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## Section 2

# ZONING

**2.01 General Provisions.** In their interpretation and application, the provisions of these zoning regulations shall be held to be minimum requirements adopted for the promotion of the public health, safety, morals, convenience, comfort, prosperity and general welfare.

**A. Uniformity of Regulations.** The regulations established by this Ordinance within each zone shall apply uniformly to each class or kind of structure or land. Unless exceptions are specified in this Ordinance, the following interpretations shall apply:

1. No buildings, structure, or land shall be used or occupied, and no building or structure or part thereof shall be erected, changed, constructed moved, or structurally altered unless in conformity with all of the regulations herein specified for the zone in which it is located.
2. No building or other structure shall be erected or altered:
  - a. to exceed the height limitations;
  - b. to accommodate or house a greater number of families;
  - c. to occupy a greater percentage of the area; to have narrower or smaller rear yards, front yards, side yards, or other open spaces;
3. No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this Ordinance, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building unless specific exception therefore is stated in this Ordinance.
4. No yard or lot existing at the time of passage of this Ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.
5. Any use not permitted in a zone either specifically or by interpretation by the Planning Commission is hereby specifically prohibited from that zone.

**B. Conflict with Other Provisions of Law.** Where this Ordinance is in any way more restrictive than other provisions of law or ordinance, the provisions of this Ordinance shall control.

- C. Conflict with Private Covenants or Deeds.** In case of a conflict between this Ordinance and any private restrictions imposed by covenant or deed, the responsibility of the Town Administrator shall be limited to the enforcement of this Ordinance.
- D. One Principal Building to a Lot.** Only one (1) principal building and its customary accessory buildings may hereafter be erected on a lot. No building shall be erected on any lot which does not have at least 50 feet frontage on a publicly dedicated street.
- E. Permitted Height Exceptions.** Except as specifically stated in other parts of this Ordinance, no building shall be erected, converted, enlarged, reconstructed or structurally altered to exceed the height limit herein after established for the district in which the building is located, except that penthouse or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building, and fire or parapet walls, skylights, towers, steeples, flagpoles, chimneys, smokestacks, private and utility radio and television aerials or antennas, ham radio masts, water tanks or similar structures may be erected above the height limits herein. No such excepted structures may be erected to exceed by more than 15 feet the height limits of the district in which it is located; nor shall such excepted structures have a total area greater than 25 percent of the roof area of the building; nor shall such excepted structures be used for any residential purpose other than a use incidental to the main use of the building. Private radio, television and ham radio aerials or masts may be erected to any height providing it is acceptable to F.C.C.

**2.02 Zone Districts.**

- A. General.** In order to implement the provisions of this Ordinance, Wiggins, Colorado, is hereby and in the future may be, divided into the following zoning districts:

RR	Rural Residential District
ER	Estate Residential District
R-1	Single-family Residential District
R-2	Residential District
MHPD	Mobile Home Park District
BD	Business District
CD	Commercial District
ID	Industrial District
PD	Planned Development District
CON	Conservation District

- B. Use Categories.** Uses of property are categorized and allowed in each of the zoning districts in the following manner:

**C. Use-by-Right.**

1. Uses-by-right include the use of land, structures or both which are authorized by the district zoning classification.
2. A use-by-right is the principal use(s) permitted in any given zone district. The design standards of any given zone district comprise the essential site plan requirements for the placement of a use on a parcel or in a structure. To construct a use-by-right on a parcel, a building permit is needed. The building permit will require that the use is properly served by access and utilities and that a plot plan be submitted which is used to check the setbacks and other design standards of the district. Plot plan reviews and approvals are a function of Town staff.

**D. Accessory Uses and Structures.** These uses are naturally and normally incidental to a use-by-right and comply with all the following conditions:

1. Is clearly subordinate, incidental and customary to and commonly associated with the operation of the use-by-right;
2. Is operated and maintained under the same ownership as the use-by-right on the same zone lot;
3. Includes only those structures or structural features consistent with the use-by-right;
4. The gross floor area utilized by all accessory uses, except a private garage, shall not exceed 10 percent of the total floor area of the use-by-right on the same property or parcel; and
5. May include home occupations, as defined by the zoning regulations and/or by zone district.
6. **Accessory Uses Permitted.** The following accessory uses are permitted in the following districts, provided that they are incidental to and on the same premises as a permitted use. Accessory uses must meet setback and other design standard requirements in each zone district. Construction of accessory uses may or may not require a building permit. If a permit is required, a plot plan showing the location of the accessory use on the zone lot will be required.

**a. Residential.**

- (1) Garage only for the storage of automobiles, recreational vehicles, and/or two (2) commercial vehicles.
- (2) Automobile parking and loading space, as required in off-street parking requirements.

- (3) Home occupations or professional activities, but conducted only by residents living on the premises and not exceeding 25 percent of the area of one floor of the principal structure.
    - (4) Any accessory buildings, structures or uses required in addition to and in conjunction with a use by right in the district.
  - b. **Commercial (C).** Any building or structure incident to and necessary for the operation of a use by right in the district.
  - c. **Industrial (I).** Any building or structure incident to and necessary for the operation of a use by right in the district.
  - d. **Business (B).** Any building or structure incident to and necessary for the operation of a use by right in the district.
  - e. **Conservation (CON).** Any building or structure incident to and necessary for the operation of a use by right in the district.
- E. **Conditional Use.** Uses normally associated with uses-by-right and permitted in any given zone district upon compliance with certain conditions and after review and approval of a site plan. See Appendix 1.
- F. **Use by Special Review.** A specific use of land or building or both described and permitted within a zone district is subject to special provisions and which, because of its unique characteristics, cannot be properly classified as a use-by-right or conditional use. Special uses require review before the Planning Commission and a public hearing before the Board of Trustees. These uses are usually extraordinary in nature, and a complete site plan and impact mitigation plan will be required to be reviewed and approved. See Appendix 2. Posting notice on property, for which special review application is pending, shall be required. See Appendix 4.
- G. **Temporary Uses.**
  - 1. The intent of this section is to provide for the regulation of temporary structures and uses. This Ordinance shall apply to temporary residences, temporary construction offices and temporary signs. For the purposes of this section, the term "temporary" shall mean a period of up to six (6) months.
  - 2. **General Requirements and Procedures.** Prior to the establishment and use of a temporary structure, the applicant shall be required to provide the following:
    - a. Submit a plot plan showing location of the use, setbacks and any other pertinent information to the Town Administrator for review.

The plan must conform with all applicable zoning requirements of the district in which the use is to be located. See Appendix 3.

- b. Upon favorable review by the Town Administrator, the applicant may obtain a building permit for the requested use.
- c. The permit granted by the Town Administrator shall expire six (6) months from the date of issuance. A maximum of three (3) permits may be granted per use. All temporary uses shall be removed at the expiration of the third permit.
- d. All written requests for renewal shall be submitted to the Town Administrator a minimum of 10 working days prior to expiration date.
- e. The applicant must meet any additional requirements necessary for the health, safety and welfare of the residents of the surrounding area as determined by the Town Administrator.

### **3. Permitted Temporary Structures.**

- a. **Temporary Construction Office.** A temporary structure for the storage of construction materials, and a construction office to be used for managing a construction job may be utilized in all districts with the following restrictions:

- (1) The unit is to be used only during normal construction hours by the construction superintendent, construction workers, contractors, etc.
- (2) While construction is occurring, a temporary construction office may be utilized provided that it is located within the area of a recorded final plat or an approved site plan.
- (3) The temporary construction office shall not be utilized as living quarters for a caretaker, property owner, contractor, or others except in approved cases where security necessitates such occupancy.

- b. **Temporary Offices.**

- (1) **Residential Sales.** Temporary residential sales offices for the sale of units in an area shall be permitted in the residential (R) and PD districts with the following restrictions:
  - (i) Sales shall be limited only to those units within the platted subdivision in which the office is located.

