

CHAPTER 11.52
GENERAL PROVISIONS

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11.52.010 BUILDING PERMITS. (a) No person, company, or corporation shall erect a building or structure of any kind or make any addition to an existing building or structure or alter any building or structure already erected within the unincorporated area of the County of Benton without first obtaining a permit in writing from a county official duly authorized for this purpose.

(b) The application for such permit and regulations governing construction, shall be as prescribed by the Benton County Building Code.

[Ord. 62 (1960) ' 1]

11.52.020 MINIMUM LOT SIZES. Minimum lot sizes shall be as shown under building site requirements for each zone or as required under Benton-Franklin Health District Rules and Regulations No. 2 as amended. Benton-Franklin Health District rules and regulations shall apply for lots served by a private well or septic tank.
[Ord. 110 (1975) ' 3]

11.52.030 FRONT YARDS. Front yards will have the requirements as set forth in this title.
[Ord. 62 (1960) ' 1]

11.52.040 SIDE YARDS. Side yards will have the requirements as set forth in this title.
[Ord. 62 (1960) ' 1]

11.52.050 REAR YARDS. Rear yards will have the requirements as set forth in this title.
[Ord. 62 (1960) ' 1]

11.52.060 ACCESS TO PUBLIC ROADS. (a) Every single-family dwelling, manufactured home, or multi-family dwelling constructed on or placed upon any property after May 10, 1976, shall be constructed on or placed upon a property which fronts upon and has direct access to a county road, state highway or city street, except the following:

NOTE: This section is continued on the following page.

(1) Dwelling placed in a planned development in accordance with the provisions of Chapter 11.20 BCC.

(2) Manufactured homes placed in an approved manufactured home park, pursuant to Chapter 3.22 (Manufactured Home Park Ordinance).

(3) Dwellings to be located on property for which there is a non-exclusive and perpetual easement or right-of-way for ingress and egress recorded in the Benton County Auditor's office. Said easement or right-of-way shall be continuous from the boundary of the property on which the dwelling is to be located to a county road, state highway, or city street and shall serve only one dwelling unit per individual piece of property. All applicants for building permits issued under the authority of this subsection shall sign an affidavit stating that the responsibility for construction and maintenance of this easement shall be vested with the property owner and not Benton County.

(4) A manufactured home located on property that proposes to provide access across state or federally owned property and for which there is a non-perpetual easement, lease, or right-of-way for ingress and egress across the state or the federally owned property, recorded in the Benton County Auditor's office. That portion of the access easement crossing property not owned by the state or federal government shall comply with BCC 11.52.060(a)(3) above. Said easements or right-of-ways shall be continuous from the boundary of the property on which the manufactured home is to be located to a county road, state highway, or city street and shall serve only one dwelling unit per individual piece of property. The placement permit for the manufactured home shall be valid for no longer than the duration of the non-perpetual easement, lease, or right-of-way obtained over the state or federally owned property, and the manufactured home must be removed thereafter. All applicants for placement permits issued under the authority of this subsection shall sign and record an affidavit stating that the responsibility for construction and maintenance of the easement shall be vested with the property owner and not Benton County.

Prior to recording of any transfer of ownership of property being served by an access easement per BCC 11.52.060(a)(4), a new easement must be granted to the new owner by the appropriate state or federal agency and recorded per BCC 11.52.060(a)(4).

(5) Dwellings placed on a lot in approved short plat; or

(6) Dwellings placed on a property for which a special permit or variance from these requirements has been granted.

(b) Any person submitting an application for a building permit to construct a dwelling on property which is exempt from the access requirement by BCC 11.52.060(a)(3) or an application for a placement permit to locate a manufactured home on property exempt from the access requirement by BCC 11.52.060(a)(4) shall also submit a copy of the recorded easement or right-of-way agreement to the Benton County Building Official.

(c) A county road shall mean a road which is on the county road system as shown by the county engineer's maps and is maintained by Benton County. Roads included in an accepted plat, filed with the county auditor, for which construction provisions have been made shall also constitute county roads.

