

ARTICLE 7. DIMENSIONAL ADJUSTMENTS, VARIANCES, TEMPORARY USE PERMITS, AND NON-CONFORMING USES

SECTION 7.010 PURPOSE

Article 7 provides standards and procedures for adjustments, variances, and temporary use permits, which are modifications to development standards that are not otherwise permitted elsewhere in the Morrow County Zoning Ordinance or are development standards for certain uses that would be reviewed outside of a particular use zone's criteria.

The Planning Director or the Planning Commission, dependent upon the criteria identified below, may authorize dimensional adjustments or variances from the requirements of this ordinance, or authorize temporary use permits, where it can be shown that owing to special and unusual circumstances related to a specific lot or desired activity, strict application of the ordinance would cause an undue or unnecessary hardship. In granting these permits, Planning Director decisions would be done either under clear and objective standards; or when discretion is applied by providing notice as required by law. Those decisions identified to be approved by the Planning Commission, conditions may be attached when the Planning Commission finds it necessary to protect the best interest of the surrounding property or vicinity and otherwise achieve the purpose of this ordinance.

SECTION 7.020 INTENT

Adjustments and variances are intended to provide relief to code standards in specific situations. Both procedures are intended to ensure that the resulting development is compatible with adjacent properties and is consistent with the intent of the Code. Temporary Use Permits are available to meet needs that may not be available within the use zone for a certain limited duration to meet a specific need identified by the landowner or user.

DIMENSIONAL ADJUSTMENTS. Dimensional adjustments provide relief from specific code provisions when a code provision has the unintended effect of preventing reasonable development in conformance with all other code requirements.

VARIANCES. Variances provide greater flexibility to code standards than dimensional adjustments where special circumstances exist or the physical characteristics of a site or its surroundings prevent reasonable development in compliance with a code standard.

TEMPORARY USE PERMITS. Temporary permits tend to be short term or seasonal in nature and may be for a special event or an emergent need. They are generally defined by limited or no adverse impact on the surrounding area.

SECTION 7.100 DIMENSIONAL ADJUSTMENTS

The following define those instances that a Dimensional Adjustment may be appropriate:

- That the literal application of the ordinance would create practical difficulties resulting in greater private expense than public benefit. An unnecessary hardship will be found when the site cannot be put to any beneficial use under the terms of the applicable ordinance.
- That the condition creating the difficulty is not general throughout the surrounding area but is unique to the applicant's site.
- That the condition was not created by the applicant. A self-created difficulty will be found if the applicant knew or should have known of the restriction at the time the site was purchased.

A. GENERAL EXCEPTIONS TO LOT SIZE REQUIREMENTS.

1. The following lot size exceptions shall only apply to lots within the Rural Service Center, Rural Residential, Farm Residential and Suburban Residential Zones.

Any parcel of land or portion thereof which is to be dedicated to a public or semi-public entity for a road, canal, railroad, utility or other public use shall be exempt from the minimum lot size requirements set forth by this Ordinance, excepting that the area available for development must be able to support the development and necessary infrastructure.

2. The following lot size exceptions shall only apply to lots within the Exclusive Farm Use, Small Farm 40, and Forest Use Zones.

Whereas land sections in the county are affected by survey adjustments, minimum requirements relative to lot sizes where applicable shall be considered as standard metes and bounds land section divisions; i.e., 160, 80, 40, 20, etc. Lot sizes therefore, may be reasonably smaller than set forth by this Ordinance if a total section acreage reduction is due to a survey adjustment or other man-made barriers over which the applicant has had no control. Applicability would be that a 158 acre parcel in the Exclusive Farm Use zone would be eligible for a farm dwelling under the acreage test if the parcel adjustment was created by such a survey adjustment, or road or other dedicated rights-of-way.

B. GENERAL EXCEPTIONS TO YARD REQUIREMENTS. The following exceptions to yard requirements are authorized for a lot in any zone.