- (ii) The temporary structure shall be located within the area of a recorded final plat.
  - (iii) The use of a temporary residential sales office shall require obtaining a temporary permit with the Town Administrator.
- (2) **Commercial, Business and Industrial Offices.** Temporary nonresidential offices used for sales or business operation purposes shall be permitted in the BD, CD, ID and nonresidential and mixed-use PD zone districts with the following restrictions:
  - (i) Upon obtaining a building permit for a permanent nonresidential structure a permit for utilizing a temporary structure on the premises by the property owner or representative may be obtained.
  - (ii) The temporary office shall be located within the area of a recorded final plat and an approved site plan.
- c. **Temporary Signs.** All temporary signs shall be in conformance with the Town of Wiggins Sign Ordinance. See appendix 11.
- d. **Other Temporary Structures.**
  - (1) Use: Carnival, circus, bazaar, or fair  
Zones: Industrial and Conservation  
Period: Two (2) weeks
  - (2) Use: Tent meeting or crusade  
Zones: Industrial and Conservation  
Period: Two (2) weeks.
  - (3) Use: Parking for another temporary use  
Zones: Same as temporary use for which it is required  
Period: Same as temporary use for which it is required.
  - (4) Use: Non-Commercial concrete batching plant  
Zones: Industrial and Conservation  
Period: Two (2) months, renewable by Board of Trustees.
  - (5) Use: Roadside stand  
Zones: Business and Commercial

Period: Two (2) weeks.

#### **H. Uses Not Itemized.**

1. On its own initiative, the Wiggins Planning Commission may, by resolution, recommend to the Board of Trustees additions to the uses permitted and/or uses permitted by special review section of any zoning district, any other similar use which conforms to the conditions set forth in this section. The recommendation of the Planning Commission is then forwarded to the Board of Trustees for their action pursuant to this Ordinance. The criteria to be considered when adding to the zone district use list are:
  - a. Such use is more appropriate in the use group to which it is added;
  - b. Such use conforms to the basic characteristics of the use group to which it is added; and
  - c. Such use does not create any more offensive noise, vibrations, dust, heat, smoke, odor, glare, or other objectionable influences or more traffic hazards than the minimum amount normally resulting from the other uses listed in the use group to which it is added.
2. Any use not specifically listed or under consideration by the Planning Commission for addition at the time of application must be approved as an addition and/or reviewed as a special use permit within an appropriate zone district.
3. When any use has been added to any use group in accordance with this Ordinance, such use shall be deemed to be listed in the appropriate section of that use group and shall be added thereto in the published text of this Ordinance at the first convenient opportunity, with a notation indicating that the addition was made in accordance with this section.

#### **2.03 Zone District Descriptions.**

##### **A. Rules of Construction of Language.**

1. The particular controls are general;
2. In the case of any difference of meaning or implication between the text of these regulations and the captions for each section, the text shall control;
3. The word "shall" is always mandatory, and not directory. The word "may" is permissive;
4. Words in the present tense include the future, unless otherwise indicated;

and,

5. Words used in the singular form include the plural, and words used in the plural form include the singular, unless the context clearly indicates the contrary.

## **2.04 Rural Residential District (RR).**

**A. Purpose.** The RR, Rural Residential District, is designed to accommodate very low density single-family residential uses and country estates on large lots that can possibly accommodate livestock at specified density limits and located on the fringes of Wiggins' Planning Influence Area. These areas must be served by centralized sewer and water utilities.

### **B. Uses-By-Right.**

1. single-family house with a minimum size of 24-feet wide and 36-feet long, or 864 square feet on the ground level, including modular homes (one [1] per parcel; minimum parcel of one [1] acre, but not to exceed five [5] acres)
2. public parks, playgrounds, and other public recreation areas
3. public utility distribution mains, lines, etc., which are underground facilities to service residences
4. domestic livestock, limited to swine, sheep, cattle, horses and mules less than or equal to an animal density of one (1) animal per acre of open lot space
5. satellite dish antennas without towers; ham radio towers
6. open space
7. accessory buildings, not more than 1,000 square feet, and uses such as garages and green houses
8. livestock barns not more than 1,000 square feet each
9. gardens

### **C. Conditional Uses.**

1. golf courses
2. public and private schools

3. churches and church schools
4. fire stations
5. small wind energy conversion systems
6. crop production, orchards, nurseries, and flower production
7. utility service facilities
8. communication facilities not exceeding height limits

**D. Special Review Uses.**

1. home occupations
2. central collection sewage treatment facilities, exclusive of individual septic system
3. exotic livestock or animals (domestic animal density limits apply)
4. group homes and licensed foster care homes
5. preschools, nursery schools, and child care centers
6. small horse boarding operations of four (4) or less animals not owned by operator; animal densities apply
7. water tanks, water and sewer treatment facilities, utility substations, and regulator stations
8. major facilities of a public utility, as defined in this Ordinance
9. accessory building greater than 1,000 square feet.

**2.05 Estate Residential District (ER).**

**A. Purpose.** The ER, Estate Residential District, is designed to accommodate very low density single-family residential uses and country estates on large lots at specified density limits and located on the fringes of Wiggins' Planning Influence Area. These areas must be served by centralized sewer and water utilities.

**B. Uses-By-Right.**

1. single-family house with a minimum dwelling space of 1,200 square feet

on the ground level, including modular homes (one [1] per parcel; minimum parcel of one [1] acre, but not to exceed five [5] acres)

2. public parks, playgrounds, and other public recreation areas
3. public utility distribution mains, lines, etc., which are underground facilities to serve residences
4. satellite dish antennas without towers; ham radio towers
5. open space
6. accessory buildings, not more than 1,000 square feet, and uses such as garages and green houses
7. gardens

**C. Conditional Uses.**

1. golf courses
2. public and private schools
3. churches and church schools
4. fire stations
5. small wind energy conversion systems
6. utility service facilities
7. communication facilities not exceeding height limits

**D. Special-Review Uses.**

1. group homes and licensed foster care homes
2. orchards, nurseries, and flower production
3. home occupations
4. central collection sewage treatment facilities, exclusive of individual septic system
5. water tanks, water and sewer treatment facilities, utility substations, and

regulator stations

6. major facilities of a public utility, as defined in this Ordinance
7. accessory buildings greater than 1,000 square feet
8. preschools, nursery schools, and child care centers

## **2.06 Single-Family Residential District (R-1).**

**A. Purpose.** The R-1 Single-Family Residential District is designed to accommodate single-family residential development at low density in areas within the Town of Wiggins that are served by public sewer and water facilities. In order to maintain the design integrity of this district, no mobile homes will be allowed in this district.

### **B. Uses-By-Right.**

1. single-family house with a minimum size of 24-feet wide and 3-feet long, or 864 square feet on the ground level, and built or assembled on a permanent foundation on site, including manufactured homes (one per parcel)
2. public parks, playgrounds, and other public recreation areas
3. public utility distribution mains, lines, etc., which are underground facilities
4. open space
5. gardens
6. non-commercial greenhouses less than 150 square feet
7. satellite dish antennas without towers; ham radio towers
8. accessory buildings, not more than one-thousand 1,000 square feet, and uses such as garages
9. community centers
10. historical structures
11. licensed child care homes

**C. Special Review Uses.**

1. public and private schools
2. churches and church schools
3. fire stations
4. home occupations
5. communication facilities up to height limit
6. utility service facilities
7. major facilities of a public utility, as defined in this Ordinance
8. nurseries and day care centers
9. convalescent homes and other extended care facilities
10. duplexes
11. golf courses
12. group homes and licensed foster care homes
13. use of portable metal Conex boxes or other portable stage containers by public or private schools, churches and church schools, fire stations, communications facilities, home care facilities and golf courses. Special review shall be taken into consideration the surrounding area and neighborhood as part of the consideration of appropriateness for approval

**D. Additional Requirements.**

1. all new residential developments must be reasonably landscaped within one year
2. for all multi-family uses, all trash receptacles must be properly screened from adjacent public rights-of-way and adjacent properties. These areas shall be designed and used in a manner that will prevent wind and animal scattering of trash.
3. all roof-mounted equipment shall be properly screened; solar collectors and heaters and television antennas are exempted.

**2.07 Residential District (R-2).**

- A. Purpose.** This zone district provides areas for low- to moderate-density residential development and allows for two-family housing units.

