

CITY OF ROSS
ADMINISTRATION
2011

PREPARED BY: KADRMAS, LEE & JACKSON

CONTENTS

3.4.1	PURPOSE AND ORGANIZATION OF CHAPTER	1
3.4.2	REVIEW AND DECISION-MAKING BODIES	1
A.	SUMMARY TABLE	1
B.	PLANNING & ZONING BOARD	3
C.	CITY STAFF	4
3.4.3	COMMON REVIEW PROCEDURES	5
A.	PRELIMINARY APPLICATION PROCEDURES	5
B.	APPLICATION REVIEW PROCESS	7
C.	REVIEW AND DECISION	15
D.	STRUCTURE OF INDIVIDUAL PROCEDURE SECTIONS	16
3.4.4	COMPREHENSIVE PLAN AND ZONING APPLICATIONS	16
A.	COMPREHENSIVE PLAN/LAND USE PLAN AMENDMENTS	16
B.	DEVELOPMENT CODE TEXT AMENDMENTS	20
C.	REZONING	21
3.4.5	LAND DIVISION APPLICATIONS	23
A.	OUTLOT PLATS	23
B.	BOUNDARY LINE ADJUSTMENTS	24
C.	PRELIMINARY PLATS	25
D.	FINAL PLATS	27
E.	VACATION OF PLAT	28
3.4.6	ENTITLEMENTS	29
A.	CONDITIONAL USE PERMITS	29
B.	DESIGN REVIEW	33
C.	TEMPORARY USE PERMITS	36
3.4.7	VACATIONS	38
A.	TYPE I VACATIONS	38
B.	TYPE II (MUNICIPAL UTILITY EASEMENT) VACATIONS	39
3.4.8	MODIFICATIONS AND APPEALS	40
A.	SUMMARY TABLE	40
B.	ADMINISTRATIVE ADJUSTMENTS	41

C.	VARIANCES	43
D.	WAIVERS	47
E.	APPEALS	48
F.	INTERPRETATIONS	50
3.4.9	OTHER PROCEDURES.....	51
G.	DEVELOPMENT AGREEMENTS	51

3.4.1 PURPOSE AND ORGANIZATION OF CHAPTER

This chapter describes the procedures for review and approval of all applications for development activity in the City of Ross.

- A. Review and Decision-Making Bodies, includes a summary table listing the land use and development procedures in this Code and describes the responsibilities of the bodies that review and decide upon development applications.
- B. Common Review Procedures, describes standard procedures that are applicable to all or most types of procedures.
- C. Additional provisions unique to each type of procedure, such as public hearing requirements and approval criteria.

3.4.2 REVIEW AND DECISION-MAKING BODIES

A. SUMMARY TABLE

Table 1 summarizes the review and decision-making responsibilities of the entities that have roles in the procedures set forth in this chapter. Other duties and responsibilities of these entities are set forth in subsequent subsections of this chapter. Bracketed numbers refer to notes at the bottom of the table.

TABLE 1: SUMMARY TABLE OF DEVELOPMENT REVIEW PROCEDURES				
PROCEDURE (SECTION)	REVIEW AND DECISION-MAKING BODIES			
	DEVELOPMENT REVIEW COMMITTEE	COMMUNITY DEVELOPMENT DIRECTOR/AUDITOR	PLANNING & ZONING BOARD	CITY COUNCIL
FUTURE LAND USE PLAN AND ZONING				
Future Land Use Plan Amendment	R {1}	R	<R>	<D>
Development Code Text Amendment		R	<R>	D
Rezoning	R	R	<R>	D

TABLE 1: SUMMARY TABLE OF DEVELOPMENT REVIEW PROCEDURES				
R = REVIEW D = DECISION A = APPEAL <> = PUBLIC HEARING				
PROCEDURE (SECTION)	REVIEW AND DECISION-MAKING BODIES			
	DEVELOPMENT REVIEW COMMITTEE	COMMUNITY DEVELOPMENT DIRECTOR/AUDITOR	PLANNING & ZONING BOARD	CITY COUNCIL
LAND DIVISION				
Outlot Plats {3}		D	A	
Boundary Line Adjustment		D	A	
Preliminary Plat {3}	R {2}	R	D	A
Final Plat {3}		D	A	
Vacation of Plat		D	A	
ENTITLEMENTS				
Conditional Use Permit		R	<D>	<A>
Design Review {2}{4}	R {2}	D {4}	A	A
Temporary Use Permit		D	A	
VACATION				
Type I (Streets/Non-Municipal Easements)	R	R	<R>	D
Type II (Municipal Easements)		R		D
MODIFICATIONS AND APPEALS				
Administrative Adjustment		D {5}	A	
Variance	R	R	<D>	<A>
Waiver		R	<D>	<D>
Appeal			D	A
Interpretation		D	A	
OTHER PROCEDURES				
Development Agreement		R		<D>
Creation of Landscape Maintenance District		R	<R>	<D>

NOTES:

{1} Amendments to the future land use map of the Comprehensive Plan require review of a concept plan by the Development Review Committee.

{2} Design Review Applications with structures of $\geq 20,000$ ft² of floor area require a concept plan review by Development Review Committee.

{3} Re-combinations of existing lots resulting in subdivisions of five or more lots are reviewed in accordance with the procedure for Final Plats; all others are reviewed in accordance with the procedure for an Outlot Survey Plat.

{4} A design review application associated with another type of application, such as a Conditional Use Permit, shall be processed concurrently, and shall be reviewed and decided upon by the same decision-making body.

{5} Administrative adjustments shall be approved prior to final decision on design review applications.

B. PLANNING & ZONING BOARD

1. Establishment, Duties, and Authority

The Planning & Zoning Board is established pursuant to the authority of City of Ross. The Planning & Zoning Board shall have all powers granted and shall perform all duties imposed by the City Charter, Municipal Codes and State Statutes. The Planning & Zoning Board shall have the review and decision making authority listed in Table 1, Summary Table of Development Review Procedures, and in addition shall have the following duties and responsibilities:

(a) Develop and recommend to the City Council new policies, ordinances, administrative procedures, and other tools related to land development and redevelopment;

(b) Conduct studies and recommend to the City Council any other new plans, goals and objectives relating to growth, development, and redevelopment of the city;

(c) Act in the capacity of the Zoning Board of Adjustment, unless the Board has been otherwise appointed;

(d) Adopt rules and regulations governing the procedures and operations of the Planning & Zoning Board; and

(e) Perform any other duties assigned by the City Council.

2. Membership

(a) The Planning & Zoning Board shall consist of five members who shall be appointed and shall serve in accordance with the City Council's adopted Policy on Board and Commission Appointments.

(b) The Planning & Zoning Board may include one member of the City Council, selected by the City Council.

(c) The Planning & Zoning Board shall include one member who resides in the extra-territorial area pursuant to state statute.

3. Compensation

All members of the Planning & Zoning Board may receive compensation as may be provided by resolution by the City Council.

4. Removal of Members

Members of the Planning & Zoning Board may be removed, after a public hearing, by a majority vote of the City Council for inefficiency, neglect of duty, or malfeasance of office.

5. Vacancies

Vacancies occurring other than through the expiration of a term shall be filled for the unexpired term in accordance with the City Council's adopted Policy on Board and Commission Appointments.

6. Bylaws and Rules

(a) The Planning & Zoning Board shall have the power to prescribe and adopt bylaws and rules governing the Planning & Zoning Board's procedure.

(b) In addition to the powers, duties, and authority prescribed by State Statute, the Planning & Zoning Board shall have the power to adopt rules and bylaws governing the order and procedure of the Planning and Zoning Board.

C. CITY STAFF

1. Development Review Committee

The City Council may select a Development Review Committee. The Development Review Committee shall have the review authority listed in Table 1, Summary Table of Development Review Procedures. In addition, the Development Review Committee shall be responsible for review and comment on all concept plans in accordance with Section, Concept Plans.

2. Community Development Director/Auditor

The Community Development Director/Auditor shall have the review and decision-making authority listed in Table 1, Summary Table of Development Review Procedures.

3.4.3 COMMON REVIEW PROCEDURES

The common review procedures in this section provide a foundation for the specific review and approval procedure. See the following paragraphs to determine which of these common procedures apply to an individual application for development review.

A. PRELIMINARY APPLICATION PROCEDURES

The procedures in this section shall apply to all applications for development permits or approvals under this Code at the beginning of the review process, unless otherwise stated.

1. Authority to File Applications

Applications for review and approval under this Code may be initiated by any of the following:

- (a) Petition of all the owners of the land that is the subject of the application.
- (b) The owners' authorized agent(s).
- (c) The official representatives of a homeowner's or property-owner's association in a master-planned development where the master developer has ceded control of the development to the association.
- (d) A lot owner or developer of a portion of a master-planned development, provided the application is limited to the land under their ownership or control.
- (e) City of Ross staff acting under the direction of the Planning & Zoning Board or City Council.
- (f) Public or private utility providers.

2. Form of Application and Application Filing Fees

Applications required under this chapter shall be submitted in a form and in such numbers as required by the official responsible for accepting the application. Applications shall be accompanied by the fee amount that has been established by the City Council. Fees are not required with applications submitted by the Planning & Zoning Board, the School District, or City agencies or staff. Application fees are nonrefundable, unless otherwise expressly stated.

3. Concept Plans

(a) Purpose

The purpose for the concept plan is to allow for a general review of a proposed development before a formal application is submitted.

(b) Applicability

Unless waived by the Community Development Director/Auditor, concept plan review by the Development Review Committee shall be required prior to submission of an application for:

- (1) Comprehensive Plan future land use map amendments;
- (2) A use with 20,000 square feet or more of floor area;

(c) Pre-Application Meetings

Applicants are entitled and encouraged to schedule and attend pre-application meetings with the Community Development Director/Auditor and/or staff prior to submitting a concept plan application for review under this Code.

(d) Application Filing

Applications for concept plan review shall be submitted in the form required by the City to the Community Development Director/Auditor.

(e) Community Development Director's Responsibilities

Upon receipt of a concept plan review application, the Community Development Director/Auditor shall, within three days from the deadline date, set a time and place for a meeting of the Development Review Committee and provide notice of the meeting and one copy of all plans and materials to each member of the Development Review Committee. Notice of the meeting time shall also be provided to the applicant. The Development Review Committee meeting shall be held within ten business days of the date that a complete application is received, unless the applicant requests a later date.

