

# **ZONING ORDINANCE**

## **TOWN OF ALBERTON, MONTANA**

**Adopted under Ordinance No. 13**

**November 5, 2013**

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**ZONING ORDINANCE**  
**TOWN OF ALBERTON, MONTANA**

**ARTICLE 1 – GENERAL PROVISIONS**

**13.101 Title**

This ordinance shall be known as “Zoning Ordinance – Town of Alberton, Montana.”

**13.102 Authority**

This ordinance is adopted under the authority granted by Section 76-2-301 of the Montana Code Annotated.

**13.103 Purpose and Intent**

Made in accordance with the Growth Policy of Mineral County, Alberton and Superior, the purpose of this ordinance is to promote the public health, safety and general welfare; to secure safety from fire and other dangers; to facilitate the adequate provision of motorized and non-motorized transportation, water, sewerage, schools, parks and other public requirements; to provide adequate light and air; to promote compatible urban growth; to preserve the character of the districts and their peculiar suitability for particular uses; and to conserve the value of buildings and encourage the most appropriate use of land throughout the jurisdictional area.

**13.104 Applicability and Jurisdiction**

1. This ordinance shall apply to all land, buildings, structures, and uses thereof located within the Town of Alberton, as shown on the Official Zoning Map. When development is exempt from the requirements of this ordinance, this ordinance shall be used as a non-binding guideline.
2. All development that is considered a subdivision by the Montana Subdivision and Platting Act (MSPA) [Title 76, Chapter 3, MCA] must adhere to the applicable provisions of The Subdivision Regulations for Mineral County and the Towns of Alberton and Superior in addition to all applicable provisions in these regulations.

**13.105 Minimum Requirements**

The provisions of this ordinance are the minimum requirements necessary to protect the public health, safety, and general welfare, and to implement the Growth Policy.

### **13.106 Severability**

If any section, provision or portion of this ordinance is adjudged invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

### **13.107 Repeal**

The February, 1985 Zoning Ordinance – Town of Alberton, Montana is repealed and replaced with this ordinance.

### **13.108 Conflicting Laws and Ordinances**

If the provisions of this ordinance are inconsistent with those of the state or federal government, or if the provisions of this ordinance are inconsistent with one another, the more restrictive shall control.

### **13.109 Vested Rights**

A vested right is the right to proceed with development in compliance with the previous zoning. Such vested rights are established only by having obtained a permit in compliance with the previous ordinance. Such vested rights expire with the permit. Vested rights are established for a development only as it was approved. Any material change must be in compliance with the current ordinance.

### **13.110 Private Agreements**

This ordinance is not intended to revoke or repeal any easement, covenant or other private agreement. However, where this ordinance is more restrictive or imposes higher standards than such easement, covenant or private agreement, the requirements of this ordinance shall govern. In no case shall the Town be obligated to enforce the provision of any easement, covenant or agreement between private parties. The Town may enforce private restrictions if it is a party to such restrictions, if such restrictions were required by the Town during the land permitting and development process, in order to meet the requirements of this ordinance.

### **13.111 Meaning and Intent**

The language of this ordinance must be read literally. This ordinance is no more or less strict than stated. Words and terms expressly defined in this ordinance have specific meanings assigned, unless the context expressly indicates another meaning.

### **13.112 Responsibility for Interpretation**

In the event that a question arises concerning any provision or the application of any provision of this ordinance, the Administrator, acting on behalf of the Town and in consultation with the Town Attorney as may be necessary, shall be responsible for such interpretation and shall look to the Growth Policy and the overall purpose and intent of this ordinance for guidance. The Administrator shall provide such

interpretations in writing upon request and keep a permanent record of said interpretations. Any person who disputes the Administrator's interpretation may appeal to the Town Council as provided in 13.0307.

#### **13.113 Construction Timing**

Upon submittal of a land use permit application, the developer or any subordinate shall not engage in construction or demolition of improvements prior to approval of the application. The Administrator, Planning Board and Town Council are not bound to accept or approve any on-site improvements that exist prior to submittal of a permit application. The Town of Alberton shall not be responsible if improvements have to be eradicated, moved or rebuilt due to a developer making improvements not in conformance with this ordinance or any condition of approval.

#### **13.114 Burden of Proof**

The responsibility for demonstrating compliance with this ordinance is the developer's.

#### **13.115 Sewage Disposal**

To protect public health, abate nuisance and odor conditions, and to control water pollution, construction of private sewage disposal systems shall be prohibited. New development shall be connected to the Town sanitary sewer system.

