

**CHAPTER 3.26**  
**FLOOD DAMAGE PREVENTION**

**SECTIONS:**

3.26.020	Applicability
3.26.030	Purpose
3.26.040	Definitions
3.26.050	Basis for Establishing the Areas of Special Flood Hazard
3.26.060	Compliance - Exceptions
3.26.070	General Standards
3.26.080	Specific Standards - Construction and Development
3.26.090	Floodway
3.26.100	Conflicts with Other Ordinances, Easements, Covenants, Deed Restrictions
3.26.110	Interpretation
3.26.120	Warning and Disclaimer of Liability
3.26.130	Development Permit Required - Information Necessary
3.26.140	Administration
3.26.150	Review of Construction or Development Projects
3.26.160	Variance Procedure
3.26.170	Conditions for Variances
3.26.180	Applications for Variances
3.26.190	Hearings, Dates, and Notice of Variances
3.26.195	Planning and Building Director Approval of Variances
3.26.200	Violations - Penalties
3.26.210	Injunctive Relief
3.26.220	Severability

**3.26.020 APPLICABILITY.** This chapter shall apply to all areas of special flood hazards within the unincorporated areas of Benton County. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full

compliance with the terms of this chapter and other applicable regulations.

[Ord. 208 (1987) ▪ 2]

**3.26.030 PURPOSE.** This chapter is adopted for the purpose of protecting the public health, safety, and general welfare; to reduce the annual cost of flood insurance and to minimize public and private losses due to flood conditions in specific areas by enforcement of the National Flood Insurance Program and the State Floodplain Management, Chapter 86.16 RCW.

[Ord. 208 (1987) § 3; Ord. 419 (2005) § 1]

**3.26.040 DEFINITIONS.** Whenever the words and phrases in this section appear in this chapter, they shall be given the meanings attributed them by this section. When not inconsistent with the context, words used in the present tense shall include the future, singular shall include the plural, and the plural, singular.

(1) "Accessory Structure" means nonresidential structures such as garages, sheds, garden buildings, pole buildings, grain bins, and barns which are considered normal for farming or ranching activities.

(2) "Appeal" means a request for a review of the interpretation of any provision of this chapter or a request for a variance.

(3) "Area of Shallow Flooding" means a designated AO or AH Zone on the Flood Insurance Rate Map: the base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO characterizes sheet flow and AH indicates ponding.

(4) "Area of Special Flood Hazard", which designation on the Flood Insurance Rate Maps always includes the letter A or V, means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.

(5) "Base Flood", or "100-year Flood", which designation on the Flood Insurance Rate Maps always includes the letter A or V, means the flood having a one percent chance of being equalled or exceeded in any given year.

(6) "Basement" means any area of the building which has its floor subgrade below ground level on all sides.

(7) "Critical Facility" means a facility for which even a slight chance of flooding would be too great. Critical facilities include but are not limited to schools, hospitals, police, fire and emergency response installations, nursing homes, installations which produce, use, or store hazardous materials or hazardous waste.

(8) "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

(9) "Elevation Certificate" means the official form (FEMA Form 81-31) used to track development, provide elevation information necessary to ensure compliance with community floodplain management ordinances, and determine the proper insurance premium rate with Section B completed by Community Officials.

(10) "Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(a) The overflow of inland or tidal waters and/or

(b) The unusual and rapid accumulation of runoff of surface waters from any source.

(11) "Flood Insurance Rate Map" or "FIRM", means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

(12) "Flood Insurance Study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

(13) "Floodway" means the channels of all rivers or other watercourses and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

(14) "Flood Protection Elevation" means at or above the base flood elevation.

(15) "Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements set forth herein.

(16) "Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a recreational vehicle.

(17) "Manufactured Home Park" or "Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

(18) "New Construction" means structures for which the "start of construction" commenced on or after the effective date of this chapter.

(19) "Recreational Vehicle" means a vehicle which is:

(a) built on a single chassis;

(b) four hundred (400) square feet or less when measured at the largest horizontal projection;

(c) designed to be self-propelled or permanently towable by a light duty truck; and

(d) designed primarily as temporary living quarters for recreational, camping, travel, or seasonal use. It is not designed primarily for use as a permanent dwelling.