**B. Uses-By-Right.**

1. all Uses-By-Right included in the R-1 District
2. two-family dwellings that are framed and constructed on-site
3. accessory buildings and uses
4. duplexes
5. multifamily dwelling

**C. Special Review Uses.**

1. all Special Review Uses included in the R-1 District
2. apartments and other multiple family dwellings (i.e. boarding houses)
3. multiple family subdivisions (lots or condominiums)
4. central collection sewage treatment facilities
5. group homes and licensed foster care homes

**D. Additional Requirements.** All Additional Requirements included in the R-1 District.

**2.08 Mobile Home Park District (MHPD).**

- A. Purpose.** The Mobile Home (MH) District provides a residential zone for mobile home parks within the Town of Wiggins. This district allows the use/siting of the types of mobile homes and manufactured homes that may not qualify for location in other residential zone districts. For the purposes of the Mobile Home Park District (MHPD), the term “mobile home(s)” shall include “manufactured homes(s)”.
- B. Interpretation.** In the interpretation and application of the provisions of this Ordinance, they are not intended to abrogate or annul any permits issued before the effective date of this Ordinance or any easement, covenant, or any other private agreement.
- C. Definitions.** For the purposes of this Zoning District, "MHPD," unless the context otherwise requires, the following terms have the following meanings: Access Street. Streets designed to carry vehicular traffic from a mobile home park to a public street or highway system.

**Access way.** A way for vehicular traffic providing access from a mobile home stand to an abutting collector street, cul-de-sac street, or service street.

**Collector Street.** A private street, within a mobile home park, designed to gather vehicular traffic from abutting mobile home spaces, cul-de-sac streets, and service streets and to carry it to an access street.

**License.** A written, non-transferable license issued by the Town Council authorizing the operation of a mobile home park under these regulations.

**Manufactured Home.** A single-family dwelling unit which is partially or entirely manufactured in a factory and is not less than 24-feet in width and 36-feet (24' x 36') in length. It is installed on an engineered permanent foundation and has brick, wood, or cosmetically equivalent exterior siding, and a pitched roof. It is certified to the National "Manufactured Housing Construction and Safety Standards Act of 1974," 42 U.S.C. 5401, et seq., as amended.

**Mobile Home.** A detached, transportable, one-family dwelling unit intended for year-round occupancy that is at least 12 feet in width and 52 feet in length and 624 square feet or more, and to be no more than 20 years old based upon its Year of Manufacture. At a minimum, it must contain sleeping accommodations, flush toilet, a tub or shower bath, kitchen facilities with plumbing and electrical connections intended for attachment to outside systems. All mobile homes must be certified to the National "Manufactured Housing Construction and Safety Standards Act of 1974," 42 U.S.C. 5401, *et seq.*, as amended. These homes are made to be readily movable as a unit or units on its (their) own running gear and designed to be used as a dwelling unit(s) without a permanent foundation and which unit or units are not licensed as a recreational vehicle or park model. The phrase "without a permanent foundation" indicates that the support system is constructed with the intent that the mobile home placed thereon may be moved from time to time at the convenience of the owner.

**Mobile Home Park.** Any plot of ground zoned MHPD upon which two or more mobile homes, occupied or intended to be occupied for dwelling, are located for any period of time, regardless of whether or not a charge is made for such accommodations, and whether or not the mobile homes and/or the land are owned by the occupants. A license is required.

**Mobile Home Lot or Space.** A plot of ground within a mobile home park designed for the accommodation of one mobile home and its permitted accessory buildings and uses.

**Mobile Home Stand.** That portion of an individual mobile home space which has been reserved for the placement of a mobile home, and structures or additions appurtenant to the mobile home.

**Portable Utility Building.** A structure located on a mobile home lot, which is designed and used solely for the storage and use of personal equipment and

possessions of the mobile home occupants.

**Portable Utility Building Stand.** The ground located beneath the portable utility building.

**Recreational Vehicle (RV).** A wheeled vehicle intended to provide temporary living accommodations. It is either self-propelled, hauled, or towed by a non-commercial vehicle. Included are units commonly referred to as travel- trailers, camper-trailers, trailer-coaches, motor homes, and pickup campers. It is not a mobile home.

**Service Building.** A building housing laundry facilities, operated by the mobile home park management, recreational facilities, storage and other activities, facilities and uses which may be authorized or approved by the board, pursuant to the procedures delineated in this Ordinance.

**Service Street.** A private street, within a mobile home park, designed to be used primarily for service vehicles, such as garbage trucks, fire trucks, and mobile home transport vehicles.

**Set up Requirements for Mobile Homes.** See Section 3

**Site.** A Mobile Home Park District.

**Street Frontage.** That side of a mobile home space abutting a street or roadway and ordinarily regarded as the front of the mobile home space. On a corner mobile home space, only one side shall be considered as the front, and the shorter street frontage shall be considered the front of the mobile home space.

**Unit.** Mobile home space.

#### **D. Uses-By-Right.**

1. mobile homes, at least 12-feet in width and 52-feet in length, and 624 square feet or more and be no more than 20 years old based upon its Year of Manufacture.
2. mobile home parks
3. accessory uses, buildings, and structures
4. open space
5. public parks and playgrounds
6. public utility mains, lines, and underground facilities
7. satellite dish antennas without towers

**E. Special Review Uses.**

1. manufactured homes used as service buildings
2. churches and church schools
3. golf courses
4. communication facilities not exceeding height limits
5. home occupations
6. childcare home and childcare center
7. central collection sewage treatment facilities
8. major facilities of a public utility, as defined in this Ordinance
9. water tanks, water treatment facilities, utility substations and regulator stations, water reservoirs
10. any mobile home less than 12 feet in width and 52 feet in length or more than 20 years old based upon its Year of Manufacture.
11. parking areas and/or facilities for recreational vehicles
12. group homes and licensed foster care homes

**2.09 Business District (BD).**

**A. Purpose.** This zone district is designed to accommodate a wide variety of business activities in addition to mixed-use residential, office businesses and the municipal center. The BD zone will serve as the primary business core of the Town and be pedestrian-oriented, resulting in the provision of adequate space for the development of attractive, centralized, people-oriented environments where retail enterprises will provide sales and services responding to the needs of the town, tourists, and the surrounding agricultural community.

**B. Uses-By-Right.**

1. Retail and business use such as:
  - a. attorney-at-law/legal services
  - b. antique shops

- c.** artist supply stores
- d.** auto and truck parts store
- e.** banks (drive-in facilities are allowed)
- f.** barber and beauty shops
- g.** book and stationery stores
- h.** clothing stores
- i.** communication facilities up to the height limit
- j.** copy centers
- k.** CPA/bookkeeping services
- l.** craft stores
- m.** department stores
- n.** drug stores
- o.** dry cleaning and dyeing establishments
- p.** dry goods and variety stores
- q.** electrical and household appliance stores
- r.** farm equipment sales and repair shops
- s.** florists
- t.** furniture stores
- u.** gift shops
- v.** grocery stores
- w.** hardware stores
- x.** insurance agencies
- y.** jewelry stores
- z.** laundromats
- aa.** libraries

- bb.** medical and dental clinics
- cc.** membership clubs, public or private
- dd.** mortuaries and funeral homes
- ee.** music, radio, television, and video stores
- ff.** newspaper publications
- gg.** newsstands
- hh.** office supply stores
- ii.** offices for business, professional and governmental activities
- jj.** optometrist shops
- kk.** parking lots for customers and employee parking (off-premise lots)
- ll.** package liquor stores
- mm.** paint stores
- nn.** pet shops
- oo.** photographic studios, equipment, and supply stores
- pp.** post offices
- qq.** printers
- rr.** public utility collection offices
- ss.** radio and TV stations and other communication businesses
- tt.** realty/land offices
- uu.** restaurants and other eating and drinking establishments without drive-in facilities
- vv.** senior centers
- ww.** shoe stores
- xx.** sporting goods and athletic equipment stores
- yy.** theaters (indoors)
- zz.** toy stores

