

Chapter 17.76

EXCEPTIONS

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17.76.010 Exceptions—Generally.

Exceptions to the requirements of this title may be granted under the provisions of this chapter.

Statutory Reference: ORS Ch. 197 and 227

History: Ord. 1131 §2, 1990; Ord. 1323 §1, 2002.

17.76.020 Nonconforming uses and nonconforming developments.

(1) Continuance of a Nonconforming Use or a Nonconforming Development: Alteration of a Nonconforming Development. Except as provided herein, a nonconforming use may be continued but may not be altered or extended. The extension of a nonconforming use to a portion of a development which was arranged or designed for the nonconforming use at the time of passage of the ordinance codified in this title is not an enlargement or expansion of a nonconforming use. A nonconforming development which conforms with respect to use may be altered or extended provided the alteration or extension conforms to the standards of this title.

(2) Discontinuance of a Nonconforming Use. If a nonconforming use is discontinued for a period of one (1) year, further use of the property shall conform to this title.

(3) Maintenance. Normal maintenance of structures and premises that are part of a nonconforming use shall be permitted provided there are no significant use or structural alterations. Normal maintenance may include painting, roofing, siding, interior remodeling, electrical work, plumbing work, re-paving of access roads and parking/loading areas, replacement of landscaping elements or other similar tasks. Normal maintenance does not include increasing the number of dwelling units, constructing new structures or constructing additions to existing structures except to the extent that an addition is necessary to render a structure accessible to the disabled.

(4) Alterations Required by Law. Alteration of a nonconforming use shall be permitted when necessary to comply with any lawful requirement for alteration of the use or structures and premises associated with the use. Such alteration shall be subject to building, plumbing, electrical and other permit requirements in effect at the time the alteration is begun.

(5) Alterations Not Required by Law. A nonconforming use may be altered, expanded or changed to another nonconforming use pursuant to GMC Division VII (administrative procedures) and subject to the following criteria:

(a) The alteration, expansion or change of use will, after the imposition of conditions as authorized below, have no greater adverse impact on the neighborhood than the existing use. At a minimum, factors that shall be considered under this criterion include traffic generation, noise, vibration, smoke, dust, fumes, glare and visual compatibility with surrounding uses;

(b) Conditions of approval may be imposed on any alteration, expansion or change of use when deemed necessary to ensure the mitigation of any adverse impacts of such alteration, expansion or change of use. These conditions may include, but are not limited to, the following:

(A) Limiting the hours, days, place and manner of operation;

(B) Requiring design features that minimize environmental impacts such as noise, vibration, smoke, dust, fumes and glare;

- (C) Requiring increased setbacks, lot area, lot depth and lot width;
- (D) Limiting the building height, size, lot coverage and location on the site;
- (E) Designating the size, number, location and design of vehicle access points;
- (F) Requiring street right-of-way to be dedicated and streets to be improved;
- (G) Requiring landscaping, screening, drainage and surfacing of parking and loading areas;
- (H) Limiting the number, size, location, height and lighting of signs;
- (I) Regulating the location and intensity of outdoor lighting; and
- (J) Requiring a sight-obscuring fence or hedge to screen the nonconforming use from adjacent or nearby property.

(6) Destruction of a Nonconforming Use or a Nonconforming Development. If a nonconforming use or a nonconforming development is destroyed by any cause to an extent exceeding seventy-five percent (75%) of its fair market value as indicated by the records of the Clackamas County Assessor, a future use or development on the site shall conform to the requirements of this title. Nonconforming single-~~family household~~ dwellings shall not be deemed nonconforming for the purpose of this subsection and may be replaced regardless of the extent of destruction provided that replacement commences within one (1) year of destruction. ~~Nonconforming two-family dwellings in the R-5 zoning district shall not be deemed nonconforming for the purpose of this subsection and may be replaced regardless of the extent of destruction provided that the number of stories and the area of the structure footprint of a replacement two-family dwelling shall not exceed those of the two-family dwelling being replaced and provided that replacement commences within one (1) year of destruction.~~

(7) Plans Otherwise Approved. Nothing contained in this chapter shall require any change in the plans, construction, alteration or designated use of a structure for which a building permit has been approved by the city and issued by Clackamas County and for which construction has commenced prior to the adoption of the ordinance codified in this title provided that the structure, if nonconforming or intended for a nonconforming use, is completed and in use within one year of the date the building permit is issued.

