

Chapter 5.0 - Exceptions to Code Standards

5.0 Introduction

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Chapter 5.0 - Introduction

This chapter provides standards and procedures for variances and nonconforming 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 nonconforming uses and development are intended to

Chapter 5.1 - Variances

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5.1.1 Purpose

Flexibility, adaptability, and reasonableness in the application and administration of development standards is necessary where special conditions exist. For lands, or uses with unique characteristics, the intent and purpose of the development standard may be maintained while allowing adjustments to requirements. No variance shall be approved which permits the establishment of a use, or activity not identified in a zone.

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 Type III procedure because they involve discretionary decision-making.

5.1.2 Class A Variance

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 ten (10) percent change to the front yard setback standard in the land use zone.
2. Interior setbacks. Up to a ten (10) 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 ten (10) percent increase of the maximum lot coverage required in the base zone.
4. Landscape area. Up to ten (10) percent reduction in landscape area (overall area or interior parking lot landscape area).
5. Access.
 - a. Temporary access for RV parking during the time period of May 1st through September 30th based upon a City approved location.
 - b. Access for turn-around driveway based upon a maximum driveway and approach width of 10th feet.

- c. Access to a second subdivided parcel or lot under the same ownership (or for such parcels or lots combined based upon City approval of a lot consolidation or lot line adjustment application.)
- 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.

5.1.3 Class B Variances

- A. 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:
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, sensitive lands (Chapter 3.7), 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 Minimum Dwelling Living Space Area. The city may approve a dwelling with less than 700 square feet of living space if all of the following criteria are satisfied:
 - a. A hardship to development exists which 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.
 - b. 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.
 - c. The variance requested is the minimum variance that would alleviate the hardship.
 3. 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 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 Chapter 3.1 will be met.
4. Variations 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:
- a. Installation of the tree would interfere with existing utility lines;
 - b. The tree would cause visual 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).
5. Variance to Parking Standards (Chapter 3.3).
- a. The city may approve variances to the minimum or maximum standards for off-street parking in Section 3.3.1 upon finding the following:
 - i. The individual characteristics of the use at the location require more or less parking than is generally required for a use of this type and intensity;
 - ii. The need for additional parking cannot reasonably be met through provisions of on-street parking or shared parking with adjacent or nearby uses; and
 - iii. All other parking design 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 Chapter 3.3.2, 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 Reduce Tree Removal or Impacts to Wetlands** (Chapter 2 and 3.2). 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. Modification shall not be more than is necessary for the preservation of trees on the site.
- C. Variations to Transportation Improvement Requirements** (Chapter 3.4.1). The city may approve, approve with conditions, or deny a variance to the transportation improvement standards of Section 3.4.1, based on the criteria for granting variances provided in Section

3.4.1.B. When the provisions of that Section cannot support a variance request, then the request shall be reviewed as a Class C Variance.

5.1.4 Class C Variance

A. Purpose. The purpose of this section is to provide standards for variances that exceed the Class A and Class B Variance criteria in Section 5.1.2 and 5.1.3. 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 zone would create a hardship to development that is peculiar to the lot size or shape, topography, sensitive lands (Chapter 3.7), 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); 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. Variances to allow a use not otherwise allowed in the underlying land use district are prohibited.

C. Approval Process and Criteria.

1. Class C Variances shall be processed using a Type III procedure, as governed by Section 4.1.5, using the approval criteria in subsection 2, below. In addition to the application requirements contained in Section 4.1.5, the applicant shall provide a written narrative or letter describing their 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 zone or vicinity.
 - b. A hardship to development exists which is peculiar to the lot size or shape, topography, sensitive lands (Chapter 3.7), 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 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 that would alleviate the hardship.

5.1.5 Variance Application and Appeals

The variance application shall conform to the requirements for Type I, II, or III applications (Chapter 4.1.3, 4.1.4, 4.1.5), as applicable. In addition, the applicant shall provide a narrative or letter explaining the reason for their 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 Chapter 4.1.

5.1.6 Expiration of Approval--Standards for Extension of Time

- A. Variance approval shall be effective for a period of one (1) year from the date of approval. If the variance request has not been implemented within the one (1) year period, the approval shall expire.
- B. Variance approval shall be voided immediately if the use established on site does not substantially conform to the approval granted by the City.
- C. The City Recorder shall, upon request by the applicant and payment of the required fee, grant an extension of the approval for a period not to exceed six (6) months. Requests for extension of approval shall be submitted in writing thirty (30) days before the expiration date of the approval period.

Chapter 5.2 - Nonconforming Uses and Developments

Sections:

- 5.2.1 Nonconforming Uses**
- 5.2.2 Nonconforming Development**
- 5.2.3 Pre-existing Lots and Parcels**
- 5.2.4 Conditional Uses**

5.2.1 Nonconforming 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 12 months. For purposes of calculating the 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 and power meters is made to the applicable utility districts.
- D. **Application of Code Criteria and Standards.** If the use is discontinued or abandoned for any reason for a period of more than 12 months, any subsequent use of land shall conform to the applicable standards and criteria specified by this Code for the land use zone in which such land is located.

5.2.2 Nonconforming 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 provision:

- A. No such nonconforming structure may be repaired, maintained, enlarged or altered in a way which increases its nonconformity.
- B. Where a dwelling or other primary structure was lawfully established and is located on two or more separate lots/parcels under single ownership, so that the structure straddles a lot/parcel line, the separate lots/parcels shall be considered a single lot/parcel for land use and development purposes.
- C. Destruction of Nonconforming Structures. In case any nonconforming structure is damaged or destroyed by fire, explosion, an act of God or an act by any other cause to the extent that the total deterioration exceeds 60 percent of the cost of replacement of the building using new materials, the land and the building shall be subject to all the regulations specified by this Code for the zone where such land and building are located.
- D. Should such structure be moved for any reason and by any distance, it shall thereafter conform to the regulations of the Development Code.

5.2.3 Pre-existing Lots and Parcels. Nothing in this Code shall be construed as prohibiting development of non-conforming lots of record existing at the time of the enactment of this Ordinance.

Construction of single-family dwelling on property within residential zone districts may occur on legal lots of record based upon approval of a septic system by Marion County Public Works Department. Such properties shall not be deemed non-conforming development.

5.2.4 Conditional Uses. Any use that is permitted as a conditional use as provided in this Code shall not be deemed a non-conforming use, but shall without further action, be deemed a conforming use, qualified with such conditions as the Planning Commission or City Council has required.