



Rear Yard Setback Adjustment Staff Report and Recommendation

Community Development Department, Planning Division

REPORT DATE: November 8, 2019

HEARING DATE: November 18, 2019

LAND USE REQUESTS: Approval of 20% adjustments to the rear yard setback for decks above three feet above ground for certain lots at the Gales Creek Terrace Planned Residential Development. If approved, the adjustment would allow a 2.4-foot encroachment into rear yards for some lots with a 12-foot rear yard and a 3-foot encroachment into rear yard for some lots with a 15-foot rear yard.

FILE NUMBER(S): 311-19-000026-PLNG

PROPERTY LOCATION: 1548 19th Avenue, 1844 C Street, and 1336 Pacific Avenue

LEGAL DESCRIPTION: Washington County Tax Lots: 1S40000400, 1S4010000401, 1S4010000500

OWNER/APPLICANT(S) Applicant:
Gales Creek Terrace LLC
8840 SW Holly Ln.
Wilsonville, OR 97070

Applicant Representative: Morgan Will

Property Owner:
Gales Creek Terrace LLC
8840 SW Holly Ln.
Wilsonville, OR 97070

**COMPREHENSIVE
PLAN MAP AND
ZONING MAP
DESIGNATIONS:** High Density Residential (HDR)
Residential Multifamily High (RMH)

**APPLICABLE
STANDARDS
AND CRITERIA:** City of Forest Grove Development Code:
§17.2.120 (Adjustment)

REVIEWING STAFF: Daniel Riordan, Senior Planner

RECOMMENDATION: Based on the information provided in the application and the analysis, findings and conclusions contained in the staff report, staff recommends the Planning Commission approve the 20% adjustments to the established rear yard setback for certain lots in the Gales Creek Terrace Planned Residential Development as shown on Exhibit A.

I. REVIEW PROCESS

This review is for adjustments to the rear yard building setback standard to allow construction of decks more than three feet above ground on certain lots in the Gales Creek Terrace Planned Residential Development. If approved, the adjustment would affect 98 out of 197 homes in the Gales Creek Terrace development.

Ordinarily, an adjustment from 10% to 20% of the setback, height or lot coverage standard is processed as a Type II (Limited Land Use Decision) permit. Type II permits are reviewed administratively by staff and required notice is provided to property owners and residents within 300 feet of the subject property (Development Code §17.1.515 and §17.1.530).

Under Forest Grove Development Code §17.1.510, the Community Development Director has authority to elevate a Type II application to the Type III (Quasi-Judicial Land Use Decisions) process if in the opinion of the Director, there is potential for neighborhood or community concern about a proposal. Given the level of neighborhood interest expressed during the original Gales Creek Terrace approval process, that continues today, the Director decided to elevate this application to the Type III process. This provides an opportunity for a Planning Commission public hearing on this application.

In addition to the level of interest expressed by the neighborhood, the Gales Creek Development was approved as a planned development. Under Forest Grove Development Code §17.4.215(l) building setbacks are established as part of the preliminary development plan approval. Under Forest Grove Development Code §17.1.605 (Type III Applications and Approval Criteria) preliminary plan approval for a planned development is a Type III process. Since this adjustment request modifies the planned development approval, reviewing the proposal under the same process as the original approval is warranted.

II. LAND USE HISTORY

The Gales Creek Terrace Planned Residential Development was approved by City Council on November 24, 2014 (Order 2014-06). The Gales Creek Terrace development includes 197 homes on 186 over to be built in three to four phases. The project includes single family detached, single family attached, and duplex units. A grading permit for the first project phase was issued on September 19, 2018. A structural permit for construction of retaining walls was issued on February 26, 2019. So far, the developer has completed initial grading and substantially completed public improvements including 18th Avenue and 19th Avenue, and Phase 1 retaining walls.

