

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 993

Amending MCC Chapter 37, Land Use Code Administration and Procedures, to Make Technical Corrections and Replace Language Inadvertently Deleted During the Zoning Code Reorganization
Enacted by Ordinance No. 953

(Language ~~stricken~~ is deleted; double- underlined language is new.)

Multnomah County Ordains as follows:

Section 1. § 37.0530 is amended to read as follows

37.0530 Summary Of Decision Making Processes.

The following decision making processes chart shall control the County's review of the indicated permits:

APPROVAL PROCESS					
Permit Type	I	II	III	IV	PC
Initial Approval Body	(Not a "land use decision")	(Planning Director)	(Hearings Officer)	(Planning Commission)	(Legislative)
Allowed Uses	X				
Review Uses		X			
Conditional Uses			X		
Community Service			X		
Design Review		X			
Plan/Zone Change (single tract) quasi-judicial				X	
Plan/Zone Changes-legislative					X
Zone Code Text Changes (Initiated by County only)					X
Variance		X			
Non-conforming Uses/Determination of Non- conforming Use		X			
Extension of Decision		X			
Revocation of Decision		X			
Property Line Adjustments		X			
Planned Unit Developments			X		
Land Divisions					
• Subdivision			X		
• Major Partition		X			
• Minor Partition		X			

Significant Environmental Concern		X			
Hillside Development Permit		X			
Willamette River Greenway		X			
Zoning Code Interpretations		X			
Grading and Erosion Control	X				
Floodplain Development	X				
Street & Property Addressing	X				

Permit Types

(B) Type II decisions involve the exercise of some interpretation and discretion in evaluating approval criteria. Applications evaluated through this process are assumed to be allowable in the underlying zone. County Review typically focuses on what form the use will take, where it will be located in relation to other uses and natural features and resources, and how it will look. However, an application shall not be approved unless it is consistent with the applicable siting standards and in compliance with approval requirements. Upon receipt of a complete application, notice of application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject tract. The Planning Director accepts comments for 14 days after the notice of application is mailed and renders a decision. The Planning Director's decision is appealable to the Hearings Officer. If no appeal is filed the Planning Director's decision shall become final at the close of business on the 14th day after the date on the decision. If an appeal is received, the Hearings Officer decision is the County's final decision and is appealable to ~~LUBA~~ the Land Use Board of Appeals (LUBA) within 21 days of when the signed Hearings Officer decision is signed. ~~mailed pursuant to 37.0660(D).~~

(C) Type III decisions involve the greatest amount of discretion and evaluation of subjective approval criteria, yet are not required to be heard by the Board. Applications evaluated through this process primarily involve conditional uses and some land divisions applications. The process for these decisions is controlled by ORS 197.763. Notice of the application and Hearings Officer hearing is published and mailed to the applicant, recognized neighborhood association and property owners 750 feet of the subject tract. Notice must be issued at least 20 days pre-hearing, and the staff report must be available at least 7 days pre-hearing. The Hearings Officer shall accept into the record all testimony and evidence relevant to the matter, prior to the close of the hearing. The Hearings Officer decision is the County's final decision and is appealable to LUBA within 21 days of when the decision is ~~signed~~. final. The decision is final the day the signed Hearings Officer decision is mailed pursuant to 37.0660(D).

(D) Type IV decisions include plan amendment and/or zone change applications of an individual parcel or tract. These applications involve substantial discretion and evaluation of subjective approval criteria. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and Planning Commission hearing is published and mailed to the applicant, recognized neighborhood association and property owners within 750 feet. Notice must be issued at least 20 days pre-hearing, and the staff report must be available at least 7 days prehearing. At the evidentiary hearing held before Planning Commission all testimony and evidence relevant to the matter shall be accepted prior to the close of the hearing. If the Planning Commission denies the application, any party who appeared before the Planning Commission either in person or in writing, may appeal the Planning Commission's denial to Board of Commissioners within 14 days after the decision is signed.

