SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET

ITEM NO: D-2

DATE: May 1, 2008

SUBJECT: Lot size for towing yard

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

At the Council meeting on April 24, 2008 Mr. Schueler addressed the Council regarding his desire to lease his property to a towing company as a towing yard.

Mr. Schueler noted that his property is 19,656 square feet in size and the city's Economic Development Zone (Attachment A) requires a minimum lot dimension of 20,000 square feet.

The City Council directed staff to review the issue and return to Council with recommendations for addressing Mr. Schuler's issue.

STAFF RECOMMENDATION:

Review the SMC requirements and alternatives and give staff direction on how to proceed.

SUMMARY:

Mr. Schuler's property is located in the Economic Development Zone. In order to use the property for towing and wrecking services under the Sultan Municipal Code 16.12.060 the property must be at least 20,000 square feet. Mr. Schueler's property is short approximately 350 square feet.

In order to use the property as a towing yard, Mr. Schueler has asked the Council to grant a variance. Mr. Schueler has not submitted an application for variance. A variance is a limited exception to the usual requirements of local zoning. When a city or county is confronted with development on an unusual piece of property, the variance procedure can lend some flexibility to the usual standards of the zoning ordinance.

Approval of a variance allows the property owner "to use his property in a manner basically consistent with the established regulations with such minor variations as will place him in parity with other property owners in the same zone."

The purpose of a variance should be strictly limited to granting relief to specific bulk, dimensional or performance standards set forth in the code where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the code would impose unnecessary hardships on the applicant or thwart City policies.

While Chapter 16.120.050 contemplates a variance process through the Hearing Examiner (Attachment B), there are no corresponding regulations to guide the variance process.

If a variance were granted, and the City allowed Mr. Schueler to use the property for a towing yard, the City would create a nonconforming situation.

A non-conforming use is a legal violation of the current zoning ordinance because the use of the land (or structure) existed before the ordinance was passed. Nonconforming uses are often referred to as "grandfathered" uses. An example of a nonconforming use would be a small neighborhood convenience store having parking spaces for 10 cars while current regulations require spaces for 25.

The City would create a non-conforming use if Mr. Schueler were using his property as a towing yard when the City enacted the regulations limiting towing and wrecking services to 20,000 square feet.

However, in this case, Mr. Schueler is requesting the City to, in effect, create a non-conforming use - a use that does not conform to the City's Economic Development Code requirements.

ALTERNATIVES:

There are two alternatives for the City Council to consider:

1. Suggest Mr. Schueler negotiate a Boundary Line Adjustment (BLA) with his neighbors to obtain the area needed to meet the code minimum requirement for 20,000 square feet.

   Boundary Line Adjustments are administrative procedures. Once Mr. Schueler submits an application, the City's process takes approximately 30 days.

2. Change the Development Code to eliminate the specific minimum lot dimensions for specific uses.

   The City's code is a little unusual because it provides specific minimum lot dimensions for permitted uses (Attachment A). Most land use regulations (see Attachment D) are more generic regarding minimum lot area, width, and set backs.

Changing the development code will require a significant amount of time. City staff will need to work with the Planning Board and City Council. The change will require review by the Community Trade and Economic Development (CTED) department and public hearings.

Staff recommends considering this change after the Comprehensive Plan is adopted and approved by the Growth Management Hearings Board later this year

FISCAL IMPACT:

A decision to change the code could result in legal fees and staff time to review proposed changes.

RECOMMENDED ACTION:

Review the SMC requirements and alternatives and give staff direction on how to proceed.

ATTACHMENTS

A – City of Sultan SMC Economic Development Zone table of dimensions
B – SMC 16.120.050 Development Permit Approval Process
C – Nonconformances
D – Sample Density and Dimension tables for Commercial and Industrial Zones

Attachment A

Economic Development (ED) Zone
Table of Dimensional and Density Requirements

		Minimum Lot Dimensions			Minimum Yard Setbacks (ft)				
Uses Permitted	Maximum Units/Acre	Area	Width (ft)	Depth (ft)	Front	Each Side	Rear	Max. Bldg. Hgt. (ft)	Max. Lot Coverage (%)[5]
Manufacturing Plants/Facilities[2]	–	1 acre	100	200	25	25	35	50	65
Wholesale Operations[2]	–	1 acre	100	200	25	25	35	50	40
Warehousing Operations[2]	–	1 acre	100	200	25	25	35	50	40
Freight Distribution Centers[2]	–	2 acres	200	200	25	25	35	50	30
Mini-Warehouse/Storage Facilities[2]	–	1 acre	100	200	25	25	25	30	65
Public Transit Storage and Maintenance Facilities	–	2 acres	200	200	25	25	25	50	25
Public Transit Stations	–	10,000 sq. ft.	70	80	25	10	25	30	40
Moving Van and Storage Facilities[2]	–	1 acre	100	200	25	25	35	50	40
Airports, Landing Fields and Heliports	–	25 acres	500	500	100	100	100	50	20
Auto Repair Establishments	–	20,000 sq. ft.	100	100	25	25	35	30	25
Towing and Wrecking Services	–	20,000 sq. ft.	100	100	25	25	35	30	25
Janitorial Services	–	20,000 sq. ft.	100	100	25	25	25	30	25
Laundry Plants[2]	–	1 acre	100	200	25	25	35	50	25
Electrical Substations	–	20,000 sq. ft.	100	100	25	30	25	30	25
Electrical Generating Plants	–	25 acres	500	500	100	100	100	100	25
Sewage Treatment Plants	–	2 acres	200	200	50	50	50	30	35
Solid Waste Disposal/Recycling Centers	–	2 acres	100	200	25	50	50	30	25
Petroleum Products Storage and Distribution	–	5 acres	200	300	50	50	50	50	50