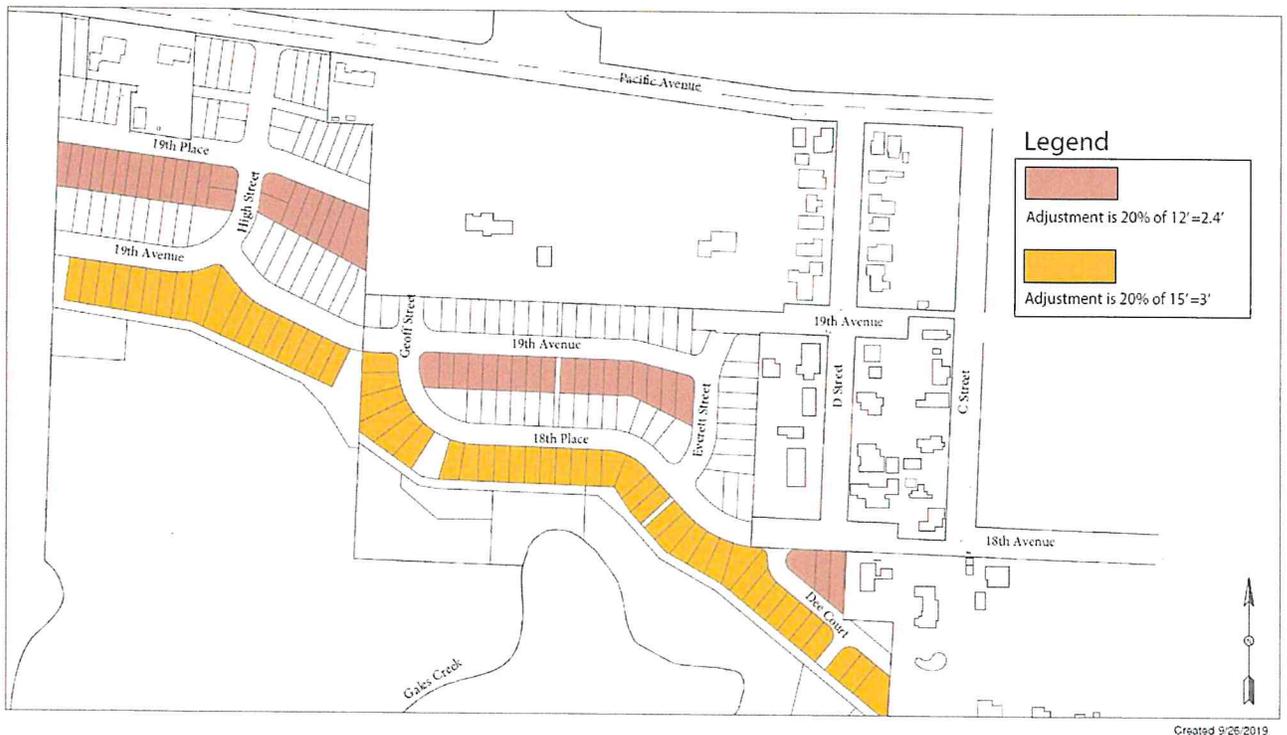
The land use approval established building setbacks throughout the development including rear yard setbacks. The approval establishes a 12 foot rear yard setback throughout most of the development. The approved rear yard setback for the southern tier along the urban growth boundary is 15 feet. The standard rear yard setback under the Forest Grove Development Code §17.3.130 (Residential Development Standards), Table 3-7 (Setback Requirements) is "15 feet or two feet for every three feet in building height at the eave line, whichever is greater."

III. PROJECT DESCRIPTION AND ANALYSIS

The Gales Creek Terrace Planned Residential Development includes 20 duplex, 20 attached single family and 157 detached single family homes on a variety of lot sizes. Lots range in size from about 1,900 square feet to about 3,400 square feet. The largest lots are generally along the south edge of the project near the urban growth boundary. As noted above, the land use approval for the project established a rear yard setback of 12 feet throughout most of the development. The approved rear yard setback for the southern tier of lots along the urban growth boundary is 15 feet. The established front yard setback is 11 feet for the dwelling and 20 feet to a garage. Interior side yard setback is 3 feet from a building to the side property line. The side yard setback for lots where the side yard is on the side of a dwelling adjacent to one of the site's exterior property boundary lines is 5 feet.

The applicant requests 20% adjustments to the approved rear yard setbacks to allow for decks built more than 3 feet above ground only on certain lots with 12 foot and 15 foot rear yard setbacks as describe in Exhibit A and shown below. If approved by the Planning commission, the adjustments will allow a 2.4-foot deck encroachment into the 12 foot rear yard setback area and a 3-foot deck encroachment into the 15 foot rear yard setback area on certain lots as described in Exhibit A and shown below. The encroachments are above ground level and will not reduce the amount of useable yard space.

