



Planning Commission Agenda

Note: Anyone wishing to speak at any Planning Commission meeting is encouraged to do so. Written testimony will be accepted for the public hearing agenda items via email to PC-public-testimony@ashland.or.us. After you have been recognized by the Chair, give your name and complete address for the record. You will then be allowed to speak. Please note the public testimony may be limited by the Chair.

March 28, 2023

STUDY SESSION

AGENDA

I. CALL TO ORDER: 7:00 p.m., Civic Center Council Chambers, 1175 E. Main Street

II. ANNOUNCEMENTS

III. PUBLIC FORUM

Note: To speak to an agenda item in person you must fill out a speaker request form at the meeting and will then be recognized by the Chair to provide your public testimony. Written testimony can be submitted in advance or in person at the meeting. If you wish to discuss an agenda item electronically, please contact PC-publictestimony@ashland.or.us by March 28, 2023 to register to participate via Zoom. If you are interested in watching the meeting via Zoom, please utilize the following link: <https://zoom.us/j/98837140997>

IV. DISCUSSION ITEMS

A. Variances & Exceptions Discussion

V. OTHER BUSINESS

A. Recognition of Retiring Commissioners

VI. OPEN DISCUSSION

VII. ADJOURNMENT

Next Meeting Date: April 11, 2023

Memo

DATE: March 28, 2023

TO: Planning Commission

FROM: Derek Severson, *Senior Planner*

RE: Discussion of Variances & Exceptions

Staff have prepared the following information to facilitate further discussion of Variances and Exceptions as requested by the Planning Commission during the March 14, 2023 regular meeting.

Type of Variances

In the Ashland Land Use Ordinance, Variances are noted as applying where “*practical difficulties, unnecessary hardships, and results inconsistent with the general purpose of the Land Use Ordinance*” may result from the strict application of certain ordinance provisions.

Variances may not be used to allow a use that is not in conformity with the uses specified by this chapter for the district in which the land is located. So, for instance, a Variance could not be used to approve a commercial use in a residential zone.

Generally, the magnitude of the Variance determines whether it is a “Type I” application procedure (\$1,120.25 fee) subject to a staff decision or a “Type II” application procedure (\$2,247.50 fee) requiring a decision by the Planning Commission through a public hearing.

COMMUNITY DEVELOPMENT DEPARTMENT

51 Winburn Way
Ashland, Oregon 97520
ashland.or.us

Tel: 541.488.5305
Fax: 541.552.2050
TTY: 800.735.2900



'Type I' Variances where a decision by the Staff Advisor is allowed are limited to:

- **SIGNS:** Sign placement or non-conforming signs.
- **SETBACKS:** Up to a 50 percent reduction of standard yard requirements.
- **PARKING:** Parking in setback areas, up to a ten percent reduction in the number of required parking spaces, or up to a 50 percent reduction for parking requirements in the Historic District.
- **LOT REQUIREMENTS:** Up to a ten percent reduction in the required minimum lot area; up to a ten percent increase in the maximum lot coverage percentage; or up to a 20 percent reduction in lot width or lot depth requirements.
- **OTHER:** Up to ten percent variance on height, width, depth, length, or other dimensional standard not otherwise listed above.

Any Variance other than those listed above requires a 'Type II' procedure with a decision by the Planning Commission through a public hearing.

The Variance Chapter ([AMC 18.5.5](#)) is attached as an exhibit hereto.

Variances do not apply where the Land Use Ordinance specifically provides for Exceptions to development standards in lieu of Variances (e.g., *Exceptions to the Site Development and Design Standards, Solar Setback Exceptions, Exceptions to the Street Design Standards, Exceptions to the Hillside Lands Development Standards, Exceptions to the Wildfire Lands Development Standards, Hardship Exceptions for Development in Water Resource Protection Zones*).

During pre-application conferences, where potential Variances are identified as a component of a request, staff make clear that Variances are discretionary decisions that are generally difficult to justify and that can increase the level of uncertainty in the process.

Types Exceptions

Generally speaking, where Variances may apply across a broad section of standards and requirements in the Land Use Ordinance, Exceptions typically apply only to a

COMMUNITY DEVELOPMENT DEPARTMENT

51 Winburn Way
Ashland, Oregon 97520
ashland.or.us

Tel: 541.488.5305
Fax: 541.552.2050
TTY: 800.735.2900



specific set of development standards and have specific approval criteria based on the type of Exception.

