

1205 VARIANCES

1205.01 PURPOSE AND APPLICABILITY

Section 1205 is adopted to provide standards, criteria, and procedures under which a variance to a dimensional standard of this Ordinance may be approved. However, a variance is prohibited to the following dimensional standards:

- A. The minimum lot size standards in the RA-2, RR, FU-10, EFU, TBR, and AG/F Districts;
- B. The minimum lot size standard or, in the case of a flexible-lot-size or planned unit development, the minimum average lot size standard if the variance would result in reducing the minimum by more than 10 percent. Subsection 1205.01(B) is not applicable to partitions of lots of record that are divided by a public road;
- C. The 20-acre minimum lot size standard inside the Portland Metropolitan Urban Growth Boundary in the RA-1, RA-2, RRF-5, FF-10, RC, and RI Districts.
- D. The fuel-free break standards of Subsection 406.08;
- E. The maximum building floor space standards in the MRR, RTC, RC, and RI Districts;
- F. Standards applicable in the CI District pursuant to Subsections 601.08(C) through (F); and
- G. Dimensional standards established in Sections 703 through 710, 712, and 713.

1205.02 APPROVAL CRITERIA

A variance to a dimensional standard of this Ordinance requires review as a Type II application pursuant to Section 1307, *Procedures*, and shall be subject to the following standards and criteria:

- A. Compliance with the applicable dimensional standard of this Ordinance would create a hardship due to one or more of the following conditions:
 - 1. The physical characteristics of the land, improvements, or uses are not typical of the area. When the requested variance is needed to correct an existing violation of this Ordinance, that violation shall not be considered as a condition "not typical of the area".
 - 2. The subject property cannot be developed to an extent comparable with other similar properties in the area if the standard is satisfied.

3. The subject property is an Urban Low Density Residential, RA-1, RRFF-5, FF-10, or HR District, the requested variance is to the minimum lot size standard, and more than 50 percent of the lots of record that are within one-half mile of the subject property and located in the same zoning district as the subject property are smaller than the minimum lot size standard.
 4. Compliance with the standard would eliminate a significant natural feature of the subject property.
 5. Compliance with the standard would reduce or impair the use of solar potential on the subject property or adjacent properties.
- B. Strict adherence to the dimensional standard is unnecessary because the proposed variance from the standard will reasonably satisfy all the following objectives:
1. Will not adversely affect the function or appearance of the development and use on the subject property;
 2. Will not impose limitations on other properties and uses in the area, including uses that would be allowed on vacant or underdeveloped properties; and
 3. Will result in the minimum variance needed to alleviate the hardship.
- C. The proposed variance is consistent with the applicable goals and policies of the Comprehensive Plan.

1205.03 APPROVAL PERIOD AND TIME EXTENSION

- A. Approval of a variance is valid for four years from the date of the final decision. If the County's final decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented, or the approval will become void.
1. For a variance directly related to an application for a partition or subdivision, implemented means that the final plat of the partition or subdivision shall be recorded with the County Clerk.
 2. For any other variance, implemented means all major development permits shall be obtained and maintained, or if no major development permits are required to complete the development contemplated by the approved variance, implemented means all other necessary County development permits (e.g., grading permit, building permit for an accessory structure) shall be obtained and maintained. A major development permit is:
 - a. A building or manufactured dwelling placement permit for a new primary structure that was part of the variance approval; or

CLACKAMAS COUNTY ZONING AND DEVELOPMENT ORDINANCE

- b. A permit issued by the County for parking lot or road improvements that were part of the variance approval.
- B. If the approval of a variance is not implemented within the initial approval period established by Subsection 1205.03(A), a two-year time extension may be approved pursuant to Section 1310, *Time Extension*.

[Amended by Ord. ZDO-230, 9/26/11; Amended by Ord. ZDO-248; 10/13/14; Amended by Ord. ZDO-253, 6/1/15]