

ORDINANCE NO. 241

**AN ORDINANCE AMENDING THE CITY OF DETROIT DEVELOPMENT CODE
AND DECLARING AN EMERGENCY**

WHEREAS, the City of Detroit provided public notice of public hearings before the Planning Commission and City Council for proposed amendments to the Comprehensive Plan and Development Code as required by Development Code Section 4.1.6.D;

WHEREAS, on September 8, 2015, the Planning Commission conducted a public hearing on CPA/DCA 2015-01, considered information provided by City staff and the public, and voted to recommend selected amendments of these documents to the City Council;

WHEREAS, on September 8, 2015 and December 8, 2015, the City Council conducted public hearings on CPA/DCA 2015-01, considered information provided by City staff and the public, and voted to approve selected amendments to these documents;

NOW, THEREFORE, THE CITY OF DETROIT ORDAINS AS FOLLOWS:

SECTION 1. The City Council of the City of Detroit does hereby adopt the findings and conclusions contained in the Staff Report dated August 26, 2015 with the following modifications:

Comprehensive Plan Chapter IV: Land Use shall be amended so that the minimum lot size for single-family dwellings is 8,000 square feet.

Section 2.1.5(A)(1) and 2.2.4(A)(1) shall be amended so that that the minimum lot area for single-family dwellings in the RS and RM Zones is 8,000 square feet.

SECTION 2. The City Council of the City of Detroit does hereby amend the Detroit Comprehensive Plan and Development Code as shown in Exhibit A, attached hereto and by this reference made a part hereof.


SECTION 3. EMERGENCY CLAUSE: For the peace, health and safety of the citizens of Detroit this ordinance shall take effect immediately upon its passage by the Council.

First read before the City Council of the City of Detroit on December 8, 2015
Second reading by title before the City Council of the City of Detroit on December 8, 2015.

Passed by the Common Council of the City of Detroit, Oregon, this 8th day of December, 2015.

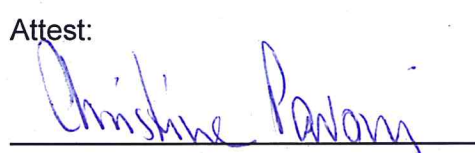
Ayes 10 Nays 1 Absent 0

Signed:



Sharyl Flanders, Mayor

Attest:



Christine Pavoni, City Recorder

ORDINANCE 241 - EXHIBIT A
Approved Amendments to the
Detroit Comprehensive Plan and Development Code
12/8/2015 City Council Hearing

APPROVED AMENDMENTS

The following shows language to be added in underline and language to be deleted in ~~strikeout~~.

DETROIT COMPREHENSIVE PLAN

CHAPTER IV: LAND USE

INTRODUCTION

A land use plan indicates the area into which various types of activities are expected to occur. Detroit designates five categories of land uses. There is currently no land designated Industrial Commercial.

1. Single-Family Residential. Areas designated as single-family residential shall have a minimum lot size of ~~12,000~~8,000 square feet. New subdivisions and planned unit developments shall have a minimum net density of 3 ~~to 4~~ units per acre.

Chapter 1.3 - Definitions

Sections:

1.3.1 Grammatical Interpretation.

1.3.2 Definitions

1.3.1 Grammatical Interpretation

Words used in the masculine include the feminine, and feminine the masculine. Words used in the present tense include the future; the singular number includes the plural. The word "shall" is mandatory and not directory. The word "may" is permissive. All terms in this code have their commonly accepted, dictionary meaning unless they are specifically defined in the following section or the context in which they are used clearly indicates to the contrary.

1.3.2 Definitions

The following words and phrases, when used in this Code, shall have the meanings set forth in this Chapter, except in those instances where the context clearly indicates a different meaning. Definitions marked with a # are further illustrated in Appendix A.

Land Division - The process of dividing land to create parcels or lots.

Lot - A unit of land created by a subdivision of land ~~(ORS 92.010(3)). See also, Chapter 4.3.~~

Lot Line Adjustment – See Property Line Adjustment.

Lot of Record – A lot or parcel created pursuant to ORS 92 or another unit of land created:

1. In compliance with all applicable planning, zoning, subdivision or partition regulations;
or

2. By deed or land sales contract, if there were no applicable planning, zoning, subdivision or partition regulations. A lot that is part of a subdivision or a lot or parcel described by metes and bounds, which has been recorded in the Office of the Marion County Clerk.

Parcel - A unit of land created by a partitioning of land ~~(ORS 92.010(6)). See also, Chapter 4.3.~~

Partition - To divide ~~an area or tract of land into 2 or 3 parcels~~ land into not more than three parcels within a calendar year ~~when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year. (See also, ORS 92.010(8)).~~ "Partition" does not include:

1. Divisions of land resulting from lien foreclosures, ~~divisions of land resulting from foreclosure of recorded~~ contracts for the sale of real property, ~~and divisions of land resulting from~~ the creation of cemetery lots; or
2. A sale or grant by a person to a public agency or public body for state highway, county road, or other right-of-way purposes provided that such road or right-of-way complies with the applicable comprehensive plan and ORS 215.213 (2)(q) to (s) and 215.283 (2)(p) to (r).

Plat - The final map ~~and which is a diagram, drawing, re plat or~~ other writing containing all the descriptions, locations, specifications, dedications, provisions, and information concerning a subdivision, ~~or partition or replat, which is prepared as specified in ORS 92.080. All plats shall conform to Chapter 4.3 Land Divisions.~~

Property Line – The division line between two units of land.

Property Line Adjustment – The relocation or elimination of all or a portion of the common property line between abutting properties ~~or the elimination of all or part of a common property line that does not create an additional lot or parcel.~~

Replat – The act of platting the lots, parcels and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision.

Setback - The distance between a ~~building (or other feature of development) structure~~ and a property line. Setbacks are measured from the outermost portion of the structure or its component parts. Minimum and maximum setbacks may be required for front, side and rear yards.

