

Chapter 1 ADMINISTRATION

SECTIONS:	PAGE
10-1-1: Title	1
10-1-2: Purpose.....	1
10-1-3: Authority and Enforcement.....	2
10-1-4: Interpretation	2
10-1-5: Violations and Penalties.....	3
10-1-6: Definitions	3
10-1-7: Nonconforming Buildings and Uses	13
10-1-8: Board of Adjustment.....	14
10-1-9: Development Review Process	15
10-1-10: Site Plan Approval.....	19
10-1-11: Amendment of Zoning Map (Rezoning).....	20
10-1-12: Use by Special Review.....	22
10-1-13: Expiration of Development Approval	23
10-1-14: Severability	24
10-1-15: Payment of Costs	24

10-1-1: Title

- A.¹ Title. An ordinance and map establishing Zoning Districts in Westcliffe, Colorado; regulating the location, height, bulk, size and type of buildings and other structures; the percentage of lot which may be occupied; the size of lots, courts and other open space; the size, illumination, nimation and type of signs; the density and distribution of population; the location and use of land for residences, trade, industry, recreation, or other purposes; regulation of subdivision; PUD and supplementary regulations. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)

- B. Short Title. This Title 10 shall be known as the Westcliffe Land Use Code, portions of which are referred to herein as "Chapters," and the entirety of which is referred to as this "Title," or this "Code." (Ord. 2-2007, eff. 9/6/2007)

10-1-2: Purpose

- A.² General Purpose. This title is necessary, designed, and enacted for the purpose of promoting the health, safety and general welfare of the present and future inhabitants of Westcliffe, Colorado, by lessening congestion in the streets and roads; securing safety from disease, fire and other hazards; providing adequate light and air; preventing the overcrowding of land; avoiding undue concentration of population; facilitating the adequate provision of transportation, communication, power, water, sewerage, schools, parks, and other public development. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)

¹ Title 10, Chapter 1 “Administration”, Section 1 “Title” Subsection A is repealed and reenacted in its entirety, Ord. 13-2016, eff. 10/6/2016

² Title 10, Chapter 1 “Administration”, Section 2 “Purpose” is repealed and reenacted in its entirety. Ord. 13-2016, eff. 10/6/2016

10-1-3: Authority and Enforcement ^{3 4}

- A. Authority. The Westcliffe Land Use Code is authorized by and enacted pursuant to Article 23, Chapter 31, of the Colorado Revised Statutes, as amended, and hereby is declared to be in accordance with all provisions of same. (Ord. 2-2007, eff. 9/6/2007)
- B. Enforcement. This ordinance hereby establishes and shall be enforced by an officer appointed by the Board of Trustees to be known as the "Zoning Enforcement Officer." (Ord. 2-2007, eff. 9/6/2007)
- C. Zoning Enforcement Officer. An official of the Town appointed by the Board of Trustees charged with authority for administration and enforcement of this Title. (Ord. 2-2007, eff. 9/6/2007)
- D.⁵ Certificate of Occupancy. No new building hereafter shall be occupied or used until inspected by the building inspector or person designated by the Board of Trustees and certificate of occupancy therefore has been issued by the Zoning Enforcement officer. Such certificate shall be issued within (10) working days after the inspector has been notified of the building's completion and after a final inspection has been made to determine conformance with the provisions of this Title and the International Building Code that the town is currently operating on. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
- E.⁶ Records. All building permits, application records, records of inspection, and certificate of occupancy records shall be kept on file in the office of the Zoning Enforcement Officer/Building Inspector and shall be available for inspection by the public at the Building Inspectors office. This includes electronic records and data. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
- F. Standards and Specifications. The Board of Trustees, by resolution, may adopt standards and specifications for the construction of all improvements as set forth in this Title. (Ord. 2-2007, eff. 9/6/2007)
- G.⁷ The Town shall form and maintain a Planning and Zoning Commission pursuant to C.R.S. 31-23-202 and C.R.S. 31-23-203. The Planning and Zoning Commission shall consist of five members, including the Mayor, one member of the Board of Trustees, and three members appointed by the Mayor at least one of which shall be a Town Building and Zoning official. Pursuant to C.R.S. 31-23-203 (4), the Board of Trustees hereby elects to empower the Mayor to appoint members to the Planning and Zoning Commission, including the Town's Building and Zoning official from either within or outside the Town of Westcliffe, who are full time residents of Custer County, Colorado. Policies and Procedures of the Planning and Zoning Commission shall be approved by the Board of Trustees. (Ord. 1-2016, eff. 2/4/2016)

10-1-4: Interpretation

³ Title 10, Chapter 1, Section 3 is amended by the addition of subparagraph F. Ord. 2-2007, eff. 9/6/2007

⁴ Title 10, Chapter 1, Section 3 is amended by the addition of subparagraph G and re-title 10-1-3 Ord. 1-2016, eff. 2/4/2016

⁵ Title 10, Chapter 1 "Administration", Section 3 "Authority and Enforcement", Subsections, D is repealed and reenacted in its entirety. Ord. 13-2016, eff. 10/6/2016

⁶ Title 10, Chapter 1 "Administration", Section 3 "Authority and Enforcement", Subsections, E is repealed and reenacted in its entirety. Ord. 13-2016, eff. 10/6/2016

⁷ Title 10, Chapter 1, Section 3, is amended by adding Subsection G. Ord. 1-2016, 2/4/2016

- A.⁸ Interpretation. The provisions of this Title are minimum requirements adopted for the promotion of the public health, safety, and general welfare. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
- B. Conflict. Whenever the requirements of this Title are in conflict with the requirements of any other ordinance, rule, regulation, private covenant, or deed restriction, the more restrictive or that imposing the higher standards shall govern. (Ord. 2-2007, eff. 9/6/2007)

10-1-5: Violations and Penalties⁹

- A. Violation and Penalty. Failure to comply with all of the provisions of this Title, unless a variance has been authorized by the Board of Adjustment, shall constitute a misdemeanor punishable by a fine of up Three hundred dollars (\$300.00) per day. Each day that a violation continues to exist shall constitute a separate offense, unless the Zoning Enforcement Officer has determined a more reasonable period of time to correct the violation. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
- B. Notification. Whenever the Zoning Enforcement Officer shall find a violation of any of the provisions of this Title, that officer shall notify the person responsible for the violation in writing and shall order the necessary corrections to be made within a reasonable period of time to be determined by the Zoning Enforcement Officer. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
- C. Complaints. Any person aggrieved by a violation or apparent violation of the provisions of this Title may file a signed written complaint with the Zoning Enforcement Officer, who shall investigate such complaint and take action within ten (10) working days to have the violation penalized or removed, if such violation is found to exist. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)

