

### 3.1 Intent

- A. **Intent.** The intent of this Zoning Code is to create a vital, cohesive, well-designed community in order to enhance the Town of Nunn's small-town character and further the citizens' goals as identified in the *Comprehensive Plan*. These zoning regulations are designed to promote the health, safety, aesthetics and general welfare of the community.

### 3.2 General Provisions

A. **Application.**

1. **Intent.** In their interpretation and application, the provisions of these zoning regulations shall be held to be minimum requirements adopted for the promotion of the public health, safety, morals, convenience, comfort, prosperity and general welfare.
2. **Uniformity of Regulations.** The regulations established by this Article within each zone shall apply uniformly to each class or kind of structure or land. Unless exceptions are specified in this Article, the following interpretations shall apply:
  - a. The regulations contained herein are not retroactive in their application on existing buildings and or land use.
  - b. No buildings, structure or land shall be used or occupied, and no building, structure or part thereof shall be erected, changed, constructed, moved or structurally altered unless in conformity with all of the regulations herein specified for the zone in which it is located.
  - c. No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this Article, shall be included as part of a yard, open space or off-street parking or loading space similarly required for any other building unless specific exception therefore is stated in this Article. Exceptions may be granted by the Board of Adjustment for infill development.
  - d. No yard or lot existing or approved at the time of passage of This Code shall be reduced in dimension or area below the minimum requirements set forth herein; nor shall the lot area per family be reduced except in conformity with the regulations hereby established for the District in which such building or land is located. Yards or lots created after the effective date of This Code shall meet at least the minimum requirements established by This Code.
  - e. Any use not permitted in a zone either specifically or by interpretation by the Board of Trustees is hereby specifically prohibited from that zone.
  - f. The Board of Trustees may withhold building permits, occupancy certificates, final inspection certificates and any other certificates or permits provided for by any building code or other law, if a violation of this Article exists with respect to the land to which the permit or certificate pertains, or such a violation would exist upon the exercise of the privilege granted by the permit or certificate.



2. Determining uses. The administrative official shall make the initial determination as to the land use descriptions contained in this Article that best identify an actual land use or proposed land use.
3. Unspecified Uses. Notwithstanding the foregoing, land uses not otherwise identified in This Code may be proposed for development. In order to provide for such uses, the classification of any new or unlisted land use shall be made by the Board of Trustees to determine if the use can be reasonably interpreted to fit into a similar use category described in This Code. The Board will determine if such unspecified use shall be considered a use by right, accessory use or use by special review within any particular zone district. Unless such determination is made, the use is not permitted. An applicant shall make a request for such determination in writing and submit it to the Town Clerk.
4. Prohibited Uses.
  - a. No junk or waste shall be stored outdoors.
  - b. No junk material, wastes or trash shall be removed from one parcel of property and disposed of by depositing upon another parcel of property or in the streets or public rights-of-way except by being delivered to an authorized dump site.

### 3.3 Establishment of Zoning Districts

- A. **Establishment of Districts.** In order to carry out the provisions of this title, the Town is hereby divided into the following zoning Districts:
1. A, Agricultural District.
  2. R-1, Single-Family Residential District;
  3. R-2, Multiple-Family Residential District;
  4. MH, Mobile Home Park District;
  5. MU, Mixed-Use District
  6. C, Commercial District;
  7. I, Industrial District.
  8. PUD, Planned Unit Development Overlay District

### 3.4 Zoning District Boundaries

- A. **District Boundaries.** The boundaries of the zoning districts are shown upon the official map designated Zoning District Map, and all future changes of zoning districts shall be reflected on the Zoning District Map, as may from time to time be revised, updated or redrafted. The official Zoning District Map adopted and to be used for present reference shall be that map bearing the most recent date of publication that has been signed by the Town Clerk and the Mayor. District boundaries shall be on section lines, lot lines, the center lines of highways, streets, alleys, railroad rights-of-way or such

lines extended; municipal corporation lines; natural boundary lines, such as streams; or other lines to be determined by the use of scales shown on the map.

