

Article 5 — Exceptions to Code Standards

Chapters:

5.1 Variances

5.2 Non-Conforming Uses and Development

5.3 Lots of Record

Chapter 5.1 — Variances

Sections:

- 5.1.100 Variances - Purpose**
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- 5.1.500 Class C Variances**
- 5.1.600 Variance Application and Appeals**

Background: The model code is designed to be more flexible than conventional zoning; the model code frequently allows outright, or subject to discretionary review, design options that would require a variance under conventional codes. For example, the model code provides flexibility in lot sizes and setbacks, as well as minimum parking ratios that are below the minimums of some codes. It also allows reductions to required off-street parking if an applicant can demonstrate through a parking study that less parking would be sufficient.

Typical variance procedures require the property owner to demonstrate that a hardship exists which is not self-imposed; there are unusual or extraordinary circumstances related to the site; and rights that others in the vicinity enjoy would be denied without a variance. In contrast, the three variance options in Chapter 5.1 provide a range of standards and approval criteria based on the specific type of variance requested. For example, it should be fairly easy to modify a yard setback in order to protect significant trees or to provide other amenities if all applicable building and fire codes are met.

5.1.100 Variances - Purpose

This Chapter provides standards and procedures for variances, which are modifications to land use or development standards that are not otherwise permitted elsewhere in this Code as exceptions to code standards. This Code cannot provide standards to fit every potential development situation. The City's varied geography, and complexities of land development, require flexibility. Chapter 5.1 provides that flexibility, while maintaining the purposes and intent of the Code. The variance procedures provide relief from specific code provisions when they have the unintended effect of preventing reasonable development in conformance with all other codes. The variance procedures are intended to provide flexibility while ensuring that the purpose of each development standard is met.

5.1.200 Variances - Applicability

A. Exceptions and Modifications versus Variances. A code standard or approval criterion ("code section") may be modified without approval of a variance if the applicable code section expressly allows exceptions or modifications. If the code section does not expressly provide for exceptions or modifications, then a variance is required to modify that code section and the provisions of Chapter 5.1 apply.

B. Combining Variances With Other Approvals; Permit Approvals by Other Agencies. Variance requests may be combined with and reviewed concurrently by the City approval body with other land use and development applications (e.g., development review, site design review, subdivision, conditional use, etc.), however, some variances may be subject to approval by other

permitting agencies, such as ODOT in the case of State Highway access.

C. Types of Variances. As provided in Section 5.1.3, there are three types of variances (Class A, B, or C); the type of variance required depends on the extent of the variance request and the discretion involved in the decision making process. *[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.]*

5.1.300 Class A Variances.

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

1. Front yard setbacks. Up to a *[10]* 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 required in the base zone.
4. Landscape area. Up to *[10]* percent reduction in landscape area (overall area or interior parking lot landscape area).

B. Approval criteria. A Class A Variance shall be granted if the applicant demonstrates compliance with all of 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;
3. The variance will not result in violation(s) of any other adopted ordinance or code standard; each code standard to be modified shall require a separate variance request.
4. An application for a Class A variances is limited to one lot per application.
5. No more than three Class A variances may be approved for one lot or parcel in 12 months.

5.1.400 Class B Variances.

A. Applicability. Class B variance requests apply to the types of requests meeting the approval criteria in Sections 5.1.400B through 5.1.400G, and that conform to subsections 1-3, below, Class B variances shall be reviewed using a *[Type II or Type III]* procedure, in accordance with Chapter 4.1:

1. The Class B variance standards apply to individual platted and recorded lots only.
2. The Class B variance procedure shall not be used to modify a standard for lots yet to be created through a partition or subdivision process; such requests shall 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 (Article 2).
- B. Variance to minimum housing density standard (Chapter 2.2).** The City may approve a variance to a minimum housing density standard in Chapter 2.2 after finding that the minimum housing density cannot be achieved due to physical constraints that limit the division of land or site development. “Physical constraint” means steep topography, [*sensitive lands (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.
- C. 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:
1. There is not adequate physical space for shared access, or the owners of abutting properties do not agree to execute a joint access easement;
 2. There are no other alternative access points on the street in question or from another street;
 3. The access separation requirements cannot be met;
 4. The request is the minimum variance required to provide adequate access;
 5. The approved access or access approved with conditions will result in a safe access;
 6. The visual clearance requirements of Chapter 3.1 will be met; and
 7. Variances for street access deviations shall be subject to review and approval by the roadway authority.
 8. Variances for access deviations on a [*name*] County road right-of-way shall be subject to review and approval by [*name*] County.
- D. 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:
1. Installation of the tree would interfere with existing utility lines, and no substitute tree with a lower canopy is appropriate for the site;
 2. The tree would cause visual clearance problems; or

3. There is not adequate space in which to plant a street tree; and
4. The City may require the installation of additional or replacement landscaping elsewhere on the site (e.g., parking lot area trees) to compensate for the street tree variance.
5. Street tree approval or modification of standards within an ODOT or *[name]* County right-of-way may require approval, respectively, by ODOT or *[name]* County.

E. Variance to Parking and Loading Standards (Chapter 3.3).

1. The City may approve variances to the minimum or maximum standards for off-street parking (quantities and dimensions of parking spaces) in Chapter 3.3.1 upon finding all of the following:
 - a. 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, or modified parking dimensions, as demonstrated by a parking analysis or other facts provided by the applicant;
 - b. The need for additional parking cannot reasonably be met through provision of on-street parking or shared parking with adjacent or nearby uses; and
 - c. All other code standards are met, in conformance with Article 2 (Land Use Districts) and Article 3 (Design Standards).
2. The City may reduce the number of required bicycle parking spaces 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.
3. 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 and location of the development, limited services available and other pertinent factors.
4. The City may modify the loading area standards if such a reduction is deemed appropriate after analysis of the use, anticipated shipping or delivery traffic generated by the use and alternatives for loading/unloading, such as use of on- or off-street parking areas during non-business hours provided that traffic is not impeded.

F. Variance to Maximum or Minimum Yard Setbacks to Avoid or Reduce Impacts to Floodplains, Significant Trees, Wetlands, or Other Natural Features (Chapters 2.2-2.6 – Land Use Districts). The City may grant a variance to the applicable setback requirements of this Code for the purpose of avoiding or reducing impact to floodplains, significant trees, wetlands, or other natural features. Modification of the standard shall

not be more than is necessary for the preservation of the nature feature to be protected.

G. Variances to Transportation Improvement Requirements (Chapter 3.4.100). The City may approve, approve with conditions, or deny a variance to a transportation improvement standard in Table 3.4.100F when the variance does not exceed [10] percent of the standard. When a variance request to the standards in Table 3.4.100F exceeds [10] percent, then the request shall be reviewed as a Class C variance.

5.1.5 Class C Variances.

A. Applicability. Class C variance requests are those that do not conform to the provisions of Sections 5.1.200-5.1.300 (Class A and Class B), and that meet the criteria in 1-4, below, Class C variances shall be reviewed using a [Type III] procedure, in accordance with Chapter 4.1:

1. The Class B variance standards apply to individual platted and recorded lots only.
2. The Class C variance procedure may be used to modify a standard for 3 or fewer lots, including lots yet to be created through a partition process.
3. An applicant who proposes to vary a standard for lots yet to be created through a subdivision process may not utilize the Class C variance procedure. Approval of a Master Planned Development shall be required to vary a standard for lots yet to be created through a subdivision process, where a specific code section does not otherwise permit exceptions.
4. A variance shall not be approved that would vary the “permitted uses” or “prohibited uses” of a land use district (Article 2).

B. Approval Process. Class C variances shall be processed using a Type III procedure, as governed by Chapter 4.1.500, using the approval criteria in subsection D, 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 D.

