

# CHAPTER 16

## PLANNING & ZONING

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# ARTICLE 1

## General

### **Sec. 16-1-10. Short Title.**

This Chapter shall be known and may be cited as the "Planning and Zoning Code of the Town of Red Cliff," "Planning and Zoning Code" or "Chapter."

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

This Chapter is enacted pursuant to Article 23 of Title 31, Article 67 of Title 24, Article 20 of Title 29 and Article 68 of Title 24 of the Colorado Revised Statutes, as amended.

### **Sec. 16-1-30. Scope.**

This Chapter applies to all private and public land and structures located within the boundaries of the Town of Red Cliff and, except as deemed otherwise by the Board of Trustees of the Town of Red Cliff, all annexed lands at such time as they are annexed into the Town of Red Cliff.

### **Sec. 16-1-40. Purpose and Intent.**

This Chapter encompasses the purposes and intents of the enabling legislation cited in § 16-1-20. It is the additional purpose and intent of this Chapter to encourage the most appropriate use of land within the Town of Red Cliff, preserve and protect the Town of Red Cliff's economy, heritage and scenic beauty, preserve and protect the Town of Red Cliff's small town qualities and character and promote the health safety, welfare and convenience of the citizens of the Town of Red Cliff by:

- (a) Dividing the Town of Red Cliff into zone districts and prescribing the uses to which land and structures within each zone district may be devoted;
- (b) Establishing standards and requirements governing the location, erection, construction, reconstruction, alteration and expansion of structures in the Town of Red Cliff;
- (c) Limiting the bulk, scale and density of new structures in the Town of Red Cliff;
- (d) Regulating the intensity of the uses to which land and structures may be devoted in the Town of Red Cliff;
- (e) Encouraging innovative development and use of land and structures in the Town of Red Cliff;
- (f) Providing for planned and orderly use of land;
- (g) Minimizing adverse impacts on landowners from incompatible neighboring development and uses of land and structures;
- (h) Assuring adequate provision of parking and snow storage in relation to new development;
- (i) Assuring adequate air and light;
- (j) Conserving property values;
- (k) Reducing traffic and parking congestion on Town of Red Cliff streets and thereby enhancing pedestrian and vehicular movement and safety; and
- (l) Implementing the goals of the Comprehensive Plan.

**Sec. 16-1-50. Application.**

(a) The provisions of this Chapter shall be considered the minimum requirements for the protection of the public health, safety, welfare, comfort, convenience and prosperity of the present and future residents of the Town of Red Cliff. Consequently, this Chapter shall be regarded as remedial and, where appropriate, construed liberally in order to accomplish its purpose.

(b) Whenever any part of this Chapter contains requirements, restrictions or standards regarding the same subject matter as any other part of this Chapter, the Town of Red Cliff Municipal Code or any other law, statute, regulation, resolution or contract of the Town of Red Cliff, Eagle County, the state of Colorado or the United States, the more restrictive or stringent requirement, restriction or standard shall apply unless otherwise specified herein.

(c) This Chapter is not intended to repeal, abrogate, annul, impair or interfere with any permits, easements or private agreements issued or existing prior to the effective date hereof except as otherwise specified herein.

(d) This Chapter shall apply to the development and use of land by all units and/or agencies of federal, state, county and municipal government to the extent permitted by state and federal law.

(e) Annexation of land shall be governed by the Colorado Municipal Annexation Act as now existing and hereafter amended except as otherwise provided by ordinance hereafter enacted.

**Sec. 16-1-60. Severability.**

If any part, section or provision of this Chapter is determined to be illegal, unconstitutional or otherwise invalid by a court of competent jurisdiction, such determination shall not affect the validity, application or effect of the remaining portions of this Chapter. The Board of Trustees of the Town of Red Cliff hereby declares that it would have adopted this Chapter and each part, section and provision thereof irrespective of the fact that one or more parts, sections or provisions is determined to be invalid.

## ARTICLE 2

### Interpretation and Definitions

#### Sec. 16-2-10. Interpretation.

(a) Except as specifically defined in this Chapter, the words and phrases used in this Chapter shall be interpreted to give them their meaning in ordinary and common usage and most reasonable application.

(b) For the purposes of this Chapter and except where the context indicates otherwise, words and phrases in the present tense include the future tense, word and phrases in the singular include the plural, words and phrases in the plural include the singular, the masculine includes the feminine and the feminine includes the masculine.

#### Sec. 16-2-20. Definitions.

As used in this Chapter:

*Accessory apartment* means an attached or detached dwelling unit that is incidental and subordinate in function and size to the principal structure or building on a site. An accessory apartment shall have separate cooking, sleeping and sanitation facilities and be intended for occupancy as a separate independent living facility.

*Accessory structure* means a subordinate structure incidental and subordinate in function to the principal structure on a site located on the same site as the principal structure. Accessory structures shall not have cooking, sleeping or sanitation facilities sufficient to render them suitable for residential occupancy.

*Accommodation unit* means any room or group of rooms within a building intended for transient lodging and accessible from common corridors, walks or balconies without passing through another accommodation unit. An accommodation unit may include an efficiency kitchen.

*Adjacent property* means any lot or parcel of land located within 100 feet of the outer boundary or perimeter of a site on which some form of land use subject to this Chapter is occurring or will occur.

*Animal day care home* means an occupation or use that provides regular care and supervision for the entire day or portion of a day for 3 or more animals who are not owned by the owner, operator or manager thereof, whether such care and supervision is provided with or without compensation.

*Administrator* means the duly appointed Town Administrator for the Town.

*Balcony* means that portion of a structure which is essentially open and outward from the main structure with a floor and railing, with or without a ceiling, not touching the ground and not accessible for ingress and egress from the ground.

*Bed and breakfast* means an establishment operated in a private residence or portion thereof which provides temporary accommodation to overnight guests for less than 30 days for a fee and which is typically occupied by the operator.

*Board of Trustees* or *Board* means the duly elected or appointed Board of Trustees for the Town of Red Cliff, Colorado.

*Building* means any structure having a roof supported by columns and/or walls and intended for the shelter or enclosure of persons, animals or property of any kind.

*Child day care home* means an occupation or use that provides regular care and supervision for the entire day or portion of a day for 5 or more children under the age of 16 who are not related to the

owner, operator or manager thereof, whether such care and supervision is provided with or without compensation.

*Code* means the Town of Red Cliff Municipal Code in its entirety.

*Comprehensive Plan* means the Town of Red Cliff, Colorado Comprehensive Plan dated March 2006, as amended, or such other comprehensive plan as is adopted by the Town subsequent to the effective date hereof.

*Construction trailer* means a structure constructed partially or entirely in a factory, designed to be transported to the site at which it will be occupied, installed temporarily for office use and removed upon completion of construction.

*Deck* means an exterior flat surface capable of supporting weight extending from and connecting to a building, either at grade or above grade, and accessible for ingress and egress from the ground.

*Development* means any man-made change in or to improved or unimproved real estate, including, but not limited to, (i) the construction, improvement, alteration, installation, erection or expansion of any structure, (ii) mining, dredging, filling, grading, paving, excavating or drilling operations, (iii) any activity that changes the basic character or use of land on which the activity occurs, (iv) any material change in the exterior appearance of a structure, (v) any change in use of land or structures, (vi) the initiation or commencement of a new or additional use of land or structures, (vi) demolition of a structure and (vii) clearing land as an adjunct of development.

*Dwelling* means a building or portion thereof designed or used for human habitation, including single-family dwellings, duplex dwellings, accessory apartments and multi-family dwellings but not including lodging.

*Dwelling, duplex* means a building containing 2 dwelling units designed for or used as a dwelling by 2 families as independent housekeeping units living independently of each other. It shall include manufactured or modular homes intended to contain 2 dwelling units designed for or used as a dwelling by 2 families as independent housekeeping unit living independently of each other but shall not include mobile homes.

*Dwelling, multi-family* means a building containing 3 or more dwelling units designed for or used as a dwelling by 3 or more families as independent housekeeping unit living independently of each other, including condominiums, apartments and townhouse but not including lodging.

*Dwelling, single family* means a building designed for or used as a dwelling by one family as an independent housekeeping unit. It shall include manufactured or modular homes designed for or used as a dwelling by one family as an independent housekeeping unit but shall not include mobile homes.

*Dwelling unit* means one or more rooms with cooking, sleeping and sanitation facilities designed or used as a separate, independent living facility for the exclusive use of single family for living, sleeping, cooking and sanitary purposes.

*Efficiency kitchen* means a portion of a room within an accommodation unit that may contain a sink, refrigerator, dishwasher, microwave oven, cook top, wet bar or similar facility but not a stove or oven and not stub-outs for natural gas, propane or 220-V electric hookups.

*Exterior appearance* means the character and general composition of the exterior of a structure, including, but not limited to, the kind, color and texture of the building material(s) and the type, design and character of all windows, visible roof surfaces, doors, lighting fixtures, signs and related elements.

*Family* means any number of individuals living together as a single housekeeping unit but not exceeding 4 unrelated adults.

*Grade, existing* means the existing or natural topography of a site prior to development.

*Grade, finished* means the grade upon completion of development.



*Home occupation* means an occupation or business activity conducted within a dwelling by the inhabitants thereof which use is clearly additional and secondary to the use of the dwelling for residential purpose, which does not adversely affect the residential character thereof and does not interfere with the peace and quiet of the neighborhood and adjacent property.

*Hotel* means a building offering transient lodging to the general public in accommodation units but excluding bed and breakfasts. It may include accessory uses such as office, laundry facilities, recreational facilities, lobbies, lounges, dining facilities, meeting rooms and similar accessory uses commonly associated with hotels.

*Landscaping* means the portion of a lot or site with any combination of living plants (such as trees, shrubs, vines, ground cover, native grasses, flowers or lawns), natural features and nonliving ground cover (such as rock, stone and bark) and structural features (such as fountains, reflecting pools, art works, screen walls, fences and benches) but not including paved walkways or parking areas.

*Loading space* means an off-street space or berth for the temporary parking of commercial vehicles while loading or unloading merchandise, materials or supplies.

*Lodging* means a building occupied and used as a bed and breakfast, hotel or other use containing accommodation units.

*Lot or site* means a parcel of land occupied or intended to be occupied by a use or structure. A lot or site may consist of a single lot of record, a portion of a lot of record, a combination of lots of record or portions thereof, or a parcel of land described by metes and bounds.

*Lot line, front* means the boundary line of a lot or site adjoining or abutting a street which provides the primary access to or street address for the lot or site.

*Lot line, rear* means the boundary line of a lot or site extending between the side lot lines and forming the boundary of the lot or site opposite the front lot line.

*Lot line, side* means the boundary line of a lot or site extending from the front lot line toward the opposite or rearmost portion of the lot or site.

*Manufactured or modular home* means a structure that is partially or fully manufactured in a factory, installed on an engineered foundation, with brick, wood or cosmetically equivalent exterior siding and certified pursuant to the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. § 5401, et seq., as amended.

*Marijuana* shall have the meaning attributed to it in section 2(f) of Section 16 of Article XVIII of the Colorado Constitution.

*Marijuana establishment* shall have the meaning attributed to it in section 2(i) of Section 16 of Article XVIII of the Colorado Constitution.

*Marijuana products* shall have the meaning attributed to it in section 2(k) of Section 16 of Article XVIII of the Colorado Constitution.

*Mechanized recreational vehicle rental business* means a business engaged in the rental of mechanized recreational vehicles to the public for a fee, whether such rental is by trip or for any specified period of time.

*Mobile home* means a structure constructed partially or entirely in a factory, designed for long-term residential use and transported to its occupancy site on its own wheels, arriving at the site as a complete residential unit, equipped with necessary service connections (electrical, plumbing and sanitary facilities) and designed to be installed in a permanent or semi-permanent manner but not certified pursuant to the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. § 5401, et seq., as amended.

*Parking space* means an open space or enclosed structure, exclusive of drives, turning areas or loading spaces, devoted to the parking of an automobile.

*Person* means a natural person, association, partnership, corporation, company, firm, limited liability company, trust or other legal entity.

*Personal service shop* means a shop primarily engaged in providing services generally involving the care of the person or his or her personal goods or apparel.

*Planning and Zoning Commission or Commission* means the commission created pursuant to Article 3 of this Chapter.

*Planning Director or Director* means the Town official appointed by the Board to administer, implement and enforce the planning, zoning, development and use standards, requirements and processes set forth in this Chapter.

*Site coverage* shall mean the area within the surrounding exterior walls of a structure or building or portion thereof, measured from the greater extension of such exterior walls no matter the height, plus any area under a horizontal roof or floor projection, deck or balcony consisting of an impermeable surface.

*Street or road* means means a way for vehicular traffic, however named or designated, which affords the principal means of access to abutting properties.

*Structure* means anything constructed or erected with a fixed location on the ground but not including poles, lines, cables or other transmission or distribution facilities of public utilities, mailboxes or light fixtures.

*Structure height* means the distance measured vertically from the existing or finished grade (whichever is more restrictive) at any given point outside a structure to the top of the structure, excluding chimneys and other similar vertical projections.

*Structure setback* means the distance from a lot line measured horizontally to a location within the lot or site which establishes the permitted location of structures on the lot or site. The distance shall be measured from the lot line to the nearest edge of any structure projection, not including roofs but including balconies, decks and similar projections.

*Structure setback, front* means the distance a structure must be located from the front lot line.

*Structure setback, rear* means the distance a structure must be located from the rear lot line.

*Structure setback, side* means the distance a structure must be located from the side lot lines.

*Timeshare ownership* means a form of real property ownership in which more than 4 persons are entitled to use, occupy or possess the same lot, parcel or unit according to a fixed or floating time schedule occurring periodically over any period of time where such use, occupancy or possession by each person is exclusive to that by the others.

*Town of Red Cliff or Town* means the Town of Red Cliff, Colorado.

*Use* means the purpose, activity or function for which land or structures are arranged, designed or intended or for which land or structures are occupied or maintained.

*Zone district* means and refers to the zone districts established pursuant to Article 4 of this Chapter.

## ARTICLE 3

### Administration

#### Sec. 16-3-10. Purpose.

This Article is intended to establish and describe the manner in which the provisions of this Chapter shall be administered, implemented and enforced.

#### Sec. 16-3-20. Planning Director.

(a) There is hereby created the position of the Town of Red Cliff Planning Director to administer, implement and enforce this Chapter. The Planning Director shall be appointed by the Board.

(b) In addition to any authority granted by ordinance or statute, the Planning Director shall have the power, authority and duty under this Chapter to:

- (1) Undertake the day-to-day administration of this Chapter;
- (2) Establish application submittal requirements including content and quantities of materials to be submitted;
- (3) Receive applications for approvals and permits for processing;
- (4) Review applications, provide recommendations and render administrative decisions as provided for in this Chapter;
- (5) Review, evaluate and approve, approve with conditions or disapprove certain development as provided in this Chapter;
- (6) Review, evaluate and render interpretations of this Chapter and the zone district map;
- (7) Prepare staff reports for consideration by all recommending and decision-making bodies;
- (8) Ensure that adequate and required notice is provided pursuant to the terms of this Chapter;
- (9) Delegate any power, duty or responsibility set forth in this Chapter when determined to be appropriate and efficient;
- (10) Inspect and examine properties for violations of this Chapter;
- (11) Assist the Board in enforcing the provisions of this Chapter; and
- (12) Perform such other duties as provided for in this Chapter, this Code and any other ordinance, statute or regulation.

#### Sec. 16-3-30. Planning and Zoning Commission.

- (a) There is hereby created the Town of Red Cliff Planning and Zoning Commission.
- (b) The Commission shall consist of five members.
- (c) Three members shall constitute a quorum for the transaction of business.
- (d) Members of the Commission shall be appointed by the Board.
- (e) Members of the Board may serve as members of the Commission.
- (f) Members of the Commission shall be residents of the Town. If a member of the Commission ceases to reside in the Town, his or her membership on the Commission shall terminate immediately.

(g) The terms of each member of the Commission shall be two years, except that the respective terms of the two members first appointed shall be one year and the respective terms of the other three members first appointed shall be two years, as designated by the Board at the time of appointment.

(h) Members of the Commission shall serve without compensation, except reimbursement of reasonable-out-of-pocket expenses approved by the Board.

(i) Members of the Commission may be removed after public hearing before the Board for misconduct, inefficiency, neglect of duty, intentional disregard of duties or any other reason deemed sufficient by the Board.

(j) Vacancies on the Commission shall occur when a member resigns, is removed by the Board or ceases to reside in the Town. Vacancies shall be filled by the Board by appointment.

(k) The Commission shall elect its Chair from among the members and fill such other offices as it may determine. The term of the Chair shall be for one year, with eligibility for reelection. The Chair shall be responsible for setting meeting agendas and conducting all Commission meetings and hearings.

(l) The Commission shall adopt rules for the transaction of business and keep a record of its recommendations, resolutions, transactions, findings and determinations.

(m) The Commission shall meet in regular session at a time designated by the Commission. Upon the advice of the Planning Director, regular sessions may be vacated or continued by the Chair if their is insufficient business before the Commission to justify a regular session.

(n) In addition to any authority granted by ordinance or statute, the Commission shall have the power, duty and authority under this Chapter to:

(1) Review, evaluate and make recommendations to the Board for amendments to the Comprehensive Plan;

(2) Review, evaluate and make recommendations to the Board for adoption of or amendments to any design guidelines applicable to land use proposals under this Chapter;

(3) Review, evaluate and make recommendations to the Board on land use proposals as provided for in this Chapter;

(4) Review, evaluate and make recommendations to the Board for amendments to the text, standards and requirements of this Chapter;

(5) Review, evaluate and make recommendations to the Board for amendments to the zone district map;

(6) Make its specialized knowledge and expertise available to the Board with respect to any land use proposal subject to this Chapter;

(7) Require preparation and submission of environmental impacts reports pursuant to the terms of this Chapter;

(8) Hear and decide appeals from any order, decision, determination or interpretation made by the Planning Director;

(9) Perform such studies and issue such recommendations as requested by the Board; and

(10) Perform such other duties as provided for in this Chapter, this Code and any other ordinance, statute or regulation.

**Sec. 16-3-40. Board of Trustees.**

In addition to any authority granted by ordinance or statute, the Board shall have the authority, power and duty under this Chapter to:

- (a) Initiate, hear, review, evaluate and approve or disapprove applications to amend the zone district map;
- (b) To amend or alter any standard or requirement established by this Chapter by ordinance;
- (c) Approve, approve subject to modifications or conditions or disapprove any recommendation issued by the Commission;
- (d) Hear and decide appeals from any order, decision, determination or interpretation made by the Commission;
- (e) Revoke any permit issued pursuant to this Chapter as provided herein;
- (f) Act as any necessary and required Zoning Board of Appeals;
- (g) Render final decisions subject to legal challenge with respect to any matter arising under this Chapter;
- (h) Establish by resolution such fees as are authorized by this Chapter;
- (i) Pursue such penalties and remedies as are provided for in this Chapter for violations of this Chapter and otherwise enforce the terms of this Chapter; and
- (j) Perform such other duties as provided for in this Chapter, this Code and any other ordinance, statute or regulation.

**Sec. 16-3-50. Board of Trustees review of Planning and Zoning Commission recommendations.**

(a) The Board shall take up and consider all recommendations issued by the Commission pursuant to this Chapter as set forth in this section.

(b) Upon receipt of a recommendation from the Commission, the Administrator shall schedule a public hearing before the Board for consideration of the recommendation. The public hearing shall take place no more than 35 days after receipt of the Commission's recommendation.

(c) The Administrator shall give notice of the recommendation and the public hearing to the owner of the site affected by the recommendation and to all adjacent property owners at least 14 days before the hearing.