10-1-6: Definitions^{10 11}

- A. Rules of Language Construction. For the purposes of this Title and when not inconsistent with the context: (Ord. 2-2007, eff. 9/6/2007)
1. Words used in the present tense include the future. (Ord. 2-2007, eff. 9/6/2007)
 2. Words in the singular include the plural. (Ord. 2-2007, eff. 9/6/2007)
 3. Words in the plural include the singular. (Ord. 2-2007, eff. 9/6/2007)
 4. The masculine includes the feminine. (Ord. 2-2007, eff. 9/6/2007)
 5. The word "shall" is mandatory and not directory. (Ord. 2-2007, eff. 9/6/2007)
 6. The word "may" is permissive. (Ord. 2-2007, eff. 9/6/2007)

⁸ Title 10, Chapter 1 "Administration", Section 4 "Interpretation" Subsection A is repealed and reenacted in its entirety. Ord. 13-2016, eff. 10/6/2016

⁹ Title 10, Chapter 1 "Administration" Section 5 "Violations and Penalties" Subsections A, B and C are repealed and reenacted in their entirety. Ord. 13-2016, eff. 10/6/2016

¹⁰ Title 10, Chapter 1, Section 6, subparagraph C, is amended by the addition of subsection 18.1, subsection 19, subparagraphs "a through g" and subsection 20.1, and the repeal and reenactment of subsections 24 & 25. Ord. 2-2007, 9-6-2007

Title 10, Chapter 1, Section 6 is amended by the addition of a new definition, then renumbered. (Ord. 2-2017, eff. 2-3-2017)

7. The particular controls the general. (Ord. 2-2007, eff. 9/6/2007)

B. Interpretation. Certain words and phrases are defined; and certain provisions shall be interpreted as herein set out, when not inconsistent with the context. The work “structure” includes the word “building”; the work “person” includes a “firm,” “association,” “corporation,” “partnership,” and “natural person”; the work “used” includes the word “occupied,” “arranged,” “designed,” or “intended to be used”; the word “construct” includes the words “erect,” “reconstruct,” “alter,” “move in,” and “move upon.” (Ord. 2-2007, eff. 9/6/2007)

C. Definitions:^{12 13}

1. Accessory Structure: a detached subordinate structure, the use of which is customarily incidental to that of the principal building or to the main use of the land and which is located on the same lot with the principal structure or use. Such a structure does not include dwellings or living quarters of any kind. (Ord. 2-2007, eff. 9/6/2007)
2. Accessory Use. A use naturally and normally incidental and subordinate to the permitted use of a land or lot area. (Ord. 2-2007, eff. 9/6/2007)
3. Alley: A public, dedicated right-of-way used primarily as a service or secondary means of access and egress to the service side of abutting property. (Ord. 2-2007, eff. 9/6/2007)
4. Bed and Breakfast: A private residence, several rooms of which are set aside for overnight guests whose paid accommodations include breakfast. (Ord. 13-2016, eff. 10/6/2016)
5. Block: A parcel of land bounded on all sides by a street or streets. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
6. Board of Trustees: The Board of Trustees of the Town of Westcliffe, Colorado. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
7. Building: Any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals, chattels, or property of any kind. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
8. Building Height: The vertical distance as measured from the average (pre-development) grade level at the four (4) points of the structure most closely approximating geographic north, south, east and west, to the highest point of the roof structure, exclusive of mechanical infrastructure such as chimneys, vents, pipes, spires or similar items. Pre-development grade shall be established by use of scaled photographs taken from the crown of the

¹² Title 10, Chapter 1, Section 6, subparagraph C is amended with the addition of 47 through 51. Ord. 8-2014, 12-13-2014

¹³ Title 10, Chapter 1 “Administration”, Section 6 “Definitions” Subsection C “Definitions”, 8, 9, 11, 22, 23 Paragraphs b, c and f, 24, 30, 32, 48, 51, 54 are repealed and reenacted in their entirety, and new definitions added - 4, 21, 33, 34, 35, 36, 37, 38, 39, 40, 41, 46, 50, 58, 61, 66 and 67 as follows: and are amended by renumbering. Ord. 13-2016, eff. 10/6/2016

adjacent street before construction, compared to similar photographs taken after construction. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)

9. **Building Set-Back:** A line extending across the full width or side of a lot, parallel with the street right-of-way or property line and outside of which no building or structure shall be constructed. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
10. **Commission:** See Planning Commission. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
11. **Consumer:** Any person contacted as a potential purchaser, lessee or renter as well as one who actually purchases, leases or rents property. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
12. **County:** Custer County, Colorado. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
13. **County Commissioners:** The Board of County Commissioners of Custer County, Colorado. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
14. **Dedication:** A grant by the owner of a right to use land to the public in general involving a transfer of property rights and an acceptance of the dedicated property by the appropriate public agency. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
15. **Density:** The average number of dwelling units per acre, excluding areas used for public rights-of-way. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
16. **Dwelling:** A principal structure designed to be used as a living place for one or more persons or families but not including hotels, motels, clubs, boarding houses, or any institution such as an asylum, hospital, or jail where persons are housed by reason of illness or under legal restraint. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
17. **Dwelling Unit:** Any building or portion thereof which is intended for long-term human habitation which includes sleeping, cooking and sanitation facilities for not more than one family. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
18. **Easement:** A dedication of land for a specified use, such as providing access for maintenance of utilities. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
19. **Family:** One or more persons living together as a single housekeeping unit in a dwelling unit. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
20. **Fully Shielded:** A lighting fixture constructed in such a manner that all light emitted by the fixture, either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any part of the luminaire, is projected below the horizontal. (Ord. 8-2014, eff. 12/13/2014, Ord. 13-2016, eff. 10/6/2016)

