

ARTICLE II: ADMINISTRATION

Section 1 Administration

1.01 Zoning Enforcement Agent. The Zoning Enforcement Agent supervises and enforces the provisions of this Regulation pursuant to § 76-2-210, MCA. This consists of, but is not limited to, issuing land use permits, making official interpretations, enforcing violations and reviewing applications for conditional use permits, variances, rezoning requests and amendments to the Regulation.

1.02 Advisory Committee. The Commission may create one non-remunerative advisory committee for each zoning district, of up to five members each, to make recommendations on legislative matters and infrastructure needs within each zoning district. The Advisory Committees shall in no way function in a quasi-judicial manner. Members shall be real property owners within that zoning district or have their primary residence within that zoning district. Advisory Committee members are appointed for two-year staggered terms. Initially, two members are appointed for one-year terms and three members are appointed for two-year terms.

1.02.1 Advisory Committee recommendations are advisory only and are not binding upon the Commission. Advisory Committee meetings are open to the public and shall be noticed accordingly. The Advisory Committee may also notify the Zoning Enforcement Agent of alleged violations within the zoning district.

1.03 Board(s) of Adjustment. There are four Boards of Adjustment (BOA) created by the Commission for the various zoning districts. The BOA for the Gallatin County/Bozeman Area Zoning District is known as the “Gallatin County/Bozeman Area BOA.” The BOA for the East Gallatin Zoning District is known as the “East Gallatin Zoning District BOA.” The BOA for the Middle Cottonwood Zoning District is known as the “Middle Cottonwood Zoning District BOA.” The BOA for the Reese Creek Zoning District, South Cottonwood Zoning District, and the AG-160 Zoning District is known the “Gallatin County Consolidated Board of Adjustment.”

1.03.1 The role of a BOA is to hear and decide:

1.03.1.1 Appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this Regulation.

1.03.1.2 To hear and decide variances to the Regulation that will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the

Regulations will result in an unnecessary hardship, and so that the spirit of the Regulation is observed and substantial justice done.

1.03.2 A BOA may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or administrative determination made by the Zoning Enforcement Agent appealed and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all of the powers of the officer from whom the appeal is taken, (§ 76-2-223, MCA). The concurring vote of three members of the BOA shall be necessary to grant a variance, reverse any order, requirement, decision, or determination of any such administrative official (§ 76-2-224, MCA).

1.04 County Planning Board(s). The Gallatin County Planning Board, the Belgrade City-County Planning Board, and the Manhattan City-County Planning Board serve in an advisory capacity to the Commission. The Planning Boards' role is to make recommendations on the revision of boundaries and the amendment of these Regulations that fall under their respective growth policies (§ 76-2-204 and § 76-2-205, MCA).

1.05 County Commission. The Commission reserves the right to, after public notice and hearing, deny, approve or conditionally approve all applications for a Conditional Use Permit.

1.06 Schedule of Fees. The Commission sets fees for all applications; including but not limited to Land Use Permits, zone changes, official interpretations, Conditional Use Permits, and Variances. Neither the Zoning Enforcement Agent nor the Commission may take action on an item until fees are paid in full. The Zoning Enforcement Agent may establish policies for the refund of fees.

Section 2 Non-Conforming Lots, Uses and Structures

2.01 Intent. Within the districts established by this Regulation, there exist lots, Tracts of Record, Structures, uses of land and Structures, and characteristics of use, which were lawful before this Regulation was adopted or amended, but which would be prohibited, regulated or restricted under terms of this Regulation or future amendments. It is the intent of this Regulation that non-conformities may continued in the same manner and extent as existed upon the effective date of the resolution establishing a zoning district and shall not be enlarged upon, expanded or extended, nor used as grounds for adding other Structures or uses prohibited elsewhere in the same district, unless done so in compliance with the requirements of a specific zoning district or, if the terms of a zoning district are silent, granted an approved Conditional Use Permit.

2.01.1 Non-conforming uses are declared by this Regulation to be incompatible with permitted uses in the district involved. However, to avoid undue

hardship, nothing in this Regulation shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction lawfully begun prior to the effective date of adoption or amendment to this Regulation and which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

2.01.2 A property owner may apply to change, alter, enlarge, or expand a non-conforming use or Structure pursuant to the Conditional Use Permit process described in **Sect. 4**.

