



Happy Valley Municipal Code: Land Development Code Effective June 16, 2022

ARTICLE 16.7 EXCEPTION TO CODE STANDARDS

Chapter 16.71 VARIANCES

16.71.010 Purpose.

This chapter provides standards and procedures for variances, which are modifications to land use or development standards that are not otherwise permitted elsewhere in this title as exceptions to Code standards. This title cannot provide standards to fit every potential development situation. The City's varied geography, and complexities of land development, require flexibility. This chapter provides that flexibility, while maintaining the purposes and intent of the title. 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 variance procedures are intended to provide flexibility while ensuring that the purpose of each development standard is met.

16.71.020 Applicability and application requirements.

- A. Exceptions and Modifications versus Variances. A Code standard or approval criterion ("Code section") may be modified without approval of a variance if the applicable Code section expressly allows exceptions or modifications. If the Code section does not expressly provide for exceptions or modifications, then a variance is required to modify that Code section and the provisions of Chapter 16.71 apply. Except that a variance shall not be approved that would vary the "permitted uses" or "prohibited uses" of a land use district.
- B. Combining Variances With Other Approvals—Permit Approvals by Other Agencies. Variance requests may be combined with and reviewed concurrently by the City approval body with other land use and development applications (e.g., development review, site design review, subdivision, conditional use, etc.), however, some variances may be subject to approval by other permitting agencies, such as ODOT in the case of State Highway access.
- C. Types of Variances. There are three types of variances (Class A, B, or C). The type of variance required depends on the extent of the variance request and the discretion involved in the decision-making process. Regulations described in the following sections of this chapter pertaining to applicability of the type of variance should be considered a guide only. Ultimately, it is at the discretion of the Planning Official to determine whether a variance proposal is processed as a Class A, B, or C.
- D. Application. The variance application shall conform to the requirements for Type I, II, or III applications (Chapter 16.61), as applicable. In addition, the applicant shall provide a narrative or

letter explaining the reason for his or her request, alternatives considered, how the stated variance criteria are satisfied, and why the subject standard cannot be met without the variance.

E. Land Divisions. The variance standards of this chapter apply to individual platted and recorded lots only. However, the lot area and dimensions of a single lot may be modified by up to five percent with a Class B variance. The Class C variance procedure may be used to modify a standard for three or fewer lots, including lots yet to be created through a partition process.

16.71.030 Class A variances.

A. Applicability. The following variances are reviewed using a Type I procedure, as governed by Chapter 16.61, using the approval criteria in subsection B below:

1. Front Yard Setbacks. Up to a ten (10) percent change to the front yard setback standard in the land use district.
2. Interior Setbacks. Up to a ten (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 ten (10) percent increase of the maximum lot coverage required in the base zone.
4. Lot Size. Up to five percent reduction of the minimum lot size required in the base zone.
5. Landscape Area. Up to five percent reduction in landscape area (overall area or interior parking lot landscape area).
6. All other land development standards or issues that may generally be addressed by a ten (10) percent benchmark. For variance requests not easily defined by a percentage benchmark, the Planning Official shall determine whether a variance request is eligible for processing as a Class A variance.

B. 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 any other adopted ordinance or Code standard; each code standard to be modified shall require a separate variance request;
4. An application for a Class A variances is limited to one lot per application;
5. No more than three Class A variances may be approved for one lot or parcel in twelve (12) months.

16.71.040 Class B variances.

A. Applicability Class B variances may be granted in the following areas:

1. Sections within Article 16.2, Land Use Districts, including setbacks; dimensional standards including lot width, depth and coverage; street frontage requirements; structure height;

