
TITLE 13, Chapter 15
MOUNTAIN OVERLAY ZONING DISTRICT (MO)

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13-15-1: MOUNTAIN OVERLAY (MO) ZONING DISTRICT ESTABLISHED

The mountain overlay (MO) zoning district is established to identify those areas where, after due investigation, study and deliberation, the Wallace city council finds that orderly development of hillside areas is vital to the public interest; that the city should regulate access to, erosion of, and damage from construction on hillsides; that it is obligated to protect the public health, safety and welfare; and that special regulations regarding hillside development should be imposed within such district. Site alterations within the mountain overlay district require a mountain overlay site alteration permit, which is a type of special use permit authorized by Idaho Code section 67-6512.

13-15-2: PURPOSES

The MO mountain overlay zoning district is established for the following purposes:

- A. To protect the public health, safety and welfare of the citizens of Wallace;
- B. To encourage land uses harmonious with existing natural resources;
- C. To protect scenic beauty and scenic values;
- D. To prohibit detrimental alteration of existing topography and terrain, leaving hillsides and steep sided canyons generally open and unobstructed, to prohibit scarring by roadways;
- E. To protect natural land features and wildlife habitat;
- F. To minimize or prohibit alteration of hillsides, steep slopes, canyons, and ridges;

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- G. 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;
 - H. To minimize or prohibit detrimental effects on the natural topography, geology, soils, drainage, wildlife and vegetation;
 - I. To prevent unsafe development into areas at risk to wildfires;
 - J. To carry out provisions contained in Wallace's comprehensive plan;
 - K. To minimize the visual impact of building sites and access drives at higher elevations;
 - L. To protect hillsides in Wallace which are physically and topographically unique due to their present lack of access roads and thus their lack of development;
 - M. To ensure preservation of hillsides, steep slopes, and ridgelines and their natural features which are visible from the valley floor from obstruction by development;
 - N. To protect and enhance the City of Wallace's designation as a historical site by preserving the natural environment and mountains surrounding Wallace;
 - O. To assure the property owner is not deprived of economically viable use of his/her property; and
 - P. To ensure that building, excavation, filling or vegetation on ridges or hillsides will not have a material visual impact on a significant hillside or 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 purposes outlined herein.

13-15-3: MOUNTAIN OVERLAY ZONING DISTRICT BOUNDARIES

The mountain overlay zoning district boundaries shall be an overlay district and shall designate those areas within the city found to be hillside and mountain areas that, due to their steepness of slope, high visibility from other areas within and outside of the city by the general public, unique physical characteristics including, steep mountain slopes, canyons, ridges, and/or skyline juxtaposition among other mountain slopes, require regulation in order to carry out the purposes of this district. The mountain overlay zoning district shall include those areas so designated illustratively on the "zoning map of the city of Wallace, Idaho" as presently exists or as adopted hereafter, and more specifically defined as follows:

- A. The mountain overlay regulations shall apply to those areas within city limits having a slope of 25% or greater. Existing parcels zoned for residential use as of the adoption date of this chapter shall be exempted from the requirements of the mountain overlay regulations.

13-15-4: USES PERMITTED

The Mountain Overlay zoning district shall be an overlay district and shall apply the requirements of the Mountain Overlay to replace the uses and requirements contained in the underlying base zoning district.

- A. Single Family Residential use (excluding mobile homes/trailers) is permitted in the Mountain Overlay zoning district, consistent with regulations contained in this chapter.
- B. Any approved development shall be limited to a single-family dwelling and one (1) approved outbuilding/garage per 10-acre parcel.
 - a. Setback for buildings and structures shall be 50' from all property lines.

13-5-5: USE RESTRICTIONS

The regulations contained in this chapter are imposed upon construction, development and use of all real property within the Mountain Overlay zoning district. Each of the following activities shall be subject to design review and shall require approval under the regulations contained in this chapter prior to issuance of a building permit, mountain overlay site alteration permit or commencement of any work associated with any such activity:

- A. Construction or placement of buildings or structures, including additions to any such structures or buildings existing at the effective date hereof, upon real property within the Mountain Overlay Zoning District.
- B. All grading activity involving more than 50 cubic yards.
- C. Any activity regulated by city or state street standards. Included therein are standards for private driveways.

13-15-6: MOUNTAIN OVERLAY DESIGN STANDARDS

The following design standards are imposed upon construction, development, excavation and use of all real property within the Mountain Overlay zoning district. These standards are intended to provide a framework for development that is sensitive to the unique characteristics of hillside properties.

