

Chapter 94

Property Line Adjustments

94.005 Purpose. The purpose of the property line adjustment chapter is to allow the adjustment of property lines under certain conditions. The provisions of this chapter are intended to ensure that proposed adjustments to property lines are reviewed in a consistent, efficient and transparent manner. Further, the adjustments must be in compliance with state statutes, state provisions protecting resource lands, and County zoning. Additionally, due to the changing nature of state law and zoning regulations, this chapter may enable modification or correction of properties created under the current and historic zoning regulations. [Ord 2018-0289]

94.010 General.

- (1) No person shall relocate a property line in unincorporated Benton County without approval of a property line adjustment pursuant to this chapter. [Ord 7, Ord 90-0069, Ord 96-0118]
- (2) Tax lot boundaries do not necessarily represent property boundaries. Tax lot boundaries are established by the Benton County Assessment Department for purposes of assessment and taxation and may or may not coincide with legal property boundaries. The boundaries of a legally created property are determined by the Planning Official using the definitions of “lot” and “parcel” in BCC 51.020, past land use approvals, and other applicable law.
- (3) A property line adjustment application consists of a “property line adjustment” as that term is defined by BCC 51.020 between two legally created properties, except in the case of correcting the illegal creation of a property. A property line adjustment between more than two legally created properties may be authorized as provided by 94.150. [Ord. 2018-0289]

94.050 Platted Parcels and Lots.

- (1) Adjustment of all or a portion of the common property line between abutting properties, one or both of which is a parcel or lot in a recorded partition or subdivision plat, shall:
 - (a) Not be subject to the provisions of Chapter 95 or 97, provided the adjustment complies with the provisions of Chapter 94;
 - (b) Comply with BCC 94.550(1) by means of a partition or subdivision plat prepared in accordance with the standards of the Benton County Surveyor, but shall not require review pursuant to the provisions of Chapter 95 or Chapter 97; and,
 - (c) If the properties are under separate ownership, include a transfer deed meeting the standards of 94.550(1)(d) for the adjusted area(s).
- (2) In the event that either the proposed adjustment of a property line pursuant to subsection (1) of this section cannot meet the applicable provisions of Chapter 94, or the number of parcels or lots is increased, a new request for either a partition subject to all provisions of Chapter 95 or a subdivision subject to all provisions of Chapter 97 shall be required.

[Ord. 2018-0289]

94.100 Consolidation of Properties.

- (1) Consolidation of properties, meaning reducing the number of properties through elimination of one or more property lines, shall conform to the following procedure:

- (a) The property owner shall provide documentation to the Planning Official as necessary to demonstrate that:
 - (A) The parcels or lots were legally established and
 - (B) For any of the parcels or lots that were not legally established, the proposed consolidation will correct that illegal establishment;
- (b) If the Planning Official's determination in subsections (a)(A) or (B) above requires the exercise of discretion, the determination shall be applied for and processed as an administrative review pursuant to BCC 53.160.
- (c) Once the Planning Official has determined that the proposed consolidation complies with subsections (a)(A) and (B), then:
 - (A) If any of the properties proposed to be consolidated was created by subdivision or partition plat, legal consolidation requires a new subdivision or partition plat in accordance with the standards of the Benton County Surveyor. A new subdivision or partition plat consolidating parcels or lots and creating no additional parcels or lots shall not be reviewed as a property line adjustment pursuant to this chapter and shall not require review pursuant to Chapter 95 or 97, notwithstanding BCC 95.050 and BCC 97.050. Signature of the Planning Official on the plat shall indicate compliance with subsection (a) of this section.
 - (B) To consolidate properties that were not created by subdivision or partition plat, the property owner shall have a property description prepared, to the standards of the County Surveyor, describing the properties to be consolidated as a single unit of land, and attach the description to a property deed that includes a statement that the property owner is intentionally consolidating the land into a single unit. The property owner shall also comply with any other requirements of the Benton County Surveyor.

[Ord. 2018-0289]

94.150 Concurrent Property Line Adjustments.

- (1) Two or more property line adjustments may be reviewed simultaneously, if the following requirements are met:
 - (a) The applicant submits the information required in Section 94.200 for each application and all applications are received on the same date;
 - (b) Each application includes at least one property that is also included in one or more of the other applications being reviewed, such that all together the properties being reviewed are contiguous; and
 - (c) The documents required by 94.550(1) are recorded in the order identified in the decision.
- (2) Concurrent property line adjustments will be reviewed together and will receive one decision. Each property line adjustment application shall comply with the applicable review standards and criteria or the concurrent property line adjustments as a group shall be denied.
- (3) Concurrent property line adjustments shall not cause a property located entirely in one zoning designation to be moved such that it is located entirely within a different zoning designation, unless the resulting property meets the minimum parcel or lot size of the receiving zone.