Subdivide - To divide land into 4~~four~~ or more lots within a calendar year. ~~(ORS 92.010(13)).~~

***Yard** - The area defined by setbacks (i.e., between the setback line and respective property line).

Chapter 2.1 – Residential Single Family (RS) Zone

Sections:

- 2.1.1 Purpose
- 2.1.2 Permitted Uses
- 2.1.3 Transitional Uses
- 2.1.4 Conditional Uses
- 2.1.5 Dimensional Standards
- 2.1.6 Development Standards
- 2.1.7 Special Standards for Certain Uses

2.1.2 Permitted Uses

Within the RS zone, no building, structure or premise shall be used, arranged or designed to be used, erected, structurally altered, or enlarged except for the following uses and activities:

- A. Single-family dwellings ~~including manufactured homes complying with the definitional requirements in Chapter 1.3 and 2.1.7 Section A with at least 700 square feet of living space, including Single-family dwellings shall not have less than 700 square feet of living space on newly developed properties. “Newly developed” shall be determined as not having a single family structure or manufactured home on the property six months prior to date of filing a building permit application, manufactured homes subject to Section 2.1.7.A.~~

2.1.5 Dimensional Standards

A. Minimum Lot Area

1. Single Family dwellings: ~~10,000~~8,000 square feet
2. Public utility structures: Lot area shall be adequate to contain all proposed structures within the required yard setbacks.

B. Minimum Yard Setback Requirements. All principal ~~and accessory~~ structures shall maintain the following minimum yard setbacks:

1. Front Yards, Yards Adjacent to Streets 15 feet
2. Side and Rear Yards 5 feet

C. ~~There are no exceptions to Setback Requirements:~~Special Setbacks. The following special building setbacks shall be maintained:

1. Buildings or structures shall setback an additional one (1) foot from every street and lot line for each foot of height the building exceeds 35 feet.
2. The garage entrance shall be setback a minimum of 20 feet from an adjacent street.
3. Accessory structures shall comply with the setback provisions in Chapter 3.8.

D. Maximum Structure Height

The maximum structure height is 35 feet. Churches or public or semi-public buildings with conditional use permits may be constructed to a maximum of 70 feet.

E. Minimum Lot Width 50 feet

F. ~~Special Setbacks~~

~~The following special building setbacks shall be maintained:~~

- ~~1. Buildings or structures shall setback an additional one (1) foot from every street and lot line for each foot of height the building exceeds 35 feet.~~
- ~~2. The garage entrance shall be setback a minimum of 20 feet from an adjacent street.~~
- ~~3. Accessory structures shall comply with the setback provisions in Chapter 3.8.~~

2.1.7 Special Standards for Certain Uses

This section supplements the standards contained in Sections 2.1.1 through 2.1.6. It provides standards for the following land uses in order to control the scale and compatibility of those uses within the RS Zone:

A. **Manufactured homes on individual lots or parcels.** Manufactured homes are permitted on individual lots and parcels, subject to all of the following design standards, consistent with ORS 197.307(5). Exception: The following standards do not apply to units that existed within the City before the effective date of this Code.

1. **Floor Plan.** The manufactured home shall be multi-sectional and have an enclosed floor area living space of not less than 700 square feet;
2. **Roof.** The manufactured home shall have a pitched roof with a slope not less than three (3) feet in height for each 12 feet in width (14 degrees);
3. **Residential Building Materials.** The manufactured home shall have exterior siding and roofing which in color, material and appearance are similar or superior to the exterior siding and roof material used on nearby residences (e.g., horizontal wood or wood-appearance siding is considered "superior" to metal siding and roofing);
4. **Garages and Carports.** The manufactured home shall have a garage or carports constructed of similar materials when nearby residences have carports or garages. The city may require an attached or detached garage where that would be consistent with the predominant construction of immediately surrounding residences;
5. **Thermal Envelope.** The manufactured home shall be certified by the manufacturer to meet the thermal envelope requirements equivalent to those for a single-family dwelling constructed under the State Building Code. Evidence demonstrating that the manufactured home meets "Super Good Cents" energy efficiency standards is deemed to satisfy the exterior thermal envelope certification requirement. Additional manufacturer certification shall not be required.

6. Placement. The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than 16 inches above grade, and complying with the minimum set-up standards of the adopted stated Administrative Rules for Manufactured Dwellings, Chapter 918. Where the building site has a sloped grade, no more than 16 inches of the enclosing material shall be exposed on the uphill side of the home;
7. Foundation Skirt. The foundation area of the manufactured home shall be fully skirted; and
8. Prohibited. The manufactured home shall not be located in a designated historic district.

Chapter 2.2 – Residential Multi Family (RM) Zone

Sections:

2.2.1 Purpose

2.2.2 Permitted Uses

2.2.3 Conditional Uses

2.2.4 Dimensional Standards

2.2.5 Development Standards

2.2.2 Permitted Uses

Within the RM zone, no building, structure or premise shall be used, arranged or designed to be used, erected, structurally altered, or enlarged except for the following uses and activities:

- A. ~~Single-family dwellings with at least 700 square feet of living space, including manufactured homes subject to Section 2.1.7.A.~~
- B. ~~Dwellings, including single family dwellings, manufactured homes complying with the definitional requirements in Chapter 1.3 and 2.1.7 Section A., dDuplexes and multifamily dwellings, detached or attached. Single family dwellings shall not have less than 700 square feet of living space.~~
- ~~B~~C. Public parks, and playgrounds.
- ~~E~~D. Public utility structures and buildings, such as pump stations, reservoirs, and electric substations; but not including telecommunications facilities or office or administrative buildings.
- ~~D~~E. Child care facilities for less than thirteen (13) children complying with ORS 657(A).
- ~~E~~F. Accessory structures and uses, including but not limited to customary residential accessory buildings for private use, such as a greenhouse, hot house, hobby shop, patio, enclosed or covered patio, fences (over six (6) feet) or garage; provided the requirements in Chapter 3.8 are satisfied. Accessory uses and structures may include:
 - 1. Accessory Dwelling;
 - 2. Gardens, orchards and crop cultivation, provided no stable or barn, cattle or other livestock, or poultry is maintained on the property, and, no outdoor sales or retail business is conducted.
- ~~F~~G. Boarding houses and rooming houses.
- ~~G~~H. Churches and places of worship.
- ~~H~~I. Community or neighborhood club buildings.
- ~~I~~J. Residential Homes and Residential Facilities consistent with the definitional requirements in Chapter 1.3 and 2.1.7 Section B.

