

<u>Article 6: Variances</u> .....	6-1
<u>6.010 Purpose</u> .....	6-1
<u>6.020 Definitions</u> .....	6-1
<u>6.030 Eligible Regulations</u> .....	6-1
<u>6.040 Ineligible Regulations</u> .....	6-2
<u>6.050 Review Procedures and Submittal Requirements</u> .....	6-2
<u>6.060 Criteria for Variance</u> .....	6-4
<u>6.070 Conditions</u> .....	6-7
<u>6.080 Expiration</u> .....	6-7

## <sup>1</sup>Article 6: Variances

### 6.010 Purpose

This Article provides standards, criteria, and procedures for variances. This Code cannot provide standards to fit every potential development situation. The City's varied geography, and complexities of land development, require flexibility. This Article provides that flexibility, while maintaining the purposes and intent of the Code. These provisions provide relief from strict application of measurable standards of the Development Code when the property has unique physical constraints or characteristics.

When greater flexibility is desired, or where flexibility is desired but there are no unique physical constraints or characteristics of the property, application may be made through the Planned Unit Development process of Article 18. Flexible application of the Code for development or creation of lots through the Planned Unit Development process shall be managed through the provisions of Article 18, and does not require action under this Article.

### 6.020. Definitions

#### (1) Minor Variance.

- (a) For Site Development Standards. A reduction below a minimum standard or an increase over a maximum standard, as follows:
  - (i) Building setback in front, side, and rear yards: 12 inches or less.
  - (ii) Building height: 18 inches or less.
  - (iii) Lot area, lots of record only: 50 square feet or less.
- (b) For Property Line Adjustments, Partitions, or Subdivisions. A reduction below a minimum standard or an increase over a maximum standard, as follows:
  - (i) Building setback: 12 inches or less.
  - (ii) Lot width or depth: 2 feet or less.
  - (iii) Lot area: 50 square feet or less.

#### (2) Major Variance.

A variance from any measurable standard other than defined as a minor variance.

### 6.030. Eligible Regulations

Variances are permitted for the following items when related to a unique constraint of the

property:

- (1) Any measurable standard designed to regulate the physical characteristics of a permitted use;
- (2) Any measurable standard designed to regulate lot size, shape, or dimension;
- (3) Any other standard that this Code expressly specifies may be varied.

6.040. Ineligible Regulations.

Variances are prohibited for the following items:

- (1) To modify any standard when there is no unique constraint of the property;
- (2) To change any standard for a minimum size of a public utility;
- (3) To change any provision of this Code that specifies obligations for public improvements;
- (4) To allow a primary or accessory use that is not allowed by the regulations;
- (5) As an exception to any restrictions on uses or development that contain the word “prohibited.”
- (6) To reduce minimum lot area by more than 50 square feet.
- (7) As an exception to a threshold for a review. *For example, expansion of a development by more than 25% could not be processed under criteria for a minor site plan review instead of criteria for major site plan review.*
- (8) As an exception to a definition or classification. *For example, an accessory structure is defined as one that does not exceed 1,000 square feet. By definition, a structure in excess of 1,000 square feet is not an accessory structure, and the definition can't be varied.*
- (9) As an exception to the procedural steps of a procedure or to change assigned procedures. *For example, development of a Manufactured Dwelling Park in an R-2 zone requires a Type III procedure with a public hearing. The procedure could not be varied to require a Type I procedure without a public hearing.*

6.050. Review Procedures and Submittal Requirements.

<sup>2</sup>Except as specified below, variances shall be processed in accordance with the procedures in Schedule 2-1.

- (1) Applications for variances shall be submitted and processed along with the land use application for site plan review, property line adjustment, partition, or

subdivision.

