

ORDINANCE NO. 705

AN ORDINANCE AMENDING TROUTDALE DEVELOPMENT CODE CHAPTERS 1, 5, 6, AND 16 RELATING TO DEFINITIONS, VARIANCES, NONCONFORMING USES, AND PUBLIC DELIBERATIONS AND HEARINGS

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The current nonconforming use chapter of the Troutdale Development Code is very sketchy and does not make a clear distinction between a use that is nonconforming (ie. the use is not permitted by the underlying zoning district) and a development that is nonconforming (ie. the use is permitted, but the structure may not conform to setbacks, building height, etc.). The distinct nature of these two categories of nonconformities requires different treatment when they are enlarged or expanded. Furthermore, the TDC does not currently include any criteria for evaluating a request to enlarge or expand a nonconforming use and having approval criteria will provide better consistency in how these applications are reviewed and decided. Amendments to distinguish between types of nonconformities and to include approval criteria will clarify and improve procedures for handling these type of land use actions.
2. The addition of definitions related to the various type of nonconformities will further clarify the meaning and intent of amendments to the nonconforming use chapter.
3. The current variance chapter is very confusing and has been difficult to interpret. Consequently, variance applications have not always been processed consistently. The most difficult problem has been in determining whether a particular variance should be processed under the Type II or Type III procedure and what criteria to apply. Clarifying the procedures will benefit the public by consistent application of the code.
4. Increasing the threshold between Type II and Type III variances from 20% to 30% benefits the public because it streamlines the process by allowing more variances to be handled administratively rather than necessitating a public hearing.

5. Amendments relating to side yard setbacks for some accessory structures benefits the public by providing greater flexibility and by giving equal treatment for the placement of an accessory structure from the side property line as from the rear property line.
6. Amendments pertaining to conduct of hearing bodies, such as conflict of interest, impartiality, ex parte contact and disqualification, are necessary to make the code consistent with state law. Current provisions of the code pertaining to these subjects are unnecessarily more restrictive than those required under state law.
7. Amending appeal procedures for quasi-judicial land use decisions to require that an appeal of a planning commission decision to the city council is automatically conducted as a de novo review and subject to a de novo hearing provides the public with more opportunity for comment, treats all appeals the same, and avoids confusion in determining whether testimony at the appeal hearing is within the scope of review.
8. These amendments deal primarily with procedural matters outlined in the TDC and do not establish new standards for the development and use of land within the city. To the extent that the nonconforming use, variance and public deliberations chapters of the code are being amended to clarify provisions that have been poorly written, confusing and difficult to administer in the past, these amendments best satisfy public need.
9. These amendments will not adversely affect the health, safety and welfare of the community because, for the most part, they do not modify or establish standards related to development. It is beneficial to the public welfare to have clear procedures and approval criteria for review of nonconforming uses, variances and appeals. These amendments clear up discrepancies and inconsistencies in the current code provisions. Allowing small accessory structures to be placed as close as three feet from the side property line without the need for a variance is an insignificant change that does not adversely affect the public welfare. The overall result of these amendments is that more objective, understandable rules and procedures will be followed in handling nonconforming use modifications, variances and appeals.
10. This change does not conflict with any goals or policies from the Troutdale Comprehensive Plan because they are mostly procedural in nature. For the

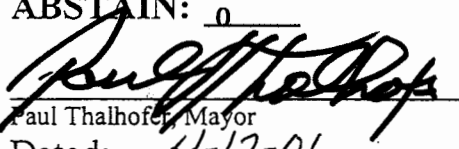
same reason, the amendments are consistent with the Metro Urban Growth Management Functional Plan.

11. The Troutdale Planning Commission held a public hearing on February 21, 2001 and has forwarded this proposal to the City Council with a recommendation for adoption.
12. Notice of the public hearing has been provided in accordance with applicable law.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE:

The Troutdale Development Code is hereby amended to read as shown in Attachment A.

