

<u>Article 6: Variances</u>	6-1
<u>6.010 Purpose</u>	6-1
<u>6.020 Definitions</u>	6-1
<u>6.030 Eligible Regulations</u>	6-3
<u>6.035 Alternatives and Exceptions</u>	6-3
<u>6.040 Ineligible Regulations</u>	6-3
<u>6.050 Review Procedures and Submittal Requirements</u>	6-4
<u>6.060 Criteria for Variance</u>	6-5
<u>6.070 Conditions</u>	6-6
<u>6.080 Expiration</u>	6-6

Article 6: Variances

6.010 Purpose

This Article provides standards, criteria, and procedures for variances. This Code cannot provide standards to fit every potential development situation. The City’s varied geography, and complexities of land development, require flexibility. This Article provides that flexibility, while maintaining the purposes and intent of the Code. These provisions provide relief from strict application of measurable standards of the Development Code when the property has unique physical constraints or characteristics.

When greater flexibility is desired, or where flexibility is desired but there are no unique physical constraints or characteristics of the property, application may be made through the Planned Unit Development process of Article 18. Flexible application of the Code for development or creation of lots through the Planned Unit Development process shall be managed through the provisions of Article 18, and does not require action under this Article.

6.020. Definitions

(1) Minor Variance.

- (a) For Site Development Standards. A reduction below a minimum standard or an increase over a maximum standard, as follows:
 - (i) Building setback in front, side, and rear yards: 12 inches or less.
 - (ii) Building height: 18 inches or less.
 - (iii) Lot area, lots of record only: 50 square feet or less.
- (b) For Property Line Adjustments, Partitions, or Subdivisions. A reduction below a minimum standard or an increase over a maximum standard, as follows:
 - (i) Building setback: 12 inches or less.
 - (ii) Lot width or depth: 2 feet or less.
 - (iii) Lot area: 50 square feet or less.

(2) Major Variance.

A variance from any measurable standard other than defined as a minor variance.

6.030. Eligible Regulations

Variances are permitted for the following items when related to a unique constraint of the property:

- (1) Any measurable standard designed to regulate the physical characteristics of a permitted use;
- (2) Any measurable standard designed to regulate lot size, shape, or dimension;
- (3) Any other standard that this Code expressly specifies may be varied.

6.035. Alternatives and Exceptions

Where alternatives or exceptions are identified in the Code, a Variance shall not be required.

6.040. Ineligible Regulations.

Variances are prohibited for the following items:

- (1) To modify any standard when there is no unique constraint of the property;
- (2) To change any standard for a minimum size of a public utility;
- (3) To change any provision of this Code that specifies obligations for public improvements;
- (4) To allow a primary or accessory use that is not allowed by the regulations;
- (5) As an exception to any restrictions on uses or development that contain the word “prohibited.”
- (6) To reduce minimum lot area by more than 50 square feet.
- (7) As an exception to a threshold for a review. *For example, expansion of a development by more than 25% could not be processed under criteria for a minor site plan review instead of criteria for major site plan review.*
- (8) As an exception to a definition or classification. *For example, an accessory structure is defined as one that does not exceed 1,000 square feet. By definition, a structure in excess of 1,000 square feet is not an accessory structure, and the definition can't be varied.*
- (9) As an exception to the procedural steps of a procedure or to change assigned procedures. *For example, development of a Manufactured Dwelling Park in an R-2 zone requires a Type III procedure with a public hearing. The procedure could not be varied to require a Type I procedure without a public hearing.*

6.050. Review Procedures and Submittal Requirements.

Except as specified below, variances shall be processed in accordance with the procedures in Schedule 2-1.