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Business or Professional Service Establishments	–	10,000 sq. ft.	70	80	10	10	25	30	25
Personal Services	–	10,000 sq. ft.	70	80	10	10	25	30	35
Libraries	–	0.5 acres	100	100	25	20	20	30	40
Government Offices	–	10,000 sq. ft.	70	80	10	10	25	30	35
Post Offices	–	1 acre	100	200	25	20	60	30	25
Public Safety Police/Fire	–	0.5 acres	100	100	25	25	40	30	35
Recreational Facilities[6]	–	6	6	6	6	6	6	30	10
Caretaker Residences[4]	–	4,500 sq. ft.	50	90	25	10	25	30	25
Guest Houses[3]	–	3	3	3	3	3	3	30	25
Hotel/Apartment Hotels[3]	30 rooms	0.5 acres	100	100	25	10	25	30	35
Bed and Breakfast[3]	16 rooms	0.5 acres	100	100	25	25	25	50	25
Auto Service Station[3]	–	0.5 acres	100	100	25	25	25	30	25
Auto Rental[3]	–	10,000 sq. ft.	70	80	25	10	25	30	20
Bars/Taverns/Cocktail Lounges[3]	–	10,000 sq. ft.	70	80	10	10	25	30	35
House of Worship[3]	–	1 acre	100	200	25	25	25	30	30
Parking Structure[4]	–	0.5 acre	100	100	10	10	10	30	60
Retail Food Establishments	–	20,000 sq. ft.	100	100	25	10	25	30	25
Health Care Facilities	–	20,000 sq. ft.	100	100	25	10	25	30	25
Correctional Institutions	–	50 acres	1,000	1,000	200	200	200	50	20
Adult Entertainment Facilities[1]	–	1 acre	100	200	25	25	35	30	25
Tattoo Parlors[1]	–	1 acre	100	200	25	25	35	30	25
Seasonal Parking Facility[3]	–	2,500 sq. ft.	50	50	10	5	5	N/A	N/A
Secure Community Transitional Facilities[3]	3 rooms	12,000 sq. ft.	100	100	25	25	25	30	25

[1]No adult entertainment facility or tattoo parlor shall be located any closer than 400 feet from the nearest right-of-way line of State Route 2, nor shall any such facility be located within 1,000 feet of any school or house of worship.

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[2]Lots existing prior to the adoption of this chapter need not meet minimum area requirements. All other dimensional and density requirements shall apply.

[3]Conditional use.

[4]Accessory use.

[5]Transfer of floor area from critical areas may be applicable:

Buildable Area Calculation – Transfer of Floor Area. An owner of a site or property containing critical areas (streams and wetlands) may be permitted to transfer the available floor area attributed to the size of the critical area to the unconstrained portion of the same site or property, and reduce the parking requirements for the development by an area equal to the floor area transferred, subject to the following requirements:

(1) The critical area and or stream corridor and required buffers be dedicated to the city as an easement.

(2) The minimum parking requirements for the proposed single-story land use, based on maximum lot coverage and net usable lot area is provided.

[6]Minimum dimensional requirements for recreational facilities shall be established by the building and zoning official, based on the recreation performance standards.

(Ord. 796-02 § 2; Ord. 780-02 §§ 11, 13; Ord. 765-01 §§ 7, 8; Ord. 667-97 § 1; Ord. 664-97 §§ 2, 3; Ord. 630 § 2[16.07.060], 1995)

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Attachment B

16.120.050 Development permit approval process.

Permits	Administrative Approval	Public Hearing Required	Council Action	Appeals
Sign	Building Official			To Hearing Examiner
Driveway	Building Official			To Hearing Examiner
Porch	Building Official			To Hearing Examiner
Roof	Building Official			To Hearing Examiner
Home Occupation	Building Official			To Hearing Examiner
Building	Building Official			To Hearing Examiner
Plumbing	Building Official			To Hearing Examiner
Mechanical	Building Official			To Hearing Examiner
Stormwater				To Hearing Examiner
Grading and Fill				To Hearing Examiner
Boundary Line Adjustment				To Hearing Examiner
Short Plat (up to 4 lots)	City Planner		Acceptance of Final Short Plat	To Hearing Examiner
Formal Plat (5 + lots)		Hearing Examiner	X	Sno. Co. Sup. Court
Shoreline Development		Hearing Examiner	X	Shoreline Hearings Board
Commercial 20,000 sq. ft.+, Condo, MF, MHP		Hearing Examiner	X	Sno. Co. Sup. Court
Binding Site Plan		Hearing Examiner	X	Sno. Co. Sup. Court
Variance		Hearing Examiner	X	Sno. Co. Sup. Court
Conditional Use		Hearing Examiner	X	Sno. Co. Sup. Court
Rezone		Planning Commission	X	To Hearing Examiner
Code Amendments		Planning Commission	X	To Hearing Examiner
Comprehensive Plan Amendment		Planning Commission	X	To Hearing Examiner

Attachment C

Chapter 16.18
NONCONFORMANCES

Sections:

16.18.010 Nonconformances – Continuance.
16.18.020 Nonconformances – Lots smaller than required minimums.
16.18.030 Nonconforming lots – Setbacks.
16.18.040 Nonconforming lots – Applicability.
16.18.050 Nonconformances – Adjoining lots.
16.18.051 Nonconforming accessory dwelling units.
16.18.060 Extension or enlargement of nonconforming situations.
16.18.070 Nonconformances – Repair, maintenance, and construction.
16.18.080 Change in use of property where a nonconforming situation exists.
16.18.090 Abandonment and discontinuance of nonconforming situations.
16.18.100 Completion of nonconforming projects.

