

## **5.103 Type III (Quasi-Judicial) Decisions**

### **5.103 General Requirements**

- A. The purpose of this section is to identify what types of actions are considered Type III decisions. Type III decisions involve significant discretion and evaluation of subjective approval standards, yet are not required to be heard by the City Council, except upon appeal. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the Planning Commission or Design Review Board hearing is published and mailed to the applicant, recognized neighborhood associations and property owners. The decision of the Planning Commission or Design Review Board is appealable to the City Council. The City Council's decision is the City's final decision and is appealable to the Land Use Board of Appeals.
- B. To initiate consideration of a Type III decision, a complete City application, accompanying information, and filing fee must be submitted to the Director. The Director will evaluate the application as outlined in this section.

- 5.103.01 Conditional Use
- 5.103.02 Design Review, Type III
- 5.103.03 Exception to Street Right of Way and Improvement Requirements
- 5.103.04 Manufactured Dwelling Park, Preliminary Approval
- 5.103.05 Phasing Plan for a Subdivision, PUD, Manufactured Dwelling Park or any other Land Use Permit
- 5.103.06 Planned Unit Development (PUD), Preliminary Plan Approval
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- 5.103.08 Special Conditional Use - Historically or Architecturally Significant Building
- 5.103.09 Special Use as a Conditional Use
- 5.103.10 Subdivision Preliminary Approval
- 5.103.11 Telecommunications Facility, Specific Conditional Use
- 5.103.12 Variance

### **5.103.01 Conditional Use**

- A. Purpose: A conditional use is an activity which is permitted in a zone but which, because of some characteristics, is not entirely compatible with other uses allowed in the zone, and cannot be permitted outright. A public hearing is held by the Planning Commission and conditions may be imposed to offset impacts and make the use as compatible as practical with surrounding uses. Conditions can also be imposed to make the use conform to the requirements of this Ordinance and with other applicable criteria and standards. Conditions that decrease the minimum standards of a development standard require variance approval.
- B. Criteria:
  - 1. The proposed use shall be permitted as a conditional use within the zoning district.
  - 2. The proposed use shall comply with the development standards of the zoning district.

3. The proposed use shall be compatible with the surrounding properties.

Relevant factors to be considered in determining whether the proposed use is compatible include:

- a. The suitability of the size, shape, location and topography of the site for the proposed use;
- b. The capacity of public water, sewerage, drainage, street and pedestrian facilities serving the proposed use;
- c. The impact of the proposed use on the quality of the living environment:
  - (1) Noise;
  - (2) Illumination;
  - (3) Hours of operation;
  - (4) Air quality;
  - (5) Aesthetics; and
  - (6) Vehicular traffic.
- d. The conformance of the proposed use with applicable Comprehensive Plan policies; and
- e. The suitability of proposed conditions of approval to ensure compatibility of the proposed use with other uses in the vicinity.

#### **5.103.02 Design Review, Type III**

- A. Purpose: The purpose of Type III design review is to ensure that new buildings or additions to existing buildings comply with Land Use, Specified Use, and Development Guidelines and Standards of this Ordinance (Sections 2.1, 2.2, and 3.1).
- B. Type III Design Review is required for the following:
  1. Non-residential structures in residential zones greater than 1,000 square feet in the RS, R1S, RM, and P/SP zones.
  2. Multi-family dwellings not meeting all architectural design guidelines and standards.
  3. Structures greater than 2,000 square feet in the CO, CG, MUV, DDC, and NNC zones.
  4. Structures greater than 3,000 square feet in the IP, IL, and SWIR zones.
  5. For sites with existing buildings in the CO, CG, MUV, DDC, NNC, IP, IL, and SWIR zones; expansions or new buildings that increase lot coverage by more 25%.
  6. Change of use that results in a greater than 25% increase in required parking.

#### **5.103.03 Exception to Street Right of Way and Improvement Requirements**

- A. Purpose: The purpose of a Type III Exception is to allow a deviation from the development standard required for the functional classification of the street identified in the

Transportation System Plan. Street exceptions are processed in conjunction with a development proposal that is a Type III application.

