

## CHAPTER 16

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## ARTICLE 1

### General Provisions

#### **Sec. 16-1-10. Purpose.**

The zoning regulations set forth in this Chapter have been established in accordance with the Comprehensive Plan for the purpose of promoting the health, safety and the general welfare of the present and future inhabitants of the Town, in order to:

- (1) Implement the Town's goals, policies, plans and programs to guide orderly growth;
- (2) Protect the tax base and property values in the Town;
- (3) Encourage and facilitate the most appropriate land uses throughout the Town;
- (4) Promote logical, quality growth that facilitates adequate provisions for transportation systems, water, sewerage, schools and emergency services;
- (5) Provide adequate open space for light and air;
- (6) Secure safety from fire and other dangers;
- (7) Promote safety on streets and roads within the Town;
- (8) Secure economy in governmental expenditures; and
- (9) Ensure quality development that will promote economic development and preserve and enhance the quality of life for the present and future inhabitants of the Town. (Ord. 2001-10 §1)

#### **Sec. 16-1-20. Applicability.**

This Chapter shall apply to all property within the Town. (Ord. 2001-10 §1)

#### **Sec. 16-1-30. Effective date.**

This Chapter shall become effective on the effective date of the adopting ordinance passed by the Town Council. (Ord. 2001-10 §1)

#### **Sec. 16-1-40. Repeal.**

Town of Mountain View Ordinance 87-1 and all other ordinances that are in conflict with the provisions of this Chapter are hereby repealed in their entirety. (Ord. 2001-10 §1)

#### **Sec. 16-1-50. Violation and penalty.**

No land in the Town shall be used, nor any building or structure erected, constructed, enlarged, altered, maintained, moved or used, in violation of this Chapter or amendments thereto. The Town Council, through the Town Attorney and any court of appropriate jurisdiction, may initiate legal action to prevent, abate or remove such unlawful use, maintenance, erection, construction, reconstruction or alteration, in addition to any other remedies provided by law. Any such violation of this Chapter or amendments thereto shall be considered unlawful and a public nuisance. (Ord. 2001-10 §1)

**Sec. 16-1-60. Interpretation.**

(a) In interpreting the provisions of this Chapter, the minimum requirements for the promotion of public health, safety, convenience, order, prosperity and the general welfare shall apply.

(b) To the extent that there is a conflict between this Chapter and any other law, ordinance, resolution, rule or regulation of any kind, the more restrictive requirement shall apply to such application, except to the extent limited by vested property rights then in effect.

(c) Restrictive or protective covenants which contain any specification limiting the transfer, rental or lease of any housing because of race, creed, religion, color, sex, marital status, national origin, ancestry or handicap are prohibited by Section 24-34-502, C.R.S., and Title VIII of the Fair Housing Act of 1968, 42 U.S.C. § 3604(c). (Ord. 2001-10 §1)

**Sec. 16-1-70. Rezoning procedures and application requirements.**

(a) This Section provides guidelines for the approval of rezoning when required for specific principal permitted uses and accessory uses in particular zoning districts.

(b) Preapplication conference. The applicant for a rezoning shall meet with the Chief Building Official at a preapplication conference to discuss the proposed use, concepts, feasibility, regulations and application requirements applicable to the proposal. The Chief Building Official shall review and explain the application form and required submittal items at the preapplication conference.

(c) An application for rezoning shall include the following:

(1) A completed application on a form provided by the Town.

(2) A copy of a current title commitment for the subject property.

(3) A legal description of the property designated as a lot, block or tract on a recorded plat.

(4) A written description of the proposed use and project overview, containing enough information to provide a detailed overview of the proposed use and containing specific descriptions of items such as building setbacks, structure height, signage, parking, lighting, architectural materials to be used, landscaping being proposed and any other items necessary to provide a clear understanding of the proposed rezoning.

(5) The name, address and telephone number of the applicant. An application filed by any party other than the property owner shall contain a written statement signed by the owner and notarized, stating that there is no objection to the proposed application and that the agent is authorized to act on behalf of the owner with regard to all aspects of the action requested.

(6) A twenty-four-inch-by-thirty-six-inch scaled drawing of the layout of the proposed uses for the parcel, which includes the following: property lines and dimensions; adjacent rights-of-way and easements; location, type and size of utility lines; vicinity map; bar-type graphic scale; location and ownership of adjacent property; location and name of adjacent subdivisions; location and zoning classification of each adjacent zone district; location of any flood hazard areas; project name; north arrow; and name, address and telephone number of the person preparing the drawing.

(7) A closed and balanced boundary survey of the subject property in graphic and written form, with the name, address, telephone, license number and stamp of the registered engineer or surveyor responsible for preparing the survey.

(8) A Phase I Drainage Report, if there is a significant amount of impervious material proposed for the site.

(9) Other materials as specified by the Chief Building Official shall be included with the application as necessary to provide written or graphic information about the subject property and impacts on the area in which the property is located, to permit a thorough and accurate analysis of the request.

(d) Fees.

(1) Application fee. A fee in the amount determined by resolution of the Town Council shall be collected with the application, which fee shall be sufficient to cover the costs of administration, inspection, publication of notice and similar matters associated with review of the application.

(2) Consultant fees. The Town may bill applicants for any and all costs of professional or consulting services which the Town incurs as a result of an applicant or his or her project. Professional or consulting services include but are not limited to legal, engineering, planning or hydrological services. In addition to the application fee, the applicant shall deposit with the Town the estimated cost for professional or consulting services, as determined by the Town at the time the application is submitted.

(e) Procedure.

(1) The applicant shall submit the completed application to the Chief Building Official, who shall refer the submittal to Town staff, appropriate governmental agencies and/or interested parties within three (3) business days of receipt. Said referral shall be for a period of twenty-one (21) calendar days. The Town shall provide the applicant with a written response to the submittal within five (5) business days after the end of the referral period.

(2) When all necessary documentation has been received, reviewed and found to be complete by the Chief Building Official, the Town shall schedule the application for review by the Planning and Zoning Commission and the Town Council.

(3) The Planning and Zoning Commission and the Town Council shall each review the application at a public hearing, and both public hearings may be held on the same day.

(4) At least thirty (30) days prior to the public hearing before the Planning and Zoning Commission, the Town shall post notice of the hearing on the property and shall publish notice of the hearing in a newspaper of general circulation in the Town.

(5) The Planning and Zoning Commission shall review each application, consider the testimony and evidence presented at the public hearing and make a recommendation to the Town Council for approval, denial, conditional approval or continuance.

(6) After the Planning and Zoning Commission has held a public hearing and forwarded a recommendation to the Town Council, the Town Council shall conduct a second public hearing, which hearing may be held on the same day as the Planning

and Zoning Commission's public hearing. The Town Council's public hearing shall be subject to the same notice requirements as the Planning and Zoning Commission's public hearing.

(7) Upon conclusion of the presentation of testimony, evidence and arguments, the Town Council shall render a decision approving, conditionally approving or denying the rezoning or continuing the case for further testimony or decision.

(8) Any decision to rezone the property must be done by ordinance, the first reading of which may occur on the same day that the Town Council approves the application. (Ord. 2001-10 §1; Ord. 2006-6 §1)

#### **Sec. 16-1-80. Zoning Map.**

The boundaries of the zone districts are set forth on the Town of Mountain View Zoning Map located at the Town Hall. The Zoning Map shall be amended from time to time as rezoning and special exceptions occur. (Ord. 2001-10 §1)

#### **Sec. 16-1-90. Definitions.**

For purposes of this Chapter, words used in the present tense also include future tense. Words used in the singular also include plural and vice versa. The word *shall* is mandatory, not directory. Words and terms are defined as follows for purposes of this Chapter:

*Accessory building* means a subordinate building that is incidental to the principal building on the same lot or property.

*Accessory use* means a subordinate use that is incidental to the principal use on the same lot or property.

*Alley* means a public right-of-way within a block which is less than twenty (20) feet in width, which provides access to the rear of residential or commercial establishments and which is generally a secondary means of access to the property abutting along its length.

*Assisted living facility* means a home for the aged, chronically ill or incurable persons in which five (5) or more persons, not of the immediate family, are kept or provided with food, shelter or care for compensation, and that is licensed by the State.

*Automotive repair* means a commercial enterprise providing for the maintenance of motor vehicles in a fully enclosed structure, including but not limited to mechanical repairs, painting, bodywork, detailing, tires, mufflers, brakes, lubrication, oil changes and similar type repair work.

*Board of Adjustment and Appeals* means the board established by Section 8.2 of the Home Rule Charter.

*Building* means a structure having a roof supported by columns or walls and used or intended for supporting or sheltering any use or occupancy.

*Building permit* means a written document issued by the Town, granting permission to construct, erect, repair or alter structures in accordance with the building and zoning codes of the Town in effect at the time application for the permit is filed.

*Chief Building Official* means the official designated by the Town Council to be responsible for accepting and reviewing plans for building or occupancy and applications for building and occupancy permits, and for the interpretation and enforcement of ordinances related thereto.

*Child care* means the care of children eighteen (18) years of age or younger who are not related to the person providing the care, whether the care is provided with or without compensation.

*Child care center* has the meaning set forth in Section 26-6-102(1.5), C.R.S.

*Church* means a building, together with its parsonage and accessory buildings and uses, where persons regularly assemble for religious worship, meetings, church school and other activities, and which is maintained and controlled by a religious body organized for the purposes of worship.

*Commercial* means any lawful business endeavor to engage in the manufacturing, purchase, sale, lease or exchange of goods and/or the provision of services.

*Construction office* means a mobile trailer, home or any temporary structure used by a construction contractor for temporary office facilities during construction of a building or structure.

*Dwelling, multi-family* means any building structurally divided into three (3) or more separate dwelling units.

*Dwelling, single-family* means a detached principal structure, other than a mobile home, designed and used as a single residential dwelling unit exclusively by one (1) family, unless otherwise provided for in state or federal law.

*Dwelling, two-family attached* means any building structurally divided into two (2) separate dwelling units.

*Dwelling unit* means one (1) or more rooms connected together but structurally divided from other structures or from all other rooms in the same structure and providing residence for a family.

*Family* means a group of persons related by blood, marriage or adoption, or by the relationship of guardian, ward or foster family who may not necessarily be related by blood or marriage, or a group of not more than three (3) unrelated persons living together in a dwelling unit, living together as a single household unit, except that a *family* shall not include more than one (1) individual, or two (2) individuals related by marriage, required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S.

*Fast food establishment* means any establishment whose principal business is the sale of foods, frozen desserts or beverages to the customer in a ready-to-consume state and whose principal method of operation is not restricted to tables and counters inside the restaurant building or on a dining patio immediately adjacent thereto.

*Front yard* means that portion of a lot lying between a public street and the nearest parallel front setback line of such lot.

*Frontage* means all sides of a lot adjacent to a street.

*Grade* means the average finished ground level of the land immediately adjacent to and surrounding a building.

*Gross leasable area (GLA)* means the total floor area designed for tenant occupancy and exclusive use, expressed in square feet and measured from the centerline of joint partitions and from outside wall faces. *GLA* does not include public or common areas such as public toilets, corridors, stairwells, elevators, machine and equipment rooms, lobbies or mall areas, whether open or enclosed.

*Group home* means a residence in which five (5) or more individuals, who are not capable of living independently, can live together and receive supportive services and are supervised by persons who live in the residence. A group home shall not have more than twelve (12) residents, including supervisory personnel. A group home shall be licensed by an agency of the State of Colorado or a political subdivision, or a State-licensed child placement agency, as a group home, receiving home or similar facility.

*Hardscape* means any nonliving element in landscaping, including pedestrian walkway paving, street furniture, lighting and similar elements that complement landscaping materials, but not including nondecorative sidewalks.

*Junk* means any material that is so worn, deteriorated or obsolete as to make it unusable in its existing condition.

*Landscape plan* means a scaled plan that illustrates the location, size, type and number of landscaping items to be installed.

*Landscaped area* means an area with a combination of living plants such as trees, shrubs, groundcover, flowers or grass; natural features such as rock, stone or mulch; and structural features such as fountains, reflecting pools, art work, screen walls, fences, benches, decorative paving, ornamental concrete or stonework areas. Weeds and artificial plants shall not be considered landscaping.

*Legal nonconforming use* means the use of land or buildings that was lawful at the time of the effective date of the ordinance adopting this Chapter or amendments thereto, and that does not comply with the use regulations applicable to the district in which the property is located as set forth in this Chapter.

*Lot* means a parcel of land under one (1) ownership, occupied or intended to be occupied by a main building and the accessory uses customarily incidental to such main building, including the open spaces required by this Chapter and such open spaces as are arranged and designed to be used in connection with such buildings. A lot may or may not be a portion of a recorded plat. A lot may not be divided by any public right-of-way or alley.

*Lot coverage* means that portion of a lot covered or permitted to be covered by structures, including accessory structures, also known as *building coverage*.

*Lot line, front* means any property boundary line parallel and adjacent to a north-south-running public street.

*Lot line, rear* means any property boundary line adjoining or in an alley access road.

*Lot line, side* means any property boundary line of a lot that is not a front or rear lot line.

*Lot line, side adjacent to street* means any property line parallel and adjacent to an east-west-running public street.

*Major arterial street* means a thoroughfare designated on the Town's Comprehensive Plan as an expressway or parkway.

