

19.72.060 Administration and enforcement.

A. Administrative Modification of Standards Allowed.

1. Development Standards in Relation to the Establishment of Limits of Disturbance. In establishing the limits of disturbance for developments subject to this chapter, the development services director shall have the discretion to administratively modify the following development standards up to twenty-five percent:

- a. Site and building design standards, as set forth in Section 19.72.030L;
- b. Tree and vegetation protection standards, as set forth in Section 19.72.030H;
- c. Perennial stream corridor and wetlands setbacks, as set forth in Section 19.72.030J and Section 19.73.080B;
- d. Driveway access standards, as set forth in Section 19.72.030E;

2. Limitations on the Granting of Administrative Modifications in Relation to the Establishment of Limits of Disturbance. The development services director may only exercise the aforementioned administrative modification authorities if either or both of the following circumstances apply:

a. Modification would result in:

- i. More effective preservation of existing mature trees, vegetation, riparian areas, rock outcrops, or other significant natural features on the site; and/or
- ii. Less visual impact on the property or on the surrounding area; and/or
- iii. Better protection of wildlife habitat.

b. Strict application of the standard(s) would render a site undevelopable.

3. Exceptions to Perennial Stream Corridor and Wetland Setback Requirements for Lots of Record.

a. Existing Legally-Established Buildings and Structures. A building or structure legally existing on the effective date of the ordinance codified in this chapter that is within fifty feet of a perennial stream corridor or twenty-five feet of a wetland may be renovated, altered, or expanded as follows:

- i. Renovations or alterations that will not increase the gross floor area of the original, existing structure are permitted.
- ii. Renovations, alterations or expansions which will increase the gross floor area of the original, existing building or structure are limited, regardless of change of ownership, to a cumulative total expansion of no more than two hundred fifty square feet of gross floor area located closer than fifty feet to a perennial stream corridor or closer than twenty-five feet to a wetland.
- iii. Renovations, alterations or expansions which will increase the gross floor area of the original, existing building or structure but which are no closer than fifty feet to a perennial stream corridor or no closer than twenty-five feet of a wetland are permitted, subject to compliance with all other applicable regulations and standards.

b. New Buildings and Structures. In establishing the limits of disturbance for new developments subject to this chapter, the development services director may authorize construction to no closer than fifty feet from a perennial stream corridor or to no closer than twenty-five feet from a wetlands upon satisfaction of the following criteria:

- i. Denial of an encroachment of more than twenty-five percent into the stream or wetlands setback area would render the site undevelopable; and
- ii. No alternative location for the development that is further from the stream or wetland is feasible or available; and
- iii. Creative architectural or environmental solutions have been incorporated into the development proposal in order to ensure that the purposes of stream corridor protection, as set forth in Section 19.72.030 of this chapter, are achieved; and
- iv. No federal or state laws, or other county ordinances or regulations would be violated.

4. In allowing for the preceding improvements, the development services director shall not:

- a. Increase the maximum limits of disturbance set forth in Section 19.72.040F; or

b. Authorize the encroachment of more than five hundred square feet of gross floor area of structural improvements (cumulative total) within the land area between seventy-five feet and fifty feet from perennial stream corridor or within the land area between fifty and twenty-five feet of a wetland.

5. Appeals of decisions on modifications shall be addressed as set forth in Section 19.92.050 of this title, as applicable.

B. Planning Commission Authority to Waive or Modify Standards.

1. Waiver of Slope Protection Standards for Lots of Record.

a. Subject to the conditions set forth in subsection (B)(1)(b) of this section, the planning commission may waive or modify the following standards as applied to development on lots of record and in subdivisions that were approved prior to the effective date of the ordinance codified in this chapter:

i. Slope protection standards regarding prohibition of development on slopes greater than thirty percent or in ridge line protection areas, as set forth in Section 19.72.030B; or

ii. Limitations on the crossing of slopes greater than thirty percent with any street, road, private access road or other vehicular route, as addressed in Section 19.72.030(D)(3)(4).

b. The planning commission may waive or modify the aforementioned standards only upon satisfaction of the following criteria:

i. Strict compliance with the slope protection standards in Section 19.72.030B or in Section 19.72.030(D)(3)--(4) would render the site completely undevelopable; or

ii. Strict compliance with the slope protection standards in Section 19.72.030B or in Section 19.72.030(D)(3)--(4) would result in a substantial economic hardship (as defined in Section 19.72.070) not created by the applicant or otherwise self-imposed; and

iii. The development conforms with all other development, site design, and environmental standards set forth in this chapter, in Chapter 19.73, "Foothills and Canyons Site Development and Design Standards," and in all other applicable ordinances and codes.

c. Notwithstanding its discretion to grant waivers for lots of record from the slope protection standards set forth in this chapter, in no case shall the planning commission permit development other than roads on slopes greater than forty percent.

d. In granting a waiver from or modification of the slope and ridge line protection standards set forth in Section 19.72.030B of this chapter, the planning commission may impose such conditions as are reasonable and appropriate to not only mitigate the impacts of the proposed development on adjacent properties and area characteristics, but to also enhance their compatibility with the surrounding environment. Such conditions may include, for example, but are not limited to, a reduction in the maximum building height otherwise permitted by the underlying zone (e.g., a reduction to twenty feet from the thirty-foot maximum building height permitted in the F.R. zone); mandatory (rather than advisory) incorporation of specific building scale and design, building materials and colors, landscaping and vegetation, and other site development and design standards of Chapter 19.73 of this title that are otherwise advisory, etc.

