



## City of Ketchum Planning & Building

### STAFF REPORT KETCHUM PLANNING AND ZONING COMMISSION REGULAR MEETING OF APRIL 11, 2023 MOUNTAIN OVERLAY DESIGN REVIEW DISCUSSION

#### INTRODUCTION AND BACKGROUND

The City of Ketchum Planning and Building Department have seen an increase in redevelopment and new development within the Mountain Overlay (MO) district in the past few years generally on the city's more complex sites that are mostly in areas of 25% slopes or on sites where previous development has occurred that has shaped the site in a specific way. This is likely a result of the high amount of growth and development the city experienced during COVID and the limited number of parcels available for development within the city limits. Developments within the MO district require design review and must show compliance with not only the design review improvements and standards listed in 17.96, but also the standards and criteria outlined in 17.104.070.A. When working with more complex sites and development proposals, the MO design review criteria becomes difficult to navigate as each site is unique and some of the criteria are very broad.

The purpose of the MO district is to:

- A. To protect the public health, safety and welfare of inhabitants of hillside areas;
- B. To encourage land uses harmonious with existing natural resources;
- C. To prohibit detrimental alteration of existing topography and terrain, leaving hillsides generally open and unobstructed, to prohibit scarring by roadways;
- D. To protect natural land features and wildlife habitat;
- E. To minimize or prohibit alteration of hilltops, rock outcrops, knolls and ridges;
- F. To facilitate adequate provision of public services and facilities (i.e., water and sewer, and police, fire and ambulance protection) through standards appropriate to local conditions;
- G. To minimize or prohibit detrimental effects on the natural topography, geology, soils, drainage, wildlife and vegetation;
- H. To carry out provisions contained in Ketchum's comprehensive plan;
- I. To minimize the visual impact of building sites and access drives that are significantly higher than the vast majority of building sites in Ketchum;
- J. To protect hillsides in Ketchum which are physically and topographically unique due to their present lack of access roads and thus their lack of development;
- K. To ensure preservation of hills, ridges, ridgelines and their natural features which are visible from the valley floor from obstruction by development;
- L. To direct building away from the higher elevations; and
- M. To assure the property owner is not deprived of economically viable use of his/her property.

There are 16 MO design review criteria that seek to influence the design and construction of the projects within the district that were developed to implement the purpose statements outlined. A full list of the criteria can be found in Attachment A. The Planning and Zoning Commission have adopted two interpretations that relate to the design review criteria, however, further clarity of the goals and objectives of the Planning and Zoning Commission for projects within the MO district are necessary to:

- Facilitate productive conversations between staff and applicants during the review process
- Provide direction and guidance to applicants of how the design review criteria is applied to previously disturbed sites and undisturbed sites

- Provide clarity on certain terms contained within the criteria and what those terms apply to

Below is some background on the history of the MO district and design review criteria. Staff has also provided an analysis of certain criteria and code interpretations that could be clarified and how staff is currently advising applicants. Staff requests the Commission review the analysis and provide feedback on each.

## **BACKGROUND**

The city's origin of regulating hillside development was contained within the subdivision regulations until the City of Ketchum first created the Mountain Overlay Zone District, review process, and criteria through Emergency Ordinance 502 in March 1989. The subdivision and zoning regulations continue to work in tandem to address hillside development but have been amended numerous times in the past to respond to development trends. Most of the review criteria was the same in 1989 as it is today, however, the following amendments have been made since initial adoption:

- 2001 – boundaries of the Mountain Overlay Zone District were expanded
- 2001 – language in criteria #2 and #9 were amended and criteria #14 was added
- 2006 – Designation of specific areas as significant landmarks and addition of criteria related to preservation of significant landmarks
- 2018 – Allowance of below grade structures in setbacks with specific criteria

In adopting Ordinance 502, the city found that orderly development of hillside areas is vital to the public interest and that the city should regulate access to, erosion of, damage from and construction on hillsides. This effort was found to be in the interest of the health, safety, and welfare of the public and that regulations should be put in place.

