

LID ELEMENT #21: VARIANCES, DEVIATIONS AND EXCEPTIONS

OBJECTIVE

Examine the existing provisions and code that require a variance, deviation, or exception process prior to incorporating LID elements into site design in order to remove barriers and encourage the use of low impact development.

CONSIDERATIONS

This element differs from some other elements in that it addresses a process rather than a design technique. Nearly all aspects of LID could be accommodated in existing City codes either through the elimination of the need for a variance, deviation, or exceptions process (if already required), or through the addition of a specified process to utilize a LID element not currently considered in City code.

Variations apply to proposed changes to requirements of the Olympia Municipal Code (OMC) and follow processes mandated by the State. Deviations are proposed changes to the requirements of the Engineering Design and Development Standards (EDDS). Exceptions are proposed changes to the requirements of the Drainage Design and Erosion Control Manual (DDECM).

TRADITIONAL APPROACH TO USING VARIANCES, DEVIATIONS AND EXCEPTIONS

Typically, development proposals are designed to meet the prescriptive standards outlined in development regulations. Meeting these requirements allows the project to move forward on a clearly understood timeline and schedule. City staff are experienced at efficiently processing these applications. However, when developments vary from City standards, they can run into unknown delays, design costs and administrative procedures which can impact the project schedule, finished product or financing costs.

Sometimes, flexibility is sought in those cases where site conditions complicate the clear application of the regulation. The codes allow a variance or deviation to the requirements, but have outlined impact, safety, operations, maintenance and aesthetic criteria that must be satisfied before allowing the non-standard practice.

CODES AND STANDARDS REVIEWED

OMC Chapters 17.48, 17.52, 18.66, and 18.72 (variances, under specific conditions)

Engineering Design and Development Standards (EDDS) Section 1.050 (deviations from standards)

Drainage Design and Erosion Control Manual (DDECM) Volume 1 Section 2.8 (Exceptions)

“Usually, standards are very prescriptive and do not allow much deviation, which can present barriers to effectively integrating LID into a site. Such standards should be reviewed and modified so the LID approach is used and there is enough flexibility to allow the best design possible.

Integrating LID into Local Codes: A Guidebook for Local Governments, Puget Sound Partnership (2012)

BENEFITS OF USING VARIANCES, DEVIATIONS AND EXCEPTIONS TO ACHIEVE LID

Development regulations are adopted by the City to implement the goals and policies set forth in the Comprehensive Plan. The intent is that these code requirements, applied over time and to similar types of projects, will achieve the quality of life the residents expect. When developments request a modification to this standard, development is proposed to occur in a manner that is not otherwise permitted. While sites can have unique characteristics that make the strict application of the code difficult, modifications from codes and standards should be avoided or minimized whenever possible and therefore the threshold for granting these waivers usually includes some type of hardship due to of the physical attributes of the property site.

Ideally, variances and deviations from codes and standards should be avoided or minimized.

However, having an avenue available to consider exceptions and alternatives can provide flexibility, which can be particularly important when implementing new technology or dealing with unusual or challenging physical site conditions. The current method of using variances (OMC), deviations (EDDS) and exceptions (DDECM) is effective in that it clearly outlines the process and establishes the criteria needed from the applicant in order to gain approval of a changed standard. This allows a project and site specific review of the LID technique and helps the City to balance LID with other priorities. However, a secondary permitting process acts as a disincentive to using LID, as delays can increase development costs and add uncertainty in the outcome.

OLYMPIA CODE ANALYSIS

The OMC has distinct standards that dictate building setbacks, maximum building square footage, density, height, maximum lot coverage or impervious area, and other dimensional or visual elements for each zoning district or roadway type. Allowing flexibility in setback and height limitations, or increased residential densities in exchange for reducing impervious surfaces or managing stormwater on-site beyond what is required, could help facilitate use of LID.

Areas of the OMC that allow significant flexibility are the co-housing and cottage housing provisions, which promote clustering, pedestrian amenities and density bonuses depending on the type and mix of housing on the site. The code also authorizes reductions in lot sizes, setbacks and other dimensions by up to 20% to protect environmentally sensitive areas and preserve open space. These approaches do not require variances or other exceptional approvals.

OMC 17.48 addresses subdivision standards that guide the design of new lots, streets, landscaping, storm drainage and tree preservation. As addressed in other elements, there are numerous opportunities to integrate LID to promote clustering, support greater flexibility for setbacks, and provide guidance on using common open space, recreation areas, and streets in a manner that promotes natural hydrology. Existing OMC Chapter 18.04.080(4) provides density bonuses when certain standards are met.

