow adjustment, variance, or both to Site
 18 Development Requirements in Chapter 20 (Land Uses) allows the
 19 modification of such design standards without the necessity for separate
 20 Adjustment or Variance applications, findings, and approvals. This Section
 21 is carried out by the approval criteria listed herein.

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 23 *****

24
 25 **40.15.15. Application.**

26
 27 There are five (5) four (4) conditional use applications which are as follows:
 28 Minor Modification of a Conditional Use, Major Modification of a Conditional
 29 Use, Administrative Conditional Use, New Conditional Use, and Planned
 30 Unit Development.

31
 32 **1. Minor Modification of a Conditional Use.**

33
 34 A. Threshold. An application for Minor Modification of a
 35 Conditional Use shall be required when one or more of the
 36 following thresholds apply:

- 37
 38 1. An increase in the gross floor area of an existing
 39 conditional use up to and including 10% 25% and less
 40 than 1,000 not to exceed 3,000 gross square feet of floor
 41 area for all properties that are not located in a residential
 42 zoning district and are located at a distance of more than
 43 50 feet from a residential zoning district.
 44

1 2. An increase in the gross floor area of an existing
 2 conditional use up to and including 10% and not to exceed
 3 1,000 gross square feet of floor area for properties that are
 4 located in a residential zoning district or within a
 5 distance of up to and including 50 feet of a residential
 6 zoning district.

7
 8 3.2. A projected or actual increase in vehicular traffic to and
 9 from a site approved for an existing conditional use of up
 10 to and including 100 less than 200 vehicle trips per day as
 11 determined by using the Institute of Transportation
 12 Engineers (ITE) Trip Generation manual or an evaluation
 13 by a traffic engineer or civil engineer licensed by the State
 14 of Oregon for all properties that are not located in a
 15 residential zoning district and are located at a distance of
 16 more than 50 feet from a residential zoning district.

17
 18 4. A projected or actual increase in vehicular traffic to and
 19 from a site approved for an existing conditional use of up
 20 to and including 100 vehicle trips per day as determined
 21 by using the Institute of Transportation Engineers (ITE)
 22 Trip Generation manual or an evaluation by a traffic
 23 engineer or civil engineer licensed by the State of Oregon
 24 for all properties that are located in a residential zoning
 25 district or within a distance of up to and including 50 feet
 26 of a residential zoning district. This threshold shall not
 27 release an applicant from the requirements in Section
 28 60.55.20, Traffic Impact Analysis.

29
 30 B. Procedure Type. The Type 12 procedure, as described in Section
 31 50.3540 of this Code, shall apply to an application for Minor
 32 Modification of a Conditional Use. The decision making
 33 authority is the Director.

34
 35 C. Approval Criteria. In order to approve a Minor Modification of a
 36 Conditional Use application, the decision making authority shall
 37 make findings of fact based on evidence provided by the
 38 applicant demonstrating that all the following criteria are
 39 satisfied:

40
 41 1. The proposal satisfies the threshold requirements for a
 42 Minor Modification of Conditional Use application.

- 1 2. All City application fees related to the application under
- 2 consideration by the decision making authority have been
- 3 submitted.
- 4
- 5 3. The proposal contains all applicable application submittal
- 6 requirements as specified in Section 50.25.1 of the
- 7 Development Code.
- 8
- 9 ~~4. The proposal complies with conditions of an applicable~~
- 10 ~~conditional use approval.~~
- 11
- 12 4. The existing use has been approved as a conditional use
- 13 as governed by the regulations in place when the use was
- 14 established and complies with the applicable conditions of
- 15 the conditional use approval.
- 16
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- 19 5. The proposal will not remove or modify previously
- 20 established conditions of approval for the prior conditional
- 21 use consistent with Section 50.95.6 of this Code.
- 22
- 23 6.5. Applications and documents related to the request, which
- 24 will require further City approval, shall be submitted to
- 25 the City in the proper sequence.