YEA: 5
NAY: 1 (Kight)
ABSTAIN: 0


Paul Thalhoffer, Mayor

Dated: 4-12-01


Debbie Stickney, City Recorder

Adopted: April 10, 2001

Chapter 5.300, Nonconforming Uses, including sections 5.310 through 5.340, is repealed and there is enacted a new Chapter 5.300 to read as follows:

5.300 NONCONFORMING USES AND DEVELOPMENTS NC

5.305 Purpose and Intent. Within the zoning districts established by this code, or amendments that may later be adopted, there may exist lots, uses, structures, or other developments of the land which were lawful before this code was adopted or amended, but because of the application of this code, they no longer conform to the provisions and standards of the district in which they are located or of this code in general. This chapter provides for the regulation of these legal nonconforming lots, uses, structures, and developments and specifies those circumstances, conditions, and procedures under which such nonconformities shall be permitted to continue and expand. It is the intent of this chapter to permit legal nonconforming lots, uses, structures, or developments to continue until they are removed by economic forces or otherwise. Legal nonconforming lots, uses, structures, or developments may also be expanded or reconstructed as provided in this chapter.

5.310 Expansion of a Nonconforming Use. A nonconforming use may be expanded by up to 20% in floor area of each structure or, in those cases not involving structures, up to ten percent in land area, provided the Planning Commission approves the expansion pursuant to a Type III procedure. Expansion of a use beyond either of these limitations shall require a zoning map amendment or zoning district text amendment that permits the use. The provisions of this section shall not apply within any overlay district which specifically prohibits the expansion of a nonconforming use. In approving a nonconforming use expansion, the Planning Commission may attach reasonable conditions, restrictions, or safeguards to mitigate potential adverse impacts which may result by reason of the approved nonconforming use expansion.

5.315 Approval Criteria for Expansion of a Nonconforming Use. The Planning Commission may approve the expansion of a nonconforming use if the following criteria are met:

- A. The expansion will not increase detrimental effects in the surrounding area associated with the existing nonconforming use including, but not limited to, noise, vehicle traffic, vibration, dust, odor, fumes, smoke, or glare;
- B. The expansion will not result in serious conflicts between the nonconforming use and existing or permitted conforming uses in the area;
- C. The expansion does not necessitate a variance from any dimensional standard of this code that is applicable to the development; and
- D. The owner will incur practical difficulties or unnecessary hardship if the nonconforming use is not expanded.

- 5.320 Reconstruction of a Damaged Nonconforming Use. A nonconforming use, or a structure containing a nonconforming use, that has been damaged by any cause may be reconstructed if the reconstruction costs are less than 75% of the real market value as indicated by the records of the County Assessor. Reconstruction costs shall be based on the cost to restore the use or structure to meet current building code and development code standards, not simply the cost to reconstruct the use or structure to the condition it existed in prior to it being damaged. Reconstruction is subject to review under a Type II procedure. Reconstruction shall begin within 12 months of the date the damage was done and shall be completed within 12 months of the date the reconstruction began. If reconstruction does not occur within these timeframes, the nonconforming use shall be considered terminated and shall not be reestablished.
- 5.325 Destruction of a Nonconforming Use. When a nonconforming use, or a structure containing a nonconforming use, is damaged by any cause to an extent the reconstruction costs would equal or exceed 75% of the real market value as indicated by the records of the County Assessor, the nonconforming use or structure containing the nonconforming use shall be considered terminated and shall not be reestablished. Reconstruction costs shall be based on the cost to restore the use or structure to meet current building code and development code standards, not simply the cost to restore the use or structure to the condition it existed in prior to it being destroyed.
- 5.330 Discontinuance of a Nonconforming Use. When a nonconforming use or any part thereof is discontinued for a period of at least 12 months, the nonconforming use or part thereof shall be considered terminated and further use of the property upon which the use or part thereof was located shall conform to the regulations of the zoning district in which it is located. Discontinuance of the use shall be determined by information such as termination of any lease or contract under which the nonconforming use has occupied the site; discontinuation of water or electric services; expiration of business license; absence of any outwardly visible activity associated with the nonconforming use; demolition or removal of a structure in which the nonconforming use is located; or similar indications that the use or occupancy has ceased. When a nonconforming use is superseded by a permitted use, the nonconforming use shall not be resumed.
- 5.335 Expansion of a Nonconforming Structure or Development. A structure conforming as to use but nonconforming as to height, setback, or similar dimensional standards, or development of property conforming as to use, but nonconforming as to parking, landscaping, architectural features, or similar standards, may be expanded provided the expansion does not increase the degree of nonconformity. A land use permit not otherwise required by this code is not required to expand a nonconforming structure or development if the expansion does not increase the degree of nonconformity. Expansion of a nonconforming structure or development which increases the degree of nonconformity is prohibited unless the Planning Commission approves the expansion pursuant to a Type III procedure. In approving the expansion of a nonconforming structure or development, the Planning Commission may attach reasonable conditions,