(20) "Start of Construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/ or walkways; nor does it include excavation for a basement, footings, piers, or foundation or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as

garages or sheds not occupied as dwelling units or not part of the main structure.

(21) "Structure" means a walled and roofed building including a gas or liquid storage tank that is principally above ground.

(22) "Substantial Improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

(a) before the improvement or repair is started, or

(b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

(a) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or

(b) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(23) "Variance" means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

(24) "Water Dependent" means a water dependent structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

(25) "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. Wetlands have one or more of the following three attributes: (a) At least periodically, the land supports predominantly hydrophytes; (b) the substrate is predominantly undrained hydric soil; and (c) the substrate is nonsoils and is saturated with water or covered by shallow water at some time during the growing season of each year. [Ord. 208 (1987) § 4; Ord. 224 (1988) § 1; Ord. 230 (1990) § 1; Ord. 376 (2001) § 1; Ord. 419 (2005) § 2]

**3.26.050 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.** The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for Benton County," dated January 19, 1982, with accompanying Flood Insurance Maps and any subsequent revisions is hereby adopted by reference and declared to be a part of this chapter. The Flood Insurance Study shall be kept on file at the office of the Planning and Building Department, Planning Annex, Prosser, Washington. [Ord. 208 (1987) § 5; Ord. 212 (1987) § 1; Ord. 230 (1990) § 2; Ord. 376 (2001) § 2]

**3.26.060 COMPLIANCE - EXCEPTIONS.** Accessory structures which do not represent significant investments should be treated differently in regard to the application of flood plain management measures. The minor initial investment in such structures would be greatly increased by the necessity to either elevate or dry floodproof the accessory structure. Such measures may provide an excessive degree of protection for these types of structures.

When an accessory structure represents a minimal investment, the elevation or dry floodproofing standards need not be met. All other requirements applicable to structures shall apply.

Accessory structures that meet the following criteria do not need to be floodproofed or elevated:

- (a) Accessory structures shall not be used for human habitation.
- (b) Accessory structures shall be designed to have low flood damage potential.

(c) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to flow of floodwaters.

(d) Accessory structures shall be firmly anchored to prevent flotation which may result in damage to other structures.

(e) Service facilities such as electrical or heating equipment shall be elevated or floodproofed.

(f) Each accessory structure shall not exceed ten percent (10%) of the value of the main structure.  
[Ord. 208 (1987) § 6; Ord. 376 (2001) § 3]

**3.26.070 GENERAL STANDARDS.** The following standards are required in all areas of special flood hazards:

(a) Anchoring.

(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

(2) All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's **A** Manufactured Home Installation in Flood Hazard Areas @guidebook for additional techniques).

(b) Construction Materials and Methods.

(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(3) Electrical, heating, ventilation, plumbing, and airconditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

## (c) Utilities.

(1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters;

(3) On-site waste disposal systems shall be located to avoid or minimize impairment to them or contamination from them during flooding; and

(4) Water wells for potable water or irrigation water shall be located outside all floodways.

## (d) Subdivision Proposals.

(1) All subdivision proposals shall be consistent with the need to minimize flood damage;

(2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

(3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,

(4) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

(e) Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study or from another authoritative source, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two (2) feet above the highest adjacent grade in these zones may result in higher insurance rates.

[Ord. 208 (1987) § 7; Ord. 376 (2001) § 4; Ord. 419 (2005) § 3]

**3.26.080 SPECIFIC STANDARDS - CONSTRUCTION AND DEVELOPMENT.** The following provisions are required in all areas of special flood hazards where base flood elevation data has been provided as set forth herein:

(a) Residential Construction.

(1) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to one foot or more above base flood elevation.

(2) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or must meet or exceed the following minimum criteria:

- (i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- (ii) The bottom of all openings shall be no higher than one foot above grade.
- (iii) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

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

(b) Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to at least the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

(1) be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water (See note in subsection (b)(5) below.);

(2) have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,

(3) be certified by a registered professional engineer that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth herein.

