

CHAPTER 11.50
VARIANCE AND CONDITIONAL USE

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11.50.010 PURPOSE. This chapter is established to provide an administrative framework for minor setback variations, variance requests, and conditional use permit applications.
[Ord. 611 (2018) § 210]

11.50.020 MINOR SETBACK VARIATIONS.

(a) The Planning Administrator may approve, without public notice, a minor variation consisting of a reduction in setback not exceeding 5 feet of the standards of the zoning district in which the use is located. In the case of a side yard setback variation, the variation shall not exceed 10 percent of the standards of the zoning district in which the use is located. Minor variations may not allow an increase in the number of dwelling units on a parcel.

(1) Any person requesting a minor variation shall submit a completed application on a form supplied by the Planning Department. The Planning Administrator shall approve a minor setback variation only if he or she can make the findings required by BCC 11.50.030(d)(1)(i-viii).

(2) If the Planning Administrator denies a minor variation, the applicant may apply for a variance as provided in BCC 11.50.030.

[Ord. 611 (2018) § 211; Ord. 615 (2018) § 6]

11.50.030 VARIANCES.

(a) Variance—General Standards. The variance application process allows the Hearings Examiner in specific cases, as provided in RCW 36.70.970, to grant a variance to the provisions of this title when it can be demonstrated that such variance is in harmony with the general purposes and intent of this title and is in accordance with the requirements of this section. No variance shall be granted to allow the use of property for purposes not authorized in the district in which the proposed use would be located, create lots with less than the minimum size required by the district, increase densities above that established for the district, or reduce/eliminate standards of other BCC Titles.

(b) Variance—Application Required—Non-Refundable Application Fee. The Planning Department shall provide application forms for variances and prescribe the type of information to be provided in the application. No application shall be processed unless it complies with the requirements of this section. A completed application for a variance shall be filed with the Planning Department accompanied by a non-refundable fee as set by resolution of the Board of County Commissioners.

(c) Variance—Application—Site Plan Required. Whenever a variance to the provisions of this title is sought, the Planning Department shall require the applicant to submit a site plan for the variance as part of the application. The site plan drawing shall be at a scale of not less than one inch equals fifty feet (1" = 50'), unless an alternate scale is approved by the Planning Administrator. The site plan drawing shall include the following:

(1) Boundaries, dimensions and square footage of the property proposed to be developed;

(2) All proposed and existing buildings and setback lines;

- (3) Size and location of the variance requested;
- (4) All existing and proposed easements;
- (5) Locations of all utility structures and lines;
- (6) All means of vehicular and pedestrian ingress and egress to and from the site and the size and location of driveways, existing streets bordering or crossing the site;
- (7) Location and design of off-street parking areas showing their size and locations of internal circulation and parking spaces;
- (8) Location of all loading/unloading areas, including, but not limited to, loading platforms and loading docks where trucks will load or unload, if applicable; and,
- (9) Topographic maps, when the Planning Administrator deems the maps necessary for adequate review, which delineate existing and proposed contours, at intervals of two (2) feet and show the location of existing lakes, streams, and storm water drainage systems from existing and proposed structures, together with an estimate of existing maximum storm runoff, and any other information deemed pertinent for adequate review.

(d) Variance—Permit Granted.

- (1) A variance shall be granted only if the Hearings Examiner concludes that based on his or her findings and the conditions imposed, if any, that:
 - (i) Granting of the proposed variance will not permit a use that is not classified as an allowable, accessory or conditional use in the zoning district wherein the use would be located;
 - (ii) Special circumstances such as lot size, slope, topography or necessary size or shape of the building

prevent compliance with the applicable property development standards;

(iii) Due to special circumstances applicable to the subject property, strict application of the zoning district property development standards would deprive the subject property of rights and privileges enjoyed by other properties in the vicinity and under the same zoning district classification;

(iv) The problem sought to be addressed by the variance is related to the physical features of the particular property or building and would exist regardless of the identity of the owner;

(v) The problem sought to be addressed is not common for other property in the surrounding area;

(vi) The variance would not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity under the same zoning classification;

(vii) The variance will not adversely affect the health or safety of persons residing or working in the neighborhood in which the variance is being requested; and,

(viii) The variance would not deny the preservation and enjoyment of substantial property rights of those owning property in the vicinity.

(2) The Hearings Examiner may grant a variance subject to specified conditions designed to ensure that the purpose and intent of this title and the Comprehensive Plan will not be violated; provided, the specified conditions are needed to make the conclusions required by BCC 11.50.030 (d) (1).