If no appeal is filed, the Planning Commissions denial shall become final upon the close of business on the last day of the appeal period. If the Planning Commission votes to approve the application, that decision is forwarded as a recommendation to the Board of Commissioners for final consideration. In either case, any review by the Board of Commissioners is ~~on the record, and only issues raised before the Planning~~ recorded novo, as if new, and all issues relevant to the applicable Commission may be raised before the Board of Commissioners. approval criteria may be considered. The Board of Commissioners decision is the County's final decision and is appealable to LUBA within 21 days of when the signed Board order is mailed.

(E) PC review's are legislative actions which involve the adoption or amendment of the County's land use regulations, comprehensive plan, map inventories and other policy documents that affect the entire County, large areas, or multiple properties. These applications involve the greatest amount of discretion and evaluation of subjective approval criteria, and must be referred by majority vote of the entire Planning Commission onto the Board for final action prior to adoption by the County. The Board of Commissioner's decision is the County's final decision and is appealable to LUBA within 21 days of the signed Board order or ordinance ~~as applicable is mailed.~~

Section 2. § 37.0540 is amended to read as follows

37.0540 Assignment Of Decision Makers.

The following County entity or official shall decide the following types of applications:

(A) Type I Decisions. The Planning Director shall render all Type I decisions. The Planning Director's decision is the County's final decision on a Type I application.

(B) Type II Decisions. The Planning Director shall render the initial decision on all Type II permit applications. The Planning Director's decision is the County's final decision unless appealed to the Hearings Officer. The Hearing Officer decision on such an appeal is the County's final decision on a Type II application and is appealable to ~~the Land Use~~ LUBA.
~~Board of Appeals.~~

(C) Type III Decisions. The Hearings Officer shall render all Type III decisions. The Hearings Officer decision is the County's final decision on a Type III application and is appealable to ~~the Land Use~~ Board of Appeals.LUBA.

(D) Type IV Decisions. The Planning Commission shall render the initial decision on all Type IV permit applications. If the Planning Commission denies the Type IV application, that decision is final unless appealed to the Board of Commissioners in accordance with MCC 37.0640. If the Planning Commission recommends approval of the application, that recommendation is forwarded to the Board of Commissioners. The Board's decision is the County's final decision on a Type IV application and is appealable to ~~the Land Use Board of Appeals.LUBA.~~

(E) PC Actions. The Planning Commission shall review all PC actions. If the Planning Commission adopts by majority vote of the entire Planning Commission a resolution to recommend an action, the Planning Commission refers the resolution to the Board for final action. The Board's decision is the County's final decision on a PC application and is appealable to ~~the Land Use Board of Appeals.LUBA.~~

Section 3. § 37.0600 is amended to read as follows

37.0600 Completeness Review And 150-Day Rule.

(C) An applicant shall file within 30 days of the mailing of the initial completeness letter, a statement accepting the 180 day time period to complete the application. Failure of an applicant to accept the time to complete the application within 30 days of the mailing of the completeness letter will constitute a refusal to complete the application.

Section 4. § 37.0620 is amended to read as follows

37.0620 Hearings Notice - Type II Appeals, Type III Or Type IV Applications.

Notice for all public hearings for Type III, IV or an appeal of a Type II application shall conform to the requirements of this section. At least 20 days prior to the hearing, the County shall prepare and send, by first class mail, notice of the hearing to all owners of record, based upon the most recent Multnomah County records, of property within 750 feet of the subject tract and to any County-recognized neighborhood association or identified agency whose territory includes the subject property. The County shall further provide notice at least 20 days prior to a hearing to those persons who have identified themselves in writing as aggrieved or potentially aggrieved or impacted by the decision prior to the required mailing of such notice. The County shall also publish the notice in a newspaper of general circulation within the County at least 20 days prior to the hearing. Notice of the hearing shall include the following information:

Section 5. § 37.0640 is amended to read as follows

37.0640 Appeals.

(E) The Land Use Planning Division shall issue notice of the appeal hearing to all parties entitled to notice had the initial decision been subject to a hearing under MCC ~~37.0710~~ 37.0620. Notice of the appeal hearing shall contain the following information:

Section 6. § 37.0650 is amended to read as follows

37.0650 Reapplication Limited.

If an application is denied or withdrawn following the close of the public hearing or the end of the appeal period, no reapplication for the same or substantially similar proposal may be made for one year following the date of final decision denying the permit or the date of withdrawal.

