

How to justify approval of a variance

The criteria for approval of a variance are below. The applicant bears the burden of proof to show that all of the approval criteria are satisfied. The sample applicant statement and responses to the approval criteria are provided to assist you in preparing your own materials.

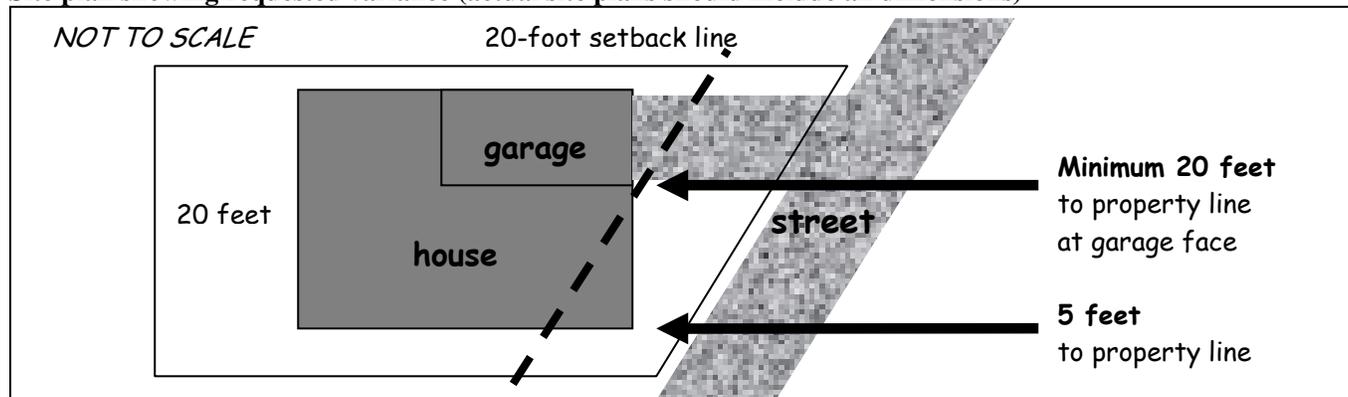
SECTION 139. CIRCUMSTANCES FOR GRANTING A VARIANCE. A variance shall be granted only in the event that all of the following circumstances exist:

- A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of this Ordinance, topography, or other circumstances over which the applicant has no control.
- B. The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possessed.
- C. The variance would not be materially detrimental to the purposes of this Ordinance, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any City plan or policy.
- D. The variance requested is the minimum variance which would alleviate the hardship.

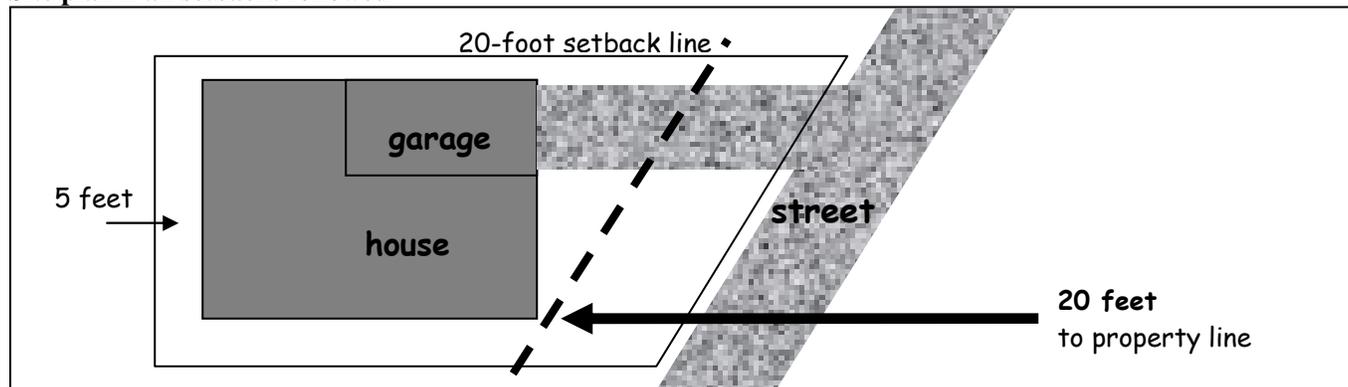
Hypothetical situation:

The applicant is the owner of an irregularly-shaped residential lot. The front lot line is not perpendicular to the side lot lines, and the applicant wishes to build a house that does not meet the minimum 20-foot front setback along the entire frontage. The applicant wishes to build the house with a five foot front setback at the nearest point to the front property line, but position the house so that the garage face is 20 feet from the front property line. Does the argument presented below justify approval?

Site plan showing requested variance (actual site plans should include all dimensions)



Site plan if all setbacks followed



Applicant's statement:

Tax Lot 100 is an irregularly-shaped lot. The lot is zoned R-2 Medium Density Residential. The minimum front setback in the R-2 zone is 20 feet. In order to construct a reasonable house on this particular piece of property and meet the minimum 20-foot setback along the entire frontage, I would have to site the house very far back on the property. This would result in a very large front yard, but a very small rear yard affording minimal utility and privacy. In order to maximize the amount of useful back yard, I would like to site the house with a five foot front setback. The front setback would be five feet only at the southern corner of the house; the setback would increase to a minimum of 20 feet in front of the garage face.

Relevant criteria from the Pendleton Zoning Ordinance:

Section 24. Yard (Setback) Regulations. The yard (setback) requirements in all residential zones shall be as follows:

- A. Front Yard: twenty (20) foot minimum;
- B. Side Yard: five (5) foot minimum, except on corner lots, where ten (10) feet are required on the side abutting the street, and in the case of attached single-family dwellings, where a zero lot line is allowable (with the provision of common “party” wall construction);
- C. Rear Yard: five (5) foot minimum, except in the case of attached single-family dwellings, where a zero rear lot line is allowable (with the provision of common “party” wall construction).