(d) Except in planned developments established in accordance with Chapter 11.20 BCC, short plat lots which obtain access via access easements, manufactured home parks established in accordance with Chapter 3.22 BCC, recreational vehicle parks or when multiple detached dwellings are approved in accordance with BCC 11.52.065, no other dwelling shall be located between a single family dwelling, manufactured home or multiple family dwelling and the street, road, or highway upon which it fronts.
[Ord. 66 (1960) ' 2; Ord. 96 (1971) ' 2; Ord. 106 (1975) ' 2; Ord. 114 (1976) ' 3; Ord. 133 (1979) ' 17; Ord. 167 (1983) ' 13; Ord. 179 (1984) ' 1; Ord. 353 (1999) § 1]

11.52.065 PLANNING ADMINISTRATOR APPROVAL OF A SPECIFIED USE.

Where stated in this title that two (2), three (3), or four (4) detached single-family dwellings on an individual lot or two (2), three (3), or four (4) manufactured (mobile) homes on an individual lot may be permitted upon compliance with this section, the following procedure shall apply:

(a) Application. The property owner shall submit a completed application form supplied by the Benton County Planning Department. The application shall accompany a plot plan, drawn to a scale of one inch equals fifty (1" = 50') feet showing the proposed use, all existing and proposed structures and means of access. The applicant's name, address, and telephone number, the signatures of all persons holding an ownership interest in the

NOTE: This section is continued on the following page.

real property, and a non-refundable application fee as established by resolution of the Board of Benton County Commissioners shall be required. Each dwelling unit must have frontage on a county, city or state road or easement in a short plat.

(b) Review by Planning Administrator. The planning administrator shall refer the matter to appropriate agencies for their comments, and shall determine the following:

(1) The proposed use does not have an adverse effect on other uses permitted in the applicable zoning district.

(2) The proposed use conforms with all applicable ordinances and regulations of Benton County which also apply to other permitted uses in the applicable zoning district.

(3) The proposed use complies with the density requirements of the Benton County Comprehensive Plan.

(4) The lot size equals or exceeds the total square footage and setbacks required by this chapter for the total proposed dwellings as if the dwellings were located on separate parcels.

(5) The proposed use complies with all applicable requirements of the Benton Franklin District Health Department, Department of Social and Health Services, Department of Ecology or any municipality providing water or sewer.

(c) Notification. If the planning administrator determines all the above are satisfied, written notification of the proposed use shall be sent by first class U.S. Mail to owners of real property, as shown in the records of the Benton County Assessor, located within three-hundred (300) feet of any portion of the boundary of the proposed use; provided, if the owner of the property for which the proposed use is requested owns another parcel or parcels adjacent the property, notification shall be mailed to owners of real property located within three-hundred (300) feet of any portion of the boundaries of such adjacent parcels. The notification shall contain a statement that the proposed use shall be approved without holding a public hearing if no objection is submitted to the planning administrator within

seven (7) calendar days following date of mailing of notification.

Failure to send notice to a person specified in this section or failure to receive the notice shall not invalidate any proceedings or decision in connection with the proposed use.

(d) Approval by Planning Administrator. If no objection is received by the planning administrator within seven (7) days following mailing of notification, the proposed use shall be approved or conditionally approved. If conditional approval is given, the applicant shall have six (6) months to satisfy the conditions. The planning administrator shall endeavor to issue his decision on the proposed use within fifteen (15) working days from the date of submittal of a complete application.

(e) Referral to the Hearings Examiner. If, after notification by the planning administrator, any objection to the proposed use is received within seven (7) days following the mailing thereof, the planning administrator shall refer the request to the Hearings Examiner and the Hearings Examiner shall act upon the request as if it were a request for special permit, pursuant to BCC 11.52.090.

(f) Denial. If, after reviewing the application, the planning administrator determines that the proposal does not meet the requirements of BCC 11.52.065(b), he shall deny the request and inform the applicant in writing the reasons for the denial.

(g) Appeal. Anyone aggrieved by the administrator's decision shall have fourteen (14) days from the date of decision to appeal to the Hearings Examiner. The Hearings Examiner shall hear the appeal pursuant to BCC 11.52.131.

[Ord. 167 (1983) §14; Ord. 173 (1983) § 1; Ord. 179 (1984) § 2; Ord. 185 (1985) § 10; Ord. 371 (2001) § 12; Ord. 556 (2014) § 1]

11.52.067 CHILD DAY CARE FACILITY REGISTRATION. No Child Day Care Facility, Type A, shall be permitted until a Child Day Care Facility Registration has been approved by the Planning Administrator upon compliance with this section. The following procedures shall apply:

(a) Application. The property owner shall submit a completed application form supplied by the Benton County Planning Department. The application shall be accompanied by a site plan, drawn to a scale of one inch equals 100 feet showing the proposed use, all existing and proposed structures and means of access. The applicant's name, address, and telephone number, the signatures of all persons holding an ownership interest in the real property, the size and type of day care facility, including maximum number and ages of children cared for, and a non-refundable application fee as established by resolution of the Board of County Commissioners shall be included at the time an application for registration is submitted.