(d) At the conclusion of the public hearing for consideration of the Commission's recommendation, the Board may (i) adopt the Commission's recommendation, (ii) adopt the Commission's recommendation subject to modifications or conditions or (iii) reject the Commission's recommendation. If the Board rejects the Commission's recommendation, it shall issue a decision with respect to the subject matter of the recommendation which decision shall be final.

(e) In considering a recommendation issued by the Commission, the Board shall apply and evaluate the review criteria applicable to the subject matter of the recommendation set forth in this Chapter.

**Sec. 16-3-60. Appeals from Planning Director.**

(a) The Commission shall have authority to hear and decide appeals from any order, decision, determination or interpretation rendered by the Planning Director pursuant to this Chapter.

(b) An appeal from any order, decision, determination or interpretation rendered by the Planning Director may be initiated by an applicant, adjacent property owner or any aggrieved or adversely affected person. "Aggrieved or adversely affected person" means a person who will suffer an adverse effect to an interest protected or furthered by this Chapter which alleged adverse effect may be shared in common with other members of the community at large but shall exceed in degree or character the general interest in community good shared by all persons. The Planning Director shall determine the standing of an appellant. If the appellant objects to the Planning Director's determination of standing, the Commission shall, at a meeting prior to hearing evidence on the appeal, make a determination as to the standing of the appellant. If the Commission determines that the appellant does not have standing to appeal, the appeal shall not be heard and the original order, decision, determination or interpretation rendered by the Planning Director shall remain in full force and effect.

(c) An appeal shall be initiated by filing a written notice of appeal with the Planning Director within 21 days of the Planning Director rendering the order, decision, determination or interpretation from which an appeal is sought. Such notice shall include the name, mailing address and physical address of the appellant, applicant, property owner and adjacent property owners, set forth specific and articulate reasons for the appeal and be accompanied by any appeal fee established by the Town.

(d) Upon receipt of a notice of appeal complying with subsection (c), including payment of any appeal fee, the Planning Director shall schedule a public hearing before the Commission for consideration of the appeal within 35 days of receipt of a notice of appeal. The Planning Director shall give notice of the appeal and hearing to the appellant, applicant, property owner and adjacent property owners at least 14 days before the hearing.

(e) Upon written request of an appellant, applicant, property owner or an adjacent property owner submitted to the Planning Director, the Commission may continue the hearing for up to 35 days to allow the parties additional time to obtain information.

(f) Failure to file a notice of appeal complying with this section shall constitute a waiver of any rights under this Chapter to appeal any order, decision, determination or interpretation rendered by the Planning Director pursuant to this Chapter.

(g) The filing of a notice of appeal shall stay all development and any proceedings in furtherance of the action appealed unless the Planning Director certifies in writing to the Commission and the appellant that a stay poses an imminent peril to life or property in which case the appeal shall not stay development and proceedings in furtherance of the action appealed.

(h) In considering an appeal, the Commission shall apply and evaluate the review criteria applicable to the subject matter of the order, decision, determination or interpretation appealed as set forth in this Chapter.

(i) The Commission shall have authority to establish procedures for appellate hearings before it, including but not limited to, time allowances for the presentation of evidence and oral arguments.

#### **Sec. 16-3-70. Appeals from Planning and Zoning Commission.**

(a) The Board shall have authority to hear and decide appeals from any order, decision, determination or interpretation rendered by the Commission pursuant to this Chapter.

(b) An appeal from any order, decision, determination or interpretation rendered by the Commission may be initiated by an applicant, adjacent property owner or any aggrieved or adversely affected person. "Aggrieved or adversely affected person" means a person who will suffer an adverse effect to an interest protected or furthered by this Chapter which alleged adverse effect may be shared in common with other members of the community at large but shall exceed in degree or character the general interest in community good shared by all persons. The Planning Director shall determine the standing of an appellant. If the appellant objects to the Planning Director's determination of standing,

the Board shall, at a meeting prior to hearing evidence on the appeal, make a determination as to the standing of the appellant. If the Board determines that the appellant does not have standing to appeal, the appeal shall not be heard and the original order, decision, determination or interpretation rendered by the Commission shall remain in full force and effect.

(c) An appeal shall be initiated by filing a written notice of appeal with the Planning Director within 21 days of the Commission rendering the order, decision, determination or interpretation from which an appeal is sought. Such notice shall include the name, mailing address and physical address of the appellant, applicant, property owner and adjacent property owners, set forth specific and articulate reasons for the appeal and be accompanied by any appeal fee established by the Town.

(d) Upon receipt of a notice of appeal complying with subsection (c), including payment of any appeal fee, the Planning Director shall promptly forward the notice of appeal and all records concerning the subject matter of the appeal to the Administrator. The Administrator shall schedule a public hearing before the Board for consideration of the appeal within 35 days of receipt of a notice of appeal and accompanying documents from the Planning Director. The Administrator shall give notice of the appeal and hearing to the appellant, applicant, property owner and adjacent property owners at least 14 days before the hearing.

(e) Upon written request of an appellant, applicant, property owner or an adjacent property owner submitted to the Administrator, the Board may continue the hearing for up to 35 days to allow the parties additional time to obtain information.

(f) Failure to file a notice of appeal complying with this section shall constitute a waiver of any rights under this Chapter to appeal any order, decision, determination or interpretation rendered by the Commission pursuant to this Chapter.

(g) The filing of a notice of appeal shall stay all development and any proceedings in furtherance of the action appealed unless the Planning Director certifies in writing to the Board and the appellant that a stay poses an imminent peril to life or property in which case the appeal shall not stay development and proceedings in furtherance of the action appealed.

(h) In considering an appeal, the Board shall apply and evaluate the review criteria applicable to the subject matter of the order, decision, determination or interpretation appealed as set forth in this Chapter.

(i) The Board shall have authority to establish procedures for appellate hearings before it, including, but not limited to, time allowances for the presentation of evidence and oral arguments.

(j) The Board's decision concerning an appeal is final. An aggrieved or adversely affected person may appeal the decision to an appropriate court of competent jurisdiction.

#### **Sec. 16-3-80. Fees.**

(a) The Board shall periodically establish by resolution any application or other fee authorized by this Chapter. The proponent of development shall pay all such applicable fees.

(b) In addition to any application or other fee established by the Board by resolution, the Planning Director may require the proponent of any development subject to this Chapter to pay such additional reasonable fees deemed necessary to cover the costs of administration, inspection, publication of notice and similar matters where the nature, character and particular or unique circumstances of the development requires more intensive and involved administration and review than is the norm.

(c) In addition to payment of any fees required by subsections (a) and (b), proponents of development subject to this Chapter shall pay all fees incurred by the Town for review by planning,

engineering, legal, scientific and other expert personnel retained by the Town in connection with its review of the development in the amount of such charges incurred by the Town.

(d) Upon the request of the proponent of development subject to this Chapter, the Planning Director shall provide a good faith estimate of the fees to be incurred pursuant to this section by the proponent in connection with the development.

(e) Except as otherwise set forth in this Chapter, any fees authorized by this section shall be paid in full to the Town within 28 days of invoicing. Payment in full of all fees authorized by this section shall be a precondition for all development, the granting of any approvals required by this Chapter and the issuance of any permit required by this Chapter. The Planning Director may suspend or terminate any development approval or permit application process if the proponent of development fails to pay all fees authorized by this section when due. Any approval granted or permit issued pursuant to this Chapter shall be null, void and of no force or effect if any fees authorized by this section are not paid in full when due.

(f) Upon written request of the proponent of any development and good cause shown, the Board may waive or reduce any fees authorized by this section or extend the time period for payment of such fees.

(g) All fees authorized by this section that are not paid within 35 days of invoicing shall be deemed past due and bear interest at a rate of 1.5% per annum. All past due fees and any interest that has accrued thereon shall be subject to a lien on the property concerning which the fees were incurred and may be certified to the County Treasurer and collected and paid over to the Town by the County Treasurer in the same manner as taxes.

#### **Sec 16-3-90. Notice.**

(a) Whenever this Chapter requires notice to be given to any person, such notice shall be by first class mail, postage prepaid, addressed to the record address of such person. Such notice shall be deemed to have been effectuated upon deposit with the United States Postal Service.

(b) Notices shall state the time and place of the hearing and the name of the applicant, if applicable, describe the property subject to the notice and its location, provide a brief summary of the subject matter of the notice and advise the recipient that information pertaining to the subject of the notice is available for review and inspection by the public.

#### **Sec. 16-3-100. Public Hearings.**

(a) All public hearings required by and held pursuant to this Chapter shall comply with the procedures set forth in this section.

(b) Any person may appear at a public hearing and submit evidence, either individually or as a representative of an organization. Upon request of the Chair or Mayor, anyone representing an organization shall present written evidence of his or her authority to speak on behalf of the organization in regard to the subject matter of the hearing. Each person who appears at a public hearing shall identify himself or herself, state an address and, if appearing on behalf of an organization, state the name and mailing address of the organization.

(c) The order of proceedings shall generally be as follows:

(1) The Planning Director shall present a narrative or graphic description of the subject matter of the hearing.



(2) Where a hearing concerns a recommendation issued by the Commission, the Planning Director shall describe the recommendation and conditions or modifications pertaining to the recommendation.

(3) The Planning Director may present a staff report concerning the subject matter of the hearing.

(4) The proponent of the development that is the subject of the hearing shall present any information he or she deems appropriate.

(5) Public testimony shall be heard. The Chair or Mayor conducting the hearing may limit the time of individual testimony to a reasonable time. Further, the Chair or Mayor conducting the hearing may exclude testimony or evidence deemed to be immaterial, irrelevant or unduly repetitious. If any testimony or evidence is excluded as immaterial, irrelevant or unduly repetitious, the person offering such testimony or evidence shall be afforded an opportunity at the public hearing to make a proffer in regard to such testimony or evidence for the record.

(6) The proponent of the development that is the subject of the hearing may respond to any testimony or evidence presented by the public at the close of public testimony.

(7) The Planning Director, Town Attorney or other staff may respond to statements made by the applicant or the public.

(8) With recognition of the Chair or Mayor, any member of the Commission or Board may ask questions for clarification, not for debate, of the proponent or any member of the public offering testimony.

(d) The Commission or Board may, on its own motion or at the request of any person, continue the public hearing to a fixed date, time and place.

(e) The Commission or Board shall record the hearing by appropriate means. The recorded record of oral proceedings, including testimony and statements of personal opinions, the minutes of the secretary or Town Clerk, all applications, exhibits, papers, materials and information submitted in connection with any proceeding before the decision-making, administrative or advisory body, any staff report and the decision of the body shall constitute the record. The record shall be open for inspection. A copy of the record may be obtained acquired by any person upon reasonable notice and written request to the Planning Director and payment of a fee to cover the costs of duplication of the record.

(f) The Commission shall base its decisions on statements and information contained in and accompanying an application, reports from staff or consultants, if any, and the evidence presented to the Commission at the hearing. The Board shall base its decision upon statements and information contained in and accompanying an application, reports from staff or consultants, evidence submitted to the Commission, the recommendation of the Commission and the evidence presented to the Board at the hearing.

(g) Hearings shall be conducted in such a manner as to afford the proponent and all interested parties the opportunity to submit exceptions to the record, contentions and arguments with respect to the issues entailed, provided that the Commission and Board may limit the taking of evidence to evidence not previously submitted and made part of the record.

#### **Sec. 16-3-110. Consolidation.**

The development approval and permitting processes established by this Chapter are intended to encourage the efficient processing of applications. Consequently, applicants may request and the Planning Director may permit the simultaneous submission and review of all necessary development applications. The Planning Director is further authorized to waive any overlapping application submission requirements in such a consolidated, simultaneous review.

**Sec. 16-3-120. Effect of approvals and permits.**

(a) Development subject to this Chapter shall not begin until the proponent of the development secures all approvals and permits required by this Chapter and Code.

(b) Approval of development or issuance of a permit required by this Chapter shall not ensure that the development will receive subsequent required approvals or permits.

(a) The proponent of development shall not apply for a building permit until all approvals and/or permits required by this Chapter have been obtained.

**Sec. 16-3-130. Post-approval and permit issuance obligations.**

(a) The proponent of development shall submit a foundation location certificate to the Planning Director after the foundation for any structure has been poured. No further construction shall occur until the certificate is submitted to the Planning Director and the location of the foundation has been approved by the Planning Director.

(b) The proponent of development shall submit an improvement location certificate to the Planning Director after framing of any structure is complete. The certificate shall verify structure heights and demonstrate that no encroachments on required setbacks exist. No further construction shall occur and no framing inspection shall be approved until this certificate has been submitted to and approved by the Planning Director.

**Sec. 16-3-140. Lapse of approvals and permits.**

Except as otherwise set forth in this Chapter, all approvals and permits issued pursuant to this Chapter shall lapse, become void and be of no force and effect if the approved or permitted development is not commenced and diligently pursued within one year of the date upon which approval was granted or a permit issued. On written request from the proponent of development, the Commission may approve a one-time, one-year extension of the deadline established by this section.

**Sec. 16-3-150. Approval or permit based on materially false information.**

Any development approval granted or permit issued that is obtained in reliance on any materially false statement in or accompanying any application or in an oral statement shall be revoked, void and of no force and effect.

**Sec. 16-3-160. Inspection and entry.**

(a) Whenever necessary to inspect or examine a site to enforce any of the provision of this Chapter or whenever there is reasonable cause to believe there exists a violation of this Chapter on a site, the Planning Director may enter the site at a reasonable time to inspect and examine the same or perform any duty imposed by this Chapter. If the site is occupied, the Planning Director shall first present proper credentials and demand entry. If the site is unoccupied, the Planning Director shall first make a reasonable effort to locate the owner of the site and demand entry.

(b) Should entry be refused, the Planning Director shall have recourse to every remedy provided by law to secure entry. When the Planning Director has secured entry pursuant to such remedies as are available at law, no owner or occupant of a site shall refuse to permit entry by the Planning Director for the purpose of inspection and examination. Any person refusing to allow such entry shall be deemed to have committed a violation of this section.

**Sec. 16-3-170. Violations.**

(a) It shall be unlawful and a violation of this Chapter for any person to:

(1) Commence or continue any development without having first complied with the provisions and requirements of this Chapter;

(2) Commence or continue any development contrary to any applicable development standards or requirements established by this Chapter;

(3) Perform any act in violation of the provisions of this Chapter or fail to perform an act required by this Chapter;

(4) Make any materially false written or oral statement to the Town or its representatives in connection with any development;

(5) Fail to observe and satisfy any condition imposed in relation to any approval granted or permit issued pursuant to this Chapter; or

(6) Fail to obey any lawful order issued by the Town or its representatives under this Chapter.

(b) The owner of property upon which any violation of this Chapter occurs shall be responsible for the violation and subject to the penalties and remedies described in this Article.

**Sec. 16-3-180. Notice of violations.**

The Planning Director shall give notice of any violation of this Chapter to the violator and demand that such violation be corrected or remedied within 21 days or such additional time as the Planning Director may determine should it reasonably appear that, due to the nature of the violation, it cannot be corrected within 21 days. If a violator fails to correct or remedy a violation within 21 days or such additional as allowed, the Planning Director shall refer such violation to the Board to pursue the penalties and remedies provided for in § 16-3-190.

**Sec. 16-3-190. Penalties and remedies.**

(a) Each separate act in violation of any provision of this Chapter shall be deemed a separate violation, punishable pursuant to this section. Each day or portion thereof during which any act in violation of this Chapter is committed, continued or allowed shall be deemed a separate violation, punishable pursuant to this section.

(b) The Board may, after affording such person an opportunity to be heard, punish any person who violates any provision of this Chapter by:

(1) Imposing a fine of not less than \$1 and not more than \$1,000 for each such violation;

(2) Requiring such person to pay up to 2 times any fee required pursuant to this Chapter for all subsequent approvals and permits related to and necessary for the development on which such violation occurred;

(3) Subjecting the development on which such violation occurred to additional conditions.

(c) The Board may initiate injunctive, abatement or other appropriate action to prevent, enjoin, abate or remove any violation of this Chapter. In any such action, the Town shall be entitled to an award of all reasonable costs and attorney fees.

(d) The Board may order Town staff to deny and withhold all permits, certificates or other forms of authorization to use, occupy or develop land or structures until such time as any violation of this Chapter is corrected or remedied.

(e) The Board may direct the Planning Director to issue a written order to stop work at any site on which there is an uncorrected or unremedied violation of this Chapter. Stop work orders shall be given in person, by first class mail or by posing notice at the site on which there is an uncorrected or unremedied violation of this Chapter. After a stop work order has been served, no work shall proceed on any structure implicated by such order except to correct or remedy such violation or comply with the order.

(f) The imposition of any penalty or the pursuit of any remedy pursuant to this section shall not preclude the Town or an affected property owner from instituting any appropriate action or proceeding to require compliance with the provisions of this Chapter.

(g) Any and all penalties and remedies provided for in this section shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

**Sec. 16-3-200. Conceptual or preliminary approval.**

Except as otherwise set forth in this Chapter, whenever provision is made in this Chapter for conceptual or preliminary approval or any development, such conceptual or preliminary approval shall not be considered binding or as a final approval and any person who expends time or funds in reliance thereon shall do so at his or her own risk. Neither the Town nor any of its officers or employees shall have any liability or responsibility for any detriment incurred thereby or be estopped by reason thereof from withholding final approval.

**Sec. 16-3-210. Disclaimer of liability.**

This Chapter shall not be construed as imposing on the Town or any of its officers or employees any liability or responsibility for damages of any kind to any person by reason of any inspection authorized by this Chapter, any failure to inspect, any development approval granted pursuant to this Chapter or any permit issued pursuant to this Chapter.

## ARTICLE 4

### Zone Districts, Zone District Map and Amendments

#### Sec. 16-4-10. Zone districts created.

For the purposes of this Chapter, the Town is divided into the following zone districts:

- (a) Industrial and Commercial (IC). This zone district is intended to provide for industrial and manufacturing uses, wholesale outlets, warehousing, offices and storage facilities.
- (b) Mixed Use / Town Center (MU/TC). This zone district is intended to provide for a variety of residential and nonresidential uses and allow for development which distinguishes it from other zone districts in Town.
- (c) Mixed Use / Neighborhood Commercial (MU/NC). This zone district is intended to provide for a mix of residential uses and smaller, less-intensive nonresidential uses than permitted in the MU/TC zone district.
- (d) Residential (R-1). This zone district is intended to provide for single-family and duplex residential development and home occupations while allowing for certain higher density residential uses and nonresidential uses as special review uses.
- (e) Cemetery / Open Space (C/OS). This zone district is intend to remain primarily as it exists and serve as undeveloped open space while allowing for certain limited uses consistent with this intent.
- (f) Parks / Open Space (P/OS). This zone district is intended to remain primarily as it exists and serve as undeveloped open space while allowing for certain limited uses consistent with this intent.
- (g) Public Facilities / Office Complex (PF/OC). This zone district is intended to provides sites for parks, community centers, recreation facilities, water storage, treatment and distribution systems, fire stations, governmental facilities and public and/or private housing units for employees.
- (h) Planned Unit Development (PUD). This is an overlay zone district intended to provide for flexibility and creativity in development in order to promote appropriate and efficient uses of property in a manner not otherwise allowed by this Chapter.

#### Sec. 16-4-20. Zone district map.

- (a) The location and boundaries of the zone districts created by § 16-4-10 are shown on the zone district map of the Town. The zone district map, together with all notations, references and other information shown thereon, is incorporated in and made part of this Chapter.
- (b) The official zone district map shall be located in the office of the Town Clerk and shall be the final authority as to the current zoning status of lands and structures in the Town.
- (c) Changes to zone district boundaries or other matters portrayed on the zone district map made in accordance with this Chapter shall be entered on the official zone district map.