2.2.4 Dimensional Standards

A. Minimum Lot Area

1. Single Family dwellings: ~~10,000~~8,000 square feet
2. Duplex: 14,000 square feet
3. Multi-family dwelling, 3 unit: 15,000 square feet
plus 3,000 square feet per unit in excess 3 units
4. Public utility structures: Lot area shall be adequate to contain all proposed structures within the required yard setbacks

B. Minimum Yard Setback Requirements. All principal ~~and accessory~~ structures shall maintain the following minimum yard setbacks:

1. Front Yards, Yards Adjacent to Streets ~~20-15~~ feet
2. Side and Rear Yards
Single-family dwellings 5 feet
All other structures 10 feet

~~C. There are no exceptions to setback requirements:~~Special Setbacks. The following special building setbacks shall be maintained.

1. Buildings or structures shall setback an additional one foot from every street and lot line for each foot of height the building exceeds 35 feet.
2. The garage entrance shall be setback a minimum of 20 feet from an adjacent street.
3. Accessory structures shall comply with the setback provisions in Chapter 3.8 of the title.
4. The distance between buildings on the same lot or parcel shall be ten (10) feet.

D. Maximum Structure Height

The maximum structure height is 35 feet. Churches or public or semi-public buildings with a conditional use permit may be constructed to a maximum of 70 feet.

E. Minimum Lot Width 60 feet

~~F. Special Setbacks~~

~~The following special building setbacks shall be maintained.~~

- ~~1. Buildings or structures shall setback an additional one foot from every street and lot line for each foot of height the building exceeds 35 feet.~~
- ~~2. The garage entrance shall be setback a minimum of 20 feet from an adjacent street.~~
- ~~3. Accessory structures shall comply with the setback provisions in Chapter 3.8 of the title.~~
- ~~4. The distance between buildings on the same lot or parcel shall be ten (10) feet.~~

Chapter 4.1 - Types of Applications and Review Procedures

Sections:

- 4.1.1 Purpose
- 4.1.2 Description of Permit Procedures
- 4.1.3 Type I Procedure
- 4.1.4 Type II Procedure
- 4.1.5 Type III Procedure
- 4.1.6 Type IV Procedure
- 4.1.7 General Procedures
- 4.1.8 Special Procedures

4.1.1 Type II Procedure (Administrative)

~~A. **Preapplication conference.** A preapplication conference is required for Type II applications. Preapplication conference requirements and procedures are in Section 4.1.7.~~

B.A. Application Requirements.

1. Application Forms. Type II applications shall be made on forms provided by the city.
2. Submittal Information. The application shall:
 - a. Include the information requested on the application form;
 - b. Be filed with three (3) copies of a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision-making;
 - c. Be accompanied by the required fee;
 - ~~d. Include an impact study for all land division applications. The impact study shall quantify/assess the effect of the development on public facilities and services. The study shall address, at a minimum, the transportation system, including pedestrian ways and bikeways, the drainage system, the parks system, the water system, and the noise impacts of the development. For each public facility system and type of impact, the study shall propose improvements necessary to meet city standards and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users. In situations where this Code requires the dedication of real property to the city, the applicant shall either specifically agree to the dedication requirement, or provide evidence that shows that the real property dedication requirement is not roughly proportional to the projected impacts of the development.~~

4.1.7 General Provisions

- A. **120-day Rule.** The city shall take final action on permit application which are subject to this Chapter, including resolution of all appeals, within 120 days from the date the application is deemed as complete. Any exceptions to this rule shall conform to the provisions of ORS 227.178. (The 120-day rule does not apply to Type IV legislative decisions - plan and code amendments - under ORS 227.178.)

B. **Time Computation.** In computing any period of time prescribed or allowed by this chapter, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or legal holiday, including Sunday, in which event, the period runs until the end of the next day which is not a Saturday or legal holiday.

C. **Pre-application Conferences.**

1. **Participants.** ~~When a pre application conference is required, t~~The applicant shall meet with the City Recorder or the City Recorder's designee(s) and other City staff or officials as required by the City Recorder or the City Recorder's designee;
2. **Information provided.** At such conference, the City Recorder or designee shall:
 - a. Cite the comprehensive plan policies and map designations applicable to the proposal;
 - b. Cite the ordinance provisions, including substantive and procedural requirements applicable to the proposal;
 - c. Provide available technical data and assistance which will aid the applicant;
 - d. Identify other governmental policies and regulations that relate to the application; and
 - e. Reasonably identify other opportunities or constraints concerning the application.
3. **Disclaimer.** Failure of the City Recorder or the City Recorder's designee to provide any of the information required by this Section C shall not constitute a waiver of any of the standards, criteria or requirements for the application;
4. ~~Changes in the law. Due to possible changes in federal, state, regional, and local law, the applicant is responsible for ensuring that the application complies with all applicable laws on the day the application is deemed complete.~~

Chapter 4.3 - Land Divisions, Replats and Property Line Adjustments/Lot Line Adjustments

Sections:

4.3.1 Purpose

4.3.2 General RequirementsProperty Line Adjustment/Lot Line Adjustment

4.3.3 Preliminary Plat Submission RequirementsGeneral Requirements

4.3.4 Approval Criteria: Preliminary PlatApprovals Process

4.3.5 Final Plat Submission Requirements and Approval CriteriaPreliminary Plat Submission Requirements

4.3.6 Public ImprovementsApproval Criteria: Preliminary Plat

4.3.7 Filing and RecordingVariiances Authorized

4.3.8 ReplatsFinal Plat Submission Requirements and Approval Criteria

4.3.9 Property Line AdjustmentsPublic Improvements

~~4.3.10 Performance Guarantees~~

~~4.3.11 Filing and Recording~~

~~4.3.12 Property Line Verification for Building Permits~~

4.3.1 Purpose.

The purpose of this chapter includes all of the following and is to:

- A. Provide rules, regulations and standards governing the approval of property line adjustments/~~lot line adjustments~~, partitions, and subdivisions and planned unit developments. Units of land shall only be created or reconfigured in conformance with the standards of this chapter and ORS 92.
 - ~~1. Property Line Adjustment/Lot Line Adjustment. Property Line Adjustments/Lot Line Adjustments involve modifications to lot lines or parcel boundaries that do not result in the creation of new lots (includes consolidation of lots). Adjustments are subject to the provisions of ORS Chapter 92.~~