21. Government Buildings: Any buildings used as an office, branch, or agency of the federal, state, county, or municipal governing body. (Ord. 13-2016, eff. 10/6/2016)
22. Heavy Industrial: Uses engaged in the basic processing and manufacturing of materials or products predominately from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involved hazardous conditions. Heavy industrial shall also mean those uses engaged in the operation, parking or maintenance of vehicles, including trailers, cleaning of equipment or work processes involving solvents, solid waste or sanitary waste transfer stations, recycling establishments, and transport terminals (truck or trailer terminals, public works yard, container storage). (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
23. Home Occupation: Any non-residential use undertaken for monetary gain within a Dwelling Unit or Accessory Structure, which: (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 - a. is operated solely by the inhabitants thereof, which use clearly is incidental and secondary to the use of the Dwelling Unit for living purposes; (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 - b. does not have more than one employee excluding the inhabitants at the Dwelling Unit or Accessory Structure; (Ord. 2-2007, eff. 9/6/2007, Ord 13-2016, eff. 10/6/2016)
 - c. does not generate excessive vehicular traffic or parking; (Ord. 2-2007, eff. 9/6/2007, Ord 13-2016, eff. 10/6/2016)
 - d. does not involve retail or wholesale sales of supplies or products unless said sales are commonly related to a service provided at the location of the Home Occupation or delivery of said supplies or products is by mail order or over the Internet; (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 - e. has no signs, display, advertising or activity that would in any way indicate that the premises are being used for a Home Occupation except for a single sign, which may be attached either to the Dwelling Unit or the Accessory Structure, such sign not to exceed an area of two square feet; (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 - f. is conducted entirely on the interior of a Dwelling Unit or Accessory Structure, except that exterior activities shall be allowed with approval by the zoning officer; and (Ord. 2-2007, eff. 9/6/2007, Ord 13-2016, eff. 10/6/2016)
 - g. generates no vibration, smoke, dust, odors, noise, electrical interference with radio or television transmission or reception, or heat or glare in excess of levels customarily found in residential neighborhoods that is noticeable at or beyond the property line of the

premises upon which the Home Occupation is located. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)

Medical, dental and real estate offices are not permitted as Home Occupations. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)

24. Hotel: A building designed for occupancy with or without meals and in which no facilities are provided for cooking meals in individual rooms. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
25. Light Industrial: Manufacturing, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales or distribution of such products. Further, light industrial shall mean uses such as the manufacture of electronic instruments, preparation of food products, pharmaceutical manufacturing, research and scientific laboratories or the like. Light industrial shall not include uses such as mining and extracting industries, petrochemical industries, rubber refining and primary metal or related industries. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
26. Light Pollution: any and all nuisances caused by adverse effect of man-made light, including but not limited to glare, light trespass, sky glow, visual clutter, and wasted energy due to excessive or unnecessary lighting; or artificial light that unnecessarily diminishes the ability to view the night sky or is disruptive to flora and fauna. (Ord. 8-2014, eff. 12/13/2014, Ord. 13-2016, eff. 10/6/2016)
27. Light Trespass: Light projected across property lines or into the public right-of-way when it is not required or permitted to do so. (Ord. 8-2014, eff. 12/13/2014, Ord. 13-2016, eff. 10/6/2016)
28. Lot: A parcel or portion of land separated from other parcels or portions by legal description and intended for transfer of ownership or building development. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
29. Lot Area: The total number of horizontal square feet contained within the boundaries of the lot lines of the lot. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
30. Lot Line: A line separating a parcel or portion of land from another by legal description. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
31. Lumen: A unit used to measure the amount of light that is produced by a light source. The lumen quantifies the amount of light energy produced by a lamp at the lamp, not by the energy input, which is indicated by the wattage. One foot-candle means one lumen per square foot of area illuminated. (Ord. 8-2014, eff. 12/13/2014, Ord. 13-2016, eff. 10/6/2016)
32. Manufactured Home: A dwelling unit which is partially or entirely manufactured in a factory; is installed on a permanent foundation; is

pursuant to the International Building Code as adopted by the Board of Trustees. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)

33. Marijuana: means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marihuana concentrate. “Marijuana” or “marihuana” does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other product. (Ord. 13-2016, eff. 10/6/2016)
34. Marijuana Accessories: means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body. (Ord. 13-2016, eff. 10/6/2016)
35. Marijuana Cultivation Facility: means an entity licensed to cultivate, prepare and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers. (Ord. 13-2016, eff. 10/6/2016)
36. Marijuana Establishment: means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store. (Ord. 13-2016, eff. 10/6/2016)
37. Marijuana Product Manufacturing Facility: means an entity licensed to purchase marijuana; manufacture, prepare and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers. (Ord. 13-2016, eff. 10/6/2016)
38. Marijuana Products: means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use and consumption, such as, but not limited to, edible products, ointments, and tinctures. (Ord. 13-2016, eff. 10/6/2016)
39. Marijuana Testing Facility: means an entity licensed to analyze and certify the safety and potency of marijuana. (Ord. 13-2016, eff. 10/6/2016)

40. Medical Marijuana Center: means an entity licensed by a state agency to sell marijuana and marijuana products pursuant to section 14 of this article and the Colorado Medical Marijuana Code. (Ord. 13-2016, eff. 10/6/2016)
41. Marijuana Retail Store: means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers. (Ord. 13-2016, eff. 10/6/2016)
42. Mobile Home: A structure which is transportable in one or more sections; is built upon a permanent chassis, is designed to be used as a place of living for a single family, with or without permanent foundation and retains it's original title, when connected to the required utilities; and includes the plumbing, heating, air conditioning and electrical systems contained therein. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
43. Motel: A group of attached or detached buildings containing individual living or sleeping units, designed for or used temporarily by tourists and transients, with garage or parking space near each rental unit. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
44. Nonconforming Building: A building or portion thereof, legally built prior to the effective date of this Title or any pertinent amendment thereto, which does not conform to the regulations for the district in which it is located. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
45. Nonconforming Use: Land or a building lawfully occupied prior to the effective date of this Title or any pertinent amendment thereto, by a use which does not conform to the regulations for the district in which it is located. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
46. Nuisance Defined: Anything which is injurious to the health or indecent or offensive to the senses or an obstruction to the free use of property so to interfere with the comfortable enjoyment of life or property is declared a nuisance and as such shall be abated. (Ord. 13-2016, eff. 10/6/2016)
47. Permit: A document issued by the Town of Westcliffe, Colorado, granting permission to perform an act or service which is regulated by the said Town. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
48. Person: An individual, partnership, corporation, association, LLC, unincorporated organization, municipality, state agency, trust or any other legal or commercial entity, including joint venture or affiliated ownership. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
49. Planning Commission: The Planning Commission of the Town of Westcliffe, Colorado. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)

