

## Chapter 53

### General Review Criteria and Procedures

**53.050 Interpretation.** Any member of the public may apply for a Planning Official's Interpretation of provisions of the Comprehensive Plan or Development Code or their application to a specific property, project, or issue, pursuant to BCC 51.205. [Ord 2000-0161]

#### PERMITTED USES

**53.105 Purpose.** Permitted uses are land uses which are consistent with the purpose of the zone. [Ord 90-0069]

**53.110 Review Process.** In general, permitted uses are allowed to be established in a zone without review. Some permitted uses are regulated by a review process, but approval of such uses is based upon clear and objective standards. Unless specifically authorized by this code, the County may not impose additional criteria or conditions of approval upon a permitted use. [Ord 90-0069]

#### ADMINISTRATIVE REVIEW

**53.150 Purpose.** Administrative review is established as a procedure for land use actions involving little discretion.

**53.160 Review Process.** Upon receipt of a complete application, the Planning Official shall notify any affected agencies. The Notice of Proposed Quasi-Judicial Land Use Action of BCC 51.610 is not required. The Planning Official shall issue a decision based on the applicable standards and criteria, and shall provide notice of the decision pursuant to BCC 51.625. At the Planning Official's discretion, the matter may be referred to the Planning Commission. A decision of the Planning Official or Planning Commission may be appealed pursuant to BCC 51.805 through 51.840. [Ord 2000-0163]

#### CONDITIONAL USES

**53.205 Purpose.** Conditional uses are land uses which may have an adverse effect on surrounding permitted uses in a zone. [Ord 90-0069]

**53.210 Permit Required.** A person shall obtain a conditional use permit from the County in order to establish a conditional use. The decision to issue a conditional use permit is discretionary. [Ord 90-0069]

**53.215 Criteria.** The decision to approve a conditional use permit shall be based on findings that:

- (1) The proposed use does not seriously interfere with uses on adjacent property, with the character of the area, or with the purpose of the zone;
- (2) The proposed use does not impose an undue burden on any public improvements, facilities, utilities, or services available to the area; and
- (3) The proposed use complies with any additional criteria which may be required for the specific use by this code. [Ord 90-0069]

**53.220 Conditions of Approval.** The County may impose conditions of approval to mitigate negative impacts to adjacent property, to meet the public service demand created by the development activity, or to otherwise ensure compliance with the purpose and provisions of this code. On-site and off-site conditions may be imposed. An applicant may be required to post a bond or other guarantee pursuant to BCC 99.905 to 99.925 to ensure compliance with a condition of approval. Conditions may address, but are not limited to:

- (1) Size and location of site.
- (2) Road capacities in the area.
- (3) Number and location of road access points.
- (4) Location and amount of off-street parking.
- (5) Internal traffic circulation.
- (6) Fencing, screening and landscape separations.
- (7) Height and square footage of a building.
- (8) Signs.
- (9) Exterior lighting.
- (10) Noise, vibration, air pollution, and other environmental influences.
- (11) Water supply and sewage disposal.
- (12) Law enforcement and fire protection. [Ord 26, Ord 90-0069]

**53.225 Modification of a Conditional Use Permit.** An original applicant or successor in interest may request that a conditional use permit be modified if a change in circumstance has occurred since approval which would justify a change in the permit. Such application shall be processed as a new request for a conditional use permit. [Ord 26, Ord 90-0069]

**53.230 Period of Validity.** Unless otherwise specified at the time of approval, a conditional use permit for a single-family dwelling shall be valid for ten (10) years from the date of decision and other conditional use permits shall be valid for a period of two (2) years from the date of decision. [Ord 26, Ord 90-0069]

**53.235 Extension of Permit.** A conditional use permit may be extended for good cause at the discretion of the approving authority responsible for the original decision. The applicant shall submit the request for extension in writing to the Planning Official prior to expiration of the original permit. [Ord 26, Ord 90-0069]

## **NONCONFORMING USES**

**53.305 Nonconforming Use Allowed to Continue.** A legally established use of any building, structure or land existing at the time of the enactment or amendment of the Development Code or Zoning Map may continue in use. Continuation of a nonconforming use includes a change of ownership or occupancy. [Ord 26, Ord 90-0069]

### **53.310 Burden of Proof.**

- (1) The property owner shall bear the burden of proving the existence, continuity, nature and extent of a use for the purposes of BCC 53.305 through 53.335.
- (2) In no case shall the applicant be required to prove the continuous existence, nature and extent of a use for a period exceeding 20 years immediately preceding the date of application, enforcement order, or other pertinent action. However, the applicant shall demonstrate that the use was legal at the time it was established regardless of whether such establishment occurred more than 20 years ago.