Section 7. § 37.0660 is amended to read as follows

37.0660 Conditions Of Approval And Notice Of Decision.

(D) Notice of decision. The County shall send, by first class mail, a notice of all decisions rendered under a Type II, Type III, or Type IV process. For Type II, decisions, notice shall be mailed to all property owners within 750 feet of the subject tract, to those persons who have identified themselves in writing and to any County-recognized neighborhood association or identified agency whose territory includes the subject property. For Type III and Type IV decisions, notice shall be mailed to all parties within 750 feet of the subject tract, to those who submitted written comment, requested the decision in writing or provided oral testimony at a hearing on the matter, and DLCD at the discretion of the applicant. The notice of decision shall include the following information:

Section 8. § 37.0690 is amended to read as follows

37.0690 Expiration And Extension Of A Type II Or Type III Decision in EFU and CFU Zones.

~~(B) Except as provided in (A), all Type II and Type III approvals automatically become void if any of the following events occur:~~

~~(1) If, within two years of the date of the final decision, all necessary building permit(s) have not been issued, if required; or~~

~~(2) If, within two years of the date of the final decision, the development action or activity approved in the decision is not initiated or, in situations involving only the creation of lots or property line adjustments, the final survey or plat has not been approved by the Planning Director and recorded.~~

~~(C) Notwithstanding Subsection (B) of this section, on exception lands the decision maker may set forth in the written decision, specific instances or time periods when a permit expires.~~

~~(D)~~(B) New application required. Expiration of an approval shall require a new application for any use on the subject property that is not otherwise allowed outright.

~~(E)~~(C) Deferral of the expiration period due to appeals. If a permit decision is appealed beyond the jurisdiction of the County, the expiration period shall not begin until review before the Land Use Board of Appeals and the appellate courts has been completed, including any remand proceedings before the County. The expiration period provided for in this section will begin to run on the date of final disposition of the case (the date when an appeal may no longer be filed).

Section 9. § 37.0700 is amended to read as follows

37.0700 Expiration and Extension Of Type II Or Type III Decisions In Exception Areas and Lands Within the UGB.

(A) All Type II and Type III approvals automatically become void if any of the following events occur:

(1) If, within two years of the date of the final decision, all necessary building permit(s) have not been issued, if required; or

(2) If, within two years of the date of the final decision, the development action or activity approved in the decision is not initiated or, in situations involving only the creation of lots or property line adjustments, the final survey or plat has not been approved by the Planning Director and recorded.

(B) Notwithstanding Subsection (A) of this section, on exception lands the decision maker may set forth in the written decision, specific instances or time periods when a permit expires.

(A)(C) The Planning Director may extend, prior to its expiration, any approved decision outside of an Exclusive Farm Use or Commercial Forest Use zone for a period of six months up to an aggregate period of one year; provided, however, that there has been substantial implementation of the permit. Any request for an extension shall be reviewed and decided upon by the Planning Director as a Type II decision.

(B)(D) Substantial implementation of a permit shall require at a minimum, for each six month extension, demonstrable evidence in a written application showing:

(1) The permit holder has applied for all necessary additional approvals or permits required as a condition of the land use or limited land use permit;

(2) Further commencement of the development authorized by the permit could not practicably have occurred for reasons beyond the reasonable control of the permit holder;

(3) The request for an extension is not sought for purposes of avoiding any responsibility imposed by this code or the permit or any condition thereunder; and

(4) There have been no changes in circumstances or the law likely to necessitate significant modifications to the approval.

(E) New application required. Expiration of an approval shall require a new application for any use on the subject property that is not otherwise allowed outright.

(F) Deferral of the expiration period due to appeals. If a permit decision is appealed beyond the jurisdiction of the County, the expiration period shall not begin until review before the Land Use Board of Appeals and the appellate courts has been completed, including any remand proceedings before the County. The expiration period provided for in this section will begin to run on the date of final disposition of the case (the date when an appeal may no longer be filed).