~~Property Line Adjustments/Lot Line Adjustments do not include street vacations that shall comply with Oregon Revised Statutes, Chapter 271.~~
 - ~~2. Partition. This action creates up to three (3) new parcels within a calendar year and is subject to the provisions in ORS Chapter 92. Partitions generally maintain the traditional development pattern whereby major flexibility in design, densities, and land uses are not encouraged or provided for.~~
 - ~~3. Subdivision. This action creates four (4) or more new parcels within a calendar year and is subject to the provisions in ORS Chapter 92. Traditional development patterns are usually maintained and major flexibility in design; densities and land uses are not encouraged or provided for. Subdivisions usually require the extension of public facilities and services.~~
- B. Carry out the city's development pattern, as envisioned by the Comprehensive Plan.
- C. Encourage efficient use of land resources, full utilization of urban services, and transportation options.

- D. Promote the public health, safety and general welfare through orderly and efficient urbanization.
- E. Lessen or avoid traffic congestion, and secure safety from fire, flood, pollution and other dangers.
- F. Provide adequate light and air, prevent overcrowding of land, and facilitate adequate provision for transportation, water supply, sewage and drainage.
- G. Encourage the conservation of energy resources.

~~4.3.2 Property Line Adjustments/Lot Line Adjustments.~~

~~Property Line Adjustments/Lot Line Adjustments include the consolidation of two (2) lots, and the modification of lot boundaries, when no new lots are created. Consolidation of lots or parcels serves to vacate parcel/lot lines and reconfigure the platted lots or parcels within a previously recorded partition or subdivision plat. The application submission and approvals process is as follows:~~

- ~~1. Submission Requirements. All applications for Property Line Adjustment/Lot Line Adjustment shall be made on forms provided by the city and shall include information required for a Type I application, as governed by Chapter 4.1.3. The application shall include a preliminary lot line map identifying all existing and proposed lot lines and dimensions; footprints and dimensions of existing structures (including accessory structures); location and dimensions of driveways and public and private streets within or abutting the subject lots; location of significant vegetation as defined and mapped in Section 3.2.2.B-C; existing fences and walls; and showing any other information deemed necessary by the city for ensuring compliance with city codes.~~

~~B. Approval Process.~~

- ~~1. Decision making process. Property line adjustments/lot line adjustments shall be reviewed by means of a Type I procedure, as governed by Chapter 4.1.3, using approval criteria contained in subsection C, below.~~
- ~~2. Time limit on approval. The property line adjustment/lot line adjustment approval shall be effective for a period of one year from the date of approval, during which time it must be recorded.~~
- ~~3. Lapsing of approval. The property line adjustment/lot line adjustment approval shall lapse if:

 - ~~a. The property line adjustment/lot line adjustment is not recorded within the time limit in subsection 2;~~
 - ~~b. The property line adjustment/lot line adjustment has been improperly recorded with Marion County without the satisfactory completion of all conditions attached to the approval; or~~
 - ~~c. The final recording is a departure from the approved plan.~~~~

~~C. Approval Criteria. The City Recorder or City Recorder's designee shall approve or deny a request for a lot line adjustment in writing based on findings that all of the following criteria are satisfied:~~

- ~~1. No increase in non-conformance. In any zone, the adjustment of a lot line by mutual consent of property owners shall be permitted provided the adjustment in no way increases the degree of non-conformity of any parcel.~~

- ~~2. No increase in parcels/lots. No additional parcel or lot is created by the property line adjustment/lot line adjustment, however the number of lots or parcels may be reduced.~~
- ~~3. Public Right. Lot consolidations that remove platted partition or subdivision lot lines do not destroy any public right in any of its public uses, improvements, streets or alleys.~~
- ~~4. Lot standards. All lots and parcels comply with the applicable lot standards of the land use district (Chapter 2) including lot area and dimensions.~~
- ~~5. Access. All lots and parcels comply with the standards or requirements of Chapter 3.1 Access and Circulation.~~
- ~~6. Setbacks. The resulting lots, parcels, tracts, and building locations comply with the standards of the land use district (Chapter 2).~~

~~Exemptions from Dedications and Improvements. A property line adjustment/lot line adjustment is not considered a development action for purposes of determining whether right of way dedication or improvement is required.~~

~~D. Recording Property Line Adjustments/Lot Line Adjustments.~~

- ~~1. Recording. Upon the city's approval of the proposed property line adjustments/lot line adjustment, the applicant shall record the property line adjustment/lot line adjustment with the Marion County Surveyor within 60 days of approval (or the decision expires), and submit a copy of the recorded survey map to the city, to be filed with the approved application. Consolidation of platted lots requires recording of a plat document in a format approved by the Marion County Surveyor. An approved plat (adjustment/consolidation) and revised property description(s) shall be recorded with the Marion County Recorder.~~
- ~~2. Time limit. The applicant shall submit the copy of the recorded property line adjustment/lot line adjustment survey map to the city within 15 days of recording and before the issuance of any building permits on the re-configured lots.~~

~~E. Extension. The city shall, upon written request by the applicant and payment of the required fee, grant an extension of the approval period not to exceed one (1) year provided that:~~

- ~~1. No changes are made on the original plan as approved by the city;~~
- ~~2. The applicant can show intent of recording the approved property line adjustment/lot line adjustment within the one year extension period;~~
- ~~3. No changes occurred in the applicable Code or plan provisions on which the city based its approval. In the case where the property line adjustment/lot line adjustment conflicts with a code change, the extension shall be denied; and~~
- ~~4. The extension request is made before expiration of the original approved plan.~~

~~4.3.34.3.2 Subdivision, Partition and Replat General Requirements~~

A. **Subdivision, and Partition and Replat Approval through Two-step Process.** Applications for subdivision or partition approval shall be processed through a two-step process: the preliminary plat and the final plat.

1. Preliminary plats for partitions shall be processed as a Type II application. Preliminary plats for subdivision shall be processed as a Type III application. The preliminary plat shall be approved before the final plat can be submitted for approval consideration; and
2. Upon approval of the preliminary plat and satisfaction of all applicable conditions, the final plat shall be processed as a Type I application. The final plat shall include all conditions of approval of the preliminary plat.

