



CITY OF LA PINE

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CITY OF LA PINE PLANNING DIVISION
Decision: Minor Variance for Setbacks

PLANNING FILE NO. 01VA-21

I. BACKGROUND

- A. APPLICANT:** Sagebrush Development, LLC.
- B. PROPERTY 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. This property is identified as Tax Lot 202 on the Deschutes County Tax Assessor's Map 22-10-11, and has not been assigned an address.
- C. ZONING:** The property is designated Master Plan Residential (MPR) on the Comprehensive Plan Map and Zoning Map. The property is in the Newberry Neighborhood Planning Area and with approved Quadrant Plans and a Subdivision Plan.
- D. EXISTING DEVELOPMENT:** The subject property consists of the tentatively approved lots of the Reserve in the Pines Phases 2, 3 and 4. The site is in the process of being cleared and developed. The site is generally level with a slight grade change from the northeast property corner to the south boundary line.
- E. ADJACENT ZONING AND LAND USE:** The property to the north is zoned Master Plan Residential (MPR)/Newberry Neighborhood Planning Area (NNPA) Overlay Zone, the property to the south is zoned Traditional Commercial (C) and the properties to the southwest are zoned Commercial Mixed Use (CMX) and Public Facilities (PF). To the west is Huntington Road and to the east is Highway 97. Properties to the north(west) are developed with detached single-family homes in the Crescent Creek Subdivision, the property to the north(east) is vacant. The properties to the southwest include a senior living facility and senior center; an affordable multi-family development; and, the Sunriver/La Pine Habitat for Humanity Development. To the south is Bi- Mart and to the west is a recently developed St. Charles Medical Clinic. Also, the Bend- La Pine School Campus is situated in close proximity to the west.
- F. REQUEST:** The applicant is requesting approval of a Minor Variance to reduce the required side yard setback from 10-feet to 7.5-feet. This request applies to all lots in the approved, but un-platted, Phases 2, 3, and 4 of Reserve in the Pines subdivision.
- G. DECISION CRITERIA:** This application will be evaluated against the criteria contained in Chapter 15.320 of the La Pine Development Code.

II. APPLICATION SUMMARY

- A. The applicant received approval to create a 191-lot single family subdivision identified as Reserve in the Pines. Phase I was plated with 55 lots, a majority of which are developed. The remaining Phases 2, 3 and 4 will contain 140-lots but are not yet plated.
- B. The subject property is zoned Residential Master Plan and is situated within the Newberry Neighborhood Planning Area, with approved Quadrant Plans and Subdivision Plan. At the time of Quadrant Plan Approval, the applicant selected the Residential General District for the entirety of the Quadrant.
- C. Setbacks within this subdivision are contained in Table 15.32-2 of the Development Code with a minimum side-yard setback is 10-feet. The applicant is requesting reduction in this setback to 7.5-feet. A variance is required as this request reduces a quantifiable standard. However, as the reduction does not exceed 25% of the standard, this is processed as a Minor Variance.
- D. The Planning Division requested comments from area property owners and affected agencies. The La Pine City Engineer and La Pine Public Works Department reviewed the request and did not comment. The County Building official noted the review would occur when permits are submitted. The La Pine Rural Fire District reviewed the proposal and opposed the setback reduction. The District noted setbacks are an important element of community safety in keeping structure fires from extending to multiple buildings. In reviewing the application, the District did not find any proposed off set accommodations such as sprinkler systems in all the homes. For the record, all comments are part of the official record.

III. CRITERIA AND FINDINGS

- A. As noted, Chapter 15.320 contains the procedures and decision criteria for a Variance. Section 15.320.010 includes provisions for applicability. Subsection "B." states the following:

Minor Variance. A minor variance is a variance to an area or dimensional standard of this Code that meets one of the following conditions. Only one such variance may be granted for any one lot, parcel or tract of land.

1. *Involves a deviation from a minimum lot size requirement of not more than 10%.*
2. *Involves a deviation from a yard or setback requirement of not more than 25%.*
3. *Involves a request for the expansion of a nonconforming use by not more than 10%.*

FINDING: The reduction is to a side yard setback and the reduction does not exceed 25% of the 10-foot standard. This application can therefore be processed as a Minor Variance.

- B.** Section 15.320.020 identifies the procedure type. Per subsection “A.”, a Minor Variance is subject to Type II review in accordance with the procedures in Article 7 of the Development Code.

FINDING: For the record, this application and review follow procedures in Article 7 for a Type II Review.

- C.** Submittal requirements are contained in Section 15.320.030.