The 2014 City of Ketchum Comprehensive Plan outlines core values of the community and a policy framework that assists the city in strengthening those values as the community grows over time. "Community Character" is one of the ten values outlined in the plan that speaks directly to development on the hillsides stating, "Protecting and enhancing the visual character of our community gateways, the undeveloped hillsides, and night skies is a priority." The plan also states that "Unobstructed views exist in every direction in large part due to Ketchum's wide streets and lack of hillside development. These environmental features and resources sustain our economy and are why many people choose to live in Ketchum."

Policy CD-2.2 Mountain Overlay Zone outlines the city should "Continue to protect hillsides within the City and Area of City Impact from further development. Enforce and encourage strengthening of the Mountain Overlay standards of the City and County by using a variety of techniques such as clustering at lower elevations, creating conservation easements, or purchasing private property on hillsides." Policy CD-2.4 Development Designed for Natural Feature Preservation outlines the city should "Protect and incorporate natural features into newly developing areas. Conserve the natural patterns of streams, ridgelines, topography, riparian areas, and wildlife habitat areas."

Preservation of hillsides in and around Ketchum has been a north star for land use and development policies for a very long time. Providing additional guidance on how the criteria are applied will assist property owners and developers in creating projects that meet the criteria and reinforce the importance of this critical asset.

## **ANALYSIS**

The 16 MO design review criteria could be lumped into four general buckets including:

- Access and Service availability
- Building and fire code compliance
- Preservation of landscape features and significant landmarks
- Visual Impact
- Site Disturbance (horizontal and vertical)

In addition, the Planning and Zoning Commission have made interpretations in the last year regarding the allowance of pools in the MO district and redevelopment of previously disturbed sites within the MO district. Staff believes that further discussion and clarification on criteria #1, #2, #9, #14, #16 and certain elements of the two interpretations would help both staff and applicants navigate the complexities of MO district design review.

#### *Criteria #14 – Excavations/Fills/Disturbance*

Criteria #14 states “Excavations, fills and vegetation disturbance on hillsides not associated with the building construction shall be minimized.” Staff and applicants often discuss the merits of what is considered “building construction” applicants argue that all site improvements including the building, driveway, hardscape, and softscape are part of “building construction”. However, staff has generally approached the scope of building construction to be that of the buildings itself and associated access walkway and driveway improvements to access the building. Exterior amenities such as pools, hot tubs, outdoor patios and hardscape treatments, and landscaping not necessary for revegetation are generally seen as improvements outside the building construction that should be minimized. The Commission has adopted criteria for pools within the MO district as further discussed later in this report. Staff and applicants also frequently discuss the appropriateness of landscaping improvements outside revegetation of disturbed areas from “building construction” as further discussed below. Generally, staff has discouraged landscaping outside revegetation of disturbed areas in an effort to preserve the natural vegetation and open hillside landscapes as outlined in the MO district purpose statements.

#### *Criteria #9 – Disturbance For Roadways and Revegetation*

Criteria #9 states “Cuts and fills allowed for roadways shall be minimized; lengths of driveways allowed shall be minimized; all cuts and fills shall be concealed with landscaping, revegetation and/or natural stone materials. Revegetation on hillsides with a clear zone of 30 feet around all structures is recommended. Said clear zone shall include low combustible irrigated vegetation with appropriate species, on file with the Ketchum Planning Department. Revegetation outside of this clear zone should be harmonious with the surrounding hillsides.” Most of this criterion is fairly straightforward except for the last sentence which speaks to revegetation of hillsides outside the clear zone.