16.18.010 Nonconformances – Continuance.

Unless otherwise specifically provided in this unified development code, nonconforming situations that were otherwise lawful on the effective date of this code may be continued. (Ord. 715-00; Ord. 630 § 2 [16.06.160(A)], 1995)

16.18.020 Nonconformances – Lots smaller than required minimums.

When a nonconforming lot can be used in conformity with all of the requirements applicable to the intended use, except that the lot is smaller than the required minimums set forth in the dimensional and density requirements for each zoning district, then the lot may be used as proposed just as if it were conforming. (Ord. 715-00; Ord. 630 § 2[16.06.160(B)], 1995)

16.18.030 Nonconforming lots – Setbacks.

When the use proposed for a nonconforming lot is one that is conforming in all other respects, but the applicable setback requirements cannot reasonably be complied with, then the zoning official may allow variances from the applicable setback requirements if he/she finds that:

A. The property cannot reasonably be developed for the use proposed without such deviations;

B. These deviations are necessitated by the size or shape of the nonconforming lot;

C. The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety; and

D. Compliance with applicable building setback requirements is not reasonably possible if a building that serves the minimal needs of the use proposed for the nonconforming lot cannot practicably be constructed and located on the lot in conformity with such setback requirements. However, financial hardship does not constitute grounds for finding that compliance is not reasonably possible. (Ord. 715-00; Ord. 630 § 2[16.06.160(C)], 1995)

16.18.040 Nonconforming lots – Applicability.

This chapter applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures upon it. (Ord. 715-00; Ord. 630 § 2 [16.06.160(D)], 1995)

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16.18.050 Nonconformances – Adjoining lots.

If, on the date this unified development code becomes effective, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, then neither the owner of the nonconforming lot nor his successors in interest may take advantage of the provisions of this chapter. This requirement shall not apply to a nonconforming lot if a majority of the developed lots located on either side of the street where such lot is located and within 500 feet of such lot are also nonconforming. The intent of this chapter is to require nonconforming lots to be combined with other undeveloped lots to create conforming lots under the circumstances specified herein, but not to require such combination when that would be out of character with the way the neighborhood has previously been developed. (Ord. 715-00; Ord. 630 § 2 [16.06.160(E)], 1995)

16.18.051 Nonconforming accessory dwelling units.

A. Commencing on October 1, 2003, a registration period of six months, ending April 1, 2004, at 5:00 p.m. is hereby established for the registration of legal nonconforming and illegal detached and attached accessory dwelling units (ADU). No fees shall be charged for such registration. Accessory dwelling unit (ADU) is defined in SMC 16.150.010(6)(a). Upon receipt of the registration, the city shall develop a schedule for the inspection of such accessory dwelling units to determine compliance with the State Building and Fire Codes. An inspection of such structures by the State Electrical Inspector shall also be requested if no records of a prior electrical inspection is provided by the registrant.

B. Nonconforming Structures. An attached or detached ADU, which qualifies as a legal nonconforming structure as defined in SMC 16.150.140(9), shall be inspected to determine whether it was in compliance with the State Building and Fire Codes in existence at the date it was constructed. An applicant shall submit a final occupancy permit issued by the city of Sultan or Snohomish County, as appropriate, with respect to said ADU prior to the date said use was regulated by the agency with jurisdiction, as proof of its legal nonconformity or such other proof as may be reasonably available. Upon an adequate showing of nonconformity as determined at the discretion of the city, the ADU shall be required to meet the provisions of the State Building and Fire Codes which are applicable to any building or structure and are considered life safety codes. The city shall issue a certificate of noncompliance noting the size and characteristics of the ADU and the structure in which it is located in order to permit its use and continuation and to determine its compliance with the other provisions of SMC 16.25.010. Such registration of legal nonconforming structures may include both attached and detached units which were in conformance with the applicable provisions of law and ordinance at the date constructed.

C. Registration of Illegal Accessory Dwelling Units. ADUs which were not legal uses at the date constructed may be registered during the registration period set forth in subsection (A) of this section. Registration shall be accompanied by the fee established for the issuance of a permit for each ADU with such fees to be used to defray the cost of building, fire and other inspections. The city shall establish an inspection schedule for ADUs. Certificates of registration and permit shall be issued to the former illegal structure granting the privileges of a legal nonconforming structure subject to the provisions of SMC 16.25.010 upon certification that the structure is or has been brought into compliance with all current provisions of the State Building Code and city ordinance.

