

CHAPTER 4.05

**ZONING REVIEW PROCEDURES**

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SPECIAL USEA. Conditions for Special Use1. All Special Uses

- a. A special use permit may be granted for a use in a particular Zone District, as provided in Section B below, provided the Board of Trustees finds the following:
  1. The proposed use is consistent with the provisions of this Chapter and with the Town's goals, policies and plans, and
  2. The proposed use is compatible with existing and allowed uses surrounding or affected by the proposed use, and
  3. Street improvements adequate to accommodate traffic volumes generated by the proposed use and in provision of safe, convenient access to the use and adequate parking are either in place or will be constructed in conjunction with the proposed use, as approved by the Town, and
  4. The special conditions for specific uses, as provided in this Section, are met.
- b. In granting a special use permit, the Board shall impose such restrictions on the proposed use as they find necessary to protect the public health, safety and welfare, including but not limited to restrictions equal to or more restrictive than requirements of the zone district regulations regarding area, setback, coverage, and height of proposed structures; off-street parking; safety of ingress and egress; physical separation in distance from other uses or buildings; landscaped buffer areas; screening fences; and any other provisions they find necessary. A special use permit may be limited as to duration of not less than three (3) years, location, the party entitled to the benefit thereof, and/or other specifics.
- c. All special uses that attract or produce additional vehicular trips shall pay a Street Improvement Fee in accordance with Section 4.13.185.
- d. All special uses requiring additional fire protection services shall pay a Fire Protection Services Impact Fee in accordance with Section 4.13.186.

Amended Ord. 18-2015 06/23/15

2. Industrial Operations

Every industrial use requiring a Special Use Permit shall be designed to conform with Section 4.04.100(L) and operated so as to have no adverse effect on:

- a. Existing lawful use of water through depletion or pollution of surface run-off, stream flow or ground water.
- b. Wildlife and domestic animals through creation of hazardous attractions, blockade of migration routes or patterns or other means.

3. High-Density Multiple-Family Dwellings

- a. In the Residential Multi-Family (RMF) Zone District, high density multiple-family dwellings shall be allowed as a Special Use at the maximum density of one dwelling unit per 2,000 square feet of lot area provided that in addition to all other applicable standards and requirements, the lot area shall include a minimum of 300 square feet of useable open space, as defined in this Title, per dwelling unit.
- b. In the Central Business District (CBD) Zone District, high density multiple-family dwellings shall be allowed as a Special Use provided that, in addition to all other applicable standards and requirements, the lot area shall include a minimum of 300 square feet of usable open space, as defined in this Title, per dwelling unit.
- c. As a condition of any special use permit for high density multi-family dwellings in the Residential Multi-Family (RMF) Zone District and the Central Business District (CBD) Zone District, containing ten (10) or more “for sale” residential units, the applicant shall provide Local Employee Residences in accordance with Section 4.04.120 and the Town’s Local Employee Residency Requirements and Guidelines.

Amended Ord. 18-2015 06/23/15

4. Bed and Breakfast Facility

A bed and breakfast facility may be allowed as Special Use in certain Zone Districts, as set forth herein, provided all of the following conditions and standards, in addition to those imposed by the Planning Commission and/or Board of Trustees, are met:

- a. A bed and breakfast facility is an owner-occupied, single-family residential dwelling unit that contains no more than three (3) guest bedrooms where overnight lodging, with or without meals, is provided for compensation. Kitchen and dining facilities serve only residents and guests and are not operated or used for any commercial activity other than that necessary for bed and breakfast purposes;

- b. The bed and breakfast use shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes and shall not change the residential character thereof;
- c. There shall be no advertising display or other indication of the bed and breakfast use on the premises other than a single six (6) square-foot unlighted sign that is otherwise in compliance with the provisions of Chapter 4.08;
- d. A minimum of one parking space per guest and resident bedroom shall be required and shown on a site plan. Additional landscape screening may be required;
- e. Basement bedrooms shall have adequate egress;
- f. The bed and breakfast facility shall comply with all Building Codes adopted by the Town, and any requirements Fire Codes adopted by the Greater Eagle Fire Protection District;
- g. The bed and breakfast facilities shall be subject to the street improvement fee set forth in Section 4.13.185, fire protection impact fee set forth in Section 4.13.186, and the lodging occupation tax set forth in Chapter 5.05 of the Municipal Code;
- h. It shall be the responsibility of the applicant to demonstrate that the relevant subdivision's, covenants, condition or restrictions allow for a bed and breakfast use and/or associated signing, and
- i. Existing uses in addition to that of a dwelling unit (e.g. home occupation, accessory dwelling unit, etc.), if any, will be considered as part of the Special Use review.