[Ord 2006-0214]

### **53.315 Alteration of a Nonconforming Use.**

- (1) Alteration or change of a nonconforming use may be permitted if the alteration or change of the use, or of the structure or physical improvements associated with the nonconforming use, has no greater adverse impact on the neighborhood than did the existing use at the time it became nonconforming. An application to alter a nonconforming use shall be reviewed by the Planning Official. The Planning

Official may impose conditions of approval pursuant to BCC 53.220 in order to reduce the impact of the alteration on the neighborhood.

- (2) Alteration of a nonconforming use shall be permitted when necessary to comply with any lawful regulatory requirement. An application to alter a nonconforming use pursuant to a lawful requirement shall be reviewed by the Planning Official. The Planning Official may impose conditions of approval pursuant to BCC 53.220 in order to reduce the impact of the alteration on the neighborhood. [Ord 26, Ord 90-0069, Ord 2006-0214]
- (3) Alteration of a nonconforming public or private school in the Exclusive Farm Use zone or Multi-Purpose Agriculture zone shall be allowed as outlined in BCC 55.205(18) and (19). [Ord. 2020-0297]

**53.317 (Section Deleted)** [Ord 2009-0232, Ord 2015-0267, Ord 2020-0297]

**53.320 Abandonment of a Nonconforming Use.** A nonconforming use may not be resumed after a period of interruption or abandonment of one year unless the resumed use complies with the requirements of the Development Code in effect at the time of resumption of the use. [Ord 26, Ord 90-0069]

**53.325 Alteration of a Nonconforming Structure.** A legally established structure that does not comply with current siting standards may be altered provided the alteration does not increase the degree of nonconformity of the existing structure. A structure with a nonconforming setback may be increased in size provided the portion of the structure within the setback is not expanded in any dimension, including height. A structure with a nonconforming setback may be rebuilt within one year of destruction, provided the portion of the structure within the setback is rebuilt in the same location and is not expanded in any dimension, including height. [Ord 90-0069, Ord 2006-0214, Ord 2015-0267]

**53.330 Restoration or Replacement.**

- (1) When a nonconforming use has been unintentionally damaged or destroyed by calamity, such as fire, flood, wind or other casualty, the use may be restored or replaced. Restoration or replacement shall be commenced within two years from the occurrence of such calamity.
- (2) Notwithstanding subsection (1) of this section, in the Exclusive Farm Use zone a legally established non-farm use may be re-established to its previous nature and extent within two years of its destruction, if such destruction was unintentional and caused by fire, other casualty or natural disaster. Re-establishment shall meet all current building, plumbing, sanitation and other codes, ordinances and permit requirements.
- (3) **Extension.** The two-year time limit imposed by subsections (1) and (2) of this section may be extended as follows. The property owner may request an extension by submitting a written request to the Planning Official prior to the expiration of this two year period. The Planning Official may grant an extension for up to two additional years upon determining that the property owner has demonstrated that the nonconforming use is eligible for replacement pursuant to this chapter, and that the property owner was unable to initiate or continue development during the approval period for reasons for which the property owner was not responsible.

[Ord 26, Ord 90-0069, Ord 2006-0214]

**53.335 Vested Right to a Nonconforming Use.** A use lawfully initiated under a prior ordinance, but which has not been completed at the time the use becomes nonconforming, shall have a vested right to continue to completion if construction or other preparation has progressed to a substantial degree. The Planning Official shall determine whether an applicant has a vested right to complete a nonconforming use based on the following requirements:

- (1) The applicant must have relied in good faith on the prior zoning or permit approval in making expenditures to develop his or her property in a given manner.
- (2) The expenditures made prior to the subsequent zoning regulation must demonstrate that the property

owner has gone beyond mere contemplated use and has committed the property to an actual use which would have been made but for passage of the new zoning regulation.