1. Once registered, a formerly illegal ADU shall enjoy all the protections and privileges afforded to a nonconforming structure under the provisions of this section; provided, however, that such ADU shall be subject to the permit review

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requirement of SMC 16.25.010 to the end that the city council reserves the right to impose additional conditions on the continued use and occupancy of the formerly illegal ADU if it is found to constitute a nuisance or present a hazardous condition, or to revoke such registration and permit if a nuisance or hazardous condition relating to the ADU is not abated.

2. The provisions of this subsection (C) shall apply to both attached and detached accessory dwelling units; provided, however, that such ADUs shall be registered and permitted to continue subject to the provisions of this section only if they were constructed in good faith by construction completed prior to December 31, 1999.

D. Legal nonconforming units shall receive a permit certificate confirming such status and listing the physical dimensions and other characteristics of the structure; provided, however, that the registration and permit of a formerly illegal ADU may be revoked and/or conditioned in accordance with the provisions of SMC 16.25.010.

E. Failure to register a structure within the time period established by the provisions of this section shall be considered to be presumptive proof that such a unit is an illegal unit and subject to abatement. The owner of such structure may overcome such a presumption only by presentation of substantial and competent evidence which establishes the legal nonconforming nature of such building by clear and convincing evidence that the structure was permitted by Snohomish County or the city of Sultan and was in complete compliance with the applicable provisions of state law and county or city ordinance, at the date such construction was initiated and was completed. (Ord. 823-03 § 2)

16.18.060 Extension or enlargement of nonconforming situations.

A. Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:

1. An increase in the total amount of space devoted to a nonconforming use; or

2. Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations, density requirements, or other regulations such as parking requirements.

B. Subject to subsection (D) of this section, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this unified development code, was manifestly designed or arranged to accommodate such use. However, a nonconforming use may not be extended to additional buildings or to land outside the original building.

C. A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming.

D. The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased, and the equipment or processes used at a location where a nonconforming situation exists may be changed, if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other requirements of this section occur.

E. Notwithstanding subsection (A) of this section, any structure used for single-family detached residential purposes and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to such matters as setback and parking requirements.

F. Notwithstanding subsection (A) of this section, whenever: (1) there exists a lot with one or more structures on it; and (2) a change in use that does not involve any enlargement of a structure is proposed for such lot; and (3) the off-street parking or

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loading requirements of this code that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practicably be used for off-street parking or loading, then the proposed use shall not be regarded as resulting in an impermissible extension or enlargement of a nonconforming situation. However, the applicant shall be required to comply with all applicable off-street parking and loading requirements that can be satisfied without acquiring additional land, and shall also be required to obtain satellite off-street parking if: (1) parking requirements cannot be satisfied on the lot with respect to which the permit is required; and (2) such off-street satellite parking is available within 500 feet of the site said satellite parking area is intended to serve, measured from property line to property line. If such off-street satellite parking is not reasonably available at the time the permit is granted, then the permit recipient shall be required to obtain it if and when it does become reasonably available. This requirement shall be a continuing condition of the permit. (Ord. 715-00; Ord. 630 § 2 [16.06.160(F)], 1995)

16.18.070 Nonconformances – Repair, maintenance, and construction.

A. Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged. Major renovation, i.e., work estimated to cost more than 25 percent of the appraised valuation of the structure to be renovated, may be done only in accordance with a permit issued pursuant to this unified development code.

B. If a structure located on a lot where a nonconforming situation exists is damaged to an extent that the costs of repair or replacement would exceed 25 percent of the appraised valuation of the damaged structure, then the damaged structure may be repaired or replaced only in accordance with a permit issued pursuant to this unified development code. This section does not apply to structures used for single-family detached residential purposes, which structures may be reconstructed pursuant to a permit just as they may be enlarged or replaced.

C. For purposes of subsections (A) and (B) of this section:

1. The "cost" of renovation or repair or replacement shall mean the fair market value of the materials and services necessary to accomplish such renovation, repair, or replacement.

2. The "cost" of renovation or repair or replacement shall mean the total cost of all such intended work, and no person may seek to avoid the intent of subsections (A) or (B) of this section by doing such work incrementally. An itemized appraisal of the work shall be prepared by an independent professional and provided to the city by the applicant.

3. The "appraised valuation" shall mean either the appraised valuation for property tax purposes, updated as necessary by the increase in the consumer price index since the date of the last valuation, or the valuation determined by a professionally recognized property appraiser.

D. The building and zoning official shall issue a permit authorized by this section if it finds that, in completing the renovation, repair or replacement work:

1. No violation of subsection (B) of this section will occur;

2. The permittee will comply to the extent reasonably possible with all provisions of this code applicable to the existing use (except that the permittee shall not lose his or her right to continue a nonconforming use); and

3. Compliance with a requirement of this code is not reasonably possible if it cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. (Ord. 715-00; Ord. 630 § 2[16.06.160(G)], 1995)

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16.18.080 Change in use of property where a nonconforming situation exists.

A. A change in use of property (where a nonconforming situation exists) that is sufficiently substantial to require an amendment in accordance with Chapter 16.128 SMC may not be made, except in accordance with subsections (B) through (D) of this section.

B. If the intended change in use is to a principal use that is permissible in the zoning district where the property is located, and all of the other requirements of this code applicable to that use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once conformity with this code is achieved, the property may not revert to its nonconforming status.