C. Waivers and Modifications for Ski Resorts, Public Uses, and Mineral Extraction and Processing Uses.

1. Authority to Grant Waivers. The topographic conditions, soil characteristics, hydrologic patterns, climatic constraints, susceptibility to natural hazards, vegetation, wildlife habitat concerns, and aesthetic considerations of foothill and canyon areas often create circumstances in which strict compliance with adopted standards is not only difficult but sometimes impossible to achieve. As these challenges are frequently created by the very nature and operational characteristics of ski resort developments, mineral extraction and processing operations, and many public uses, and are therefore most often self imposed, other avenues of administrative relief are sometimes necessary and appropriate. Accordingly, the development services director, and the planning commission, as authorized by this title with regards to the review and approval of conditional use permits, may waive or modify the development standards of this chapter in accordance with the procedures and criteria set

forth in this section and in subsection (C)(5) of this section.

2. Waiver Request Procedures. A petition or request for a waiver or modification of the development standards of this chapter shall be submitted in writing by the owner or authorized agent of the property for which administrative relief is sought. Such request shall be made concurrent with the conditional use permit application relating to the proposed establishment and operation of the requested use. The petition or written request seeking the waiver or modification shall clearly indicate:

- a. Those aspects or elements of the development proposal which would not be permitted through strict application of the regulations contained in this chapter;
- b. The specific regulations which would need to be waived or modified in order to accommodate the development as proposed;
- c. The basis, justification, or grounds, in the applicant's opinion, for granting the waiver or modification;
- d. Improvements or design alternatives which would be incorporated into the development, in lieu of strict adherence to the regulations from which waiver or modification is sought, that would lessen or mitigate impacts on adjacent properties and area characteristics, or enhance the environmental compatibility of the proposed development when compared to other design alternatives.

In addition to other submittal requirements, as set forth in this chapter, applications for developments for which waivers or modifications are requested shall clearly illustrate on all graphic materials and supporting written documentation the exact nature and locations of improvement for which waivers or modifications have been requested.

3. Proposed Modifications--Referral for Comment. Each proposed waiver or modification shall be referred to the operational division, department, or agency with jurisdiction over the applicable regulation. The comments, concerns, and recommendations regarding the requested waiver or modification shall be specifically incorporated into the written staff analysis and recommendations prepared for subsequent action by the development services director or the planning commission on the conditional use.

4. Public Hearing and Notice. Requests for waivers or modifications of the development standards of this chapter shall, in the instance of uses that require approval at a public hearing, incorporate into the published notice of hearing the specific ordinance provisions from which the waivers or modifications are requested, together with the alternative development patterns or characteristics that would result from the granting of the requested waivers or modifications.

Where it is required that owners of properties within three hundred feet of the exterior boundaries of that for which development is proposed be notified by first class mail prior to a public hearing, such owners shall likewise be notified in writing of requested waivers, modifications, and alternative development proposals.

Ski resort developments subject to multi-jurisdictional approvals that have completed a National Environmental Policy Act (NEPA) or other comprehensive public review and comment process and been granted approval for development on lands under the jurisdiction of those agencies administering such processes shall be exempt from subsequent compliance with the county noticing and public hearing requirements of this section so long as:

- a. A notice of intent to request waiver or modification of otherwise applicable Salt Lake County zoning ordinance provisions, together with the specific ordinance provisions that the request will apply to and the alternative development standards and improvements that are proposed have been incorporated into the public notification materials of the other agencies with review and approval authority; and
- b. The information presented to the public in the review and comment processes administered by those agencies was, with respect to those portions of the development proposal that are to be situated on privately-owned lands subject to the review and approval of Salt Lake County, at a level of site planning and construction detail consistent with that required by the county for its own public review and comment process; and

c. The issues, comments, and concerns expressed through the process were conveyed in writing to the development services director for consideration prior to any official county action on the proposal.