## **ARTICLE 2 – ZONING DISTRICTS**

### **13.201 Zoning Map**

The location and boundaries of the zoning districts are hereby established as shown on the map entitled “Official Zoning Map” on file in the office of the Town Clerk. The Alberton Town Council shall regularly update the Official Zoning Map to show any changes in the planning and zoning district boundaries resulting from amendments to the map or this ordinance. Amendment dates shall be shown on the map.

Location of District Boundaries – The following rules shall apply with respect to the boundaries of the zoning districts as shown on the Official Zoning Map:

1. Where the zoning district boundary lines are indicated as following a highway, street, alley or railroad right-of-way, such boundary lines shall be the centerline of said right-of-way unless clearly shown to the contrary.
2. Boundaries indicated as following municipal limits shall be construed as following municipal limits.
3. Boundaries indicated as following platted lots lines shall be construed as following such lot lines.
4. Where any uncertainty exists as to the exact location of a zoning district boundary line, the Administrator shall determine the location of such boundary line. Any person who disputes the Administrator’s determination may appeal to the Town Council (see 13.0307).

### **13.202 Permitted Uses**

Land uses listed as permitted in a zoning district are allowed in compliance with this ordinance upon the application and approval of a zoning compliance permit.

### **13.203 Conditionally Permitted Uses**

Land uses listed as conditional in a zoning district are allowed in compliance with this ordinance upon the application and approval of a conditional use permit.

### **13.204 Evaluation of Land Uses**

It is the intent of the zoning to group similar and compatible land uses into specific districts, either as permitted or conditional uses. Evaluation of uses shall be as follows:

1. The Administrator shall determine if a use not listed is materially similar to a permitted or conditional use within that district. Determinations may be appealed to the Town Council.



2. Materially similar means the use provides similar function, occurs within a similar structure or setting, and has a similar scale to a permitted or conditional use listed in that district.

### **13.205 Land Uses Preempted by State Law**

Land uses that are required to be permitted in a zoning district by state law or those uses that only the state or federal government have jurisdiction over shall be permitted as provided by state or federal law whether or not the use is included in this Article.

### **13.206 Zoning Districts**

A zoning district is a geographic area within which development of certain uses and buildings is permitted and certain other uses and buildings may be developed upon approval of a conditional use permit (See Article 3, Zoning Administration, for permitting procedures).

The following zoning districts and their boundaries, as shown on the Official Planning and Zoning Map, are established:

1. Residential 1 (R-1)
2. General Commercial (GC)
3. Public/Open Space (P)

### **13.207 Residential 1 (R-1)**

The purpose of this district is to provide an area of residential living connected to public water and sewer services. No building, land or structure shall be used, and no building or structure shall be erected, structurally altered or maintained unless, otherwise provided in this title, except for one or more of the following uses.

1. Permitted Uses
  - a. Single family dwellings and accessory buildings
  - b. Two family dwellings
  - c. Doublewide mobile homes meeting the requirements of 13.0407(2)
  - d. Home occupations
  - e. Public parks and playgrounds
  - f. Community residential facilities and group homes (eight or fewer residents)
  - g. Day cares (12 or fewer children)
2. Conditionally Permitted Uses
  - a. Bed and breakfast establishments (See 13.0501)
  - b. Multiple family dwellings (See 13.0502)
  - c. Mobile Home Parks (See 13.0503)
  - d. Libraries, schools and related facilities
  - e. Day cares (more than 12 children)
  - f. Religious institutions
  - g. Public buildings and facilities, not including storage and repair shops

- h. Community residential facility and group homes (more than eight residents)

### 3. Area Requirements

- a. Except as provided in (b) and (e) below, the minimum lot size required for all permitted uses is 5,000 square feet with a minimum lot width of 34.5 feet
- b. The minimum lot area for two family and multiple family dwellings shall be 5,000 square feet per dwelling unit with a minimum lot width of 50 feet.
- c. Mobile home parks shall be developed in accordance with Section 13.0503.
- d. All other land uses shall have a minimum lot size of 20,000 square feet.
- e. Recorded Lots Excepted – Existing lots of record are exempt from the area requirements of this district but no new lots shall be created that do not comply.

### 4. Setback Requirements

- a. The minimum front yard setback from the right-of-way of streets and highways for all structures shall be 15 feet for permitted uses, 20 feet for conditional uses.
- b. The minimum rear yard setback from all structures shall be 5 feet for permitted uses, 20 feet for conditional uses
- c. Side yard shall be a width of not less than seven and half (7.5) feet. The width, however, shall not be less than one-third of the height of the building; and, where the building fronts the street and the side yard is to be parallel to an alley, or if the building is on a corner lot, it shall have a side yard on the street side not less than 10 feet in width.
- d. Accessory buildings except garages may be built no closer to property lines than 3 feet in the rear, 5 feet front and sides. Garages must be 15 feet when entered from the alley and 5 feet when not entered from the alley.
- e. When the setback requirements set forth in (a), (b), (c), or (d), above cannot be met on existing lots, the Town Council may grant a reasonable variance from these standards (See 13.0306).