Criteria And Standards: The following list of criteria shall be considered and addressed by each applicant seeking design review approval. The commission will use this list of design review criteria as a basis to determine whether a project is to be approved, approved with conditions or denied:

- A. There shall be no building on ridgelines which would have a material visual impact on a significant skyline visible from a public vantage point entering the City or within the City.

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- B. 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.
- C. 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.
- D. Structure Location: Design of building sites shall be sensitive to the natural terrain. Structures shall be located in such a way as to minimize grading and to preserve natural features. Careful consideration shall be given to the general orientation of the slope when locating structures.
- E. Development must be compatible with the general scale (height, dimensions, overall mass) of development in vicinity.
- F. Cuts And Fills Visual Mitigation: The visual impact of cuts and fills shall be mitigated by methods approved by the city. This mitigation may include, but is not limited to, the placement of buildings in front of the cuts and/or the placement of retaining walls designed to blend with the surrounding terrain to stabilize the cut. Mitigation shall predominantly be contour grading along with plantings as identified on the approved landscape plan that will stabilize the cut or fill slope and blend with the surrounding vegetation. The use of retaining walls is to be as limited in scope and height as feasible to ensure the visual predominance of vegetation. Contour grading techniques shall be used to provide a natural appearing variety of slope transitions, slope percentage and slope direction in a three-dimensional, undulating pattern similar to existing, adjacent terrain.
- i. Hard edges left by cut and fill operations shall be given a rounded appearance that closely resembles the natural contours of the land.
 - ii. Manmade slopes adjacent to roadways shall be softened where feasible by sufficient berms, contour grading, and/or landscaping to create visually interesting and pleasing streetscapes.
- G. Cut and fill slopes shall be no greater than 15' each in order to ensure effective screening by vegetation. Cut and fill slopes shall have a minimum 20' setback from the property line to provide for vegetation buffer and screening.
- H. Any activity involving roads or driveways shall ensure compliance with Wallace City Code standards pertaining to Site Development, Excavation Control, and shall conform to the standards for roadway and street construction as adopted by the Idaho Transportation Department in existence at the time of such activity.
- I. Grading, excavation, site development, and roadway standards as well as other applicable building code standards shall be met. All applications for permitting of grading activity shall be submitted with detailed plans including location, an analysis of the environmental impact and plan to address erosion control.
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- J. All roads or driveways shall be reviewed and approved by the District Fire Chief in order to ensure fire code minimums are met for safe access and emergency response vehicles.
 - K. Any site development involving roads, driveways, grading, or activities done under the Forest Practices Act must conform to these standards for any actual or anticipated use other than forestry.
 - L. All development shall have access for fire and other emergency vehicles to within one hundred fifty feet (150') of the furthest exterior wall of any building.
 - M. International Building Code (IBC) and International Fire Code (IFC) and Wallace Fire Department requirements shall be met.
 - N. Public water and sewer service shall comply with the requirements of the City;
 - O. All utilities shall be underground.
 - P. Finish Materials, Color, And Reflectivity: Building materials and colors shall be compatible with the natural setting. The color, material and texture palette shall be reinforced with compatible landscaping. The light reflective value (LRV) of materials used on all exterior walls and roof areas shall be similar to the LRV of the surrounding terrain. Generally, the more visible the structure, the lower its LRV shall typically be.
 - i. Nonreflective windows and glass are required
 - ii. Exterior lighting shall be minimized and shielded to reduce visibility.
 - iii. Roofs must be designed to minimize visibility.
 - a. No metal roofing is permitted.
 - b. Earth colored shingles required.
 - c. Roof pitch must be no steeper than a 5/12 pitch.
 - Q. Drainage shall be controlled and maintained to not adversely affect other properties. Applicant shall submit an erosion control plan, reviewed by an Idaho licensed engineer. Alteration or scarring of drainage must be mitigated.
 - R. The clearing of trees, shrubs and other native vegetation shall be limited to: the approved locations for streets, driveways, yards and easements; the approved locations for building pads for structures, main buildings and accessory structures; and the minimum distance between structures and surrounding vegetation for established fire prevention and safety standards or recommendations.
 - S. Revegetation Plan required. Landscaping should consist of low-combustible species (list available at city hall) and must blend with the surrounding area.
 - T. No building or development shall exceed 35' in height.
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- U. Approved outbuildings/garages shall not exceed 600 square feet and shall comply with the requirements of this chapter.