(8) Residential Uses. Nonconforming single-~~family household~~ dwellings, nonconforming two-~~household family~~ and multi-~~household family~~ dwellings in commercial and industrial zoning districts and nonconforming two-~~family household~~ dwellings in the R-5 zoning district shall not be deemed nonconforming for the purpose of expansion, remodeling or alteration for residential use or for residential accessory uses provided that there is no increase in the number of dwelling units other than the addition of an accessory dwelling unit when otherwise permitted by this title. The number of stories and the area of the structure footprint of a two-~~family household~~ dwelling in the R-5 zoning district shall not be increased. .

Statutory Reference: ORS Ch. 197 and 227

History: Ord. 1131 §2, 1990; Ord. 1171 §1 (G), 1993; Ord. 1267 §1, 1998; Ord. 1291 §1, 2000; Ord. 1323 §1, 2002; Ord. 1374 §2, 2006.

17.76.030 Lot size requirements.

A lot of record that has an area less than the minimum lot area standard of the zoning district in which it is located may be developed with a use allowed in the zoning district. ~~In~~, ~~except that in~~ a zoning district where dwellings are an allowed use, residential development shall be limited to one (1) single-~~family household~~ dwelling. Development on an undersized lot of record shall comply with other applicable standards of this title.

Statutory Reference: ORS Ch. 197 and 227

History: Ord. 1131 §2, 1990; Ord. 1323 §1, 2002. Ord. 1374, 2006.

17.76.040 Setback requirements.

The following exceptions to setback requirements may be authorized for a lot in any zoning district:

- (1) Average of Adjacent Front Setbacks. If there are buildings on both abutting lots which are within one hundred feet (100') of the intervening lot, and the buildings have front setbacks of less than the minimum for the zoning district, the front setback for the intervening lot need not exceed the average front setback of the abutting lots or ten feet (10'), whichever is greater. However, in all cases the minimum front setback requirement of the zoning district shall be maintained for a garage or carport if the garage vehicle entrance or an open side of the carport faces the front lot line.
- (2) Related to Abutting Front Setbacks. If there is a building on one (1) abutting lot which is within one hundred feet (100') of the lot, and this building has a front setback of less than the minimum for the zoning district, the front setback for the lot need not exceed the average of the front setback of the abutting lot and the minimum front setback for the zoning district, or ten feet (10'), whichever is greater. However, in all cases the minimum front setback requirement of the underlying zoning district shall be maintained for a garage or carport if the garage vehicle entrance or an open side of the carport faces the front lot line.
- (3) Corner Lots with Frontage on a Private Street. Where a corner lot has frontage on a public street and also has frontage on a private street from which it does not receive vehicular access, the lot line abutting the private street shall be considered a side lot line for the purpose of determining the minimum setback requirement.
- (4) Front Setbacks from Private Streets or Flag Lot Accesses. Where the front lot line of a lot in an R-5 or R-7.2 zoning district abuts a private street or the narrow deeded strip of land or easement providing access to a flag lot, the front setback may be reduced to ten feet (10'). However, if a garage vehicle entrance or an open side of a carport faces the front lot line, a minimum setback of twenty feet (20') shall be maintained between the garage or carport and the interior edge of the private street or flag lot access drive.
- (5) Flag Lots. For the purpose of determining the minimum setback requirements for a flag lot, the designation of front, rear and side property lines may be modified to allow flexibility in the placement of structures when one or both of the following conditions apply:
 - (a) It is not possible to extend the narrow deeded strip of land or easement providing access to the flag lot to serve additional lots due to physical conditions such as topography or existing development; or
 - (b) It is not necessary to extend the narrow deeded strip of land or easement providing access to the flag lot to serve additional lots because the subject property and adjacent property are fully developed or have adequate alternative access from existing streets.
- (6) Fences and walls. There shall be no minimum setback requirements for fences and walls. Compliance with GMC Chapter 17.54 (clear vision) shall be required.
- (7) Through lots. In the case of a through lot, either of the lot lines separating the lot from a street other than an alley may be designated by the property owner as the front lot line with the other such lot line designated as a rear lot line. However, in a residential zoning district, a minimum setback of twenty feet (20') shall be maintained between a garage vehicle entrance or an open side of a carport and a street.

Statutory Reference: ORS Ch. 197 and 227

History: Ord. 1131 §2, 1990; Ord. 1289 §1, 2000; Ord. 1323 §1 (pan), 2002.