C. If the intended change in use is to a principal use that is permissible in the zoning district where the property is located, but all of the requirements of this code applicable to that use cannot reasonably be complied with, then the change is permissible if the city council approves an application authorizing the change. A permit may be issued if the building and zoning official finds, in addition to any other findings that may be required by this code, that:

1. The intended change will not result in a violation of SMC 16.16.020; and

2. All of the applicable requirements of this code will be reasonably complied with. Compliance with a requirement of this code is not reasonably possible if it cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation.

Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. And, in no case may an applicant be given permission pursuant to this section to construct a building or add to an existing building if additional nonconformities would thereby be created. (Ord. 715-00; Ord. 630 § 2 [16.06.160 (H)], 1995)

16.18.090 Abandonment and discontinuance of nonconforming situations.

A. If the principal activity on property where a nonconforming situation other than a nonconforming use exists is discontinued for a consecutive period of 180 calendar days, then that property may thereafter be used only in conformity with all of the current regulations. A permit may be issued if the council finds that eliminating a particular nonconformity is not reasonably possible (i.e., cannot be accomplished without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation). The permit shall specify which nonconformities need not be corrected.

B. For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building for 180 calendar days shall not result in a loss of the right to rent that apartment or space thereafter, so long as the apartment building as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter. (Ord. 715-00; Ord. 630 § 2 [16.06.160(I)], 1995)

16.18.100 Completion of nonconforming projects.

A. All nonconforming projects on which construction was begun before the

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effective date of this code, as well as all nonconforming projects that are at least 10 percent completed in terms of the total expected cost of the project (excluding land acquisition) on the effective date of this code may be completed in accordance with the terms of their permits, so long as these permits were validly issued and remain unrevoked and unexpired. If a development is designed to be completed in stages, this section shall apply only to the particular phase under construction.

B. Except as provided in subsection (A) of this section, all work on any nonconforming project shall cease on the effective date of this code, and all permits previously issued for work on nonconforming projects may begin or may be continued only pursuant to a permit issued in accordance with this section for the type of development proposed. The city council shall order the issuance of such a permit if it finds that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations or otherwise changed his position in some substantial way in reasonable reliance on the code as it existed before the effective date of this code and, thereby, would be unreasonably prejudiced if not allowed to complete his project as proposed. In considering whether these findings may be made, the city council shall be guided by the following, as well as other relevant considerations:

1. All expenditures made to obtain or pursuant to a validly issued and unrevoked development permit shall be considered as evidence of reasonable reliance on the code that existed before this code became effective.

2. Except as provided in subsection (B)(1) of this section, no expenditures made more than three years before the effective date of this code may be considered as evidence of reasonable reliance on the law that existed before this code became effective.

3. To the extent that expenditures are recoverable with a reasonable effort, a party shall not be considered prejudiced by having made those expenditures. For example, a party shall not be considered prejudiced by having made some expenditure to acquire a potential development site if the property obtained is approximately as valuable under the new classification as it was under the old, for the expenditure can be recovered by a resale of the property.

4. To the extent that a nonconforming project can be made conforming and that expenditures made or obligations incurred can be effectively utilized in the completion of a conforming project, a party shall not be considered prejudiced by having made such expenditures.

5. An expenditure shall be considered substantial if it is equal to 10 percent or more of the total estimated cost of the proposed project (excluding land acquisition).

6. A person shall be considered to have acted in good faith if actual knowledge of a proposed change in the code affecting the proposed development site could not be attributed to him or her.

7. Even though a person had actual knowledge of a proposed change in the code affecting a development site, the city council may still find that he or she acted in good faith if he or she did not proceed with his or her plans in a deliberate attempt to circumvent the effects of this code. The city council may find that the developer did not proceed in an attempt to undermine the code if it determines that: (a) at the time the expenditures were made, either there was considerable doubt about whether any code would ultimately be passed, or it was not clear that the proposed code would prohibit the intended development, and (b) the developer had legitimate business reasons for making expenditures.

C. When it appears from the developer's plans or otherwise that a project was intended to be or reasonably could be completed in phases, stages, segments, or other discrete units, the developer shall be allowed to complete only those phases or segments with respect to which the developer can make the showing required under subsection (B) of this section. The city council shall, in determining whether a developer would be unreasonably prejudiced if not allowed to complete phases or

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segments of a nonconforming project, consider the following in addition to other relevant factors:

1. Whether any plans prepared or approved regarding uncompleted phases constitute conceptual plans only or construction drawings based upon detailed surveying, architectural, or engineering work.

2. Whether any improvements, such as streets or utilities, have been installed in phases not yet completed.

3. Whether utilities and other facilities installed in completed phases have been constructed in such a manner or location or such a scale, in anticipation of connection to or interrelationship with approved but uncompleted phases, that the investment in such utilities or other facilities cannot be recouped if such approved but uncompleted phases are constructed in conformity with existing regulations.

D. The city council shall not consider any application for the permit authorized by subsection (B) of this section that is submitted more than 60 working days after the effective date of this code. The council may waive this requirement for good cause shown, but in no case may it extend the application deadline beyond one year.

E. The council shall send copies of this section to the persons listed as owners for tax purposes (and developers, if different from the owners) of all properties in regard to which permits have been issued for nonconforming projects or in regard to which a nonconforming project is otherwise known to be in some stage of development. This notice shall be sent by certified mail not less than 15 working days before the effective date of this code.

