

435 VARIANCES AND HARDSHIP RELIEF

435-1 Purpose

The purpose of this Section is to provide a remedy from the strict interpretation of this Code where it can be shown that literal interpretation would cause unnecessary hardship.

435-2 Scope

435-2.1 Permitted Variances and Hardship Relief

Under the provisions of this Section, an applicant may propose a variance or hardship relief from a dimensional standard (as defined by Section 106-61) of this Code, and from the minimum required amount of parking of Section 413, except when:

- A. The proposed variance or hardship relief would allow a use which is not permitted in the applicable land use district;
- B. Another procedure is available in this Code for modifying or waiving the particular standard; or
- C. This Code specifically prohibits a variance or hardship relief from a standard (e.g., Section 430-1.1 B.(8) prohibits a variance or hardship relief change to the distance between an accessory structure and a primary structure).

435-2.2 Prohibited Variances and Hardship Relief

Notwithstanding Section 435-2.1, the following standards of this Code may not be varied by the provisions of this Section:

- A. The minimum and maximum density requirements of a residential land use district;
- B. Definitions;
- C. A standard that implements a Federal, State, Regional, or Local requirement;
- D. A floor area ratio (FAR); or
- E. The sight distance standards of Section 501-8.5 F.

435-3 Procedure

Unless otherwise specified in this Code, variances shall be processed through a Type III procedure.

435-4 Variance Criteria

A variance may be granted only when the Review Authority makes findings, based upon evidence in the record, that the variance is consistent with all of the following criteria:

- 435-4.1 Compliance with the applicable standard of the Code would create an unnecessary hardship due to the following condition:
- A. The physical characteristics of the land are not typical of the area, including a jurisdictional wetland, or a significant natural resource or historic feature that is identified by a Community Plan or the Rural Natural Resource Plan, resulting in a hardship unique to the property of the applicant and not applying generally to other property in the same vicinity and the variance is necessary to permit the property to be developed or enjoyed to an extent comparable with other properties in the same district in the area;
- 435-4.2 The hardship does not result from actions of the applicant, owner(s) or previous owner(s), or from personal circumstances of the applicant, owner(s) or previous owner(s), such as physical condition, age or financial situation;
- 435-4.3 The variance is not intended to avoid a standard of this Code to facilitate a particular site design or development when another design or development which meets the standard is available;
- 435-4.4 Strict adherence to the requirement or standard is unnecessary because the proposed variance will reasonably satisfy both of the following objectives:
- A. Not adversely affect the function or appearance of the development and use of the subject property and surrounding properties;
 - B. Not impose limitations on other properties and uses in the area including uses that would be allowed on adjacent properties; and
- 435-4.5 The variance will allow the property to be used only for purposes authorized by this Code.
- 435-4.6 The Review Authority may impose such conditions as are deemed necessary to mitigate any adverse impacts which may result from granting the relief.

435-5 Hardship Relief

- 435-5.1 Notwithstanding Section 435-4, the Director may grant hardship relief of up to twenty (20) percent from any dimensional standard (as defined by Section 106-61) consistent with Section 435-2, or for lot area, which shall be limited to five (5) percent hardship relief. There is no limit to the amount the well spacing standard in the EFU, AF-20, EFC, AF-10, AF-5, and RR-5 Districts may be reduced through hardship relief.
- 435-5.2 Hardship relief application shall be a Type II action;

435-5.3 The Director shall grant such relief only when the Director makes findings, based upon evidence in the record, that all of the following criteria have been met:

- A. The standard imposes a significant economic burden on the applicant;
- B. The use is a permitted use in the District; and
- C. Relief will not be materially detrimental to other property in the vicinity.

435-5.4 The Director may impose such conditions as are deemed necessary to mitigate any adverse impacts which may result from granting the relief.

435-6 Lot Area Variances Outside the UGB

Lot area variances outside the UGB which meet the standards of this Section shall be processed through the Type II procedure.