(f) Development Review Committee Action

At the Development Review Committee meeting, the Community Development Director/Auditor shall describe the requirements of the review process. Committee members shall:

- (1) Ask questions of the applicant to clarify their understanding of the applicant's intent;
- (2) Ensure the applicant understands all required steps in the development review process; and
- (3) State their concerns based on preliminary review of project plans and materials.

(g) Meeting Notes Provided

Within three days after the Development Review Committee meeting, the committee shall provide notes from the meeting to the applicant summarizing the Development Review Committee's comments.

B. APPLICATION REVIEW PROCESS

The common procedures in this section deal with the processing of an application, which occurs following the completion of the preliminary application procedures. This section applies to all applications for development permits or approvals under this Code, unless otherwise stated.

1. Application Completeness

(a) An application will be considered complete if it:

- (1) Is submitted in the required form;
- (2) Contains all necessary exhibits and supporting information (including maps, site drawings, analyses, etc.);
- (3) Is accompanied by the appropriate fee(s);
- (4) Includes the minimum number of copies required;
- (5) Is submitted within review schedule timeframe; and
- (6) Follows all required pre-application steps.

(b) Following submittal, the application will be officially accepted and a determination of application completeness shall be made by the Community Development Director/Auditor following the staff review meeting. If an application is determined to be incomplete, the Community Development Director/Auditor shall provide written notice to the applicant along with an explanation of the application's deficiencies within three days of official acceptance. No further processing of the application shall occur until the deficiencies are corrected. If the deficiencies are not corrected by the applicant within 30 days, the application shall be considered withdrawn.

(c) If the application has been deemed complete and is heard at a public hearing where the Planning & Zoning Board or City Council have continued the application to allow for submittal of additional information, the application completeness date shall change to the date of the public meeting when the information is deemed acceptable.

2. Community Development Director/Auditor and Agency Review

(a) In conducting required reviews, the Community Development Director/Auditor shall be authorized to distribute the application and other submittals to City departments and other agencies for the purpose of soliciting comments and ensuring that the proposal complies with all applicable standards and requirements. Comments received from reviewers shall be included in any required report.

3. Neighborhood Meetings

(a) General

The purpose of a neighborhood meeting is to provide an informal opportunity to inform the affected neighborhood(s) of the details of a proposed development and application, how the applicant intends to meet the standards contained in this Code, and to receive public suggestions, identify neighborhood concerns, and encourage dialogue at an early stage in the review process.

(b) Applicability

(1) Neighborhood Meeting Mandatory

Unless waived by the Community Development Director/Auditor, a neighborhood meeting is mandatory for any application subject to a mandatory concept plan review, as well as an amendment to the official zoning map and an amendment to the Comprehensive Plan. Neighborhood meetings are optional for any other applications under this Code.

(2) Neighborhood Meeting May Be Required

In addition to those instances when a meeting is mandatory under

Subsection (1) above:

i. The Community Development Director/Auditor may require an applicant to conduct a neighborhood meeting prior to a public hearing on an application if the Community Development Director/Auditor determines the application is likely to cause a significant land use, appearance, traffic, or other public facility impact on neighboring lands; or

ii. The Mayor or the Chair of the Planning & Zoning Board may direct an applicant to conduct a neighborhood meeting either prior to or during a public hearing on an application being reviewed by the board they chair if it is determined the application could

potentially have significant land use, appearance, traffic, or other public facility impacts on neighboring lands.

(c) Timing

At least one neighborhood meeting must be held at least three weeks prior to a public hearing, or as specified by the City.

(d) Procedure

The neighborhood meeting shall comply with the following procedures:

(1) Time and Place

The neighborhood meeting shall be held at a place that is generally accessible to neighbors that reside in close proximity to the land subject to the application, and shall be scheduled after 5:00 p.m. on a weekday.

(2) Notification

An applicant holding a neighborhood meeting shall provide mailed notice of the meeting to the same notification area that would be required for public hearings on the application pursuant to Section, Public Notice. Notification of the neighborhood meeting shall be provided by the applicant via first-class mail postmarked a minimum of ten days in advance of the meeting. Notification shall also be provided to City staff at least ten calendar days prior to the meeting date.

(3) Notification Contents

Public notification of a neighborhood meeting shall include:

- i. A vicinity map depicting the subject site,
- ii. The purpose of the neighborhood meeting,
- iii. The type of application proposed by the applicant,
- iv. The date, time, and location of the meeting, and
- v. Contact information for the applicant.

(4) Conduct of Meeting

At the neighborhood meeting, the applicant shall explain the development proposal and application, answer any questions, respond to concerns

neighbors have about the application, and propose ways to resolve conflicts.

(5) Staff Attendance

City staff may attend the neighborhood meeting for the purpose of advising the attendees regarding applicable provisions of this Code, but shall not serve as facilitators or become involved in negotiations at the neighborhood meeting.

(6) Written Summary of Neighborhood Meeting

The applicant shall provide the Community Development Director/Auditor a written summary of the neighborhood meeting within five business days of its conclusion, along with a list of the notified parties and a signed affidavit indicating the notification was completed in accordance with the standards in this Code. The written summary shall include a summary of the issues related to the development proposal discussed, comments by those in attendance about the development proposal, and any other information the applicant deems appropriate. The written summary of the neighborhood meeting also shall be included with the application materials, and be made available to the public for inspection.

(7) Response to Summary

Any person in attendance at the neighborhood meeting may submit an additional written summary stating their understanding of the issues related to the development proposal discussed, comments by those in attendance about the development proposal, and any other information they deem appropriate. This written summary may include a response to the applicant's written summary of the meeting. All written summaries of the neighborhood meeting shall be included with the application materials, and be made available for public inspection.

4. Public Notice

(a) Content

All notices required under this Code shall comply with North Dakota Statutes and shall:

- (1) Indicate the time and place of the public hearing or action;
- (2) Describe the property involved in the application by street address or by legal description and nearest cross-street;

(3) Describe the nature, scope, and purpose of the application or proposal being advertised;

(4) Indicate that interested parties may appear at the hearing and speak on the matter; and

(5) Indicate where additional information on the matter can be obtained.

(b) Written (Mailed) Notice

(1) When the provisions of this Code require that written or mailed notice be provided, the City shall be responsible for preparing and mailing the notice at least ten days in advance of the first public hearing. Unless otherwise specified in Table 2, written notice shall be provided to the applicant; the nearest 30 real property owners; all advisory boards established in the affected area; and all registered property owner's associations, neighborhood associations, and appointed individuals serving as rural neighborhood representatives.

(c) Posted Notice

When the provisions of this Code require that notice be posted, signs approved by the City shall be posted on the property that is the subject of the application in a manner that makes them clearly visible to neighboring residents and passers-by from each abutting street. Required signs shall be posted at least ten days before the first public hearing. Installers shall be required to sign an affidavit provided by the City stating that the signs were posted properly and provide a photograph showing each sign after installation. The photograph shall include a landmark that substantiates each sign's location.

(d) Published (Newspaper) Notice

When the provisions of this Code require that notice be published, the City shall be responsible for preparing the notice and ensuring that it is published in a newspaper that has been selected by the City. The notice shall appear at least ten days before the public hearing.

(e) Summary Table of Required Notice and Timing

Unless otherwise expressly provided in the North Dakota Statutes, or this Code, public notice shall be provided in accordance with Table 2, Public Notice Requirements. Failure to receive notice in accordance with this section shall not invalidate the proceedings for which notice was required, nor shall failure to receive notice constitute a basis for legal action against the City. Bracketed numbers refer to notes at the bottom of the table.

TABLE 2: PUBLIC NOTICE REQUIREMENTS		
APPLICATION TYPE	NOTICE REQUIRED {1}	
	WRITTEN (MAILED) NOTICE RECIPIENTS	POSTED NOTICE REQUIRED
FUTURE LAND USE PLAN AND ZONING		
Master Streets, Water, & Sewer Plan Amendment	None required. Where street name changes, notices are sent to affected parties.	Yes {2}
Future Land Use Plan Map Amendment	In addition to general recipients listed above in B.4.b, all owners of real property and tenants within mobile home parks within 500 feet of the subject site and the nearest 30 real property owners. {3}	Yes {2}
Development Code Text Amendment	None required.	Yes
Rezoning	In addition to general recipients identified above, all owners of real property and tenants within mobile home parks within 750 feet of the subject site and the nearest 30 real property owners. {3}	
LAND DIVISION		
Outlot Plat	None required.	No
Boundary Line Adjustment		
Preliminary Plat		
Final Plat		
ENTITLEMENTS		
Conditional Use Permit without alcohol sales or hazardous substances	In addition to general recipients listed above in B.4.b, all owners of real property and tenants within mobile home parks within 500 feet of the subject site and the nearest 30 real property owners. Newspaper notification is not required. {3}	Yes
Conditional Use Permit with alcohol sales	In addition to general recipients listed above in B.4.b, all owners of real property and tenants within mobile home parks within 1,500 feet of the subject site, and the nearest 30 real property owners. Newspaper notification is not required.	Yes
Conditional Use Permit with hazardous substances	In addition to general recipients listed above in B.4.b, all owners of real property and tenants within mobile home parks within 1,000 feet of the subject site, and the nearest 30 real property owners, as required. Public hearing notices are sent out 30 days prior to Planning & Zoning Board meeting.	Yes
Design Review with Waiver requests	In addition to general recipients listed above in B.4.b, all owners of real property and tenants within mobile home parks within 500 feet of the subject site and the nearest 30 real property owners. Newspaper notification is not required.	Yes
Removal proceedings for non-conforming billboards	The applicant, real property owner, and owner of the nonconforming billboard.	No
Any application involving a non-restricted gaming establishment or gaming enterprise overlay	In addition to general recipients listed above in B.4.b, all owners of real property and tenants within mobile home parks within 5,000 feet of the subject site, and the nearest 30 real property owners.	Yes
Project of Regional Significance	In addition to general recipients listed above in B.4.b, all owners of real property and tenants within mobile home parks within 750 feet of the subject site and the nearest 30 real property owners. {3}	Yes

TABLE 2: PUBLIC NOTICE REQUIREMENTS		
APPLICATION TYPE	NOTICE REQUIRED	
	WRITTEN (MAILED) NOTICE RECIPIENTS	POSTED NOTICE REQUIRED
VACATION		
Type I Vacation	Owners abutting the proposed area to be vacated shall be notified via confirmation of delivery.	No
MODIFICATIONS AND APPEALS		
Variance	In addition to general recipients listed above in B.4.b, all owners of real property and tenants within mobile home parks within 500 feet of the subject site and the nearest 30 real property owners. Newspaper notification is not required. {3}	Yes
Appeal	Same notice as was provided for the decision being appealed.	

