Chapter 5.0 — Exceptions to Code Standards

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Chapter 5.1 — Variances

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5.1.100 Purpose

The purpose of this Chapter is to provide flexibility to development standards, in recognition of the complexity and wide variation of site development opportunities and constraints. The variance procedures are intended to provide flexibility while ensuring that the purpose of each development standard is met. Because some variances are granted using "clear and objective standards," they can be granted by means of a Type I procedure. Other variances, as identified below, require a Type II or III procedure because they involve discretionary decision-making.

5.1.200 Class A Variance

A. **Class A Variance Applicability.** The following variances are reviewed using a Type I procedure, as governed by Chapter 4.1, using the approval criteria in Subsection B, below:

1. Front yard setbacks. Up to a 20 percent change to the front yard setback standard in the land use district.
2. Interior setbacks. Up to a 10 percent reduction of the dimensional standards for the side and rear yard setbacks required in the base land use district.
3. Lot coverage. Up to 10 percent increase of the maximum lot coverage permitted in the base zone.
4. Landscape area. Up to 10 percent reduction in required landscape area (overall area or interior parking lot landscape area).

B. **Class A Variance Approval Criteria.** A Class A Variance shall be granted if the applicant demonstrates compliance with all the following criteria:

1. The variance requested is required due to the lot configuration, or other conditions of the site;
2. The variance does not result in the removal of trees, or it is proposed in order to preserve trees, if trees are present in the development area; and
3. The variance will not result in violation(s) of Chapter 3, or other design standards.

5.1.300 Class B Variances

A. **Class B Variance Applications.** Due to their discretionary nature, the following types of variances shall be reviewed using a Type II procedure, in accordance with Chapter 4.1:

1. Variance to minimum housing density standard (Chapter 2)

2. Variance to vehicular access and circulation standards (Chapter 3.1)
3. Variance to street tree requirements (Chapter 3.2).
4. Variance to parking standards (Chapter 3.3).
5. Variance to maximum or minimum yard setbacks to reduce tree removal or impacts to wetlands (Chapters 2 and 3.2)
6. Variance to transportation facility and improvement requirements (Section 3.4.100)

B. Class B Variance Approval Criteria

1. Variance to minimum housing density standard (Chapter 2). The City may approve a variance after finding that the minimum housing density provided in Chapter 2 cannot be achieved due to physical constraints that limit the division of land or site development. "Physical constraint" means steep topography, Flood Plain Design Standards (Chapter 3.7), unusual parcel configuration, or a similar constraint. The variance approved shall be the minimum variance necessary to address the specific physical constraint on the development.

2. Variance to vehicular access and circulation standards (Chapter 3.1). Where vehicular access and circulation cannot be reasonably designed to conform to Code standards within a particular parcel, shared access with an adjoining property shall be considered. If shared access in conjunction with another parcel is not feasible, the City may grant a variance to the access requirements after finding all of the following:

    a. There is not adequate physical space for shared access, or the owners of abutting properties do not agree to execute a joint access easement;
    b. There are no other alternative access points on the street in question or from another street;
    c. The access separation requirements cannot be met;
    d. The request is the minimum adjustment required to provide adequate access;
    e. The approved access or access approved with conditions will result in a safe access; and
    f. The visual clearance requirements of Chapter 3.1 will be met.
    g. Variances for deviations regarding access to State Highways shall be subject to review and approval by the Oregon Department of Transportation.

3. Variance to street tree requirements (Chapter 3.2). The City may approve, approve with conditions, or deny a request for a variance to the street tree requirements in Chapter 3.2, after finding the following:

    a. Installation of the tree would interfere with existing utility lines; or
    b. The tree would cause visual clearance problems; or
    c. There is not adequate space in which to plant a street tree; and
    d. Replacement landscaping is provided elsewhere on the site (e.g., parking lot area trees).

4. Variance to parking standards (Chapter 3.3).

    a. The City may approve variances to the minimum or maximum standards for off-street parking in Chapter 3.3.100 upon finding all the following:
        (1) The individual characteristics of the use at that location require more or less parking than is generally required for a use of this type and intensity;

(2) The need for additional parking cannot reasonably be met through provision of on-street parking or shared parking with adjacent or nearby uses; and
(3) All other parking design and building orientation standards are met, in conformance with the standards in Chapter 2 and Chapter 3.

b. The City may approve a reduction of required bicycle parking per Chapter 3.3.200, if the applicant can demonstrate that the proposed use by its nature would be reasonably anticipated to generate a lesser need for bicycle parking; and
c. The City may allow a reduction in the amount of vehicle stacking area required in for drive-through facilities if such a reduction is deemed appropriate after analysis of the size location of the development, limited services available and other pertinent factors.

5. Variance to maximum or minimum yard setbacks to reduce tree removal or impacts to wetlands (Chapters 2 and 3.2). The City may grant a variance to the applicable setback requirements of this Code for the purpose of preserving a tree or trees on the site of proposed development or avoiding wetland impacts. Modification shall not be more than is necessary for the preservation of trees or wetlands on the site.

6. Variance to transportation facility and improvement requirements (Section 3.4.100). The City may approve, approve with conditions, or deny a variance to the transportation standards of Section 3.4.100 based on topographic or environmental constraints.

