

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 1082

Amending MCC Chapters 33, 34, 35, 36 and 37 to Change the “Variance” Parts of the Zoning Code Chapters and Add “Adjustments” as Another Zoning Provision for Modifying Dimensional Standards

(Language stricken is deleted; double underlined language is new.)

The Multnomah County Board of Commissioners Finds:

- a. The individual Zoning Code chapters should be periodically updated and improvements adopted. The last substantive amendments to the variance provisions occurred in 1985 and there is a need to make some changes.
- b. The present “two tier” approach to variances is appropriate to continue. This approach provides different approval criteria for reviewing requests for smaller and greater modifications of dimensional standards.
- c. There is a need to add more flexibility in the ability to approve minor modifications to certain dimensional standards in the zoning code. The replacement of “minor variance” provisions with those for allowing “adjustment” of certain zoning dimensional standards will increase the extent of the modification allowed from 25 percent to 40 percent and will change the approval criteria to emphasize meeting the purposes of the zoning standard.
- d. There is a need to amend the zoning code to clearly specify the dimensional standards that are eligible for modification and the extent to which the standards can be modified.
- e. There is a need to clarify the approval criteria language to better implement the purposes of this zoning tool.
- f. There is a need to add a requirement that the requested dimensional modification is the minimum necessary to alleviate the difficulty and to add provisions to require mitigation for any adverse impacts that result from granting the “adjustment” or variance.

Multnomah County Ordains as follows:

Section 1. **§§ 33.0005, 34.0005, 35.0005, and 36.0005 are amended as follows:**

§ 33.0005 **Definitions.**

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

* * *

Buffer – **See Setback.**

* * *

Forest Practices Setback – A type of dimensional setback in the forest zoning districts that provides for separation between structures and property lines. This setback assures that accepted forestry practices can occur on adjacent properties without the adjacent property owner needing to alter those practices due to the close proximity of a dwelling or structure.

* * *

Lot Line (Front) – In the case of an interior lot, a line separating the lot from the street or accessway; in the case of a corner lot, a line separating the narrowest frontage of the lot from a street or accessway; and in the case of a flag lot, the lot line closest to and most nearly parallel with the street which serves the lot. A minimum front lot line length is a dimensional requirement to assure that a parcel or lot has sufficient street frontage and lot width near the street to accommodate a safe access driveway and reasonable building area after considering the required side yards.

* * *

Setback – At times this term is used interchangeably with yard. However, setback (and Buffer) may also be a needed separation between a land use/structure and a feature of the land that could be adversely impacted by the land use/structure (e.g. between structures and wetlands). Other setback requirements are for such purposes as public safety or reduction of nuisances such as the distance needed between a guyed television transmission tower and the property line in order to provide an area for potential ice fall and tower failure or it may be a distance to reduce the level of adverse noise, odor, or visual impacts to sensitive land uses.

* * *

Yard – An open space, on a lot with a building and bounded on one or more sides by such building, such space being unoccupied and unobstructed from 30 inches above the ground upward, except as otherwise specified in the district. A yard satisfying the yard requirement for one building shall not satisfy the yard requirement for another building. The purpose of yards between buildings and property lines is to provide space, light, air circulation, and safety from fire hazards.

* * *

§ 34.0005 Definitions.

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

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Lot Line (Front) – In the case of an interior lot, a line separating the lot from the street or accessway; in the case of a corner lot, a line separating the narrowest frontage of the lot from a street or accessway; and in the case of a flag lot, the lot line closest to and most nearly parallel with the street which serves the lot. A minimum front lot line length is a dimensional requirement to assure that a parcel or lot has sufficient street frontage and lot width near the street to accommodate a safe access driveway and reasonable building area after considering the required side yards.

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As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

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Forest Practices Setback – A type of dimensional *setback* in the forest zoning districts that provides for separation between structures and property lines. This *setback* assures that accepted forestry practices can occur on adjacent properties without the adjacent property owner needing to alter those practices due to the close proximity of a dwelling or structure.

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§ 36.0005 Definitions.

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

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Buffer – See Setback.

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Forest Practices Setback – A type of dimensional setback in the forest zoning districts that provides for separation between structures and property lines. This setback assures that accepted forestry practices can occur on adjacent properties without the adjacent property owner needing to alter those practices due to the close proximity of a dwelling or structure.