B. ~~Minimize Flood Damage.~~ All subdivisions and partitions shall be designed based on the need to minimize the risk of flood damage. No new building lots shall be created entirely within a floodway. All new lots shall be buildable without requiring development within the floodway. Development in a 100-year flood plain shall comply with Federal Emergency Management Agency requirements, including filling to elevate structures above the base flood elevation. The applicant shall be responsible for obtaining such approvals from the appropriate agency before city approval of the final plat. See Chapter 3.7.1.

C. ~~Determination of Base Flood Elevation.~~ Where a development site consists of three (3) or more lots, or is located in or near areas prone to inundation, and the base flood elevation has not been provided or is not available from another authoritative source, it shall be prepared by a qualified professional, as determined by the City Recorder or the City Recorder's designee.

D. ~~Need for Adequate Facilities.~~ All lots created through land division shall have adequate public utilities and facilities such as electrical and water systems located and constructed to prevent or minimize flood damage to the greatest extent practicable.

E. ~~Need for Adequate Drainage.~~ All subdivision and partition proposals shall have adequate surface water drainage provided to reduce exposure to flood damage. Water quality or quantity control improvements may be required.

4.3.4 Approval Process

A. ~~Review of Preliminary Plat.~~ Review of a preliminary plat for a partition shall be processed by means of a Type II procedure, as governed by Section 4.1.4. Preliminary plats for subdivisions shall be processed with a Type III procedure under Section 4.1.5. All preliminary plats shall be reviewed using approval criteria contained in Section 4.3.5.

B. ~~Review of Final Plat.~~ Review of a final plat for a subdivision or partition shall be processed by means of a Type I procedure under Section 4.1.3, using the approval criteria in Section 4.3.8.

C. ~~Preliminary Plat Approval Period.~~ Preliminary plat approval shall be effective for a period of one (1) year from the date of approval. The preliminary plat shall lapse if a final plat has not been submitted within a one year period.

D. Phased Development.

1. The City may approve a time schedule for developing a subdivision in phases, but in no case shall the actual construction time period (i.e., for required public improvements, utilities, streets) for any

partition or subdivision phase be greater than three (3) years without reapplying for a preliminary plat;

2. The criteria for approving a phased land division proposal are:
 - a. Public facilities shall be constructed in conjunction with or prior to each phase;
 - b. The development and occupancy of any phase dependent on the use of temporary public facilities shall require City Council approval. Temporary facilities shall be approved only upon city receipt of bonding or other assurances to cover the cost of required permanent public improvements, ~~in accordance with Section 4.3.10~~. A temporary public facility is any facility not constructed to the applicable city or district standard;
 - c. The phased development shall not result in requiring the city or a third party (e.g., owners of lots) to construct public facilities that were required as part of the approved development proposal; and
 - d. The application for phased development approval shall be reviewed concurrently with the preliminary plat application and the decision may be appealed in the same manner as the preliminary plat.

4.3.54.3.3 **Preliminary Plat Submission Requirements.**

~~A. **General Submission Requirements.** For partitions, the applicant shall submit an application containing all of the information required for a Type II procedure under Section 4.1.4. For subdivisions, the application shall contain all of the information required for a Type III procedure under Section 4.1.5;~~

~~B.A. **Preliminary Plat Information.** In addition to the general information described in Subsection A above, the A preliminary plat application shall consist of drawings and supplementary written material (i.e., on forms and/or in a written narrative) adequate to provide the following information:~~

1. General information;
2. Name of subdivision (not required for partitions). This name must not duplicate the name of another subdivision in Marion County (please check with County Surveyor);
3. Date, north arrow, and scale of drawing;
4. Location of the development sufficient to define its location in the city, boundaries, and a legal description of the site;
5. Names, addresses and telephone numbers of the owners, designer, and engineer or surveyor if any, and the date of the survey; and
6. Identification of the drawing as a "preliminary plat".
7. Site analysis:
 - a. Streets: Location, name, present width of all streets, alleys and rights-of-way on and abutting the site;

- b. Easements: Width, location and purpose of all existing easements of record on and abutting the site;
 - c. Utilities: Location and identity of all utilities on and abutting the site. If water mains are not on or abutting the site, indicate the direction and distance to the nearest ones;
 - d. Ground elevations shown by contour lines at 5-foot vertical intervals for ground slopes exceeding ten (10) percent and at 2-foot intervals for ground slopes of less than ten (10) percent. Such ground elevations shall be related to some established benchmark or other datum approved by the County Surveyor. This requirement may be waived for partitions when grades, on average, are less than five (5) percent;
 - e. The location and elevation of the closest benchmark(s) within or adjacent to the site (i.e., for surveying purposes);
 - f. Potential natural hazard areas, including any flood plains, areas subject to high water table, landslide areas, and areas having a high erosion potential;
 - g. Sensitive lands, including wetland areas, streams, wildlife habitat, and other areas identified by the City or natural resource regulatory agencies as requiring protection. (See also, Chapter 3.7 and relevant portions of the Comprehensive Plan);
 - h. Site features, including existing structures, pavement, areas having unique views, drainage ways, and ditches;
 - i. Designated historic and cultural resources on the site and adjacent parcels or lots;
 - j. The location, size and species of trees having a caliper (diameter) of four (4) inches or greater at four (4) feet above grade in conformance with Chapter 3.2;
 - k. North arrow, scale, name and address of owner;
 - l. Name of address of project designer, if applicable; and
 - m. Other information, as deemed appropriate by the City Recorder to address required standards or applicable criteria. The City may require studies or exhibits prepared by qualified professionals to address specific site features and code requirements.
8. Proposed improvements:
- a. Public and private streets, tracts, driveways, open space and park land; location, names, right-of-way dimensions, approximate radius of street curves; and approximate finished street center line grades. All streets and tracts which are being held for private use and all reservations and restrictions relating to such private tracts shall be identified;
 - b. Easements: location, width and purpose of all easements;
 - c. Lots and private tracts (e.g., private open space, common area, or street): approximate dimensions, area calculation (e.g., in square feet), and identification numbers for all lots and tracts;

