



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

AMENDED NOTICE OF ADOPTED AMENDMENT

September 21, 2007



TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Medford Plan Amendment
DLCD File Number 002-05

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: October 5, 2007

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
John Renz, DLCD Regional Representative
Bianca Petrou, City of Medford

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PROP **2**

DLCD

Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

In person electronic mailed

DEPT OF

SEP 17 2007

LAND CONSERVATION AND DEVELOPMENT

For DLCD Use Only

Jurisdiction: City of Medford Local file number: DCA-05-187
 Date of Adoption: 12/01/05 Date Mailed: 09/14/07
 Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date: 10/04/05
 Comprehensive Plan Text Amendment Comprehensive Plan Map Amendment
 Land Use Regulation Amendment Zoning Map Amendment
 New Land Use Regulation Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Amends the criteria for an exception for Articles IV and V of the Medford Land Development Code.

Does the Adoption differ from proposal? Please select one

Same

Plan Map Changed from: --- to: ---
 Zone Map Changed from: --- to: ---
 Location: --- Acres Involved: ---
 Specify Density: Previous: ---- New: ----

Applicable statewide planning goals:

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing? Yes No
 If no, do the statewide planning goals apply? Yes No
 If no, did Emergency Circumstances require immediate adoption? Yes No

DLCD file No. 002-05(14727)

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

None

Local Contact: Bianca Petrou Phone: (541) 774-2386 Extension:
Address: 200 South Ivy Street Fax Number: 541 - 774 2564
City: Medford Zip: 97501 E-mail Address: bianca.petrou@cityofmedford.or

Enclosures: Staff Report dated October 3, 2005 including Exhibit "A";
Ordinance No. 2005-276

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. **Send this Form and TWO Complete Copies (documents and maps) of the Adopted Amendment to:**

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

ORDINANCE NO. 2005-276

AN ORDINANCE amending Chapter 10 of the Code of Medford by amending Sections 10.252, 10.253, and 10.290 pertaining to the criteria for obtaining an exception to standards.

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

Section 1. Section 10.252 of the Code of Medford is amended to read as follows:

10.252 Application Form.

An application for an exception shall be made by the owner of the property for which the exception is requested to the approving authority for the plan authorization involving the exception. An exception application shall include the following:

(1) **A list of the specific standard(s) for which an exception is being requested and a description of the degree of exception(s) being requested, including findings prepared by the applicant or applicant's representative addressing the criteria as set forth in Section 10.253, Criteria for an Exception.**

~~(2)~~ Vicinity map drawn at a scale of 1" = 1000' identifying the location of the site of the variance.

~~(3)~~ Assessor's map with the subject site identified.

~~(4)~~ Site plan showing in detail the circumstance(s) of the situation which justifies **each** the exception.

~~(4)~~ Findings prepared by the applicant or applicant's representative addressing the criteria as set forth in Section 10.253, Criteria for an Exception.

Section 2. Section 10.253 of the Code of Medford is amended to read as follows:

10.253 Criteria for an Exception.

No exception, in the strict application of the provisions of this chapter, shall be granted by the approving authority (Planning Commission/Site Plan and Architectural Commission) having jurisdiction over the plan authorization unless it finds that all of the following criteria and standards are satisfied. The power to authorize an exception from the terms of this code shall be sparingly exercised. **Findings must indicate that:**

(1) The granting of the exception shall be in harmony with the general purpose and intent of the regulations imposed by this code for the zoning district in which the exception request is located, and shall not be injurious to the general area or otherwise detrimental to the **health, safety, and general public welfare or adjacent natural resources. The Planning Commission/Site Plan and Architectural Commission shall have the authority to impose conditions to assure that this criterion is met.**

(2) The granting of an exception will not permit the establishment of a use which is not permitted in the zoning district within which the exception is located.

(3) **There are unique or unusual circumstances which apply to this site which do not typically apply elsewhere in the City, and that the strict application of the standard(s) for**

~~which an exception is being requested would result in peculiar, exceptional, and undue hardship on the owner. There must be proof of the existence of special circumstances or conditions, fully described in the findings, applicable to the project site or buildings located thereon for which the exception is sought, and which circumstances or conditions are such that the strict application of the provisions of this code would deprive the applicant of the reasonable use of such land or building.~~

~~(4) That~~ The need for the exception is not the result of an illegal act nor can it be established on this basis by one who purchases the land or building with or without knowledge of the standards of this code. It must result from the application of this chapter, and it must be suffered directly by the property in question. It is not sufficient proof in granting an exception to show that greater profit would result.