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Lot Line (Front) – In the case of an interior lot, a line separating the lot from the street or accessway; in the case of a corner lot, a line separating the narrowest frontage of the lot from a street or accessway; and in the case of a flag lot, the lot line closest to and most nearly parallel with the street which serves the lot. A minimum front lot line length is a dimensional requirement to assure that a parcel or lot has sufficient street frontage and lot width near the street to accommodate a safe access driveway and reasonable building area after considering the required side yards.

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Setback – At times this term is used interchangeably with *yard*. However, *setback* (and *Buffer*) may also be a needed separation between a land use/structure and a feature of the land that could be adversely impacted by the land use/structure (e.g. between structures and wetlands). Other *setback* requirements are for such purposes as public safety or reduction of nuisances such as the distance needed between a guyed television transmission tower and the property line in order to provide an area for potential ice fall and tower failure or it may be a distance to reduce the level of adverse noise, odor, or visual impacts to sensitive land uses.

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* * *

Section 2. Subsection (A)(4)(a) of §§ 33.0515, 34.0515, 35.0515, and 36.0515, Temporary Health Hardship Permit is amended as follows:

* * *

(a) The proposed siting of the mobile home will satisfy the applicable setback ~~and lot coverage~~ standards of the zoning district without requiring a variance. An adjustment of the setback requirement may be approved.

* * *

Section 3. §§ 33.7600, 34.7600, 35.7600, and 36.7600, Variance Approval Criteria, are deleted as follows:

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.~~

Section 4. §§ 33.7605, 34.7605, 35.7605, and 36.7605 are deleted as follows:

§ 33.7605 — 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 33.7600 (A).~~

~~(1) A Major Variance must be approved at a public hearing except when 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 33.7605 (B) (1) and (2).~~

~~(B) A Minor Variance is one that is within 25 percent of an applicable dimensional requirement. The approval authority is authorized to grant a Minor Variance in accordance with the following conditions:~~

~~(1) Application 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.~~

§ 34.7605 — Variance Classification

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(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.

§ 35.7605 — 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 35.7600 (A).

(1) A Major Variance must be approved at a public hearing except when 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 35.7605 (B) (1) and (2).

(B) A Minor Variance is one that is within 25 percent of an applicable dimensional requirement. The approval authority is authorized to grant a Minor Variance in accordance with the following conditions:

(1) Application shall be accompanied by the written consent of the owner or owners of each lot adjoining and across any street from the subject property;

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(1) Application 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.

Section 5. §§ 33.7615, 34.7615, 35.7615, and 36.7615 are deleted as follows:

§ 33.7615 — Hillside Residential Variances by Administrative Action

~~(A) Notwithstanding the limitation of MCC 33.7600 (A), the approval authority 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.~~

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~~(A) Notwithstanding the limitation of MCC 36.7600 (A), the approval authority may approve reductions in the required front setback for hillside residential properties when the following conditions exist:~~

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~~(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.~~

Section 6. §§ 33.7620, 34.7620, 35.7620, and 36.7620 are deleted as follows:

~~§ 33.7620 — 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 33.4035 (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 33.4035 (A), 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.~~

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~~(A) In acting on an application for a variance from the height limitations of the Airport Landing Field District, under MCC 34.4035 (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 34.4035 (A), 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.~~

~~§ 35.7620 — 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 35.4035 (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 35.4035 (A), 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.~~

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~~(A) In acting on an application for a variance from the height limitations of the Airport Landing Field District, under MCC 36.4035 (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 36.4035 (A), 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.~~

Section 7. §§ 33.7601, 34.7601, 35.7601, and 36.7601 are added as follows:

ADJUSTMENTS AND VARIANCES

§ 33.7601 Purpose

(A) The regulations of this Zoning Code Chapter are designed to implement the Policies of the Comprehensive Framework Plan and each Rural Area Plan. However, it is also recognized that because of the diversity of lands and properties found in the county there should be a zoning provision that permits justifiable departures from certain Zoning Code dimensional standards where literal application of the regulation would result in excessive difficulties or unnecessary hardship on the property owner.

(B) To address those situations, modification of the dimensional standards given in MCC 33.7606 may be permitted if the approval authority finds that the applicant has satisfactorily addressed and met the respective approval criteria in MCC 33.7611, Adjustments, or 33.7616, Variances. If an Adjustment or Variance request is approved, the approval authority may attach conditions to the decision to mitigate adverse impacts which might result from the approval.

(C) The Adjustment review process provides a mechanism by which certain dimensional standards may be modified no more than 40 percent if the proposed development continues to meet the intended purpose of the regulations. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the regulation.