1. Interpretation of Boundary Lines.

- a. *Zoning District Boundaries* – In the event uncertainty is deemed to exist on the zoning district map, district boundaries shall be on section lines, lot lines, the center lines of highways, streets, alleys, railroad rights-of-way or such lines extended; municipal corporation lines; natural boundary lines, such as streams; or other lines to be determined by the use of scales shown on the map.
- i. Amendment upon Zoning or Modification. Upon enactment of any ordinance annexing and establishing zoning or modifying existing zoning for any property, and upon final adoption thereof, the Board of Trustees shall amend the official Zoning District Map to include the annexed area with the proper zoning classification or show the amended classification, as the case may be. Refer to Section 4.9H of this Code for details regarding change of zone.
- ii. Cost for Amending Zoning. Any person who proposes zoning for property being annexed or proposes modifying existing zoning shall bear the entire cost of amending the official zoning map, including all notification costs, professional fees and recording costs. The Town Clerk shall provide applicants with a copy of the current fee schedule and fee agreement form.
- iii. Public Inspection; Storage of original maps are at Weld County Clerk and Recorder's office. A duplicate copy of the official Zoning District Map shall be available and on display at the Town Clerk's office during normal business hours. The current official map, and all prior official maps having been adopted, shall be held under lock and in a secure place by the Town Clerk, who shall act as custodian thereof, and the map shall not be amended, changed, updated or otherwise modified or let out of direct control of the Town Clerk.

### 3.5 Amendments to the Zoning Map and Zoning Text (Change of Zone)

Amendments to the zoning district map or text within This article may be initiated by the Board of Trustees, the Planning Commission or by a real property owner in the area to be included in the amendment. Refer to Section 4.9 of This Land Use Code for details about the process, submittal requirements and review criteria.

### 3.6 Reserved

This section is intentionally reserved.

### 3.7 Zoning District Standards

#### A. A Agricultural District

1. Intent. This is an ultra-low density district intended for the pursuit of farm activities and limited farm animal raising and grazing. The A district regulations are established to promote the health, safety and general welfare of the present and future residents of the Town.
2. Uses by Right. Uses by right in the A District shall be as follows:
  - a. Accessory buildings, farm dwelling and accessory uses.
  - b. Cultivation, storage and sale of crops, vegetables, plants, flowers, and nursery stock produced on the premises.
  - c. Farming, ranching and gardening.
  - d. Grazing and keeping of livestock, as restricted. (animal units)
  - e. Greenhouse
  - f. Horseback riding stables and arenas.
  - g. Identification signs as permitted in the R-1 District.
  - h. Nursery
  - i. Open air farmers' markets.
  - j. Parks and open space.
  - k. Single-family dwelling.
  - l. Sod farm.
  - m. Storage of farm products and private farm equipment.
  - n. Truck farm.
  - o. Utility service facilities.
  - p. Veterinary facilities, small animal clinics.
  - q. Veterinary facilities, large animal clinics.
3. Uses by Special Review. Uses by special review of the Board of Trustees or Planning Commission in the A District shall be as follows:
  - a. Animal boarding, including kennels, as restricted.
  - b. Cemeteries.
4. Density and Dimensional Standards.
  - a. Setbacks.
    - i. The front setback in the A District shall be fifty (50) feet.
    - ii. The side setback in the A District shall be twenty (20) feet, and fifty (50) feet if adjacent to a public street.
    - iii. The rear setback shall be twenty (20) feet for principle buildings and ten (10) feet for accessory buildings.
  - b. Minimum Lot Width. The minimum lot width in the A District shall be 175 feet.

- c. Minimum Lot Area. The minimum lot area in the A District shall be four (4) acres, unless homes are clustered.
- d. Minimum Open Space Requirement. At least twenty five (25) percent shall not contain structures. For clustered homes, housing may cover twenty five (25) percent of the total property (agricultural land and clustered homes) and open space shall encompass at least seventy five (75) percent of the total property.
- e. Building Height. The maximum building height in the A District shall be forty (40) feet.
- f. Minimum Dwelling Size. The minimum floor area of a residential structure shall be 1,000 square feet.

