

Chapter 5.0 — Exceptions to Code Standards

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Chapter 5.0 — 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.

Chapter 5.1 — Variances

Sections:

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5.1.100 Purpose

The purpose of a variance is to provide relief when a strict application of the zoning requirements would impose unnecessary hardships resulting from the size, shape, or dimensions of a site or the location of existing structures thereon; or from geographic, topographic, or other factors listed below. Reasonable conditions may be imposed in connection with a variance as deemed necessary to protect the best interests of the surrounding property or neighborhood, and otherwise secure the purpose and requirements of this Section. Guarantees and evidence may be required that such conditions will be met.

5.1.110 Criteria

Variances to a quantitative requirement of this Code may be granted only if, on the basis of the written application, investigation, and evidence submitted by the applicant, findings of fact are made by the zoning administrator (for Class 1 applications) or Planning Commission (for Class 2 applications) that satisfy Criteria 1 through 6 listed below. Prior variances allowed in the neighborhood shall not be considered by the granting authority in reaching its decision. A determination of whether the standards set forth in Section 5.1.110(1) through (6) are satisfied necessarily involves the balancing of competing and conflicting interests. Each request shall be considered on its own merits.

- (1) The hardship was not created by the person requesting the variance;
- (2) The request is necessary to make reasonable use of the property. There will be an unreasonable economic impact upon the person requesting the variance if the request is denied;
- (3) The request will not substantially be injurious to the neighborhood in which the property is located. The variance will not result in physical impacts, such as visual, noise, traffic or increased potential for drainage, erosion and landslide hazards, beyond those impacts that would typically occur with development in the subject zone;
- (4) The request is not in conflict with the Comprehensive Plan;
- (5) The request is not in conflict with the Development Code. No variance may be granted which will result in a use not permitted in the applicable zone or which will increase the allowable residential density in any zone with the exception of individual lot size reduction; and,
- (6) Physical circumstance(s) related to the property involved preclude conformance with the standard to be varied.

5.1.120 Classification of Variances

- (1) Class 1 variances include minor variances that are small changes from the applicable Code requirements and which will have little or no effect on adjacent property or users. Administrative approval by the zoning administrator for Class 1 variances may be granted using a Type II procedure. Class 1 variances are limited to:
 - a. location of structures in relation to required yards;
 - b. variances from minimum lot width and depth;
 - c. variances from other quantitative standards by 20% or less.
- (2) Class 2 variances include variances that are significant changes from the applicable Code requirements and have the potential for creating impacts on adjacent property or users. A Class 2 variance shall be granted by the Planning Commission using a Type III procedure. Class 2 variances include, but are not limited to:
 - a. Variances from quantitative standards by more than that allowed under a Class 1 variance.
 - b. Variances from other quantitative Code provisions except use restrictions.
- (3) The zoning administrator shall decide the classification of any variance application.
- (4) If the zoning administrator believes that substantial issues are involved in a Class 1 variance application, the application may be reviewed using Class 2 procedures and a public hearing before the Planning Commission may be scheduled in accordance with the procedures specified in Section 4.1.

Chapter 5.2 — Non-Conforming Uses and Development

Sections:

5.2.100 Non-Conforming Uses or Structures

5.2.100 Non-Conforming Uses or Structures

A non-conforming use or structure was a lawful existing structure or use at the time this Code became effective, but which does not conform to some or all of the requirements of this Code.