435-6.1 Notwithstanding the provisions of Sections 346-6, 348-6 or 350-6, a lawfully created lot or parcel in the AF-5, AF-10 or the RR-5 district upon which two or more lawfully established and habitable dwellings exist, may be partitioned into a number of parcels equal to the number of dwellings on the lot or parcel upon findings that:

- A. Each parcel to be created has a habitable dwelling on the parcel.
- B. The configuration of the parcels will allow for the establishment of an alternate septic tank drainfield on each parcel in case the existing drainfield fails.
- C. Any lot less than (2) two acres must have a public water supply.
- D. Each lot shall meet the access and dimensional requirements of the District except for the lot size as indicated above.
- E. If the lot or parcel is within one mile of the UGB, the resulting parcels shall be sized to promote efficient future urban development by ensuring that one of the parcels is the minimum size necessary to accommodate the residential use of the parcel.

435-6.2 Notwithstanding the provisions of Sections 346-6, 348-6 or 350-6, all lawfully created lots or parcel in the AF-10, AF-5 or RR-5 Districts which are defined as one parcel pursuant to Oregon Laws may be established as separate parcels through the provisions of Article VI upon findings that:

- A. The configuration of the lots of record are not changed.
- B. The lots of record qualify for subsurface sewage systems according to the standards adopted by the DEQ.

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440 NONCONFORMING USES AND STRUCTURES

440-1 Intent and Purpose

A nonconforming use is a structure or use of land which does not conform to the provisions of this Code or Comprehensive Plan lawfully in existence on the effective date of enactment or amendment of this Code or Comprehensive Plan. It is the intent of this Section to allow and regulate existing uses and structures that were lawfully established and are not now in conformance with the applicable regulations of this Code.

The purpose of this Section is to generally encourage the discontinuance of nonconforming uses and structures or changing of nonconforming uses and structures to conforming or more conforming uses or structures. However, it is not the purpose of this Section to force all nonconforming uses or structures to be eliminated or brought into conformance with existing standards, or to discourage the continued nonconforming use of land for single family dwellings. Except in commercial, industrial and institutional districts, it is the intent of this Section to allow the owner of a structure used as a single family dwelling to alter or replace the structure consistent with state law, LCDC administrative rules and the applicable provisions of this Code.

Nonconforming uses that have a lesser impact on the immediate area have fewer restrictions than nonconforming uses with greater impacts. Nonconforming commercial and industrial uses in residential and farm or forest districts have more rigorous review criteria than these uses have in commercial and industrial districts in order to protect the livability and character of residential and farm or forest districts. In contrast, nonconforming single dwelling units in residential and farm or forest districts have fewer review standards because residential uses are permitted in these districts and these uses do not represent a major disruption to the immediate area. The intent of this Section in reviewing alterations to nonconforming single dwelling units in the EFU, EFC and AF-20 Districts is to review only those things that adversely affect resource based activities which are the basis for the use restrictions in these districts.

440-2 Exemptions

The following improvements or actions are exempt from the provisions of this Section, and pursuant to Section 201-2 do not require a Development Permit. These improvements or actions do not alter or change a nonconforming use but merely allow the use to continue.

440-2.1 Repair or Remodeling of a Structure Used as a Single Dwelling Unit

Repair or remodeling of a structure that is used as a single dwelling unit is exempt from the provisions of this Section if the repair or remodeling does not change or alter the ability of the structure to function as a modern dwelling, or enlarge the square footage of the structure.

For the purposes of this Section, the following systems are required for a structure to function as a modern dwelling. The addition of a required system to a structure that

lacks such a system, or the replacement of a nonfunctioning system, is not an exempt repair or remodeling. Such addition or replacement is an alteration of a structure and is subject to review pursuant to Section 440-6. Repairs to upgrade a functioning system which result in total replacement of the system are exempt from the provisions of this Section.

Essential Systems Required for a Structure to Function as a Modern Dwelling

- A. Intact exterior walls and roof structure;
- B. Indoor plumbing consisting of kitchen sink, toilet and bathing facilities (shower or bath tub) that is connected to a sanitary waste disposal system;
- C. Interior wiring for interior lights and appliances; and
- D. Heating system.