[Ord. 2018-0289]

94.160 Validation of a Unit of Land Not Legally Established.

- (1) An application to validate a unit of land not legally established shall be processed as a quasi-judicial land use action pursuant to BCC 51.605 and shall be exempt from the requirements of BCC 94.300. The applicant shall provide evidence that the criteria in this section have been met.
- (2) The criteria of this section shall only apply to units of land where all of the following are true:
 - (a) Was not created as provided by the definitions of “lot” or “parcel” in BCC 51.020, past land use approvals, or other applicable law;
 - (b) The current configuration could not be obtained using the current standards of BCC 94.300; and
 - (c) Was created in its current configuration prior to January 1, 2007.
- (3) To validate a unit of land that was not legally established through a property line adjustment, such that it becomes a legal parcel, the applicant shall provide the following:
 - (a) Evidence that at the time a unit of land was created by means of a property line adjustment, the applicable criteria for the creation of a legal parcel in effect at the time could have been met; and
 - (b) A partition plat pursuant to BCC 95.125(2) for each unit of land under separate ownership within 90 days after the preliminary decision is issued. If the 90-day timeframe is not met, the preliminary approval is void; no extension shall be provided.

[Ord. 2018-0289]

APPLICATION

94.200 Application Requirements. An applicant for a property line adjustment pursuant to BCC 94.350, 94.400 or 94.450 shall demonstrate that the proposed property line adjustment complies with the standards of this chapter by submitting the following:

- (1) A completed application form signed by the owner of each property involved in the property line adjustment;
- (2) An accurate scaled map showing both properties, the proposed adjustment to the property line, the property boundaries and acreages, the configuration and acreage of the area proposed to be transferred, any existing structures, roads, easements, septic systems, septic system repair areas, wells, or other improvements, and the distances of these features from existing and proposed property lines;
- (3) Current deeds for the subject properties; and
- (4) Any other information the Planning Official deems necessary to determine compliance with this chapter.

PRELIMINARY APPROVAL

94.300 General Review Standards. A property line adjustment shall, in addition to the applicable standards of BCC 94.350, 94.400 and 94.450, meet the following standards:

- (1) The existing properties are legally created or will become legally created as a result of the property line adjustment;
- (2) As a result of the amount of land transferred, the resulting property sizes will:
 - (a) Comply with the applicable minimum parcel or lot size;
 - (b) Not be reduced in size;

- (c) Comply with applicable minimum and maximum size per BCC 100.205(6), if the properties are within the Urban Growth Boundary of Corvallis and were created pursuant to Chapter 100;
 - (d) Transfer no more acreage than that necessary to correct the encroachment of a legally built structure over a property line and establish the required setback to the adjusted property line; or
 - (e) Comply with 94.350(1)(c) or 94.400(1)(a)(B);
- (3) Each of the resulting properties:
- (a) Retains the entire septic drainfield (and reserve area if one has been designated) on the property. If any portion of the septic system or reserve area is located on the other property, appropriate easements shall be established if not already existing. If no reserve area has been designated, or if the County Sanitarian determines the system or reserve area could potentially be impacted by the proposed property line adjustment, the County Sanitarian may require the applicant to apply for a septic system evaluation certifying that the proposed property line adjustment does not affect any portion of the on-site sewage disposal system;
 - (b) Maintains required setbacks;
 - (c) Maintains required frontage, depth-to-width ratio, and flag-lot dimensions pursuant to Chapter 99 and the applicable zone.
- (4) A property line adjustment involving an existing property that is nonconforming to the standards referenced in subsections (3)(b) and (c) of this section may be approved if the property line adjustment will not increase the degree of the nonconformity. [Ord 2009-0233 eff. 6/2/2011]
- (5) When one or more structures exists on one or both properties, the property line adjustment may cause one or more of those structures to shift to a different property if:
- (a) The zoning of the property receiving the structure or structures allows the type and number of structures being received as an outright permitted use; or
 - (b) The property receiving the structure or structures has received land use approval for the type and number of structures being received.
- (6) A property line adjustment shall not separate a temporary medical hardship dwelling, an accessory dwelling unit, or a home occupation from the property on which the primary residential use exists.

[Ord. 2018-0289]

94.350 Properties in Non-Resource Zones. An adjustment of property lines where all of the land involved is in the same non-resource-zone shall be processed through a ministerial review as provided by subsection (1) or as an administrative review pursuant to BCC 53.160 as provided by subsection (2).