(D) The Variance review process differs from the Adjustment review by providing a mechanism by which a greater variation from the standard than 40 percent may be approved for certain zoning dimensional requirements. The Variance approval criteria are based upon the traditional variance concepts that are directed towards consideration of circumstances or conditions on a subject property that do not apply generally to other properties in the same vicinity.

All proposed modification of the dimensional standards given in MCC 33.7606(A)(2) shall be reviewed under the Variance review process regardless of the proposed percentage modification.

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(B) To address those situations, modification of the dimensional standards given in MCC 35.7606 may be permitted if the approval authority finds that the applicant has satisfactorily addressed and met the respective approval criteria in MCC 35.7611, Adjustments, or 35.7616, Variances. If an Adjustment or Variance request is approved, the approval authority may attach conditions to the decision to mitigate adverse impacts which might result from the approval.

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(B) To address those situations, modification of the dimensional standards given in MCC 36.7606 may be permitted if the approval authority finds that the applicant has satisfactorily addressed and met the respective approval criteria in MCC 36.7611, Adjustments, or 36.7616, Variances. If an Adjustment or Variance request is approved, the approval authority may attach conditions to the decision to mitigate adverse impacts which might result from the approval.

(C) The Adjustment review process provides a mechanism by which certain dimensional standards may be modified no more than 40 percent if the proposed development continues to meet the intended purpose of the regulations. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the regulation.

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All proposed modification of the dimensional standards given in MCC 36.7606(A)(2) shall be reviewed under the Variance review process regardless of the proposed percentage modification.

Section 8. §§ 33.7606, 34.7606, 35.7606, and 36.7606, Scope, are added as follows:

§ 33.7606 Scope

§ 34.7606 Scope

§ 35.7606 Scope

§ 36.7606 Scope

(A) Dimensional standards that may be modified under an Adjustment review (modified no more than 40 percent) are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:

(1) Reduction of yards/setback/buffer requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) overlay districts and the Commercial Forest Use fire safety zone are not allowed under the Adjustment process; and

(2) Reduction of yards/setback/buffer requirements within the Hillside Development, Large Fills, Mineral Extraction, and Radio and Television Transmission Towers Code Sections and any increase to the maximum building height shall only be reviewed as Variances; and

(3) Minor modification of yards/setbacks/buffers in the off-street parking and design review standards are allowed only through the “exception” provisions in each respective Code section.

(B) Dimensional standards that may be modified under a Variance review are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, height, sign height, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:

(1) Reduction of yards/setback/buffer requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) overlay districts; and

(2) Modification of fire safety zone standards given in Commercial Forest Use districts; and

(3) Increase to any billboard height or any other dimensional sign standard.

(C) The dimensional standards listed in (A) and (B) above are the only standards eligible for Adjustment or Variance under these provisions. Adjustments and Variances are not allowed for any other standard including, but not limited to, minimum lot area, modification of a threshold of review (e.g. cubic yards for a Large Fill), modification of a definition (e.g. 30 inches of unobstructed open space in the definition of yard), modification of an allowed density in a Planned Development or houseboat moorage, or to allow a land use that is not allowed by the Zoning District.

Section 9. §§ 33.7611, 34.7611, 35.7611, and 36.7611 are added as follows:

§ 33.7611 Adjustment Approval Criteria

The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 33.7606 upon finding that all the following standards in (A) through (E) are met:

(A) Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

(B) Any impacts resulting from the adjustment are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage; and

(C) If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zoning district; and

(D) If the properties are zoned farm (EFU) or forest (CFU), the proposal will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on the subject property and adjoining lands; and

(E) If in a Rural Residential (RR) or Rural Center (RC) zone, the proposal will not significantly detract from the livability or appearance of the residential area.

§ 34.7611 Adjustment Approval Criteria

The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 34.7606 upon finding that all the following standards in (A) through (E) are met:

(A) Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

(B) Any impacts resulting from the adjustment are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage; and

(C) If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zoning district; and

(D) If the properties are zoned farm (EFU) or forest (CFU), the proposal will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on the subject property and adjoining lands; and

(E) If in a Rural Residential (RR) or Rural Center (RC) zone, the proposal will not significantly detract from the livability or appearance of the residential area.

§ 35.7611 Adjustment Approval Criteria

The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 35.7606 upon finding that all the following standards in (A) through (E) are met:

(A) Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

(B) Any impacts resulting from the adjustment are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage; and

(C) If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zoning district; and

(D) If the properties are zoned farm (EFU) or forest (CFU), the proposal will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on the subject property and adjoining lands; and

(E) If in a Rural Residential (RR) or Rural Center (RC) zone, the proposal will not significantly detract from the livability or appearance of the residential area.