440-2.2 The addition of decks or porches to a structure that is used as a dwelling provided they are not closed to the elements.

440-2.3 Remodeling of a structure that is used as a dwelling for moving, adding or changing such things as windows, doors, skylights and chimneys.

440-2.4 Maintenance of a nonconforming use or structure for the upkeep of the use or structure, including such things as replacement of shingles, siding and gutters. Maintenance does not include restoration or repair made necessary by fire, other casualty or natural disaster.

440-2.5 Change of ownership or occupancy of a nonconforming use or structure.

440-3 Determination of a Nonconforming Use

In order to proceed with any of the land use actions listed in Sections 440-5 and 440-6, an applicant shall provide evidence that shows the following. Determination of a nonconforming use may be processed independently or concurrently through a Type II procedure with any of the land use actions listed in Section 440-5 and 440-6.

440-3.1 The nonconforming use was lawfully established in accordance with applicable land use standards. Building permits or tax records may be used as evidence to prove when the use was established.

440-3.2 The nature and extent of the nonconforming use at the time it became nonconforming. Sporadic and intermittent nonconforming uses may continue as nonconforming uses provided the continuation of the use continues to be sporadic and intermittent.

A structure that is used as a single dwelling unit shall:

- A. Have been used full-time as a dwelling at the time it became nonconforming and used continually since then as a dwelling; and

- B. Have sleeping quarters and eating facilities. The dwelling occupants shall not have been sustained by another dwelling (taking meals or bathing at another dwelling).

440-3.3 The nonconforming use has continued since it became nonconforming. Utility bills, tax records, business licenses or telephone directory listings may be used as evidence to demonstrate how the use has continued.

440-4 Discontinuance or Abandonment

If a nonconforming use of land or structure is discontinued or abandoned for more than one (1) year for any reason except bona fide efforts to market the property or structure, it shall not be resumed unless the resumed use conforms with the applicable requirements of this Code at the time of proposed resumption. Once a nonconforming use has been changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use. Any future uses shall conform with the applicable requirements of this Code.

A surface mining use shall not be deemed to be interrupted or abandoned for any period after July 1, 1972, provided: the owner or operator was issued and continuously renewed a state or local surface mining permit, or received and maintained a state or local exemption from surface mining regulations; and the surface mining use was not inactive for a period of twelve (12) consecutive years or more. For purposes of surface mining uses, 'inactive' means no aggregate materials were excavated, crushed, removed, stockpiled or sold by the owner or operator of the surface mine.

440-5 Restoration or Replacement of a Nonconforming Use or Structure Made Necessary by Fire, Other Casualty or Natural Disaster

The following nonconforming uses or structures may be replaced or restored through either a Type I or a Type II procedure when the replacement or restoration is made necessary by fire, other casualty or natural disaster when in conformance with the following standards.

Restoration or replacement shall begin within one (1) year from the occurrence of the fire, casualty or natural disaster.

440-5.1 Restoration or Replacement Permitted Through a Type I Procedure

A nonconforming single family dwelling unit may be replaced or restored in the following districts regardless of the extent of damage or destruction: R-5, R-6, R-9, R-15, R-24, R-25+, FD-10, FD-20, EFU, EFC, AF-20, AF-10, AF-5, RR-5, TO:R9-12, TO:R12-18, TO:R-18-24, TO:R24-40, TO:R40-80 and TO:R80-120 Districts when the following standards are met:

- A. The applicant demonstrates the dwelling was lawfully established on or after April 6, 1959 by submitting the following information:
 - 1. A development application approval for the dwelling issued on or after April 6, 1959;

2. A building permit for the dwelling issued on or after April 6, 1959; or
 3. A certificate of zoning compliance for the dwelling issued on or after April 6, 1959; or
- B. The applicant demonstrates the dwelling was lawfully established by providing documentation from the Department of Assessment and Taxation that the dwelling was established prior to April 6, 1959;
 - C. The applicant provides a letter from an insurance company stating that the loss is covered by a valid homeowner's insurance policy (at the time of fire, other casualty or natural disaster) for at least eighty (80) percent of the replacement cost;
 - D. In the EFC District, the replacement dwelling meets the standards in Section 428-3 (forest structure siting and fire safety standards for dwellings reviewed through a Type I procedure).