13-15-7: MOUNTAIN OVERLAY APPLICATION DESIGN REVIEW

Design review applications shall be made and processed as follows:

- A. The applicant may request a preapplication review by the commission. The purpose of the preapplication review shall be for the commission to consider conceptually the location of the proposed activity, access and any other element of the proposal in concept as requested by the applicant. In the event an applicant does not desire a preapplication review, the Applicant is required to submit an application for a Mountain Overlay Site Alteration Permit from the Planning and Zoning commission prior to proceeding with any activity or development of property within the Mountain Overlay District.
- B. The fee for the application and permit shall be established by resolution of the Council and shall be paid at the time preapplication review is requested, or at the time of application if no preapplication review is requested and shall be nonrefundable.
- C. Information to be submitted with the application shall include, but not be limited to, a legal survey of the property, topography of sufficient detail to represent slope of land, 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 story poles illustrating proposed heights of structures and also may include recent photographs evidencing impact(s) of the proposed development from various vantage points.
- D. On site review by the members of the commission may be requested and if so, shall occur prior to taking action on said application review. Extreme weather conditions or inordinate depth of snow may cause the commission to delay said on site review not more than one hundred eighty (180) days.

13-15-8: APPLICATION

- A. A completed design review application with all fees paid and all application materials submitted shall constitute a complete application for design review and is required prior to review of any design review proposal.
- B. All design review plans and drawings shall be prepared by an Idaho licensed architect or an Idaho licensed engineer.
- C. The following is required to be submitted for an application for design review:

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1. Design review application form including project name, location, applicant, owner, project representatives, and contact information.
 2. One PDF electronic set of the complete application containing all requirements as listed below, plans appropriately scaled, shall be submitted. Electronic record of the materials and color sample board may be satisfied with photos. One hard copy set of scalable plans showing at a minimum the following:
 - a. Legal survey of the property.
 - b. Vicinity map, to scale, showing the project location in relationship to neighboring buildings and the surrounding area.
Note: A vicinity map must show location of adjacent buildings and structures.
 - c. Site plan, to scale. List square footage of subject property including lot dimensions.
 - d. Drainage plan (grading, catch basins, piping, and dry wells).
 - e. Utilities plan (location and size of water and sewer mains and services, gas, electric, TV and phone).
 - f. Landscape plan (existing landscaping on the site shown and adjacent right-of-way as retained, relocated or removed; proposed landscaping including species type, size and quantity).
 - g. Floor plan. List gross and net square footage for each floor.
 - h. Detailed elevations of all sides of the proposed building and other exterior elements (colors, materials).
 - i. Exterior lighting plan, showing location, height, type, and lumen output; spec sheets for fixtures.
 - j. One 11-inch by 17-inch materials and colors sample board showing all exterior materials used on the facade of the structure.
 - k. Building corners for all proposed buildings and additions shall be staked on the site and all trees proposed to be removed shall be flagged at least one week prior to the Commission meeting. The applicant shall install story poles, or other approved method, at the maximum roof peaks of the proposed buildings as required by the Administrator.
 3. The Administrator may waive some submittal requirements if it is determined the information is not relevant to the design review.
 4. Other information or studies as required by the Commission.
 5. Design review fee shall be submitted as established by resolution of the city council.
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13-5-9: ACTION BY COMMISSION

A. Approval; Conditional Approval: Within sixty (60) days after the public hearing, the Commission shall either approve, conditionally approve, or disapprove the applications presented. If the application is approved, or approved with modifications, the Commission shall direct the Administrator or Chairperson to issue a **Mountain Overlay Site Alteration Permit** listing the specific conditions specified by the Commission for approval.

B. Criteria. The Commission shall determine the following before approval is given:

1. The project does not jeopardize the health, safety or welfare of the public.
2. The project conforms to all applicable standards and criteria as set forth in this chapter, this title, and any other standards as adopted or amended by the City of Wallace from time to time.

C. Conditions. The Commission may impose any condition deemed necessary to ensure the health, safety, or welfare of the public is not jeopardized. The Commission may also condition approval of a project with subsequent review and/or approval by the administrator or planning commission. All conditions of approval must cite the appropriate standard for imposing such condition. Conditions which may be attached include, but are not limited to, those which will:

1. Ensure compliance with applicable standards.
2. Require conformity to approved plans and specifications.
3. Require security for compliance with the terms of the approval, including monetary security in the form of a bond to be posted in an amount sufficient to cover anticipated costs of remedying non-compliance.
4. Minimize adverse impact on other development.
5. Control the sequence, timing and duration of development and ongoing maintenance.
6. Require more restrictive standards than those generally found in this Code.
7. Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including districts, providing services within the planning jurisdiction.