NOTES:

{1} All application types listed in this table, except those listed under the Land Division application type and as otherwise noted, require the City to provide published notice in a newspaper selected by the City at least ten days prior to the public hearing.

{2} Posted notice shall be provided by the City in the U.S. Post Office.

{3} When a project is located within the extra-territorial limits, the notice requirement shall be expanded to 1,500 feet. The 1,500 foot notification shall only apply within the boundaries of the extra-territorial limits.

(f) Constructive Notice

Minor defects in notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements. Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a hearing, and the location of the subject property shall be strictly construed. If questions arise at the hearing regarding the adequacy of notice, the decision-making body shall make a formal finding regarding whether there was substantial compliance with the notice requirements of this Development Code before proceeding with the hearing upon recommendation from City staff.

5. Continuation of Public Hearings

(a) A public hearing for which proper notice was given may be continued to a later date without again complying with the notice requirements of this Code, provided

that the continuance is set for a date and time certain and the date and time is announced at the public hearing.

(b) In the case of a public hearing before the Planning & Zoning Board, the Planning & Zoning Board will not grant more than two continuances for the same case, unless it is determined, upon good cause shown, the granting of additional continuances is warranted. "Good cause" includes, without limitation, the desire to revise plans or drawings, to engage in negotiations with any person or governmental entity, to retain counsel, or circumstances relating to the matter that are beyond the control of the applicant.

(c) If a public hearing is continued more than three times or for more than 90 days, whichever is less, the public hearing shall be "re-noticed" in accordance with the original notice requirements for the subject application. Unless otherwise approved by the review or decision-making body at the time of the continuance, the applicant shall pay all costs associated with the re-notification.

6. Burden of Proof or Persuasion

The burden of demonstrating that an application complies with applicable review and approval criteria is on the applicant. The burden is not on the City or other parties to show that the criteria have not been met.

7. City Council Call-Up of Development Applications

Whenever the procedures of this chapter give the Planning & Zoning Board decision making or appeal authority on a development application or permit request, any member of the City Council shall be authorized to "call-up" the application for final action at the City Council. In order to call-up an application, a City Council member must notify the Community Development Director/Auditor within nine days of the date that the City received written notice of the Planning & Zoning Board's final action. In the event of City Council call-up, public notice shall be provided in accordance with the same procedures that applied to the Planning & Zoning Board's original action. In the event of call-up, the City shall be responsible for all costs associated with the re-notification.

8. Simultaneous Processing

(a) Whenever two or more forms of review and approval are required under this Code (e.g., a rezoning and a conditional use permit), applications for those development approvals may, at the option of the City, be processed simultaneously.

(b) The decision-making authority identified in Table 1, Summary Table of Development Review Procedures, shall have the authority to review and decide any application for which it is the designated decision-making authority. In cases where an application is submitted in conjunction with another application requiring

approval by a separate, higher-level decision-making authority (e.g., the City Council), the higher-level decision-making authority shall be responsible for reviewing and deciding both applications.

9. Processing Cycles

The Community Development Director/Auditor shall issue timetables for reviewing each type of development application under this chapter. Timetables, which may be revised from time-to-time, may include:

- (a) Dates of regular meetings of review bodies and decision-makers.
- (b) Deadlines for receipt of a complete application for consideration of such application at a particular meeting.
- (c) Routing and scheduling of staff and agency reviews.

C. REVIEW AND DECISION

The provisions of this section shall apply to all applications for development permits or approvals under this Code, unless otherwise specified.

1. Conditions of Approval

Unless otherwise specified in this Code, the decision-maker may impose such conditions on the approval of the application as may be necessary to reduce or minimize any potential adverse impact upon other property in the area, or to carry out the general purpose and intent of the Comprehensive Plan and this Code. In such cases, any conditions attached to approvals shall be directly related to the impacts of the proposed use or development and shall be roughly proportional in both nature and extent to the anticipated impacts of the proposed use or development. No conditions of approval shall be less restrictive than the requirements of this Code.

2. Lapse of Approval; Extensions of Time

(a) Unless otherwise provided in this chapter, an approved application shall expire if no activity approved under the permit occurs for six months and an extension is not granted.

(b) The lapse of approval time frames established by the procedures in this chapter may be extended only when all of the following conditions exist:

- (1) The provisions of this chapter must expressly allow the extension;
- (2) An extension request must be filed prior to the applicable lapse-of approval deadline;

(3) The extension request must be filed in a form and include all exhibits and fees established by the Community Development Director/Auditor; and

(4) Unless otherwise provided in this chapter, authority to grant extensions of time shall rest with the decision-making body that granted the original approval (the one being extended).

D. STRUCTURE OF INDIVIDUAL PROCEDURE SECTIONS

Contents

Each of the procedures listed includes a standard set of information, including requirements for application filing, preliminary actions undertaken by the City during the review process (e.g., public notice), the sequence of review, the approval criteria or standards for the type of application, and how appeals, amendments, or expiration are addressed (as appropriate).

3.4.4 COMPREHENSIVE PLAN AND ZONING APPLICATIONS

A. COMPREHENSIVE PLAN/LAND USE PLAN AMENDMENTS

1. Concept Plan Review Required

Applications to amend the future land use map of the Comprehensive Plan shall submit a concept plan prior to application submittal, in accordance with, Concept Plans. Applications to amend the text of the Comprehensive Plan do not require concept plan review.

2. Neighborhood Meeting Required

Applicants to amend the future land use map of the Comprehensive Plan shall conduct a neighborhood meeting in accordance with Section, Neighborhood Meetings, following concept plan review. Applications to amend the text of the Comprehensive Plan do not require a neighborhood meeting.

3. Application Filing

Applications for an amendment to the Comprehensive Plan shall be submitted to the Community Development Director/Auditor.

4. Traffic Impact Analysis Required

Unless waived by the City Council, applications for an amendment to the Comprehensive Plan shall be accompanied by a Traffic Generation Impact Report. Each impact report shall compare the maximum potential traffic that may be generated by the existing land use with the traffic expected to be generated by the proposed land use in accordance with the site plan submittal. References and sources indicating where the traffic data was obtained shall be included with the Traffic Generation Impact Report, which shall be in a form that is specified by the City Engineer/City Council.

5. Public Hearing Notice

(a) Future Land Use Plan Map Amendments

Notice of the public hearing on a Comprehensive Plan/Future Land Use map amendment shall be mailed, published, and posted in accordance with the requirements of Section, Public Notice.

6. Community Development Director Review and Report

The Community Development Director/Auditor shall review each proposed Comprehensive Plan amendment in light of the approval criteria of this Section, Comprehensive Plan Amendment Approval Criteria, and, as deemed necessary, distribute the application to other reviewers. Based on the results of those reviews, the Community Development Director/Auditor shall provide a report and recommendation to the Planning & Zoning Board.

7. Planning & Zoning Board Review and Recommendation

(a) The Planning & Zoning Board may continue a Comprehensive Plan amendment application, and all of its accompanying applications, to any future Planning & Zoning Board meeting.

(b) The Planning & Zoning Board shall hold at least one public hearing on the proposed Comprehensive Plan amendment and at the close of the public hearing make a recommendation to the City Council, based on the approval criteria of Section, Comprehensive Plan Amendment Approval Criteria.

(c) An affirmative vote of two-thirds of the total membership of the Planning & Zoning Board shall be required to approve a resolution recommending adoption of the Comprehensive Plan amendment. A two-thirds vote is a vote of at least two thirds of the votes cast by persons legally entitled to vote, excluding abstentions, at a meeting at which a quorum is present.

(d) If a Comprehensive Plan amendment application is accompanied by other applications for the same development, the Comprehensive Plan amendment shall be acted upon before all other applications for that project.

(e) If the Comprehensive Plan amendment fails to receive an affirmative vote of two thirds of the total membership or is recommended for denial by the Planning & Zoning Board, all accompanying applications shall be acted on in accordance with Table 1, Summary Table of Development Review Procedures.

8. City Council Review and Decision
 - (a) After receiving the recommendation of the Planning & Zoning Board, the City Council shall hold at least one public hearing and, at the close of the public hearing, act to approve, approve with conditions, or deny the proposed amendment based on the approval criteria of Section, Comprehensive Plan Amendment Approval Criteria.
 - (b) No applicant-requested change in or addition to an amendment recommended for approval by the Planning & Zoning Board shall be made by the City Council until the proposed change or addition has been referred back to the Planning & Zoning Board for a new public hearing and recommendation. Failure of the Planning & Zoning Board to conduct a new public hearing and make a new recommendation within 40 days after the referral, or such longer period as may be designated by the City Council, shall be deemed to be approval of the proposed change or addition.
 - (c) If a Comprehensive Plan amendment recommended for denial by the Planning & Zoning Board is approved by the City Council, any applications that accompanied the Comprehensive Plan amendment at the Planning & Zoning Board shall be re-noticed and scheduled to be heard and acted upon at the next available Planning & Zoning Board meeting.
 - (d) If a Comprehensive Plan amendment is denied by the City Council, all applications that accompanied the Comprehensive Plan amendment are terminated.
 - (e) The City Council may continue a Comprehensive Plan amendment application, and all of its accompanying applications, to any future City Council meeting.
9. Comprehensive Plan Amendment Approval Criteria
 - (a) Comprehensive plan amendments may be approved by the City Council only following a determination that the proposed amendment is consistent with the overall purpose and intent of the Comprehensive Plan and that any one of the following criteria has been met:
 - (1) There was an error in the original Comprehensive Plan adoption;
 - (2) The City Council failed to take into account then-existing facts, projections, or trends that were reasonably foreseeable to exist in the future;
 - (3) Events, trends, or facts after adoption of the Comprehensive Plan have changed the City Council's original findings made upon plan adoption; and/or

(4) Events, trends, or facts after adoption of the Comprehensive Plan have changed the character or condition of an area so as to make the proposed amendment necessary.