(b) Review by Planning Administrator. The Planning Administrator shall refer the matter to appropriate agencies for their comments, and shall determine the following:

(1) The proposed use has received all necessary approvals from Washington State regarding child care facilities.

(2) The proposed use conforms with all applicable ordinances and regulations of Benton County which also apply to other permitted uses in the applicable zoning district.

(3) The proposed use complies with all applicable requirements of the Benton-Franklin District Health Department, Department of Social and Health Services, and any municipality or agency providing water or sewer.

(4) Signage is limited to no more than one non-illuminating sign, with a maximum area of four (4) square feet, and a maximum sign height of six (6) feet above grade. The posting of such signs is limited to the parcel on which the approved child day care facility is located. On-street (inside the road right-of-way) sign posting and any sign posting which interferes with the line-of-sight for road intersections are prohibited..

(5) The outdoor play area is fenced to a height of not less than four (4) feet.

(6) Off-street parking areas shall be provided so as to allow one space for every employee.

(7) An off-street parking area shall be designated for the loading and unloading of children.

(8) The site for the proposed use shall be landscaped in such a manner to be compatible with surrounding uses.

(9) The residential character of an existing residential structure used for a child day care facility must continue, and maintain, the essence of the residential character of the surrounding neighborhood. Any structural or decorative alteration which alters the residential character is not permitted.

(10) The facility shall conform to International Fire Code (IFC), state, and local fire standards for fire prevention as now adopted or hereafter amended.

(11) The facility must comply with International Building Code (IBC) requirements as now adopted or hereafter amended.

(c) Notification. If the Planning Administrator determines all the above are satisfied, written notification of the proposed use shall be sent by first class U. S. Mail to owners of real property, as shown in the records of the Benton County Assessor, located within three-hundred (300) feet of any portion of the boundary of the proposed use; provided, if the owner of the property for which the proposed use is requested owns another parcel or parcels adjacent to the property, notification shall be mailed to owners of real property located within three-hundred (300) feet of any portion of the boundaries of such adjacent parcels. The notification shall contain a statement that the proposed use shall be approved without holding a public hearing if no appeal is submitted to the Planning Administrator within fourteen (14) calendar days following date of mailing of notification.

Failure to send notice to a person specified in this section or failure to receive notice shall not invalidate any proceedings or

decision in connection with the proposed use. The appeal must be accompanied by a non-refundable fee as established by resolution of the Board of County Commissioners.

(d) Approval by Planning Administrator. If no appeal is received by the Planning Administrator within fourteen (14) days following mailing of the notification, the proposed use shall be approved or conditionally approved. If conditional approval is given, the applicant shall have six (6) months to satisfy the conditions.

NOTE: This section is continued on the following page.

(e) Denial. If, after reviewing the application, the Planning Administrator determines that the proposal does not meet the requirements of BCC 11.52.067(c), he shall deny the request and inform the applicant in writing the reasons for the denial.

(f) Revocation of Child Day Care Facility Registration. If the Planning Administrator determines that an activity is not being conducted in accordance with the terms of the Child Day Care Facility Registration and in compliance with the requirements of BCC 11.52.067, the registration may be revoked after notice to the holder of the registration. If the registration holder has not demonstrated to the Planning Administrator within seven (7) days of the mailing of such notice that grounds for revocation do not exist, then the registration will be revoked.

Upon revocation of a child day care facility registration, all day care activities shall cease within twenty (20) days unless an appeal is in process. If the child day care activities do not timely cease, the matter may be referred to the code enforcement officer for appropriate action pursuant to Chapter 11.54 BCC, inclusive.

[Ord. 235 (1991) § 9; Ord. 371 (2001) § 13; Ord. 485 (2011) § 1]

11.52.068 CHILD DAY CARE FACILITY, TYPE B--CONDITIONAL USE PERMIT REQUIRED. No Child Day Care Facility, Type B, shall be permitted unless a conditional use permit has been approved by the Benton County Hearings Examiner that meets the following criteria and any other conditions required by the Hearings Examiner:

- (1) The proposed use has received all necessary approvals from Washington State regarding child care facilities.

(2) The proposed use conforms with all applicable ordinances and regulations of Benton County that also apply to other permitted uses in the applicable zoning district.

(3) The proposed use complies with all applicable requirements of the Benton-Franklin District Health Department, Department of Social and Health Services, and any municipality or agency providing water or sewer.