*Major recreational equipment* means boats, boat trailers, travel trailers, motorized dwellings, motor homes, tent trailers and hauling trailers.

*Major vehicle* means any vehicle of eight (8) feet or more in width and/or twenty-five (25) feet or more in length, or any truck tractor or semi-trailer, regardless of size, but does not include major recreational equipment.

*Mini-structure* means a portable-type, movable structure such as a storage shed, prefabricated greenhouse or elevated or nonelevated play enclosure, that meets the definition of a *mini-structure* as defined in the current building code adopted by the Town, which is exempt from side and rear zoning setback requirements, but not exempt from any easement, right-of-way or vision clearance triangle requirements.

*Mobile home* is defined as any mobile home or movable structure as defined by Section 42-2-102(82), C.R.S.

*Off-street loading space* means a parking space for loading and unloading vehicles with a minimum area of thirty-five (35) feet in length and twelve (12) feet in width.

*Parking space, off-street* means an off-street area or space, located either inside or outside a structure, including driveways and garages, used for the temporary parking of motor vehicles, with direct and unobstructed access to a street or alley. In the R-2 Zone District, the standard off-street parking space shall measure nine (9) feet in width and eighteen (18) feet in length. In the R-3 Zone District and any nonresidential zone district, the standard parking space shall measure nine (9) feet in width and eighteen (18) feet in length, and any aisle shall be adequate in width for emergency services and approved by the fire district.

*Planning and Zoning Commission* means the commission established to carry out the powers and duties to provide and plan for development as mandated by state law, Section 8.3 of the Home Rule Charter and Town ordinance. The Town Council shall serve as the Planning and Zoning Commission.

*Preschool* means a day care and educational facility for seven (7) or more children, aged five (5) years or younger, that is licensed by the State.

*Principal permitted use* means the primary purpose or function that a parcel serves or is intended to serve, and/or a use by right which is permitted anywhere within the particular zone district in which it is identified.

*Property line* means the legally described boundary line that indicates the limits of a parcel, tract, lot or block for the purpose of delineating ownership and setback requirements.

*Right-of-way* means property dedicated to public use, such as roads, streets, utilities, pedestrian and bicycle paths and alleys.

*Setback* means the required minimum distance that any structure may be located from the front, side or rear property line. The setback lines define the area of a lot that can be built upon.

*Site plan* means a graphic representation of proposed or existing improvements, including building locations, parking areas, easements, driveways and adjacent rights-of-way.

*State* means the State of Colorado.

*Structural alteration* means any change in the supporting members of a building, such as bearing walls, columns, beams, girders, floors or roof joists.

*Structure* means a building.

*Town* means the Town of Mountain View, Colorado.

*Town Council* means the Town Council of the Town of Mountain View, Colorado.

*Tree lawn* means that landscaped area between the sidewalk and the roadside curb which is landscaped with live materials and is permeable.

*Use* means the purpose for which land or structures are intended to be occupied, maintained, rented or leased.

*Variance* means a deviation from the terms of this Chapter that is not contrary to public interest and due to special conditions or circumstances.

*Vision clearance triangle* means a clear area from four (4) feet to eight (8) feet from the ground located at a stop or light-controlled intersection going a distance of ten (10) feet along the flowline of the controlled road and twenty (20) feet along the flowline of the uncontrolled road in each direction.

*Xeriscape* means landscaping which is specifically intended to achieve water conservation. (Ord. 91-2 §1; Ord. 2001-10 §1; Ord. 2001-12 §4; Ord. 2007-4 §1)

#### **Sec. 16-1-100. Modification of lots or structures.**

No lot or any structure thereon shall be modified in any way which does not comply with the applicable zone district regulations in this Chapter, unless:

- (1) The Board of Adjustment and Appeals grants a variance or special exception within its authority; or
- (2) The property or a portion thereof is acquired by an authorized public entity. (Ord. 2001-10 §1)

#### **Sec. 16-1-110. Structures per lot.**

(a) Every building shall be constructed on a lot or combination of lots, and no lot shall have more than one (1) main building, except as otherwise provided by this Chapter.

(b) The site approval process described in Article 11 of this Chapter shall be required for all properties in the C-1 and R-3 Zone Districts on which the use is not a single-family or two-family dwelling. (Ord. 2001-10 §1)

#### **Sec. 16-1-120. Setback measurement.**

(a) Setbacks shall be measured from the point that is the shortest distance between any portion of the structure and the lot line.

(b) Setbacks adjacent to an alley shall be measured from the point that is the shortest distance between any portion of the structure and a line parallel to the centerline of the block in the alley, which line is located eight (8) feet from the centerline of the block in the alley in the direction of the property in question. (Ord. 2001-10 §1)

**Sec. 16-1-130. Major recreational equipment.**

(a) No major recreational equipment shall be parked or stored on any street or roadway within the Town for a period of more than seventy-two (72) consecutive hours.

(b) No major recreational equipment shall be used for living, sleeping or housekeeping purposes while parked on any street or roadway in the Town.

(c) No major recreational equipment shall be used for living, sleeping or housekeeping purposes while parked on private property in the Town for more than seven (7) days. (Ord. 2001-12 §1)

**Sec. 16-1-140. Garage and yard sales.**

(a) For purposes of this Section, *garage sale* or *yard sale* means the selling of items or merchandise by the occupants of the residence at which the sale is held.

(b) In any residential zone district in the Town, garage or yard sales shall not be held more than three (3) times per year, per household. A garage or yard sale that continues for no more than three (3) successive days, such as Friday, Saturday and Sunday, shall be considered one (1) garage or yard sale.

(c) Notwithstanding Subsection (b) above, the sale of any item or merchandise that is not owned by the occupants of the residence at which the sale is held or by neighbors residing on the same street as the residence at which the sale is held is prohibited.

(d) All signs advertising a garage or yard sale shall be removed from all locations within the Town no later than 7:00 a.m. on the morning following the conclusion of the garage or yard sale.

(e) All garage sale items shall be removed and/or stored in an enclosed structure during any time the garage sale is not being conducted and by sunset of each day the garage sale is being conducted.

(f) Violations of this Section shall be punished by a fine not to exceed four hundred ninety-nine dollars (\$499.00). (Ord. 2003-12 §1)

**ARTICLE 2**

**Permits Required**

**Sec. 16-2-10. Building permits.**

No building or other structure shall be erected, moved, added to or structurally altered without a permit issued by the Chief Building Official or other person directed by the Town. No building permit shall be issued except in conformity with the provisions of this Chapter, unless the Board of Adjustment and Appeals has granted a variance within its authority. (Ord. 2001-10 §1)

**Sec. 16-2-20. Application for building permit.**

An application for a building permit shall include the following:

- (1) A completed application on a form provided by the Town.
- (2) An application fee in an amount determined by resolution of the Town Council.
- (3) Two (2) copies of a scaled site plan showing property lines, access and drive locations, and existing and proposed buildings.
- (4) Documentation from the Wheat Ridge Water and Sewer District that adequate water and sewer service is available and that all applicable tap fees have been paid.
- (5) Construction drawings in compliance with the current adopted edition of the building code and any other applicable Town ordinances or regulations.
- (6) Any other information deemed necessary by the Chief Building Official. (Ord. 2001-10 §1)

**Sec. 16-2-30. Fence permit.**

It is unlawful for any person, firm or corporation to erect, construct or reconstruct a fence without first obtaining a fence permit. (Ord. 2001-10 §1)

**Sec. 16-2-40. Application for fence permit.**

An applicant for a fence permit shall submit a completed application on a form provided by the Town, to the Town Clerk, which shall include the following information:

- (1) An application fee in an amount determined by resolution of the Town Council;
- (2) Two (2) copies of a scaled site plan showing property lines, access and drive locations and existing and proposed buildings; and
- (3) Any other information deemed necessary by the Chief Building Official. (Ord. 2001-10 §1)

**Sec. 16-2-50. Automotive sales permit.**

(a) It is unlawful for any automotive repair shop to sell motor vehicles from its premises unless the following criteria are met and a permit is received from the Chief of Police:

- (1) Only one (1) vehicle shall be sold at a time;
- (2) The motor vehicle being sold was delivered to the repair shop by the owner for repairs and then abandoned by the vehicle owner after repairs were done; and
- (3) Any other information deemed necessary by the Chief Building Official.

(b) An automotive sales permit shall be valid for six (6) months. (Ord. 2001-10 §1; Ord. 2007-4 §1)

**Sec. 16-2-60. Application for automotive sales permit.**

An applicant for an automotive sales permit shall submit a completed application, on a form provided by the Town, to the Town Clerk, which shall include the following information:

- (1) An application fee in an amount determined by resolution of the Town Council;
- (2) Proof of repair work done on the vehicle;
- (3) Proof of ownership by the automobile repair shop; and
- (4) Any other information deemed necessary by the Chief Building Official. (Ord. 2001-10 §1; Ord. 2007-4 §1)

**Sec. 16-2-70. Home occupation permit.**

It is unlawful for any person, firm or corporation to operate any business from a home which is residentially zoned without first obtaining a home occupation permit. (Ord. 2001-10 §1)

**Sec. 16-2-80. Application for home occupation permit.**

An applicant for a home occupation permit shall submit a completed application, on a form provided by the Town, to the Town Clerk, which shall include the following information:

- (1) An application fee in an amount determined by resolution of the Town Council;
- (2) Two (2) copies of a scaled site plan showing property lines, access and drive locations, existing and proposed buildings, and the location of access points for any activities associated with the home occupation;
- (3) A written statement signed by the property owner or resident operating the home occupation which describes the business and how it complies with this Chapter; and
- (4) Any other information deemed necessary by the Chief Building Official. (Ord. 2001-10 §1)

**Sec. 16-2-90. Sign permit.**

No sign shall be erected, moved, enlarged or structurally altered without a sign permit. (Ord. 2001-10 §1)

**Sec. 16-2-100. Application for sign permit.**

An applicant for a sign permit shall submit a completed application, on a form provided by the Town, to the Town Clerk, which shall include the following information:

- (1) An application fee in an amount determined by resolution of the Town Council;

(2) Two (2) copies of a scaled site plan showing property lines, access and drive locations, existing and proposed buildings and signs;

(3) A written description of all existing and proposed signs, including location, type, text and size;

(4) A scaled elevation of each proposed sign; and

(5) Any other information deemed necessary by the Chief Building Official. (Ord. 2001-10 §1)

### **ARTICLE 3**

#### **Enforcement**

##### **Sec. 16-3-10. Compliance.**

It is unlawful for any person, firm, corporation or other entity to use, or cause or permit to be used, any land within the Town except as permitted by this Chapter. (Ord. 2001-10 §1)

##### **Sec. 16-3-20. Enforcement.**

(a) The Chief Building Official shall have the duty of interpreting and enforcing all provisions of this Chapter.

(b) No oversight or error on the part of the Chief Building Official or any other employee or representative of the Town shall legalize, authorize or excuse the violation of a provision of this Chapter. (Ord. 2001-10 §1)

### **ARTICLE 4**

#### **Residential-2 (R-2) Zone District**

##### **Sec. 16-4-10. Intent and purpose.**

The Residential-2 (R-2) Zone District is intended to provide low to medium density housing and preserve the existing character of the Town. This Article sets forth the principal permitted uses in the R-2 Zone District and establishes standards for those uses. (Ord. 2001-10 §1)

##### **Sec. 16-4-20. Principal permitted uses.**

The following are principal permitted uses in the R-2 Zone District:

(1) Single-family dwellings.

(2) Two-family attached dwellings.

(3) Private garages, sheds and other structures typical of medium density zoning.

(4) Public parks and government buildings and uses. (Ord. 2001-10 §1; Ord. 2007-4 §1)

**Sec. 16-4-30. Lot and building standards.**

Lot and building standards for the R-2 Zone District are set forth in the table below:

<i>Type</i>	<i>Maximum/Minimum</i>	<i>Limit</i>
Height	Maximum	30 feet
Setbacks		
Front	Minimum	20 feet
Side (total)	Minimum	10 feet
Side	Minimum	2 feet
Side adjacent to street	Minimum	10 feet
Rear (main building)	Minimum	20 feet
Rear (accessory building)	Minimum	5 feet
Lot size		
Single-family	Minimum	6,250 sq. ft.
Two-family	Minimum	9,375 sq. ft.

(Ord. 2001-10 §1; Ord. 2007-4 §1)

**Sec. 16-4-40. Fences, hedges and walls.**

(a) Fences, hedges and walls shall not exceed forty-eight (48) inches in height on vacant lots, unless used as a portion of a yard for an existing structure.

(b) Fences, hedges and walls shall not exceed six (6) feet in height and shall not exceed four (4) feet in height when located within the front yard.

(c) Front yard fences shall be constructed of open picket or similar fence design to allow for sight distance visibility through the fence.

(d) Barbed wire and electric fences shall not be permitted.

(e) Fences shall be set back eight (8) feet from the centerline of any alley and one (1) foot from any public sidewalk. (Ord. 2001-10 §1; Ord. 2007-4 §1)

**Sec. 16-4-50. Minimum off-street parking requirements.**

(a) Residential properties shall have at least two (2) off-street parking spaces per dwelling unit.

