

UNDERSTANDING LAND USE WAIVERS & VARIANCES

Land use applicants use the Bend Development Code (BDC) as a guide when planning projects within Bend. While most development projects fit within the allowed use of the BDC, some may qualify as having justification to apply for an exception due to unavoidable circumstances. There are two types of exceptions – waivers, which may be approved when the requirements for public infrastructure cannot be met, and variances, which may be approved if certain site-specific standards cannot be met.

Community Benefit to Understanding Waivers & Variances:

Understanding waivers and variances will help to identify why a development might be different from the requirements outlined by the BDC. The important items to understand about the numerous exceptions are:

The code only allows the waiver or variance if there is a reasonable justification as identified by the criteria defined in the BDC.

The decision for approval for a waiver or variance is dependent on the application. Decisions can be made by a review authority such as a City Planner or Engineer, Hearings officer, Planning Commission or City Council.

Waivers

The BDC includes a list of [public improvement standards](#), which provide requirements for design and construction of infrastructure such as transportation, sewer, water and utilities that development must comply with in Bend. These standards are generally non-negotiable, though a [waiver](#) may be granted in some instances. Four criteria can qualify an applicant to be granted a waiver. These criteria can be found in [BDC 3.4.150.B](#).

Example: ABC Construction is building a development in which the adjacent right of way (ROW) is inadequate to meet the road width required by public improvement standards. ABC Construction does not have the ability to obtain additional ROW, and this prevents them from building a full-width road, as the code requires.

Following the criteria outlined in BDC 3.4.150.B, ABC construction would be approved for a waiver because:

1. The waiver will not harm or will be beneficial to the public in general;
2. The waiver is not inconsistent with the general purpose of ensuring adequate public facilities;
3. The waiver meets condition 9 of the 12 listed conditions.
4. The waiver was not in order to maximize the number of lots or parcels in a land division.



Variations

The BDC also outlines the [development standards](#) for which a development must comply with in Bend. A [variance](#) may be requested in instances where there is a site-specific reason that an applicant cannot meet a regulation. There are three variance types, each with their own criteria. The distinction between each:

- Class A variances are simple to achieve as the decision for approval comes down to the measurements defined within the code and what needs the physical conditions or lot configuration present.
- Class B variances are more difficult to achieve as the need cannot be due to a self-imposed hardship.
- Class C variances are somewhat simple to achieve if the specific criteria is met.

	CLASS A VARIANCE	CLASS B VARIANCE	CLASS C VARIANCE
Purpose	A variance for on-site development standards for: <ul style="list-style-type: none"> • building setbacks. • landscape area. 	A variance for on-site development standards that exceed the criteria for “Class A” variances.	A variance for: <ul style="list-style-type: none"> • vehicular access and circulation standards. • parking standards. • tree removal and/or impacts to wetlands. • maximum height. • transportation improvement requirements. • deviations regarding access to State highways. • floodplain sub-zones.
Examples	<ul style="list-style-type: none"> • Reducing a 10 ft. side yard setback to 7.5 ft. • Reducing the 15% landscape requirement to 11.25%. 	<ul style="list-style-type: none"> • Variance to minimum lot depth (due to narrow property). • Variance to parking lot setback. 	<ul style="list-style-type: none"> • Variance to maximum height. • Variance to driveway width.
Criteria	3 criteria (5.1.200.B) Limited to a 25% reduction of the requirement.	6 criteria (5.1.300.B) Must show hardship and is not self-imposed, includes Class A variances that exceed 25% reduction.	6 criteria (5.1.400.B) Must meet specific criteria.



Involvement Opportunities:

Granting a waiver or variance requires a public process, which allows the public to submit comments for the public record in writing prior to a decision being made by the City on whether to grant the exception. Many times, an applicant will submit for a waiver or variance in advance of submitting their entire application which allows for an opportunity for community members to discuss and ask questions about their request at the Neighborhood Public Meeting, if held. Additionally, once a decision is made, any “party to the record,” or persons who submitted comment on the application, can appeal the decision within a certain timeframe.

For further information about the public comment process for Type II Applications, including how to become a “party to the record” please refer to [Frequently Asked Questions on Land Use Applications](#).



Accommodation Information for People with Disabilities

To obtain this information in an alternate format such as Braille, large print, electronic formats, etc. please contact Makayla Oliver, Community Relations Manager at moliver@bendoregon.gov or (541) 323-8571. Relay Users Dial 7-1-1.

