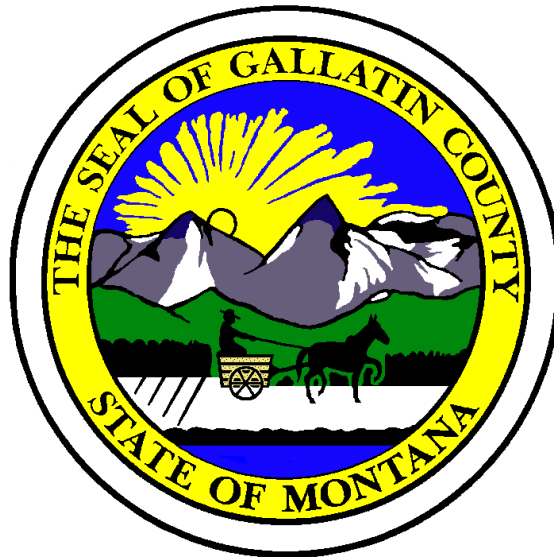


# Gallatin County “Part 1” Zoning Administrative Regulation

Gallatin County, Montana



Adopted May 21, 2019  
County Commission Resolution No. 2019-047



## TABLE OF CONTENTS

<a href="#">Section 1:</a>	Title, Adoption, and Applicability	1-1
<a href="#">Section 2:</a>	Definitions	2-1
<a href="#">Section 3:</a>	Application of Zoning Regulations	3-1
<a href="#">Section 4:</a>	Administration	4-1
<a href="#">Section 5:</a>	Non-Conforming Parcels, Uses, and Structures	5-1
<a href="#">Section 6:</a>	Land Use Permits	6-1
<a href="#">Section 7:</a>	Change of Use Permits	7-1
<a href="#">Section 8:</a>	Certificate of Completion	8-1
<a href="#">Section 9:</a>	Zoning Improvements Agreement	9-1
<a href="#">Section 10:</a>	Conditional Uses	10-1
<a href="#">Section 11:</a>	Variances	11-1
<a href="#">Section 12:</a>	Complaints and Enforcement	12-1
<a href="#">Section 13:</a>	Appeals	13-1
<a href="#">Section 14:</a>	Amendments	14-1



## **SECTION 1      TITLE, ADOPTION, AND APLICABILITY**

- 1.1    The regulations herein shall be known as the Gallatin County “Part 1” Zoning Administrative Regulation, which was adopted pursuant to County Commission Resolution No. 2019-047 on May 21, 2019, and as it may be amended thereafter.
- 1.2    This Administrative Regulation is intended to apply to all “Part 1” Zoning Districts in Gallatin County, Montana created by the County Commission pursuant to Title 76, Chapter 2, Part 1, MCA. This Administrative Regulation applies to a Zoning District upon the County Commission’s approval of an amendment to that Zoning District’s District Regulation adopting this Administrative Regulation.
- 1.3    Upon the County Commission’s adoption of this Administrative Regulation for a Zoning District, this Administrative Regulation supplements the District Regulation. In the case of a conflict between this Administrative Regulation and a District Regulation, this Administrative Regulation shall control.
- 1.4    As defined in Section 2, this Administrative Regulation and the District Regulation applicable to a tract of land are referred to herein as the “Zoning Regulations.”

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## SECTION 2 DEFINITIONS

The following definitions provide clarification and guidance regarding this Administrative Regulation. Additional terms are defined in the District Regulations. In the case of a conflict between the definitions below and the definitions provided in an applicable District Regulation, the definitions in this Administrative Regulation control.

- 2.1. Actual Construction: As it relates to Section 5 of this Administrative Regulation, the term shall mean the placing of construction materials in their permanent position, fastened in a permanent manner; actual work in excavation or grading, or the demolition or removal of an existing Structure begun preparatory to rebuilding; provided, that in all cases diligent work shall be carried on until the completion of the Structure and the implementation of the designated Use.
- 2.2. Administrative Regulation: This Gallatin County “Part 1” Zoning Administrative Regulation.
- 2.3. Agriculture: The conduct of an agricultural activity occurring in connection with the commercial production of farm products as defined under Section 76-2-902, MCA. For the purpose of the Zoning Regulations, agricultural activities do not include game farms, fur farms, animal hospitals, commercial dog kennels, confined animal feeding operations, or similar uses. Agriculture does not include the cultivation, growing, harvesting, or manufacturing of marijuana or marijuana-infused products (excluding hemp or hemp seeds) for sale, or the sale of marijuana or marijuana-infused products (excluding hemp or hemp seeds).
- 2.4. Approved Non-Conforming Status: A Decision by the Planning Director, after considering documentation of the lawful establishment of the parcel, Use, Structure, or Sign prior to the adoption or amendment of the applicable District Regulation, that a parcel, Use, Structure, or Sign that does not comply with one or more requirements of the applicable District Regulation is allowed to remain, subject to certain conditions.
- 2.5. Building: A Structure with a roof, built for support, shelter, or enclosure of persons, animals, chattels, or property of any kind.
- 2.6. Certificate of Completion: A certificate issued by the Planning Director, which certifies that all Exterior Construction and other relevant conditions of approval for a project have been completed in conformance with the plans approved through the Land Use Permit or Change of Use Permit review processes.
- 2.7. County Commission: The Board of Gallatin County Commissioners.
- 2.8. Decision: A final act of:

- a. The Planning Director or Zoning Enforcement Agent evidenced in writing, giving an interpretation or determination or granting or denying any permit, exception, certificate, permission, or approval; or
  - b. The Planning and Zoning Commission or Gallatin County Commission evidenced in writing, which may include findings of fact, conclusions of law, resolutions, and orders.
- 2.9. District Regulation: The zoning regulation adopted by the County Commission for a Zoning District.
- 2.10. Dwelling Unit: A Building or portion thereof providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. Where a portion of a Building containing complete, independent living facilities may be separated from another portion of a Building also containing complete, independent living facilities, such Building shall be considered to contain more than one Dwelling Unit.
- 2.11. Dwelling Unit, Single Family: A Building or portion thereof containing a single Dwelling Unit for habitation by one or more persons co-residing therein and their domestic employees.
- 2.12. Exterior Construction: Those components of a Structure visible from the outside of the Structure, such as siding, windows, roofing, and painting. Site improvements such as any parking, landscaping, or screening improvements required pursuant to the District Regulation are considered part of Exterior Construction.
- 2.13. Hearing Rules: The current version of the Planning and Zoning Commission's adopted rules for the conduct of hearings.
- 2.14. MCA: The current version of the Montana Code Annotated.
- 2.15. Non-Conforming Parcel: A parcel, the area, dimensions or location of which was lawful prior to the adoption, revision or amendment of the District Regulation applicable to the parcel, but that fails by reason of such adoption, revision or amendment to conform to the present requirements of the District Regulation.
- 2.16. Non-Conforming Sign: A Sign, the size, dimensions or location of which was lawful prior to the adoption, revision, or amendment of the District Regulations applicable to the parcel on which the Sign is located, but that fails by reason of such adoption, revision or amendment to conform to the present requirements of the District Regulation.
- 2.17. Non-Conforming Structure: A Structure, the size, dimensions or location of which was lawful prior to the adoption, revision, or amendment of the District Regulations applicable to the parcel on which the Structure is located, but



that fails by reason of such adoption, revision or amendment to conform to the present requirements of the District Regulation.