- (3) The expenditures must relate more to the nonconforming use than to conforming uses. If the expenditures could reasonably apply to preparation of the property for a conforming use, such expenditures may not be considered as vesting a right to a nonconforming use.
- (4) The amount of prior expenditure must represent more than an incidental expense when considering the cost of the project as a whole.
- (5) The length of time since the proposed use became nonconforming must be reasonable, considering the nature of the project, economic conditions, or other factors. [Ord 90-0069]

**53.340 Use Established Following a Claim under ORS 197.352 (Ballot Measure 37).**

- (1) A dwelling established following a claim under ORS 197.352 (Ballot Measure 37; 2004) on land zoned Exclusive Farm Use (EFU), Forest Conservation (FC), or Multi-Purpose Agriculture (MPA), shall be subject to BCC 55.106(5) for EFU or MPA zones, or 60.105(17) for FC zones.
- (2) Other than those uses specified in subsection (1) of this section, any use of land resulting from a claim under ORS 197.352 (Ballot Measure 37; 2004) shall be considered a nonconforming use, and shall be subject to the provisions of BCC 53.305 through 53.335.

[Ord 2006-0214]

**VARIANCES**

**53.405 Purpose.** A variance to any requirement of the Development Code may be granted where literal application of the requirement would cause significant hardship caused by unique characteristics of the property. [Ord 26, Ord 90-0069]

**53.410 Variance Criteria.** The decision to approve a variance shall be based on findings that:

- (1) Physical circumstances or other conditions of the land prevent the property from being reasonably developed in a manner consistent with the standards of the Development Code without significant hardship;
- (2) Such circumstances or conditions result in a hardship unique to the property in question;
- (3) The hardship does not result from actions of the applicant nor derive from personal circumstances of the applicant such as age, physical condition, or financial situation;
- (4) Strict adherence to the standard is unnecessary in that the proposed variance will not alter the essential character of the neighborhood in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property; and
- (5) The proposed variance is the minimum variance of the standard that will afford relief and is the least modification possible of the provisions of the Development Code. [Ord 26, Ord 90-0069]

**53.415 Variance Conditions.** Conditions of approval pursuant to BCC 53.220 may be imposed on an approval of a variance to mitigate adverse impacts which may result from granting the variance. [Ord 90-0069]

**53.420 Period of Validity.** Unless otherwise specified at the time of approval, a variance shall be valid for one (1) year. [Ord 26, Ord 90-0069]

**53.425 Extension of Variance Approval.** A variance approval may be extended for good cause at the discretion of the approving authority responsible for the original decision. The applicant shall submit the request for extension in writing to the Planning Official prior to expiration of the initial variance. [Ord 90-0069]

## **ZONE CHANGE**

**53.505 Zone Change Criteria.** The Official Zoning Map may be amended if:

- (1) The proposed zoning for the property is more appropriate than the current zoning, when considering existing uses, changes in circumstances since the current zoning was applied, or information that indicates that the current zoning was not properly applied;
- (2) The impact on adjacent properties will be minimal;
- (3) Any significant increase in the level of public services which would be demanded as a result of the proposed zone change can be made available to the area; and
- (4) The proposed zone change is consistent with the policies of the Comprehensive Plan. [Ord 90-0069]

### **53.510 Initiating a Zone Change.**

- (1) A landowner may initiate a zone change for land in his or her ownership by submitting an application for a zone change to the Planning Official. The application shall include maps, drawings, data and other relevant information supporting the zone change.
- (2) The Board of Commissioners may initiate a zone change. The Board shall direct the Planning Official to prepare maps, drawings, data, and other information supporting the proposed zone change. [Ord 90-0069]

**53.515 Notice Requirements.** In addition to the notice requirements set forth in BCC 51.605 to 51.625, the Planning Official shall notify the following applicable agencies or agents of a proposed zone change.

- (1) If a zone change is proposed for land located in a resource zone, the Planning Official shall notify the Oregon Department of Fish and Wildlife for comments regarding impact on significant wildlife habitat.
- (2) The Planning Official shall notify an airport owner of any hearing concerning a zone change for property located within 5,000 feet of a visual flight rules (VFR) airport or 10,000 feet of an instrumental flight rules (IFR) airport. [Ord 90-0069]

**53.520 Planning Commission Review.** The Planning Commission shall conduct a public hearing to review a proposed zone change. Following the close of the public hearing, the Planning Commission shall make a recommendation to the Board of Commissioners to approve, deny or modify the proposed zone change. The Commission shall include findings in support of its recommendation. [Ord 90-0069]

**53.525 Board of Commissioners Review.** The Board of Commissioners shall conduct a public hearing to review a proposed zone change. The Board may approve, modify, or deny the proposed zone change. The Board shall include findings in support of its decision. If the Board approves the zone change, the Board shall amend the Official Zoning Map by ordinance pursuant to the provisions of the Benton County Charter. [Ord 90-0069]