~~(5) The granting of the exception is necessary for the reasonable use of the land or building, and the exception as granted by the approving authority is the minimum exception that will accomplish this purpose.~~

~~The report of the approving authority shall fully set forth the circumstances by which this code would deprive the applicant of reasonable use of his land. Mere loss in value or the convenience of site or building design shall not justify granting an exception; there must be a deprivation of beneficial use of land.~~

~~(6) The proposed exception will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public street, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the adjacent area.~~

Section 3. Section 10.290 of the Code of Medford is amended to read as follows:

10.290 Site Plan and Architectural Review Criteria.

The Site Plan and Architectural Commission shall approve a site plan and architectural review application if it can find that the proposed development conforms, or can be made to conform through the imposition of conditions, with the following criteria:

(1) The proposed development is compatible with uses and development that exist on adjacent land, and

~~(2) The proposed development complies with the applicable provisions of all city ordinances, or (2) The proposed development is compatible with uses and development that exist on adjacent land.~~ **the Site Plan and Architectural Commission has approved (an) exception(s) as provided in MLDC Section 10.253.**

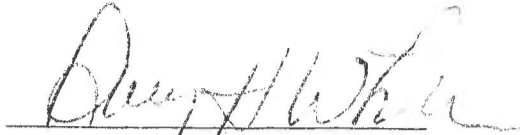
PASSED by the Council and signed by me in authentication of its passage this 1 day of December, 2005.

ATTEST: Lauren M. Speck
Deputy City Recorder

Quynh White
Mayor

///

APPROVED December 1, 2005.


Mayor

NOTE: Matter in **bold** in an amended section is new. Matter ~~struck out~~ is existing law to be omitted.

City of Medford

October 3, 2005

STAFF REPORT**File No.:** DCA-05-187 *Land Development Code* Amendment**Applicant:** City of Medford**Request:** Consideration of amendments to Sections 10.252, 10.253, 10.290 of the Medford *Land Development Code* to amend the criteria for obtaining an exception to standards contained in Articles IV and V of the Medford *Land Development Code*.**BACKGROUND:**

The City Council and Planning Commission shared a concern that the Planned Unit Development (PUD) ordinance for the City was frequently being used simply as a means to obtain exceptions to code requirements, and not for the purpose of encouraging creative and innovative development as had been the intention. A subcommittee of the Planning Commissioners and members of the development community was formed to modify the PUD ordinance so that it would be less likely to be used solely for the purpose of obtaining exceptions to code requirements. The new PUD ordinance that was developed by the subcommittee was adopted by the City Council on June 2, 2005 against the wishes of some members of the development community. Their concern was that the new PUD ordinance made it very difficult for commercial and industrial developments to obtain approval for a PUD, and thus, to obtain exceptions to code requirements necessary to allow creative development. The City Council asked staff and the Planning Commission to work with these development community members to address their concerns.

The subcommittee determined that the best way to address their concerns was to modify the exception criteria in the code so that an exception could be granted in circumstances where a PUD was not otherwise necessary. The exception criteria currently require the applicant to show that there is no "reasonable use of the land" if the applicant complies with the code requirement in question. In most cases, it is nearly impossible to make a legally defensible argument that there would be no reasonable use of the land without the exception, and the City's exception process cannot be used for its intended purpose. By removing the "no reasonable use of the land" criteria, the subcommittee believes that the exception process is more likely to be used by applicants who might otherwise have resorted to using the PUD ordinance to obtain exceptions to code requirements. The development community involved in this process agrees that this adequately addresses their concerns. To be granted an exception using the new exception criteria, an applicant need only convince the Planning Commission or Site Plan and Architectural Commission that they have a unique or unusual circumstance and that compliance with a specific code requirement will cause an undue hardship if they are forced to comply with it.

The other two code sections being modified are simply house keeping changes. Section 10.252 changes the application to require a list of the exceptions being requested and the findings required by Section 10.253. Section 10.290 is changed to make it clear that Site Plan and Architectural

DCA-05-187

October 3, 2005

Commission approval may be granted when an exception has been approved, not just when all code requirements have been met.

Proposed Modifications to the *LAND DEVELOPMENT CODE LANGUAGE* in Sections 10.252, 10.253, and 10.290 (Section 10.251 included as background):

10.251 Application, Exception.

The purpose of sections 10.251, Application for Exception, to 10.253, Criteria for an Exception, is to empower the approving authority (Planning Commission/Site Plan and Architectural Commission) to vary or adapt the strict application of any of the standards of this chapter as contained in Articles IV and V. Exceptions may be appropriate for reasons of exceptional narrowness or shape of a parcel; for reasons of exceptional topographic conditions, extraordinary and exceptional building restrictions on a piece of property; or if strict applications of standards in Articles IV and V would result in peculiar, exceptional, and undue hardship on the owner.