- (1) Continuation: a non-conforming use or structure may be continued.
- (2) Expansion, or extension: In case of practical difficulty and unnecessary hardship, the Planning Commission may grant a variance for the enlargement or expansion of a non-conforming use up to 25% in floor or 10% in land area as was existing on the effective date of this ordinance. For non-conforming industrial uses or structures, the Planning Commission may grant a variance for enlargement or expansion up to a size approved by the Planning Commission. The extension of a non-conforming use to a portion of a structure which was arranged or designed for the non-conforming use at the time of passage of this ordinance is not an enlargement or expansion of a non-conforming use.
- (3) Alteration: A non-conforming structure that conforms with respect to use may be altered or extended if the alteration or extension does not cause the structure to deviate further from the standards of this Code.
- (4) Discontinuance: If a non-conforming use is discontinued for a period of twelve months, further use of the property shall conform to this Code.
- (5) Replacement: If a non-conforming use involving a structure is replaced by another use, the new use shall conform to this Code unless the Planning Commission determines that such structure is suitable only for another non-conforming use no more detrimental to surrounding properties than the one to be replaced.
- (6) Damage: If a non-conforming structure, or a structure containing a non-conforming use, is damaged by any cause, it may continue if damage is limited to no more than 75% of its fair market value (as indicated by the County Assessor's records), and if a building permit for repair is issued within one year of the damage event. If these conditions are not met, any subsequent structure or use of the site shall conform to this Code.
- (7) Time Limitation: Nothing contained in this Code shall require any change in the plans, construction, alteration or designated use of a structure for which a permit had been issued by the City and construction had commenced prior to the adoption of this Code, provided the structure, if non-conforming or intended for a non-conforming use, is completed and is in use within two years from the time the permit is issued.

- (8) Non-conforming street access connections that exist prior to the adoption date of this ordinance (Ordinance No. 1064-A) that do not conform with the standards in Chapter 3.1 shall be brought into compliance when the following conditions exist.
1. When a new access connection permit is requested for the subject property; or
 2. When a building permit or land use application is submitted that results in an increase of trip generation by 20% and 100 average daily trips (ADT).

Chapter 5.3 — Lot Size, Setback, and Height Exceptions

Sections:

5.3.100 General Exceptions to Lot Size Requirements

5.3.110 General Exceptions to Yard Requirements

5.3.120 General Exception to Building Height Limitations

5.3.100 General Exceptions to Lot Size Requirements

- (1) Purpose: The City has approved plats with lots, which do not now meet the square footage requirement of the zone in which the lots are located. The City intends to avoid personal hardship to property owners by granting an exception to lot size standards for lots or parcels legally created prior to the adoption of the initial zoning ordinance of this City, dated 21 April 1975.
- (2) Exception: An exception to lot size requirements is granted to individual or contiguous lots or parcels which:
 - a. Have an area or dimension deficiency under this ordinance that would forbid development; and
 - b. Have not been reduced in size since 21 April 1975.

In addition:

- c. Lots previously platted 33 1/3' by 100' and located in a residential zone other than RH will require two lots to be a legal lot; and,
 - d. Lots previously platted 25' by 100' will require two lots to be a legal lot; and,
 - e. Development of a "legal lot" or "lot of record" must meet all other applicable development standards, except for the minimum lot size of the zone.
- (3) In residential zones, the exception is limited to one detached single-family dwelling for any lot or adjoining contiguous lots which were in the same ownership as of 21 April 1975. Once an exception has been granted for a series of adjoining contiguous lots under the same ownership, development of the remainder of the contiguous lots shall conform to this Code.

5.3.110 General Exceptions to Yard Requirements

- (1) Authorization Requirements: The following exceptions to yard requirements are authorized for a lot in any zone:
 - a. Where there are buildings on both abutting lots which are within 100 feet of the intervening lot and the buildings have front yards of less than the required depth for the zone, the depth of the front yard for the intervening lot need not exceed the average depth of the front yards of the abutting lots.

- b. If there is a building on one abutting lot which is within 100 feet of the lot and this building has a front yard of less than the required depth for the zone, the front yard for the lot need not exceed a depth halfway between the depth of the front yard of the abutting lot and the required front yard depth.
 - c. Architectural features such as cornices, eaves, canopies, sun shades, gutters, chimneys and flues may project up to 24 inches into a required yard.
- (2) Accessory Structures in Rear Yard Setback: Accessory structures with a floor area of less than or equal to 150 square feet and maximum wall height not exceeding eight feet and a maximum overall height of not more than 13 feet are permitted to be placed in the rear yard setback areas in R-D, R-40, R-10, R-M R-H, and C-MU zones on the condition that:
- a. A minimum five-foot rear yard setback is maintained and all other standard setbacks are maintained in the other yards.

5.3.120 General Exception to Building Height Limitations

- (1) Vertical Projections: Vertical projections such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles and similar objects are not subject to the building height limitations of the Code. Vertical projections may be subject to height limitations due to other applicable Code standards, such as: Location of the structure in the City's airport overlay zone or the imposition of conditions of development via the conditional use permit review process.