### **53.530 Correction of map error.**

- (1) Notwithstanding the criteria and procedures of BCC 53.505 through 53.525, if a lot or parcel can be shown to have been unintentionally re-zoned through adoption of the 2004 Zoning Map (Ord 2004-0196), the property owner may request correction of the error through the following procedure.
  - (a) The property owner shall submit to the Planning Official evidence of the previous zoning and that the property was unintentionally re-zoned. Upon determination by the Planning Official that the property was unintentionally re-zoned, the Planning Official shall schedule the matter forthwith for a correction amendment by ordinance adopted by the Board of Commissioners.
  - (b) If the Planning Official determines that the property does not meet the standard for correction in (a) above, that determination shall be issued in the form of an interpretation pursuant to BCC 51.205(1). The interpretation may be appealed to the Planning Commission as provided in BCC

51.205.

- (c) Any unintentional re-zoning that also involves error on the Comprehensive Plan Map shall be corrected simultaneously through the process for correcting the Zoning Map described in subsections (a) and (b) of this section.
- (d) The Planning Official, the Planning Commission as a body, or any member of the Board of Commissioners may cause an unintentional re-zoning to be considered for correction by the Board of Commissioners. The owner of the affected property shall be notified of the proposed correction at least 10 days prior to the Board of Commissioners considering the correction ordinance. The property owner shall have the opportunity to provide written comment prior to the Board of Commissioners action.

[Ord 2004-0196]

## **TEXT AMENDMENT**

**53.605 Purpose.** On occasion, it may be appropriate to amend sections of the Comprehensive Plan or Development Code to respond to changing policies and conditions, or to clarify the text. [Ord 90-0069]

### **53.610 Initiating a Text Amendment.**

- (1) The Board of Commissioners may initiate an amendment to this code. The Board shall direct the Planning Official to prepare a background report discussing the justification for the proposed text amendment.
- (2) The Planning Commission may initiate a text amendment. The Planning Commission shall notify the Board of Commissioners of its intent to initiate an amendment. The Board must conceptually approve the amendment before the Planning Commission may cause an Ordinance to be drafted or a public hearing to be held. [Ord 90-0069]

**53.615 Notice Requirements.** In addition to the notice requirements set forth in BCC 51.605 to 51.625, the Planning Official shall notify the Oregon Department of Fish and Wildlife of any proposed text amendment affecting a resource zone, requesting comments regarding impact on significant wildlife habitat. [Ord 90-0069]

**53.620 Planning Commission Review.** The Planning Commission shall conduct a public hearing to review a proposed text amendment. Following the hearing, the Planning Commission shall make a recommendation to the Board to approve, deny or modify the proposed text amendment. [Ord 90-0069, Ord 2015-0267]

**53.625 Board of Commissioners Review.** The Board of Commissioners shall hold a public hearing to review a proposed text amendment. The Board may accept, reject, or modify the proposed text amendment in whole or in part. Incorporation of any text amendment into the Development Code shall proceed pursuant to the Ordinance adoption provisions of the Benton County Charter. [Ord 90-0069]

### **53.630 Amendment to conform Comprehensive Plan or Development Code to new requirement in statute, goal or rule.**

- (1) Notwithstanding contrary provisions of state and local law, including BCC 53.620 and 53.625, a change to the Comprehensive Plan or Development Code solely for the purpose of conforming the Plan or Code to new requirements in a land use statute, statewide land use planning goal or rule of the Land Conservation and Development Commission implementing the statutes or goals may be adopted without a land use public hearing if:
  - (a) The Planning Official gives notice to the Department of Land Conservation and Development (DLCD) of the proposed change in the manner provided by ORS 197.610 and 197.615; and
  - (b) The DLCD confirms in writing that the only effect of the proposed change is to conform the

Comprehensive Plan or Development Code to the new requirements.

- (2) Nothing in this section removes any requirement in the Benton County Charter for a public hearing prior to adoption of an ordinance.
- (3) Notwithstanding the requirement under ORS 197.830 (2) that a person must have appeared before the local government orally or in writing, a person who has not appeared may petition for review of the decision under subsection (1) of this section solely to determine whether the only effect of the local decision is to conform the Comprehensive Plan or the Development Code to the new requirements.

[Ord 2015-0267] {ORS 197.612}

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