2. Major Modification of a Conditional Use.

A. Threshold. An application for Major Modification of a Conditional Use shall be required when one or more of the following thresholds apply:

- 1. Any increase in the gross floor area of an existing conditional use more than 10% or more than 1,000 gross square feet of floor area for all ~~on~~ properties that are located in a residential zoning district or within a distance of up to and including 50 feet of a residential zoning district.
- 2. An increase in the gross floor area of an existing conditional use by more than ~~10%~~ 25% or in excess of ~~1,000~~ 3,000 gross square feet of floor area for all

1 properties that are not located in a residential zoning
 2 district and are located at a distance of more than 50 feet
 3 from a residential zoning district.

4
 5 3. The proposal contains all applicable application submittal
 6 requirements as specified in Section 50.25.1 of the
 7 Development Code.

8
 9 ~~3~~ 4. Any projected or actual increase in vehicular traffic
 10 ~~vehicle trips per day~~ to and from a site approved for an
 11 existing conditional use of more than 100 vehicle trips per
 12 day as determined by using the Institute of
 13 Transportation Engineers (ITE) Trip Generation manual
 14 or an evaluation by a traffic engineer or civil engineer
 15 licensed by the State of Oregon for all properties that are
 16 located in a residential zoning district or are located at a
 17 distance of up to and including 50 feet from a residential
 18 zoning district.

19
 20 4 5. A projected or actual increase in vehicular traffic to and
 21 from a site approved for an existing conditional use of
 22 more than ~~100~~ 200 vehicle trips per day as determined by
 23 using the Institute of Transportation Engineers (ITE)
 24 Trip Generation manual or an evaluation by a traffic
 25 engineer or civil engineer licensed by the State of Oregon
 26 for all properties that are not located in a residential
 27 zoning district and are located at a distance of more than
 28 50 feet from a residential zoning district.

29
 30 ~~5. Any increase in the number of dwellings or residential~~
 31 ~~lots.~~

32
 33 B. Procedure Type. The Type 3 procedure, as described in Section
 34 50.45 of this Code, shall apply to an application for Major
 35 Modification of a Conditional Use. The decision making
 36 authority is the Planning Commission.

37
 38 C. Approval Criteria. In order to approve a Major Modification of a
 39 Conditional Use application, the decision making authority shall
 40 make findings of fact based on evidence provided by the
 41 applicant demonstrating that all the following criteria are
 42 satisfied:
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- 1. The proposal satisfies the threshold requirements for a Major Modification of a Conditional Use application.
- 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
- 3. The proposal complies with the applicable policies of the Comprehensive Plan.
- 4. The existing use has been approved as a conditional use as governed by the regulations in place when the use was established and complies with the applicable conditions of the conditional use approval unless the applicant has received or is concurrently requesting requests that one or more conditions be removed or modified as part of the current application.
- ~~4. The size, dimensions, configuration, and topography of the site and natural and man-made features on the site can reasonably accommodate the proposal.~~
- 5. The location, size, and functional characteristics of the proposal are such that it can be made reasonably compatible with and have a minimal impact on livability and appropriate use and development of properties in the surrounding area of the subject site.
- 6. The proposal will not modify previously established conditions of approval for the prior conditional use consistent with Section 50.95.6 of this Code.
- 6 7. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

~~3. Administrative Conditional Use.~~

- ~~A. Threshold. An application for Administrative Conditional Use shall be required when one or more of the following thresholds apply:~~

1. ~~Placement of one or more portable classroom on a public or private school site.~~

B. ~~Procedure Type.~~ The Type 2 procedure, as described in Section 50.40 of this Code, shall apply to an application for Administrative Conditional Use. The decision making authority is the Director.