### 5. Maximum Building Height

- a. All structures and accessory structures on residential lots shall not exceed 32 feet or two stories in height.

## **13.208 General Commercial (GC)**

The purpose of this District is to provide for areas of general retail and service uses as well as a variety of carefully planned heavy commercial and light industrial uses. No building, land or structure shall be used, and no building or structure shall be erected, structurally altered or maintained unless, otherwise provided in this title, except for one or more of the following uses.

### 1. Permitted Uses

- a. Any use permitted in R-1 district.
- b. Retail and service uses including drug store, clothing, appliance sales and service, bakeries, cabinet shops, print shops, theaters, professional offices, medical offices and clinics
- a. Government, public safety/service, libraries, non-profits, civic clubs

- b. Accessory uses, including residential use of the upper stories of commercial buildings
  - c. Hospitals and nursing homes
  - d. Eating and drinking establishments
  - c. Hardware
  - d. Automobile fueling and service stations
  - e. Laundry and dry cleaning establishments
  - a. Funeral homes and undertaking parlors
  - b. Grocery stores
  - c. Gyms
  - d. Feed stores
  - e. Radio broadcasting station.
  - f. Other business, which, in the opinion of the Administrator, are of the same general character as the uses herein enumerated (see 13.0204)
2. Conditionally Permitted Uses
- a. Agriculture
  - b. Bottling plants
  - c. Farm equipment factories
  - d. Fertilizer plants
  - e. Fuel storage tanks and terminals
  - f. Grain and feed elevators and mills
  - g. Heavy equipment sales, service and repair
  - h. Lumber yards
  - i. Manufacturing and processing of wood, metal, concrete and blacktop mix
  - j. Sales and service of automobiles and farm implements
  - k. Trucking and freight terminals
  - l. Warehouses
  - m. Facilities for storage and repair
  - n. Hotels and motels (see 13.0504)
  - o. Regional water supply facilities
3. Performance Standards: All conditional uses listed in 13.0208(2) must meet the following performance standards prior to being issued a permit
- a. Buffer Strip: A buffer strip no less than 20 feet wide and approved by the Town Council shall provide a sight and sound barrier when abutting a residential use. The buffer shall be comprised of a combination of berms, trees, stones, shrubs and fences made of natural looking materials. Landscaping that is indigenous to the area and requires minimal irrigation is encouraged.
  - b. Storage: The open storage of materials may be permitted when located at least 50 feet from any residential use and at least 30 feet from any street or lot line. All material shall be handled so as to effectively control dust. All combustible material shall be stored in such a way as to permit free access of fire-fighting equipment.

- c. Loading Requirements: Adequate ingress, egress, parking and turn-around space shall be provided off-street.
  - d. Off-Street Parking
    - i. All conditional uses shall provide off-street parking in accordance with section 13.0406.
4. Area and Setback Requirements
- a. Residential uses shall conform to the area and setback requirements of the R-1 district.
  - b. The minimum lot size for non-residential uses south of Railroad Ave. is 20,000 square feet. North of Railroad Ave., the minimum lot size for non-residential uses is 5,000 square feet for permitted uses and 2,000 square feet for conditional uses.
  - c. Except as provided in (3.a., above), setbacks for non-residential uses are 20 feet in the front and back, and seven and one-half (7.5) feet on each side; the width however, shall not be less than one-third of the height of the building. In areas north of Railroad Ave, there are no setbacks for non-residential uses listed as permitted in this district.
5. Height Requirements
- a. The maximum building height is 45 feet.

**13.209 Public / Open Space (P)**

The purpose of this district is to provide for areas for public facilities, recreation, and open lands.

1. No building, land or structure shall be used, and no building or structure shall be erected, structurally altered or maintained unless, otherwise provided in this title, except for one or more of the following uses:
  - b. Public schools, public school recreational and sports facilities;
  - c. Town offices and public community facilities;
  - d. Public and non-profit quasi-public institutions, public zoos, historical and cultural exhibits and assembly halls;
  - e. Public golf courses, playgrounds, play-fields, tennis courts, swimming pools, skating rinks and other public grounds for non- profit sports, games or recreation;
  - f. Public parks, parkways, trails, pathways, nature walks, gardens, arboretums, land reserves, undeveloped open space and related public facilities.
  - g. Flood plains, natural drainage areas and wildlife refuges;
  - h. Timber and cropland uses excluding the raising or feeding of animals;
  - i. Open land owned by government or other public agencies;
  - j. Accessory buildings directly related to permitted uses in the P District.
2. Area, width and setbacks requirements
  - a. There are no restrictions in the Public/Open Space district except that R-1 setbacks for front, side and rear yards apply to public buildings.
3. Height Requirements
  - a. Except for public schools, the maximum building height is 25 feet.