1. Average Front Yard Setback: If there are buildings on both abutting lots which are within 100 feet of the intervening lot, and the buildings have front yards of less than the required depth for the zone, the depth of the front yard for the intervening lot need not exceed the average depth of the front yards of the abutting lots.
2. Non Building Features: Steps, terraces, platforms, and porches having no roof covering, and fences not interfering with the vision clearance requirements (see Article 4 of this Ordinance) may occupy a yard and not impact setback requirements.
3. Signs: Signs conforming to the requirements of this Ordinance (see Article 4) and all other applicable Ordinances may be permitted in required yards.
4. Canopies: A canopy installed as a temporary structure is allowable within the setback requirement. Should a canopy become a permanent attachment to the structure, necessary setback requirements will be required.
5. A side yard or rear yard may be reduced to three feet for an accessory structure erected more than 65 feet from a front lot line, provided the structure is detached from other buildings by five feet or more and does not exceed a height of one story nor an area of 450 square feet.

C. NONCONFORMING LOTS OF RECORD. Any lot which is smaller than the minimum area required in any zone may be occupied by an allowed use in the zone provided that:

1. The lot was a lot in a duly platted and recorded subdivision on or before the date of this Ordinance, was a parcel created by an approved land partitioning prior to such date, or was held in a single ownership on a deed as recorded in the office

- of the County Clerk at the time of the passage of this Ordinance.
2. The use conforms to all other requirements of that zone.
 3. If there is an area deficiency, residential use shall be limited to a single dwelling unit.
 4. Approval for sewage disposal is obtained and the approval has provisions for any needed future replacement.
- D. **EXCEPTION TO BUILDING HEIGHT LIMITATIONS.** The following types of structures or structural parts are not subject to the building height limitations of this Ordinance: chimneys, tanks, church spires, belfries, domes, monuments, fire and hose towers, observation towers, transmission towers, smokestacks, flagpoles, radio and television towers, masts, cooling towers, elevator shafts, and other similar projections. This exception does not apply within the Airport Approach, Airport Safety and Compatibility Overlay, or Airport Hazard Zones.
- E. **PROJECTIONS FROM BUILDINGS.** Architectural features such as cornices, eaves, canopies, sunshades, gutters, chimneys and flues shall not project more than three (3) feet into a required yard. Any projection beyond three (3) feet would require additional setback to meet the setback requirements required within the subject Use Zone.
- F. **PLANNED UNIT DEVELOPMENT.** In any residential zone, the stated minimum lot area for residential purposes may be amended by ruling of the Planning Commission, provided that it is replaced by a Planned Unit Development with approval under Article 6 Planned Unit Development of the Subdivision Ordinance.

APPROVAL CRITERIA: The Planning Director, or their designee, may grant a Dimensional Adjustment upon finding that the following criteria are met. The burden is on the applicant to demonstrate compliance with the criteria.

1. Approval of the Dimensional Adjustment does not create a violation(s) of any other adopted ordinance or code standard;
2. An application for a Dimensional Adjustment is limited to one (1) lot or parcel per application;
3. Requests for more than one Dimensional Adjustment on the same lot or parcel shall be consolidated on one application and reviewed concurrently by the County;
4. Not more than three (3) Dimensional Adjustments may be approved for one lot or parcel in a continuous 12-month period; and

5. All applicable building code requirements and engineering design standards shall be met.

SECTION 7.200 VARIANCES

A Variance can serve multiple purposes and is designed to provide relief from the literal requirements of a regulation found within this Zoning Ordinance. The result of approving a Variance should result in improved planning that would benefit the applicant and the broader community, and it may be the first step in reevaluating requirements or allowed uses within a use zone.

- A. **MINOR VARIANCE.** For the purposes of this Ordinance, a "Minor Variance" is an "Area or Dimensional" Variance that meets one of the following conditions.
 1. A request involving a deviation from a minimum lot size requirement of not more than 10%; or
 2. A request involving a deviation from a yard or setback requirement of not more than 25%; or
 3. A request for the expansion of a nonconforming use by not more than 10%.