(4) Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in BCC 3.26.080 (a) (2).

(5) Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building constructed to the base flood level will be rated as one foot below that level).

(c) Manufactured Homes. All manufactured homes to be placed or substantially improved within Zones A1-30, AH, and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of BCC 3.26.070 (a) (2).

(d) Recreational Vehicles. Recreational vehicles placed on sites within Zones A, A1-30, AH, and AE designated on the Community Flood Insurance Rate Map (FIRM) published by the Federal Emergency Management Agency must:

(1) be on the site for fewer than one hundred and eighty (180) consecutive days, or

(2) be fully licensed and ready for highway use, on its wheels or jacking system, be attached to the site only by quick-disconnect type utilities and security devices, and have no permanently attached additions; or

(3) meet the requirements of BCC 3.26.080(c) and the elevation and anchoring requirements for manufactured homes.

(e) Critical Facilities. Critical facilities should be afforded additional flood protection due to their nature. Communities therefore shall impose minimum standards which are in addition to those used for other types of development.

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the one hundred year floodplain as identified on the community's FIRM. Construction of new critical facilities shall be permissible within the one hundred year floodplain if no feasible alternative site is available. Critical facilities constructed within the one hundred year floodplain shall have the lowest floor elevated to three or more feet above the level of the one hundred year flood. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters.

Access routes elevated to or above the level of the one hundred year floodplain shall be provided to all critical facilities to the extent possible.

[Ord. 208 (1987) § 8; Ord. 224 (1988) § 2; Ord. 230 (1990) § 3; Ord. 376 (2001) § 5; Ord. 419 (2005) § 4]

**3.26.090 FLOODWAYS.** Located within areas of special flood hazards are floodways, including but not limited to designated floodways on the Flood Insurance Rate Map (FIRM) and/or the Flood Boundary-Floodway Map (FBFM) of a flood insurance study for the area. Since a floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

(a) Encroachments are prohibited, including: fill, new construction, substantial improvements, and other development unless, certification by a registered professional engineer is provided. Such certification must demonstrate through hydrologic

and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge.

(b) If BCC 3.26.090(a) is satisfied, all new construction and substantial improvements shall comply with flood hazard reduction provisions set forth herein.

(c) Construction or reconstruction of residential structures are prohibited except for:

(1) repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and,

(2) repairs, reconstruction, or improvements to a structure the cost of which (a) does not exceed fifty percent of the market value of the structure either before the repair, reconstruction, or improvement is started, or (b) does not exceed fifty percent of the market value of the structure before damage occurs (if the structure is damaged and is being restored). The cost of the minimum necessary work done on structures mandated by a local code enforcement official to gain compliance with existing health, sanitary, or safety codes and of work on structures listed on the National Register of Historic Places maintained by the National Park Service or the State Register of Historic Places maintained by the Washington State Office of Archaeology and Historic Preservation is allowed and shall not be included in costs of repairs, reconstruction, or improvements under this section BCC 3.26.090(c)(2).

[Ord. 208 (1987) § 9; Ord. 212 (1987) § 2; Ord. 224 (1988) § 3; Ord. 376 (2001) § 6; Ord. 419 (2005) § 5]

**3.26.100 CONFLICTS WITH OTHER ORDINANCES, EASEMENTS, COVENANTS, DEED RESTRICTIONS.** This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

[Ord. 208 (1987) § 10]

**3.26.110 INTERPRETATION.** In the interpretation and application of this chapter, all provisions shall be:

- (a) Considered as minimum requirements;
  - (b) Liberally construed in favor of the governing body; and,
  - (c) Deemed neither to limit nor repeal any other powers granted under state statutes.
- [Ord. 208 (1987) § 11]

**3.26.120 WARNING AND DISCLAIMER OF LIABILITY.** The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of Benton County, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

[Ord. 208 (1987) § 12]

**3.26.130 DEVELOPMENT PERMIT REQUIRED - INFORMATION NECESSARY.** A development permit shall be obtained before construction or development begins within any area of special flood hazard. The permit shall be for all structures including manufactured homes, and for all other development including fill and other activities.