#### Sec. 16-4-30. Zone district map interpretation and boundary determination.

- (a) Any conflict, dispute or uncertainty regarding the location of any zone district boundary shown on the zone district map shall be referred to the Commission for interpretation and resolution.
- (b) In interpreting the zone district map and resolving any conflict, dispute or uncertainty regarding the location of any zone district boundary shown on the zone district map, the Commission shall apply the following standards:

(1) Zone district boundary lines are intended to follow lot lines, subdivision lines, incorporation lines or centerlines of rights of way;

(2) Where zone district boundary lines approximate lot lines, subdivision lines, incorporation lines or centerlines of rights of way, such lines shall be construed to be the boundary lines.

**Sec. 16-4-40. Property without zone district designation.**

Any land, lot or site that is not contained within a zone district on the zone district map shall be considered part of the Parks / Open Space zone district, subject to rezoning by amendment to the zone district map pursuant to this Article.

**Sec. 16-4-50. Amendment to zone district map by application.**

(a) The owner of any real property in the Town may apply to the Commission for an amendment to the zone district map. An application for an amendment to the zone district map shall be made on a form to be provided by the Planning Director.

(b) An application for amendment to the zone district map shall include and be accompanied by:

(1) The name and address of the applicant;

(2) The name and address of the owner of the property subject to the amendment;

(3) The legal description, street address and other identifying information for the property subject to the amendment;

(4) A survey of the property subject to the amendment dated no more than one year before the date the application is made;

(5) Identification of the zone district(s) in which the property subject to the amendment is located;

(6) Identification of the zone district(s) in which the property subject to the amendment will be located if the amendment is approved;

(7) A statement of the reasons for the amendment;

(8) Such additional materials as the Planning Director may require for adequate review and evaluation of the application and amendment by the Commission;

(9) Any zone district map amendment fee established by the Town and any fees required pursuant to § 16-3-80, which zone district map amendment fee shall not be refundable.

(c) Upon receipt of an application for amendment to the zone district map complying with subsection (b), including payment of any required fees, the Planning Director shall schedule a public hearing before the Commission for consideration of the application. The public hearing shall take place no more than 35 days after receipt of an application complying with subsection (b). The Planning Director shall give notice of the application and hearing to the owner of all property subject to the amendment and all adjacent property owners at least 14 days before the hearing.

(d) At the conclusion of the hearing for consideration of an application for amendment to the zone district map, the Commission shall issue a recommendation to (i) approve the application, (ii) approve the application subject to modifications or conditions or (iii) deny the application.

(e) The Planning Director shall give notice of the recommendation to the applicant, the owner of all property subject to the amendment and adjacent property owners no more than 14 days after it is issued. The Planning Director shall also forward the recommendation to the Administrator as soon as

reasonably practicable after it is issued, whereupon the recommendation shall be taken up by the Board in accordance with § 16-3-50.

**Sec. 16-4-60. Amendments to zone district map by Planning and Zoning Commission.**

(a) The Commission may issue a recommendation for an amendment to the zone district map on its own initiative or at the request of the Board.

(b) If the Commission issues a recommendation for an amendment to the zone district map on its own initiative or at the request of the Board, the Planning Director shall give notice of the recommendation to the owner of all property subject to the recommended amendment and adjacent property owners no more than 14 days after the recommendation is issued. The Planning Director shall also forward the recommendation to the Administrator as soon as reasonably practicable after it issued, whereupon the recommendation shall be taken up by the Board in accordance with § 16-3-50.

**Sec. 16-4-70. Criteria for amendments to zone district map.**

In considering an application for an amendment to the zone district map or in recommending an amendment to the zone district map on its own initiative or at the request of the Board, the Commission shall evaluate the degree to which an amendment to the zone district map will:

- (a) Encourage the most appropriate use of land in the Town;
- (b) Preserve and protect the Town's economy, heritage, scenic beauty and small town qualities and character;
- (c) Promote the health, safety, welfare, comfort and convenience of the citizens of the Town;
- (d) Conform to the goals and policies enunciated in the Comprehensive Plan;
- (e) Conserve the value of existing uses and structures;
- (f) Correct mistakes in the initial zoning of land so that the zone district map is consistent with prevailing planning and development objectives; and
- (g) Reflect the evolving character of various parts and areas of the Town.

## ARTICLE 5

### Development Approval Process

#### Sec. 16-5-10. Purpose.

(a) This Article establishes and describes the requirement for and process by which any development occurring in the Town shall be approved.

(b) The term "development" as used in this Article and Chapter is intended to be broad and all-encompassing, capturing within its meaning the erection, construction, reconstruction, replacement, alteration, enlargement and placement of any structure, building or man-made improvement and any and all uses to which land, sites, lots and real property in the Town may be devoted.

(c) This Article is intended to promote a clear, understandable, flexible and efficient development approval process. To that end, it:

(1) Recognizes that certain types and forms of development should be exempted from the development approval requirement and process established by this Article;

(2) Further recognizes that certain other types and forms of development, while subject to the development approval requirement and process described in this Article, are of a sufficiently minor character or nature that they can be administratively approved by the Planning Director without the involvement or approval of the Commission or Board;

(3) Requires all remaining types and forms of development not exempt from the development approval requirement and process and not qualifying for administrative approval by the Planning Director shall only be approved by way of recommendation by the Commission and subsequent ratification of such recommendation by the Board;

(4) Contemplates that submittal requirements and the Commission-approval process may vary in scope, scale and intensity depending on the character and nature of the development;

(5) Identifies the criteria the Commission and Board shall apply in determining whether to grant approval to any proposed development; and

(6) Specifies the manner by which the Town shall determine whether certain uses not explicitly identified as permitted uses or special review uses in this Chapter should be allowed in particular zone districts.

(d) The development approval requirement and process described in this Article does not supplant, replace or nullify any other approval or permit requirement or process established in this Chapter or anywhere else in this Code.

#### Sec. 16-5-20. Applicability.

(a) Except as otherwise provided in this section, the development approval process described in and established by this Article shall apply to all development commenced or initiated after the effective date hereof.

(b) The following types and forms of development shall be exempt from the development approval process described in this Article:

(1) Development occurring wholly within the interior of a structure that does not result in any alteration or change to the exterior appearance of a building or structure;

(2) The commencement or initiation of a permitted use so long as the use does not (i) result in any alteration of or change to the exterior appearance of an existing structure, (ii) require



the erection, construction or location of a new structure other than an accessory structure or (iii) require more off-street parking spaces or loading areas than existing at the site at which the use will occur prior to commencement or initiation of the use;

(3) A change of use from one permitted use to another permitted use so long as the change of use does not (i) result in any alteration of or change to the exterior appearance of an existing structure, (ii) require the erection, construction or location of a new structure other than an accessory structure or (iii) require more off-street parking spaces or loading areas than existing at the site at which the use will occur prior to commencement or initiation of the changed use;

(4) The placement or erection of any sign or flag complying with the standards and requirements set forth in Article 9; and

(5) Erection, construction and location of accessory structures of less than 120 square feet of floor area so long as the accessory structure is not located within any structure or stream setback established by this Chapter.

(c) The proponent of development exempt from the development approval process pursuant to this section shall not be required to obtain the approval of the Planning Director, Commission or Board before initiating, commencing or undertaking such development. However, an exemption from the development approval process described in this Article shall not constitute an exemption from or waiver of any other ordinance, regulation, process or requirement established by this Chapter or Code.

#### **Sec. 16-5-30. Approval requirement.**

(a) No person shall commence, initiate or undertake any development without first obtaining approval for such development in accordance with the development approval process described in this Article unless such development is exempt pursuant to § 16-5-20.

(b) No building permit or other type of permit shall be issued by the Town until development is approved pursuant to this Article.

#### **Sec. 16-5-40. Administrative approval by Planning Director.**

(a) The Planning Director may administratively approve the types and forms of development described in subsection (b) pursuant to this section.

(b) The following types and forms of development may be administratively approved by the Planning Director:

(1) The installation, erection or placement of any structure for which a building permit is not required pursuant to this Code;

(2) Alterations or changes to the exterior appearance of any structure for which a building permit is not required pursuant to this Code;

(3) The replacement or reconstruction of any exterior element of a structure with materials similar in appearance, function or character so long as such replacement or reconstruction does not materially expand or enlarge the structure; and

(4) Construction of aboveground utility installations.

(c) The proponent of development qualifying for administrative approval by the Planning Director pursuant to this section shall submit an application to the Planning Director on a form to be provided by the Planning Director. The application shall include and be accompanied by such documents, maps, plans, specifications or materials as the Planning Director may require for adequate consideration of the application, determination whether the development qualifies for administrative approval pursuant to this section and determination whether the development shall be approved. The

application shall also be accompanied by any development approval application fee established by the Town and any fees required pursuant to § 16-3-80. The Planning Director may require the applicant to submit a survey of the site on which the development will occur dated no more than one year before the date of the application.

(d) Upon receipt of an application complying with subsection (c), the Planning Director shall promptly determine whether the development qualifies for administrative approval pursuant to this section. If it is determined that the development does not qualify for administrative approval pursuant to this section, the Planning Director shall, at the request of the applicant, refer the development to the Commission for approval or disapproval pursuant to § 16-5-50.

(e) If it is determined that a development qualifies for administrative approval, the Planning Director shall promptly (i) administratively approve the development, (ii) administratively approve the development subject to modifications or conditions or (iii) deny administrative approval of the development, in which case the Planning Director shall, at the request of the applicant, refer the development to the Commission for approval or disapproval pursuant to § 16-5-50.

(f) The Planning Director shall give notice of any determination or decision made pursuant to this section to the applicant as soon as reasonably practicable after the determination or decision is made.

(g) The proponent of any development administratively approved pursuant to this section may commence, initiate or undertake the development, as approved and subject to any conditions imposed by the Planning Director, after obtaining such approval so long as the proponent has obtained all other approvals and permits required by this Chapter and Code.

#### **Sec. 16-5-50. Approval by Planning and Zoning Commission.**

(a) All development not exempt pursuant to § 16-5-20 and not administratively approved by the Planning Director pursuant to § 16-5-40 shall be approved pursuant to this section and § 16-5-60.

(b) The proponent of development subject to this section shall submit an application for development approval to the Commission on a form to be provided by the Planning Director. The application shall include and be accompanied by:

(1) The name and address of the owner of the site at which the development will occur and/or applicant and a statement that the applicant, if not the owner, has the permission of the owner to make the application and undertake the development;

(2) The legal description, street address and other identifying information for the site at which the development will occur;

(3) A survey of the site at which the development will occur dated no more than one year before the application is made;

(4) A general description of the development; and

(5) Any development approval application fee established by the Town and any fees required pursuant to § 16-3-80, which development approval application fee shall be nonrefundable.

(c) At the discretion of the applicant, the application may also include and be accompanied by such additional documents, maps, plans and other materials as the applicant deems necessary for the Commission to review, consider and evaluate the development pursuant to the criteria described in § 16-5-70, including, but not limited to:

(1) A detailed description of the development;

(2) A site plan showing existing and proposed features on the site pertinent to the development, including site boundaries, required structure setbacks, existing and proposed structure locations, site topography and physical features, off-street parking spaces and loading areas, snow storage areas, traffic circulation, areas devoted to landscaping, utilities, drainage features and stream setbacks;

(3) Scaled plans, elevations and perspective drawings sufficient to indicate the dimensions and interior plans of any structure that will be constructed, reconstructed, altered or expanded as part of the development;

(4) Materials samples or detailed descriptions of the materials to be used in connection with the development; and

(5) Such additional materials as the applicant deems necessary for adequate review of the application and development by the Commission.

(d) Upon receipt of an application for development approval complying with subsection (b), including payment of any required fees, and receipt of additional materials submitted by an applicant pursuant to subsection (c), if any, the Planning Director shall schedule a public hearing before the Commission for consideration of the application. The public hearing shall take place no more than 35 days after receipt of an application complying with subsection (b). The Planning Director shall give notice of the application and hearing to adjacent property owners at least 14 days before the hearing.

(e) At the hearing, the Commission shall determine whether the information submitted by the applicant pursuant to subsections (b) and (c) is sufficient to allow it to evaluate and apply the criteria set forth in § 16-5-70 and recommend approval or disapproval of the development. If it determines that the information submitted by the applicant is sufficient allow it to evaluate and apply the criteria set forth in § 16-5-70, it shall proceed to issue a recommendation pursuant to § 16-5-60. If it determines that additional information is needed from the applicant in order to evaluate and apply the criteria set forth in § 16-5-70, it shall continue the hearing and request that the applicant provide such additional materials and information to allow it to evaluate and apply the criteria set forth in § 16-5-70. In conjunction with such a request, the Commission may preliminarily or conceptually approve the development, may propose such modifications or conditions on the development and otherwise provide such guidance to the applicant as it deems appropriate. At a continued hearing pursuant to this subsection, the Commission shall proceed in accordance with this subsection.

#### **Sec. 16-5-60. Planning and Zoning Commission recommendation.**

(a) At the conclusion of the public hearing for consideration of an application for development approval, as continued pursuant to § 16-5-50(e), the Commission shall issues a recommendation to (i) approve the development, (ii) approve the development subject to modifications or conditions or (iii) deny approval of the development.

(b) The Planning Director shall give notice of the recommendation to the applicant no more than 14 days after it is issued.

(c) The Planning Director shall forward the recommendation to the Administrator as soon as reasonably practicable after it is issued, whereupon the recommendation shall be taken up by the Board in accordance with § 16-3-50.

#### **Sec. 16-5-70. Criteria.**

(a) The Commission shall not recommend the approval of any development:

(1) That does not satisfy and comply with the development standards and requirements established in Article 6 of this Chapter unless the applicant obtains a variance from such standards and requirements pursuant to Article 12 of this Chapter;

(2) For a use identified as a special review use in Article 6 of this Chapter unless the applicant obtains a special review use permit pursuant to Article 7 of this Chapter;

(3) For a use that is not a permitted use or special review use in the zone district in which the development will occur unless it determined that the use is sufficiently similar to permitted uses or special review uses in the applicable zone district and is consistent with the intent of the applicable zone district pursuant to § 16-5-80;

(4) That does not satisfy the off-street parking space and loading area standards and requirements set forth in Article 8 of this Chapter unless the applicant obtains a variance from such standards and requirements pursuant to Article 12 of this Chapter;

(5) That will include the placement or location of signs contrary to the sign standards and requirements set forth in Article 9 of this Chapter unless the applicant obtains a variance from such standards and requirements pursuant to Article 12 of this Chapter;

(6) Subject to the flood damage prevention standards and requirement set forth in Article 10 of this Chapter unless the applicant obtains a floodplain development permit pursuant to Article 10 or obtains a variance from such standards and requirements pursuant to Article 12 of this Chapter;

(7) For which an environmental impact report is required pursuant to Article 11 of this Chapter until the applicant submits a environmental impact report satisfying the requirements of Article 11 of this Chapter; or

(8) That is contrary to the standards and requirements governing nonconforming uses, nonconforming structures and nonconforming uses of structures set forth in Article 13 of this Chapter unless the applicant obtains a variance from such standards and requirements pursuant to Article 12 of this Chapter.

(b) In considering whether to recommend approval of any development, the Commission shall consider and evaluate:

(1) Any environmental impact statement submitted by the applicant pursuant to Article 11 of this Chapter;

(2) The degree to which the development conforms to the evolving character of the community and the zone district in which it will occur;

(3) The degree to which the development is consistent with the policy and planning objectives identified in the Comprehensive Plan;

(4) The degree to which the development is consistent with any applicable design guidelines adopted by the Town; and

(5) Such other factors as the Commission deems applicable to the development.

#### **Sec. 16-5-80. Determination of similar uses.**

(a) Article 6 of this Chapter identifies various uses as permitted uses and special review uses in each zone district. Article 6 further specifies that additional uses determined to be similar to permitted uses or special review uses and consistent with the intent of each zone district shall be deemed to be permitted special review uses. This section is intended to establish the process by which it shall be determined whether a use is sufficiently similar to identified permitted uses or special review uses to allow it to be deemed a permitted special review use.

(b) The Commission shall determine whether a use not explicitly identified as a permitted use or special review use is sufficiently similar to identified permitted uses or special review uses so as to be deemed a permitted special review use. The procedure described in this section shall not be substituted for the Code-revision-by-ordinance procedure as a means of adding new uses to the list of permitted uses or special review uses but shall be followed to determine whether the characteristics of a particular use not explicitly identified in Article 6 of this Chapter are sufficiently similar to certain classes of permitted uses or special review uses to justify a determination that the use should be deemed a permitted special review use.

(c) Upon the written request of the Planning Director, Board or any person, the Commission shall review the characteristics of a proposed use and evaluate the degree to which it is similar to permitted uses or special review uses in the applicable zone district and consistent with the intent of the applicable zone district and the degree to which it is not similar to the permitted uses or special review uses in the applicable zone district or inconsistent with the intent of the applicable zone district. Based on this evaluation, the Commission shall determine whether the proposed use shall be deemed a permitted special review use.

(d) Any use determined by the Commission to be sufficiently similar to permitted uses or special review uses in the applicable zone district and consistent with the intent of the applicable zone district shall be deemed a permitted special review use, subject to the same standards and requirements as other permitted special review uses in the applicable zone district.

(e) A determination by the Commission that a use is sufficiently similar to permitted uses or special review uses and consistent with the intent of the applicable zone district so as to be deemed a permitted special review use shall not relieve the proponent of such use from the requirement to obtain a special review use permit pursuant to Article 7.

## ARTICLE 6

### Development Standards and Requirements

#### Sec. 16-6-10. Purpose.

The purpose of this Article is to set forth the standards and requirements applicable to development within the Town and identify the uses that shall be permitted as of right and permitted as special review uses within the Town. Except as otherwise set forth in this Chapter, all development in the Town shall satisfy and comply with the standards and requirements set forth in this Article.

#### Sec. 16-6-20. General standards and requirements applicable to all development.

(a) All development shall satisfy and comply with the development standards and requirements set forth in this Article for the zone district in which it will occur.

(b) No person shall engage in a use unless it is a permitted use in the zone district in which it will occur or the proponent of the use obtains a special review use permit pursuant to Article 7. Any use not specially permitted in a zone district, permitted as a special review use in a zone district or determined to be similar to a permitted use or permitted special review use in a zone district in accordance with § 16-5-80 shall not be permitted in the zone district.

(c) Where applicable, all development shall satisfy and comply with the standards and requirements set forth in:

- (1) Article 7, pertaining to special review uses;
- (2) Article 8, pertaining to required off-street parking spaces and loading areas;
- (3) Article 9, pertaining to signs;
- (4) Article 10, pertaining to flood damage prevention;
- (5) Article 11, pertaining to environmental impact reports; and
- (6) Article 13, pertaining to nonconforming uses and structures.

#### Sec. 16-6-30. Snow Storage.

(a) Development that will result in an increase in or addition to the total impermeable surface area used for a purpose other than aboveground construction on the site at which development will occur shall satisfy and comply with the following requirements:

- (1) An area equal to at least 20% of the impermeable surface area used for a purpose other than aboveground construction that will exist on the site at the conclusion of development shall be designated as a snow storage area;
- (2) Areas designated as a snow storage areas shall not be used or developed in a manner inconsistent with its use as a snow storage area;
- (3) Areas devoted to landscaping may be designated as snow storage areas;
- (4) No area that will be used to satisfy the off-street parking space and loading area requirements of Article 8 shall be designated as a snow storage area; and
- (5) Areas designated as snow storage areas shall be located, designed and constructed in such a manner so as to avoid negatively impacting adjacent properties, sidewalks and public rights-of-way from runoff.

(b) The proponent of development that will result in an increase in or addition to the total impermeable surface area used for a purpose other than aboveground construction on the site at which development will occur may satisfy the snow storage requirements established by this section by installing an adequate and appropriate on-site snow melt system which system shall be permanently and continually maintained in a good and working condition.