- (1) A property line adjustment shall be reviewed ministerially if the following can be met:
- (a) Both properties are entirely outside of an identified Special Flood Hazard Area (SFHA) or no land outside of a SFHA is transferred and the standards of BCC 83.605(2)(b) are met; and
 - (b) The resulting properties meet the size requirements of BCC 94.300(2)(a) through (d); or,
 - (c) If the size requirements of BCC 94.300(2)(a) through (d) cannot be met and one or both of the existing properties are currently smaller than the minimum parcel or lot size, the following alternative outcomes are available:
 - (A) If only one of the existing properties is smaller than the minimum parcel or lot size, then:
 - (i) Both resulting properties shall be at least as large as the smallest existing property; and

- (ii) At least one of the resulting properties shall meet or exceed the minimum parcel or lot size.

Example: The minimum parcel or lot size is 2 acres. If Property A is 1.5 acres and Property B is 2.5 acres, then neither property may be smaller than 1.5 acres after the property line adjustment is complete and at least one of the resulting properties has to be 2 acres or larger.

(B) If both existing properties are smaller than the minimum parcel or lot size, then:

- (i) Both resulting properties shall be at least as large as the existing smallest property.

Example: The minimum parcel or lot size is 2 acres. If Property A is 1.5 acres and Property B is 1.0 acres, then neither property can be smaller than 1.0 acres after the property line adjustment is complete.

- (2) If the criteria of subsection (1)(a) cannot be met, a property line adjustment shall be processed as an administrative review pursuant to BCC 53.160 and approved if the resulting properties meet the following:
 - (a) Maintain compliance with the floodplain requirements of BCC 83.605; and
 - (b) Meet the size requirements of BCC 94.350(1)(b) or (c) above.

[Ord. 2018-0289]

94.400 Properties in Resource Zones. An adjustment of property lines where all of the land involved is in the same resource-zone shall be processed through a ministerial review as provided by subsection (1), as an administrative review pursuant to BCC 53.160 as provided by subsection (2), or as a quasi-judicial land use action pursuant to BCC 51.605 as provided by subsection (3). Subsections (4) and (5) shall apply to all applications.

- (1) A property line adjustment shall be reviewed ministerially if the following can be met:
 - (a) The resulting properties will meet the size requirements of:
 - (A) BCC 94.300(2)(a) through (d); or
 - (B) When one or both existing properties are currently smaller than the minimum parcel or lot size, the following alternative outcomes are available:
 - (i) If only one of the existing properties is smaller than the minimum parcel or lot size, then:
 - (a) Both resulting properties shall be at least as large as the smallest existing property; and
 - (b) At least one of the resulting properties shall meet or exceed the minimum parcel or lot size.

Example: The minimum parcel or lot size is 80 acres. If Property A is 75 acres and Property B is 100 acres, then neither property can be smaller than 75 acres after the property line adjustment is complete and at least one of the resulting properties has to be 80 acres or larger.

- (ii) If both existing properties are smaller than the minimum parcel or lot size, then:
 - (a) Both resulting properties shall be at least as large as the smallest existing property.

Example: The minimum parcel or lot size is 80 acres. If Property A is 75 acres and Property B is 40 acres, then neither property can be smaller than 40 acres after the property line adjustment is complete.

- (b) A property line adjustment shall not increase the size of a parcel containing a dwelling approved as a nonfarm dwelling, lot-of-record dwelling, or template-test dwelling, or containing a nonfarm or nonforest use, unless either:
 - (A) Both properties involved have been approved for one of these types of dwellings or uses; or
 - (B) The adjustment is consistent with an approval for a nonfarm parcel.
 - (c) Both properties are entirely outside of an identified Special Flood Hazard Area (SFHA) or no land outside of a SFHA is transferred and the standards of BCC 83.605(2)(b) are met.
- (2) If subsection (1)(c) above cannot be met, a property line adjustment shall be processed as an administrative review pursuant to BCC 53.160 and approved if the resulting properties meet the following:
- (a) Maintain compliance with the floodplain requirements of BCC 83.605; and
 - (b) Meet the requirements of BCC 94.400(1)(a) and (b) above.
- (3) If the criteria of subsections (1) and (2) cannot be met, a property line adjustment shall be processed as a quasi-judicial land use action pursuant to BCC 51.605 and approved if the resulting properties meet the following:
- (a) A resource-zoned parcel currently smaller than the minimum parcel or lot size may be reduced in size by property line adjustment if:
 - (A) The property line adjustment will result in a net increase in the ability to use resource-zoned land for resource use, when considering the reduced ability on the parcel that is being reduced in size and the increased ability on the parcel that is being increased in size;
 - (B) The property line adjustment will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use, and will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
 - (C) The acreage transferred from the undersized resource-zoned property will be transferred to another resource-zoned property.
 - (b) A property line adjustment shall not increase the size of a parcel containing a dwelling approved as a nonfarm dwelling, lot-of-record dwelling, or template-test dwelling, or containing a nonfarm or nonforest use, unless:
 - (A) The property line adjustment will result in a net increase in the ability to use resource-zoned land for resource use, when considering the reduced ability on the parcel that is being reduced in size and the increased ability on the parcel that is being increased in size.
 - (c) Maintain compliance with the floodplain requirements of BCC 83.605.
- (4) A deed restriction shall be required in the following circumstances:
- (a) A property line adjustment shall not be used to qualify an abutting vacant lot or parcel for a dwelling based on acreage. In cases where subsections (A) and (B) are true, a deed restriction shall be recorded on the vacant parcel or lot increasing in size, stating that the transferred acreage cannot be used to qualify the vacant parcel or lot for a dwelling based on an acreage standard. The deed restriction shall be provided by the Community Development Department for signature by the property owner(s), and shall be recorded concurrent with the final approval of the property line adjustment. The applicant shall be responsible for fees for document preparation and recording.