§ 36.7611 Adjustment Approval Criteria

The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 36.7606 upon finding that all the following standards in (A) through (E) are met:

(A) Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

(B) Any impacts resulting from the adjustment are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage; and

(C) If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zoning district; and

(D) If the properties are zoned farm (EFU) or forest (CFU), the proposal will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on the subject property and adjoining lands; and

(E) If in a Rural Residential (RR) or Rural Center (RC) zone, the proposal will not significantly detract from the livability or appearance of the residential area.

Section 10. §§ 33.7616, 34.7616, 35.7616, and 36.7616 are added as follows:

§ 33.7616 Variance Approval Criteria

The Approval Authority may permit and authorize a variance from the dimensional standards given in MCC 33.7606 upon finding that all the following standards in (A) through (F) are met:

(A) 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 zoning district. The circumstance or condition may relate to:

(1) The size, shape, natural features and topography of the property, or

(2) The location or size of existing physical improvements on the site, or

(3) The nature of the use compared to surrounding uses, or

(4) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district, or

(5) A circumstance or condition that was not anticipated at the time the Code requirement was adopted.

(6) The list of examples in (1) through (5) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.

(B) The circumstance or condition in (A) above that is found to satisfy the approval criteria is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.

(C) There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.

(D) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zoning district in which the property is located, or adversely affects the appropriate development of adjoining properties.

(E) The Variance requested is the minimum necessary variation from the Code requirement which would alleviate the difficulty.

(F) Any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.

§ 34.7616 Variance Approval Criteria

The Approval Authority may permit and authorize a variance from the dimensional standards given in MCC 34.7606 upon finding that all the following standards in (A) through (F) are met:

(A) 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 zoning district. The circumstance or condition may relate to:

(1) The size, shape, natural features and topography of the property, or

(2) The location or size of existing physical improvements on the site, or

(3) The nature of the use compared to surrounding uses, or

(4) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district, or

(5) A circumstance or condition that was not anticipated at the time the Code requirement was adopted.

(6) The list of examples in (1) through (5) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.

(B) The circumstance or condition in (A) above that is found to satisfy the approval criteria is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.

(C) There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.

(D) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zoning district in which the property is located, or adversely affects the appropriate development of adjoining properties.

(E) The Variance requested is the minimum necessary variation from the Code requirement which would alleviate the difficulty.

(F) Any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.

§ 35.7616 Variance Approval Criteria

The Approval Authority may permit and authorize a variance from the dimensional standards given in MCC 35.7606 upon finding that all the following standards in (A) through (F) are met:

(A) 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 zoning district. The circumstance or condition may relate to:

(1) The size, shape, natural features and topography of the property, or

(2) The location or size of existing physical improvements on the site, or

(3) The nature of the use compared to surrounding uses, or

(4) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district, or

(5) A circumstance or condition that was not anticipated at the time the Code requirement was adopted.

(6) The list of examples in (1) through (5) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.

(B) The circumstance or condition in (A) above that is found to satisfy the approval criteria is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.

(C) There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.

(D) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zoning district in which the property is located, or adversely affects the appropriate development of adjoining properties.

(E) The Variance requested is the minimum necessary variation from the Code requirement which would alleviate the difficulty.

(F) Any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.

§ 36.7616 Variance Approval Criteria

The Approval Authority may permit and authorize a variance from the dimensional standards given in MCC 36.7606 upon finding that all the following standards in (A) through (F) are met:

(A) 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 zoning district. The circumstance or condition may relate to:

(1) The size, shape, natural features and topography of the property, or

(2) The location or size of existing physical improvements on the site, or

(3) The nature of the use compared to surrounding uses, or

(4) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district, or

(5) A circumstance or condition that was not anticipated at the time the Code requirement was adopted.

(6) The list of examples in (1) through (5) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.

(B) The circumstance or condition in (A) above that is found to satisfy the approval criteria is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.

(C) There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.

(D) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zoning district in which the property is located, or adversely affects the appropriate development of adjoining properties.

(E) The Variance requested is the minimum necessary variation from the Code requirement which would alleviate the difficulty.

(F) Any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.