(b) In addition to the above-listed criteria, any proposed amendment is subject to the following additional review standards:

(1) That the amendment is not in conflict with any portion of the goals and policies of the plan.

(2) That the amendment constitutes a substantial benefit to the City and is not solely for the good or benefit of a particular landowner or owners at a particular point in time.

(3) The extent to which the proposed amendment and other amendments in the general area are compatible with the land use goals of the plan and that they avoid creation of isolated uses that will cause incompatible community form and a burden on public services and facilities.

(4) That the development pattern contained in the existing plan does not provide adequate and appropriate optional sites for the use or change being proposed in the amendment.

(5) That the impact of the amendment, when considered cumulatively with other applications and development in the general area, will not adversely impact the City or a portion of the City by:

- i. Significantly altering acceptable existing land use patterns;
- ii. Having significant adverse impacts on public services and facilities that are needed to support the current land use and which cannot be mitigated to the maximum extent feasible;
- iii. Adversely impacting environmentally sensitive areas or resources; or
- iv. Adversely impacting existing uses because of increased traffic on existing systems.

(6) That site conditions, including but not limited to topography, utility corridors/easements, drainage patterns, noise, odors, or environmental contamination, would make development under the current plan designation inappropriate.

10. Appeals

Appeals of the City Council's decision on Comprehensive Plan amendments shall be made to the District Court of Mountrail County, as provided by law.

B. DEVELOPMENT CODE TEXT AMENDMENTS

1. Application Filing

Applications for an amendment to the text of this Development Code may be filed by the City Council, Planning & Zoning Board, or Community Development Director/Auditor.

2. Public Hearing Notice

Notice of public hearings on Development Code text amendments shall be published and posted in accordance with the requirements of Section, Public Notice.

3. Community Development Director Review and Report

The Community Development Director/Auditor shall review each proposed Development Code text amendment in light of the approval criteria of Section, Text Amendment Approval Criteria, and, as deemed necessary, distribute the application to other reviewers. Based on the results of those reviews, the Community Development Director/Auditor shall provide a report to the Planning & Zoning Board.

4. Planning & Zoning Board Review and Recommendation

The Planning & Zoning Board shall hold at least one public hearing on the proposed Development Code text amendment and at the close of the public hearing make a recommendation to the City Council, based on the approval criteria of Section, Text Amendment Approval Criteria.

5. City Council Review and Decision

After receiving the recommendation of the Planning & Zoning Board, the City Council shall act to approve, approve with conditions or deny the proposed Development Code amendment, based on the approval criteria of Section, Text Amendment Approval Criteria.

6. Text Amendment Approval Criteria

Recommendations and decisions on Development Code text amendments shall be based on consideration of all of the following criteria:

- (a) Whether the proposed amendment corrects an error or meets the challenge of some changing condition, trend, or fact;

(b) Whether the proposed amendment is consistent with the Comprehensive Plan and the stated purposes of Section, Purpose and Intent;

(c) Whether the proposed amendment will protect the health, safety, morals, or general welfare of the public; and

(d) Whether the proposed amendment will result in significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation.

7. Appeals

Appeals of the City Council's decision on Development Code text amendments shall be made to the District Court of Mountrail County, as provided by law.

8. Successive Application

Following denial of a Development Code text amendment request, no new application for the same or substantially the same amendment shall be accepted within one year of the date of denial, unless denial is made without prejudice.

C. REZONING

This section includes the procedure for the review of applications for all amendments to the zoning map (rezoning).

1. Neighborhood Meeting Required

Applications to amend the official zoning map may require a neighborhood meeting held in accordance with the procedures in Section, Neighborhood Meetings, after submittal of a formal application.

2. Application Filing

Applications for zoning map amendments shall be submitted to the Community Development Director/Auditor.

3. Public Hearing Notice

Notice of public hearings on zoning map amendments shall be published, mailed, and posted in accordance with Section, Public Notice.

4. Community Development Director/Auditor Review and Report

The Community Development Director/Auditor shall review each proposed zoning map amendment in light of the approval criteria of Section, Map Amendment Approval Criteria, and, as deemed necessary, distribute the application to other reviewers. Based on the results of those reviews, the Community Development Director/Auditor shall provide a report to the Planning & Zoning Board.

5. Planning & Zoning Board Review and Recommendation

The Planning & Zoning Board shall hold a public hearing on the proposed zoning map amendment and at the close of the public hearing make a recommendation to the City Council based on the approval criteria of Section, Map Amendment Approval Criteria. Approval may be recommended for a less intensive zoning classification than requested by the applicant without re-notification.

6. City Council Review and Decision

After receiving the recommendation of the Planning & Zoning Board, the City Council shall act to approve, approve with conditions, or deny the proposed zoning map amendment, based on the approval criteria of Section, Map Amendment Approval Criteria. Approval may be granted for a less intensive zoning classification than requested by the applicant without re-notification.

7. Map Amendment Approval Criteria

(a) Recommendations and decisions on zoning map amendments shall be based on consideration of all of the following criteria:

(1) Whether the proposed amendment corrects an error or meets the challenge of some changing condition, trend, or fact.

(2) Whether the proposed amendment is consistent with the Comprehensive Plan and the stated purposes of Section, Purpose and Intent.

(3) Whether the proposed amendment will protect the health, safety, morals, or general welfare of the public.

(4) Whether the City and other service providers will be able to provide sufficient public safety, transportation and utility facilities, and services to the subject property, while maintaining sufficient levels of service to existing development.

(5) Whether the proposed rezoning will have significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation.

(6) Whether the proposed amendment will have significant adverse impacts on other property in the vicinity of the subject property.

(7) The suitability of the subject property for the existing zoning classification and proposed zoning classification.

(8) The need for the proposed use at the proposed location.

(b) In addition to the above-listed criteria, any proposed amendment that would reduce the density or intensity of uses on property (i.e., result in a “down-zoning”) is subject to additional approval criteria. These criteria apply if at least 20 percent of the property owners to whom notices were sent indicate opposition to the proposed amendment. These criteria require the governing body to:

(1) Consider separately the merits of each aspect of the proposed amendment to which any property owner(s) expressed opposition.

(2) Make a written finding that the public interest and necessity will be promoted by the approval of the proposed amendment.

8. Appeals

Appeals of City Council decisions on zoning map amendments shall be made to the District Court for Mountrail County, as provided by law.

9. Successive Application

Following denial of a zoning map amendment request, no new application for the same or substantially the same amendment shall be accepted within one year of the date of denial, unless denial is made without prejudice.

3.4.5 LAND DIVISION APPLICATIONS

A. OUTLOT PLATS

1. Applicability

Outlot Plats shall be required for all nonexempt subdivisions consisting of four or fewer lots.

2. Application Filing

Applications for Outlot Plat approval shall be submitted to the Community Development Director/Auditor.

3. Community Development Director/Auditor Review and Decision

The Community Development Director/Auditor shall review each proposed Outlot Plat and distribute the application to other City departments, including any agencies required for Preliminary Plats. Based on the results of those reviews, the Community Development Director/Auditor shall, within 45 days of a complete application, act to approve, approve with conditions, or deny the application. Failure to take action within 45 days shall constitute approval of the application, unless the time frame is extended by mutual agreement.

4. Approval Criteria

No Outlot Plat shall be approved unless the Community Development Director/Auditor determines that the map complies with all applicable standards of this Code, State and County Statute.

5. Recording; Lapse of Approval

The applicant shall be responsible for recording approved Outlot Maps with the County Recorder. If the approved Outlot Plat is not recorded within one year of the date of approval of the Outlot Plat, the Outlot Plat shall lapse and be of no further effect.

6. Appeals

Appeals of the Community Development Director's/Auditor's decision on Outlot Plat applications shall be taken to the Planning & Zoning Board in accordance with the appeal procedures in Section, Appeals.

B. BOUNDARY LINE ADJUSTMENTS

1. Applicability

The procedures of this section shall apply to all boundary line adjustments.

2. Application Filing

Applications for boundary line adjustments shall be submitted to the Community Development Director/Auditor.

3. Community Development Director/Auditor Review and Decision

The Community Development Director/Auditor shall review each proposed boundary line adjustment and, within 30 days of a complete application, act to approve, approve with conditions, or deny the application based on the approval criteria of this subsection. Failure to take action within 30 days shall constitute approval of the application, unless the time frame is extended by mutual agreement.

4. Approval Criteria

No boundary line adjustment shall be approved unless the Community Development Director/Auditor determines that the proposed adjustment complies with all of the following criteria:

(a) No additional lots shall be created;

(b) No parcel shall be created that is smaller than allowed by the underlying zoning district;

(c) No parcel shall be created that does not have access; and

(d) The application shall comply with all other applicable requirements of this Development Code and all other applicable regulations.

5. Recording; Lapse of Approval

The applicant shall be responsible for recording approved boundary line adjustments with the County Recorder. If the approved boundary line adjustment is not recorded within one year of the date of approval of the boundary line adjustment, the approval shall lapse and be of no further effect.

6. Appeals

Appeals of the Community Development Director's/Auditor's decision on boundary line adjustments shall be taken to the Planning & Zoning Board in accordance with Section, Appeals.

C. PRELIMINARY PLATS

1. Applicability

Preliminary Plats shall be required for all nonexempt subdivisions consisting of five or more lots. The property included within the boundaries of the proposed Preliminary Plat shall coincide with platted lands or deed boundaries, or must be platted prior to the recordation of the first Final Plat.

2. Application Filing

Applications for Preliminary Plats shall be submitted to the Community Development Director/Auditor.

3. Community Development Director/Auditor Review and Report

The Community Development Director/Auditor shall review each proposed Preliminary Plat in light of the approval criteria of this subsection and distribute the application to other review agencies, including those required by State and County Statute. Based on the results of those reviews, the Community Development Director/Auditor shall provide a report to the Planning & Zoning Board.

4. Planning & Zoning Board Review and Decision

After reviewing the Preliminary Plat and the Community Development Director's/Auditor's report, the Planning & Zoning Board shall act to approve, approve with conditions, or deny the application, based on the approval criteria of this subsection. The Planning & Zoning Board shall take action on the Preliminary Plat within 45 days of receipt of a complete application.