2. Sections within Article 16.3, Specific Area Plan Districts and Overlay Zones;
 3. Sections within Article 16.4, Community Design Standards, including access and circulation, landscaping, street trees, fencing and screening, parking and loading, signs and the Happy Valley Style design standards;
 4. Sections within Article 16.5, Public Facilities;
 5. Other development standards as specified by the Land Development Code.
- B. Procedures. Class B variances are reviewed using a Type II procedure, as governed by Chapter 16.61, using the approval criteria in subsections C through G below. Staff may impose such conditions as are deemed necessary to mitigate any adverse impacts which may result from granting relief.
- C. Variance to Development Standards. The Planning Official or designee may grant a Class B variance of up to twenty (20) percent from any dimensional or development review standard except for lot area which shall be limited to ten (10) percent for a Class B variance 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. That the condition requiring the variance has not been intentionally created to circumvent the Land Development Code;
 3. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property;
 4. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the development provisions which are in question;
 5. The variance will not result in violation(s) of any other adopted ordinance or Code standard; each Code standard to be modified shall require a separate variance request;
 6. In granting the variance, the Planning Official or designee may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this title.
- D. Variance to Vehicular Access and Circulation Standards. Where vehicular access and circulation cannot be reasonably designed to conform to the standards of this title 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 all of 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 variance required to provide adequate access;
 5. The approved access or access approved with conditions will result in a safe access;
 6. The vision clearance requirements of Chapter 16.50 will be met; and

7. Variances for street access deviations shall be subject to review and approval by the roadway authority.
- E. Variance to Street Tree Requirements. The City may approve, approve with conditions, or deny a request for a variance to the street tree requirements in Chapter 16.42, after finding the following:
1. Installation of the tree would interfere with existing utility lines, and no substitute tree with a lower canopy is appropriate for the site;
 2. The tree would cause visual clearance problems; or
 3. There is not adequate space in which to plant a street tree; and
 4. The City may require the installation of additional or replacement landscaping elsewhere on the site (e.g., parking lot area trees) to compensate for the street tree variance;
 5. Street tree approval or modification of standards within an ODOT or Clackamas County right-of-way may require approval, respectively, by ODOT or Clackamas County.
- F. Variance to Parking and Loading Standards.
1. The City may approve variances to the minimum or maximum standards for off-street parking (quantities and dimensions of parking spaces) in Chapter 16.43 upon finding all of the following:
 - a. 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, or modified parking dimensions, as demonstrated by a parking analysis or other facts provided by the applicant;
 - b. The need for additional parking cannot reasonably be met through provision of on-street parking or shared parking with adjacent or nearby uses; and
 - c. All other Code standards are met.
 2. The City may reduce the number of required bicycle parking spaces pursuant to Chapter 16.71, if the applicant can demonstrate that the proposed use by its nature would be reasonably anticipated to generate a lesser need for bicycle parking.
 3. 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.
 4. The City may modify the loading area standards if such a reduction is deemed appropriate after analysis of the use, anticipated shipping or delivery traffic generated by the use and alternatives for loading/unloading, such as use of on- or off-street parking areas during non-business hours, provided that traffic is not impeded.
- G. Variance to Maximum or Minimum Yard Setbacks to Avoid or Reduce Impacts to Floodplains, Significant Trees, Wetlands, or Other Natural Features. The City may grant a variance to the applicable setback requirements of greater than twenty (20) percent for the purpose of avoiding or reducing impact to floodplains, significant trees, wetlands, or other natural features. Modification of the standard shall not be more than is necessary for the preservation of the nature feature to be protected.

16.71.050 Class C variances.

- A. Applicability. Class C variance requests are those that do not conform to the provisions of Sections 16.71.030 and 16.71.040 (Class A and Class B), and that meet the criteria in subsections (B)(1) through (5) below. Class C variances shall be reviewed using a Type III procedure, in accordance with Chapter 16.61.
- B. Approval Criteria. The City shall approve, approve with conditions, or deny an application for a variance based on all of the following criteria:
1. The variance requested is required due to the lot configuration, or other conditions of the site;
 2. That the condition requiring the variance has not been intentionally created to circumvent the Land Development Code;
 3. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, or substantially or permanently impair the appropriate use or development of adjacent property;
 4. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the development provisions which are in question;
 5. The variance will not result in violation(s) of any other adopted ordinance or Code standard; each Code standard to be modified shall require a separate variance request;
 6. In granting the variance, the City Administrator or appropriate and designated body or agent may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this title.

16.71.060 Appeals.

Appeals to variance decisions shall be processed in accordance with the provisions of Chapter 16.61.