Section 11. §§ 33.7770, 34.7770, 35.7770, and 36.7770 are amended as follows:

§ 33.7770 Category 1 Land Divisions

The following proposals are designated Category 1 Land Divisions:

* * *

(C) A subdivision or partition associated with an application affecting the same property for any action proceeding requiring a public hearing under MCC Chapter 33 ~~or for a variance under the Land Division part of this Chapter~~; and

* * *

§ 34.7770 Category 1 Land Divisions

The following proposals are designated Category 1 Land Divisions:

* * *

(C) A subdivision or partition associated with an application affecting the same property for any action proceeding requiring a public hearing under MCC Chapter 34 ~~or for a variance under the Land Division part of this Chapter~~; and

* * *

§ 35.7770 Category 1 Land Divisions

The following proposals are designated Category 1 Land Divisions:

* * *

(C) A subdivision or partition associated with an application affecting the same property for any action proceeding requiring a public hearing under MCC Chapter 35 ~~or for a variance under the Land Division part of this Chapter~~; and

* * *

§ 36.7770 Category 1 Land Divisions

The following proposals are designated Category 1 Land Divisions:

* * *

(C) A subdivision or partition associated with an application affecting the same property for any action proceeding requiring a public hearing under MCC Chapter 36 ~~or for a variance under the Land Division part of this Chapter~~; and

* * *

Section 12. §§ 33.7775, 34.7775, 35.7775, and 36.7775 are amended as follows:

§ 33.7775 Category 3 Land Divisions

A land division proposal under any of the following circumstances is designated a Category 3 Land Division:

* * *

(G) A partition resulting in the creation of a lot for which an Exception, Adjustment or Variance is required under another part of MCC Chapter 33.

* * *

§ 34.7775 Category 3 Land Divisions

A land division proposal under any of the following circumstances is designated a Category 3 Land Division:

* * *

(G) A partition resulting in the creation of a lot for which an Exception, Adjustment or Variance is required under another part of MCC Chapter 34.

* * *

§ 35.7775 Category 3 Land Divisions

A land division proposal under any of the following circumstances is designated a Category 3 Land Division:

* * *

(G) A partition resulting in the creation of a lot for which an Exception, Adjustment or Variance is required under another part of MCC Chapter 35.

* * *

§ 36.7775 Category 3 Land Divisions

A land division proposal under any of the following circumstances is designated a Category 3 Land Division:

* * *

(G) A partition resulting in the creation of a lot for which an Exception, Adjustment or Variance is required under another part of MCC Chapter 36.

* * *

Section 13. §§ 33.8005, 34.8005, 35.8005, and 36.8005 are amended as follows:

§ 33.8005 Adjustments and Variances

~~(A) An adjustment or variance from certain dimensional requirements in the provisions of MCC 33.7885 through 33.8000 of this Chapter may be authorized by the Approval Authority under the provisions of MCC 33.7601 through 33.7616, Hearings Officer or the Planning Commission, as appropriate. Such a variance may be authorized only when substantially all of the following factors exist:~~

- ~~(1) Special circumstances or conditions apply to the property or to the intended use that do not apply to other property in the same vicinity;~~
- ~~(2) The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant and extraordinary hardship would result from strict compliance with the ordinance requirements;~~
- ~~(3) The authorization of the variance will not be materially detrimental to the public welfare or injurious to other property in the vicinity;~~
- ~~(4) The granting of the variance will not adversely affect implementation of the Comprehensive Plan; and~~
- ~~(5) The circumstances of any hardship are not of the applicant's making.~~

~~(B) Application for a variance shall be filed with the Planning Director, on the forms provided, at the time of application for tentative plan approval. The application shall be accompanied by the required fee. Notice of the hearing on the tentative plan shall include notice of the proposed variance.~~

~~(C) A variance authorized under the provisions of MCC 33.8005 shall expire upon expiration of the tentative plan approval or of the phase of an approved staged development associated therewith.~~

~~(D) A variance from the provisions of the Street Standards Code and Rules may be authorized as provided therein.~~

§ 34.8005 Adjustments and Variances

~~(A) An adjustment or variance from certain dimensional requirements in the provisions of MCC 34.7885 through 34.8000 of this Chapter may be authorized by the Approval Authority under the provisions of MCC 34.7601 through 34.7616, Hearings Officer or the Planning Commission, as appropriate. Such a variance may be authorized only when substantially all of the following factors exist:~~

- ~~(1) Special circumstances or conditions apply to the property or to the intended use that do not apply to other property in the same vicinity;~~
- ~~(2) The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant and extraordinary hardship would result from strict compliance with the ordinance requirements;~~
- ~~(3) The authorization of the variance will not be materially detrimental to the public welfare or injurious to other property in the vicinity;~~
- ~~(4) The granting of the variance will not adversely affect implementation of the Comprehensive Plan; and~~
- ~~(5) The circumstances of any hardship are not of the applicant's making.~~