GCT 20% Adjustment to Rear Setback to Decks over 3' in Height



IV. SITE EXMINATION

The Gales Creek Terrace development site is located west of downtown Forest Grove adjacent to the urban growth boundary. The project area is generally west of D Street, south of Pacific Avenue and north of the Gales Creek 100-year floodplain boundary.

The development area is characterized by topography that slopes from Pacific Avenue towards Gales Creek and the Gales Creek floodplain. The highest elevation of the Gales Creek Terrace development site is about 235 feet near Pacific Avenue in the north and about 185 feet along the urban growth boundary to the south. The southern half of the development site closest to the urban growth boundary exhibits the steepest slopes in the project area. In this area, the elevation ranges from 225 feet in the north to 185 feet along the urban growth boundary. In this area, the characteristic slope is about 13.5%.

The Gales Creek Terrace project area is approximately 47 gross acres, in its entirety, including land outside of the urban growth boundary. About one-half of the area (25 gross acres) is within the urban growth boundary and is where development will occur. The net developable area after deducting rights-of-way, open space and of the site is approximately 13.2 acres.

The table below shows the Comprehensive Plan designations, zone districts and land uses for the Gales Creek Terrace site and surrounding area. The Gales Creek Terrace site is adjacent to an established residential neighborhood to the east that was generally developed in the mid-20th Century. The area to the north is largely institutional. This area includes Tom McCall Upper Elementary School and Forest View Cemetery. The area to the west is characterized by single family homes on acreage lots. The area to the south is outside the urban growth boundary and is undevelopable. This area includes Gales Creek and the Gales Creek floodplain.

Existing Comprehensive Plan Designation and Zoning of Site and Area

LOCATION	COMPREHENSIVE PLAN DESIGNATION	ZONE DISTRICT	LAND USE
Site	HDR	RMH	Being Developed for Single Family Detached, Single Family Attached and duplex homes
North	Public	INST	Middle School
South	EFU	EFU	Gales Creek Floodplain
East	HDR MDR	RMH RML	Single Family Dwellings
West	A-Medium B-Standard	R-7 R-5	Single Family Dwellings

V. APPROVAL CRITERIA AND FINDINGS

To approve the adjustment request, the Planning Commission must find that the adjustment review criteria contained in Development Code §17.2.120 have been met. The applicant has the burden of proof demonstrating the criteria have been met.

Forest Grove Development §17.2.120 – Adjustment Review

Development Code §17.2.120 *Adjustment Review Criteria* requires that the Commission find that the proposal complies with the following criteria for a Type II adjustment:

1. *The requested adjustment is from 10% to 20% of the setback, height, or lot coverage standard.*

Applicant's Response: The request is for a 20% adjustment to the setback, within the range allowed, meeting this criterion.

Staff Analysis: The requested adjustment is 20% of the rear yard setback established by the Gales Creek Terrace Planned Residential Development Approval (Order 2014-06). The requested adjustment is between 10% and 20% of the setback coverage standard therefor, this criterion applies.

Finding: The requested adjustment is 20% of the established rear yard for certain lots in the Gales Creek affecting lots with 12 foot and 15 foot rear yards. The requested adjustment is between 10% and 20% of the setback coverage standard. Therefore, Criterion 1 is met.

2. *Granting the adjustment will be consistent with the purpose of the affected zoning district or meet or exceed the purpose of the standard to be modified.*

Applicant's Response: This site is a planned development in the RMH zone. The purpose of residential zones is described in Section 17.3.100 of the code, where it states "the residential zones are intended to protect the livability of existing and future residential neighborhoods." Approval of the requested adjustment will allow decks in the rear yard above 3' in height which will enhance livability of the residents of this future neighborhood, which is consistent with the purpose of the code, thus this criterion is met.

Staff Analysis: The Gales Creek Terrace development site is zoned for residential development. As the applicant notes, §17.3.100 states: "the residential zones are intended to protect the livability of existing and future residential neighborhoods." Neither Development Code §17.3.100 nor Article 12 (Definitions) defines livability. As such, the Planning Commission must determine whether granting the adjustment is consistent with protecting the livability of existing and future residential neighborhoods. This is addressed further under Criterion 3 below.