B. Criteria:

1. The estimated extent, on a quantitative basis, to which the rights of way and improvements will be used by persons served by the building or development, whether the use is for safety or convenience;
2. The estimated level, on a quantitative basis, of rights of way and improvements needed to meet the estimated extent of use by persons served by the building or development;
3. The estimated impact, on a quantitative basis, of the building or development on the public infrastructure system of which the rights of way and improvements will be a part; and
4. The estimated level, on a quantitative basis, of rights of way and improvements needed to mitigate the estimated impact on the public infrastructure system.

C. Proportionate Reduction in Standards: An exception to reduce a street right of way or cross section requirement below the functional classification standard may be approved when a lesser standard is justified based on the nature and extent of the impacts of the proposed development. No exception may be granted from applicable construction specifications.

D. Minimum Standards: To ensure a safe and functional street with capacity to meet current demands and to ensure safety for vehicles, bicyclists and pedestrians, as well as other forms of non-vehicular traffic, there are minimum standards for right of way and improvement that must be provided to meet the standards of this Ordinance (Section 3.101). Deviation from these minimum standards may only be considered by a variance procedure.

**5.103.04**      **Manufactured Dwelling Park, Preliminary Approval**

A. Purpose: The purpose of this review is to ensure that proposed Manufactured Dwelling Parks (MDP) comply with the standards of this ordinance (Sections 2.1, 2.2, and 3.1) and all applicable state standards.

B. Criteria:

1. The proposed use shall be a special permitted use within the zoning district.
2. The proposed use shall comply with the applicable standards and criteria of this Ordinance (Sections 2.1, 2.2, and 3.1).

**5.103.05**      **Phasing Plan for a Subdivision, PUD, Manufactured Dwelling Park or any other Land Use Permit**

A. Purpose: The purpose of a Type III Phasing Permit is to allow phased construction of development while meeting the standards of this ordinance (Sections 2.1, 2.2, and 3.1), while providing fully functional phases that develop in compliance with the tentative approval for the development.

B. Criteria: The proposed phasing of development shall:

1. Ensure that individual phases will be properly coordinated with each other and can be designed to meet City development standards; and
2. Ensure that the phases do not unreasonably impede future development of adjacent undeveloped properties;
3. Ensure that access, circulation, and public utilities are sized for future development of the remainder of the site and adjacent undeveloped sites.

**5.103.06      Planned Unit Development (PUD), Preliminary Plan Approval**

- A. Purpose: The purpose of a Type III PUD Preliminary Plan Approval is to ensure that the proposed development complies with all provisions of this ordinance. The PUD process is intended to provide incentives for greater creativity and adaptability in development design through a process that allows flexibility in the application of standards, while that the same time meeting the overall intent of this Ordinance (Sections 2.1, 2.2, and 3.1).
- B. Criteria: Preliminary approval of a Planned Unit Development shall require compliance with the following:
1. Preliminary Plan or Subdivision Plat
    - a. That approval does not impede the future best use of the remainder of the property under the same ownership or adversely affect the safe and efficient development of the remainder of any adjoining land or access thereto.
    - b. That the proposed development is served with city streets, water, sewer and storm drainage facilities with adequate capacity.
    - c. That the plan for the development takes into account topography, vegetation and other natural features of the site.
    - d. That adequate measures have been planned to alleviate identified hazards and limitations to development:
      - (1) For wetlands, these shall be the measures required by the Division of State Lands for regulatory wetlands.
      - (2) For unstable areas, these measures shall be documentation as approved by the Public Works Department, ensuring that streets and building sites are on geologically stable soil considering stress and loads.
    - e. If phased, that the development of the subdivision is balanced with the need for urbanization within the Woodburn Urban Growth Boundary.
    - f. That the tentative plan complies with all applicable provisions of this ordinance.

