

## Chapter 89

### Historic Preservation

#### ADMINISTRATION

**89.005 Purpose.** This Chapter is intended to encourage continued use, rehabilitation, and preservation of significant historic sites and structures. [Ord 90-069, Ord 91-0080]

#### HISTORIC RESOURCES COMMISSION

**89.010 Historic Resources Commission Established.** (1) A Benton County Historic Resources Commission (HRC) is hereby created.

(2) The Historic Resources Commission shall:

- (a) Review and maintain the Benton County Cultural Resources Survey as the depository of information about historic resources in Benton County, and as the primary source of historic resources for inclusion on the Benton County Register of Historic Resources, and submit such information to the State Historic Preservation Officer for inclusion on the State Wide Inventory;
- (b) Receive and take action on requests to include a potential historic resource on, or remove a listed historic resource from, the Benton County Register of Historic Resources;
- (c) Review and act on National Register of Historic District applications;
- (d) Review and make recommendations to the County Development Department and Planning Commission on proposed land use actions and programs that may impact resources listed on the Benton County Register of Historic Resources;
- (e) Review and make decisions on demolition permits and building permits for exterior alteration of structures listed on the Benton County Register of Historic Resources;
- (f) Promote the use and preservation of historic resources by developing, in cooperation with other concerned parties, programs for the education, pleasure, energy conservation, housing, and public welfare and benefit of the County, and provide technical assistance to owners wishing to improve their historic properties;
- (g) Obtain and maintain up-to-date information on private, state and federal historic preservation organization and agency activities, seek to establish and maintain local programs that are consistent with these activities, and create and maintain a current reference library at the Benton County Historical Museum for individual use and consultation;
- (h) Recommend local historic resources for nomination to the National Register of Historic Places nomination;
- (i) Seek funding and professional assistance for historic resource survey and planning, and for repair, maintenance, rehabilitation, or restoration of historic resources;
- (j) Promote public awareness and interest in Benton County historic resources; and

(k) Perform other duties relating to historic resources upon request of the Benton County Board of Commissioners. [Ord 85-003, 85-026, Ord 90-069]

## **BENTON COUNTY REGISTER OF HISTORIC RESOURCES**

**89.205 Creation of Register.** The Benton County Register of Historic Resources is hereby created and recognized as the official County list of property that possesses cultural and historic values worthy of preservation. The purpose of the Register is to provide additional protection and additional incentives to preserve significant historic structures. [Ord 85-003, 85-026, Ord 90-069]

**89.210 Location of Register.** The Register shall be maintained and located at the Benton County Development Department. A copy of the Register shall be located at the Benton County Historical Society Museum. [Ord 85-003, ORD 90-069, Ord 91-0080]

### **89.215 Procedure for Placement of Historic Resource on Register.**

(1) A site or structure may be considered for placement on the Benton County Register of Historic Resources:

(a) Upon application of an owner of a potential historic resource;

(b) Upon determination by the Historic Resources Commission that an historic resource should be reviewed for inclusion on the Register to comply with the requirements of Statewide Planning Goal 5; or

(c) Upon petition by a representative of an affected state agency or by any member of the public and with the endorsement of a majority of members of the Historic Resources Commission, for the review of any structure or site not reviewed by the Commission pursuant to BCC 89.215(2).

(2) Placement of a property on the Register after July 1, 2000 shall only occur if:

(a) The property owner signs an affidavit of consent to have the property listed; and

(b) Signs a deed covenant to be recorded into the County Deed Records, binding on the current property owner and the owner's successors in interest, agreeing to retain the historic designation for a period of at least 20 years.

(3) If the property owner does not consent to the historic designation, the property shall not be listed on the Register. In such case, the County shall not issue any permits for demolition or alteration of the property for 120 days from the date of objection. [Ord 91-0080; 2000-0161]

**89.220 Sites on the Inventory of Historic Resources.** (1) The Historic Resources Commission (HRC) shall review all the structures and sites on the Benton County Inventory of Historic Resources, contained in the Open Space Scenic and Cultural Resource background Report of the Benton County Comprehensive Plan to determine compliance with the requirements of BCC 89.230. The Commission shall conduct the review of site and structures on the inventory in accordance with the procedures contained within BCC 89.225.