~~(B) Application for a variance shall be filed with the Planning Director, on the forms provided, at the time of application for tentative plan approval. The application shall be accompanied by the required fee. Notice of the hearing on the tentative plan shall include notice of the proposed variance.~~

~~(C) A variance authorized under the provisions of MCC 34.8005 shall expire upon expiration of the tentative plan approval or of the phase of an approved staged development associated therewith.~~

~~(D) A variance from the provisions of the Street Standards Code and Rules may be authorized as provided therein.~~

§ 35.8005 Adjustments and Variances

~~(A) An adjustment or variance from certain dimensional requirements in the provisions of MCC 35.7885 through 35.8000 of this Chapter may be authorized by the Approval Authority under the provisions of MCC 35.7601 through 35.7616, Hearings Officer or the Planning Commission, as appropriate. Such a variance may be authorized only when substantially all of the following factors exist:~~

- ~~(1) Special circumstances or conditions apply to the property or to the intended use that do not apply to other property in the same vicinity;~~
- ~~(2) The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant and extraordinary hardship would result from strict compliance with the ordinance requirements;~~
- ~~(3) The authorization of the variance will not be materially detrimental to the public welfare or injurious to other property in the vicinity;~~

~~(4) The granting of the variance will not adversely affect implementation of the Comprehensive Plan; and~~

~~(5) The circumstances of any hardship are not of the applicant's making.~~

~~(B) Application for a variance shall be filed with the Planning Director, on the forms provided, at the time of application for tentative plan approval. The application shall be accompanied by the required fee. Notice of the hearing on the tentative plan shall include notice of the proposed variance.~~

~~(C) A variance authorized under the provisions of MCC 35.8005 shall expire upon expiration of the tentative plan approval or of the phase of an approved staged development associated therewith.~~

~~(D) A variance from the provisions of the Street Standards Code and Rules may be authorized as provided therein.~~

§ 36.8005 Adjustments and Variances.

~~(A) An adjustment or variance from certain dimensional requirements in the provisions of MCC 36.7885 through 36.8000 of this Chapter may be authorized by the Approval Authority under the provisions of MCC 36.7601 through 36.7616. Hearings Officer or the Planning Commission, as appropriate. Such a variance may be authorized only when substantially all of the following factors exist:~~

~~(1) Special circumstances or conditions apply to the property or to the intended use that do not apply to other property in the same vicinity;~~

~~(2) The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant and extraordinary hardship would result from strict compliance with the ordinance requirements;~~

~~(3) The authorization of the variance will not be materially detrimental to the public welfare or injurious to other property in the vicinity;~~

~~(4) The granting of the variance will not adversely affect implementation of the Comprehensive Plan; and~~

~~(5) The circumstances of any hardship are not of the applicant's making.~~

~~(B) Application for a variance shall be filed with the Planning Director, on the forms provided, at the time of application for tentative plan approval. The application shall be accompanied by the required fee. Notice of the hearing on the tentative plan shall include notice of the proposed variance.~~

~~(C) A variance authorized under the provisions of MCC 36.8005 shall expire upon expiration of the tentative plan approval or of the phase of an approved staged development associated therewith.~~

~~(D) A variance from the provisions of the Street Standards Code and Rules may be authorized as provided therein.~~

Section 14. § 37.0530, Summary of Decision Making Processes, are amended as follows:

§ 37.0530 Summary Of Decision Making Processes.

The following decision making processes chart shall control the County's review of the indicated permits:

APPROVAL PROCESS					
Permit Type	I	II	III	IV	PC
Initial Approval Body	(Not a "land use decision")	(Planning Director)	(Hearings Officer)	(Planning Commission)	(Legislative)
* * *					
<u>Adjustment</u>		X			
Variance		X	X		
* * *					

* * *

FIRST READING:

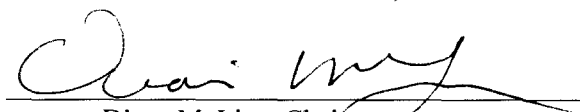
September 21, 2006

SECOND READING AND ADOPTION:

September 28, 2006



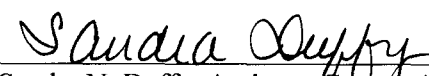
BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON



Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 

Sandra N. Duffy, Assistant County Attorney