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AT 12 O'CLOCK M

Office of Records and Administration  
Lane County

BY: Ruth Bishop  
DEPUTY

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. 15-73 ) Amending Lane Code Chapter 11 (Building)  
)

The Board of County Commissioners of Lane County ordains as follows:

For the purpose of revising procedural sections of Lane Code Chapter 11 (Building) pertaining to modifications of and variances to certain requirements established for subdivision compliance, frontage and access, interior yard setbacks, minimum lot area, and minimum average width, and appeal procedures related thereto; and for the additional purpose of deleting building permit moratorium provisions contained in Lane Code Chapter 11 relating to land being considered for zoning or rezoning, Lane Code Chapter 11 is hereby amended by removing existing pages 11.045 - 11.045 to 11.120 - 11.135 (six pages) and substituting therefor pages 11.045 - 11.045 to 11.135 - 11.135 (eleven pages), attached hereto as "Exhibit A".

An emergency is hereby declared to exist and this ordinance, being enacted by the Board in the exercise of its police power for the purpose of meeting such emergency and for the immediate preservation of the public peace, health, and safety, shall take effect immediately.

Enacted this 5th day of December, 1973.

Nancy D. Hayward  
Chairman, Lane County Board of Commissioners

Robert Paulillo  
Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM  
DATE 11-20-73  
Roy Brandy  
OFFICE OF COUNTY CLERK

Ordinance No. 15-73

11.045

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11.045 Permit Denial Standards - Frontage and Access Requirements. Permits shall be denied where the proposed site does not comply with any of the following frontage and access requirements:

(a) Such site has frontage of not less than sixty feet (60') on a public road connecting with the public road system of the County, such road having a right-of-way width from its centerline of not less than the requirements of the County Master Road Plan, as now existing in Chapter 15, and as hereafter amended, throughout the frontage of the land ownership for which a building permit is requested, provided, however:

(i) That a site on the outer radius of a curved road or facing the circular end of a cul-de-sac shall have frontage of not less than thirty-five feet (35') thereon, said frontage measured on the arc.

(ii) That where a structure is proposed to be built on a relatively small portion of a larger tract, the within right-of-way width requirements shall be applied only to the extent of the frontage of a reasonable building site, but said frontage shall not be less than two hundred feet (200'). For the purposes of this section a "larger tract" shall be considered to be limited to those tracts of land larger than five acres and a "reasonable building site" shall be considered to be one which has sufficient width and depth to include all the proposed land development taking into consideration sanitation, topographic, access and driveway requirements and conditions. The determination of a "reasonable building site" shall be the responsibility of the Planning Director and his decision shall be final subject only to appellate procedures.

(iii) That notwithstanding the provisions of this section to the contrary, no additional right-of-way width than presently existing shall be required if the land in question fronts on an existing public road and either

(a) said land is located outside the "urbanizing area" as defined by the County's Revised Subdivision Ordinance, as now existing in Chapter 13 and as hereafter amended, or

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(b) according to the County's Master Road Plan as now existing in Chapter 15 and as hereafter amended, said road will be subject to alteration or relocation within one year of the date of subject application for a building permit, or

(c) said land is the site of an existing building and the subject building permit request is for the remodeling or replacement of said existing structure and will not result in an additional living or family unit.

(iv) The provisions of the subsection shall not be construed as to alter, in any way, the requirements of the County's Revised Subdivision Ordinance as now existing in Chapter 13.

(b) Such site has direct access to a public road connecting with the public road system of the County, or access to such a public road over a private road easement approved by the Planning Commission, or over a meandered navigable lake or stream approved as access by the Planning Commission; the Planning Commission in each case to make its determination in accordance with rules, standards, and conditions for such approval adopted by the Board as being adequate, in the judgment of the Board, to meet the normal access needs of such site and to protect the health, safety and welfare of the future residents thereof and the public, and not detrimental to the development of the area.

11.050 Permit Denial Standards - Potential Flooding and Hazardous Conditions. Permits shall be denied where the proposed site is located all or partly within any area determined by the Board to necessitate special building requirements as a result of potential flooding, surface water, or other potentially hazardous conditions and is designated either "Lane County Special Permit Area" or "F-H Flood Hazard District" in any ordinance enacted by the Board. The special permit required by such ordinance shall contain all special building requirements required in any such special permit and these shall be incorporated into the permit issued to the applicant.