F. The city council shall establish expedited procedures for hearing applications for permits under this section. These applicants shall be heard, whenever possible, before the effective date of this code so that construction work is not needlessly interrupted. (Ord. 715-00; Ord. 630 § 2 [16.06.160(J)], 1995)

C-7

What is a Variance?

A variance is a form of relief that is granted when the application of the zoning regulations results in "peculiar or unusual practical difficulties" to a property owner.

Relief:

The Board of Appeals will grant a variance from the applicable zoning regulations by relaxing the standard which has caused the "peculiar or unusual practical difficulties."

Examples of the zoning standards that may be altered are minimum front, rear, and side yard setbacks, and height requirements.

The Board strictly applies the requirements for a variance because a variance changes the development standards that all other property owners must follow.

Burden of Proof:

An applicant for a variance must prove that:

- There are specific situations or conditions that are peculiar to the property which make it unique or peculiar from neighboring properties.
  - Uniqueness for zoning purposes requires that subject property have an inherent characteristic that is not shared by neighboring properties such as:
    - shape (narrowness, shallowness)
    - topography
    - historic significance
    - environmental features
- The requested variance is the minimum necessary to overcome the unique condition of the property.
- The requested variance is not detrimental to neighboring properties.

Basic Rules:

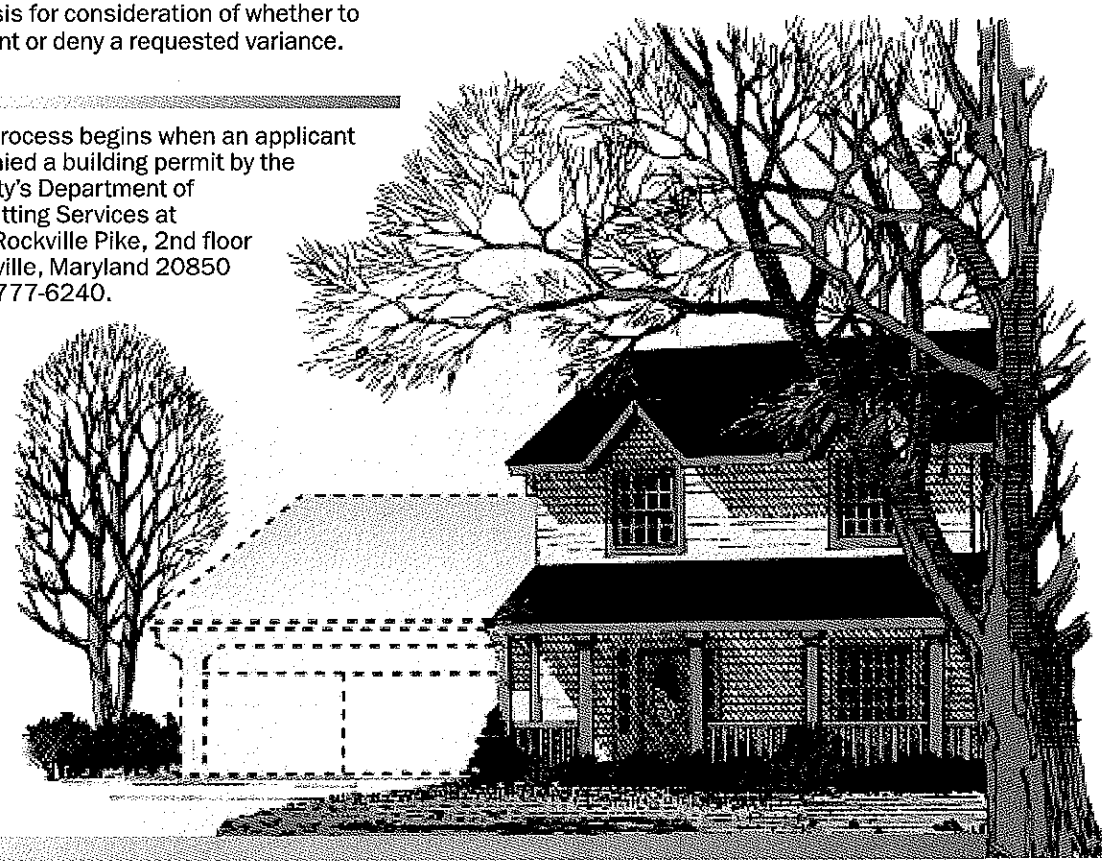
- The location of a house on the property which restricts the buildable area on the property is not a factor which will be considered in the decision on whether to grant or deny.
- The "practical difficulty" must result from the application of zoning standards, not from the action or inaction of the property owner. In other words, the condition which a variance relieves must not be self-inflicted by the owner.
- The Board of Appeals can establish conditions to lessen the effects of a variance on a neighboring property and the community.
- Personal circumstances are not a basis for consideration of whether to grant or deny a requested variance.

Process:

The process begins when an applicant is denied a building permit by the County's Department of Permitting Services at 255 Rockville Pike, 2nd floor Rockville, Maryland 20850 240-777-6240.

The Department issues a Building Permit Denial which indicates that a variance is needed and describes the variance from the zoning regulations that is required before a building permit can be granted.

An applicant then applies for a variance by filing a completed Petition for Variance under the Zoning Ordinance, along with required information, with the Board of Appeals for Montgomery County at 100 Maryland Avenue, Room 217 Rockville, Maryland 20850, 240-777-6600. The application is also available on the Board of Appeals website at: **www.co.mo.md.us/council/board.html**



The Board will furnish the applicant with a sign to be posted on the property.

