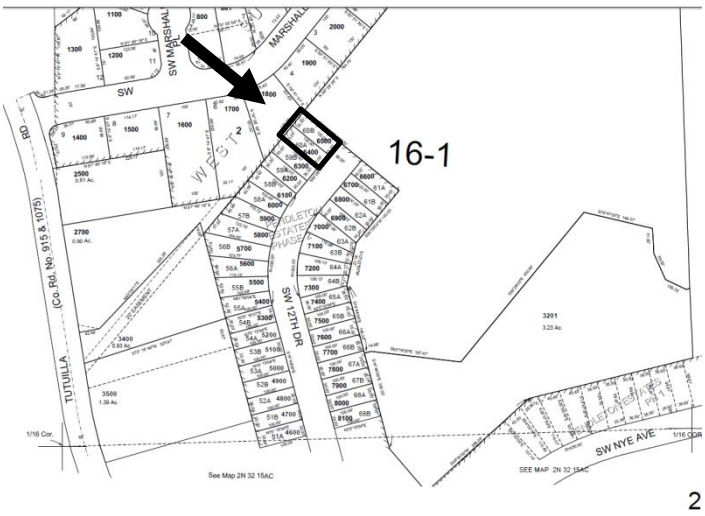
CITY OF PENDLETON PLANNING COMMISSION

Minor Variance Staff Report

File No.: **MV18-03**
Deemed Complete: March 20, 2018
Prepared by: Julie Chase, Planning Aide
Date: March 23, 2018
Pending Hearing Date: April 26, 2018



Applicant/ Owner **Dusty & Tamera Pace**
71480 Gateway Ln
Pendleton, OR 97801

Site Location: 1235 SW 12th Street, Pendleton OR

Description: Map 2N-32-15AB, Tax Lot 06500

Zoning: R-2 Medium Density Residential

Attachments: Application and supplemental materials

SUMMARY:

Applicant requests approval of a minor variance to allow lot coverage greater than that permitted in the R-2 Medium Density residential zone. The requested lot coverage allowance is 45%. Administrative approval is permitted if the lot coverage is within 5% of the coverage allowance. R-2 lot coverage allowance is 40%. The request is within what is allowed administratively.

APPLICABLE CRITERIA, STANDARDS, AND PROCEDURES:

Unified Development Code Ord. #3845

Article III. Residential Zones
Article VIII. Standards Applicable in all Zones
Article XI. Zoning and Related Decisions
Article 13. Land Use Application Procedure

STAFF RECOMMENDATION:

1. Lot Coverage approval is dependent upon City Engineer's approval that the site drainage will be adequately concentrated on the lot given the increase of lot coverage. 9.15
2. Lot Coverage approval is dependent upon Building Official's approval that the building setbacks will adequately meet building codes given the increase of lot coverage, residential development, and fire separation.

NON-DISCRETIONARY CONDITIONS OF APPROVAL

1. Yard setbacks as per Table 3.1 shall be maintained. Front of dwelling unit: 15 feet, Garage face: 20 feet, Side setback: 4 feet, and Rear setback: 5 feet. Table 3.1
2. Each townhouse shall provide a minimum of one (1) off-street parking space per unit. 8.03.2
3. All driveways shall meet driveway standards for apron length and driveway surfaces. At a minimum the driveway access, the first 20 feet behind the curb or sidewalk, shall be paved as an apron to control gravel. 9.05.10, 9.05.11

4. Two street trees, meeting City Parks Directors approval, are required prior to installation of water service for occupancy. 9.10.2
5. A joint mail box facility exists along SW 12th Street. If this facility does not include a box for this lot, a joint mail box facility to handle no less than two and no more than 12 dwelling units must be installed with approval by the Community Development Director and United States Postmaster at Pendleton. 9.13.1

APPROVAL RESTRICTIONS & BURDEN OF PROOF

6. The approval granted herein is limited to those items specifically addressed in this report. Approval of this request does not grant nor imply approval for any other land use action (variance, conditional use, etc.). Issues including, but not limited to (approval of) such non-discretionary matters as ROW improvements, floodplain development standards, impervious surface/storm water runoff, Development Permit(s), Building Permits and/or construction, are likewise not addressed.
7. The applicant bears the burden of proof for all approvals. Should an appeal arise, the applicant shall be responsible for all costs pursuant to the standards and limitations contained in §13.6 of the UDC.
8. Approval of a land use action shall be void after two years pursuant to the standards contained in §15.4 of the UDC. Pursuant to §15.5 of the UDC, the Planning Director may extend a permit for one additional period of two (2) years upon written request.

FINAL DECISION: PAGE 5-6

The proposed development must comply with applicable provisions contained in Chapter 10 of the General Ordinances of the City of Pendleton, and the City of Pendleton Comprehensive Plan. Generally, unless otherwise noted, if a request is found to be consistent with the General Ordinances it is considered consistent with the Comprehensive Plan. Additional criteria and standards as contained in Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR) and the most current State Building or Specialty Code may supersede local code.

STAFF FINDINGS OF FACT:

1. LOCATION:
ZONING MAP

Uses allowed with the Medium Density Residential (R-2) zone are parks, dwellings, townhouses, and residential facilities. The proposed development for this lot is a townhouse. The General Provisions regulates density, lot size, height of structures, and lot coverage. The subdivision, Pendleton Estates Phase 2, was approved for single-family attached (townhouse) construction with a slope between 10-20%. Therefore, the minimum lot size allowed is 3,500 square feet. Lot coverage allowance in the R-2 zone is 40%. Maximum height is 40 feet or 3 stories, regardless of the lot size.

FINDINGS:

1. The Zone Map shows this area to be within the R-2, Medium Density Residential zone. Higher density development, single-family attached townhouses are allowed in the zone.
2. The proposed townhouse will occupy 1,572 square feet of the 3,500 square foot lot. The lot coverage will be 45% of the lot size.
3. The proposal is to increase the lot coverage to provide 2-car garages, 3-bedroom dwellings on the site. Residential structures, both single-family and multi-family are encouraged to have off-street parking spaces. Off-street parking is required at one (1) space per unit.
4. Development will need to follow setback regulations.
5. The lot requires variance approval to construct a structure that will cover more than 40% of the lot.
6. A minor variance is allowed if the lot coverage increase does not exceed 5% above the allowed (40%) lot coverage. The request is for 45%.

2. STANDARDS APPLICABLE TO ALL ZONES:
CLEAR VISION, SOLAR, PARKING, STORAGE

Development near intersections requires increased distance from those intersections or railroads to protect a driver's view, minimizing hazards to the public. Clear vision includes structures, landscaping, and fencing. Intersections controlled by either street lights or stop signs reduce the vision clearance measurement equal to the situation. Solar energy collectors are encouraged with subsequent solar skyspace easements to protect the installed panels from shade produced by neighboring buildings or landscape. Parking requirements for specific uses are defined. No city has the capacity to afford enough parking along city streets; therefore, off-street parking requirements mitigate overcrowding of streets by placing the parking within the use, a private establishment rather than public. The parking requirement for a single-family dwelling is one (1) space per unit. Driveways within urban areas should reflect a design that maintains or preserves the construction of the paved street system. Therefore design standards that preserve the pavement are appropriate and required. Landscaping encourages slower traffic, provides energy savings through shade, and enhances the curb appeal of the general community. Each subdivision or partition requires the planting of street trees. For every 70 feet of frontage, a lot is required to plant a single tree. However, a minimum of two (2) street trees are required per lot. New shade trees shall have a minimum trunk diameter of not less than two (2) inches measured 12 inches above ground level. Joint Mailboxes Facilities are utilized to group multiple mail deliveries. The City and the United States Postal Service approve of joint mail box locations. Joint mail boxes are used to serve two and no more than 12 dwelling units. Storm water drainage shall be directed away from all buildings and either conveyed into the City's storm water system or handled within the lot itself. The grading of lots through development requires inspection to determine that storm water drainage is properly dispersed away from all buildings.

FINDINGS:

7. The subject lot is not located on a corner; therefore, not subject to clear vision area.
8. A single-family dwelling requires one off-street parking space. The applicant proposes a two-car garage.
9. A driveway will be utilized to access the lot. The driveway will be required to meet city standards; a minimum of the first 20-feet paved as an apron to control gravel.
10. The lot has a frontage of 35 feet, less than the 70 foot frontage requiring multiple street trees. However, the minimum requirement for street trees is two per lot. Therefore, despite the 35-foot frontage, this lot will require two street trees.
11. A joint mail box facility exists along SW 12th Street. If this facility does not include a box for this lot, a joint mail box facility to handle no less than two and no more than 12 dwelling units must be installed with approval by the Community Development Director and United States Postmaster.
12. Increase of lot coverage decreases the potential for a lot to manage its storm water runoff when developed. This lot is 3,500 square feet, a 1,500 square foot reduction from a typical single-family residential lot. The combination of increased lot coverage and loss of lot square footage for townhouse, single-family attached, development warrants review by the Community Development Director to determine if the site is adequate to handle its drainage.

CONCLUSION: Conditions are necessary to meet criteria.

3. VARIANCE CRITERIA:

ZONING AND RELATED DECISIONS – ARTICLE XI

Article XI – UDC. Pre-application conferences are encouraged for land use actions. A Development Permit is required for all land use actions prior to operation, placement, installation, or construction of any structure or use. Dependent upon the land use action, a transportation impact study may be required to determine the traffic impact the proposed use will have on the neighborhood and City as a whole. The Commission must review variance requests against criteria to determine if the proposal will have complimentary or negative impacts to the surrounding area or City as a whole.

Applicant's Statements:

Exceptional/Extraordinary Circumstances: It would allow us to build a 2 car garage and have more off-street parking.

Necessary for Preservation of a Property Right: To have a townhouse built on the lot that would allow the required off-street parking.

Not Materially Detrimental: Approval would allow us to have more off-street parking and relieve the on-street parking congestion.

Minimum Variance Request to Alleviate Hardship: We would need to have an increase of 5% lot coverage so that we can build our townhouses to increase the available off-street parking.

FINDINGS:

A. Site is Adequate in Size and Shape: The applicant attended a Pre-Conference meeting at first proposal of townhouse development with increased lot coverage; this meeting occurred in 2017. Concerns brought forth at the meeting involved maintaining setbacks, establishing a maintenance agreement for the shared fence and shared firewall between townhouses, and a fire protection parapet. Drainage requirements were discussed and the City recommended swales along the front and side yard. Overall, the City did not foresee any difficulty with developing townhouses on the lot, and the increase in lot coverage could be addressed through drainage swales that meet City Engineer's approval.