C. ~~Approval Criteria.~~ In order to approve an Administrative Conditional Use application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. ~~The proposal satisfies the threshold requirements for an Administrative Conditional Use application.~~

2. ~~All City application fees related to the application under consideration by the decision making authority have been submitted.~~

3. ~~The proposal complies with conditions of an applicable conditional use approval.~~

4. ~~The location, size, and functional characteristics of the proposal are such that it can be made reasonably compatible with and have a minimal impact on livability of properties adjoining the subject site.~~

5. ~~Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.~~

D. ~~Submission Requirements.~~ An application for a Administrative Conditional Use shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Administrative Conditional Use application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), and any other information identified through a Pre Application Conference.

1 ~~E. Conditions of Approval. The decision making authority may~~
2 ~~impose conditions on the approval of a Administrative~~
3 ~~Conditional Use application to ensure compliance with the~~
4 ~~approval criteria.~~

5
6 ~~F. Appeal of a Decision. Refer to Section 50.65.~~

7
8 ~~G. Expiration of a Decision. Refer to Section 50.90.~~

9
10 ~~H. Extension of a Decision. Refer to Section 50.93.~~

11
12
13 **3.4. New Conditional Use.**

14
15 A. Threshold. An application for a New Conditional Use shall be
16 required when the following threshold applies:

17
18 1. The proposed use is conditionally permitted in the
19 underlying zoning district for which and a prior
20 conditional use approval for the proposed use is not
21 already in effect. ~~A new conditional use is proposed.~~

22
23 B. Procedure Type. The Type 3 procedure, as described in Section
24 50.45 of this Code, shall apply to an application for a New
25 Conditional Use. The decision making authority is the Planning
26 Commission.

27
28 C. Approval Criteria. In order to approve a New Conditional Use
29 application, the decision making authority shall make findings
30 of fact based on evidence provided by the applicant
31 demonstrating that all the following criteria are satisfied:

32
33 *****

34
35 5. The location, size, and functional characteristics of the
36 proposal are such that it can be made reasonably
37 compatible with and have a minimal impact on livability
38 and appropriate use and development of properties in the
39 surrounding area of the subject site.

40
41 *****

42 **4.5. Planned Unit Development**

43
44 *****

1 **Section 3: The Development Code, Ordinance No. 2050, Chapter 40 –**
2 **Applications, Section 40.30.15, FLEXIBLE AND ZERO YARD SETBACKS, is**
3 **amended to read as follows with deleted matter in strikethrough and new**
4 **matter in highlight:**

5
6 **40.30.15. Application Types.**

7
8 *****

9
10 **1. Flexible Setback for Individual Lot With Endorsement.**

11
12 A. Threshold. An application for Flexible Setback for an Individual
13 Lot With Endorsement shall be required when the following
14 threshold applies:

- 15
16 1. Development on individual residentially zoned lots of
17 record proposes to use flexible setbacks and can
18 demonstrate the affected abutting property owners of
19 record endorsement of the request.

20
21 *****

22
23 **2. Flexible Setback for Individual Lot Without Endorsement.**

24
25 A. Threshold. An application for Flexible Setback for an Individual
26 Lot Without Endorsement shall be required when the following
27 threshold applies:

- 28
29 1. Development on individual residentially zoned lots of
30 record proposes to use flexible setbacks and cannot
31 demonstrate the affected abutting property owners of
32 record endorsement of the request.

33
34 *****

35
36 C. Approval Criteria. In order to approve a Flexible Setback on
37 Individual Lot Without Endorsement application, the decision
38 making authority shall make findings of fact based on evidence
39 provided by the applicant demonstrating that all the following
40 criteria are satisfied:

- 41
42 1. The proposal satisfies the threshold requirements for a
43 Flexible Setback on Individual Lot Without Endorsement
44 application.

