

ARTICLE 40

Variances

SECTION 3.40.000 Purpose

A variance may be granted whenever the strict application of a requirement of this chapter would impose unusual practical difficulty on the applicant. Practical difficulty may result from the size, shape, or dimensions of a site or the location of existing structures thereon, geographic, topographic or other physical conditions on the site or in the immediate vicinity, or from population density, street location, or traffic conditions in the immediate vicinity. The authority to grant variances does not extend to use regulations.

SECTION 3.40.100 Criteria for Decision

A variance to the requirements of this chapter may be granted with respect to lot area and dimensions, setbacks, yard area, lot coverage, height of structures, vision clearance, fences and walls, and other dimensional requirements only if, on the basis of the application, investigation and evidence submitted, all of the following circumstances are found to exist:

1. Unique circumstances, such as lot size, shape or topography, apply to the property which do not apply generally to other properties in the same zone or vicinity.
2. The variance is necessary for the preservation of a property right of the applicant.
3. The variance would conform with the purposes of this ordinance and would not be materially detrimental to property in the same zone or vicinity in which the property is located, or otherwise conflict with the Comprehensive Plan.
4. The variance requested is the minimum variance necessary to make reasonable use of the property.
5. The variance is not the result of a self-created hardship.

SECTION 3.40.200 Administrative Variance from Building Setback Requirements

1. An Administrative Variance from regulations covering any building setback requirements may be authorized as a use permitted with standards up to a maximum of 50% of the requirement (but not resulting in a setback of less than five (5) feet) upon written consent from the affected adjacent property owner(s). A pre-application conference and fee shall be required. Affected property owner consent shall be obtained by the applicant and submitted to the Planning Department on forms provided by the County. The affected adjacent property owner(s) shall be identified by the Planning Department. Adjacent owner consent signatures shall be verified by sending a copy of the

signed consent form to each identified owner of record. If no negative comments are received within 12 days, the request shall be granted.

2. If adjacent owner consent cannot be obtained, the request shall be processed pursuant to the Administrative Action process of §2.060.1 up to a maximum of 50% of the requirement, by the Director, upon findings that:
 - a. Approval of the variance will not negatively impact adjacent properties; and
 - b. The variance does not result in a setback of less than five (5) feet.
3. An Administrative Variance is void if it conflicts with any restrictive covenant applicable to the property at the time such variance is granted.

SECTION 3.40.300 Administrative Variance from Building Height Requirements

1. An Administrative Variance from the regulations covering any building height requirements may be authorized as a use permitted with standards up to a maximum of 30% of the requirement upon written consent from the affected adjacent property owner(s). A pre-application conference and fee shall be required. Affected property owner consent shall be obtained by the applicant and submitted to the Planning Department on forms provided by the County. The affected adjacent property owner(s) shall be identified by the Planning Department. Adjacent owner consent signatures shall be verified by sending a copy of the signed consent form to each identified owner of record. If no negative comments are received within 12 days, the request shall be granted.
2. If adjacent owner consent cannot be obtained, the request shall be processed pursuant to the Administrative Action process of §2.060.1 up to a maximum of 30% of the requirement, by the Director, upon findings that:
 - a. Approval of the variance will not negatively impact adjacent properties; and
 - b. The variance does not result in a height in excess of three stories.
3. An Administrative Variance is void if it conflicts with any restrictive covenant applicable to the property at the time such variance is granted.

SECTION 3.40.400 Administrative Variance from Replacement Dwelling Requirements of Section 3.3.050 and 3.4.050

1. Alteration, restoration or replacement of a lawfully established dwelling that has or formerly had:
 - a. Intact exterior walls and roof structure;
 - b. Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
 - c. Interior wiring for interior lights;
 - d. A heating system; and
 - e. The dwelling was assessed as a dwelling for purposes of ad valorem taxation for the lesser of:
 - 1) The previous five property tax years unless the value of the dwelling was eliminated as a result of the destruction, or demolition in the case of restoration, of the dwelling; or
 - 2) From the time when the dwelling was erected upon or affixed to the land and became subject to assessment unless the value of the dwelling was eliminated as a result of the destruction, or demolition in the case of restoration, of the dwelling.
 - f. If the dwelling does not meet the requirements of "e." above, the dwelling may be altered, restored or replaced if the applicant establishes that the dwelling was improperly removed (as defined by ORS 215.283) from the tax roll by a person other than the current owner.
 - g. In the case of replacement, the dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:
 - 1) Within one year after the date the replacement dwelling is certified for occupancy; or
 - 2) If the dwelling to be replaced is, in the discretion of the permitting authority, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, within 90 days after the replacement permit is issued.
 - h. The replacement dwelling:
 - 1) May be located on any part of the same lot or parcel.

- 2) Must comply with applicable siting standards. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.
- i. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned EFU, then the applicant shall, as a condition of approval, record a deed restriction prohibiting the future siting of a dwelling on that non-EFU portion of the lot or parcel. The deed restriction shall be noted on Planning Department records. A release from the deed restriction may only occur if the statute regarding replacement dwellings changes or if there is a change in the Plan and Zone designation.
 - j. When a replacement dwelling qualifies for replacement: i) because it formerly had the features described in a. through d. of this provision; ii) because it meets the requirements of f. of this provision, or; iii) because it meets the requirements of l. of this provision, then the replacement dwelling must be sited on the same lot or parcel:
 - 1) Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or another natural boundary of the lot or parcel; and
 - 2) If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure.
 - k. Deferred replacement: Upon request from an applicant, a deferred replacement may be authorized, allowing the replacement dwelling to be constructed or placed at any time in the future. A deferred replacement is subject to the following:
 - 1) The replacement dwelling permit becomes void unless the dwelling to be replaced is removed or demolished within three months after the deferred placement is issued; and
 - 2) May not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.
 - 3) The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction or placement.

- I. A permit for a replacement dwelling that was issued and became void before January 2, 2014 shall be deemed valid if, by January 2, 2015 the holder of the permit:
 - 1) Removes, demolishes or converts to an allowable nonresidential use the dwelling to be replaced; and
 - 2) Causes to be recorded in the deed records with the county a statement that the dwelling to be replaced had been removed, demolished or converted.

- m. The provisions of this 2013 Act became operative January 2, 2014 and are repealed January 2, 2024¹.

¹ Permits approved for alteration, restoration or replacement of a dwelling issued under the provisions of this 2013 Act do not expire.

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