

Benton County Planning Department

Planning Annex, P.O. Box 910, 1002 Dudley Avenue, Prosser WA 99350, Phone: (509) 786-5612 or (509) 736-3086, Fax (509) 786-5629

PCM 1.1

DATE: December 22, 2011
TO: BENTON COUNTY PLANNING COMMISSION
FROM: BENTON COUNTY PLANNING DEPARTMENT
RE: DRAFT ORDINANCE AMENDING SECTIONS 11.52.089 AND 11.52.090 OF THE BENTON COUNTY CODE.

BACKGROUND:

Attached to this memo is a draft ordinance amending BCC Sections 11.52.089 and 11.52.090 relating to the Condition Use/Special Permits.

Section 1 of the draft ordinance would amend BCC 11.52.089(c)(1) by adding wording that would require a condition use permit/Special permit be consistent with all applicable state laws, county codes and the comprehensive plan.

Section 2 of the draft ordinance would amend BCC 11.52.090(d), by adding wording that would require the applicant to present sufficient evidence to the Board of Adjustment to allow them to make the required conclusions to approve a special permit.

The notice for the Benton County Planning Commission Open Record Hearing for the proposed ordinance amending BCC Sections 11.52.089 and 11.52.090 was published on December 29, 2011 in the Tri-City Herald. The Open Record Hearing is scheduled for January 10, 2012.

SUMMARY:

This action is to review and discuss the attached draft ordinances and conduct a public hearing on the proposed ordinances.

RECOMMENDATION:

The Benton County Planning Department recommends that the planning commissions review the proposed ordinances, conduct the public hearing and make recommendations to the Board of County Commissioners.

Benton County Planning Department

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PCM 1.2

NOTICE OF OPEN RECORD HEARING

NOTICE IS GIVEN that the following ordinance amendment will be considered by the Benton County Planning Commission at public hearings on Tuesday, January 10, 2012, at 7 p.m. in the Planning Annex Hearing Room, Benton County Planning Department, 1002 Dudley Avenue, Prosser, WA 99350. All concerned persons may appear and present any support for or objections to the ordinance amendments or provide written testimony to the Planning Commission in care of the Planning Department on or before the date of the hearings.

ORDINANCE AMENDMENT BCC CHAPTER 11.52 - An ordinance amending BCC Chapter 11.52.089 relating to Variances and Conditional Use/Special Permits; amending Ordinance 391, Section 1, and BCC 11.52.089; and amending Ordinance 391, Section 2, Ordinance 369, Section 3 and BCC 11.52.090. This will amend the decision criteria for these permits to require that proposed uses are consistent with all applicable state laws, the Benton County Code and the Benton County Comprehensive Plan and will require the applicant to present sufficient evidence to allow the Board of Adjustment to make conclusions as stated in BCC 11.52 and if reasonable conditions are not identified by the applicant that the application shall be denied.

INFORMATION REGARDING THE AMENDMENT and copies of the proposed ordinance are available at no cost to the public from the Benton County Planning Department at the address below. More information concerning this amendment can be obtained by contacting the Benton County Planning Department, 1002 Dudley Avenue, P O Box 910, Prosser, WA 99350 or by calling 736-3086 (Tri-Cities) or 786-5612 (Prosser).

It is Benton County's policy that no qualified individual with a disability shall by reason of such disability be excluded from participation in public meetings. If you wish to use auxiliary aids or require assistance to comment at this public meeting, please contact the ADA Coordinator or the Benton County Planning Department at the above stated phone numbers and/or address no later than 48 hours prior to the date of the meeting. The Request for Reasonable Accommodation form is available online at www.co.benton.wa.us or from the Planning Department.

Dated at Prosser, Washington on this 20th day of December 2011.

MARTIN SHEERAN, Chairman
BENTON COUNTY PLANNING COMMISSION



MICHAEL SHUTTLEWORTH, Planning Manager
BENTON COUNTY PLANNING DEPARTMENT

PUBLISH ON: December 29, 2011

ORDINANCE NO. _____

AN ORDINANCE relating to zoning, amending the sections relating to variances and conditional use/special permits; amending Ordinance 391, Section 1 and BCC 11.52.089; and amending Ordinance 391, Section 2, Ordinance 369, Section 3 and BCC 11.52.090.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

SECTION 1. Ordinance 391, Section 1 and BCC 11.52.089 are hereby amended to read as follows:

PROCEDURES-VARIANCE AND CONDITIONAL USE/SPECIAL PERMITS.