10.252 Application Form.

An application for an exception shall be made by the owner of the property for which the exception is requested to the approving authority for the plan authorization involving the exception. An exception application shall include the following:

- (1) A list of the specific standard(s) for which an exception is being requested and a description of the degree of exception(s) being requested, including findings prepared by the applicant or applicant's representative addressing the criteria as set forth in Section 10.253, Criteria for an Exception.
- (~~2~~) Vicinity map drawn at a scale of 1" = 1000' identifying the location of the site of the variance.
- (~~3~~) Assessor's map with the subject site identified.
- (~~3~~) Site plan showing in detail the circumstance(s) of the situation which justifies each the exception.
- (4) ~~Findings prepared by the applicant or applicant's representative addressing the criteria as set forth in Section 10.253, Criteria for an Exception.~~

10.253 Criteria for an Exception.

No exception, in the strict application of the provisions of this chapter, shall be granted by the approving authority (Planning Commission/Site Plan and Architectural Commission) having jurisdiction over the plan authorization unless it finds that all of the following criteria and standards are satisfied. The power to authorize an exception from the terms of this code shall be sparingly exercised. Findings must indicate that:

- (1) The granting of the exception shall be in harmony with the general purpose and intent of the regulations imposed by this code for the zoning district in which the exception request is located, and shall not be injurious to the general area or otherwise detrimental to the health, safety, and general public welfare or adjacent natural resources. The Planning Commission/Site Plan and Architectural Commission shall have the authority to impose conditions to assure that this criterion is met.
- (2) The granting of an exception will not permit the establishment of a use which is not permitted in the zoning district within which the exception is located.

DCA-05-187

October 3, 2005

~~(3) There are unique or unusual circumstances which apply to this site which do not typically apply elsewhere in the City, and that the strict application of the standard(s) for which an exception is being requested would result in peculiar, exceptional, and undue hardship on the owner. There must be proof of the existence of special circumstances or conditions, fully described in the findings, applicable to the project site or buildings located thereon for which the exception is sought, and which circumstances or conditions are such that the strict application of the provisions of this code would deprive the applicant of the reasonable use of such land or building.~~

~~(4) That~~ The need for the exception is not the result of an illegal act nor can it be established on this basis by one who purchases the land or building with or without knowledge of the standards of this code. It must result from the application of this chapter, and it must be suffered directly by the property in question. It is not sufficient proof in granting an exception to show that greater profit would result.

~~(5) The granting of the exception is necessary for the reasonable use of the land or building, and the exception as granted by the approving authority is the minimum exception that will accomplish this purpose.~~

~~The report of the approving authority shall fully set forth the circumstances by which this code would deprive the applicant of reasonable use of his land. Mere loss in value or the convenience of site or building design shall not justify granting an exception; there must be a deprivation of beneficial use of land.~~

~~(6) The proposed exception will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public street, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the adjacent area.~~

10.290 Site Plan and Architectural Review Criteria.

The Site Plan and Architectural Commission shall approve a site plan and architectural review application if it can find that the proposed development conforms, or can be made to conform through the imposition of conditions, with the following criteria:

~~(1) The proposed development is compatible with uses and development that exist on adjacent land,~~
~~and~~

(2) The proposed development complies with the applicable provisions of all city ordinances, or

~~(2) The proposed development is compatible with uses and development that exist on adjacent land.~~
the Site Plan and Architectural Commission has approved (an) exception(s) as provided in MLDC Section 10.253.

RECOMMENDED ACTION:

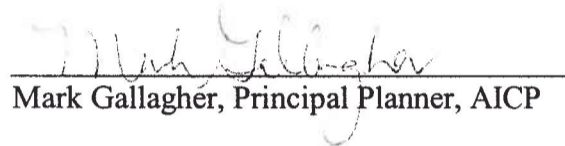
Forward a recommendation to the City Council for approval of DCA-05-187 per staff report dated October 3, 2005, including Exhibit "A" - Findings of Fact dated October 3, 2005.