**B. R-1 Single-Family Residential.**

1. Intent. This is a low-density housing district intended primarily for single-family uses on individual lots.
2. Uses by Right. Uses by right in the R-1 District shall be as follows:
  - a. Accessory buildings and accessory uses.
  - b. Accessory dwelling when associated with a use by right.
  - c. Identification signs – one single-face sign per lot, and only if such signs are unlighted, less than three square feet in area, and describes the use on the lot upon which it is located.
  - d. Parks, playgrounds and recreational areas.
  - e. Single-family dwellings.
3. Uses by Special Review. Uses by special review by the Board of Trustees or Planning Commission in the R-1 District shall be as follows:
  - a. Child care centers.
  - b. Community facilities.
  - c. Group homes.
  - d. Hospitals and long-term care facilities.
  - e. Neighborhood-scale church and church schools.
  - f. Police and fire stations or community facilities.
  - g. Public and private schools for primary education (grades K-12).
  - h. Private recreational facilities.
  - i. Public and private schools for secondary education.
  - j. Public utilities: mains, transmission and distribution lines, substations and exchanges only.
  - k. Electric Substation,
4. Density and Dimensional Standards.
  - a. Building Placement. Building placement shall meet the setback standards outlined below. Buildings shall be oriented toward the street.

- b. Setbacks.
  - i. The front setback shall be twenty five (25) feet for both principle and accessory buildings and fifteen (15) feet if the building has a porch.
  - ii. The side setback shall be ten (10) feet for principle buildings, five (5) feet for accessory buildings, and twenty five (25) feet if the building is adjacent to a public street.
  - iii. The rear setback shall be thirty (30) feet for principle buildings and five (5) feet for accessory buildings.
- c. Minimum Lot Width. The minimum lot width in the R-1 District shall be seventy-five (75) feet.
- d. Minimum Lot Area. The minimum lot area in the R-1 District shall be 10,000 square feet.
- e. Minimum Floor Area. The minimum floor area of the primary dwelling shall be 750 square feet.
- f. Building Height. The maximum building height in the R-1 District shall be thirty-five (35) feet or 2.5 stories, with no less than one story above ground.
- g. Open Space. Thirty percent (30%) of the total lot area shall be designated as open space.

**C. R-2 Multiple-Family Residential**

1. Intent. This is a higher-density housing district that represents the traditional development pattern in Nunn. Housing types may include single-family homes, duplexes, town homes, additional density units/mother-in-law units, etc.
2. Uses by Right. Uses by right in the R-2 District shall be as follows:
  - a. All uses permitted by right in the R-1 District.
  - b. Multiple-family dwellings.
3. Uses by Special Review. Uses by special review of the Board of Trustees or the Planning Commission in the R-1 District shall be as follows:
  - a. All permitted uses by special review in the R-1 District.
4. Density and Dimensional Standards.
  - a. Building Placement. Building placement shall meet the setback standards outlined below. Buildings shall be oriented toward the street.

- b. Setbacks.
  - i. Single family dwellings must conform to the R-1 District setback requirements.
  - ii. The front setback in the R-2 District shall be twenty five (25) feet and fifteen (15) feet if the building has a porch.
  - iii. The side setback for a two-family dwelling shall be ten (10) feet on each side. The side setback for a multiple-family dwelling with two (2) side yards shall have a combined width of fifteen (15) feet and neither side yard shall be less than five (5) feet.
  - iv. The rear setback shall be thirty (30) feet for two-family dwellings and twenty five (25) feet for multiple-family dwellings.
- c. Minimum Lot Width. The minimum lot width in the R-2 District shall be seventy-five (75) feet for two-family dwellings and one hundred (100) feet for multiple-family dwellings.
- d. Minimum Lot Area per Dwelling Unit. The minimum lot area in the R-2 District for properties served by a public sewer system shall be:
  - i. Two-family dwelling – 5000 square feet,
  - ii. Multi-family dwelling with 4-bedroom or over – 5,000 square feet
  - iii. Multi-family dwelling with 3-bedrooms – 3,500 square feet
  - iv. Multi-family dwelling with 2-bedroom – 2,600 square feet
  - v. Multi-family dwelling with 1-bedroom or efficiency units – 2,000 square feet.