The Gales Creek Terrace site is zoned Residential Multifamily High (RMH). The purpose of the RMH zone is to allow residential development at densities ranging from 16.22 units per net acre and 23.32 dwellings per net acre. As stated in Development Code §17.3.100, the regulations for the residential zones are intended to protect the livability of existing and future residential neighborhoods by encouraging

primarily residential development with compatible non-residential development at appropriate locations and at an appropriate scale. Granting the requested 20% adjustments to allow deck three feet above ground will not change the scale of the single family homes allowed by the Gales Creek Terrace approval. In addition, granting the adjustment will still allow for building separation characteristic of housing types allowed within the Residential Multifamily Housing zone including housing types with more bulk such as apartment buildings. As such, granting the adjustments is consistent with the purpose of the affected zoning district which is to allow for high density residential development. In addition, granting the adjustment meets the purpose of the standard to be modified which is to provide building separation.

Finding: The requested adjustment to the established rear yard setbacks for certain lots at the Gales Creek Terrace development is consistent with the purpose of the RMH zone and meets the purpose of the rear yard setback standard for the reasons stated above. Therefore, Criterion 2 is met.

3. *If in a residential zone, the adjustment will not significantly detract from the livability or appearance of the residential area. If in a commercial or industrial zone, the adjustment will be consistent with the desired character of the area.*

Applicant Response: The adjustment is in a residential zone and will affect the rear yards, thus from the street it will not detract from the appearance of the neighborhood. The building setbacks will not change, so a deck encroachment into the rear yard of 2.4' or 3' respectively, will not significantly impact livability either. The adjustment is minor, therefore this criterion does not apply.

Staff Analysis: The project site is located in a residential zone: Residential Multifamily High (RMH). As such the Planning Commission must consider whether the proposed encroachment will significantly detract from the livability or appearance of the residential area. Both "livability" and "significant" are subjective terms not specifically defined in the Development Code. However, guidance for addressing livability is found in the Conditional Use Section of the Development Code (§17.2.220(C)). Under this Code provision, factors detracting from livability include significant adverse impacts on nearby land due to noise, glare from lights, late-night operations, odors, and litter and privacy and safety issues.

The proposed above grade deck encroachment into the rear yard will not have impacts on neighboring properties due to noise, glare from lights, late night operations, odor, litter or safety.

The only potential impact from the encroachment might be impacts to privacy on adjacent lots depending on orientation of the lots, lot location and topography. Given the topography of the Gales Creek Terrace development site such privacy impacts as those noted above are possible with or without the deck encroachment depending on building design and window locations. Furthermore, the Gales Creek Terrace project site is located within a high density residential zone. Given the development density, lot dimensions and housing types allowed in the Residential Multifamily Housing zone as described in Development Code §17.3.130 (Residential Development Standards) there will be less privacy generally compared to lower density residential districts with larger lots.

Finding: The proposed 20% adjustment to the rear yard setback for decks built more than 3 feet above grade constituting a 2.4 foot encroachment on certain lots with a 12 foot rear yard and 3 foot encroachment on certain lots with a 15 foot rear yard will not significantly detract from the livability or appearance of the residential area for the reasons stated above. Therefore, Criterion 3 is met.

4. *If more than one adjustment is requested, the cumulative effect of the adjustment shall result in a project which is consistent with the overall purpose of the zone.*

Applicant Response: Only one adjustment is requested, therefore this criterion does not apply.

Staff Analysis: As noted by the applicant, only one adjustment is requested based on lot type. Therefore, this criterion does not apply to this request.

Finding: The request for a 20% adjustment to the rear yard setback for certain lots in the Gales Creek Terrace development. Since only one adjustment is requested Criterion 4 does not apply.

5. *Any impact resulting from the adjustment are mitigated to the extent practical.*

Applicant Response: There are no impacts resulting from the adjustment, therefore this criterion does not apply and no mitigation is required.

Staff Analysis: Impacts from granting the adjustment request appear minor and would only affect privacy depending building orientation and location with the Gales Creek Terrace Development. Requiring mitigation is not practical given the density allowed under Development Code §17.3.130 (Residential Development Standards) and the Gales Creek Terrace approval (Order 2014-06).

