

## Chapter 19.35

### ADMINISTRATIVE ADJUSTMENTS, MODIFICATIONS AND VARIANCES

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#### **19.35.010 Legislative Intent.**

This Chapter establishes procedures, review criteria and authority for:

- (1) Administratively adjusting specific development standards of this Title in order to:
  - (a) Coordinate development with adjacent land uses and the physical features of the site;
  - (b) Permit flexibility in the design and placement of structures and other site improvements;
  - (c) Allow developments consistent with a respective city or neighborhood comprehensive plan; and
  - (d) Allow buildings to be sited to maximize solar access;
- (2) Approval of modifications to previously approved uses;
- (3) Approval of design modifications to certain road standards;
- (4) Variances to the strict application of the requirements of this Title in limited circumstances. Provided, such variance would not be contrary to the public interest and the strict application of the regulation would cause peculiar, exceptional and undue hardship on the owner of the property. It is the intent of this Title that the variance be used only to overcome some exceptional physical condition of land that prevents any reasonable use of the property; and
- (5) Reducing resource setbacks when the reduction will not adversely affect the natural resource operations or resource property owner or otherwise adversely affect non-resource occupants of especially sensitive land uses from the noise, spray drift and other potential impacts from such adjacent management practices.

(Ord. 6-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 7-2013 § 1 (Exh. A) (part), 2015).

#### **19.35.020 Administrative Adjustments.**

- (1) Review. The Reviewing Official may consider applications for administrative adjustments of certain development standards for Type 1, 2, 3 and 4 uses authorized by Type 2 review to provide flexibility in the administration of this Title. Applications for administrative adjustments will be processed under Type 2 review for administrative adjustments involving Type 3 uses as set forth in Chapter 19.30 and YCC Title 16B. Applications for administrative adjustments may be processed collectively with project permits under the Optional Consolidated Permit Review process as set forth in YCC Title 16B.
- (2) Decision. The Reviewing Official may approve, modify, deny, or impose conditions of approval, as authorized by Chapter 19.30.
- (3) Scope of Administrative Adjustments.
  - (a) Administrative adjustments to certain development standards under this Title may be approved, except as limited in Subsection (b) below, as follows:

- (i) Setbacks, building height, and heights of fences, walls and recreational screens, contained in Section 19.10.040 General Development Regulations;
  - (ii) Setbacks, building height and lot coverage in Chapter 19.11 Rural and Resource Districts, Chapter 19.12 Urban Residential Districts, and Chapter 19.13 Business, Commercial and Industrial Districts;
  - (iii) Chapter 19.20 Signs;
  - (iv) Chapter 19.21 Sitescreening and Landscaping;
  - (v) Chapter 19.22 Parking and Loading;
  - (vi) As otherwise specified herein, such as for reductions to special resource setbacks.
- (b) The Reviewing Official shall not have the authority through the administrative adjustment process to modify the requirements for:
- (i) Density or minimum lot size or width;
  - (ii) Height of buildings or structures as limited in Section 19.17.010 Airport Safety Overlay District;
  - (iii) The number of signs or size of signs, or to allow any prohibited sign;
  - (iv) The siting of manufactured and mobile homes as set forth in Chapter 19.18 within Urban Growth Areas or the Rural Transitional and Rural Settlement zoning districts;
  - (v) Standards in Chapter 19.18, except adjustments to visibility of a front entrance of an accessory dwelling unit, the siting of manufactured and mobile homes outside Urban Growth Areas or the Rural Transitional and Rural Settlement zoning districts, resource setbacks as specified in this Section and special events for bed and breakfasts in excess of 12 per year;
  - (vi) The requirements in other Titles of Yakima County Code, which may have their own adjustment processes outside the scope of this Title; or
  - (vii) Road standards which are subject to Road Design Modifications set forth in section 19.35.040.
- (4) Use of Other Procedures. Other procedures for modifying standards may be available as specified in this Title or may be available through a variance. Where specific modification and variance procedures and criteria are provided in other sections in this Title, the Reviewing Official shall not accept an administrative adjustment application for processing.
- (5) Findings Required to Approve Administrative Adjustments. A standard listed in Subsection (3)(a) above may be adjusted if the Reviewing Official finds that the administrative adjustment is consistent with:
- (a) The purpose and intent of Comprehensive Plan policies that relate to the specific adjustment being proposed and this Title;
  - (b) The purpose and intent of the specific zoning district and the standard being adjusted;
  - (c) Maintaining the minimum administrative adjustment necessary to accommodate the proposed use;
  - (d) Balancing the flexibility of the administrative adjustment with the health, safety and general welfare of individual neighborhoods and the community; and
  - (e) The placement or design of structures will maximize solar access for the production of solar energy;
- (6) Reductions to Special Setbacks for Especially Sensitive Land Uses (ESLUs).