B. Site Relates Well to Streets and Highways: The site has frontage on one street, SW 12th Street. SW 12th Street is classified as a Minor Residential street in this neighborhood. The street layout, size, and design were constructed to handle townhouse development.

C. Negative Impacts Mitigation: Drainage requirements were discussed and the City recommended swales along the front and side yards. Overall, the City did not foresee any difficulty with developing townhouses on the lot, and the increase in lot coverage could be addressed through drainage swales that meet City Engineer's approval. The construction proposed involves townhouse development which implies shared facilities. Establishing a maintenance agreement for the shared fence and shared firewall between townhouses will adequately address these shared facilities. A copy of the shared agreements is required for City records. The proposal to increase lot coverage to provide additional parking off-street will relieve rather than cause a negative impact in that fewer vehicles will occupy curb parking.

D. **Historic, Scenic, or Cultural Preservation:** The lot is vacant of structures and trees. There are no historic, scenic or cultural aspects to this lot.

CONCLUSION: Conditions are required to meet criteria: shared agreements and drainage.

4. PUBLIC NOTICE AND COMMENTS:

On March 20, 2018, staff sent out 16 notices to the neighboring property owners within 250 feet of this proposal. This application will require a public hearing if the administrative decision is appealed; the appeal period is 14 days from the Administrative decision. Hearing date for this proposal is April 26, 2018.

FINDINGS:

13.04 An affidavit of mailing is on file showing that the neighboring property owners were notified with an opportunity to provide testimony or attend the meeting. No testimony has been received from the general public at the time of this report.

CONCLUSION: Criteria are met.

5. APPLICATION OF THE CRITERIA:

SUMMARY FINDINGS:

- The proposed townhouse will occupy 1,572 square feet of the 3,500 square foot lot. The lot coverage will be 45% of the lot size.
- The proposal is to increase the lot coverage to provide 2-car garages, 3-bedroom dwellings on the site. Residential structures, both single-family and multi-family are encouraged to have off-street parking spaces. Off-street parking is required at one (1) space per unit.
- Development will need to follow setback regulations.
- The lot requires variance approval to construct a structure that will cover more than 40% of the lot.
- A minor variance is allowed if the lot coverage increase does not exceed 5% above the allowed (40%) lot coverage. The request is for 45%.
- The subject lot is not located on a corner; therefore, not subject to clear vision area.
- A single-family dwelling requires one off-street parking space. The applicant proposes a two-car garage.
- A driveway will be utilized to access the lot. The driveway will be required to meet city standards; a minimum of the first 20-feet paved as an apron to control gravel.
- The lot has a frontage of 35 feet, less than the 70 foot frontage requiring multiple street trees. However, the minimum requirement for street trees is two per lot. Therefore, despite the 35-foot frontage, this lot will require two street trees.
- A joint mail box facility exists along SW 12th Street. If this facility does not include a box for this lot, a joint mail box facility to handle no less than two and no more than 12 dwelling units must be installed with approval by the Community Development Director and United States Postmaster.
- Increase of lot coverage decreases the potential for a lot to manage its storm water runoff when developed. This lot is 3,500 square feet, a 1,500 square foot reduction from a typical single-family residential lot. The combination of increased lot coverage and loss of lot square footage for townhouse, single-family attached, development warrants review by the Community Development Director to determine if the site is adequate to handle its drainage.

- **Site is Adequate in Size and Shape:** The applicant attended a Pre-Conference meeting at first proposal of townhouse development with increased lot coverage; this meeting occurred in 2017. Concerns brought forth at the meeting involved maintaining setbacks, establishing a maintenance agreement for the shared fence and shared firewall between townhouses, and a fire protection parapet. Drainage requirements were discussed and the City recommended swales along the front and side yard. Overall, the City did not foresee any difficulty with developing townhouses on the lot, and the increase in lot coverage could be addressed through drainage swales that meet City Engineer's approval.

- **Site Relates Well to Streets and Highways:** The site has frontage on one street, SW 12th Street. SW 12th Street is classified as a Minor Residential street in this neighborhood. The street layout, size, and design were constructed to handle townhouse development.

SUMMARY FINDINGS:

- **Negative Impacts Mitigation:** Drainage requirements were discussed and the City recommended swales along the front and side yards. Overall, the City did not foresee any difficulty with developing townhouses on the lot, and the increase in lot coverage could be addressed through drainage swales that meet City Engineer's approval. The construction proposed involves townhouse development which implies shared facilities. Establishing a maintenance agreement for the shared fence and shared firewall between townhouses will adequately address these shared facilities. A copy of the shared agreements is required for City records. The proposal to increase lot coverage to provide additional parking off-street will relieve rather than cause a negative impact in that fewer vehicles will occupy curb parking.

- **Historic, Scenic, or Cultural Preservation:** The lot is vacant of structures and trees. There are no historic, scenic or cultural aspects to this lot.

CONCLUSIONS:

Conditions are required to meet criteria: street trees, shared agreements and drainage.

As noted in §13.6, the burden is on the applicant to prove that a proposed land division meets all development criteria and standards. Approval may not be granted unless all applicable decision criteria and standards are found met. In this case, staff was able to make findings and conclusions that all criteria are met or can be met through specific conditions of approval.

SIGNS:
Approval of this Land Use Decision does not constitute sign permit approval. Signs are reviewed through a separate permit application procedure. Signs must comply with all applicable Oregon codes and City of Pendleton ordinances.

6. DECISION

MV18-03 is hereby approved unless a request for Planning Commission review is received within the 14 day appeal period specified in UDC §13.03.7.

Written by Julie Chase Planning Aide

7. CODES SPECIFIC TO APPLICATION
ARTICLE III. RESIDENTIAL ZONES

3.03 R-2 Medium Density Residential

3.03.1 **Description and Purpose.** To provide for land areas to be used predominately for dwellings of varying types within a moderate density range, together with related uses.
Within the Central Mixed Use Plan Designation, the R-2 zone also provides opportunities for adaptive re-use of historic structures and for expansion of existing commercial and light industrial uses.
Within a designated Opportunity Area, land within the R-2 zone is suitable for the range of urban land uses authorized by a Master Development Plan approved by the City pursuant to the Opportunity Area Subdistrict in Article 7.

3.03.2 **Permitted Uses.** The following uses and their accessory uses are permitted:
A. City Park
B. Dwelling, duplex; or two single family dwellings on a minimum lot size of 5,000 square feet (subject to the provisions of Table 3.1), provided the distance between principal buildings is a minimum of ten feet.

C. Dwelling, single family (attached or detached)
D. Manufactured Home, Class A provided that it is located within a Class A or Class B Manufactured Housing Subdistrict, and Class B, provided that it is located within a Class B Manufactured Housing Subdistrict, subject to the requirements of Section 3.07 of this Ordinance.
E. Residential Homes and Residential Facilities (see ORS 197.660-670)
F. Townhouse
G. Manufactured Home Park, Manufactured Home Subdivision, Vacation Trailer Park (Individual Conditional Use permits not required for each unit within approved parks or subdivisions)
H. Within the Central Mixed Use Plan Designation, adaptive commercial or industrial re-use of an historic structure if approved by the Historic Preservation Commission.
I. Within a designated Residential or Mixed Use Opportunity Area, conditional uses listed in Section 3.03.3 shall be permitted when authorized by an approved Master Development Plan.
J. Within a designated Mixed Use Opportunity Area, other urban uses shall be permitted when authorized by an approved Master Development Plan.
K. Transportation uses consistent with the adopted Transportation System Plan and OAR 660-012-0045, and not otherwise identified as conditional uses, pursuant to 3.03.3 (M).

3.03.3 **Conditional Uses.** The following uses and their accessory uses are permitted when authorized in accordance with the provisions of Article 11 of this Ordinance:
A. Bed and Breakfast
B. Cemetery
C. Church, lodge, private club or other assembly area
D. Day Nursery, Social Services
E. Dwelling, Multi-family
F. Governmental Structure or land use, public and semi-public use or structures
G. Home Occupation
H. Health Services
I. Neighborhood Commercial (see Section 3.08 for details)
J. Schools and Colleges
K. Transportation and Communication Facilities (Railroads, general warehouse/storage, air transportation, pipelines except natural gas, packing and crating, communication facilities by wire or airwave, electric/gas/sanitary services)
L. Within the Central Mixed Use Plan Designation, expansion of existing, lawfully established commercial or light industrial uses on the same or adjacent property
M. The following uses:
(1) park-and-ride/rideshare facilities
(2) transit centers
(3) transportation warehousing

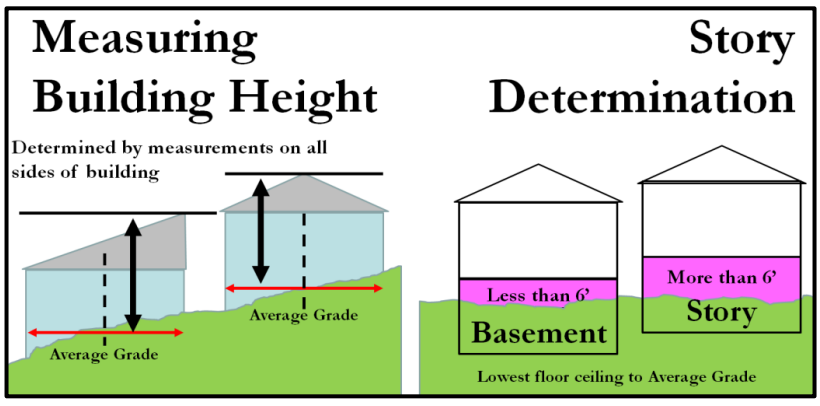
3.09 General Provisions for Residential Zones
This Section sets forth development standards that apply within Residential zones. However, in designated Opportunity Areas, the dimensional standards may be modified by an approved Master Development Plan (MDP) pursuant to the Opportunity Area Subdistrict in Article 7.

3.09.1 Density. In all of the residential zones, the minimum and maximum residential densities shall be as shown in Table 3.1.

3.09.2 Lot Size. In all of the residential zones, the minimum lot sizes shall be as shown in Table 3.1.

3.09.3 Maximum Lot Size. The maximum lot size that may be approved administratively shall not exceed twice the minimum lot size under the corresponding zone and slope. Mapped constraints may be removed from the maximum lot size calculation.