The term “revegetation” would apply to landscaping of disturbed areas from construction activities; however, the criteria has been applied to new landscape improvements on hillsides that are not a result of construction disturbance from “building construction” but are desires of property owners to have more formal or attractive landscaping around their homes. Staff and applicants frequently discuss the appropriateness of trees and formal planting plans proposed on hillsides that are predominantly low-lying sagebrush, other native shrubs, and hearty grasses. The design review criteria in Chapter 17.96 encourages landscape plans that feature drought tolerant native species, but the location and extent of the landscaping is guided by the MO district design review criteria. Generally, staff has discouraged the inclusion of extensive landscaping outside the clear zone and recommended applicants stick to planting plans the mimic the surrounding hillsides.

#### *Criteria #1 and #2 – Visual Impacts*

Criteria #1 and #2 reference “public vantage points entering the city or within the city”. There is general agreement that public vantage points entering the city are from key vehicular and pedestrian corridors such as Hwy 75, Warm Springs Rd, and Sun Valley Rd. However, staff and applicants frequently discuss the relevant vantage points within the city. The criteria emphasizes “public vantage points”. Staff generally considers these to be public gathering areas and parks such as Town Square, Atkinson Park, Little Park, Forest Service Park, and areas along the regional bike path. Generally, intersections within residential neighborhoods in public rights of way have not been considered “public vantage points”. Neither has visibility from Dollar Mtn or Baldy.

#### *Criteria #14 and #16*

Criteria #14 states that “excavations....shall be minimized” and Criteria #16 states that underground encroachments into setbacks may be permitted under certain criteria. Staff and applicants often debate the importance of minimizing vertical excavations for below grade improvements to meet design review criteria. Many of the purpose statements and numerous other MO design review criteria specifically reference mitigation of visual impacts and limits of disturbance of the hillside, however, these two criteria are the only ones that address below grade improvements and can potentially contradict one another. Applicants also make the argument that cutting into the hillside is a way of mitigating visual impacts as it allows for the building to be nestled into the hillside rather than sitting on top. In some instances, excavation is necessary to meet the requirements of criteria #6 and #4 (building and fire code compliance) as driveway grades need to be less steep for emergency access. Siting buildings lower on hillsides shortens the distance to buildings and lessens the grade of driveways but may require a deeper excavation down to settle the building into the hillside. Generally, when conflicting criteria arise based on specific site constraints, staff have prioritized visual disturbance and emergency service needs over concerns related to depth of excavation. Staff have been supportive of stepping buildings into the hillside but have discouraged the placement of basements as the additional excavation necessary to accommodate the basement does not contribute to the goals of mitigating visual impacts.

#### *Interpretation - Redevelopment of Hillside Lots*

The Commission has adopted an interpretation of how to evaluate redevelopment of hillside lots, meaning lots that already have a building and hillside disturbance. In the city’s subdivision ordinance (Title 16), development of areas with 25% slopes is only permitted in limited situations through a waiver. However, in the zoning regulations (Title 17), there are no limitations on development of 25% slopes except for the MO design review criteria. Because of these differences, restrictions of development on 25% slopes is only enforceable if a property is going through a subdivision process. Most redevelopment of MO district property does not include a subdivision and therefore only the MO design review criteria applies.

The following directions were provided in the interpretation.

- If the property configuration is proposed to be modified (lot line adjustment, lot consolidation etc.), then the new property configuration must establish a building envelope on the lowest portion of the property. Existing non-conforming building footprints are not permitted to be redeveloped outright. If a more compliant alternative at a lower elevation on the hillside property exists, the new home must be sited in the more suitable area for redevelopment.
- If the property configuration is not being altered or changed, then a new home may be constructed at the Commission’s discretion through Mountain Overlay Design Review provided that the project does not exceed the height or limits of disturbance of the existing non-conforming home. The building footprint shall conform as close as possible to the existing building.

Staff are often in discussions with applicants on the interface between the building footprint and the full limits of disturbance on the site. Applicants represent that disturbance related to building construction is very similar as disturbance related to over lot grading and landscaping and that the two should be treated the same. Applicants also argue that constricting a new building footprint to the footprint of the pre-existing building is unreasonable as there may be opportunities to better site the building in a different location based on size and design. Staff have also seen increases in requests to further excavate into 25% slopes on previously disturbed sites to accommodate different configurations and/or larger buildings.