Tables 1A and 1B outline the existing framework for variances from requirements of the OMC and deviations from requirements in the EDDS, as well as new provisions for exceptions outlined in the 2012 Stormwater Management Manual for Western Washington (SWMMWW):

Table 1A: Overview of Current OMC Regulations

| | OMC Variances Title 18 Unified Development Code (18.66) | OMC Variances Title 17 Subdivisions (17.52) |
|--------------------|---|--|
| Public Notice | Notice to parcels within 300 feet & public hearing | Notice to parcels within 300 feet & public hearing |
| Approval Authority | Hearings Examiner | Hearings Examiner (concurrent with hearing and decision on preliminary plat) |
| Appealable | Yes, to Superior Court | Yes, to Superior Court |
| Review Criteria | <p>A. Before any variance is granted, the Hearing Examiner shall find that the following circumstances exist:</p> <ol style="list-style-type: none"> 1. That the proposed variance will not amount to a rezone or constitute a change in the district boundaries shown on the Official Zoning Map; 2. That because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property the variance is necessary to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; 3. That the special conditions and circumstances do not result from the actions of the applicant; 4. That granting of the variance will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property is located; 5. That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which subject property is situated; and 6. That the variance is the minimum variance necessary to provide the rights and privileges described above. | <p>No variance shall be granted which would have the effect of granting a special privilege not shared by other property in the same vicinity. Before granting a variance, the hearing examiner shall determine whether the following conditions apply to the requested variance:</p> <ol style="list-style-type: none"> A. There are exceptional or extraordinary circumstances or conditions which apply to the land referred to in the application which do not apply generally to lands in the vicinity. These include, but are not limited to, size, shape, topography, location or surroundings. B. The granting of the application is necessary for the preservation and enjoyment of substantial property rights of the petitioner. C. The granting of the application will not, under the circumstances of the particular case, affect adversely the health or safety of persons residing or working in the neighborhood of the property referred to in the application and will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood or adversely affect the comprehensive plan. Provided that, to the extent the variance request pertains to Chapter 18.56, planned residential development, or Chapter 18.57, master planned development, that chapter shall apply. |

Table 1B: Overview of Current EDDS and SWMMWW Regulations

| | Engineering Design and Development Standards, Deviations (1.050) | Stormwater Management Manual for Western Washington (SWMMWW), 2012 (Dept. of Ecology) |
|--------------------|---|--|
| Public Notice | No | Yes |
| Approval Authority | City Engineer | Drainage Manual Administrator |
| Appealable | No (Currently Amendment Being Considered to Make Deviations Appealable) | No |
| Review Criteria | <p>A. The deviation will achieve the intended result with a comparable or superior design and quality of improvement; and</p> <p>B. The deviation will not adversely affect safety or operations; and</p> <p>C. The deviation will not adversely affect maintenance and its associated cost; and</p> <p>D. The deviation will not adversely affect the aesthetic appearance; and</p> <p>E. The deviation will not impact future expansion, development, or redevelopment.</p> | <p>The administrator may grant an exception to the minimum requirements if such application imposes a severe and unexpected economic hardship. To determine whether the application imposes a severe and unexpected economic hardship on the project applicant, the administrator must consider and document - with written findings of fact -the following:</p> <ul style="list-style-type: none"> • The current (pre-project) use of the site, and how the application of the minimum requirement(s) restricts the proposed use of the site compared to the restrictions that existed prior to the adoption of the minimum requirements; and • The possible remaining uses of the site if the exception were not granted; and • The uses of the site that would have been allowed prior to the adoption of the minimum requirements; and • A comparison of the estimated amount and percentage of value loss as a result of the minimum requirements versus the estimated amount and percentage of value loss as a result of requirements that existed prior to adoption of the minimum requirements; and • The feasibility for the owner to alter the project to apply the minimum requirements. <p>In addition, any exception must meet the following criteria:</p> <ul style="list-style-type: none"> • The exception will not increase risk to the public health and welfare, nor be injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and • The exception is the least possible exception that could be granted to comply with the intent of the Minimum Requirements. |

Currently, these three documents have different ways of handling requests for changes from adopted codes. The City does not have a specified process for combined review of variances and deviations requested for a project, and also does not have review criteria that are specifically related to low impact development.

HURDLES TO USING VARIANCE, EXCEPTIONS AND DEVIATIONS

Variances, exceptions and deviations are intended to be infrequently used processes, not a normal aspect of land use planning or municipal engineering. Using these methods to circumvent the minimum requirements within the code is a significant administrative and public process that should not be considered a routine way to implement a “preferred” design technique that is otherwise using Best Management Practices.