11.055 Permit Denial Standards - Minimum Land Area and Width Requirement. Permits shall be denied where a site proposed for residential use does not meet the following minimum land area and width requirements:

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(a) Where the site is served by both an approved community water system and a community sewerage facility:

	<u>dwelling</u>	<u>sq. ft.</u>	<u>M.A.W.</u>
(i)	single-family	6,000	60 ft.
(ii)	two-family	8,000	60 ft.
(iii)	three-family	10,000	70 ft.
(iv)	four-family	12,000	70 ft.

(b) Where the site is served by an approved community water system but not by a community sewerage facility:

	<u>dwelling</u>	<u>sq. ft.</u>	<u>M.A.W.</u>
(i)	single-family	8,000	60 ft.
(ii)	two-family	12,000	70 ft.
(iii)	three-family	16,000	80 ft.
(iv)	four-family	20,000	90 ft.

(c) Where the site is served by neither an approved community water system nor a community sewerage facility:

	<u>dwelling</u>	<u>sq. ft.</u>	<u>M.A.W.</u>
(i)	single- and two-family	one acre	150 ft.
(ii)	three- and four-family	two acres	250 ft.

(d) The site area requirements of this section shall not apply to prohibit the crection of a single-family dwelling on a lot separately owned on or before January 8, 1969, or on any numbered lot in an approved and filed major or minor subdivision plat of record on or before January 8, 1969.

(e) Modifications of the area and width requirements of this section may be granted by the Director if, from the facts presented or discovered:

(i) the modification requested is not in conflict with the general purpose and intent of this chapter nor the provisions of Chapter 10 (Zoning), and

(ii) the modification will not be detrimental to the public health, welfare, safety or convenience.

(iii) Notice of the Director's decision shall be sent by mail to the applicant within two working days of the date of action. If the decision is to deny, the same mail shall include notice of the manner in which an appeal of the decision may be made to the Board. If the decision is to approve the request, the notice of said approval and appeal procedures shall also be sent in the same manner to the owners of property abutting the exterior boundaries of the contiguous property ownership involved.

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(f) The minimum area requirements of this section shall not be construed to govern in situations where:

(i) lesser minimum requirements are incorporated within a finally approved planned unit development in accordance with Chapter 10 (Zoning);

(ii) lesser minimum requirements are incorporated within a subdivision area developed as a unit and receiving final approval in accordance with the provisions of Chapter 13 (Subdivision); or

(iii) greater minimum area requirements are imposed or required by state law, state rules and regulations, or county rules and ordinances.

11.065 Permit Denial Standards - Master Road Plan. Permits shall be denied where the planned construction conflicts with the setback provisions of the Master Road Plan as set forth in Chapter 15.

11.070 Setback Requirements. Where not otherwise provided in Chapter 10 (Zoning), the minimum building setback from a property line which does not abut a street or road shall be five feet (5'). The above requirements shall apply to all buildings, structures, improvements, and attachments, except eaves and cornices of a building may extend two feet (2') into the required setback area.

11.075 Inspections - Septic Tanks; Plumbing. Except as otherwise provided in this code, the following inspections are required:

(a) Septic tanks and sewage disposal systems must have the approval of the Director before backfilling, provided, however, in all cases inspection must be made within three judicial days after the applicant has notified the department by registered mail, return receipt requested, that construction is ready for inspection.

(b) All plumbing must be inspected and found to meet all requirements of the Department of Commerce, as established by the Director of Commerce, before being covered or used. However, in all cases inspection must be made by the department within three judicial days after the applicant has notified the department by registered mail, return receipt requested, that the plumbing is ready for inspection. No person shall occupy any new residence until facilities for sewage disposal equal to the minimum standards of the regulations of the Oregon State Division of Health have been installed and approved by the Director.

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11.080 Right of Entry. Whenever necessary to make an inspection to enforce any of the provisions of this code, or whenever the building official or his authorized representative has reasonable cause to believe that there exists in any building or upon any premises, any condition which makes such building or premises unsafe, the building official or his authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the building official by this code; provided that if such building or premises be occupied, he shall first present proper credentials and demand entry; and if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and demand entry. If such entry is refused, the building official or his authorized representative shall have recourse to every remedy provided by law to secure entry.

