



Josephine County, Oregon

Community Development – Planning Division

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VARIANCE APPLICATION **(General Development Standards)**

PROPERTY INFORMATION

ASSESSOR'S LEGAL DESCRIPTION:

TWN _____ RNG _____ SEC _____ QQ _____ TAX LOT _____

TWN _____ RNG _____ SEC _____ QQ _____ TAX LOT _____

PROPERTY ADDRESS: _____

EXISTING ZONING: _____ PARCEL SIZE: _____

OWNER, APPLICANT & REPRESENTATIVE INFORMATION

OWNER'S NAME: _____ TEL: _____

MAILING ADDRESS: _____

APPLICANT'S NAME: _____ TEL: _____

MAILING ADDRESS: _____

REPRESENTATIVE: _____ TEL: _____

MAILING ADDRESS: _____

EMAIL ADDRESS: _____

REQUEST

RURAL LAND DEVELOPMENT CODE SECTION: _____

GENERAL DESCRIPTION OF THE PROPOSED VARIANCE: _____

APPLICANT'S STATEMENT OF UNDERSTANDING

I _____, have filed an application for a **VARIANCE** with the Community Development – Planning Division to be reviewed and processed according to state and county requirements. My signature below affirms I have discussed my application with _____ of the planning staff, and that I acknowledge the following disclosures:

1. I understand that any representations, conclusions or opinions expressed by staff in the pre-application review of this request do not constitute final authority or approval, and that I am not entitled to rely upon any such expressions in lieu of formal approval of my request.
2. I understand I may ask questions and receive input from planning staff, but acknowledge that I am ultimately responsible for all information or documentation submitted with this application. I further understand that Planning Staff cannot legally bind the county to any fact or circumstance which conflicts with state or local laws, and in the event a conflict occurs, the statement or agreement is null and void.
3. I understand I have the burden of proving the criteria for a Comprehensive Plan and Zone Change are met for my application, and that I may not rely upon the staff report to establish my request.
4. I understand planning staff is entitled to ask for additional information or documentation any time after the submission of this application if it is determined such information is needed for review of my application.
5. I understand if my application is approved by Josephine County that approval may be reviewed by the Oregon Department of Land Conservation and Development, and this agency has the authority to appeal its approval. In the event a public hearing is required, I agree that it is my responsibility, and not the county's, to respond to the appeal and make out the case in favor of the application. While the planning office may take a position supporting the application, I realize it is not the county's function to argue my case at the hearing.
6. I understand I am entitled to have a lawyer, engineer, surveyor, land use consultant, or other help me with my application and to appear with me (or for me) at any appointment, conference or hearing relating to it.
7. I understand the processing of my application may require a site visit, which may include officials from other agencies, and photographs are commonly taken. Advance notice of the visit will be provided when the site is also a personal residence.

DATE: _____, 20____.

OWNER/APPLICANT *

OWNER/APPLICANT *

** If the applicant is someone other than the owner, a power of attorney must be on file from the owners authorizing the application*

VARIANCE TO GENERAL DEVELOPMENT STANDARDS

A variance is an allowed departure from a property development standard. The procedure is intended to provide a cautious amount of flexibility in the administration of land use regulations in specific situations. As a general rule it is difficult to obtain a variance, and the application must be supported by convincing circumstances.

What Types Of Variances Are Permitted? A variance may be granted from a property development standard, but cannot be used to allow a use not listed in the governing zone. A "standard" is a requirement for developing the lot and/or parcel, like structure setback distances from property lines or streams, lot size or design requirements, building height limitations, and so on. The development standards set out in Articles 71, 72, 73, 74, 81 and 85 of the *Rural Land Development Code* (RLDC) are the standards that may be modified when the criteria for a variance are met.

A variance, however, cannot be used to allow a new use in a zone where it is not listed. This type of change can only occur as a "similar use" (Section 60.060, RLDC), or as an amendment of the Code (Article 48/49, RLDC). A variance also cannot be used to change requirements contained in a Code definition. This type of change also requires an amendment to the Code.

What Circumstances Justify A Variance? The Rural Land Development Code says a variance may be granted only when there are special or unusual circumstances related to the property which show why the departure is necessary. The courts have said many times the reason for the variance must come from a condition in the land itself, and not from the owner's personal circumstances.

Some examples of reasons which come from the land are steep slopes, flooding, rocky soil, the location of trees, ponds or special vegetation, and other similar conditions. Some common examples of reasons which do not come from the land are loss of monetary or aesthetic value, oversized structures and personal preferences.

