

# **Chapter 5.0 Exceptions to Code Standards**

5.0 - Introduction

5.1 - Variances

5.2 - Non-Conforming Uses and Development

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## **Chapter 5.0 Introduction**

This Chapter provides standards and procedures for variances and non-conforming situations (i.e., existing uses or development that do not comply with the Code). This code cannot provide standards to fit every potential development situation. The City's varied geography, existing land use patterns, and the complexities of land development require flexibility. Chapter 5 provides that flexibility, while maintaining the purposes and intent of the Code. The variance procedures provide relief from specific code provisions when they have the unintended effect of preventing reasonable development in conformance with all other codes. The standards for non-conforming uses and development are intended to provide some relief from code requirements for older uses, buildings, or lots that do not comply with current standards.

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# Chapter 5.1 Variances

## Sections:

- 5.1.1 Purpose
- 5.1.2 Class A Variance
- 5.1.3 Class B Variance
- 5.1.4 Class C Variance
- 5.1.5 Class D Variance
- 5.1.6 Variance Application and Appeals

## 5.1.1 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.

## 5.1.2 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 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 required in the base zone.
  4. Landscape area. Up to 10 percent reduction in 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.

### 5.1.3 Class B Variances

- A. Class B variances. Due to their discretionary nature, the following types of variances shall be reviewed using a Type II procedure, in accordance with Chapter 4.1:
1. Variance to minimum housing density standard (Chapter 2). The City may approve a variance after finding that the minimum housing density provided in Chapter 2 cannot be achieved due to physical constraints that limit the division of land or site development. “Physical constraint” means drainage channel, wetlands, unusual parcel configuration, access constraints, 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 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. 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).

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### 5.1.3 Class B Variance *(continued)*

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 Chapter 3.3.1 upon finding 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 provision of on-street parking or 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 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.
5. 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. Modification shall not be more than is necessary for the preservation of trees or wetlands on the site.
6. 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 Chapter 3.4.1, based on the criteria for granting variances provided in Chapter 3.4.1.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.

### 5.1.4 Class C Variance

- 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 5.1.2 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 district would create a hardship to development 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); except that no variances to “permitted uses” shall be granted.

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#### 5.1.4 Class C Variance (*continued*)

##### 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. A variance shall not be approved which would vary the “permitted uses” of a land use district (Chapter 2).

##### C. Approvals Process and Criteria.

1. Class C variances shall be processed using a Type III procedure, as governed by Chapter 4.1.5, using the approval criteria in subsection 2, below. In addition to the application requirements contained in Chapter 4.1.5, 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, 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 district or vicinity;
  - 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.

### 5.1.5 Class D Variance

- A. Purpose. The purpose of this section is to provide criteria for variances from floodplain development standards contained in Chapter 3.6. Class D variances may be granted if an applicant substantiates the existence of exceptional circumstances that preclude consistency with the development standards in Chapter 3.6, and demonstrates consistency with the applicable variance criteria.
- B. Applicability. Class D variances are limited to the following:
1. Modifying the required elevation standard for new construction and Substantial Improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level.
  2. Allowing a Water Dependent use, provided structures or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
  3. Reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the Statewide Inventory of Historic Properties, upon a determination that the proposed reconstruction, rehabilitation, or restoration will not preclude the structure's continued historic resource designation and the variance is the minimum necessary to preserve the historic character and design of the structure.
  4. Allow a lesser degree of floodproofing than watertight or dry-floodproofing for non-residential structures, where it can be determined that such action will have low damage potential, complies with all other variance criteria and otherwise complies with Building Codes.
- C. Approvals Process and Criteria.
1. Class D variances shall be processed using a Type III procedure, as governed by Chapter 4.1.5, using the approval criteria in Section 5.1.5.C.3, below. In addition to the application requirements contained in Chapter 3.6 and Section 4.1.5, 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 Section 5.1.5.C.3, below. The burden to show that the variance is warranted and meets the criteria set out below is on the applicant.
  2. In passing upon such applications, the Planning Commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and the:
    - a. danger that materials may be swept onto other lands to the injury of others;
    - b. danger to life and property due to flooding or erosion damage;
    - c. susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
    - d. importance of the services provided by the proposed facility to the community;

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**5.1.5 Class D Variance (continued)**

- e. necessity to the facility of a waterfront location, where applicable;
  - f. availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  - g. compatibility of the proposed use with existing and anticipated development;
  - h. the relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
  - i. safety of access to the property in times of flood for ordinary and emergency vehicles;
  - j. expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
  - k. costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
3. The City shall approve, approve with conditions, or deny an application for a variance based on findings made in response to Section 5.1.5.C.2, and findings 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;
  - b. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
  - c. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - d. Variances shall only be issued upon a:
    - (1) showing of good and sufficient cause;
    - (2) determination that failure to grant the variance would result in exceptional hardship to the applicant, and;
    - (3) determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in Section 4.1-4(4), or conflict with existing local laws or ordinances.

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**5.1.5 Class D Variance (continued)**

4. The decision to either grant or deny a variance shall be in writing and shall set forth the reasons for such approval and denial. If the variance is granted, the property owner shall be put on notice along with the written decision that the permitted building will have its lowest floor below the Base Flood Elevation and that the cost of flood insurance likely will be commensurate with the increased flood damage risk.

**5.1.6 Variance Application and Appeals**

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

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## Chapter 5.2 Non-Conforming Uses and Developments

### Sections:

#### 5.2.1 Non-conforming Uses

#### 5.2.2 Non-conforming Development

### 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 (see exception under Section E below).
- B. Location. No such nonconforming use shall be moved in whole or in part to any portion of the lot other than that occupied by such use at the effective date of adoption or amendment of this Code;
- C. Discontinuation or Abandonment. The nonconforming use of land is not discontinued for any reason for a period of more than 12 months. For purposes of calculating the 12-month period, a use is discontinued or abandoned upon the occurrence of the first of any of the following events:
  1. On the date when the use of land is physically vacated;
  2. On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;
  3. On the date of termination of any lease or contract under which the nonconforming use has occupied the land; or
  4. On the date a request for final reading of water and power meters is made to the applicable utility districts.
- D. Application of Code Criteria and Standards. If the use is discontinued or abandoned for any reason for a period of more than 12 months, any subsequent use of land shall conform to the applicable standards and criteria specified by this Code for the land use district in which such land is located.
- E. Special Status for Single Family Residences. Notwithstanding the restrictions of any other section of the Halsey Development Code, all single-family residential dwellings built before June 30, 2004, on commercial or industrially zoned properties are considered as conforming with the base district. If any building on these properties is substantially destroyed, as defined in HDC 5.2.2(B), it may be rebuilt in accordance with the standards of the Residential District, subject to the regulations of any applicable overlay district. Expansions, accessory buildings, and other residential uses are also allowed in accordance with the standards of the Residential District. If an existing single-family residence is converted to a permitted commercial, office or industrial use, the special status granted here is rescinded. However, the use of the property may revert to residential if the requirements of the Conditional Use Permit process in HDC 4.4 are met, and the structure meets or can meet residential building code requirements. (7/04)

### **5.2.2 Non-conforming 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 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 (see exception under Section 5.2.1.E above); (7/04)
- B. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent more than 50 percent of its current value as assessed by the Linn County assessor, it shall be reconstructed only in conformity with the Development Code; and
- C. Should such structure be moved for any reason and by any distance, it shall thereafter conform to the regulations of the Development Code.