

BEFORE THE CITY COUNCIL OF THE CITY OF ORINDA

In the Matter of:
An Ordinance Updating City's Rules
Regarding Accessory Dwelling Units to
Conform with State Law

Ordinance 17-03

The City Council of the City of Orinda DOES ORDAIN as follows:

SECTION 1. The City Council of the City of Orinda intends, by adopting this ordinance, to repeal Section 17.3.4 (Second Units) and replace it with Section 17.3.4 (Accessory Dwelling Units), within the Orinda Municipal Code (Zoning) and to make other related amendments to Section 17.2.3 (Definitions), Sections 17.4.22 (Accessory structures), 17.5.4 (Design review requirement), 17.6.2 (Determining allowed home size), 17.6.3 (Calculation of floor area), 17.6.8 (Chapter 17.6 schedule), 17.30.3 (Design review requirement), 17.32.2 (Exceptions—General) and Schedules 17.3.3 and 17.16.4A. These amendments are intended to bring Orinda's regulation of accessory dwelling units within the City's residential zoning districts into conformity with state law.

SECTION 2. The following portions of the Municipal Code are amended and added as specified below and in Attachment A. Attachment A shows additions with double-underlined text and deletions with ~~strike-out text~~.

Municipal Code Provision	Action
Section 17.3.4	Repeal existing 17.3.4 (Second units) and replace with new section as shown in Attachment A.
Section 17.2.3	New or amended definitions shown in Attachment A inserted in alphabetical order
Schedule 17.3.3	Amendments as shown in Attachment A
Section 17.4.22	Amendments as shown in Attachment A
Section 17.5.4	Amendments as shown in Attachment A
Section 17.6.2	Amendments as shown in Attachment A
Section 17.6.3	Amendments as shown in Attachment A
Section 17.6.8	Amendments as shown in Attachment A
Schedule 17.16.4A	Amendments as shown in Attachment A
Schedule 17.30.3	Amendments as shown in Attachment A
Schedule 17.32.2	Amendments as shown in Attachment A

SECTION 3. Purpose and intent.

A. The purpose of this ordinance is to bring the Orinda Municipal Code into conformity with state law on accessory dwelling units, including SB 1069 and AB 2299 (2016), which amended Government Code section 65852.2.

B. Accessory dwelling units provide a community benefit by expanding the number and type of residential facilities available and assist owners of accessory dwelling units by providing additional affordable space for housing friends/family and/or revenue that may be used for maintenance, upgrades and other costs.

C. If not regulated, accessory dwelling units can create nuisances such as overcrowding, illegal vehicle parking, traffic flow disruptions, and risks to public safety. The restrictions of this ordinance are necessary to prevent a burden on City services and adverse impacts on residential neighborhoods posed by accessory dwelling units.

D. This ordinance is not intended to provide any owner of residential property with the right or privilege to violate any private conditions, covenants and restrictions applicable to the owner's property that may prohibit the use of such owner's residential property for accessory dwelling unit purposes as defined herein.

SECTION 4. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

SECTION 5. This ordinance is consistent with the Orinda General Plan.

SECTION 6. This ordinance will not have a significant impact on the environment as defined by the California Environmental Quality Act (CEQA). The proposed code amendments are categorically exempt from CEQA under CEQA Guidelines Section 15305 (Minor Alterations in Land Use Limitations) and Section 15061(b)(3) (Review for Exemption, General Rule). The changes made will add reasonable restrictions on the construction of accessory dwelling units in Orinda. This will result in a slight reduction in the number and size of units (and associated impacts) that would be allowed under the currently applicable state law regarding accessory dwelling units.

SECTION 7. This ordinance becomes effective 30 days after adoption.