- d. Proposed uses of the property, including all areas proposed to be dedicated to the public or reserved as open space for the purpose of surface water management, recreation, or other use;
- e. Proposed improvements as required by Chapter 3 (Design Standards), and timing of improvements (e.g., in the case of streets, sidewalks, street trees, utilities, etc.);
- f. The proposed source of domestic water;
- g. The location and dimension of all storm water or water quality treatment, infiltration and/or retention facilities;
- h. The proposed method of sewage disposal, and method of surface water drainage and treatment if required;
- i. The approximate location and identity of other utilities, including the locations of street lighting fixtures;
- j. Changes to navigable streams or other watercourses. Provision or closure of public access to these areas shall be shown on the preliminary plat, as applicable;
- k. Identification of the base flood elevation for development greater than three (3) lots or one (1) acre, whichever is less. Evidence of contact with the Federal Emergency Management Agency to initiate a flood plain map amendment shall be required when development is proposed to modify a designated 100-year flood plain; and
- l. Evidence of contact with the applicable natural resource regulatory agency~~(ies)~~ for any development within or adjacent to jurisdictional wetlands and other sensitive lands, as identified in Chapter 3.7.

B. Method of Sewage Disposal. Documentation of an adequate method of sewage disposal available to serve each lot or parcel shall be provided. If the sewage disposal system utilizes septic tanks, there shall be an approved site for subsurface sewage disposal for each and every lot or parcel prior to final plat approval.

C. Impact Study for Subdivisions. The impact study shall quantify/assess the effect of the development on public facilities and services. The study shall address, at a minimum, the transportation system, including pedestrian ways and bikeways, the drainage system, the parks system, the water system, and the noise impacts of the development. For each public facility system and type of impact, the study shall propose improvements necessary to meet city standards and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users. In situations where this Code requires the dedication of real property to the city, the applicant shall either specifically agree to the dedication requirement, or provide evidence that shows that the real property dedication requirement is not roughly proportional to the projected impacts of the development.

D. Determination of Base Flood Elevation. Where a development site consists of three (3) or more lots, or is located in or near areas prone to inundation, and the base flood elevation has not been provided or is not available from another authoritative source, it shall be prepared by a qualified professional, as determined by the City Recorder or the City Recorder's designee.

E. Future Re-division Plan. When creating large lots or parcels (i.e., greater than two (2) times or 200 percent the minimum lot size allowed by the underlying land use zone), the city shall require that the lots

or parcels be of such size, shape, and orientation as to facilitate future re-division in accordance with the requirements of the land use zone and this Code. A re-division plan shall be submitted which identifies:

1. Potential future land division(s) in conformance with the housing and density standards of Chapter 2;
2. Potential street right-of-way alignments to serve future development of the property and connect to adjacent properties, including existing or planned rights-of-way.
3. A disclaimer that the plan is a conceptual plan intended to show potential future development. It shall not be binding on the city or property owners, except as may be required through conditions of land division approval. For example, dedication and improvement of rights-of-way within the plan area may be required to provide needed secondary access and circulation.

4.3.64.3.4 Approval Criteria: Preliminary Plat.

A. General Approval Criteria. ~~The city shall not approve a preliminary plan for a proposed subdivision, partition or replat without findings that the following criteria are satisfied; may approve, approve with conditions or deny a preliminary plat based on the following approval criteria:~~

1. The proposal complies with applicable provisions of the underlying land use district; proposed preliminary plat complies with all of the applicable Development Code sections and other applicable ordinances and regulations. At a minimum, the provisions of this Chapter, and the applicable sections of Chapter 2.0 (Land Use Zones) and Chapter 3.0 (Design Standards) shall apply. Where a variance is necessary to receive preliminary plat approval, the application shall also comply with the relevant sections of Chapter 5.0 (Exceptions);
- ~~2.~~ All lots or parcels have sufficient area for intended structures and uses considering setbacks, access, terrain, and spacing required for water supply and sewage disposal.
- ~~2.~~ The proposed plat name is not already recorded for another subdivision; and satisfies the provisions of ORS Chapter 92;
- ~~3.~~ The proposed streets, roads, sidewalks, bicycle lanes, pathways, utilities, and surface water management facilities are laid out so as to conform or transition to the plats of subdivisions and maps of partitions already approved for adjoining property as to width, general direction and in all other respects. The proposal allows for the development of adjacent property in accordance with the provisions of this code;
- ~~4.~~ The proposal complies with the applicable provisions of Chapter 3.0 – Design Standards.
- ~~3-5.~~ Required public facilities have adequate capacity, as determined by the City, to serve the proposed subdivision, partition or replat. All proposed public improvements and dedications are identified on the preliminary plat; and
- ~~4.~~ All proposed private common areas and improvements (e.g., home owner association property) are identified on the preliminary plat.

B. Housing Density. ~~The subdivision meets the city's housing standards of Chapter 2.~~

~~C. **Block and Lot Standards.** All proposed blocks (i.e., one (1) or more lots bound by public streets), lots and parcels conform to the specific requirements below:~~

- ~~1. All lots shall comply with the lot area, setback, and dimensional requirements of the applicable land use zone (Chapter 2), and the standards of Chapter 3.1, Section 2.J – Street Connectivity and Formation of Blocks.~~
- ~~2. Setbacks shall be as required by the applicable land use zone (Chapter 2).~~
- ~~3. Each lot shall conform to the standards of Chapter 3.1 – Access and Circulation. Minimize Flood Damage. All subdivisions and partitions shall be designed based on the need to minimize the risk of flood damage. No new building lots shall be created entirely within a floodway. All new lots shall be buildable without requiring development within the floodway. Development in a 100-year flood plain shall comply with Federal Emergency Management Agency requirements, including filling to elevate structures above the base flood elevation. The applicant shall be responsible for obtaining such approvals from the appropriate agency before city approval of the final plat. See Chapter 3.7.1.~~
- ~~4. Landscape or other screening may be required to maintain privacy for abutting uses. See also, Chapter 2 – Land Use Zones, and Chapter 3.2 – Landscaping.~~
- ~~5. In conformance with the Uniform Fire Code, a 20-foot wide apparatus access drive shall be provided to serve all portions of a building that are located more than 150 feet from a public right of way or approved access drive. See also, Chapter 3.1 – Access and Circulation.~~
- ~~6. Where a common drive is to be provided to serve more than one (1) lot, a reciprocal easement that will ensure access and maintenance rights shall be recorded with the approved subdivision or partition plat.~~