- (A) The lot or parcel decreasing in size contains a dwelling or is approved for a dwelling, or, if the lot or parcel has no dwelling, after the property line adjustment the lot or parcel would continue to meet the minimum size required to qualify for a dwelling; and,
- (B) After the property line adjustment the lot or parcel decreasing in size would be smaller than the minimum parcel size, whether or not it was smaller than the minimum parcel size before the property line adjustment.

Example: The minimum property size in the Exclusive Farm Use (EFU) zone is 80 acres. If a lot or parcel of EFU zoned land is 160 acres or more, and other code criteria are met, a dwelling right may be allowed. Property A and Property B are abutting. Property A is 30 acres and contains a dwelling legally built in 1948. Property B is 150 acres and contains no dwelling. A property line adjustment transferring 10 acres from Property A to Property B shall not qualify the resultant 160 acre Property B for a dwelling right, and a deed restriction pursuant to BCC 94.300(3)(b) shall be recorded on Property B.

- (b) A property line adjustment in which the property decreasing in size qualified for a dwelling based on an acreage standard shall require the recording of a deed restriction prohibiting use of any of that property to qualify another tract for a dwelling based on an acreage standard. The deed restriction shall be recorded on both properties involved in the property line adjustment. The deed restriction shall be provided by the Community Development Department for signature by the property owner(s) and shall be recorded concurrent with the final approval of the property line adjustment. The applicant shall be responsible for fees for document preparation and recording.

Example: The minimum property size in the Forest Conservation zone is 80 acres. If 160 acres of Forest Conservation zoned land are contiguous and under the same ownership and meet other code criteria, a dwelling right may be allowed. Property C and Property D are abutting and under the same ownership. Property C contains 70 acres and Property D contains 100 acres. Together Property C and Property D total 170 acres, and a dwelling right was approved for that tract. Property E abuts Property D. Property E is 150 acres. If 10 acres of Property D were transferred to Property E, Property D would still comply with the 80-acre minimum parcel size and Property E would then total 160 acres. However, because the acreage in Property C and Property D was already used to qualify that tract for a dwelling, no part of the land that was within Property C or Property D can be used to obtain a dwelling right for Property E or any other property. The property line adjustment transferring the 10 acres might be allowed, however a deed restriction will be required to be recorded on all the properties involved in the transfer, stating that the land being transferred has already been used to obtain a dwelling right and cannot be used again.

- (5) A property line adjustment shall not:
 - (a) Separate a dwelling approved as a farm-related dwelling from the farm operation, nor separate the primary farm dwelling from an accessory farm dwelling or farm-help dwelling for a relative, unless the accessory or farm-help dwelling is approved for placement on its own parcel pursuant to Chapter 55.
 - (b) Adjust a property line that resulted from a subdivision or partition authorized by a Measure 49 waiver, as described by ORS 195.300, so that any lawfully established unit of land affected by the property line adjustment is larger than the maximum size authorized by the Measure 49 waiver.
 - (c) Separate a facility for processing farm products from the farm operation on which it is located.
- (6) Note: A property line adjustment that reconfigures a lot, parcel or tract of land, the effect of which is to cause a lot, parcel or tract to qualify for the siting of a dwelling, may disqualify the lot, parcel or

tract for the siting of a dwelling pursuant to Chapter 55 or 60.