- (2) Where the site plan review, property line adjustment, partition, or subdivision requires a higher procedure type, the variance shall be considered using the higher procedure.
- (3) Where the variance requires a higher procedure type, the related application, such as an application where the building permit serves as the development permit, shall be considered using the higher procedure.
- (4) When an application requires more than one variance, the applicant shall file a single application for all variances, and pay one fee for the application, in addition to the required application and fee for the site plan review, property line adjustment, partition, or subdivision.
- (5) <sup>3</sup>The variance application shall include the following:
  - (a) A written narrative with responses to the criteria in this chapter.
  - (b) It shall be the applicant's responsibility to verify the location of property lines. If the variance is to a required setback, or if there is question as to whether an existing structure on the subject property encroaches into the public right-of-way or onto an adjacent property, the application shall include evidence of property line location. Evidence shall consist of the subject land deed and one of the following:
    - (i) Property corner monuments set by an Oregon-licensed land surveyor, and evidenced by recordation in the Josephine County survey records, shall be the preferred evidence of property line location. The monuments shall be in full view and subject to City inspection prior to a complete application. It shall be the final determination of the City Surveyor as to whether the monuments are authentic.
    - (ii) If unable to provide monument evidence in the field, the applicant shall submit a site map prepared by an Oregon-licensed land surveyor as part of the application. The site plan map shall, at a minimum, include the following:
      - (A) Scale, north arrow, date of preparation.
      - (B) Location: Street address, and assessor's map page number and tax lot number.
      - (C) Dimensions and size of parcel by deed, with any measured distances necessary to show convincing evidence of the true property line location.

- (D) Proposed and existing buildings and structures, including fences: location, dimension, setbacks to property lines, distance between buildings, height.
- (E) Current deed conveyance number and any registered survey numbers used in the determination of the property lines shown therewith.
- (F) The site plan shall include a signed statement from the map preparer which certifies that the lines shown accurately represent existing conditions as laid out on the subject ground and are adequate for the purpose of verifying property line location.

6.060. Criteria for Variances

Previously granted variances shall not be considered to have established a precedent. The review body shall approve, approve with conditions, or deny the application. No variance shall be granted unless the review body finds that all of the applicable criteria under (A) and (B) have been satisfied.

- (A) Qualifying Condition. The applicant shall demonstrate that the following elements are present to qualify for a variance.
  - (1) Unique Physical Constraint or Characteristic. The applicant has clearly described the nature of a unique physical constraint or characteristic of the property to which the variance application is related. The constraint is related to the particular property for which the variance is sought, regardless of the owner, and it does not relate to other property or personal conditions of the owner or applicant, such as personal financial circumstances or inconvenience. Either:
    - (a) The property has unique physical constraints or characteristics peculiar to the land involved, over which the applicant has no control, such as lot size or shape, topography, natural features, or other physical conditions on the site or in the immediate vicinity, which are not typical of other lands in the same zoning district subject to the same regulation; or
    - (b) The property has existing development, conforming or nonconforming, located such that it poses unique constraints to the further development of the property in full compliance with the standards of this Code.
  - (2) Self-Created Constraint. If the review body finds the unique constraint described in Subsection (1) was self-created, the property shall only qualify for a variance if the review body determines that the self-created constraint can no longer be reasonably eliminated or reversed, or that it is

in the public interest to grant a variance rather than require the owner to eliminate the self-created constraint. A situation shall be considered self-created if:

- (a) A current or previous owner created the unique physical constraint or characteristic by dividing, reconfiguring, or physically altering the property in a manner such that it could only be subsequently developed, or further developed, by obtaining a variance to the regulations in effect at the time of alteration; and
  - (b) At the time the current owner altered or acquired the property, he could have known that, as a result of the deliberate alteration, the property could only be developed, or further developed, by obtaining a variance.
- (3) Need for Variance. The applicant has demonstrated that a variance is necessary to overcome at least one of the following situations:
- (a) Allow Reasonable Use of an Existing Property. Due to the unique physical constraint or characteristic of an existing lot or parcel, strict application of the provisions of the Development Code would create a hardship by depriving the owner of the rights commonly enjoyed by other properties in the same zoning district subject to the same regulation. The variance is necessary for preservation of a property right of the owner, substantially the same as is possessed by owners of other property in the same district subject to the same regulation.
  - (b) Better Achieve Public Purpose for Development, Division, or Adjustment of Lots and Parcels. There need not be a hardship to the owner to qualify for a variance under this Subsection. Due to the unique physical constraint or circumstance, the variance is necessary to better achieve the public purposes of the Comprehensive Plan and Development Code, with minimum deviation from standards. The variance will allow preservation of scenic, natural, or historic resources or features; allow a lot arrangement that represents a more efficient use of land; avoid odd shaped lots or flag lots; or alleviate other unique physical conditions to better achieve public purposes.
  - (c) Allow Flexibility for Expansion of Existing Development. The location of existing development on the property poses a unique constraint to expansion in full compliance with the Code. The variance is needed for new construction and site improvements in order to provide for efficient use of the land or avoid demolition of existing development, where the public purpose can be substantially furthered in alternate ways with minimal deviation from standards.