Additional area is required for septic systems in accordance with Weld County Health Department standards.
- e. Building Height. The maximum building height in the R-2 District shall be thirty -five (35) feet or 2.5 stories, with no less than one story above ground.
- f. Open Space. Not less than three thousand (3,000) square feet per two-family dwelling and not less than nine hundred (900) square feet per multiple-family dwelling.

#### D. MH Mobile Home Park District

1. Intent. This is high density residential district on a parcel of land under single ownership or control on which two or more mobile homes are occupied as residences.
2. General Requirements. Requirements applicable to MH Districts include the following:
  - a. This District may only be used in conjunction with the PUD Overlay District.
  - b. The minimum number of acres which may constitute a MH District shall be five (5) acres.

- c. All mobile homes must have permanent foundations and tongues, axels and wheels must be removed and taxed Ad Valorum as a permanent dwelling.

**E. MU Mixed-Use District.**

1. Intent. This is primarily a commercial district with complementary residential and civic uses. It is intended to reflect the character of the original downtown and to provide of a mixture of uses that will strengthen and expand the core community and provide a transitional zoning area within the downtown as land uses evolve and change over time.
2. Uses by Right. Uses by right in the MU District shall be as follows:
  - a. Residential Uses:
    - i. Single-family dwellings.
    - ii. Two-family dwellings.
    - iii. Home occupations.
    - iv. Live-work (office/commercial building with residential units on top) structures.
  - b. Institutional/Civic/Public Uses:
    - i. Police and fire stations or community facilities.
    - ii. Public and private schools for primary education (K-12).
  - c. Commercial/Retail Uses:
    - i. Artisan and photography studios and galleries.
    - ii. Bed and breakfasts.
    - iii. Boarding and rooming houses.
    - iv. Child care centers.
    - v. Convenience retail stores.
    - vi. Financial services.
    - vii. Small grocery stores.
    - viii. Medical and dental offices and clinics.
    - ix. Mixed use dwelling units.
    - x. Open air farmers' market.
    - xi. Personal and business service shops.
    - xii. Professional offices.
    - xiii. Restaurants, not including drive-ins.
    - xiv. Retail sales.
    - xv. Tourist facilities.
3. Uses by Special Review. Uses by special review in the Mixed-Use District shall be as follows:
  - a. Bars and taverns.
  - b. Clubs and lodges.
  - c. Churches.
  - d. Gasoline service stations, with repair and servicing facilities or capabilities.
  - e. Entertainment facilities and theaters, seating capacity not over one thousand (1,000).
  - f. Hospitals and long-term care facilities.

- g. Hotels and motels.
- h. Parking lots and parking garages.
- i. Public and private schools for secondary education.
- j. Recreational facilities.
- k. Utility service facilities.
- l. Workshops and custom small industry uses.

#### 4. Density and Dimensional Standards.

- a. **Building Placement.** Building placement shall meet the setback standards outlined below. Buildings shall be oriented toward the street, defining a street wall.
- b. **Setbacks.**
  - i. No front setback is required if all building frontage on the side of the street between two (2) intersecting streets is commercial. If the frontage on the side of the street between two (2) intersecting streets includes residential, the R-2 setback shall apply to the entire frontage.
  - ii. No side setback is required if the building is constructed of masonry or fireproof materials, provided that the wall or walls are located on the property line. In all other cases, a side setback of three (3) feet is required. If rear access to the property is not available, a twelve (12) foot setback shall be required on one (1) side.
  - iii. The rear setback shall be fifteen (15) feet (which may include half of the alley, if applicable).
- c. **Minimum Lot Width.** The minimum lot width in the Mixed-Use District shall be fifty (50) feet.
- d. **Minimum Lot Area.** The minimum lot area in the Mixed-Use District shall be six thousand (6,000) square feet.
- e. **Building Height.** The maximum building height in the Mixed-Use District shall be forty (40) feet.

#### F. **C Commercial District.**

- 1. **Intent.** This district is intended to establish and preserve areas for local business uses, offices, retail and related commercial uses.
- 2. **Uses by Right.** Uses by right in the C District shall be as follows:
  - a. Any general business and commercial retail activity, including:
    - i. Automobile repair shops.
    - ii. Auto, recreation vehicle, boat and truck sales.
    - iii. Bakeries.
    - iv. Banks.