- 2.18. Non-Conforming Use: A Use or activity that was lawful prior to the adoption, revision, or amendment to the District Regulation applicable to the parcel on which the Use or activity is located, but that fails by reason of such adoption, revision or amendment to conform to the present requirements of the District Regulation.
- 2.19. Planning Director: The person authorized by the County Commission and the Planning and Zoning Commission to carry out the administrative duties specified by the Zoning Regulations. Staff of the Gallatin County Department of Planning and Community Development, as well as other individuals designated by the Planning Director, are authorized to act as the Planning Director's agent.
- 2.20. Published Notice: Notice given consistent with Section 7-1-2121, MCA and the Planning and Zoning Commission's adopted hearing rules.
- 2.21. Structural Alteration: A change in the shape or size of a portion of an existing Structure or of the supporting members of an existing Structure that increases the exterior dimension of the existing Structure, including but not limited to walls, columns, beams, arches, girders, foundation, floor joists or roof joists.
- 2.22. Structure: A combination of materials to form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water.
- 2.23. Sub-district: The sub-districts, zones, or districts in which a Zoning District is divided. For example, an Agricultural Exclusive (AE) district or an Agricultural and Rural Residential (AR) sub-district.
- 2.24. Use: Any purpose for which a Building or other Structure or tract of land may be designed, arranged, intended, maintained, or occupied for any activity, occupation, business, operation, or residence.
- 2.25. Use, Change of: Substitution of one Use for another or the addition of a new Use, specifically regarding the Use of a Building or other Structure or on a tract of land.
- 2.26. Use, Conditional: Uses, other than Permitted Uses, that may be allowed in a specific Sub-district, but which require a public hearing by the Planning and Zoning Commission to consider if the Use should be conditioned to maintain and ensure the health, safety, and general welfare of the community and to maintain the character of the Zoning District.
- 2.27. Use, Permitted: Uses listed as being authorized in a specific Sub-district, generally as a principal use or accessory use, and which may be approved

by the Planning Director pursuant to the administrative process of a Land Use Permit or Change of Use Permit.

- 2.28. Use, Seasonal: The Use of a Building, Structure, or tract of land to conduct one or more Uses that vary in accordance with the season of the year and are not conducted year-round.
- 2.29. Variance: A procedure through which a property owner may be granted relief from standards of the District Regulation.
- 2.30. Zoning District: A zoning district created by the County Commission pursuant to Title 76, Chapter 2, Part 1, MCA.
- 2.31. Zoning Enforcement Agent: The person authorized by the County Commission and Planning and Zoning Commission to carry out only those enforcement duties specified by the Zoning Regulations. The Zoning Enforcement Agent can authorize a person to act as his/her agent. If the Zoning Enforcement Agent is unable to act for any reason, the Planning Director is authorized to act as the Zoning Enforcement Agent.
- 2.32. Zoning Regulations: The District Regulation that applies to a tract of land, together with this Administrative Regulation.

## SECTION 3 APPLICATION OF ZONING REGULATIONS

3.1 Application. The requirements established by the Zoning Regulations are minimum regulations and apply uniformly to each class or kind of Structure or land throughout the Zoning District. The Zoning Regulations shall be held to the minimum standard that protects and promotes the public health, safety and general welfare of the Zoning District.

3.2 Zoning Regulation Conformance. Property owners are responsible for ensuring all activity within and on their property conforms to this Administrative Regulation and the applicable District Regulation. No Building, Structure, or land shall hereafter be used or occupied, and no Building, Structure, or part thereof shall hereafter be erected, constructed, reconstructed, moved or Structurally Altered unless it is in conformity with all the Zoning Regulations.

No Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure, or unless such Use is deemed to be an appropriate Use pursuant to the interpretation process of Section 3.8 of this Administrative Regulation. All other uses are prohibited unless otherwise authorized by federal or state law.

The burden of proof is on an applicant to demonstrate that applicable requirements and review criteria of the Zoning Regulations are met. Where conditions of approval are attached to any approval issued under the Zoning Regulations, the failure to comply with any condition of approval is a violation of the Zoning Regulations.

3.3 Contradictions. If the requirements of the Zoning Regulations conflict with the requirements of any other lawfully adopted rules, regulations, statutes, or County-required covenants, the most restrictive (or higher standard) shall control.

3.4 Severability. If any section, subsection, subdivision, sentence, clause, paragraph or phrase of the Zoning Regulations or any attachment thereto is for any reason held to be invalid, unconstitutional or void, such decision shall not affect the validity or enforceability of the remaining portions of the Zoning Regulations to render the same inoperative or ineffective for carrying out the main purpose of the Zoning Regulation.

3.5 Vesting. An application submitted pursuant to the Zoning Regulations shall be reviewed in accordance with the Zoning Regulations in effect at the time the application is submitted. See also the Non-Conforming Parcels, Uses, and Structures section of this Administrative Regulation.

- 3.6 Application to Agencies. As provided under Section 76-2-402 MCA, whenever an agency proposes to use public land contrary to the Zoning Regulations, the Planning and Zoning Commission shall hold a public hearing. The Planning and Zoning Commission shall have no power to deny the proposed use but shall act only as to allow a public forum for comment on the proposed use.
- 3.7 Natural Resources. In accordance with Section 76-2-109 MCA, the Zoning Regulations shall not apply to lands used for grazing, horticulture, Agriculture or the growing of timber. This shall not be interpreted as extending to the cultivation, growing, harvesting, or manufacturing of marijuana or marijuana-infused products for sale, or the sale of marijuana or marijuana-infused products.
- 3.8 Interpretations. Requests for Official interpretations concerning the Zoning Regulations, boundaries, and maps shall be made in writing, accompanied by the appropriate application and fee, and shall be handled as follows:
- a. Administrative Interpretations. Interpretations concerning the Zoning Regulations and maps, except those interpretations listed at subsection (b) or (c)(vii) below, may be made by the Planning Director and are subject to Appeal as described in Section 13 of this Administrative Regulation. If the Planning Director determines the interpretation is of significant public interest, the Planning Director may refer the request to the Planning & Zoning Commission. The Planning & Zoning Commission shall consider the request in a public hearing.
  - b. Interpretation of Use Classification. If questions arise concerning the appropriate classification of a particular Use, or if the specific Use is not listed, the Planning and Zoning Commission shall determine the appropriate classification of that Use. In interpreting a Use classification, the Planning and Zoning Commission shall hold a public hearing, consider the recommendation of any Zoning Advisory Committee, and determine whether the use meets all of the following criteria:
    - i. The proposed Use is compatible with the Uses allowed in the Sub-district;
    - ii. The proposed Use is similar to one or more Uses allowed in the Sub-district;
    - iii. The proposed Use will not adversely affect property in the neighborhood or Sub-district or Zoning District; and
    - iv. The proposed use will not abrogate the intent of the Zoning Regulations and applicable growth policy or neighborhood plan.
  - c. Interpretation of Zoning District Boundaries. Where uncertainty exists as to the location of Sub-district boundaries as shown on the Official Zoning Map, the

Planning Director shall interpret the location of the Sub-district and/or Zoning District boundaries following the nearest logical line to that shown; where:

- i. Boundaries indicated as approximately following the center line of streets, highways or alleys shall be construed to follow such center lines;
- ii. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
- iii. Boundaries indicated as following the center line of water features (e.g. streams, watercourse, canals, ditches) shall be construed to follow the current center lines, even if the water feature changes course;
- iv. Boundaries indicated as parallel to or extensions of features indicated on the Official Zoning Map shall be determined according to the scale of the map;
- v. Boundaries indicated as following section lines or quarter section lines or quarter-quarter section lines shall be construed as following such lines;
- vi. Topographic features shown on the Official Zoning Map are illustrative only.

Where circumstances or controversy arise over Zoning District boundaries, the resolution of which circumstances or controversy is not provided for by subsection (c)(i)-(vi) above, the Planning and Zoning Commission shall interpret the District boundary during a public hearing.