A minor variance may be granted when the Planning Director, or designee, provides notice to adjoining and affected landowners, offers the opportunity to provide comment and request a hearing, and determines the following:

1. Granting the minor variance will equally or better meet the purpose of the regulation to be modified, and
 2. If in a rural zone, that farm and forest uses or practices will not be significantly affected; if in a residential zone, that the proposal will not significantly detract from the livability or appearance of the residential area; or if in a commercial or industrial zone, that the proposal will be consistent with the desired character of the area, and
 3. Any identified impacts resulting from the minor variance are mitigated to the extent practical, and
 4. Granting the minor variance is the minimum necessary deviation from the requirement to satisfy the identified problem.
- B. **MAJOR VARIANCE.** The following are examples of Variances that could be considered: siting a manufactured home that is not in compliance with current manufactured home requirements, allowing for less frontage than required, allowing for a smaller lot size than required, approve a variance when a dimensional adjustment does not accomplish the needs of the property owner, and other similar or related instances. Use Variances amend or change the use of a property or structure. Area Variances tend to amend or change the area needed to validate a lot or parcel, or reduce necessary setbacks. Financial hardship does not qualify for a use or area Variance.

APPROVAL CRITERIA. The Planning Commission may grant a Major Variance upon finding that all of the following criteria are met. The burden is on the applicant to demonstrate compliance with the criteria.

1. The variance relates to a specific lot or parcel of land.
2. The Variance can be granted without substantial detriment to the public good. It would allow for a building or site plan that is more compatible with adjacent land and land uses, or it does not create a conflict with adjacent uses.
3. The Variance does not hinder compliance with applicable building code requirements or engineering design standards.

4. Approval of the Variance does not create a violation of this or any other adopted ordinance or code standard.
5. Applicant shall provide evidence from the applicable fire district that services can be provided in the event of an emergency.
6. Application for a Variance should include all necessary Variances anticipated for the proposed development.
7. Application for a Variance is limited to one per year.

SECTION 7.300 MEDICAL HARDSHIP PERMITS

MEDICAL HARDSHIP. A medical hardship is a Special Use of a manufactured home, recreational vehicle or an existing dwelling necessary for a relative or other designated caregiver to care for or provide custody for an elderly, mentally handicapped, or infirm person whom a medical professional certifies needs this kind of care or custody. This certification will be on the medical professional's stationery or stamped by the medical professional's office, and will indicate that the patient is not physically or mentally capable of maintaining himself/herself in a residence on a separate property and is dependent on someone being close by for assistance. As an alternative, the medical professional can stamp and sign the application form available through the Planning Department for a medical hardship. Financial hardship conditions, child care, and other convenience arrangements not relating to physical and/or mental impairment are not considered an infirm condition.

The provisions of this section are to apply when the proposed use does not qualify as a continuation of a nonconforming use, not permitted by right, nor permitted through the operations of other more pertinent procedures and provisions of this zoning ordinance. Medical hardship permits for dwellings are not to be construed, permitted nor utilized as a means to abrogate the intent, purpose or procedures of the County's Comprehensive Plan or Zoning Ordinance regulations. A medical hardship permit shall be approved by the Planning Director or their designee as an Administrative decision in accordance with the provisions of MCZO Article 9.

No medical hardship permit shall be granted that would have the effect of creating a permanent zone change or result in a hardship when the use is not permitted to continue at the expiration of the permit period. Further, no medical hardship permit will be granted which has the effect of conferring a special privilege for which other property within the same zone would not be equally eligible.

- A. As a medical hardship permit in any zone that allows dwellings, the Planning Director may allow one manufactured home, recreational vehicle, or temporary use of an existing building complying with the standards of Section 4.110, as applicable, and providing that no additions, except approaches or handicapped ramps, to the temporary residence shall be permitted in conjunction with a primary dwelling with the following findings:
 1. That an accessory dwelling is necessary to care for or provide custody of an elderly, mentally handicapped, or infirm person who a medical professional certifies needs this kind of care or custody as required in A. above.
 2. Electric, water and sewer utility connections shall be made to the temporary residence. If the medical hardship dwelling will not use a public sanitary sewer system, the dwelling shall use the same subsurface sewage disposal system used by the existing dwelling if that disposal system is adequate to accommodate the additional dwelling or as otherwise allowed and conditioned by