- v. Boarding and rooming houses.
- vi. Hotels and motels, including incidental business.
- vii. Laundries.
- viii. Medical and dental clinics.
- ix. Mortuary.
- x. Nurseries and green houses.
- xi. Personal service shops.
- xii. Police and fire stations or community facilities.
- xiii. Printing and publishing establishments.
- xiv. Private schools.
- xv. Professional offices.
- xvi. Restaurants, including drive-ins and tea rooms.
- xvii. Recreational facilities.
- xviii. Identification signs – provided such signs are for identification of a business located on a premises and do not exceed ten (10) square feet for any one sign, and provided the total area of signs displayed by any one establishment does not exceed one square foot of sign surface for each three (3) feet of frontage actually occupied by the building, within which such building is located.
- xix. Gasoline service stations, repair garages and car washes.
- xx. Hotels and motels.
- xxi. Parking lots and parking garages.
- xxii. Print shops.
- xxiii. Private recreational facilities.
- xxiv. Professional offices.
- xxv. Small equipment repair facilities.
- xxvi. Transportation headquarters, without repair and servicing facilities or capability.

3. Uses by Special Review. Uses by special review of the Board of Trustees and Planning Commission in the C District shall be as follows:

- a. Entertainment facilities and theaters, seating capacity not over one thousand (1,000).
- b. Electric Substation.
- c. Mini-storage facilities.
- d. Places serving food or beverages outside of an enclosed building.
- e. Places of amusement or recreation.
- f. Advertising sign boards.
- g. Utility service facilities
- h. Wireless telecommunication facilities (as permitted in Article 4).
- i. Workshops and custom small industry uses.

4. General Requirements.

- a. Goods sold shall consist primarily of new merchandise and any goods produced on the premises unless otherwise permitted herein for special uses.
- b. Processes and equipment employed and goods processed or sold shall be limited to those which are not objectionable by reason of odor, dust, smoke, cinders, gas, noise, vibration, refuse matter, or water-carried waste.

5. Density and Dimensional Standards.

- a. **Block Size.** Block size shall encompass a maximum perimeter of two thousand (2,000) feet. A maximum block face of seven hundred (700) feet is permitted. Optimal block length for mixed-use development is between 350 and 500 feet.
- b. **Building Placement.** Building placement shall meet the setback standards outlined below. Buildings shall be oriented toward the street, defining a street wall when possible.
- c. **Setbacks.**
  - i. Where all the frontage on the side of a street between two (2) intersecting streets is zoned Commercial District, no setback shall be required. Where the frontage of one (1) side of a street between two (2) intersecting streets is zoned partly as business, the setback requirements of the R-2 Multiple-Family Residential District shall apply to the entire frontage.
  - ii. No side setback is required if the building is constructed of masonry or fireproof materials, provided that the wall or walls are located on the property line. In all other cases, a side setback of three (3) feet is required. If rear access to the property is not available, a twelve (12) foot setback shall be required on one (1) side. For motels, hotels and rooming houses, the side yard requirements for multiple-family dwelling of the R-2 District shall apply.
  - iii. The rear setback shall be two (2) feet for all buildings in the Commercial District.
- d. **Minimum Lot Width.** The minimum lot width in the Commercial District shall be fifty (50) feet.
- e. **Minimum Lot Area.** The minimum lot area in the Commercial District shall be six thousand (6,000) square feet.
- f. **Building Height.** The maximum building height in the Commercial District shall be forty (40) feet or three (3) stories.

G. **I Industrial District**

1. **Intent.** The industrial district is intended to provide a location for a variety of industrial uses, warehousing and distributing, indoor and outdoor storage and a wide range of commercial and industrial operations.

2. Uses by Right in the industrial (I) district shall be as follows.

- a. Accessory uses and accessory buildings.
- b. Accessory dwelling.
- c. Cremation facility.
- d. Electric Substation.
- e. Establishments for the sale and repair of farm machinery and diesel trucks and buses.
- f. Lumberyards and builders supply facilities (with outdoor storage).
- g. Machine shops.
- h. Manufacturing, assembly packaging or processing from previously prepared materials.
- i. Mini storage facilities.
- j. Newspaper plants.
- k. Outside storage facilities.
- l. Recreation facilities.
- m. Research, experimental or testing laboratories.
- n. Transportation headquarters, without incidental repair and servicing facilities.
- o. Warehouse.
- p. Wholesale merchandise establishments.
- q. Workshops and custom small industry uses.