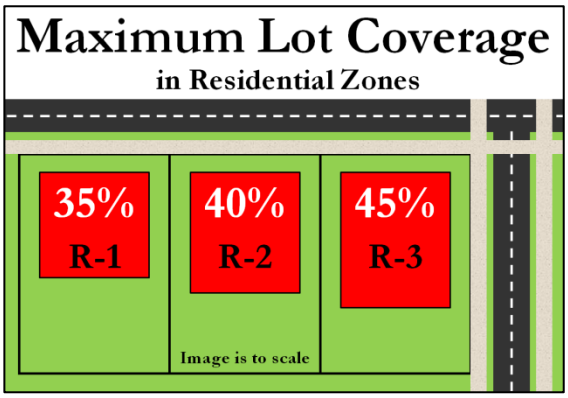
3.09.4 Maximum Height. In all of the residential zones, the maximum height shall be as shown in Table 3.1. Building height shall be determined by measuring all sides of a building relative to average grade.



Building stories located more than six feet above average grade shall be counted as a full story; those less than six feet above average grade shall be counted as a basement.

3.09.5 Exceptions to Height limits. The height limits of this Ordinance shall not apply to church spires, belfries, cupolas, and domes not for human occupancy, monuments, water towers, observation towers, transmission towers, windmills, chimneys, smokestacks, derricks, conveyors, flagpoles, radio towers, masts, aerials, solar energy collectors and equipment used for the mounting or operation of such devices, and any other on-site energy generating device.

3.09.6 Maximum Lot Coverage. In all of the residential zones, the maximum lot coverage shall be as shown in the adjacent diagram and Table 3.1.



3.09.7 Miscellaneous Lot Provisions.

A. Building Lots must abut a public right of way or other public access. No residential, commercial, or industrial building shall be erected on a lot which does not abut at least one street. Where there is a residence constructed, as of the date of this Ordinance, on an interior lot not abutting on a public street, such property shall continue unaffected except that in the case of reconstruction of such a structure, as provided in Section 11.07 of this Ordinance, nothing more than a single family dwelling and accessory buildings may be constructed upon such interior lot, and then only when easements for ingress and egress are recorded.
B. The primary access shall be via a street that is improved or will be improved to City standards prior to occupancy of any unit, unless otherwise approved by the Planning Commission.
C. Parking, Storage or Use of Recreational Equipment. No equipment shall be used for living, employment, sleeping or housekeeping purposes, nor connected to utilities, when parked or stored on a residential lot, or in any location not approved for such use. Recreational vehicles may be used for guest accommodation for a maximum of 14 days within a three month period.
D. Parking and Storage of Certain Vehicles. Automotive vehicles or trailers of any kind or type without current license plates shall not be parked or stored on any residentially used property other than in completely enclosed buildings.

3.09.8 **Yard (Setback) Regulations – Primary Structures**

A. Front Yard: The minimum front setback shall be as shown in Table 3.1.
B. Side Yard: The minimum side setback shall be as shown in Table 3.1, except on corner lots, where ten (10) feet are required on the side abutting the street, and in the case of attached single-family dwellings, where a zero lot line is allowable (with the provision of common "party" wall construction);
C. Rear Yard: The minimum rear setback shall be as shown in Table 3.1, except in the case of attached single-family dwellings, where a zero rear lot line is allowable (with the provision of common "party" wall construction).
D. Garage or carport face: 20 feet from any property line. The front wall of a garage, and any portion of a carport, shall not be permitted less than twenty (20) feet from a property line for primary and accessory structures.
E. The required front yard depths may be reduced in any residential zone as follows:
    1. If there are dwellings on both abutting lots with front yards of depths less than the required depth for the zone, the depth of the front yard for the intervening lot need not exceed the average depth of the front yards of the abutting lots;
    2. If there is a dwelling on one abutting lot with a front yard of less depth than the required depth for the zone, the front yard for the lot need not exceed a depth one-half way between the depth of the abutting lot and the required front yard depth:
    3. In determining the depth of a front yard, the required depth shall be measured at right angles to the nearest street right-of-way, except as provided in subsection (F) below.
F. No building shall be erected on a lot which fronts upon a street having only a portion of its required width dedicated (as set forth in the Comprehensive Plan), unless the yards provided and maintained in connection with such building have a width and/or depth needed to complete the street right-of-way width plus the width and/or depth of the yards required on the lot by this Ordinance.
G. Only under adverse topographical circumstances will a variance be granted for a front yard setback less than ten (10') feet.
H. Projecting Building Features: The following building features may project into the required front yard no more than five (5') feet, and into the required interior yards no more than two (2) feet, provided that such projections are no closer than three (3) feet to any interior lot line:
    1. Architectural features such as gutters, flues, eaves, cornices, belt courses, sills, awnings, buttresses, or similar features;
    2. Chimneys and fireplaces.

3.09.9 **Setbacks – Accessory Structures, Fences and Walls**

A. The front wall of a garage or carport shall not be permitted less than twenty (20) feet from a property line fronting an existing street or a future street as shown in the Transportation System Plan. Garages and carports on alley frontages shall have a minimum setback of five (5) feet.
B. In any zone, open work fences, hedges, guard railings or other landscaping or architectural devices for safety protection around depressed ramps, stairs or retaining walls, may be located in required yards, provided such devices are not more than three and one-half feet (42") in height. Only stairs and protective railings may be located within the first ten (10') feet of the required front yard.
C. Accessory Structure: In the interior rear and/or side yards, an accessory structure may be located so that its walls and/or projecting features shall be no closer than three (3) feet to the property line.
D. Solar energy collectors and equipment used for the mounting or operation of such devices, and any other on-site energy generating device shall be exempt from the interior yard requirements.
E. Satellite dish antennas shall not be located in the front yard (setback) of a dwelling.
F. Porches, patios, decks and associated covers, and unattached solar energy systems shall be permitted with a minimum ten (10') foot front yard setback. Such structures shall not be enclosed to extend the living areas of the house.
G. Stairs and other means of access to side and/or rear decks and patios may project into the minimum side and/or rear setback provided they are permitted in accordance with all applicable Structural, Fire or other codes.
H. Fences and Walls. In any residential zone, a sight obscuring fence or wall, not exceeding six (6) feet in height, may be located or maintained within the required interior yards, except where the requirements of vision clearance apply. Such fences or walls may be placed in front or side yards abutting a street, provided such fences or walls do not exceed three and one-half (3.5') feet in height. Non-sight obscuring fences of six (6') feet or less in height may be erected within any required yard. This Section does not apply to retaining walls.
I. Retaining walls. Retaining walls, steps, ramps and other associated elements associated with site grading are exempt from setback standards but must observe all other applicable permitting requirements.

Article VIII. Standards Applicable in all Zones

8.01 Clear Vision Areas

8.01.1 A clear-vision area shall be maintained on the corners of all property at the intersection of two streets or a street and a railroad. A clear-vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding two and one-half (2 ½ ') feet in height, measured from the top of the curb, or where no curb exists, from the established street center line grade, except that trees exceeding this height may be located in this area, provided all branches and foliage are removed to a height of eight (8') feet above the grade of a sidewalk, and eleven (11) feet above the grade of a roadway.

8.01.2 Property owners shall not permit the limbs or other portion of a tree, bush, flower, plant or shrub on private property or on public property abutting private property to project into or extend over a street so that the vegetation interferes with the use of the sidewalk or roadway, obstructs a driver's view of an intersection, street sign or of traffic upon streets approaching an intersection, or otherwise creates a hazard to the public. Where topography dictates a requirement for retaining walls to provide practical usable yard area, clear-vision area limits shall not apply to such retaining walls construction.

Article IX. Development Design Standards for Land Divisions

9.05.1 **Width of Driveway Approach Apron.** The width of driveway approach aprons shall not exceed the following dimensions:
A. For residential driveways, 14 feet for single driveways and 22 feet for double driveways. No more than one driveway shall be permitted for lots having frontages of 60 feet or less.
B. For commercial driveways, when one or more driveway approaches serve a given property frontage, no single apron shall exceed 30 feet in width if the property abuts a street where the speed limit is 25 miles or less per hour; or 35 feet in width where the speed limit is in excess of 25 miles per hour.
C. A safety island of full height curb shall be provided between driveway approaches serving any one property frontage. Whenever possible, this safety island shall be 22 feet in length and in no case shall it be less than 10 feet in length.
D. In no case shall single driveways serving more than one property be combined to allow greater widths than stated above.
E. Deviations not to exceed 50%, of the maximum Driveway Approach Apron width limitations may be considered for Type II Minor Variance approval.

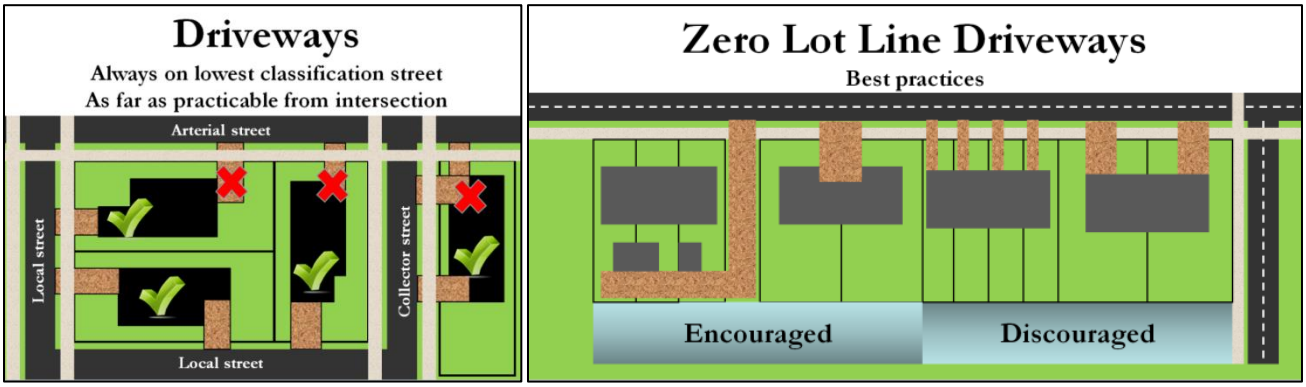
9.05.2 **Driveway Surfaces.**
A. Driveway surfaces shall be designed for all weather conditions (paved or compacted gravel). Vehicle driveway and storage areas will not be allowed to be dirt or vegetation. For grades over 8 percent, paved driveway surfaces are required. All portions of the driveway within the public right-of-way, and at a minimum of the first 20 feet behind the curb or sidewalk shall be paved as an apron to control gravel.