5. Preliminary Plat Approval Criteria

Recommendations and decisions on Preliminary Plats shall be based on consideration of all of the following criteria:

- (a) Compliance with environmental and health laws and regulations concerning water and air pollution, solid waste disposal, water supply facilities, community or public sewage disposal, and, where applicable, individual systems for sewage disposal;
 - (b) Availability of water that meets applicable health standards and is sufficient for the reasonably foreseeable needs of the subdivision;
 - (c) Availability and accessibility of utilities;
 - (d) Availability and accessibility of public services such as schools, police and fire protection, transportation, recreation facilities, and parks;
 - (e) Consistency with the zoning district regulations;
 - (f) Conformity with the Master Streets Plan;
 - (g) Effect of the proposed subdivision on existing public streets and the need for new streets or highways to serve the subdivision;
 - (h) Physical land characteristics, such as floodplain, slope, soil, and elevation differentials with abutting properties;
 - (i) Recommendations and comments of review bodies;
 - (j) Conformity to the Master Sewer and Water Utility Plan; and
 - (k) Compliance with this Code and all other applicable regulations and plans.
6. Appeals
- Appeals of the Planning & Zoning Board's decision on Preliminary Plats shall be taken to the City Council in accordance with the appeal procedures of Section, Appeals.
7. Lapse of Approval
- (a) An approved Preliminary Plat shall lapse and be of no further force and effect two years after the date of Preliminary Plat approval by the Planning & Zoning Board unless one of the following occurs:
 - (1) A Final Plat application for the subdivision is recorded within two years of the date of Preliminary Plat approval by the Planning & Zoning Board; or
 - (2) The first of a series of Final Plats covering a portion of the approved Preliminary Plat is recorded. Subsequently, the subdivider shall record a series of Final Plats, each covering a portion of the approved Preliminary

Plat, within successive one-year periods after the date of recordation of the latest Final Plat in the series.

(b) If the subdivider fails to record a Final Plat for any portion of the Preliminary Plat within two years after the date of approval of the Preliminary Plat or within one year after the date of recordation of the most recently recorded Final Plat, all proceedings concerning the subdivision are terminated.

(c) The Planning & Zoning Board may grant an extension of time of up to one year for the recordation of any Final Plat in cases where the subdivider is presenting a series of successive Final Plats. If the subdivider is submitting final Plats for a phased subdivision in a timely manner, no new requirements or conditions other than those imposed on each of the Final Plats in the series may be placed on the Final Plat when an extension of time is granted unless the requirement is directly attributable to a change in applicable laws that affect the public health, safety or welfare.

D. FINAL PLATS

1. Application Filing

Applications for Final Plats shall be submitted to the Community Development Director/Auditor.

2. Community Development Director/Auditor Review and City Council Action

The Community Development Director/Auditor shall distribute the application to other City departments for their review and comment. After reviews are complete, the Community Development Director/Auditor shall forward the plat to the City Council with the required public notices. The City Council shall act to approve, approve with conditions, or deny the application, based on whether the Final Plat is consistent with the approved Preliminary Plat and whether it complies with this Code and all other applicable regulations.

3. Acceptance of Dedications

In approving a Final Plat, the Community Development Director/Auditor shall be authorized to accept or reject offers of dedications and to require improvements of streets and easements.

4. Civil Drawings

After approval of the Preliminary Plat, but prior to submitting the Final Plat or starting construction of any required improvements, civil drawings shall be submitted to the City for review. Prior to submittal of the Final Plat to the City of Ross signatures, bonds, fees, and civil drawings must be approved and the applicant shall pay all required fees.

5. Certificates and Acknowledgments

The certificates and acknowledgments required by the applicable provisions of State Statute and the City shall appear on a Final Plat.

6. Recording; Lapse of Approval

The applicant shall be responsible for recording the approved Final Plat with the County Recorder. If the approved Final Plat is not recorded within one year of the date of approval of the Final Plat, the approved Final Plat shall lapse and be of no further effect.

7. Copy of Recorded Map to be Delivered to City

Within 15 days of recordation of the Final Plat, the subdivider shall deliver an 11" by 17" conformed copy of the recorded Final Plat, along with an application for street addressing, to the Community Development Director/Auditor for establishment of street addresses and storage in the City files.

8. Effect of Approval

Following approval of the Final Plat by the Community Development Director/Auditor, the subdivider may obtain a building permit for the subject property or transfer, sell, agree to sell, or negotiate to transfer or sell the subject lots.

9. Title to Dedicated Property

Title to property accepted for dedication passes when the Final Plat is recorded. If offers of dedication are rejected at the time of Final Plat approval, offers of dedication shall be deemed to remain open. The City Council may, by resolution at any later date and without further action by the subdivider, rescind its action of non-acceptance and accept and open the streets for public use, which acceptance shall be recorded in the office of the County Recorder and be so noted on the subdivision map by the Recorder.

E. VACATION OF PLAT

1. Applicability

The procedures of this subsection shall apply to all requests for Vacation of Plat (to acreage) of any subdivision map, Outlot Map, or any part thereof.

2. Mandatory Conference

Prior to filing an application for a Vacation of Plat, an applicant shall conduct a conference with the City Auditor to ensure the City has full information on the proposal.

3. Application Filing
Applications for reversions to acreage shall be submitted to the Community Development Director/Auditor.
4. Community Development Director/Auditor Review and City Council Decision
The Community Development Director/Auditor shall review each proposed reversion to acreage and distribute the application to other City departments. Based on the results of those reviews, the Community Development Director/Auditor shall, within 30 days of a complete application, send the Plat to the City Council with proper public notice. The City Council shall act to approve or deny the application, based on whether it complies with the standards of this Development Code and State Statute.
5. Merger and Re-Subdivision Maps
 - (a) In lieu of reverting pre-existing parcels to acreage in accordance with stature, two or more contiguous parcels may be merged and re-subdivided into new parcels or lots in accordance with the procedures of State Statute.
 - (b) Parcels or lots merged without reversion to acreage must be re-subdivided and recorded on a Final Plat or Outlot Plat as appropriate, in accordance with State Statute and any applicable local ordinances.
6. Recordation
The applicant shall be responsible for recording the Vacation of Plat with the County Recorder. If the approved Vacation of Plat is not recorded within one year of the date of approval of the Vacation of Plat, the approval shall lapse and be of no further effect.

3.4.6 ENTITLEMENTS

A. CONDITIONAL USE PERMITS

1. Purpose/Description
The conditional use permit review and approval procedure provides a discretionary approval process for uses with unique or widely varying operating characteristics or unusual site development features. The procedure encourages public review and evaluation of a use's operating characteristics and site development features and is intended to ensure proposed conditional uses will not have a significant adverse impact on surrounding uses or on the community-at-large.
2. Application Filing
Applications for conditional use permits shall be submitted to the Community Development Director/Auditor.

3. Public Hearing Notice

Notice of public hearings on conditional use permits shall be posted and mailed in accordance with Section, Public Notice.

4. Community Development Director/Auditor Review and Report

The Community Development Director/Auditor shall review each proposed conditional use permit application in light of the approval criteria of Section, Conditional Use Permit Approval Criteria, and, as deemed necessary, distribute the application to other reviewers. Based on the results of those reviews, the Community Development Director/Auditor shall provide a report to the Planning & Zoning Board.

5. Planning & Zoning Board Review and Decision

(a) Within 50 days of receipt of a complete application, the Planning & Zoning Board shall hold a public hearing on the proposed conditional use permit. At the close of the public hearing, the Planning & Zoning Board shall act to approve, approve with conditions, or deny the application, based on the approval criteria of Section, Conditional Use Permit Approval Criteria. However, the Planning & Zoning Board's vote shall be a recommendation only when the application is being processed concurrently with an application that requires a final decision by the City Council.

(b) Design review applications that are being processed concurrently with conditional use permits shall be reviewed and approved concurrently by the Planning & Zoning Board.

6. Conditional Use Permit Approval Criteria

(a) General Criteria

Conditional use permits may be approved by the Planning & Zoning Board only if they find that all of the following criteria are met:

(1) The proposed use complies with all applicable provisions of this Development Code unless otherwise expressly stated;

(2) The proposed use is compatible with adjacent uses in terms of scale, site design, and operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts);

(3) Any significant adverse impacts resulting from the use will be mitigated or offset to the maximum practical extent;

(4) The proposed use will not cause substantial diminution in value of other property in the neighborhood in which it is to be located;

(5) Public safety, transportation, and utility facilities and services will be available to serve the subject property while maintaining sufficient levels of service for existing development;

(6) Adequate assurances of continuing maintenance have been provided;
and

(7) Any significant adverse impacts on the natural environment will be mitigated to the maximum practical extent.

(b) Liquor Licenses

Conditional use permits for liquor licenses may be approved by the Planning & Zoning Board only if they find that all of the “General” approval criteria and the following criteria have been met:

(1) The proposed use, its site design and conditions applied thereto, are intended to result in a facility where littering, loitering, and outdoor disturbance or excessive noise are not likely to occur.

(2) The proposed use will not adversely affect the welfare of the neighborhood residents because on-site consumption occurs in designated and properly designed areas indoors or outdoors and that, for package sales locations, adequate measures are proposed that on-site consumption is not likely to occur.

(3) The proposed project, based upon its physical positioning on the site and it’s architectural and design features, is compatible with the surrounding neighborhood. Considerations to ensure compatibility may include, but are not limited to, an evaluation of security, noise, light and glare, parking location and availability, and service area locations.

7. Findings of Fact

The decision of the Planning & Zoning Board shall be accompanied by written findings of fact specifying the reasons for the decision.

8. Notice of Decision

Within five days of the Planning & zoning Board’s decision on a conditional use permit, the Community Development Director/Auditor shall mail notice of the decision to the applicant and all other parties who have made a written request for notification.

9. Appeals

Appeals of the Planning & Zoning Board's decision on conditional use permits shall be taken to the City Council in accordance with the appeal procedures of Section, Appeals.

10. Effective Date

Decisions of the Planning & Zoning Board on a conditional use permit shall become effective ten days after the date that the City Auditor received written notice of the Planning & Zoning Board's approval of the conditional use permit, unless a valid appeal is filed in accordance with Section, Appeals.

11. Lapse of Approval

(a) A conditional use permit shall lapse and have no further effect one year after its effective date or at such alternate time specified in the approval unless one or more of the following criteria has been met:

(1) A building permit has been issued and construction diligently pursued.