(b) Off-street parking requirements for public parks and government buildings shall be determined at the time of issuance of the permit. (Ord. 2001-10 §1; Ord. 2007-4 §1)

**Sec. 16-4-60. General requirements.**

(a) A development plan is required for all principal permitted uses except single-family and two-family dwellings and for all uses permitted by special exception.

(b) Mobile homes as defined in Section 16-1-90 of this Chapter are prohibited.

(c) No fence, wall, structure, hedge or other obstruction to view shall be erected, placed or maintained within the vision clearance triangle.

- (d) The minimum permeable landscaped area shall be thirty percent (30%).
- (e) No person shall sell or offer for sale any vehicle which is not owned by the property owner or occupant.
- (f) No major vehicle shall be parked or stored upon any street, roadway or private property within the R-2 Zone District except for purposes of active loading or unloading. Notwithstanding the foregoing, the Director of Public Works may issue a permit authorizing the parking or storage of a major vehicle, upon payment of a permit fee in the amount of ten dollars (\$10.00) and a showing that the parking or storage is reasonably necessary in the course of a construction project. This Subsection shall not apply to any state highway within the Town. (Ord. 87-1 Art. 4; Ord. 91-2 §2; Ord. 2001-10 §1; Ord. 2001-12 §2)

**ARTICLE 5**

**Residential-3 (R-3) Zone District**

**Sec. 16-5-10. Intent and purpose.**

The Residential-3 (R-3) Zone District is intended to provide medium density housing, including multi-family dwellings and semi-public uses, while preserving the existing character of the Town. This Article sets forth the principal permitted uses in the R-3 Zone District and establishes standards for those uses. (Ord. 2001-10 §1)

**Sec. 16-5-20. Principal permitted uses.**

The following are principal permitted uses in the R-3 Zone District:

- (1) Single-family dwellings.
- (2) Two-family attached dwellings.
- (3) Multi-family dwellings.
- (4) Churches, parish houses and/or parsonages.
- (5) Public, parochial and private schools (K-12).
- (6) State-licensed child care centers.
- (7) Assisted living facilities.
- (8) Private garages, sheds and other structures typical of medium density residential zoning.
- (9) Public parks and government buildings and uses. (Ord. 2001-10 §1; Ord. 2007-4 §1)

**Sec. 16-5-30. Lot and building standards.**

Lot and building standards for the R-3 Zone District are set forth in the table below:

<i>Type</i>	<i>Maximum/Minimum</i>	<i>Limit</i>
-------------	------------------------	--------------

Height	Maximum	30 feet
Setbacks		
Front	Minimum	20 feet
Side (total)	Minimum	10 feet
Side	Minimum	2 feet
Side adjacent to street	Minimum	10 feet
Rear (main building)	Minimum	20 feet
Rear (accessory building)	Minimum	5 feet
Parking setback (4+ parking spaces)		
Front	Minimum	20 feet
Side	Minimum	5 feet
Side adjacent to R-2	Minimum	10 feet
Rear	Minimum	0 feet
Lot size		
Single-family	Minimum	6,250 sq. ft.
Two-family	Minimum	9,375 sq. ft.
Three-family	Minimum	15,625 sq. ft.
Multi-family (4 units or more)	Minimum	4,500 sq. ft. per unit
Other uses permitted	Minimum	12,500 sq. ft.

(Ord. 2001-10 §1; Ord. 2007-4 §1)

**Sec. 16-5-40. Fences, hedges and walls.**

(a) Fences, hedges and walls shall not exceed forty-eight (48) inches in height on vacant lots, unless used as a portion of a yard for an existing structure.

(b) Fences, hedges and walls shall not exceed six (6) feet in height and shall not exceed four (4) feet in height when located within the front yard.

(c) Front yard fences shall be constructed of open picket or similar fence design to allow for sight distance visibility through the fence.

(d) Barbed wire and electric fences shall not be permitted.

(e) Fences shall be set back eight (8) feet from the centerline of any alley and one (1) foot from any public sidewalk. (Ord. 2001-10 §1)

**Sec. 16-5-50. Minimum off-street parking requirements.**

(a) Residential properties shall have at least two (2) off-street parking spaces per unit.

(b) Churches shall have at least one (1) off-street parking space for each four (4) seats in the main worship room.

(c) Schools shall have at least two (2) off-street parking spaces per classroom plus one (1) space for every ten (10) students in the tenth through twelfth grades.

(d) Child care centers shall have at least one (1) off-street parking space for every five (5) children permitted by state license.

(e) Assisted living facilities shall have at least one (1) off-street parking space per unit.

(f) Off-street parking requirements for public parks and government buildings shall be determined at the time of permit. (Ord. 2001-10 §1)

**Sec. 16-5-60. General requirements.**

(a) A development plan is required for all principal permitted uses except single-family and two-family dwellings and for all uses permitted by special exception.

(b) Mobile homes as defined in Section 16-1-90 of this Chapter are prohibited.

(c) No fence, wall, structure, hedge or other obstruction to view shall be erected, placed or maintained within the vision clearance triangle.

(d) Trees and lawn shall occupy at least fifty percent (50%) of the lot frontage on a public street.

(e) The minimum permeable landscaped area shall be thirty percent (30%).

(f) The maximum wall distance shall be fifty (50) feet without a setback change of five (5) feet or more.

(g) The maximum roofline distance shall be fifty (50) feet.

(h) Parking setbacks for parking lots containing four (4) or more parking spaces shall be landscaped.

(i) All buildings over two (2) stories in height shall be designed with no windows or balconies above the second floor facing towards an adjacent property zoned R-2.

(j) Parking lots adjacent to R-2 zoned lots shall be screened, which screening may include a solid fence of six (6) feet in height.

(k) No person shall sell or offer for sale any vehicle which is not owned by the property owner or occupant.

(l) No major vehicle shall be parked or stored upon any street, roadway or private property within the R-3 Zone District except for purposes of active loading or unloading. Notwithstanding the foregoing, the Director of Public Works may issue a permit authorizing the parking or storage of a major vehicle, upon payment of a permit fee in the amount of ten dollars (\$10.00) and a showing that the parking or storage is reasonably necessary in the course of a construction project. This Subsection shall not apply to any state highway within the Town. (Ord. 87-1 Art. 4; Ord. 91-2 §2; Ord. 2001-10 §1; Ord. 2001-12 §3; Ord. 2007-4 §1)

## ARTICLE 6

### Commercial-1 (C-1) Zone District

#### Sec. 16-6-10. Intent.

The Commercial-1 (C-1) Zone District is intended to provide safe, efficient areas in which to offer goods and services at wholesale or retail for the general public. The uses permitted in the C-1 Zone District shall be designed and operated in a manner that minimizes undesirable impacts on the surrounding properties. (Ord. 2001-10 §1)

#### Sec. 16-6-20. Principal permitted uses.

The following are principal permitted uses in the C-1 Zone District:

(1) Medical and dental offices, clinics and small animal veterinary clinics with no outside holding facilities.

(2) Business and professional offices.

(3) State-licensed child care centers.

(4) Dining establishments, drug stores, liquor stores, florists, news and book sales, video rental stores, hardware stores, feed stores, automotive supply stores, butcher shops, furniture stores, bakeries, ice cream parlors, delicatessens and other similar uses.

(5) Automotive repair, excluding automobile body repair and provided that no junk cars or stored vehicles shall be kept on the premises and also provided that the premises and structures shall comply with the Wheat Ridge Fire Protection District regulations. For the purposes of this Section only, junk cars and stored vehicles shall mean any vehicle that, in the Town's determination, meets the definition of abandoned vehicle set forth at C.R.S. § 42-4-2104.5(2)(a), as may be amended from time to time. For purposes of this section only, a rebuttable presumption arises that a vehicle is abandoned when it has remained on the premises for thirty (30) consecutive days without physical work being performed on it. The Town's determination that a vehicle is abandoned may be rebutted by sufficient evidence to the contrary provided by the automobile body repair shop. (amended by Ord. 2008-4)

(6) Low intensity specialty goods and services, including: art galleries, antiques, artisan shops, gift shops, plant stores or nurseries, photography studio and developing, pet stores, copying and blueprinting, apparel, appliances and other similar uses.

(7) Taverns, lounges and private clubs. (Ord. 95-1; Ord. 2001-10 §1; Ord. 2007-4 §1)

(8) Residential uses along Sheridan Boulevard existing as of the effective date of this ordinance are principal permitted uses in the C-1 Zone to which the restriction placed on nonconforming uses by Section 1609-50(1)-(4) and (6) shall not apply. Section 16-9-50(5) shall apply in that once a residential use is converted to a commercial use for a period of one hundred twenty (120) days it shall so remain and the right to a residential use shall be deemed forever lost and abandoned. (Section 16-6-20(8) added by Ord. 2007-10)

**Sec. 16-6-30. Uses permitted by special exception.**

The following uses are permitted in the C-1 Zone District only by special exception:

- (1) Convenience stores with gasoline sales, but not car washes or filling of propane tanks.
- (2) Fast food sales with drive-through facilities. (Ord. 2001-10 §1; Ord. 2007-4 §1)

**Sec. 16-6-40. Lot and building standards.**

Lot and building standards for the C-1 Zone District are set forth in the table below:

<i>Type</i>	<i>Maximum/Minimum</i>	<i>Limit</i>
Height	Maximum	30 feet
Setbacks		
Front	Minimum	10 feet
Side	Minimum	10 feet
Side adjacent to residential	Minimum	20 feet
Rear	Minimum	10 feet
Rear adjacent to residential	Minimum	20 feet
Parking setback (4+ spaces)		
Public sidewalk	Minimum	5 feet
Residential	Minimum	7 feet
Property lines	Minimum	5 feet
Lot size		
Commercial	Minimum	6,250 sq. ft.

(Ord. 2001-10 §1; Ord. 2007-4 §1)

**Sec. 16-6-50. Fences, hedges and walls.**

- (a) Fences, hedges and walls shall not exceed forty-eight (48) inches in height on vacant lots, unless used as a portion of a yard for an existing commercial use.
- (b) Fences, hedges and walls shall not exceed six (6) feet in height and shall not exceed four (4) feet in height when located within the front setback.
- (c) Barbed wire and electric fences shall not be permitted.
- (d) Fences shall be set back eight (8) feet from the centerline of any alley and five (5) feet from any public sidewalk. (Ord. 2001-10 §1)

**Sec. 16-6-60. Minimum off-street parking requirements.**

- (a) Retail and service buildings shall have at least five (5) off-street parking spaces for every one thousand (1,000) square feet of GLA.

(b) Office buildings shall have at least three (3) off-street parking spaces for every one thousand (1,000) square feet of GLA.

(c) Automotive repair facilities shall have at least three (3) off-street parking spaces per bay.

(d) Child care centers shall have at least one (1) off-street parking space for every five (5) students permitted by state license.

(e) Restaurants, taverns, lounges and private clubs shall have at least ten (10) off-street parking spaces for every one thousand (1,000) square feet of GLA.

(f) Fast food establishments shall have at least fifteen (15) off-street parking spaces for every one thousand (1,000) square feet of GLA. (Ord. 2001-10 §1)

**Sec. 16-6-70. Trash and dumpster screening.**

(a) All trash containers and dumpsters shall be screened from public view with a fence, wall or landscaping. The access side of the dumpster shall be screened by an opaque gate, but no landscaping is required on the access side.

(b) Screening fences and walls abutting buildings shall be made of the same finish material as the building or a visually compatible material.

(c) All screening fences and walls shall be six (6) feet in height, and the perimeter shall be landscaped as follows: within a minimum five-foot-wide planting strip adjacent to the fence or wall, a continuous row of evergreen shrubs shall be planted at a minimum spacing of one (1) shrub every five (5) linear feet of fence or wall. (Ord. 2001-10 §1)

**Sec. 16-6-80. General requirements.**

(a) No fence, wall, structure, hedge or other obstruction to view shall be erected, placed or maintained within the vision clearance triangle.

(b) Trees and lawn shall occupy at least fifty percent (50%) of the lot frontage on a public residential street.

(c) A hardscaped area of at least four (4) feet with trees shall be located between the sidewalk and 44th Avenue, and between the sidewalk and Sheridan Boulevard.

(d) One (1) tree of a minimum of one and one-half (1½) inches in caliper shall be required for every fifty (50) feet of road frontage. The location of trees may be flexible to preserve visibility of commercial uses. However, trees shall not be moved from one (1) road frontage to another.

(e) The minimum permeable landscaped area shall be ten percent (10%).

(f) Landscaping shall consist of primarily indigenous and low water consumptive plants.

(g) The maximum wall distance shall be fifty (50) feet without a setback change of five (5) feet or more.

(h) The maximum roofline distance shall be fifty (50) feet.

(i) Parking setbacks for parking lots containing four (4) or more parking spaces shall be landscaped.

(j) All buildings of more than one (1) story in height shall be designed with no windows or balconies above the second floor facing towards an adjacent property zoned R-2.

(k) Parking lots adjacent to any lot zoned residential shall be screened; such screening may include solid fence of six (6) feet in height and landscaping.

(l) All overnight storage of vehicles for repair shall be screened from public view by an evergreen hedge with a minimum height of thirty-six (36) inches at planting and a mature height of at least six (6) feet, or a solid wood fence of six (6) feet in height.

(m) Access drives shall be limited to one (1) drive per property owner or business, whichever is less, per road frontage. Shared access is highly encouraged.