No owner or occupant or any other person having charge, care or control of any building or premises shall fail or neglect, after proper demand is made as herein provided, to properly permit entry therein by the building official or his authorized representative for the purpose of inspection and examination pursuant to this code.

11.085 Stop Work Order. The Director may cause a stop work order to be posted when:

(a) It is found that the installation of a septic tank or sewage disposal system does not meet minimum standards of the regulations of the State Board of Health or the requirements of the County.

(b) It is found that installation of plumbing is in violation of any provisions of State plumbing laws and administrative rule of the requirements of the County.

(c) The removal of a stop work order for any of the above reasons can only be done with the express approval of the Director.

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11.110 Building Permit and Modification Appeal Procedure.

(a) Procedure. Any person aggrieved by the denial of a permit or the issuance or denial of a modification under Section 11.055 of this chapter, may appeal any ruling of the Director to the Board:

(i) within ten (10) days after the denial of a permit or issuance or denial of a modification.

(ii) a permit may be deemed by the applicant to be denied where the application has not been finally acted upon by the Director before the fifteenth day following the date of application, and the time for appeal in such case shall commence on the fifteenth day.

(b) Manner of Taking Appeal. Appeal to the Board under Section 11.110 shall be taken by filing with the Board a written request for hearing and determination on the issuance or denial, and setting forth the number officially designated on the application denied.

(c) Time of Hearing. Within fifteen (15) days of the filing of an appeal, the Board shall hold a public hearing. Notice of the hearing shall be at least ten (10) days prior to the hearing and in the same manner as provided for notice of approvals by the Director. At the hearing the Board shall consider evidence presented by the appellant, together with any reports, comments or information with respect to the appeal from any public office or official theretofore considered by the department, and any other evidence desired for consideration by the Board.

(d) Determination of Appeal. Not later than ten (10) days after the hearing provided for in Section 11.110, the Board shall make a final determination on the issuance or denial appealed from, by order entered in the journal of administration. Such determination shall be limited to a finding as to whether or not the issuance or denial appealed from was proper.

(e) Action or Determination. If the Board determines that the issuance or denial appealed from was not proper, the department shall immediately grant the permit or modification in accordance with the determination of the Board.

(f) Fees. For the purpose of partially defraying expenses involved in processing applications to modify the provisions of 11.055 the Division of Building and Sanitation shall collect a fee in an amount established by order of the Board.

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11.115 Variances to Sections 11.035(a), 11.035(b), 11.045(a) and 11.070.

(a) Purpose. The purpose of a variance is to provide relief from the provisions of Sections 11.035(a), 11.035(b), 11.045(a), and 11.070 when a strict application of the requirements would impose unusual practical difficulties or unnecessary physical hardship on the applicant. Practical difficulties and unnecessary hardships may result from the size, shape, or dimensions of a site or the location of existing structures thereon; from geographic, topographic, or other physical conditions on the site or in the immediate vicinity or from population densities, street location, or traffic conditions in the immediate vicinity.

(b) Definitions. For the purpose of this section, the definitions provided in LC 10.020 supersede definitions otherwise provided in this code.

(c) Criteria. Variances as provided in this section to subdivision, frontage, and interior lot line setback requirements may be granted only if, on the basis of the application, investigation, and evidence submitted, the following expressly written findings are made:

(i) that a strict or literal interpretation and enforcement of the specified requirement would result in practical difficulty or unnecessary hardship and would be inconsistent with the objectives of this code; or

(ii) that there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties in the same vicinity; or

(iii) that strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges legally enjoyed by the owners of other properties in the same vicinity; and

(iv) that the granting of the variance will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the near vicinity.

Variances in accordance with this section should not ordinarily be granted if the special circumstances upon which the applicant relies are a result of the actions of the applicant or owner or previous owner.

(d) Effect on Substantially Identical Variances and Modification to Other County Regulations.

(i) A variance granted by authority of this section eliminates the necessity of obtaining approval of a substantially identical or less extensive variance or modification to Chapter 13 of the Lane Code (Subdivision), and constitutes a variance or modification of that chapter.

(ii) A variance shall not be required to the area, width, depth, frontage and access or setback requirements of this chapter for any subdivision area developed as a unit and receiving final approval in accordance with the provisions of Chapter 13 (Subdivision) when the requirements to be varied are specifically incorporated within the finally approved subdivision plat.