(c) The proponent of development that will result in an increase in or addition to the total impermeable surface area used for a purpose other than aboveground construction on the site at which development will occur may satisfy the snow storage requirements established by this section by making arrangements for removal of snow from the site to a suitable off-site location which arrangements shall be permanently and continually maintained.

(d) A person who satisfies the snow storage requirements established by this section pursuant to subsections (b) or (c) but fails to permanently and continually maintain an on-site snow melt system or arrangements for off-site snow-storage and fails to designate an on-site snow storage area complying with subsection (a) shall be deemed to be in violation of this Chapter.

**Sec. 16-6-40. Stream Setbacks.**

(a) No development shall occur within 10 horizontal feet of the mean annual high water mark of any live stream. Accordingly, the mean annual high water mark shall be identified by a licensed professional surveyor on all surveys, plats and plans required under this Chapter.

(b) The prohibition on development set forth in subsection (a) shall not apply to footpaths, bridges, areas devoted to landscaping, irrigation structures and flood-control and erosion-protection devices.

(c) The requirements of this section are in addition to and not in lieu of any requirements and restrictions established in Article 10, pertaining to flood damage protection.

(d) The requirements of this section are in addition to and not in lieu of any county, state or federal regulations, restrictions, ordinances or guidelines prohibiting development at, in or near waterways, floodplains or wetlands.

**Sec. 16-6-50. Accessory building and structures.**

(a) Accessory structures shall be allowed in all zone districts so long as such accessory structures are not built, constructed or located in any structure or stream setback.

(b) Construction trailers shall be allowed in all zone districts during the course of construction of any structure or improvement.

**Sec. 16-6-60. Mobile homes.**

Mobile homes shall not be allowed in any zone district.

**Sec. 16-6-70. Relief.**

Relief from any of the development standards and requirements set forth in this Article shall be by way of and in accordance with the variance procedure described in Article 12.

**Sec. 16-6-80. Use and development standards in Industrial and Commercial zone district.**

(a) The following uses shall be permitted in the IC zone district:

- (1) Warehouses;

- (2) Laboratories;
- (3) Electrical substations;
- (4) Manufacturing plants;
- (5) Wholesales sales outlets;
- (6) Showrooms;
- (7) Industrial, construction and wholesale offices; and
- (8) Self-storage facilities.

(b) The following uses shall be permitted in the IC zone district as special review uses:

- (1) Vehicle sales and repair shops;
- (2) Retail and commercial business establishments;
- (3) Drinking and dining establishments;
- (4) Outside storage areas;
- (5) Offices, personal service shops and medicals clinics;
- (6) Marijuana establishments; and
- (7) Additional uses determined to be similar to uses permitted in the zone district or permitted as special review uses in the zone district and consistent with the intent of the zone district.

(c) All development in the IC zone district shall satisfy and comply with the following requirements:

- (1) Maximum structure height: 35 feet
- (2) Minimum structure setbacks:
  - (i) Front: 5 feet
  - (ii) Side: 5 feet
  - (iii) Rear: 10 feet
- (3) Maximum site coverage: 50%
- (4) Minimum site area devoted to landscaping: 20%

**Sec. 16-6-90. Use and development standards in Mixed Use / Town Center zone district.**

(a) The following uses shall be permitted in the MU/TC zone district:

- (1) Multi-family dwellings, except timeshare-ownership multi-family dwellings;
- (2) Lodging, except bed and breakfasts;
- (3) Offices and personal service shops;
- (4) Medical clinics;
- (5) Financial institutions without drive-through windows or facilities;
- (6) Retail and commercial business establishments;
- (7) Drinking and dining establishments without drive-through windows or facilities;
- (8) Indoor and outdoor recreation and entertainment facilities; and
- (9) Places of worship.



- (b) The following uses shall be permitted in the MU/TC zone district as special review uses:
- (1) Single-family dwellings and duplex dwellings;
  - (2) One accessory apartment per single-family dwelling or duplex dwelling;
  - (3) Timeshare-ownership multi-family dwellings;
  - (4) Bed and breakfasts;
  - (5) Financial institutions with drive-through windows or facilities;
  - (6) Drinking and dining establishments with drive-through windows or facilities;
  - (7) Public transportation and parking facilities;
  - (8) Light-industrial occupations;
  - (9) Hospitals;
  - (10) Mechanized recreational vehicle rental businesses;
  - (11) Marijuana establishments; and
  - (12) Additional uses determined to be similar to uses permitted in the zone district or permitted as special review uses in the zone district and consistent with the intent of the zone district.

(c) All development in the MU/TC zone district shall satisfy and comply with the following requirements:

- (1) Maximum structure height: 40 feet
- (2) Minimum structure setbacks:
  - (i) Front: 0 feet, provided adequate accommodation for sidewalks is provided, otherwise 5 feet
  - (ii) Side: 0 feet, provided the structure holds snow on its roof, otherwise 5 feet
  - (iii) Rear: 0 feet
- (3) Maximum site coverage: 90%
- (4) Minimum site area devoted to landscaping: 10%

**Sec. 16-6-100. Use and development standards in Mixed Use / Neighborhood Commercial zone district.**

- (a) The following uses shall be permitted in the MU/NC zone district:
- (1) Dwellings;
  - (2) Offices and personal service shops;
  - (3) Medical clinics;
  - (4) Financial institutions without drive-through windows or facilities;
  - (5) Home occupations, excluding child daycare homes and animal daycare homes;
  - (6) Retail and commercial business establishments; and
  - (7) Places of worship.
- (b) The following uses shall be permitted in the MU/NC zone district as special review uses:
- (1) One accessory apartment per single-family dwelling or duplex dwelling;

- (2) Lodging;
- (3) Child daycare homes and animal daycare homes
- (4) Drinking and dining establishments;
- (5) Light-industrial occupations;
- (6) Keeping chickens, in accordance with § 7-6-40; and
- (7) Additional uses determined to be similar to uses permitted in the zone district or permitted as special review uses in the zone district and consistent with the intent of the zone district.

(d) All development in the MU/NC zone district shall satisfy and comply with the following requirements:

- (1) Maximum structure height: 35 feet
- (2) Minimum structure setbacks:
  - (i) Front: 5 feet
  - (ii) Side: 5 feet
  - (iii) Rear: 10 feet
- (3) Maximum site coverage: 50%
- (4) Minimum site area devoted to landscaping: 20%

**Sec. 16-6-110. Use and development standards in Residential zone district.**

(a) The following uses shall be permitted in the R-1 zone district:

- (1) Single-family dwellings and duplex dwellings;
- (2) One accessory apartment per single-family dwelling or duplex dwelling; and
- (3) Home occupations, excluding child daycare homes and animal daycare homes;

(b) The following uses shall be permitted in the R-1 zone district as special review uses:

- (1) Multi-family dwellings;
- (2) Bed and breakfasts;
- (3) Child daycare homes and animal daycare homes;
- (4) Keeping chickens, in accordance with § 7-6-40;
- (5) Places of worship; and
- (6) Additional uses determined to be similar to uses permitted in the zone district or permitted as special review uses in the zone district and consistent with the intent of the zone district.

(c) All development in the R-1 zone district shall satisfy and comply with the following requirements:

- (1) Maximum structure height: 35 feet
- (2) Minimum structure setbacks:
  - (i) Front: 5 feet
  - (ii) Side: 5 feet
  - (iii) Rear: 10 feet

- (3) Maximum site coverage: 50%
- (4) Minimum site area devoted to landscaping: 25%

**Sec. 16-6-120. Use and development standards in Cemetery / Open Space and Parks / Open Space zone districts.**

- (a) The following uses shall be permitted in the C/OS and P/OS zone districts:
  - (1) Dams, small lakes and ponds;
  - (2) Municipal parks and cemeteries;
  - (3) Outdoor recreation facilities, including equestrian, pedestrian and bicycle paths and trails;
  - (4) Erosion protection structures and screening; and
  - (5) Landscaping screening.
- (c) The following uses shall be permitted in the C/OS and P/OS zone districts as special review uses:
  - (1) Water storage tanks and facilities;
  - (2) Horse corrals, barns and livery operations;
  - (3) Agriculture; and
  - (4) Additional uses determined to be similar to uses permitted in the zone districts or permitted as special review uses in the zone districts and consistent with the intent of the zone districts.
- (c) All development in the C/OS and P/OS zone districts shall satisfy and comply with the following requirements:
  - (1) Maximum structure height: 35 feet
  - (2) Minimum structure setbacks:
    - (i) Front: 5 feet
    - (ii) Side: 5 feet
    - (iii) Rear: 10 feet
  - (3) Maximum site coverage: 25%
  - (4) Minimum site area devoted to landscaping: 75%

**Sec. 16-6-130. Use and development standards in Public Facilities / Office Complex zone district.**

- (a) The following uses shall be permitted in the PF/OC zone district:
  - (1) All buildings and structures for governmental uses;
  - (2) Communication sites and facilities;
  - (3) Parks and recreation areas;
  - (3) Transportation facilities;
  - (4) Schools;
  - (5) Fire, water and wastewater facilities;

- (6) Public parking lots;
  - (7) Heliports for governmental and emergency uses;
  - (8) Outdoor recreation facilities, including equestrian, pedestrian and bicycle paths and trails;
  - (9) Railroads;
  - (10) Access ways, including roads; and
  - (11) Publicly-owned dwellings exclusively for persons employed in Eagle County.
- (b) The following uses shall be permitted in the PF/OC zone district as special review uses:
- (1) Public assembly facilities;
  - (2) Residential units for the efficient operation of public assembly facilities;
  - (3) Privately-owned dwelling for persons employed in Eagle County; and
  - (4) Additional uses determined to be similar to uses permitted in the zone district or permitted as special review uses in the zone district and consistent with the intent of the zone district.
- (c) All development in the PF/OC zone district shall satisfy and comply with the following requirements:
- (1) Maximum structure height: 35 feet
  - (2) Minimum structure setbacks:
    - (i) Front: 5 feet
    - (ii) Side: 5 feet
    - (iii) Rear: 5 feet
  - (3) Maximum site coverage: 50%
  - (4) Minimum site area devoted to landscaping: 25%

**Sec. 16-6-140. Planned Unit Development (PUD) zone district.**

(a) *Purpose and Intent.* The Planned Unit Development (PUD) zone district is an overlay zone district intended to provide for flexibility and creativity in development in order to promote appropriate and efficient uses of land in a manner not otherwise allowed by this Chapter. PUD zone districts as contemplated by this section are intended to foster and allow for development more beneficial to the Town than development that complies with the specific standards and requirements applicable to the Town's other zone districts. The designation of land as a PUD zone district and development in a zone district so designated shall only occur in accordance with a plan for the PUD approved pursuant to this section.

(b) *Preliminary Development Plan.* The proponent of a PUD may initiate the PUD approval process by submission of a preliminary development plan (PDP) to the Commission. Submission of a PDP is not required for approval of a PUD and the proponent of a PUD may proceed directly to submission of a final development plan (FDP) to the Commission. Approval of a PDP pursuant to this section shall not result in creation of any vested property rights and shall not constitute approval of any development within the PUD.

(c) *Contents of PDP.* A PDP shall include:

- (1) A site plan generally describing the uses and within the PUD, the locations and sizes of all existing and proposed structures within the PUD, the locations and dimensions of all streets,

rights-of-way, drives, parking areas and pedestrian ways within the PUD, the locations of lot lines within the PUD, the locations of parks, open spaces and other areas dedicated to public use within the PUD, the locations of existing forested or uniquely vegetated areas to remain within the PUD, the locations of significant natural, environmental, historical, archaeological or paleontological features within the PUD and the locations and types of landscaping to be included within the PUD.

(2) A written statement describing the character of and development concept for the PUD and showing the total building, paved, open space and landscape coverage within the PUD.

(3) A PDP shall be accompanied by any PDP review fee established by the Town and any fee required pursuant to § 16-3-80. PDP review fees shall be nonrefundable.

(d) *Review and Approval of PDP.* Upon receipt of a PDP complying with subsection (c), including payment of any required fees, the Planning Director shall schedule a public hearing before the Commission for consideration of the PDP. The public hearing shall take place no more than 35 days after receipt of PDP complying with subsection (c). The Planning Director shall give notice of the PDP and hearing to adjacent property owners at least 14 days before the hearing. At the conclusion of the hearing for consideration of the PDP, the Commission shall issue a recommendation to (i) approve the PDP, (ii) approve the PDP subject to modifications or conditions or (iii) deny the PDP. The Planning Director shall provide notice of the Commission's recommendation with respect to the PDP to the proponent of the PDP no more than 14 days after the recommendation is issued. The Planning Director shall forward the Commission's recommendation with respect to the PDP to the Administrator as soon as reasonably practicable after the recommendation is issued, whereupon the PDP shall be acted upon by the Board in accordance with § 16-3-50.

(e) *Final Development Plan.* Approval of a FDP in accordance with this section is required before the commencement of any development within a PUD. An FDP may be approved with modifications or conditions. The FDP, with such modifications and conditions as may be imposed upon approval, is intended to comprehensively establish all regulations, standards and requirements that shall be applicable to development within the PUD. Approval of a FDP shall constitute approval of a "site specific development plan" as that phrase is defined in Article 14.

(f) *Contents of FDP.* A FDP shall include:

(1) A site plan containing the following:

(i) A title block, scale, north arrow(s) and vicinity map, drawn to scale and inclusive of topography at 10 foot intervals;

(ii) Identification of the owner of the property within the PUD and the developer of the PUD if different from the owner of the property within the PUD;

(iii) Uses within the PUD and their respective sizes or acreage;

(iv) The locations, dimensions and surfacing of all existing and proposed streets, rights-of-way, drives, parking areas, pedestrian ways, service areas, outdoor storage areas and easements within the PUD;

(v) The location of all existing and proposed points of ingress and egress to and from the PUD;

(vi) The locations and dimensions of all lot lines, structure setbacks, parks, open spaces and other areas dedicated for public use within the PUD;

(vii) The location, height and size of all lighting, signs, advertising devices and mailboxes within the PUD;

(viii) The locations, dimensions and heights of all structures within the PUD;

- (ix) The locations of all utilities within the PUD; and
  - (x) A delineation of all floodplains and floodways within the PUD.
- (2) An environmental site plan containing the following:
- (i) The locations of all forested or uniquely vegetated areas that will remain within the PUD after development;
  - (ii) The location of existing wildlife habitat and wildlife migration routes within the PUD; and
  - (iii) The location of significant natural, environmental, historical, archaeological or paleontological features within the PUD.
- (3) A grading plan drawn to scale and showing existing and proposed grades at 2 foot intervals;
- (4) A landscape plan showing the spacing, sizes and specific types of landscaping materials to be used in the PUD;
- (5) Architectural elevations for all buildings and structures within the PUD;
- (6) Cross-sections of all building and structures within the PUD;
- (7) Utility plans for all utility and drainage features within the PUD, showing necessary easements and including water, wastewater, storm water, gas, electrical and telephone utilities;
- (8) Transportation plans;
- (9) A soils report;
- (10) A traffic study;
- (11) A written statement containing the following:
- (i) The title block, legal description, submittal date, identification of present ownership, identification of the developer if different than the owner and identification of technical consultants;
  - (ii) A description of the character of and development concept for the PUD;
  - (iii) A land use table showing building coverage and square footage and providing the percentage of paved, open space and landscaped areas in relation to the gross area of the PUD;
  - (iv) A statement of assessment and mitigation for the preservation or special treatment of significant natural, environmental, historical, archaeological or paleontological features in the PUD;
  - (v) A description of any agreements, conveyances, restrictions or covenants that will govern the use, maintenance and continued protection of the PUD and any of its parks, open spaces and common areas;
  - (vi) A development schedule setting forth the timing and phasing, if any, for development of the PUD; and
  - (vii) A description of signs and lighting devices, indicating type, size, material and color.
- (12) A FDP shall be accompanied by any FDP review fee established by the Town and any fee required pursuant to § 16-3-80. FDP review fees shall be nonrefundable.
- (g) *Review and Approval of FDPs.* Upon receipt of a FDP complying with subsection (f), including payment of any required fees, the Planning Director shall schedule a public hearing before the

Commission for consideration of the FDP. The public hearing shall take place no more than 35 days after receipt of an FDP complying with subsection (f). The Planning Director shall give notice of the FDP and hearing to adjacent property owners at least 14 days before the hearing. At the conclusion of the hearing for consideration of the FDP, the Commission shall issue a recommendation to (i) approve the FDP, (ii) approve the FDP subject to modifications or conditions or (iii) deny the FDP. The Planning Director shall provide notice of the Commission's recommendation with respect to the FDP to the proponent of the PUD no more than 14 days after the recommendation is issued. The Planning Director shall forward the Commission's recommendation with respect to the FDP to the Administrator as soon as reasonably practicable after the recommendation is issued, whereupon the FDP shall be acted upon by the Board in accordance with § 16-3-50.

(h) *Criteria for Approval of PDPs and FDPs.* The Commission and Board shall assess and consider the following factors in evaluating a PDP or FDP for approval:

- (1) The PUD's compatibility with present development in the surrounding area;
- (2) The PUD's impact on surrounding areas, Town infrastructure and Town services;
- (3) The PUD's consistency with public health, safety and welfare;
- (4) The degree to which the PUD will result in the efficient use of the land and resources within the PUD;
- (5) The PUD's consistency with the overall direction and intent of this Chapter, the Comprehensive Plan and prevailing development and planning objectives;
- (6) The degree to which the PUD provides for creative and innovative design not otherwise achievable in other zone districts;
- (7) Whether exceptions to the standards and requirements otherwise applicable to development proposed for the PUD are warranted by virtue of innovative designs and amenities incorporated in the PUD;
- (8) The adequacy of public roads, traffic circulation and pedestrian circulation provided for within the PUD;
- (9) The functionality of open space provided for within the PUD in terms of practical usability and accessibility;
- (10) The degree to which the PUD optimizes preservation of natural features and resources, including trees and drainage areas, recreation areas, views, natural stream courses, bodies of water and wetlands, within the PUD;
- (11) The variety of dwelling types, sizes, densities and affordability provided for within the PUD;
- (12) The degree to which the PUD provides for safe, convenient, accessible and attractive pedestrian traffic and circulation;
- (13) The appropriateness of building types within the PUD in terms of density, size relationship and bulk;
- (14) The suitability of building design within the PUD in terms of orientation, spacing, materials, color and texture;
- (15) The suitability of landscaping to be provided within the PUD in terms of screening, types and materials to be used, maintenance suitability and water demands;
- (16) The availability of services for the PUD, including utilities, water, wastewater collection and disposal and fire and police protection;
- (17) The existence and location of floodplains and floodways within the PUD; and

(18) The visual relief and variety of visual settings located within the PUD through building placement, shortened or interrupted street vistas and visual access to open space.

(i) *Control of Development.* After a FDP has been approved in accordance with this section, the use of land and the construction, modification or alteration of any buildings or structures within the PUD shall be governed by the FDP. The FDP shall constitute the zoning document for the PUD and govern all development within the PUD. The Commission may periodically compare the development accomplished within the PUD to any development schedule imposed as a condition to approval of the FDP. If the development accomplished fails to comply with or satisfy the development schedule, the Commission may recommend modification of the development schedule or revocation of the FDP approval.

(j) *Assurance of Completion.* In conjunction with the review and approval of a FDP, the Commission may recommend and the Board may require the proponent of the PUD to issue such guarantees to the Town as deemed necessary to assure completion of all on-site and off-site public improvements contemplated by the FDP. Such guarantees shall be in a form acceptable to the Town. Approval of a FDP may be conditioned upon the proponent of the PUD timely providing such guarantees. The failure of the proponent of a PUD to timely provide such guarantees when required shall constitute abandonment of the proposed PUD and void any approvals of a PDP or FDP under this section.