[Ord 2009-0232, Ord 2018-0289, Ord 2020-0297]

94.450 Split-zoned Properties. Adjustment of property lines that will result in a parcel containing more than one zone designation shall be reviewed pursuant to BCC 94.300 and this section. In addition, for any resulting property that will contain resource-zoned land, BCC 94.400 shall apply; for resulting properties containing no resource-zoned land, BCC 94.350 shall apply.

- (1) Creation of a split-zoned property may be allowed only if:
 - (a) Any reduction in property size will not increase the degree of nonconformity; and,
 - (b) The owner(s) of the property that will be split-zoned records a deed restriction agreeing that no parcels will be created by partitioning along the zone line unless each parcel resulting from such a division would be consistent with the applicable minimum parcel or lot size. The deed restriction form will be provided by the Community Development Department for signature by the property owner, who will be responsible for fees for document preparation and recording.
- (2) In addition to the requirements of subsection (1) of this section, a property line adjustment that would result in property(ies) being split between a resource zone and a non-resource zone may be allowed if:
 - (a) A property line adjustment that reduces the size of a resource-zoned property shall be allowed only if the remaining resource-zoned property (or resource-zoned portion of the property) complies with the applicable minimum parcel or lot size.
 - (b) A property line adjustment that reduces the size of a non-resource-zoned property shall be allowed only if the remaining non-resource-zoned property (or non-resource-zoned portion of the property) complies with the applicable minimum parcel or lot size.
 - (c) In the case of a resource-zoned property that is adjusted to include non-resource-zoned land:
 - (A) The non-resource zoned portion of the property shall not be eligible for a new dwelling or include an existing dwelling, unless the non-resource-zoned portion meets the applicable minimum parcel or lot size or density; and,
 - (B) On the resource-zoned portion of the property, only those uses allowed in the resource zone may be established.
 - (C) Deed restrictions shall ensure compliance. The deed restriction form(s) will be provided by the Community Development Department for signature by the property owner, who will be responsible for fees for document preparation and recording. [Ord. 2018-0289]
 - (d) In the case of a non-resource-zoned property that is adjusted to include resource-zoned land, only those uses allowed in the resource zone may be established on the resource-zoned portion of the property. Deed restrictions shall ensure compliance. The deed restriction form(s) will be provided by the Community Development Department for signature by the property owner, who will be responsible for fees for document preparation and recording. [Ord. 2018-0289]

94.500 Period of Validity of Preliminary Approval. Within one year of preliminary approval, the applicant shall comply with the requirements of this section to complete the property line adjustment. Upon written request submitted prior to the expiration date, the Planning Official may extend the expiration date of a property line adjustment preliminary approval for one additional six-month period.

FINAL DOCUMENT APPROVAL

94.550 Final Approval

- (1) To obtain final approval, the applicant shall:
 - (a) For resulting properties 10 acres or smaller or located in a residential zone or inside an urban growth boundary, submit a survey or plat conforming to the standards of the County Surveyor. The survey or plat shall:
 - (A) Show the adjusted property line and, if a survey, all structures within 25 feet of the property line. Any septic system easements created for purposes of this property line adjustment shall also be shown and monumented; and,
 - (B) Establish monuments to mark the adjusted line.
 - (b) For properties other than those listed in subsection (a) of this section, submit a scale-drawn map that accurately depicts the resulting property configurations conforming to the legal descriptions required by subsection (d) of this section. This map shall be on letter- or legal-sized paper and attached to and recorded with the deed(s) described in subsection (d).
 - (c) Notwithstanding subsections (a) and (b) of this section, if one or more of the properties being adjusted is a parcel resulting from a partition plat or a lot resulting from a subdivision plat, the applicant shall submit a partition or subdivision plat as specified in BCC 94.050(1)(b). [Ord. 2018-0289]
 - (d) Submit to the Community Development Department for review a deed or deeds consistent with ORS 92.190(4) first in final draft form and again once ready for recording, which contain the following:
 - (A) The planning file number(s);
 - (B) The legal descriptions of both resulting properties and the property transfer(s) prepared by an Oregon-registered Professional Land Surveyor;
 - (C) The property transfer document(s) shall state “This conveyance is made solely as an adjustment of the boundary between adjacent properties and does not create a separate property that can be conveyed independently.”
 - (D) A scale-drawn map depicting the adjusted property line and resultant properties;
 - (e) Once the Planning Official has reviewed and approved the deed(s) and the survey or plat or map, the Planning Official shall sign the survey or plat or map indicating Final Approval of the property line adjustment, and shall record the deeds in Benton County Deed Records, thereby completing the property line adjustment.

[Ord 2018-0289]

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