5. Criteria for Approval. Waivers or modifications to the development standards of this chapter may only be approved upon evidence establishing the following criteria, as deemed applicable by the development services director or planning commission, depending upon which has jurisdiction over the particular proposal:

- a. That the improvements proposed are essential to the operation and maintenance of the property and use, and that no reasonable alternative means of satisfying such requirements are feasible or readily available;
- b. That the physical surroundings, shape, or topographic conditions of the specific property involved are such that strict compliance with these regulations would result in extraordinary hardship or practical difficulties, or a substantial economic hardship (as defined in Section 19.72.070) for the owner of the property;
- c. That strict or literal interpretation and enforcement of the specified regulation would result in a development approach unintentionally inconsistent with the objectives of this chapter;
- d. That the waivers or modifications granted will result in a development approach which better preserves area views, reduces adverse impacts on existing trees and vegetation, reduces the overall degree of disturbance to steep slopes, protects wildlife habitat, and reflects a greater degree of sensitivity to stream corridors, wetlands, rock outcrops, and other sensitive environmental features in the vicinity of the proposed improvements;
- e. That the granting of the waiver or modification will not be detrimental to the public health, safety, or general welfare, or materially injurious to properties or improvements in the vicinity;
- f. That the waiver or modification granted shall not have the effect of nullifying the intent and purpose of these regulations;
- g. That the proposed development, as modified by the request, is not in conflict with the goals, objectives, and policies of the adopted community general plan applicable to the area;
- h. That creative architectural or environmental solutions can be applied and used to alternatively achieve the purposes of this chapter;
- i. That the development in all other respects conforms with the site design, development, and environmental standards set forth in this chapter, in Chapter 19.73, "Foothills and Canyons Site Development and Design Standards," and in all other applicable ordinances and codes;
- j. That the waivers or modifications granted do not result in the violation of other applicable federal, state, and county laws.

6. Action on Waiver Requests.

- a. The waiver or modification may be approved as proposed, approved in an alternative manner which better satisfies the required findings of fact, or may be denied.
- b. The decision on the request shall include the reasons for approval or disapproval.
- c. In granting a waiver from or modification of the development standards of this chapter, such conditions may be imposed as are reasonable and appropriate to mitigate the impacts of the proposed development on adjacent properties and area characteristics. These may include, for example, but are not limited to: measures for the protection of scenic vistas, especially with respect to views from public rights-of-way and public lands; measures for the protection of natural settings in the vicinity of site improvements; measures to enhance the relationship to and compatibility with other structures and open spaces in the vicinity of the proposed improvements; etc.
- d. All development shall comply with approved plans. Any proposed revisions or changes to approved waivers or modifications shall require resubmittal for consideration and final action.

7. Limitations. Notwithstanding the discretion to grant waivers or modifications from the standards set forth in this chapter, in no case shall development other than pedestrian or nonmotorized trails, vehicular access routes for emergency or maintenance purposes, ski runs, ski lifts with supporting

appurtenances, or similar recreation access corridors be permitted on slopes greater than forty percent but less than fifty percent, except as otherwise authorized in this chapter. In no case shall roads or vehicular access corridors of any kind be permitted on slopes in excess of fifty percent.

8. Notations. In the approval of any waiver or modification under the provisions of this chapter, the development services director shall note in the file for the conditional use permit authorizing the use for which the waiver or modification is granted, as well as on the building permit issued for the proposed development, the exact nature and conditions of approval of such waiver or modification.

9. Appeals. Any person or entity adversely affected by a waiver or modification decision of the development services director may appeal such decision to the board of adjustment in accordance with the provisions of Section 19.92.050 of this title. Appeals must be filed in writing in the development services director's office within ten days following the date upon which the decision is made, and must be based solely on an assertion that an error has been made in the interpretation or administration of the provisions of this title. The person or entity making the appeal has the burden of proving by a preponderance of the evidence that an error has been made. Appeals of development services director decisions regarding conditional uses shall be processed in accordance with the requirements of Section 19.84.100 of this title.

Appeals to the board of adjustment of planning commission decisions on waiver or modification requests subject to the provisions of this chapter shall be filed in writing in the planning and development services office within ten days following the date upon which the decision is made by the planning commission. The appeal shall thereafter be considered by the board of adjustment, as set forth in Section 19.92.050 of this title.

D. Violations/Penalties for Unauthorized Land Disturbance and Tree/Vegetation Removal. Any applicant, whether as principal, agent, employee, or other, who violates the provisions of this chapter by removing trees or vegetation or exceeding the prescribed limits of disturbance shall be guilty of a misdemeanor and punishable as provided by law and/or shall be subject to civil penalties as provided by law. Such applicant who violates this chapter shall be deemed to be guilty of a separate offense for each and every day during which any violation of this chapter is committed, continued, or permitted by such person. In addition, any applicant violating the provisions of this chapter shall replace all trees/vegetation illegally removed pursuant to the standards set forth in Section 19.72.030H of this chapter.

E. Financial Assurances. Financial assurances such as cash or surety bonds, escrow agreements, or letters of credit provided in lieu of actual completion of improvements required under this chapter shall be subject to the provisions of Section 19.02.110 of this title or those set forth in Title 18, the subdivision ordinance for Salt Lake County, as deemed most applicable by the public works director. (Ord. 1473 (part), 2001; Ord. 1454 § 4 (part), 1999; Ord. 1417 § 2 (part), 1998)