SECTION 8. The City Clerk shall either (a) have this ordinance published once within fifteen (15) days after adoption in a newspaper of general circulation, or (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

Following a duly noticed public hearing, the foregoing ordinance was introduced at a regular meeting of the City Council of the City of Orinda held on July 18, 2017 and was adopted and ordered published at a regular meeting held on August 1, 2017 by the following vote:

AYES: COUNCILMEMBERS: Gee, Miller, Orr, Phillips, Worth

NOES: COUNCILMEMBERS: None
ABSENT: COUNCILMEMBERS: None
ABSTAIN: COUNCILMEMBERS: None

Eve Phillips, Mayor

ATTEST:

Sheri Spediacci, City Clerk

Attachment A

17.3.4 – Accessory Dwelling Units

- A. Purpose. The purpose of this section is to comply with state law regarding accessory dwelling units (California Government Code Section 65852.2).
- B. Limited Review (Ministerial).
 - 1. Category One Accessory Dwelling Unit. Any accessory dwelling unit that is wholly contained within the existing space of a single-family dwelling or accessory structure shall meet the following development standards and use restrictions:
 - a. The unit is located in an RVL-E, RVL, RL-40, RL-20, RL-15, RL-12, RL-10 or RL-6 zoning district.
 - b. Only one (1) accessory dwelling unit is permitted per lot.
 - c. The accessory dwelling unit has exterior access independent from the existing residence.
 - d. The existing single-family residence or accessory structure has side and rear setbacks sufficient for fire safety. If the existing residence or structure complies with the City's setback requirements as described in Chapter 17.4, it shall automatically meet this standard.
 - e. The accessory dwelling unit complies with applicable building codes and health and safety regulations; however, the accessory dwelling unit is not required to provide fire sprinklers if fire sprinklers are not required for the primary residence.
 - f. The single-family dwelling or accessory structure was constructed in compliance with all then-applicable City requirements or was in existence on January 1, 2017.
 - 2. Category Two Accessory Dwelling Unit. Any accessory dwelling unit that involves the addition of square footage to an existing single-family dwelling or accessory structure shall meet the following development standards and use restrictions:
 - a. The unit is located in an RVL-E, RVL, RL-40, RL-20, RL-15, RL-12, RL-10, RL-6 or RM zoning district.
 - b. The lot on which the accessory dwelling unit is located contains an existing, single-family dwelling.
 - c. Only one (1) accessory dwelling unit is permitted on a lot.
 - d. The accessory dwelling unit meets all other applicable requirements of this code that do not involve discretionary review of the proposed use including, but not limited to, building height, setback, water channel setback, tree removal, ridgeline and

environmental preservation overlay, payment of applicable fees, and building code requirements; however:

- i. To the extent required by California Government Code Section 65852.2, no passageway is required in conjunction with the construction of an accessory dwelling unit.
 - ii. The side and rear setback requirements for an accessory dwelling unit that is constructed above an existing private garage is five (5) feet.
 - iii. The accessory dwelling unit is not required to provide fire sprinklers if fire sprinklers are not required for the primary residence.
- e. The accessory dwelling unit is not intended for sale separate from the primary residence (rental is allowed).
- f. The accessory dwelling unit is either attached to the existing dwelling unit or partially located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.
- g. Maximum size.
- i. The accessory dwelling unit shall meet all of the following requirements:
 - A. For an attached accessory dwelling unit, the floor area shall not exceed fifty (50) percent of the existing living area, with a maximum increase in floor area of one-thousand-two-hundred (1,200) adjusted square feet.
 - B. For a detached accessory dwelling unit, the floor area shall not exceed one-thousand-two-hundred (1,200) adjusted square feet.
 - C. Compliance with the floor area requirements in Section 17.6.2.
 - ii. For determining compliance with this Subsection, the floor area of the accessory dwelling unit shall be calculated pursuant to Section 17.6.3.
- h. Parking.
- i. One (1) all-weather surface, off-street parking space measuring at least nine (9) feet by nineteen (19) feet shall be provided per bedroom included in the accessory dwelling unit, up to a maximum of two (2) spaces. The required parking space(s) can be located as tandem space(s) in an existing driveway or in required setbacks. See Section