2.02 Non-Conforming Tracts of Record. In any district, Structures permitted in said district may be erected on any non-conforming Tract of Record, which was of record on the effective date of this Regulation. All other requirements and restrictions of each district apply to a Tract of Record that does not meet area requirements.

2.02.1 Unless authorized by the provisions of a specific zoning district, a non-conforming Tract of Record shall not be divided or changed in any way to reduce the area of the original Tract of Record or increase its non-conformity.

2.03 Non-Conforming Uses of Land. Where at the time of the adoption of this Regulation a lawful use of land exists which would not be permitted by this Regulation, the use may be continued so long as it continues in the same manner and extent as existed upon the effective date of the resolution establishing a zoning district and as long as it remains otherwise lawful, provided:

2.03.1 A legal non-conforming use may only be enlarged or increased, or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Regulation after being granted an approved Conditional Use Permit.

2.03.2 A legal non-conforming use may only be moved in whole or in part to any portion of the lot, parcel, or Tract of Record not occupied by such use at the effective date of adoption or amendment of this Regulation after being granted an approved Conditional Use Permit.

2.03.3 If any such non-conforming use of land, with the exception of seasonal uses, ceases for any reason for a period of more than 12 months, any subsequent use of such land shall conform to the regulations for the district in which the land is located. If a seasonal use ceases for the use of two consecutive seasons, then subsequent use of such land shall conform to this Regulation.

2.03.4 Any non-conforming use of land superseded by a permitted use shall thereafter conform to the regulations of the district in which it is located and the non-conforming use may not thereafter be resumed.

2.04 **Non-Conforming Structures.** Where a lawful Structure exists at the effective date of adoption or amendment of this Regulation that could not be built under the terms of this Regulation by reason of restriction on parcel, area, height, yards, its location on the parcel, or other requirements concerning the Structure, such Structure may be continued in the same manner and extent as existed upon the effective date of the resolution establishing a zoning district so long as it remains otherwise lawful, subject to the following provisions:

2.04.1 Unless otherwise authorized by the terms of a zoning district, a legal non-conforming Structure may only be altered or enlarged to increase its non-conformity after being granted an approved Conditional Use Permit. Notwithstanding the above, any Structure or portion thereof may be altered to decrease its non-conformity without a Conditional Use Permit but shall comply with the requirements of a specific zoning district and, if the provisions of the zoning district are silent to this regard, require a Land Use Permit.

2.04.2 Should such non-conforming Structure or non-conforming portion of a Structure be destroyed by a catastrophic event, it may be reconstructed if it is rebuilt in substantially the same manner as it existed prior to destruction and does not require prior approval by the Commission and, unless the provisions of the zoning district require otherwise, shall require a Land Use Permit.

2.04.3 Should such Structure be moved for any reason for any distance whatever, it shall thereafter conform to this Regulation.

2.04.4 Any legal non-conforming Structure altered to conform to the regulations of the district in which it is located shall thereafter remain in conformance with these Regulations.

2.05 **Non-Conforming Uses of Structures.** Unless the provisions of a zoning district provide otherwise, if a lawful use of a Structure, or of Structures and premises, exist at the effective date of adoption or amendment of this Regulation that would not be allowed in the district within which it is located under the terms of this Regulation, the lawful use may be continued in the same manner and extent as existed upon the effective date of the resolution establishing a zoning district so long as it remains otherwise lawful provided that:

2.05.1 An existing Structure devoted to a legal non-conforming use may only be enlarged, extended, constructed, or structurally altered after an approved Conditional Use Permit. A Conditional Use Permit is not required to change the legal non-conforming use to a permitted use.