- aaa.** travel agencies
  - bbb.** video rentals
  - ccc.** other similar retail establishments not of an industrial or wholesale nature
2. Utility service facilities
  3. Accessory buildings and uses
  4. Recreational vehicle storage buildings

**C. Conditional Uses.**

1. auto and truck repair shops
2. bed and breakfast homes
3. car dealerships
4. health club/gym
5. restaurants with drive-in facilities
6. utility service facilities where height limits are exceeded
7. cabinet, wood working or carpentry shops

**D. Special Review Uses.**

1. builders' supply and lumber yards
2. used car dealers
3. community centers
4. convalescent homes, and other extended care facilities
5. drive-in restaurants
6. frozen food lockers
7. gasoline stations
8. government buildings, police station, or fire station

9. hospitals and nursing homes
10. hotels and motels
11. lounges or clubs
12. multiple family dwellings
13. off-street automobile parking lots
14. public transportation terminals
15. major facilities of a public utility, as defined in this Ordinance
16. recreational vehicle storage yards
17. rooming and boarding houses
18. railroad facilities
19. shopping centers
20. single-family dwelling within a business establishment for care taking purposes
21. warehouses
22. water tanks, water and sewer treatment facilities, and regulator stations
23. communication facilities where height limits are exceeded
24. recycling centers
25. all Uses-By-Right included in the R-1 district
26. Use of portable Conex boxes or other portable storage containers.

**2.10 Commercial District (CD).**

- A. Purpose.** To provide land for a range of commercial uses including wholesale businesses, services and sales that will respond to both the need of the Town and the surrounding agricultural community.
- B. Uses-By-Right.**
  1. Places for the conduct of commercial and service activities, not of an industrial nature, including, but not limited to, the following:

- a. uses-by-right allowed in the Business District (BD) section of this Chapter
- b. amusement and general recreational facilities
- c. auto and truck repairs
- d. auto and truck sales -new and used
- e. bowling alleys
- f. building materials, farm and ranch materials center
- g. cabinet, wood working or carpentry shops
- h. car washes
- i. contractor's office with outside storage of construction materials or equipment
- j. dry cleaning plants
- k. electrical, heating, painting, plumbing, roofing, or ventilating shops
- l. heavy equipment sales---new and used
- m. feed mills and grain elevators
- n. firewood sales and storage
- o. flea markets; farmers markets
- p. fresh or frozen food lockers
- q. hospitals and nursing homes
- r. lumber yards
- s. machine and blacksmith shops
- t. miniature golf courses, golf driving ranges
- u. motels and hotels
- v. nurseries and greenhouses
- w. printing or publishing establishments
- x. storage facilities -household goods

- y.** sign painting
- z.** radio and TV stations, telephone exchanges and other communications facilities --which may exceed height limits-- such as towers and antennas
- aa.** rental equipment stores
- bb.** restaurants and other eating and drinking establishments with drive-up facilities
- cc.** tack, feed and grain stores
- dd.** theaters (outdoor)
- ee.** tire supply and repair stores
- ff.** full service truck stores
- gg.** upholstery supply and repair stores
- hh.** veterinary clinics and hospital
- ii.** warehousing
- jj.** water tanks, water and sewer treatment facilities, and regulator stations
- kk.** welding shops

**C. Special Review Uses.**

- 1.** Special Review uses allowed in the Business District in Section 3.7.4, with the exception of multi-family and single-family dwellings
- 2.** auction houses
- 3.** campgrounds and recreational vehicle (RV) parks
- 4.** chemical and gas (liquid or pressurized) storage businesses
- 5.** commercial storage areas
- 6.** gas stations/food stores
- 7.** mobile home sales areas

8. storage and sale of commercial fertilizer and farm chemicals, and bulk fuel yards
9. trucking terminals and loading docks
10. wholesale animal by-product processing
11. recycling centers
12. other wholesale businesses, storage or sales locations that conform with current local, state, and federal regulations, but are likely to create smoke, dust, noise, fumes, vibrations, or any other deleterious effect such as air or water pollution.
13. use of portable metal Conex boxes or other portable storage containers.

## **2.11 Industrial District (ID).**

- A. Purpose.** Land areas to be used primarily for research and development, warehousing, product assembly and manufacturing and other service, distribution, and industrial uses that conform with local, state, and federal environmental standards.
- B. Uses-By-Right.**
  1. automobile service stations with gasoline pumps and retail gift and sundry sales
  2. bakeries - wholesale and retail
  3. bars and lounges
  4. boats sales and storage
  5. building materials - wholesale and retail
  6. emergency response facilities
  7. general merchandise wholesale; retail sales allowed
  8. heavy equipment, truck and farm implement sales and repair
  9. home repair centers - wholesale and retail
  10. warehouses, with no storage of dangerous or flammable material and no selling of merchandise and other tangible goods or services from any unit

11. motor vehicle and motorized equipment sales, service and repair
12. product distribution and storage facilities (warehouse)
13. public and private parking lots
14. public and private recreation areas
15. recreational vehicle storage yards
16. temporary construction office
17. temporary office
18. oil and gas well drilling service operations, storage yards and offices

**C. Accessory Uses.**

1. storage buildings for equipment
2. below ground utility mains
3. parking and loading areas to service the industrial operation
4. use of portable metal Conex boxes or other portable storage containers.

**D. Special Review Uses.**

1. all Special - Review Uses included in the Commercial District Section.
2. utility generation facility
3. above ground utility transmission lines - on or off site
4. water tanks, water and sewage treatment facilities
5. communication facilities where height limits are exceeded
6. utility service facilities where height limits are exceeded
7. adult amusement, entertainment or business establishment
8. commercial airports and heliports
9. crop dusting operations and associated chemical storage and airstrips

10. animal sales yard
11. storage or warehousing of any dangerous or toxic chemicals or products, fertilizers, farm chemicals, etc.
12. concrete, asphalt and mortar batching plants
13. aircraft related recreational facilities
14. manufacturing, assembly, and distribution of secondary and basic goods
15. commercial storage areas and warehouses used to store or distribute goods and commodities (food stuffs, grains, etc.)
16. private and public storage areas
17. public safety facilities
18. truck terminals and loading areas
19. junk, scrap metal, auto wrecking and equipment storage and salvage yards
20. recycling centers
21. commercial synthetic fuel plants
22. assembling and light manufacturing plants
23. food and beverage processing plants
24. bottling plants
25. scientific research facilities

## 2.12 **Planned Development District (PD).**

- A. Purpose.** The PD, Planned Development district, is established to encourage innovations in residential, commercial, industrial, and recreational development by allowing for mixed land uses, variations in development densities, and variety in the type, design, and layout of buildings in a manner not allowed under traditional zoning. The PD district provides a means for clustering development and allowing for the preservation of open space, more effective land utilization, and for more cost-effective and efficient extensions of infrastructure. The PD district is intended to provide a means for developing large or several different tracts of land into building and use complexes with a continuity of design and development. It shall not be available as a means to develop a single lot or several lots of average size.

## **B. PD Requirements.**

- 1.** The boundaries of the PD are not delineated in this Ordinance but shall be fixed by amendment of the Wiggins Zoning Resolution and Map, at such times in the future as such district may be applied to specific real property in this Town.
- 2.** The PD shall be consistent with the intent and policies of the Comprehensive Plan.
- 3.** The PD shall be designed in a manner such that it protects the environmental assets of the area including considerations of elements such as plant and wildlife, streams and storm drainage courses and scenic vistas.
- 4.** The planned development's relationship to and compatibility with its surroundings shall be considered in order to avoid adverse effects caused by traffic circulation, building height or bulk, lack of screening, or intrusions on privacy.
- 5.** The PD design and construction plans shall take into account characteristics of soils, slopes and potential geological hazards, in a manner intended to protect the health, safety, and welfare of potential users of the PD. These aspects of the plan must be accompanied by a detailed soil engineering report on the suitability of the area for the intended use and the necessary precautions needed to bring the area to a state of structural soundness before building permits may be issued.
- 6.** Design and construction of the PD shall include adequate, safe, and convenient arrangements for pedestrian circulation, roadways, driveways, off-street parking, and loading space.
- 7.** The mixture of uses and densities in a PD is negotiable. The applicant must demonstrate the positive benefits to the Town of the PD district classification versus a traditional single-district zone classification.
- 8.** The plans for the proposed planned development shall indicate the particular portions of the project that the developer intends to develop under various use categories. Densities, averages, and permitted uses shall be detailed for all development areas within the PD. A summary chart indicating development standards applicable to entire PD and/or separate areas within the PD will be required.
- 9.** The total parking requirements of the PD will not exceed the sum of the parking that would be required for each use. However, all the parking required for each district does not have to be provided within that district, and total parking requirements may be reduced, if the developer demonstrates to the Town using industry standards that the total number of spaces are not needed within the PD.