(2) A certificate of occupancy has been issued.

(3) The use is established.

(4) The conditional use permit is renewed (if accompanying an application requiring City Council action).

(b) A conditional use permit shall lapse upon termination of a project or expiration of a building permit.

(c) A conditional use permit shall lapse if the rights granted by it are discontinued for 180 consecutive days or other period of time as specified by the City Council as part of a closure plan.

12. Extensions of Time

The Community Development Director/Auditor may renew or extend the time of a conditional use permit when the applicant demonstrates good cause for the extension. Any such administrative extension granted shall not exceed one year in length, and no more than one extension may be granted by the Community Development Director/Auditor. Additional extensions of time may be approved by the Planning & Zoning Board, whose decision may be appealed to the City Council in accordance with the appeal procedures of Section, Appeals.

13. Transferability

The status of a conditional use permit is not affected by changes of tenancy, ownership, or management.

14. Amendments

A request for changes in conditions of approval of a conditional use permit or a change to development plans that would affect a condition of approval shall be processed in the same manner as the original application. The Community Development Director/Auditor shall be authorized to approve minor modifications that have no potential for significant offsite impacts, provided that they do not involve any of the following:

- (a) A five percent or greater increase in building height;
- (b) A five percent or greater increase in floor area or building coverage when calculated on a total, aggregate project basis; or
- (c) A five percent decrease in common open space.

15. Successive Applications

Following denial of a conditional use permit request, no new application for the same or substantially the same use shall be accepted within one year of the date of denial, unless denial is made without prejudice.

16. Complaints Regarding Approved Conditional Use Permits

Complaints regarding approved conditional use permits shall be processed in accordance with the Municipal Ordinances.

B. DESIGN REVIEW

This section sets out the required review and approval procedures for design review, which is a review procedure for determining compliance with the site planning, building design, and standards of this Code.

1. Applicability

Unless waived by the Community Development Director/Auditor, or included in Section, Exemptions, all of the following shall be subject to review and approval under the design review procedures of this Code prior to the issuance of a building permit:

- (a) Any building or non-building site improvement.
- (b) Any alteration or addition with a building permit valuation of \$5,000 or more that affects the external appearance, function, or external circulation of any permitted use in any nonresidential zoning district.
- (c) Any manufactured home or addition to a manufactured home.

2. Exemptions

The following forms of development are exempt from the standards in this section:

- (a) Any alteration or improvement not affecting the external appearance of a structure.
- (b) Any alterations or additions to a legally-established, conforming, single-family, detached dwelling.
- (c) Additions or alterations to any nonresidential or mixed-use building with a building permit valuation of less than \$5,000.

The Community Development Director/Auditor or the Director of Building and Fire Safety may require the development to comply with the standards of this section in cases where the proposed alteration or improvement endangers the public health, safety, or general welfare.

3. Developments Over 20,000 Square Feet

New developments with 20,000 square feet or more shall undergo concept plan review in accordance with Section, Concept Plans, and a neighborhood meeting held in accordance with Section, Neighborhood Meeting.

4. Application Filing

Applications for design review shall be submitted to the Community Development Director/Auditor.

5. Review and Decision

(a) Design review applications that are not being processed concurrently with rezonings, conditional use permits, or variances are eligible for administrative review and approval by the Planning & Zoning Board.

(b) Design review applications that are being processed concurrently with rezonings, conditional use permits, or variances shall be reviewed and approved concurrently with the other required approvals, and shall be decided by the decision-making body deciding the rezoning, conditional use permit, or variance.

(c) Decision-making bodies shall review each application for design review and act to approve, approve with conditions, or deny the application based on whether the application complies with the standards of this Code or other approved design standards for the subject development.

6. Approval Criteria for Applications with Development Code Waivers

A Design Review application with requests for waivers of the Development Code may be approved only if the City Council finds that all of the following criteria have been met:

- (a) The proposal is consistent with the Land Use Plan;
- (b) The proposed development addresses a unique situation, confers a substantial benefit to the city, or incorporates creative site design such that it achieves the purposes of this Code and represents an improvement in quality over what could have been accomplished through strict application of the otherwise applicable district or development standards. Such improvements in quality may include but are not limited to: improvements in open space provision and access; environmental protection; tree/vegetation preservation; efficient provision of streets, roads, and other utilities and services; or increased choice of living and housing environments;
- (c) The proposal mitigates any potential significant adverse impacts to the maximum practical extent;
- (d) Sufficient public safety, transportation, and utility facilities and services are available to serve the subject property while maintaining sufficient levels of service to existing development; and
- (e) The same development could not be accomplished through the use of other techniques such as variances or administrative adjustments.

7. Notice of Decision

Within five days of a decision on a design review application, the Community Development Director/Auditor shall mail notice of the decision to the applicant and all other parties who have made a written request for notification.

8. Appeals

Appeals of the Planning & Zoning Board's decision shall be taken to the City Council, in accordance with the appeal procedures of Section, Appeals.

9. Lapse of Approval

An approved design review application shall lapse and have no further effect 18 months after its effective date or at such alternate time specified in the approval unless:

- (a) A building permit has been issued and construction diligently pursued;
- (b) A certificate of occupancy has been issued;
- (c) The use is established; or

(d) The design review has been granted an extension of time.

C. TEMPORARY USE PERMITS

1. Application Filing

Applications for a temporary use permit shall be submitted to the Community Development Director/Auditor.

2. Community Development Director/Auditor Review and Report

The Community Development Director/Auditor shall review each proposed temporary use permit application in light of the approval criteria of Section, Temporary Use Permit Approval Criteria, and, as deemed necessary, distribute the application to other reviewers. Based on the results of those reviews, the Community Development Director/Auditor shall provide a report to the Planning & Zoning Board.

3. Planning & Zoning Board Review and Decision

(a) Within 50 days of receipt of a complete application, the Planning & Zoning Board shall hold a public hearing on the proposed temporary use permit. At the close of the public hearing, the Planning & Zoning Board shall act to approve, approve with conditions, or deny the application, based on the approval criteria of Section, Temporary Use Permit Approval Criteria. However, the Planning & Zoning Board's vote shall be a recommendation only when the application is being processed concurrently with an application that requires a final decision by the City Council.

(b) Temporary use permit applications seeking approval for a temporary use expected to remain in place for more than 30 calendar days or other time limit as specified for the specific temporary shall also be required to obtain a conditional use permit.

4. Conditions of Approval

In approving a temporary use permit, the Planning & Zoning Board may impose conditions, stipulations, or limitations as are deemed necessary to ensure that the activity will be consistent with this section and the proposed temporary use. Such conditions may include, but are not limited to the following:

(a) Provision for temporary parking facilities, including vehicle ingress and egress;

(b) Measures to prevent or reduce nuisance factors such as glare, excessive illumination, noise, vibration, smoke, dust, dirt, odors, gases, and heat;

(c) Regulation of placement, height, size, and location of structures, facilities, landscaping and equipment, including provision for buffering and separation;

- (d) Provision for sanitary facilities and for waste collection and disposal;
- (e) Measures to promote safety and security;
- (f) Regulation of signs and other attention-gaining devices;
- (g) Regulation of operating hours and duration of the temporary commercial use;
- (h) Regulation of the hours and duration of set-up and dismantling activities;
- (i) Compliance with applicable provisions of the Ross Municipal Code (RMC);
- (j) Any other conditions that will ensure the operation of the proposed temporary use is conducted in an orderly, efficient manner and in accordance with the intent and purpose of this Code.

5. Temporary Use Permit Approval Criteria

Temporary use permits may be approved by the Planning & Zoning Board only upon a finding that all of the following criteria have been met:

- (a) The proposed temporary use will be located, operated, and maintained in a manner consistent with the policies of the Land Use Plan and the provisions of this Code;
- (b) Approval of the application will not be detrimental to property or improvements in the surrounding area or to the public health, safety, or general welfare; and
- (c) The proposed temporary use complies with all applicable standards of this Code unless otherwise expressly stated.

6. Effective Date

An approved temporary use permit shall be effective on the date of its approval.

7. Cleanup of Temporary Site

The holder of a temporary use permit shall be responsible for leaving the property free of debris, litter, or other evidence of the temporary use immediately upon completion or removal of the use. If the holder of the temporary use permit is not the record owner of the property, the holder and the property owner(s) are jointly and severally responsible for compliance with this Subsection.

8. Time Limits

Temporary use permits shall be valid for a specified period of time, not to exceed 30 days. Any temporary uses requested for periods of time exceeding 30 days or other time limit as specified for the specific temporary use shall obtain a conditional use permit in accordance with Section, Conditional Use Permit.

9. Appeals
Appeals of the Planning & Zoning Board decision to deny a temporary use permit shall be taken to the City Council in accordance with the Section, Appeals.
10. Lapse of Approval
A temporary use permit shall lapse if not used within the dates approved.
11. Complaints Regarding Approved Temporary Use Permits
Complaints regarding approved temporary use permits shall be processed in accordance with the provisions of the Ross Municipal Code.
12. Revocation
A temporary use permit may be revoked or modified by the Community Development Director/Auditor, upon notice to the permit holder, if the Director/Auditor finds that:
 - (a) The permit was obtained by misrepresentation or fraud;
 - (b) The activity is not in compliance with the permit or any condition of approval;
 - (c) The use to be allowed by means of the permit is conducted in violation of any applicable statute, ordinance, or regulation; or
 - (d) The permit is being employed to circumvent the limitations of this Code.

3.4.7 VACATIONS

A. TYPE I VACATIONS

The Type I vacation procedures of this subsection shall apply to all requests to vacate or abandon any public (City) street, any City of Ross easement other than Type II, or the City's interest in any easement owned by agencies other than the City. Requests to vacate municipal utility easements shall be processed in accordance with Section, Type II Vacations.

1. Application Filing
Applications for Type I vacations shall be submitted to the City Auditor.
2. Public Hearing Notice
Notice of public hearings on Type I vacations shall be published in accordance with the requirements of Section, Public Notice. Additionally, all owners of property abutting the proposed area to be vacated shall be notified by mail pursuant to a method that provides confirmation of delivery. Notice shall be provided not less than ten days before and not more than 40 days before the scheduled public hearing.

3. Community Development Director/Auditor Review and Report

The Community Development Director/Auditor shall review each proposed Type I vacation and distribute the application to other review agencies. Based on the results of those reviews, the Community Development Director/Auditor shall provide a report to the Planning & Zoning Board.