3. Uses by Special review by The Board of Trustees or Planning Commission in the Industrial District shall be as follows:

- a. Establishments for food and beverage processing.
- b. Concrete and asphalt batch plants.
- c. Lumberyards and builders supply facilities (with outdoor storage).
- d. Mining, mineral extraction, processing.
- e. Outside storage facilities.
- f. Railroad yards and stations.
- g. Recycling facilities.
- h. Transportation headquarters, with incidental repair and servicing facilities.
- i. Truck depot.
- j. Utility service facilities with buildings and/or storage structures.
- k. Water and wastewater treatment facilities.

4. Density and Dimensional Standards.

- a. Setbacks.
  - i. The front setback in the Industrial District shall be fifty (50) feet. The first fifteen (15) feet of the front setback shall be used exclusively for landscaping and ingress and egress.
  - ii. No side setback shall be required of a building constructed of masonry or fireproof materials, provided the wall or walls are located on a property line. The side setback shall be fifteen (15) feet on each side if a building is to be constructed of non-fireproof materials. In the event that rear access to the property is not available, a side setback of twelve (12) feet shall be required on each side.

- iii. The rear setback shall be a minimum of fifteen (15) feet, which may include one-half the width of an alley.
- b. Minimum Lot Width. The minimum lot width in the Industrial District shall be seventy-five (75) feet.
- c. Minimum Lot Area. The minimum lot shall be 7,000 square feet.
- d. Building Height. The maximum building height shall be forty (40) feet.

### 3.8 Planned Unit Developments Overlay District

- A. **Intent.** The intent of the Planned Unit Development (PUD) Overlay District is to permit and encourage innovative design and to allow and encourage compatible uses to be developed in accordance with a unified development plan in harmony with the environment and surrounding neighborhood. The PUD Overlay District is intended to permit greater flexibility in the application of zoning and development standards and greater freedom in providing a mix of land uses in the development of a balanced community. PUDs are expected to preserve critical environmental resources, provide above-average open space and recreational amenities, include exceptional design and provide greater efficiency in the layout and provision of roads, utilities and other infrastructure.
- B. **Permitted Uses.** Any combination of land uses may be permitted in a PUD District so long as the Board of Trustees determine that such uses are compatible with one another and with any property that could reasonably be impacted by the development and are consistent with the *Comprehensive Plan*. Compatibility shall be determined based on the context of the existing or desired character of the neighborhood in which the PUD is located. Factors which may be considered include:
  1. The extent to which uses and structures complement one another and the neighborhood;
  2. The size, appearance and placement of buildings relative to one another, the streets and the neighborhood;
  3. Street connectivity, block patterns and overall walkability and bikability of project;
  4. The project's integration of the property's natural characteristics (soils, topography, hydrologic features, vegetation);
  5. Parking (location, landscaping, quantity) and traffic;
  6. Quality of the public realm (location/functionality of open space, distinctive architecture, landscaping, fencing, screening
  7. The diversity of product types (variety of housing sizes and styles); and
  8. The environmental impact (avoids ecologically sensitive areas, minimizes impact on wildlife, conserves natural resources, protects the night sky, minimizes potential noise issues) and the community's health, safety and well-being.

- C. **Permitted Densities.** The density and intensity of development shall be based on the capacity of the land proposed for development as well as the impact of the proposed development on Town services and facilities and on the neighborhood that reasonably could be impacted by the proposed development. The capacity of the land shall be based on the size, topography, geological and environmental limitations of the property.
- D. **Setbacks and Dimensional Requirements.** There shall be no minimum spacing between buildings. However, the following conditions shall be met:
1. Buildings shall be constructed with the appropriate amount of firewall as set forth in the Building Code for their proposed distance to an adjacent structure.
  2. Buildings shall be placed in a manner that emergency access or other designed or required access is not hindered.
  3. Buildings shall be placed in a manner that allows for the proper placement of utility infrastructure and/or drainage channels.
  4. Buildings shall be placed to provide adequate privacy for the occupants and to ensure the adequate circulation of light and air.
  5. Structures on the outside perimeter of the PUD shall be adequate to fit within the contexts of structures on adjacent properties.