B. For residential driveways, including private roads, the maximum slope of any portion of the driveway shall be 20 percent, with an overall average grade of less than 15 percent along the entire length of the driveway. The maximum grade change in any given 10 feet of driveway shall be 12 percent for a crest situation and 16 percent for a sag situation. The maximum number of houses served by a driveway or private road is three.

C. For commercial or industrial driveways, including private roads, the maximum slope of any portion of the driveway shall be 15 percent for any point above the elevation of the roadway, and shall be 8 percent for any point below the elevation of the roadway. The overall average grade shall be less than 12 percent along the entire length of the driveway. The maximum grade change in any given 10 feet of driveway shall be 8 percent for a crest situation and 12 percent for a sag situation.

D. Every driveway approach or entrance to abutting property shall be maintained and kept in safe condition by the owner of the abutting property. Any driveway approach which is not so maintained or which interferes with the drainage or safe travel of the street shall be repaired to conform to the specifications of the City ordinances and the City Engineer or be removed.

E. Driveways less than 18 feet in depth, or those that would force a vehicle to park over an existing or future public sidewalk, shall be prohibited.



Article XI. Zoning and Related Decisions

11.01 Development Review

11.01.1 **Pre-application Conferences.** The City encourages all persons considering any development that requires a land use action to schedule a pre-application conference. The purpose of a pre-application conference is to bring the applicant together with members of City staff to discuss a potential project and identify applicable development requirements, including possible opportunities and constraints.

A. Participants. Staff at a pre-application conference will vary depending on the proposal. Typically meetings will include the Planner, Community Development Director, Building Inspector and Fire Marshall. Other parties may be included as appropriate.

B. Information provided. At such conference, the City Planning Official or designee shall:
   1. Cite the comprehensive plan policies and map designations applicable to the proposal;
   2. Cite the ordinance provisions, including substantive and procedural requirements applicable to the proposal;
   3. Provide available technical data and assistance that will aid the applicant;
   4. Identify other governmental policies and regulations that relate to the application; and
   5. Reasonably identify other opportunities or constraints concerning the application.

C. Disclaimer. Failure of any member of City staff to provide information shall not constitute a waiver of any of the standards, criteria or requirements for the application;

D. Changes in the law. Due to possible changes in federal, state and local law, the applicant is responsible for ensuring that the application complies with all applicable laws on the day the application is deemed complete.

E. Waiver. Applicants are not required to attend a Pre-application conference. Failure to attend a pre-application conference may result in application delays if additional information is required from the applicant to deem an application complete.

11.01.2 **Neighborhood Meetings.** There is no legal requirement to conduct neighborhood-developer meetings. However, applicants are encouraged to meet with adjacent property owners and neighborhood representatives prior to submitting their application to the City in order to solicit input and exchange information about the proposed development. The City can provide the same list used for mailed notices to the applicant if he/she wishes to provide additional notification and/or schedule a community meeting.

11.01.3 **Implementing Action.** The following development shall fall within the scope of this Ordinance and shall be required to comply with the requirements identified herein:

A. New residential, commercial, public/institutional or industrial development.
B. Expansion of single-family or duplex residential development valued in excess of thirty (30%) percent of the most recent assessed value of the improvements on the property.
C. Reconstruction of a single-family or duplex residential casualty loss valued in excess of one hundred thirty (130%) percent of the most recent assessed value of the structure.
D. Expansion of multiple family, commercial, public/institutional or industrial development valued in excess of fifteen (15%) percent of the most recent assessed value of the improvements on the property.
E. Reconstruction of multiple family, commercial, public/institutional or industrial casualty loss in excess of one hundred fifteen (115%) percent of the most recent assessed value of the structure.
F. Change in use (occupancy class) of a building as defined by the Building Code.
G. Development values within this Section shall be determined by the City Manager based on the Building Valuation Data published and updated periodically by the State of Oregon Building Codes Agency for use in determining building permit valuations and the records of the Umatilla County Assessor's Office.

11.01.4 **Development Permit Required.** The following requirements shall pertain to all development and major improvements within the jurisdiction of the City of Pendleton:

A. The developer shall complete a Development Permit application and a site plan. The site plan shall be drawn to scale and show all existing and proposed structures and their exterior dimensions; all streets, alleys and other public rights-of-way; existing and proposed utility lines and/or easements; building setbacks; location of utilities and proposed connection routes; off-street parking; curb cut and sidewalk locations and dimensions, flood hazard area (if applicable) and drainage plan.
Applicants shall also submit a circulation plan which includes the subject site and all adjacent parcels. Proposed streets must be shown to the point of connection with the existing street system within six hundred (600) feet. The circulation plan shall demonstrate feasibility with development of adjacent properties, or may revise the off-site portion of prior approved plans.
Circulation plans shall also be consistent with the Transportation System Plan Map, as amended. A circulation plan shall be submitted with the application.
Circulation plans shall be schematic in nature and include sufficient off-site and on-site conditions to evaluate it against the review criteria. It shall include:
    1. Proposed project boundary;
    2. Existing and proposed streets (from TSPM), transit routes and facilities, and other pedestrian/bicycle destinations within six hundred (600) feet of the project boundary;
    3. Site access points for vehicles, pedestrians, bicycles, and transit; and
    4. Contours showing changes in elevation.
    5. Sensitive lands (wetlands, shorelines, geologic hazard, floodplain, etc.)

B. **Transportation Impact Study**
    1. A transportation impact study shall be required for all development applications in which the proposed development is projected to have an impact upon any affected transportation corridor or intersection of local significance, unless the development application is exempt from the provisions of this Section or the requirement for a study has been waived by the Public Works Director.
    2. A transportation impact study shall include, at a minimum, an analysis of the following elements:
        a. Trip generation, modal split, distribution, and assignment for the proposed development; and
        b. An analysis of the projected impact of the proposed development upon the current operating level of any affected transportation corridor or intersection of regional significance.
    3. A transportation impact study shall be prepared by and/or under the supervision of a registered professional traffic engineer in the state of Oregon.
    4. A transportation impact study shall be based on traffic counts obtained within twenty (12) months of the date of the development application. The traffic counts shall reflect representative traffic conditions within transportation corridors and at intersections of significance. The Public Works Director may request new counts be taken or estimated when recent development renders counts from within the previous 12 month period to no longer be accurate.
    5. A transportation impact study shall analyze impacts on affected transportation corridors or intersections of significance between the subject development and the state highway system. The City staff will provide the list of these intersections for different areas of the City, based on analysis from the State Transportation Planning and Analysis Unit (TPAU). Intersections of significance shall include all those with an arterial or collector level roadway as defined in the TSP.
    6. The Director reserves the right to require an applicant to provide additional data and/or analysis as part of a particular transportation impact study, where the Public Works director determines that additional information or analysis is required to implement the standards and requirements contained in this Section.
    7. No traffic impact study shall be required, pursuant to the provisions of this Section, where the proposed development includes fewer than 50 single family residential units, 83 multifamily units, or 50,000 square feet of non-residential space.
    8. Upon the written request of an applicant, the Public Works Director may waive the requirement for a transportation impact study, or limit the scope of analysis and required elements of a traffic impact study where the Public Works Director determines that the potential transportation impacts upon the affected transportation corridor are minimal.

9. The Traffic Impact Study will be used to determine impacts, and propose mitigation. The City will negotiate with the applicant to determine the most appropriate mitigation. The mitigation shall then be provided by the applicant or an equivalent payment must be made so that the City can initiate the required transportation system improvement project. These improvements must be proportionate and directly related to the impacts of the proposed development.
10. Traffic Impact Studies shall be prepared by a professional engineer in accordance with the requirements of the road authority. If the road authority is the Oregon Department of Transportation (ODOT), consult ODOT's regional development review planner and OAR 734-051-180.

C. The developer shall provide proof of review and approval by all affected state and/or county agencies, such as the State Department of Transportation or County Public Works Department.

D. Where the development site abuts existing curb and gutter, sidewalks in conformance with City standards (see Table 9.1) shall be constructed in conjunction with the development. If sidewalks exist on none of the abutting properties, the developer may be required to irrevocably consent to participate in an improvement district to install the sidewalk in the future. This requirement may be waived by the City Manager if sidewalks are impractical due to topography. Additionally, with the approval of the City Engineer, requirements for sidewalks can also be met by providing a multi-use pathway consistent with the City of Pendleton Transportation System Plan.

E. If City standard public facilities do not exist at the time of development, the developer shall be required to irrevocably consent to participate in a future improvement district to construct and dedicate all public facilities, such as water, sewer, storm drainage, pavement, curb, gutter, sidewalk and street right-of-way adjacent to the development in conformance with City standards (see Table 9.1 for street design standards; requirements for sidewalks and/or bikeways may be met by providing a multi-use pathway consistent with the City Transportation System Plan) and provide easement or deeds to the City for all such public facilities. However, where it is determined by the City Manager that delaying the design and construction of any or all such facilities is not appropriate and logical, or causes an adverse impact on surrounding properties, the City may require the developer to construct and dedicate all such improvements as a condition of development. For water, sewer, and storm drainage facility improvements, the City Manager may waive certain improvement requirements based on topography or other locational factors that make provision of the improvement(s) impractical. For transportation improvements, the City Manager may waive or deviate from public facility improvement requirements for reasons such as:
    a. steep slopes;
    b. identified natural or cultural resources (in a Goal 5 inventory);
    c. existing development;
    d. existing legal agreement.
    e. an alternative design better serves the designated street functional classification and surrounding land use.

F. When it has been determined that the extension of public facilities is required, costs related to such extension shall be borne by the developer as they relate to the development. In addition, any extension of such facilities shall be continued and extended in a logical fashion through the development site so as to be readily available for adjacent development. This subsection shall not prevent the City from choosing to participate in engineering design and public facility construction or oversizing costs.

