

Chapter 5.1 - Variances

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5.1.100 Purpose

The purpose of this Chapter is to provide flexibility to development standards, in recognition of the complexity and wide variation of site development opportunities and constraints. The variance procedures are intended to provide flexibility while ensuring that the purpose of each development standard is met. Because some variances are granted using “clear and objective standards,” they can be granted by means of a Type I procedure. Other variances, as identified below, require a Type II or III procedure because they involve discretionary decision-making.

5.1.200 Class A Variances

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 10 percent change to the front yard setback standard in the base land use district.
2. Interior setbacks. Up to a 10 percent reduction of the dimensional standards for the side and rear yard setbacks required in the base land use district.
3. Lot coverage. Up to 10 percent increase of the maximum lot coverage permitted in the base land use district .
4. Landscape area. Up to 10 percent reduction in required landscape area (overall area or interior parking lot landscape area).

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.

5.1.300 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:

A. 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:

1. There is not adequate physical space for shared access, or the owners of abutting properties do not agree to execute a joint access easement;
2. There are no other alternative access points on the street in question or from another street;
3. The access separation requirements cannot be met;
4. The request is the minimum adjustment required to provide adequate access;
5. The approved access or access approved with conditions will result in a safe access; and
6. The visual clearance requirements of Chapter 3.1 will be met.

B. Variance to Street Tree Requirements (Chapter 3.2). The City may approve, or approve with conditions, a request for a variance to the street tree requirements in Chapter 3.2, after finding the following:

1. Installation of the tree would interfere with existing utility lines; or
2. The tree would cause visual clearance problems; or
3. There is not adequate space in which to plant a street tree; and
4. Replacement landscaping is provided elsewhere on the site (e.g., parking lot area trees).

C. Variance to Maximum or Minimum Yard Setbacks to Reduce Tree Removal or Impacts to Wetlands (Chapters 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. The modification shall not be more than is necessary for the preservation of trees on the site.

D. Variances to Transportation Improvement Requirements (Chapter 3.4.100). The City may approve, approve with conditions, or deny a variance to the transportation improvement standards of Chapter 3.4.1, based on the criteria for granting variances provided in Section 3.4.100.B. When a variance request cannot be supported by the provisions of that Chapter, then the request shall be reviewed as a Class C variance.

5.1.400 Class C Variances

Due to their discretionary nature and review of special circumstances, the variances in this subsection require a Type III process, as described in Section 5.1.400.C.

5.1.400 Class C Variances *(continued)*

A. Purpose. The purpose of this section is to provide standards for variances which exceed the Class A and Class B variance criteria in Sections 5.1.200 and 5.1.300. Class C variances may be granted if the applicant shows that, owing to special and unusual circumstances related to a specific property, the literal application of the standards of the applicable land use district would create a hardship to development which is peculiar to the lot size or shape, topography, 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); except that no variances to “permitted uses” or “prohibited 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 not yet created through a land division process may not utilize the Class C variance procedure.
3. A variance shall not be approved which would vary the “permitted uses” or “prohibited uses” of a land use district (Chapter 2).
4. 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 3.3.100 upon finding all of the following:
 - (1) The individual characteristics of the use at that location require more or less parking than is generally required for a use of this type and intensity;
 - (2) The need for additional parking cannot reasonably be met through shared parking with adjacent or nearby uses; and
 - (3) All other parking design and building orientation standards are met, in conformance with the standards in Chapter 2 and Chapter 3.
 - b. The City may approve a reduction of required bicycle parking per Section 3.3.200, 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 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.

C. Approvals Process and Criteria.

1. Class C variances shall be processed using a Type III procedure, as governed by Section 4.1.500, using the approval criteria in subsection 2, below. In addition to the application requirements contained in Section 4.1.500, the applicant shall provide a written narrative or letter describing his/her reasoning for the variance, why it is required, alternatives considered, and compliance with the criteria in subsection 2.
2. The City shall approve, or approve with conditions, an application for a variance based on finding that all of the following criteria are satisfied:
 - a. The proposed variance will not be materially detrimental to the purposes of this Code, to any other applicable policies and standards, and to other properties in the same land use district or vicinity;

5.1.400 Class C Variances *(continued)*

- b. 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, 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 which would alleviate the hardship.

5.1.500 Variance Application and Appeals

The variance application shall conform to the requirements for Type I, II, or III applications (Sections 4.1.300, 4.1.400, 4.1.500). In addition, the applicant shall provide a narrative or letter explaining the reason for his/her request, alternatives considered, and why the subject standard cannot be met without the variance. Appeals to variance decisions shall be processed in accordance with the provisions of Chapter 4.1.