10. Planned open spaces within the PD, including those spaces being used as public or private recreation sits, shall be protected by adequate covenants running with the land, or by conveyances or dedications.
11. A minimum of 25 percent of the total PD area shall be devoted to open-air recreation or other usable open space (public or quasi- public). "Usable open space" shall be defined as open area designed and developed for use by the occupants of the development or by others for uses including, but not limited to, recreation, courts, gardens, parks and walkways. The terms may include space devoted to streets, parking and loading areas. Open space percentages within separate land use areas of a PD may vary from the 25 percent figure, but the total amount of open area must equal 25 percent of the overall acreage. This amount of open space may include any publicly dedicated land for parks and open space.
12. Traffic circulation shall be determined by review of each Planned Development. The PD must have an adequate internal street circulation system. Public streets must serve all planning areas and meet minimum Town construction standards for use by police and fire department vehicles for emergency purposes. Each nonresidential structure or use in the PD must provide off-street loading spaces, loading berths, service courts, or accesses for delivery and service vehicles.

### **C. PD Approval Process.**

1. Where PD zoning already exists on a parcel, the development shall conform to all standards and restrictions specified in the Official Development Plan (ODP). Subdivision of the property may be required, as well as an approved improvements agreement with the Town. If the PD consists of a Preliminary PD Plan, final PD approval (ODP) must be obtained prior to commencement of development and issuance of building permits.
2. Where a PD zoning does not exist on a lot or lots and the PD designation is desired, the developer must first apply for an amendment to the zoning map per Section II.C. Consideration of the zoning amendment request (rezoning) can occur simultaneously with consideration of the proposed PD preliminary plan. Sketch plan approval is necessary prior to preliminary PD approval. In approving the zoning amendment to a PD district, the Planning Commission and Town Board must find that (1) the PD as described in the preliminary plan conforms to the policies and intent of the Wiggins Comprehensive Plan, (2) the application is complete, (3) the project is in the best interest of the residents of Wiggins, (4) the project does not place an extraordinary financial burden on the Town, and (5) the intent of applicable ordinances in the Town are met.

### **3. Review Bodies.**

- a. Sketch Plan -Town Administrator.
  - b. Preliminary PD -Town Administrator, public hearing before the Planning Commission, public hearing before the Town Board. Approval of the preliminary PD establishes the PD Zone District.
  - c. Final PD -Town Administrator, Planning Commission public hearing, Town Board review. All public hearings must be duly noticed according to standard noticing procedures. The property must be posted at the Preliminary PD or PD District stage. Formats for posting are found in Appendix 4.
- 4. Amendments to PD Plans.** Amendments to PD plans may be made under the following conditions:
- a. Minor changes in locations, siting, bulk of structures, height or character of building may be authorized by the Planning Commission if required by circumstances not foreseen at the time the final plan was approved.
  - b. All other changes in use, any rearrangement in lots, or changes in the provision of open space must be approved by the Town Board, subject to the procedure for PD amendments.
- D. Submission Requirements.** The materials listed in Appendix 5 and 6 must be submitted, at minimum, to the Town for review of the PD. The Town Administrator will detail the submission requirements for each submission stage. Additional items may be requested by the Town at each stage of the process.
- E. Enforcement and Modifications of PD Provisions.**
- 1. To further the mutual interest of the residents, occupants, and owners of a planned development and of the public in the preservation of the integrity of the plan, the provisions of the plan relating to the use of land and the location of common open space shall be in the best interests of the Town and shall be enforceable in law or inequity by the Town without limitation on any powers or regulation otherwise granted by law.
  - 2. All provisions of the PD shall run in favor of the residents, occupants, and owners of the planned development, but only to the extent expressly provided in the plan and in accordance with the terms of the plan, and, to that extent, said provisions, whether recorded by plat, covenant, easement, or otherwise, may be enforced at law or in equity by residents, occupants, or owners acting individually, jointly, or through an organization designated in the plan to act on their behalf. However, no provisions of the plan shall be implied to exist in favor of residents, occupants, and owners except as to those portions of the plan which have been finally approved.

3. All those provisions of the plan authorized to be enforced by the Town may be modified, removed, or released by the Town, subject to the following:
  - a. No modification, removal, or release of the provisions of the plan by the Town shall affect the rights of the residents, occupants, and owners of the planned development to maintain and enforce those provisions at law or equity as provided above.
  - b. No substantial modification, removal, or release of the provisions of the plan by the Town shall be permitted except upon a finding by the Town, following a public hearing called and held in accordance with the provisions of this Ordinance, that the modification, removal, or release is consistent with the efficient development and preservation of the entire planned development, does not affect in a substantially adverse manner either the enjoyment of land adjacent from the planned development or the public interest, and is not granted solely to confer a special benefit upon any person.
  - c. Residents and owners of the planned development may, to the extent and in the manner expressly authorized by the provisions of the plan, modify, remove, or release their rights to enforce the provisions of the plan, but no such action shall affect the right of the Town to enforce the provisions of the plan.

**2.13 Conservation District (CON).**

- A. **Purpose.** The Conservation District is established to preserve the environment and natural character of the landscape within the district. Land within the district may be protected from development, but may also be used for trails, buffering between developed land uses, and preserving valuable natural features. In addition, this district is to provide open space areas for passive, active, and developed recreation activities.
- B. **Uses-By-Right.**
  1. agricultural uses with the exception of animal feeding operations, provided no structures are necessary
  2. golf courses
  3. playgrounds
  4. public and private parks, open space areas and natural features

**C. Special Review Uses.**

1. recreation facilities, ballfields, etc.
2. fairgrounds
3. fishing ponds
4. parking areas for all uses in this district
5. trails
6. public utility distribution mains, lines, etc., which are underground facilities
7. campground areas for tourists used for camper units, camp trailers, and tents
8. cemeteries
9. outdoor theaters
10. schools
11. water and sewer treatment facilities
12. water storage reservoirs
13. other recreation uses, with or without accompanying structures
14. concession stands, club houses, and commercial sales related to recreational uses locate inside or attached to club houses, fairgrounds buildings, and other similar uses
15. correctional facility
16. major facilities of a public utility, as defined in this Ordinance

**2.14 District Schedule of Requirements.** The Schedule of Requirements includes basic bulk, setback, density, intensity, and open space requirements for each zone district. Additional requirements are listed for uses permitted by special review.

# SCHEDULE OF REQUIREMENTS

## RESIDENTIAL DISTRICTS (SEE NOTE #1)

STANDARD	E-R	R-1	R-2	R-R	MHPD
Minimum lot area (square feet)	43,560	8,750	8,750	43,560	5,000
Minimum dwelling space (square feet) (see note #2)	1,200	864	864	864	480
Max building or structure height (ft) (see notes #3, 4)	40	40	40	40	30
Maximum height of accessory uses (ft)	25	20	20	25	20
Maximum number of stories	3	3	3	3	1
Minimum lot width (ft)	150	70	70	150	50

<b>YARD REQUIREMENTS (feet) Front yard setback from all roads:</b> (See Notes #5,6)					
Local	25	25	25	25	25
Side Yard (accessory use)	3	3	3	3	3
Side Yard (principal use): (see note #6)	25	7	7	25	7
Rear Yard (Principal uses)	50	3	3	50	15
Rear Yard	50	3	3	50	3
Rear Entry Garages	50	15	15	50	15
Maximum Lot Area	5 acres	---	---	5 acres	---
Maximum Lot Coverage	20%	---	---	20%	---
Minimum Landscaped Open Space	---	20%	30%	---	30%

**NOTES:**

- 1) All requirements subject to Uniform Building Code standards for specific type of construction.
- 2) Dwelling space as measured by interior walls.
- 3) Number of stories does not include a crawlspace nor a basement.
- 4) Subject to Uniform Building Code restrictions regarding type of construction.
- 5) Where lots comprising 25% or more of the frontage of any block are developed with buildings having a predominate setback, no building hereafter erected shall project beyond the predominate setback so established; provided that no setback shall be greater than 50 feet.
- 6) For all residential corner lots, the front and the street-facing side of the building shall comply with the setback requirement of the street upon which the front of the building faces.