The variance, exception, deviation processes are the result of a well-designed approach that staff and developers have familiarity with, and amending the codes to allow additional changes could upset the balance that has been achieved.

Increasing the use of variances increases design and regulatory costs, can prolong the approval process, and can increase a builder’s financing costs. Such a process may require additional design and engineering studies, takes more time, which increases the developer’s uncertainty and interest charges, and has inherent risk that the variance may not be granted.

OPTIONS CONSIDERED

- Option 1: No change- The existing variance, deviation and exception processes and provisions are adequate to address requests for variations from standards and codes related to low impact development.
- Option 2: Develop a single variance (OMC), deviation (EDDS) and exception (DDECM) process that would apply to all requests for variances, deviations and/or exceptions that are related to low impact development.
- Option 3: Modify the existing provisions in OMC 18.66 and 17.52, EDDS 1.050, and add new Section 2.8 to the Olympia DDECM so they each include their own variance process and review criteria that accommodates LID-related requests.
- Option 4: Incorporate LID into all codes without the requirement for a variance, exception or deviation application.



Combining the public notice and comment periods is one benefit of a single variance application.

ANALYSIS

Option 1 (no change) does not change the type and criteria for variances, deviations and exceptions currently found in the OMC, EDDS and Stormwater Manual. However, LID techniques are not listed as potential reasons for a modification from standards and therefore developments may not be aware that LID use is a possibility. LID implementation also may not be as effective because the options are not coordinated with other code sections.

Option 2 (single modification process) allows for consideration of LID-based techniques in code and standard modifications into a project by incorporating additional review criteria in the code. This approach follows the State's request to make LID the preferred and commonly-used approach to development. Example criteria that support code and standard modifications for the purposes of achieving LID include:

The modification will result in one or more of the following:

- a. Innovative site design;
- b. Increased on-site stormwater retention using a variety of vegetation and landscape conditions;
- c. Retention or re-creation of original natural habitat conditions over a significant portion of the site;
- d. Improved on-site water quality beyond that required by current applicable regulations; or
- e. Retention or re-creation of pre-development and/or natural hydrologic conditions, and retention or re-creation of forested watershed conditions.

In addition to including LID review criteria, a single application for all requested variances, deviations and exceptions would allow staff to see the entire package of requested LID-related code and standard modifications together. Combining the public notice process and a single decision by the Hearings Examiner could be included in this option. This approach facilitates a coordinated review of the full picture of code variations to ensure that they will work together. Additionally, this approach is more transparent and ensures that the public will see the full set of code and standard variations at once for a project.

A new code section could be added to OMC 18.66 Variances and Unusual Uses (i.e., 18.66.100) that outlines a unified application, single public notice process and a combined review by the Hearings Examiner. Additionally, the new review criteria as stated above would be included. Code language would be added to OMC 17.52, EDDS 1.050 and the new proposed section 2.8 of the Olympia DDECM to point LID-related requests for code modifications to proposed new section OMC 18.66.100.

A consequence of Option 2 is it elevates what might be an otherwise routine administrative review process into a full public notification process which would eventually include a decision by the Hearings Examiner and corresponding appeal timeframes.

Option 3 (update existing processes for LID requests) would update each section but still require a variance, deviation or exception application as needed. LID elements would still be considered a divergence from the accepted and standard practice. This option would also complicate applications that are now solely an administrative process.

Option 4 (incorporate LID into codes so no modifications needed) would update all sections of the OMC, EDDS and DDECM to incorporate LID elements by practice without the need for a variance or additional administrative review mechanism. Minimum intensity standards and dimensional requirements would have to be adjusted throughout the development code to accommodate the use of LID. This option would demonstrate that LID has been fully interwoven into the code and is considered the normal method of review, conditioning and approval.

RECOMMENDATION

Staff recommends Option 4. Option 4 is preferred because it removes administrative barriers to using LID techniques on sites, recognizing that the use of variances should continue to be the exception rather than the rule. Although there is more upfront work from staff, it is clearer to applicants and the public that this is how LID is accomplished in the City.

Option 1 would result in no change in current practice. Options 2 would create one process for seeking modifications to the OMC, EDDS or DDECM. However, since the variance process is a State mandated process, all modifications would have to follow the current variance process. This would include a public hearing and could overcomplicate simple modification requests. Option 3 would provide LID specificity to the current variance, deviation and exception requests but would not necessarily result in an easier process.