Applications for a development permit shall be made on forms furnished by the Planning and Building Department and may include but not be limited to plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

(a) Elevation, in relation to mean sea level of the lowest floor (including basement) of all structures recorded on a current elevation certificate.

(b) Elevation in relation to mean sea level to which any structure has been floodproofed;

(c) Certification by a registered professional engineer that the floodproofing methods for any nonresidential structure meet the floodproofing criteria herein; and,

(d) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.  
[Ord. 208 (1987) § 13; Ord. 376 (2001) § 7; Ord. 419 (2005) § 6]

**3.26.140 ADMINISTRATION.** Prior to the issuance of a building permit required for any construction or development falling within an area of special flood hazard, the Planning and Building Department shall review the project for compliance with this chapter. Construction or development projects which do not require a building permit but involve some other local legislative or administrative approval (i.e., shorelines permit, special use permit, subdivision or short plat approval, etc.), shall be reviewed by the Planning and Building Department for compliance with this chapter.  
[Ord. 208 (1987) § 14; Ord. 376 (2001) § 8]

**3.26.150 REVIEW OF CONSTRUCTION OR DEVELOPMENT PROJECTS.** Review of construction or development projects shall include, but not be limited to:

(a) Permit Review.

(1) Review of all development permits to determine that the permit requirements of this chapter have been satisfied.

(2) Review of all development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

(3) Review of all development permits to determine if the proposed development is located in a floodway. If located in a floodway, encroachment provisions shall be met.

(b) Use of Other Base Flood Data. When base flood elevation data has not been provided, the reviewing department shall obtain, review, and reasonably use any base flood elevation and floodway data available from a federal, state or other source.

(c) Information to be Obtained and Maintained.

(1) When base flood elevation data has been provided, the reviewing department shall obtain an elevation certificate to record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantial improved structures, and record whether the structure contains a basement.

(2) For all new or substantially improved floodproofed structures the reviewing department shall:

(i) verify and record the actual elevation (in relation to mean sea level), and

(ii) maintain the floodproofing certifications required herein.

(3) The reviewing department shall maintain for public inspection all records pertaining to the provisions of this chapter.

(d) Notice of Alteration of Watercourses. The reviewing department shall:

(1) Notify adjacent communities and the Washington State Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

(2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

(e) Interpretation of FIRM Boundaries. The reviewing department shall make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the

boundary shall be given a reasonable opportunity to appeal the interpretation.

[Ord. 208 (1987) § 15; Ord. 419 (2005 § 7)]

**3.26.160 VARIANCE PROCEDURE.** Appeal Board.

(a) Except as provided in BCC 3.26.195, the Board of County Commissioners shall hear and decide appeals and requests for variances from the requirements of this chapter.

(b) The Board of County Commissioners shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the reviewing department in the enforcement or administration of this chapter.

(c) Decisions of the Board of County Commissioners may be appealed to the Superior Court, pursuant to Chapter 36.70C RCW, or as otherwise permitted under Washington State law.

(d) In reviewing applications, the Board of County Commissioners shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

(1) the danger that materials may be swept onto other lands to the injury of others;

(2) the danger of life and property due to flooding or erosion damage;

(3) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(4) the importance of the services provided by the proposed facility to the community;

(5) the necessity to the facility of a waterfront location, where applicable;

(6) the availability of alternative locations, for the proposed use which are not subject to flooding or erosion damage;

(7) the compatibility of the proposed use with existing and anticipated development;

**NOTE:** This section is continued on the following page.

(8) the relationship of the proposed use to the comprehensive plan and flood plain management program for that area;

(9) the safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,

(11) the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(e) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items 1 through 11 in BCC 3.26.160(d) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance shall also increase.

