

1205 VARIANCE

1205.01 APPLICABILITY

The applicant may propose a variance from a standard or requirement of this Ordinance, except when one or more of the following applies:

- A. The proposed variance would allow a use which is not permitted in the zoning district in which the subject property is located;
- B. Another procedure and/or criteria is specified in this Ordinance for modifying or waiving the particular requirement or standard;
- C. Modification of the requirement or standard is prohibited within the zoning district in which the subject property is located;
- D. An exception from the requirement or standard is allowed in the zoning district in which the subject property is located;
- E. The proposed variance is to the minimum lot size standard or, in the case of a flexible-lot-size or planned unit development, the minimum average lot size standard and would result in reducing the minimum by more than 10 percent. Subsection 1205.01(E) is not applicable to partitions of lots that are divided by a public road and located in a residential zoning district; or
- F. The request is for a variance to the minimum lot size standard in the Recreational Residential, Rural Area Residential 2-Acre, Future Urban 10-Acre, Exclusive Farm Use, Timber, or Ag/Forest zoning district.

[Amended by Ord. ZDO-230, 9/26/11]

1205.02 APPROVAL CRITERIA

The Planning Director may approve a variance from a requirement or standard of this Ordinance, pursuant to Subsection 1305.02, if the applicant provides evidence substantiating the following:

- A. Compliance with the applicable requirement or standard of this Ordinance would create a hardship due to one or more of the following conditions:
 - 1. The physical characteristics of the land, improvements, or uses are not typical of the area. When the requested variance is needed to correct an existing violation, that violation shall not be considered as a condition "not typical of the area".
 - 2. The property cannot be developed to an extent comparable with other

similar properties in the area if the requirement or standard is satisfied.

3. Compliance with the requirement or standard would eliminate a significant natural feature of the property.
 4. Compliance with the requirement or standard would reduce or impair the use of solar potential on the subject property or adjacent properties.
- B. Strict adherence to the requirement or standard is unnecessary because the proposed variance from the standard or requirement will reasonably satisfy all the following objectives:
1. Will not adversely affect the function or appearance of the development and use on the subject property;
 2. Will not impose limitations on other properties and uses in the area, including uses that would be allowed on vacant or underdeveloped properties; and
 3. Will accomplish the purpose(s) for the standard as set forth in this Ordinance.
- C. Approval of the application will allow the property to be used only for purposes authorized by this Ordinance; and
- D. Approval of the application complies with the Comprehensive Plan.

[Amended by Ord. ZDO-230, 9/26/11]

1205.03 APPROVAL PERIOD AND TIME EXTENSION

- A. Approval of a variance is valid for four years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented, or the approval will become void.
1. For a variance directly related to an application for a partition or subdivision, "implemented" means that the final plat of the partition or subdivision shall be recorded with the County Clerk.
 2. For any other variance, "implemented" means all major development permits shall be obtained and maintained, or if no major development permits are required to complete the development contemplated by the approved variance, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an

accessory structure) shall be obtained and maintained. A “major development permit” is:

- a. A building or manufactured dwelling placement permit for a new primary structure that was part of the variance approval; or
 - b. A permit issued by the County Engineering Division for parking lot or road improvements that were part of the variance approval.
- B. If the approval of a variance is not implemented within the initial approval period established by Subsection 1205.03(A), a two-year time extension may be approved by the Planning Director, pursuant to Subsection 1305.02, and subject to Subsection 1305.05.

[Amended by Ord. ZDO-230, 9/26/11]