4. Planning & Zoning Board Review and Recommendation

After reviewing the Type I vacation application and the Community Development Director's/Auditor's report, the Planning & Zoning Board shall hold a public hearing on the application and, at the conclusion of the hearing, act to recommend that the City Council approve, approve with conditions, or deny the application. The Planning & Zoning Board's recommendation shall be based on whether the application complies with the standards of this Development Code and State statute.

5. City Council Review and Decision

After reviewing the Type I vacation application, the City Council shall act to approve, approve with conditions, or deny the application based on whether it complies with the standards of this Development Code and State statute. If a utility has an easement over the property, the City Council shall provide for the continuation of that easement if the utility so desires.

6. Recordation

The applicant shall be responsible for preparing all vacation documents except the vacation order. The City shall prepare the vacation order and record all documents with the County Recorder. If the approved vacation order is not recorded within one year of the date of approval, the approval shall lapse and be of no further effect unless a onetime administrative extension of time has been granted by the City Auditor on a form established by the City.

B. TYPE II (MUNICIPAL UTILITY EASEMENT) VACATIONS

The Type II vacation procedures of this subsection shall apply to all requests to vacate municipal (City) utility easements. The procedures of this subsection shall not apply to requests to vacate public streets or the City's interest in any utility controlled by agencies other than the City such as the easements associated with a Type I vacation.

1. Application Filing

Applications for municipal utility easement vacations shall be submitted to the City Auditor.

2. Community Development Director/Auditor Review and Report

The Community Development Director/Auditor shall review each proposed municipal utility easement vacation and distribute the application to other review agencies. Based on the results of those reviews, the Community Development Director/Auditor shall provide a report to the City Council.

3. City Council Review and Decision

After reviewing the application for municipal utility easement vacations and the Community Development Director's/Auditor's report, the City Council shall act to approve, approve with conditions, or deny the application based on whether it complies with the standards of this Development Code and State Statute.

4. Recordation

The applicant shall be responsible for preparing all vacation documents except the vacation order. The City shall prepare the vacation order and record all documents with the County Recorder. If the approved municipal utility easement vacation order is not recorded within one year of the date of approval of the municipal utility easement vacation, the approval shall lapse and be of no further effect unless a one-time administrative extension of time has been granted by the Community Development Director/Auditor on a form established by the City.

3.4.8 MODIFICATIONS AND APPEALS

The development review procedures in this section are intended to allow relief and flexibility in the development review process. Generally, it is the intent of the City to allow significant reductions or deviations from the minimum standards of this Code only in exchange for a higher level of quality development and compensating public benefits.

A. SUMMARY TABLE

Table 3, Summary of Flexibility Options, summarizes the principal tools that are available to provide relief from the strict application of the standards in this Code. The table includes procedures that allow reduction, waiver, adjustment, or exemption from certain Code standards, and any applicable limitations. Applicants seeking to use one or more of the procedures in this table shall provide compensating public benefits in accordance with the standards in Section, Compensating Public Benefits.

TABLE 3: SUMMARY OF FLEXIBILITY OPTIONS				
PROCEDURE	DECISION-MAKING BODY	DESCRIPTION	LIMITATIONS	COMPENSATING BENEFITS REQUIRED?
Administrative Adjustment	Community Development Director/Auditor	Allows minor deviations from certain standards, as specified in Table 4.	Only specified adjustments allowed; See approval criteria in Section B.5	No
Variances	Planning & Zoning Board	Allows deviation from any development standard (except allowable use).	Hardship must be demonstrated. See approval criteria in Section C.6	No
Waivers	Planning & Zoning Board or City Council per Section	Allows new development to depart from required development or design standards in through the DRA or PUD or MP processes.	Does not exempt requirements; allows an alternative form of compliance equal to or better than standard.	Yes
Development Agreements	City Council	Allows departure from Development Code and HMC in exchange for compensating benefits.	Subject to approval by City Council.	No

B. ADMINISTRATIVE ADJUSTMENTS

1. Purpose

This section sets forth the required review and approval procedures for administrative adjustments, which are minor deviations from otherwise applicable standards that may be approved by the Community Development Director/Auditor when the small size of the modification requested, and the unlikelihood of any adverse effects on nearby properties or the neighborhood, make it unnecessary to complete a formal variance process.

2. Applicability

The Community Development Director/Auditor is authorized to approve administrative adjustments as provided in Table 4.

TABLE 4: ALLOWABLE ADMINISTRATIVE ADJUSTMENTS	
STANDARD	ALLOWABLE MODIFICATION (%)
Any zoning district setback, lot size, lot width, or building coverage	10
Front setback for mansion apartment or single-family attached	50
Maximum building height	10
Minimum dwelling unit/garage size	5
Minimum building spacing	5
Maximum building size	10
Mandatory use-mixing requirements	10
The minimum or maximum number of off-street parking, loading, or stacking spaces	10
Percentage of required common open space devoted to active	10
Plant units	20
Minimum connectivity index score	15
Minimum sustainability score	10

3. Procedure

Applications for administrative adjustments shall be submitted to the Community Development Director/Auditor. If the application is submitted along with an application for an entitlement, the administrative adjustment application will be reviewed and decided upon as part of the entitlement application.

4. Review and Decision

The Community Development Director/Auditor shall review each application for an administrative adjustment and act to approve, approve with conditions, or deny the application based on the approval criteria of Section, Approval Criteria.

5. Approval Criteria

Administrative adjustments may be approved by the Community Development Director/Auditor only upon a finding that all of the following criteria have been met:

- (a) The requested adjustment is consistent with the stated purposes of this Development Code.

(b) The administrative adjustment will not substantially interfere with the convenient and enjoyable use of adjacent lands, and will not pose a danger to the public health or safety.

(c) Any adverse impacts resulting from the administrative adjustment will be mitigated to the maximum practical extent.

(d) The administrative adjustment is of a technical nature (i.e., relief from a dimensional or design standard), and is either:

(1) Required to compensate for some unusual aspect of the site or the proposed development that is not shared by landowners in general;

(2) Supporting an objective or goal from the purpose and intent statements of the zoning district where located; or

(3) Proposed to protect sensitive natural resources or better integrate development with the environment.

(e) The owner of any real property adjacent to the site that would be affected by the administrative adjustment has provided written consent to the applicant.

6. Findings of Fact

The decision of the Community Development Director/Auditor shall be accompanied by written findings of fact specifying the reasons for the decision. Staff shall specify any approved minor modifications and the justifications for such modifications on the pending development application for which the modifications were sought.

7. Notice of Decision

Within five days of the Community Development Director's/Auditor's decision on an administrative adjustment, the Community Development Director/Auditor shall mail notice of the decision to the applicant and all other parties who have made a written request for notification.

8. Appeals

Appeals of the Community Development Director's/Auditor's decision on an administrative adjustment shall be taken to the Planning & Zoning Board, in accordance with the appeal procedures of Section, Appeals.

C. VARIANCES

1. Applicability

Variations are deviations from the strict requirements of this Development Code. They may be granted only when necessary to relieve peculiar and exceptional

practical difficulties or exceptional and undue hardships resulting from the size, shape, or dimensions of a site or the location of existing structures thereon; from geographic, topographic or other physical conditions on the site or in the immediate vicinity; or from street locations or traffic conditions in the immediate vicinity of the site. Only the following standards are eligible for a variance:

(a) Site or lot area, lot width, setback, height, building coverage, structure spacing, or dwelling size.

(b) Any of the off-street parking and loading standards in Section, Parking and Loading and Use Regulations.

(c) Any of the landscaping and buffering standards in Section, Landscaping and Screening.

2. Application Filing

Applications for variances shall be submitted to the Community Development Director/Auditor.

3. Public Hearing Notice

Notice of public hearings on variances shall be posted and mailed in accordance with the requirements of Section, Public Notice.

4. Community Development Director/Auditor Review and Report

The Community Development Director/Auditor shall review each proposed variance in light of the approval criteria of Section, Variance Approval Criteria, and, as deemed necessary, distribute the application to other reviewers. Based on the results of those reviews, the Community Development Director/Auditor shall provide a report to the Planning & Zoning Board.

5. Planning & Zoning Board Review and Action

(a) Within 30 days of receipt of a complete application, the Planning & Zoning Board shall hold a public hearing on the proposed variance request. At the close of the public hearing, the Planning & Zoning Board shall act to approve, approve with conditions, or deny the application, based on Section, Variance Approval Criteria.

(b) Design review applications that are being processed concurrently with variances shall be reviewed and approved concurrently with the variance by the Planning & Zoning Board.

6. Variance Approval Criteria

(a) Variances

Variances to regulations may be approved by the Planning & Zoning Board only if they find that all of the following criteria have been met:

(1) Because of special circumstances or conditions applicable to the subject property, including narrowness, hollowness, shape, exceptional topography, or other extraordinary or exceptional situations or conditions, strict application of the requirements of this ordinance would result in peculiar and exceptional difficulties or undue hardships for the owner of the property.

(2) The variance may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources, and without detriment or injury to property or improvements in the vicinity of the development site or to the public health, safety, or general welfare.

(3) Granting the variance is consistent with the purposes of this ordinance and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district.

(4) Granting the variance will not allow a use that is otherwise prohibited in the underlying zoning district.

7. Findings of Fact

The decision of the Planning & Zoning Board shall be accompanied by written findings of fact specifying the reasons for the decision.

8. Notice of Decision

Within five days of the Planning & Zoning Board's decision on a variance, the Community Development Director/Auditor shall mail notice of the decision to the applicant and all other parties who have made a written request for notification.

9. Appeals

Appeals of the Planning & Zoning Board's decision on variances shall be taken to the City Council in accordance with the appeal procedures of Section, Appeals.

10. Effective Date

The Planning & Zoning Board's decision on a variance shall become effective ten days after the date that the City Auditor received written notice of the Planning & Zoning Board's approval of the variance, unless a valid appeal is filed in accordance with Section, Appeals. No permit shall be issued until expiration of the appeal period.

11. Lapse of Approval

(a) A variance shall lapse and have no further effect one year after its effective date or at such alternate time specified in the approval unless one or more of the following criteria has been met:

(1) A building permit has been issued and construction diligently pursued.

(2) A certificate of occupancy has been issued.

