



CRITICAL AREAS REASONABLE USE EXCEPTION

General Requirements and Criteria

I. Application and filing requirements (MTMC 16.15.360 (B)).

A complete Request for Reasonable Use Exception application shall be submitted to include the following information:

1. A description of the proposed development site, including the entire critical area and the setbacks or buffers as required under this title, whether the critical area is wholly contained on the development site or not;
2. An analysis of the impact that the amount of development proposed, in accordance with all applicable development regulations, would have on the critical area;
3. An analysis of whether any other reasonable use with less adverse impact on the critical area and buffer area, as required, is possible;
4. A design of the project as proposed as a reasonable use so that the development will have the least practicable adverse impact on the critical area;
5. A description and analysis of the modification requested of the minimum requirements of this chapter to accommodate the proposed development;
6. Such other information as may be required by the director as reasonable and necessary to evaluate the reasonable use respective to the proposed development;
7. Detailed responses to the applicable criteria, pursuant to section II or III, below.
8. Any additional materials, studies or reports or previously prepared or issued approvals related to the proposal such as a critical area identification form; critical areas report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act.

II. Criteria for public agencies and utilities reasonable use exceptions (MTMC 16.15.130 (C)).

If strict application of this chapter would unreasonably prohibit the provision of a public service by a public agency or public utility development proposal, the public entity may be granted an exception subject to meeting all of the following criteria.

1. The application of the critical areas regulations would unreasonably restrict the ability to provide utility services to the public;
2. There is no other practical alternative to the proposed development with less impact on the critical areas;
3. The proposal does not pose an unreasonable threat to the public health or safety on, or off, the development proposal site and will not be materially detrimental to the property or improvements in the vicinity;
4. The proposal attempts to protect and mitigate impacts to the existing critical area functions and value, consistent with MTMC 16.15.310 Alterations, to critical areas and best available science, to the fullest extent possible;
5. Any impacts or alterations permitted to the critical area are the minimum necessary and will be mitigated consistent with relevant mitigation standards in this chapter;
6. The proposal attempts to protect and mitigate, consistent with MTMC 16.15.210 and best available science, the existing critical area functions; and
7. The proposal is consistent with other applicable regulations and standards.

III. Criteria for private development and private permit application reasonable use exceptions (MTMC 16.15.130 (D)).

The property owner may apply for and be granted a reasonable use exception subject to meeting all of the following criteria.

1. The application of the critical area regulations would deny all reasonable economic use of the property;
2. No other reasonable economic use of the property has less impact on the critical area or buffer;
3. The inability of the applicant to derive reasonable economic use of the property is not the result of a self-created hardship, due to the applicant's actions or that of a previous owner, after the effective date of this chapter, or its predecessor (Ord. No. 2370), or other actions thereby creating an undevelopable condition;
4. The proposed encroachment into the critical area and/or buffer is the minimum necessary to allow for reasonable economic use of the property and no feasible and reasonable on-site alternative is possible to the activities proposed, considering possible changes in site layout, reductions in density and similar factors, with fewer adverse impacts;
5. The proposed reasonable use will result in minimal impact and/or alteration of the critical areas and/or buffers;

6. Any impacts or alterations permitted to the critical area are mitigated consistent with relevant mitigation standards in this chapter;
7. The proposal attempts to protect and mitigate, consistent with MTMC 16.15.210 and best available science, the existing critical area functions and values to the fullest extent possible;
8. The proposal does not create a health or safety hazard on or off the proposal site or be materially detrimental to the property or improvements in the vicinity; and
9. The proposal is consistent with other applicable regulations and standards.

NOTES FOR APPLICANT:

1. Burden of Proof. The burden of proof is with the applicant to submit sufficient evidence and information in support of the request on which the decision is to be made.
2. Review and approval process (MTMC 16.15.130 (E)).
 - a. Pre-applications conference.
 - b. Submit complete application and fee.
 - c. City review for consistency with applicable criteria and recommendation to the Hearing Examiner.
 - d. Public hearing by Hearing Examiner.
 - e. Decision issued within 120 days of the determination of completeness.
3. Appeal. An appeal of the final decision can be filed within 14 days of the decision date, consistent with the appeal process pursuant to MTMC 16.15.385.
4. Time limits.
 1. One year. Any permits necessary to establish or construct the approved reasonable use shall be applied for within one year of the effective date of the Hearing Examiner's decision, unless a different time is approved or required.
 2. Time extension. The approval is automatically null and void if the necessary permit applications to establish the use are not received within the specified of time, unless a time extension is obtained pursuant to MTMC 19.110.130 including a demonstration that the conditions of the site and critical areas have not changed since the approval decision was issued. Knowledge of the expiration date is the responsibility of the applicant.

(Ord. No. 2731, 2018)