



Oregon

Theodore R. Kubongski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

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www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

5/27/2010

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Gaston Plan Amendment  
DLCD File Number 001-10

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: Friday, June 11, 2010

This amendment was submitted to DLCD for review 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 Acknowledgment or 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. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Carole Connell, City of Gaston  
Gloria Gardiner, DLCD Urban Planning Specialist

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# 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

MAY 24 2010

LAND CONSERVATION  
AND DEVELOPMENT  
For DLCD Use Only

Jurisdiction: *City of Gaston* Local file number: *PA 10-02*  
Date of Adoption: *5-12-10 + 5-19-10* Date Mailed: *5-21-10*

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date:

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other:

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

*Amendment to reduce the R-3 zone sideyard setback minimum from 5' per story to 5'*

Does the Adoption differ from proposal? Please select one

*No*

Plan Map Changed from: *NA* to:

Zone Map Changed from: *NA* to:

Location: *R-3 zone* Acres Involved: *1/10 acres*

Specify Density: Previous: *NA* 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. 001-10 (18141) [16147]



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

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Local Contact: *Carole Connell* Phone: *(503) 297 6660* Extension:  
Address: *4626 SW Hewett Bv* Fax Number: *same*  
City: *Portland OR* Zip: *97221* E-mail Address: *connellpc@comcast.net*

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### 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](http://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](mailto: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](mailto:mara.ulloa@state.or.us) - **ATTENTION: PLAN AMENDMENT SPECIALIST.**

BEFORE THE CITY COUNCIL OF THE CITY OF GASTON

Ordinance No. 2010 - 003

An Ordinance approving an Amendment to the Gaston Development Code Chapter 152.205.06 High Density Residential R-3 Zone Interior Side Yard Setback standard.

WHEREAS, The City Council of Gaston, Oregon is authorized by Chapter 152.414 to amend the Gaston Land Development Code; and

WHEREAS, The city initiated the amendment because of a need to provide more flexibility for property owners who desire to remodel or build on parcels zoned R-3. The R-3 zone currently has a restrictive interior side-yard setback standard that requires five (5) feet of building setback for each building story; and

WHEREAS, The Gaston Comprehensive Plan policies regarding Citizen Involvement, Land Use Planning and Housing are found to support the amendment as described in the City Staff Report dated April 7, 2010; and;

WHEREAS, The City currently does not have a separate Planning Commission and therefore the City Council is the only official review body to consider and act on land use requests, including Code Text Amendments; and

WHEREAS, The City's Staff Report dated April 7, 2010 provides the Text Amendment approval criteria and the Findings for the decision; and

WHEREAS, Notice of the Text Amendment was provided to the Oregon Department of Land Conservation and Development, was posted in three public places and was published in the local newspaper, prior to the April 14, 2010 City Council Hearing; and

WHEREAS; After consideration of the City Staff Report and no public testimony, the City Council passed a motion approving the amendment to the R-3 Zone Side-yard Setback Standard and establishing a five (5) foot setback regardless of the number of building stories and now, therefore,

THE CITY OF GASTON ORDAINS AS FOLLOWS:

The City Council, after conducting a public hearing, adopting the findings in the city staff reports, and following procedures for adoption of ordinances set forth in the Gaston Land Development Code, hereby approves an Amendment to the Urban High Density Residential R-3 Zone interior side-yard setback standard requiring a minimum five (5) foot setback.

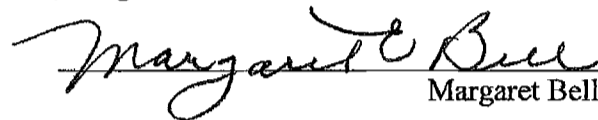
Presented and Passed first reading on the 12 day of May, 2010

Presented and Passed the second and final reading on the 19 day of May, 2010

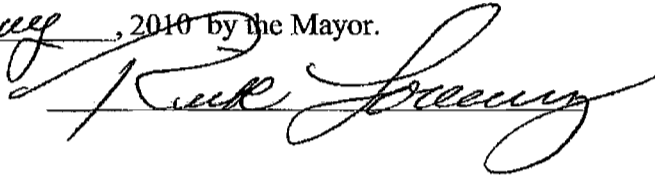
Votes in favor 6

Votes against 0

Enacted this 19 day of May, 2010 by the City Council of the City of Gaston, Oregon.

  
Margaret Bell, City Recorder

Approved this 19 day of May, 2010 by the Mayor.