- the Planning Director.
3. Within 90 days of the end of the medical hardship, the manufactured dwelling or recreational vehicle shall be removed or, in the case of an existing building, the building shall be removed, demolished, or returned to an allowed use.
- B. As a medical hardship permit in a resource zone, the following are also applicable:
1. That the medical hardship dwelling use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use;
 2. The medical hardship dwelling use will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use. Department of Environmental Quality review and removal requirements also apply.
 3. The landowner for the hardship dwelling shall sign and record in the deed records for the County a Right-to-Farm or a Right-to-Forest Statement binding the landowner and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from customary farm or forest practices.
 4. A temporary residence approved under this sub-section is not eligible for replacement under Section 3.010 or 3.020.
- C. A medical hardship permit granted under this section is void when the elderly, mentally handicapped, or infirm existing resident or other person who is the subject of the permit no longer needs care, moves to another residence, is absent from the residence for more than 120 days or leaves the residence with no likelihood of returning for continued residency of at least 30 days. Exception to the 120-day limit can be provided for in the case of extraordinary circumstances such as extended hospitalization. These extensions can be approved by the Planning Director for up to an additional 60 days without Planning Commission approval. Additional extensions will require Planning Commission review and approval.
- D. The County Planning Director or designee shall review permits issued under this section every two years and may revoke permits when they are found to be out of compliance. After the initial approval by the Planning Director any required renewal shall be applied for as a medical hardship extension. The decision to approve a medical hardship extension shall be an administrative decision of the Planning Director.
- E. Any dwelling authorized by a medical hardship permit must be located as close as possible to the primary dwelling. Unless there are physical limitations of the land this should be within 100 feet of the primary dwelling.
- F. County Zoning and Building Permits will be required. A Rural Address will also be required to facilitate emergency response.
- G. A medical hardship permit is valid for up to 2 years from the date of initial issuance, i.e., permits issued in an odd-numbered year will expire in the next odd-numbered year. All permits will have an expiration date of January 31. The County will process all medical hardship permit renewal requests once per year in January. The County will give permittees not less than 30 calendar days written notice of the pending expiration of their permits, advising that a renewal will be required. Failure to receive notification of pending expiration does not constitute an extension of time for the permit. The Planning Director shall not renew the medical hardship permit until the permittee has shown compliance with the conditions for issuance specified in this Section at the time of renewal and the County has received evidence of the continued validity of the medical hardship.

SECTION 7.400 TEMPORARY USES

A Temporary Use Permit may be approved to allow the limited use of structures or activities which are short term or seasonal in nature and do not conflict with the zoning designation in which they are located. No Temporary Use Permit shall be issued that would have the effect of permanently re-zoning or granting a special use privilege not shared by other properties in the same zoning designation. Examples of a temporary use may be special events or an emergent need. Permanent improvements to the site or structures are not allowed with a temporary permit. Reasonable conditions may be imposed.

- A. **TEMPORARY STORAGE OF A MANUFACTURED HOME.** The Planning Director or their designee can authorize storage of a manufactured or mobile home on an individual bare lot or parcel for not more than six months. Authorization for the storage of a manufactured home shall be obtained through application for a Zoning Permit and must meet the following conditions:
1. It will not be used for residential or other purposes.
 2. There will be no electrical, plumbing or sewer connections to the stored manufactured or mobile dwelling.
 3. All normal setback standards of the zone will be met.
 4. The manufactured dwelling will not be located in a Floodplain or other natural hazard area.
 5. Only one manufactured dwelling storage permit may be issued to a property owner for a specific lot or parcel within any five-year period.
- B. **TEMPORARY USE OF A RECREATIONAL VEHICLE.** The Planning Director or their designee can authorize the following uses of a Recreational Vehicle, which are not designed for residential purposes according to standards and specifications of the Uniform Building Code which has been established to protect public health, safety and welfare. Recreational vehicles shall not be used for housing or residential purposes except:
1. When the recreational vehicle is located on an individual lot or parcel during the construction of a dwelling not to exceed six (6) months with one extension period not to exceed six (6) months (MC-C-1-99). The Zoning Permit for the approved dwelling must also authorize this temporary use.
 2. For temporary housing to accommodate visitors of the primary residence in a residential or farm use zone not to exceed 30 days in any 12 month period. Property owners found in violation of this requirement will be subject to enforcement action.
 3. For seasonal recreational (i.e. summer camping or hunting season) use by the land owner or lessee in the Forest Use Zone after obtaining a Zoning Permit and Rural Address.
or
 4. When the recreational vehicle is on a lot or parcel with a manufactured dwelling or single-family dwelling that is uninhabitable due to damages from a natural disaster, including wildfires, earthquakes, flooding or storms, until no later than the date:
 - a. The dwelling has been repaired or replaced and an occupancy permit has been issued;
 - b. The local government makes a determination that the owner of the dwelling is unreasonably delaying in completing repairs or replacing the dwelling; or