Chapter 16.72 NONCONFORMING USES, STRUCTURES AND LOTS

16.72.010 Purpose.

A nonconformity is created when regulations and standards, generally more recent than certain developmental circumstances to which they are applied, cause a pre-existing development to fail to meet those regulations and standards. The purpose of this chapter is to define, explain and delineate the nonconforming situation and to create a workable relationship between this title, the nonconforming situation and the development patterns and trends in the City. (Ord. 389 § 1(Exh. A), 2009)

16.72.020 Nonconforming uses.

- A. Purpose. A nonconforming use is a use of the land, regardless of the conforming situation of the building or lot, which would not be permitted by the regulations imposed by this title, but which was lawful at the time it was established.
- B. Continuation of Use. A nonconforming use may be continued even though not in conformity with the regulations for the district in which the use is located as long as it remains otherwise lawful.

C. Enlarging or Extension of Use.

1. Pursuant to the provisions and procedures of this chapter, a nonconforming use may be enlarged or extended within a building or on the same lot provided that the more restrictive requirements of either the district involved or the proper district for the use involved applies to such enlargement or extension; and provided further that all current development regulations are complied with, and that additional adverse effects are not created for abutting properties or the neighborhood, e.g., objectionable conditions, visual and noise pollution, vehicular traffic, dust, or street parking, and provided further that the provisions of this chapter are adhered to.

2. In cases of practical difficulty and unnecessary hardship, a nonconforming use in a residential district may be enlarged within its containing structure or may be permitted to enlarge within the existing floor area of its containing structure or of its land use.

D. Change of Use. A nonconforming use may not be changed or altered unless the change or alteration is to the same use classification as prescribed in the Development Code or to the classification that more nearly conforms with the regulations for the district in which the use is located.

E. Discontinuation of Use. If a nonconforming use is discontinued for a period of at least twelve (12) consecutive months, the use shall not be reestablished. For purposes of calculating the twelve (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.

F. Damage and Destruction. When a building which contains a nonconforming use is damaged to an extent exceeding seventy-five (75) percent of its valuation, the nonconforming use shall not be reestablished. Buildings and uses that conform to the Land Development Code requirements may be reestablished. Valuation shall be determined by an independent fee appraiser who shall be acceptable to both the City and the applicant. The cost of the appraisal shall be the sole responsibility of the applicant.

16.72.030 Nonconforming buildings.

A. Purpose. A nonconforming building is an existing building or tower lawfully constructed prior to the effective date of this Land Development Code but which, under the development standards of the currently adopted codes or regulations, fails to meet the stated minimum standards or exceeds any stated maximum standards.

B. Continuation of the Building.

1. A nonconforming building may continue to exist and be used although the building may not be in conformity with the regulations for the district in which the structure is located as long as it remains otherwise lawful.

- 2. Normal maintenance of a nonconforming structure is permitted.
- C. Enlarging or Alteration of a Building. No such nonconforming development may be enlarged or altered in a way that increases its nonconformity, but any development or portion thereof may be enlarged or altered in a way that satisfies the current requirements of this Code or will decrease its nonconformity.
- D. Completion of a Building. Nothing contained in this title shall require any change in the plans, construction, alteration or designated use of a building for which a building permit has been issued and construction work has commenced prior to the adoption of this Land Development Code, except that if the designated use will be nonconforming, it shall, for the purpose of this chapter, be discontinued if not in operation within one year of the date of issuance of the building permit.
- E. Change in Use in a Nonconforming Building (see Section 16.72.020(D)).
- F. Damage and Destruction. When a nonconforming building is damaged to an extent exceeding seventy-five (75) percent of its valuation, such nonconforming building shall not be reestablished unless the building will comply with the development standards of all currently adopted ordinances, codes and regulations. Valuation shall be determined by an independent fee appraiser who shall be acceptable to both the City and the applicant. The cost of the appraisal shall be the sole responsibility of the applicant.
- G. Relocation or Removal. Should such development be moved for any reason and by any distance, it shall thereafter conform to the regulations of this Code.
- H. Roadway Access. The owner of a nonconforming access connection (i.e., street or highway access) may be required to bring the nonconforming access into conformance with this Title and other applicable standards as a condition of the City or other roadway authority approving a new access connection permit, or a change in land use.