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B. Procedures for Special Use Review

1. Application

- a. Each application for a special use permit shall be made on a form provided by the Town, and signed by the applicant which clearly states the nature of the proposed use and reasons in support thereof. The application shall be accompanied by:
  - 1. Proof of ownership of the land for which the application is made. If applicant is other than the owner, notarized consent of the owner is required;
  - 2. A site plan drawn to scale depicting the locations and boundaries of existing and proposed lots and structures;
  - 3. The proper special use permit fee as set by the Town, and

4. A list of names and addresses of owners of record of all property within 250' excluding right-of-way.
  5. Any other information which the Town Planner determines is necessary to determine whether the Special Use will comply with the Town's regulations, goals and policies.
  6. Applications for special use permits for high density multi-family dwellings, containing ten (10) or more residential units, shall include a Local Employee Residency Plan pursuant to Section 4.04.120 and the Town's Local Employee Residency Requirements and Guidelines.
- b. A minimum of twenty copies of the completed application, siteplan and supporting materials, except proof of ownership, shall be submitted to the Town Planner at least 30 calendar days prior to the Planning Commission meeting at which it is to be reviewed. This submittal shall include an electronic copy (PDF) of all submittal materials.

Amended Ord. 18-2015 06/23/15

2. Staff/Agency Review

The Town Planner shall review the application with appropriate staff or other agencies and shall provide copies of a summary of the application and staff or agency comments to the Planning Commission members.

3. Amended Ord. 18-2015 06/23/15 Planning Commission Review

The Planning Commission shall review the application at a regular meeting, at which it shall hold a Public Hearing on the application, following procedures and public notice requirements of Section 4.03.060 and 4.03.070. The applicant or his representative shall be present at the meeting to represent the proposal. The Commission shall take one of the following actions:

- a. Recommend to the Town Board that a special use permit be approved, subject to any conditions they find necessary to protect the public health, safety and welfare or to ensure compliance with the Town's regulations, goals, and policies; or
- b. Recommend denial of the special use permit, stating the specific reasons for denial.
- c. Continue the hearing pursuant to Chapter 2.20 of the Municipal Code, with the requirement that the applicant submit changes or additional information which they find necessary to determine whether the proposal complies with the Town's regulations, goals, policies; or

4. Further Review by Planning Commission

- a. In the event the hearing is continued pursuant to paragraph b. above, the applicant shall submit fifteen copies of the required changes or information to the Town Planner at least ten days prior to the Planning Commission meeting at which the application is to be reconsidered. The Town Planner shall review the additional submittal with appropriate staff or agencies and shall distribute copies of the submittal to the Planning Commission members, along with comments from the staff or agencies.
- b. At the continued hearing, the applicant or his representative shall be present to represent the application. At this meeting, the Planning Commission shall take on one of the following actions:
  1. Recommend to the Town Board that a special use permit be approved, subject to any conditions they find necessary to protect the public health, safety and welfare or to ensure compliance with the Town's regulations, goals and policies; or
  2. Recommend denial of the special use permit, stating the specific reasons for denial.
  3. Continue the hearing pursuant to Chapter 2.20 of the Municipal Code.

Amended 05/08/07  
Amended Ord. 18-2015 06/23/15

5. Town Board Review

- a. After the Planning Commission has made its recommendation for issuance or denial of the special use permit, the Town Planner shall distribute copies of the summary of the application to the Board members, along with relevant excerpts from Planning Commission meeting minutes and copies of staff or agency comments.
- b. The Board shall review the application at a regular meeting within thirty (30) days of the Planning Commission recommendation, or such longer period as may be agreed to by the applicant and the Town, at which it shall hold a public hearing on the application. At such hearing, the Board shall consider the recommendations of the Planning Commission and

the comments, testimony and other evidence presented. The applicant or its representative shall be present to represent the proposal. The Board shall take one (1) of the following actions:

1. Approve the proposed special use, subject to any conditions it finds necessary to protect the public health, safety and welfare or to insure compliance with the Town's regulations, goals and policies; or
2. Deny the special use applied for, stating the specific reasons for denial; or
3. Continue the hearing pursuant to Chapter 2.20 of the Municipal Code.