50. Planned Unit Development (PUD): A project or subdivision that consists of common property and improvements that are owned and maintained by an owner's association for the benefit and use of the individual units within the project. (Ord. 13-2016, eff. 10/6/2016)
51. Plat: A map, drawing or chart, drawn to scale, upon which the subdivider presents proposals for the physical development of a subdivision and PUD and which he or she submits for approval and intends to record in final form. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
52. Property Line: See Lot Line. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
53. Public Hearing: A public meeting held by the Planning Commission or Board of Trustees at which citizens' opinions may be voiced concerning the subject of the hearing, and at which a decision on the matter may be made. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
54. Public Notice: Notice of a public hearing by the Board of Trustees, Planning Commission or Board of Adjustment. Unless otherwise specified, such notice shall be published one (1) time in a newspaper of general circulation in the Town at least seven (7) days before such hearing. In the case of proposed changes to the Zoning Map, such publication shall be made at least ten (10) days prior to the hearing. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
55. Reservation: A legal obligation to keep property free from development for a stated period of time, not involving any transfer of property rights. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
56. Road: See Street. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
57. Right- of- Way: The entire dedicated tract or strip of land dedicated for circulation and service. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
58. RV Park: A place where people with recreational vehicles can stay overnight, or longer, in allotted spaces known as "pitches". (Ord. 13-2016, eff. 10/6/2016)
59. Site Development: All construction and improvements on any parcel, lot or tract of property within the Town and on any structure (other than construction or remodel of a single family residence or one duplex building, or normal maintenance or repair), including but not limited to substantial clearing, grading, filling or excavation, streets and roads, drainage, utilities, parking lots and structures, landscaping, street lights, signs and moving of structures. The Zoning Enforcement Officer shall have authority to determine whether an activity, including a substantial remodel of or addition to an existing structure, constitutes site

development; that determination may be appealed to the Board of Adjustment. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)

60. Street: A way for vehicular traffic, further classified and defined as follows: (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
- a. Arterial streets are those which permit the relatively rapid and unimpeded movement of large volumes of traffic from one part of the community to another. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 - b. Collector streets are those which collect traffic from local streets and carry it to arterial streets or to local traffic generators such as neighborhood shopping centers and schools. Collector streets include the principal entrance streets to a residential development, those streets linking adjacent developments, and those streets providing circulation within such developments. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 - c. Local streets are those used primarily for direct access to lots abutting the right-of-way. Local streets carry traffic having an origin or destination within the development and do not carry through traffic. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
61. Storage Units: A system whereby individuals rent containers or rooms in a larger warehouse to store possessions. (Ord. 13-2016, eff. 10/6/2016)
62. Subdivider: Any person acting individually or as a group dividing or proposing to divide land so as to constitute a subdivision. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
63. Subdivision:
- a. The division of a parcel of land into two or more parcels, sites or lots for the purpose, whether immediate or future, of transfer of ownership or building development; or a tract of land, including land to be used for condominiums, apartments, Townhomes or any other multiple-dwelling units, or for time-sharing dwelling units, unless the improvement with the same density has previously complied with the requirements of the subdivision regulations contained in this Title 10; or (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 - b. The improvement of one or more parcels of land for residential, commercial or industrial structures or groups of structures involving the division or allocation of land for the dedication, opening, widening or extension of any street or streets; the division or allocation of land as open spaces for common use by owners, occupants or lease holders or as easements for the extension and

maintenance of public Sewerage, water, storm drainage or other public utilities or facilities. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)

- c. Unless the method of land disposition is adopted for the purpose of evading this definition, the term subdivision as defined in this Section shall not apply to any of the following divisions of land or interests in land: (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 1. The division of land by order of any court in the State or by operation of law. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 2. The division of land by a lien, mortgage, deed or trust or any other security instrument. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 3. The division of land by a security or unit of interest in any investment trust regulated under the laws of the State or any other interest in an investment entity. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 4. The division of land which creates cemetery lots. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 5. The division of land which creates an interest or interests in oil, gas or minerals which are now or hereafter severed from the surface ownership of real property. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 6. The division of land by the acquisition of an interest in land in the name of a husband and wife or other persons in joint tenancy or as tenants in common, and any such interest shall be deemed for purposes of this Section as only one (1) interest. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
64. Town: The Town of Westcliffe, Colorado. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
65. Tiny Dwelling: Any dwelling no larger than 660 square feet of floor space, and no less 330 square feet of floor space. The floor space shall be calculated on the basis of the total area of all habitable rooms. (Ord. 2-2017, eff. 2-3-2017)
66. Unshielded Fixture: A fixture which, as designed or installed, emits all or part of the light above the lowest part of the light source. (Ord. 8-2014, eff. 12/13/2014, Ord. 13-2016, eff. 10/6/2016)
67. Use by Special Review: A process and procedure which provides for review and approval of certain uses which, although permitted within

specific zoning districts, may contradict some regulations in the Land Use Code. (Ord. 13-2016, eff. 10/6/2016)

68. Variance: The process by which an applicant can request deviation from the set of rules a municipality applies to land use and land development, typically a zoning ordinance, building code, or municipal code. (Ord. 13-2016, eff. 10/6/2016)
69. Yard, side: that part of a lot which is located between the center line of the property and abutting private property. A corner lot shall be deemed to have two front yards, and shall be required to conform to the minimum setback for yards on each side abutting the street. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
70. Yard, front: that portion of a yard between the front lot line and the principal structure, and between the two (2) side lot lines, the depth of which shall be the least distance between the front lot line and the building. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
71. Yard, rear: that portion of a yard between the rear of the principal structure and a rear lot line and between two (2) side lot lines, the depth of which shall be the least distance between the principal structure and the rear lot line. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)

10-1-7: Nonconforming Buildings and Uses

- A. Nonconformance. Certain uses of land and buildings may be found to be in existence at the time of enactment of this Title that do not meet the requirements of this Title. It is the intent of this Title to allow the continuance of such nonconforming uses, subject to the requirements and limits herein. (Ord. 2-2007, eff. 9/6/2007)
- B. Alterations and Extensions. No building, sign or light fixture or use that is nonconforming as of the effective date of this Title shall be expanded in any way that would increase the degree of nonconformance. The following changes or alterations may be made to a nonconforming building: (Ord. 2-2007, eff. 9/6/2007)
 1. Repair to a building, sign or light fixture that officially has been declared unsafe, to restore such building, sign or light fixture to a safe condition. (Ord. 2-2007, eff. 9/6/2007)
 2. Maintenance repairs that are necessary to maintain the good condition of the building, sign or light fixture. (Ord. 2-2007, eff. 9/6/2007)
 3. Any structural alteration that would reduce the degree of nonconformance or change the use to a conforming use. (Ord. 2-2007, eff. 9/6/2007)
- C. Restoration. A nonconforming building that has been damaged by fire or other natural cause may be restored to its original usability, provided such restoration is begun within

nine (9) months and completed within three (3) years of the occurrence of the damage. (Ord. 2-2007, eff. 9/6/2007)