restrictions, or safeguards to mitigate potential adverse impacts which may result by reason of the approved nonconforming structure or development.

5.340 Approval Criteria for Expansion of a Nonconforming Structure or Development. The Planning Commission may approve the expansion of a nonconforming structure or development if the following criteria are met:

- A. Special circumstances or conditions including, but not limited to, lot size, lot shape, topography, or size or shape of building, applied to the property and nonconforming structure or development, are not typical of the general conditions in the surrounding area;
- B. The expansion of the nonconforming structure or development, if authorized, will not be injurious to adjacent properties or the surrounding neighborhood or otherwise be detrimental to the public welfare;
- C. The expansion of the nonconforming structure or development will be consistent with the general purpose and intent of the provisions which would otherwise prohibit the nonconforming structure or development; and
- D. The amount of the expansion being requested is the minimum amount necessary to relieve a practical difficulty and any resulting unnecessary hardship.

5.345 Reconstruction of a Damaged Nonconforming Structure or Development. A structure conforming as to use but nonconforming as to height, setback, or similar dimensional standards, or a development of property conforming as to use, but nonconforming as to parking, landscaping, architectural features, or similar standards, that has been damaged by any cause may be reconstructed if the reconstruction costs are less than 75% of the real market value as indicated by the records of the County Assessor. Reconstruction costs shall be based on the cost to restore the structure or development to meet current building code and development code standards, not simply the cost to reconstruct the structure or development to the condition it existed in prior to it being damaged. Reconstruction is subject to review under a Type II procedure. Reconstruction shall begin within 12 months of the date the damage was done and shall be completed within 12 months of the date the reconstruction began. If reconstruction does not occur within these timeframes, the nonconforming structure or development shall be considered terminated and shall not be reestablished.

5.350 Destruction of a Nonconforming Structure or Development. When a structure conforming as to use but nonconforming as to height, setback, or similar dimensional standards, or a development of property conforming as to use but nonconforming as to parking, landscaping, architectural features, or similar standards, is damaged by any cause to an extent the reconstruction costs would equal or exceed 75% of the real market value as indicated by the records of the County Assessor, the nonconforming structure or development shall be considered terminated and shall not be reestablished without conforming to the regulations of this code. Nonconforming structures or

development within the Vegetation Corridor and Slope District or within the Flood Management Area are subject to the provisions of those chapters in this code that regulate Vegetation Corridors, Slope Districts, and Flood Management Areas.

- 5.355 Repairs and Maintenance. Normal repairs and maintenance activities including, but not limited to, replacement of non-bearing walls, fixtures, wiring, or plumbing may be performed on any nonconforming structure or portion of a nonconforming structure, or on any structure or portion thereof that contains a nonconforming use.
- 5.360 Sale of Nonconforming Use or Structure. The ownership of property classified as nonconforming may be transferred without affecting the right to continue such nonconformity.
- 5.365 Nonconforming Lot. If a lot, or the aggregate of contiguous lots or parcels of land held in a single ownership, has an area or dimension which does not meet size requirements, the lot or aggregate holdings may be developed subject to all other requirements. If there is an area deficiency, residential use shall be limited to a single-family dwelling.