~~B. **Conditions of Approval.** The city may attach such conditions as are necessary to carry out provisions of this Code, and other applicable ordinances and regulations, and may require reserve strips be granted to the city for the purpose of controlling access to adjoining undeveloped properties. See also, Chapter 3.4.0.D (Public Facilities).~~

~~C. **Modifications and Extension.** The applicant may request changes to the approved preliminary plat or conditions of approval following the procedures and criteria provided in Chapter 4.6 - Modifications. The City Recorder or City Recorder's designee shall, upon written request by the applicant and payment of the required fee, grant one extension of the approval period not to exceed one (1) year, provided that:~~

- ~~1. Any changes to the preliminary plat follow the procedures in Chapter 4.6;~~
- ~~2. The extension request is made before the expiration of the original plan;~~
- ~~3. The applicant has submitted written intent to file a final plat within the one-year extension period;~~
- ~~4. An extension of time will not prevent the lawful development of abutting properties.~~

~~4.3.7 – Variances Authorized.~~

~~Adjustments to the standards of this Chapter shall be processed in accordance with Chapter 5.1 – Variances. Applications for variances shall be submitted at the same time an application for land division or lot line adjustment is submitted.~~

~~4.3.8~~4.3.5 Final Plat Submission Requirements and Approval Criteria

- A. **Submission Requirements.** Final plats shall be reviewed and approved by the city before recording with Marion County. The applicant shall submit the final plat within one (1) year of the approval of the preliminary plat ~~as provided by Section 4.3.3~~. Specific information about the format and size of the plat, number of copies and other detailed information can be obtained from the City Recorder.
- B. **Approval Criteria.** By means of a Type I procedure, the City Recorder or City Recorder's designee shall review the final plat and shall approve or deny the final plat based on findings regarding compliance with the following criteria:
1. The final plat complies with the approved preliminary plat, and all conditions of approval have been satisfied;
 2. All public improvements required by the preliminary plat have been installed and approved by the city. Alternatively, the developer has provided a performance guarantee in accordance with Section 4.3.~~10~~6.
 3. The streets and roads for public use are dedicated without reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public utilities;
 4. The streets and roads held for private use have been approved by the city as conforming to the preliminary plat;
 5. The plat contains a dedication to the public of all public improvements, including but not limited to streets, public pathways and trails, access reserve strips, parks, storm drainage, and water supply systems;
 6. The applicant has provided copies of all recorded homeowners association Codes, Covenants, and Restrictions (CC&Rs); deed restrictions; private easements and agreements (e.g., for access, common areas, parking, etc.); and other recorded documents pertaining to common improvements recorded and referenced on the plat;
 - ~~7. The plat complies with the applicable sections of this code (i.e., there have been no changes in land use or development resulting in a code violation since preliminary plat approval);~~
 7. Certification by the city or service district, as applicable, that water service is available to each and every lot depicted on the plat; or bond, contract or other assurance has been provided by the ~~subdivider-developer~~ to the city that such services will be installed in accordance with Chapter 3.4 - Public Facilities, and the ~~bond requirements of Section 4.3.10~~. The amount of the bond, contract or other assurance by the subdivider shall be determined by a registered professional engineer, subject to review and approval by the city;
 8. If the sewage disposal system of the subdivision utilizes septic tanks, there shall be an approved site for subsurface sewage disposal by Marion County Building Inspection for each and every lot or parcel prior to final plat approval.
 - ~~9. The plat contains an affidavit by the surveyor who surveyed the land, represented on the plat to the effect the land was correctly surveyed and marked with proper monuments as provided by ORS Chapter 92, and indicating the initial point of the survey, and giving the dimensions and kind of such~~

~~monument, and its reference to some corner established by the U.S. Geological Survey or giving two (2) or more permanent objects for identifying its location.~~

4.3.9**4.3.6 Public Improvements.**

Before city approval is certified on the final plat, all required public improvements shall be installed, inspected, and approved. Alternatively, the ~~subdivider-developer shall~~ may provide a performance guarantee, ~~which shall comply with the following; in accordance with Section 4.3.10.~~

~~4.3.10 Performance Guarantee.~~

A. Performance Guarantee Required. ~~When a~~ performance guarantee ~~is required under Section 4.3.9,~~ ~~the subdivider shall~~ file an assurance of performance with the city supported by consist of one (1) of the following:

1. An irrevocable letter of credit executed by a financial institution authorized to transact business in the state of Oregon;
2. A surety bond executed by a surety company authorized to transact business in the state of Oregon which remains in force until the surety company is notified by the city in writing that it may be terminated; or
3. Cash.

B. Determination of Sum. The sum of the assurance of performance shall be determined by a registered professional engineer, subject to review and approval by the city, ~~the city~~ as required to cover the cost of the improvements and repairs, including related engineering and incidental expenses.

C. Itemized Improvement Estimate. The developer shall furnish to the city an itemized improvement estimate, certified by a registered civil engineer, to assist the city in calculating the amount of the performance assurance.

D. Agreement. An agreement between the city and developer shall be recorded with the final plat that stipulates all of the following:

1. Specifies the period within which all required improvements and repairs shall be completed;
2. A provision that if work is not completed within the period specified, the city may complete the work and recover the full cost and expenses from the applicant;
3. Stipulates the improvement fees and deposits that are required.
4. Provides for the construction of the improvements in stages and for the extension of time under specific conditions therein stated in the contract.

The agreement may be prepared by the city, or in a letter prepared by the applicant. It shall not be valid until signed and dated by both the applicant and the Mayor.

E. When Subdivider-Developer Fails to Perform. In the event the developer fails to carry out all provisions of the agreement and the city has un-reimbursed costs or expenses resulting from such failure, the city shall call on the bond, cash deposit or letter of credit for reimbursement.

F. **Termination of Performance Guarantee.** The developer shall not cause termination of nor allow expiration of the guarantee without having first secured written authorization from the city.

~~4.3.11~~ 4.3.7 **Filing and Recording.**

A. **Filing plat with County.** Within 60 days of the city approval of the final plat, the applicant shall submit the final plat to Marion County for signatures of County officials as required by ORS Chapter 92.