(a) Legislative Intent. Special setbacks were adopted to protect the farmer or other resource property owner from nuisance complaints resulting from common, customary and accepted resource management practices, and to protect non-resource occupants of ESLUs from the noise, spray drift and other potential impacts from such adjacent management practices. Considerations in reducing the setback may include the dimensions of the parcel, historic use, natural features, physical barriers, crop type and location of structures on adjoining properties, proposed site design including location of the ESLU and the use of screening, berms, barriers and/or landscaping.

(b) Review Criteria. In lieu of the review criteria for other types of administrative adjustments in Subsection (5), resource setback reductions to the setbacks for ESLUs, under Subsection 19.18.205(2) may be granted, subject to Type 2 review and recording a declarative covenant as provided in Section 19.18.205(4), if an applicant can document on the required site plan and accompanying narrative that:

(i) The lot does not have sufficient buildable area as defined by this code to accommodate the space for the proposed ESLU outside the special setback;

(ii) An intervening physical barrier mitigates the effects of placing an ESLU closer to the agricultural, mineral or forest zoned lot or use; and

(iii) Based on a response, if any, from the adjoining resource operator, a reduction of the setback will not now, or in the future, adversely affect accepted agricultural, mineral or forest practices.

(c) Documentation. The documentation in Subsection (a) may include or be supported by the characteristics of adjoining and nearby land use and mitigation measures that effectively reduce the potential for land use conflicts and separate the site from active agricultural, forest or mineral operations, such as: use of landscape buffers or screening under Chapter 19.21 and site design using berms or other physical features. Where a setback reduction is justified by this specific subsection, the proposed ESLU must maintain the maximum practicable setback. Subsection (b) above shall not be used to reduce the setback by over fifty percent, except as provided under Subsection (d) below.

(d) Exceptions. The widths of the setbacks specified in Subsection 19.18.205(2)(a) may be modified under Type 1 review by the Building Official in consultation with the Administrative Official and recording a declarative covenant as provided in section 19.18.205(4), or as stipulated by conditions of previous permit approvals, where the applicant documents one or more of the following cases:

(i) The lot was legally created prior to adoption of this Title, or afterward in conformance with a formally approved administrative adjustment to the setback, and the lot cannot accommodate the special setback due to its insufficient area or dimension. In such situations, the maximum possible setback or approved setback from the adjoining agricultural, mineral or forest zoning district or use shall apply.

(ii) The new structure is an alteration, expansion or replacement of a dwelling or other especially sensitive land use lawfully existing prior to February 8, 2000 or was formally approved afterward, maintaining the maximum practicable setback from the nearby or adjoining resource-designated lot as demonstrated by the proposed floor plan.

(iii) The special setback would prohibit placement of the especially sensitive land use on an existing lot due to geologic hazard, flood hazard, critical area or other natural feature.

(iv) The special setback would cause the proposed ESLU to be located further from adjacent existing ESLUs and/or result in a greater impact to commercial agricultural operations on the subject property.

(v) The most recent plat or short plat containing the proposed especially sensitive land use specifies a different setback from the resource use, in which case the platted setback distance shall apply to the proposed especially sensitive land use, whether or not other conditions, such as current use, specified in the platted setback are present.