(4) Signage is limited to no more than one non-illuminating sign with a maximum area of four (4) square feet and a maximum sign height of six (6) feet above grade. The posting of such sign is limited to the parcel on which the approved Type B Child Day Care Facility is located. On-street (inside the road right-of-way) sign posting and any sign posting that interferes with the line of sight for a road intersection are prohibited.

(5) Off-street parking areas shall be provided so as to allow one (1) space for every employee and one (1) space for every five (5) children that will be attending the facility.

(6) A driveway designed for continuous forward flow of passenger vehicles for the purpose of loading and unloading children.

(7) The facility shall conform to International Fire Code (IFC), State, and local fire standards for fire prevention as now adopted or hereafter amended.

(8) The facility must comply with International Building Code (IBC) requirements as now adopted or hereafter amended.

[Ord. 485 (2011) § 2; Ord. 556 (2014) § 2]

11.52.075 NON-CONFORMING USES. (a) Purpose. The purpose of this section is to provide reasonable alternatives to property owners for the continuance of nonconformities and in certain circumstances limited expansion.

(b) Continuance. Lots, structures, and uses that were legally established prior to the adoption of Title 11 BCC or that were in compliance with Title 11 BCC at the time of initial establishment but, due to revision or amendment of Title 11 BCC, have become noncompliant are nonconforming uses that may continue, without regard to ownership changes, so long as in compliance with this section.

(c) Discontinuance. If a nonconforming use is replaced by a conforming use for any length of time, no structure or land use shall revert to the nonconforming use. The mere presence of a structure shall not constitute the continuance of a nonconforming use. When a nonconforming use is discontinued for a period of one (1) year or more without replacement by a conforming use, legal conforming use status expires and further use of the structure or lot must be in compliance with the provisions of this title.

(d) Normal Upkeep, Repairs, and Maintenance. Normal upkeep, repairs, maintenance, strengthening, or restoration to a safe condition of any nonconforming structures or part thereof are not prohibited solely as a result of the structure's nonconforming use status.

(e) Alteration, Expansion, or Restoration of Nonconforming Uses. Alteration, expansion, or restoration of nonconforming structures and uses are not allowed except as set forth in this subsection:

(1) Dwelling Units. Nonconforming dwelling units may be altered, expanded or restored on conforming or nonconforming lots if:

- (i) all other requirements of the Benton County Code and the Benton-Franklin Health District are satisfied, including but not limited to setback requirements; and
- (ii) to restore a damaged dwelling unit, a complete application for a building permit shall be submitted within one (1) year of the act causing damage or destruction to the dwelling unit.

This subsection shall apply to each dwelling unit when two or more single-family dwellings exist on a parcel pursuant to a valid multiple detached dwelling permit.

(2) Legally Required Alterations or Expansions. Alteration or expansion of a nonconforming use or structure is allowed if necessary to accommodate handicapped accessibility requirements, fire code, or other life safety related requirements mandated by local, state, or federal law.

(3) Other structures. Except as set forth above, nonconforming structures may not be altered or expanded. Such other structures may be restored if less than fifty (50) percent of the gross floor area has been unintentionally destroyed or damaged if:

- (i) all other requirements of the Benton County Code and the Benton-Franklin Health District are satisfied, including but not limited to setback requirements;
- (ii) the nonconforming use resumes within such structure within one (1) year from the destroying or damaging event; and

- (iii) the restoration of the nonconforming structure does not increase the gross floor area that existed immediately prior to the destruction or damaging event. Structures intentionally destroyed or damaged and those with fifty (50) percent or more of their gross floor area unintentionally destroyed or damaged, may not be restored or reconstructed.

[Ord. 505 (2011) § 2; Ord. 564 (2015) § 1]

11.52.080 OWNERSHIP DIVIDED BY DISTRICT BOUNDARY LINE. If a district boundary line cuts a property having a single ownership as of record at the time of adoption of this title, in such a manner that the property so cut shall have one or more parcels of different classification, then each such parcel having an area of less than ten thousand (10,000) square feet or an average width of less than sixty (60) feet may take the same classification as the adjoining parcel of the same ownership.
[Ord. 62 (1960) ' 1]

11.52.082 ACCESSORY DWELLING UNITS--PURPOSE AND AUTHORIZATION. An accessory dwelling unit shall be allowed on any real property located within unincorporated Benton County that is zoned for single family residences, except for those properties with an Industrial or Commercial zoning designation, thereby meeting the requirements of the Washington State Housing Policy Act of 1993 to incorporate provisions for accessory apartments in the County's zoning ordinance (Title 11 BCC).