Section 1.020.55 is repealed.

Section 1.020 is amended to add the following definitions:

Nonconforming Development. A development that was legally established before this code was adopted or amended, but which does not comply with the current regulations in this code due to subsequent enactments or amendments.

Nonconforming Structure. A structure that was legally established before this code was adopted or amended, but which does not comply with the current regulations in this code due to subsequent enactments or amendments.

Nonconforming Lot. A lot or parcel that was legally established before this code was adopted or amended, but which does not comply with the current regulations in this code due to subsequent enactments or amendments.

Nonconforming Use. A use that was legally established before this code was adopted or amended, but does not comply with or is not permitted to exist due to subsequent enactments or amendments to this code.

Section 17.040, Residential Lot Size Standards, is repealed.

Chapter 6.200, Variance, including sections 6.210 through 6.250, is repealed and there is enacted a new Chapter 6.200 to read as follows:

6.200 VARIANCE

6.205 General Provisions.

- A. The variance procedures are intended to allow modifications of specific standards contained within this code where difficulties exist which render compliance with the standards impractical and such compliance would create unnecessary hardship to the owner or user of land or buildings.
- B. In approving a variance request, the approving authority may attach reasonable conditions, restrictions, or safeguards to mitigate any adverse impacts which may result by reason of the approved variance.
- C. Separate variance provisions apply to uses within the Vegetation Corridor and Slope District and the Flood Management Area.

6.210 Regulations Which May Not Be Varied.

- A. No variance may be granted which will permit a use not permitted in the applicable zoning district.
- B. No variance may be granted which will increase the maximum residential density or decrease the minimum residential density allowed in the applicable zoning district.
- C. No variance may be granted to the provisions of Chapter 5.300, Nonconforming Uses and Developments.

6.215 Type I Variance. The Director may grant a variance under the Type I procedure if the request involves the expansion or reduction of a quantifiable provision in this code by no more than ten percent, and the following criteria are met:

- A. Special circumstances or conditions including, but not limited to, lot size, lot shape, topography, or size or shape of building, apply to the property, development, or to the intended use and are not typical of the general conditions in the surrounding area;
- B. The variance authorized will not be injurious to adjacent properties or the surrounding neighborhood or otherwise detrimental to the public welfare;
- C. The variance authorized will be consistent with the general purpose and intent of the provision from which a variance is sought; and

- D. The variance is the minimum necessary to relieve a practical difficulty and the resulting hardship.
- 6.220 Type II Variance. The Director may grant a variance under the Type II procedure if the request involves only the expansion or reduction of a quantifiable provision in this code by more than ten percent, but not more than 30%, and the criteria in section 6.215 of this chapter are met.
- 6.225 Type III Variance. The Planning Commission may grant a variance under the Type III procedure if the request involves the expansion or reduction of a quantifiable provision in this code by more than 30%, or if this request is referred to the Planning Commission in accordance with section 6.235 of this chapter and the criteria in section 6.215 of this chapter are met.
- 6.230 Type III Special Variance. The Planning Commission may grant a special variance under the Type III procedure if the request involves waiving a provision in this code not involving a quantifiable standard, and the following criteria are met:
- A. The unique nature of the proposed development is such that the intent and purpose of the regulations and of the provisions to be waived will not be violated;
 - B. Authorization of the special variance will not be materially detrimental to the public welfare and will not be injurious to other property in the area when compared with the effects of development otherwise permitted; and
 - C. The provision to be waived is unreasonable and unwarranted due to the specific nature of the proposed development.
- 6.235 Referral to Planning Commission. The Director may refer any variance request involving the expansion or reduction of a quantifiable provision of this code by 30% or less to the Planning Commission if the Director determines that a higher level of review is justified given the complexity or controversial nature of the request. A variance that is referred to the Planning Commission shall be considered in accordance with section 6.225 of this chapter.