The Planning Commission may increase, decrease or change in any manner any setback, dimensional, spacing or lot area requirement which they deem is in the best interest of protecting the health, safety and welfare of the community and/or which they feel will improve the internal and/or external compatibility of the PUD

- E. **PUD Restrictions and General Requirements.** Properties utilizing the PUD Overlay District shall be subject to the following.
1. PUD applications shall include a gross land area of not less than two (2) acres. Upon the specific request of the landowner or upon the recommendation of the Board of Trustees, the two-acre requirement set forth in this section may be waived if, after considering the land use requested, the Board of Trustees finds that such waiver would be beneficial to the Town and foster the objectives of this Code.
  2. All requirements set forth in this Code otherwise applicable to the area of land proposed for a PUD shall govern, except to the extent that the unified plan of development for residential, commercial, educational, recreational or industrial uses or any combination thereof may propose exceptions in lot size, bulk, type of use, density, lot coverage, open space or other standards within the existing land use regulations, except those development standards that are not open to modification.
- F. **Land Previously Zoned PUD.** Any land previously zoned PUD, and partially developed prior to the date of adoption of this Code may continue and complete such development under the terms and conditions of approval for that PUD; subject, however, to the provision that any major modifications, as determined by the Board of Trustees, to that PUD shall require review and approval under the new requirements of This Code.

### 3.9 Board of Adjustment

- A. Establishment.** A Board of Adjustment is hereby established and shall be a five member panel appointed by The Board of Trustees. All power and authority of the Board of Adjustment as described in state law and as described in The State law and This Section.
- B. Power and Duties.** The Board of Adjustment shall have the following powers and duties:
1. Appeals. To hear and decide appeals where an error is alleged in any order, requirement, decision or determination made by an administrative official charged with the enforcement of the provisions in this title.
  2. Referred Matters. To hear and decide all matters referred to it under the provisions of this Section.
  3. Practical Difficulties. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Article. The Board of Adjustment has the power, in passing upon appeals, to vary or modify the application of the regulations or provisions of this Section relating to the use, construction, or alteration of buildings or structures, or the use of land, so that the spirit of this Section is observed, public safety and welfare secured, and substantial justice done. The Board of Adjustments concludes a valid case has been made for the existence of a practical difficulty when it finds:
    - a. That a unique circumstance or condition relative to the land prevents the landowner from enjoying the reasonable use of their property as others in the same zoning district are generally able to do.
    - b. That the request will not be significantly harmful to your neighbors or the community as a whole
    - c. That the request is consistent with the intent of the Land Use Code.
    - d. That the request was not made necessary by anything the applicant did in the first place.
    - e. That the request is granted with fairness and integrity afforded both the applicant and the public at large.
- C. Procedure.**
1. Filing. Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department or The Board of Trustees affected by any decision of the Administrative Official charged with enforcement of this title.
  2. Such appeals shall be taken within thirty (30) days from the date of the decision, and shall be filed in writing with the Town Clerk together with an application fee of fifty (50) dollars. The Town Clerk shall forthwith transmit to the Board of Adjustment the application and any materials submitted with the application and all papers constituting the record upon which the action appealed was taken. The Town Clerk shall also forthwith transmit to the Board of Trustees a copy of all items transmitted to the Board of Adjustment. The Board of Trustees

may consider the application and other relevant material at a public meeting and may submit a written recommendation to the Board of Adjustment.