Amended 05/08/07

- c. If the Special Use permit is approved, the Board shall authorize issuance of a written Special Use Permit, subject to such conditions as it finds necessary to protect the public health, safety and welfare and to ensure compliance with the Town's regulations, goals and policies. In the event no building permit has been applied for or the special use has not been established within three years of the approval date, the Special Use Permit shall be null and void unless otherwise provided for in the Board's approval.

Amended Ord. 18-2015 06/23/15

### C. Performance Guarantee

In order to secure the construction and installation of street improvements, access improvements, parking improvements, landscape improvements, and any other improvements required by the Town as a condition of the issuance of a Special Use Permit, the applicant shall, prior to the issuance of the Special Use Permit, furnish the Town with:

1. A certificate or other evidence in good and sufficient form approved by the Town Attorney of a performance bond or an irrevocable letter of credit to secure the performance and completion of such improvements in an amount equal to one hundred ten percent (110%) of the estimated costs of said facilities, or
2. Such other collateral as may be satisfactory to the Town Attorney.

The estimated cost of such improvements shall be a figure mutually agreed upon by the applicant and the Town Engineer. The purpose of such cost estimate is solely to determine the amount of security and may be revised from time to time to reflect the actual cost. No representation shall be made as to the accuracy of these estimates, and the applicant

shall in any event pay the actual cost of such required improvements.

All improvements required to be constructed shall be warranted to be free of any defects in materials or workmanship for a period of twenty-four (24) months following completion and approval by the Town. If any such improvements are public improvements, they shall also be dedicated or conveyed to the Town of Eagle.

Upon the applicant's failure to perform its obligations as required by the conditions for the issuance of the Special Use Permit, and in accordance with all plans, drawings, specifications and other documents submitted to the Town within the required time periods, the Town may give written notice to the applicant and the surety on a performance bond or the issuer of an irrevocable letter of credit, that the Town, as agent for the applicant, is proceeding with the task of installing the required improvements in whole or in part. Upon the assumption by the Town, the surety or issuer of the irrevocable letter of credit shall be authorized to disburse funds, upon written request from the Town, showing the proposed payee and the amount to be paid. Copies of any such request shall be sent to the applicant's last known address. Applicant shall be given an opportunity to appear before the Town Board of Trustees concerning any such assumption by the Town, within thirty (30) days after the giving of such notice by the Town,

The applicant shall in writing designate and irrevocably appoint the Mayor of the Town as its attorney in fact and agent for the purpose of completing all of the improvements required by the Special Use Permit in event of a default by the applicant.

If any legal proceedings are commenced by the applicant concerning the Town's assumption of the task of installing the required improvements, and if the applicant does not prevail in said legal proceedings, the surety or issuer of the letter of credit as well as the Town shall be entitled to recover the reasonable attorney's fees and costs incurred therein from the applicant.

Amended Ord. 18-2015 06/23/15

- D. Revocation of Special Use Permit. Any special use permit granted under this Chapter may be revoked, following a public hearing, upon a determination that the owner of the property subject to the special use permit, or holder of the permit if different from the owner, has violated one or more of the conditions or requirements contained in the special use permit, including the conditions set forth in Section 4.17.050. In the event the Town Planner has reasonable cause to believe that one or more conditions or requirements of the special use permit has been violated, the Town Planner shall serve the record owner of the property subject to the special use permit and the holder of such permit if other than the owner, in person or by certified mail, return receipt requested, a notice to show cause why the special use permit should not be revoked and any vested property rights related thereto forfeited. Such notice shall state the date, time and place for a public hearing at which the Board of Trustees or designated hearing officer

will consider whether the special use permit should be revoked. The notice shall also set forth a concise statement of the grounds for revocation. The notice shall be served at least fifteen (15) days prior to the date of the hearing. The public hearing shall be conducted by the Board of Trustees, or a hearing officer appointed by the Board of Trustees, pursuant to Chapter 2.20 of the Eagle Municipal Code. Following such hearing, the Board of Trustees shall issue a written decision either revoking the special use permit or finding insufficient evidence exists to revoke the permit.