- (vi) Part of a property line of the lot proposed to contain a new or expanded especially sensitive land use adjoins another parcel equal to or less than three acres in size and contains a lawfully established ESLU, in which case the resource setback shall not apply from the adjoining established ESLU lot.
  - (vii) The adjoining lot was approved as a special exception lot, under the small lot provision or a cluster development, in which case the resource setback shall not apply from the adjoining established special exception, small lot or clustered lot.
  - (viii) The lot was approved as a special exception lot, under the small lot provision or a cluster development, in which case the standard ESLU resource setback reduction under Subsection (c) above, may exceed 50 percent, provided that the ESLU setback not be less than 60 feet.
  - (e) Effect of Intervening Right-of-Way or Easement. If the property abuts a public or private right-of-way or easement that is precluded from being utilized for resource purposes (agricultural, mineral or forestry), because it contains limiting features such as, but not limited to, roadways, railroads, and irrigation canals, then the width of the right-of-way or easement may count towards the setback requirement.
- (7) Administrative Adjustment of Sign Standards Allowed. Administrative adjustment of the sign height and setback standards in Chapter 19.20 may be authorized under the provisions of this Chapter when the administrative adjustment application meets the requirements for an adjustment and a comprehensive design plan is prepared that integrates the sign into the site plan of the project.
- (a) Comprehensive Design Plan. A comprehensive design plan is required whenever adjustment of one or more sign standards of Chapter 19.20 is proposed or when required as part of the detailed sign plan. The comprehensive design plan shall include a narrative and site plan, including, but not limited to the following:
    - (i) The physical components of the sign including sign size, height, shape, color, location and associated landscaping;
    - (ii) A description of how the sign relates to the immediate surroundings, including existing and proposed structures, other signs, neighboring land uses and the character of the zoning districts; ~~and~~;
    - (iii) For multiple-use complexes a description of how the available sign area will be allocated between tenants or leasable spaces; and.
    - (iv) An explanation of why the existing sign regulations are not adequate and require adjustment.
  - (b) Review Procedures and Criteria. The Reviewing Official shall use the criteria in this Subsection in lieu of Subsection (5) above and review the comprehensive design plan under this Chapter and may either approve or disapprove the plan. The Reviewing Official shall approve the comprehensive design plan and/or adjustments in the standards of Chapter 19.20 when such approval would:
    - (i) Be consistent with the character of the zoning district;
    - (ii) Be compatible with neighboring land uses; and
    - (iii) Create visual harmony between the sign, structure and the site where it is located.
  - (c) Conditions of Approval. The Reviewing Official may also attach conditions to this approval to accomplish the objectives of Chapter 19.20 and the legislative intent of this Chapter.
- (8) Administrative Adjustment of Sitescreening and Landscaping Standards Allowed. In lieu of the review criteria for other types of administrative adjustments in Subsection (5), the Reviewing Official may adjust the sitescreening and landscaping standards in Chapter 19.21 by approving other sitescreening and landscaping plans under this Section, subject to Type 2 review, based on the following factors:
- (a) No useable space for landscaping exists between the proposed new structure and existing structures on adjoining lots or alleys because of inadequate sunlight or inadequate width.

- (b) The building setback provided in front of the new structure is less than six feet or is developed as a plaza with decorative paving/pavers, trees, planters, or other amenities.
- (c) Xeriscape landscaping is utilized in designated stormwater control areas; provided, this factor shall not be used exclusively in reducing a sitescreening standard.
- (d) When existing trees and other vegetation serves the same or similar function as the required landscaping, they may be substituted for the required landscaping if they are healthy and appropriate for the site at mature size. When existing trees are eight inches or more in diameter, they shall be equivalent to three required landscape trees. If necessary, supplemental landscaping shall be provided in areas where existing vegetation is utilized to accomplish the intent of this Chapter.
- (e) Other adjustments to sitescreening requirements provided that they are able to comply with criteria in Subsection (5) above, as the Reviewing Official determines applicable.

(Ord. 6-2017 § 2(C) (Exh. 1) (part), 2017; Ord. 8-2015 § 2 (Exh. 4) (part), 2015; Ord. 7-2013 § 1 (Exh. A) (part), 2015).

**19.35.030 Modification to Existing or Approved Uses Regulated.**

- (1) The Reviewing Official may consider applications for modifications of lawfully established Type 2 or Type 3 uses and developments approved under this Title, and existing Type 2 and 3 uses (see Chapter 19.30). The Reviewing Official may approve, condition, or deny the modification application. A site plan conforming to Chapter 19.30 shall accompany the application showing the location, size and type of modification proposed by the applicant.
- (2) Applicability.
  - (a) Modifications to existing or approved Type 2 and 3 uses may be reviewed under this Section 19.35.030.
  - (b) All modifications to an existing or approved Type 1 Permitted Use or development shall be reviewed as a Type 1 Permitted Use rather than under these modification provisions.
  - (c) For a list of activities and modifications typically not subject to the modification review process of this Title, see Subsection 19.30.020(2).
- (3) Modifications may be approved by the Reviewing Official under Type 1 review procedures, provided that the cumulative modifications of the approved use will not exceed the following limitations:
  - (a) The modification will not increase residential use by more than one unit, if allowed by the zoning district;
  - (b) The modification will not increase the required parking by more than 20% or 20 spaces (whichever is less), except that the parking for controlled-atmosphere and cold storage warehouses may be increased by up to twenty spaces. This limit shall be calculated cumulatively for all previous modifications;
  - (c) The proposed modification will not expand the total square footage of all structures and/or outdoor use areas, excluding parking, by more than 20%. This limit shall be calculated cumulatively for all previous modifications;
  - (d) The modification will not change or modify any condition imposed under any previous official review where it is specifically found by the applicable Reviewing Official for the approved use that a particular condition is no longer necessary due to changes in circumstances (in such cases, notice shall be provided to adjacent property owners identified in YCC Subsection 16B.05.030(3), in a manner similar to Type 2 applications);
  - (e) The modification will not significantly reduce the amount or location of required site screening;