(f) Upon consideration of the factors of BCC 3.26.160(d) and the purposes of this chapter, the Board of County Commissioners may add reasonable conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(g) The Planning and Building Department shall maintain the records of appeals to the Board of County Commissioners and report variances to the Federal Insurance Administration upon request. [Ord. 208 (1987) § 16; Ord. 295 (1996) § 1; Ord. 376 (2001) § 9]

**3.26.170 CONDITIONS FOR VARIANCES.** (a) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.

(b) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(d) Variances shall only be issued upon:

(1) a showing of good and sufficient cause; and

(2) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and,

(3) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(4) a written approval from the Washington State Department of Ecology approving the replacement or reconstruction of the structure within the floodway.

(e) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. Variances primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

(f) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except BCC 3.26.160(e), and otherwise complies with BCC 3.26.070.

(g) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. [Ord. 208 (1987) § 17; Ord. 295 (1996) § 2]

**NOTE:** This chapter is continued on the following page.

**3.26.180 APPLICATIONS FOR VARIANCES.** All variance applications must be made in writing and submitted to the office of the Planning and Building Director. Applications must be made on the form provided, with all information filled in and the necessary signatures obtained. A non-refundable application fee as established by resolution of the Board of Benton County Commissioners must be submitted with the application.  
[Ord. 208 (1987) § 18; Ord. 376 (2001) § 10]

**3.26.190 HEARINGS, DATES, AND NOTICE OF VARIANCES.** When an application has been filed in proper form and with the required information, the Planning and Building Department shall present the application to the Board of County Commissioners. The Board shall set the time and place for a public hearing. Notification of hearing shall be made in the following ways:

(a) A written notice of hearing shall be sent by United States mail to all property owners of record within a radius of three-hundred (300) feet of the exterior boundary of the subject property. The written notice shall be mailed not less than ten (10) days prior to the hearing. The County Assessors' records shall be used to determine property owners of record, and

(b) A legal notice shall be placed in the official county newspaper as designated by the Board of County Commissioners at least ten (10) days prior to the hearing date.  
[Ord. 208 (1987) § 19; Ord. 376 (2001) § 11]

**3.26.195 PLANNING AND BUILDING DIRECTOR APPROVAL OF VARIANCES.** (a) When the Benton County Board of Commissioners has declared a state of emergency as a result of a major flood within Benton County, the Planning and Building Director or his/her designee is authorized to approve requests for variances to the requirements of this chapter relating to the replacement or reconstruction of dwellings within a floodway in unincorporated Benton County.

(b) The Planning and Building Director or his/her designee may issue such a variance without a public hearing, but only after considering the factors set forth in BCC 3.26.160(d) and in accordance with the conditions set forth in BCC 3.26.170.

(c) The decision of the Planning and Building Director or his/her designee to issue or deny a variance is appealable to the Board of County Commissioners within ten (10) days from the date of the decision. The appellant shall submit a written request for appeal to the Board of County Commissioners who will then hold a public hearing and review the decision of the Planning and Building Director.

[Ord. 295 (1996) § 3; Ord. 376 (2001) § 12]

**3.26.200 VIOLATIONS - PENALTIES.** (a) Upon a finding of a first violation of any provision of this chapter, any person or contractor shall be punished by a civil penalty not to exceed five hundred dollars (\$500) for said violation, shall be responsible for court costs, if applicable, and shall be ordered to pay restitution for any damages caused by said violation.

(b) Upon the court's finding of a second or subsequent violation of the same provision of this chapter, any person or contractor and shall be found guilty of a misdemeanor.

[Ord. 208 (1987) § 20; Ord. 224 (1988) § 4; Ord. 304 (1997) § 10]

**3.26.210 INJUNCTIVE RELIEF.** Notwithstanding the existence or use of any other remedy or means of enforcement of the provisions hereof, Benton County may seek legal or equitable relief to enjoin any acts or practices which constitute a violation of any of the provisions hereof and compel compliance with all provisions of this chapter. The costs of such action shall be taxed against the person violating the provisions of this chapter. The Planning and Building Department may accept a written assurance of discontinuance of any act in violation of this chapter from any person who has engaged in such act. Failure to comply with the assurance of discontinuance shall be a further violation of this chapter.

[Ord. 208 (1987) § 21; Ord. 376 (2001) § 13]

**3.26.220 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. 208 (1987) § 22]