Finding: Impacts resulting from granting the adjustment are minor and requiring mitigation is not practical. Therefore, no mitigation is required.

VI. ALTERNATIVES

The Planning Commission may:

1. Approve the application as submitted if the Planning Commission finds the review criteria of Development Code §17.2.120 have been met;
2. Continue deliberations to a date certain; or
3. Deny this request if the Commission finds the review criteria of Development Code §17.2.120 have not been met.

VII. RECOMMENDATION

Based on the information provided in the application and the analysis, findings and conclusions above, staff recommends the Planning Commission approve a 20% adjustment to the established rear yard setback for certain lots in the Gales Creek Terrace Planned Residential Development as shown on Exhibit A.

VIII. LIST OF EXHIBITS

The following exhibits were received, marked, and entered into the record as evidence for this application at the time this staff report was written. Exhibits received after the date of this report will be marked beginning with the next consecutive letter and will be entered into the record at the time the public hearing is opened, prior to oral testimony.

Exhibit A Application and Applicant's Narrative



A place where families and businesses thrive.

EXHIBIT A

Land Use Application

APPLICATION FOR:

- Site Plan Approval
- Conditional Use
- Variance
- Appeal to _____

Establish a Planned Development:

- PRD CPD PID

Comprehensive Plan Amendment:

- Text Map

Zoning Ordinance Amendment:

- Text Map

Land Division:

- Subdivision Partition
- Tentative Plat Final Plat

Other: Adjustment

APPLICANT:

Name: Gales Creek Development, LLC
 Address: 8840 SW Holly Ln
 City: Wilsonville
 State: OR Zip: 97070
 Phone: 503-305-7647 Fax: —
 Email: morgan@staffordlandcompany.com

PROPERTY DESCRIPTION:

Site Address: Gales Creek Terrace (PRD-14-00181)
 Map and Tax Lot #: 7200 5401AA and
 (Please attach legal description) 400,401,500 15401
 Total Acres or Square Feet: —
 Acres: ~ 25 acres
 Sq. Ft: —

PROPERTY OWNERS:

Name: Same as Applicant
 Address: _____
 City: _____
 State: _____ Zip: _____
 Phone: _____ Fax: _____
 Email: _____

PROPERTY USE DESCRIPTION:

Existing Land Use: Vacant
 Existing Zone: RMIH
 Proposed Zoning: —
 (if applicable)
 Proposed Use: Residential

ADDITIONAL INFORMATION:

In order to expedite and complete the processing of this application, the Planning Division requires that all pertinent material required for review be submitted at the time application is made. If the application is found to be incomplete, review and processing of the request will not begin until the application is made complete. The submittal requirements relative to this application may be obtained from the specific sections of the Zoning or Land Division Ordinances pertaining to this application and from Planning Division staff. Pre-application conferences with Planning Division staff are encouraged. If there are any questions as to submittal requirements, contact the Planning Division prior to formal submission of the application. In submitting this application, the applicant should be prepared to give evidence and information which will justify the request. *The filing fee must be paid at the time of submission. This fee in no way assures approval and is non-refundable.*

Continued

I certify that the statements made in this application are complete and true to the best of my knowledge. I understand that any false statements may result in denial of this application.

Applicants Signature Morgan Wild Date 9/20/19

Property Owner's Signature Rin Date 9/20/19

For Office Use:	
Received by _____	Date _____
Fee Paid _____	Date _____
	Receipt Number _____
	Application Number _____
	File Number _____

ADJUSTMENT NARRATIVE

Gales Creek Terrace (GCT)
(PRD-14-00181)

Applicant/Owner
Gales Creek Development, LLC
8840 SW Holly Lane
Wilsonville, OR 97070
503-305-7647

Applicant's Representative
Morgan Will
morgan@staffordlandcompany.com

Date: September 25, 2019

Summary:

The Applicant is requesting a Type II 20% Adjustment to the rear yard setback for decks built more than 3-feet above the ground only. The approval of Gales Creek Terrace (PRD-14-00181) requires a 12-foot setback on some lots and 15-foot setback on others. Approval of the adjustment requested would allow 2.4' encroachment of a deck into the 12-foot rear yard setbacks and 3' encroachment of a deck into the 15-foot rear yard setbacks, respectfully. Approval would have no effect on the building setback. The lots where the adjustment would apply are the downhill lots shown on the preliminary plat sheets P301 and P302 dated 10/16/14 as Lots 11-34, 40-47, 68-77, 88-120, 130-144, and 171-178. (Note: Lot numbering on the phased final plat may differ.)