Where a public or private road has been constructed, created or stubbed in such a manner as to be able to be extended or widened in accordance with adopted plans, prior approved development or this Section, then:

1. Connection with Adjacent Areas. All residences, buildings or structures shall be constructed in such a position on the property that they will not interfere with the extension or widening of the roadway to adjacent areas and shall be so situated that such extension will make orderly and planned development for additional road installations to meet the reasonable minimum requirements of good and safe traffic circulation, consistent with applicable zoning setbacks.
2. Right-of-Way for Street Extensions. Right-of-way or private easements necessary to such extension or widening and falling within parcels being developed shall be granted or created as a condition of development approval.
3. Provisions for Future Extensions. Any street for which an extension in the future is planned shall be extended to the edge of the property being developed through the plat, short plat or site plan approval process, unless otherwise approved by the Public Works Director. The street stub shall include sidewalks, bike lanes, planting strips etc., in accordance with the Transportation System Plan. The stub shall include a full street section unless the Public Works Director finds that only a half street or 2/3rd street width is necessary.
4. Use of Temporary Turnaround. If a road serving more than eighteen (18) dwelling units or more than one hundred fifty (150) feet in length temporarily terminates at a property boundary, a temporary turnaround cul-de-sac bulb consistent with this standard shall be constructed near the plat boundary. The bulb shall be paved and shall be ninety (90) feet in diameter, which may include the width of the roadway with sidewalks, where required, terminating at the point where the bulb radius begins. Removal of the temporary turnaround and extension of the sidewalk shall be the responsibility of the developer who extends the road.
5. The easement for a temporary turnaround may be extinguished without City approval after the temporary turnaround is determined to be no longer necessary by the City.
6. Barricades. A barricade shall be placed at the end of all stub streets, whether or not a temporary turnaround is constructed. Barricades must be constructed in accordance with city code, and will include a permanent sign in conformance with the Manual on Uniform Traffic Control Devices with the following or a similar message approved by the Public Works Director: Dead End, This road will be extended in the future.

G. Where such improvement(s) installed by a developer benefit other properties, a settlement shall be arrived at between the City and the developer prior to installing the improvements. This agreement shall identify the benefiting properties, actual costs to be charged and method of repayment to the developer. Where prior agreement exists for improvements benefiting the subject property, the developer shall make arrangements with the City for the payment of such improvements prior to issuance of any City permit.

H. Where Required. Bike lanes shall be included in the reconstruction or new construction of any arterial or collector street if bike lanes are indicated in the Transportation System Plan or as required by the City Manager.
   1. Signage and Markings. Bike lanes shall include signage and pavement markings in conformance with the Manual on Uniform Traffic Control Devices.
   2. Vertical Clearance. Bike facilities shall have an unobstructed vertical clearance of not less than eight (8) feet.
   3. Design Standards. Bikeway lanes shall be designed in accordance with Table 9.1. Deviations, such as a multi-use pathway, from these standards may be permitted by the City Manager pursuant to Subsections 11.01.04 (E).

I. No building shall be erected on a lot which fronts upon a street having only a portion of its required width dedicated (as set forth in the Transportation System Plan), unless the yards provided and maintained in connection with such building have a width and/or depth needed to complete the street right-of-way width plus the width and/or depth of the yards required on the lot by this Ordinance.

11.01.5 **Procedure**. Development Review applications shall be processed according to the standards for a Type I application contained in Article 13.

11.01.6 **Approval Period**. Development Review approvals shall be effective for a period of one year from the date of approval. The approval shall lapse if:
A. A public improvement plan or building permit application for the project has not been submitted within one year of approval; or
B. Construction on the site is in violation of the approved plan.

11.01.7 **Extension**. The Director shall, upon written request by the applicant, grant a written extension of the approval period not to exceed one year; provided that:
A. No changes are made on the original approved site design review plan;
B. The applicant can show intent of initiating construction on the site within the one-year extension period;
C. There have been no changes to the applicable Code provisions on which the approval was based. If there have been changes to the applicable Code provisions and the expired plan does not comply with those changes, then the extension shall not be granted; in this case, a new site design review shall be required; and
D. The applicant demonstrates that failure to obtain building permits and substantially begin construction within one year of site design approval was beyond the applicant's control.

11.04 Variances

11.04.1 **Purpose.** This Code cannot provide standards to fit every potential development situation. Variances are modifications to land use or development standards that are not otherwise permitted elsewhere in this Code. The variance procedures provide relief from specific code provisions when they have the unintended effect of preventing reasonable development in conformance with applicable standards and requirements. The variance procedures are intended to provide flexibility while ensuring that the intent of this Code is met.

11.04.2 The Planning Commission may authorize variances from the requirements of this Ordinance where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of the Ordinance would cause an undue or unnecessary hardship.

11.04.3 **Allowances.** Unless specifically stated otherwise, a person or party may apply for a variance from any standard contained herein.

11.04.4 **Findings of fact.** In order to grant any Variance, the Planning Commission must find, based upon evidence provided by the applicant, both factual and supportive, that:
A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of this Ordinance, topography, or other circumstances over which the applicant has no control.
B. The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possessed.
C. The variance would not be materially detrimental to the purposes of this Ordinance, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any City plan or policy.
D. The variance requested is the minimum variance which would alleviate the hardship.

11.04.5 **Conditions of Approval.** In granting a variance, the Planning Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood or to otherwise achieve the purposes of this Ordinance.

11.04.6 **Limitations.** No variance shall allow the use of property for a purpose not authorized within the zone in which the proposed use would be located.

11.04.7 **Procedure.** Variance applications shall be processed according to the standards for a Type III application contained in Article 13.

11.04.8 **Appeal.** Appeal of a Variance shall be processed according to the standards for appeal of a Type III decision contained in Article 13.

11.05 Minor Variances

11.05.1 Certain Minor Variances which are less likely to result in a change to neighborhood character may be approved by the Planning Director without a public hearing.

11.05.2 **Allowances.** Only those specific deviations identified herein shall be eligible for approval of a Minor Variance.

A. Deviation from lot coverage requirements of 5% or less.
B. Deviation from lot size or building height requirements of 10% or less.
C. Deviation from minimum setbacks:
    1. Front Yard: No reduction.
    2. Side Yard Abutting a Street: minimum 8 feet.
    3. Side and Rear Yards: minimum 3 feet.
D. Deviation, not to exceed 50%, of Length of Driveway Approach Apron
E. Front Yard Fence and Wall Waivers. Waiver of the front and side yard (3.5') fence provisions may be sought by any person who proves he can provide equal aesthetic qualities by other means. The Director shall consider such application on the basis of aesthetic value of the substitute plan. The substitute plan must:
    1. Provide adequate vision clearance for automobiles, both those passing on the street and those leaving the development site;
    2. Include landscaping;
    3. Not be detrimental to the public health, safety or welfare, or be materially injurious to properties or improvements in the vicinity.

11.05.3 **Approval criteria.** A Type II Variance shall be granted only if the request falls within established allowances.

11.05.4 **Procedure.** Minor Variance applications shall be processed according to the standards for a Type II application contained in Article 13.

11.05.5 **Appeal.** Appeal of a Minor Variance shall be processed according to the standards for appeal of a Type II decision contained in Article 13.

11.07 Pre-Existing, Non-Conforming Uses and Developments

11.07.1 Non-Conforming Uses are existing uses or development that do not comply with the Code. The standards for non-conforming uses and development are intended to provide some relief from code requirements for uses and developments that were established prior to the effective date of this Code and do not comply with current standards.
Except as is hereinafter provided in this Ordinance, the lawful use of a building or structure or of any land or premises lawfully existing at the time of the effective date of this Ordinance or at the time of a change in the official zoning maps may be continued although such use does not conform with the provisions of this Ordinance. No unlawful use of property existing at the time of passage of this Ordinance shall be deemed a non-conforming use.

11.07.2 **Continuation of Nonconforming Uses.** Where at the time of adoption of this Code a use of land exists which would not be permitted by the regulations imposed by this Code and was lawful at the time it was established, the use may be continued as long as it remains otherwise lawful, provided:

A. Expansion Prohibited. No such nonconforming use may be enlarged, increased or extended to occupy a greater area of land or space than was occupied at the effective date of adoption or amendment of this Code. No additional structure, building or sign shall be constructed on the lot in connection with such nonconforming use of land;
B. Location. No such nonconforming use shall be moved in whole or in part to any portion of the lot other than that occupied by such use at the effective date of adoption or amendment of this Code;

C. Discontinuation or Abandonment. The nonconforming use of land is not discontinued for any reason for a period of more than 12 months. For purposes of calculating the 12-month period, a use is discontinued or abandoned upon the occurrence of the first of any of the following events:
   1. On the date when the use of land is physically vacated;
   2. On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;
   3. On the date of termination of any lease or contract under which the nonconforming use has occupied the land; or
   4. On the date a request for final reading of water and power meters is made to the applicable utility districts.

D. Application of Code Criteria and Standards. If the use is discontinued or abandoned for any reason for a period of more than 12 months, any subsequent use of land shall conform to the applicable standards and criteria specified by this Code for the land use district in which such land is located.

11.07.3 **Alterations or Repairs of a Non-Conforming Use.**

A. Alterations or repairs of a non-conforming use may be permitted to continue the use in a reasonable manner subject to the provisions of this Ordinance. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use.

B. Any proposal for the alteration or repair of a non-conforming use may be permitted to reasonably continue, restore or replace the use.

C. As used in this Section, "alteration" of a non-conforming use includes, as determined by the City Manager:
   1. A change in the use of no greater adverse impact to the neighborhood; and
   2. A change in the structure or physical improvements of no greater adverse impact to the neighborhood.

D. A non-conforming use may be altered only insofar as it applies to the zone in which it is located. Once altered to conforming use, no building or land shall be permitted to revert to a non-conforming use.

11.07.4 **Restoration of a Non-Conforming Building, Structure or Lot.**

A. A non-conforming building or structure which is damaged by fire, flood, wind, earthquake or other calamity or act of God or the public enemy, may be restored, and the occupancy or use of such building or structure or part thereof, which existed at the time of such partial destruction, may be resumed, provided that the restoration is commenced within a period of one (1) year and is diligently prosecuted to completion.

B. The restoration or reconstruction of a non-conforming building or structure may not create a greater non-conformance than existed at the time of damage or destruction.

C. Nothing in this Ordinance shall be construed to prevent the reconstruction or replacement of a pre-existing building or structure conforming as to use on a non-conforming lot, so long as such lot did not become non-conforming in violation of the provisions of this Ordinance.