(n) All commercial activities, except outdoor seating areas for restaurants, shall occur within a completely enclosed building. Outdoor display of products for sale is prohibited.

(o) The maximum width of a driveway shall be twenty-six (26) feet.

(p) Notwithstanding Subsection (n) above, each business located within the C-1 Zone District and operated in compliance with all applicable zoning regulations may have up to three (3) sales per year at which merchandise is displayed outside, such as a "sidewalk sale." Each such outdoor sale shall be limited to forty-eight (48) hours in duration. At least ten (10) days prior to each such sale, the business shall obtain a permit from the Town, but there shall be no fee for the permit. Nothing herein shall relieve the business from collecting all applicable sales taxes on all items sold during such sale. Christmas tree sales only are permitted in addition to the provision for sidewalk sales. (Ord. 91-6 §1; Ord. 2001-10 §1; Ord. 2003-9 §1)

## ARTICLE 6.5

### *Planned Development (PD) Zone District*

**Sec. 16-6.5-10 Authority.** This section is adopted pursuant to the Planned Unit Development Act of 1972. Article 67 of Chapter 24, C.R.S.

#### **Sec. 16-6.5-20 Definitions.**

(1) Common open space means a parcel of land, an area of water or a combination of land and water within the site designated for a planned development designed and intended primarily for the use or enjoyment of residents, occupants and owners of the planned development. This is distinguished from public open space which is dedicated to and maintained by the town. Such public open space may be used to contribute to any open space requirement imposed upon a PD.

(2) Plan means the provisions for development of a planned development which may include, and need not be limited to location and bulk of buildings and other structures, intensity of use or density of development, utilities, private and public streets, ways, roads, pedestrian areas and parking facilities, common open space and other public facilities. Provisions of the plan means the written and graphic materials referred to in this definition.

(3) *Planned development* means an area of land controlled by one ( 1 ) or more landowners to be developed under unified control or unified plan of development for a number of dwelling units, commercial, educational or recreational uses or any combination of the foregoing, the plan for which does not correspond in lot size, bulk or type of use, density, lot coverage, open space or other restriction to other provisions of this chapter.

**Sec. 16-6.5-30 Objectives.** The town's objectives in providing for planned development are as follows:

- (1) To provide for necessary commercial, recreational and educational facilities conveniently located to housing of all types and design.
- (2) To ensure that the provisions of this chapter which direct the uniform treatment of dwelling type, bulk, density and open space with each zoning district will not be applied to the improvement of land by other than lot-by-lot development in a manner which would distort the objective of this chapter.
- (3) To encourage innovations in residential and commercial development and renewal so that the demands of the population may be met by greater variety in type, design and layout of buildings, and by the conservation and more efficient use of open space ancillary to such buildings.
- (4) To encourage a more efficient use of land and of public services, or private services in lieu thereof, and to reflect changes in the technology of land development so that resulting economies may inure to the benefit of those who need homes.
- (5) To lessen the burden of traffic on streets and highways.
- (6) To provide a procedure which can relate the type, design and layout of residential and commercial development to the particular site, thereby encouraging preservation of the site's natural characteristics.
- (7) To encourage integrated planning in order to achieve the above purposes.

**Sec. 16-6.5-40 Pre-application conference.** A pre-application conference shall be held by the applicant with the town's staff so that the applicant may become acquainted with planned development procedures and related town requirements. The applicant shall submit a conceptual plan to the town to review prior to this conference.

**Sec. 16-6.5-50 Sketch plan.** (1) The applicant shall submit a sketch plan to the town for review and consideration. The sketch plan shall delineate the following:

- a. The existing topographic character of the site.
- b. Proposed land use or uses, differentiating areas to be developed from areas to remain open.
- c. The location of all existing buildings, structures and improvements.
- d. The location of all proposed buildings, structures and improvements.
- e. The internal traffic and circulation system and points of access to public rights-of-way.
- f. A concept drainage scheme.
- g. The location of existing water and sewer utilities, or the location of the last point of said facilities if they do not exist on the site.
- h. A signed statement from water and sewer utility providers that sufficient water and sewer capacity exists to adequately serve the proposed development on the site.

(2) After review by the town staff, the application will be forwarded to the Planning and Zoning Commission. The Planning and Zoning Commission shall review the sketch plan in light of the foregoing objectives, the town comprehensive plan and the impact of the proposed development on existing or future public facilities and upon neighboring properties. The Planning and Zoning Commission may also review the application in light of the additional information required by this section and recommend the waiver of some requirements because they are unnecessary or inapplicable, or the addition of required information not set forth in this section. The Planning and Zoning Commission shall then recommend approval, disapproval or conditional approval to the Town Council.

(3) Upon the request of the applicant, the Planning and Zoning Commission may continue the hearing on the planned development to a later regularly scheduled meeting of the Planning and Zoning Commission to permit the applicant an opportunity to revise the sketch plan in light of the comments and recommendations made by the Planning and Zoning Commission.

(4) Upon conclusion of the hearing on the sketch plan, the Planning and Zoning Commission shall render a decision on whether to accept said sketch plan, with or without conditions, and if said sketch plan is not accepted by the Planning and Zoning Commission, then the applicant may appeal such decision to the Town Council. If so appealed, the Town Council shall indicate approval, disapproval or conditional approval, and shall state definitely what additional information is to be submitted with the PD zone district plan and any preliminary plat, and what additional information not otherwise required by this section will be required to be filed with said application. Such a statement shall not preclude the Town Council from requiring further information to be filed with the final plat or final development plan.

**Sec. 16-6.5-60 Formal application — preliminary plat/PD zone district plan**

The procedure for the submittal of the formal application and preliminary plan and PD zone district plan shall be identical to the procedure for submittal and re-review of the sketch plan by the Planning and Zoning Commission except as set forth in this paragraph. The application for zone district plan and any preliminary plat approval shall not be combined with the pre application conference or the sketch plan. These applications shall be complete, including any information required by this section or by the Town Council after review of the sketch plan. Except as otherwise provided herein, approval of the PD zone district plan shall be by ordinance pursuant to the procedures set forth in this section, and notice shall be given as set forth in Section 16-1-70 (e)(4) this chapter. In addition, at the cost of the developer, notice of the proposed development in a form approved by town staff shall be mailed to property owners of record within five hundred (500) feet of the proposed planned development.

**Sec. 16-6.5-70 Final plat/development plan approval,** Except as otherwise provided herein, final approval of any planned development ("FDP"), accompanied by a final plat shall be by motion of the Town Council. In addition to approval or disapproval, the Planning and Zoning Commission may recommend conditional approval, and the Town Council may grant conditional approval. In granting approval or conditional approval, the Town Council must make an express finding that the planned development, as approved, is in general conformity with the town comprehensive plan. No planned development may be approved without the written consent of each landowner whose properties are included within the planned development. Approval of a planned development under this section shall not relieve the applicant of any duty to comply with any appropriate subdivision regulations promulgated by the Planning and Zoning Commission pursuant to Part I of Article 23 of Chapter 31, C.R.S.

**Sec. 16-6.5-80 Allowable uses.** A planned development may provide for any one (1) or more of the uses allowed in any zoning district in the town.

**Sec. 16-6.5-90 Required additional information to be tiled with PD zone district application.** The following additional information shall be filed with a PD zone district application:

(1) A written statement and exhibits containing as a minimum the following information:

- a. A statement of the present ownership and a legal description of all land included in the planned development.
- b. An explanation of the objectives to be achieved by the planned development.
- c. A development schedule indicating the approximate date when construction of the planned development, or stages of the planned development can be expected to begin and be completed.
- d. Copies of any special agreements, advances, restrictions, covenants, property owners' agreements or dedications which will govern the use of maintenance and continued protection of the planned development and its common areas.
- e. A list of property owners of record and their addresses within five hundred (500) Feet of the proposed planned development.

- (2) A written statement and exhibits describing the uses and activities to be permitted within each area or areas including the following:
  - a. The types and locations of dwelling units, if any.
  - b. The approximate acreage or square footage of each use, including any nonresidential uses, parking, roadways, recreational areas and facilities, etc.
  - c. The area occupied by buildings.
  - d. Parking ratios, e.g. spaces per unit or square feet along with a parking plan. See Section 16-142.
  - e. Any other applicable restrictions such as building setbacks, height limits, access, grades or widths of roads, etc.
- (3) The overall density proposed for the land as well as the maximum density to occur in each area.
- (4) The proportion of land to be left in a natural condition as a major open space, slated in terms of acreage or square footage, as well as the ratio of open space in areas to be developed, stated on a square foot per unit basis.
- (5) A description of snow removal methods or techniques to be utilized.
- (6) A description of the proposed method of providing permanent maintenance of all non-private buildings, facilities and areas, and private streets, if any.
- (7) A written statement which shall describe and provide evidence of:
  - a. A water source with adequate and dependable capacity to service the proposed development if the town sanitation district sewer system is to be used.
  - b. The proposed method or methods of sewage treatment and the location of planned outfall line if the town sanitation district sewer system is not to be used.
  - c. The soil, geological and groundwater conditions of the site.
  - d. Traffic capacity of existing and proposed streets and whether these are sufficient to accommodate the planned development.
- (8) The maximum height of buildings shall be determined by review of each planned development.
- (9) The plan must provide for parking in conformance with the zoning ordinance.
- (10) The manner in which storm drainage shall be handled.
- (11) The limits of the one-hundred-year floodplain for the area.
- (12) Adequate fire and emergency equipment access.

(13) Other materials as may be required by the town.

**Sec. 16-6.5-100 Common open space.**

(1) Common open space will be required in all planned developments. Unless otherwise listed below, common open space for a PD and/or specific land use areas of a PD shall be negotiated using as a base for discussion the open space amount as stated in the underlying zone district. This amount or the amounts listed below shall be understood to be the *minimum* amount from which to start such open space negotiations. Where there is no minimum open space identified for a base zone district, the following minimum\* land area percentages shall apply:

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Single-family residential and  
attached, including duplex:

25%

Multi-family (triplex and  
greater-condominiums, townhomes, apartments):

35%

Retail commercial:

General office — campus office complexes:

25%

20%

Light manufacturing -- campus office  
complexes:

25%

\*Percentages of land area are based on the total land area of a PD or its individual land use subareas inclusive of rights-of-way, both public and private. This land area does not include preexisting public rights-of-way bordering the PD property.

(2) The planned development shall not be permitted unless provisions for ownership and maintenance of open space, streams, stream banks, wooded cover and other desirable landscape features and needs for public facilities are made or are protected by easements, covenants, property owners' agreements or dedications to ensure their continuity and conservation.

(3) In the event that the organization established to own and maintain common open space, or any successor organization, fails at any time after establishment of the planned development to maintain the common open space in reasonable order and condition in accordance with the plan, the town may serve written notice upon such organization or upon the residents of the planned development setting forth the manner in which the organization has failed to maintain the common open space in reasonable condition. Such notice shall include a demand that such deficiencies of maintenance be cured within thirty (30) days thereof and shall state the date and place of the hearing thereon which shall be held within fourteen (14) days of notice. At such hearing, the town may modify the terms of the original notice as to deficiencies and may give an extension of time within which they shall be cured. If the deficiencies set forth in the original notice or in any modified notice are not cured within thirty (30) days or any extension thereof, the town, in order to preserve the taxable value of the property within the planned development and to prevent the common open space from becoming a public nuisance, may enter upon the common open space and maintain the same for a period of one (1) year. Such entry and maintenance shall not vest in the public any right to use the common open space except when the same is voluntarily dedicated to the public by the owners. Before the expiration of the one-year period, the town shall, upon its own initiative or upon the written request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing upon notice to such organization or to the residents of the planned development to show cause why such maintenance by the town shall not, at the election of the town, continue for a succeeding year. If the Town Council determines that such organization is not ready and able to maintain the common open space in a reasonable condition, the town may, in its discretion, continue to maintain the common open space during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter.

(4) The cost of such maintenance by the town shall be paid by the owners of properties within the planned development who have a right of enjoyment of the common open space, and any unpaid assessments shall become a tax lien on the properties. The town shall file a notice of such lien in the office of the county clerk and recorder upon the properties affected by such lien within the planned development and shall certify such unpaid assessments to the board of county commissioners and the county treasurer for collection, enforcement and remittance in the manner provided by law for the collection, enforcement and remittance of general property taxes.

**Sec. 16-6.5-110 Enforcement and modification of provisions of the plan.**

(1) To further the mutual interest of the residents, occupants and owners of a planned development and of the public and the preservation of the integrity of the plan, the provisions of the plan relating to the use of the land, the location of common open space shall run in favor of the town and shall be enforceable at law or in equity by the town without limitation on any power or regulation otherwise granted by law.

(2) All provisions of the plan shall run in favor of the residents, occupants and owners of the planned development, but only to the extent expressly provided in the plan and in accordance with the terms of the plan, and to the extent such provisions, whether recorded by plat, covenant, easement or otherwise, or by contract or agreement, may be enforced at law or in equity by residents, occupants or owners acting individually, jointly or through an organization designated in the plan to act on their behalf; provided that no provisions of the plan shall be implied to exist in favor of residents, occupants or owners except as to those portions of the plan which have been fully approved.