## **ARTICLE 3 – ZONING ADMINISTRATION**

### **13.301 Permits Required**

1. It shall be unlawful for any person to commence any development, including demolition, without obtaining an ordinance permit.
2. An ordinance permit is any permit issued under this ordinance including a zoning compliance permit, plat approval, rezoning, certificate of occupancy, amendment, demolition, variance or other action having the effect of permitting development.
3. Ordinance permits run with the land.

### **13.302 Zoning Compliance Permits**

1. The purpose of this permit is to ensure that routine building activity complies with this ordinance. Zoning compliance permits may be combined and processed simultaneously with permits required by the town's fire and building codes, although the development's compliance with zoning shall be determined prior to action on the building permit.
2. The developer shall file a properly completed application form, a site plan, and any supporting materials necessary to demonstrate compliance with this ordinance, and the required application fee with the Administrator.
4. The Administrator shall determine whether the application is complete and sufficient for review, and may require more information from the developer.
5. After determining the application is complete and sufficient, the Administrator shall determine whether the proposed development is in compliance with this ordinance and notify the developer of the decision. If it complies, the application shall be approved and a permit shall be issued. If it fails to comply, the application shall be rejected.
6. Zoning compliance permits are valid for two years and may be extended for one additional year by the Administrator if so requested by the developer prior to expiration.
7. The Administrator may attach conditions to the permit to reduce or minimize any potential adverse impact upon other property in the area, or to carry out the purpose and intent of the growth policy, other adopted plans, or this ordinance. In such cases, any conditions shall be directly related to the impacts of the proposed use and shall be roughly proportional in both nature and extent to the anticipated impacts of the use.
8. The Administrator's decision may be appealed to the Town Council using the appeals procedure of 13.0307. A notice of appeal shall be filed with the Administrator within 30 days after the decision is issued.
9. After a permit is granted and prior to permit expiration, the developer shall apply for a certificate of occupancy and include information demonstrating the development conforms to this ordinance and any conditions of approval. The Administrator shall visit the site to check for

conformance and, if verified, issue a certificate of occupancy. If the development is determined not to be in compliance, the Administrator shall notify the developer of the deficiencies. The developer must demonstrate conformance within the original or extended approval period, reapply for a permit, or appeal the Administrator's decision (see 13.0307, below). If voluntary compliance is not achieved a notice of violation may be issued. No building or premises may be used or occupied until the Administrator has issued a certificate of occupancy.

### **13.303 Board of Adjustment**

1. The Town Council shall function as a board of adjustment, unless the Town Council deems it necessary to establish an appointed board of adjustment pursuant to Sections 76-2-321--76-2-328, MCA.
2. In functioning as a board of adjustment, the Town Council shall have the powers to hear and decide appeals, special exceptions and variances as per 76-3-323, MCA.

### **13.304 Conditional Use Permits**

The conditional use permit procedure implements the growth policy and this ordinance by requiring public review of developments that may have a significant impact on the Town of Alberton, public facilities, or neighboring land uses. Applications for approval of a conditionally permitted use shall be submitted to the Administrator using the following procedure.

1. Application and Review Procedure
  - a. The developer shall file with the Administrator a properly completed application form, with a site plan, narrative describing the project in light of the evaluation criteria (see 2., below), any supporting materials necessary to demonstrate compliance with the growth policy and this ordinance, and the required application fee.
  - b. After receiving the application, supporting materials and fee, the Administrator shall determine whether the application is complete and sufficient for review. When an application is determined incomplete or insufficient, the Administrator shall provide written notice to the developer indicating what information must be submitted for the review to proceed.
  - c. The Administrator shall place a hearing on the proposed conditional use on the agenda of the next regular Town Council meeting for which these notice requirements can be met, and at which time will allow for its proper consideration. Notice of the hearing shall be published in a newspaper of general circulation and notice shall be sent to all landowners whose property is located within 150 feet of the subject property at least 15 days prior to the hearing.
  - d. The Administrator shall prepare or contract for preparation of a report that describes the proposed conditional use, its site, its context, and its compliance, or failure to comply, with the growth policy and this ordinance. In preparation of the report, the Administrator may seek input from the police, fire, parks, department of transportation,

solid waste and other departments as well as other agencies and service providers. In the report the Administrator shall propose findings of fact and a recommendation of approval, approval with conditions or denial of the proposal for the Town Council's consideration.