- (f) The modification will not expand an existing nonconforming use, or render a conforming use or structure substandard;
- (g) The modification will not establish a new use;
- (h) The modification will not expand a landfill, mining/site operation, mineral processing or mineral batching activity;
- (i) In the determination of the Reviewing Official, the modification will not create or materially increase any adverse impacts or undesirable effects of the project, or cause the use or structure to become inconsistent with County adopted plans or the purpose of the zoning district;
- (j) The modification will not increase the height of any structure;
- (k) Any demolition of structures will not exceed 20% of the current area. This limit shall be calculated cumulatively for all previous modifications;
- (l) The modification will not add a drive-through facility that abuts a residential zone; and
- (m) The modification does not include hazardous materials (Chapter 70.105 RCW).

(4) All proposed uses, structures and site improvements (and modifications) shall comply with the development standards of this Title and previous conditions of approval not modified by this application, except as approved under the administrative adjustment or variance provisions of this Title.

(5) Any proposed modification that does not meet all the requirements of this Section shall be denied. Further consideration of the proposal shall be subject to the Type 2 or 3 review procedures according to Chapter 19.30.

(Ord. 6-2017 § 2(C) (Exh. 1) (part), 2017; Ord. 7-2013 § 1 (Exh. A) (part), 2015).

**19.35.040 Road Design Modifications.**

(1) Legislative Intent. Requirements of the road standards in Table 19.35.040-1 may be modified as provided in this Section where necessary to address unusual topographic conditions, nature of existing development, unique or innovative development design or similar factors. The applicant must demonstrate that the proposed design modification meets the Approval Criteria in Subsection 19.35.040(4). To ensure a consistent, objective evaluation of the proposed design modification, such proposals will be reviewed and processed using the procedures in this Section and elements adapted from the Washington State Department of Transportation (WSDOT) local agency guidelines for road design standard deviation approvals.

(2) Applicability. The road standards of Chapter 19.23 of this Title may be modified as listed in Table 19.35.040-1 below. Such design modifications will be considered as part of the underlying decision on the proposed development following the required pre-application conference and standard decision time limits as set forth in YCC Title 16B. The official reviewing the design modification request may differ from the decision maker for the development.

**Table 19.35.040-1 Road Standard Modification Table**

Attributes	Modifiable Standard	Modifiable Standard <sup>(1)</sup>	Request Reviewed by	Roads Standard
	Public Road	Private Road		
Right-of-Way Width	Yes	Yes	County Engineer	19.23.040(6)
Surface Type	Yes	Yes	County Engineer	19.23.040(2) and 19.23.050(6)
Surface Width	Yes <sup>(2)</sup>	Yes	County Engineer	Tables 19.23.045-1, 19.23.045-2 and 19.23.050-1

Attributes	Modifiable Standard	Modifiable Standard <sup>(1)</sup>	Request Reviewed by	Roads Standard
	Public Road	Private Road		
Subsurface Materials	Yes	Yes	County Engineer	
Bicycle Facilities	Yes	Yes	County Engineer	19.23.030(10)
Lighting	Yes	Yes	County Engineer/Admin. Official	Table 19.23.045-1 Note (4)(c)
Block Lengths	Yes	Yes	Admin. Official	19.23.040(10)
Half-Roads	Yes	Yes	County Engineer	19.23.040(7)
Non-Through Roads	Yes	Yes	Admin. Official	19.23.040(8)
Turnarounds	Yes	Yes	Fire Marshal	19.23.040(8)(c)
Alleys	No	No	N/A	19.23.040(12)
Driveway Location	Yes	Yes	County Engineer	19.23.060
Stormwater/Drainage	No	No	N/A	See YCC Title 12.09
Sidewalks	Yes	Yes	County Engineer/Admin. Official	Table 19.23.045-1 Note (4)(b)
Pathways	Yes	Yes	Admin. Official	Table 19.23.045-1 Note (4)(b)
Trail Connections	Yes	Yes	Admin. Official	