Staff believes both interpretation statements directly relate to criteria #10 which states “Are there other sites on the parcel more suitable for the proposed development in order to carry out the purposes of this section.” Staff believes the purpose of the interpretation is to imply that previously disturbed areas are more suitable for development than undisturbed areas. If the Commission agrees, then clarity should be provided as to the importance or difference between disturbance related to building construction and that of overall site

disturbance. In general, staff believes that focusing on the existing disturbed area as a whole would provide some flexibility in redevelopment but would deter further excavation into 25% slopes. To date, staff has indicated to applicants that further excavation into hillsides where a reasonable amount of development area exists does not meet the MO design review criteria and should be avoided.

#### *Interpretation - Pools*

The Planning and Zoning Commission adopted criteria for pools in 2022. Much of the discussion was related to pools impact on wildlife and whether pools should be permitted in the MO district or the city as a whole. The criteria adopted is as follows:

1. Adding the footprint of the pool to the building coverage of the lot does not take the building coverage of the project over the permitted building coverage requirement.
2. The project site must be disturbed from previous development therefore the pool causes minimal disruption to the project site.
3. Prior to issuance of the building permit, the applicant must demonstrate that the pool cover is sufficient to withstand the weight of wildlife and the pool does not endanger wildlife.
4. Pool construction shall not excavate into a hillside and shall not have a visual impact on the hillside.
5. Pool size shall be minimal in size and not cause disruption to the hillside.

In staff's application of these criteria on new projects, we generally explain the guidance in relation to MO design review criteria #14 that states excavations outside of building construction should be minimized. This is specifically true for items 1, 4, and 5. As outlined above, clarity of what "building construction" includes will be helpful in this discussion. The criteria states anything outside building construction should be minimized, however, there isn't much guidance on what is reasonable and what is not. The guidance above for pools would imply that pools could be considered building construction provided they meet the guidance. However, staff and applicants frequently discuss the reasonableness of item 2. Applicants argue that this criterion is not logical and that it isn't fair to allow pools on some MO overlay properties and not others.

Staff also have frequent discussions with applicants on guidance #4 above. Applicants generally agree that the pool should not have a visual impact as that relates to criteria #1 and #2 discussed above. However, all pools are excavated into hillsides if they are below grade, which most are. There generally isn't a desire of property owners to construct pools that sit on top of existing grade aesthetically and one would argue that could create a potential visual impact depending on the location of the pool. Similar conversations are had on guidance #5, all pools would cause disruption to the hillside either through the clearing of existing vegetation or grading to set the pool into the hillside. Staff generally notes that the term disruption is a synonym for disturbance, but the degree of acceptable disturbance or excavation is not clear.

Generally, staff and applicants agree with the intent of item 3, however, evaluating the latter portion of the item that states "and the pool does not endanger wildlife" seems a bit duplicative. The surety that a pool cover is being implemented that can withstand the weight of wildlife in and of itself is the proof that the pool does not endanger wildlife. It is unclear what other impacts to wildlife pools have and therefore this element of the criteria is difficult to explain to applicants.

#### *Summary*

In general, staff believes the MO design review criteria and interpretations contribute positively to the review of development within the MO district. However, some of the criteria and interpretations don't quite align which causes confusion for staff and the applicants. This results in tension between staff and applicants and complicates the decision-making parameters for the Commission. At the meeting, staff will provide a graphic overview of how the design review criteria and the interpretations interface to aid in the discussion.

**NEXT STEPS**

As discussed during the scoping of the interim ordinance discussions, an overhaul of the mountain overlay design review criteria will be helpful. However, that effort is very detailed and warrants a larger community conversation appropriate during the comp plan/code rewrite. In the meantime, staff believes that providing some clarity on the items above will be sufficient for the time being. Based on the Commission's feedback, staff will consolidate and revise the MO design review interpretations and include additional interpretations to provide clarity to the criteria outlined in code.