[Ord. 611 (2018) § 212]

11.50.040 CONDITIONAL USE.

(a) Conditional Use Permit-General Standards. The conditional use permit application process allows the Hearings Examiner to review the location and design of certain proposed uses, the configuration of improvements, and the potential impacts on the surrounding area. The application process also allows the Hearings Examiner to ensure that development in each zoning district protects the integrity of that district. The notice, hearing, decision and enforcement procedures are as set forth herein and in BCC 11.50.050.

Certain uses are classified as conditional uses because of their unusual nature, infrequent occurrence, special requirements, or potentially significant impacts to the environment, public infrastructure or adjacent properties, and/or possible safety hazards and other similar reasons.

Once granted, a conditional use permit may be transferred by a holder thereof after written notice to the Hearings Examiner; provided the use and location must remain the same and the transferee must continue to comply with the conditions of the permit and, if applicable, the requirements set forth in Chapter 11.51 BCC.

(b) Conditional Use Application Required-Non-Refundable Application Fee. The Planning Department shall provide application forms for conditional use permits and prescribe the type of information to be provided in the application. No application shall be processed unless it complies with the requirements of this section. A completed application for a conditional use permit shall be filed with the Planning Department accompanied by a non-refundable fee as set by resolution of the Board of County Commissioners.

(c) Conditional Use Application-Site Plan Required. The Planning Department shall require the applicant to submit an application and a site plan as part of the application whenever such a permit

is required for that use under the applicable zoning district. The application and site plan shall contain the following information:

- (1) Identify the proposed use and associated facilities, together with the names, addresses and telephone numbers of the owner or owners of record of the land and of the applicant, and, if applicable, the names, addresses and telephone numbers of the architect, planner, designer, and/or engineer;
- (2) The proposed use or uses of the land and buildings; and,
- (3) A site plan drawing or drawings at a scale of not less than one inch equals fifty feet (1"=50'), unless an alternate scale is approved by the Planning Administrator. The site plan drawing(s) shall include the following:
 - (i) Location of all existing and proposed structures, including, but not limited to, buildings, fences, culverts, bridges, roads and streets;
 - (ii) Boundaries, dimensions and square footage of the parcel or parcels involved;
 - (iii) All setback lines;
 - (iv) All areas, if any, to be preserved as buffers or to be dedicated to a public, private or community use, or for open space under the provisions of this title;
 - (v) All existing and proposed easements;
 - (vi) Location of all utility structures and lines;
 - (vii) All means of vehicular and pedestrian ingress and egress to and from the site and the size and location of driveways;

(viii) Location and design of off-street parking areas showing their size and locations of internal circulation and parking spaces;

(ix) Location of all loading/unloading areas, including, but not limited to, loading platforms and loading docks where trucks will load or unload;

(x) Topographic maps, when the Planning Administrator deems the maps necessary for adequate review, which delineate existing and proposed contours, at intervals of two (2) feet and show the location of existing lakes, streams, and storm water drainage systems from existing and proposed structures, together with an estimate of existing maximum storm runoff, and any other information deemed pertinent for adequate review.

(xi) Identification of all special districts, such as fire, school, sewer, drainage improvements, and irrigation districts, in which the proposed use would be located; and,

(xii) The proposed number of square feet of paved or covered surfaces, whether covered by buildings, driveways, parking lots or any other structure covering land.

(d) Conditional Use-Permit Granted or Denied. A conditional use permit shall be granted only if the Hearings Examiner can make findings of fact based on the evidence presented sufficient to allow the Hearings Examiner to conclude that, as conditioned, the proposed use:

(1) Is compatible with other uses in the surrounding area or is no more incompatible than are any other outright permitted uses in the applicable zoning district;

(2) Will not materially endanger the health, safety, and welfare of the surrounding community to an extent greater

than that associated with any other permitted uses in the applicable zoning district;

(3) Would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses in the applicable zoning district;

(4) Will be supported by adequate service facilities and would not adversely affect public services to the surrounding area; and

(5) Would not hinder or discourage the development of permitted uses on neighboring properties in the applicable zoning district as a result of the location, size or height of the buildings, structures, walls, or required fences or screening vegetation to a greater extent than other permitted uses in the applicable zoning district.

It is the applicant's burden to present sufficient evidence to allow the above conclusions to be made. If such evidence is not presented or all necessary reasonable conditions are not identified by the applicant so as to allow the Hearings Examiner to make the conclusions required above, the conditional use application shall be denied.

