

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 462

An Ordinance amending the Approval Criteria for Variances and the Administrative Processing of Variances of the Zoning Code.

Multnomah County Ordains as follows:

SECTION 1. FINDINGS.

- A. The existing Variance Approval Criteria are often not fully applicable to dimensional type variances. The Criteria should be modified so that they are more relevant to typical variance requests.
- B. There are ambiguous phrases in the criteria. When they are strictly interpreted few requests can qualify for variances. These phrases should be deleted or replaced with clearer language.
- C. Some major variances can be approved administratively without jeopardizing the public health, safety or welfare. The impact on the neighborhood and the consent of nearby property owners should be taken into consideration.
- D. A "use variance" allows a land use not allowed by the underlying zone, it undermines the Comprehensive Plan and should not be allowed. A request to allow a use not listed in the underlying zone should be considered through the zone change and plan amendment process.

SECTION 2. AMENDMENT.

Underlined (\_\_\_) material is added; bracketed [ ] material deleted.

- A. MCC 11.15.8505 is amended to read:

11.15.8505. [Initiation] Variance Approval Criteria

- (A) The [Hearings Officer] Approval Authority may permit

and authorize a variance from the requirements of this Chapter only when [unusual circumstances cause] there are practical difficulties in the application of the Chapter. [A variance shall be granted only when substantially all of the following conditions and facts are found to exist:] 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) [Unusual circumstances or conditions apply] A circumstance or condition applies to the property or to the intended use that [do] 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 variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, possessed by the owners of other properties in the same vicinity or district;] 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[; and] or adversely affect 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.

(B) A variance shall be void if no substantial construction or substantial expenditure of funds occurs on the affected property within 18 months after the variance is granted.

B. MCC 11.15.8515 is amended to read:

11.15.8515 [Variances Under Certain Conditions] Variance Classification

(A) [In lieu of the provisions of MCC .8505(A), the Planning Director is authorized to grant variances of the setback, yard, height, coverage, lot size, width or

depth requirements of this Chapter in accordance with the following procedures and conditions:] 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 .8505(A)

(1) A Major Variance must be approved by the Hearing Authority at a public hearing except when:

(a) 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 .8505(1) and (2).

(b) The Planning Director shall make findings and a tentative decision within ten business days of the application filing. Notice of the findings and decision, and information describing the appeals process shall be mailed by first class mail to the applicant and to the record owners of all property within 100 feet of the property under application.

(c) The tentative decision shall be final at the close of business on the tenth day after notice is mailed, unless the applicant or a person entitled to mailed notice or a person substantially affected by the application files a written notice of appeal. Such notice of appeal and the decision shall be subject to the applicable provisions of MCC .8290 and .8295, except that subsection MCC .8290(C) shall apply only to a notice of appeal filed by the applicant. The persons entitled to notice under subsection (b) of this section shall be given the same notice of appeal hearing as is given the applicant.

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

- (1) Application shall be made on forms provided by the Planning Director and 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 liveability of his property.
- (3) The filing fee for the variance shall be as required by this Ordinance.
- (4) The Planning Director may, without notice or hearing, grant the variance for which the application is made and may attach reasonable conditions thereto.
- (5) Written Findings that MCC .8505(A)(3) and (4) are satisfied.

[(B). A variance under subsection (A) above shall require a finding by the Planning Director that:]

[(1) The requirements of MCC .8505(A) of this Chapter have been met; and]

[(2) Due to the size, shape, topography or location of the site or the location of existing buildings or other conditions, compliance with applicable requirements can only be achieved with practical difficulty or hardship.]

[(C) A statement reciting the findings under (B) above shall be attached by the Planning Director to the variance application.]

[(D) The Planning Director shall in no case grant a variance in excess of 25 percent of the applicable requirements.]

C. MCC 11.15.8520 is amended to read:

11.15.8520 Notice of Denial

In the event the Planning Director declines to grant a var-

iance requested under MCC .8515[(A)](B), the Director shall notify the applicant, stating the reasons for denial. The applicant may, within 20 days after receipt of such notice, file a variance application under MCC .8505(A) and be considered by the Hearing Authority at a public hearing.

D. MCC 11.15.8525(A) is amended to read:

11.15.8525 Hillside Residential Variances by Administrative Action

(A) Notwithstanding the limitation of MCC .8525[C](B), the Planning Director 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.

SECTION 3. ADOPTION.

This Ordinance being necessary for the health, safety, and general welfare of the people of Multnomah County, shall take effect on the \_\_\_\_\_ day after its adoption, pursuant to Section 5.50 of the Charter of Multnomah County.

SECTION. 4 CODIFICATION.

This Ordinance shall be codified in the Multnomah County Code Chapter 11.15 and adopted as part of that Code.

Adopted this 10th day of April, 1985, being the date of its second reading before the Board of County Commissioners of Multnomah County.

(SEAL)

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

By Earl Blumenaur  
Earl Blumenaur, Presiding Officer

AUTHENTICATED by the County Executive on the 12th day of April, 1985.

Dennis Buchanan  
Dennis Buchanan, County Executive

APPROVED AS TO FORM

John B. Leahy, County Counsel  
for Multnomah County, Oregon

By Peter Kasting  
Peter Kasting, Assistant  
County Counsel

01400 (C 7-84)