Hardship Exceptions for Development in Water Resource Protection Zones are subject to a Type II procedure with a \$2,247.50 fee. Solar Setback Exceptions are subject to a Type I procedure with a \$1,120.25 fee. Other Exceptions are typically treated as part of a larger request, not subject to separate fees (e.g., a Site Design Review application allows consideration of Exceptions to the Site Development and Design Standards as part of the Site Design Review request).

Types of Exceptions in the Land Use Ordinance include:

- [Hardship Exceptions for Development in Water Resource Protection Zones \(Type II\)](#)
- [Solar Setback Exception \(Type I\)](#)
- [Exceptions to the Site Development and Design Standards](#)
- [Exceptions to the Development Standards for Hillside Lands](#)
- [Exceptions to the Street Design Standards](#)
- [Exception to a Fire Prevention and Control Plan/Exception to General Fuel Modification Area Standards](#)

Code sections relative to each of the above Exceptions are attached as exhibits hereto.

Chapters within the Land Use Ordinance will typically speak to where the requirements or standards of the chapter apply, and whether they are subject to Variance or Exception criteria. As an example, the Public Facilities Chapter (AMC 18.4.6) addresses the applicability of Exceptions and Variances as follows in AMC 18.4.6.020.B:

Exceptions and Variances. *Requests to depart from the requirements of this chapter are subject to chapter [18.5.5](#), Variances, except that deviations from section [18.4.6.040](#), Street Design Standards, are subject*

COMMUNITY DEVELOPMENT DEPARTMENT

51 Winburn Way
Ashland, Oregon 97520
ashland.or.us

Tel: 541.488.5305
Fax: 541.552.2050
TTY: 800.735.2900



to subsection **B.1**, Exception to the Street Design Standards [see attached].

COMMUNITY DEVELOPMENT DEPARTMENT

51 Winburn Way
Ashland, Oregon 97520
ashland.or.us

Tel: 541.488.5305
Fax: 541.552.2050
TTY: 800.735.2900



Chapter 18.5.5

VARIANCES

Sections:

- 18.5.5.010 Purpose.**
- 18.5.5.020 Applicability.**
- 18.5.5.030 Review Procedure.**
- 18.5.5.040 Application Submission Requirements.**
- 18.5.5.050 Approval Criteria.**
- 18.5.5.060 Effect.**
- 18.5.5.070 Expiration and Extension.**

18.5.5.010 Purpose

Where practical difficulties, unnecessary hardships, and results inconsistent with the general purpose of the Land Use Ordinance (“this ordinance”) may result from the strict application of certain provisions thereof, a Variance may be granted as provided in this chapter.

18.5.5.020 Applicability

This chapter may not be used to allow a use that is not in conformity with the uses specified by this chapter for the district in which the land is located. Chapter [18.5.5](#) does not apply where this chapter specifically provides for exceptions to development standards (e.g., exceptions to the site development and design standards, solar setback, street standards, hillside lands development standards, wildfire lands development standards, water resource protection zone standards). (Ord. 3158 § 10, amended, 09/18/2018)

18.5.5.030 Review Procedure

Applications for Variances are reviewed as follows.

- A. Type I.** The following Variances are subject to the Type I review procedure in section [18.5.1.050](#).
1. Sign placement, per chapter [18.4.7](#).
 2. Non-conforming signs, when bringing them into conformance as described in chapter [18.4.7](#).
 3. Up to a 50 percent reduction of standard yard requirements.

4. Parking in setback areas.
5. Up to ten percent reduction in the number of required parking spaces.
6. Up to 50 percent reduction for parking requirements in the Historic District.
7. Up to ten percent reduction in the required minimum lot area.
8. Up to ten percent increase in the maximum lot coverage percentage.
9. Up to 20 percent reduction in lot width or lot depth requirements.
10. Up to ten percent variance on height, width, depth, length, or other dimension not otherwise listed in this section.

B. Type II. Variances not listed in subsection [18.5.5.030.A](#), above, are subject to the Type II review procedure in section [18.5.1.060](#).

18.5.5.040 Application Submission Requirements

An application for a Variance shall be submitted by the owner of the subject property or authorized agent on a form prescribed by the City and accompanied by the required filing fee. The application shall include a plan or drawing meeting the requirements below:

A. General Submission Requirements. Information required for Type I or Type II review, as applicable (see sections [18.5.1.050](#) and [18.5.1.060](#)), including but not limited to a written statement or letter explaining how the application satisfies each and all of the relevant criteria and standards.