Amended 06/02/91  
Amended 07/15/96  
Amended 04/17/97  
Amended 09/08/02

#### 4.05.020 ZONING VARIANCE

##### A. Conditions for Zoning Variance

A variance from the strict application of any zone district requirement or supplementary regulation of this Chapter may be granted by the Planning Commission following the procedures and conditions herein, except that no use shall be allowed in any zone district in which it is not listed as a permitted or special use. The Planning Commission may grant a variance provided it finds both items 1 and 2 and either item 3 or 4 are applicable.

1. That the variance granted is without substantial detriment to the public good and does not impair the intent and purposes of the Town's regulations, goals, policies and plan, including the specific regulation in question; and

2. That the variance granted is the minimum necessary to alleviate the hardship; and

3. That there exists on the property in question exceptional topography, shape, size or other extraordinary and exceptional situation or condition peculiar to the site, existing buildings, or lot configuration such that strict application of the zone district requirements from which the variance is requested would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property in question; or

4. That such exceptional situation or condition was not induced by any action of the applicant and is not a general condition throughout the zone district.

In granting a zoning variance, the Planning Commission shall modify the application of the regulation so that the spirit of the Title is observed, public safety and welfare secured, and substantial justice done.

Pursuant to 31-23-307, Colorado Revised Statutes, as amended, the Planning Commission may vary or modify the application of zoning regulations for the purpose of considering access to sunlight for solar energy devices.

B. Procedures for Variance Review

1. Application

a. Each application for a zoning variance shall be made on a form provided by the Town, and signed by the applicant which clearly states the reasons for the request and how it complies with the conditions for variance. The application shall be accompanied

by:

1. Proof of ownership of the land for which the application is made. If applicant is other than the owner, notarized consent of the owner is required;

2. A site plan drawn to scale depicting the locations and boundaries of existing and proposed lots and structures;

3. The proper zoning variance fee as set by the Town; and

4. A list of names and addresses of owners of record of adjacent property.

b. A minimum of twenty (20) copies of the application, site plan and supporting materials shall be submitted to the Town Planner at least fifteen (15) calendar days prior to the Planning Commission meeting at which the variance request is to be reviewed.

2. Staff/Agency Review

The Town Planner shall review the application with appropriate Staff or other agencies and shall provide copies of the application and staff or agency comments to the Planning Commission.

3. Planning Commission Review

The Planning Commission shall review the zoning variance request at a regular meeting at which it shall hold a public hearing on the application. Public notice shall be given pursuant to Section 4.03.060. The applicant or his representative shall be present to represent the proposal. The Planning Commission shall take one of the following actions:

a. Grant the zoning variance, subject to Section 4.05.020.A, or

b. Deny the zoning variance, stating the specific reasons for denial.

c. Continue the hearing pursuant to Chapter 2.20 of the municipal code.

Any decision of the Planning Commission shall be final, from which an

appeal may be taken to a court of competent jurisdiction as provided in accordance with 31-23-307, Colorado Revised Statutes, as amended.

Amended 06/02/91

4.05.030

REZONING

A. Conditions for Rezoning

The Town Board may amend the number, shape, or boundaries of any zone district, removing any property from one zone district and adding it to another zone district, only after recommendation of the Planning Commission. A rezoning may be granted where the findings are made:

1. That the rezoning is compatible with surrounding land uses, and is consistent with the Town's goals, policies and plans, and
2. That the land to be rezoned was previously zoned in error or the existing zoning is inconsistent with the Town's goals, policies and plans, or
3. That the area for which rezoning is requested has changed substantially such that the proposed rezoning better meets the needs of the community, or
4. That the rezoning is incidental to a comprehensive revision of the Town's zoning map which recognizes a change in conditions and is consistent with the Town's goals, policies and plans.