17.16.2 for factors used by the City to determine whether a room is a bedroom for purposes of this subsection.

ii. The above parking requirements shall not apply:

- A. to an accessory dwelling unit that is located within one-half (0.5) mile of public transit, defined as an existing BART or public bus stop;
- B. to an accessory dwelling unit that is located within an architecturally and historically significant historic district;
- C. when on-street parking permits are required but not offered to the occupant of the accessory dwelling unit;
or
- D. to an accessory dwelling unit that is located within one (1) block of the designated pick-up or drop-off location of a car-share vehicle, where such vehicle is owned by a car-sharing company.

i. Any skirt wall developed in conjunction with an accessory dwelling unit is less than six (6) feet in height.

- 3. Within one-hundred-and-twenty (120) days of receipt of a complete application, the Planning Director shall ministerially process for approval any application for a building permit for a Category One or Two accessory dwelling unit that meets all the criteria in this Section.
- 4. When a Category One or Two accessory dwelling unit is proposed in conjunction with another use or structure, the City shall simultaneously and separately process (a) the accessory dwelling unit application in accordance with this Section, independently of the other use or structure, and (b) the other use or structure in accordance with this Code, independently of the accessory dwelling unit. This subsection shall not apply if the accessory dwelling unit is dependent on the other use or structure (for instance, if an accessory dwelling unit is proposed on top of a new garage for which discretionary review is required). In that instance, the accessory dwelling unit shall be processed in accordance with this Section subsequent to approval of the other use or structure.

C. Full Review (Discretionary).

- 1. Category Three Accessory Dwelling Unit. Any accessory dwelling unit proposed in conjunction with a new single-family dwelling on a vacant lot shall meet the following requirements:
 - a. Design review approval pursuant to Chapter 17.30.
 - b. The unit is located in an RVL-E, RVL, RL-40, RL-20, RL-15, RL-12, RL-10, or RL-6 zoning district.
 - c. Only one (1) accessory dwelling unit is permitted on a lot.

- d. The accessory dwelling unit meets all other applicable requirements of this code.
 - e. The accessory dwelling unit is not intended for sale separate from the primary residence and may be rented.
 - f. Maximum size.
 - i. The floor area of the accessory dwelling unit shall not exceed one-thousand-two-hundred (1,200) square feet, provided that the accessory dwelling unit must be included in determining the single family residence's compliance with the floor area requirements in Section 17.6.2 and any other applicable maximum size requirements (e.g., requirements in any applicable development agreement).
 - ii. For determining compliance with this subsection, the floor area of the accessory dwelling unit shall be calculated pursuant to Section 17.6.3.
 - g. Parking.
 - i. One (1) all-weather surface, off-street parking space measuring at least nine (9) feet by nineteen (19) feet shall be provided per bedroom included in the accessory dwelling unit, up to a maximum of two (2) spaces. See Section 17.16.2 for factors used by the City to determine whether a room is a bedroom for purposes of this subsection.
2. Non-Compliant Proposals. If the requirements for a Category One, Two or Three Accessory Dwelling Unit, above, are not met, the proposed accessory dwelling unit cannot be approved under this Section. Notwithstanding the foregoing, applicants may seek approval of the unit, addition, or renovation under the City's generally-applicable standards and procedures.
- D. Converted Parking. When a private garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an accessory dwelling unit, the spaces must be replaced if such spaces are required under this title. The replacement spaces may be located in configuration on the same lot as the accessory dwelling unit, including, but not limited to, covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. Compliance with this subsection may result in the loss of covered parking associated with a single-family residence, for which an exception shall not be required.
- E. Existing Accessory Dwelling Unit. An existing accessory dwelling unit may be enlarged or modified only in accordance with the requirements of this section.
- F. Density. To the extent required by California Government Code Section 65852.2, an accessory dwelling unit built in conformance with this section does not count

toward the allowed density for the lot upon which the accessory dwelling unit is located.