11.09 Interpretations of this Ordinance

11.09.1 The City of Pendleton reserves the right to interpret this ordinance. Some terms or phrases within the Code may be open for interpretation or not foreseen. This Section provides a process for resolving differences in the interpretation of the Code text.

11.09.2 **Procedure.**

A. A request for a code interpretation shall be made in writing to the Planning Director.

B. The Planning Director shall have the authority to interpret the code, or refer the request to the Planning Commission for its interpretation. The Planning Director shall advise the person making the inquiry in writing within 14 days after the request is made, on whether or not the City will make an interpretation.

C. If the City decides to issue an interpretation, it shall be issued in writing and shall be mailed or delivered to the person requesting the interpretation and any other person who specifically requested a copy. The written interpretation shall be issued within 14 days of the request. The decision shall become effective 14 days later, unless an appeal is filed in accordance subsection D below.

D. Appeals. The applicant and any party who received notice or who participated in the proceedings through the submission of written or verbal evidence may appeal the decision to the Planning Commission pursuant to the standards for appeal of a Type II decision. The appeal must be filed within 14 days after the interpretation was postmarked to the applicant.

Article XIII. Land Use Application Procedure

13.01 Application Submittal and Completeness Review

The City of Pendleton provides a consolidated procedure by which an applicant may apply at one time for all land use permits needed for a development project.

13.01.1 **Application Forms and Checklists**

A. The Director shall supply land use application forms pursuant to the standards contained in the applicable state law, comprehensive plan, and implementing ordinance provisions. All applications provided for in this Ordinance shall be made on the application forms prescribed by the City.

B. The Director shall supply checklists or information sheets for applications, which shall detail the specific information which must be contained in the application, including format and number of copies. Such checklists may be incorporated into the application forms.

13.01.2 **Who May Apply**

A. An application for a Special Permit may be filed by:
1. The owner or the contract purchaser of the subject property, or any person authorized in writing to act as agent of the owner or contract purchaser.
2. The City Council, Planning Commission, City Manager, or the City Manager's designee, as to property owned by the City, including public right of way and easements, or which the City intends to acquire.
3. Public agencies that own the property or have passed a resolution declaring that they intend to exercise their statutory authority to condemn the property.

B. A Text Amendment application may be filed by an interested person, City Council, Mayor, or Director.

C. A Zoning Map Amendment application subject to a Type III procedure may be filed by the owner or the contract purchaser of the subject property, City Council, Mayor, or Director.

D. A Zoning Map Amendment application subject to a Type IV procedure may be filed only by the City Council, Mayor, City Manager, or the City Manager's designee.

13.01.3 **Classification of Applications**

A. All applications shall be subject to the procedure type specified in this Code. If the Code does not specify a procedure type for a given application and another procedure is not required by law, the Director shall determine the appropriate procedure based on the following guidelines. Where two or more procedure types could be applied to a particular application, the selected procedure will be the type providing the broadest notice and opportunity to participate.
1. A Type I (Ministerial) application is subject to non-discretionary criteria or criteria that require the exercise of professional judgment only about technical issues.
2. A Type II (Ministerial) application is subject to criteria that require the exercise of limited discretion about non-technical issues and about which there may be limited public interest.
3. A Type III (Quasi-Judicial) application is subject to criteria that require the exercise of substantial discretion and about which there may be broad public interest, although the application applies to a limited number of land owners and properties.
4. A Type IV (Legislative) procedure typically involves the adoption, implementation or amendment of policy or law by ordinance. The subject of a Type IV procedure generally applies to a relatively large geographic area containing many property owners.
5. When an applicant submits more than one complete application for a given proposal, where each application addresses a separate set of code requirements and the applications are subject to different procedure types, all of the applications are subject to the procedure type of the application which requires the broadest notice and opportunity to participate. For example, a Type II application will be consolidated with a Type III application for the same proposal on the same site, in which case, the Type II application will be reviewed by the decision making authority of the Type III application. The decision making authority's action on the Type II application will be based on the approval criteria governing the Type II application.

B. In the event that the completed applications involve applications where the decision making authority is a combination of the Director and the Planning Commission, the decision making authority will be the Planning Commission.

C. Notwithstanding any other provision and at no cost to the applicant, the Director may choose to combine multiple applications for the same development as a way to increase the efficiency of development review.

D. For applications within the Historic District, the Director shall determine the appropriate decision-making authority between the Façade Committee, the Landmarks Commission and the Planning Commission. Such determination will be based upon the characteristics of the proposal and the associated application, if any.

E. Notwithstanding the Director's determination of procedure type, an applicant may choose to have a Type II application submitted directly to the Planning Commission provided the applicant pays the appropriate fee for the selected procedure type and the Director determines that statutory timelines for reaching a final decision can be satisfied.

F. Notwithstanding any other provision, and at no additional cost to the applicant, the Director may choose to process a Type II application under the Type III procedure in order to provide greater notice and opportunity to participate than would otherwise be required, or in order to comply with the time requirements for reviewing development applications pursuant to ORS 227.178.

13.01.4 **Application Submittal**

A. Applications for development permits shall be submitted upon forms supplied by the Director. Partial submittal of applications will not be accepted. All of the following items must be submitted to initiate the completeness review:
1. Applications for Type I and Type II actions which do not require a public hearing shall be processed administratively in the order they are received. One copy of the application and all attachments shall be submitted.
2. All applications for Type III quasi-judicial actions shall be submitted to the Planning Department no less than 28 days before the next scheduled meeting of the Planning Commission. Ten complete sets of the application and all attachments shall be submitted.
3. Any proposal for a Type IV Legislative action to amend the City of Pendleton Comprehensive Plan or any City of Pendleton land use regulation or to adopt a new land use regulation shall be submitted a minimum of 50 days prior to the first evidentiary hearing, consistent with the standards contained in ORS 197.760. Twenty complete sets of the application and all attachments shall be submitted.

4. In no instance shall an application be scheduled for a public hearing if local or State notice requirements cannot be met. Applications submitted after applicable deadlines shall be scheduled for the next available hearing date upon determination of completeness.

B. All applications shall provide the following minimum information, unless specifically waived by the Planning Director:

1. Application form, including required notarized signature(s) that demonstrate consent of all owners of the affected property;
2. Deed, title report or other proof of ownership;
3. Completed checklist provided for each type of application, including all required materials;
4. A narrative summarizing the project, including (but not limited to) such information as: the nature of the structure(s) and/or activities proposed (Residential, Commercial, Industrial, Institutional, Mixed Use, etc.) number of dwellings/employees/ students/participants, hours of operation, and any other information to assist staff and the public in understanding the proposal. If negative impacts are anticipated, please identify them and provide a proposal for mitigation.
5. Plans and specifications, drawn to scale, showing the following:
   a. The actual shape and dimensions of the lot or site to be built upon. Site drawings should be provided at a scale of 1" = 20' or 1" = 40' unless a large site dictates a more appropriate scale, which shall in all cases be consistent with a U.S. Standard Engineer scale.
   b. The sizes and locations of all structures on the site (existing and proposed), including all setbacks.
   c. Elevations of any proposed buildings, if part of or relevant to the application.
   d. The number of dwelling units, if any, that exist on the site or are proposed for construction.
   e. The relationship of the property to the surrounding area.
   f. Documentation of the public improvements abutting the site (streets, curb/gutter, sidewalks, etc.).
   g. Elevation Certificate and/or topographic map prepared by a registered land surveyor to show compliance with floodplain standards, if applicable.
   h. Any other information deemed necessary by the Planning Director to determine conformance with this Ordinance or compatibility with the general neighborhood or zone.
6. Special reports or plans required to demonstrate that the specific proposal and its site constraints comply with applicable codes. These are noted on the application checklist.
7. Application narrative to address each applicable approval criteria and standards.
8. Any mitigation proposed to address actual or potential negative impacts.
9. A Trip Generation study or Traffic Impact Analysis, if deemed necessary pursuant to this Ordinance and/or the City of Pendleton Transportation System Plan.
10. Electronic copies of all submittal materials, if possible.
11. Payment for the appropriate land use application fee(s) and deposit(s), based on the fee schedule in effect on the date of application submittal.

13.01.5 **Completeness Review**

A. The Director shall review the application submittal and advise the applicant in writing whether the application is complete or incomplete within thirty (30) calendar days after the city receives the application submittal.

B. Incompleteness shall be based solely on failure to pay required fees, failure of the applicant's narrative to address the relevant criteria or development standards, or failure to supply the required information listed in the checklist and shall not be based on differences of opinion as to quality or accuracy. Determination that an application is complete indicates only that the application contains the information necessary for a qualitative review of compliance with the Development Code standards.

C. Submittal and/or acceptance of the required fees shall not constitute acceptance of a complete application.

D. Failure to provide necessary or relevant information may result in delay or denial of an application.

E. If the application was complete when first submitted or the applicant submits additional information within 180 days of the date the application was first submitted, and a decision has not been issued, approval or denial of the application shall be based upon the standards and criteria that were in effect at the time the application was first submitted.

F. If an application is incomplete, the Director shall prepare a notice of incompleteness. The notice shall list what information is missing and allow the applicant to submit the missing information. The completeness notice shall include a form, to be returned to the Director by the applicant, indicating whether or not the applicant intends to amend or supplement the application.

G. The application will be deemed complete for purposes of this Section upon receipt by the city of:

1. All of the missing information;
2. Some of the missing information and written notice from the applicant that no other information will be provided; or
3. Written notice from the applicant that no additional information will be provided.

H. The application will be deemed void if the application has been on file with the city for more than 180 calendar days and the applicant has not met the obligations of subsection G. above.

I. The City shall take final action on an application for a permit, limited land use decision or zone change consistent with the standards contained in ORS 227.178, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete. The 120 calendar day time limit may be extended pursuant to subsection J. below or as may otherwise be permitted under State law.

J. The 120 calendar day time line may be extended at the written request of the applicant. The total of all extensions may not exceed 245 calendar days, for a total of 365 days from the date the application is deemed complete.

13.01.6 **Withdrawal of an Application**

A. An applicant may withdraw an application at any time before the application is deemed complete.
   1. An applicant may withdraw an application previously deemed complete at any time prior to adoption of a final City decision if the Director determines that:
   2. The owners or contract purchasers or the interest holders in the property consent in writing to withdraw the application.

B. No violation of this Code has been identified on the subject property and processing of the application would not correct the identified violation.