- D.¹⁴ Discontinuance. Whenever a nonconforming building has been vacant for a period of twelve (12) months, it shall not thereafter be reestablished. Changes of ownership qualifies as a discontinuance, therefor any future use shall be in conformance with the provisions of this Title. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)

Any nonconforming use in existence at the time of the effective date of this Title that has a valuation of all improvements of \$1,500 or less shall be discontinued within two (2) years from the effective date of this Title. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)

- E. Nonconforming Lots. Nonconforming lots on record on the date of enactment of this Title may be built upon, provided that yard requirements are met and that the approval of the Board of Adjustment is obtained. (Ord. 2-2007, eff. 9/6/2007)
- F. Change in Nonconforming Use. No nonconforming use of a building or lot may be changed to another nonconforming use. (Ord. 2-2007, eff. 9/6/2007)
- G. Construction Prior to Ordinance Enactment. Nothing herein contained shall require any change in plans, construction, or designated use of a building or structure for which a building permit has been issued and construction of which diligently shall have been prosecuted within three (3) months of the date of such permit. (Ord. 2-2007, eff. 9/6/2007)

10-1-8: Board of Adjustment¹⁵

- A. Membership. There is hereby established a Board of Adjustment for the Town consisting of the membership of the Board of Trustees as it exists from time to time. The Board of Adjustment shall have all of the rights, duties and obligations of Board of Adjustment as described in § 31-23-307, et seq., C.R.S., except to the degree such duties, rights or obligations conflict with any provision of this Title or other ordinance adopted by the Board of Trustees. The Board of Adjustment shall be chaired by the Mayor, as that office is occupied from time to time. (Ord. 2-2007, eff. 9/6/2007)
- B. Duties and Powers. It shall be the duty of the Board of Adjustment: (Ord. 2-2007, eff. 9/6/2007)
1. To meet at the call of the chairman, by his request or by the request of the Zoning Enforcement Officer, or the Planning Commission, or by the request of any party wishing to appeal a decision of the Zoning Enforcement officer. See Section E of this section for the procedure. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)

¹⁴ Title 10, Chapter 1 "Administration", Section 7, "Nonconforming Building and Uses" Subsection D is repealed and reenacted in its entirety. Ord. 13-2016, eff. 10/6/2016

¹⁵ Title 10, Chapter 1 "Administration", Section 8, "Board of Adjustment" Subsections B Paragraph 1, Subsections E and F are repealed and reenacted in their entirety. Ord. 13-2016, 10/6/2016

2. To adopt any rules necessary to transact the board's business or to expedite its functions or powers, provided such rules are not inconsistent with the provisions of this Title. (Ord. 2-2007, eff. 9/6/2007)
 3. To vote upon the granting of an adjustment to requirements of this Title, which vote must have the concurrence of at least a majority of the board in order to reverse an order of the Zoning Enforcement Officer or to grant any variance or to decide in favor of the applicant on any matter. (Ord. 2-2007, eff. 9/6/2007)
 4. To permit the public to attend and be heard at all of its meetings. (Ord. 2-2007, eff. 9/6/2007)
 5. To notify in writing the Zoning Enforcement Officer, the owner involved, and the Planning Commission, of all hearings scheduled, resolutions passed, decisions made, and permits authorized. (Ord. 2-2007, eff. 9/6/2007)
 6. To publish or cause to be published notice of the dates of hearings, where such hearings are deemed necessary by the board. (Ord. 2-2007, eff. 9/6/2007)
- C. The Board of Adjustment shall have the power to interpret this Title, including any uncertainty as to boundary location, or meaning of wording, so long as such interpretation is not contrary to the purpose and intent of this Title. (Ord. 2-2007, eff. 9/6/2007)
- D. Section 10-1-8.D regarding the Board of Adjustment is repealed and is reenacted to provide as follows: The Board of Adjustments shall have the power to grant variances from the provisions of this Title, but only where all of the following conditions are found to exist: (Ord. 2-2007, eff. 9/6/2007)
1. The variance will not authorize any use other than a use enumerated as a permitted use in the district; (Ord. 2-2007, eff. 9/6/2007)
 2. The variance will be necessary to mitigate or relieve practical difficulties or unnecessary hardships; (Ord. 2-2007, eff. 9/6/2007)
 3. The variance will not place an unnecessary burden on the future resources of the Town or on adjoining land owners; (Ord. 2-2007, eff. 9/6/2007)
 4. The variance will not change the predominant character of the neighborhood and will be compatible with the surrounding area; and (Ord. 2-2007, eff. 9/6/2007)
 5. The variance will not be out of harmony with the intent and purpose of this Title. (Ord. 2-2007, eff. 9/6/2007)

The Board of Adjustments may impose conditions for granting any variance including, without limitation, time limits on the variance, limitations as to the uses allowed and restrictions on uses to which the variance may apply. (Ord. 2-2007, eff. 9/6/2007)

- E. Procedure. The Board of Adjustment shall act in strict accordance with all of the applicable laws of the State of Colorado and all applicable ordinances of the Town of Westcliffe. All appeals to the Board of Adjustment shall be filed in writing with the Town Clerk within fifteen (15) days of the decision being questioned. Every appeal shall indicate which provisions of this Title are involved, what relief is being sought, and the grounds on which such an appeal is predicated. The chairman of the Board of Adjustment shall, within forty five (45) days from the filing of an appeal, call a meeting of the board for the purpose of reviewing the matter. At the same time, at the discretion of the Board of Adjustment a copy of the filed appeal may be transmitted to the Planning Commission for an opinion, which opinion shall be returned to the Board of Adjustment before the date set for hearing the appeal. Notification of the decision of the board then shall be made. (Ord. 2-2007, eff. 9/6/2007, Ord 13-2016, eff. 10/6/2016)
- F. Appeals of the decision the Board of Adjustment. Review of the decision of the Board of Adjustment shall be made to the courts, as provided by law. (Ord. 2-2007, eff. 9/6/2007, Ord 13-2016, eff. 10/6/2016)