- G. General Plan and Zoning Designations. Accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designations for the lot.

Section 17.2.3 - Definitions (addition to be inserted in alphabetical order)

“Accessory dwelling unit” means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons on the same parcel as a single family dwelling. It shall include permanent provisions for living, sleeping, eating, cooking (see definition of kitchen), and sanitation. An accessory dwelling unit also includes the following:

(a) An efficiency unit, as defined in Health and Safety Code § 17958.1.

(b) A manufactured home, as defined in Health and Safety Code § 18007.

“Accessory structure” means a structure that is incidental to the principal permitted or conditionally permitted structure or use on a site and customarily found on the same site. An accessory structure includes, as regulated by the respective zone of the property, a garage, storage shed, greenhouse, deck, and accessory ~~living quarters dwelling units~~. Small storage buildings and shelters shall be seen as accessory structures, regardless of structural definitions used to determine UBC compliance. Accessory structure does not include fences and landscape structures.

“Apartment” means a multifamily dwelling consisting of two or more dwelling units under single ownership that are offered for rent or lease. This definition excludes any single-family dwelling that contains, is attached to, or is on the same lot as an accessory dwelling unit.

Dwelling, Multifamily. “Multifamily dwelling” means a building on one lot used and designed as a dwelling for two or more families living independently of each other with an individual kitchen for each. This definition includes, without limitation, apartments, residential condominiums and townhomes. This definition excludes ~~second~~ any single-family dwelling that contains or is attached to an accessory dwelling units, as defined herein.

Dwelling, Single-Family. “Single-family dwelling” means a building on one lot designed exclusively for occupancy by one family, even if the building or lot also contains an accessory dwelling unit.

“Kitchen” means any room or part of a room within a building which is designed, built, used or intended to be used for storage and food preparation and dishwashing in conjunction with the establishment or use of a dwelling unit; but not including a bar, butler's pantry or similar room adjacent to or connected with a kitchen. Food preparation facilities shall include 220 volt electrical or natural or propane gas service, unless otherwise specified by this Code.

“Living area” means the interior habitable area of a dwelling unit including basements and attics but does not include a private garage or any accessory structure.

“Multifamily residential” means the multifamily residential zone characterized by two or more dwelling units on a lot. This classification includes mobile homes and manufactured housing; it excludes ~~second~~ accessory dwelling units in all residential districts which comply with the requirements of Title 17.

“Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of an accessory dwelling unit.

~~“Second unit” means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking and sanitation on the same parcel as the single-family dwelling is situated. A second unit also includes the following: (1) an efficiency unit, as defined in Section 17958.1 of Health and Safety Code, and (2) a manufactured home, as defined in Section 18007 of the Health and Safety Code.~~

“Single-family residential” means a building containing one dwelling unit located on a single lot. This classification includes a mobile home and manufactured housing, and lots containing a single-family dwelling and one accessory dwelling unit.

Schedule 17.3.3

RVL, RL and RM DISTRICTS—LAND USE REGULATIONS	P Permitted U Use Permit Required L Permitted, but limited by additional regulations T Temporary Event Permit — Not Permitted		
	RVL	RL	RM
Residential Uses			
• Second <u>Accessory dwelling</u> unit	P	P	<u>P</u>

17.4.22 - Accessory structures

A. Garages, accessory dwelling units proposed in new accessory structures, and existing accessory structures enlarged to accommodate new accessory dwelling units
An accessory structure shall conform to the standard minimum setback requirements of the underlying zone as described in Sections 17.4.2 and 17.4.3, subject to the following exceptions and conditions:

AB. All other ~~For an accessory structures other than a garage or second unit,~~ shall conform to the standard minimum setback requirements of the underlying zone as described in Sections 17.4.2 and 17.4.3, except:

1. ~~t~~The minimum setback from any property line with street frontage is fifty (50) feet.¹

~~B. For an accessory structure other than a garage or second unit,~~ 2. The minimum setback from side and rear property lines without street frontage is five (5) feet.