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## SECTION 4 ADMINISTRATION

- 4.1 Schedule of Fees. The County Commission sets fees for all permit applications, Amendments, Conditional Use Permits, Variances, and appeals. The Planning Director, Planning and Zoning Commission and/or County Commission will not take action on an item until fees are paid in full. Fees are non-refundable once review has commenced.
- 4.2 Authorization to Enter. Any application made pursuant to the Zoning Regulations guarantees the right of the Planning and Zoning Commission and any of its agents and employees to enter upon the property subject to the application at a reasonable time without prior notice, for inspection of the property in order to complete the review of the application. In no event, however, does this authorization permit the Planning and Zoning Commission, its agents or employees, to enter any occupied Building or Structure without express consent of the Applicant.
- 4.3 Provision of Inaccurate or False Information. Whenever a Decision under the Zoning Regulations was made by the Planning Director, Zoning Enforcement Agent, Planning and Zoning Commission, or County Commission, and it is later discovered that the Decision was based in whole or in material part on inaccurate or false information provided by the Applicant or the Applicant's agent, the Planning Director, Zoning Enforcement Agent, Planning and Zoning Commission, or County Commission may take action to void or modify the prior Decision.
- 4.4 Planning Director. The Planning Director is responsible for carrying out the administrative duties specified by this Administrative Regulation.
- 4.5 Zoning Enforcement Agent. The Zoning Enforcement Agent is responsible for carrying out the enforcement duties specified by this Administrative Regulation.
- 4.6 Planning and Zoning Commission. The seven-member Planning and Zoning Commission for each Zoning District consists of the three County Commissioners, the County Surveyor, a County official appointed by the County Commission, and two citizen members appointed by the County Commission. The Planning and Zoning Commission is granted the powers "as may be appropriate to enable it to fulfill its functions and duties to promote county planning and to carry out the purposes" of Montana law and of the Zoning Regulations in accordance with Section 76-2-103, MCA.
- a. Hearing Rules. The Planning and Zoning Commission may adopt rules governing the transaction of its business as set forth in Section 76-2-102, MCA.

Any conflict between the procedural rules of the Planning and Zoning Commission and procedural provisions of this Administrative Regulation shall be resolved in favor of this Administrative Regulation.

4.7 Zoning Advisory Committee. The Planning and Zoning Commission may, by resolution, establish a Zoning Advisory Committee for each Zoning District. If created, the Zoning Advisory Committee shall consist of five members, appointed by the Planning and Zoning Commission and shall operate under bylaws approved by the Planning and Zoning Commission.

a. Role and Duties. The Advisory Committee shall have the opportunity to consider, formulate, and transmit a recommendation on all Conditional Use Permits, Variances, Planned Unit Developments, Zone Text Amendments, Zone Map Amendments, and Interpretation of Use Classifications within the Zoning District. The Advisory Committee recommendation shall be advisory only and shall not be binding upon the Planning and Zoning Commission or the County Commission.

The inability of an Advisory Committee to formulate a recommendation or convene a quorum of its members to hold a meeting shall not prevent the Planning and Zoning Commission or County Commission from taking action on a matter.

b. Open Meetings. All meetings of the Advisory Committee shall be open to the public in accordance with the Montana Open Meetings Law, Section 2-3-201 through 2-3-221, MCA. Published Notice of Advisory Committee meeting dates and times shall be given.

c. Term. Advisory Committee members shall be appointed for two-year staggered terms. Initially, two members shall be appointed for one-year terms and three members shall be appointed for two-year terms.

d. Oath of Office. Upon appointment, Advisory Committee members shall take a statutory oath, supporting and defending the Constitution and laws of the State of Montana, to support the Zoning Regulations, to disclose any personal economic interest in any matter coming before the Advisory Committee, to disqualify themselves from participation in any matter should there be a conflict of interest, and to comply with the law as they interpret and make recommendations on the applicable plans, policies, and Zoning Regulations.



## **SECTION 5       NON-CONFORMING PARCELS, USES, SIGNS, AND STRUCTURES**

- 5.1 Intent. It is the intent of this Administrative Regulation to allow Uses, parcels, signs and Structures to remain in the state and location in which they existed at the time of adoption or amendment of the applicable District Regulation. To avoid undue hardship, nothing in the Zoning Regulations shall be deemed to require a change in the plans, construction or designated Use of any land, sign, or Structure on which Actual Construction lawfully began prior to the effective date of adoption or amendment of the applicable District Regulation. The mere intended or contemplated Use of a Building, Structure, sign, or land does not qualify for Approved Non-Conforming Status.
- 5.2 Non-Conforming Parcels of Record. In any Sub-district, subject to the issuance of a Land Use Permit, Structures may be erected on any Non-Conforming Parcel which was of record on the effective date of adoption or amendment of the applicable District Regulation; provided the Structure complies with all other applicable requirements and restrictions of the Zoning Regulations.
- a. A Non-Conforming Parcel shall not be divided or changed in any way to increase its non-conformity unless Conditional Use Permit approval is granted by the Planning and Zoning Commission pursuant to Section 5.8 of this Administrative Regulation.
- 5.3 Non-Conforming Uses of Land. A Non-Conforming Use of land may be continued so long as it remains otherwise lawful, provided:
- a. Such Use has been granted Approved Non-Conforming Status as prescribed in Section 5.7 of this Administrative Regulation;
- b. Such Use shall not be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the adoption and/or amendment of the District Regulation, unless Conditional Use Permit approval is granted by the Planning and Zoning Commission pursuant to Section 5.8 of this Administrative Regulation;
- c. Such Use shall not be moved in whole or in part to any portion of the land not occupied by such Use at the adoption and/or amendment of this District Regulation, unless Conditional Use Permit approval is granted by the Planning and Zoning Commission pursuant to Section 5.8 of this Administrative Regulation;

- d. If such Use ceases for any reason for a period of more than 12 months, any subsequent Use shall conform to the District Regulation. If a Seasonal Use ceases for two consecutive seasons, then any subsequent Use shall conform with the District Regulation; and
- e. Where such Use is listed as a Conditional Use in the applicable Sub-district of the District Regulation, that Use may be granted Approved Non-Conforming Status.
  - i. The Use may continue to operate as it existed prior to adoption or amendment of the District Regulation without a Conditional Use Permit, but any enlargement or expansion of the Use requires a Conditional Use Permit pursuant to Section 10 of this Administrative Regulation. The criteria of Section 5.8 of this Administrative Regulation do not apply in such circumstances.

5.4 Non-Conforming Structures. A Non-Conforming Structure may remain so long as it remains otherwise lawful, subject to all of the following provisions:

- a. The Structure has been granted Approved Non-Conforming Status as prescribed in Section 5.7 of this Administrative Regulation;
- b. Should such a Structure or non-conforming portion thereof be destroyed by a catastrophic event, a Land Use Permit may be issued by the Planning Director to allow reconstruction of the Structure so long as the resulting Structure will be rebuilt substantially the same as it existed immediately prior to destruction (e.g. no increase in height or size, same location, same Use). Any proposed Structure which is not substantially the same as the Structure that was destroyed shall conform to the applicable provisions of the District Regulation;
- c. Should a Structure that is non-conforming in terms of complying with the applicable Setback or Yard requirements of the District Regulation be demolished and/or moved any distance, for any reason other than being destroyed by a catastrophic event, the Structure shall thereafter be located on the property so that it conforms with the Setback or Yard requirements of the District Regulation; and
- d. Repairs, maintenance, and improvements may be performed on Non-Conforming Structures without approval from the Planning Director, provided that such work does not constitute a Structural Alteration. The Structural Alteration of a Non-Conforming Structure may only occur after the required approval, as described below, is obtained:

- i. The Structural Alteration of a Non-Conforming Structure where the proposed Structural Alteration complies with all applicable requirements (e.g. Building Height, Setbacks, Lot Coverage, etc.) of the District Regulation may be approved by issuance of a Land Use Permit pursuant to Section 6 of this Administrative Regulation; or
- ii. Any other Structural Alteration to a Non-Conforming Structure may only be authorized by the approval of a Conditional Use Permit by the Planning & Zoning Commission pursuant to Section 5.8 of this Administrative Regulation.