Notes:

- (1) AASHTO guidelines provide flexibility to allow a range of options for road design.
- (2) Design of drainage facilities should occur concurrently with design of the traveled surface where sites with physical or legal constraints.
- (3) Procedures.
  - (a) Design Modifications Requested Concurrently with a Project Permit Application. A pre-application meeting is required for all land use applications that include design modifications to the road standards in Chapter 19.23. Design modification requests must be presented to Yakima County during the pre-application meeting held for the associated permit application. Design modifications are reviewed and approved through the transportation review findings of the underlying land use application, based on additional information as required in Subsection (b) below. Design modifications must be requested at the time of the underlying land use application, or processed as an amendment to the permit, if available, as provided in Subsection (c) below.
  - (b) Submittal Requirements for Requested Design Modifications.
    - (i) Based on the pre-application materials provided, the Reviewing Official will inform the applicant what additional documentation is necessary to submit with the underlying land use application to demonstrate compliance with the Approval Criteria found in Subsection 19.35.040(4). Such documentation may include:
      - (A) Engineering, geotechnical and/or hydraulic analyses;
      - (B) Traffic and collision data;
      - (C) Aerial photos, contour, land use, quadrant and vicinity maps, cross sections and profiles, design file, environmental documents, plans, estimates, cost comparisons and existing as-built plans;

- (D) An analysis of the public safety or other impacts associated with the requested design modification; and
- (E) An analysis of how the requested design modification impacts public safety, shifting improvement obligations onto future developers or the County and material impacts on future development patterns.
- (ii) The applicant shall document reasons the design standard cannot be achieved, citing the specific accepted engineering principles where appropriate.
- (c) Design Modifications Requested after the Project Permit Decision.
  - (i) If a proposed design modification is requested after the decision has been issued, consideration of said request may only be reviewed under the applicable amendment process for the project permit, such as that set forth in Subsections 19.34.040(5) Amendments to Preliminary Short Subdivisions or 19.34.050(9) Preliminary Subdivision Amendments.
  - (ii) If there is no specified amendment or modification process, the request shall follow the same procedure required for a new application and fee. The scope of review shall be limited to the request presented and need not repeat a review of other elements in the application, provided that any time expiration is not affected unless an extension is requested under YCC Subsection 16B.07.050 or Subsection 19.34.050(10).
- (4) Approval Criteria.
  - (a) Before any design modification to the standards in Chapter 19.23 or Table 19.35.050-1 may be granted, the Reviewing Official shall consider all of the following:
    - (i) Granting of such design modification request will provide compensating or comparable results, is in the public interest, and will fully meet the objectives of public safety, environmental protection, durability, cost of maintenance, function, and appearance;
    - (ii) Granting of such design modification request will violate no development related conditions imposed upon the project and is based upon accepted engineering practices and principles;
    - (iii) Granting of such design modification request will advance the goals of adopted comprehensive plans as a whole;
    - (iv) Special physical circumstances or conditions affecting the property can only be addressed by a design modification based on accepted engineering practices;
    - (v) Granting such design modification request will achieve the maximum possible compliance with the standard;
    - (vi) Where applicable, granting such design modification request provides potential benefits from implementing low impact development or innovative concepts;
    - (vii) The reason to grant a modification request is not based on self-imposed hardships or economic conditions; and
    - (viii) At least one of the following:
      - (A) Topography, right-of-way, existing construction or physical conditions, or other geographic conditions make compliance with standards unworkable for the circumstances;
      - (B) An alternative design is proposed that is functionally equivalent or superior to the standards;