(2) The Goal 5 review process contained in BCC 89.225 shall be completed prior to or concurrent with a review for exterior alteration or demolition of any site on the Benton County Inventory of Historic Resources. This includes sites classified as significant resources (Goal 5 classification "1C") on the Inventory. [Ord 93-0101]

**89.225 Procedures for Notice, Hearings, and Findings.** (1) The notice procedures contained in BCC 51.610 through 51.615 shall be followed for public hearings before the HRC to consider placing a site or structure on the Register.

(2) Public Hearings for placement of a site or structure on the Register shall be conducted in accordance with BCC 51.705 through 51.725.

(3) The HRC shall make written findings supporting its decision based upon the review criteria contained in BCC 89.230.

(4) Notice of a decision of the HRC shall be provided in accordance with BCC 51.625.

(5) Following expiration of the appeal period, the Planning Official shall provide for recording a notice in the County Deed Records indicating placement of a site or structure on the Register and a brief summary of requirements provided by BCC 89.305 to 89.510. [Ord 91-0080]

**89.230 Review Criteria.** (1) A site or structure shall be eligible for placement on the Register if the resource is adequately identified and described by existing data sources or other information provided with the petition and the preponderance of evidence demonstrates that the site or structure:

(a) Is at least fifty (50) years old, and includes identifiable integrity of location, design, setting, materials, workmanship, feeling, or association that reflects the significance of the property; and

(b) Is associated with events that have made a significant contribution to the broad patterns of history of Benton County, the region, the State or the nation; or

(c) Is associated with the lives of persons significant in this history of Benton County, the region, the states or the nation; or

(d) Embodies distinctive characteristics of a type, period, or method of construction, or possesses high artistic values, or represents a significant and distinguishable entity even though components may lack individual distinction; or

(e) Represents types or styles of construction that were once common and now are among the last examples surviving in the County, the region or the State; or

(f) Has yielded or may be likely to yield, information important in prehistory or history.

(2) If the HRC determines that a resource is eligible for placement on the Register pursuant to Sub-section 1 of this Section, the HRC shall consider potential conflicting uses, which if allowed could negatively impact the resource, pursuant to Statewide Planning Goal 5. The Economic, Social, Environment and Energy Consequences (ESEE) of the conflicting uses shall be identified and evaluated to determine if conflicting uses should be limited or whether conflicting uses shall be fully allowed. If the conflicting use is found to have a higher value as evident in the analysis of the ESEE consequences, the conflicting use may be allowed fully in accordance with Statewide Planning Goal 5 and the site or structure under review shall not be placed on the Register. [Ord 85-003, 85-026, Ord 90-069, Ord 91-0080]

**89.235 Removal of Resource from Historic Register.** (1) If an historic resource has been demolished or destroyed, the HRC may remove the resource from the Register without a hearing. In addition, if a destroyed resource site has received approval for a special use pursuant to this chapter, the HRC shall make a written request to the Planning Official to invalidate the approval.

(2) Requests for removal of an historic resource from the Register for any reason other than demolition or destruction shall be processed through the procedure provided in this chapter. To remove an historic resource from the Register, the HRC must determine that the findings made pursuant to BCC 89.230 for inclusion on the Register no longer apply.

(3) Notwithstanding (2) above, a property placed on the Register prior to July 1, 2000, shall be removed from the Register upon request of the property owner(s).

(a) The current owner shall submit a written request to the Planning Official for the property to be removed from the Register, stating that the historic designation was imposed on the property.

(b) Upon receipt of a request that complies with BCC 89.235(3)(a), the County shall remove the historic designation.