- 2.05.2** Any non-conforming use may be extended to any other part of a Structure designed for such use, but no such use may be extended in any way to occupy land outside the Structure without an approved Conditional Use Permit.
- 2.05.3** Any legal non-conforming use superseded by a permitted use shall thereafter conform to the regulations of the district in which it is located and the non-conforming use may not thereafter be resumed.
- 2.05.4** If a non-conforming use of a Structure ceases for a period of more than 12 months, any subsequent use of such Structure shall conform to the regulations of the district in which it is located. The period of cessation may be extended for one additional 12-month period with an approved Conditional Use Permit.
- 2.05.5** If a Structure containing a non-conforming use is destroyed by catastrophic event, it may be reconstructed if it is rebuilt in substantially the same manner as it existed prior to destruction and the use does not substantially change. Reconstruction of a Structure containing a non-conforming use does not require prior approval of the Commission but shall, unless the provisions of the zoning district require or authorize differently, require a Land Use Permit.

2.06 Determination of Status of Non-Conforming Land Uses and Structures. It shall be the responsibility of the Zoning Enforcement Agent to determine the status of non-conforming land uses and Structures. If the Zoning Enforcement Agent determines that a use or Structure meets the applicable criteria in this Regulation, the use or Structure shall be deemed an approved Non-Conforming Use or approved Non-Conforming Structure. The following procedures shall be followed, unless as necessary pursuant to a compliant and enforcement action, to determine the status of non-conforming land uses and Structures.

- 2.06.1** The owner of record of the subject use or Structure shall make an application for a determination of the status of a land use or Structure.
- 2.06.2** It shall be the burden of the applicant to prove entitlement to approved non-conforming status by furnishing the Zoning Enforcement Agent with a preponderance of supporting information. Such information shall include, but not be limited to, septic or sewer hook-up permits, building permits, business licenses and dated photographs.
- 2.06.3** The Zoning Enforcement Agent shall determine on a case-by-case basis whether a land use or Structure is an existing non-conforming use or existing non-conforming Structure.
- 2.06.4** Appeals of the Zoning Enforcement Agent's decision may be made in accordance with the provisions of the administrative appeals process in **Sect. 7.**

2.06.5 The Zoning Enforcement Agent shall maintain a record of existing non-conforming uses and Structures as such information becomes available.

Section 3 Land Use Permits (LUP)

- 3.01 Intent.** Unless otherwise authorized by the terms of a zoning district, a LUP is required prior to construction of most Structures subject to this Regulation. An approved LUP shows conformity with the requirements of these Regulations.
- 3.02 Process.** Prior to commencing construction, a landowner shall submit a LUP application (with accompanying fee) to the applicable County planning agency for new Structures as defined by this Regulation. The Zoning Enforcement Agent inspects applications to determine if projects comply with provisions of this Regulation.
- 3.03 Structures Requiring LUP Approval.** All Structures, unless otherwise authorized or exempted by the terms of a zoning district, require a Land Use Permit. In addition, notwithstanding the requirements below, all Structures must comply with all applicable requirements of the specific zoning district in which the Structure is located. Unless the terms of a zoning district provide otherwise, the Zoning Enforcement Agent may exempt Structures such as fences, decks, loafing sheds, residential playground equipment, dog houses, etc... that have insignificant impact on adjacent property owners from the requirement to obtain a Land Use Permit.
- 3.04 Septic Permits.** Prior to obtaining a Land Use Permit, a landowner or agent of the landowner shall provide proof of septic or sewer permits with those projects which contemplate new facilities or extension of existing facilities.
- 3.05 Appeals.** Appeals of Zoning Enforcement Agent decisions may be submitted under the administrative appeal process in **Sect. 7**.
- 3.06 Expiration.** LUPs or affidavits expire if building or work authorized by the permit has not commenced within 12 months from the original permit/affidavit date and if work authorized by the permit/affidavit is not completed within 24 months of the original permit issuance date. Landowners must obtain a new permit or affidavit, to re-commence work.

Section 4 Conditional Use Permits (CUP)

- 4.01 Intent.** A Conditional Use Permit (CUP) is required prior to operation of a use that is not a permitted use as a matter of right, but allowed conditionally under this Regulation.