(3) All those provisions of the plan authorized to be enforced by the town may be modified, removed or released by the town, subject to the following:

a. No modification, removal or release of the provisions of the plan by the county or the town shall affect the rights of the residents, occupants or owners of the planned development to maintain and enforce those provisions at law or in equity as provided in this section.

b. No substantial modification, removal or release of the provisions of the plan by the town shall be permitted except upon a finding by the town, following a public hearing called and held in accordance with the provisions of the section regarding final approval, that the modification, removal or release is consistent with the efficient development and preservation of the entire planned development, does not affect in a substantially adverse manner either the enjoyment of land adjacent to the planned development or the public interest, and is not granted solely to confer a special benefit upon any person.

c. Residents and owners of the planned development may, to the extent and in the manner expressly authorized by the provisions of the plan, modify, remove or release their rights to enforce the provisions of the plan, but no such action shall affect the right of the town to enforce the provisions of the plan.

(Article 6.5 of Chapter 16 added by Ord. 2008-5)

## ARTICLE 7

### Signs and Outdoor Advertising Devices

#### Sec. 16-7-10. Intent and purpose.

The purpose of this Article is to provide comprehensive regulations regarding signage within the Town that will eliminate confusing, distracting and unsafe signs, ensure the efficient transfer of information and enhance the visual environment of the Town. The regulation of signs within the Town is necessary and in the best interest of the public to:

- (1) Protect property values within the Town;
- (2) Protect the general public from damage or injury caused by, or partially attributed to, the distractions and obstructions which result from improperly designed or situated signs;
- (3) Provide a pleasing overall environmental setting and community appearance which is deemed vital to the continued economic vitality of the Town;
- (4) Improve the legibility and effectiveness of signs;
- (5) Allow signs appropriate to the planned character of each zone district; and
- (6) Promote the public safety, welfare and convenience of the citizens of and visitors to the Town. (Ord. 2001-10 §1)

#### Sec. 16-7-20. Scope.

No sign shall be erected within the Town except in compliance with this Chapter. (Ord. 2001-10 §1)

#### Sec. 16-7-30. Definitions.

For purposes of this Article, the following terms shall have the following meanings:

*Awning sign* means any permanent sign or lettering located on an awning, either lighted or unlighted, which is used to advertise, announce, identify, declare, demonstrate, display, instruct, direct or attract attention.

*Banner* means a temporary sign of fabric, vinyl or the like designed to be attached to a structure with rope or similar mechanism.

*Billboard* means any sign utilized to advertise a product or service that is not produced, sold or conducted on the same property as the sign.

*Freestanding sign* means a sign that is permanent and self-supporting, being nondependent on a building or other structure except for a base or pole on which the sign is mounted, but excludes monument signs.

*Monument sign* means a permanent sign that is self-supporting, being nondependent on a building or other structure except for a base which is equivalent or greater in horizontal distance than the sign.

*Nonconforming sign* means a sign that does not conform to the regulations set forth in this Article, but which did meet the requirements of the regulations existing at the date that the sign was erected.

*Pedestal sign* means a temporary sign that sits on a temporary portable base that is easily moved from location to location.

*Sandwich board* means a temporary sign designed in the form of an "A" which is easily portable.

*Sign* means any object, device or part thereof situated outdoors or indoors, viewed from outdoors by the general public and which object or device or effect produced thereby is used to advertise, announce, identify, declare, demonstrate, display, instruct, direct or attract attention by letters, figures, designs, fixtures, colors, motion, illumination, sound or projecting images.

*Surface area* means the surface area of a sign, which is computed using the area within the outside dimensions of the largest sides of the sign containing advertisement, using a rectangle to overlay and define the area. Sign surface area shall not include the area necessary for supporting structures. In the case where characters are attached to the structure with no background, the area shall be defined as being the surface area within the lines drawn on the edge of the characters or words so that each word or character will be encompassed within a rectangular area.

*Temporary development sign* means a temporary sign that advertises a future development or development under construction, or advertises the construction company, financing company, architect or similar development service corporation.

*Wall sign* means a permanent sign affixed to or painted on an exterior surface of any building wall and not extending more than fifteen (15) inches beyond the building wall.

*Window sign* means any sign located on the inside or outside of a window, including a painted sign, which is visible from the exterior of the building. (Ord. 2001-10 §1; Ord. 2006-1 §1)

#### **Sec. 16-7-40. General requirements.**

(a) Sign height shall be measured from natural grade. Sign height shall not be measured from the top of an earth berm or support foundation.

(b) Sign area shall be measured by determining the arc of the minimum imaginary rectangle or square that encloses the sign face.

(c) All signs of more than forty-eight (48) inches in height shall be located outside of the vision clearance triangle.

(d) No sign shall be located in any public right-of-way without express permission from the Town or other entity in control of the right-of-way. (Ord. 2001-10 §1)

**Sec. 16-7-50. Prohibited signs.**

The following signs are prohibited in any zone district in the Town:

(1) Signs containing any flashing or animated lights, signs that are animated or move or signs that give the appearance of animation or movement; or message boards which use individual lights to produce the message, excluding time and temperature signs.

(2) Any sign which projects above the peak of a roof.

(3) Any sign which emits sound, odor or visible matter.

(4) Any sign which obstructs free ingress and egress from a required door, window, fire escape or other required exit way.

(5) Any sign or sign structure that obstructs the view of, may be confused with or purports to be a governmental or traffic safety sign.

(6) Signs using the words "stop," "danger" or any other word or phrase, symbol or character that might reasonably confuse, mislead or distract a vehicle driver.

(7) Signs painted on or attached to trees, rocks, utility poles or other features not designed to provide signage.

(8) Abandoned or dilapidated signs.

(9) Signs in any residential zone district advertising commercial uses, except pursuant to Section 16-7-70 below.

(10) Billboards and off-premises signs. (Ord. 2001-10 §1; Ord. 2007-4 §1)

**Sec. 16-7-60. Signs permitted in all zone districts.**

The following signs are exempt from the requirements of this Article, provided that such signs are not located within any public right-of-way without appropriate permits:

(1) Governmental, civic, religious and nonprofit organization flags, badges, insignias and the like not exceeding ten (10) square feet in size.

(2) Temporary political signs of less than six (6) square feet in size may be located on the property no earlier than sixty (60) days before an election and no later than fifteen (15) days after the election.

(3) Official notices posted by any court, public agency or officer.

(4) Historic plaques posted by public and quasi-public agencies.

(5) Traffic, directional, warning or informational signs authorized or required by any public agency.

(6) Address signs of two (2) square feet or less in total area and containing the address number. These signs may also contain the name of the owner or tenant of the structure.

(7) Real estate signs of four (4) square feet or less, located on property available for sale or lease. All such signs shall be removed within fifteen (15) days of selling or leasing the property.

(8) Development signs of four (4) square feet or less, located on property being developed or redeveloped, with a maximum of two (2) per development.

(9) Private on-site directional signs of four (4) square feet or less and a maximum of forty-two (42) inches in height. Signs on or visible from residentially zoned properties shall not be illuminated.

(10) Signs which are accessory to permitted uses within the C-1 Zone District, including but not limited to signs on gasoline pumps, cafe umbrellas and drive-through menu signs. (Ord. 2001-10 §1)

**Sec. 16-7-70. Additional signs permitted in the R-3 and C-1 Zone Districts.**

(a) Temporary development signs are permitted, subject to the following restrictions:

(1) Only one (1) temporary development sign shall be allowed per development.

(2) The surface area of a temporary development sign shall not exceed thirty-two (32) square feet.

(3) All temporary development signs shall be set back a minimum of ten (10) feet from all property lines.

(4) Temporary development signs shall not exceed six (6) feet in height.

(5) The applicant must have commenced the site approval process or have a valid building permit for the proposed project.

(b) Monument and freestanding signs are permitted, subject to the following restrictions:

(1) Monument and freestanding signs are prohibited on properties being used as residences.

(2) Only one (1) monument or freestanding sign shall be allowed on each site.

(3) The surface area of a monument or freestanding sign shall not exceed sixty-four (64) square feet.

(4) Monument and freestanding signs shall be set back a minimum of ten (10) feet from all property lines other than residential and twenty (20) feet from residential property lines.

(5) The maximum height of monument signs shall be nine (9) feet, with up to three (3) feet for the base and up to six (6) feet for the sign, and the maximum height of freestanding signs shall not exceed the peak of the roof of the principal building on the site.

(6) The sign base shall be constructed of brick, stone, metal, wood or other natural materials.

(7) Sign colors shall be compatible with the principal buildings on the site and surrounding businesses.

(8) The actual light source (bulb) of the sign shall not be visible from off premises, and sign lighting shall not cast glare on adjacent properties or public rights-of-way.

(c) Wall and awning signs are permitted, subject to the following restrictions:

(1) Wall and awning signs are prohibited on properties being used as residences.

(2) Only one (1) wall or awning sign shall be allowed for each separate business on each street frontage of that business.

(3) The maximum surface area of a wall or awning sign shall not exceed thirty-two (32) square feet.

(4) The actual light source (bulb) of the sign shall not be visible from off premises, and the sign lighting shall not cast glare on adjacent properties or public rights-of-way.

(d) Sandwich boards, banners and pedestal signs are permitted, subject to the following restrictions:

(1) Sandwich boards, banners and pedestal signs are prohibited on properties being used as residences.

(2) No more than three (3) sandwich boards, banners and pedestal signs, in any combination, shall be allowed per separate building on each site.

(3) The surface area of sandwich boards and pedestal signs shall not exceed six (6) square feet.

(4) Sandwich boards and pedestal signs shall only be outside while the business is open. While outside, sandwich boards shall be anchored or fastened to the ground so as not to blow away or fall over.

(5) Every banner shall be securely attached to an exterior wall or awning of a permanent building or to a fence at all times, so that the banner does not fall, flap or wave. No banner shall exceed the size of or overhang the wall, awning or fence to which it is attached. Banners shall not be attached to a pole or any other type of structure. Banners shall be kept in good condition at all times, and shall not be torn or faded.

(6) Sandwich boards, pedestal signs and banners shall not be located so as to obstruct pedestrian or vehicle traffic or the vision clearance triangle.

(e) Window signs are permitted. (Ord. 2001-10 §1; Ord. 2006-1 §2; Ord. 2007-4 §1)

## ARTICLE 8

### Home Occupations

#### **Sec. 16-8-10. Intent and purpose.**

(a) The purpose of this Article is to allow residents to provide limited occupational or professional services from their homes in the R-2 and R-3 Zone Districts. Such uses must be clearly incidental or secondary to the use of the dwelling for dwelling purposes and are subject to the regulations set forth in this Article.

(b) Other home occupations that cannot be conducted in conformance with this Article may be allowed upon approval of the Board of Adjustment and Appeals as provided in Section 16-10-130 of this Chapter. (Ord. 2001-10 §1)

#### **Sec. 16-8-20. Employees.**

A home occupation shall be conducted only by persons residing in the home. (Ord. 2001-10 §1)

#### **Sec. 16-8-30. Structure and space requirements.**

(a) Entrance to the space devoted to the home occupation shall be from within the principal building.

(b) A home occupation shall not occupy more than one fourth ( $\frac{1}{4}$ ) of one (1) floor of the dwelling.

(c) A home occupation shall not require internal or external alteration or involve construction features or use of mechanical equipment not reasonable and customary to a residence. (Ord. 2001-10 §1)

#### **Sec. 16-8-40. Outside activity prohibited.**

(a) A home occupation shall be conducted entirely within the principal building on the site (including the dwelling unit and any attached garage), but not within any detached structures such as garages or sheds.

(b) No evidence, activity or storage related to the home occupation shall be allowed outside, with the sole exception of child care as provided in Section 16-8-90 below.

(c) The home occupation shall not significantly increase traffic and shall not create a parking hazard.