- c. Twenty-four months after the date the dwelling first became uninhabitable.
- C. TEMPORARY USES GENERALLY. Temporary Uses, other than those outlined above, can be considered under this provision. To be eligible the Temporary Use needs to be for a limited duration not to exceed 12 months, not addressed in other portions of this Zoning Ordinance, be able to meet the limited or expanded approval criteria below, and not involve the construction or alternation of any permanent building or structure.
- D. APPROVAL CRITERIA: The Planning Director, or their designee, may grant a Temporary Use upon finding that the following criteria are met. The burden is on the applicant to demonstrate compliance with the criteria.
1. The proposed Temporary Use is not specified in this Ordinance and is not so recurrent as to require a specific or general regulation to control it.
 2. The proposed Temporary Use will not become permanent.
 3. Approval of the Temporary Use does not create a violation(s) of any other adopted ordinance or code standard;
 4. An application for a Temporary Use is limited to one (1) lot or parcel per application;
 5. Requests for more than one Temporary Use on the same lot or parcel shall be consolidated on one application and reviewed concurrently by the County;
 6. Not more than three (3) Temporary Uses may be approved for one lot or parcel in a continuous 12-month period;
 7. Temporary uses will not exceed 12 months, can be renewed up to two time, but will not exceed a total of 36 months; and
 8. All applicable building code requirements and engineering design standards shall be met.
 9. Any Temporary Use permit shall clearly set forth the purpose for which the permit is granted and shall clearly indicate the time period for which the permit is issued. No temporary permit shall be transferable to any other owner or occupant.
- E. Should the proposed Temporary Use not meet the above standards, or should the Planning Director determine a public hearing is warranted, the Planning Commission will further consider the Temporary Use and the additional Approval Criteria below:
- a. Reasonable conditions may be imposed by the Planning Commission to minimize the potential impact of the proposed use to other uses in the vicinity, such as special yards and spaces; control of points of vehicular ingress/egress; landscaping and maintenance thereof; control of noise, odors, or other nuisances; and limitation of certain activities.
 - b. All structures and uses for which a Temporary Use permit is issued shall meet all other requirements of the zoning district in which they are located and shall:
 - i. meet all applicable health and sanitation requirements;
 - ii. meet all applicable building code requirements; and
 - iii. be removed upon expiration of the temporary permit.

SECTION 7.500 NONCONFORMING USES

A use or activity that was lawful prior to the adoption, revision, or amendment of this Zoning Ordinance, but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the Zoning district.

Subject to the provisions of this section, a nonconforming use or structure may be continued, but may not be altered or expanded. The extension of a nonconforming use to a portion of a structure which was arranged or designed for the nonconforming use at the time of passage of this Ordinance is not an enlargement or expansion of a nonconforming use. A nonconforming structure which conforms with respect to use may be altered or expanded if the alteration or expansion does not cause the structure to deviate further from the standards of this Ordinance.

If a nonconforming use is discontinued for a period of one year, further use of the property shall conform to this Ordinance.

If a nonconforming use is replaced by another use, the new use shall conform to this Ordinance.

If a nonconforming structure or a structure containing a nonconforming use is destroyed by any cause to an extent exceeding 80 percent of its fair market value as indicated by the records of the County Assessor and is not returned to use and in actual operating condition within one year from the date of destruction, a future structure or use on the site shall conform to this Ordinance.

Nothing contained in this Ordinance shall require any change in the plans, construction, alteration, or designated use of a structure for which a building permit has been issued by the county and construction has commenced prior to the adoption of this Ordinance provided the structure, if nonconforming or intended for a nonconforming use, is completed and in use within two years from the time the permit is issued.

SECTION 7.600 PROCEDURE FOR TAKING ACTION ON AN APPLICATION.