Section 10. A new § 37.0705 is added to read as follows

37.0705 Type IV Quasi-Judicial Plan and Zone Change Approval Criteria.

(A) Quasi-judicial Plan Revision. The burden of proof is upon the person initiating a quasi-judicial plan revision. That burden shall be to persuade that the following standards are met:

(1) The plan revision is consistent with the standards of ORS 197.732 if a goal exception is required, including any OAR's adopted pursuant to these statutes;

(2) The proposal conforms to the intent of relevant policies in the comprehensive plan or that the plan policies do not apply. In the case of a land use plan map amendment for a commercial, industrial, or public designation, evidence must also be presented that the plan does not provide adequate areas in appropriate locations for the proposed use; and

(3) The uses allowed by the proposed changes will:

(a) Not destabilize the land use pattern in the vicinity;

(b) Not conflict with existing or planned uses on adjacent lands; and

(c) That necessary public services are or will be available to serve allowed uses.

(4) Proof that circumstances in the area affected by the proposed revision have changed since adoption of the plan, or that there was a mistake in the plan, are additional relevant factors which may be considered under this subsection.

(B) Quasi-Judicial Zone Change. The burden of proof is upon the person initiating a zone change request. That burden shall be to persuade that:

(1) Granting the request is in the public interest;

(2) There is a public need for the requested change and that need will be best served by changing the classification of the property in question as compared with other available property;

(3) The proposed action fully accords with the applicable elements of the Comprehensive Plan; and

(4) Proof of change in a neighborhood or community or mistake in the planning or zoning for the property under consideration are additional relevant factors to be considered under this subsection.

Section 11. § 37.0710 is amended to read as follows

37.0710 (PC) Legislative Hearing Process.

(B) Planning Commission Review:

(4) Planning Commission recommendation. At the conclusion of the initial hearing or a continued hearing under MCC 37.0710, ~~37.0730~~, the Planning Commission shall adopt a recommendation on the proposal to the Board of Commissioners. If the Planning Commission decides that no action is appropriate, the matter is terminated and may not be appealed unless otherwise provided by law. If the Board of Commissioners has initiated the legislative proposal, the Planning Commission shall submit to the Board of Commissioners a report and recommendation not to act. If the Planning Commission recommends adoption of some form of the proposal, the Planning

Commission shall prepare and forward to the Board of Commissioner' s a report and recommendation to that effect.

(C) Board of Commissioners review:

(1) Board of Commissioners action. Upon a recommendation from the Planning Commission on a legislative action, the Board of Commissioners shall hold at least one public hearing on the proposal. Any interested person may provide written or oral testimony on the proposal at or prior to the hearing. At the conclusion of the hearing, the Board of Commissioners may adopt, modify or reject the legislative proposal, or it may remand the matter to the Planning Commission for further consideration. If the decision is to adopt at least some form of the proposal, and thereby amend the County's land use regulations, comprehensive plan, official zoning maps or some component of any of these documents, the Board of Commissioners decision shall be enacted as an ordinance and final upon signing. The Board of Commissioner'-s decision is appealable to LUBA in accordance with OAR Chapter 661, Division 10 and ORS 197.830 or current applicable state statutes.

(2) Notice of final decision. Not later than 5 days following the Board of Commissioner'-s final decision, the Planning Director shall mail notice of the decision to DLCD in accordance with ORS 197.615 (2) or law, or current applicable state statutes.

Section 12. § 37.0750 is amended to read as follows

37.0750 Expiration Of Prior Land Use Decisions.

All land use decisions authorized prior to ~~(enactment date of this Ordinance)~~ January 1, 2001 (Ordinance No. 953) shall expire on ~~(two years from the date of enactment of this ordinance)~~ January 1, 2003, unless a different timeframe was specifically included in the decision.

FIRST READING:

September 19, 2002

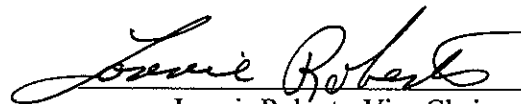
SECOND READING AND ADOPTION:

September 26, 2002



REVIEWED:

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Lonnie Roberts, Vice-Chair

THOMAS SPONSLER, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Sandra N. Duffy, Assistant County Attorney