What Are The Procedures For Making A Variance Application? The variance application may be filed alone or in conjunction with another application for a land use or a land division. If the application is filed in conjunction with another application, all of the applications will be reviewed by the Planning Director (or a staff person designated by the Director) as a package using the highest level of review procedure required. A public hearing will not be required unless the Director decides a hearing is necessary because important issues have been raised by neighborhood or agency comments, or the Director in his own evaluation believes the application will significantly impact the neighborhood. The pre-application planner will inform you of any additional requirements or criteria.

APPLICATION PROCEDURES

- Complete the application cover page.
- Attach a detailed written description of the proposed requested use, together with a plot plan showing the circumstances of the variance (plot plan requirements are set out below).
- Attach a written statement fully and completely addressing the applicable standards and criteria contained in §44.030 of the RLDC (development standards) and §81.020 of the RLDC (access standards). The criteria are set out and explained below.
- Complete the application and plot plan and submit them with the filing fee.

- Notice will then be given to the neighborhood and affected agencies and organizations. The Code provides for a 15 day comment period.
- Once the comment period closes, staff will prepare a written decision either approving or denying the request. Notice of this decision will be given to those who participated in the application review. There is a 12 day appeal period. A development permit cannot be issued until the appeal period expires without an appeal.
- If your request is referred to a public hearing, or an appeal is filed, then you will need to schedule an appointment with a planner to discuss hearing procedures and responsibilities.

CRITERIA FOR DEVELOPMENT VARIANCE

SECTION 44.030 - Applications for variances shall comply with the following criteria:

- A. The reason for the variance arises from one or more special conditions or circumstances related to the property to be developed, such as lot size or shape, topography, the location of existing structures or facilities, vegetation, the presence of development restrictions (wildlife habitat, wetlands, special setbacks, etc.) or hazardous conditions (erosion, fire, flooding, etc.), or some other similar condition or circumstance.

Explanation: *The reason for the variance must come from some unusual feature in the existing geography or development of the land. The list of examples listed here should give you a good idea of what is needed, but other similar features can be used as long as the effect is the same. This is criterion is essential for a variance and must be addressed carefully.*

- B. Strict adherence to the development standard(s) will result in a hardship to the property owner by substantially preventing or denying a development option contemplated by the applicable zoning district. The hardship shall not be self-imposed, but adverse economic or financial consequences may be used to support the hardship as long as the consequences result from a condition in the land, as described in criterion A above.

Explanation: *The key concern with this criterion is to make sure a reasonable and expected development option will be lost without the variance. This loss cannot be caused by the property owner's actions, but expenses resulting without the variance can be used to support the request.*

- C. The approved variance will result in the minimum departure from the development standard(s) needed to alleviate the hardship.

Explanation: *This criterion explains itself.*

- D. The location, size, design and use of the proposed structure or facility will not result in a significant impact(s) on the neighborhood that cannot be reasonably mitigated through the imposition of special conditions of approval by the Review Body.

Explanation: *The impacts most often involved in variances are sight, sound and traffic. But other impacts, such as pollution, drainage and odor, can also come into play. The RLDC says impacts are significant when they cause serious adverse effects to, or conflict with, other*

properties, which cannot be mitigated. Your application should carefully explain how the use will be conducted, and how the impacts will be minimized. This is usually the part of the application that most concerns neighbors and your response on this point needs to be especially thorough.

REQUIREMENTS FOR SITE MAP

A site map showing the proposed development must be drawn to scale and must show the following items. The site map is necessary for all development standard variances. It is not needed for access standard variances when submitted with a partition request, since the partition will call for a tentative plan map. If you are unsure about the applicability of any item, or if you have questions about what is required, you can cover these issues in the pre-application conference.

1. Location of the parcel by address and Assessor's legal description.
2. The length of lot lines in feet and parcel size(s) in acres (to 10ths).
3. The scale used to draw the map, a north arrow and the date of preparation.
4. The location, size, height and dimensions of existing and proposed buildings and structures, including the distances between the buildings and the nearest property line.
5. A notation describing the existing and proposed uses for the structures shown on the site.
6. The slopes on the property (by % of grade), the nature and area of any proposed grading or earth movement, and the features of the proposed erosion control plan, if one is required (see Article 83).
7. The location, dimensions and uses for all existing and proposed easements serving or burdening the parcel.
8. The location and layout of existing and proposed off-street parking, including the number and dimensions of spaces, the surface material, the internal circulation pattern and loading facilities.
9. The location, height and construction materials of walls and fences.
10. The location and nature of exterior lighting fixtures, including a depiction or description of the area to be illuminated.
11. The location and description of receptacles or areas for trash and garbage collection and/or disposal.
12. The location of natural or man-made water features, such as, springs, rivers, creeks, ponds, lakes, drainage ways, irrigation ditches and other similar features.
13. A depiction or description of adjoining structures and land uses, together with the approximate distances between the subject parcel lines and the adjacent structures or uses.