CHAPTER 5

EXCEPTIONS TO CODE STANDARDS

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Article 10-5A — Introduction

Sections:

10-5A-1 **Purpose**

10-5A-1 Purpose

This Article 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, and 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 developments that do not comply.

Article 10-5B — Variances

Sections:

10-5B-1 **Purpose**

10-5B-2 **Class A Variance**

10-5B-3 **Class B Variance**

10-5B-4 **Variance Application and Appeals**

10-5B-1 Purpose

The purpose of this Article 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 intent of each development standard is met. An administrative (Class A Variance) or quasi-judicial (Class B Variance) decision to lessen or otherwise modify the requirements of this Code for a particular piece of property, which property, because of special circumstances applicable to it, is deprived of privileges commonly enjoyed by other properties in the vicinity and similar zone classification and which adjustment remedies the difference in privileges; provided, however, that a variance granted shall not authorize a use otherwise prohibited in the zone classification in which the property is located.

10-5B-2 Class A Variance

A. Class A Variances. The following variances are reviewed using an Exempt Project procedure, as governed by Article 10-4B, 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 zoning district.
2. Interior setbacks - up to a 10 percent reduction of the dimensional standards for the side and rear yard setbacks required in the zoning district.
3. Lot coverage - up to 10 percent increase of the maximum lot coverage required in the zoning district.
4. Landscape area - up to 10 percent reduction in landscape area (overall area or interior parking lot landscape area).
5. Variance to minimum housing density standard (Chapter 2) - The Zoning Administrator 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 steep topography, critical areas (Chapter 6), unusual parcel configuration, or a similar constraint. The variances approved shall be the minimum variance necessary to address the specific physical constraint on the development.
6. Variance to Vehicular Access and Circulation Standards (Article 10-3B) - 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 Zoning Administrator 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 will be met.

7. Variances to Street Tree Requirements (Article 10-3C) - The Zoning Administrator may approve, approve with conditions, or deny a request for a variance to the street tree requirements in Article 10-3C, 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).

8. Variance to Parking Standards (Article 10-3D) - The Zoning Administrator may approve variances to the minimum or maximum standards for off-street parking in Article 10-3D upon finding 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;

   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 parking design and building orientation standards are met, in conformance with the standards in Chapter 2 and Chapter 3.

   d. The City may approve a reduction of required bicycle parking per Section 10- 3D-4, if the applicant can demonstrate that the proposed use by its nature would be reasonably anticipated to generate a lesser need for bicycle parking.

9. Variances to transportation improvement requirements (Article 10-3G). The Zoning Administrator may approve, approve with conditions, or deny a variance to the transportation improvement standards of Article 10-3G, based on the following:

   a. Required improvements are not feasible due to topographic constraints or constraints posed by critical areas.

B. Class A Variance Approval Criteria. A Class A Variance shall be granted if the applicant demonstrates compliance with the requirements of each variance listed above and 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 significant vegetation, and/or results in preserving a tree or trees on the site or avoiding wetland impacts, if trees or wetlands are present in the development area;

3. The variance will not result in violation(s) of Chapter 3, or other design standards.

10-5B-3 Class B Variance

A. Class B Variances. Class B variances shall be reviewed using a Type II Project procedure, in accordance with Article 10-4B.

1. Class B 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 zoning district would create a hardship to development which is peculiar to the lot size or shape, topography, critical areas (Chapter 6), 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 zoning district); except that no variances to "permitted uses" shall be granted.
2. Applicability.
    a. The variance standards are intended to apply to individual platted and recorded lots only.
    b. An applicant who proposes to vary a specification standard for lots yet to be created through a subdivision process may not utilize the Class B variance procedure.
    c. A variance shall not be approved which would vary the "permitted uses" of a zoning district (Chapter 2).

B. Approvals Process and Criteria.

1. Class B variances shall be processed using a Type II Project procedure, in accordance with Article 10-4B, using the approval criteria in subsection 2, below. In addition to the requirements contained in Article 10-4B, 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 zoning district or vicinity;
    b. A hardship to development exists which is peculiar to the lot size or shape, topography, critical areas (Chapter 6), 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 zoning 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.

10-5B-4 Variance Application and Appeals (Class A or Class B)

The variance application shall conform to the requirements for Exempt or Type II applications (Article 10-4B), 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 Article 10-4B.