# SCHEDULE OF REQUIREMENTS

## COMMERCIAL & BUSINESS DISTRICTS (see note #1)

Standard	BD	CD
Minimum Lot Area (square feet):		
•Nonresidential	3,125	9,375
•Residential (see note #2)	8,750	8,750
Maximum Building or Structure Height (feet)	50	50
Minimum Lot Width	25	75
Maximum Number of Stories	4	4

Yard Requirement (feet)		
Front Yard Set Back		
•Arterial (Through Street)	10	30
Side Yard (see note #3)	0	10
Rear Yard	20	25

**NOTES:**

- 1) All requirements subject to Uniform Building Code standards for specific type of construction.
- 2) Residential minimum lot sizes in both the BD and the CD shall conform to the requirements of the R-2 District.
- 3) In the CD, the minimum side yard shall be 10-feet for the first 25-feet of the building height. Buildings in excess of 25-feet shall increase the side yard setback one (1) foot for each two (2) feet of building height over 25-feet to a maximum of 25-feet.

# SCHEDULE OF REQUIREMENTS

## INDUSTRIAL DISTRICT

<b>Standard</b>	<b>ID</b>
Minimum Lot Area (square feet)	14,000
Maximum Building or Structure Height (feet)	50
Maximum Number of Stories	4
Minimum Lot Width (feet)	125
Yard Requirements (feet)	
Minimum setback from residential zone district boundaries (shall include landscaping as determined by the Zoning Administrator including a minimum of six [6] conifer trees per 100-feet with a minimum four-inch [4"] base caliper for each tree.)	100 feet
Minimum setback from residential zone district boundaries (shall include landscaping as determined by the Zoning Administrator including a minimum of four [4] conifer trees per 100-feet with a minimum four-inch [4"] base caliper for each tree.)	50 feet
Side Yard Setback (feet)	20
Rear Yard Setback (feet)	30

# SCHEDULE OF REQUIREMENTS

## CONSERVATION DISTRICT

<b>Standard</b>	<b>CON</b>
Minimum Lot Area (square feet)	8,750
Maximum Building or Structure Height (feet)	30
Maximum Number of Stories	2
Minimum Lot Width (feet)	70
Maximum Lot Coverage	35%

### **Yard Requirements (feet):**

Front Yard Setback (feet)	30
Side Yard Setback (feet)	10
Rear Yard Setback (feet)	25

- A. Zoning Amendments (Rezoning).** Amendments to the text of this Ordinance or to the zoning map are made according to the provisions of this section.
- 1. Initiation of Amendments.** Amendments, supplements, changes or repeal of this Ordinance or any section thereof, or to the official zoning map may be initiated by application of:
    - a. Any citizen, group of citizens, firm or corporation owning property in the Town;
    - b. The Planning Commission; or
    - c. The Board of Trustees of the Town.
- B.** Requests to amend this Ordinance initiated by the Town Board or Planning Commission, or by Town staff, will be prepared as a draft ordinance by the Town attorney and planning staff, after review and recommendation by the Planning Commission and presented to the Town Board for the scheduling of a public hearing.
- C.** Any citizen of the Town who owns property may petition the Town Board to amend this Ordinance by filing a petition with the Administrator. If the petition is to amend the text of this Ordinance, then one (1) typewritten copy of the text is to be submitted to the Administrator. If the petition is to amend the zoning district classification, the petitioner must be the owner of the affected property or accompany the amendment request with a petition signed by owners of a majority of the land affected by the amendment request. This petition shall include items listed in Appendix 7 as well as other information deemed relevant by the Administrator or required by this Ordinance.
- D.** Upon receiving said application, the Administrator shall schedule a date for Planning Commission review at a public meeting and a date for a public hearing before the Town Board.
- E. Planning Commission Consideration.**
- 1.** All applications for changes to the Zoning Ordinance or Map shall be referred by the Town Administrator to the Planning Commission. The Planning Commission will review the proposed amendment ordinance within a period of 30 days so as to have recommendations to present to the Board at the public hearing. However, the Planning Commission can also ask the Board to delay its final decision if the Commission is not ready to make recommendations at the public hearing.
  - 2.** The Town Board is required to have the recommendations of the Planning Commission before making a decision, but it is not bound by any

recommendation of the Commission.

3. The Planning Commission shall review the proposed amendment relative to the goals and policies of the Town Comprehensive Plan, and any other appropriate approved plans. In particular the Planning Commission shall advise the Town Board if the adoption of the proposed amendment would necessitate a comprehensive plan amendment, and evaluate the amendment according to the criteria and procedure outlined in the comprehensive plan.

**F. Notice of Hearing Required.**

1. No amendment to this Ordinance may be adopted until a public hearing has been held on the proposal.
2. All amendments shall follow the public notice requirements of Appendix 4. If the amendment request was initiated by the Town, the Town shall be responsible for meeting the public notice requirements, but not any mailing requirements. The newspaper notice period is 15 days; mailing notice period is 15 days; sign posing period is 10 days.

**G. Town Board Action on Amendments.**

1. The Town Board is not required to take final action on a proposed amendment within any specific period of time, but shall proceed as expeditiously as practicable.
2. In deciding whether to adopt a proposed amendment to this Ordinance, the central issue before the Town Board is whether the change promotes the public health, safety and welfare. The Board must consider all potential uses that may result from a change in zoning and whether these uses are more appropriate than the range of uses allowed in the existing classification.

**H. Protests to Zoning District Changes.**

1. The adoption of any amendment, supplement, change, modification, or repeal shall require the favorable vote of a majority of the Board of Trustees, except that under the following circumstances is favorable vote of not less than three-fourths (3/4) of the voting members shall be required.
  - a. Whenever a protest against such changes is filed with the Town Clerk the protest shall be signed by the owners of 20 percent or more either of the lots included in such proposed change, or of those immediately adjacent extending one hundred 100-feet in any direction; or
  - b. Whenever the Planning Commission has not recommended approval of such change.

**I. Vesting.** Properties that are rezoned and have an approved site-specific development plain (SDP), the substance of which is outlined in Section 6 of this Ordinance, are eligible for vesting of property rights as specified in this Section. Submission requirements for SDPs are found in Appendix 8.

**J. Submission Requirements.** Submission requirements for zoning amendments are found in Appendix 2.

**K. Zoning Map.**

**1. Official Zoning Map.**

**a.** There shall be a map known and designated as the Official Zoning Map which shall be boundaries of all zoning districts within the Town's planning jurisdiction. The map shall be drawn or acetate or other durable material from which prints can be made, shall be dated, and shall be kept in the planning department.

**b.** The Official Zoning Map dated \_\_\_\_\_ is adopted and incorporated herein by reference. Amendments to this map shall be made and proposed in accordance with Subsection 3 below.

**c.** Should the Official Zoning Map be lost, destroyed, or damaged, the administrator may have a new map drawn on acetate or other durable material from which prints can be made. No further Town Board authorization or action is required so long as no district boundaries are changed in this process.

**2. Interpretations of the Zoning Map.** Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

**a.** Boundaries indicated as approximately following the centerline of alleys, streets, highways, streams, or railroads shall be construed to follow such centerline;

**b.** Boundaries indicated as approximately following lot lines, town limits or extraterritorial boundary lines, shall be construed as following such lines, limits, or boundaries;

**c.** Where a district boundary divides a lot or where distances are not specifically indicated on the Official Zoning Map, the boundary shall be determined by measurement, using the scale of the Official Zoning Map; and

**d.** Where any street or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley added

thereto by virtue of such vacation or abandonment.