Section 17.1.510

If, in the opinion of the Director, there is potential for neighborhood or community concern about a proposal, the applicant or the Director may elevate a Type II application to the Type III process to provide greater notice and opportunity to participate than would otherwise be required by this Code.

Although Section 17.1.510 grants authority to the Community Development Director to elevate a Type II application to a Type III process, the applicant finds no potential for neighborhood or community concern about this proposal, because the lots where the setback encroachment will occur when this adjustment is approved, are internal to the project and will have no impact on the neighborhood or the community. It also only affects the decks, not the buildings so there is no significant change to the character of the development or scale of the dwellings on the lots.

Section 17.2.100 PURPOSE.

The adjustment process provides a mechanism by which the Director may make limited modifications to yard setback, height and lot coverage standards. Adjustment reviews provide limited flexibility for unusual situations if the proposed development continues to meet the intended purpose of the regulations.

This request for an adjustment to allow 2.4' and 3' encroachment of decks into some rear yards is a limited modification of the setback because it only applies to decks on some lots. The request is for daylight basement lots, which is an unusual situation since most lots are on flat ground. The intent of

the setback was that the building create a rear yard, and since the setback applies to decks over 3', it will mostly apply to second story decks and not impact the rear yard. This request meets the purpose of an adjustment described in this code.

Section 17.2.110 PROCEDURE.

- A. Requests for changes of less than 10% of the setback, height or lot coverage standard shall follow the Type I process.*
- B. Requests for changes from 10% to 20% of the setback, height or lot coverage standard shall follow the Type II process.*
- C. Requests for changes to standards other than setback, height or lot coverage, or which are for more than 20% of the setback, height or lot coverage standard are processed as variances under § 17.2.700.*

This request for an adjustment to the setback for decks over 3' in height is for a 20% reduction and will thus follow a Type II process. The request is not a variance because it is not for a change of more than 20%.

Section 17.2.120 REVIEW CRITERIA.

- A. Type I Adjustment Process.*
 - 1. The requested adjustment is for less than 10% of the setback, height or lot coverage standard; and*
 - 2. Granting adjustment shall be consistent with the purpose of the affected zoning.*
- B. Type II Adjustment Process.*
 - 1. The requested adjustment is from 10% to 20% of the setback, height or lot coverage standard;*
 - 2. Granting the adjustment will be consistent with the purpose of the affected zoning district or meet or exceed the purpose of the standard to be modified;*
 - 3. If in a residential zone, the adjustment will not significantly detract from the livability or appearance of the residential area. If in a commercial or industrial zone, the adjustment will be consistent with the desired character of the area;*
 - 4. If more than one adjustment is requested, the cumulative effect of the adjustments shall result in a project which is consistent with the overall purpose of the zone; and*
 - 5. Any impacts resulting from the adjustment are mitigated to the extent practical.*

This request meets the review criteria under section 17.2.120(B)1-5 above.

- 1) The request is for a 20% adjustment to the setback, within the range allowed, meeting this criterion.
- 2) This site is a planned development in the RHM zone. The purpose of residential zones is described in Section 17.3.100 of the code, where it states, "the residential zones are intended to protect the livability of existing and future residential neighborhoods." Approval of the requested adjustment will allow decks in the rear yard above 3' in height which will enhance livability of the residents of this future neighborhood, which is consistent with the purpose of the code, thus this criterion is met.
- 3) The adjustment is in a residential zone and will affect the rear yards, thus from the street it will not detract from the appearance of the neighborhood. The building setback will not change, so a deck encroachment into the rear yard of 2.4' or 3' respectively, will not significantly impact livability, either. The adjustment is minor, therefore this criterion is met.
- 4) Only one adjustment is requested, therefore this criterion does not apply.
- 5) There are no impacts resulting from the adjustment, therefore this criterion does not apply and no mitigation is required.

GCT 20% Adjustment to Rear Setback to Decks over 3' in Height



Typical Lot Cross Section

