



CRITICAL AREAS REASONABLE USE EXCEPTION REGULATIONS

MTMC 16.15.360 Reasonable use exception.

A. Applicability. A reasonable use exception is required when strict adherence to the provisions of this chapter would deny all reasonable use of the subject property as a whole, due to the property's size, topography, or location relative to the critical area and any associated buffer.

1. A reasonable use exception shall only be granted if no other reasonable alternative method of development is provided, subject to review and criteria under this section.

2. The fact that property may be utilized more profitably than allowed based on strict interpretation of this title shall not be an element of consideration in any review of a reasonable use request. Reasonable use exceptions shall not be permitted for the subdivision of land.

B. Application and filing requirements.

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

a. 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;

b. An analysis of the impact that the amount of development proposed, in accordance with all applicable development regulations, would have on the critical area;

c. An analysis of whether any other reasonable use with less adverse impact on the critical area and buffer area, as required, is possible;

d. 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;

e. A description and analysis of the modification requested of the minimum requirements of this chapter to accommodate the proposed development;

f. Such other information as may be required by the director as reasonable and necessary to evaluate the reasonable use respective to the proposed development;

g. The applicant shall address all criteria pursuant to subsection C or D, below, as applicable;

h. 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.

2. Burden of Proof. The burden of proof is on the applicant to submit sufficient evidence and information in support of the request on which the decision is to be made.

C. Criteria for public agencies and utilities reasonable use exceptions. 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.

D. Criteria for private development and private permit application reasonable use exceptions.

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 property 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.

E. Review and approval process.

1. A formal pre-applications conference is required per MTMC 16.15.150.

2. The application shall submit an application to include all filing requirements per subsection B of this section and applicable fee.

3. The land use project procedures time line set forth in MTMC 18.05.620 applies, except if otherwise stated in this chapter.

4. The Director shall review the application for completeness pursuant to meeting all the filing requirements of this section. The Director shall review the complete application for:

a. Consistency with criteria in subsections C or D of this section, as applicable.

b. Adequacy of any reports, studies or other materials submitted.

5. A notice of application shall be issued pursuant to MTMC 16.15.140.

6. The Director shall evaluate the proposal's consistency with the criteria and forward a written recommendation to the Hearing Examiner to approve or deny the variance request. The recommendation may include conditions, as are necessary to ensure adequate protection of critical areas from adverse impacts and to ensure conformity with this chapter, including the preparation and implementation of a mitigation and monitoring plan consistent with this chapter, and any time limits for application or completion of work.

7. The Hearing Examiner shall hold a public hearing and provide public notice pursuant to Chapter 18.05.

8. A final decision shall be rendered within 120 days of the determination of completeness per MTMC 18.05.540.

F. Decision.

1. The Hearing Examiner shall make written findings that the request meets or fails to meet the criteria for a reasonable use exception pursuant to MTMC 18.05.490, and that the proposed mitigation is sufficient to protect the critical area, and that strict application of the

standards in this chapter would deny all reasonable use of the property.

2. The Hearing Examiner may impose any conditions he or she feels necessary to ensure that the criteria are met and any impacts adequately mitigated to ensure no net loss to critical area functions and values, and set time limits for making application and completing work.

3. Approval of a reasonable use exception shall not eliminate the need for any other permits or approvals otherwise required by applicable city codes.

G. Time limits.

1. 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. 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.

H. Appeal. An appeal of the final decision shall be consistent with the appeal process pursuant to MTMC 16.15.385.

(Ord. No. 2731, 2018)