**3. Amendments to Official Zoning Map.**

- a. Amendments to the Official Map are accomplished using the procedures that apply to other amendments to this Ordinance. Map areas changed to PD shall be numbered sequentially and identified by their case reference number on the map.
- b. The Administrator shall update the Official Zoning Map as soon as possible after amendments to it are adopted by the Town. Upon entering any such amendment on the map, the Administrator shall change the date of the map to indicate its latest revision. New prints of the update map may then be issued.
- c. No unauthorized person may alter or modify the Official Zoning Map.
- d. The Town shall keep copies of superseded prints of the zoning map for historical reference.

**L. Board of Adjustment Appeals, Variances Interpretations of Activities Administered by Staff.**

**1. Board of Adjustment.**

- a. The Board of Adjustment shall consist of either the Board of Trustees or five (5) citizen appointees. Each of the three citizen appointees shall serve terms of three (3) years, with a new member appointed every year. Any member of the Board of Adjustment may be removed for cause by the Board of Trustees upon written charges and after public hearing.
- b. The members of the Board of Adjustment shall receive such compensation as the Board of Trustees may provide.
- c. The Board of Trustees may appoint associate members of the Board of Adjustment and shall approve a schedule providing for alternating service of such alternate members in the event that any regular member is temporarily unable to act owing to absence from the Town, illness, interest in a case before the Board, or any other cause.
- d. Meetings of the Board of Adjustment shall meet at the call of the Chairperson, and at such other times as specified by the Board of Adjustment in its Rules of Procedure. All meetings of the Board of Adjustment shall be open to the public. The Chairperson or in his/her absence, the acting Chairperson, may administer oaths and

compel the attendance of witnesses. The Board of Adjustment shall keep minutes of its proceedings showing the vote of each member on each question and showing any absences or abstentions on each vote. The Board of Adjustment shall keep records of its examination and other official actions.

- e. The Board of Adjustment may adopt supplemental by-laws not inconsistent herewith.

## **2. Appeals.**

- a. Any aggrieved person may appeal a final order or decision of the Administrator to the Board of Adjustment when there is an alleged error in the resulting requirement, decision or approval determination appropriate for the Board of Adjustment review. An appeal is made by filing with the Town a written notice of appeal specifying the reasons for the appeal. A notice of appeal shall be considered filed with the Administrator and the Board of Adjustment when delivered to the Town offices, and the date and time filing shall be entered on the notice by the Town staff.
- b. An appeal must be made within 30 days after the date of the decision or order appealed from.
- c. Whenever an appeal is filed, the Administrator shall forthwith transmit to the Board of Adjustment all records relating to the action appealed from.
- d. An appeal stays all actions by the Administrator seeking enforcement of or compliance with the order or decision appealed from, unless the Administrator certifies to the Board of Adjustment the belief that due to the facts contained in the certification, a stay would cause imminent peril to life or property. In that case, proceedings shall not be stayed except by order of the Board of Adjustment or a court, issued on application of the party seeking the stay, for due cause shown, and after notice to the Administrator.
- e. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official or agency or to decide in favor of the appellant.
- f. The Board shall hold a public hearing on all appeals after providing notice in an official paper or newspaper of general circulation in the Town of Wiggins in not less than one (1) issue to be published at least one (1) week in advance of the regular or special meeting of the Board of Adjustment at which the appeal is to be considered. Notice shall specify the meeting agenda and location of the parcel

of land which shall be the subject of the hearing and shall decide the appeal within 60 days of the date of the appeal.

- g.** All appeals shall follow the public notice requirements outlined in Appendix 4.
- h.** A written notice of such hearing shall be sent to adjacent property owners, at least 15 days prior to the hearing. In the event that adjacent property held in common ownership, the notice shall be sent to the appropriate homeowners or condominium association. The appellant shall supply the names of the adjacent property owners at the time of filing the application.
- i.** In accordance with the fee schedule contained in this Ordinance, a fee shall be charged for each appeal to cover administrative costs of processing. The appellant shall also be required to reimburse the Town for the cost of any published notices required in consideration of his/her appeal under the provisions hereof.
- j.** The Board of Adjustment may reverse, affirm or modify the order, requirement, decision or determination appealed from and shall make any order, requirement, decision or determination that in its opinion out to be made in the case before it. To this end, the Board shall have all the powers of the officer from whom the appeal is taken.

### **3. Variances.**

- a.** An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator. Applications shall be complete. A staff report shall accompany the application to the Board.
- b.** A variance may be granted by the Board of Adjustment if it concludes that strict enforcement of the Ordinance would result in practical difficulties or unnecessary hardship for the applicant and that, by granting the variance, the spirit of the Ordinance will be observed, public safety and welfare secured, and substantial justice done. It may reach these conclusions if it finds that:
  - (1)** If the applicant complies strictly with the provisions of the Ordinance, he can make no reasonable use of his property; or
  - (2)** The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public; or
  - (3)** The hardship relates to the applicant's land, rather than the

personal circumstances; or

- (4) The hardship is unique and unusual, or nearly so, rather than one shared by many surrounding properties; or
  - (5) The variance requested is the minimum that will afford relief and the least possible modification of the requirements of this Ordinance; and
  - (6) The hardship is not the result of the applicant's own actions; and/or
  - (7) The variance will neither result in the extension of a nonconforming situation in violation nor authorize the initiation of a nonconforming use of land, nor conflict with the goals and policies of the Comprehensive Plan.
- c. In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.
  - d. A variance may be issued for an indefinite duration or for a specified duration only.
  - e. The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this Ordinance.

#### **4. Map Interpretations.**

- a. The Administrator interprets the Official Zoning Map. The Board of Adjustment is authorized to hear appeals on zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions.
- b. An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator. The application shall contain sufficient information to enable the Board to make the necessary interpretation.
- c. Interpretations of the zoning map shall follow the guidelines of this Ordinance.

#### **5. Requests to be Heard Expeditiously.** The Board of Adjustment shall

hear and decide all appeals, variances requests, and requests for interpretations consistent with the need to follow regularly established agenda procedures, provide notice and obtain the necessary information to make sound decisions.

**6. Burden of Proof in Appeals and Variances.**

- a. When an appeal is taken to the Board of Adjustment, the Administrator shall have the initial burden of presenting to the Board sufficient evidence and argument to justify the order or decision under appeal. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.
- b. The burden of presenting evidence sufficient to allow the Board of Adjustment to reach any conclusions, as well as the burden of persuasion on relevant issues, remains with the applicant seeking the variance.

**7. Board of Adjustment Action of Appeals or Variances.**

- a. The Board of Adjustment, before deciding requests for appeals or variances, shall hold a public hearing following standard hearing procedures.
- b. All motions to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, to the extent practicable, a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the four votes necessary for adoption, then a motion to uphold the decision appealed from shall be in order. This motion is adopted as the board's decision if supported by a majority of the board's membership present.
- c. Before granting a variance, the Board must take a separate vote and vote affirmatively by four (4) of the regular Board members.
- d. A motion to deny a variance may be made on the basis that more than one of the criteria set forth in this Ordinance are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the board's decision if supported by a majority of the board's membership present.

**M. Nonconforming Situations.**

- 1. **Intent.** Within the districts established by this zoning code or amendments

thereto that may be adopted, there exists lots, structures, and uses of land structures, which were lawfully established before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendment. It is the intent of this section to permit the non-conformities to continue until they are removed, but not to encourage their survival. It is the further intent of this Ordinance that the non-conformities shall not be enlarged upon, expanded, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

2. **Definitions.** Unless otherwise specifically provided or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this section.

**Dimensional Nonconformity.** A nonconforming situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or buildings and other building or lot lines does not conform to the regulations applicable to the district in which the property is located.

**Effective Date of this Ordinance.** Whenever this article refers to the effective date of this Ordinance, the reference shall be deemed to include the effective date of any amendments to this Ordinance if the amendment, rather than this Ordinance as originally adopted, created a nonconforming situation.