B. Plan Submittal. The plan or drawing accompanying the application shall include the following information.

1. Vicinity map.
2. North arrow and scale.
3. Depiction and names of all streets abutting the subject property.
4. Depiction of the subject property, including the dimensions of all lot lines.
5. Location and use of all buildings existing and proposed on the subject property and schematic architectural elevations of all proposed structures.
6. Location of all parking areas, parking spaces, and ingress, egress, and traffic circulation for the subject property, including accessible parking by building code.
7. Schematic landscaping plan showing area and type of landscaping proposed.
8. A topographic map of the site showing contour intervals of five feet or less.

9. Approximate location of all existing natural features in areas which are planned to be disturbed, including, but not limited to, all existing trees of greater than six inches DBH, any natural drainage ways, ponds or wetlands, and any substantial outcroppings of rocks or boulders.

18.5.5.050 Approval Criteria

A. The approval authority through a Type I or Type II procedure, as applicable, may approve a variance upon finding that it meets all of the following criteria.

1. The variance is necessary because the subject code provision does not account for special or unique physical circumstances of the subject site, such as topography, natural features, adjacent development, or similar circumstances. A legal lot determination may be sufficient evidence of a hardship for purposes of approving a variance.
2. The variance is the minimum necessary to address the special or unique physical circumstances related to the subject site.
3. The proposal's benefits will be greater than any negative impacts on the development of the adjacent uses and will further the purpose and intent of this ordinance and the Comprehensive Plan of the City.
4. The need for the variance is not self-imposed by the applicant or property owner. For example, the variance request does not arise as result of a property line adjustment or land division approval previously granted to the applicant.

B. In granting a variance, the approval authority may impose conditions similar to those provided for conditional uses to protect the best interests of the surrounding property and property owners, the neighborhood, or the City as a whole.

18.5.5.060 Effect

No building or zoning permit shall be issued in any case where a variance is required until the effective date of the decision, and then only in accordance with the terms and conditions of said approval. An appeal from the action of the approval authority shall automatically stay the issuance of the building or other permit until such appeal has been completed and the final decision of the City is issued. In the event the variance is approved, the building or zoning permit may be issued immediately thereafter, in accordance with such terms and conditions as may have been imposed on said variance.

18.5.5.070 Expiration and Extension

Variances are subject to sections [18.1.6.030](#) Permit Expiration and [18.1.6.040](#) Permit Extension.

The Ashland Land Use Ordinance is current through Ordinance 3204, passed December 21, 2021.

Disclaimer: The City Recorder's office has the official version of the Ashland Land Use Ordinance. Users should contact the City Recorder's office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.ashland.or.us](http://www.ashland.or.us)

City Telephone: (541) 488-5307

[Code Publishing Company](#)

H. Exception to the Development Standards for Hillside Lands. An exception under this section is not subject to the variance requirements of chapter [18.5.5](#), Variances. An application for an exception is subject to the Type I procedure in section [18.5.1.050](#) and may be granted with respect to the development standards for Hillside Lands if the proposal meets all of the following criteria:

1. There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site.
2. The exception will result in equal or greater protection of the resources protected under this chapter.
3. The exception is the minimum necessary to alleviate the difficulty.
4. The exception is consistent with the stated Purpose and Intent of chapter [18.3.10](#), Physical and Environmental Constraints Overlay, and section [18.3.10.090](#), Development Standards for Hillside Lands. (Ord. 3199 § 18, amended, 06/15/2021; Ord. 3191 § 18, amended, 11/17/2020; Ord. 3158 § 4, amended, 09/18/2018)

18.5.2.050.E. Exception to the Site Development and Design Standards. The approval authority may approve exceptions to the Site Development and Design Standards of part [18.4](#) if the circumstances in either subsection 1, 2, or 3, below, are found to exist.

1. There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty;
2. There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards; or
3. There is no demonstrable difficulty in meeting the specific requirements for a cottage housing development, but granting the exception will result in a design that equally or better achieves the stated purpose of section [18.2.3.090](#). (Ord. 3147 § 9, amended, 11/21/2017)

B. Exceptions and Variances. Requests to depart from the requirements of this chapter are subject to chapter [18.5.5](#), Variances, except that deviations from section [18.4.6.040](#), Street Design Standards, are subject to subsection [B.1](#), Exception to the Street Design Standards, below.

1. **Exception to the Street Design Standards.** The approval authority may approve exceptions to the street design standards in section [18.4.6.040](#) if the circumstances in either subsection [B.1.a](#) or [b](#), below, are found to exist.