5.5 Non-Conforming Uses of Structures. A Non-Conforming Use of a Structure may be continued so long as it remains otherwise lawful provided that:

- a. The Use of the Structure has been granted Approved Non-Conforming Status as prescribed in Section 5.7 of this Administrative Regulation;
- b. Any such Use may be extended to any other part of the Structure that was in existence on the date of adoption or amendment of the District Regulation and designed for such Use, but no such Use may be extended to occupy land outside the Structure or a new part of the Structure added via a Structural Alteration without approval of a Conditional Use Permit by the Planning & Zoning Commission pursuant to Section 5.8 of this Administrative Regulation;
- c. If such Use of a Structure ceases for a period of more than 12 months, any subsequent Use of the Structure shall conform to the District Regulation. If a Seasonal Use ceases for two consecutive seasons, then subsequent Uses of such Structure shall conform with the District Regulation; and
- d. Where such Use of a Structure is listed as a Conditional Use in the corresponding District Regulation, that Use of Structure may be granted Approved Non-Conforming Use Status.
  - i. In such situations the Use of Structure may continue to operate as it existed prior to adoption or amendment of the District Regulation without a Conditional Use Permit, but any enlargement or expansion of the Use of Structure requires a Conditional Use Permit pursuant to Section 10 of this Administrative Regulation. The criteria of Section 5.8 of this Administrative Regulation do not apply in such circumstances.

5.6 Non-Conforming Signs. A Non-Conforming Sign may remain so long as it remains otherwise lawful, subject to all of the following provisions:

- a. The sign has been granted Approved Non-Conforming Status as prescribed in Section 5.7 of this Administrative Regulation;
- b. No action shall be taken to increase the non-conformity of such a sign;
- c. Should such a sign be destroyed by a catastrophic event, the sign shall thereafter be required to conform with the requirements of the District Regulation; and
- d. Should a sign that is non-conforming in terms of complying with the applicable Setback or Yard requirements of the District Regulation be demolished and/or moved any distance, the sign shall thereafter be located on the property so that it conforms with the Setback or Yard requirements of the District Regulation.

5.7 Determination of Status of Non-Conforming Parcels, Uses, Signs, and Structures.

Upon the submittal of a completed application and fee, it shall be the responsibility of the Planning Director to determine the status of Non-Conforming Parcels, Non-Conforming Uses, Non-Conforming Structures, and Non-Conforming Signs. If the Planning Director determines that a parcel, Use, Structure, or sign meets the applicable requirements, the parcel, Use, Structure, or sign shall be granted Approved Non-Conforming Status.

The following procedure shall be followed to determine the status of Non-Conforming Parcels, Uses, Structures, and Signs:

- a. The owner of record of the subject parcel, Use, Structure, or sign shall make a written request for a determination of the status of the parcel, Use, Structure, or sign and pay the associated application fee.
- b. It shall be the burden of the applicant to prove entitlement to Approved Non-Conforming Status by furnishing the Planning Director with supporting information relevant to the application request.
- c. Upon receipt of a request for a Non-Conforming determination, the Planning Director shall send notice of the request to adjoining landowners via first class mail and provide for a comment period of not less than 15 days from the date of the notice. The notice shall inform adjoining landowners that they must contact the Planning Director if they desire to be notified of the Decision on the request.
- d. The Planning Director shall determine on a case-by-case basis whether a parcel, Use, Structure, or sign is granted Approved Non-Conforming Status and issue a written Decision. The Planning Director shall send the written Decision to the Applicant.

- e. The Decision regarding the request for a Non-Conforming determination shall be subject to an appeal pursuant to Section 13.3 of this Administrative Regulation.

5.8 Conditional Use Permit Criteria for Expansion of Non-Conformities. To approve a Conditional Use Permit application to expand any non-conformity the Applicant shall demonstrate and the Planning and Zoning Commission shall determine that the proposed expansion materially improves conformity with the District Regulation. This is accomplished by following the procedural requirements set forth in Section 10 and considering all of the applicable criteria listed below in lieu of the criteria in Section 10.4. With respect to Section 5.8(e) below, a variance rather than a Conditional Use Permit is required in circumstances where there will be demolition or Structural Alteration of more than 50% of the structural members of the existing Structure's perimeter walls.

- a. The proposed expansion does not substantially increase the degree of non-conformity with the District Regulation and any applicable growth policy, development pattern or neighborhood plan, and in general will result in greater conformance with the District Regulation;
- b. Other than the known non-conformity, the proposed expansion complies with all other applicable standards of the District Regulation;
- c. The proposed expansion reasonably mitigates any unsafe or hazardous conditions (e.g. onsite and offsite traffic hazards, obstruction of the site vision triangle, drainage, parking, shedding of snow off roofs onto adjacent property, etc.) that exist as a result of the approved non-conformity or that could be created as a result of the proposed expansion;
- d. The proposed expansion reasonably mitigates conflict with other Uses in the surrounding area, including but not limited to: visual impacts; on-site and off-site impacts from noise, dust, smoke, traffic, surface or groundwater contamination, or other environmental impact;
- e. For expansion of a Non-Conforming Structure, the Applicant has demonstrated that the proposed expansion will not result in the demolition or Structural Alteration of more than 50% of the structural members of the existing Structure's perimeter walls; and
- f. For expansion of a Non-Conforming Structure where the approved non-conformity is increasing (e.g. where a building that is non-conforming in terms of Building Height will get taller, or where a building that is non-conforming in terms of Setback will get closer to the property line, watercourse, or road), the

increase in the non-conformity is necessary and there are no other viable solutions.

## SECTION 6 LAND USE PERMITS

- 6.1 Intent. The Land Use Permit review process is intended to verify a Structure's conformity to the applicable requirements of the Zoning Regulations.
- 6.2 Requirement for Land Use Permit. Notwithstanding Section 6.4 below, no Structure shall be built or moved and no Structural Alteration shall commence without an approved Land Use Permit issued under this Section. Construction without an approved Land Use Permit constitutes a violation of the Zoning Regulations. Preparatory site work may occur prior to Land Use Permit approval; however, pouring of concrete or installation of other permanent improvements prior to Land Use Permit approval is prohibited.
- 6.3 Procedures for Obtaining a Land Use Permit.
- a. Applications for a Land Use Permit shall be in the form specified by the Planning Director and shall be filed with the Gallatin County Planning Office.
  - b. All Land Use Permit applications must be complete and fees paid before the Planning Director is required to consider the application. An application is complete when it contains all of the information necessary for the Planning Director to decide whether or not the development, if completed as proposed, will comply with all applicable requirements of the Zoning Regulations.
  - c. A Land Use Permit application shall not be considered complete until the applicant provides the following documentation, as deemed applicable by the Planning Director:
    - i. A completed Land Use Permit application form with required attachments;
    - ii. Issuance of an address from the Gallatin County Geographic Information Systems (GIS) Office;
    - iii. Approved means of wastewater treatment that will accommodate the wastewater needs for the proposed project such as:
      1. A septic permit (i.e. an Authorization to Construct a wastewater treatment system) from the Gallatin City/County Health Department, or approval to connect to an existing wastewater treatment system (e.g. Water and Sewer District, community wastewater treatment system, etc.) and the Certificate of Subdivision approval from Montana Department of Environmental Quality; and
      2. Other necessary approvals from the Gallatin City/County Health Department (e.g. Tourist Home License, Food Service Establishment License, etc.);
    - iv. Documentation of any necessary zoning approvals and non-conforming determinations for existing Structures and Uses on the property;