(d) Deliveries shall be limited to one (1) delivery per day, only between the hours of 8:00 a.m. and 5:00 p.m., and only by vehicles weighing less than seven thousand (7,000) pounds gross vehicle weight and having not more than one (1) rear axle. (Ord. 2001-10 §1)

**Sec. 16-8-50. Compliance with applicable laws; no nuisance.**

- (a) No home occupation shall create a nuisance.
- (b) No hazardous materials, as that term is defined in the current edition of the uniform fire code adopted by the Town, as amended, shall be used or stored in conjunction with a home occupation.
- (c) It shall be the responsibility of the person conducting the home occupation to remain in compliance with all applicable federal, state and local laws and regulations.
- (d) Home occupations shall not generate excessive or offensive noise, vibration, smoke, dust, odors, heat, glare or light noticeable or extending beyond that property boundary. (Ord. 2001-10 §1)

**Sec. 16-8-60. Sale of merchandise prohibited.**

No home occupation shall include the sale of goods or merchandise, either wholesale or retail, at the residence in which the home occupation is conducted. (Ord. 2001-10 §1)

**Sec. 16-8-70. Permit required.**

- (a) A permit shall be required pursuant to Section 16-2-70 of this Chapter for all home occupations.
- (b) The Town retains the right to deny a permit for any home occupation that is not specifically noted as not permitted in this Chapter, but that is found to be detrimental to the residential character of the Town or neighborhood. (Ord. 2001-10 §1)

**Sec. 16-8-80. Prohibited home occupations.**

- (a) No motor vehicle service, repair, maintenance, reconstruction, restoration, cleaning, sale or storage shall be conducted as a home occupation.
- (b) No manufacturing, which is defined as the making or processing of items from raw materials with the use of machinery, shall be conducted as a home occupation. *Manufacturing* includes, but is not limited to, manufacturing of furniture, carpentry, welding or metalwork.
- (c) Clinics, nursing and convalescent homes, barber shops, beauty parlors, tourist homes, animal hospitals and restaurants shall not be permitted as home occupations. (Ord. 2001-10 §1)

**Sec. 16-8-90. Child care.**

- (a) Child care conducted as a home occupation in the Town shall comply with all applicable state statutes and regulations.
- (b) In no case shall child care for more than four (4) children be conducted as a home occupation.
- (c) Each home in which child care is provided shall provide adequate on-site parking for the dropping off and picking up of children. (Ord. 2001-10 §1)

**Sec. 16-8-100. Other regulations.**

Home occupations shall be conducted in compliance with all other applicable Town, state and federal laws and regulations. (Ord. 2001-10 §1)

**ARTICLE 9**

**Nonconforming Lots, Structures and Uses**

**Sec. 16-9-10. Intent.**

Within the zone districts created by the adoption of this Chapter or amendments thereto, there may exist lots, structures, uses and signs which were legal prior to the adoption or amendment of this Chapter, but which under the terms of this Chapter or amendments thereto are now prohibited, restricted or regulated. Such nonconformities are incompatible with the principal permitted uses in the applicable zone district. It is the intent of this Article that these nonconformities not be enlarged, expanded or extended, nor be used as grounds for adding other uses or structures prohibited in the zone district, with certain limited exceptions as set forth in this Article. (Ord. 2001-10 §1)

**Sec. 16-9-20. Permits approved prior to enactment or amendment.**

Any permit obtained prior to the enactment or amendment of this Chapter shall remain valid, provided that construction pursuant to the permit commences within sixty (60) days of the issuance of the permit and is diligently carried to completion. (Ord. 2001-10 §1; Ord. 2007-4 §1)

**Sec. 16-9-30. Single-family detached dwelling exclusion for nonconforming lots.**

In any zone district in which single-family detached dwellings are permitted, a single-family residence and customary accessory buildings may be erected on any single nonconforming lot under the ownership of record which exists at the time of the adoption of this Chapter. Such a lot may have been in separate ownership and not of continuous frontage with other lots under the same ownership. This Section shall apply even though such lots fail to meet the area or width requirements of the zone district in which they are located; provided, however, that the minimum setbacks shall be met unless a variance has been granted by the Board of Adjustment and Appeals. (Ord. 2001-10 §1)

**Sec. 16-9-40. Nonconforming structures.**

Where an existing structure, other than a sign, with a replacement value of more than one thousand dollars (\$1,000.00), does not comply with this Chapter because of lot area, lot coverage, setback requirements or the location of other structures on the lot, such structure may continue so long as it remains otherwise lawful, subject to the following provisions:

- (1) No such structure shall be enlarged or altered as to increase its nonconformity. However, the structure or any portion thereof may be altered to decrease the amount of nonconformity, provided that any additions or alterations comply with this Chapter.

(2) If a structure which is legally nonconforming is destroyed by any means, including neglect, to an extent of more than fifty percent (50%) of the replacement cost of said structure, it shall not be reconstructed except in compliance with this Chapter.

(3) The structure shall not be moved from its location at the time of adoption or amendment of this Chapter.

(4) Annual general maintenance costs shall not exceed ten percent (10%) of the value of replacement of the structure. (Ord. 2001-10 §1)

**Sec. 16-9-50. Nonconforming uses.**

Except as otherwise provided in this Article, where an existing use would not be allowed in the zone district in which it is located under this Chapter, such nonconforming use may be continued if it remains otherwise lawful, provided that:

(1) No structure dedicated to a nonconforming use shall be expanded, extended, constructed, reconstructed, moved or structurally altered except to change the use of the structure to a use permitted in the zone district in which it is located.

(2) The nonconforming use may be extended throughout any parts of a building which were designed or arranged for such use prior to the adoption of this Chapter, but no such nonconforming use shall be extended to occupy any portion of the property outside of the building.

(3) The nonconforming use shall not be changed to any other nonconforming use.

(4) Any nonconforming use which is replaced with a conforming use may not revert back to the nonconforming use.

(5) When a nonconforming use is discontinued for one hundred twenty (120) days or more, any right to continue the nonconforming use is thereby forfeited.

(6) If a structure within which the nonconforming use exists is destroyed by any means, including neglect, to an extent of more than fifty percent (50%) of the replacement cost of said structure, it shall not be reconstructed except in compliance with this Chapter. (Ord. 2001-10 §1; Ord. 2003-7 §1)

**Sec. 16-9-60. Nonconforming signs.**

Any sign, except a billboard, which lawfully exists prior to the effective date of the ordinance adopting this Chapter or any amendment thereto, which is thereafter no longer in conformance with this Chapter, may be continued subject to the following provisions:

(1) Signs shall not be enlarged or altered so as to increase the nonconformity.

(2) Signs which are destroyed by any means, including neglect, to an extent of more than fifty percent (50%) of the replacement cost of said sign shall not be reconstructed except in compliance with this Chapter.

(3) Signs shall not be moved unless brought into compliance with this Chapter. (Ord. 2001-10 §1)

## **ARTICLE 10**

### **Board of Adjustment and Appeals**

#### **Sec. 16-10-10. Number of members.**

The Board of Adjustment and Appeals (the "Board") shall consist of seven (7) members. (Ord. 2001-10 §1)

#### **Sec. 16-10-20. Powers and duties.**

The Board shall have the following powers:

(1) To hear and decide upon appeals where it is alleged by the appellant that there is an error in any order, requirement, decision or refusal made by the Chief Building Official regarding the enforcement of this Chapter.

(2) To hear and decide upon requests for special exceptions or for interpretations of zoning maps or for decisions upon other special questions upon which the Board is authorized by this Chapter to act.

(3) To decide whether a special exception should be granted; to grant special exceptions with such conditions and safeguards as are appropriate under this Chapter; and to deny special exceptions which are not in harmony with the purpose or intent of this Chapter.

(4) To authorize variances from the strict application of this Chapter, so as to relieve difficulties or hardships where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of enactment of this Chapter or amendment thereof, by the location of existing structures on the property, or by other extraordinary and exceptional situations or condition of such piece of property, the strict application of a zoning regulation would result in peculiar or exceptional and undue hardship upon the owner of such property; provided however, that such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Chapter or the Zoning Map.

(5) To permit home occupations which do not meet the requirements of this Chapter. (Ord. 2001-10 §1; Ord. 2007-4 §1)

#### **Sec. 16-10-30. Rules of procedure.**

The Board may adopt rules of procedure which will promote and allow the Board to conduct its affairs in keeping with this Chapter and Section 8.2 of the Home Rule Charter. (Ord. 2001-10 §1)

**Sec. 16-10-40. Meetings.**

(a) Regular meetings of the Board shall be held on the second Monday of each month at 7:00 p.m. or as soon as possible thereafter.

(b) Special meetings shall be held at the call of the Chair or the Mayor and at such other times as the Board may determine in its rules of procedure.

(c) All Board meetings shall be open to the public.

(d) A quorum for the Board shall consist of four (4) members.

(e) The members of the Board shall attend meetings of the Board in person.

(f) The Chair or, in his or her absence, the Vice-Chair or the acting Chair, may administer oaths and compel the attendance of witnesses.

(g) The Board shall keep minutes of its proceedings, showing the vote of each member on each question or, if absent or failing to vote, indicating such fact; and it also shall keep records of its examinations and other official actions, all of it which should be filed immediately with the Town Clerk and made a public record.

(h) The concurring vote of four (4) members of the Board shall be required to reverse any order, requirement or decision of determination by the Chief Building Official or to decide in favor of the applicant on any matter which it is required to pass under this Chapter. (Ord. 2001-10 §1; Ord. 2007-4 §1)

**Sec. 16-10-50. Procedure.**

(a) The applicant shall submit a complete application a minimum of thirty (30) days prior to the date of the Board meeting at which the applicant wishes to be heard.

(b) When an appeal is filed, the Chief Building Official shall forthwith transmit to the Board all documents pertaining to the case.

(c) An application for a variance, special exception or appeal may be filed by any person on a form provided by the Town and shall include the following information:

(1) The application fee as determined by resolution of the Town Council, which amount shall be sufficient to cover the costs of administration, inspection, publication of notice and similar matters associated with review of the appeal or variance;

(2) Name, signature and address of the applicant;

(3) Accurate legal description of the property;

(4) Names and addresses of all persons, firms or corporations which hold fee title to the property for which the variance, special exception, petition or appeal has been submitted, as of the date of the application, with proof of ownership;

- (5) Vicinity map;
- (6) Current zoning of property;
- (7) Written request for the variance, special exception or appeal;
- (8) Written documentation of the hardship or reason for the variance, special exception or appeal;
- (9) If applicable, a copy of the approved site plan meeting the requirements of this Chapter; and
- (10) Other information deemed necessary by the Chief Building Official.

(d) When the application is deemed complete by the Chief Building Official, the applicant shall be notified of the date when the case will be heard, via written notice sent by first-class mail, postage prepaid, to the address given on the application.

(e) The Chief Building Official may request comments from any affected state and public agencies prior to the consideration of any application by the Board.

(f) The Chief Building Official shall review the application and prepare a report for the Board.

(g) Not less than fifteen (15) days' notice of the time and place of the hearing before the Board shall be given by posting at least one (1) sign in a prominent place on the subject property. The Chief Building Official shall determine the number and location of signs.

(h) The applicant and any resident who supports or opposes the variance, special exception or appeal may be heard at such hearing in person, by agent or by attorney. (Ord. 2001-10 §1)

**Sec. 16-10-60. Final disposition of cases.**

(a) Every decision of the Board shall be made in the form of a resolution approving, approving with conditions or denying the request, and indicating the reasons of the Board therefor, which resolution shall be recorded by the Town Clerk.

(b) No application dismissed or denied may be heard again except on a motion to reconsider the vote or on a request for rehearing. No request for a rehearing shall be granted unless new evidence is submitted which could not have been with due diligence presented at the previous hearing. (Ord. 2001-10 §1)

**Sec. 16-10-70. Consultant fees.**

The Town may bill the applicant for any costs of professional or consulting services which the Town incurs as a result of an applicant's project. Professional or consulting services include but are not limited to: legal, engineering, planning or hydrological services. In addition to the application fee, the applicant shall deposit with the Town the estimated cost for professional or consulting services, as determined by the Town at the time the application is submitted. (Ord. 2001-10 §1)

**Sec. 16-10-80. Appeals.**

The Board, upon application thereto, may accept an appeal of any final action taken by the Chief Building Official. Such appeal shall be made within fifteen (15) days of the final decision of the Chief Building Official, by filing with the Chief Building Official and the Board a notice of appeal specifying the grounds therefor. (Ord. 2001-10 §1)

**Sec. 16-10-90. Special exceptions.**

The Board may authorize special exceptions, upon application, if the following conditions are met:

(1) The Board finds that it is empowered under this Chapter to grant the special exception and that the granting of the special exception will not adversely affect the public interest.

(2) The Board finds that the special exception complies with all applicable regulations and that satisfactory provisions and arrangements have been made concerning the following, where applicable:

a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in the case of fire or catastrophe.

b. Off-street parking and loading spaces, with particular attention to the items above and the economic, noise, glare or odor effects of the special exception on adjoining properties and generally in the neighborhood.

c. Refuse and service areas.

d. Utilities, with reference to type, availability and compatibility.

e. Screening and buffering, with reference to type, dimensions and character.

f. Signs and exterior lighting, if any, including type, dimension and character.

g. Required yards and open space.

h. Architectural design.

i. General compatibility with other properties in the zone district. (Ord. 2001-10 §1)

**Sec. 16-10-100. Special exceptions for group homes.**

(a) In addition to all other information required by this Article, an application for a special exception for a group home shall include the following:

(1) Written verification that the group home is licensed by the State or that said license is pending;

(2) The expiration date, if any, of said license or pending license; and

(3) Written verification that the proposed occupancy complies with the currently adopted edition of the building code.

(b) In addition to all other findings required by this Article, in the case of a group home, the Board shall make the following findings:

(1) That the applicant is licensed by the State to operate such a facility. If said license is pending, a special exception may be granted, but shall not take effect until licensing becomes final;

(2) That the proposed occupancy complies with the currently adopted building code; and

(3) That the proposed group home will not have any adverse effect on the residential character and quality of life of the Town.

(c) Dispersal policy. In the absence of compelling reason to the contrary, it is the policy of the Town that, in order to prevent the concentration of group homes, no two (2) group homes shall be located within one-quarter (1/4) mile of each other within the Town. The Board shall therefore find that there is no other home located within one-quarter (1/4) mile of the proposed group home or that there are compelling reasons for disregarding this dispersal policy in a particular case.

(d) A special exception for a group home shall be granted for the term of the group home license or for such shorter period of time as the Board finds appropriate under the circumstances of the case, but in no event a period of more than two (2) years.