10-1-9: Development Review Process^{16 17}

A. Scope and application.

1. All site development within the Town shall be required to follow the procedures and satisfy the requirements set out below prior to development. Site development is defined at Section 10-1-6.C.59. The developer is required to attend in person or by authorized representative, all meetings at which the project is considered, unless otherwise notified by the Town. With the exception of the erection of signs which must comply with the sign ordinance, no site development of property may be initiated, the use of property may not be substantially changed, substantial clearing, grading, filling or excavation may not be commenced, and buildings or other substantial structures may not be constructed, erected, moved or substantially altered except in accordance with and pursuant to one (1) or more of the following approvals: (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 - a. A site plan approval pursuant to Section 10-1-10; (Ord. 2-2007, eff. 9/6/2007)
 - b. A planned unit development approval pursuant to Section 10-2-4.M; (Ord. 2-2007, eff. 9/6/2007)
 - c. A subdivision approval pursuant to Chapter 3; or (Ord. 2-2007, eff. 9/6/2007)

¹⁶ Title 10, Chapter 1, Section 9 is amended by the repeal and reenactment of subparagraph “A”, subsection 1, subparagraphs “b” and “d” and subparagraph “D”. Ord. 2-2007, eff. 9/6/2007

¹⁷ Title 10, Chapter 1 “Administration”, Section 9, “Development Review Process” Subsection A Paragraph 1 is repealed and reenacted in its entirety. Subsections C Paragraphs 1, 2 and Subsection D are repealed and reenacted in their entirety. Ord 13-2016, eff. 10/6/2016

- d. A use permitted by special review pursuant to Section 10-1-12 (Ord. 2-2007, eff. 9/6/2007)
 2. All site development must also obtain building and construction permits pursuant to the uniform codes adopted by the Town, and must comply with all other applicable sections contained within this Title. (Ord. 2-2007, eff. 9/6/2007)
- B. Pre-application conference. Prior to the formal submittal of any request for approval to proceed with site development, an informal pre-application conference shall be held between the applicant and the Town staff. This conference will serve to acquaint the applicant with the requirements of this Title and to allow staff to become familiar with the applicant's development intent and design philosophy. A schematic site plan and building concept drawings will aid in discussion at this conference; however applicants are encouraged not to prepare detailed designs which might require extensive revision as a result of the pre-application conference. (Ord. 2-2007, eff. 9/6/2007)
- C. Review process.
1. The following chart establishes the required review steps applicable to different forms of site development. Applicants seeking site development approval should refer to the chart to determine which one (1) or more "APPROVALS SOUGHT" under the left-hand column of the chart applies to the proposed site development. The required stages of review for such approval are shown on the lines to the right. Submission requirements and the specific review process for each stage are set out elsewhere in this Title under the appropriate headings. Unless otherwise indicated, amendment or modification of prior site development approval shall follow the procedure for review of the original application. Notwithstanding Section 31-23-215, C.R.S., the Planning Commission is not required to act on any application (including subdivisions) until thirty (30) days following the first public meeting or public hearing. (Ord. 2-2007, eff. 9/6/2007, Ord 13-2016, eff. 10/6/2016)
 2. In the event the Planning Commission or Town Staff recommends denial of the application at any stage, the applicant may choose to proceed to the next stage of review or may resubmit the application at the first stage. If, in the opinion of the Building & Zoning Official, a submittal at any stage of review is incomplete, the matter shall be removed from the agenda and not further processed until deemed complete. (Ord. 2-2007, eff. 9/6/2007, Ord 13-2016, eff. 10/6/2016)
 3. The Planning Commission or Board of Trustees may require, prior to or as a part of any preliminary or final site development review, that the applicant permit a site visit by the members of the Commission or Board, as the case may be. In the event a site visit is required, the applicant shall provide access to the property sufficient to accommodate the needs of the site visit and shall, upon request by the Town, stake, flag or otherwise identify on or above the ground those features of the property or the

proposed development (for example, wetland boundaries, proposed building envelopes and heights, road alignments) requested. (Ord. 2-2007, eff. 9/6/2007)

4. The Planning Commission or Board of Trustees may require at any stage of review of any site development, submission of any plan, study, survey or other information, in addition to that specified in this Title, and at the applicant's expense, as such body may determine necessary to enable it to review and act upon the application in order to determine whether the application complies with the requirements of this Title: (Ord. 2-2007, eff. 9/6/2007)

D. Review Process Chart. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)

APPROVAL SOUGHT	PRELIMINARY			FINAL			COMMENTS
	S	PC	TB	S	PC	TB	
Site Plan	X	CU	CU	X	CU	CU	
Use by Special Review				X	M	H	
PUD	X	M	H	X	H	H	Ordinance required
Variance				X	M	H	TB serves as BOA
Rezoning				X	H	H	Ordinance required
Minor Subdivision				X	CU	CU	Recorded plat
Major Subdivision	X	M	H	X	H	H	Recorded plat
Vacation of Streets				X	M	H	Ordinance required
Correction plat				X			Recorded plat

S = Staff review
 PC = Planning Commission
 TB = Board of Trustees
 M = Public Meeting

H = Public Hearing
 X = Town Staff
 CU = Call upon request of Planning Commission or Board of Trustees

10-1-10: Site Plan Approval¹⁸ ¹⁹

The requirements of this Section apply to site development (as defined at Section 10-1-6.C.59) on property for which the use proposed is a use by right and subdivision or planned unit development approval is not sought. The review process for site plan consists of two staff reviews: at the preliminary and at the final stage (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)