C. The City Manager, or his designee may withdraw any City-initiated application at any time.

D. If an application is withdrawn after public notice has been mailed, the Director shall send written notice stating the application has been withdrawn to all persons to whom notice of the application or hearing has been sent. This provision shall not apply to legislative applications that require Citywide mailed notice.

E. Once an application has been withdrawn, the application fees shall be refunded by the following formula:

F. Application withdrawn prior to being deemed complete: 85%.

G. Application withdrawn prior to publication or distribution of public notice: 50%.

H. Application withdrawn after publication or distribution of public notice: no refund.

I. There shall be no refund of fees for appeal of a Type III/Planning Commission decision; appeal fees may be refunded if the appellant prevails in an appeal of a Type II decision pursuant to ORS 227.175.

13.02 Type I Procedure (Ministerial)

13.02.1 **Application Requirements.**

A. Type I applications shall be made on forms provided by the Community Development Department.

B. Type I applications shall:
   1. Include the information requested on the application form;
   2. Address the criteria in sufficient detail for review and action; and
   3. Be filed with the required fee.

13.02.2 **Administrative Decision Requirements.** The City Planning Official or designee's decision shall address all of the approval criteria. Based on the criteria and the facts contained within the record, the City Planning Official shall approve or deny the requested permit or action. A written record of the decision shall be provided to the applicant and kept on file at City Hall.

13.02.3 **Final Decision.** A Type I decision is the final decision of the City and cannot be appealed.

13.02.4 **Effective Date.** A Type I decision is final on the date it is made.

13.03 Type II Procedure (Administrative)

13.03.1 **Pre-application Conference.** A pre-application conference is not required for Type II applications but is highly recommended.

13.03.2 **Application Requirements.**

A. Type II applications shall be made on forms provided by the Community Development Department.

B. Type II applications shall:
   1. Include the information requested on the application form;
   2. Be filed with the required fee.

13.03.3 **Notice of Application.**

A. Before making a Type II Administrative Decision, the City Planning Official or designee shall mail notice to:
   1. All City-recognized neighborhood groups or associations whose boundaries include the site;
   2. Any person or party who submits a written request to receive a notice; and
   3. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies. The City shall notify the road authority, and rail authority and owner, when there is a proposed development abutting or affecting their transportation facility and allow the agency to review, comment on, and suggest conditions of approval for the application.

B. Notice of a pending Type II Administrative Decision shall:
   1. Provide a 14-day period for submitting written comments before a decision is made on the permit;
   2. List the relevant approval criteria by name and number of code sections;
   3. State the place, date and time the comments are due, and the person to whom the comments should be addressed;
   4. Include the name and telephone number of a contact person regarding the Administrative Decision;
   5. Describe proposal and identify the specific permits or approvals requested;
   6. Describe the street address or other easily understandable reference to the location of the site;
   7. State that if any person fails to address the relevant approval criteria with enough detail, they may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue. Only comments on the relevant approval criteria are considered relevant evidence;
   8. State that all evidence relied upon by the City Planning Official or designee to make this decision is in the public record, available for public review. Copies of this evidence can be obtained at a reasonable cost from the City;
   9. State that after the comment period closes, the City Planning Official or designee shall issue a Type II Administrative Decision, and that the decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice.

13.03.4 **Administrative Decision Requirements.** The City Planning Official or designee shall make a Type II written decision addressing all of the relevant approval criteria and standards. Based upon the criteria and standards, and the facts contained within the record, the City Planning Official or designee shall approve, approve with conditions, or deny the requested permit or action. Alternatively, the City Planning Official, and/or the applicant, may refer the application to the Planning Commission for review in a public hearing, in which case the review shall follow the Type III procedures in this Article.

13.03.5 **Notice of Decision.**

A. Within five days after the City Planning Official or designee signs the decision, a Notice of Decision shall be sent by mail to:
   1. The applicant and all owners or contract purchasers of record of the site that is the subject of the application;
   2. All owners of record of real property within a minimum of 100 feet of the subject site;
   3. Any person who submits a written request to receive notice, or provides comments during the review period;
   4. Any City-recognized neighborhood group or association whose boundaries include the site; and
   5. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City, and other agencies that were notified or provided comments during the application review period.

B. The Type II Notice of Decision shall contain:
   1. A description of the applicant's proposal and the specific permits or approvals requested;
   2. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area, where applicable;
   3. The relevant approval criteria by name and number of code sections;
   4. A statement that all evidence relied upon by the City Planning Official or designee to make this decision is in the public record and available for public review, and that copies can be obtained at a reasonable cost from the City;
   5. A statement of where the City's decision can be obtained;
   6. The date the decision shall become final, unless appealed;
   7. A statement that all persons entitled to notice may appeal the decision; and
   8. State the place, date and time the comments are due, and the person to whom the comments should be addressed;
   9. A statement briefly explaining how to file an appeal, the deadline for filing an appeal, and where to obtain further information concerning the appeal process.
   10. State that if any person fails to address the relevant approval criteria with enough detail, they may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue. Only comments on the relevant approval criteria are considered relevant evidence;
   11. The following notice: "Notice to mortgagee, lien holder, vendor, or seller: The City of Pendleton Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."
   12. Include the name and telephone number of a contact person regarding the Administrative Decision;
   13. State that after the comment period closes, the City Planning Official or designee shall issue a Type II Administrative Decision, and that the decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice;

C. The City Planning Official or designee shall cause an affidavit of mailing the notice to be prepared and made a part of the file. The affidavit shall show the date the notice was mailed and shall demonstrate that the notice was mailed to the parties above and was mailed within the time required by law.

13.03.6 **Final Decision and Effective Date.** A Type II administrative decision is effective on the day after the appeal period expires. If an appeal is filed, the decision is effective when the appeal is decided.

13.03.7 **Appeal.** A Type II administrative decision may be appealed to the Planning Commission as follows:

A. Who may appeal. The following people have legal standing to appeal a Type II Administrative Decision:
   1. The applicant or owner of the subject property;
   2. Any person who was entitled to written notice of the Type II administrative decision;
   3. Any other person who participated in the proceeding by submitting written comments.

B. Appeal filing procedure.
   1. Notice of appeal. Any person with standing to appeal, as provided in subsection A, may appeal a Type II Administrative Decision by filing a Notice of Appeal according to the following procedures;
   2. Time for filing. A Notice of Appeal shall be filed with the City Planning Official or designee within 14 days of the date the Notice of Decision was mailed;
   3. Content of notice of appeal. The Notice of Appeal shall contain:
      a. An identification of the decision being appealed, including the date of the decision;
      b. A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
      c. A statement explaining the specific issues being raised on appeal;
      d. If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period;
      e. Filing fee.

C. Scope of appeal. The appeal of a Type II Administrative Decision by a person with standing shall be a hearing de novo before the Planning Commission. The appeal shall not be limited to the application materials, evidence and other documentation, and

specific issues raised in the Type II administrative review. The Planning Commission may allow additional evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue.

D. Appeal procedures. Type III notice, hearing procedures and decision process shall be used for all Type II Administrative Appeals.

E. Further Appeal to City Council. The decision of the Planning Commission regarding an appeal of a Type II Administrative Decision is the final decision of the City unless appealed to City Council. An appeal to City Council shall follow the same notification and hearing procedures as for the Planning Commission hearing. The decision of the City Council on an appeal is final and effective on the date it is mailed by the City. The City Council's decision may be appealed to the State Land Use Board of Appeals pursuant to ORS 197.805 – 197.860.

13.04 Type III Procedure (Quasi-Judicial)

13.04.1 **Pre-application Conference.** A pre-application conference is not required for Type III applications but is highly recommended.

13.04.2 **Neighborhood Meetings.** There is no legal requirement to conduct neighbor-developer meetings. However, applicants are encouraged to meet with adjacent property owners and neighborhood representatives prior to submitting their application to the City in order to solicit input and exchange information about the proposed development. The City can provide the same list used for mailed notices to the applicant if he/she wishes to provide additional notification and/or schedule a community meeting.

13.04.3 **Application Requirements.**

A. Application forms. Type III applications shall be made on forms provided by the Community Development Department; if a Type II application is referred to a Type III hearing, either voluntarily by the applicant or staff, or upon appeal, no new application is required.

B. Submittal Information. When a Type III application is required, it shall:

1. Include the information requested on the application form;
2. Be filed with a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision-making;
3. Be accompanied by the required fee.

13.04.4 **Notice of Hearing.**

A. Notice of a Type III application hearing or Type II appeal hearing shall be given by the City Planning Official or designee in the following manner:

1. At least 20 days before the hearing date, notice shall be mailed to:
   a. The applicant and all owners or contract purchasers of record of the property that is the subject of the application;
   b. All property owners of record within 100 feet of the site;
   c. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies. The City shall notify the road authority, and rail authority and owner, when there is a proposed development abutting or affecting their transportation facility and allow the agency to review, comment on, and suggest conditions of approval for the application.
   d. Owners of airports in the vicinity shall be notified of a proposed zone change in accordance with ORS 227.175;
   e. Any neighborhood or community organization recognized by the City Council and whose boundaries include the property proposed for development;
   f. Any person who submits a written request to receive notice;
   g. For appeals, the appellant and all persons who provided testimony in the original decision; and
   h. For a land use district change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
2. The City Planning Official or designee shall have an affidavit of notice be prepared and made a part of the file. The affidavit shall state the date that the notice was mailed to the persons who must receive notice.
3. Notice of the hearing shall be printed in a newspaper of general circulation in the City at least 7 business days before the hearing. The newspaper's affidavit of publication of the notice shall be made part of the administrative record.