C. Approval Criteria. The City shall approve, approve with conditions, or deny an application for a variance based on all of the following 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 (Chapter 3.7)], 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, such as 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.

5.1.5 Variance Application and Appeals.

A. Application. The variance application shall conform to the requirements for Type I, II, or III applications (Chapter 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, how the stated variance criteria are satisfied, and why the subject standard cannot be met without the variance.

B. 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 and Developments - Purpose

5.2.200 Non-conforming Uses

5.2.300 Non-conforming Development

5.2.100 Non-Conforming Uses and Developments Purpose

This Chapter provides standards and procedures for non-conforming situations (i.e., existing uses or development that do not comply with the Code). The standards for non-conforming uses and development are intended to provide some relief from code requirements for uses and developments that were established prior to the effective date of this Code and do not comply with current standards.

5.2.200 Nonconforming Uses

Where at the time of adoption of this Code a use of land exists which 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 as long as it remains otherwise lawful, provided:

- A. Expansion Prohibited.** No such nonconforming use is 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;
- B. Location.** No such nonconforming use shall be moved in whole or in part to any portion of the lot other than that occupied by such use at the effective date of adoption or amendment of this Code;
- C. Discontinuation or Abandonment.** The nonconforming use of land is not discontinued for any reason for a period of more than [6-12] months. For purposes of calculating the [6-12]-month period, a use is discontinued or abandoned upon the occurrence of the first of any of the following events:
 1. On the date when the use of land is physically vacated;
 2. On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;
 3. On the date of termination of any lease or contract under which the nonconforming use has occupied the land; or
 4. On the date a request for final reading of water and power meters is made to the applicable utility districts.

D. Application of Code Criteria and Standards. If the use is discontinued or abandoned for any reason for a period of more than [6-12] 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.

5.2.3 Non-conforming Development

Where a development exists at the effective date of adoption or amendment of this Code that could not be built under the terms of this Code by reason of restrictions on lot area, lot coverage, height, yard, equipment, access, parking, landscaping, its location on the lot or other requirements concerning the development; and the development was lawful when constructed, the development may remain on the site so long as it remains otherwise lawful, subject to the following provisions:

- A. Alterations.** No such nonconforming development may be enlarged or altered in a way that increases its nonconformity, but any development or portion thereof may be enlarged or altered in a way that satisfies the current requirements of this Code or will decrease its nonconformity;
- B. Destruction.** 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 [name] County Assessor, it shall be reconstructed only in conformity with this Code;
- C. Roadway Access.** The owner of a non-conforming access connection (i.e., street or highway access) may be required to bring the non-conforming access into conformance with this Code and other applicable standards as a condition of the City or other roadway authority approving a new access connection permit, or a change in land use.
- D. Relocation or Removal.** Should such development be moved for any reason and by any distance, it shall thereafter conform to the regulations of this Code.

Chapter 5.3 - Lots of Record

Sections:

- 5.3.100** Lots of Record - Purpose
- 5.3.200** Lots of Record - Applicability
- 5.3.300** Lots of Record - Procedure

5.3.100 Lots of Record - Purpose

The purpose of Chapter 5.3 is to establish criteria and a process for determining when a lot of record exists.

5.3.200 Lots Record - Criteria

A lot of record is a plot of land that was not created through an approved subdivision or partition, was created and recorded before *[effective date of City's first subdivision ordinance]*, and for which the deed, or other instrument dividing the land, is recorded with *[name]* County. A lot of record shall be entitled to development of no less than one single family dwelling and, provided all applicable Code standards are met, additional land use or development may be approved.

5.3.300 Lots of Record - Procedure

A lot of record determination shall be made by the *[City Planning Official]* through a Type I procedure (Chapter 4.1.200). It shall be the property owner's responsibility to demonstrate that his or her plot of land is meets the lot of record criteria in Section 5.3.2.