

Chapter 5.0

EXCEPTIONS TO CODE STANDARDS

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Section 5.1

INTRODUCTION

This chapter provides standards and procedures for variances and non-conforming situations (i.e., existing uses or development that do not comply with the code). 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 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 standards for non-conforming uses and development are intended to provide some relief from code requirements for older developments that do not comply.

Section 5.2

VARIANCES

5.1.100 Purpose. The purpose of this section is to provide flexibility to development standards, in recognition of the complexity and wide variation of site development opportunities and constraints. The city encourages variances which result in public benefits, such as enhancements or development of planned open space or bike paths, or preservation of significant trees and natural water courses. 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.

5.2.110 Class A Variances.

- A. Class A Variances.** The following variances are reviewed using a Type II procedure, as governed by section 4.2, using the approval criteria in subsection B, below:
1. Front yard setbacks. Up to a fifty (50) ten (10) percent change to the front yard setback standard in the zoning district.
 2. Interior setbacks. Up to a fifty (50) ten (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 fifty (50) ten (10) percent increase of the maximum lot coverage required in the base zone.
 4. Landscape area. Up to twenty (20) ten (10) percent reduction in landscape area (overall area or interior parking lot landscape area).
 5. Sign surface area or height. Up to ten (10) percent increase in area or height.

- 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 (such as avoidance of natural water courses);
 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.

5.2.120 Class B Variances.

- A. Class B variances.** Due to their discretionary nature, the following types of variances shall be reviewed using a Type II or Type III procedure, in accordance with section 4.2:
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, wetland and floodplain, unusual parcel configuration, or a similar constraint. The variances approved shall be the minimum variance necessary to address the specific physical constraint on the development.
 2. Variance to Vehicular Access and Circulation Standards (Section 3.2). 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 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 section 3.2 will be met.
 3. Variances to Street Tree Requirements (Section 3.3). The city may approve, approve with conditions, or deny a request for a variance to the street tree requirements in section 3.3, after finding the following:
 - a. Installation of the tree would interfere with existing utility lines;
 - b. The tree would cause vision 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 (Section 3.4).
- a. The city may approve variances to the minimum or maximum standards for off-street parking in section 3.4.130 upon finding 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 section 3.4.110, if the applicant can demonstrate that the proposed use by its nature would be reasonably anticipated to generate a lesser need for bicycle parking.
 - 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 and location of the development, limited services available and other pertinent factors.
- B. Variance to Maximum or Minimum Yard Setbacks to Protect Natural Features.** 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 or other nature features. Modification shall not be more than is necessary for the protection of natural features.
- C. Variances to Transportation Improvement Requirements (Section 3.5.100).** The city may approve, approve with conditions, or deny a variance to the transportation improvement standards of section 3.5.100, based on the criteria for granting variances provided in section 3.5.110. When a variance request cannot be supported by the provisions of that Section, then the request shall be reviewed as a Class C variance.

5.2.130 Class C Variance.

- 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 5.2.110 and 5.2.120. 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 which is peculiar to the lot size or shape, topography, wetland and floodplain, 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); except that no variances to “permitted uses” shall be granted.

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 yet to be created through a subdivision process may not utilize the Class C variance procedure.
3. A variance shall not be approved which would vary the “permitted uses” of a zoning district (chapter 2).

C. Approvals Process and Criteria.

1. Class C variances shall be processed using a Type III procedure, as governed by section 4.2.140, using the approval criteria in subsection 2, below. In addition to the application requirements contained in section 4.2.140, 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 that all of the following criteria are satisfied:
 - 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, wetland and floodplain, 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 zoning 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, which would alleviate the hardship.

5.2.140 Variance Application and Appeals. The variance application shall conform to the requirements for Type I, II, or III applications (section 4.2.120, 4.2.130, 4.2.140), 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 section 4.2.

Section 5.3

NON-CONFORMING USES AND DEVELOPMENT

5.3.100 Non-conforming 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 twelve (12) months. For purposes of calculating the twelve (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 meters is made to the city.
- D. Application of Code Criteria and Standards.** If the use is discontinued or abandoned for any reason for a period of more than twelve (12) months, any subsequent use of land shall conform to the applicable standards and criteria specified by this code.

5.3.110 Non-conforming Development. Where a structure exists at the effective date of adoption or amendment of this title that could not be built under the terms of this title 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 structure may remain on the site so long as it remains otherwise lawful, subject to the following provisions:

- A. No such nonconforming structure 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 city's development code or will decrease its nonconformity;
- B. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent more than seventy-five (75) percent of its current value as assessed by the Douglas County assessor, it shall be reconstructed only in conformity with the city's development code; and
- C. Should such structure be moved for any reason and by any distance, it shall thereafter conform to the regulations of the development code.
- D. Special status for single family residences located within Commercial and Industrial zones shall be administered according to Section 2.3.115 and 2.5.105.