The applicant shall submit the following information in a brief summary

- A. General project concept (Ord. 2-2007, eff. 9/6/2007)
- B. Specific uses proposed, and intensity of use proposed (floor area and parking demand (Ord. 2-2007, eff. 9/6/2007)
- C. Proposed construction timing (Ord. 2-2007, eff. 9/6/2007)
- D. General concepts concerning building size and exterior materials and site plan concepts: (Ord. 2-2007, eff. 9/6/2007)
 - 1. An exterior materials package including roof material and color, wall treatment, glass and glazing. (Ord. 2-2007, eff. 9/6/2007)
 - 2. Site plan concepts including site organization, landscaping, irrigation, grading, lighting and signs. (Ord. 2-2007, eff. 9/6/2007)
- E. The following additional data may be required by the Town to accompany the application: (Ord. 2-2007, eff. 9/6/2007)
 - 1. A site plan to scale showing location of structures, number of dwelling units per structure, existing contours at an interval of 2 feet, location of open space to be retained, location of off-street parking spaces, location of common areas and their proposed usage (Ord. 2-2007, eff. 9/6/2007)
 - 2. Evidence of availability of public water and sewer facilities. Such evidence shall be in the form of a written commitment by a municipal or quasi-municipal agency stating that such service will be available to the property (Ord. 2-2007, eff. 9/6/2007)
 - 3. Other information required by the Zoning Enforcement Officer (Ord. 2-2007, eff. 9/6/2007)
- F. The Zoning Enforcement Officer shall act to approve, approve with conditions, or deny the site plan application, with the option of seeking Planning Commission approval.(Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)

¹⁸ Title 10, Chapter 1, Section 10 is amended by the repeal and reenactment of the introductory paragraph. (Ord. 2-2007, eff. 9/6/2007)

¹⁹ Title 10, Chapter 1 “Administration”, Section 10, “Site Plan Approval” is repealed and reenacted in its entirety. Subsection F is repealed and reenacted in its entirety. Ord. 13-2016, eff. 10/6/2016

10-1-11: Amendment of Zoning Map (Rezoning)^{20 21} (Ord 13-2016, eff. 10/6/2016)

- A. Declaration of Policy and Standards for Rezoning. For the purposes of establishing and maintaining sound, stable and desirable development within the Town of Westcliffe, the rezoning of land is to be discouraged and allowed only under certain circumstances as provided hereafter. This policy is based on the opinion of the Board of Trustees that the Town's Zoning Map is the result of a detailed and comprehensive appraisal of the Town's present and future needs regarding land use allocation and, as such, should not be amended unless to correct a manifest error or because of changed or changing conditions in a particular area or the Town in general. Rezoning shall only be allowed if the applicant demonstrates by clear and convincing evidence that rezoning is necessary because of one or more of the following reasons: (Ord. 2-2007, eff. 9/6/2007)
1. The land to be rezoned was zoned in error and as presently zoned is inconsistent with the policies and goals of the Town's Master Plan. (Ord. 2-2007, eff. 9/6/2007)
 2. The area for which rezoning is requested has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area or new approach to development. (Ord. 2-2007, eff. 9/6/2007)
 3. The proposed rezoning is necessary in order to provide land for a community related use which was not anticipated at the time of the adoption of the Town's Master Plan, and that such rezoning will be consistent with the policies and goals of the Master Plan. (Ord. 2-2007, eff. 9/6/2007)
- B. Procedure for Amendments in General. The Board of Trustees may, on its own motion, on application of any Person or Persons in interest, and upon receiving recommendation of the Planning Commission, amend, supplement or repeal the regulations and provisions of this chapter, including the Zoning Map; provided that where land is sought to be rezoned on an application of any Person or Persons in interest, the applicant shall have a controlling record title ownership interest in the subject property as demonstrated by an ownership and encumbrance report or title insurance commitment issued with thirty (30) days of submission of the application. Also, an intended purchaser may make application if the purchase of the subject property is contingent on the amendment. (Ord. 2-2007, eff. 9/6/2007, Ord 13-2016, eff. 10/6/2016)
1. Application. No application shall be accepted unless accompanied by the fee as provided in Section 10-1-15 (Ord. 2-2007, eff. 9/6/2007)
 2. Planning Commission Recommendation. Any proposed amendment or change to this chapter or to the Zoning Map, whether proposed by the Board

²⁰ Title 10, Chapter 1, Section 11 is amended by the repeal and reenactment of subparagraphs "A", "B" and "C". Ord. 2-2007, eff. 9/6/2007

²¹ Title 10, Chapter 1 "Administration", Section 11, "Amendment of Zoning Map (Rezoning)" Subsection A Paragraph 4 is deleted in its entirety, Subsection B is repealed and reenacted in its entirety. Subsection B Paragraphs 3 and 4 are repealed and reenacted in their entirety. Subsection C is repealed and reenacted in its entirety and Paragraph 1 is deleted, Subsection C and Paragraphs 2, 3 and 4 are repealed and reenacted in their entirety and renumbered. Ord. 13-2016, eff. 10/6/2016

of Trustees or otherwise, shall be referred to the Planning Commission for a recommendation thereon. (Ord. 2-2007, eff. 9/6/2007)

3. Procedure before Planning Commission. Before giving an advisory report or initial recommendation on any proposed amendment to this Ordinance or to the Zoning Map, the Planning Commission shall first conduct a Public Hearing thereon. Notice of the time and place of the Public Hearing before the Planning Commission shall be given by the Town Clerk, by one publication of the same at least seven (7) days prior to the hearing, in a newspaper of general circulation in the Town, posted on display at the Town Hall and posted on the Town website. The Zoning Officer shall, at least ten (10) days prior to the hearing, post a sign on the property notifying the general public of the time and place of the hearing. The Zoning Enforcement Officer shall either mail notice of the hearing to the applicant and to the property owners within 200 feet of the property proposed for rezoning at least ten (10) days prior to the hearing, or hand deliver to the same property owners, or affix notice to the doors of the same properties. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
4. Procedure before the Board of Trustees. After receiving the recommendation from the Planning Commission, the Board of Trustees shall hold a Public Hearing before acting on the proposed amendment or rezoning. Notice of the time and place of the Public Hearing before the Board of Trustees shall be given by the Town Clerk, by one publication of the same at least seven (7) days prior to the hearing, in a newspaper of general circulation in the Town. At least ten (10) days prior to the hearing, the Zoning Officer shall post the property with a sign notifying the general public of the time and place of the hearing. The Zoning Enforcement Officer shall also either mail notice of the hearing to the applicant, and to the property owners within 200 feet of the property to be rezoned at least ten (10) days prior to the hearing, or hand deliver to the same property owners, or affix notice to the doors of the same properties. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)

- C. Data to be submitted. Prior to any consideration for amendment to the Zoning Map, the applicant shall file the following data with the Town at least fifteen (15) business days prior to the scheduled date of Public Hearing before the Planning Commission: (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/2016)
1. Site plans or drawings to show a demonstrated need for zoning change. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 2. A written statement showing in detail how the proposed amendment will meet the criteria set forth in Section A, above. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 3. A list of all property owners, within 200 feet of the property proposed for rezoning. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)