- a. There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site; and the exception is the minimum necessary to alleviate the difficulty; and the exception is consistent with the purpose, intent, and background of the street design standards in subsection [18.4.6.040.A](#); and the exception will result in equal or superior transportation facilities and connectivity considering the following factors where applicable:
 - i. For transit facilities and related improvements, access, wait time, and ride experience.
 - ii. For bicycle facilities, feeling of safety, quality of experience (i.e., comfort level of bicycling along the roadway), and frequency of conflicts with vehicle cross traffic.
 - iii. For pedestrian facilities, feeling of safety, quality of experience (i.e., comfort level of walking along roadway), and ability to safely and efficiently cross roadway; or
- b. There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purposes, intent, and background of the street design standards in subsection [18.4.6.040.A](#). (Ord. 3204 § 2, amended, 12/21/2021)

E. Exceptions to a Fire Prevention and Control Plan and General Fuel Modification Area Standards. The approval authority may approve exceptions to the Development Standards for Wildfire Lands to meet the purpose of this chapter subject to approval through a Type I procedure for the following:

1. An action prescribed by this section that includes the removal of trees designated to be retained as part of an approved planning action.
2. A change that includes the removal of native vegetation within a Water Resources Protection Zone.
3. A change in the Fire Prevention and Control Plan not specifically listed as a minor amendment under subsection [18.3.10.100.D.1](#).
4. Tree removal on C-1, C-1-D, E-1, CM, M-1, HC, R-2, R-3, and NN-2 zoned properties subject to Tree Removal Permit requirements set forth in chapter [18.5.7](#). (Ord. 3158 § 1, replaced, 09/18/2018)

18.3.11.080 Hardship Exceptions for Development in Water Resource Protection Zones. Hardship Exceptions shall be subject to a Type II procedure in section [18.5.1.060](#), and are not subject to the Variance requirements of chapter [18.5.5](#) Variances. An application for a Hardship Exception may be approved if the proposal meets all of the following criteria.

- A. The application of this chapter unduly restricts the development or use of the lot, and renders the lot not buildable.
- B. The proposed activity or use of land would have been permitted prior to the effective date of this ordinance.
- C. The applicant has explored all other reasonable options available under this chapter and other applicable provisions of this ordinance to relieve the hardship.
- D. Adverse impacts on the structures, functions, or values of the resource including water quality, erosion, or slope stability that would result from approval of the exception have been minimized and will be mitigated to the greatest extent possible through restoration and enhancement of the Water Resource Protection Zone in accordance with a mitigation plan prepared in accordance with the standards and requirements in section [18.3.11.110](#) Mitigation Requirements.
- E. Long term conservation, management, and maintenance of the Water Resource Protection Zone shall be ensured through preparation and recordation of a management plan as described in subsection [18.3.11.110.C](#), except a management plan is not required for residentially zoned lots occupied only by a single-family dwelling and accessory structures.

18.4.8.020.C. [SOLAR ACCESS] Exceptions and Variances. Requests to depart from section [18.4.8.030](#), Solar Setbacks, are subject to subsection [18.4.8.020.C.1](#), Solar Setback Exception, below. Deviations from the standards in section [18.4.8.050](#), Solar Orientation Standards, are subject to subsection [18.5.2.050.E](#), Exception to the Site Development and Design Standards.

1. **Solar Setback Exception.** The approval authority through a Type I review pursuant to section [18.5.1.050](#) may approve exceptions to the standards in [18.4.8.030](#), Solar Setbacks, if the requirements in subsection a, below, are met and the circumstances in subsection b, below, are found to exist.
 - a. That the owner or owners of all property to be shaded sign, and record with the County Clerk on the affected properties' deed, a release form supplied by the City containing all of the following information:
 - i. The signatures of all owners or registered leaseholders holding an interest in the property in question.
 - ii. A statement that the waiver applies only to the specific building or buildings to which the waiver is granted.
 - iii. A statement that the solar access guaranteed by this section is waived for that particular structure and the City is held harmless for any damages resulting from the waiver.
 - iv. A description and drawing of the shading which would occur.
 - b. The approval authority finds all of the following criteria are met.
 - i. The exception does not preclude the reasonable use of solar energy (i.e., passive and active solar energy systems) on the site by future habitable buildings.
 - ii. The exception does not diminish any substantial solar access which benefits a passive or active solar energy system used by a habitable structure on an adjacent lot.
 - iii. There are unique or unusual circumstances that apply to this site which do not typically apply elsewhere. (Ord. 3147 § 8, amended, 11/21/2017)