B. Content of Notice. Notice of appeal of a Type II Administrative decision or notice of a Type III hearing to be mailed and published per Subsection 1 above shall contain the following information:

C. The nature of the application and the proposed land use or uses that could be authorized for the property;

D. The applicable criteria and standards from the development code(s) that apply to the application;

E. The street address or other easily understood geographical reference to the subject property;

F. The date, time, and location of the public hearing;

G. A statement that the failure to raise an issue in person, or by letter at the hearing, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue, means that an appeal based on that issue cannot be filed with the State Land Use Board of Appeals;

H. The name of a City representative to contact and the telephone number where additional information on the application may be obtained;

I. A statement that a copy of the application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards can be reviewed at Pendleton City Hall at no cost and that copies shall be provided at a reasonable cost;

J. A statement that a copy of the City's staff report and recommendation to the hearings body shall be available for review at no cost at least seven days before the hearing, and that a copy shall be provided on request at a reasonable cost;

K. A general explanation of the requirements to submit testimony, and the procedure for conducting public hearings; and

L. The following notice: "Notice to mortgagee, lien holder, vendor, or seller: The City of Pendleton Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

13.04.5 **Conduct of the Public Hearing.**

A. At the commencement of the hearing, the hearings body shall state to those in attendance:
   1. The applicable approval criteria and standards that apply to the application or appeal;
   2. Testimony and evidence shall concern the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations that the person testifying believes to apply to the decision;
   3. An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised in person or by letter not later than the close of the record or following the final evidentiary hearing on the proposal before the local government. Failure to raise an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to LUBA based on that issue;
   4. Before the conclusion of the initial evidentiary hearing, any participant may ask the Planning Commission for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing. The hearings body shall grant the request by scheduling a date to finish the hearing (a continuance), or by leaving the record open for additional written evidence or testimony per subsection B.

B. If the Planning Commission grants a continuance, the completion of the hearing shall be continued to a date, time, and place at least seven days after the date of the first evidentiary hearing. An opportunity shall be provided at the second hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the second hearing, any person may request, before the conclusion of the second hearing, that the record be left open for at least seven days, so that they can submit additional written evidence or testimony in response to the new written evidence;

C. If the Planning Commission leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days after the hearing. Any participant may ask the City in writing for an opportunity to respond to new evidence submitted during the period that the record was left open. If such a request is filed, the Planning Commission shall reopen the record.
   1. When the Planning Commission reopens the record to admit new evidence or testimony, any person may raise new issues that relate to that new evidence or testimony;
   2. An extension of the hearing or record granted pursuant to this Section is subject to the limitations of ORS 227.178 ("120-day rule"), unless the continuance or extension is requested or agreed to by the applicant;
   3. If requested by the applicant, the City shall allow the applicant at least seven days after the record is closed to all other persons to submit final written arguments in support of the application, unless the applicant expressly waives this right. The applicant's final submittal shall be part of the record but shall not include any new evidence;
   4. The record shall contain all testimony and evidence that is submitted to the City and that the hearings body has not rejected;
   5. In making its decision, the hearings body may take notice of facts not in the hearing record (e.g., local, state, or federal regulations; previous city decisions; case law; staff reports). The review authority must announce its intention to take notice of such facts in its deliberations, and allow persons who previously participated in the hearing to request the hearing record be reopened, if necessary, to present evidence concerning the noticed facts;
   6. The review authority shall retain custody of the record until the City issues a final decision.

D. Participants in the appeal of a Type II Administrative decision or participants in a Type III hearing are entitled to an impartial review authority as free from potential conflicts of interest and pre-hearing ex parte contacts as reasonably possible. However, the public has a countervailing right of free access to public officials. Therefore:
   1. At the beginning of the public hearing, hearings body members shall disclose the substance of any pre-hearing ex parte contacts (as defined below) concerning the application or appeal. He or she shall state whether the contact has impaired their impartiality or their ability to vote on the matter and shall participate or abstain accordingly;
   2. A member of the hearings body shall not participate in any proceeding in which they, or any of the following, has a direct or substantial financial interest: their spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which they are then serving or have served within the previous two years, or any business with which they are negotiating for or have an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the hearing where the action is being taken;
   3. Disqualification of a member of the hearings body due to contacts or conflict may be ordered by a majority of the members present and voting. The person who is the subject of the motion may not vote on the motion to disqualify;
   4. If all members of the Planning Commission abstain or are disqualified, the City Council shall be the hearing body. If all members of the City Council abstain or are disqualified, a quorum of those members present who declare their reasons for abstention or disqualification shall be re-qualified to make a decision;
   5. Any member of the public may raise conflict of interest issues prior to or during the hearing, to which the member of the hearings body shall reply in accordance with this Section.

E. Ex parte communications.
   1. Members of the hearings body shall not:
      a. Communicate directly or indirectly with any applicant, appellant, other party to the proceedings, or representative of a party about any issue involved in a hearing without giving notice per subsection D above;

b. Take official notice of any communication, report, or other materials outside the record prepared by the proponents or opponents in connection with the particular case, unless all participants are given the opportunity to respond to the noticed materials.

2. No decision or action of the hearings body shall be invalid due to ex parte contacts or bias resulting from ex parte contacts, if the person receiving contact:
   a. Places in the record the substance of any written or oral ex parte communications concerning the decision or action; and
   b. Makes a public announcement of the content of the communication and of all participants' right to dispute the substance of the communication made. This announcement shall be made at the first hearing following the communication during which action shall be considered or taken on the subject of the communication.
   c. A communication between City staff and the hearings body is not considered an ex parte contact.

F. Presenting and receiving evidence.
1. The hearings body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant or personally derogatory testimony or evidence;
2. No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing, only as provided in subsection C;
3. Members of the hearings body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.

13.04.6 **Recess of Hearing**. The Planning Commission may recess a hearing in order to obtain additional information or to serve further notice upon other property owners or persons it decides may be interested in the proposed action. Upon recessing for this purpose, the Commission shall announce the time and date when the hearing will be resumed.

13.04.7 **The Decision Process.**

1. Basis for decision. Approval or denial of an appeal of a Type II Administrative decision or of a Type III application shall be based on standards and criteria in the development code. The standards and criteria shall relate approval or denial of a discretionary development permit application to the development regulations and, when appropriate, to the comprehensive plan for the area in which the development would occur and to the development regulations and comprehensive plan for the City as a whole;
2. Findings and conclusions. Approval or denial shall be based upon the criteria and standards considered relevant to the decision. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts;
3. Form of decision. The Planning Commission shall issue a final written order containing the findings and conclusions stated in subsection B, which either approves, denies, or approves with specific conditions. The Planning Commission may also issue appropriate intermediate rulings when more than one permit or decision is required;
4. Decision-making time limits. A final order for any Type II Administrative Appeal or Type III action shall be filed with the City Planning Official or designee within ten business days after the close of the deliberation;
5. Notice of Decision. Written notice of a Type II Administrative Appeal decision or a Type III decision shall be mailed to the applicant and to all participants of record within ten business days after the hearings body decision. Failure of any person to receive mailed notice shall not invalidate the decision, provided that a good faith attempt was made to mail the notice.
6. Final Decision and Effective Date. The decision of the hearings body on any Type II appeal or any Type III application is final for purposes of appeal on the date it is mailed by the City. The decision is effective on the day after the appeal period expires. If an appeal is filed, the decision becomes effective on the day after the appeal is decided by the City Council. The notification and hearings procedures for Type III applications on appeal to the City Council shall be the same as for the initial hearing. An appeal of a land use decision to the State Land Use Board of Appeals must be filed within 21 days of the City Council's written decision or, in the case of Type I decision, within 21 days of the administrative decision date.

13.04.8 **Appeal.** A Type III decision may be appealed to the City Council as follows:

A. Who may appeal. The following people have legal standing to appeal a Type III Decision:
1. The applicant or owner of the subject property;
2. Any person who participated in the proceeding by submitting written comments to the Planning Commission.
3. Any person who participated in the proceeding by providing oral testimony to the Planning Commission at the hearing(s).
4. The City Council, acting upon the recommended action of the City Manager or upon its own motion, may order a de novo review of any lower level decision. This review shall be conducted in accordance with appeal procedures specified herein.

B. Appeal filing procedure.
1. Notice of appeal. Any person with standing to appeal, as provided in subsection A, above, may appeal a Type III Decision by filing a Notice of Appeal according to the following procedures;
2. Time for filing. A Notice of Appeal shall be filed with the City Planning Official or designee within 14 days of the date the Notice of Decision was mailed;
3. Content of notice of appeal. The Notice of Appeal shall contain:
   a. An identification of the decision being appealed, including the date of the decision;
   b. A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
   c. A statement explaining the specific issues being raised on appeal;

d. If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period;

e. Filing fee.

C. Scope of appeal. The appeal of a Type III Decision by a person with standing shall be a hearing de novo before the City Council. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the Planning Commission review. The City Council may allow additional evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue.

D. Appeal procedures. Type III notice, hearing procedures and decision process shall also be used for all Type III Appeals;

E. Further Appeal. The decision of the City Council on an appeal is final and effective on the date it is mailed by the City. The City Council's decision may be appealed to the State Land Use Board of Appeals pursuant to ORS 197.805 – 197.860.

13.06 Burden of Proof

The following language shall be included with all decisions for Type II, III and IV actions.

The specific findings made in granting a Permit shall be factual and supported by substantial evidence. The burden of producing substantial evidence to support the requisite findings is on the applicant seeking the approval of the Permit. If no evidence is produced by the applicant concerning any of the findings, the application may be denied based upon improper or inadequate findings. All evidence produced must be recited in the findings relating to approval or denial of an application.

A. The applicant has the burden of proof regarding all requests affecting a subject property, and the applicant recognizes that it is the sole obligation of the applicant to substantiate the request.

B. If any administrative review, suit or action is instituted in connection with any appeal of a decision, the applicant shall be required to either (1) reimburse the City for all costs incurred in defending this action, including but not limited to attorney fees, staff costs, any materials and other related costs, or (2) notify the City that the applicant does not desire to undertake such costs and will drop its request.

C. The applicant shall notify the City Manager within five (5) days from City's receipt of any notice of appeal by delivering a written statement to the City Manager within said five (5) days advising the City Manager whether the applicant will reimburse the City for all costs as described above or desires to drop the request.

D. In the absence of written communication from the applicant within the allotted five (5) days the City may at its option presume the applicant desires to drop the request and the City shall have no obligation to defend the appeal.

E. In appeals involving questions of City-wide significance, the City Council may determine to participate in part of the costs specified herein. Nothing in this condition shall affect applicant's right to retain independent counsel in making their own legal appearance upon appeal.

F. If any suit or action, including rescission, is instituted by the applicant in connection with any controversy arising out of a request, there shall be taxed and allowed to the City as a part of the costs of the action, a reasonable amount to be fixed by the court as attorney fees in such suit or action, both at trial and upon appeal. In addition, the City may charge a fee for preparation of a written transcript, not to exceed the actual cost of preparing the transcript, up to $500 plus one-half the actual costs over $500.