4.02 Requirements. Structures or land within a zoning district may not be used for any purpose unless such use is specifically listed as a permitted use or a conditional use in these Regulations. The Commission may grant a CUP when they find:

4.02.1 The use conforms to the objectives of the Growth Policy and any other applicable growth policy or formally adopted neighborhood or community plan adopted by the Commission and the purpose and intent of this Regulation;

4.02.2 The use will not adversely affect nearby properties or their occupants;

4.02.3 The use meets density, and all other regulations of the district in which it is located, unless otherwise provided in this Regulation; and

4.02.4 A public hearing, after notice has been given, has been held.

4.03 Conditional Approval. The Commission may make the granting of a CUP subject to reasonable limitations or conditions as it may deem necessary 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. The conditions may include but are not limited to the following:

- Landscaping and its maintenance.
- Regulation of height.
- Regulation of lighting.
- Regulation of odors, smoke, dust, airborne particles, vibration, glare, heat and noise.
- Regulation of placement of uses on the property.
- Regulation of signs.
- Regulation of the length of time such use may be permitted.
- Regulation of the nature and extent of the use.
- Regulation of time of activities that have off-site impacts.
- Regulation of vehicular ingress and egress.
- Requirement for dedication or improvements of rights-of-way.
- Requirements for restoration of property.
- Special setbacks, yards, open spaces, buffers, fences and walls.
- Appropriate fire mitigation.
- Time schedule of proposed development.
- Impacts of increased traffic.

4.04 Procedure. All CUP applications shall be submitted to the Zoning Enforcement Agent on the required form with the accompanying fee. A public hearing on the matter is scheduled before the Commission and they shall either approve or deny the application based on the facts. The Commission may impose reasonable conditions, as it may deem necessary to mitigate project impacts. The order granting or denying

a CUP shall be recorded with the Gallatin County Clerk and Recorder. An approved Structure or use cannot commence until all conditions have been met

- 4.05 Notice.** Notice of a public hearing before the Commission shall be published at least once 15 days prior to the hearing in a newspaper of general circulation. Adjacent property owners shall be noticed by certified mail.
- 4.06 Issuance of Land Use Permit (LUP).** No LUP shall be issued other than in accordance with the conditions and terms of the CUP. No LUP shall be issued until time for appeal on a CUP has elapsed, or if an appeal has been filed, the appeal has been decided. See **Sect. 7** for information on appeals.
- 4.07 Revocation or Modification.** Under the procedure described above in **Sect. 4.04**, The Commission may revoke or modify a CUP under the following circumstances:
- 4.07.1** If circumstances have changed substantially since original approval;
- 4.07.2** If revocation or modification is necessary to protect the health, safety, or welfare of the area, or is necessary to preserve the integrity of existing use patterns in the area; or
- 4.07.3** If the person holding the permit has not complied with the required conditions, or has not materially changed their position by detrimentally relying on said permit.
- 4.08 Expiration/Extensions.** Unless the provisions of a zoning district provide otherwise, the following apply to extensions of a CUP permit. The Commission may issue a CUP for a definite term. Extensions can be obtained through written application made no less than 90 days prior to expiration, with accompanying fee, and notification sent to adjacent property owners pursuant to **Sect. 4.05**. An extension may be granted by the Commission if no objection is received within 30 days of mailing the notice. The notice shall include a statement notifying adjacent property owners an extension may be granted unless an objection is made. A public hearing will be held if an objection is received. The Commission may choose, at its discretion, to conduct a hearing if no objection is made. If the request for an extension is received after the CUP expired the applicant shall apply for a new CUP.

Section 5 Variances

- 5.01 Intent.** It is the intent of this Section to provide a process for relief from the occasional inequities created by the physical standards of this Regulation when such standards create a substantially unequal burden on a particular parcel of land in a fashion that would otherwise prevent the reasonable use of the property owing to physical circumstances unique to that parcel. In addition, the intent of this Section is to prohibit the granting of Variances that would be contrary to the public interest and endanger public health, safety and welfare. No Variance shall be granted to allow

the use or development of property for a purpose not authorized within the zoning district or sub-district in which the proposed development would be located.

5.02 Criteria. In granting a Variance, the Board of Adjustment (BOA) shall issue findings setting forth factual evidence that the Variance:

5.02.1 Will observe the intent and purpose of this Regulation, including the applicable growth policy, and do substantial justice.