- v. Approved floodplain development permit; and
  - vi. Approved encroachment permit for any access coming off of a County-maintained roadway, or an approach permit for any access coming off of a road under the jurisdiction of the Montana Department of Transportation.
- d. Where an application is deemed incomplete, the applicant will be notified of the deficiencies in writing and shall have 60 days to submit additional information or the application may be denied.
- e. When the Planning Director determines that the application complies with all applicable requirements of the Zoning Regulations, including any applicable conditions and terms of a Conditional Use Permit or Variance approval, the Planning Director may approve the Land Use Permit application.
- i. The Planning Director is authorized to attach conditions of approval to a Land Use Permit, such as the requirement to obtain a Certificate of Completion, where such conditions are determined to be necessary to: ensure compliance with the requirements of the Zoning Regulations (e.g. parking, landscaping, screening, etc.) or of other approval(s) applicable to the property (e.g. Conditional Use Permit, Variance, etc.), or where other extenuating circumstances exist.
  - ii. The failure to comply with any condition of approval is a violation of the Zoning Regulations.
  - iii. Any Land Use Permit issued shall conspicuously state on its face that it may be subject to appeal within 30 days of the Decision to issue it pursuant to this Administrative Regulation or Section 76-2-110, MCA and state that commencement of construction activity within the 30-day appeal period or prior to resolution of any appeal shall be at the risk of removal of such improvements by the landowner.
- f. Land Use Permit applications shall not be approved if the Planning Director is aware that the project does not conform with the applicable requirements of the Zoning Regulations. If a violation of other lawfully-adopted regulations and approvals (e.g. Subdivision Regulations; Floodplain Regulations, Building by Lease or Rent Regulations, Environmental Health regulations, etc.) is occurring on the property, the Planning Director may approve the Land Use Permit on a conditional basis.
- g. Land Use Permits issued on the basis of plans and specifications approved by the Planning Director only authorize the Use, arrangement and construction set forth in the approved permit's plans and specifications. Any Use, arrangement or construction not in conformance with that authorized shall constitute a violation of the Zoning Regulations.



- 6.4 Exempt Structures. Unless clearly stated otherwise in the District Regulation, Structures exempt from Land Use Permitting requirements as set forth in the applicable District Regulation must still comply with applicable development standards (e.g. Setbacks, building height, number of accessory structures, lot coverage, etc.).
- 6.5 Land Use Permit Approval Modification. Upon written request and payment of the applicable fee, the Planning Director may approve modifications to the plans and specifications of a previously approved Land Use Permit when such request is made prior to expiration of the Land Use Permit and prior to the issuance of any required Certificate of Completion. Modification requests submitted after the expiration of the Land Use Permit or after issuance of a Certificate of Completion shall be made by filing a new application for a Land Use Permit.
- 6.6 Completion of Exterior Construction. All Exterior Construction shall be completed within two years of the date of the issuance of the Land Use Permit.
- 6.7 Land Use Permit Approval Expiration. A Land Use Permit shall expire two years from the date of issuance. After a Land Use Permit has expired, work shall not commence or resume until a new Land Use Permit is obtained pursuant to Section 6.3 above, or an extension is granted pursuant to Section 6.8 below.
- 6.8 Extension of Land Use Permit Approval Period. Land Use Permits may be extended as follows:
- a. Upon submittal of a written request and payment of applicable fee to the Planning Department prior to the expiration of the Land Use Permit, the Planning Director may approve a one-time, one-year extension to an approved Land Use Permit; or
  - b. Upon submittal of a written request and payment of applicable fee to the Planning Department prior to the expiration of the Land Use Permit, the County Commission may enter into an agreement authorizing subsequent extension requests.

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## SECTION 7 CHANGE OF USE PERMITS

- 7.1 Intent. The Change of Use Permit review process is intended to verify that conformity with the applicable requirements of the Zoning Regulations is maintained when there is a Change of Use of a Building, Structure, or on a tract of land.
- 7.2 Requirement for Change of Use Permit. In order to verify compliance with applicable requirements of the Zoning Regulations (e.g. parking, landscaping, screening, signage, etc.), a Change of Use of any existing commercial, industrial, or mixed-use Building or land shall not occur without a valid Change of Use Permit issued under this Section.
- a. Notwithstanding Section 7.3 below, the Change of Use of any existing commercial, industrial, or mixed-use Building or land without a valid Change of Use Permit constitutes a violation of the Zoning Regulations.
- 7.3 Waiver. The Planning Director shall waive the requirement for a Change of Use Permit in the following circumstances:
- a. Where a project involving a Change of Use requires a Land Use Permit; or
- b. In instances where the Planning Director makes a Decision that a change in the Use of a Building or land does not trigger additional requirements under the Zoning Regulations, such as standards related to parking, landscaping, screening, etc.
- 7.4 Procedure for Obtaining a Change of Use Permit.
- a. Applications for a Change of Use Permit shall be in the form specified by the Planning Director and shall be filed with the Gallatin County Planning Office.
- b. All Change of Use Permit applications must be complete and fees paid before the Planning Director is required to consider the application. An application is complete when it contains all of the information necessary for the Planning Director to decide whether or not the change of Use, if completed as proposed, will comply with all applicable requirements of the Zoning Regulations.
- c. A Change of Use Permit application shall not be considered complete until the applicant provides the following documentation, as deemed applicable by the Planning Director:
- i. A completed Change of Use Permit application form with required attachments;
- ii. Issuance of an address from the Gallatin County Geographic Information Systems Office;

- iii. Approved means of wastewater treatment that will accommodate the wastewater needs for the proposed project:
    - 1. A septic permit (i.e. an Authorization to Construct a wastewater treatment system) from the Gallatin City/County Health Department, or
    - 2. Approval to connect to an existing wastewater treatment system (e.g. Water and Sewer District, community wastewater treatment system, etc.) and the Certificate of Subdivision approval from Montana Department of Environmental Quality
  - iv. Other necessary approvals from the Gallatin City/County Health Department (e.g. Tourist Home License, Food Service Establishment License, etc.);
  - v. Documentation of any necessary zoning approvals and non-conforming determinations for existing Structures and Uses on the property;
  - vi. Approved floodplain development permit; and
  - vii. Approved encroachment permit for any access coming off of a County-maintained roadway, or an approach permit for any access coming off of a road under the jurisdiction of the Montana Department of Transportation.
- d. Where an application is deemed incomplete, the applicant will be notified of the deficiencies in writing and shall have 60 days to submit additional information or the application may be denied.
- e. When the Planning Director determines that the application complies with all applicable requirements of the Zoning Regulations, including any applicable conditions and terms of a Conditional Use Permit or Variance approval, the Planning Director may approve the Change of Use Permit application.
- i. The Planning Director is authorized to attach conditions of approval to a Change of Use Permit, such as the requirement to obtain a Certificate of Completion, where such conditions are determined to be necessary to: ensure compliance with the requirements of the Zoning Regulations (e.g. parking, landscaping, screening, structural modifications etc.) or of other approval(s) applicable to the property (e.g. Conditional Use Permit, Variance, etc.), or where other extenuating circumstances exist.
  - ii. The failure to comply with any condition of approval is a violation of the Zoning Regulations.
  - iii. Any Change of Use Permit issued shall conspicuously state on its face that it may be subject to appeal within 30 days of the Decision to issue it pursuant to this Administrative Regulation or Section 76-2-110, MCA and state that commencement of construction activity within the 30-day appeal period or prior to resolution of any appeal shall be at the risk of removal of such improvements by the landowner.
- f. Change of Use Permit applications shall not be approved if the Planning Director is aware that the project does not conform with the applicable requirements of the Zoning Regulations. If a violation of other lawfully-adopted

regulations and approvals (e.g. Subdivision Regulations, Floodplain Regulations, Building by Lease or Rent Regulations, Environmental Health Regulations, etc.) is occurring on the property, the Planning Director may approve the Change of Use Permit on a Conditional basis.

- g. Change of Use Permits issued on the basis of plans and specifications approved by the Planning Director only authorize the Use, arrangement and construction set forth in the approved permit's plans and specifications. Any Use, arrangement or construction not in conformance with that authorized shall constitute a violation of the Zoning Regulations.

