

TITLE 9

COMMUNITY DEVELOPMENT

Subtitle 2 — Land Development Code Division 6 — Miscellaneous Development Code Provisions

CHAPTER 938

VARIANCE PROCEDURE CODE

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938.005 Title; short title

This Chapter, LCC 938.005 to 938.999, shall be known and may be cited as the “Linn County Variance Procedure Code.” This Chapter may also be referred to and cited as the “Variance Procedure Code.”

[Adopted 98-002 §3 eff 3/4/98; amd 99-121 §19 eff 6/30/99]

938.010 Statement of purpose

(A) The purpose of this Chapter shall be to establish procedures and criteria that allow the decision maker to approve a variance from the

development standards set forth in LCC 934 (Development Standards Code) as a means to alleviate impractical restrictions on development which would result from an overly strict or literal interpretation and enforcement of those standards.

(B) An application may be submitted for and the decision-maker may approve in accordance with this chapter a variance from certain development standards including setbacks, yards, height of structures, parcel and lot width, depth and ratio, landscaping, screening, coverage, parking standards, certain signs, and frontage.

[Adopted 98-002 §3 eff 3/4/98; amd 02-420 §1 eff 10/30/02]

938.100 Variances; generally

(A) Variances from the minimum lot or parcel size requirements of any district shall not be allowed unless authorized by subsections (B) or (C).

(B) A variance from a minimum property size for an authorized unit of land in a Rural Resource Zone may not be approved by the decision maker.

(C) Any authorized unit of land in the Rural Development Zone created prior to March 4, 1998, that cannot otherwise be partitioned may be divided if:

(1) the property size of each unit created by that division is not less than 95% of the minimum property size for the respective zoning district; and

(2) the application otherwise meets the requirements of the Land Development Code.

(D) Variances may not be submitted for uses specified within any zoning district.

(E) The Director may not accept an application seeking, nor may the decision maker approve

a variance from the development standards set forth in:

- (1) LCC 934.211 (Signs; prohibited);
 - (2) LCC 934.360 (Home occupations; performance standards);
 - (3) LCC 934.370 (Kennels; performance standards);
 - (4) LCC 934.442 (Development standards for private parks);
 - (5) LCC 934.590 (F/F (forest area) and FCM zoning district structural siting standards);
 - (6) LCC 934.790 (UGAZ manufactured home standards for placement on individual authorized units of land);
 - (7) LCC Chapter 940 (Marijuana Code);
- or
- (8) LCC Section 934.900 (Accessory Dwelling Unit Standards).

[Adopted 98-002 §3 eff 3/4/98; amd 02-420 §1 eff 10/30/02; amd 16-370 §7 eff 12/14/16; amd 08-108 §4 eff 7/1/18]

938.200 Application procedure

An application filed under this Chapter shall comply with the provisions of LCC 921.040.

[Adopted 98-002 §3 eff 3/4/98]

938.300 Decision criteria

(A) Except as provided in LCC 938.100, a variance may be granted from the standards regulating property development as set forth in LCC 934 (Development Standards Code) if on the basis of the application, investigation, testimony and evidence submitted, the findings and conclusions show that all of the criteria in subsection (B) have been met.

(B) *Decision criteria.*

(1) A variance from a development standard as set forth in LCC 934 (Development Standards Code) is needed because conditions or circumstances or both exist on the land or structure involved that renders development impractical or impossible;

(2) Granting a variance from a development standard will not have a significant adverse affect on property, improvements, or public health or safety in the vicinity of the subject property; and

(3) Approval of the variance is limited to the minimum necessary to permit otherwise normal development of the property for the proposed use.

[Adopted 98-002 §3 eff 3/4/98; amd 02-420 §1 eff 10/30/02]; amd 02-420 §1 eff 10/30/02

938.340 Decision criteria for UGA–UGM minimum property size

The Director may approve a variance to the minimum property size of an authorized unit of land in the UGA–UGM zoning district if:

(A) the criteria of LCC 938.300 (B) (2) and (3) are met; and

(B) the proposal is consistent with the affected city’s comprehensive plan.

[Adopted 98-002 §3 eff 3/4/98; amd 02-420 §1 eff 10/30/02; amd 08-108 §4 eff 7/1/18]

938.400 Density standards; exceeding dwelling unit density for areas within major and peripheral habitats

(A) The major and peripheral habitat density standards may be exceeded in the EFU and F/F zoning districts if on the basis of the application, investigation, testimony and evidence submitted, findings and conclusions show that the impact of the dwelling on major or peripheral habitat can be reduced through, but not limited to, the following measures:

(1) Locating dwellings and structures near each other and existing roads;

(2) Locating dwellings and structures to avoid habitat conflicts and utilize least valuable habitat areas; and

(3) Minimize road development to that necessary to support the residential use.

(B) The Director shall notify the Oregon Department of Fish and Wildlife and their comments taken into consideration prior to final action on the proposal.

[Adopted 98-002 §3 eff 3/4/98]

938.900 Violations; enforcement

But for a variance approved under this chapter, the development standards apply as mandatory standards, and any development subject to the standards set forth in LCC 934 (Standards Devel-

opment Code) that does not otherwise comply with the development standards applicable to that property is unauthorized, is a violation of the Land Development Code, and is subject to enforcement under LCC 240 (Code Enforcement Code).

[Adopted 02-420 §1 eff 10/30/02]

Statutory References and Other Authorities:

ORS 197; 203; 215

Legislative History of Chapter 938:

Adopted 98-002 eff 3/4/98

Amendments to 98-002

- #1 98-432 eff 10/21/98
- #2 99-121 §19 eff 6/30/99
- #3 02-420 §1 eff 10/30/02
- #4 16-370 §7 eff 12/14/16
- #4 18-108 §4 eff 7/1/18

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