

# What is a Variance?



This document is provided by the City of Pendleton Planning Department to help citizens understand the land use process. If you have further questions, please contact department staff at (541) 966-0204 and they will be happy to assist you.

The zoning ordinance identifies certain land uses which may not precisely fit into existing zones, but may be allowed upon approval of a variance. A variance is a limited waiver of development standards for a use that is permitted in the zone. It is not a change in the zoning law. If granted, it permits the owner to “go beyond” what is ordinarily permitted by the ordinance. Examples where a variance might apply would be to reduce slightly the setback requirements in order to fit a building, or to build above the maximum height allowed in the zone.

The city may not grant a variance to permit a use that is not otherwise allowed in that zone (for example, a commercial use could not be approved in a residential zone by variance). Typically, variances are considered when the physical characteristics of the property make it difficult to develop. For instance, in a situation where the rear half of a lot is a steep slope, a variance to setbacks might be approved to allow a house to be built closer to the street than usually allowed. Variance requests require a public hearing before the Planning Commission and neighboring property owners are given the opportunity to testify. The Planning Commission then decides whether to approve or deny the variance.

## Criteria for approval of 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.*

## How do I prove a case for a variance?

If you want to change the permitted use of your land, you must prove that your proposal preserves the appearance and ambience of neighboring properties, is applicable only to your unique piece of property and not to surrounding properties, and, more importantly, the existing restrictions create a serious hardship on you (and only you).

The exact nature of a "hardship" is very difficult to define. The answer depends on the circumstances and the general objectives of zoning in your neighborhood, the nature of the change, its effect on adjacent neighbors, and a demonstrated difficulty in using the property if the request is not approved.

If you are requesting a variance, make sure that the project is modest, blends in with the existing neighborhood, and can't be readily achieved in some other way. There must be a specific burden on your property and not on others similarly zoned. You bear the burden of proof to show that these conditions exist, and that approval of a variance is the only way to alleviate them.

## How do I object to a proposed variance?

If you oppose (approval of) a variance request, do some homework first and then attend the public hearing(s) to voice your concerns, clearly stating why—and bringing in supporting data. Your testimony must show that the proposal does not meet the approval criteria. If there is strong neighborhood opposition, neighbors may band together to present their common views.

**You may challenge a variance on a number of reasonable grounds, such as:**

- The proposal does not meet the desires of the neighborhood
- Negative impacts on the neighborhood
- Negative impacts on property values
- The scale of the project is (too) extensive
- The change poses a threat to the health and safety of the neighborhood that would not be present if the applicable code was observed
- There is no inordinate burden or hardship on the property owner sufficient to justify the variance

Any argument in opposition should relate its points specifically to the approval criteria. The mere fact that you don't like the proposal does not provide the Planning Commission with enough information to say the proposal does not meet the approval criteria. Base any statements you make on facts, not emotion.

Sometimes, City staff will advise applicants to meet directly with neighborhood groups prior to the public hearing. Staff encourages concerned citizens to work with applicants constructively (and vice versa), rather than assuming an adversarial stance right from the start.

Please remember that it is staff's job to process these applications. We will produce a staff report that contains a recommendation to the Planning Commission, but they are not bound by the contents of that report. If you submit written testimony (for or against a proposal) more than 10 days before the hearing, it will be included with the staff report to the commission members. You may also attend the hearing and voice your support or opposition. If you plan on speaking at the hearing, it is a good idea to bring written materials to submit for the record also.

A variance is a discretionary act, considered at a public hearing before the Planning Commission. The owners of property near the site are sent advance notice of the date, time, and place of the hearing. Anyone wishing to get more information on the request may contact the Planning Department before the hearing, or attend the hearing. At the hearing, the applicant will present the application and other pertinent information. The applicant bears the burden of proof to show that the proposal meets the approval criteria. Members of the public may testify in support of

or in opposition to the application. The applicant is entitled to a final rebuttal of all testimony. The commission will then deliberate the application among themselves, and will generally issue a decision for approval or denial at the hearing. Any person or party wishing to appeal the decision of the commission must have either submitted written testimony at or before the hearing, or provided oral testimony at the hearing.

The deadline to submit an application for any matter that must go before the Planning Commission is typically one month before the hearing date. The planning commission meets the 1<sup>st</sup> and 3<sup>rd</sup> Thursday of every month, but only when there is an agenda item. A hearing before the Planning Commission must be noticed to neighboring property owners a minimum of 20 days before the hearing; notice must also appear in the local paper. Staff must have time to evaluate an application to make sure it is complete. Staff must then prepare and mail the notice to property owners. Unfortunately, due to the notice requirements for a public hearing, the timeline is not flexible. After the hearing, there is an appeal period before the decision becomes final. Assume a minimum of 45 days for an application to go from submittal to approval, but some applications may take significantly longer.

Appeal of a Planning Commission decision goes to the City Council, who hears the application "de novo." The applicant must again justify approval of the application to the Council, and the appellant must specifically address how the applicant has not met the approval criteria. An application denied by the Planning Commission may also be appealed to Council by the applicant.