3. The setback for Front, Side and Rear Yards with street frontage may, at the applicant's discretion, be measured from the edge of the existing paved roadway rather than from the property line with street frontage (i.e., the right-of-way boundary), provided the resulting setback measures no less than forty (40) feet from the property line with street frontage.

~~C. Minimum separation from main structure is five (5) feet.~~

~~D. 4. The maximum height of the portion of the accessory structure built within the standard minimum yard setback for the underlying zone as described in Sections 17.4.2 and 17.4.3 shall be fifteen (15) feet.~~

5. If any portion of an accessory structure encroaches into the standard minimum yard setbacks for the underlying zone as described in Sections 17.4.2 and 17.4.3, ~~E. The maximum size of any one that accessory structure of which any part encroaches into the standard minimum yard setbacks for the underlying zone as described in Section 17.4.3 shall be four hundred (400) square feet.~~

6. If a parcel contains more than one accessory structure that encroach into the standard minimum yard setbacks for the underlying zone as described in Sections 17.4.2 and 17.4.3, ~~tThe total size of all such accessory structures, any part of which structure encroaches into the standard setbacks of the subject lot, is shall be eight hundred (800) square feet.~~

C. The minimum separation between an accessory structure and the main structure is five (5) feet.

FD. Structures to be used for animals shall comply with the additional requirements specified for "animal structures."

Note—¹ ~~The setback for Front, Side and Rear Yards with street frontage may, at the applicant's discretion, be measured from the edge of the existing paved roadway rather than from the property line with street frontage (i.e., the right of way boundary);~~

~~provided the resulting setback measures no less than forty (40) feet from the property line with street frontage.~~

17.5.4 -~~Design review requirement~~ Development restrictions.

A. ~~If a proposed residence or addition is~~ Development located partially or entirely in a ridgeline overlay zone, or partially or entirely within the environmental preservation zone shall be less than five hundred (500) square feet of floor area and less than eighteen (18) feet in height except as provided in subsection B below.; ~~a building permit for any development exceeding five hundred (500) square feet of floor area and over 18 feet in height may only be issued after obtaining~~

B. An applicant may elect to seek approval to exceed the maximum allowed size described in subsection A, above, through general design review approval under Section 17.30.5 and special design review approval under Section 17.30.7, except as provided in Section 17.5.6.

17.6.2 - Determining allowed home size.

For the reasons set forth in Section 17.6.1, the size of a proposed new home or expansion of an existing home, including an expansion to accommodate an accessory dwelling unit in conformance with Section 17.3.4, shall be established as set forth in this section.

A. Lots Under Twenty Thousand Square Feet. No single-family residence on a lot of less than twenty thousand (20,000) square feet may exceed the values shown on the schedule found in Section 17.6.8 entitled "Maximum Allowable Home Size Without Design Review Approval for Lots Less Than 20,000 Square Feet" except as provided in Subsection D below, ~~unless a larger home is approved through design review.~~ The "Maximum Floor Area" values shown on that Section 17.6.8 schedule shall be increased by five (5) square feet for every linear foot of open space abutting the lot proposed for development, provided at least 75 linear feet of open space abut the lot proposed for development. For the purposes of this section, "open space" must not contain any buildings within 35 feet of the lot proposed for development. "Open space" includes EBMUD watershed property, PG&E transmission line rights-of-way, golf course fairways, East Bay Regional Park District parkland and portions of City parks in a natural state.