(c) If a property is removed from the Register by the process in this subsection, the County shall not issue any permits for demolition or alteration of the subject property for at least 120 days from the date the property owner requests removal of the property from the Register. [Ord 85-003, 85-026, Ord 90-069, Ord 91-0080, 2000-0161]

**89.240 Appeals.** A decision made by the HRC to approve or deny inclusion of an historic resource on the Register or to remove an historic resource from the Register may be appealed to the Board of Commissioners pursuant to BCC 51.805 through 51.825. [Ord 85-003, Ord 90-069, Ord 91-0080]

## **EXTERIOR ALTERATION OR DEMOLITION OF A STRUCTURE ON THE COUNTY REGISTER**

**89.305 Permits Required.** A permit is required for the exterior alteration, demolition or removal of any structure listed on the Benton County Register of Historic Resources, or any buildings, structures, objects, sites, or districts listed in the National Register of Historic Places, or within approved national register historic districts pursuant to the National Historic Preservation Act of 1966 (PL 89-665; 16 U.S.C. 470).. For the purpose of this section "exterior alteration" includes any construction activity which would affect the character or integrity of a site or structure. Ordinary maintenance of a site or structure, including cleaning, painting, and minor repairs which do not require the installation or replacement of exterior building materials are exempt from exterior alteration review requirements. The construction of additions, changes in an exterior facade including the replacement of doors or windows and the replacement of other architectural features are subject to review under this section. [Ord 85-003, Ord 90-069, Ord 91-0080, 2000-0161]

**89.310 Exception to Permit Requirements.** Nothing in this section prevents the construction, reconstruction, alteration, restoration, demolition, or removal of any exterior architectural feature or any property on the Register when the Building Official, Fire Marshall, or Rural Fire District Chief determines that such emergency action is required for the public safety due to unsafe or dangerous condition. Prior to such emergency action, the Chairperson of the Historic Resources Commission shall be notified. [Ord 85-003]

**89.315 Permit Process.** (1) Application for a permit to alter or demolish a structure listed on the Register shall be on such forms and in such detail as prescribed by the Planning Official. The Planning Official shall schedule a public hearing on the request at the next available meeting of the Historic Resources Commission.

(2) Upon receipt of a completed application, the Planning Official shall refer the request to all appropriate County agencies, the County Building Official, the chairperson of the Historic Resources Commission, and the chairperson of any city-appointed historic preservation group, if the request is located within an urban growth boundary.

(3) If the site or structure is listed on the National Register of Historic Places and the owner receives tax benefits under the provisions of ORS 358.475, the Planning Official shall also refer such applications to the State Historic Preservation Office.

(4) Public notice procedures in BCC 51.610 to 51.615 shall be followed for public hearings before the Commission.

(5) The hearing shall be conducted in accordance with BCC 51.705 through 51.725. [Ord 85-003, Ord 90-0069, Ord 91-0080]

**89.320 Review Criteria for an Alteration Permit.** (1) The Historic Resources Commission shall review an application for exterior alteration pursuant to the following guidelines:

(a) The removal or alteration of any historic material or distinctive architectural feature should be avoided.

(b) Alterations that have no historical basis, or which seek to create an earlier or later appearance inconsistent with the age or type of the structure *sought* be altered, should be discouraged.

(c) Changes in a structure which have taken place over time and which have acquired significance in their own right within the meaning of BCC 89.230(1), should be protected.

(d) Deteriorated architectural features should be repaired rather than replaced. In the event that replacement is necessary, the new material should match the material being replaced in composition, design, color, texture and other visual qualities.

(e) Repair or replacement of missing architectural features should be based on accurate duplication of the feature, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of architectural elements from other structures.

(f) Contemporary design for alterations or additions to existing properties should be discouraged unless such alteration and additions will not destroy significant historical, architectural or cultural material and such design is compatible with the size, scale, color, material, and character of the property, neighborhood or environment.

(g) New additions, or alterations should be done in such manner that if the additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

(h) Alterations or additions should not significantly alter the character of the site or potential archaeological resource.

(2) A decision by the Historic Resources Commission to approve, approve with Conditions, or deny an application for an exterior alteration permit shall be based upon the following criteria:

(a) The extent to which the state of repair of the structure creates a need for the alterations. An alteration required because of a defect or deterioration in the structural or environmental systems of the historic resource shall be given greater deference than an alteration for cosmetic purposes.

(b) The cost of complying with the guidelines in Subsection 1 as compared to the cost of the alteration as proposed by the applicant shall not cause an undue hardship on the applicant; and

(c) The significance and integrity of the historic resource, and the degree of impact of the proposed alteration.