(e) Upon receiving an application for renewal of any special exception for a group home, the Chief Building Official shall review Town files to determine if the Town has received any written complaints regarding the operation of the group home during the term of the special exception. In addition, the Chief Building Official shall inquire of the group home licensing agency to determine whether the licensing agency has received any such complaints and, if so, the nature of such complaints. If any such complaints have been received, the application for renewal shall be heard before the Board under the same requirements for a new special exception. If no complaints have been received, the Chief Building Official shall issue an automatic renewal of the special exception under the same conditions and duration as the original special exception. (Ord. 2001-10 §1)

**Sec. 16-10-110. Special exceptions for temporary structures and uses.**

(a) The Board may issue special exceptions for temporary structures and uses on certain properties, provided that such temporary structures and uses are not contrary to the public interest and meet the following requirements:

(1) No special exception shall be granted for use of a temporary building for residential occupancy.

(2) A building may be approved for temporary use if such building and/or use is authorized by this Chapter in the zone district in which the property is located.

(3) The temporary structure or use must be clearly incidental to the development of the property.

(b) A special exception for a temporary structure or use shall be granted for a period of time as the Board finds appropriate under the circumstances of the individual case, but in no event for a period of over one (1) year.

(c) Upon receiving an application for renewal of a special exception for a temporary structure or use, the Chief Building Official shall review the Town files to determine if the Town has received any written complaints regarding the temporary structure or use during the term of the special exception. If any such complaints have been received, the application for renewal must be heard before the Board under the same requirements for a new special exception. If no complaints have been received, the Chief Building Official shall issue an automatic renewal of the special exception under the same conditions and duration as the original special exception. A maximum of three (3) total years, beginning from the date the first special exception was granted, shall be allowed.

(d) The Board may, at the time of approval of a special exception, establish restrictions on location, height, setbacks, water and sewer facilities and public improvements and impose any other restrictions deemed necessary to protect the health, safety and welfare of the Town. (Ord. 2001-10 §1)

**Sec. 16-10-120. Variances.**

(a) The Board may authorize, upon application, variances from the terms of this Chapter if the applicant demonstrates and the Board finds each of the following:

(1) The strict application of the provisions of this Chapter would result in a hardship for the applicant;

(2) The hardship is not self-created by any person having an interest in the property or the result of mere disregard for or ignorance of this Chapter;

(3) The hardship is unique to the property in question and does not apply to other properties in the same zone district;

(4) The relief requested is not arbitrary or discriminatory;

(5) The granting of a variance will not be of substantial detriment to the public interest or injurious to the surrounding neighborhood;

(6) The reasons set forth in the application justify the granting of the variance;

(7) The variance is the minimum deviation from the zoning regulations that will make possible the reasonable use of the property or structure; and

(8) The granting of the variance will be in harmony with the general purpose and intent of this Chapter.

(b) No nonconforming use of neighboring lands, structures or buildings in the same zone district and no permitted nonconforming use of lands, structures or buildings in other zone districts shall be considered grounds for the issuance of a variance.

(c) In granting any variance, the Board may prescribe appropriate conditions and safeguards. It is unlawful for any person who is the owner, possessor or occupant of any property which has received a variance to fail to comply with such conditions or safeguards. The Board may revoke or terminate any variance for failure to comply with such conditions.

(d) Under no circumstances shall the Board grant a land or use variance to permit the use of any land, structure or building which is not permitted by this Chapter in the zone district in question or to alter the density requirements in the zone district in question. (Ord. 2001-10 §1)

**Sec. 16-10-130. Home occupation variances.**

(a) The Board shall have the power to authorize in specific cases home occupation variances, as long as such variances are not contrary to the public interest.

(b) Variances for home occupations shall be subject to the following restrictions in addition to those restrictions set forth in Section 16-10-120 above:

(1) The Board shall not issue a variance for any home occupation specifically prohibited by Article 8 of this Chapter.

(2) A variance for a home occupation shall be granted for a period of time as the Board deems appropriate under the circumstances of the individual case, but in no event for more than one (1) year.

(3) The Board shall, at the time of approval thereof, establish restrictions on location, access, water and sewer facilities and any other reasonable stipulation deemed necessary to protect the health, safety and welfare of the citizens of the Town.

(4) The Board shall give consideration to all incidental uses in connection with the proposed variance.

(5) A home occupation shall be conducted by a resident of the residential property and shall terminate automatically upon any conveyance of possession or termination of a lease or rental agreement.

(6) A home occupation variance shall be approved only in circumstances involving practical difficulties or hardships and only if the relief requested is compatible with the general spirit and intent of this Chapter and will promote the general welfare of the Town.

(7) The Board shall not permit any sign advertising the home occupation.

(c) Upon receiving an application for renewal of any home occupation variance, the Chief Building Official shall review the Town files to determine if the Town has received any written complaints regarding the home occupation during the term of the variance. If any complaints have been received, the application for renewal shall be heard by the Board under the same requirements

for a new variance. If no complaints have been received, the Chief Building Official shall issue an automatic renewal of the variance under the same conditions and duration as the original variance. (Ord. 2001-10 §1; Ord. 2007-4 §1)

## **ARTICLE 11**

### **Site Approval Process**

#### **Sec. 16-11-10. Intent and purpose.**

The site approval process allows the Town to review all structures to be built or modified in any zone district, with the exception of single-family and two-family dwellings and related accessory structures. The intent of the site approval process is to ensure that permitted uses are developed to be functionally and aesthetically compatible with existing and planned land uses, to require safe and adequate access to and from public streets, and to provide for performance guarantees in a sufficient amount to ensure that the improvements and landscaping are installed per the approved site plan. (Ord. 2001-10 §1; Ord. 2007-4 §1)

#### **Sec. 16-11-20. Applicability.**

(a) A site approval process shall be required for all structures constructed or modified in the C-1 or R-3 Zone District, except single-family and two-family dwellings.

(b) No structure for which a site approval process is required shall be modified in use or type of occupancy, developed, constructed, moved or structurally altered until a site approval process has been approved and recorded by the Town Clerk.

(c) No building permit shall be issued for any structure which requires a site approval process until the site approval process has been approved by the Town Council and recorded by the Town Clerk.

(d) No site approval process shall be required for normal repairs and maintenance of an existing structure.

(e) No site approval process shall be required for interior remodels.

(f) Any property owner who owns multiple adjacent lots and makes application under this Article shall merge the individual lots into one (1) legal parcel through the procedure for lot line adjustments set forth in Article 12 of this Chapter. (Ord. 2001-10 §1)

#### **Sec. 16-11-30. Application.**

The site approval process application provides the applicant an opportunity to demonstrate how the proposal complies with this Chapter. The following items shall be submitted, at a minimum:

(1) A completed application, on a form provided by the Town.

(2) A copy of the deed, current title report or other legal instrument identifying the applicant's interest in the subject property.

(3) A party wall agreement and legal description for any duplex or triplex uses held in separate ownership.

(4) A detailed written description of the proposed use or building modification, including such items as the number of employees or residents, number of square feet to be constructed or added, a parking analysis that shows how the proposed use complies with the parking requirements of the Town, and any other information that would be helpful in the review of the application.

(5) Evidence that adequate water and sewage disposal facilities are available for the proposed use.

(6) An access permit issued by the Colorado Department of Transportation for any use proposed to take access from Sheridan Boulevard. The applicant shall provide a statement prepared by a licensed engineer that explains that any new access or use of an existing access for a change of land use will provide safe access to an approved public street. Engineered construction drawings of any public improvements shall be provided prior to the issuance of any building permit. A traffic report and study shall be required if the proposed use will create an increase in traffic.

(7) Elevations of the proposed structure from four (4) sides, including information on materials used and colors.

(8) A site plan locating all improvements in the following form:

a. The site plan shall measure twenty-four (24) inches by thirty-six (36) inches.

b. The scale shall be one (1) inch equals ten (10) feet or another scale suitable to adequately show the proposed development. A bar scale shall be included.

c. The legal description of the parcel and street address shall be indicated.

d. A north arrow shall be indicated.

e. The perimeter of the property shall be indicated with a bold line, and all property lines shall be dimensioned.

f. The location and name of all roads abutting the property shall be indicated.

g. All existing and proposed structures and dimensions of the structures shall be shown, including underground storage tanks.

h. The location, dimensions and design of any existing and proposed signs on the site shall be indicated.



Process. I understand that my failure to comply with the development standards and/or any conditions imposed under the Site Approval Process could result in the Town initiating an action against me as the property owner.

\_\_\_\_\_  
Signature of Property Owner

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_.

Witness my hand and official seal.

My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(2) Town's certification:

This Site Approval Process and site plan Mylar have been approved for filing.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

(Ord. 2001-10 §1; Ord. 2007-4 §1)

**Sec. 16-11-50. Fees and costs.**

(a) With each site approval process application, the applicant shall submit an application fee of five hundred dollars (\$500.00), which is deemed to be a reasonable fee sufficient to cover the costs of administration, inspection, publication and other matters associated with the Town's review of the application. Applications submitted without the application fee shall be deemed incomplete.

(b) The applicant shall also be responsible for the payment of any and all costs of professional or consulting services incurred by the Town as a result of the application, including but not limited to legal, engineering or hydrological services. A deposit shall be made at the time of application, in an amount to be determined by the Town. Full payment shall be due and payable fifteen (15) days after receipt of a statement from the Town showing all professional and consulting costs incurred. If timely payment is not made, the Town shall immediately cease any action on the application, and the Town may also initiate legal action against the applicant for nonpayment in any court of competent jurisdiction, including the Municipal Court. If such action is determined in favor of the Town, the Town shall be awarded its reasonable attorney's fees and costs as a part of any judgment against the applicant. (Ord. 2003-13 §1)

## ARTICLE 12

### Lot Line Adjustment

#### Sec. 16-12-10. Intent.

The intent of this Article is to establish a process to adjust lot lines and merge existing lots to resolve survey disputes and ownership disputes. (Ord. 2001-10 §1)

#### Sec. 16-12-20. Eligibility.

The following property line adjustments shall be considered exempt from the definition of *subdivision* or *subdivided land* as set forth in Section 30-28-101, C.R.S., and shall be approved by the Town Council subject to the criteria, requirements and procedure outlined below and approved by the Town Council.

(1) Minor adjustments to property lines and the elimination of interior property lines involving any combination of legal lots or legal unplatted parcels and technical modifications to a plat or exemption survey which do not increase any of the following: the number of lots, the number or existing legal building sites or the number of parcels.

(2) Amendments to plats to correct technical errors as set forth in Section 30-28-133(9), C.R.S. (Ord. 2001-10 §1)

#### Sec. 16-12-30. Criteria.

(a) Amendments to plats and property line adjustments may be approved by the Town Council if:

(1) Eligibility requirements are met;

(2) The change does not conflict with the applicable zone district regulations; and

(3) The Town Council does not determine that the change constitutes subdividing as defined by state statute or is an attempt to evade the requirements of Section 30-28-101, et seq., C.R.S.

(b) Where the change adjusts or eliminates lot or parcel lines, the following additional limitations shall apply:

(1) All lots, tracts or parcels affected must be in the same zone district;

(2) There shall be no increase in the number of lots or building sites;

(3) An existing lot of a nonconforming lot size shall be altered only if the nonconformity is eliminated; and

(4) The resulting property boundaries or building sites shall conform to applicable lot layout and design standards in this Chapter, and the lot shall be configured to allow at least one (1) of the uses permitted in the applicable zone district.

(c) For requests to eliminate lot or parcel boundaries, the applicant shall affirm that any liens or encumbrances encumber the entirety of the property to be combined. For requests to adjust lot or parcel lines, the applicant shall affirm that any liens or encumbrances encumbering the portion of property to be transferred have been released.

(d) If there is a vacation of all or a portion of a right-of-way or easement, the Mayor shall be authorized to sign the vacation statement under the provisions of this Section upon approval as to form by the Town Attorney. (Ord. 2001-10 §1)

**Sec. 16-12-40. Application.**

(a) An application for a lot line adjustment shall include the following:

- (1) An application fee in an amount established by resolution of the Town Council;
- (2) An application, on a form provided by the Town;
- (3) A current title commitment for all properties involved in the request;
- (4) A cover letter explaining the request being made to the Town and any other descriptive information necessary to explain the submittal; and
- (5) For requests to eliminate lot lines, a current tax statement indicating that there are no liens or encumbrances that only affect a portion of the properties involved in the request.

(b) For all requests except requests to eliminate lot lines, the applicant shall initially provide three (3) copies of a current survey showing all properties involved in the lot line adjustment with all other application requirements. The first copies of the survey shall show the existing and proposed lot lines and the location of all existing structures, roads and driveways. The survey shall also include:

- (1) A scaled drawing of the boundaries of the property and all dimensions to establish the boundaries in the field;
- (2) All recorded or apparent rights-of-way or easements;
- (3) A statement by the surveyor that the survey was performed by him or her or under his or her direct supervision, responsibility and checking; explaining how bearings, if used, were determined; and providing on the survey the scale, representative fraction of the drawing and a bar-type or graphic scale;
- (4) A description of all monuments, both found and set, which mark the boundaries of the property and a description of all control monuments used in conducting the survey;
- (5) Reference to the recorded plat, including book and page numbers where the plat is recorded;
- (6) North arrow;

- (7) Signature and seal of the land surveyor;
- (8) Vicinity map; and
- (9) Any certificates required by the County. (Ord. 2001-10 §1)

**Sec. 16-12-50. Procedure.**

(a) The Town shall review the application to determine whether the proposal is eligible and meets the criteria set forth in this Article.

