

# Variances

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### **11.15.8505 Variance Approval Criteria**

- A. The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met. A Minor Variance shall meet criteria (3) and (4).
  - 1. A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses.
  - 2. The zoning requirement would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district.
  - 3. The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affects the appropriate development of adjoining properties.
  - 4. The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone. The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone.
- B. A variance shall be void if the Planning Director finds that no substantial construction or substantial expenditure of funds has occurred on the affected property within two years after the variance is granted. That determination shall be processed as follows: *[Amended 1999, Ord. 932 § IX]*
  - 1. Application shall be made on appropriate forms and filed with the Director at least 30 days prior to the expiration date.
  - 2. The Director shall issue a written decision on the application within 20 days of filing. That decision shall be based on findings that:

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- a. Final Design Review approval has been granted under MCC .7845 on the total project, if appropriate; and
  - b. At least ten percent of the dollar cost of the total project value has been expended for construction or development authorized under a sanitation, building or other development permit. Project value shall be as determined in accordance with the Uniform Building Code, or as otherwise determined by the Planning Director. *[Amended 2000, Ord. 944 § 14]*
3. Notice of the Planning Director decision shall be mailed to all parties as defined in MCC .8225.
4. The decision of the Planning Director shall become final at the close of business on the tenth day following mailed notice unless a party files a written notice of appeal. Such notice of appeal and the decision shall be subject to the provisions MCC .8290 and .8295.

*[Amended 1990, Ord. 643 § 2]*

*[Amended 1985, Ord. 462 § 2]*

### **11.15.8510 Landing Field Height Limitation**

- A. In acting on an application for a variance from the height limitations of the Airport Landing Field District, under MCC .6080(A), the approval authority shall consider statements from the Federal Aviation Administration and the Port of Portland as to the effect of the variance on the operation of air navigation facilities or the safe and efficient use of navigable air space.
- B. In the event a variance is granted from the height limitation of MCC .6080(A), condition of such action shall be that such markings or lights shall be installed and maintained at the owner's expense, as are necessary to indicate to aircraft operators the presence of such structure or natural growth.

### **11.15.8515 Variance Classification**

- A. A Major Variance is one that is in excess of 25 percent of an applicable dimensional requirement. A Major Variance must be found to comply with MCC .8505(A).
  - 1. A Major Variance must be approved by the Hearing Authority at a public hearing except when:
    - a. All owners of record of property within 100 feet of the subject property grant their consent to the variance according to the procedures of MCC .8515(B)(1) and (2).
    - b. The Planning Director shall make findings and a tentative decision within ten business days of the application filing. Notice of the findings and decision, and information describing the appeals process shall be mailed by First Class mail to the applicant and to the record owners of all property within 100 feet of the property under application.
    - c. The tentative decision shall be final at the close of business on the tenth day after notice is mailed, unless the applicant or a person entitled to mailed notice or a person substantially affected by the application files a written notice of appeal. Such notice of appeal and the decision shall be subject to the applicable provisions of MCC .8290 and .8295, except that subsection MCC .8290(C) shall apply only to a notice

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of appeal filed by the applicant. The persons entitled to notice under subsection (b) of this section shall be given the same notice of appeal hearing as is given the applicant.

B. A Minor Variance is one that is within 25 percent of an applicable dimensional requirement. The Planning Director is authorized to grant a Minor Variance in accordance with the following procedures and conditions:

1. Application shall be made on forms provided by the Planning Director and shall be accompanied by the written consent of the owner or owners of each lot adjoining and across any street from the subject property;
2. The form to be presented to each owner must include the zoning requirement, the amount of relief requested by the applicant and a declaration by the owner that the granting of the variance shall not harm the value and livability of his property.
3. The filing fee for the variance will be as set by Board resolution;*[Amended 2000, Ord. 944 § 13]*
4. The Planning Director may, without hearing, grant the variance for which the application is made and may attach reasonable conditions thereto. *[Amended 1999, Ord. 932 § IX]*
5. Written findings that MCC .8505(A)(3) and (4) are satisfied.

*[Amended 1985, Ord. 462 § 2]*

### **11.15.8520 Notice of Denial**

In the event the Planning Director declines to grant a variance requested under MCC .8515(B), the Director shall notify the applicant, stating the reasons for denial. The applicant may, within 20 days after receipt of such notice, file a variance application under MCC .8505(A) and be considered by the Hearing Authority at a public hearing.

*[Amended 1985, Ord. 462 § 2]*

### **11.15.8525 Hillside Residential Variances by Administrative Action**

A. Notwithstanding the limitation of MCC .8505(A), the Planning Director may approve reductions in the required front setback for hillside residential properties when the following conditions exist:

1. Application of the required setback will necessitate extraordinary cutting or filling of the land, resulting in potentially unsafe banks; and
2. The reduction of the required setback would not permit the development of the property in a manner that would be more hazardous or detrimental to the public safety than development within the required setback.

B. For the purposes of this subsection, a hillside residential property is any legally created lot or parcel with an average grade from the front to the rear property line of more than five percent.

*[Amended 1985, Ord. 462 § 2]*