7.5 Exterior Construction. All Exterior Construction shall be completed within two years of the date of the issuance of the Change of Use Permit.

- a. The two-year period to complete Exterior Construction can be extended as follows:
  - i. Upon submittal of a written request and payment of applicable fee to the Planning Department prior to the expiration of the two-year period, the Planning Director may approve a one-time, one-year extension to an approved Change of Use Permit; or
  - ii. Upon submittal of a written request and payment of applicable fee to the Planning Department prior to the expiration of the approval period, the County Commission may enter into an agreement authorizing subsequent extension requests.

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## **SECTION 8      CERTIFICATE OF COMPLETION**

- 8.1 Intent. The Certificate of Completion is intended to verify that all Exterior Construction and other relevant conditions of approval for a project have been completed in conformance with the plans approved through the Conditional Use Permit, Variance, Land Use Permit or Change of Use Permit review processes.
- 8.2 Requirement for a Certificate of Completion. Where the Planning Director has determined as part of the approval of a Land Use Permit or Change of Use Permit that a Certificate of Completion is required for a project, a Certificate of Completion shall be obtained after completion of all Exterior Construction and prior to expiration of the Land Use Permit or Change of Use Permit. A Certificate of Completion may also be required as a condition of approval for a Conditional Use Permit or Variance.
- 8.3 Procedure to obtain a Certificate of Completion.
- a. Applications for a Certificate of Completion shall be in the form specified by the Planning Director and shall be filed with the Gallatin County Planning Office.
  - b. The Certificate of Completion shall be approved or denied by the Planning Director based on the extent of compliance with the Land Use Permit, or Change of Use Permit, and only when the Planning Director is able to verify, upon inspection, that the applicable requirements of the Zoning Regulations have been met. This review includes but is not limited to completion of all permitted Exterior Construction, and other conditions of approval.

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## SECTION 9 ZONING IMPROVEMENTS AGREEMENTS

- 9.1 Intent. The purpose of a Zoning Improvements Agreement is to contractually guarantee completion of all Exterior Construction necessary to comply with the requirements of an approved Land Use Permit or Change of Use Permit, but not completed prior to the expiration of those approvals.
- 9.2 Application. An application for a Zoning Improvements Agreement shall be filed with the Planning Director, accompanied by the appropriate fee, and signed by the property owner.
- a. Applications for Zoning Improvements Agreement shall be in the form specified by the Gallatin County Planning Office, and shall include the following:
    - i. A list of all required improvements that have not been completed, and an estimate of the costs to complete such improvements; and
    - ii. Financial security, in a form acceptable to the County, in an amount equal to 150% of the cost of completion of the required improvements. The expiration of the financial security shall not be less than 12 months from the date of the completion of the required improvements as stipulated in the improvements agreement.
  - b. The County has the discretion to require a second estimate of the cost of the improvements. The cost of obtaining the second estimate shall be borne by the Applicant.
- 9.3 Limitations. Essential improvements are those improvements necessary to ensure the proper function of required health and safety components associated with a project and include, but are not limited to: access, sewage disposal facilities, water supply facilities, fire protection facilities, intersection improvements, and traffic safety signage. Essential improvements should be completed prior to use or occupancy of a building and a Zoning Improvements Agreement shall not be used to secure completion of essential improvements. The County Commission has the final authority to decide whether or not an improvement is an essential improvement.
- 9.4 County Commission Action Required. Approval of a Zoning Improvements Agreement shall be at the discretion of the County Commission.
- a. Zoning Improvements Agreements shall be considered by the County Commission during a public meeting.
  - b. Upon approval by the County Commission, the property owner shall record the Zoning Improvements Agreement with the Gallatin County Clerk and Recorder.

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## SECTION 10      CONDITIONAL USES

- 10.1 Intent. The Conditional Use Permit review process is intended to provide a transparent, public review process for Uses that, because of their widely varying design, operational characteristics, and potential to cause off-site impacts, require case-by-case review in order to determine whether they will be compatible with surrounding Uses and patterns of development and, if necessary, develop appropriate conditions of approval. Where District Regulations provide specific procedures and requirements for Planned Unit Developments, Wireless Communication Facilities, Natural Resource Conditional Uses, or Open Cut (Gravel Pit) Operations, those District Regulations shall control.
- 10.2 Requirement for a Conditional Use Permit. Conditional Use Permits are required prior to operation of a Use and/or occupancy of a Structure which is listed as a Conditional Use under the applicable District Regulation.
- 10.3 Conditional Use Permit Procedure.
- a. An application for a Conditional Use Permit shall be filed with the Planning Director accompanied by the appropriate fee and signed by the property owner.
  - b. Upon the receipt of a completed application for a Conditional Use Permit, the Planning Director shall initiate an investigation and analysis of the application to identify and provide the Planning & Zoning Commission with information regarding the application's consistency with the intent and purpose of the Zoning Regulations.
  - c. If an Advisory Committee has been established, the Planning Director shall forward the application to the Committee, which, after holding a meeting and taking public comment, may forward a recommendation to the Planning and Zoning Commission.
  - d. The Planning and Zoning Commission shall consider the application during a public hearing for which Published Notice has been provided and issue a Decision in accordance with the Planning and Zoning Commission Hearing Rules.
- 10.4 Review Criteria. Conditional Use Permits may be granted by the Planning and Zoning Commission when the Planning and Zoning Commission finds substantial evidence in the record that all of the following criteria are met:
- a. The Use conforms to the objectives and intent of the applicable District Regulation and applicable growth policy or neighborhood plan;
  - b. The Use will not adversely affect nearby properties or their occupants; and
  - c. The Use meets density, coverage, Yard, Building Height, and all other applicable provisions of the Zoning Regulations.

- 10.5 Conditional Approval. The Planning and Zoning Commission may approve a Conditional Use Permit subject to reasonable limitations or conditions as it deems necessary to protect public health and safety, to enhance the appearance of the property, to reduce any adverse effects on nearby property or residences, to preserve the character of the area, or to make it more acceptable in other ways. These conditions may include but are not limited to the following:
- a. Special setbacks, yards, open spaces and buffers.
  - b. Fences and walls.
  - c. Lighting.
  - d. Regulation of signs.
  - e. Regulation of vehicular ingress and egress.
  - f. Regulation of time of activities that have off-site impacts.
  - g. Landscaping and the maintenance thereof.
  - h. Time schedule of proposed development.
  - i. Regulation of odors, smoke, dust, airborne particles, vibration, glare, heat and noise.
  - j. Mitigation of traffic impacts.
  - k. Dedication or improvements of rights-of-way.
  - l. Regulation of placement of uses on the property.
  - m. Regulation of height.
  - n. Regulation of the nature and extent of the use.
  - o. Regulation of the length of time such use may be permitted.
  - p. Requirements for restoration of property.
  - q. Financial Security in the form of bonds, cash deposits and/or security acceptable to the County in order to ensure compliance with conditions of approval.

The failure to comply with any condition of approval is a violation of the Zoning Regulations.

- 10.6 Unless otherwise conditioned by the Planning & Zoning Commission or expressly limited by the applicable District Regulation, Conditional Use Permit approval runs with the land and is not affected by changes of tenancy, ownership, or management.