B. Procedures for Rezoning

1. Application

- a. Rezoning action may be initiated by the Planning Commission, the Board of Trustees or by a minimum of 50% of the owners of the property to be rezoned. When a rezoning request is initiated by other than the Town, the request for rezoning shall be made on an application form provided by the Town. The application shall be accompanied by:

1. Proof of ownership of the land for which the application is made,
2. A petition requesting the zoning change signed by owners of at least 50% of the land area proposed for rezoning,
3. A site plan depicting the location and boundaries of existing and proposed lot(s) and structures, and
4. The proper zoning action request fee as set by the Town.

- b. A minimum of twenty copies of the application,

site plan and supporting materials shall be submitted to the Town Planner at least 30 calendar days prior to the Planning Commission meeting at which the rezoning request is to be reviewed.

- c. Review of a rezoning request may occur concurrently with review for a Development Permit, pursuant to Section 4.06.010, a Special Use Permit, pursuant to Section 4.05.010; or a subdivision, pursuant to Section 4.12.020; at the option of the applicant.

2. Staff/Agency Review

The Town Planner shall review the application with appropriate Staff and other agencies and shall provide copies of the application and comments to the Planning Commission members.

3. Planning Commission Review

Whether initiated by the Town or property owner(s), the Planning Commission shall review the zoning application at a regular meeting within thirty (30) days of the application submittal, at which it shall hold a public hearing on the application. Public Notice shall be given pursuant to Section 4.03.060, except that when an entire zone district is to be rezoned, notice to the owners of land within such district shall be made by published notice rather than mailed notice. The applicant, if any, or his representative, shall be present at the meeting to represent the proposal. The Planning Commission shall take one of the following actions:

- a. Approve the rezoning and recommend to the Town Board that an ordinance be enacted to rezone the subject property, or
- b. Recommend denial of the rezoning stating the specific reasons for denial.
- c. Continue the hearing pursuant to Chapter 2.20 of the Municipal Code.

4. Town Board Review

- a. After the Planning Commission has made its recommendation for approval or denial, the Town Planner shall distribute copies of the rezoning application, staff comments, and Planning Commission Minutes to the Board members.
- b. The Board shall review the application at a regular meeting within thirty (30) days of the Planning Commission recommendation, or such longer period as may be agreed to by the Town and the applicant, at which it shall hold a public hearing on the application. Public notice shall be given as for the Planning

Commission hearing. At such hearing, the Board shall consider the recommendations of the Planning Commission and the comments, testimony and other evidence presented. The applicant, if any, or its representative, shall be present at the meeting to represent the proposal.

Amended 05/08/07

- c. The Board shall take one (1) of the following actions:
1. Approve the proposed rezoning, after a finding that the criteria for rezoning have been met pursuant to Section 4.05.030(A). If the rezoning is approved by the Board of Trustees, it shall enact an ordinance to such effect and the rezoning shall become effective thirty (30) days after publication of said ordinance; or
  2. Deny the rezoning application, stating the specific reasons for such denial; or
  3. Continue the hearing pursuant to Chapter 2.20 of the Municipal Code.

Amended 05/08/07

- d. In case of a protest against a rezoning which is submitted to the Town Clerk at least 24 hours before the Town Board's vote on the rezoning, and which is signed by the owners of 20% or more of either the area included in the proposed rezoning or of the land extending a radius of 250 feet from the land included in the proposed rezoning, then such rezoning shall not become effective except upon favorable vote by 3/4 of the entire membership of the Board, whether present or not.

Amended 03/05/86

Amended 08/09/88

#### 4.05.040 AMENDMENT TO ZONE DISTRICT REGULATIONS

##### A. Conditions for Amendment

The Town Board may, after the recommendation of the Planning Commission, amend any regulation of any zone district, which amendment may be initiated by the Town or by the owner of real property within a zone district for which a change is proposed. Amendment to zone district regulations may be made upon a finding that the amendment is consistent with the Town's goals, policies and plans.

##### B. Procedures for Amendment

###### 1. Application

When a zoning regulation amendment is proposed by other than the Town, such proposal shall be accompanied by a request signed by the

owners of at least 50% of the land area within the districts to be affected by the amendment.

a. The amendment to Zone District Regulations fee shall be paid at time of application submittal when proposed by an applicant other than the Town.

2. Review

A request for a zoning regulation amendment proposed by an applicant other than the Town shall follow the procedures and public notice requirements as set forth for rezoning in Section 4.05.030.