(e) Conditions. Reasonable conditions may be imposed in connection with a variance as deemed necessary to protect the best interest of the surrounding property or neighborhood and otherwise secure the purpose and requirements of this section. Guarantees and evidence may be required that such conditions will be and are being complied with.

(f) Application. Application for a variance shall be filed with the Planning Department on the form prescribed by the department, by any person with a legal interest in the property, and shall include the following:

- (i) name and address of applicant;
- (ii) statement of applicant's legal interest in the property (owner, contract purchaser, lessee, renter, etc.), a description of that interest, and in case the applicant is not the owner, that the owner knows of the application;
- (iii) address and legal description of property, four (4) copies of a plot plan, approximately to scale, illustrating the size and location of existing uses and structures on the property and describing the proposed variance;
- (iv) a statement explaining the intended request;
- (v) the fee required by this section to defray the cost of processing the application;
- (vi) any other materials or information as may be deemed necessary by the applicant to assist in the evaluation of the request.

(g) Investigation and Reports. The Planning Director shall make or cause to be made an investigation to provide necessary information to insure that the action on each application is consistent with the variance criteria. Any report of such investigation shall be included in the application file.

(h) Planning Director Review.

(i) The Planning Director shall review the application and investigation report.

(ii) The Planning Director shall determine whether the evidence supports a finding that the required criteria have been met, and shall approve, approve with conditions, or deny the application accordingly. His approval or denial shall be in writing and shall include express written findings on each of the applicable criteria. Variance decisions by the Planning Director shall become final after an elapsed period of ten (10) days from the date of the decision of the Planning Director unless appealed to the Board within that ten (10) day period.

(iii) The Planning Director's decision with findings shall be sent by mail to the applicant within two working days of the date of action. If the decision is to deny, the same mail shall include notice of the manner in which an appeal of the decision may be made to the Board. If the decision is to approve the request, the notice of said approval and appeal procedure shall also be sent in the same manner to the owners of property abutting the exterior boundaries of the contiguous property ownership involved.

(iv) An application for a variance which is not acted upon by the Planning Director within fifteen (15) days from the receipt of application by the Planning Department may be deemed denied and may be appealed to the Board in the manner as provided for appeals of Planning Director decisions.

(i) Appeal to the Board of Commissioners.

(1) An appeal may be made to the Board by an interested person or county official. Such appeal shall be filed in written form with the Planning Department within ten (10) days of the date of the Planning Director's action, stating how the Planning Director erred in his application of the requirements of this section.

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(ii) Within fifteen (15) days of the filing of the notice of appeal, the Board shall hold a public hearing. Notice of the hearing shall be at least ten (10) days prior to the hearing and in the same manner as provided for notice of approvals by the Planning Director. Prior to the public hearing the Planning Director shall forward to the Board a copy of the application, all pertinent data filed with it, and the Director's decision with findings if applicable.

(iii) In reversing a decision of the Planning Director, the Board shall indicate by order the basis for its decision, including any necessary findings.

(j) Compliance with Conditions of Approval.

Compliance with conditions imposed in the variance, and adherence to the submitted plans as approved is required. Any departure from these conditions of approval and approved plans constitutes a violation of this code.

(k) Revocation. Variances shall automatically be revoked if not exercised within two years of the date of approval.

(l) Limitations on Refiling of Application. Applications for which a substantially similar application has been denied within the previous year shall be heard by the Planning Director only after the Board's separate determination that for good cause the application may be refiled.

(m) Fees.

(i) For the purpose of partially defraying expenses involved in processing variance applications, the Planning Department shall require fees as established by order of the Board.

(ii) All fees are non-refundable except in cases when the processing of an application was terminated prior to the incurring of any substantial administrative expenses. Refunds shall be made at the direction of the Planning Director.

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11.135 Exemptions from Building Code.

(1) None of the provisions of this chapter shall apply to territory within the boundaries of incorporated cities in the County.

(2) Except for the setback requirements in Sections 11.065 and 11.070 of this chapter, none of the other provisions of this chapter shall apply to work done on farm buildings or structures other than those used or intended to be used as dwellings, and other than the construction, creation, enlargement or alteration of any sewage disposal system.

(3) The exemptions provided for in this section shall be matters of affirmative defense in any litigation, criminal or civil, for the enforcement of this chapter, where it may be sought to be established that any such exemption is relevant to the facts of the case.

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Exhibit A