440-5.2 Restoration or Replacement Permitted Through a Type II Procedure

- A. A nonconforming single dwelling unit may be replaced or restored in the following districts regardless of the extent of damage or destruction: R-5, R-6, R-9, R-15, R-24, R-25+, FD-10, FD-20, EFU, EFC, AF-20, AF-10, AF-5, RR-5, TO:R9-12, TO:R12-18, TO:R-18-24, TO:R24-40, TO:R40-80 and TO:R80-120 Districts.
- B. A nonconforming manufactured dwelling used as a dwelling unit in an urban district permitting detached dwellings may be replaced or restored regardless of the extent of damage or destruction provided there is compliance with the standards set forth in Sections 430-75.1 (Manufactured Dwellings) and 430-72 (Infill).
- C. A structure or use that is nonconforming as a result of the dimensional standards of the district or the standards of Article IV, may be repaired or replaced if damaged or destroyed, provided that the repair or replacement conforms as much as practicable to those standards.
- D. If a nonconforming use or structure, except as permitted by Section 440-5.1, or Section 440-5.2 A., B. or C. is damaged or destroyed by fire or other casualty or natural disaster to an extent not exceeding seventy (70) percent in value based on an insurance appraisal, the use may be replaced or restored. The Review Authority shall make findings that the restoration or replacement will have no greater adverse impact on the neighborhood than the use and improvements had before the damage or destruction occurred.
- E. If a nonconforming use or structure, except as permitted by Section 440-5.1, or Section 440-5.2 A., B., or C. is damaged or destroyed by fire or other casualty or natural disaster to an extent exceeding seventy (70) percent in value based upon an insurance appraisal, the nonconforming use or structure shall not be replaced or restored.

440-6 Alterations to a Nonconforming Use or Structure

Alterations to a nonconforming use or structure are permitted through a Type I or II procedure. Alteration includes a change in nonconforming use of a structure or parcel of land; or replacement, addition or modification in construction to a structure.

440-6.1 Alterations Permitted Through a Type I Procedure

Alteration of a nonconforming structure or use of land shall be permitted through a Type I procedure when the alteration is necessary to comply with any lawful requirement, including health and safety requirements. The applicant shall submit with the application written notice from the applicable agency describing the required alteration that must be made and the requirement necessitating the alteration.

440-6.2 Alterations Permitted Through a Type II Procedure

A. Alterations of Structures used as a Single Dwelling Unit

The following alterations to structures used as a single dwelling unit may be approved upon findings by the Review Authority that the proposed alteration is consistent with the following standards.

- (1) Except in a commercial, industrial or institutional district, an alteration to replace or relocate, on the same parcel, a structure used as a single dwelling unit may be permitted for a dwelling provided:
 - (a) The alteration will have no greater adverse impact on the neighborhood;
 - (b) If the location of the new dwelling is more than one-hundred (100) feet from the existing dwelling in the EFU, EFC, and AF-20 Districts the replacement shall not:
 - (i) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
 - (ii) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.
 - (c) The alteration will meet all applicable dimensional and access standards of the primary district;
 - (d) The alteration will meet all applicable standards of Article IV; and
 - (e) A nonconforming manufactured dwelling used as a dwelling unit in an urban district permitting detached dwellings, may be replaced provided there is compliance with the standards set forth in Sections 430-75.1 (Manufactured Dwellings) and 430-72 (Infill).
- (2) Except in a commercial, industrial or institutional district, an alteration to repair, remodel or expand a structure used as a single dwelling unit may be permitted for a dwelling provided:

- (a) The alteration will have no greater adverse impact to the neighborhood;
 - (b) District setback and height standards are maintained;
 - (c) District access requirements have been met;
 - (d) The alteration will meet all applicable standards of Article IV; and
 - (e) A nonconforming manufactured dwelling used as a dwelling unit in an urban district permitting detached dwellings, may be expanded, repaired or remodeled provided there is compliance with the standards set forth in Sections 430-75.1 (Manufactured Dwellings) and 430-72 (Infill).
- B. An alteration to change or expand a lawful nonconforming use, or to change, repair or remodel a structure associated with a lawful nonconforming use other than a single dwelling unit, or a structure used as a single dwelling unit in a commercial, industrial or institutional district, may be permitted provided:
- (1) The alteration will have no greater adverse impact on the neighborhood;
 - (2) Any increase in floor area shall be limited to a one time increase up to twenty (20) percent;
 - (3) Any increase in the area of the nonconforming use, excluding floor area, shall be limited to a one time increase up to ten (10) percent;
 - (4) For residential uses, there shall be no increase in the number of dwelling units;
 - (5) The alteration is designed to mitigate to the extent practicable adverse impacts caused by the alteration; and
 - (6) The alteration will meet all applicable standards of the primary district and the standards of Article IV to the extent practicable.
 - (7) In addition, alterations to expand a nonconforming use or structure shall address the following:
 - (a) The alteration is necessary to avoid future deterioration or obsolescence; and
 - (b) Relocation would create undue hardship.
 - (8) In addition, alterations to change a nonconforming use and structure shall address the following:

The alteration will have no greater adverse impact on the neighborhood considering factors such as:

- (a) The character and history of the development and of development in the surrounding area;
- (b) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line;
- (c) The comparative numbers and kinds of vehicular trips to the site;
- (d) The comparative amount and nature of outside storage, loading and parking;
- (e) The comparative visual appearance;
- (f) The comparative hours of operation;
- (g) The comparative effect on existing vegetation;
- (h) The comparative effect on water drainage;
- (i) The degree of service or other benefit to the area; and
- (j) Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area;

C. Notwithstanding Sections 440-6, a structure or use that is nonconforming solely as a result of the dimensional standards of the applicable land use district and standards in Article IV, may expand to any extent provided that the expansion complies with all applicable standards of this Code.

440-7 Signs

Signs are allowed in accordance with the regulations of the primary district in which the nonconforming use is located.

440-8 Lots of Record

440-8.1 Inside the UGB, development which complies with all other standards of this Code shall be permitted on a lot of record, as defined in Section 106, regardless of whether the proposed development complies with the dimensional standards of the District. The development shall be subject to the dimensional requirements in existence at the time the lot or parcel was created. The proposed development shall be subject to all other provisions of this Code unless expressly exempted by this Code.

For residential lots of record inside an urban growth boundary, a single dwelling unit may be permitted if there were no applicable street frontage standards at the time the lot of record was created and if the lot of record has access with a minimum continuous width of at least fifteen (15) feet for the full length of the access. Such access shall either be direct frontage or by an easement of record or statutory way of necessity.

440-8.2 Inside the UGB, and in the AF-10, AF-5, RR-5, R-COM, R-IND and MAE Districts, a use lawfully established on a lot of record recognized under the former zoning

ordinance shall not be deemed nonconforming due to the lot of record provision of this Code.

440-9 Access Requirements for Residential Lots or Parcels Created Prior to November 15, 1979

For residential lots or parcels inside an urban growth boundary that were created prior to November 15, 1979, and which do not meet the lot width at the street standard of the primary district, a single dwelling may be permitted if the lot or parcel has access with a minimum continuous width of at least fifteen (15) feet for the full length of the access. Such access shall either be by direct frontage or by an easement of record or statutory way of necessity.

440-10 Alteration or Expansion of Uses Not Conforming to the Access Requirements to Public or County Roads

Approval of an alteration, expansion or change in occupancy of a Type II use which currently does not conform with the requirements of Section 501-8.5 (Access to County and Public Roads) shall require that the use be brought into compliance with these standards when such changes create a twenty-five (25) percent increase in the existing Average Daily Trips (ADT). Compliance must be assured prior to the issuance of final approval or building permits for the expansion, addition or alteration.