**5.103.07      Planned Unit Development (PUD), Design Plan Final Approval**

- A. Purpose: The purpose of this Type III review is ensure that the PUD Final Design Plan provides sufficient detail to ensure compliance with the standards of this ordinance (Sections 2.1, 2.2, and 3.1) and that the design elements of development are consistent with the preliminary approval for the PUD.

B. Criteria:

The Final PUD Design Plan shall substantially conform to the Preliminary PUD Design Plan approval, including the conditions relating to:

1. Concurrent permit approvals regarding use, density, and designation of common areas;
2. Design parameters that establish the character of common areas and facilities;
3. Elements of the Homeowner agreement and CC&R's regarding:
  - a. Management and maintenance of common areas and facilities;
  - b. Design review guidelines and procedures for common and individually owned buildings and structures; and
  - c. Covenants with the City regarding permanent conditions of development.

**5.103.08 Special Conditional Use - Historically or Architecturally Significant Building**

A. Purpose: The purpose of the Type III Special Conditional Use is to create a procedure that allows consideration of the adaptive reuse of historically or architecturally significant buildings in the RS and RM zones for more intensive use than permitted outright in the zone in order to conserve the site or building resource. The procedure is intended to provide appropriate opportunities for the maintenance and use of significant cultural resources, including those designated on the National Register of Historic Places, having award-winning design, or that are locally designated as a cultural resource, that would not otherwise be economically practical, and where a zone change would be inappropriate.

B. Criteria:

1. The proposed use shall be permitted as a conditional use within the zoning district.
2. The proposed use shall comply with the development standards of the zoning district.
3. The proposed use shall be compatible with the surrounding properties. Relevant factors to be considered in determining whether the proposed use is compatible include:
  - a. The suitability of the size, shape, location and topography of the site for the proposed use;
  - b. The capacity of public water, sewerage, drainage, street and pedestrian facilities serving the proposed use;
  - c. The impact of the proposed use on the quality of the living environment, such as:
    - (1) Noise;
    - (2) Illumination;
    - (3) Hours of operation;
    - (4) Air quality;
    - (5) Aesthetics; and
    - (6) Vehicular traffic.

- d. The conformance of the proposed use with applicable Comprehensive Plan policies; and
  - e. The suitability of proposed conditions of approval to ensure compatibility of the proposed use with other uses in the vicinity.
  - f. The proposed use shall be compatible with the surrounding properties.
4. The specific standards and criteria of this Ordinance (Section 2.204) shall be met.

**5.103.09 Special Use as a Conditional Use**

A. Purpose: The purpose of this Type III decision is to allow modification or elimination of specific development standards required for Special Permitted Uses listed in this Ordinance (Section 2.203). Modification or elimination of specific development standards are approved as a Conditional Use.

B. Criteria:

- 1. The proposed use shall be permitted as a Special Use within the zoning district.
- 2. The proposed use shall comply with the development standards of the zoning district.
- 3. The proposed use shall be compatible with the surrounding properties. Relevant factors to be considered in determining whether the proposed use is compatible include:
  - a. The suitability of the size, shape, location and topography of the site for the proposed use;
  - b. The capacity of public water, sewerage, drainage, street and pedestrian facilities serving the proposed use;
  - c. The impact of the proposed use on the quality of the living environment, such as:
    - (1) Noise;
    - (2) Illumination;
    - (3) Hours of operation;
    - (4) Air quality;
    - (5) Aesthetics; and
    - (6) Vehicular traffic.
- d. The conformance of the proposed use with applicable Comprehensive Plan policies; and
- e. The suitability of appropriate standards of this Ordinance and other proposed conditions of approval to ensure compatibility of the proposed use with other uses in the vicinity.

**5.103.10 Subdivision Preliminary Approval**

A. Purpose: The purpose of a Type III Subdivision decision is to ensure that the division of

properties into 4 or more lots complies with the standards of this Ordinance (Sections 2.2, 2.3, and 3.1). Subdivisions are allowed in all zones, provided the proposal meets applicable standards.