- e. The Town Council shall conduct a hearing on the proposed conditional use. At that hearing, the Town Council shall review the particular facts and circumstances of the proposed use and develop findings and conclusions in support of its decision. If the Town Council finds that it complies with the evaluation criteria in 2., below, it shall approve the application. If the Town Council finds that the proposed conditional use fails to comply, it shall deny of the application.
- f. Consideration of a CUP application may be tabled for no more than 35 days.
- g. Within 30 working days of the public hearing, the Town Council shall approve or deny the CUP application and adopt findings and conclusions in support of its decision.
- h. Conditions may be attached to an approval that are intended to reduce or minimize any potential adverse impact upon other property in the area, or to carry out the purpose and intent of the comprehensive plan, other adopted plans, or this ordinance. In such cases, any conditions shall be directly related to the impacts of the proposed use and shall be roughly proportional in both nature and extent to the anticipated impacts of the use.
- i. The Administrator shall notify the developer and interested parties who have specifically requested such notice of the Town Council's decision within 14 days after it is made.
- j. Development related to conditional use permits shall be complete within two years but may be extended for one additional year by the Administrator if so requested by the developer prior to expiration.

## 2. Evaluation Criteria

No conditional use permit shall be granted unless the Town Council finds all of the following:

- a. The conditional use will not be detrimental to or endanger the public health, safety or general welfare.
- b. The existing permitted uses in the neighborhood will not in any manner is substantially impaired or diminished by the establishment of the conditional use.
- c. The conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- d. Adequate utilities, access roads, drainage and other necessary site improvements have been provided or will be provided prior to the conditional use being initiated.
- e. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- f. The conditional use shall conform to all applicable regulations of the district in which it is located or a variance has been granted (see 13.0306).



### **13.305 Nonconforming Uses**

The lawful use of a building, structure or premises existing at the time of the adoption or amendment of this ordinance may be continued although such use does not conform to the provisions of this ordinance.

1. If a nonconforming use is discontinued for a period of two years, any future use of the building, structure or premises shall conform to this ordinance.
2. There shall be no limit on the maintenance and repair of nonconforming uses or buildings, provided that no such activity increases the degree of nonconformity. The degree of nonconformity is the measured extent to which an existing building or use fails to comply with the standards of this ordinance. For example, the degree of nonconformity of a parking lot that has four spaces, but serves a use requiring nine is five parking spaces. No change in the nonconforming building could be permitted that would reduce the number of parking spaces, because that would increase the degree of nonconformity.
3. When determining the status of a nonconforming use:
  - a. The Administrator shall compile and maintain a record of legal non-conforming land uses and legal non-conforming structures as such information becomes available; and
  - b. The Administrator shall gather appropriate information to determine on a case-by-case basis whether a land use constitutes a legal non-conforming land use as defined in this chapter; and
  - c. It shall be the burden of the proponent of a legal non-conforming land use status to prove all elements of such status by supplying the Administrator with a preponderance of evidence required to establish a right to legal non-conforming land use; and
  - d. Any appeals to the Administrator's determination of the status of a non-conforming land use shall be made according to 13.0307.

### **13.306 Variance**

A variance is a relaxation of the provisions of this ordinance that will not be contrary to the purpose and intent of this ordinance or the public interest. The Town Council, acting as a board of adjustment, shall hear and decide requests for variance from the terms of this ordinance where the literal enforcement will result in practical difficulty or unnecessary hardship.

1. The developer shall file with the Administrator a properly completed variance application form, preliminary plat or site plan, narrative describing the variance request in light of the evaluation criteria (see 4., below), any supporting materials explaining why the variance is necessary, and the required application fee.
2. The Administrator shall place a hearing on the agenda of the next regular Town Council meeting for which the notice requirements can be met and at which time will permit its proper consideration. Notice shall be published in a newspaper of general circulation at least once a

week for two consecutive weeks starting at least 15 days prior to the hearing and notice shall be sent to all landowners whose property is located within 150 feet of the subject property at least 15 days prior to the hearing.

3. The Administrator shall prepare, or contract for preparation of, a report that describes the proposed variance, its site, its context, and an evaluation of the request under the variance criteria and a recommendation for approval, approval with conditions, or denial.
4. The Town Council shall conduct a hearing on the proposed variance. At that hearing, the Town Council shall review the particular facts and circumstances of the proposed variance and develop findings and conclusions in support of its decision. The Town Council shall base its findings upon evidence presented to it and shall only grant the variance after determining that all of the following conditions are met:
  - a. The particular physical surroundings, lot characteristics, or topographic conditions of the property result in an unnecessary hardship;
  - b. The purpose of the variance request is not based solely on a desire for economic or other gain;
  - c. The alleged difficulty or hardship has not been created by any person presently having an interest in the property;
  - d. The variance shall not be detrimental to the public welfare or injurious to other properties in the area; and
  - e. The variance shall not be contrary to the intent and purpose of this ordinance.
5. Consideration of a variance may be tabled for no more than 35 days.
6. The concurring vote four members shall be necessary to grant a variance.
7. The Administrator shall notify the developer and interested parties who have specifically requested such notice of the Board's decision within 10 days.