(3) The structure is established.

(4) The variance is renewed.

(b) A variance shall lapse if the rights granted by it are discontinued for 180 consecutive days.

12. Extensions of Time

The Community Development Director/Auditor may renew or extend the time of a variance when the applicant demonstrates good cause for the extension. Any such administrative extension granted shall not exceed one year in length, and no more than one extension may be granted by the Community Development Director/Auditor. Additional extensions of time may be approved by the Planning & Zoning Board, whose decision may be appealed to the City Council in accordance with the appeal procedures of Section, Appeals.

13. Transferability

The status of a variance is not affected by changes of tenancy, ownership, or management.

14. Amendments

A request for changes in conditions of approval of a variance or a change to development plans that would affect a condition of approval shall be processed as a new application.

15. Successive Applications

Following denial of a variance request, no new application for the same or substantially the same matter shall be accepted within one year of the date of denial, unless denial is made without prejudice.

16. Complaints Regarding Approved Variances

Complaints regarding approved variances shall be processed in accordance with Chapter, Enforcement.

D. WAIVERS

1. Purpose and Scope

This section allows the approval of a waiver as part of a Design Review application, which allows development to occur in a manner that meets the intent of this Code, yet through an alternative design that does not strictly adhere to the Code's standards. This section authorizes a site-specific development alternative that is equal to or better than the strict application of the standards of this Code.

2. Applicability

The waiver procedure is available only for the following:

- (a) Site or lot area, lot width, setback, height, building coverage, structure spacing, or dwelling size.
- (b) Section, Common Open Space;
- (c) Section, Parking and Loading;
- (d) Section, Landscaping and Screening

3. Pre-Application Meeting Required

An applicant proposing to apply for a waiver shall request and attend a pre-application meeting prior to submitting application materials for the applicable entitlement(s), to determine the preliminary response from the Community Development Director/Auditor. Based on the response, the application should include sufficient explanation and justification, in both written and graphic form, for the requested alternative compliance.

4. Decision-Making Responsibility

Final approval of any proposed waiver shall be the responsibility of the City Council.

5. Criteria

A waiver may be approved if the applicant demonstrates that the following criteria have been met by the proposed alternative:

- (a) Achieves the intent of the subject standard to the same or better degree than the subject standard;
- (b) Advances the goals and policies of the Land Use Plan and this Code to the same or better degree than the subject standard;
- (c) Provides compensating public benefits pursuant; and

(d) Imposes no greater impacts on adjacent properties than would occur through compliance with the specific requirements of this ordinance.

6. Effect of Approval

A waiver shall apply only to the specific site for which it is requested and shall not establish a precedent for approval of other requests.

E. APPEALS

1. Applicability

The appeal procedures of this section shall apply only when the provisions of this Development Code state that an appeal applies.

2. Effect of Filing

Once a complete application for an appeal has been received by the Community Development Director/Auditor, no other development approvals or permits will be issued for the subject property pending a decision on the appeal, unless it is determined that such a “hold” on permits and approvals would cause immediate peril to life or property.

3. Aggrieved Party

Appeals allowed under the procedures of this Code may be filed only by an “aggrieved party” who shall be limited to the following:

(a) Any person who testified at the public hearing on the application;

(b) Any person who submitted written comments prior to or during the public hearing on the application;

(c) Any person who testified or submitted written comments on the application prior to or during a public hearing through an authorized representative; or

(d) In the case of applications approved by an administrative official, any person who submitted written comments to such administrative official before the end of the appeal period following the date of the administrative official’s action.

4. Consolidation

Appeals by two or more parties aggrieved by the same decision may be consolidated into a single appeal.

5. Initiation

All appeals taken in accordance with this section shall be filed with the Community Development Director/Auditor no more than nine days after the date the City Auditor received written notice of the decision or action being appealed.

6. Contents of Appeal

The application for the appeal shall specify the grounds for the appeal, a statement of the improper decision or interpretation, the date of the decision or interpretation, and all relevant supporting materials.

7. Record

Upon receipt of the materials initiating an appeal, the Community Development Director/Auditor shall assemble all papers, documents, and other materials related to the action being appealed. These materials shall constitute the record of the appeal.

8. Notice and Hearing Requirements

The requirements for hearings, notices, and approval criteria shall be the same as required of the original action that is the subject of the appeal.

9. Appeals of the Decision and Interpretations of the Community Development Director/Auditor

(a) The Planning & Zoning Board shall have the authority to hear and decide all appeals of decisions and interpretations of the Community Development Director/Auditor. The Planning & Zoning Board shall consider the appeal as a new matter and act to affirm, modify, or reverse the decision or interpretation within 30 days of the end of the appeal period.

(b) In acting on the appeal of an interpretation, the Planning & Zoning Board shall grant to the Community Development Director's/Auditor's interpretation a presumption of correctness, placing the burden of persuasion of error on the appellant.

(c) The Planning & Zoning Board's decision on an appeal of the Community Development Director may be appealed to the City Council.

10. Appeals of Planning & Zoning Board Decisions

(a) The City Council shall have the authority to hear and decide all appeals of decisions of the Planning & Zoning Board. The City Council shall, within 30 days of the end of the appeal period, consider the appeal as a new matter and act to affirm, modify, or reverse the Planning & Zoning Board's decision, or act to continue the item for not more than 30 days and to a date specific. The City Council may not continue the same matter more than two times unless the City Council determines,

upon good cause shown, that additional continuances are warranted and the appellant agrees to such additional continuances.

(b) The City Council's decision is final for the purpose of judicial review. Appeals of the City Council's decision on appeals shall be made in Mountrail County District Court within 25 days of the date of filing of notice of the decision with the City Auditor.

11. Continued Meetings or Hearings

An appellant is limited to a maximum of two requests to continue a meeting or hearing on an appeal unless the decision-making body hearing the appeal grants a request for an additional continuance based on a demonstration of good cause.

12. Notice of Decision

Within five days of a decision on an appeal of a written interpretation, the Community Development Director/Auditor shall mail notice of the decision to the appellant and all other parties who have made a written request for notification.

13. Effective Date

Decisions of the Planning & Zoning Board on appeals shall become effective ten days after the date that the City Auditor received written notice of the Planning & Zoning Board's approval of the appeal unless a new appeal to City Council is filed. Decisions of the City Council on appeals shall become effective upon the date of the decision.

14. Successive Applications

Following denial of an appeal, no new appeal for the same or substantially the same matter shall be accepted for one year from the date of denial, unless the denial is made without prejudice.

F. INTERPRETATIONS

1. Request Filing

Requests for written interpretations of this Development Code shall be submitted to the Community Development Director/Auditor.

2. Community Development Director's/Auditor's Review and Decision

Within 30 days of receipt of a complete request for a written interpretation, the Community Development Director/Auditor shall:

(a) Review and evaluate the request in light of this Development Code, the Land Use Plan, and any other relevant documents;

- (b) Consult with the City Attorney and other staff, as necessary; and
- (c) Render a written interpretation.
- 3. Form
The interpretation shall be provided to the applicant in writing and shall be filed in the official record of interpretations.
- 4. Official Record of Interpretations
An official record of interpretations shall be kept on file in the office of the Community Development Director/Auditor. The record of interpretations shall be available for public inspection in the City Hall during normal business hours.
- 5. Appeals
Appeals of the Community Development Director's/Auditor's written interpretation shall be taken to the Planning & Zoning Board in accordance with the appeal procedures of Section, Appeals. If the appeal results in a change of interpretation, the new interpretation shall be filed in the official record of interpretations.

3.4.9 OTHER PROCEDURES

G. DEVELOPMENT AGREEMENTS

- 1. Applicability
A Development Agreement may be utilized to plan for development of those parcels that, due to size, location, or uses, should, at the discretion of the City Council, be developed in accordance with a Development Agreement.
- 2. Requests for Development Agreement
A request for a Development Agreement shall be submitted to the Community Development Director/Auditor, who shall be directed to collaborate with other departments in preparation and negotiation of such agreement.
- 3. Development Agreement Terms
A Development Agreement shall:
 - (a) Describe the land subject to the development agreement and provide a land use development plan.
 - (b) Provide land use and development regulations, including:
 - (1) Use regulations;
 - (2) Intensity and dimensional standards;

- (3) Subdivision design and improvement standards;
- (4) General development standards;
- (5) Standards for signs;
- (6) Provisions for nonconformities; and
- (7) Definitions.

(c) Provide, where appropriate, for reservation or dedication of land for public purposes, including, but not limited to rights-of-way, easements or public facilities, as may be required or permitted pursuant to laws, ordinances, resolutions, rules or plans adopted by the City and in effect at the time of entering into the agreement.

(d) Specify the duration of the agreement and, if desired, terms for modification and extension of the agreement; provided that the parties shall not be precluded from extending the termination date by mutual agreement or from entering into subsequent development agreements or supplements thereto.

(e) Specify the laws, ordinances, codes, resolutions, rules, regulations, plans, design, and improvement standards by name and date of adoption applicable to the project. Unless specified in the agreement or unless directly in conflict with what is specified in the agreement, the laws, ordinances, codes, resolutions, rules, regulations, plans, and design and improvement standards adopted by the City Council and in effect at the time of issuance of any required construction or building permit shall apply.

(f) Specify other conditions, terms, restrictions, and requirements for other discretionary actions.

(g) Contain a description of the final resolution proposed for each of the issues identified, and any other information identified and deemed necessary as a result of any action by the City Council.

(h) Specify the manner in which amendments, modifications, or additional terms to the agreement will be reviewed and approved.

(i) Provide for a review of compliance with the development agreement terms and conditions at least every 12 months. If the terms of the development agreement are not being complied with, the City may cancel or amend the development agreement without the consent of the breaching party.

4. Optional Elements

A Development Agreement may:

- (a) Provide for commencement and completion of various portions of the proposed development. Each portion or phase of development or improvement contemplated should be able to stand alone, independent of proposed further phases or improvements. Subsequent phases of development may be added to completed phases to achieve independent status.
- (b) Include conditions imposed by other land use and permit approvals allowed by law as of the effective date of the Development Agreement.
- (c) If required by the City Council, be accompanied by a bond, posted by the property owner, to ensure provision of some or all of the public facilities.
- (d) Contain an indemnity or insurance clause requiring the developer, applicant, and/or property owner to indemnify the City against certain claims arising out of the development process.