(3) The Historic Resources Commission may attach conditions to the approval of an alteration permit in order to mitigate the impact of an alteration on an historic resource. Conditions may address, but shall not be limited to:

(a) Design;

(b) Material;

(c) Location;

(d) Scale;

(e) Size; and

(f) Style.

(3) If a property owner removes a property from the Register by means of BCC 89.235(3), the Historic Resources Commission shall not issue a permit for any alteration for at least 120 days from the date the property owner requests removal of the property from the Register.

[Ord 91-0080, 2000-0161]

**89.325 Review Criteria for a Demolition Permit.** (1) A decision by the Historic Resources Commission to approve, approve with conditions, delay a final decision or deny an application for demolition shall be based upon the following criteria:

(a) The state of repair of the structure;

- (b) The rehabilitation costs;
- (c) The cultural or historic significance of the resource, including assessment of such items as integrity of location, design, setting, materials, workmanship, feeling, or association; and
- (d) The economic, cultural, and energy consequences of demolition of the structure.

(2) The Historic Resources Commission may order that action on a demolition request be deferred for a period not to exceed 150 days. A decision to defer action on a demolition request shall be based upon an identified course of action which provides for the investigation of alternatives to demolition, documentation of the property prior to demolition or other appropriate mitigative measures. During this period, the HRC may attempt to determine if public or private acquisition and preservation is feasible, or if other alternatives could be carried out to prevent demolition or removal of the structure. At the end of the delay period, the HRC shall make a final decision within ten (10) working days. Approval, or approval with conditions, shall only be made prior to the expiration of a 150 day waiting period when the Building Official and Fire Marshall or Rural Fire District Chief have determined that the demolition request is necessary due to applicable building, fire, life, and safety codes.

(3) If a property owner removes a property from the Register by means of BCC 89.235(3), the Historic Resources Commission shall not issue a demolition permit for at least 120 days from the date the property owner requests removal of the property from the Register. [Ord 85-0030, Ord 90-0069, Ord 91-0080, 2000-0161]

**89.330 Appeals.** A decision of this Historic Resources Commission decision on a request for exterior alteration or demolition of a site or structure on the Register may be appealed to the Board of Commissioners pursuant to BCC 51.805 - 51.825. [Ord 85-003, Ord 90-069, Ord 91-0080]

## **SPECIAL USES ALLOWED FOR REGISTER PROPERTIES**

**89.400 Home Occupation.** (1) All uses permitted under ORS 215.448 (Home Occupation) shall be reviewed by the Historic Resources Commission when such uses are proposed for a structure listed on the Benton County Register of Historic Resources. The HRC shall recommend approval, approval with modifications or denial of application to the Planning Official for final approval.

(2) The decision to approve a Home Occupation proposed for a structure on the Register shall be based on compliance with the following criteria:

- (a) The home occupation shall be operated by a resident of the property on which the business is proposed to be located;
- (b) The home occupation shall be conducted in the dwelling or other existing buildings;
- (c) The home occupation shall employ no more than five full-time or part-time persons in any work shift;
- (d) A minimum of two parking spaces or as otherwise determined to be required by the use shall be provided on-site for the home occupation;
- (e) The home occupation shall not seriously interfere with existing uses on nearby land or with other uses permitted in the zone in which the property is located;
- (f) The home occupation shall be compatible with the historic and architectural integrity of the structure and surrounding site;
- (g) The home occupation shall not destroy or seriously detract from the distinguishing character or qualities of the structure and surrounding site;
- (h) The location, size, design, and operating characteristics of the home occupation shall not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood; and

(i) The proposed site of the home occupation shall have adequate services and physical characteristics, including water supply, sewage disposal, access (ingress and egress) and parking.

(3) Home occupations located in structures on the Register shall be reviewed by the Planning Official every twelve (12) months following the date the use is approved. The use may continue if it complies with the conditions of its approval. The approval of a home occupation shall not be used as sole justification for a zone change; nor shall an approval of a home occupation permit construction of any new structure that would not otherwise be allowed in the zone in which the use is to be established.