FINDING: In compliance with these provisions, the applicant submitted an application, tentative plan, burden of proof, fee, and supporting materials required for a Minor Variance.

- D.** Section 15.320.040 contains the approval criteria. A variance may be granted unqualifiedly, or may be granted subject to prescribed conditions and limitations, provided that the following findings are evident:

1. Section 15.320.040.A. - That the literal application of specific provisions of the Code would create practical difficulties for the applicant resulting in greater private expense than public benefit. However, a variance is not to be granted simply because it would afford the owner a higher profit or prevent a mere inconvenience.

FINDING: The applicant noted setback standards are a type of development standard and they are established to create a particular aesthetic, ensuring safety, privacy, energy conservation and/or recreational opportunities. They noted the Crescent Creek subdivision (to the north) allows for setbacks that are less than those that are proposed (5 feet), thus a particular aesthetic has been established in the area. The applicant intends for Reserve in the Pines to have a similar aesthetic, but on slightly larger lots, making the proposal in harmony with the intent and purpose of the MRP, NNPA and the Setback Standards. In further support of the request, the applicant identified setback standards from other jurisdictions in Central Oregon, including Bend, Redmond, Sisters, Prineville, and Madras, which document that the distance is reasonable for the housing product proposed.

The applicant’s commentary focuses on aesthetic issues but does not identify any practical difficulties which support the setback reduction. The applicant chose the Residential General District for the entirety of the Quadrant. Homes in Phase I of this project fully comply with the 10-foot setback requirement without apparent harm to the public or financial impact for the developer. To the contrary, the Fire District identified significant fire safety concerns with the proposed reduction. On balance, there is no public benefit gained from the reduction.

2. Section 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.

FINDING: The applicant notes the subject property is unique, because it is part of a Quadrant Plan and stating the proposed setback standards may not be appropriate for all Residential Zones throughout the entire City at this time. Further, the proposal is for a unique and discrete area, an area where the proposed setbacks could have been approved through the Quadrant Planning processes, if the Applicant would have established a Residential Center District instead of a Residential General District (the lots would have been smaller). With the Quadrant Plan, the applicant desired slightly larger lots than the Residential Central District allows, and the purpose of the larger lots was (and is) to better fit in with the character of La Pine. Furthermore, the applicant notes the neighborhood has been and will continue to be developed with parks and a well-connected pedestrian system and concludes the proposal is consistent with Building and Fire Code Requirements.

While stating the site is unique, the applicant does not identify specific conditions on the 140-lots that warrant a reduction in the setback. The applicant specifically noted the site is relatively flat with only a slight incline. Nothing in this description identified unique physical features that prevent compliance with setbacks. Again, Phase I, a part of this project and on similarly situated land, has been successfully developed in compliance with all setback requirements.

3. Section 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 Code.

FINDING: The applicant states the site's challenges and associated setback impacts were only identified when marketing the properties to potential buyers. Builders interested in the properties noted that the 10-foot side yard setbacks on the lot size that were approved prevent a number of housing options that could be provided if a lesser side yard setback were established.

Staff notes the applicant was well aware of the development requirements at the beginning of the subdivision project. In fact, the applicant specifically chose the Residential General District at the time of the application, a District containing a 10-foot side yard setback. Only after the approval was granted did the applicant consider the lot sizes and setbacks may not be marketable. This situation is entirely self-created and not the result of unique factors with the property.

4. Section 15.320.040.D. - No variance shall be granted that would allow the use of property for a purpose not authorized within the zone in which the proposed use or development is located.

FINDING: The variance would modify a quantifiable standard and not allow a use prohibited in the zone.

5. Section 15.320.040.E. - In granting a variance, conditions may be attached that are found necessary to protect the best interests of the adjoining or surrounding properties or the vicinity, and to otherwise achieve the purposes of this Code, including the specific applicable zone, and the objectives and policies of the City's Comprehensive Plan.

FINDING: The applicant stated they were aware a decision could be conditioned. This is an administrative provision of this Chapter.

IV. **DECISION:**

Based on the submitted application materials and the above Findings, the City concludes that the Applicant has not met the applicable criteria for a Minor Variance for a 25% deviation from the side yard setback requirement. The request is therefore DENIED.

THIS DECISION BECOMES FINAL TWELVE (12) DAYS AFTER THE DATE MAILED, UNLESS APPEALED BY THE APPLICANT OR A PARTY OF INTEREST IN ACCORDANCE WITH ARTICLE 7 OF THE CITY OF LA PINE LAND DEVELOPMENT CODE.



Alexa Repko, City Planner
City of La Pine

Date: December 2, 2021

Date Mailed: December 2, 2021

By: Alexa Repko