D. Studies: Prior to granting a **Mountain Overlay Site Alteration Permit**, studies may be required of the social, fiscal, and environmental effects of the proposed special use.

E. Specifications on Granting or Denying: Upon granting or denying an application the Commission shall specify:

1. The standards used in evaluating the application.
2. The reasons for approval or denial; and
3. The actions, if any, that the applicant could take to obtain a permit.

13-15-10: PROCEDURE FOR HEARING, NOTICE

Upon receipt of a complete design review application, the Commission shall hold a public hearing, publish notice in the newspaper and give written notice to all parties as required for conditional use permits. See Section 13-9-6 of this Title.

13-15-11: VARIANCE

A. Power To Authorize: The Commission may authorize in specific cases such variance from the terms of this Title as will not be contrary to the public interest where, owing to special conditions a literal enforcement of the provisions of this Title would result in unnecessary hardship. No nonconforming of neighboring lands, structure, or buildings in the same district and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for issuance of a variance.

B. Hardship: Variances shall not be granted on the grounds of convenience or profit, but only where strict application of the provisions of this Title would result in unnecessary hardship. (Ord. 468, 4-15-1980)

C. Application and standards for variances:

1. Required Information: A variance from the terms of this Title shall not be granted by the Commission unless and until a written application for a variance is submitted to the Administrator and the Commission containing:

- A. Name, address and phone number of applicants.
- B. Legal description of property.
- C. Description of nature of variance requested.

D. A narrative statement demonstrating that the requested variance conforms to the following standards:

1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved which are not applicable to other lands, structures or buildings in the same district.

2. That a literal interpretation of the provisions of this Title would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Title.

3. That special conditions and circumstances do not result from the actions of the applicant.

4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Title to other lands, structures or buildings in the same district.

D. Action by Commission

1. Upon receipt of the application for an appeal or a variance, the Commission shall hold a public hearing, publish notice in the local newspaper and give written notice to all affected persons within 300' of the subject property

2. The Applicant shall be responsible for reimbursement to the City for all out-of-pocket costs resulting from the application and may require a deposit at the time of filing of the application in an amount established by resolution

3. Within sixty (60) days after the public hearing, the Commission shall either approve, conditionally approve, or disapprove the request for appeal or variance. Upon granting or denying an application, the Commission shall specify:

4. Findings Of Fact: The Commission shall issue a decision on the application making specific findings of fact based directly on the particular evidence presented to it which support conclusions to approve or deny the application, the standards used in evaluating the application, and the action, if any, that could be taken by the Applicant to obtain approval.

13-15-12: APPEALS

A. An appeal of any decision or determination of the Planning and Zoning or Historic Preservation Commission ("the Commission") made in the administration or enforcement of this ordinance may be taken by any affected person, as that term is defined by Idaho Code section 67-6521, as it may be amended from time to time, to the City Council by filing a notice of appeal in writing with the City clerk in the manner prescribed in this chapter.

1. *Action required by the City Clerk.* The clerk shall certify that all procedural requirements have been satisfied and fees paid and transmit to the council the original of all papers constituting the record in the case, together with the decision or determination of the Commission. A verbatim transcript of the Commission proceedings shall be prepared and transmitted to the council at the appellant's expense.

2. *Hearing and notice.* The council shall, following receipt of the clerk's certificate and the record of the case, set the matter for hearing and give notice of the date, time, place and purpose thereof and of the right to request a copy of the decision thereon, to the appellant, the Commission, and to any other affected person, as defined in Idaho Code section 67-6521, as that section may be amended from time to time, all in accordance with Idaho Code section 67-6501 et seq., as may be amended from time to time.