[NOTE: This section is continued on the following page.]

(a) The primary purpose of this chapter shall be to permit establishment of additional living quarters within single family residences in order to permit persons who due to a disability or an infirmity require the assistance of friends, relatives, or a professional nurse to remain in their home.

(b) A secondary purpose is to permit an accessory dwelling unit in the home to provide housing for a person related to the occupant. [Ord. 263 (1995) ' 1]

11.52.084 ACCESSORY DWELLING UNITS--CRITERIA. Accessory Dwelling Units authorized herein shall meet the following minimum criteria:

(a) Existing residence. The single family dwelling in which the accessory dwelling unit is to be located must meet Benton-Franklin District Health Department requirements for the additional unit.

(b) The accessory dwelling unit must be located within or attached to the single family dwelling unit with a common wall. In no case shall an accessory dwelling be permitted in a detached structure such as a guest house or garage.

(c) The appearance and character of the single family residence shall be maintained when viewed from the surrounding neighborhood. Whenever possible, any new entrance shall be placed at the side or rear of the building.

(d) Only one accessory dwelling unit shall be approved for each primary single family dwelling. If the parcel has an approved Temporary Dwelling Permit as allowed in BCC 11.52.091, no accessory dwelling unit shall be allowed.

(e) The occupant of the accessory dwelling unit must be related to the occupant or be providing or receiving continuous care and assistance necessitated by advanced age, illness, or other infirmity.

(f) Rent or other remuneration will not be required as a condition for occupancy of the accessory dwelling unit.

(g) The accessory dwelling unit shall not exceed a maximum of 800 square feet.

(h) The accessory dwelling unit shall comply with all of the applicable building codes and zoning requirements of Title 3 and Title 11 of the Benton County Code.
[Ord. 263 (1995) § 2]

11.52.086 ACCESSORY DWELLING UNITS--CERTIFICATION OF OWNER OCCUPANCY. Benton County shall record the permit issued for the accessory dwelling unit with the Benton County Auditor's Office. The recording fee shall be paid by the applicant for the accessory dwelling unit.
[Ord. 263 (1995) § 3]

11.52.088 VARIANCES AND MINOR SETBACK VARIATIONS. (a) *Minor Setback Variations.* The Planning Administrator may approve without notice a minor variation consisting of a reduction in setback not exceeding ten (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. If the Planning Administrator denies a minor variation, the applicant may apply for a variance as provided in BCC 11.52.088(d). 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 the findings in BCC 11.52.088(e)(1)(i) through BCC 11.52.088(e)(1)(viii) are met.

(b) *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. However, the Hearings Examiner shall not grant variances to land uses or density requirements.

(c) *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.

(d) *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.
- (e) *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 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 11.52.088(e)(1).
 [Ord. 369 (2001) § 1; Ord. 556 (2014) § 3]

11.52.089 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 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/Special 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/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 Hearings Examiner shall approve, approve with conditions, or deny the requested variance or conditional use/special permit. If the Hearings Examiner grants a variance or a conditional use/special 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/special 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/special permit shall be final. There are no administrative appeals on applications for variances or conditional use/special permits. Judicial appeals of the Hearings Examiner'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 Hearings Examiner 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 Hearings Examiner, 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 Hearings Examiner conditionally approved the variance or conditional use/special 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/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 Hearings Examiner may revoke the permit after an open record hearing with notice as set forth in BCC 11.52.089(b). [Ord. 369 (2001) § 2; Ord. 391 (2004) § 1; Ord. 521 (2012) § 1; Ord. 556 (2014) § 4]

11.52.090 CONDITIONAL USE/SPECIAL PERMITS. (a) *Conditional Use/Special Permit-General Standards.* The conditional use/special 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 11.52.089.

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 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 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 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) 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 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/Special Permit—Permit Granted or Denied.* A conditional use/special 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/special permit application shall be denied.

[Ord. 62 (1960) § 1; Ord. 116 (1976) § 5; Ord. 185 (1985) § 11; Ord. 290 (1996) § 1; Ord. 335 (1998) § 1; Ord. 369 (2001) § 3; Ord. 391 (2004) § 2; Ord. 521 (2012) § 2; Ord. 556 (2014) § 5]

11.52.091 TEMPORARY DWELLINGS--PURPOSE AND AUTHORIZATION. (a)

Purpose. The purpose of this section is to provide for the approval of temporary dwellings to satisfy certain personal hardships, and to satisfy certain needs of the agricultural community. Because such hardships or needs are personal and generally transitory, the approval of temporary dwellings should not constitute a long-term land use commitment which may conflict with the comprehensive plan and implementing ordinances.