(k) *Lapse of FDP Approval.* If the proponent of a PUD does not begin and diligently work toward completion of the PUD or any stage of the PUD within any time limits for development imposed as a condition to approval of a FDP, the approval of the FDP shall become void and of no force or effect and any subsequent development on property within the PUD shall satisfy and comply with all standards and requirements set forth in this Chapter as if a PDP and/or FDP had never been approved.

(l) *Subdivision Approval.* A FDP shall not be approved unless and until the proponent of the PUD has obtained any necessary subdivision approvals pursuant to Chapter 17 of this Code.



## ARTICLE 7

### Special Review Uses

#### Sec. 16-7-10. Purpose.

This Article is intended to recognize that those uses identified as special review uses in Article 6 may or may not be appropriate in a zone district depending on the particular circumstances applicable to a proposed use, to allow the Town to review such uses prior to their commencement and to ensure that the location and operation of such uses shall be compatible with surrounding uses and prevailing planning and development objectives.

#### Sec. 16-7-20. Special review use permit.

(a) The proponent of a use identified as a special review use in Article 6 shall obtain a special review use permit prior to commencement of the use or commencement of construction of any structure related to the use.

(b) A use identified as a special review use in Article 6 shall not be considered a use by right until the proponent of the use obtains a special review use permit and shall not vest until the proponent of the use obtains approval for any development related to the use in accordance with this Chapter.

(c) A special review use permit issued pursuant to this Article may be revocable, issued for a limited period of time and/or issued subject to such modifications or conditions as the Commission or Board may impose.

#### Sec. 16-7-30. Application for special review use permit.

(a) An application for a special review use permit shall be made to the Commission on a form to be provided by the Planning Director. The form of application may vary depending on the nature of the special review use.

(b) An application for a special review use permit shall include and be accompanied by documents, maps, plans and other materials containing the following information:

(1) The name and address of the owner of the site at which the use will occur and/or applicant and a statement that the applicant, if not the owner, has the permission of the owner to make the application and engage in the use;

(2) The legal description, street address and other identifying information for the site at which the use will occur;

(3) A survey of the site at which the use will occur dated no more than one year before the date the application is made;

(4) A detailed description of the nature of the use, the operating characteristics of the use, proposed measures to make the use compatible with surrounding uses and proposed measures for ongoing maintenance of the use;

(5) A site plan showing existing and proposed features on the site pertinent to the special review use permit, including site boundaries, required structure setbacks, existing and proposed structure locations, site topography and physical features, off-street parking spaces and loading areas, snow storage areas, traffic circulation, areas devoted to landscaping, utilities, drainage features and stream setbacks;

(6) Scaled plans, elevations and perspective drawings sufficient to indicate the dimensions, appearance and interior plans of any structure at, on or in which the use will occur;

(7) A development schedule setting forth the date for commencement of the use and the anticipated rate at which the use will be developed; and

(8) Such additional materials as the Planning Director may require for adequate review of the application and use by the Commission.

(c) An application for a special review use permit shall be accompanied by any special review use permit application fee established by the Town and fee required pursuant to § 16-3-8. Special review use permit application fees may vary depending on the nature of the proposed special review use. Special review use permit application fees shall be nonrefundable.

**Sec. 16-7-40. Procedures upon application for special review use permit.**

(a) Upon receipt of an application for a special review use permit complying with § 16-7-30, including payment of any required fees, the Planning Director shall schedule a public hearing before the Commission for consideration of the application. The public hearing shall take place no more than 35 days after receipt of an application complying with § 16-5-30.

(b) The Planning Director shall give notice of the application and hearing to adjacent property owners at least 14 days before the hearing.

**Sec. 16-7-50. Planning and Zoning Commission recommendation.**

(a) At the conclusion of the hearing for consideration of an application for a special review use permit, the Commission shall issue a recommendation to (i) issue the permit, (ii) issue the permit subject to modifications or conditions or (iii) deny the permit.

(b) The Planning Director shall give notice of the recommendation to the applicant no more than 14 days after it is issued.

(c) The Planning Director shall forward the recommendation to the Administrator as soon as reasonably practicable after it is issued, whereupon the recommendation shall be taken up by the Board in accordance with § 16-3-50.

**Sec. 16-7-60. Criteria.**

In considering an application for a special review use permit, the Commission shall evaluate the following factors:

(a) The relationship to and impact of the use on prevailing planning and development objectives;

(b) The compatibility of the use with adjacent conforming uses;

(c) The effect of the use on traffic and parking;

(d) The effect of the use on the character of the area in which it will occur;

(e) The extent to which the use complies with other applicable requirements of this Code; and

(f) Such other factors as the Commission deems applicable to the use.

**Sec. 16-7-70. Conditions, expiration, duration and revocation.**

(a) In addition to any conditions imposed on a special review use permit pursuant to this Article, special review use permits shall be conditioned on the holder of the permit paying all fees, taxes and

finer due to the Town pursuant to this Code and otherwise complying with all other applicable requirements of this Code. A special review use permit shall not constitute a waiver of or exemption from any other procedure, standard or requirement set forth in this Code.

(b) Special review use permits issued in accordance with this Article shall lapse and become void if:

(1) Approval of any development related to the use and contemplated when the permit is issued is not obtained pursuant to this Chapter within one year of the date upon which the permit was issued;

(2) A building permit is not obtained for and development not commenced and diligently pursued on any structure at, on or in which the use will occur within one year of the date upon which the permit was issued;

(3) The use is not commenced within one year of the date upon which the permit was issued; and

(4) The use for which the permit was issued is discontinued for a period of one year.

(c) Except as otherwise provided in this Article, special review use permits shall remain valid so long as the holder of the permit conducts the use as approved, observes all conditions on such permit imposed pursuant to this Article and complies with the requirements of subsection (a).

(d) If the holder of a special review use permit fails to conduct the use as approved, observe all conditions on such permit imposed pursuant to this Article or comply with the requirements of subsection (a), the Board may revoke the permit after affording the holder an opportunity to be heard.

#### **Sec. 16-7-80. Changes to special review uses.**

(a) Upon written request of the holder of a special review use permit, the Planning Director may approve changes to an existing special review use permit, including, but not limited to, alterations and additions to structures at, on or in which the use occurs and modifications to the operating characteristics of the use, if the Planning Director determines that such changes are in accordance with prevailing planning and development objectives, do not alter the basic character and intent of the original special review use permit and shall not adversely affect the public health, safety and welfare.

(b) If the Planning Director determines that changes to an existing special review use permit requested by the holder do not satisfy the requirements of subsection (a), any changes to an existing special review use permit requested by the holder shall be addressed in accordance with the procedures described in §§ 16-7-40, 16-7-50 and 16-7-60 as if the holder had submitted an application for a permit for the changed special review use.

(c) Any change to a special review use permit approved in accordance with this section shall not constitute a waiver of or exemption from any other procedure, standard or requirement set forth in this Code.

#### **Sec. 16-7-90. Special review use permits for child day care homes and animal day care homes.**

(a) In addition to any other procedure, standard or requirement established by this Article, special review use permits for child day care homes and animal day care homes within a duplex dwelling or multi-family dwelling shall be subject to this section.

(b) In addition to the submittal requirements set forth in § 16-7-30, an applicant for a special review permit for a child day care home or animal day care home within a duplex dwelling shall also

submit proof that the owner of the other unit in the duplex dwelling has consented in writing to the operation of a child day care home or animal day care home where proposed by the applicant

(c) In addition to the submittal requirements set forth in § 16-5-30, an applicant for a special review use permit for a child day care home or animal day care home within a multi-family dwelling shall also submit proof that the owner of any unit sharing a common wall with the unit in which the use will occur has consented in writing to the operation of a child day care home or animal day care home where proposed by the applicant.

(d) Upon written notification that the written consent required by subsection (b) or (c) has been withdrawn, the Planning Director may ask the Board to consider revoking the special review use permit. If so requested, the Board shall decide whether to revoke the special review use permit based on the considerations set forth in § 16-7-60. A special review use permit shall not be revoked pursuant to this subsection solely because the written consent required in subsections (b) or (c) has been withdrawn. A special review use permit shall not be revoked pursuant to this subsection without affording the holder of the permit an opportunity to be heard.

**Sec. 16-7-100. Special review use permits for mechanized recreational vehicle rental businesses.**

(a) In addition to any other procedure, standard or requirement established by this Article, special review use permits for mechanized recreational vehicle rental business shall be subject to this section.

(b) Special review use permits for mechanized recreational vehicle rental businesses shall be subject to the following conditions:

(1) Except in the cases of emergency, permit holders shall not rent any mechanized recreational vehicle or allow any person to operate a rented mechanized recreational vehicle outside the hours of 8:00 a.m. to 5:00 p.m.;

(2) Permit holders shall clearly mark all mechanized recreational vehicles available for rent with an individualized badge, sticker or similar identifying mark sufficient to allow Town staff or members of the public to readily identify the vehicle as a rental vehicle and the permit holder to whom such vehicle belongs, which badge, sticker or similar identifying mark shall be approved by the Planning Director prior to commencement of the use;

(3) Permit holders shall not modify or alter mechanized recreational vehicles available for rent in such a way as to increase the normal operating decibel level of such vehicles above factory specifications

(4) Permit holders shall not rent any mechanized recreational vehicle which has a non-stock muffler, no muffler, a muffler which is not in good working order or a muffler which fails to prevent excessive or unusual noise or annoying smoke;

(5) Permit holders shall not rent any mechanized recreational vehicle with a tuned exhaust or racing engine not having a conventional exhaust;

(6) Permit holders shall cause the renters of rented mechanized recreational vehicles to operate the vehicles only on those streets, roads and pathways within the Town's boundaries designated to the permit holder by the Planning Director;

(7) Permit holders shall cause the renters of rented mechanized recreational vehicles to observe all applicable federal, state, and local rules, regulations, standards, statutes, and ordinances governing the use and operation of mechanized recreational vehicles while operating such vehicles within the Town's boundaries;

(8) Permit holders shall cause the renters of rented mechanized recreational vehicles to drive in a single-file line as near as safely possible to the right-hand side of the roadway, come to a complete stop at the intersection of every street whether or not such intersection is marked with a stop sign, signal all turns, yield the right-of-way to all other vehicular traffic, travel at no more than 15 miles per hour and keep headlight and taillights illuminated at all times while operating the vehicles within the Town's boundaries; and

(9) Permit holders shall be required to pay all mechanized recreational vehicle rental business special review use permit fees established by the Town or, in lieu of payment of such fees, provide such in-kind services to the Town as are determined and agreed to by the Planning Director.

(c) Special review use permits for mechanized recreational vehicle rental businesses shall be subject to annual review by the Commission to determine whether the holder of the permit has observed and adhered to all conditions on the permit imposed pursuant to this Article. Upon such annual review and after affording the holder of the permit an opportunity to be heard, the Commission may recommend (i) allowing the permit to continue as originally issued, (ii) the imposition of additional conditions on the permit, (iii) the imposition of fines for the holder's failure to adhere to any conditions on the permit and/or (iv) revocation the permit. The Commission shall not recommend revocation of a permit pursuant to this subsection if the holder has conducted the use as approved and observed all conditions on such permit. At the conclusion of such annual review, the Planning Director shall forward any recommendation issued by the Commission to the Administrator, whereupon the recommendation shall be taken up by the Board in accordance with § 16-3-50.

#### **Sec. 16-7-110. Special review use permits for marijuana establishments.**

(a) In addition to any other procedure, standard or requirement established by this Article, special review use permits for marijuana establishment shall be subject to this section.

(b) In addition to the notice required by § 16-7-40(b), notice of the time, place and subject matter of the hearing before the Commission for consideration of an application for a special review use permit for a marijuana establishment shall be (i) posted at the office of the Town Clerk at least 14 days before the hearing, (ii) posted in a conspicuous location on the site at which the use will occur at least 14 days before the hearing, (iii) posted in at least three public places within the Town at least 14 days before the hearing date and (iv) published once in the Town's newspaper of record at least 14 days before the hearing.

(c) In addition to the criteria it is to evaluate pursuant to § 16-7-60, the Commission shall also evaluate the following criteria when considering an application for a special review use permit for a marijuana establishment:

(1) The number, type and location of existing marijuana establishments in the Town;

(2) Whether granting the permit will result in greater density of marijuana establishments in the Town than reasonable and appropriate; and

(3) Whether granting the permit will be contrary to the public health, safety and welfare of the Town and its inhabitants.

(d) Special review use permits for marijuana establishments shall not be transferrable or assignable. If the holder of a special review use permit for a marijuana establishment transfers ownership of the marijuana establishment, the transferee shall be required to obtain a new special review use permit in accordance with this Article. If the holder of a special review use permit for a marijuana establishment changes, alters or modifies the marijuana establishment in such a way as to require prior approval from the State of Colorado pursuant to the Colorado Retail Marijuana Code, the holder shall be required to obtain a new special review use permit in accordance with this Article.

(e) Special review use permits for marijuana establishments are subject to the following conditions:

(1) Marijuana establishments shall be operated in all respects in strict compliance with the Colorado Retail Marijuana Code;

(2) Marijuana establishments shall be subject to and comply with all applicable Town ordinances and regulations;

(3) No marijuana establishments shall sell, serve, distribute or initiate the transport of marijuana, marijuana accessories or marijuana products at any time other than between the hours of 10:00 a.m. and 7:00 p.m.;

(4) All marijuana establishments shall be equipped with a ventilation system that filters out the odor of marijuana so that the odor is not capable of detection by a person with a normal sense of smell at the exterior of the site on which the marijuana establishment is located;

(5) All marijuana establishments shall operate from a permanent and fixed location;

(6) No marijuana establishment shall operate from a vehicle or other moveable location;  
and

(7) All marijuana establishments shall have staff members present during its hours of operation and no vending machine or other unsupervised transactions shall be permitted.

(f) Special review use permits for a marijuana establishment shall be subject to annual review by the Commission to determine whether the holder of the permit has observed and adhered to all conditions on the permit imposed pursuant to this Article. Upon such annual review and after affording the holder of the permit an opportunity to be heard, the Commission may recommend (i) allowing the permit to continue as originally issued, (ii) the imposition of additional conditions on the permit, (iii) the imposition of fines for the holder's failure to observe any conditions on the permit, and/or (iv) revocation of the permit. The Commission shall not recommend revocation of a permit pursuant to this subsection if the holder has conducted the use as approved and observed all conditions on such permit. At the conclusion of such annual review, the Planning Director shall forward any recommendation issued by the Commission to the Administrator, whereupon the recommendation shall be taken up by the Board in accordance with § 16-3-50.

## ARTICLE 8

### Off-Street Parking and Loading

#### Sec. 16-8-10. Purpose and Intent.

(a) This Article establishes minimum standards for the provision of off-street parking spaces and loading areas in conjunction with uses permitted by this Chapter.

(b) This Article is intended to:

(1) Ensure that uses permitted by this Chapter are served by an adequate supply of well-planned and well-designed off-street parking spaces and loadings areas;

(2) Ensure that the proponent of a use permitted by this Chapter provides sufficient off-street parking spaces and loading areas for the use; and

(3) Provide for attractive, convenient and efficient off-street parking and loading areas with sufficient space for fire lanes, maneuvering and public safety.

#### Sec. 16-8-20. Required off-street parking spaces for residential uses.

The following Table 16-8-20 sets forth the required number of off-street parking spaces to be provided for residential uses:

**TABLE 16-8-20**  
**Minimum Number of Off-Street Parking Spaces for Residential Uses**

Use	Required Off-Street Parking Spaces
Single-Family and Duplex Dwellings	2 spaces per dwelling unit with 3 bedrooms or less 3 spaces per dwelling unit with 4 bedrooms 1 space per additional bedroom above 4 for dwelling units with more than 4 bedrooms
Accessory Apartments	1 space per dwelling unit
Multi-Family Dwellings	1 space per studio and 1 bedroom dwelling unit 2 spaces per dwelling unit for all others 1 guest space per 3 dwelling units
Any Other Residential Use	See § 16-8-50

#### Sec. 16-8-30. Required off-street parking spaces for nonresidential uses.

The following Table 16-8-30 sets forth the required number of off-street parking spaces to be provided for nonresidential uses:

**TABLE 16-8-30  
Minimum Number of Off-Street Parking Spaces for Nonresidential Uses**

Use	Required Off-Street Parking Spaces
Lodging	1.25 spaces per accommodation unit 2 spaces per manager/caretaker quarters
Recreational and Entertainment Facilities	1 space per 250 square feet, excluding storage areas
Theatres and Places of Assembly and Worship	1 space per 4 seats
Offices, Professional Offices and Personal Service Shops	3 spaces per 1,000 square feet, excluding storage areas
Medical Offices and Clinics	5 spaces per 1,000 square feet, excluding storage areas
Hospitals	1 space per 2 beds 1 space per resident/doctor per shift 1 space per full-time or part-time employee per shift
Retail and Commercial Business Establishments	1 space per 250 square feet, excluding storage areas
Dining and Drinking Establishments	1 space per 5 people based on maximum occupancy
Any other Nonresidential Use	See § 16-8-50

**Sec. 16-8-40. Determination of area.**

Where the required number of off-street parking spaces is to be determined based on the square footage of a use, area shall be determined based on the gross floor space of the building area occupied by the use, measured from outside wall to outside wall.

**Sec. 16-8-50. Required off-street parking spaces for other uses.**

- (a) The required number of parking spaces for uses not specifically listed in this Article shall be determined by the Planning Director.
- (b) The Planning Director shall consider the following criteria in determining the required number of parking spaces for uses not specifically listed in this Article:
  - (1) The results of any parking studies, including vehicle occupancy studies, ordered by the Planning Director;
  - (2) Off-street parking space and loading area requirements for comparable uses listed in this Article;
  - (3) Off-street parking space and loading requirements for similar uses in comparable municipalities; and
  - (4) Whether suitable and adequate loading facilities and systems for the distribution and delivery of merchandise, materials or supplies exist.



**Sec. 16-8-60. General requirements for off-street parking spaces and loading areas.**

(a) Off-street parking spaces and loading areas shall have adequate access to a public street or alley sufficient to permit satisfactory ingress and egress of vehicles.

(b) Safe and efficient pedestrian circulation paths shall be provided between required off-street parking spaces and the use occurring on the site. Where feasible, pedestrian circulation paths shall connect to pedestrian circulation paths on adjacent sites.

(c) Off-street parking spaces shall not encroach on sidewalks, areas devoted to landscaping, areas designated for snow storage or applicable structure or stream setbacks.

(d) Off-street parking spaces shall be used only for parking operable passenger vehicles of residents, guests, customers, patrons and employees of the use for which they are required.

(e) Exterior off-street parking spaces shall not be used for:

(1) Storage or parking of inoperable vehicles;

(2) Storage of materials;

(3) Delivery vehicle or truck parking during business hours in off-street parking spaces required for non-residential uses;

(4) Displaying vehicles for sale in a parking space required for a nonresidential use except for the temporary display of a vehicle for sale by its owner when the owner is customer, patron or employee of the use for which the parking space is required;

(5) Maintenance or repair of a vehicle in a parking space required for a nonresidential use if the maintenance or repair renders the vehicle inoperable for a period of 24 hours or more; and

(6) Parking commercial vehicles or equipment in a parking space required for a residential use except for parking commercial vehicles used for a permitted home occupations and overnight parking of commercial vehicles used for commuting.

**Sec. 16-8-70. Location of required off-street parking spaces.**

(a) Off-street parking spaces shall be located:

(1) On the same site as the use for which the off-street parking spaces are required or located;

(2) On a different site in the same zone district so long as the different site is owned by the same person as the site for which the off-street parkings spaces are required;

(3) On a different site in the same zone district by arrangement with the owner of the different site so long as such arrangements are permanently and continually maintained.