**Expenditure.** A sum of money paid out in return for some benefit or to fulfill some obligation. The term also includes binding contractual commitments to make future expenditures, as well as any other substantial changes in position.

**Nonconforming Sign.** A sign that, on the effective date of this Ordinance does not conform to one or more of the regulations set forth in this Ordinance.

**Nonconforming Situation.** A situation when, on the effective date of this Ordinance, an existing lot or structure or use of an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum square footage requirements, because structures exceed maximum eight limitations, because the relationship between existing buildings and the land (in such matters as density and setback requirements) is not in conformity with this Ordinance, or because land or buildings are used for purposes made unlawful by this Ordinance. Nonconforming signs shall not be regarded as nonconforming situations for purposes of this Ordinance.

**3. Continuation of Nonconforming Situations and Completions of Nonconforming Projects.**

- a.** Where at the time of the passage of this zoning ordinance, or amendment thereof, lawful use of land exists which would not be permitted by the regulations imposed by this Ordinance, the use may be continued so long as it remains otherwise lawful, provided:

  - (1)** No such non-conforming situation shall be enlarged or increased, nor extended to occupy greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance;
  - (2)** No such non-conforming situation shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance;
  - (3)** If any such non-conforming situation ceases for any reason for a period of more than one (1) year, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located;
  - (4)** No additional structures not conforming to the requirements of this Ordinance shall be erected in connection with such non-conforming use of land.
  - (5)** A non-conforming use shall not be changed to a use of lower or less restrictive classification, but such non-conforming use may be changed to another use of the same or higher classification.
- b.** Unless otherwise specifically provided in this Ordinance and subject to the restrictions and qualifications listed below, nonconforming situations that were otherwise lawful on the effect date of this Ordinance may be continued.
- c.** Nonconforming projects may be completed only in accordance with the provisions listed below.

**4. Undeveloped Nonconforming Lots.**

- a.** When a nonconforming lot can be used in conformity with all the regulations applicable to eh intended use, except for the required lot minimums, then the lot may be used as proposed. However, no use (e.g., a two-family residence) requiring a lot size greater than the established minimum lot size for a particular zone is permissible on a nonconforming lot.

- b. When the use proposed for a nonconforming lot is one that is conforming in all respects but the applicable setback requirements, then the Town may allow deviations from the applicable setback requirements if it find that:
  - (1) The property cannot reasonably be developed for the use proposed without such deviations.
  - (2) These deviations are necessitated by the size or shape of the nonconforming lot, and
  - (3) The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety.
- c. Compliance with applicable building setback requirements is not reasonably possible if a building that serves the minimal needs of the use proposed for the nonconforming lot cannot practicably be constructed and located on the lot in conformity with such setback requirements. However, mere financial hardship does not constitute grounds for finding that compliance is not reasonably possible.
- d. An adjacent nonconforming lot under the same ownership at the date this Ordinance becomes effect may not utilize the provisions of this subsection, nor may the successors in interest of these lots. The interest of this section is to require undeveloped nonconforming lots to be combined with adjacent like lots to create conforming lots.

**5. Extension or Enlargement of Nonconforming Situations.**

- a. Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activities results in:
  - (1) An increase in the total amount of space devoted to a nonconforming use, or
  - (2) Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations or density requirements or other requirements such as parking requirements.
- b. A nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this Ordinance, was manifestly designed or arranged to

accommodate such use. However, (authorizing the completion of nonconforming project in certain circumstances), a nonconforming use may not be extended to additional buildings or to land outside the original building.

- c. A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming, except that a use involving the removal of natural materials from the lot (e.g., a sandpit) may be expanded to the limits of its existing permit within the lot.
- d. Whenever: (i) there exists a lot with one or more structures involving nonconforming uses on it, and (ii) a change to a conforming use that does not involve any enlargement of a structure is proposed for such lot, and (iii) the parking or loading requirements that would be applicable as a result of the proposed change cannot be satisfied on such lot because insufficient area is available on the lot practicably be used for parking or loading, then the proposed use shall not be regarded as resulting in an impermissible extension or enlargement of a nonconforming situation. However, the applicant shall be required to comply with all applicable parking and loading requirements that can be satisfied without acquiring additional land and shall also be required to obtain satellite parking if: (i) parking requirements cannot be satisfied on the lot with respect to which permit is required; and (ii) such satellite parking is reasonably available.

## **6. Repair, Maintenance and Reconstruction.**

- a. Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged. Major renovations may be done only in accordance with a zoning permit issued pursuant to this Ordinance.
- b. If a structure located on a lot where a nonconforming situation exists, then the damaged structure may be repaired or replaced only in accordance with a zoning permit issued pursuant to this section.
- c. For purposes of sections (a) and (b) above:
  - (1) The “cost” of renovation or repair or replacement shall mean the fair market value of the materials and services necessary to accomplish such renovation, repair, or replacement, as reflected in the plans submitted for a building permit, or other materials supplied by the applicant.
  - (2) The “cost” of renovation or repair or replacement shall mean the total cost of all such intended work, and no person may

seek to avoid the intent of sections (a) or (b) above by doing such work incrementally.

- (3) The “appraised valuation” shall mean the valuation determined by a professionally recognized property appraiser.
- d. The Administrator shall issue the zoning permit authorized by this section if he finds that, in completing the renovation, repair, or replacement work:
  - (1) No violation will occur; and
  - (2) The permittee will comply to the extent reasonably possible with all provisions of this Ordinance applicable to the existing use (except that the permittee shall not lose his right to continue a nonconforming use). Reasonably possible compliance does not include increasing the size of a lot or moving a substantial structure sited on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible.

**7. Change in Use of Property Where a Nonconforming Situation Exists.**

- a. A change in use of nonconforming situation sufficiently substantial to require a new zoning, special-use, or conditional-use permit may only be made in accordance with sections (2) through (4) below.
- b. If the intended change in use is to a principal use permissible in the district where the property is located, and all other requirements of this Ordinance can be complied with.
- c. If the intended change in use is to a principal use permissible in the district where the property is located, but not all requirements of this Ordinance can reasonably be complied with, provided that the proposed change does not add additional nonconformities or increases the extent of nonconformity.
- d. If the intended change in use is to another principal use that is also nonconforming, then the permit issuing board must find that the propose development will have less of an adverse impact on those most affected by it and will be more compatible with the surrounding neighborhood than the current use.

**8. Discontinuation and Termination of Nonconforming Situation.**

- a. When a nonconforming use is discontinued or abandoned for a

consecutive period of one (1) year, future uses may be for conforming purpose only.

- b. Nonconforming uses must meet all the requirements of this Ordinance except those specific to that particular nonconformity if it cannot be reasonably eliminated. The permit shall specify which nonconformities need not be corrected.
- c. For the purposes of this selection, all of the buildings, activities, and operations maintained on a lot are generally considered as a whole. For example, failing to rent one apartment in a nonconforming apartment building for one (1) year shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building as a whole is continuously maintained. However, discontinuing an accessory nonconforming use for the required period shall terminate the right to maintain it thereafter.
- d. When a structure or operation made nonconforming by this Ordinance is vacant or discontinued at the effective date of this Ordinance, the one (1) year period for purposes of this section begins to run on the effective date of this Ordinance.

## **9. Completion of Nonconforming Projects.**

- a. Only nonconforming projects which have received vested property rights by the effective date of this Ordinance may be completed in accordance with the terms of their permits, so long as these permits were validly issued and remain unrevoked and unexpired. If a development is designed to be completed in stages, this subsection shall apply only to the particular phase under construction or with vested rights.
- b. Except as provided in above, all projects may begin or may be continued only pursuant to a variance, zoning, special-use, conditional-use, or signed permit issued in accordance with this Ordinance by the Town.
- c. The Administrator shall send copies of this section to the person listed as owners for tax purposes (and developers, if different from owners) of all properties to which permits have been issued for nonconforming projects or in regard to which a nonconforming project is otherwise known to be in some state of development. This notice shall be sent by mail not less than 15 days before the effective date of this Ordinance.