5.1.400 Class C Variances

A. Purpose. The purpose of this section is to provide standards for variances which exceed the Class A and Class B variance criteria in Sections 5.1.200 and 5.1.300. Class C variances may be granted if the applicant shows that, owing to special and unusual circumstances related to a specific property, the literal application of the standards of the applicable land use district would create a hardship to development that is peculiar to the lot size or shape, topography, , or other similar circumstances related to the property over which the applicant has no control, and which are not applicable to other properties in the vicinity (e.g., the same land use district).

B. Applicability.

1. The variance standards are intended to apply to individual platted and recorded lots only.
2. An applicant who proposes to vary a specification standard for lots not yet created through a land division process may not utilize the Class C variance procedure.
3. A variance shall not be approved that would vary the “permitted uses” or “prohibited uses” of a land use district (Chapter 2).

C. Approval Process and Criteria.

1. Due to their discretionary nature and review of special circumstances, Class C variances shall be processed using a Type III procedure, as governed by Chapter 4.1.500, using the approval criteria in subsection 2, below. In addition to the application requirements contained in Chapter 4.1.500, the applicant shall provide a written narrative or letter describing his/her reasoning for the variance, why it is required, alternatives considered, and compliance with the criteria in subsection 2.

2. The City shall approve, approve with conditions, or deny an application for a variance based on finding for all the following criteria: Approval or approval with conditions requires satisfaction of all criteria.

    a. The proposed variance will not be materially detrimental to the purposes of this Code, to any other applicable policies and standards, and to other properties in the same land use district or vicinity;
    b. A hardship to development exists which is peculiar to the lot size or shape, topography, sensitive lands, or other similar circumstances related to the property over which the applicant has no control, and which are not applicable to other properties in the vicinity (e.g., the same land use district);
    c. The use proposed will be the same as permitted under this title and City standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land;
    d. Existing physical and natural systems, including but not limited to traffic, drainage, natural resources, and parks will not be adversely affected any more than would occur if the development occurred as specified by the subject Code standard;
    e. The hardship is not self-imposed; and
    f. The variance requested is the minimum variance that would alleviate the hardship.

5.1.500 Variance Application and Appeals

The variance application shall conform to the requirements for Type I, II, or III applications (Section 4.1.300, 4.1.400, 4.1.500), as applicable. In addition, the applicant shall provide a narrative or letter explaining the reason for his/her request, alternatives considered, and why the subject standard cannot be met without the variance. Appeals to variance decisions shall be processed in accordance with the provisions of Chapter 4.1.

Chapter 5.2 — Non-Conforming Uses and Developments

Sections:

5.2.100 - Non-conforming Uses
5.2.200 - Non-conforming Development

5.2.100 Nonconforming Uses

Where at the time of adoption of this Code a use of land exists that would not be permitted by the regulations imposed by this Code and was lawful at the time it was established, the use may be continued if it remains otherwise lawful, provided:

A. **Creation of Nonconforming Situations.** Within the districts established by this title or amendments that may later be adopted, there may exist lots, uses of land, and structures which were lawful before the effective date of the ordinance codified in this title, but which would be prohibited, regulated, or restricted under the terms of the ordinance codified in this title or future amendment.

B. **Expansion Prohibited.** No such nonconforming use may be enlarged, increased, or extended to occupy a greater area of land or space than was occupied at the effective date of adoption or amendment of this Code. No additional structure, building, or sign shall be constructed on the lot in connection with such nonconforming use of land.

C. **Location.** A nonconforming use shall not be moved in whole or in part from one lot to another lot, except to bring the use into conformance with this Code.

D. **Discontinuation or Abandonment.** A nonconforming use that is discontinued for any reason other than fire or other catastrophe beyond the owner's control for a period of more than 12 months shall be deemed abandoned and shall no longer be an allowed use. For purposes of calculating the 12-month period, a use is discontinued when:

1. The use of land is physically vacated;
2. The use ceases to be actively involved in the sale of merchandise or the provision of services;
3. Any lease or contract under which the nonconforming use has occupied the land is terminated; or
4. A request for final reading of water and power meters is made to the applicable utility districts;
5. The owner's utility bill or property tax bill account became delinquent; or
6. An event occurs similar to those listed in 1-5 above, as determined by the Planning Commission.

E. **Application of Code Criteria and Standards.** If the use is discontinued or abandoned for any reason for a period of more than 12 months, any subsequent use of land shall conform to the applicable standards and criteria specified by this Code for the land use district in which such land is located.

5.2.200 Non-Conforming Developments

Where a development exists at the effective date of adoption or amendment of this title that could not

be built under the terms of this Ordinance by reason of restrictions on lot area, lot coverage, height, yard, equipment, its location on the lot or other requirements concerning the structure, and the structure was lawful when constructed, the development may remain on the site so long as it remains otherwise lawful, subject to the following provisions:

A. No such nonconforming development may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be enlarged or altered in a way that satisfies the current requirements of the Development Code or will decrease its nonconformity;

B. Should such nonconforming development or nonconforming portion of development be destroyed by any means to an extent more than 50 percent of its current value as assessed by the Umatilla County assessor, it shall be reconstructed only in conformity with the Development Code; and

C. Should such development be moved for any reason and at any distance, it shall thereafter conform to the regulations of the Development Code.

D. Nonconforming street access connections that existed prior to May 2001 that do not conform to the standards in Chapter 3.1 shall be brought into compliance when the following conditions exist:

1. When a new access connection permit is requested for the subject property; or
2. When a building permit or land use application is submitted that results in an increase of trip generation by 20% and 100 average daily trips (ADT).