

SECTION 1400 – ADMINISTRATIVE PROVISIONS

1401. ADMINISTRATION.

[Amended 5/24/12; Ord. 872]

1401.01 Interpretation and Enforcement.

The Board shall have the authority and duty to interpret and enforce the provisions of this ordinance.

1401.02 Conformance to Ordinance Requirements.

All State, County and local officials, departments and employees vested with authority to issue permits, certificates or licenses shall adhere to and require conformance with the provisions of this ordinance.

1402. PUBLIC HEARINGS

1402.01 Notice of Quasi-Judicial Public Hearing.

Notice of any quasi-judicial public hearing authorized or required by this ordinance shall be published in a newspaper of general circulation in the county at least ten (10) days prior to the hearing date, and shall be sent to affected property owners within the following distance of the boundaries of the parcel which is the subject of the application or that larger distance determined appropriate by the Director:

1. Within 750 feet when the subject parcel is within a farm or forest district;
[Amended 12/05/02; Ord. 720]
2. Within 250 feet when the subject parcel is not within an urban growth boundary or a farm or forest district, or is partially within an urban growth boundary;
3. Within 100 feet when the subject parcel is entirely within an urban growth boundary.

The notice shall be sent by mail at least twenty (20) days prior to the hearing, or ten (10) days prior to the hearing date when two hearings are required. The address used by the Director in providing notice by mail shall be the address then existing in the tax records of Yamhill County.

[Amended 3/19/98, Ord. 643]

1402.02 Notice of Legislative Public Hearing.

Notice of any legislative public hearing authorized or required by this ordinance shall be published in a newspaper of general circulation in the county at least ten (10) days prior to the hearing date.

1402.03 Continuance of Hearing.

A public hearing may be continued as is necessary to gather additional information on the application or for other good reason and no additional notice need be given if the hearing is adjourned to a time and a date certain, unless otherwise ordered by the hearings body.

1402.04 Rules Governing Public Hearing.

The initial quasi-judicial evidentiary hearing shall be a de novo hearing and shall be conducted in accordance with the requirements of ORS 197.763.

[Amended 5/24/12; Ord. 872]

1402.05 Appointment of Hearings Officer.

The Board may appoint or designate one (1) or more qualified persons as Hearings Officers, who shall have the authority to conduct any public hearing authorized or required by this ordinance.

1402.06 Ex Parte Contact.

In any land use application subject to a quasi-judicial hearing process, the Board, Commission, or Hearings Officer shall not:

- A. Communicate, directly or indirectly, with any party or his representative in connection with any issue involved except upon notice and with opportunity for all parties to participate;
- B. Take notice of any communication, reports, staff memoranda, or other materials prepared in connection with the particular case unless all parties are afforded an opportunity to contest the materials so noticed; or
- C. Inspect the property with any party or his representative unless all parties are given such notice as the Board determines to be fair and just.

1402.07 Testimony.

- A. Testimony presented at hearings shall be pertinent and based upon sound reasoning, and shall be incorporated into the record unless the Chair rules such information to be excluded from the record as immaterial, or of questionable fact, intent or merit, based upon objection raised by Commission or Board members or other parties having standing in the hearing.
- B. All testimony not excluded shall become a part of the hearing record, and in addition to verbal testimony, may be presented in written form or incorporated by reference.
- C. In ascertaining whether or not the party providing testimony has standing, the chair may ask that such party identify and/or document the basis of standing, or may question the source of the information, or the interest or qualifications of the party submitting testimony, or question how the party giving testimony might be beneficially or adversely affected by the action under consideration.
- D. In the event that it is determined that a party does not have standing because the party will not be beneficially or adversely affected by the action under consideration, the Chair may direct that any prior testimony by that party be stricken from the record, and that further testimony from the party be prohibited.
- E. The Chair may set reasonable and fair time limits for oral presentation of testimony.

- F. Minutes of the meeting shall be accepted as the official hearing record. A verbatim transcript is not required.

1403. REVIEW BY THE BOARD.

1403.01 Review by the Board.

Review by the Board at a public hearing shall be accomplished in accordance with its own adopted Rules of Procedure and the requirements of this ordinance. The Board may continue its hearing to gather additional evidence or to consider the application more completely. Unless otherwise provided by the Board, no additional notice need be given of continued hearings if the matter is continued to a time certain.

1403.02 Notice Requirements.

Notice of hearing and a record of the proceeding shall be the same as required for initial hearings on proposed actions as provided in Section 1402.

1403.03 Review on Record.

Unless otherwise provided in subsection 1402.04 or by the Board under subsection 1403.04, the review of the decision of the Commission or Hearings Officer by the Board shall be confined to the record of the proceeding, which shall include: [Amended 12/05/02; Ord. 720]

- A. All materials, pleading, memoranda, stipulations and motions submitted by any party to the proceeding and received or considered by the Director, Commission or Hearings Officer as evidence;
- B. All materials submitted by the Director with respect to the application;
- C. The transcript or tape of the public hearing of the Commission or Hearings Officer;
- D. The findings and action of the Director, Commission or Hearings Officer and the notice of review; and
- E. Argument confined to the record by the parties or their legal representatives at the time of review before the Board.