### **13.307 Appeals**

Appeal of Administrator's decision to Town Council. The Town Council, acting as a board of adjustment, shall hear appeal of any person, firm or organization aggrieved by the decision or ruling of the Administrator when there are alleged errors in the administration of this ordinance.

1. Within 30 days of publication of the Administrator's decision, the appellant shall file notice of appeal with the Administrator, specifying the grounds thereof.
2. The Administrator shall transmit to the Town Council all papers constituting the record upon which the action appealed from was taken.
3. An appeal stays all proceedings in furtherance of the action appealed unless the Administrator certifies to the Town Council that the stay would cause imminent peril to life or property. In such a case, proceedings shall not be stayed except by a restraining order which may be granted by the Town Council or by a court of record.
4. The Town Council shall publish notice of the appeal hearing in a newspaper of general circulation at least once a week for two consecutive weeks starting at least 15 days prior to the

hearing and notice shall be sent to all landowners whose property is located within 150 feet of the subject property at least 15 days prior to the hearing.

5. At that hearing, the Town Council shall review the particular facts and circumstances of the appeal and develop findings and conclusions in support of its decision.
6. The Town Council may reverse or affirm, in whole or in part, or may modify, the decision appealed from, and shall make such a decision as in its opinion ought to be made. If there is practical difficulty or unnecessary hardship in the way of carrying out the strict letter of the ordinance, the Town Council may modify any of the provisions of this ordinance relating to the use, construction or alteration of buildings or structures or the uses of land so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.
7. The concurring vote of four members shall be necessary to grant an appeal.

### **13.308 Amendments**

The Town Council may from time to time on its own motion, or on petition, or on recommendation of the Planning Board and the Administrator, amend, supplement, repeal or revise any provision of this ordinance, including the Official Zoning Map. Such revisions shall be made using the applicable provisions of the following process:

1. The petitioner shall file a properly completed application form, the required supporting materials, including a narrative evaluating the amendment request under the review criteria in 11., below, and the required application fee with the Administrator.
2. After receiving the application, supporting materials and fee, the Administrator shall determine whether the application is complete and sufficient. If an application is determined incomplete or insufficient, the Administrator shall provide written notice to the petitioner indicating what information must be submitted for the review to proceed.
3. When the petition is determined to be complete and sufficient, the Administrator shall place a hearing on the application for an amendment on the agenda of the next regular Planning Board meeting for which the notice requirements can be met, and at which time allows for its proper consideration.
4. The Administrator shall publish notice of the hearing in the official newspaper once per week for two successive weeks starting at least 15 days before the time set for the hearing. For zoning or text amendments impacting a specific property or district, the Administrator shall also mail notice to all landowners whose property is located within 150 feet of the subject property at least 15 days prior to the hearing.
5. The Administrator shall prepare, or contract for the preparation of, a report that describes the proposed amendment and how it complies, or fails to comply, with the growth policy and the amendment criteria (see 11., below). The report shall also include a recommendation for approval, approval with modifications or denial.
6. The Planning Board shall conduct a hearing on the proposed amendment. At the hearing, the Planning Board shall determine whether the proposed amendment is consistent with the

growth policy and meets the amendment criteria below. The Planning Board shall review the particular facts and circumstances of the proposed amendment and develop findings and conclusions that support its recommendation.

7. Action on a proposed amendment may be tabled, but for no more than 35 days.
8. The Administrator shall convey the Planning Board's written recommendation and public testimony to the Town Council within 10 days of the public hearing.
9. At a public hearing with public notice issued in accordance with 4., above, the Town Council shall consider the recommendation of the Planning Board and all testimony and written protest received, then approve, reject, or modify and approve the amendment. Action on the proposed amendment may be tabled, but for no more than 35 days.
10. Protest of amendments: An amendment may not become effective except upon a favorable vote of two-thirds of the present and voting members of the Town Council if a protest against a change pursuant to 76-2-305(1) MCA is
  - a. signed by the owners of 25% or more of:
    - i. the area of the lots included in any proposed change; or
    - ii. those lots or units, as defined in 70-23-102 MCA, 150 feet from a lot included in a proposed change.
  - b. For purposes of this subsection (10);
    - i. each unit owner is entitled to have the percentage of the unit owner's undivided interest in the common elements of the condominium, as expressed in the declaration, included in the calculation of the protest. If the property, as defined in 70-23-102, spans more than one lot, the percentage of the unit owner's undivided interest in the common elements must be multiplied by the total number of lots upon which the property is located.
    - ii. The percentage of the unit owner's undivided interest must be certified as correct by the unit owner seeking to protest a change pursuant to this subsection or by the presiding officer of the association of unit owners.
11. Amendment Criteria. In order to approve an amendment to this ordinance, the Town Council shall find that the amendment substantially complies with the growth policy and furthers the purpose and intent of this ordinance (see Section 13.0103). The amendment may also be designed to correct an inconsistency or error, address changing conditions or address a specific public challenge such as the need for affordable housing or downtown redevelopment. Any amendment to these zoning regulations must be made in accordance with 76-2-304 MCA, criteria and guidelines for zoning regulations. All amendments must be:
  - a. Made in accordance with a growth policy; and
  - b. designed to:
    - i. secure safety from fire and other dangers;
    - ii. promote public health, public safety, and the general welfare; and
    - iii. facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.
  - c. In the adoption of zoning regulations, the Town Council shall consider:

- d. reasonable provision of adequate light and air;
- e. the effect on motorized and non-motorized transportation systems;
- f. promotion of compatible urban growth;
- g. the character of the district and its peculiar suitability for particular uses; and
- h. conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

### **13.309 Violations and Penalties**

A person in violation of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars, nor more than three hundred dollars (\$300.00) for each offense, and shall be imprisoned until such fine be paid, but not exceeding fifty days. Each day that a violation is permitted to exist shall constitute a separate offense.

Whenever a violation of this ordinance occurs, any person may file a complaint in regard thereto. All such complaints shall be filed with the Administrator who shall investigate such violation and report to the Town Council for appropriate action. The process for enforcement of this ordinance shall be as follows:

1. The Administrator shall notify the occupant (and developer if they are not the same) of the violation by certified mail and/or posting on the site. The notice shall describe the violation, cite the section of this ordinance being violated, and order the responsible party to attain compliance within 30 days.
2. The notice may include a “stop work order” that requires all non-corrective development to cease, states the specific development to be stopped, the specific reasons for the ordered stoppage, and the conditions under which development may resume. If the activity does not cease, the Administrator shall ask the Town Attorney to take prompt action to end the unpermitted activity and, if a permit is not subsequently issued, to require restoration of the site to its original condition.
3. While a “stop work order” is in effect or until a violation is corrected, no permits or development approvals shall be granted for the property.
4. Any person who receives a notice of violation may request inspection by the Administrator to show that compliance has been attained within the 30 days allowed; or appeal the Administrator’s decision to the Town Council (see 13.0307, above) .
5. If voluntary compliance is not attained or an appeal is not filed within 30 days, the Administrator shall ask the Town Council and Town Attorney to begin legal action against any responsible party.
6. This enforcement process may be accelerated where the Administrator finds that public health and safety are endangered by a violation.

### **13.310 Public Notice**

All public notices shall contain the following information:

1. The time and place of the hearing;
2. A description of any property involved, by street address if streets have been platted or designated for the area affected;
3. A description of the nature, scope and purpose of the regulation, restriction, boundary, variance request, appeal, or permit request; and
4. A statement of the times at which documentation will be available to the public for inspection and copying at the office of the Town Auditor.

## **ARTICLE 4 – PERFORMANCE STANDARDS**

All development shall comply with the following standards, as applicable.

### **13.401 Adequate Public Facilities Required**

1. Unless expressly authorized elsewhere in this ordinance, all development, and all lots or parcels within a development, shall be provided with water, sewer, power, telephone, paved streets, curbs, gutters, stormwater facilities, street lights and sidewalks.
2. All public facilities necessary to serve the development, including any necessary easements, extension of mains, lift stations, streets, sidewalks, and other improvements, shall be provided by the developer as set forth herein.
3. No improvements shall be made until all necessary plans, profiles and specifications have been submitted to and approved by the Town Engineer.

### **13.402 Solid Waste**

Solid waste disposal facilities shall be provided by the developer where deemed appropriate by the Town Council. Visual screening of solid waste facilities may be required.

### **13.403 Mail Delivery**

A means of mail delivery, such as cluster mailbox units, may be required.

### **13.404 Traffic Impact Analysis**

If a proposed use may generate more than 500 Average Daily Traffic, the developer shall submit a traffic impact analysis (TIA) to gauge the impacts of development on transportation facilities, safety and traffic flow.