- (C) A change to a specification or standard must ensure consistency with existing infrastructure or facilities adjacent to or affected by the site that are not expected to change over time.
- (b) In addition to Subsections (3)(a) and (b) above, in considering a road design modification request within Urban Growth Areas, the County will require sufficient right-of-way to be dedicated such that frontage and cross circulation roads will be substantially completed within the 20 year period provided in RCW 36.70A.110.
- (5) Decision.
- (a) When granting a design modification, the Reviewing Official may attach specific conditions that will accomplish the intent of standards, criteria, and established policies. These conditions will be incorporated into the project permit requirements. Examples of such conditions may include:
- (i) Dedication of right-of-way for future road for any exterior or interior roads serving the property;
  - (ii) Covenants binding owners of the lots to participate in future public and/or private road improvements;
  - (iii) Formation of a road maintenance association comprising the owners of a majority of the parcels abutting the private road, with recorded bylaws, annual assessments, and an established road maintenance fund;
  - (iv) Restriction of further subdivision of the lots;
  - (v) Other requirements in Sections 19.23.030, 19.23.040, 19.23.050 and 19.23.060; and
  - (vi) Improvements to existing interior and/or exterior private roads proportional to the additional traffic the development places on the roadway.
- (b) Requests for design modifications will receive a final decision with the project permit.

(Ord. 6-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 7-2013 § 1 (Exh. A) (part), 2015).

**19.35.050 Modifications to Existing Master Planned Resorts and Planned Developments.**

Modifications may be considered to Master Planned Resorts (MPR) and/or Resort Development Plan (RDP) and Planned Developments (PD) previously established under Title 15, as described below.

- (1) **Minor Modifications.** Minor modifications include minor shifting of the location of buildings, proposed streets, public or private ways, sewer or water facilities, parking areas, landscaping, parks, open space, or similar improvements. The process for minor modifications of a MPR, RDP and PD shall be a Type 1 Review.
- (2) **Major Modifications.** All other modifications such as, but not limited to: changes to approved land uses, phasing, time limits and density within the MPR and PD, shall be considered as major modifications and shall be reviewed under the Type 4 Review process in Chapter 19.30 and YCC Chapter 16B.03.
- (3) **Expiration.** Modifications approved under this section shall expire by time limitation, as set forth in Subsection 19.30.100(4) and YCC Chapter 16B.07 when the Reviewing Official determines that the modification has not been developed as approved within the time frame granted.

(Ord. 6-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 7-2013 § 1 (Exh. A) (part), 2015).

**19.35.055 Modification of an Approved Master Planned Development Overlay.**

Implementation of the Master Development Plan shall be reviewed through the Type 1 review process. Modifications to the adopted Master Development Plan and/or Development Agreement may be requested from time to time. Minor modifications will undergo Type 2 review. Major modifications will undergo Type 3 review. The following criteria are established to assist this determination.

- (1) Type 1 Review Projects or Actions. Type 1 review process shall apply to future projects or actions in compliance with an approved Master Development Plan and Development Agreement;
  - (2) Type 2 Review Projects or Actions. Type 2 review process shall be applied for minor modifications to an approved Master Development Plan or Development Agreement. A change or amendment to the approved master plan shall be deemed a “minor modification” if, in the Reviewing Official’s discretion, the following criteria are satisfied:
    - (a) The amendment does not increase the areas identified for any particular land use or increase the residential density approved in the master plan;
    - (b) The amendment does not increase the total floor area of nonresidential uses by more than five percent;
    - (c) The amendment does not materially change the type and character of approved uses;
    - (d) The amendment does not materially change parking or traffic circulation within the development;
    - (e) The amendment does not materially change setbacks, buffers, landscaping, shoreline, critical area or other mitigation measures;
    - (f) The amendment does not materially impact the overall design of the approved master plan; and
    - (g) Other similar changes minor nature proposed to be made to the configuration, design, layout or topography of the Master Planned Development deemed not to be material or significant in relation to the entire Master Planned Development and are determined not to have any significant adverse effect on adjacent or nearby lands or the public health, safety or welfare;
  - (3) Type 3 Review Projects or Actions. A major modification to the Master Development Plan shall be subject to a Type 3 review and shall be referred to the Hearing Examiner under YCC Title 16B and Chapter 19.31. A “major modification” shall be any modification to an approved Master Development Plan or Development Agreement deemed to be more significant than a “minor modification” as described above; and
  - (4) Review Procedures. Type 2 and 3 review shall be conducted consistent with YCC Title 16B and Chapter 19.30, respectively. For any changes falling outside the scope of such review, the procedures in this Chapter for original Master Development Plan and Development Plan approval shall be followed.
- (Ord. 6-2017 § 2(C) (Exh. 1) (part), 2017; Ord. 7-2013 § 1 (Exh. A) (part), 2015).