B. All Other Lots. No single-family residence on a lot of twenty thousand (20,000) square feet or more may have a floor area exceeding the product of .20 times the net parcel area of the lot except as provided in Subsection D below, ~~unless a larger home is approved through design review.~~

C. Large Homes. The maximum floor area for a single-family residence shall not exceed seven thousand (7,000) square feet, regardless of lot size except as provided in Subsection D below, ~~unless a larger home is approved through design review,~~ subject to the two hundred (200) foot exemption in Section 17.6.5(B).

D. ~~Residential Projects Subject to Design Review.~~ An applicant may elect to seek approval to exceed the maximum allowed sizes described in Subsections A-C, above, through a design review application to the City. Such applications shall be granted only if exceeding the maximum allowed sizes described in Subsections A-C, above, will not cause or contribute to inconsistency with the City's Basic design review standards (Section 17.30.5) or any other applicable design review standards. ~~The maximum size of a single-family residential project subject to design review will be determined by the application of the design review standards of Chapter 17.30 in the discretion of the decision maker.~~

17.6.3 - Calculation of floor area.

The floor area of a single-family residence shall be calculated as follows:

A. The floor area shall include the total horizontal area of each floor within the exterior walls of all buildings on a lot, including attached and detached primary and accessory dwelling units, buildings, garages, carports (measured by total roof area), storage spaces and any enclosed space with a seven-foot or greater ceiling height, and as measured at the exterior face of the enclosing walls. The area of a fully enclosed atrium shall be calculated as interior floor area.

B. The floor area shall exclude:

1. Attics and lofts, and/or portions of attics and lofts, which have less than an eight-foot ceiling height as measured from the top of exterior framing elements;
2. Basements where the finished floor level directly above is less than four feet above the finished grade on all sides or basements where the finished floor level directly above is less than two feet above the finished grade on all but one side;
3. Building recesses as follows:
 - a. On existing residences, balconies, porches, decks or other structures, (except carports) where the longest dimension is unenclosed;
 - b. On proposed construction, only portions of building recesses recessed less than eight feet deep where at least one of the longest dimensions is unenclosed; and
 - c. On existing residences and proposed construction, up to 150 square feet of covered porches.

17.6.8 - Chapter 17.6 schedule.

Maximum Allowable Home Size Without Design Review Approval For Lots Less Than
20,000 sq. ft.

Note: The "Maximum Floor Area" as listed below excludes the first four hundred (400) square feet of garage and/or carport roof area, but includes all such garage/carport areas in excess of the first four hundred (400) square feet. Application of the design review standards of Chapter 17.30 may result in homes that are either smaller or larger than the maximum floor areas listed below.

Schedule 17.16.4A

Off-street Parking and Loading Spaces Required

Use Classifications	Schedule A Off-Street Parking Spaces	Off-Street Loading Spaces per Group Classification on Schedule B
<u>Accessory Second Dwelling Unit</u>	See <u>Section Subsection 17.3.4.A.7</u>	

17.30.3 - Design review requirement.

Design review approval prior to issuance of a building permit is required for a project which meets any one or more of the following descriptions:

A. Single-Family Residential Projects.

1. A new single-family home that is not a renovation;
2. An addition which exceeds one thousand (1,000) square feet;
3. An addition which creates a second story above an existing single story residence and an addition of a second story under an existing single story residence if the City receives a request for design review where one does not presently exist;
4. An addition over one hundred ninety-nine (199) square feet in size which:
 - a. Is proposed on a small or narrow lot as defined in Section 17.30.8 of this chapter; or
 - b. Will result in a residence with a total floor area exceeding seven thousand (7,000) square feet, as provided in Section 17.30.6 of this chapter.
5. An addition over five hundred (500) square feet of floor area and over 18 feet in height located partially or entirely in the ridgeline or environmental preservation overlay district, except as provided in Section 17.5.6 of this chapter;
6. An addition that results in a home that is larger than the maximum permissible floor area without design review under Chapter 17.6.
7. A renovation which includes changes in doors or windows, or both, and an affected neighbor requests design review in accordance with Subsection 17.42.1.B. of this title. All other renovations are exempt from design review so long as proof is made according to Planning Department requirements that the project meets the definition of a renovation;
8. An addition, including one under two hundred (200) square feet, will be subject to design review if an approval for either a new residence or for an exterior addition has been granted for the property within the past five years from the time of the subject application and design review would have been required under this section for the multiple projects combined and deemed to be a single project;
9. An addition of newly created habitable space in an attic or basement which is fully contained within the building envelope of any conforming or legally nonconforming single-family residential structure, as determined by

