

## Article 5 — Exceptions to Code Standards

### Chapters:

- 5.1.100 Variances
- 5.2.200 Non-Conforming Uses and Development
- 5.3.300 Lots of Record

## Chapter 5.1 — Variances

### Sections:

- 5.1.100 Purpose
- 5.1.200 Applicability
- 5.1.300 Class A Variances
- 5.1.400 Class B Variances
- 5.1.500 Class C Variances
- 5.1.600 Application and Appeals

**Background:** The code is designed to be more flexible than conventional zoning; the model code frequently allows uses permitted via a Type I procedure, or subject to discretionary review, design options that would require a variance under conventional codes. For example, the 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 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 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.** 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 procedure, as governed by Chapter 4.1, using the approval criteria in Subsection B, below:
1. Front yard setbacks. Up to a 15 percent change to the front yard setback standard in the land use zone.
  2. Interior setbacks. Up to a 15 percent reduction of the dimensional standards for the side and rear yard setbacks required in the base land use zone.
  3. Lot coverage. Up to 15 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).
  5. Minimum lot size. Up to a 10 percent reduction to the minimum lot size standard in the base land use district. Applies to existing lots only.
  6. Sign height. Up to a 15 percent increase to the maximum sign height permitted in the base land use district.
  7. Sign area. Up to a 15 percent increase to the maximum sign area permitted in the base land use

district.

- 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 variance 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 5.1.400H, and that conform to subsections 1-3, below. Class B variances shall be reviewed using a Type II 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 zone (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, 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 Baker County road right-of-way shall be subject to review and approval by Baker 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 Baker County right-of-way may require approval, respectively, by ODOT or Baker 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 Zones) 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 Zones).** 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 3.4.100.F. when the variance does not exceed 20 percent of the standard. When a variance request to the standards in Table 3.4.100.F. exceeds 20 percent, then the request shall be reviewed as a Class C variance.

**H. Variances to Fencing Standards (Chapter 3.2).** The City may grant a variance from the fencing standards provided in Section 3.2.500 after finding the following:

1. The proposed variance will not adversely affect the following interests of the City:
  - a. Visibility for public safety and neighborhood security;
  - b. Preservation of access for public right of ways, utilities and emergency services;
  - c. Attractive appearance; and
  - d. Safety physical environment;

2. The proposed variance will not adversely affect the neighboring property owners; and
3. Substantial reasons exist why the fence cannot be constructed in accordance with current regulations; or there is a hardship on the land, and that the hardship is not a personal or self-created hardship.

#### 5.1.500 Class C Variances

**A. Applicability.** Class C variance requests are those that do not conform to the provisions of Sections 5.1.300-5.1.400 (Class A and Class B), and that do not conflict with 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 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.
2. 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.
3. A variance shall not be approved that would vary the “permitted uses” or “prohibited uses” of a land use zone (Article 2).

**B. Approval Process.** Class C variances shall be processed using a Type III procedure, as governed by Chapter 4.1.400, using the approval criteria in subsection C, below. In addition to the application requirements contained in Chapter 4.1.400, 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 C.

**C. Approval Criteria.** The City shall approve, approve with conditions, or deny an application for a variance based on all of the following criteria:

1. 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 zone or vicinity;
2. A hardship to development exists which 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 zone);
3. 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;

4. 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;
5. The hardship is not self-imposed; and
6. The variance requested is the minimum variance that would alleviate the hardship.

#### **5.1.600 Application and Appeals**

- A. Application.** The variance application shall conform to the requirements for Type I, II, or III applications (Chapter 4.1.200, 4.1.300, 4.1.400), 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.** Appeals to variance decisions shall be processed in accordance with the provisions of Chapter 4.1.