[Ord. 611 (2018) § 213]

11.50.050 PROCEDURES—VARIANCE AND CONDITIONAL USE PERMITS.

(a) Variance or Conditional Use –Application–Urban Growth Area–Notice to City. When a proposal requiring review under BCC 11.50.030 or BCC 11.50.040 is submitted with respect to a parcel within or partially within an Urban Growth Area, as designated on the Benton County Comprehensive Plan map, the Planning Department shall refer the variance or conditional use permit application to the respective city for comment. The Hearings Examiner shall consider comments from such city unless the respective city fails to supply comments to the Hearings Examiner prior to, or at the

open record hearing. In such case, the Hearings Examiner will assume that the city intends to make no comment.

(b) Variance or Conditional Use Permit–Application–Open Record Hearing–Notice Required. The Hearings Examiner will hold an open record hearing consistent with Title 17 BCC (Permit Review Process) on all variance and conditional use permit applications. The notice of such open record hearing shall be given as follows:

(1) The Planning Department shall provide written notification for an open record hearing, subject to the rules and regulations set forth in RCW 36.70. Written notice shall be mailed at least twelve (12) days in advance of the open record hearing to the applicant and the owner of the parcel(s) to which the proposed variance or conditional use permit would apply, and to all owners of real property, as shown in the records of the Benton County Assessor, located within a distance of three hundred (300) feet of any portion of the applicable parcel, provided that if the owner of the parcel for which the proposed variance or conditional use permit is requested owns another parcel or parcels adjacent the parcel at issue, notification shall be mailed to owners of real property located within three hundred (300) feet of any portion of such adjacent parcels as well. Failure to receive the notice shall not invalidate any proceedings or decision in connection with the proposed variance or conditional use permit. Notices addressed to the last known owner of record as shown on the County Assessor's records shall be deemed proper notice to the owner of such property; and,

(2) By publication of a legal notice in a newspaper of general circulation in the County at least ten (10) days prior to the open record hearing date.

(c) Variance or Conditional Use Permit–Application–Approval or Denial–Decision Final.

(1) Following the conclusion of an open record hearing on a variance or conditional use permit application, the Hearings Examiner shall approve, approve with conditions, or deny the

requested variance or conditional use permit. If the Hearings Examiner grants a variance or a conditional use permit, he or she shall also recite the conditions and limitations that are imposed. The decision shall be in writing and shall include the Hearings Examiner's conclusions and the findings of fact supporting such conclusions. Upon receipt of a written request from an applicant stating the reasons for requesting the reconsideration, it is within the discretion of the Hearings Examiner to re-open the open record hearing on any matter prior to the adoption of such written decision; provided, written notice of such request and any hearing to consider the request must be given to all persons providing evidence to the Planning Department for submittal to the Hearings Examiner or who provided evidence at a hearing on such matter.

(2) Each conditional use permit approved by the Hearings Examiner shall specify the location, nature and extent of the conditional use, together with all conditions that are imposed to ensure the proposed use is consistent with all applicable state laws, the Benton County Code, the Benton County Comprehensive Plan and any other information deemed necessary for the issuance of the permit.

(3) The written decision of the Hearings Examiner on an application for a variance or conditional use permit shall be final. There are no administrative appeals on applications for variances or conditional use permits. Judicial appeals of the Hearings Examiner's decision on variances or conditional use permits must be made in accordance with state law.

(d) Variance or Conditional Use Permit—Application—Conditions of Approval—Noncompliance—Permit Issuance or Non-Issuance. Any conditions imposed by the Hearings Examiner that must be met prior to issuance of a variance or conditional use permit shall be so specified. In such case, the Planning Department shall not issue a variance or conditional use permit until those specified conditions of approval, as set by the Hearings Examiner, have been

met. No variance or conditional use permit shall become effective until issued by the Planning Department.

If such specified conditions have not been met and the Planning Department does not issue the variance or conditional use permit within one (1) year from the time the Hearings Examiner conditionally approved the variance or conditional use permit, the Hearings Examiner may declare its approval null and void. Prior to doing so, the applicant shall be notified in writing at the applicant's last known address at least twelve (12) days in advance. If the Hearings Examiner finds that the conditions have not been met, it shall adopt a written decision and findings of fact to support that decision.

(e) Variance or Conditional Use Permit—Violations and Penalties—Permit Revocation. Any person who violates any term or condition of a variance or conditional use permit shall be considered in violation of this title and shall be subject to the penalties prescribed in Chapter 11.43 BCC.

If the variance or conditional use permit has been issued by the Planning Department and violations exist, the Hearings Examiner may revoke the permit after an open record hearing with notice as set forth in BCC 11.50.050(b).

[Ord. 611 (2018) § 214]

11.50.060 SEVERABILITY. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.

[Ord. 611 (2018) § 249]

11.50.070 EFFECTIVE DATE. This chapter shall take effect and be in full force upon its passage and adoption.

[Ord. 611 (2018) § 250]