5.02.2 Will not be injurious to the public health, safety, and general welfare.

5.02.3 Will not be contrary to and will serve the public interest.

5.02.4 Is necessary, owing to conditions unique to the property, to avoid unnecessary hardship which would unavoidably result from the enforcement of the literal meaning of this Regulation:

5.02.4.1 Hardship does not include difficulties arising from actions, or otherwise be self-imposed, by the applicant or previous predecessors in interest, or potential for greater financial returns;

5.02.4.2 Conditions unique to the property may include, but are not limited to, slope, presence of watercourses, after the fact imposition of additional regulations on previously lawful parcels, and governmental actions outside of property owner's control; and

5.02.4.3 Is the minimum relief necessary to provide reasonable use of the property.

5.03 Procedure. All Variance applications shall be submitted to the Planning Department on the required form with the accompanying fee. A hearing on the matter is scheduled before the BOA, and the BOA shall either approve or deny the application based on the facts. The BOA may impose reasonable conditions, as it may deem necessary to mitigate project impacts. The concurring vote of three members of the BOA shall be necessary to decide in favor, wholly or partly, of any Variance from this Regulation.

5.04 Notice. Notice of the public hearing shall be published at least once 15 days prior to the hearing in a newspaper of general circulation. Adjacent property owners shall be noticed by certified mail.

5.05 Issuance of Land Use Permit (LUP). No LUP shall be issued other than in accordance with the conditions and terms of the Variance. No LUP shall be issued until time for appeal on a Variance has elapsed, or if an appeal has been filed, the appeal has been decided. See **Sect. 7** for information on appeals.

Section 6 Amendments

- 6.01 Intent.** This Regulation and the boundaries of the official Zoning Maps for each zoning district and/or sub-district may be amended or revised whenever the public health, safety and general welfare requires such amendment. Amendments shall follow the procedure prescribed by § 76-2-201 et seq., MCA, and this Regulation.
- 6.02 Procedure.** An amendment may be initiated by submittal of one of the following to the Zoning Enforcement Agent:
- 6.02.1** The petition of one or more landowners in the zoning district. The petition shall be filed on the required application and accompanied by the required fee; or
- 6.02.2** Resolution of Intention of the Commission.
- 6.03 Planning Board.** The applicable Planning Board shall make recommendations to the Commission on the revision of boundaries and the amendments of this Regulation.
- 6.04 Hearing.** The Commission shall consider all proposed amendments at a public hearing. The Commission may adopt the amendment in accordance with the procedure prescribed by § 76-2-205, MCA
- 6.05 Notice.** Notice of the public hearing on a proposed amendment shall be published in a newspaper of general circulation pursuant to § 76-2-205, MCA.

Section 7 Appeals

- 7.01 Appeal from Zoning Enforcement Agent.** The Board of Adjustment shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination by the Zoning Enforcement Agent, and reverse or affirm, wholly or partly, or modify the order, decision, or determination of the Zoning Enforcement Agent.
- 7.01.1** An appeal from any final order, decision, or determination of the Zoning Enforcement Agent may be made to the applicable Board of Adjustment within 30 days after the decision is filed and served or, in the case of official interpretations of these Regulations and/or the official Zoning Map, within 30 days from the official interpretation. The appeal must be submitted to the Zoning Enforcement Agent via certified mail or hand delivery, be accompanied by the appeal fee as established by the Commission, and state the basis for the appeal.
- 7.01.2** Upon receipt of appeal, a public hearing shall be scheduled before the applicable Board of Adjustment. Notice of the public hearing shall be sent

to adjacent property owners via certified mail, and be published in a newspaper of general circulation at least once fifteen days prior to the hearing.

7.02 Appeal from Board of Adjustment. Pursuant to MCA § 76-2-227 and 76-2-228, a decision from the Board of Adjustment may be appealed to the Eighteenth Judicial District Court within 30 days from the date the decision is filed in the office of the board.