**ATTACHMENTS:**

A: Mountain Overlay Design Review Criteria



City of Ketchum

# Attachment A: Mountain Overlay Design Review Criteria

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### **17.104.070 Mountain Overlay design review.**

Design review applications shall be made and processed according to the regulations contained in chapter 17.96 of this title and as follows:

- A. *Criteria and standards.* The following list of criteria and those contained in chapter 17.96 of this title must be considered and addressed by each applicant seeking design review approval. The Commission will use this list of design review criteria along with that contained in chapter 17.96 of this title as a basis to determine whether a project is to be approved, approved with conditions or denied:
1. There shall be no building on ridges or knolls which would have a material visual impact on a significant skyline visible from a public vantage point entering the City or within the City. "Material", as the term is used herein, shall be construed in light of the magnitude of the negative impact on the objectives of this section;
  2. Building, excavating, filling and vegetation disturbance on hillsides which would have a material visual impact visible from a public vantage point entering the City or within the City shall be minimized. "Material", as the term is used herein, shall be construed in light of the magnitude of the negative impact on the objectives of this section;
  3. Driveway standards as well as other applicable standards contained in title 12, chapter 12.04 of this Code shall be met;
  4. All development shall have access for fire and other emergency vehicles to within 150 feet of the furthest exterior wall of any building;
  5. Significant rock outcroppings shall not be disturbed;
  6. International Building Code (IBC) and International Fire Code (IFC) and Ketchum Fire Department requirements shall be met;
  7. Public water and sewer service shall comply with the requirements of the City;
  8. Drainage shall be controlled and maintained to not adversely affect other properties;
  9. Cuts and fills allowed for roadways shall be minimized; lengths of driveways allowed shall be minimized; all cuts and fills shall be concealed with landscaping, revegetation and/or natural stone materials. Revegetation on hillsides with a clear zone of 30 feet around all structures is recommended. Said clear zone shall include low combustible irrigated vegetation with appropriate species, on file with the Ketchum Planning Department. Revegetation outside of this clear zone should be harmonious with the surrounding hillsides;
  10. Are there other sites on the parcel more suitable for the proposed development in order to carry out the purposes of this section;
  11. Access traversing 25 percent or greater slopes does not have significant impact on drainage, snow and earthslide potential and erosion as it relates to the subject property and to adjacent properties;
  12. Utilities shall be underground;
  13. Limits of disturbance shall be established on the plans and protected by fencing on the site for the duration of construction;
  14. Excavations, fills and vegetation disturbance on hillsides not associated with the building construction shall be minimized; and



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15. Preservation of significant landmarks shall be encouraged and protected, where applicable. A significant landmark is one which gives historical and/or cultural importance to the neighborhood and/or community.
  16. Encroachments of below grade structures into required setbacks are subject to subsection 17.128.020.K of this title and shall not conflict with any applicable easements, existing underground structures, sensitive ecological areas, soil stability, drainage, other sections of this Code or other regulating codes such as adopted International Code Council Codes, or other site features concerning health, safety, and welfare.
- B. *Application information.* Information to be submitted with the application shall include, but not be limited to, topography of sufficient detail to represent slope of land, significant rock outcrops, cuts and fills required and similar features; elevations of proposed building pads and public streets providing access, private access drives; preliminary utility extension plans, drainage plans and driveway plans; and description of proposed drilling or blasting, if any. On site information may be required prior to any on site visit to the subject property by the Commission. Such information may include stakes marking boundaries of buildings, centerlines of access drives or other elements of the proposal, and/or poles illustrating proposed heights of structures, and also may include recent photographs evidencing impact(s) of the proposed development from various vantage points.
- C. *On site review.* On site review by the members of the Commission is required prior to taking action on said design review application. Extreme weather conditions or inordinate depth of snow may cause the Commission to delay said on site review not more than 180 days.

(Ord. 1135, 2015; Ord. 1186, 2018)