- 10.7 Authorized Use. A Conditional Use is not authorized until all conditions of approval and the following are satisfied:
- a. Structures proposed for construction in connection with the proposed Use have obtained any required Land Use Permit or Change of Use Permit and are in the process of Actual Construction on the site; or
  - b. If remodeling is proposed for existing Structures in connection with the proposed Use, any required Land Use Permit or Change of Use Permit has been approved and Actual Construction of the remodeling has begun on the site; or
  - c. If no construction or remodeling is required, then the permittee has obtained any necessary Change of Use Permit and is regularly engaged on the site in performing and carrying out the Use, and has secured all necessary federal, state, and local permits and licenses.
- 10.8 Expiration. Unless specifically provided otherwise in the Planning and Zoning Commission's approval, all Conditional Use Permits shall automatically expire if the Authorized Use as set forth in Section 10.6 above is not started within two years of the date of approval. All Conditional Use Permits issued for a definite term shall automatically expire at the end of the specified term.
- 10.9 Administrative Extension. When an Applicant is required to secure approvals from a regulatory agency prior to commencing the approved Conditional Use, and the Applicant has applied for but not obtained the necessary approval(s), the Planning Director may, upon a written request from the Applicant, approve a one-time, one-year extension.
- 10.10 General Extensions. Upon an Applicant's request, the Planning and Zoning Commission may issue an extension to a Conditional Use Permit as provided below.
- a. A written request for an extension must be submitted to the Planning Director and accompanied by the required fee prior to the expiration of the Conditional Use Permit.
    - i. The written request must summarize how the applicant has complied with the conditions of approval of the existing Conditional Use Permit, and specify the length of time for the extension.
  - b. Upon the receipt of a completed application for an extension to the duration of a Conditional Use Permit, the Planning Director shall initiate an investigation and analysis of the application to identify and provide the Planning & Zoning Commission with information regarding the application's consistency with the intent and purpose of the Zoning Regulations.

- c. If an Advisory Committee has been established, the Planning Director shall forward the application to the Committee, which, after holding a meeting and taking public comment, may forward a recommendation to the Planning and Zoning Commission.
- d. The Planning and Zoning Commission shall consider the application during a public hearing for which Published Notice has been provided and issue a Decision in accordance with the Planning and Zoning Commission Hearing Rules.
- e. In addition to other relevant factors, the Planning and Zoning Commission's decision on the extension request shall consider all of the following:
  - i. The extent to which the applicant has complied with the original conditions of approval;
  - ii. The reasonableness of the duration of the extension request;
  - iii. The extent to which the Use conflicts with any amendments to the applicable District Regulation since initial approval of the Conditional Use Permit; and
  - iv. The need to modify or add conditions of approval necessary to protect public health and safety, enhance the appearance of the property, to reduce any adverse effects on nearby property or residences, to preserve the character of the area, or to make the proposed request more acceptable in other ways.

10.11 Modification. The Planning and Zoning Commission is authorized to modify Conditional Use Permits.

- a. A request to modify a Conditional Use Permit may be initiated by the Planning Director or the Zoning Enforcement Agent, or upon written request and payment of any applicable fee by the property owner.
- b. Upon the receipt of a request to modify an approved Conditional Use Permit, the Planning Director shall initiate an investigation and analysis of the application to identify and provide the Planning & Zoning Commission with information regarding the modification's consistency with the intent and purpose of the Zoning Regulations.
- c. If an Advisory Committee has been established, the Planning Director shall forward the modification request to the Committee, which, after holding a meeting and taking comment, may forward a recommendation to the Planning and Zoning Commission.
- d. The Planning and Zoning Commission shall consider the modification request during a public hearing for which Published Notice has been provided and issue a Decision in accordance with the Planning and Zoning Commission Hearing Rules.

- e. When requested by a property owner, the Planning and Zoning Commission may authorize a modification to an approved Conditional Use Permit when the Planning and Zoning Commission finds that with the proposed modification, the Use will continue to meet the Conditional Use Permit review criteria established in Section 10.4 of this Administrative Regulation.
- f. When requested by the Planning Director or Zoning Enforcement Agent, the Planning and Zoning Commission may modify a Conditional Use Permit when the modification is found to be necessary to protect the health, safety, and welfare of the area in which the Use is situated or of the residents of the County.

10.12 Revocation. The Planning and Zoning Commission is authorized to revoke Conditional Use Permits.

- a. If the Planning Director or Zoning Enforcement Agent finds that a person holding a Conditional Use Permit has not complied with the conditions upon which it was issued, the Planning Director or the Zoning Enforcement Agent may, after providing the person holding the Conditional Use Permit with written notice and an opportunity to remedy the matter, initiate the process to revoke a Conditional Use Permit.
- b. If an Advisory Committee has been established, the Planning Director or Zoning Enforcement Agent shall forward the revocation request to the Committee, which, after holding a meeting and taking comment, may forward a recommendation to the Planning and Zoning Commission.
- c. The Planning and Zoning Commission shall consider the revocation request during a public hearing for which Published Notice has been provided and issue a Decision in accordance with the Planning and Zoning Commission Hearing Rules.
- d. The Planning and Zoning Commission may revoke a Conditional Use Permit when the Planning and Zoning Commission finds that the person holding a Conditional Use Permit has not complied with the conditions upon which it was issued.

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## SECTION 11 VARIANCES

- 11.1 Intent. A Variance is intended to provide landowners with an opportunity to seek relief from certain standards (e.g. building height, setback) of the applicable District Regulation, where literal application of said standards would create unnecessary hardship. These procedures are intended to provide a transparent, public review of such requests.
- 11.2 Requirement for a Variance. Unless otherwise provided by the Zoning Regulations, a Land Use Permit shall not be approved by the Planning Director for a Structure that does not meet the standards in the applicable District Regulation unless a Variance has been approved.
- a. No Variance shall be granted to allow a Use not authorized within the Sub-district in which the proposed Use would be located, or to deviate from a procedural requirement of the District Regulation.
  - b. A Variance approval runs with the land and is not affected by changes of tenancy, ownership, or management.
- 11.3 Variance Procedure.
- a. An application for a Variance shall be filed with the Planning Director accompanied by the required fee and signed by the property owner.
  - b. Upon the receipt of a completed application for a Variance, the Planning Director shall initiate an investigation and analysis of the application to identify and provide the Planning & Zoning Commission with information regarding the application's consistency with the intent and purpose of the Zoning Regulations.
  - c. If an Advisory Committee has been established, the Planning Director shall forward the application to the Committee, which, after holding a meeting and taking comment, may forward a recommendation to the Planning and Zoning Commission.
  - d. The Planning and Zoning Commission and County Commission shall consider the application in a public hearing for which Published Notice has been provided. Where possible, variances shall be considered in a joint public hearing of the Planning and Zoning Commission and the County Commission. The Planning and Zoning Commission shall issue a recommendation in accordance with the Planning and Zoning Commission Hearing Rules. The County Commission shall take separate action by resolution.

11.4 Criteria for Granting a Variance. A Variance from the standards of the applicable District Regulation may be approved by the County Commission only when the applicant has demonstrated that the Variance requested will not be contrary to the public interest and that owing to special conditions unique to the property, literal enforcement of the District Regulation will result in unnecessary hardship. Hardship does not include difficulties arising from self-imposed actions by the applicant or predecessors-in-interest, or the alleviation of conditions to allow the applicant a greater financial return.

a. To make this determination, the County Commission shall find:

- i. Exceptional or extraordinary circumstances apply to the subject property that do not apply generally to other properties in the same Sub-district or vicinity due to lot size or shape, topography, or other circumstances over which the owners of the property have had no control since enactment of the District Regulation;
- ii. The Variance is necessary for the preservation of the applicant's property right that is substantially the same as that possessed by owners of other property located within in the same Sub-District or vicinity in which the subject property is located;
- iii. The approval of the variance will not be materially detrimental to property located within the same Sub-district or vicinity in which the subject property is located; and
- iv. The Variance requested is the minimum Variance needed to alleviate the hardship.

11.5 Conditional Approval. The County Commission may conditionally approve a Variance subject to reasonable limitations or conditions as it deems necessary to protect public health and safety, enhance the appearance of the property, to reduce any adverse effects on nearby property or residences, to preserve the character of the area, or to make it more acceptable in other ways. These conditions may include but are not limited to the following:

- a. Special setbacks, yards, open spaces and buffers.
- b. Fences and walls.
- c. Lighting.
- d. Regulation of vehicular ingress and egress.
- e. Landscaping and the maintenance thereof.
- f. Time schedule of proposed development.

g. Regulation of Building Height.