7.03 Appeal from County Commission. Pursuant to MCA § 76-2-227 and 76-2-228, a decision from the Commission may be appealed to the Eighteenth Judicial District Court within 30 days from the date the decision is filed in the office of the board.

Section 8 Complaints and Enforcement

8.01 Complaints. Any person may file a signed, written complaint with the Zoning Enforcement Agent addressing an alleged violation of these Regulations. The complaint shall fully describe the facts supporting the complaint.

8.01.1 Upon receipt of a complaint or discovery of an alleged violation upon its own initiative, the Zoning Enforcement Agent shall investigate an alleged violation, and determine if a violation exists. If the Zoning Enforcement Agent determines a violation exists, they shall take action to resolve the violation.

8.01.2 The name of the person filing the complaint may remain confidential until the violation is remedied and/or there is a public hearing on the matter.

8.02 Investigations. When investigating an alleged violation, the Zoning Enforcement Agent shall review these Regulations and other applicable information, regulations, rules or laws regarding the alleged violation. The Zoning Enforcement Agent may inspect the alleged violation from public right-of-way, from a neighboring property or the site itself if permission has been granted for the inspection. Permission for access is assumed in the event an alleged violator has a permit application pending with the Zoning Enforcement Agent. The investigator shall document the inspection with written notes and/or photographs as appropriate.

8.03 Administrative Remedies. If the Zoning Enforcement Agent determines that any of the provisions of this title are being violated, including conditions of approval for any permit, they may pursue enforcement remedies provided by law. The Zoning Enforcement Agent shall notify an alleged violator in writing of the corrective action necessary to remedy the violation.

8.03.1 The Zoning Enforcement Agent may: (i) revoke any Land Use Permit; (ii) issue orders to obtain after-the-fact permits; (iii) issue cease and desist orders requiring cessation of any building, moving, alteration or use which is in violation of these Regulations, (iv) require mitigation and/or corrective

action, which may include orders to dismantle or remove noncompliant Structures to remedy the violation; and/or (v) take any other action authorized by these Regulations and law to insure compliance with, or prevent violation of its provisions.

8.03.2 Persons liable for violations and compliance with any order, determination, decision, fine, penalty, proceeding, and remedial action shall include without limitation, any and all owners, tenants, leaseholders, builders, contractors, architects, agents or other persons or entities that commits, maintains, participates, assists, causes or contributes to such violation; hereinafter “persons.”

8.03.3 The owner of any building, Structure, premises, or part thereof, shall be held liable for any and all violations, remedies, remedial actions, fines, penalties, enforcement actions or proceedings, and shall be required to comply with any order, determination and decision of the Zoning Enforcement Agent. In addition to the owner, any person as defined herein shall each, jointly and severally, be held liable for any and all violations, remedies, remedial actions, fines, penalties, enforcement actions or proceedings, and shall be required to comply with any order, determination and decision of the Zoning Enforcement Agent.

8.03.4 Gallatin County and/or the Zoning Enforcement Agent shall have the right to proceed or take action jointly or severally against any or all persons, and the failure to proceed or take action against any person or persons shall not constitute a waiver of any rights or remedies whatsoever against any person or persons.

8.04 Civil Fine. The Zoning Enforcement Agent may assess violators an administrative fine of up to \$500.00 per violation. Each day of violation may be considered a separate offense. When determining the amount and duration of the fine, the Zoning Enforcement Agent shall consider the nature, circumstances, extent and gravity of the violation, any prior history of such violations, the degree of culpability, and such other matters as justice may require. If the fine is not paid, it shall become a lien upon the property.

8.05 Criminal Penalty. A violation of this Regulation, any conditions imposed through the authority of this Regulation, or any Variance granted through this Regulation shall constitute a misdemeanor. A person convicted of a violation under this Section shall be punished by a fine not exceeding \$500.00 or imprisonment in the county jail not to exceed six months, or both.

8.06 Injunction. The Commission, through the County Attorney or otherwise, may bring an action in the name of Gallatin County in the District Court to enforce these Regulations, which may include without limitation injunctive relief.

8.07 Remedies, Cumulative. The remedies provided for herein shall be cumulative and not exclusive. No waiver shall result in the failure to enforce any provision(s).

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