**City of Gaston  
Planning Staff Report**

April 7, 2010

To: Gaston City Council  
From: Carole Connell, AICP

**Re: Proposed Amendment to the Urban High Density Residential R-3 Zone modifying the interior side yard setback building setback requirement.**

File #PA10 – 02 R-3 Zone Setback Amendment  
Applicant: City of Gaston  
Public Hearing: April 14, 2010

Location: Any land currently zoned R-3 will be affected by the decreased side yard (interior) setback standard.

**Introduction**

In February 2010 City Council directed staff to prepare amendments to the Development Code, Section 152.205.06 R-3 Zone Dimensional Standards, in order to decrease the side yard setback for two or more story structures in the R-3 zone. Currently the standard is 5 feet per story for a side yard that is not parallel to a street. The proposal reduces the requirement to 5 feet for a single or multi-story structure.

**Exhibits:**

- Current R-3, Commercial and Industrial Dimensional Standards tables

**Amendment Criteria**

Gaston Development Code

- a. Section 152.414 Text Amendment
- b. Section 152.422.05 Notice
- c. Section 152.421 Type IV Review Procedures

**PLAN AMENDMENT CRITERIA & FINDINGS**

**I. Section 152.412 Comprehensive Plan Map Amendment Decision Criteria**

Plan map amendment proposals shall be approved if the applicant provides evidence substantiating the following:

- (A) Compliance is demonstrated with the Statewide Land Use Goals that apply to the subject properties or to the proposed land use designation. If the proposed designation requires an exception to the Goals, the applicable criteria in the LCDC Administrative Rules for the type of exception needed shall also apply.

FINDINGS: The City finds the proposal does not require a statewide goal exception, and that the most applicable goals are the Goal 1 Citizen Involvement, Goal 2 Land Use Planning, and Goal 10 Housing. The City generally has the same goals in their Comprehensive Plan, so that the following statements apply to both state and City plan goals and policies.

The City finds that the proposed R-3 zone setback amendment applies to land zoned R-3 when a new structure is proposed to be built or an existing structure is proposed to be remodeled. No new structure is proposed at this time. And no property zone designation is affected by this proposal. The code text amendment is desired in anticipation of future conflicts between the development plans of homeowners and the restrictive setback standard.

Citizen Involvement Goal 1: The City finds that Public Notice was provided for the City Council hearing on April 14, 2010 to consider the proposed amendment. Notice was provided to DLCD more than 45 days in advance of the hearing, and notice of the pending hearing was posted in two public places in the City.

The Land Use Planning Goal 2 requires that jurisdictions use proper planning processes and plan implementation methods. The City staff followed the typical planning process to analyze the desired amendment by gathering data on Gaston Heights residential setbacks, and by reviewing setback regulations for similar residential zones in the Oregon Model Development Code for Small Cities and the North Plains, Wood Village and Sandy Development Codes. The following provides comparative data for the City to consider:

**TABLE 1 Setback Comparatives**

<b>Zone</b>	<b>Gaston</b>	<b>Model State Code</b>	<b>North Plains</b>	<b>Wood Village</b>	<b>Sandy</b>
Interior Side yard					
R-1	10'	5 – 7.5'	5'	5'	5'
R-2	5'	5'	5'	5'	5'
R-3	5' per story	5'	5'	5'	5'

Gaston Heights Subdivision: The approved plans to date are in land zoned R-2 and all interior side yard setbacks for those homes will be 5 feet.

City and State Housing Goal 10 requires that the City provide an adequate supply of housing in various types and tenures to meet projected population projections. City policies support a variety of housing styles. The amendment will increase the possibility of building single or multi-family units of more than one story because the land can be more efficiently utilized with a less restrictive side yard setback. The setback reduction also provides more flexibility to use various house plans in citing a new home on a lot, or in modifying an existing home.

The City finds that the Gaston Comprehensive Plan policies do not specifically address setback standards, but rather focus on density limitations, blending of housing styles and the ability to locate different housing types in the City.

The Comprehensive Plan Vision for Gaston speaks more generally to the importance of “developing policies that are based in the collective capacities, skills and assets of every member of the community. In doing so, we lay the foundation on which we build our community, one that is both economically sound and citizen oriented” (page 9).

Further, the vision goes beyond land use and “ventures into the realm of relationships between people and the built and natural environment, and between the people and their government and the way they interact with each other.”

The City finds that some residents of Gaston have expressed a desire to change city policy in order to increase the flexibility of a land owner in the type and location of residence that is built on a parcel in the R-3 zone.