1403.04 De Novo Hearing.

The Board may, at its option, whether or not upon a motion of a party, hold a de novo hearing or admit additional testimony and other evidence with or without holding a de novo hearing, if it is satisfied that the testimony or other evidence could not have been presented upon initial hearing and action. In deciding such admission, the Board shall consider:

- A. Prejudice to parties;
- B. Convenience of locating the evidence at the time of initial hearing;
- C. Surprise to opposing parties;

- D. When notice was given to other parties as to the attempt to admit; and
- E. The competency, relevancy and materiality of the proposed testimony and other evidence.

Upon a decision to admit additional testimony or evidence or to hear the entire matter de novo, the presentation of such testimony and evidence shall be governed by the procedures applicable to the presentation of such matters at the initial hearing.

1403.05 Board Action.

The Board may affirm, modify or reverse all or part of the action of the Director, Commission, or Hearings Officer, or may remand the matter to the decision-making body for additional review or information. In all cases the Board shall make findings to justify its action which are based upon the record before it and any additional testimony or other evidence it receives.

1404. APPEALS.

1404.01 Appeals From Decisions of the Planning Director.

Where it is alleged that there is error in any land use decision made by the Director in the interpretation of this ordinance, an appeal therefrom may be made by an affected party only to the Board on a form prescribed by the Director. Such written appeal shall be filed with the Director within fifteen (15) days of the decision on a proposed action and shall be accompanied by the appropriate filing fee. Upon determination that the appeal request is complete and in order, a public hearing before the Board shall be scheduled and public notice mail and published according to the public notice requirements contained in Section 1402.

[Amended 5/24/12; Ord. 872]

A. Board Action.

In hearing and deciding such an appeal:

1. The Board may affirm, modify or reverse all or part of the action of the Director so long as such action is in conformity with the ordinance;
2. The Board shall make findings based on the testimony or other evidence received by it as justification for its action; and
3. The Board, on its own motion, may order review of any decision of the Director within fifteen (15) days of the decision, pursuant to Section 1403 for Board review.

B. Commission Action.

The Commission, on its own motion, may order review of any decision of the Director within fifteen (15) days of the decision, pursuant to subsection 1301.04. The decision of the Commission shall be final unless appealed to the Board.

1404.02 Appeals From Decisions of the Commission or Hearings Officer.

Where it is alleged that there is error in any land use decision made by the Commission or Hearings Officer, an appeal therefrom shall be made by an affected party only to the Board on a form

prescribed by the Director. Such written appeal shall be filed with the Director within fifteen (15) days of the decision on a proposed action and shall be accompanied by the appropriate filing fee. The Board, on its own motion, may order review of any decision of the Commission or Hearings Officer within fifteen (15) days of the decision, pursuant to Section 1403 for Board review.

1404.03 Standing to Appeal.

- A. A decision by the Director, Planning Commission or Board of Commissioners to approve or deny an application or docket item request may be appealed provided the appellant has satisfied Subsections 1, 2, and 3:
1. Filed a written appeal, accompanied by the appropriate filing fee, with the Director within the time required by this ordinance submitted in accordance with Subsection B of this section;
 2. Appeared before the Commission, hearings officer or Board orally or in writing; and
 3. Meets one of the following criteria:
 - (a) Was entitled by this ordinance to notice and hearing prior to decision appealed; or
 - (b) Is aggrieved or has interests adversely affected by the decision.
- B. Any appeal filed shall be in writing, shall explain the basis of the appeal and shall include one or more of the following:
1. A reference to the ordinance provisions or plan policies providing the basis of the appeal.
 2. Reasons why the decision is factually or legally incorrect.
 3. A description of new information or additional facts which should have been considered in the decision.
 4. A description of any mitigating factors which might be taken to make the decision acceptable.

1405. FORMS AND FEES.

1405.01 Forms.

Petitions, applications and appeals provided for in this ordinance shall be made on forms prescribed by the Director. Applications shall be accompanied by plans and specifications, drawn to scale, showing the area and dimensions of the parcel to be used or developed; the sizes and locations on the parcel of existing and proposed structures; the intended use of each structure; the number of dwelling units, if any, to be accommodated thereon; the relationship of the lot or site to adjacent and surrounding lands; and such other information as is needed to determine compliance with this ordinance.

1405.02 Filing Fees.

For the purpose of defraying expenses involved in processing applications, fees shall be paid to the Director in favor of Yamhill County upon the filing of an application. Said fees and the amounts thereof shall be established by order of the Board. All fees shall be nonrefundable except when an application is withdrawn or deferred prior to the preparation, publication and issuance of any public hearing notice. Refunds shall be made at the authorization of the Board. Upon recommendation from the Director or the hearings body or upon its own motion, the Board may waive, for just cause, any filing fee established by this Section.

1406. REMEDIES FOR UNLAWFUL STRUCTURES OR LAND USE.

1406.01 In the event a building or other structure is, or is proposed to be, located, constructed, maintained, repaired, altered, or used, or any land is, or is proposed to be, used, in violation of an ordinance or regulation designed to implement the Yamhill County Comprehensive Plan, the governing body of the county or a person whose interest in real property in the county is or may be affected by the violation, may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, or remove the unlawful location, construction, maintenance, repair, alteration or use.

1406.02 No person shall locate, construct, maintain, repair, alter, or use a building or other structure or use or transfer land in violation of this ordinance or any ordinance lawfully adopted by Yamhill County.