- (4) No Other Reasonable Alternative. Reasonable alternatives to comply with the provisions of the Development Code have been exhausted. No reasonable alternatives have been identified that would accomplish the same purpose in accordance with the Code without the need for a variance. If applicable, the applicant shall, at a minimum, demonstrate that the following are not reasonable alternatives instead of the requested variance:
- (a) Lot line adjustment.
  - (b) Modified setback option, pursuant to Section 22.200.
  - (c) Alternate solar standards, pursuant to Section 22.623.
- (B) Result of Relief. If the review body finds the proposal for a variance based on the criteria in Subsection (A) above, the review body shall only approve the proposal if it finds the specific proposal is consistent with the following criteria.
- (5) Best Alternative. When a variance is needed for a purpose identified in Subsection (3) above, the proposed variance shall be the best alternative to achieve the purpose compared with variances to other standards that could accomplish the same purpose. The best alternative will be the most consistent with the overall purpose of the Comprehensive Plan and Development Code, with the least impact to other properties and the public interest. Impacts to public facilities, substantial natural features, and natural systems shall be presumed to have broader public impact than localized impacts on nearby properties.
  - (6) Minimum Deviation. Adherence to the standards of this Code shall be maintained to the greatest extent that is reasonably possible while accomplishing the purpose in Subsection (3). The deviation from standards shall be the minimum necessary to accomplish the purpose, and shall not convey a special right to the property that is not available to properties in the same zoning district subject to the same regulation.
  - (7) No Hazard. The proposal shall not pose a public safety hazard such as a visual obstruction or traffic hazard, and shall not obstruct pedestrian or vehicular movement or impede emergency access.
  - (8) Plan and Ordinance Consistency. The proposal shall not adversely affect implementation of the Comprehensive Plan, and shall not be materially detrimental or injurious to the purposes of the Comprehensive Plan or Development Code; other applicable plans, policies, or standards; or other properties in the same district or vicinity.
  - (9) Mitigate Adverse Impacts. Adverse impacts shall be avoided where possible and mitigated to the extent practical. If a variance is not

necessary to preserve a property right, or if the unique constraint in Subsection (1) was self-created, adverse impacts may be grounds for denial.

- (10) No Significant Increase in Residential Density. For development of an existing lot, if the variance is for a reduction to lot area, it shall not result in a significant increase in density. For a land division, the variance shall not result in an increase in density over that permitted by the zoning district, except that when a lot is reduced in size due to dedication of right-of-way, minimum lot area may be reduced by fifty square feet or less.
- (11) Recommendation of City Engineer. The review body shall consider a written recommendation of the City Engineer when the variance is any to any of the following standards:
  - (a) A street, access, or utility development standard in Article 27 or 28 of the Code.
  - (b) The Flood Hazard or Slope Hazard provisions in Article 13 of this Code.
  - (c) To allow encroachment into existing or planned right-of-way or public utility easement. When a variance is authorized to allow encroachment into a right-of-way, the owner shall sign a right-of-way use agreement that specifies the terms and conditions under which the right-of-way may be utilized.
- (12) Additional Criteria. Variances from the street standards in Article 27 of this Code shall meet the additional criteria of 27.121(11)(h)(4) General Design Standards, 27.122(5) Connectivity Standards, and 27.123(15) Street Section Design Standards.

6.070. Conditions

If the review body finds that the proposal does not sufficiently mitigate impacts resulting from a variance, it may attach conditions necessary to ensure impacts are mitigated to the extent practical. The review body may consider the provisions in Section 19.053 as a guideline for applicable conditions, but shall not be limited to these provisions.

6.080. Expiration

A variance shall be part of the land use decision and shall only vary standards for the specific development proposal reviewed and approved by the review body. If the property is redeveloped, a new variance application shall be required as part of the new land use application. A variance shall not vary standards for future development of a property for which a land use application has not been submitted.

The expiration of a variance shall be the same as the expiration date of the associated

application for site plan review, property line adjustment, partition, subdivision, or other land use review. If no separate land use application was required, such as an application where the building permit serves as the development permit, the variance shall expire 18 months from the effective date of the review body's final decision on the variance. Pursuant to Section 3.024, a decision shall be final upon the expiration of the period for filing an appeal, unless appealed. An extension may be granted pursuant to Section 3.025(2).

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<sup>1</sup>Revised 12-17-03 by Ordinance 5205

<sup>2</sup>Revised 4-20-05 by Ordinance 5285

<sup>3</sup>Revised 10-21-09 by Ordinance 5496