The Board holds a public hearing on the variance application. The Board's Rules of Procedure set out all relevant procedures and requirements and are available from the Board.

At the end of the hearing the record is closed. The members of the Board then publicly discuss the merits of the case and vote on whether to grant or deny the variance.

It takes approximately 30 days from the date of the public hearing to when an applicant receives the decision of the Board.

Examples of Variances Granted

- A variance for a new single-family residence was granted due to the uneven terrain of the lot, the shape of the lot, and because the lot was smaller and shallower than neighboring properties.
- A variance to enclose an existing side yard porch was granted due to the existence of the porch for 75 years and because the existing footprint would not change.
- A variance for a one-story sunroom addition to an existing residence was granted because of the shallowness and trapezoidal shape of the lot and the lot's topography.
- Variances for a swimming pool and fence were granted because of rocky, sloping topography and because a 200-foot National Park Service Scenic Easement prevented new construction and tree removal in the rear yard of the site.

Examples of Variances Denied

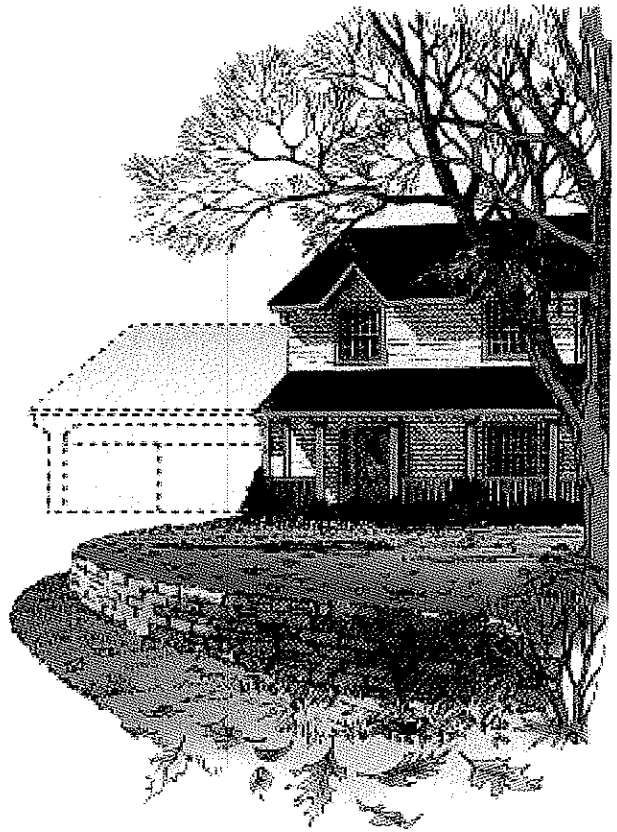
- A variance for a storage shed was denied because the lot had the same topographic conditions as those located on adjoining and neighboring properties on the same side of the street.
- A variance to enlarge and expand an existing one-story garage for use as garden storage, an art studio, and as a guest room was denied because there were no exceptional topographic conditions and the property was similar in shape and size to the neighboring lots.
- A variance for a one-story addition on the front of an existing residence was denied because the lot was not unique in shape, there were no topographic conditions restricting the buildable envelope.
- Variances for the construction of a pool house and equipment structure were denied even though the lot was oddly shaped because the property was not unique, the proposed structures could be redesigned without need for the variances, and that the variances were "the maximum and not the minimum reasonably necessary."

Questions or More Information

If you have any questions or need more information, please call:

The Office of the People's Counsel of Montgomery County
240-777-9700

WHAT IS A VARIANCE?



Board of Appeals
Office of the People's Counsel
Montgomery County, Maryland

Title 18 ZONING*

Attachment 1D

Chapter 18.09 DENSITY AND DIMENSIONS

18.09.030 Table 1--Density and dimensions--Commercial and industrial zones.

Density and Dimensions for Commercial and Industrial Zones

	NC	DC	CC	RC	LI/BP[4]	LI	HI
Bulk regulations							
Minimum lot area (square feet)	5,000	1	1	1	10 (acres)	10,000	1
Minimum lot width (feet)	40	1	1	1	Not specified	100	1
Maximum lot depth (feet)	40	1	1	1	Not specified	1	
Setbacks							
Minimum front yard (feet)[3]	15	5	5	5	5' per 1 foot of building height (200' minimum)	Not specified	1
Minimum side yard (feet)	1 10'2	1	1	1	100' for building; 25' for parking	15' 25' if abutting a residential area	1
Minimum rear yard (feet)	1	1	1	1	100' for building; 25' for parking area	25	1
Lot coverage							
Lot coverage (percentage)	85%	1	1	1	1 story (30%) 2 stories (40%) 3 stories (45%)	70%	1
Building height							
Maximum building height (feet)	2.5 stories; or 35	1	1	1	60	acre or less: 35 1 to 2 acres: 45 2 acres or more: 60	1

1. No limitation.

2. If along a flanking street of corner lot.

3. On corner parcels, (parcels bordered by two or more streets), the setback requirements shall be the same for all street frontages. Front setback restrictions shall apply.

4. The densities and dimensions in the LI/BP zone may be reduced under a planned industrial

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20C.50.25 Site Requirements for Commercial Zones.