- D. Hearing Procedures.** For applications for variances relating to the use requirements of this title, a written notice of the hearing shall be sent by certified mail at least five (5) days, or delivered personally at least three (3) days prior to the hearing date, to owners of property adjacent to the property in question; names of such owners shall be provided by the applicant.
- E. Written decision.** The Board of Adjustment shall render a decision within fifteen (15) days after the completion of the hearing on appeal.
1. Unless otherwise stated in the Board of Adjustment minutes, all variance permits shall be valid for a period of time not to exceed six (6) months from the time such variance is granted by the Board of Adjustment.
- F. Decisions of the Board of Adjustment.**
1. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify, the order, requirement, decision or determination as in its opinion ought to be made, and to that end has all the powers of the officer from whom the appeal is taken.
  2. In passing upon appeals, the Board of Adjustment may vary or modify the regulations or provisions governing construction or alteration of buildings or structures so that the spirit of this Section is observed, public safety, environmental health and welfare secured.
  3. The concurring vote of all five members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the zoning officer of the Town, or to decide in favor of an applicant on any matter referred to the Board of Adjustment under the provisions of this chapter.
  4. All decisions of the Board of Adjustment, including grounds for such decision, shall be stated in writing.
  5. The criteria for variances and appeals are set forth in Section 4.9 of the subdivision regulations.

### 3.10 Violations and Penalties

- A. Violation – Penalty.**
1. Any person or corporation, whether as principal, agent, employee, or otherwise, who violates any of the provisions of this title shall be fined not exceeding one thousand (1,000) dollars for each offense, such fine to inure the Town. Each day of the existence of any violation shall be deemed a separate offense.
  2. The erection, construction, enlargement, conversion, moving, or maintenance of any building or structure and the use of any land or building which is continued, operated or maintained, contrary to any provisions of this title, is declared to be a violation of this title and unlawful. The Town Attorney shall immediately, upon any such violation having been called to his

attention, institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove such violation.

3. The remedy provided for in this Section shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

### 3.11 Non-Conforming Uses

- A. Generally.** Except as provided in this Section, the lawful use of any building or land existing at the time of enactment of this ordinance codified in this title, or of any amendments to this title, may be continued even though such use does not conform to the requirements of this title provided that such continued use does not pose a significant safety hazard or health.
- B. Definitions**
1. "Non-conforming lot"-- a lawfully established lot that is described and depicted within a subdivision plat approved by the Board of Trustees which is recorded in the records of the Weld County Clerk and Recorder but which does not meet the requirements for area, width, frontage, size or any other lot requirements for the zoning district in which the lot is located.
  2. "Non-conforming structure"-- a lawfully erected building that does not meet the applicable limitations and restrictions on building size, height, bulk, or location on the lot for the zoning district in which the building is located.
  3. "Non-conforming use" -- a lawful use of land that does not comply with the use restrictions, regulations or provisions of the zoning district classification applicable to the land but which fully complied with applicable use restrictions, regulations.
- C. Repair and Maintenance.** Ordinary maintenance of a non-conforming building shall be permitted.
- D. Restoration.** A non-conforming building which has been damaged by fire or other causes may be restored to its original condition, provided such work is commenced within one (1) year of such calamity.
- E. Abandonment.**
1. Whenever a non-conforming use has been discontinued for a period of one (1) year, such use shall not thereafter be reestablished and any future use shall be in conformance with the provisions of this ordinance. (Ord. 120, 1972; Ord. 212, 1998)
  2. Whenever a non-conforming use arising from or related to the use of a mobile home which does not satisfy the definition of "dwelling, single family" and where such non-conforming use has been discontinued, such use shall not thereafter be reestablished and any future use shall be in conformance with the provisions of this Ordinance. (Ord 120, 1972; Ord. 212, 1998)
- F. Change in Use.** A non-conforming use shall not be changed to a use of lower, or less restrictive classification; such non-conforming uses may, however, be changed to another use of the same or higher classification.

- G. **Extension.** A non-conforming use shall not be extended either in intensity of use or in floor area or lot area.
- H. **Cessation.** Cessation shall be made for all industrial use ordinance in any residential or commercial district the effective date of this ordinance if such uses are not contained within an enclosed and covered building and/or if such uses are detrimental and injurious to the adjoining lands because such uses create unusual and odors, smoke, sounds, dust, vibration , or traffic problems.
- I. **Moving.** No building or structure which does not conform to all of which it is located shall be moved in whole or in part to another location unless structure is moved in whole or in part, to another location unless every portion of such building or structure is moved, and the use thereof is made to conform to all regulations of the district in which it is moved.

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