The procedure for taking action on an application shall follow the procedures outlined in Article 9 and as further defined below:

- A. A property owner may initiate a request for a dimensional adjustment, variance, or temporary permit by filing an application with the Planning Department, using forms prescribed pursuant to this Article and Article 9 where applicable. Applications shall be filed with the Planning Department in a timely manner, and at least 35 days prior to a Planning Commission meeting should Planning Commission action be required.
- B. If an application is for a lot or parcel located within the Urban Growth Boundary of an incorporated city the Joint Management Agreement in place with that city will govern.

SECTION 7.700 TIME LIMIT TO INITIATE A PERMIT

- A. On land zoned for Farm Use or Forest Use a permit may be valid for two years from the date of the final decision. The County may grant ministerially an extension period of up to 12 months on land zoned for Farm Use or Forest Use if:
 - 1. An applicant makes a written request for an extension of the development approval period;
 - 2. The request is submitted to the county prior to the expiration of the approval period;
 - 3. Provisions of the County Code applicable to the original approval have not changed.
- B. On land zoned other than Farm or Forest Use, a permit may be valid for two years. In the case of appeals, the two year permit period shall be tolled until a decision by a review authority with final jurisdiction is made that is not appealed.

An additional one-year extension may be authorized by county staff without providing notice and opportunity for a hearing under the following conditions:

1. An applicant makes a written request for an extension of the development approval period;
 2. The request is submitted to the county prior to the expiration of the approval period, excepting any request under consideration on the date of adoption of this amendment;
 3. Provisions of the County Code applicable to the original approval have not changed.
- C. Approval of an extension granted under this Section is a ministerial decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.
- D. The time periods described above do not take effect until all appeals are complete.

SECTION 7.800 LENGTH OF PERMITS, PERMIT HOLDER, RENEWAL AND REVOCATION

- A. Length of Permit and Permit Holder: The County may evaluate how long a particular permit is expected to remain valid. Some uses may be considered “permanent” as a fully developed use that “runs with the land” and it attaches to and benefits the land and is not limited to a particular landowner. The County may require the owner of the original permit to record the permitted use on the deed record. The permit is the responsibility of the current owner of the property, whether that is the original applicant or a successor.

A permit may allow a use that would benefit the permit owner on a sporadic or temporary basis until the purpose for the permit no longer exists. Upon termination of the use, the land must be in a condition that it may be re-developed in compliance with its current zoning designation. The County may authorize a permit until a particular date, for a stated period of time, or until the occurrence of a particular event. Additionally, the County may stipulate that a permit will be reviewed or renewable after a stated time period.

- B. Reviews and Renewals. If a review or renewal date is included as a condition by which a permit is granted, initial review would be ministerial and completed by the Planning Director. The holder of the permit will be required to make application and pay the requisite fee for review. The review would evaluate the permit conditions and adherence to them, determine if any changes had taken place with the uses allowed in the zone, and determine whether any complaints had been logged concerning the property or the conditional use. If any concerns arise further review will take place at a public hearing with notice. If no concerns arise the permit will be renewed.

For permits without a review or renewal condition, or if complaints are received concerning a permit, the County may review any valid permit for compliance with the conditions of the permit. This review would be a ministerial review done by the Planning Director. If it is deemed necessary by the Planning Director to amend or revoke the permit, a public hearing with notice must be held before the Planning Commission. If action is based on a complaint the complainant may be required to pay any permit review or renewal application fees.

- C. Revocation or Vacation. Any permit may be vacated by the current landowner or by the County after appropriate notice and hearing when:
- The use has been terminated and there is no expectation by the land owner and the County that the use will continue;
 - The use is not being conducted in compliance with the stated conditions of the permit, or
 - The County finds that the use jeopardizes the public health, safety and welfare of Morrow County and the use does not conform to the Morrow County Code Enforcement Ordinance or other adopted ordinances.

SECTION 7.900 OCCUPANCY PERMIT

The County may require an occupancy permit for any permitted and approved use pursuant to the provisions of this Ordinance. The County shall consider such a requirement for any use authorized by a permit for which conditions have been established upon approval of such use. The requirement of an Occupancy Permit shall be for the intent of insuring permit compliance and said permit shall not be issued except as set forth by the County. The authority to issue an Occupancy Permit upon compliance with the requirements and conditions of a permit may be delegated by the County at the time of approval of a specific permit to the Planning Commission, the Planning Director, and/or the Building Official.