- 1 2. ~~All City application fees related to the application under~~
2 ~~consideration by the decision making authority have been~~
3 ~~submitted. The application complies with all applicable~~
4 ~~submittal materials requirements as specified in Section~~
5 ~~50.25.1 and includes all applicable fees.~~
6
- 7 3. The proposal does not violate any recorded Solar Access
8 Permit requirements.
9
- 10 4. The proposal meets the minimum standards specified in
11 Section 20.05.50.3.D of this Code.
12
- 13 5. If an addition to an existing structure, the proposal is
14 compatible in design, scale and building materials with
15 the existing structure. If a new structure, the proposal is
16 compatible with neighboring development with respect to
17 ~~compatible with the surrounding area regarding~~
18 ~~topography, vegetation, building character, and site~~
19 ~~design. In determining compatibility, consideration shall~~
20 ~~be given to harmony in:~~ scale, bulk, lot coverage, density,
21 rooflines, and building materials.
22
- 23 6. All critical facilities and services related to the
24 development have or can be improved to have adequate
25 capacity to serve the proposal at the time of its
26 completion.
27
- 28 7. The proposal is consistent with all applicable provisions of
29 Chapter 20 (Land Uses) unless the applicable provisions
30 are modified by means of one or more ~~are subject to an~~
31 ~~Adjustment, Variance, Planned Unit Development~~
32 ~~applications that already have been shall be approved or~~
33 are considered concurrently with the subject proposal.
34
- 35 8. The proposal is consistent with all applicable provisions of
36 Chapter 60 (Special Requirements) and that all
37 improvements, dedications, or both required by the
38 applicable provisions of Chapter 60 (Special
39 Requirements) are provided or can be provided in rough
40 proportion to the identified impact(s) of the proposal.
41
- 42 9. ~~The proposal contains all applicable application submittal~~
43 ~~requirements as specified in Section 50.25.1 of the~~
44 ~~Development Code.~~

10.9. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

3. Flexible Setback for a Proposed Residential Land Division.

A. Threshold. An application for Flexible Setback for a Proposed Residential Land Division shall be required when the following threshold applies:

1. The property is located within a residential zoning district and this application is accompanied by a land division application for the subject property.

B. Procedure Type. The Type 23 procedure, as described in Section 50.4540 of this Code, shall apply to an application for Flexible Setback for a Proposed Residential Land Division and shall be considered concurrently with the proposed land division. The decision making authority is the Director Planning Commission.

C. Approval Criteria. In order to approve a Flexible Setback for a Proposed Residential Land Division application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a Flexible Setback for a Proposed Residential Land Division application.

2. All City application fees related to the application under consideration by the decision making authority have been submitted.

3. The proposal is compatible with the surrounding area regarding topography, vegetation, building character, and site design. In determining compatibility, consideration shall be given to harmony in: scale, bulk, lot coverage, density, rooflines, and building materials.

4. The proposal is consistent with all applicable provisions of Chapter 20 (Land Uses) unless the applicable provisions are modified by means of one or more ~~are subject to an Adjustment, Variance, Planned Unit Development~~ applications that already have been ~~shall be approved or~~ are considered concurrently with the subject proposal.

4. **Zero Side or Zero Rear Yard Setback for a Proposed Residential Land Division.**

A. Threshold. An application for Zero Side or Zero Rear Yard Setback for a Proposed Residential Land Division shall be required when the following threshold applies:

1. The property is located within a residential zoning district and this application is accompanied by a land division application for the subject property.

B. Procedure Type. The Type ~~23~~ procedure, as described in Section 50.4540 of this Code, shall apply to an application for Zero Side or Zero Rear Yard Setback for a Proposed Residential Land Division in any residential zoning district and shall be considered concurrently with the proposed land division. The decision making authority is the Director ~~Planning Commission~~.

C. Approval Criteria. In order to approve a Zero Side Yard or Zero Rear Yard Setback for a Proposed Residential Land Division application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements for a Zero Side Yard or Zero Rear Yard Setback for a Proposed Residential Land Division application.

2. All City application fees related to the application under consideration by the decision making authority have been submitted.

3. The side or rear yard setback on all adjacent lots which abut the proposed zero side or rear setback are either zero feet (0') or ten feet (10') or more.