- (B) Consistency with the applicable goals and policies in the Comprehensive Plan is demonstrated, including compliance with the City Transportation Master Plan, Parks and Open Space Plan, Water Master Plan and Storm Water Master Plans.

FINDINGS: The City finds that the subject Plan is in compliance with the more general housing policies of the City as stated above. The City finds that there was related citizen involvement in a prior variance case (File # VAR 10-01 denied 2/10) whereby testimony was in support of the reduced side yard setback for the proposed new single family residence. The City finds that when an R-3 zone abuts a commercial or industrially zoned parcel increased setback standards are required by those zones.

The City finds that the Parks, Water and Storm Water Master Plans are not directly related to the proposed Zoning Code text amendment to reduce interior side yard setbacks in the R-3 zone.

- (C) The Plan does not provide adequate areas in appropriate locations for uses allowed in the proposed land use designation and the addition of this property to



the inventory of lands so designated is consistent with projected needs for such lands in the Comprehensive Plan.

FINDINGS: The City finds that this criterion is not relevant since the proposal does not include changing a land use or zoning designation on property, and does not add property to the City's land inventory.

- (D) The Plan provides more than the projected need for lands in the existing land use designation.

FINDINGS: The City finds that this criterion is not relevant because the proposal to decrease a side yard setback standard in the R-3 zone does not increase land area zoned for residential use.

- (E) The proposed land use designation will not allow zones or uses that will destabilize the land use pattern in the vicinity or significantly adversely affect existing or planned uses on adjacent lands.

FINDINGS: The City finds that the above criterion is not applicable because the proposed amendment is not a proposed land use designation change. The amendment is a proposed modification to a standard in the R-3 zone and therefore has no affect on zone designations or uses.

- (F) Public Facilities and services necessary to support uses allowed in the proposed designation are or will be available in the near future.

FINDINGS: The City finds that this criterion is not relevant because the setback modification will have no impact on City public facilities and services.

(G) Amendments Affecting the Transportation System:

When a development application includes a proposed comprehensive plan amendment, zone change or land use regulation change, the proposal shall be reviewed to determine whether it significantly affects a transportation facility. An amendment significantly affects a transportation facility if it would:

- (1) Change the functional classification of an existing or planned transportation facility. This would occur, for example, when a proposal causes future traffic to exceed the capacity of “collector” street classification, requiring a change in the classification to an “arterial” street, as identified by the Gaston Transportation Master Plan (GTMP); or
- (2) Changes standards implementing a functional classification system;  
or
- (3) Allows types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility; or
- (4) Reduce the performance standards of the facility below the minimum acceptable level identified in the Gaston TMP.

FINDINGS: The City finds this criterion is not applicable because the side yard setback reduction does not modify zone densities or otherwise affect or alter an existing or planned transportation facility in any manner.

(H) Amendments That Affect Transportation Facilities:

Comprehensive plan, zoning map and land use regulation amendments which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Gaston Transportation Master Plan. This shall be accomplished by one of the following:

- (1) Amending the GTMP to ensure that existing, improved or new transportation facilities are adequate to support the proposed land uses

- consistent with the requirements of the state transportation planning rule (TPR); or
- (2) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation; or
  - (3) Limiting allowed land uses to be consistent with the planned function of the transportation facilities; or
  - (4) Amending the Transportation Master Plan to modify the planned function, capacity and performance standards, as needed to accept greater motor vehicle congestion to promote mixed use, pedestrian friendly development where multi-modal travel choices are provided.

FINDINGS: The City finds that the above criterion is not applicable because the proposed code text amendment is not a land use designation amendment or other amendment that would have any effect on the city transportation system.

## **II. Section 152.414 Text Amendment**

Amendments to the Comprehensive Plan or Development Code text shall be approved if the evidence can substantiate the following:

- (A) Impact of the proposed amendment on land use and development patterns within the city, as measured by:
  - (1) Traffic generation and circulation patterns in compliance with the Transportation Master Plan;
  - (2) Demand for public facilities and services, in compliance with the City Utility master plans;
  - (3) Level of park and recreation facilities;
  - (4) Economic activities;
  - (5) Protection and use of natural resources;
  - (5) Compliance of the proposal with existing adopted special purpose plans or programs, such as public facilities improvements.

FINDINGS: The City finds that the proposed building setback amendment has no impact on traffic circulation, demand for public facilities, park facilities, economic activities, protection of natural resources or specially adopted City plans or programs because it is a minor code text amendment to the R-3 side yard setback standard and only affects the specific location of future buildings on a parcel zoned R-3.

