

## **Sec. 35-321. Modifications.**

*(Added by Ord. 4228, 6/18/96)*

### **Sec. 35-321.1. Purpose and Intent**

The purpose and intent of this Section is to allow minor modifications of District setback regulations, parking, height requirements, or zoning development standards where, because of practical difficulties, integrity of design, topography, tree or habitat protection or other similar site conditions, minor adjustments to such regulations, requirements, or standards would result in better design, resource protection, and land use planning.

### **Sec. 35-321.2. Applicability**

1. The provisions of this Section shall apply to specific development proposals allowed pursuant to the Permitted Uses sections in all zone districts, which are not otherwise subject to Conditional Use Permit or Development Plan requirements.
2. In no case shall a Modification, pursuant to this Section, be granted to permit a use or activity which is not otherwise permitted in the District in which the property is situated, nor shall a Modification be granted which alters the procedural or timing requirements of this Article.
3. Modifications may only be granted in conjunction with a specific development proposal and are limited to all of the following:
  - a. The total area of each side, front and/or rear yard setback area shall not be reduced by more than twenty percent (20%) of the minimum yard setback area required pursuant to the applicable District regulations.
  - b. No setback reduction for buildings and structures, except for unenclosed, attached porches or entryways, shall result in:
    - 1) A front yard setback depth, as measured from the right of way or easement line of a street or driveway, of less than sixteen and one half (16 1/2) feet.
    - 2) A side yard setback depth from property lines of less than three (3) feet.
    - 3) A rear yard setback depth from property lines of less than fifteen (15) feet.
  - c. No unenclosed, attached porch or entryway shall result in a front yard setback depth, as measured from the right of way or easement line of a street or driveway, of less than ten (10) feet.
  - d. Up to a ten percent (10%) increase in District height regulations.
  - e. Up to a ten percent (10%) increase in mandatory Floor Area Ratio (FAR) requirements for buildings originally constructed prior to the adoption of such FAR regulations (e.g., if the required FAR is 0.50 the maximum modification allowed would be 0.55.)

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- f. A reduction in the required number and/or a modification in the design, loading zone or location of parking spaces. In no case shall: (1) any required number of bicycle parking spaces be reduced, (2) any Modification of parking requirements be granted, pursuant to this Section for a residential second unit, or (3) any parking or screening requirement Modification be granted for a vehicle with more than two-axles, a recreational vehicle or bus, a trailer or other non-passenger vehicle. (*Amended by City Ord. 03-07, 11/17/2003*)
4. In no case shall a Modification be granted pursuant to this Section for a reduction in landscape, buffer, open space, or other requirements of this Article except as provided above.

### *Sec. 35-321.3. Jurisdiction*

The decision-maker for a Modification, pursuant to this Section, shall be the Zoning Administrator, who upon making the findings required under this Section, may approve or conditionally approve Modifications to the regulations applicable to physical standards for land, buildings, and structures contained in this Article, as listed in Section 35-321.2.3..

### *Sec. 35-321.4. Contents of Application*

As many copies of a Modification application as may be required shall be submitted to the Planning and Development Department. Said application shall contain full and complete information as required pertaining to the request.

### *Sec. 35-321.5. Processing*

1. After receipt of the Modification application, the Planning and Development Department shall process the project through environmental review.
2. The project shall be subject to provisions of Section 35-329 Design Review Board (DRB), and shall normally be scheduled to be heard by the Design Review Board for Preliminary Review and approval only, prior to the project being heard by the Zoning Administrator. The exception to the requirement for DRB review of Modifications is that for projects requesting one or more minor modifications of zoning requirement standards, no DRB review and approval is required if the associated project is exempt from DRB review. (*Amended by City Ord. 07-06, 6/4/2007*)
3. The Zoning Administrator shall hold at least one noticed public hearing on the requested Modification and either approve, conditionally approve, or deny the request. Notice of the time and place of said hearing shall be given in the manner prescribed in Sec. 35-326. (Noticing).
4. The Zoning Administrator, in granting said Modification, may require such conditions as deemed necessary to assure that the intent and purpose of this Article and the public health, safety, and welfare will be promoted.
5. The Zoning Administrator's action is final, subject to appeal to the Board of Supervisors as provided in Sec. 35-327.3. (Appeals)

**Sec. 35-321.6. Findings Required for Approval.**

A Modification shall only be approved if all of the following findings are made:

1. The project is consistent with the Comprehensive Plan and any applicable Community Plan.
2. The project complies with the intent and purpose of the applicable Zone District(s) including Overlays, this Section and this Article.
3. The Modification is minor in nature and will result in a better site or architectural design, as approved by the Design Review Board, if such DRB review is required, and/or will result in greater resource protection than the project without such Modification. *(Amended by City Ord. 07-06, 6/4/2007)*
4. The project is compatible with the neighborhood, and does not create an adverse impact to community character, aesthetics or public views.
5. Any Modification of parking or loading zone requirements will not adversely affect the demand for on-street parking in the immediate area.
6. The project is not detrimental to existing physical access, light, solar exposure, ambient noise levels or ventilation on or off site.
7. Any adverse environmental impacts are mitigated to a level of insignificance.

**Sec. 35-321.7. Expiration**

Unless otherwise specified by conditions of project approval, a Modification shall expire one year from the date of approval if a Land Use Permit has not been issued for the modified building or structure. Prior to the expiration of such time period, the Director may grant one, one year extension from the date of expiration of the Modification, for good cause shown. Once the building or structure has been granted a Land Use Permit, the Modification shall have the same expiration date as the issued Land Use Permit.

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