(b) Any person who satisfies the off-street parking space requirements of this Article pursuant to subsections (a)(2) or (a)(3) but fails to permanently and continually maintain ownership of the different site or or arrangements for off-site parking and fails to provide required off-street parking spaces onsite shall be deemed to be in violation of this Chapter.

**Sec. 16-8-80. Design requirements for off-street parking spaces and loading areas.**

(a) Perpendicular and angled parking spaces shall be at least 9 feet wide and 18 feet long.

(b) Parallel parking spaces shall be at least 9 feet wide and 22 feet long.

(c) Handicap parking spaces shall be at least 8 feet wide and 18 feet long, with an adjacent striped aisle at least 5 feet wide.

- (d) Off-street loading areas shall be at least 10 feet wide and 35 feet long, with vertical clearances of at least 14 feet.
- (e) Handicap parking spaces shall be designated as such by a 12-inch-by-18-inch white-on-blue identification sign raised no higher than 7 feet from the surface of the parking space.
- (f) Tandem parking arrangements in which one vehicle is parked directly behind another shall be allowed only in valet parking lots in nonresidential areas and for residential uses.
- (g) Covered off-street parking spaces shall have vertical clearances of at least 7.5 feet.
- (h) Driveways and other features providing access to off-street parking spaces and loading areas shall be located, designed and constructed so as to safely and conveniently direct traffic to and from such off-street parking spaces and loading areas, minimize traffic congestion and protect pedestrian and vehicular traffic.
- (i) Driveways and curb cuts for driveways shall be no more than 20 feet wide where on-street parking is permitted.
- (j) Off-street parking spaces and loading areas shall be (i) graded for drainage, (ii) designed to direct run-off to an appropriate outlet, (iii) surfaced with concrete, asphalt or aggregate material, (iv) made of materials suitable to the uses to which the parking space will be put, (v) made of materials compatible with the character of surrounding uses and (vi) maintained in good condition. Off-street parking spaces and loading areas may include pavers designed with grass or plants located in pavers. All off-street parking spaces and loading areas shall be considered impermeable for the purposes of this Chapter no matter the actual surface.
- (k) All lights and lighting fixtures used to illuminate off-street parking spaces and loading areas, driveways and maneuvering areas (i) shall be so designed, arranged and screened so that the source of lighting shall not be directly visible from any point on adjacent sites or streets, (ii) shall be directed away from adjacent streets or residential uses, (iii) shall not be of an intensity that unreasonably disturbs adjacent streets or residential uses, (iv) shall not be installed above a maximum height of 15 feet and (v) shall be energy efficient.
- (l) At least 5% of the total area of any off-street parking area containing more than 6 parking spaces shall be landscaped in a manner that blends in compatibly with adjacent existing or proposed uses and developments. Any off-street parking area containing more than 30 parking spaces shall be divided with islands containing landscaping. Any landscaping required by this subparagraph shall be evenly distributed throughout the off-street parking area. Landscaping located outside the perimeter of the off-street parking area shall not be included in calculating the total area of an off-street parking area devoted to landscaping.
- (m) Off-street parking spaces shall be marked and signed so as to ensure efficient utilization of space, promote appropriate traffic patterns and foster general safety.
- (n) Permanent curbs, bumpers, wheel stops or similar devices shall be installed where necessary so as to protect public rights-of-way, sidewalks, planters and structures from damage caused by vehicle overhangs.
- (o) Off-street parking spaces and loading areas shall comply with applicable American with Disabilities Act requirements.
- (p) Off-street parking spaces shall be located, designed and constructed so as to encourage no net loss in the number of available on-street and off-street parking spaces.

**Sec. 16-8-90. Supplemental requirements for off-street parking spaces and loading areas.**

(a) Where two or more uses occur at a single site, the required number of off-street parking spaces shall be equal to the combined total of required off-street parking spaces for each such use.

(b) The proponent of any use requiring 15 or more off-street parking spaces shall designate at least one out of every 15 off-street parking spaces as a handicap parking space.

(c) Commercial and industrial uses for which the gross floor area of the building(s) or structure(s) dedicated to the use is less than 10,000 square feet, measured from outside wall to outside wall, shall not be required to provide an off-street loading area.

(d) Commercial and industrial uses for which the gross floor area of the building(s) or structure(s) dedicated to the use is greater than 10,000 square feet, measured from outside wall to outside wall, shall be required to provide at least one off-street loading area.

## ARTICLE 9

### Signs

#### Sec. 16-9-10. Purpose and intent.

This Article establishes the requirements governing the placement, erection, dimensions and appearance of signs. It is intended to coordinate and normalize the type, placement and dimensions of signs, recognize the particular sign requirements of various uses, encourage innovative and attractive sign design, preserve and enhance property values within the community, provide for public safety with regard to signs and prevent overload of visual stimuli resulting from signs.

#### Sec. 16-9-20. Allowed signs.

Signs complying with the following requirements are allowed in the Town:

- (a) *Flags.* Up to 3 official flags of any government or governmental agency and one non-official flag shall be allowed, provided that (i) the flagpole on which the flag is mounted shall not exceed the height of the principal structure on the site, (ii) the flag shall not be more than one-fifth the height of the flagpole on which it is mounted, (iii) the total area of an official flag shall not exceed 20 square feet and (iv) the total area of a non-official flag shall not exceed 12 square feet.
- (b) *Large Special Event Banners.* Up to 2 large special event banners may be suspended from a building occupied by a permitted use provided that (i) any such banner shall relate to a public event, (ii) any such banner shall be removed not later than 7 days after the event to which it relates concludes and (iii) the total area of any such banner shall not exceed 200 square feet.
- (c) *Small Special Event and Other Small Banners:* Any number of small banners may be suspended from light poles, utility poles or building-mounted fixtures in the MU/TC and MU/NC zone districts provided that (i) any such banner shall relate to a public event, (ii) any such banner shall be removed not later than 7 days after the event to which it relates concludes, (iii) no more than 2 such banners may be suspended from any one pole or fixture and (iv) the total area of any such banner shall not exceed 6 square feet.
- (d) *Public Signs.* Any number of signs placed or erected by governmental agencies shall be allowed.
- (e) *Interior Signs.* Any number of signs located within any structure and not visible from adjacent properties and streets shall be allowed.
- (f) *Historical Signs.* Any number of historical plaques, memorials or signs containing the name and/or age of the building shall be allowed in any location designated as having historical significance.
- (g) *Real Estate Signs.* One freestanding or wall-mounted sign per street frontage that advertises the sale, rental or lease of the property or a portion of the property on which the sign is located, provided that any such sign shall not exceed 12 square feet in total area in the MU/TC and MU/NC zone districts and 4 square feet in total area in the R-1 zone district.
- (h) *Address and Building Identification Signs.* Up to 2 signs that include a letter, number word or address used to identify a building for purposes of information and not advertising shall be allowed provided that all such signs shall be attached to the building identified, shall not be illuminated and shall not exceed 4 square feet in total area.
- (i) *Window Signs.* Permanent window signs occupying less than 10% of the total window area of a business establishment located in in the MU/TC and MU/NC zone districts shall be allowed. Such signs may be illuminated when the business establishment is open.

(j) *Temporary Window Signs.* Temporary window signs occupying less than 70% of the total window area of a business establishment located in the MU/TC and MU/NC zone districts shall be allowed for not more than 2 periods of not more than 4 consecutive days in any calendar month.

(k) *Temporary Freestanding Sidewalk Signs.* Temporary freestanding signs shall be allowed in the MU/TC and MU/NC zone districts provided that (i) any such sign shall be placed on the sidewalk in front the business establishment to which it pertains, (ii) the total area of any such sign shall not exceed 6 square feet, (iii) no such sign shall be placed within 25 feet of another temporary freestanding sign, (iv) each such sign shall be maintained in good condition and repair so that it does not create a hazard to pedestrians, (v) no such sign shall be anchored or cause damage to the sidewalk on which it is placed, (vi) each such sign shall be placed on the sidewalk only when the business establishment to which it pertains is open for business and (viii) no such sign shall impede pedestrian movement.

(l) *Election/Campaign Signs:* Any number of election or campaign signs that are located on private property shall be allowed provided that the size and location of such signs shall not create a hazard for vehicle or pedestrian traffic and all such signs shall be removed not later than 7 days after the election to which they relate

(m) *Garage, Yard and Estate Sale Signs.* Signs directing the public to garage, yard and estate sales shall be allowed provided that (i) no such sign shall be attached to any utility pole, utility box or other public facility in a manner that creates a hazard for vehicle or pedestrian traffic, (ii) no such sign shall be posted more than 7 days prior to the first day of the sale, (iii) all such signs shall be removed no later than 8:00 a.m on the day following the last day of the sale, (iv) the total area of any such sign shall not exceed 6 square feet and (v) no such sign shall be located higher than 6 feet above ground level.

(n) *Bed and Breakfast Signs.* Signs identifying and advertising bed and breakfasts shall be allowed provided that such signs (i) shall not exceed 2 square feet in total area, (ii) shall be set back from all property lines at least 10 feet, (iii) if freestanding, shall not be located more than 8 feet above ground level and (iv) if wall-mounted, shall not be located more than 6 feet above ground level. Such signs may be illuminated.

(o) *Home Occupations.* Wall-mounted signs for permitted home occupations shall be allowed provided that the total area of such signs shall not exceed one square foot, shall not be illuminated and shall not be located higher than 6 feet above ground level.

(p) *Informational Signs.* Signs that give specific instructions to the user of a building or facility are permitted provided that such signs (i) have letters that do not exceed 4 inches in height, (ii) do not exceed 5 feet in total area, (iii) display only instructional information pertaining the use occurring at the site, (iv) do not contain any word, symbol or image identifying the owner, tenant or user of the building or facility, (v) if freestanding, are set back from property lines at least 10 feet and (vi) if wall-mounted, are located no higher than 6 feet above ground level. Such signs may be illuminated.

(q) *Office Center Signs:* Signs identifying and advertising office centers shall be allowed provided that such signs (i) shall be located no higher than 6 feet above ground level, (ii) if freestanding, shall not exceed 8 square feet in total area, (iii) if wall-mounted, shall not exceed 24 square feet in total area and (iv) if freestanding, shall be set back from all property lines at least 15 feet. Such signs may be illuminated.

(r) *Commercial Building Signs.* Signs identifying and advertising commercial buildings shall be allowed provided that such signs (i) shall be freestanding, (ii) shall be set back from all property lines at least 15 feet, (iii) shall not exceed 10 square feet in total area and (iv) shall not be located more than 6 feet above ground level. Such signs may be illuminated.

(s) *Office Signs.* Office signs shall be allowed provided that such signs (i) shall be freestanding, (ii) shall not be located more than 6 feet above ground level, (iii) if listing tenants, shall be located within

5 feet of the building and (iv) shall not exceed 3 square feet in total area per tenant, up to a maximum size of 24 square feet. Such signs may be illuminated.

(t) *Residential Subdivision Signs.* One freestanding permanent subdivision identification sign and an unlimited number of subdivision identification signs incorporated into entryways or fences shall be allowed provided that such signs (i) shall only contain the name of the subdivision or development, (ii) shall be located only at the principal street entrance to the subdivision, (iii) shall not be located within 3 feet of any sidewalk or curb, (iv) shall not exceed a maximum combined area of 40 square feet, (v) shall not be located more than 6 feet above ground level and (vi) shall be constructed of masonry or other substantial materials.

**Sec. 16-9-30. Other signs.**

Any type of sign not specifically allowed pursuant to § 16-9-20 shall be allowed only if the proponent of the sign obtains a variance for such sign in accordance with Article 12.

**Sec. 16-9-40. Additional requirements.**

All signs allowed pursuant to § 16-9-20 shall satisfy and comply with the following requirements:

- (a) No sign attached to a structure shall project above the top of the structure;
- (b) No flags or banners shall be displayed from a pole or standard placed on the roof of a structure;
- (c) The rear service entrance of a business establishment shall have no more than one sign stating the name and/or address of the business which shall not exceed 2 square feet in area;
- (d) No freestanding sign shall be located closer than 2 feet from a front property line;
- (e) No freestanding sign located within 100 feet of a residential use shall exceed 6 feet in height;
- (f) No sign shall cause a hazard to vehicle or pedestrian traffic.
- (g) No sign shall be constructed in a public right-of-way without the approval of the Town. Any allowed sign located in a public right-of-way shall not be located over any existing or future utilities.
- (h) Allowed signs may be located on awnings or canopies so long as they otherwise comply with all other requirements of this Article.

## ARTICLE 10

### Flood Damage Prevention

#### **Sec. 16-10-10. Statutory authorization.**

The Legislature of the State of Colorado has, in Article 20 of Title 29 of the Colorado Revised Statutes, delegated to local government units the responsibility for adopting regulations designed to minimize flood losses. Therefore, the Board does hereby adopt the following floodplain management regulations.

#### **Sec. 16-10-20. Findings of fact.**

(a) The flood hazard areas of the Town may be subject to periodic inundation which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services and extraordinary public expenditures for flood protection and relief, all of which adversely affect the health, safety and general welfare of the public.

(b) Such flood losses may be created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

#### **Sec. 16-10-30. Statement of purpose.**

It is the purpose of this Article to promote public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (a) Protect human life and health;
- (b) Minimize expenditure of public money for costly flood control projects;
- (c) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (d) Minimize prolonged business interruptions;
- (e) Minimize damage to critical facilities, infrastructure and other public facilities such as water, sewer and gas mains, electric and communications stations, and streets and bridges located in floodplains;
- (f) Help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize future flood blight areas; and,
- (g) Insure that potential buyers are notified that property is located in a flood hazard area.

#### **Sec. 16-10-40. Methods of reducing flood losses.**

In order to accomplish its purposes, this Article uses the following methods:

- (a) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood or cause excessive increases in flood heights or velocities;
- (b) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (c) Control the alteration of natural floodplains, stream channels and natural protective barriers, which are involved in the accommodation of flood waters;

- (d) Control filling, grading, dredging and other development which may increase flood damage; and
- (e) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

**Sec. 16-10-50. Definitions.**

Unless specifically defined below or elsewhere in this Chapter, words or phrases used in this Article shall be interpreted to give them the meaning they have in common usage and to give this Article its most reasonable application. As used in this Article:

*100-Year Flood* means a flood having a recurrence interval that has a one-percent chance of being equaled or exceeded during any given year (1-percent-chance-of-annual-flood). The term does not imply that the flood will necessarily happen once every one hundred years.

*100-Year Floodplain* mean the area of land susceptible to being inundated as a result of the occurrence of a 100-year flood.

*500-Year Flood* means a flood having a recurrence interval that has a 0.2 percent chance of being equaled or exceeded during any given year (0.2-percent-chance-of-annual-flood). The term does not imply that the flood will necessarily happen once every five hundred years.

*500-Year Floodplain* means the area of land susceptible to being inundated as a result of the occurrence of a 500-year flood.

*Alluvial Fan Flooding* means a fan-shaped sediment deposit formed by a stream that flows from a steep mountain valley or gorge onto a plain or the junction of a tributary stream with the main stream. Alluvial fans contain active stream channels and boulder bars and recently abandoned channels. Alluvial fans are predominantly formed by alluvial deposits and are modified by infrequent sheet flood, channel avulsions and other stream processes.

*Area of Shallow Flooding* means an area designated Zone AO or AH on the Town's flood insurance rate map with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

*Base Flood Elevation* means the elevation shown on a FEMA flood insurance rate map for Zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V1-V30 and VE that indicates the water surface elevation resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year.

*Basement* means any area of a building having its floor below ground level on all sides.

*Channel* means the physical confines of a stream or waterway consisting of a bed and stream banks existing in a variety of geometries.

*Channelization* means the artificial creation, enlargement or realignment of a stream channel.

*Code of Federal Regulations (CFR)* means the codification of the general and permanent Rules published in the Federal Register.

*Community* means any political subdivision in the State of Colorado that has authority to adopt and enforce floodplain management regulations through zoning, including, but not limited to, cities, towns, unincorporated areas in the counties, Indian tribes and draining and flood control districts.

*Conditional Letter of Map Revision* means FEMA's comment on a proposed project, which does not revise an effective floodplain map, that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in modification of the existing regulatory floodplain.



**Critical Facility** means a structure or related infrastructure, but not the land on which it is situated, as specified in § 16-10-270, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood.

**DFIRM Database** means the databases, usually spreadsheets containing data and analyses, that accompany digital flood insurance rate maps.

**Digital Flood Insurance Rate Map** means a FEMA digital floodplain map. These digital maps serve as “regulatory floodplain maps” for insurance and floodplain management purposes.

**Elevated Building** means a non-basement building (i) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X and D, to have the top of the elevated floor above the ground level by means of pilings, columns (posts and piers) or shear walls parallel to the flow of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the cases of Zones A1-30, AE, A, A99, AO, AH, B, C, X and D, “elevated building” also means and includes a building elevated by means of fill or solid foundation perimeter walls with opening sufficient to facilitate the unimpeded movement of flood waters.

**Existing Manufactured Home Park or Subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed before the effective date of this Article.

**Expansion to an Existing Manufactured Home Park or Subdivision** means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).

**Federal Register** means the official daily publication for rules, proposed rules and notices of Federal agencies and organizations as well as executive orders and other presidential documents.

**FEMA** means the Federal Emergency Management Agency, the agency responsible for administering the National Flood Insurance Program.

**Flood or Flooding** means a general temporary condition of partial or complete inundation of normally dry land areas from (i) the overflow of water from channels and reservoir spillways, (ii) the unusual and rapid accumulation or runoff of surface waters from any source or (iii) mudslides and mudflows that occur from excess surface water that is combined with mud or other debris that is sufficiently fluid so as to flow over the surface of normally dry land areas (such as earth carried by a current of water and deposited along the path of the current).

**Flood Insurance Rate Map** means an official map of a community on which FEMA has delineated both special flood hazard areas and the risk premium zones applicable to the community.

**Flood Insurance Study** means the official report provided by FEMA. The report contains the flood insurance rate map as well as flood profiles for studied flooding sources that can be used to determine base flood elevations for some areas.

**Floodplain or Flood-Prone Area** means any land area susceptible to being inundated as the result of a flood, including the area of land over which floodwater would flow from the spillway of a reservoir.

**Floodplain Director** means the Town official designated by the Board to administer, implement and enforce the floodplain management regulations established by this Article.

**Floodplain Development Permit** means the permit required before development begins in any special flood hazard area. Permits are required to ensure that proposed development projects meet the requirements of the National Flood Insurance Program and this Article.

***Floodplain Management*** means the operation of an overall program of corrective and preventive measures for reducing flood damage, including, but not limited to, emergency preparedness plans, flood control works and floodplain management regulations.

***Floodplain Management Regulations*** mean zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance or erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

***Flood Control Structure*** means a physical structure designed and built expressly or partially for the purpose of reducing, redirecting or guiding flood flows along a particular waterway. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

***Floodproofing*** means any combination of structural and/or non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate, improved real property or water and sanitary facilities, structures and their contents.

***Floodway (Regulatory Floodway)*** means the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. The Colorado statewide standard for the designated height to be used for all newly studied reaches shall be one-half foot (six inches). Letters of map revision to existing floodway delineations may continue to use the floodway criteria in place at the time of the existing floodway delineation.

***Functionally Dependent Use*** means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities but does not include long-term storage or related manufacturing facilities.