- (1) Applications for variances shall be submitted and processed along with the land use application for site plan review, property line adjustment, partition, or subdivision.
- (2) Where the site plan review, property line adjustment, partition, or subdivision requires a higher procedure type, the variance shall be considered using the higher procedure.
- (3) Where the variance requires a higher procedure type, the related application, such as an application where the building permit serves as the development permit, shall be considered using the higher procedure.
- (4) When an application requires more than one variance, the applicant shall file a single application for all variances, and pay one fee for the application, in addition to the required application and fee for the site plan review, property line adjustment, partition, or subdivision.
- (5) ³The variance application shall include the following:
 - (a) A written narrative with responses to the criteria in this chapter.
 - (b) It shall be the applicant's responsibility to verify the location of property lines. If the variance is to a required setback, or if there is question as to whether an existing structure on the subject property encroaches into the public right-of-way or onto an adjacent property, the application shall include evidence of property line location. Evidence shall consist of the subject land deed and one of the following:
 - (i) Property corner monuments set by an Oregon-licensed land surveyor, and evidenced by recordation in the Josephine County survey records, shall be the preferred evidence of property line location. The monuments shall be in full view and subject to City inspection prior to a complete application. It shall be the final determination of the City Surveyor as to whether the monuments are authentic.
 - (ii) If unable to provide monument evidence in the field, the applicant shall submit a site map prepared by an Oregon-licensed land surveyor as part of the application. The site plan map shall, at a minimum, include the following:
 - (A) Scale, north arrow, date of preparation.

- (B) Location: Street address, and assessor's map page number and tax lot number.
- (C) Dimensions and size of parcel by deed, with any measured distances necessary to show convincing evidence of the true property line location.
- (D) Proposed and existing buildings and structures, including fences: location, dimension, setbacks to property lines, distance between buildings, height.
- (E) Current deed conveyance number and any registered survey numbers used in the determination of the property lines shown therewith.
- (F) The site plan shall include a signed statement from the map preparer which certifies that the lines shown accurately represent existing conditions as laid out on the subject ground and are adequate for the purpose of verifying property line location.

6.060. Criteria for Variances

Previously granted variances shall not be considered to have established a precedent. The review body may approve, or approve with conditions, a Variance upon finding that it meets all the following criteria:

- (1) The variance is necessary because the subject code provision does not account for special or unique physical circumstances of the subject site, such as topography, natural features, adjacent development, or similar circumstances. A legal lot determination may be sufficient evidence of a hardship for purposes of approving a variance.
- (2) The variance is the minimum necessary to address the special or unique physical circumstances related to the subject site.
- (3) The proposal's benefits will be greater than any negative impacts on the development of the adjacent uses and will further the purpose and intent of this ordinance and the Comprehensive Plan of the City.
- (4) The need for the variance is not self-imposed by the applicant or property owner. For example, the variance request does not arise as result of a property line adjustment or land division approval previously granted to the applicant.

6.070. Conditions

If the review body finds that the proposal does not sufficiently mitigate impacts resulting from a variance, it may attach conditions necessary to ensure impacts are mitigated to the extent practical. The review body may consider the provisions in Section 19.053 as a guideline for applicable conditions, but shall not be limited to these provisions.

6.080. Expiration

A variance shall be part of the land use decision and shall only vary standards for the specific development proposal reviewed and approved by the review body. If the property is redeveloped, a new variance application shall be required as part of the new land use application. A variance shall not vary standards for future development of a property for which a land use application has not been submitted.

The expiration of a variance shall be the same as the expiration date of the associated application for site plan review, property line adjustment, partition, subdivision, or other land use review. If no separate land use application was required, such as an application where the building permit serves as the development permit, the variance shall expire 18 months from the effective date of the review body's final decision on the variance. Pursuant to Section 3.024, a decision shall be final upon the expiration of the period for filing an appeal, unless appealed. An extension may be granted pursuant to Section 3.025(2).

REVISIONS

DATE	ORD #
12/7/03	5205
4/20/05	5285
10/2/09	5496
10/7/92	4747
2/16/94	4787
6/6/18	5735
2/6/19	5753