(b) **Temporary Dwellings Authorized.** Subject to the conditions and upon issuance of the permit provided for herein, one (1)

temporary dwelling may be established and maintained on a parcel for use by one or more of the following:

- (1) A person who is to receive or administer continuous care and assistance necessitated by advanced age, illness or infirmity. Such care must be received or administered by a resident of an existing dwelling located on the same lot;
- (2) A caretaker, hired hand or other employee working on the parcel in connection with an agricultural use of the premises; or
- (3) An owner in the process of building a permanent dwelling on the parcel; or
- (4) A caretaker living on the parcel for the purpose of caring for the existing dwelling and for making other improvements on the property while the owner is on vacation or is working out of the area. Only a self-contained recreational vehicle shall be used as a temporary dwelling under this subsection.

[Ord. 173 (1983) ' 3; Ord. 320 (1998) ' 1]

11.52.092 SSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSCRITERIA. Temporary dwellings authorized herein shall meet the following minimum criteria:

- (a) The parcel upon which the temporary dwelling is to be placed shall be of such configuration, and the temporary dwelling shall be located in such a manner to comply with the comprehensive plan and all applicable county, state and federal regulations, except density, lot size and the provisions in BCC 11.52.060.
- (b) The temporary dwelling shall be designed, constructed and maintained in a manner which will facilitate its removal on termination of the permit. Temporary dwellings shall include, but not be limited to, recreation vehicles and manufactured homes.
- (c) A current vehicular license, if applicable, shall be maintained under this section.
- (d) No more than (1) temporary dwelling per parcel shall be authorized under this section.

(e) No rent or other remuneration is paid for the occupancy of the temporary dwelling.

(f) The public health, safety and general welfare will not be adversely affected.

(g) Setback requirements applicable to other dwellings in the same zone must be met.

(h) The temporary dwelling must be located no closer to the front property line than the primary dwelling.
[Ord. 173 (1983) ' 4]

11.52.093 SSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSPERMITS - APPLICATION AND ISSUANCE. (a) Application. Applications for temporary dwelling permits shall be submitted to the Benton County Planning Department on forms provided by the department and shall include:

(1) A scaled drawing showing the size and boundaries of the parcel; the size and location of access, including driveways and access easements from the parcel to the county, state or city road; and the proposed location and size of the temporary dwelling;

(2) A description of the proposed temporary dwelling;

(3) Documentation of approval of proposed method of water supply and sewage disposal by the appropriate governmental agency; and,

(4) A statement signed by the applicant setting forth the circumstances which necessitate the temporary dwelling.

(5) A non-refundable application fee as established by resolution of the Board of Benton County Commissioners.

(b) Issuance. A permit for a temporary dwelling may be issued by the Planning Director after receipt of a completed application upon finding that the proposed temporary dwelling meets the requirements of this section. If the temporary dwelling is a manufactured home, all requirements of the Manufactured Home Placement Ordinance (BCC 3.20) must be met.
[Ord. 173 (1983) ' 5; Ord. 185 (1985) ' 12]

a statement listing any changes in the information provided on the application for the original permit.

(1) A temporary dwelling permit, authorized under BCC 11.52.091(b)(1) may be continued on a year-to-year basis as specified above.

(2) Sixty (60) days prior to the expiration of the permit, the Planning Director or his representative shall send, postage prepaid, a notice to the applicant at the last known address the date that the temporary dwelling permit shall expire and the procedure to request a further one year continuation.

(3) If a request for continuation of a temporary dwelling permit, as specified above, is not received thirty (30) days prior to the expiration of the permit, the permit shall become null and void.

(4) Reapplication after expiration will be processed as if it were an original application, subject to existing ordinances at the time of reapplication.

(d) Revocation. A temporary dwelling permit or permit renewal issued pursuant to this section may be revoked by the planning director at any time when the director finds that:

(1) any of the requirements of this section have not been satisfied;

(2) any of the conditions attached to the permit have not been met; or,

(3) the circumstances requiring the permit have materially changed.

(e) Upon termination or revocation of a temporary dwelling permit, occupancy of the dwelling shall cease within ten (10) days after receipt of notification of termination or revocation by certified mail; all utilities shall be disconnected within thirty (30) days after the date of termination or revocation; and, if the temporary dwelling is a manufactured home, it shall be totally removed within thirty (30) days after the date of termination or revocation.