***Highest Adjacent Grade*** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

***Historic Structure*** means any structure that is (i) listed individually in the National Register of Historic Places (a listing maintained by the United States Department of the Interior) or preliminarily determined by the Secretary of the United States Department of the Interior as meeting the requirements for individual listing on the National Register, (ii) certified or preliminarily determined by the Secretary of the United States Department of the Interior as contributing to the historic significance of a registered historic district or a district preliminarily determined by the Secretary of the United States Department of the Interior to qualify as a historic district, (iii) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the United States Department of the Interior or (iv) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the Secretary of the United States Department of the Interior or directly by the Secretary of the United States Department of the Interior in states without approving programs.

***Letter of Map Revision*** means FEMA's official revision of an effective flood insurance rate map or flood boundary and floodway map or both. Letters of map revision are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations or the special flood hazard area.

*Letter of Map Revision Based on Fill* means FEMA's modification of the special flood hazard area shown on the flood insurance rate map based on the placement of fill outside the existing regulatory floodway.

*Levee* means a man-made embankment, usually earthen, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

*Levee System* means a flood protection system which consists of a levee, or levees, and association structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

*Lowest Floor* means the lowest floor of the lowest enclosed area (including basement). This includes any floor used for living purposes which includes working, storage, sleeping, cooking and eating, recreation or any combination thereof and also includes any floor that could be converted to such a use. The lowest floor is a determinate for the flood insurance premium for a building, home or business. An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of § 60.3 of the National Flood Insurance Program regulations.

*Manufactured Home Park or Subdivision* means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

*Mean Sea Level* means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

*Material Safety Data Sheet* means a form with data regarding the properties of a particular substance. An important component of product stewardship and workplace safety, it is intended to provide workers and emergency personnel with procedures for handling or working with that substance in a safe manner and includes information such as physical data (melting point, boiling point, flash point, etc.), toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment and spill-handling procedures.

*National Flood Insurance Program* means FEMA's program of flood insurance coverage and floodplain management.

*New Manufactured Home Park or Subdivision* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed on or after the effective date of this Article.

*No-Rise Certification* means a record of the results of an engineering analysis conducted to determine whether a project will increase flood heights in a floodway. A No-Rise Certification must be supported by technical data and signed by a registered Colorado professional engineer. The supporting technical data should be based on the standard step-backward computer model used to develop the 100-year floodway shown on the flood insurance rate map or flood boundary and floodway map.

*Physical Map Revision* means FEMA's action whereby one or more map panels are physically revised and republished. A physical map revision is used to change flood risk zones, floodplain and/or floodway delineations, flood elevations and/or planimetric features.

*Recreational Vehicle* means a vehicle which is (i) built on a single chassis, (ii) 400 square feet or less when measured at the largest horizontal projections, (iii) designed to be self-propelled or permanently towable by a light duty truck and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

*Special Flood Hazard Area* means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year, i.e., the 100-Year floodplain.

*Start of Construction* means the date the building permit was issued, including those for substantial improvements, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, any work beyond the stage of excavation or, for manufactured homes, the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

*Substantial Damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure just prior to when the damage occurred.

*Substantial Improvement* means any reconstruction, rehabilitation, addition or other improvement of a structure the cost of which equals or exceeds 50 percent of the market value of the structure before start of construction of the improvement. The value of the structure shall be determined by the local jurisdiction having land use authority in the area of interest. This includes structures which have incurred substantial damage regardless of the actual repair work performed. The term does not include either (i) any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are minimum necessary conditions or (ii) any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

*Threshold Planning Quantity* means a quantity designated for each chemical on the list of extremely hazardous substances that triggers notification by facilities to the State that such facilities are subject to emergency planning requirements.

*Violation* means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations.

*Water Surface Elevation* means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

#### **Sec. 16-10-60. Lands to which this ordinance applies.**

This ordinance shall apply to all special flood hazard areas and areas removed from the floodplain by issuance of a FEMA letter of map revision based on fill within the jurisdiction of the Town.

#### **Sec. 16-10-70. Basis for establishing the special flood hazard area.**

The special flood hazard areas identified by FEMA in a scientific and engineering report entitled the Flood Insurance Study for Eagle County, Colorado, and Incorporated Areas, dated December 4, 2007, with accompanying flood insurance rate maps and/or flood boundary-floodway maps and any revisions thereto are hereby adopted by reference and declared to be part of this Article. These special flood hazard areas identified by the flood insurance study and attendant mapping are the minimum area

of applicability of this ordinance and may be supplemented by studies designated and approved by the Town. The Floodplain Director shall keep a copy of the flood insurance study, digital flood insurance rate maps, flood insurance rate maps and/or flood boundary and floodway maps on file and available for public inspection.

**Sec. 16-10-80. Establishment of floodplain development permit.**

A floodplain development permit shall be required to ensure conformance with the provisions of this Article.

**Sec. 16-10-90. Compliance.**

No structure or land shall hereafter be located, altered or have its use changed within the special flood hazard area without full compliance with the terms of this Article, including obtaining a floodplain development permit, and other applicable provisions of this Code. Nothing herein shall prevent the Town from taking such lawful action as is necessary to prevent or remedy any violation of this Article. These regulations are intended to meet the minimum requirements set forth by the Colorado Water Conservation Board and the National Flood Insurance Program.

**Sec. 16-10-100. Abrogation and greater restrictions.**

This Article is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this Article and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes more stringent restrictions shall prevail.

**Sec. 16-10-110. Interpretation.**

In interpretation and application of this Article, all provisions shall be considered as minimum requirements, liberally construed in favor of the Town and deemed neither to limit nor repeal any other powers granted under State statutes.

**Sec. 16-10-120. Warning and disclaimer of liability.**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This Article does not imply that land outside the special flood hazard area or uses permitted within such areas will be free from flooding or flood damages. This Article shall not create liability on the part of the Town or any other official or employee thereof for any flood damage that results from reliance on this Article or any administrative decision lawfully made hereunder

**Sec. 16-10-130. Designation of Floodplain Director.**

The Board shall appoint a Floodplain Director to administer, implement and enforce the provisions of this Article and other appropriate sections of the National Flood Insurance Program regulations pertaining to floodplain management.

**Sec. 16-10-140. Duties and responsibilities of Floodplain Director.**

Duties and responsibilities of the Floodplain Director shall include, but not be limited to, the following:

- (a) Maintain and hold open for public inspection all records pertaining to the provisions of this Article including the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and any floodproofing certificate required by § 16-10-150;
- (b) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required;
- (c) Inspect all development at appropriate times during construction to ensure compliance with the requirements of this Article, including proper elevation of the structure;
- (d) Determination of the exact location of the boundaries of the special flood hazard area;
- (e) When base flood elevation data has not been provided in accordance with § 16-10-70, obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source in order to administer this Article;
- (f) Notify, in riverine situations, adjacent communities and the Colorado Water Conservation Board prior to any alteration or relocation of a watercourse and submit evidence of such notification to FEMA; and
- (g) Ensure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

**Sec. 16-10-150. Application for floodplain development permit.**

- (a) An application for a floodplain development permit shall be made to the Commission on a form to be provided by the Floodplain Director.
- (b) An application for a floodplain development permit shall be accompanied by plans in duplicate drawn to scale showing location, dimensions and elevations of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to special flood hazard areas.
- (c) An application for a floodplain development permit shall also be accompanied by (i) documentation establishing the elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures, (ii) documentation establishing the elevation in relation to mean sea level to which any nonresident structure shall be floodproofed, (iii) a certificate from a registered Colorado professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of § 16-10-220 and (iv) a description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
- (d) An application for a floodplain development permit shall be accompanied by any floodplain development permit application fee established by the Town and fees required pursuant to § 16-3-80. Floodplain development permit application fees shall be nonrefundable.

**Sec. 16-10-160. Procedure upon application for floodplain development permit.**

- (a) Upon receipt of an application for a floodplain development permit complying with § 16-10-150, including payment of required fees, the Planning Director shall schedule a public hearing before the Commission for consideration of the application. The public hearing shall take place no more than 35 days after receipt of an application complying with § 16-10-150.

(b) The Planning Director shall give notice of the application and hearing to adjacent property owners at least 14 days before the hearing.

**Sec. 16-10-170. Criteria.**

(a) In considering an application for a floodplain development permit, the Commission shall consider all of the provisions of this Article and the following relevant factors:

- (1) Whether the proposed building site, including the placement of manufactured homes, will be reasonable safe from flooding;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The danger that materials may be swept onto other lands to the injury of others;
- (5) The compatibility of the proposed use with existing and anticipated development;
- (6) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (7) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges and public utilities and facilities such as sewer, gas, electrical and water systems;
- (8) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
- (9) The necessity to the facility of a waterfront location, where applicable;
- (10) The availability of alternative locations not subject to flooding or erosion damage for the proposed use; and
- (11) The relationship of the proposed use to any comprehensive or master plan for that area.

(b) For waterways with base flood elevations for which a regulatory floodway has not been designated, the Commission shall not recommend permitting new construction, substantial improvements or other development (including fill) in Zones A1-30 and AE on the community's flood insurance rate map, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one-half foot at any point within the Town.

(c) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, the Commission may recommend approving certain development in Zones A1-30, AE or AH on the Town's flood insurance rate map which increase the water surface elevation of the base flood by more than one-half foot, provided the Town first applies for a conditional flood insurance rate map revision through FEMA, fulfills the requirements for such revisions as established under the provisions of § 65.12 and receives FEMA approval.

**Sec. 16-10-180. Planning and Zoning Commission recommendation.**

(a) At the conclusion of the public hearing for consideration of an application for a floodplain development permit, the Commission shall issue a recommendation to (i) issue the permit, (ii) issue the permit subject to modifications or conditions or (iii) deny the permit.

(b) The Planning Director shall give notice of the recommendation to the applicant no more than 14 days after it is issued.

(c) The Planning Director shall forward the recommendation to the Administrator as soon as reasonably practicable after it is issued, whereupon the recommendation shall be taken up by the Board in accordance with § 16-3-50.

#### **Sec. 16-10-190. Variance procedures.**

Requests for variances from the requirements of this Article shall be processed in accordance with Article 12 of this Chapter. Notwithstanding anything to the contrary set forth in Article 12, requests for variances from the requirements of this Article are subject to the following:

(a) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or State Inventory of Historic Places without regard to the procedures set forth in the remainder of this Article;

(b) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in § 16-10-170 have been fully considered;

(c) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result;

(d) Variances may be issued for repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure;

(e) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

(f) Variances shall only be issued upon (i) showing a good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud or victimization of the public or conflict with existing local laws and ordinances;

(g) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation; and

(h) Variances may be issued for new construction and substantial improvement and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in § 16-10-170 are met and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

#### **Sec. 16-10-200. General standards.**

(a) In special flood hazard areas, all new construction and substantial improvements shall be:

(1) Designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic or hydrodynamic loads, including the effects of buoyancy;

(2) Constructed by methods and practices that minimize flood damage;



(3) Constructed with materials resistant to flood damage; and

(4) Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment or other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(b) In special flood hazard areas, all manufactured homes shall be installed using methods and practices which minimize flood damage. For the purposes of this subsection, manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. The requirements of this subsection are in addition to applicable State and local anchoring requirements for resisting wind forces.

(c) In special flood hazard areas, new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(d) In special flood hazard areas, new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the system into flood waters.

(e) In special flood hazard areas, on-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

#### **Sec. 16-10-210. Specific standards.**

In all special flood hazard areas where base flood elevation data has been provided as set forth in this Article, the following shall be required:

(a) *Residential Construction:* New construction and substantial improvement of any residential structure shall have the lowest floor (including basement), electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) elevated to one foot above the base flood elevation. Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered Colorado professional engineer, architect or land surveyor. Such certification shall be submitted to the Floodplain Director.

(b) *Nonresidential Construction:* With the exception of Critical Facilities, addressed in § 16-10-270, new construction and substantial improvements of any nonresidential structure shall either have the lowest floor (including basement), electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) elevated to one foot above the base flood elevation or, together with attendant utility and sanitary facilities, be designed so that at one foot above base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered Colorado professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. Such certification shall be submitted to the Floodplain Director.

(c) *Enclosures:* New construction and substantial improvements with fully enclosed areas below the lowest floor that are usable for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered Colorado professional engineer or architect or meet or exceed the following minimum criteria: (i) a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided, (ii) the bottom of all openings shall be no higher than one foot above grade and (iii) openings may be

equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(d) *Manufactured Homes:* All manufactured homes that are placed or substantially improved within Zones A1-30, AH and AE on the Town's flood insurance rate map on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as a result of a flood, shall be elevated on a permanent foundation such that the lowest floor of the manufactured home, electrical, heating, ventilation, plumbing and air conditioning equipment or other service facilities (including ductwork) are elevated to one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. All manufactured homes placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH and AE on the Town's flood insurance rate map that are not subject to the provisions of the above paragraph shall be elevated so that either (i) the lowest floor of the manufactured home, electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) are one foot above the base flood elevation or (ii) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(e) *Recreational Vehicles.* All recreational vehicles on sites within Zones A1-30, AH and AE on the Town's flood insurance rate map shall either (i) be on site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use or (iii) meet the elevation and anchoring requirements for manufactured homes in subsection (d). A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

#### **Sec. 16-10-220. Standards for areas of shallow flooding.**

Located within the special flood hazard area established in § 16-10-70 are areas designated as areas of shallow flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following shall be required in such areas:

(a) *Residential Construction:* All new construction and substantial improvement of residential structures must have the lowest floor (including basement), electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) elevated above the highest adjacent grade at least one foot above the depth number specified in feet on the Town's flood insurance rate map and at least three feet if no depth number is specified. Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered Colorado professional engineer, architect or land surveyor. Such certification shall be submitted to the Floodplain Director.

(b) *Nonresidential Construction:* With the exception of critical facilities, addressed in § 16-10-270, all new construction and substantial improvement of nonresidential structures must have the lowest floor (including basement), electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) elevated above the highest adjacent grade at least one foot above the depth number specified in feet on the Town's flood insurance rate map and at least three feet if no depth number is specified or together with attendant utility and sanitary facilities, be designed so that the structure is watertight to at least one foot above the base flood level with walls substantially impermeable to the passage of water and with structural components having the capability

of resisting hydrostatic and hydrodynamic loads or effects of buoyancy. A registered Colorado professional engineer or architect shall submit a certification to the Floodplain Director that the standards of this Section are satisfied. Within Zones AH or AO, adequate drainage paths around structures on slopes are required to guide flood waters around and away from proposed structures.

**Sec. 16-10-230. Floodways.**

Floodways are administrative limits and tools used to regulate existing and future floodplain development. The State of Colorado has adopted floodway standards that are more stringent than the FEMA minimum standard. Located within the special flood hazard area established by § 16-10-70 may be areas designated as floodways. Since a floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following requirements apply in floodways:

(a) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed by a licensed Colorado professional engineer and in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within Town during the occurrence of base flood discharge.

(b) If subsection (a) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Article.

(c) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, the Town may permit encroachments within the adopted regulatory floodway that would result in an increase in Base Flood Elevation, provided that the Town first applies for a conditional letter of map revision and floodway revision through FEMA.

**Sec. 16-10-240. Alteration of a watercourse.**

For all proposed developments that will alter a watercourse within a special flood hazard area, the following requirements shall apply:

(a) Channelization and flow diversion projects shall appropriately consider issues of sediment transport, erosion, deposition and channel migration and properly mitigate potential problems through the project as well as upstream and downstream of any improvement activity. A detailed analysis of sediment transport and overall channel stability should be considered when appropriate to assist in determining the most appropriate design.

(b) Channelization and flow diversion projects shall evaluate the residual 100-year floodplain.

(c) Any channelization or other stream alteration activity proposed by a project proponent must be evaluated for its impact on the regulatory floodplain and be in compliance with all applicable Federal, State and local floodplain rules, regulations and ordinances.

(d) Any stream alteration activity shall be designed and sealed by a registered Colorado professional engineer or certified professional hydrologist.

(e) All activities within the regulatory floodplain shall meet all applicable Federal, State and Town floodplain requirements and regulations.

(f) Within the regulatory floodway, stream alteration activities shall not be constructed unless a project proponent demonstrates through a floodway analysis and report, sealed by a registered Colorado professional engineer, that there is not more than a 0.00-foot rise in the proposed-conditions-compared-to-existing-conditions floodway resulting from the project, otherwise known as a no-rise

certification, unless the community first applies for a conditional letter of map revision and floodway revision in accordance with § 16-10-230.

(g) Maintenance shall be required for any altered or relocated portions of watercourses so that the flood-carrying capacity is not diminished.

**Sec. 16-10-250. Properties removed from the floodplain by fill.**

A floodplain development permit shall not be issued for the construction of a new structure or addition to an existing structure on a property removed from the floodplain by the issuance of a FEMA letter of map revision based on fill unless such new structure or addition complies with the following requirements:

(a) *Residential Construction:* The lowest floor (including basement), electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) must be elevated to one foot above the base flood elevation that existed prior to the placement of fill.

(b) *Nonresidential Construction:* The lowest floor (including basement), electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) must be elevated to one foot above the base flood elevation that existed prior to the placement of fill or, together with attendant utility and sanitary facilities, be designed so that the structure or addition is watertight to at least one foot above the base flood level that existed prior to the placement of fill with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads or effects of buoyancy.

**Sec. 16-10-260. Standards for subdivision proposals.**

(a) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall be reasonably safe from flooding. If a subdivision or other development proposal is in a flood-prone area, the proposal shall minimize flood damage.

(b) All proposals for the development of subdivisions, including the placement of manufactured home parks and subdivisions, shall meet floodplain development permit requirements of § 16-10-80 and the provisions of this Article.

(c) Base flood elevation data shall be generated for subdivision proposals and other proposed development, including the placement of manufactured home parks and subdivisions, which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to § 16-10-70.

(d) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall provide adequate drainage to reduce exposure to flood hazards.

(e) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

**Sec. 16-10-270. Standards for critical facilities.**

A critical facility is a structure or related infrastructure, but not the land on which it is situated, as specified in Rule 6 of the Rules and Regulations for Regulatory Floodplains in Colorado, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for a community at any time before, during or after a flood.

(a) The Floodplain Administrator shall identify and confirm that specific structures within the Town meet the criteria that follow. Critical facilities are classified under the following categories.

(1) Essential services facilities include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities and transportation lifelines. The facilities consist of public safety (police stations, fire and rescue stations, emergency vehicle and equipment storage and emergency operations centers); emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions and non-ambulatory surgical structures but excluding clinics, doctor's offices and non-urgent care medical structures that do not provide these functions); designated emergency shelters; communications (main hubs for telephones, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio and other emergency warning systems but excluding towers, poles, lines, cables and conduits); public utility plant facilities for generation and distribution (hubs, treatment plants, substations and pumping stations for water, power and gas but not including towers, poles, power lines, buried pipelines, transmission lines, distribution lines and services lines; and air transportation lifelines (airports, helicopter pads and structures serving emergency functions and associated infrastructure). Specific exemptions to this category include wastewater treatment plants, non-potable water treatment and distribution systems and hydroelectric power generating plants and related appurtenances. Public utility plant facilities may be exempted if it can be demonstrated to the satisfaction of the Town that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same utility or available through an intergovernmental agreement or other contract) and connected, the alternative facilities are located outside of the 100-year floodplain or are compliant with the provisions of this Article and an operations plan is in effect that states how redundant systems will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the Town on an as-needed basis upon request.