Section 5.010 is amended to read as follows:

5.010 Accessory Structures in Required Yards.

- A. **Building Permit Required.** A building permit is required for any accessory structure over 120 square feet in size or over 10 feet in height.
- B. **Regulatory Requirements.** No accessory structure shall be erected or maintained, and no existing accessory structure shall be structurally altered, converted, enlarged, moved, or maintained unless such accessory structure is located on the lot in conformance with the following:
 - 1. Accessory structures shall comply with the setback requirements for the main building except where specifically modified by this section.
 - 2. No accessory structure shall be located in a required front yard setback.
 - 3. No accessory structure shall encroach on an active easement of record. An active easement is an easement containing one or more public utilities. Small plants and shrubs, perimeter fences, and concrete or asphaltic pavement shall not constitute accessory structures. An accessory structure may encroach on an inactive easement (those not containing a public utility), provided required building setbacks are met, or a variance to the setback standard has been approved.
 - 4. An accessory structure may be constructed as close as three feet to a rear property line, provided that it does not encroach on an active easement. For purposes of this subsection, the measurement shall be applied to projecting building features, if any, such as eaves, rain gutters, or other similar features.
 - 5. An accessory structure of 120 square feet or less in size may be constructed as close as three feet to a side property line provided that it does not encroach on an active easement. For purposes of this subsection, the measurement shall be applied to projecting building features, if any, such as eaves, rain gutters, or other similar features.
 - 6. An accessory structure on a corner lot shall meet a minimum street side yard setback of ten feet except for private vehicle storage. Accessory structures for private vehicle storage which have an entrance from the street side yard shall have a minimum street side yard setback of 20 feet.
 - 7. Accessory structures within the required rear yard setback shall not exceed 50% of the required rear yard setback area.
 - 8. No single accessory structure may exceed 1,000 square feet in area.

9. The maximum height of a detached accessory structure shall be the height of the primary dwelling or 20 feet, whichever is less, provided the accessory structure meets the side and rear yard setbacks of the underlying zone. A detached accessory structure which does not meet the underlying side and rear yard setbacks shall not exceed 10 feet in height.
10. For purposes of these regulations, solariums, greenhouses, garages, or other enclosed areas which are attached to the residential structure shall not be considered accessory.

Chapter 16.000, Public Deliberations and Hearings, is changed as follows:

Section 16.020 is renumbered to Section 16.285, and is amended to read as follows:

16.285 Raising Issues for Appeal. An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised before the close of the record at the final evidentiary hearing on the proposal. Such issues shall be raised with sufficient specificity to afford the final reviewing body and the parties an adequate opportunity to respond to each issue.

Sections 16.170 through 16.200 are amended to read as follows:

- 16.170 Ex Parte Contacts. The general public has a right to have hearing body members free from ex parte contacts in quasi-judicial hearings. It is recognized that a countervailing public right is free access to public officials on any matter. Therefore, hearing body members shall reveal all ex parte contacts with regard to a matter that comes before the hearing body member at a quasi-judicial proceeding. If ex parte contacts have not impaired the member's ability to make a fair and impartial decision based on the information presented during the quasi-judicial proceeding, the member shall so state and may participate in the hearing and decision. Ex parte contacts with a member of the decision-making body shall not invalidate a final decision or action of the decision-making body, provided that the member receiving the ex parte contact places the substance of the content of the ex parte communication in the record of the hearing, and makes a public announcement of the content of the communication and of the right of the parties to rebut the content of the first hearing where action will be considered or taken.
- 16.180 Challenges to Impartiality. A party to a quasi-judicial hearing, or a member of the hearing body, may challenge the qualifications of a member of the hearing body to participate in a quasi-judicial hearing or decision. A challenge shall identify the facts and basis for concluding that the member being challenged cannot make a fair and impartial decision due to bias, prejudice, a direct and substantial personal interest in the outcome, or other similar circumstances. Except for good cause shown, a written challenge shall be filed with the Director not less than 48 hours preceding the time set for the quasi-judicial hearing. The Director shall attempt to notify the member being challenged prior to the meeting. The challenge shall be incorporated into the record of the hearing.
- 16.190 Conflicts of Interest. No officer or employee of the City shall participate in a hearing or decision if the officer or employee has an actual conflict of interest as defined by state law, unless otherwise authorized by state law. An officer or employee of the City may participate in a land use hearing or decision if the officer or employee has a potential conflict of interest as defined by state law. Officers and employees shall disclose actual and potential conflicts of interest.