**19.35.060 Variances.**

- (1) Variance Applications. The Hearing Examiner may consider applications for a variance from the terms of this Title under the Type 3 review provisions of Chapter 19.30 and the requirements of YCC Title 16B.
  - (a) Under no circumstances shall the Hearing Examiner grant a variance to allow a use not permissible under the terms of the Title in the zoning district involved, or any use expressly or by implication prohibited in the zoning district by this Title.
  - (b) A variance application that would alter density or minimum lot size requirements shall not be accepted or granted.
  - (c) A variance application shall not be accepted if administrative adjustment or modification provisions apply and could provide the relief sought from the standards of this Title.
  - (d) The Hearing Examiner shall not have jurisdiction to grant a variance to standards or requirements under the Federal Emergency Management Agency’s National Flood Insurance Program (NFIP) as implemented by YCC Title 13.

(2) Criteria for Variance Approval. The Hearing Examiner shall authorize such variance from this Title, as will not be contrary to the public interest and the comprehensive plan where literal enforcement of this Title would cause undue hardship, as measured by the criteria below. A variance shall not be granted unless the Hearing Examiner makes findings that the applicant has expressly demonstrated all of the following:

- (a) Special circumstances applicable to the property, including size, shape, topography, location or surroundings, exist;
- (b) Due to such special circumstances, strict application of this Title would deprive the property of rights and privileges enjoyed by other properties in the vicinity under identical zoning district classification;
- (c) Granting the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zoning district classification in which the property is situated;
- (d) Special circumstances do not result from the actions of the applicant;
- (e) The variance is the minimum variance that will make possible the reasonable use of the land, building or structure;
- (f) Granting a variance will be in harmony with the general purpose and intent of this Title, the specific zoning district and the Comprehensive Plan;
- (g) Administrative adjustment or administrative modification provisions of this Chapter were not applicable or could not provide the relief sought from the standards of this Title;
- (h) Granting the variance requested will not confer on the applicant any special privilege denied by this Title to other lands in the same area; and
- (i) Financial gain is not the ground or grounds for the variance.

(3) Additional Criteria for Variances in a Floodplain and/or Airport Safety Overlay District. When considering variance applications for property within a 100-Year Floodplain designated under YCC Titles 16A, 16C or 16D or within the Airport Safety Overlay District, the Hearing Examiner shall consider:

- (a) The conditions in Section 19.17.030;
- (b) All technical evaluations and standards that apply;
- (c) The danger to life and property due to flooding or airport land use and safety conflicts;
- (d) The importance of the services provided by the proposed use to the community;
- (e) The necessity to the facility of a waterfront or airport location;
- (f) The availability of alternative locations for the proposed use that is not subject to flooding or airport hazards;
- (g) The compatibility of the proposed use with existing and anticipated development; and
- (h) The relationship of the proposed use to the Airport Master Plan and floodplain requirements under the Federal Emergency Management Agency's National Flood Insurance Program (NFIP) as implemented by YCC Title 13.

(4) Action on a Variance Application.

- (a) The Hearing Examiner shall file a written decision following closing of the public hearing in accordance with YCC Chapter 16B.09 that shall include the following considerations:
  - (i) The testimony at the public hearing;

- (ii) The extent to which the proposed variance complies with the requirements of Subsection 19.35.070(2);
  - (iii) The variance, if granted, is the minimum variance that will make possible the reasonable use of the land, or structure; and
  - (iv) The consistency of the variance with the general purpose and intent of this Title, the specific zoning district and the Comprehensive Plans.
- (b) The Hearing Examiner may approve, modify, deny, or require conditions of approval in his or her judgment that will substantially secure the objectives of the standards or requirements so varied or modified.
- (c) Violations of conditions and safeguards, when made a part of the terms under which the variance is granted, shall be considered a violation of this Title and is subject to remedies set forth in YCC Chapter 16B.11.

(Ord. 6-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 7-2013 § 1 (Exh. A) (part), 2015).

**19.35.070 Final Decisions.**

- (1) Notification of a final decision shall be issued as required under YCC Chapter 16B.07.
- (2) Notice shall specify whether the final decision may be appealed as allowed under YCC Chapter 16B.09.
- (3) If the effect of the decision is a recommendation, it shall be transmitted to the Board as provided in YCC Section 16B.09.050.

(Ord. 6-2017 § 2(C) (Exh. 1) (part), 2017: Ord. 7-2013 § 1 (Exh. A) (part), 2015).