(a) *Variance or Conditional Use/Special Permit-Application-Urban Growth Area-Notice to City.* When a proposal requiring review under BCC 11.52.088 or BCC 11.52.090 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/special permit application to the respective city for comment. The Board of Adjustment shall consider comments from such city unless the respective city fails to supply comments to the Board of Adjustment prior to, or at the open record hearing. In such case, the Board of Adjustment will assume that the city intends to make no comment.

(b) *Variance or Conditional Use/Special Permit-Application-Open Record Hearing-Notice Required.* The Board of Adjustment will hold an open record hearing consistent with Title 17 BCC (Permit Review Process) on all variance and conditional use/special 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/special 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/special 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/special 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/Special Permit-Application-Approval or Denial-Decision Final.~~

- (1) Following the conclusion of an open record hearing on a variance or conditional use/special permit application, the Board of Adjustment shall approve, approve with conditions, or deny the requested variance or conditional use/special permit. If the Board of Adjustment grants a variance or a conditional use/special permit, it shall also recite the conditions and limitations that are imposed. The decision shall be in writing and shall include the Board of Adjustment'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 Board of Adjustment 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 Board of Adjustment or who provided evidence at a hearing on such matter.
- (2) Each conditional use/special permit approved by the Board of Adjustment 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 Board of Adjustment on an application for a variance or conditional use/special permit shall be final. There are no administrative appeals on applications for variances or conditional use/special permits. Judicial appeals of the Board of Adjustment's decision on variances or conditional use/special permits must be made in accordance with state law.

~~(d) Variance or Conditional Use/Special Permit-Application-Conditions of Approval-Noncompliance-Permit Issuance or Non-Issuance.~~ Any conditions imposed by the Board of Adjustment that must be met prior to issuance of a variance or conditional use/special permit shall be so specified. In such case, the Planning Department shall not issue a variance or conditional use/special permit until those specified conditions of approval, as set by the Board of Adjustment, have been met. No variance or conditional use/special 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/special permit within one (1) year from the time the Board of Adjustment conditionally approved the variance or conditional use/special permit, the Board of Adjustment may declare its approval null and void at a regular Board of Adjustment meeting. 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 of the upcoming Board of Adjustment meeting. If the Board of Adjustment 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/Special Permit-Violations and Penalties-Permit Revocation.* Any person who violates any term or condition of a variance or conditional use/special permit shall be considered in violation of this title and shall be subject to the penalties prescribed in Chapter 11.54 BCC.

If the variance or conditional use/special permit has been issued by the Planning Department and violations exist, the Board of Adjustment may revoke the permit after an open record hearing with notice as set forth in BCC 11.52.089(b).

SECTION 2. Ordinance 391, Section 2, Ordinance 369, Section 3 and BCC 11.52.090 are hereby amended to read as follows:

CONDITIONAL USE/SPECIAL PERMITS. (a) *Conditional Use/Special Permit-General Standards.* The conditional use/special permit application process allows the Board of Adjustment 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 Board of Adjustment 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 11.52.089.

Certain uses are classified as conditional uses/special 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/special permit may be transferred by a holder thereof after written notice to the Board of Adjustment; 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 BCC 11.52.070.

(b) *Conditional Use/Special Permit-Application Required-Non-Refundable Application Fee.* The Planning Department shall provide application forms for conditional use/special 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/special 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/Special Permit-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 Director. 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) locations 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 Director 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/Special Permit—Permit Granted or Denied.* A conditional use/special permit shall be granted only if the Board

of Adjustment can make findings of fact based on the evidence presented sufficient to allow the Board of Adjustment 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.

NOTE: This ordinance is continued on the following page.

It is the applicant's burden to present sufficient evidence to allow the above conclusions to be made. If reasonable conditions ((cannot be imposed)) are not identified by the applicant so as to allow the Board of Adjustment to make the conclusions required above, the conditional use/special permit application shall be denied.

SECTION 3. SEVERABILITY. If any provision of this ordinance is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the ordinance and the applicability thereof to other persons and circumstances shall not be affected thereby.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect and be in full force upon its passage and adoption.

ADOPTED AND PASSED this _____ day of _____, 2011.

Chairman of the Board.

Chairman Pro-Tem.

Member.

Approved as to Form:

Constituting the Board of
County Commissioners of
Benton County, Washington

Deputy Prosecuting Attorney

Attest: _____
Clerk of the Board