16.200 Disqualification. A Planning Commissioner shall not participate in the discussion or decision on a matter in which any of the following have a direct or substantial financial interest: The Planning Commissioner or the commissioner's spouse, brother, sister, child, parent, father-in-law or mother-in-law; any business in which the commissioner is then serving or has served within the previous two years; or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.

Sections 16.280 and 16.290 are amended to read as follows:

16.280 Request for Review - Appeal of Decision.

- A. Type I or II Procedure. A decision on a land use proposal or permit may be appealed to the Planning Commission by an affected party by filing an appeal with the Director within ten days of notice of the decision. The notice of appeal shall indicate the nature of the decision that is being appealed, and the matter at issue will be a determination of the appropriateness of the decision.
- B. Type III Procedure. A decision of the Planning Commission may be appealed to the City Council by an affected party by filing an appeal within ten days of notice of the decision. The notice of appeal shall indicate the decision that is being appealed.
- C. Type IV Procedure. A decision of the City Council may be appealed to the Land Use Board of Appeals, or to the legal authority governing land use regulations and issues, by an affected party by filing an appeal within 21 days of notice of the decision.

16.290 Appeal Requirements

- A. A notice of appeal shall contain:
 - 1. An identification of the decision sought to be reviewed, including the date of the decision.
 - 2. A statement of the interest of the person seeking review and that the person was a party to the initial proceedings.
 - 3. The specific grounds relied upon for review, including an explanation of the errors the person seeking review believes exist in the decision that is being appealed.
- B. An appeal of a decision rendered under a Type I or II procedure shall be limited to a review of the record supplemented by oral arguments relevant to the record presented by parties to the prior deliberations.

- C. An appeal of a decision rendered under a Type III procedure shall automatically be conducted as a de novo review and subject to a de novo hearing.

Section 16.300 is repealed.

Section 16.310 is amended to read as follows:

16.310 De Novo Hearing.

- A. "De novo hearing" shall mean a hearing by the reviewing body as if the action had not been previously heard, and as if no decision had been rendered, except that the reviewing body may consider all the testimony, evidence, and other material that is in the record.
- B. For purposes of a de novo hearing, the record shall include:
 - 1. A-report prepared by the Director.
 - 2. All prior staff reports, decisions, the application, and any exhibits, materials, reports, letters, memoranda, and stipulations submitted by any party that were received and considered by the decision-maker in reaching the decision under review.
 - 3. The transcript of prior hearings, if previously prepared, or the tapes and minutes from the prior hearings.
- C. At a de novo hearing, the applicant for the land use proposal or permit which is the subject of the appeal shall have the right of final rebuttal to any arguments, evidence, or testimony raised by an opposing party.

Section 16.320 is repealed.

Section 16.330 is amended to read as follows:

16.330 Reviewing Body Decision. Upon review, the reviewing body may by order affirm, reverse, or modify in whole or in part, a determination or requirement of the decision that is under review. When the reviewing body modifies or renders a decision that reverses a decision of the hearing body, the reviewing body, in its order, shall set forth its finding and state its reasons for taking the action encompassed in the order. When the reviewing body elects to remand the matter back to the hearing body for such further consideration as it deems necessary, it shall include a statement explaining the error found to have materially affected the outcome of the original decision and the action necessary to rectify it.