10-1-12: Use by Special Review^{22 23}

- A. The owner of record and the proposed user for land for which a special use is requested may make application to the Town for Use by Special Review. No application shall be accepted unless accompanied by: (Ord. 2-2007, eff. 9/6/2007)
1. The fee as provided in Section 10-1-15. (Ord. 2-2007, eff. 9/6/2007)
 2. A site plan drawn to scale showing the location of all Buildings and structures, set-back distances, off-street loading areas, parking areas, means of ingress and egress, landscaping, utility locations with invert elevations and signage; and (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 3. An ownership and encumbrance report or title insurance commitment issued with thirty (30) days of submission of the application showing the owner of the property. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 4. A written statement showing in detail how the proposed use will meet the criteria set forth in the following subsections. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 - a. Will not result in undue traffic congestion or hazard; (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 - b. Will not cause significant air, odor, water or noise pollution; (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 - c. Will be adequately landscaped; and, (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 - d. Will have adequate drainage so as to not interfere with abutting private or public property; (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 - e. Will not otherwise be detrimental to the health, safety or welfare of the present or future inhabitants of the Town. (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
- B.^{24 25} A use by special review may be permitted in any Zoning District in which a use by special review is authorized as shown in Section 10-2-3, Table 1, and only if the approving agency finds that the proposed use: (Ord. 2-2007, eff. 9/6/2007)

²² Title 10, Chapter 1, Section 12 is amended by the repeal and reenactment of subparagraphs “A”, “B” and “D”. Ord. 2-2007, eff. 9/6/2007

²³ Title 10, Chapter 1 “Administration”, Section 12, “Use by Special Review” Subsections A Paragraphs 2, 3, 4 and 4-a, b, c, d and e, are repealed and reenacted in their entirety. Subsection A Paragraphs 5, 6, 7 and 8 and deleted in their entirety. Ord. 13-2016, eff. 10/6/2016

²⁴ Title 10, Chapter 1, Section 12, Subsection B, item 6 is deleted in its entirety and replaced. Ord. 8-2014, eff. 12/13/2014

²⁵ Title 10, Chapter 1 “Administration”, Section 12, “Use by Special Review” Subsection B Paragraph 7 is repealed and reenacted. Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016

1. Meets all existing criteria for minimum Lot Area, setbacks, maximum building height, permitted signs and parking; (Ord. 2-2007, eff. 9/6/2007)
 2. Will not change the predominant character of the neighborhood and will be compatible with the surrounding area; (Ord. 2-2007, eff. 9/6/2007)
 3. Will not result in an over-intensive use of land; (Ord. 2-2007, eff. 9/6/2007)
 4. Will not require a level of community facilities and services greater than what is available; (Ord. 2-2007, eff. 9/6/2007)
 5. Will not result in undue traffic congestion or hazard; (Ord. 2-2007, eff. 9/6/2007)
 6. Will not cause significant air, odor, water, light or noise pollution; (Ord. 2-2007, eff. 9/6/2007, Ord. 8-2014, eff. 12/13/2014)
 7. Will be adequately landscaped; and have adequate drainage as to not interfere with abutting private or public property; and (Ord. 2-2007, eff. 9/6/2007, Ord. 13-2016, eff. 10/6/2016)
 8. Will not otherwise be detrimental to the health, safety or welfare of the present or future inhabitants of the Town. (Ord. 2-2007, eff. 9/6/2007)
- C. All applications for use by special review shall be reviewed initially by the Zoning Enforcement Officer who may require additional submissions or documentation beyond those set forth in the preceding subsection. If the Zoning Enforcement Officer determines that the application includes all items contemplated by the preceding section, he or she shall place the matter on the agenda for consideration by the Planning Commission which shall make recommendation to the Board of Trustees for denial or approval of the proposed use. (Ord. 2-2007, eff. 9/6/2007)
- D. Notice of the Public Hearing before the Board of Trustees shall be posted and mailed in the same manner as that for rezoning under subsection 10-1-11.B.4. (Ord. 2-2007, eff. 9/6/2007)
- E. Approval or denial of the proposed use shall finally be determined by the Trustees, acting by resolution, after the public hearing. If the proposed use is approved, the Trustees may impose conditions or safeguards to insure compliance with the findings set forth above, including without limitation, requirements for minimum lot area, setbacks, maximum building height, permitted signs, fencing, parking and security to guarantee compliance with the conditions. The Trustees may also require an agreement with the applicant in recordable form placing a burden upon the land. (Ord. 2-2007, eff. 9/6/2007)
- F. The violation of any conditions or safeguards imposed upon the special use shall be sufficient grounds for revocation of the special use approval, after public hearing. (Ord. 2-2007, eff. 9/6/2007)

10-1-13: Expiration of development approval; reapplications.²⁶

²⁶ Title 10, Chapter 1, Section 13 is amended by the repeal and reenactment of the entire section. . (Ord. 2-2007, eff. 9/6/2007)

Any preliminary or final approval of Site Development by the Town pursuant to this title shall expire and become null and void if: (1) for preliminary approvals, an application for final approval is not filed within twelve (12) months following the date of preliminary approval, or (2) for final approvals (unless a vested property right is granted under Chapter 5), the work authorized is not commenced within two (2) years from the date of final approval or if the work is ceased for a period of one hundred-eighty days (180) or more at any time after work is commenced. An extension of the time limits set forth in this section may be granted by the Board of Trustees for good cause to any applicant who applies for an extension before the time limits set forth in this section expire. For rezoning, PUD and use by special review approvals, a Public Hearing before the Board of Trustees in the manner required for final review shall be held to determine whether the zoning and/or permitted use of the property shall revert to that in place prior to the (expired) approval. Unless an extension has been granted, after Site Development approval has expired, no work shall be commenced until the developer has received new approval pursuant to the procedures set forth in this Title. (Ord. 2-2007, eff. 9/6/2007)

10-1-14: Severability

Should any section, subsection, clause, or provision of this Title be declared invalid by a court of competent jurisdiction, the invalid portion shall be severable from the remainder of this Title and such decision shall not affect the validity of this Title as a whole, or any part thereof other than the part so declared to be invalid. (Ord. 2-2007, eff. 9/6/2007)

10-1-15: Payment of Costs

In addition to any and all other fees and charges imposed by this Code, any applicant for action under this Title shall pay the fees as set forth in Appendix A. (Ord. 2-2007, eff. 9/6/2007)