(2) Hazardous materials facilities include facilities that produce or store highly volatile, flammable, explosive, toxic and/or water-reactive materials. These facilities may include chemical and pharmaceutical plants; laboratories containing highly volatile, flammable, explosive, toxic and/or water reactive materials; refineries; hazardous waste storage and disposal sites; and above ground gasoline or propane storage or sales centers. Facilities shall be determined to be critical facilities if they produce or store materials in excess of threshold limits. If the owner of a facility is required by the Occupational Safety and Health Administration to keep a material safety data sheet on file for any chemicals stored or used in the work place and the chemical is stored in quantities equal to or greater than the threshold planning quantity for that chemical, then that facility shall be considered a critical facility. The threshold planning quantity for these chemicals is: either 500 pounds or the threshold planning quantity listed (whichever is lower) for the 356 chemicals listed under 40 CFR § 302 (2010), also known as the extremely hazardous substances; or 10,000 pounds for any other chemical. Specific exemptions from this category include: finished consumer products within retail centers and households containing hazardous materials intended for household use and agricultural products intended for agricultural use; buildings and other structures containing hazardous materials for which it can be demonstrated to the satisfaction of the Town by hazard assessment and certification by a qualified professional that a release of the subject hazardous material does not pose a major threat to the public; and pharmaceutical sales, use, storage and distribution centers that do not manufacture pharmaceutical products. These exemptions shall not apply to buildings or other structures that also function as critical facilities under another category outlined in this Section.

(3) At-risk population facilities consist of elder care (nursing homes); congregate care serving 12 or more individuals (day care and assisted living); and public and private schools and before-school and after-school care serving 12 or more children.

(4) Facilities vital to restoring normal services including government operations consisting of essential government operations (public records, courts, jails, building permitting and inspection services, community administrative and management and maintenance and equipment centers) and essential structures for public colleges and universities (dormitories, offices and classrooms only). These facilities may be exempted if it is demonstrated to the Town that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same entity or available through an inter governmental agreement or other contract), the alternative facilities are either located outside the 100-year floodplain or are compliant with this Article and an operations plan is in effect that states how redundant facilities will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the Town on an as-needed basis upon request.

(b) All new and substantially improved critical facilities and new additions to critical facilities located within the special flood hazard area shall be regulated to a higher standard than structures not determined to be critical facilities. For the purposes of this Article, protection shall include one of the following: (i) location outside the special flood hazard area or (ii) elevation of the lowest floor or flood proofing of the structure, together with attendant utility and sanitary facilities, to at least two feet above the base flood elevation.

(c) New critical facilities shall, when practicable as determined by the Town, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a 100-year flood event.

## ARTICLE 11

### Environmental Impact Reports

#### Sec. 16-11-10. Purpose.

This Article is intended to ensure that complete information on the environmental impacts of proposed development is available to the Commission and the general public, ensure that long-term protection of the natural and socioeconomic environment is considered in the development approval process and provide procedures for review and evaluation of the effects of proposed development on the natural and socioeconomic environment prior to granting approvals, issuing permits or other necessary authorizations for commencement of development.

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

The Commission may require the proponent of development to submit an environmental impact report pursuant to this Article if it concludes, based on its preliminary review, that the development may significantly impact the environment, either during construction or on a continuing basis, by:

- (a) Altering an ecological unit or landform, such as a ridgeline, saddle, draw, ravine, hillside, cliff, slope, creek, marsh, watercourse or other natural landform feature;
- (b) Directly affecting a wildlife habitat, feeding ground or nesting ground;
- (c) Altering or removing native grasses, trees, shrubs or other vegetative cover;
- (d) Affecting the appearance or character of a significant scenic area or resource;
- (e) Involving structures and buildings that are of size, bulk or scale that would be in marked contrast to existing natural or cultural features;
- (f) Potentially resulting in rock fall, avalanche, landslide, siltation, settlement, flood, other landform change or hazard to health and safety;
- (g) Discharging toxic or thermally abnormal substances, involving the use of herbicides or pesticides or emitting smoke, gas, steam, dust or other particulate matter;
- (h) Involving any process that results in odor that may be objectionable or damaging;
- (i) Requiring waste treatment, cooling or settlement ponds or requiring transportation of solid or liquid waste to a treatment or disposal site;
- (j) Discharging significant volumes of solid or liquid waste;
- (k) Potentially straining the capacity of existing or planned water, wastewater, storm drainage and other utility systems;
- (l) Involving any process which generates noise that may be offensive or damaging;
- (m) Either displacing a significant number of people or resulting in a significant increase in population;
- (n) Preempting use of a site that is desirable for recreational uses or as open space;
- (o) Altering local traffic patterns to cause a significant increase in traffic or transit service needs; and/or
- (p) Being part of a larger project that, at any future stage, may involve any of the impacts listed above.

**Sec. 16-11-30. Exemptions.**

An environmental impact report shall not be required for:

- (a) A phase of development for which an environmental impact report was previously submitted and reviewed covering the entire development, provided that the entire development was approved as provided for in this Chapter and not subsequently altered in any material respect.
- (b) A development found to have insignificant impacts on the environment by the Commission based on a preliminary evaluation of the development evaluating the factors listed in § 16-11-20.
- (3) Alteration, repair and maintenance of existing structures and site improvements.

**Sec. 16-11-40. Preparation and scope.**

(a) The environmental impact report shall be prepared by independent, qualified professional consultants or personnel.

(b) The environmental impact report shall include studies and assessments of the following natural systems:

- (1) Hydrologic conditions (such as natural water features, surface drainage, watershed characteristics, groundwater characteristics and soil permeability) and any potential changes or impacts;
- (2) Atmospheric conditions (such as air shed characteristics and potential emissions) and any potential changes or impacts;
- (3) Geologic conditions (such as landforms, slope, soil characteristics and potential hazards) and any potential changes or impacts;
- (4) Biotic conditions and any potential changes or impacts;
- (5) Noise levels and odor characteristics and any potential changes or impacts;
- (6) Visual conditions (such as views and scenic values) and any potential changes or impacts;
- (7) Land use conditions (such as characteristics of uses and compatibility with prevailing planning and development objectives) and any potential changes or impacts;
- (8) Circulation and transportation conditions (such as volumes and traffic flow patterns, transit service needs and alternative transit systems) and any potential changes or impacts; and
- (9) Population characteristics (such as growth rates, residential densities, neighborhood patterns and potential displacement of residents or businesses) and any potential changes or impacts.

(c) The environmental impact report shall summarize the findings and recommendations of the technical and other supporting studies in terms that can be assessed and evaluated by the Commission and general public. Technical data shall be submitted as supporting documentation. Technical data prepared as part of any other procedures or requirements of this Code or any federal, state, county or Town regulation may be used to support an environmental impact report.

**Sec. 16-11-50. Report contents.**

(a) The environmental impact report shall include sufficiently detailed information and analysis to enable the Commission to evaluate the environmental impact of the development.

(b) The environmental impact report shall include a general statement identifying and describing the proposed development and its purpose.



(c) To the extent not included in other materials submitted pursuant to this Chapter, the environmental impact report shall include descriptive materials, maps and plans showing:

- (1) Project boundaries and boundaries of the area within which environmental impacts are likely to be significant;
- (2) Present and proposed uses of the site on which the development will occur;
- (3) Present and proposed zoning of the site on which the development will occur;
- (4) Quantitative information relative to the development, such as site area, numbers of residential units, proposed height and bulk of buildings, building floor areas and such other data as will contribute to a clear understanding of the scale of the development; and
- (5) A list of regulatory or review agencies and specific regulations to which the development will be subject.

(d) The environmental impact report shall include an environmental inventory, providing reasonably complete information on the environmental setting existing prior to the proposed development and containing sufficient information to permit independent evaluation of environmental factors that could be affected by the development. The environmental inventory shall describe both the physical and biological natural setting and man-made setting of the site and its surroundings.

(e) The environmental impact report shall include a comprehensive qualitative and quantitative analysis of any significant impact that the proposed development will have on the environment. The analysis shall describe temporary impacts that will prevail during construction and long-term impacts that will prevail after completion, shall describe both beneficial and detrimental impacts and shall consider primary and secondary impacts that will result from the development on the social, cultural, physical and economic environment.

(f) The analysis portion of the environmental impact report shall assess the following items in reasonable detail:

- (1) Adverse impacts which cannot be avoided if the development is implemented;
- (2) Mitigating measures proposed to minimize impacts;
- (3) Cumulative and long-term impacts of the development which either significantly reduce or enhance the state of the environment;
- (4) Irreversible environmental changes that will result from the development; and
- (5) Population and economic growth-inducing impacts of the development.

**Sec. 16-11-60. Additional materials.**

The Commission may further prescribe the form and content of an environmental impact report, setting forth in greater detail the factors to be considered and the manner in which the report shall be prepared, and may require submission of information in addition to that required in this Article.

**Sec. 16-11-70. Submission and review.**

(a) The proponent of development shall submit any required environmental impact report to the Commission at least 14 days before the Commission conducts its final public hearing concerning the development.

(b) The Commission shall consider the environmental impact report, together with the other development standards and requirements established by this Chapter, before issuing its final recommendation concerning a proposed development.

## ARTICLE 12

### Variances

#### Sec. 16-12-10. Purpose.

(a) In order to prevent or lessen such practical difficulties and unnecessary physical hardships inconsistent with the objectives of this Chapter as would result from strict or literal interpretation and enforcement, variances from certain standards and requirements may be granted as provided for in this Article. A practical difficulty or unnecessary physical hardship may result from the size, shape or dimensions of a site or the location of existing structures thereon; from topographic conditions or physical conditions on the site or in the immediate vicinity; or from other physical limitations, street locations or traffic conditions in the immediate vicinity. Cost or inconvenience to the applicant of strict or literal compliance with a standard or requirement shall not be a reason for granting a variance.

(b) Variances may be granted only with respect to the development but not use standards and requirements prescribed in Article 6, the parking standards and requirements prescribed in Article 8, the sign standards and requirements prescribed in Article 9, the flood damage standards and requirements prescribed in Article 10 and the nonconforming use and structure standards and requirements prescribed in in Article 13.

(c) The power to grant variances does not extend to the use standards and requirements prescribed in Article 6 because the flexibility necessary to avoid results inconsistent with the provision of this Chapter is provided by Article 7, pertaining to special review uses, and Article 4, pertaining to amendments to the zone district map.

(d) A variance granted pursuant to this Article may be revocable, granted for limited period of time or granted subject to conditions.

#### Sec. 16-12-20. Application for variance.

(a) An application for a variance shall be made to the Commission on a form to be provided by the Planning Director.

(b) An application for a variance shall include and be accompanied by documents, maps, plans and other materials containing the following information:

(1) The name and address of the owner of the site for which a variance is sought and/or applicant and a statement that the applicant, if not the owner, has the permission of the owner to make the application and develop the site as contemplated by the variance;

(2) The legal description, street address and other identifying information for the site for which a variance is sought;

(3) A survey of the site for which a variance is sought dated no more than one year before the date the application is made;

(4) A detailed description of the variance, the standard or requirement involved, the practical difficulty or unnecessary physical hardship inconsistent with the objectives of this Chapter that would result from strict or literal interpretation and enforcement of the specified standard or requirement and the measures proposed to make the variance compatible with other properties in the vicinity;

(5) A site plan showing existing and proposed features on the site pertinent to the variance requested, including site boundaries, required structure setbacks, existing and proposed structure locations, site topography and physical features, off-street parking spaces and loading areas,

snow storage areas, traffic circulation, areas devoted to landscaping, utilities, drainage features and stream setbacks;

(6) Scaled plans, elevations and perspective drawings sufficient to indicate the dimensions, appearance and interior plans of any structure proposed in connection to the variance; and,

(7) Such additional materials as the Planning Director may require for adequate review of the application and variance by the Commission.

(c) An application for a variance shall be accompanied by any variance application fee established by the Town and fees required pursuant to § 16-3-80. Variance application fees shall be nonrefundable.

**Sec. 16-12-30. Procedure upon application for variance.**

(a) Upon receipt of an application for a variance complying with § 16-12-20, including payment of any required fees, the Planning Director shall schedule a public hearing before the Commission for consideration of the application. The public hearing shall take place no more than 35 days after receipt of an application complying with § 16-12-20.

(b) The Planning Director shall give notice of the application and hearing to adjacent property owners at least 14 days before the hearing.

**Sec. 16-12-40. Planning and Zoning Commission recommendation.**

(a) At the conclusion of the public hearing for consideration of an application for a variance, the Commission shall issue a recommendation to (i) grant the variance, (ii) grant the variance subject to modifications or conditions or (iii) deny the variance.

(b) The Planning Director shall give notice of the recommendation to the applicant no more than 14 days after it is issued.

(c) The Planning Director shall forward the recommendation to the Administrator as soon as reasonably practicable after it is issued, whereupon the recommendation shall be taken up by the Board in accordance with § 16-3-50.

**Sec. 16-12-50. Criteria and findings.**

(a) In considering an application for a variance, the Commission shall evaluate the following:

(1) The relationship of the proposed variance to other existing or potential uses and structures in the vicinity;

(2) The degree to which relief from strict or literal interpretation and enforcement of a specified standard or requirement is necessary to achieve compatibility with and uniformity of treatment among sites in the vicinity or satisfy the objectives of this Chapter;

(3) The effect of the variance on light and air, distribution of population, transportation and traffic facilities, public facilities and utilities and public safety; and

(4) Such other factors as it deems applicable.

(b) In order to recommend the granting of a variance, the Commission shall find:

(1) That granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zone district;

(2) That granting of the variance will not be materially detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the same zone district; and

(3) That the variance is warranted for one or more of the following reasons:

(i) The strict or literal interpretation and enforcement of the specified standard or requirement would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of this Chapter;

(ii) There are exceptional or extraordinary circumstances or conditions applicable to the site for which the variance is requested that do not apply generally to other properties in the same zone district; or

(iii) The strict or literal interpretation and enforcement of the specified standard or requirement would deprive the applicant of privileges enjoyed by the owners of other properties in the same zone district.

**Sec. 16-12-60. Expiration.**

Any variance granted pursuant to this Article shall lapse and become void if approval of any development for which the variance was sought is not obtained in accordance with this Chapter or if a building permit is not obtained for and development not commenced and diligently pursued on any structure for which the variance was sought within one year of the date upon which the variance was granted.

## ARTICLE 13

### Nonconforming Uses and Structures

#### Sec. 16-13-10. Intent.

Uses, structures and and uses of structures exist within the Town that were lawfully established prior to the effective date of this Chapter but do not conform to the requirements of this Chapter and would otherwise be prohibited, regulated or restricted if subjected to this Chapter. It is the intent of this Article to limit the number and extent of such nonconforming uses and structures by prohibiting their enlargement, reestablishment after abandonment and restoration after substantial destruction. While permitting nonconforming uses and structures to continue, this Article is intended to limit enlargement, alteration, restoration or replacement that would increase the discrepancy between existing conditions and the requirements of this Chapter.

#### Sec. 16-13-20. Uses.

Uses lawfully established prior to the effective date hereof that do not conform to the use regulations of this Chapter may continue so long as they remain otherwise lawful, provided that:

- (a) No nonconforming use shall be enlarged, extended or altered to occupy a greater area of land or building floor area than occupied on the effective date hereof;
- (b) No nonconforming use shall be moved in whole or in part to another location on or off the parcel of land on which it is located as of the effective date hereof;
- (c) No additional structure shall be erected in connection with a nonconforming use;
- (d) Any nonconforming use that ceases or is discontinued for a period of one year, regardless of any intent to resume such use, shall be deemed to have been abandoned and shall not be resumed thereafter; and
- (e) No nonconforming use shall be changed to another nonconforming use.

#### Sec. 16-13-30. Structures

Structures that were established prior to the effective date of this Chapter that could not be built under this Chapter may continue so long as they remain otherwise lawful, provided that no such nonconforming structure may be enlarged, extended or altered in a way that increases its nonconformity with any requirements of this Chapter. Any nonconforming structure or portion thereof may be altered to decrease its nonconformity.

#### Sec. 16-13-40. Uses of structures.

Uses of structures lawfully established prior to the effective date hereof that would not be allowed under the requirements of this Chapter may continue so long as they remain otherwise lawful, provided that:

- (a) No existing structure devoted to a use not permitted by this Chapter shall be enlarged, extended or altered except in conjunction with a change in the use of the structure to a permitted use;
- (b) A nonconforming use may not be extended to new parts of a structure unless such structure was manifestly arranged or designed for such use as of the effective date hereof;

(c) Structures in which a nonconforming use is superseded by a permitted use shall thereafter conform to the requirements of this Chapter and the nonconforming use may not thereafter be resumed; and

(d) Any nonconforming use of a structure that ceases or is discontinued for a period of one year, regardless of any intent to resume such use, shall be deemed to have been abandoned and the structure shall not be used thereafter except in conformity with the requirements of this Chapter.

**Sec. 16-13-50. Restoration.**

(a) Should fifty percent or more of a nonconforming structure or nonconforming portion of a structure be destroyed by any means, it shall not be repaired, replaced or reconstructed except in conformity with the requirements of this Chapter.

(b) Should fifty percent or more of a nonconforming use be destroyed by any means, it shall not be recommenced except in conformity with the requirements of this Chapter.

(c) All construction associated with the repair, replacement or recommencement of a nonconforming structure or use shall conform to all applicable adopted building, fire and other construction codes.

**Sec. 16-13-60. Maintenance and repairs.**

Nonconforming structures, uses and uses of structures may be maintained and repaired as reasonably necessary for convenient and safe use of the structure or operation of the use, provided that no such maintenance or repair shall increase the structure's or use's nonconformity with the requirements of this Chapter.

## ARTICLE 14

### Vested Property Rights

#### Sec. 16-14-10. Purpose.

The Article sets forth the procedures necessary to implement Article 68 of Title 24 of the Colorado Revised Statutes.

#### Sec. 16-14-20. Definitions.

As used in this Article:

(a) *Site specific development plan* shall mean and be limited to final development plan approved pursuant to § 16-6-140.

(b) *Vested property right* means the right to undertake and complete the development and use of property under the terms and conditions of a site specific development plan.

#### Sec. 16-14-30. Creation.

(a) A site specific development plan shall be deemed to have been created only upon approval of a site specific development plan in accordance with this Chapter.

(b) No site specific development shall be approved until after a public hearing before the Board. Notice of the public hearing before the Board for approval of a site specific development plan shall be published once in the Town's newspaper of record at least 14 days before the hearing. The notice may be combined with any other notice required in conjunction with the hearing on the site specific development plan.

#### Sec. 16-14-40. Notice of creation.

(a) Each map, plat, site plan or other document constituting a site specific development plan shall contain the following language:

*Approval of this plan may create a vested property right pursuant to  
Article 68 of Title 24 of the Colorado Revised Statutes*

Failure to include this statement shall invalidate and void the creation of a vested property right.

(b) Notice of the creation of a vested property right shall be published once in the Town's newspaper of record no more than 14 days after approval of a site specific development plan. The notice shall state that a site specific development plan has been approved, state that a vested property right has been created, describe the property affected and describe the type and intensity of use approved.

#### Sec. 16-14-50. Effective date, duration and forfeiture.

(a) A site specific development plan shall be deemed to have been approved on the effective date the Board's final action approving the plan.

(b) A property right vested pursuant to this Article shall remain vested for a period of 3 years.

(c) In the event amendments to a site specific development plan are proposed and approved, the effective date of such amendments for purposes of duration of the vested property right shall be the date of original approval of the site specific development plan unless the Board specifically finds to the contrary and incorporates such finding in its approval of the amendments.

(d) Failure to abide by the terms and conditions of approval of a site specific development plan shall result in forfeiture of the vested property right.

**Sec. 16-14-60. Other provisions unaffected.**

(a) Approval of a site specific development plan shall not constitute an exemption from or waiver of any other provision of this Code pertaining to the development or use of property.

(b) The establishment of a vested property right shall not preclude application of ordinances or regulations that are general in nature and applicable to all property subject to this Chapter, including, but not limited to, building, fire, plumbing, electrical and mechanical codes.

(c) The establishment of a vested property right does not exempt the site specific development plan from subsequent review to ensure compliance with the terms and conditions of the original approval if such review is not inconsistent with the terms and conditions of the original approval.