16.72.040 Nonconforming lots.

A nonconforming lot is an established lot of record which, under the development standards of the currently adopted ordinances, codes and regulations, fails to meet the stated minimum standards or exceeds any stated maximum standards.

- A. Continuation of the Lot. Any single vacant lot of record at the effective date of adoption of this Land Development Code may be used for development even though the lot fails to meet the requirements for area, width or depth that are generally applicable in the district, provided that yard dimensions and other requirements pertaining to the lot shall conform to the regulations for the district in which the lot is located. Further, no division of lots shall be made which will leave remaining any separate lot with an area less than the requirements stated in this chapter.
- B. Enlarging or Alteration of a Lot.
 - 1. Any nonconforming lot may be enlarged to any extent, even though the lot may remain in nonconformance; provided the enlargement does not cause the lot to exceed any stated maximum standards.
 - 2. Any nonconforming lot may be altered with regard to size, shape and topography, provided that the degree of nonconformity is not increased.
 - 3. Any property which is a nonconforming lot may be combined with any other contiguous property which is under the same ownership for the purpose of reducing or removing the

nonconforming status of either, both or all lots. When such action has been completed and is on record with the County Clerk and/or Assessor's offices, the property may be eligible for permits as determined by the City.

16.72.050 Modification of any nonconforming situation.

A. Purpose. Before any nonconforming use is enlarged or extended or changed in any way; before any nonconforming building is extended, enlarged, rebuilt, moved or changed in any way; or before any nonconforming lot of record is altered with regard to size, shape and topography, an application must be filed with the City for such modification to take place and approval of the application must occur. The required fee must accompany the application at the time of submittal.

B. Procedure. A Type I application is required for modification to a nonconforming use. The Planning Commission or appropriate and designated body or agent shall hold a public hearing or make an administrative decision and either grant or deny the application. The Planning Commission or appropriate and designated body or agent shall base its decision to grant or deny the application for modification based on findings of fact. If the application is granted, the commission or appropriate and designated body or agent may impose such conditions and requirements as deemed necessary to insure that the intent of this Development Code is obtained. The applicant or owner(s) may appeal such decision to the appropriate appeal body by filing with the City Recorder within fifteen (15) days of the decision by the Planning Commission or appropriate and designated body or agent. If no appeal is filed, the decision shall be deemed final. If an appeal is filed, the appeal body shall hold a public hearing pursuant to the procedures provided in Section 16.61.060(H).

C. Building Variances. For modification of a nonconforming building, the application will be considered by the designated building official and the application approved or denied based on compliance with all pertinent sections of this title and with the adopted building code in the City. A copy of the decision shall be forwarded to the applicant within five working days after the receipt of application by the Building Official.

D. Lot Variances. For modifications of a nonconforming lot, the application will be considered by the Planning Commission or appropriate and designated body or agent and the application approved or denied based on compliance with all pertinent sections of this Code. No nonconforming lot may be enlarged or altered in a way that increases its nonconformity, but any lot may be enlarged or altered in a way that satisfies the current requirements of this Code or will decrease its nonconformity. Any approval or denial shall be based on findings of fact and shall be documented. A copy of the decision shall be forwarded to the applicant within five working days after the receipt of application by the City Recorder.

E. Temporary Permits. The Planning Commission or appropriate and designated body or agent after public hearing may permit the temporary use of a structure or premises in any district for a purpose or use that does not conform to the regulations prescribed elsewhere in this title for the district in which it is located, provided that such use be of temporary nature and does not involve the erection of a substantial structure. A permit for such use may be granted in the form of a temporary and revocable conditional use permit, for not more than a twelve (12) month period, subject to such conditions as will safeguard the public health, safety, convenience and general welfare. Such permits may be renewable upon reapplication to the Commission or appropriate and designated body or agent and the finding by the commission or appropriate and designated body or agent of a

continuing need. However, the finding of a continuing need by the Commission or appropriate and designated body or agent shall not necessarily mean that such permit will be renewed.