B. **Proof of recording.** Upon final recording with the County, the applicant shall submit to the city a Mylar copy and two (2) paper copies of all sheets of the recorded final plat. This shall occur before the issuance of building permits for the newly created lots.

C. **Prerequisites to recording the plat.**

1. No plat shall be recorded unless all ad valorem taxes and all special assessments, fees, or other charges required by law to be placed on the tax roll have been paid in the manner provided by ORS Chapter 92;
2. No plat shall be recorded until the County Surveyor in the manner provided by ORS Chapter 92 approves it.

~~4.3.12~~ **Property Line Verification for Building Permits**

~~To determine property lines for building permit purposes of platted parcels or subdivision lots, a property owner/developer may use the property line verification process to establish outside boundaries for parcels and lots when the affected units of land are under one ownership.~~

~~A. **Verification process.** An application for a property line verification shall contain the following:~~

- ~~1. An application form containing original signatures of all owners of affected units of land;~~
- ~~2. Payment of the applicable application fee;~~
- ~~3. A copy of recorded deeds for all affected units of land, and if not contained in the deeds, legal descriptions;~~
- ~~4. A copy of a legal description defining the outside boundaries of the subject property.~~

~~B. **Verification letter.** Upon verification of the information, the City Recorder or the Recorder's designee shall issue a letter confirming the City's review of the request.~~

~~C. **Evidence of recording.** Prior to issuance of building permit on the subject property, the owner/developer shall submit a copy of documentation indicating that the legal description defining the outside boundary of the parcels/lots was filed with the Marion County Recorder.~~

4.3.8 **Replats**

The reconfiguration of lots, parcels and easements in an existing subdivision or partition plat may be granted in accordance with the provisions of this section. The relocation of a common boundary line between two lots or parcels within a recorded subdivision or partition shall be considered a property line adjustment subject to Section 4.3.9.

A. A replat shall comply with the provisions of Sections 4.3.3 through 4.3.7 with the following exceptions:

1. The word "Replat" shall be shown in the title block;
2. The name or reference number of the previous plat and any additional recording information shall be retained in the title of the replat;
3. Blocks, lots/parcels and portions thereof which are being replatted shall be identified where applicable; and
- 5.4. Original plat information being deleted, abandoned or changed by the replat shall be shown lightly sketched or dotted on the drawing with a note of explanation.

4.3.9 Property Line Adjustments.

The relocation or elimination of all or a portion of a common property line between abutting properties may be granted in accordance with the provisions of this section. The property line adjustment provisions of this section shall not apply to a property line adjustments affecting more than two abutting units of land. A property line adjustment is not considered a development action for purposes of determining whether right-of-way dedication or improvement is required.

A. **Submission Requirements.** Property Line Adjustments shall be processed as a Type I application. The application shall include the following:

1. A scale drawing prepared by a licensed surveyor or engineer showing all existing and proposed property lines and dimensions, footprints of existing structures with setbacks to the existing and proposed property lines noted, location and dimensions of driveways and public and private streets within or abutting the subject lots; location of significant vegetation as defined and mapped in Section 3.2.2.B-C; and
2. A copy of the deed or other recorded instrument showing ownership of the affected properties; and
3. Documentation from Marion County Building Inspection that each lot or parcel retains, or can accommodate, adequate subsurface sewage disposal; and
4. Other information as deemed appropriate by the City Recorder to address required standards or applicable criteria.

B. **Criteria for Preliminary Approval.** The city shall not grant preliminary approval for a property line adjustment without findings that the following criteria are satisfied:

1. Land Use District. All lots and parcels comply with applicable provisions of the underlying land use district.
2. Sufficient Area. All lots and parcels have sufficient area for existing and intended structures and uses considering setbacks, access, and spacing required for water supply and sewage disposal.
3. Nonconforming Properties. Lots, parcels, and structures that do not meet minimum dimensional standards of the underlying zone are not made more nonconforming.

4. Access. All lots and parcels comply with Chapter 3.1 – Access and Circulation.

C. Final Approval. In order to obtain final approval of a property line adjustment, the following requirements shall be completed:

1. Within one (1) year of the preliminary approval, a survey or plat (as required by the Marion County Surveyor) conforming to the preliminary approval and complying with ORS 209.250 must be submitted to the City for approval by the Recorder or designee.
2. The survey or plat must be filed with the County Surveyor and recorded with the County Recorder within 60 days of final approval by the City. A copy of the filed and recorded survey or plat must be submitted to the City within 15 days of recording, and prior to issuance of any building permits on the adjusted properties.

D. Extension. The city shall, upon written request by the applicant and payment of the required fee, grant an extension of the approval period not to exceed one (1) year provided that:

1. No substantive changes are made to the preliminary plan, as approved by the city;
2. No changes occurred in the applicable Code or plan provisions on which the city based its approval. In the case where the property line adjustment conflicts with a code change, the extension shall be denied; and
3. The extension request is made before expiration of the original one (1) year preliminary approval.

Chapter 5.1 - Variances

Sections:

5.1.1 Purpose

5.1.2 Minor Class A Variances

5.1.3 Major Class B Variances

5.1.4 Class C Variances

5.1.4.5.1.5 Variance Application and Appeals

5.1.5.5.1.6 Expiration of Approval – Standards for Extension of Time

5.1.6 Transfer of Variance

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 ~~III~~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.
- 4.3. 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.

3.4. Variances 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).

3.5. 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. Variances 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. ~~Variations to allow a use not otherwise allowed in the underlying land use district are prohibited. A variance shall not be approved which would vary the “permitted uses” of a land use zone (Chapter 2).~~

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.

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. **Repair.** A non-conforming structure may be repaired and maintained as long as any such repair or maintenance does not increase its non-conformity and it remains otherwise lawful.~~

D.C. **Discontinuation or Abandonment.** The nonconforming use of land is not discontinued for any reason for a period of more than ~~six (6)~~ 12 months. For purposes of calculating the ~~six~~ 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.

E.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 provisions:

A. No such nonconforming structure may be repaired, maintained, 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 Development Code or will decrease its nonconformity;~~

A.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.

B.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.

C.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 nonconforming 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 nonconforming 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.