Section 25. Miscellaneous Yard Provisions and Exceptions.

- C. The front wall of a garage, and any portion of a carport, shall not be permitted less than twenty (20) feet from the front property line.
- D. Only under adverse topographical circumstances will a variance be granted for a front yard setback less than ten (10') feet.
- E. In any residential zone, a porch, patio, deck and cover thereto, or unattached solar energy system shall be permitted to project not more than ten (10') feet into the required front yard. Such structures located in the required front yard shall not be enclosed to extend the living areas of the house. Satellite dish antennas shall not be located in the front yard of a dwelling.

Note to applicants:

The approval criteria for a variance allow for a significant amount of discretion. This means you must provide enough information to give the Planning Commission some background on your request. You should also provide details to answer any questions that City staff may have when preparing the staff report. If any questions do arise, your application materials should answer them; not staff’s interpretation of them.

Criterion A.

Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, legally existing prior to the date of this Ordinance, topography, or other circumstances over which the applicant has no control.

Hint – The reason you are seeking the variance must be something that is beyond your control. You cannot justify approval of a variance on the simple contention that it is inconvenient to follow the rules. What extraordinary situation affects only your property and no others in the vicinity or zone?

Applicant’s Response

The property is irregularly shaped, as recorded on the original subdivision plat in 1972. The property is currently undeveloped. The shape of the lot requires a very large front yard if the full setback is to be followed according to code, much larger than on a lot with side lot lines perpendicular to the street frontage. The shape of the lot is beyond my control, as it was platted more than 30 years ago.

Criterion B.

The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possessed.

Hint – What rights do other property owners in the vicinity or the same zone that you do not have because of your hardship? What can they do that you can’t, and why?

Applicant’s Response

Other homes on the street were constructed with less than the minimum 20-foot front setback. I am requesting a minimum front setback of five feet, which would actually taper down from more than 20 feet at the garage face. The garage face would be a minimum of 20 feet from the front property line, preserving the ability to park a car in the driveway without protruding into the right-of-way. Approval of a variance to the minimum front setback of 20 feet would allow me to maximize the development potential of the lot without having a negative impact on traffic safety or the ability of pedestrians to use the sidewalk due to parked vehicles extending beyond the property line. Approval of the request would permit me to construct a home on the property reasonably consistent in size and character with other homes in the vicinity and same zone.

Criterion C.

The variance would not be materially detrimental to the purposes of this Ordinance, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any City plan or policy.

Hint – Would approval of your request have negative impacts on property in the vicinity or the same zone? Would approval conflict with any other aspect of the Comprehensive Plan, Zoning ordinance, or other City policy?

Applicant's Response

The property is zoned for residential development; a residential structure is the most appropriate development for the property. The right-of-way for Taylor Street is 60 feet wide, and the sidewalks are five feet inside the right-of-way. If the request is approved, my house will be a minimum of ten feet away from the sidewalk at its closest point. I have consulted with neighboring property owners regarding my request, and have included a letter signed by neighbors in the vicinity stating no opposition to my proposal. Approval of the request would not conflict with any other aspect of the City of Pendleton Zoning Ordinance to my knowledge.

Criterion D.

The variance requested is the minimum variance which would alleviate the hardship.

Hint – Is there any way to proceed without approval of a variance? Will a lesser request enable you to proceed with your proposal? If so, why have you proposed the request? What prevents you from meeting the code requirements, or proceeding with a lesser request than you have presented to the Commission?

Applicant's Response

I am aware that the request is not the absolute minimum necessary in order to alleviate the hardship. It would still be possible to construct a house on the lot while meeting the 20-foot setback. However, this would provide for virtually no useable back yard, which I personally believe to be equally, if not more undesirable, than a reduced front setback. I have requested a variance to allow me to build a house with a five foot front setback that will gradually increase to more than 25 feet. Approval of the request will allow me to build a house that is more desirable to live in for myself and my family, and also for future potential owners. The alternative is to either build a house with virtually no back yard, or build a much smaller house with approximately 600 square feet on the main floor.

General hints:

Imagine your request as if it was presented by one of your neighbors, but you are unfamiliar with it. What would your concerns be? If you can address those concerns in your application, it might help to answer questions and concerns your neighbors may have regarding your proposal.

Talk to your neighbors before you submit an application for a variance. Tell them what you want to do. If they have any concerns, you may be able to address them directly. Your neighbors are the most likely people to oppose your request. They may submit testimony or come to the hearing opposing the application.

The Planning Commission will weigh your testimony against the approval criteria and any opposing testimony. The Planning Commission is under no obligation to approve the request. If you have not provided enough information to justify approval, and/or opponents raise issues that show you have not met the approval criteria, the application may be denied.

Be prepared to rebut any negative testimony. Your testimony should be based on facts, and supported by evidence that you meet the approval criteria. You bear the burden of proof to show that the application should be approved. Arguments based on emotion (either yours or that of any opponents) do not carry much weight. Any testimony in opposition must also be based on the approval criteria. You may think your proposal is the greatest thing since sliced bread, and your neighbors may think it's the worst thing since disco, but those arguments don't justify approval or denial.

The Planning Commission may approve your request, deny it, or they may meet you somewhere in the middle. If the Commission receives testimony with specific concerns regarding negative impacts of the proposal, they may approve the request including certain conditions of approval.

For more information see these related documents:

- Planning Commission Opening Statement
- How to testify at a land use hearing