- B. Criteria: Preliminary approval of a Subdivision shall require compliance with the following:
1. That approval does not impede the future best use of the remainder of the property under the same ownership or adversely affect the safe and efficient development of the remainder of any adjoining land or access thereto.
  2. That the proposed development shall be served with city streets, water, sewer and storm drainage facilities with adequate capacity.
  3. That the plan for the development takes into account topography, vegetation and other natural features of the site.
  4. That adequate measures have been planned to alleviate identified hazards and limitations to development:
    - a. For wetlands these shall be the measures required by the Division of State Lands for regulatory wetlands.
    - b. For unstable areas, demonstration that streets and building sites are on geologically stable soil considering the stress and loads.
  5. The preliminary plat complies with all applicable provisions of this Ordinance (Sections 2.1, 2.2, and 3.1), except where waived by variance.

**5.103.11 Telecommunications Facility, Specific Conditional Use**

- A. Purpose: The purpose of this Type III review is to provide a procedure to consider the siting of telecommunication facilities subject to the standards of this Ordinance (Sections 2.1, 2.2, and 3.1).
- B. Criteria:
1. The proposed use shall be listed as an allowed conditional use within the zoning district.
  2. The proposed use shall comply with the development standards of the zoning district.
  3. The proposed use shall be compatible with the surrounding properties. Relevant factors to be considered in determining whether the proposed use is compatible include:
    - a. The suitability of the size, shape, location and topography of the site for the proposed use;
    - b. The capacity of public water, sewerage, drainage, street and pedestrian facilities serving the proposed use;
    - c. The impact of the proposed use on the quality of the living environment:
      - (1) Noise;
      - (2) Illumination;
      - (3) Hours of operation;

- (4) Air quality;
  - (5) Aesthetics; and
  - (6) Vehicular traffic.
4. The conformance of the proposed use with applicable Comprehensive Plan policies; and
  5. The suitability of proposed conditions of approval to ensure adequate public facilities are available to serve the site and compatibility with other uses in the vicinity.
  6. The specific standards and criteria this ordinance (Section 2.204.03) shall be met.

**5.103.12 Variance**

- A. Purpose: The purpose of this Type III Variance is to allow use of a property in a way that would otherwise be prohibited by this Ordinance. Uses not allowed in a particular zone are not subject to the variance process. Standards set by statute relating to siting of manufactured homes on individual lots; siding and roof of manufactured homes; and manufactured home and dwelling park improvements are non-variable.
- B. Criteria: A variance may be granted to allow a deviation from development standard of this ordinance where the following criteria are met:
  1. Strict adherence to the standards of this ordinance is not possible or imposes an excessive burden on the property owner, and
  2. Variance to the standards will not unreasonably impact existing or potential uses or development on the subject property or adjacent properties.
- C. Factors to Consider: A determination of whether the criteria are satisfied involves balancing competing and conflicting interests. The factors that are listed below are not criteria and are not intended to be an exclusive list and are used as a guide in determining whether the criteria are met.
  1. The variance is necessary to prevent unnecessary hardship relating to the land or structure, which would cause the property to be unbuildable by application of this Ordinance. Factors to consider in determining whether hardship exists, include:
    - a. Physical circumstances over which the applicant has no control related to the piece of property involved that distinguish it from other land in the zone, including but not limited to, lot size, shape, and topography.
    - b. Whether reasonable use similar to other properties can be made of the property without the variance.
    - c. Whether the hardship was created by the person requesting the variance.
  2. Development consistent with the request will not be materially injurious to adjacent properties. Factors to be considered in determining whether development consistent with the variance materially injurious include, but are not limited to:
    - a. Physical impacts such development will have because of the variance, such as visual, noise, traffic and drainage, erosion and landslide hazards.

- b. Incremental impacts occurring as a result of the proposed variance.
- 3. Existing physical and natural systems, such as but not limited to traffic, drainage, dramatic land forms or parks will not be adversely affected because of the variance.
- 4. Whether the variance is the minimum deviation necessary to make reasonable economic use of the property;
- 5. Whether the variance conflicts with the Woodburn Comprehensive Plan.