

## Chapter 5.1 Variances

### Sections:

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

### 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 Variances.

- A. Class A Variances.** 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 10 percent change to the front yard setback standard in the base 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 land use district.
  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 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 Chapter 3, or other design standards.

**5.1.300 Class B Variances.**

Due to their discretionary nature, the following types of variances shall be reviewed using a Type II procedure, in accordance with Chapter 4.1:

- A. Variance to Minimum Housing Density Standard (Chapter 2).** The Town 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, Floodplain Design Standards (Chapter 3.7) apply to the site, 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.
- B. 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 Town may grant a variance to the access requirements after finding 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 adjustment required providing adequate access;
  5. The approved access or access approved with conditions will result in a safe access; and
  6. The visual clearance requirements of Chapter 3.1 will be met.
- C. Variance to Street Tree Requirements (Chapter 3.2)** The Town 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; or
  2. The tree would cause visual clearance problems; or
  3. There is not adequate space in which to plant a street tree; and
  4. Replacement landscaping is provided elsewhere on the site (e.g., parking lot area trees).

**5.1.300 Class B Variances. (continued)****D. Variance to Parking Standards (Chapter 3.3).**

1. The Town may approve variances to the minimum or maximum standards for off-street parking in Section 3.3.300 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;
  - 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 parking design and building orientation standards are met, in conformance with the standards in Chapter 2 and Chapter 3.
2. The Town may approve a reduction of required bicycle parking per Section 3.3.400, 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 Town may allow a reduction in the amount of vehicle stacking area required for drive-through and drive-in facilities if such a reduction is deemed appropriate after analysis of the size and location of the development and other pertinent factors.

**E. Variance to Maximum or Minimum Yard Setbacks to Reduce Tree Removal or Impacts to Wetlands (Sensitive Lands, Chapter 3.7).** The Town 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.

**F. Variances to Transportation Improvement Requirements (Section 3.4.100).** The Town may approve, approve with conditions, or deny a variance to the transportation improvement standards of Section 3.4.100, based on the criteria for granting variances provided in Section 3.4.100.B. When a variance request cannot be supported by the provisions of that Chapter, then the request shall be reviewed as a Class C variance.

**G. Variances for Deviations Regarding Access to State Highways** shall be subject to review and approval by the Oregon Department of Transportation.

**5.1.400 Class C Variances.**

Due to their discretionary nature and review of special circumstances, the variances in this subsection require a Type III process, as described in Section 5.1.400.C.

**A. Purpose.** The purpose of this section is to provide standards for variances that exceed the Class A and Class B variance criteria in Sections 5.1.200 and 5.1.300.

**B. Applicability.**

1. The variance standards are intended to apply to individual platted and recorded lots only.
2. A variance shall not be approved that would vary the “permitted uses” or “prohibited uses” of a land use district (Chapter 2).
3. A Flood Plain variance shall be applied in accordance with Section 5.1.400.D, Approval Process and Criteria for Flood Plain Variances.

**C. Approval Process and Criteria.**

1. Class C variances shall be processed using a Type III procedure, as governed by Section 4.1.500, using the approval criteria in subsection 2, below. In addition to the application requirements contained in Section 4.1.500, the applicant shall provide a written narrative or letter describing the reason for the variance, why it is required, alternatives considered, and compliance with the criteria in Section 5.1.400.C(2).
2. The Town 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 stated purposes of applicable Code requirements, 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 that 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 Town 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 in compliance with 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.

**5.1.400 Class C Variances.** *(continued)***D. Approval Process and Criteria for Flood Plain Variances**

1. Variances to standards within Section 3.7.100 shall be processed using a Type III procedure, as governed by Section 4.1.500, using the approval criteria in subsection 2, below. In addition to the application requirements contained in Section 4.1.500, the applicant shall provide a written narrative or letter describing the reason for the variance, why it is required, alternatives considered, and compliance with the criteria in Section 5.1.400.D(2).
2. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (a-k) in Section 5.1.400.D.2 have been fully considered. As the lot size increases the technical justification required for issuing the variance increases. The Town shall approve, approve with conditions, or deny an application for a variance based on all of the following criteria:
  - a. The danger that materials may be swept onto other lands to the injury of others;
  - b. The danger to life and property due to flooding or erosion damage;
  - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - d. The importance of the services provided by the proposed facility to the community;
  - e. The necessity to the facility of a waterfront location, where applicable;
  - f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  - g. The compatibility of the proposed use with existing and anticipated development;
  - h. The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
  - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
  - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

**5.1.400 Class C Variances.** *(continued)*

3. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places shall be applied per Section 5.1.400.C in this section.
4. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
5. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
6. Variances shall only be issued upon:
  - a. a showing of good and sufficient cause;
  - b. a determination that failure to grant the variance would result in exceptional hardship to the applicant;
  - c. a determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in Section , or conflict with existing local laws or ordinances.
7. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
8. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except 5.1.400.D.2 and otherwise complies with Section 3.7.100.
9. Any applicant to whom a variance is granted shall be given notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

**5.1.400 Class C Variances. (continued)**

**E. Approval Process and Criteria for Wetland Protection Areas.** The Planning Commission shall be the approving authority for applications for variances to the Wetland Protection Area provisions. The procedures of Chapter 5.1, Variances, shall be followed for approval of a variance except that the following variance approval criteria apply:

1. Through application of this ordinance, the property has been rendered not buildable;
2. The applicant has exhausted all other options available under this Chapter to relieve the hardship;
3. The variance is the minimum necessary to afford relief;
4. No significant adverse impacts on water quality, erosion, or slope stability will result from approval of this variance, or these impacts have been mitigated to the greatest extent possible; and
5. Loss of vegetative cover shall be minimized.

**F. Approval Process, Criteria and Mitigation for Riparian Corridor Variances**

1. Permanent alteration of the riparian area by placement of structures or impervious surfaces shall be processed using a Type III procedure, as governed by Section 4.1.500, using the mitigation requirements in Subsection a and approval criteria in Subsection b, below. In addition to the application requirements contained in Section 4.1.500, the applicant shall provide a written narrative or letter describing the reason for the variance, why it is required, alternatives considered, and compliance with the mitigation requirements of Section 5.1.400.F.1.a and the approval criteria in Section 5.1.400.F.1.b.
  - a. Proposals for development activities within the riparian area allowed in Section 3.7.500.C shall be reviewed by the Oregon Department of Fish and Wildlife (ODFW) as per OAR 635-415 Fish and Wildlife Habitat Mitigation Policy. A mitigation recommendation shall be obtained from ODFW. For purposes of implementing Goal 5 the goal is no net loss of protected resources; correspondingly, for purposes of designing appropriate mitigation, sites should be considered at least in "Habitat Category 2" (OAR 635-415-030), which strives for no net loss of habitat values.
  - b. A property owner may request a variance to the riparian setback. The Town shall approve, approve with conditions, or deny an application for a variance based on the following criteria:
    - (1) The proposed development requires deviation from the riparian standards; and
    - (2) Strict adherence to the riparian setback and other applicable standards would effectively preclude a use of the parcel that could be reasonably expected to occur in the zone, and that the property owner would be precluded a substantial property right enjoyed by the majority of landowners in the vicinity.

**5.1.500 Variance Application and Appeals.**

The variance application shall conform to the requirements for Type I, II, or III applications (Sections 4.1.300, 4.1.400, 4.1.500), as applicable. Appeals to variance decisions shall be processed in accordance with the provisions of Chapter 4.1.