

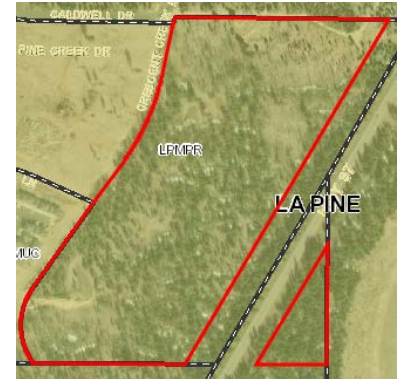


APPEAL TO ADMINSTRATIVE LAND USE DECISION

FILE NUMBER: 01VA-21

**OWNER/
APPLICANT:** Sagebrush Development LLC
PO Box 2520
La Pine, OR 97739

LOCATION: The subject property is located east of Huntington Road, south of Caldwell Drive, north of Victory Way, and west of Highway 97. The property includes all of the residential lots within the Reserve in the Pines Phases 2, 3, and 4. The subject property is identified as Tax Lot 202 on Deschutes County Tax Assessor’s Map 22-10-11.



REQUEST: The Applicant is requesting an Appeal to the Administrative Land Use Decision for a Minor Variance for 25% decrease in the side setback requirements. The proposed side setbacks are 7.5’ as opposed to the 10’ requirement.

RESPONSE: The Applicant has not provided new evidence relevant to the Development Code, more specifically Chapter 15.320 Variances. The initial Staff Report remains standing in addressing the Applicant’s Burden of Proof with the addition of findings specific to the Applicant’s Burden of Proof for Appeal of 01VA-21, subsection “Applicant Response to Staff Findings, D. 2.”.

LPDC Sec. 15.320.040 B: That the condition creating the difficulty is not general throughout the surrounding area, but is unique to the applicant’s site or property; therefore, the granting of the requested variance will not set a precedent for future applications.

Applicant Appeal Response: Nothing in this provision requires the ‘Condition’ to be a unique physical feature (as suggested by Staff), it just requires a unique condition. It is noted that Neighborhood 1 of the Newberry Neighborhood Planning area is the only area where a 45 foot minimum lot width is allowed. All other Neighborhoods of NNPA require a 50 foot width¹. The additional 5 foot of width would allow for the additional 5 foot of setback. The Condition is unique to Neighborhood 1 and while it is true that the Phase I area was able to build homes even with this condition, those homes are limited in their design, style, and diversity, thus the marker that they serve.

1. It is noted that when deciding to pursue this project in the City of La Pine, the Applicant found a number of items (*sic*), issues and concerns with the Newberry Neighborhood, which impacted the ability to develop these properties. Prior to even submitting the Quadrant Plan, the Applicant applied to modify the text of the Newberry Neighborhood Planning Area (01TA-19). Aside from cleaning up problematic text language for the benefit of the City, the amendment also made a handful of changes to the design provisions of Neighborhood 1, to establish a

specific development type. One of those changes included narrowing the minimum lot width to 45 feet. While it may have been an oversight, if a 7.5 foot setback were request (*sic*) at that time, it is likely that the text would have been updated.

Finding: The unique condition, cited as causal in the Applicant's response, creating the difficulty was not unknown to the Applicant by their own admission, and was created by them per their proposed, and adopted text amendments contained within application 01TA-19, prior to their current application which fails to meet the minimum adjoining criteria of:

LPDC Sec. 15.320.040 C: That the condition was not created by the applicant. A self-created difficulty will be found if the applicant knew or should have known of the specific restriction or provision at the time the site was purchased. Self-created hardship also results when an owner and/or developer negligently or knowingly violates a provision of this Development Code.

Additionally, as applicants, generally, may find any number of Development Code standards prohibitive to development as envisioned or planned, the unique condition creating the difficulty in the case of application 01VA-21 is not limited to the development standard inherent to Neighborhood 1, a 45 foot minimum lot width.

The unique condition creating the difficulty in this case is a self-imposed development standard, not a unique characteristic that is prohibitive without redress or recourse akin to a physical attribute. The appropriate appeal of this standard is a matter of text amendment and or legislative amendment to the La Pine Development Code, just as previously executed under application 01TA-19. To allow this unique condition to be considered as a matter of variance does not meet the minimum criteria of Sec. 15.320.040.

Setting a precedent for future applications: The statement from the Applicant's Appeal Response, "The Condition is unique to Neighborhood 1 and while it is true that the Phase I area was able to build homes even with this condition, those homes are limited in their design, style, and diversity, thus the market that they serve." also fails under adjoining following criteria:

Sec. 15.320.040. C: That the condition was not created by the applicant. A self-created difficulty will be found if the applicant knew or should have known of the specific restriction or provision at the time the site was purchased. Self-created hardship also results when an owner and/or developer negligently or knowingly violates a provision of this Development Code.