20C.50.25-010 Purpose.

This division establishes the basic site requirements for the commercial zones. These standards implement the Washington State Growth Management Act (Chapter 36.70A RCW), the County-Wide Planning Policies, and Redmond's Comprehensive Plan, while also protecting Redmond's commercial areas from public nuisances, incompatible uses, and hazards. (Ord. 2027)

20C.50.25-020 Chart of Site Requirements.

(1) Purpose. Subsection 3 of this section, Site Requirements in Commercial Zones, establishes the dimensional requirements for commercial and conditional residential development. The standards and rules shall be determined to be the minimum requirements, unless stated as maximum by this division. The standards and rules are established to provide flexibility in project design, prevent fire danger, provide adequate access and circulation, reduce incompatibilities and prevent overloading of infrastructure due to the impacts of development.

(2) Explanation of Chart. Subsection 3 of this section, Site Requirements in Commercial Zones, is arranged in table format. Development standards are listed down the left column and the commercial zones are identified across the top row. The matrix cells contain the minimum or maximum dimensional requirements of each zone. The footnotes identify particular requirements applicable to either a specific use or zone.

(3) Site Requirements in Commercial Zones.

Commercial Zones Site Requirements Chart

Site Requirement	Zoning Districts		
	NC	RC	GC
Minimum Lot Frontage (in feet)	80'	30'	30'
Minimum Building Front-, and all Street Setbacks (in feet)	20'	15' except for 152nd Ave NE[1]	10'
Minimum Building Rear Setbacks (in feet)	10'[2]	0'[2]	0'[2]
Minimum Building Side Setbacks (in feet)	10'[2]	0'[2]	0'[2]
Maximum Lot Coverage of Structures and Other Impervious Surfaces	75%	85%	75%
Minimum Landscaped Area/Landscaping Requirements	See RCDG 20C.50.25-080.	15% of site area. See RCDG 20C.50.25-080.	See RCDG 20C.50.25-080.
Maximum Height (in feet)[3] for Non-Residential Uses	2 stories or 35' whichever is less	4 stories or 52' whichever is less	2 stories or 35' whichever is less
Maximum Height (in feet)[3] for Residential Uses in Single Use or Mixed-Use Buildings, where allowed	2 stories or 35' whichever is less	5 stories or 60'[4] whichever is less	3 stories or 40'[4] whichever is less
Maximum Height in Shoreline Areas (in feet)	30'	30'	30'
Maximum Floor Area Ratio (FAR) without TDRs[5] for Non-Residential Uses	NS	0.36	0.35
Maximum Floor Area Ratio with TDRs[6] for Non-Residential Uses	NS	0.41[7]	0.70
Maximum Floor Area Ratio (FAR) without TDRs[5] for Residential Uses in Single Use	0.29	(See FAR bonus for residential uses	0.80

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or Mixed-Use Buildings where allowed		below)	
Maximum Floor Area Ratio with TDRs[6] for Residential Uses in Single Use or Mixed-Use Buildings where allowed	0.29	(See FAR bonus for residential uses below)	0.90
Floor Area Ratio (FAR) bonus for residential uses.[8]	NA	2.5[7]	NA
Ground Floor Window Standards Apply[9]	Yes	Yes	Yes
Pedestrian Requirements	Yes[10]	Yes[10]	

Notes:
NS = No standard.

[1] See RCDG 20C.50.25-040(3), Building Setbacks.

[2] Setback shall be 10 feet if abutting a property in a residential zone. This setback shall be landscaped as required by Chapter 20D.80 RCDG, Landscaping and Natural Screening, or its successor. Also see Chapter 20D.40 RCDG, Design Standards, for buffer requirements when adjacent to residential areas.

[3] See RCDG 20C.30.25-135, Maximum Height of Structures in a Transition Overlay.

[4] In the RC zone, if a building includes housing in the second and higher floors and the Design Review Board concludes the roof is well designed and approves its design, the maximum height limit shall be five stories or 65 feet, whichever is less. In the GC zone, if a building includes housing in the second and higher floors and the Design Review Board concludes the roof is well designed and approves its design, the maximum height limit shall be three stories or 45 feet, whichever is less.

[5] All legal lots are allowed the greater of either the maximum allowed FAR or 10,000 square feet of building (s) provided all other applicable site requirements are met. The purchase of TDRs shall not be required for the 10,000 square feet minimum building(s).

[6] Please refer to RCDG 20D.200.10, Transfer of Development Rights (TDR) Program, and RCDG 20C.50.30-050, Receipt of Development Rights in Commercial Zones.

[7] Building space to be used exclusively for day-care centers may be constructed with a gross floor area that exceeds the maximum floor area ratio (FAR) without TDRs without the requirement to purchase TDRs if the following requirements are met. First, the building space shall be permanently used exclusively for a day-care center and deed restrictions shall limit the building space to this purpose. Second, in no case shall the gross floor area of the building space used for any purpose exceed the maximum floor area ratio with TDRs unless otherwise authorized by the Development Guide.

[8] The bonus may only be used for residential uses as defined in RCDG 20C.50.25-090, Floor Area Ratio (FAR) Bonus for Residential Uses.

[9] See RCDG 20C.50.25-100, Ground Floor Windows.

[10] See RCDG 20C.50.25-110, Pedestrian Standards.

(Ord. 2052; Ord. 2027)

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