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3. *Authority of council.* Upon hearing the appeal, the council shall consider only matters which were previously considered by the Commission as evidenced by the record, the order, requirement, decision or determination of the Commission and the notice of appeal, together with oral presentation and written legal arguments by the appellant, the applicant, if different than the appellant, and the Commission and/or staff representing the Commission. The council shall not consider any new facts or evidence at this point. The council may affirm, reverse or modify, in whole or in part, the decision or determination of the Commission. Furthermore, the council may remand the application to the Commission for further consideration with regard to specific criteria stated by the council.
 4. *Decision by council.* The council shall enter a decision within 30 days after the hearing on appeal, which shall include its written decision separately stated. The council shall transmit a copy of the decision to the appellant and any affected person who has requested a copy in writing, as defined in Idaho Code section 67-6521, as that section may be amended from time to time.
 5. *Appeal of council.* In the event of an appeal of a decision of the council to district court, applications approved by the City will be processed by the City during the pendency of the appeal.

B. All appeals permitted or authorized by this title shall be taken and made in the manner and within the time limits as follows:

1. The written notice of appeal shall be filed before 5:00 p.m. of the fifteenth (15th) calendar day after the decision or determination of the Commission has been made or after findings of fact have been approved by the Commission, whichever occurs later. The failure to physically file a notice of appeal with the City clerk within the time limits prescribed by this section shall be jurisdictional and shall cause automatic dismissal of such appeal. The notice of appeal shall be in writing and in such form as shall be available from the office of the administrator, which shall require to be set forth with specificity all bases for appeal, including the particulars regarding any claimed error or abuse of discretion.

2. **Judicial Review:** An affected person aggrieved by a decision of the City Council may seek judicial review with the district court within twenty-eight (28) days after all administrative remedies under local ordinances have been exhausted.

- a. Pursuant to Idaho Code section 67-8003, an owner of private property that is the subject of such action may submit a written request for a regulatory takings analysis with the clerk or the agency or entity undertaking the regulatory or administrative action. Not more than twenty-eight (28) days after the final decision concerning the matter at issue, the City Council shall prepare a written taking analysis concerning the action consistent with the procedure outlined in Idaho Code section 67-8003.

C. An administrative fee set by resolution of the City Council and a fee equal to the expense of giving notice and providing the transcript shall be paid within two days after receipt from the

administrator of the amount of the fee. In the event the fee is not paid as required, the appeal shall not be considered filed.

13-15-13: ENFORCEMENT

A. No owner or agent of the owner shall construct, use or occupy any building, structure or improvement upon real property in violation of this title. The landowner, tenant, subdivider, builder, or any other person who commits, allows, participates in, assists in or maintains such violation shall be found guilty of such a violation. The provisions of this title shall be enforced in the following manner:

1. A violation of this title shall be a misdemeanor, punishable by a fine not to exceed \$1000.00, or imprisonment in the County Jail for a period not to exceed six months, or both. Each day that such a violation continues shall constitute a separate criminal offense. A misdemeanor offense occurs where:

A. Any violation of any of the provisions of this title exists in any building or any other structure or on a tract of land;

B. An order to remove any such violation has been served upon the owner, general agent, lessee or tenant of the building, other structure or tract of land (or any part thereof), or upon the architect, builder, contractor or any other person who commits or assists in any such violation; and

C. Such person shall fail to comply with such order within ten days after service.

2. Appropriate actions and proceedings may be taken at law or in equity to prevent any violation of these regulations, to prevent unlawful construction, to recover damages, to restrain, correct, or abate a violation, or to prevent illegal occupancy of a building, structure or premises, and these remedies shall be in addition to the penalties described above.

3. No building permit or other approval or permit shall be issued for the construction of any building, structure or improvement in violation of this title, nor shall any other permit be approved for an applicant where there is an outstanding unresolved violation by the same applicant or property owner. The issuance or granting of a permit or approval shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this title or of any other ordinance, rule or regulation of the City. No permit presuming to give authority to violate or cancel the provisions of this title shall be valid.

4. In addition to any of the foregoing remedies, the city attorney, acting on behalf of the City Council, may maintain an action for an injunction to restrain any violation of this title. Any costs associated with the enforcement of this Chapter shall be assessed to the property owner, and failure to pay said costs may result in the costs being certified to the property and placed upon the tax rolls.

B. The building inspector and his or her authorized representative are empowered to cause any building, other structure or tract of land to be inspected and examined, and to order in writing the remedying of any condition found to exist therein or threat in violation of any provisions of this title. After any such order has been served, no work shall proceed on any building, other structure or tract of land covered by such order, except to correct or comply with such order. This title shall not be construed to hold the City responsible for any damage to persons or property by reason of the inspection or reinspection authorized herein or failure to inspect or reinspect or by reason of issuing a building permit as herein provided.