- (B) A demonstrated need exists for the product of the proposed amendment.

FINDINGS: The City finds that based on a prior variance request, File # VAR 10-01 there is a need to review the existing setback requirements as overly restrictive based on recently approved home sites in Gaston Heights Subdivision, and many examples of other high density side yard setback requirements for residences in a comparable zone.

- (C) The proposed amendment complies with all applicable Statewide Planning Goals and administrative rule requirements.

FINDINGS: The City finds that the Statewide Planning Goals have been addressed earlier in this report, and that there are no specific administrative planning rules regarding local building setback requirements. The State Building Code requires there be a minimum 3-foot side yard setback.

- (D) The amendment is appropriate as measured by at least one of the following criteria:

- (1) It corrects identified error(s) in the provisions of the plan.
- (2) It represents a logical implementation of the plan.
- (3) It is mandated by changes in federal, state, or local law.
- (6) It is otherwise deemed by the City Council to be desirable, appropriate, and proper.

FINDINGS: The City finds the proposed amendment to the R-3 zone represents a logical implementation of general Comprehensive Plan housing policies, current housing costs and market conditions. The City approved a recent housing development (Gaston Heights) that included comparable yard setbacks. The setback reduction will encourage rehabilitation of existing homes and re-development of existing parcels in the R-3 Zone.

The City finds that appropriate separation between R-3 zones and the commercial or industrial zones will be maintained by the setback requirements in those two non-residential zones. In both the C and I zones when a rear or side yard adjoins a residential zone the setback shall be increased for two or more story structures.

The City finds that it is more appropriate to modify standards as deemed needed, rather than to continually grant variances. The City deems the proposal desirable for the community.

### **III. Section 152.422.05 Notice**

- (A) Publication. Notice of the public hearings before the Planning Commission and City Council for a Type IV land use action shall be published in a newspaper of general circulation in the City at least twenty (20) days prior to each public hearing.
- (B) Notification of Property. Where required by State law, affected property owners shall be notified by mail at least twenty (20) days prior to the initial Planning Commission hearing. Subsequent written notice for the City Council hearing shall be limited to those in attendance at the Commission hearing and those requesting, in writing, to receive notice of the City Council hearing.



FINDINGS: The City finds that the City Council may act on behalf of the Planning Commission in the event there is no Planning Commission. The City finds that notice was published in the Hillsboro Argus newspaper on April 7, 2010, seven days prior to the Council hearing on April 14, 2010. Further, on March 29, 2010 notice was posted in two places in the City. DLCD was provided notice of the amendment more than 45 days before the initial hearing on April 14, 2010. Individual property owner notice on this legislative text amendment is not required.

**152.422.06 Single Hearing before the City Council**

In the event a Planning Commission is not appointed and there is only a single hearing before the City Council, notification shall comply with procedures in Section 152.422.04.

**IV. Section 152.421 Type IV Review Procedures**

(A) Procedures. Type IV applications may be initiated by either a majority vote of the City Council or a majority vote of the Planning Commission.

(B) Public Hearings by Planning Commission

A public hearing shall be held by the Planning Commission. Notice of the time, place and purpose of the Planning Commission's hearings shall be given by publication of a notice in a newspaper of general circulation in the City not less than twenty (20) days prior to the date of hearing. The Commission shall provide a recommendation to the City Council.

(C) Public Hearing by City Council. Following Planning Commission action, the City Council shall hold a public hearing to consider the Planning Commission's recommendation on proposed amendments. Notice shall be as specified in Chapter 152.422.

(D) Time Limit. Type IV actions are not subject to the 120 day time limit.

FINDINGS: The City finds that the City Council is authorized to initiate the proposed Plan adoption, and that proper notice of a public hearing on April 14, 2010 was provided.

### **III. RECOMMENDATION**

Based upon the Findings in this report, and the public testimony, staff recommends that the City Council adopt the proposed text amendment to reduce the R-3 Zone interior side yard setback to 5 feet, regardless of the number of stories planned for a structure in that zone.

#### **City Council Motion Options:**

1. Move to approve the amendment based on the Staff Report findings and the testimony. Direct Staff to prepare an ordinance officially adopting the code text amendment.
2. Move to continue the hearing to a later date.
3. Move to deny the amendment based on new findings



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PORTLAND, OR 97221  
FRI 21 MAY 2010