- 1 4. The zero side or zero rear yard is not abutting a public
2 right-of-way or any access easement.
- 3
- 4 5. No portion of a structure or architectural feature shall
5 project over a property line related to the zero side or rear
6 yard setback unless a permanent easement allowing such
7 projection has been granted.
- 8
- 9 6. A four foot (4') non-exclusive maintenance easement
10 appears on the plat within the adjacent side or rear yard
11 setback of the adjacent lot where it abuts the zero
12 setback.
- 13
- 14 7. Satisfactory deed restrictions are submitted with the
15 preliminary land division which address maintenance
16 requirements for the zero setback wall.
- 17
- 18 8. Five-foot Utility easements are provided, when required
19 by a utility provider, along all any side, and rear, or both
20 property lines except where the zero setback is
21 designated.
- 22
- 23 9. The proposal is compatible with the surrounding area
24 regarding topography, vegetation, building character, and
25 site design. In determining compatibility, consideration
26 shall be given to harmony in: scale, bulk, lot coverage,
27 density, rooflines, and building materials.
- 28
- 29 10. The proposal is consistent with all applicable provisions of
30 Chapter 20 (Land Uses) unless the applicable provisions
31 are modified by means of one or more are subject to an
32 Adjustment, Variance, Planned Unit Development
33 applications that already have been shall be approved or
34 are considered concurrently with the subject proposal.

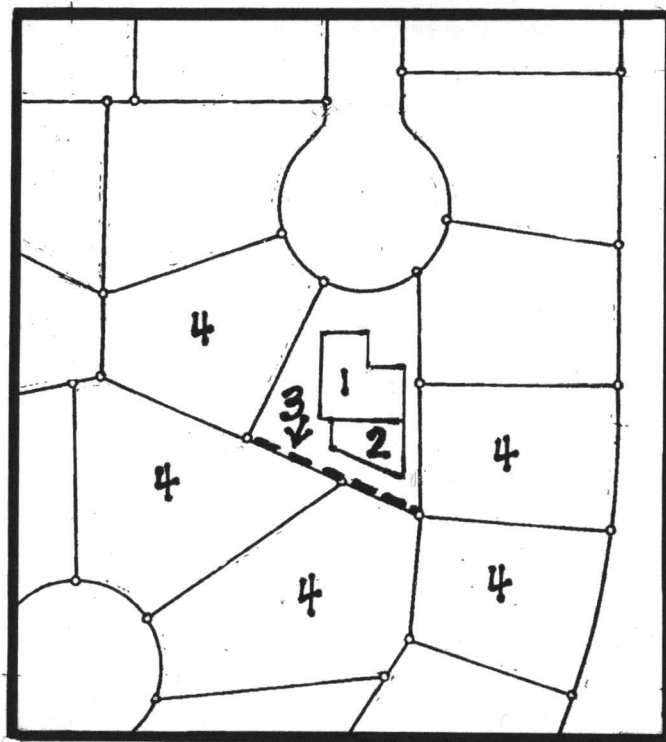
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1 **Section 4: The Development Code, Ordinance No. 2050, Chapter 90 –**
 2 **Definitions, is amended to read as follows with deleted matter in**
 3 **~~striketrough~~ and new matter in highlight:**

4
 5 *****

6 **Abut.** Contiguous to; adjoining with a common boundary line. For the purposes of
 7 defining an affected abutting property for a Flexible Setback request, the following
 8 graphic will guide the definition.

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 11
 12 *****



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 16
Example of Flexible Setback illustrating 'Affected Lot Line(s)' and 'Affected Abutting Properties' *

1. Existing structure in conformance with building setbacks, or
2. Proposed new structure or addition requiring Flexible Setback approval
3. Affected Lot Line(s) subject to proposed reduced building setback
4. Affected Abutting Properties required for endorsement by property owners **

* Example of reduction of rear yard setback

** affected properties includes common lot corners