DCA-05-187

October 3, 2005



Bianca Petrou, AICP
Associate Planner


Mark Gallagher, Principal Planner, AICP

PLANNING COMMISSION AGENDA: October 27, 2005

BEFORE THE PLANNING COMMISSION
AND CITY COUNCIL
FOR THE CITY OF MEDFORD
JACKSON COUNTY, OREGON

IN THE MATTER OF AMENDMENTS TO)
THE FOLLOWING MEDFORD LAND)
DEVELOPMENT CODE SECTIONS:)
Section 10.252, Application Form;)
Section 10.253, Criteria for an Exception; and)
Section 10.290 Site Plan and Architectural)
Commission Review Criteria)
)

FINDINGS OF FACT
CONCLUSIONS OF LAW
File No. DCA-05-187
Exhibit "A"
October 3, 2005

PROCEDURAL BACKGROUND

This action includes amendments to Sections 10.252, 10.253, and 10.290 of the City of Medford *Land Development Code*. Section 10.102 of the Medford *Land Development Code* categorizes code amendments as Procedural Class "A" actions. Sections 10.145 through 10.183 provide the process and standards for such code amendment.

RELEVANT SUBSTANTIVE CRITERIA

As stated in Section 10.182, Application Form, an application containing the following information shall be prepared by the City:

- "(1) Identification of all applicable Statewide goals.*
- (2) Identification and explanation of the goals and policies of the Comprehensive Plan considered relevant to the decision.*
- (3) Statement of the facts relied upon in rendering the decision, if any.*
- (4) Explanation of the justification of the decision based on the criteria, standards, and facts."*

Relevant Comprehensive Plan Criteria:

Upon investigation, it has been determined that none of the *Comprehensive Plan* Goals and Policies are applicable to this action as this amendment modifies the criteria for obtaining an exception to standards contained in Articles IV and V of the Medford *Land Development Code* and the criteria for obtaining Site Plan and Architectural Commission approval. There are no Comprehensive Plan criteria which relate specifically to these issues.

October 3, 2005

DCA-05-187

Relevant Statewide Planning Goals:

"GOAL NO. 1: CITIZEN INVOLVEMENT"

"GOAL NO. 2: LAND USE PLANNING"

Upon investigation, it has been determined that Statewide Planning Goals 3, 4, 5, 6, 7, 8, 9, 10, 12, 11, 13, and 14 are not applicable to this action.

Goals 15, 16, 17, 18, and 19 are not applicable since the City of Medford is not located within the Willamette River Greenway, nor is there any coastline with estuarine resources, coastal shorelands, beaches and dunes, or ocean resources within the city.

COMPLIANCE WITH STATEWIDE PLANNING GOALS

GOAL 1: CITIZEN INVOLVEMENT

TO DEVELOP A CITIZEN INVOLVEMENT PROGRAM THAT INSURES THE OPPORTUNITY FOR CITIZENS TO BE INVOLVED IN ALL PHASES OF THE PLANNING PROCESS.

FINDINGS OF FACT

The City of Medford has followed the established citizens' involvement program consistent with Goal 1 that includes review of such amendments by the Citizens' Planning Advisory Committee, the Planning Commission, and the City Council. These citizen representative groups have participated in the review along with any individuals responding to public hearing notices in the newspaper for such legislative actions.

CONCLUSIONS OF LAW

The process used by the City of Medford to facilitate and integrate citizens' involvement is consistent with the City's acknowledged *Comprehensive Plan* and the cited statewide planning goal.

GOAL 2: LAND USE PLANNING

TO ESTABLISH A LAND USE PLANNING PROCESS AND POLICY FRAMEWORK AS A BASIS FOR ALL DECISIONS AND ACTIONS RELATED TO USE OF LAND AND TO ASSURE AN ADEQUATE FACTUAL BASE FOR SUCH DECISIONS AND ACTIONS.

FINDINGS OF FACT

The City has developed a land use planning process and policy framework to be used for making decisions and for taking action concerning the use of land. This process was developed based on the desires of the City and in accordance with state and federal law.

DCA-05-187

October 3, 2005

The current criteria for obtaining an exception to the standards contained in Articles IV and V of the Medford *Land Development Code* have proven to be almost impossible to meet. In order to be granted an exception to a code requirement an applicant has had to show that compliance with the code requirement would deprive the applicant of all reasonable use of the land. This resulted in the development of creative methods for obtaining exceptions to code requirements, including the use of the Planned Unit Development ordinance when it would otherwise not be necessary. This amendment will allow exceptions if the applicant can show that they have a unique situation and compliance with the code requirement will produce an undue hardship on the applicant. The City Council and Planning Commission believe that this is a more reasonable burden of proof.

CONCLUSION OF LAW

This amendment is a modification to the established planning process and policy framework as it concerns the exception process. It will assure an adequate factual base for making decisions concerning exceptions and as such, is in compliance with Oregon Statewide Planning Goal 2, Land Use Planning.

SUMMARY

The proposed amendment is consistent with the applicable Statewide Planning Goal 1, Citizen Involvement, and Goal 2, Land Use Planning. The Goals and Policies of the City of Medford *Comprehensive Plan* do not apply to the proposed amendment.