(4) All signs shall be subject to review and recommendation by the Historic Resources Commission, and shall not detract from the historic or architectural integrity of the site, considering the proposed material, design, size and location of such signs. [Ord 26, Ord 90-0069]

**89.410 Special Uses.** (1) The following special uses may be allowed by conditional use permit pursuant to BCC 53.205 to 53.235 for a structure listed on the Benton County Register of Historic Resources in any zone except for resource zones, subject to review by the Historic Resources Commission. The Historic Resources Commission shall recommend approval, approval with modifications, or denial of application to the Planning Official who shall make the final decision.

- (a) Bed and breakfast accommodations.
- (b) Eating establishment.
- (c) Arts and craft galleries.

(2) In addition to conditional use permit criteria, the decision to recommend or grant a special use shall be based on findings that demonstrate compliance with the following criteria:

- (a) The proposed use will be conducted in the dwelling or existing buildings;
- (b) The proposed use will not interfere with existing uses on nearby land or with other uses permitted in the zone in which the property is located.
- (c) The proposed use will be compatible with the historic and architectural integrity of the structure and surrounding site;
- (d) The proposed use will not destroy or detract from the distinguishing character or qualities of the structure and surrounding site;
- (e) The location, size, design, and operating characteristics of the proposed use will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood; and
- (f) The proposed site has the physical characteristics needed to support the proposed use, such as, but not limited to, suitability for necessary sewage treatment system, adequacy of quantity and quality of water and adequacy of access (ingress and egress) and parking.

(3) Special uses shall be reviewed by the Planning Official every twelve (12) months following the date the use is approved. The use may continue if it complies with the conditions of its approval. The approval of a special use shall not be used as justification for a zone change; nor shall an approval permit construction of any new structure that would not otherwise be allowed in the zone in which the use is to be established.

(4) All signs shall be subject to review and recommendation by the Historic Resources Commission, and shall not detract from the historic or architectural integrity of the site, considering the proposed material, design, size and location of such signs. [Ord 26, Ord 90-0069]

## **LAND PARTITIONS; PROPERTY LINE ADJUSTMENTS**

**89.500 Land Partitions and Property Line Adjustments Involving Historic Resources.** An owner of a property on the County Register located in any zone may apply to separate the historic site from land in

the same ownership pursuant to BCC 89.510 without a hearing, unless a hearing is otherwise required to comply with any other land partition provision of this code. Requests for a land partition or property line adjustment to separate an historic structure or site from adjacent land in the same ownership shall be referred for review by the Historic Resources Commission. The Historic Resources Commission shall recommend approval, approval with modifications, or denial to the Planning Official or Planning Commission, who shall make the final decision. [Ord 26, Ord 90-0069, Ord 96-0118]

**89.505 Waiver of Minimum Parcel or Lot Size.** Withstanding any minimum parcel or lot size requirements specified by an adopted Comprehensive Plan or requirements of the Statewide Planning Program, a proposed parcel or lot containing a historic site or structure need not comply with the minimum parcel or lot size required by the assigned zoning. The acreage or area contained within the proposed parcel or lot shall be sufficient to comply with applicable criteria in BCC 89.510. [Ord 90-0069, Ord 91-0080, Ord 96-0118]

**89.510 Criteria for Land Partitions and Property Line Adjustments.** The decision to approve a land partition or property line adjustment involving an historic resource shall be based on findings which demonstrate that the proposed action:

- (1) Includes a structure or site listed on the County Historic Register;
- (2) Is compatible with the historic and architectural integrity of the historic structure or site;
- (3) Does not destroy or detract from the distinguishing character or qualities of the historic structure or site;
- (4) Is of a size possible to serve the interests of the affected property owner and to adequately protect the integrity of the historic structure or site;
- (5) Has no substantial adverse effect on the livability or appropriate development and existing uses of abutting properties and the surrounding area;
- (6) Incorporates adequate physical characteristics needed to comply with setback (if feasible), septic, water and road standards contained in this code;
- (7) Is appropriate to provide for the preservation and protection of a significant historic structure or site; and
- (8) Complies with appropriate criteria in BCC Chapters 95 to 98. [Ord 26, Ord 90-0069, Ord 96-0118]