Article 10-5C — Non-Conforming Uses and Development

Sections:

10-5C-1 **Non-Conforming Uses**

10-5C-2 **Non-conforming Development**

10-5C-3 **Non-Conforming Lots**

10-5C-4 **Appeals**

10-5C-1 Non-Conforming 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;

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 zoning district in which such land is located, Chapter 3, and other applicable portions of this Code.

E. A business that is a non-conforming use may transfer ownership and keep its non- conforming status as long as the provisions above are met.

F. Non-conforming land use may be replaced by a conforming land use. When land use is brought into compliance with the current code, it may not thereafter revert to or resume a non- conforming land use, except where land has been developed and the land use resumes its specific previous use and does not expand on its non-conformity.

10-5C-2 Non-Conforming Development

Previously built structures (including signs) that do not conform to the current codes may remain, provided that the structure was originally constructed and remains in conformity with the then existing codes, subject to the following provisions:

A. Nonconforming structures may not be altered in such a manner that would increase their nonconformity under the current code; however nonconforming structures may be changed in a manner that satisfies the current Development Code requirements or decreases the nonconformity to those requirements. Where it is determined that implementation of the current code is impractical, the applicability of the code requirements shall be determined by the Zoning Administrator or designee. Normal upkeep, repairs, maintenance, strengthening or restoration to a safe condition of any nonconforming structure or part thereof shall be permitted subject to the provisions of this section. Additionally, alterations required by law or the order of a public agency in order to meet health and safety regulations shall be permitted;

B. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent more than 50 percent of its replacement cost, as determined by the building code, it shall be reconstructed only in conformity with the Development Code unless compliance with this Development Code is not practical, as determined by the Zoning Administrator or designee; 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. Nonconforming signage removed for building or signage structure maintenance may be replaced after the maintenance has been completed provided no changes have been made that would increase the nonconformity of the signage.

D. Conforming uses may continue to operate in a non-conforming structure as long as the provisions above are met.

E. Nothing in this section shall prevent the full restoration by reconstruction of a structure which is either listed on the National Register of Historic Places, the Washington State Register of Historic Places, the Washington State Cultural Resource Inventory, the Washington State Historic Barn Registry, the City of Liberty Lake Cultural and Historical Heritage/Resources, or an equivalent Register of Historic Places, or is listed in a council-approved historical survey meeting the standards of the State Department of Archaeology and Historic Preservation.

> "Restoration" means reconstruction of the historic or culturally significant structure with as nearly the same visual design appearance and materials as is consistent with full compliance with the State Building Code. The reconstruction of all such historic or culturally significant structures shall comply with the life safety provisions of the State Building Code.

10-5C-3 Non-Conforming Lots

A. A nonconforming lot is one which met applicable zoning ordinance standards as to size, width, depth and other dimensional regulations at the date on which it was created but which, due to the passage of a zoning ordinance, the amendment thereof, or the annexation of property to the city, no longer conforms to the current provisions of the Development Code. A lot which was not legally created in accordance with the laws of the local governmental entity in which it was located at the date of the creation is an illegal lot and will not be recognized for development.

B. Legally created lots that do not conform to the current codes are considered nonconforming lots of record and are legally buildable except as provided below:

1. To be legally buildable, a lot must be in compliance with the rules and regulations of the health district. Where there is a conflict between the provisions of this section and those rules of the health district, the more restrictive rules shall apply.
2. A structure on a nonconforming lot of record must meet Development Code requirements for the zone in which the property is located; with the exception of minimum density standards. Where it is determined that implementation of the current code is impractical, the applicability of the code requirements shall be determined by the Zoning Administrator or designee.
3. A lot line adjustment shall be required prior to issuance of a building permit when a nonconforming and conforming lot are abutting each other and under common ownership, and a lot line adjustment will result in both legal lots being in conformance with area, building setbacks, critical area regulations, and other applicable Development Code requirements.
4. Where two or more abutting nonconforming lots of record are under common ownership and they are aggregated into one lot. For that single aggregated lot to be subdivided, all lots created shall conform to Development Code requirements.

10-5C-4 Appeals

Decisions on Non-Conforming Uses and Development can be appealable in the same manner as an Administrative Interpretation.