The failure to comply with any condition of approval is a violation of the Zoning Regulations.

- 11.6 Modification. A request to modify a Variance approval must be processed as a new Variance application, including the requirements for fees, notices and hearings.
- 11.7 Reapplication. If a Variance application is denied by the Planning & Zoning Commission, the applicant may resubmit a Variance application for the same property within one (1) year from the denial only with the permission of the Planning & Zoning Commission. Such permission shall be granted only if the applicant can show and the Planning & Zoning Commission finds: (i) a substantial change of conditions on the property from those existing at the time of such previous denial, or (ii) a modification of the original application that addresses the Planning & Zoning Commission's reasons for denial of the original application.

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## SECTION 12 COMPLAINTS AND ENFORCEMENT

- 12.1 Intent. It is the intent of this Administrative Regulation to provide for the efficient, reasonable, and impartial enforcement of the Zoning Regulations through the appointment and authorization of the Zoning Enforcement Agent and to set forth the basic procedures for compliance with and remedies for violations of the Zoning Regulations.
- 12.2 Complaint Procedure. A complaint may be filed with the Zoning Enforcement Agent whenever a violation of the Zoning Regulations is alleged to have occurred.
- a. The complaint shall be in writing, state fully the facts supporting it, and be signed by the complainant.
  - b. Upon receipt of a written complaint, or upon its own initiative, the Zoning Enforcement Agent shall investigate alleged violations of this Zoning Regulations. The Zoning Enforcement Agent may notify persons or entities responsible that an investigation is underway and may request information or access to property for an inspection.
- 12.3 Investigation. In order to facilitate compliance with the Zoning Regulations, the Zoning Enforcement Agent is authorized to enter into agreements, on behalf of Gallatin County, for the sole purpose of allowing reasonable time to remedy a violation.
- 12.4 Remedies. The Zoning Enforcement Agent may put any person or entity believed to be responsible for a violation of the Zoning Regulations on notice of such violation.
- a. The Zoning Enforcement Agent may give such notice, in the name of Gallatin County, and require the cessation of the violation. Such notice shall be sent by mail and may be sent by other means and is subject to appeal in accordance with Section 13 below. Nothing in this Administrative Regulation shall be interpreted to prohibit the continuation of previous enforcement actions, undertaken by Gallatin County under previous, valid regulations, ordinances, and laws.
  - b. The County Commission, at its option, notwithstanding any action taken by the Zoning Enforcement Agent, may begin proceedings set forth in Section 76-2-113, MCA at any time.
  - c. Legal Remedies. The County Attorney may pursue all available legal remedies to compel compliance with this Administrative Regulation and any District Regulation, including filing an action in district court to enjoin any violations thereof. The owner or tenant of any Building, Structure, premises, or part

thereof, and any architect, builder, contractor, agent, or other person or entity who commits, participates in, assists, or maintains such violation may each be held accountable. The prevailing party in any such action may be awarded all costs, including attorney's fees. This Section 12.4(c) is in addition to and not in lieu of any other remedies available to the County, or to any aggrieved person or entity, at law or in equity.

## **SECTION 13      APPEALS**

- 13.1 Intent. The intent of this Section is to set forth the process and requirements by which a Decision made by the Planning Director or Zoning Enforcement Agent may be challenged.
- 13.2 Appeal of Planning Director or Zoning Enforcement Agent Decision. A Decision of the Planning Director or Zoning Enforcement Agent may be appealed to the Planning and Zoning Commission.
- a. An appeal of a Decision made by the Planning Director or Zoning Enforcement Agent must be made in writing to the Planning Director or Zoning Enforcement Agent and received within 30 days of the date of the Decision. The Planning Director or Zoning Enforcement Agent shall acknowledge receipt and notify the appellants of the preliminary date of the appeal hearing in writing.
  - b. An appeal shall be heard by the Planning and Zoning Commission, in accordance with its Hearing Rules. The Planning and Zoning Commission shall issue its decision on an appeal within a reasonable time.
  - c. The Planning and Zoning Commission may reverse the Decision of the Planning Director or Zoning Enforcement Agent only if the Planning and Zoning Commission finds, based on facts presented in the Hearing Record, that the Planning Director or Zoning Enforcement Agent erred in their Decision.
- 13.4 Appeals to District Court. Any person aggrieved by any Decision of the Planning and Zoning Commission or the County Commission, within 30 days after such Decision, may appeal to the Eighteenth Judicial District Court. The time to appeal a Decision for a Conditional Use Permit conditioned on the grant of a Variance shall not commence until the Planning & Zoning Commission has made a Decision on that Variance.

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## SECTION 14            AMENDMENTS

- 14.1 Intent. The intent of this Section is to identify the steps required to initiate and complete amendments to the Zoning Regulations. Changes to the Zoning Regulations for the benefit and welfare of Gallatin County and for the purpose of carrying out the applicable development district may be made in accordance with the procedures prescribed by law and this Zoning Regulation.
- 14.2 Initiation. An amendment is a change to the Zoning Regulations or official maps that may be initiated by:
- a. The petition of one or more landowners of property affected by the proposed amendment. The petition shall be on the form specified by the Planning Department, signed by petitioning land owners, and shall be filed with the Planning Director accompanied by the appropriate fee;
  - b. Resolution of intention of the County Commission prepared by the Planning Director; or
  - c. Resolution of intention of the Planning and Zoning Commission prepared by the Planning Director.
- 14.3 Review and Analysis. After an amendment is initiated as set forth above, the Planning Director shall review the amendment to identify and provide the Planning & Zoning Commission with information regarding the amendment's consistency with the criteria listed below.
- a. Review Criteria for Amendments to District Regulations. To approve an amendment to the District Regulation or official map, it shall be found that all of the following criteria are satisfied:
    - i. The public necessity, convenience, and general welfare require such amendment;
    - ii. The proposed amendment does not authorize potential Uses that are significantly different from prevailing Uses in the Sub-district or vicinity in which the subject property is located;
    - iii. The proposed amendment will benefit the surrounding neighborhood, community, and the general public and not just benefit a small area and only one or few landowners;
    - iv. The proposed amendment is consistent with the District Regulation and applicable growth policy or neighborhood plan and is not special legislation designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public; and
    - v. The procedural requirements of §76-2-101 et seq., MCA have been followed.

- b. Review Criteria for Amendments to Administrative Regulations. To approve an amendment to the Administrative Regulation, it shall be found that all of the following criteria are satisfied:
  - i. The public necessity, convenience, and general welfare require such amendment; and
  - ii. The proposed amendment is consistent with the District Regulation and applicable growth policy or neighborhood plan and is not special legislation designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public; and
  - iii. The procedural requirements of §76-2-101 et seq., MCA have been followed.

#### 14.4 Meetings and Hearings.

- a. Advisory Committee. If a Zoning Advisory Committee has been established, the Planning Director shall forward amendments to the District Regulation to the Committee, which, after holding a meeting and taking comment, may forward a recommendation to the Planning and Zoning Commission.
- b. Planning and Zoning Commission Hearing. All proposed amendments shall be considered by the Planning and Zoning Commission at a public hearing with notice provided as set forth in §76-2-106, MCA. After the public hearing, the Planning and Zoning Commission will consider and recommend a draft resolution to the County Commission for the purpose of adopting or denying any amendment.
- c. County Commission Action Required. No amendment to the Zoning Regulations shall be final until adopted by a resolution of the County Commission.
- d. Joint Hearing. The Planning and Zoning Commission and County Commission may conduct a joint public hearing to consider both proposed amendments by the Planning and Zoning Commission and the draft resolution by the County Commission.