[Ord. 173 (1983) ' 6; Ord. 222 (1988) ' 7; Ord. 320 (1998) ' 2]

11.52.0941 -----PERMITS - APPEAL. Any person aggrieved by the issuance, denial or revocation of a temporary dwelling permit may appeal the decision to the Benton County Hearings Examiner within fourteen (14) days from the date of the decision or the date the temporary dwelling is moved onto and/or hooked up on site, whichever is later, and the appeal shall be conducted in accordance with BCC 11.52.131.
[Ord. 173 (1983) § 7; Ord. 371 (2001) § 14; Ord. 556 (2014) § 6]

11.52.095 TEMPORARY OUTDOOR RETAIL SALES. Temporary outdoor retail sales of Christmas trees or fire works may be approved by the Planning Administrator after receipt of an application, supplied by the Planning Department, signed by all record owners of the real property upon which the sales are to be conducted, a non-refundable fee as established by resolution of the Board of Benton County Commissioners and upon the Planning Administrator's determination that:

(a) The Engineer from Benton County, the State Department of Transportation (D.O.T.) or municipality with roads within three

NOTE: This section is continued on the following page.

hundred (300) feet has approved the proposed access location and has determined the traffic generated will have no adverse effect on vehicular circulation;

(b) Proposed parking areas are adequate for the volume and character of the business;

(c) The applicant has complied with all applicable federal, state and local licensing requirements and other ordinances and regulations, including approval from the state and county Fire Marshal.

(d) The proposed use, in the duration proposed, will not foreseeably adversely affect adjacent properties and is compatible with allowed uses in that zoning designation; and,

(e) The sales activity is conducted wholly outdoors; or partially within a structure or structures which will be totally removed at the end of the approved period. Temporary outdoor retail sales shall not exceed thirty (30) days in duration. The approved duration period shall apply to the use and location rather than to the applicant.

[Ord. 169 (1983) § 2; Ord. 185 (1985) § 13; Ord. 556 (2014) § 7]

11.52.096 TEMPORARY OUTDOOR RETAIL SALES - APPEAL OF PLANNING ADMINISTRATOR'S DECISION. Anyone aggrieved by the Administrator's decision shall have fourteen (14) days from the date of decision to appeal to the Hearings Examiner. The board shall hear the appeal pursuant to BCC 11.52.

[Ord. 173 (1983) § 2; Ord. 371 (2001) § 15; Ord. 556 (2014) § 8]

11.52.100 INTERPRETATION. (a) In interpreting and applying the provisions of this title the planning commission shall be held to the minimum requirements for the promotion of the public health, safety, morals and general welfare; therefore, where this title imposes a greater restriction upon the use of buildings or premises, or requires larger open spaces than are imposed or required by other laws, resolutions, rules, or regulations, the provisions of this title shall control.

(b) The county planning commission may permit in a zone any use not described in this resolution and deemed by the county planning commission to be of the same character and general keeping with the uses authorized in such zone.

(c) The county planning commission shall rule on the proper application or interpret the meaning of the zoning title in case there is a dispute between the administrative officials of the county and any owner or owners of property.

(d) The county planning commission shall interpret the provisions of this title in such a way as to carry out the intent and purpose of the plan thereof, as shown on the district maps herein or hereafter adopted, where the street layout actually on the ground differs from that shown on the maps aforesaid.
[Ord. 62 (1960) ' 1; Ord. 290 (1996) ' 2; Ord. 369 (2001) § 4]

[NOTE: This chapter is continued on the following page.]

11.52.110 AMENDMENTS. The board of commissioners may, upon recommendation of the county planning commission, change by ordinance the district boundary lines or zone classification as shown on the use district maps, and, or amend, supplement or change by ordinance the regulations herein contained. After holding at least one open record hearing, the county planning commission shall transmit to the board of county commissioners its recommendations for the classification of all property in the proposed district. The board of county commissioners, upon receipt from the planning commission of the said recommendations for change, may adopt, alter or reject by ordinance the recommended change in district boundary lines, zone classifications, or regulations after holding its own open record hearing. The board of county commissioners may conduct public hearings involving recommendations of the planning commission on amendments to the text of this title or area wide zone changes, but with respect to site specific zone change requests, the board of county commissioners must consider the issue in a closed record appeal hearing, as outlined in BCC 11.52.130. [Ord. 62 (1960) ' 1; Ord. 290 (1996) ' 3; Ord. 389 (2003) § 1; Ord. 505 (2011) § 3]

[NOTE: This chapter is continued on the following page.]