the Zoning Administrator and an affected neighbor requests design review under Subsection 17.42.1.B. of this title;

~~10. A second unit, regardless of size, proposed as part of a project for a new residence or an attached second unit which is proposed as part of an addition that is otherwise subject to design review under this section. For purposes of this Subsection 17.30.3.A, the method of calculating floor area found in Chapter 17.6 shall apply.~~

B. Other Projects. Design review approval is required prior to an exterior change of any nonresidential building in the residential districts and any building in the following districts: RM, DC, DO, PS, PR, OS, PD and the SP districts, except for repair work and minor alterations as determined in the reasonable discretion of the Zoning Administrator. Changes which affect the exterior of a nonresidential building shall include proposed changes to signs and commercial brand identification materials, including but not limited to exterior color changes.

17.32.2 - Exceptions—General.

An exception from the development standards for setbacks, height, the number of stories, fences and retaining walls, single-family residential parking requirements, ~~second unit regulations~~, number of replacement trees, and for maximum lot coverage and minimum landscape area under this title may be granted.

A. Examples. Such exceptions may include but are not limited to the following examples:

1. A shifting of the building mass into a required setback, which thus allows for a greater than required setback elsewhere on the property, which may be needed to reduce an off-site impact on an adjoining neighbor. In such cases, the resulting setback encroachment may be of lesser community impact than had the alternate setback be constructed within the setbacks;
2. A reduction in setback requirement, an increase in height of a building, fence or retaining wall which exceeds the permitted standard, or any combination of such deviations which are either: (1) necessary to respond to the limitations created by the characteristics of the site or an existing structure; or (2) desirable to enable greater design flexibility where appropriately mitigated by the site's unique characteristics;
3. An allowance to exceed the height or story limitations in cases where such development would be less intrusive visually or environmentally than a similarly sized more horizontal building mass;
4. A reduction in setback requirements to allow architectural elements such as arbors, trellises, porches and breezeways which will visually enhance the appearance of existing nonconforming structures;
5. A decrease in front yard setback for garage placement for nonfront-loading garages (swing entry) on narrow lots or hillside lots, reducing the visual bulk and further articulating the building mass;
6. On-site retaining walls greater in height than those allowed by Section 17.4.27 of this title which are not visible from off-site locations;
7. A home of unusual design, or a home with a striking feature which is not visible to the general public or neighboring properties because of the physical characteristics of the site;
8. Reserved;
9. Outdoor dining which does not meet the regulation specified in Subsection 17.8.5(I) of this title;
10. Take-out restaurants which do not meet the regulation specified in Subsection 17.8.5(I) of this title.

B. Exemptions for Existing Nonconformities. An exception from the development standards for setbacks, height, the number of stories, fences and retaining walls, single-family residential parking requirements, and for maximum lot coverage and minimum landscape area under Chapter 17.8 of this title shall not be required for the following types of projects:

1. A renovation as defined in Section 17.2.3 of this title.
2. A small home addition described in Subsection 17.19.3(D) of this title.
3. An attic or basement conversion as described in Subsection 17.19.3(~~EE~~) of this title.
4. A renovation with a change in a door or window as described in Subsection 17.19.3(C), except when there is an existing setback nonconformity and review of that setback nonconformity is requested by an affected neighbor under Subsection 17.42.1(B) of this title.

909548.1