(b) Within five (5) working days of acceptance of the application, the Town shall complete its evaluation of the request. If additional materials or corrected copies of the survey are needed, the Town shall complete its evaluation of the additional materials within five (5) working days after receipt of such materials.

(c) A meeting shall be scheduled before the Town Council. Posting of the property and publication of notice in the newspaper shall not be required. The Town Council shall approve, approve with conditions or deny the request at the meeting.

(d) Upon approval of a lot line adjustment or an elimination of interior lot lines, the applicant shall execute an agreement provided by the Town which requires all subsequent conveyances or transfers of the property to be consistent with the approved property lines and which requires said limitation to be set forth on all subsequent deeds, unless the lot lines are subsequently adjusted pursuant to county regulation. A copy of the agreement shall be recorded with the County Clerk and Recorder. (Ord. 2001-10 §1)

**Sec. 16-12-60. Lot line adjustment Mylar.**

(a) Upon completion of the lot line adjustment process, the applicant shall prepare and submit a site plan Mylar for recording with the County Clerk and Recorder. The Mylar shall meet the following requirements:

(1) The Mylar shall be of nonfading permanent black ink on a polyester sheet such as Mylar or other product of equal quality, three (3) millimeters or greater in thickness. The size of each sheet shall be twenty-four (24) inches by thirty-six (36) inches. No Mylar shall contain any form of stick-on type material or lettering tape.

(2) The Mylar shall contain original signatures and seals of all parties required to sign the Mylar.

(3) The Mylar shall have the following information in the upper right-hand corner: "Lot Line Adjustment Process No.: \_\_\_\_\_." The Town will fill in the appropriate number.

(b) The Mylar shall contain the following certifications:

- (1) Property owner's certification:

STATE OF COLORADO        )  
  ) ss.  
COUNTY OF JEFFERSON    )

I, the undersigned, certify that the amended or adjusted lot lines as shown on this lot line adjustment Mylar are in accordance with the applicable development standards and district requirements for the Zone District as stated in Chapter 16 of the Mountain View Municipal Code and in accordance with any conditions imposed by the Town Council at the time the property was reviewed under the lot line adjustment process. I understand that my failure to comply with the development standards and/or any conditions imposed under the lot line adjustment process could result in the Town initiating an action against me as the property owner.

\_\_\_\_\_  
Signature of Property Owner

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

Witness my hand and official seal.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(2) Town's certification:

This lot line adjustment Mylar has been approved for filing.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

(Ord. 2001-10 §1; Ord. 2007-4 §1)

**ARTICLE 13**

**Commercial Mobile Radio Service Facilities**

**Sec. 16-13-10. Purpose.**

The purposes of this Article are to:

- (1) Facilitate the provision of wireless telecommunications services throughout the Town;
- (2) Allow the location of commercial mobile radio service facilities ("CMRS facilities") in the Town subject to certain standards;
- (3) Act on applications for the location of CMRS facilities within a reasonable period of time;
- (4) Encourage co-location of CMRS facilities; and

(5) Prevent unreasonable discrimination among providers of functionally equivalent services.  
(Ord. 2001-10 §1; Ord. 2007-4 §1)

**Sec. 16-13-20. Definitions.**

For purposes of this Article, the following terms shall have the following meanings:

*Building roof-mounted CMRS facility* means a CMRS facility that is mounted and supported entirely on the roof of a legally existing building or structure.

*Building wall-mounted CMRS facility* means a CMRS facility that is mounted and supported entirely on the wall of a legally existing building or structure.

*Co-location* means the location of two (2) or more CMRS facilities on the same support structure; provided that two (2) or more separate CMRS facilities located on one (1) building shall not be considered *co-location*.

*Commercial mobile radio service facility* or *CMRS facility* means an unmanned facility consisting of antennae and accessory equipment, used for the reception, switching, transmission or receiving of wireless telecommunications operating at one thousand (1,000) watts or less effective radiated power, and using frequencies authorized by the Federal Communications Commission ("FCC"), including but not limited to paging, enhanced specialized mobile radio, personal communication systems, cellular telephone, point-to-point microwave signals and similar technologies.

*Equipment storage shelter* means buildings, storage shelters and cabinets used to house CMRS facility equipment.

*Freestanding CMRS facility* means a CMRS facility that consists of a stand-alone support structure, such as a tower or monopole, and antennae and accessory equipment.

*Microwave dish antenna* means a dish-type antenna used to link communication sites together by wireless voice or data transmission.

*Pole-mounted CMRS facility* means a CMRS facility that is mounted and supported entirely on a legally existing traffic signal, utility pole, streetlight, flagpole, freestanding CMRS facility, electric transmission line or other similar structure.

*Stealth CMRS facility* means a CMRS facility with an alternative design which camouflages or conceals the presence of antennae or towers, such as, but not limited to, artificial trees, clock and bell towers and steeples. (Ord. 2001-10 §1; Ord. 2007-4 §1)

**Sec. 16-13-30. Standards for all CMRS facilities.**

(a) Applicability. The standards contained in this Article apply to all applications for location of a CMRS facility in the Town.

(b) Special exception required. Application for a special exception pursuant to Section 16-10-90 of this Chapter shall be required prior to location of a CMRS facility in any zone district.

(c) Co-location. The Town encourages co-location of CMRS facilities when feasible to minimize the number of CMRS facility sites. To further the goal of co-location:

(1) No CMRS facility owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility or location. Upon request by the Town, the owner or operator shall provide evidence explaining why co-location is not possible at a particular facility or site.

(2) If a telecommunications competitor attempts to co-locate a CMRS facility on an existing or approved CMRS facility or location and the parties cannot reach an agreement, the Town may require a third-party technical study to be completed at the expense of either or both parties to determine the feasibility of co-location.

(d) Compliance with FCC standards. Upon a request by the Town (on no more than one [1] occasion per year), CMRS facility owners and operators shall verify in writing that:

(1) The CMRS facility complies with the current FCC regulations prohibiting localized interference with reception of television and radio broadcasts; and

(2) The CMRS facility complies with the current FCC standards for cumulative field measurements of radio frequency power densities and electromagnetic fields.

By adopting this Section, the Town is not attempting to regulate on the basis of radio frequency power densities or electromagnetic fields, which regulation is controlled by the FCC.

(e) Abandonment. If a CMRS facility ceases operation for any reason for one hundred eighty (180) consecutive days:

(1) All approvals shall expire; and

(2) The facility owner or operator shall remove it on or before two hundred seventy (270) days after such expiration. If the facility owner or operator fails to remove the facility, removal shall be the responsibility of the landowners.

(f) Equipment storage shelters.

(1) The total area of all equipment storage shelters shall not exceed four hundred (400) square feet per CMRS facility.

(2) Equipment storage shelters located outside shall be screened from view by vegetation, fencing or comparable screening.

(3) Equipment storage shelters shall be grouped as closely together as technically possible.

(4) No equipment storage shelter shall exceed fifteen (15) feet in height. (Ord. 2001-10 §1; Ord. 2007-4 §1)

**Sec. 16-13-40. Freestanding CMRS facilities.**

(a) Minimum setbacks. A freestanding CMRS facility shall be set back from each property line one (1) foot of distance for every foot of facility height.

(b) Height. A freestanding CMRS facility, including antennae, shall not exceed the maximum structure height limit in the underlying zone district unless the special exception specifically allows the facility to exceed that height. In no case shall a freestanding CMRS facility exceed one hundred (100) feet in height.

(c) Design standards. A freestanding CMRS facility shall adhere to the following design standards to minimize impacts:

(1) The facility shall be designed to be compatible with surrounding buildings and structures and existing or planned uses in the area.

(2) Existing landforms, vegetation and structures shall be used to screen the facility from view and blend in the facility with the surrounding environment.

(3) Existing vegetation shall be preserved or enhanced, where feasible.

(4) All freestanding CMRS facilities shall accommodate co-location of facilities, unless co-location is technically unfeasible.

(5) All applicable landscape regulations shall be observed.

(6) Any equipment that could be dangerous to persons or wildlife shall be adequately covered or fenced. (Ord. 2001-10 §1)

**Sec. 16-13-50. Building roof- or wall-mounted CMRS facilities.**

(a) Design standards for building wall-mounted CMRS facilities. A building wall-mounted CMRS facility shall adhere to the following design standards to minimize impacts:

(1) The facility shall be screened from view and/or colored to match the building or structure to which it is attached.

(2) The mounting of antennae shall be as flush to the building wall as possible, and in no case shall the antennae extend more than three (3) feet out from the building wall.

(3) The facility shall not extend above the highest point of the building, including parapets but excluding equipment and facilities on the roof.

(b) Design standards for building roof-mounted CMRS facilities. A building roof-mounted CMRS facility shall adhere to the following design standards to minimize impacts:

(1) The facility, including antennae, shall not extend more than twelve (12) feet above the highest point of the building on which the facility is mounted, including parapets but excluding facilities and equipment on the roof.

(2) The facility shall not be approved on pitched roofs, unless located entirely within a dormer or cupola.

(3) The facility shall be screened from view and/or colored to match the building or structure to which it is attached.

(4) The diameter of a microwave dish antenna shall not exceed four (4) feet.

(c) Accessory equipment. Accessory equipment for a building roof- or wall-mounted CMRS facility, including equipment storage shelters, shall be placed inside the building if feasible. (Ord. 2001-10 §1; Ord. 2007-4 §1)

**Sec. 16-13-60. Pole-mounted CMRS facilities.**

(a) Design standards. A pole-mounted CMRS facility shall adhere to the following design standards to minimize impacts:

(1) The facility shall be designed to be compatible with surrounding buildings and structures and existing or planned uses in the area.

(2) The facility shall be colored to match the pole to which it is attached.

(b) Height. A pole-mounted CMRS facility shall comply with the applicable height limits of the underlying zone district, unless the special exception specifically allows the facility to exceed that height. (Ord. 2001-10 §1)

**Sec. 16-13-70. Application and approval procedures.**

(a) Application. An application for a special exception for a CMRS facility shall include the following:

(1) Payment of the application fee.

(2) A site plan on twenty-four-inch-by-thirty-six-inch sheets, which includes the following:

a. The location of all proposed and existing structures and improvements on the property;

b. A landscape plan, if applicable;

c. A north arrow;

d. Scale (written and graphic);

e. Scaled building elevations, if applicable;

f. A legal description of the property; and

g. A lighting plan, if applicable.

(3) A title commitment or other proof of ownership of the property or, if the property is leased, a copy of the fully executed lease. The lease may be edited to black out or redact portions which the applicant does not want to become a public record, except: the term of the lease; any renewal provisions; provisions relating to termination of the lease; provisions relating to modification or removal of the facility; and the signature page.

(4) Photographic simulations showing the proposed facility and the structure on which it will be mounted, if applicable.

(5) A written, narrative statement describing in detail how the proposed CMRS facility will comply with each of the applicable design standards outlined in this Section.

(6) Preliminary design drawings and antenna specifications.

(7) Evidence of FAA approval, if applicable.

(b) Application submittal. The applicant shall submit the completed application, including all items listed in Subsection (a) above, to the Town Clerk.

(c) Procedure.

(1) Public hearing. The Town Council shall hold a public hearing on the application for special exception for a CMRS facility.

(2) Notice. At least fifteen (15) days prior to the public hearing, there shall be published in a newspaper of general circulation in the Town a notice indicating the time, place and nature of the public hearing. The same information shall also be posted on the property at least fifteen (15) days prior to the public hearing.

(3) Conduct of hearing. At the public hearing, all parties in interest and members of the general public shall have an opportunity to be heard.

(d) Criteria for approval or denial. At the public hearing, the Town Council shall consider whether the proposed CMRS facility complies with the design standards outlined in this Article.

(e) Decision. The Town Council's decision shall be final, and the final decision by the Town to approve or deny an application under this Article shall be in writing and supported by substantial evidence contained in a written record.

(f) Conditions. The Town Council may require, as a condition of approval of a special exception for a CMRS facility, any reasonable conditions necessary to:

(1) Improve or modify the development plan;

(2) Ensure that any negative impacts of the proposed use are eliminated or mitigated; and

(3) Ensure that the proposed development and use will be commenced and fully completed in a timely fashion.

(g) Expiration. If construction of the CMRS facility is not commenced within one hundred eighty (180) days of issuance of the special exception, the special exception shall expire. If there is an appeal of the Town Council's decision, the time period shall not begin until the appeal is finally resolved.

(h) Change in ownership. In the event there is a change in either the owner or operator of the CMRS facility, a new special exception shall not be necessary. The new owner or operator shall notify the Town of the change within fifteen (15) days after the date the change becomes effective; register such change with the Town by providing the name and business address of the new owner or operator; verify in writing that the new owner or operator understands the terms of the special exception; and pay to the Town an inspection fee, as established by resolution. Upon receipt of notification of a change in ownership, the Town may inspect the property to make certain that the new owner or operator is complying with all of the terms and conditions of the special exception.

(i) Modification. Any modification to the CMRS facility that differs from the original design which was approved by the Town shall require a new special exception.

(j) Application fee. The application fee for a special exception for a CMRS facility shall be set by resolution of the Town Council. (Ord. 2001-10 §1; Ord. 2007-4 §1)