11.52.120 PETITIONS FOR CHANGE OF CLASSIFICATION. (a) A petition for a change in classification shall be signed by all persons with an ownership interest in the property to be reclassified, as shown in the records of the Benton County Assessor, and all persons, if any, with separate ownership of the mineral rights in such property. Notwithstanding BCC 17.10.090(b)(2), a petition for a change in classification shall not be deemed complete without a representation that the petition has been signed by all such persons.

(b) The signatures of all person or persons having a contract right, as purchaser to receive title to any lot or parcel of property upon completion of the purchase price thereof, shall, for the purpose of this title, be deemed the signature of all persons with an ownership interest in the property; provided that the said person or persons state in writing over their signature that they are purchasing the property in question under contract. Nothing in this subsection eliminates the requirement that all persons, if any, with separate ownership of the mineral rights in such property must also sign said petition.

(c) All petitions requesting classification or change in classification of property must state the address of each signer and the legal description of the property owned by him.

(d) The county planning commission shall hold not less than one public hearing on all valid petitions for change of classification, and shall transmit, thereafter, the petition with their findings and recommendations to the board of county commissioners, who may adopt or reject by ordinance such proposed zone change.

(e) A non-refundable fee as established by resolution of the Board of Benton County Commissioners shall be submitted with the petition.

[Ord. 62 (1960) ' 1; Ord. 185 (1985) ' 14; Ord. 389 (2003) § 2; Ord. 505 (2011) § 4]

11.52.130 APPEALS. Any interested citizen or administrative official may appeal to the board of county commissioners from any recommendation of the county planning commission adverse to his interest, by filing with the secretary of the planning commission within fourteen (14) days from such recommendation, a written notice of appeal. Thereupon the secretary of the planning commission shall transmit to the board of county commissioners all papers constituting the record upon which the action appealed from was taken. The board of county commissioners shall then conduct a closed record appeal hearing. Closed record appeals shall be conducted in accordance with the Board's rules of procedures and shall serve to provide argument and guidance for the Board's decision. Closed record appeals shall be conducted generally as public hearings, except no new evidence or testimony shall be given. The board of county commissioners shall have the power to overrule or alter any such recommendation of the planning commission regardless of whether an appeal is filed.
[Ord. 62 (1960) § 1; Ord. 290 (1996) § 4]

11.52.131 APPEAL OF ADMINISTRATIVE DECISION TO HEARINGS EXAMINER. When the provisions of this title allow approval, conditional approval or denial of a use to be made by the Planning Administrator or his designated representative, that decision may be appealed by any person aggrieved to the Benton County Hearings Examiner, and the following procedure shall apply:

(a) Appeals shall be filed within fourteen (14) days of the date of the decision being appealed. All appeals shall be in writing, in duplicate, shall be accompanied by a non-refundable fee as established by resolution of the Board of Benton County Commissioners, and shall be filed with the Hearings Examiner.

(b) Upon the filing of an appeal, the Hearings Examiner shall set the time and place at which the matter will be considered. At least a ten (10) day notice of such time and place together with

one copy of the written appeal, shall be given to the official whose decision is being appealed and to the adverse parties of record, if any. The official whose decision is appealed shall transmit to the Hearings Examiner all of the records pertaining to the decision, together with such additional written report as he deems pertinent.

(c) Notice shall be given not less than twelve (12) days before the hearing date, in the following manner:

(1) By United States Mail addressed to the applicant and to the owners of all property within a distance of three-hundred (300) feet in any direction from the subject property. (Notices addressed to the last known address of the person making the latest tax payment shall be deemed proper notice to the owner of such property.)

(2) By publication of a legal notice in a paper of general circulation.

(d) Upon hearing the appeal, the Hearings Examiner may reverse or affirm, wholly or in part, or may modify the decision appealed, and may make such decision as should be made and, to that end, shall have all the powers of the officials whose decision is appealed, as to the particular issue.

(e) The Hearings Examiner shall keep in a written record of the case the findings of fact upon which the action is based. [Ord. 173 (1983) § 8; Ord. 185 (1985) § 15; Ord. 371 (2001) § 16; Ord. 556 (2014) § 9]

11.52.170 EFFECTIVE DATE. Ordinance 485 and Ordinance 505 shall take effect and be in full force on September 1, 2011. [Ord. 62 (1960) § 4; Ord. 485 (2011) § 2; Ord. 505 (2011) § 6]