1. Preparation. A professional engineer or transportation planner must prepare the traffic impact analysis.
2. Form and Content. The TIA shall be in written form along with supporting maps and other appropriate information. At a minimum, the report must include the following elements:
  - a. Purpose and goals;
  - b. A description of the site and study area, which shall extend to the most logical collector or arterial road based on trip distribution patterns;
  - c. Existing traffic circulation conditions and patterns including road geometrics, roadway capacity, conditions of roads leading to the development and other relevant information;

- d. Anticipated traffic circulation conditions and patterns including road geometrics, traffic counts, trip distribution, land uses, crash data, intersection evaluations, roadway capacity and other relevant information;
- e. Anticipated effects of the development on the existing road network; and
- f. Recommendations and alternatives to alleviate the negative effects (if any) and maintain the existing level of service after development.

**13.405 Fences, Visibility at Intersections**

Except as otherwise specifically provided in other codes and ordinances of the Town, the following regulations shall apply to the placement and construction of fences, landscaping and other visual obstructions at intersections:

1. Any person or developer constructing a new fence or anytime fifty percent or more of an existing fence is reconstructed or repaired by any person or contractor on any property they shall obtain a fence permit from the town.
2. No fence shall be constructed which will constitute a traffic hazard and no permit shall be granted for the placement of a fence unless the Administrator has certified that the proposed fence will not constitute a traffic hazard.
3. No person shall erect or maintain any fence which will be hazardous or dangerous to persons or animals, or which will materially damage the adjacent property by obstructing the view, shutting out the sunlight or hindering ventilation, or any fence which shall adversely affect the public health, safety and welfare.
4. Fences in residential areas shall have a maximum height of forty-eight inches adjacent to dedicated street right-of-way in a front or side yard to a point even with the front corner of the house, the remainder of the fence in the side yard shall have a maximum height of six feet. Fences adjacent to dedicated ally right-of-way shall have a maximum height of six feet. There shall be a 12 inch set back on public right-of-ways and a 12 inch set back from private property lines.
5. There shall be a fine of one hundred dollars (\$100) for not complying with the above provisions (1, 2, 3, & 4). Any new fence not in compliance with this chapter may be ordered removed by the Town Council. Any new fence not removed within thirty days notice from the Town Council or designee shall be removed by the town labor forces or by an assigned contractor with all associated cost assigned to the property owner to become a recordable lien.

**13.406 Parking and Loading**

1. Purpose and Intent. These standards establish off-street parking requirements designed to lessen congestion in the streets and provide a reasonable amount of parking for developments.
2. Applicability. Any building or structure erected or located and any use of land established after the effective date of this ordinance, including changes of use and additions to existing uses, shall



be required to provide off-street parking in accordance with the standards in this section, with the following two exceptions:

- a. In the General Commercial District, North of Railroad Ave, uses listed as permitted are exempt from these requirements;
  - b. Where a change of land use within an existing building or lot requires an increase in off-street parking by 10% or less, the increase shall be waived.
4. Size. A standard parking space is 9 feet wide by 20 feet deep.
  5. Vertical Clearance. Each space shall have a vertical clearance of at least 8 feet.
  6. Location.
    - a. For all residential uses, off-street parking shall be located on the same lot as the use they serve;
    - b. For all other uses, off-street parking shall not be located more than 300 feet from the lot and must be located within the same zoning classification as the use they serve;
    - c. For land uses other than single and two family residential, a portion of parking is encouraged to be located behind the primary structure(s) (i.e., on the opposite side of the building from the street access).
    - d. Parking shall not be located where it inhibits visibility at any intersections.
  7. Plan Review and Permit Required. Parking plans including location, circulation pattern, signage, dimensions, lighting, landscaping, pedestrian and bicycle facilities and other specifications shall be drawn to scale and submitted for review and approval.
  8. Construction. All off-street parking spaces and associated access shall be improved with asphalt or concrete or comparable hard surface except for temporary land uses, which may be gravel.
  9. Drainage. All off-street parking areas shall be designed and constructed to allow proper drainage and include stormwater containment to be reviewed and approved by the County Engineer.
  10. Landscaping and Screening.
    - a. For land uses requiring 40 or more spaces and for all land uses in the GC District, a minimum of 10% of the parking lot shall be landscaped.
    - b. For all land uses requiring 10 or more spaces, a buffer strip consisting of landscape vegetation and that may include decorative fencing, rock and berms shall be required.
  11. Lighting. Parking lot lighting shall be side-shielded and downward pointed to prevent glare from leaving the site.
  12. Drive Aisles. Minimum aisle widths shall be
    - a. For two-way circulation and 90° parking: 24 feet;
    - b. For one-way circulation and 60° angle parking: 18 feet; and
    - c. For one-way circulation and 45° angle parking: 15 feet.
  13. Snow Storage. A snow storage area at least 2% of the size of the parking lot, drive aisles and circulation shall be provided to avoid the loss of required parking spaces to snow storage.
  14. Required Parking: All development shall provide at least the minimum number of off-street parking spaces established in Table 13.0406.22. Except as provided in (14), if two or more uses

occupy the same building or lot, the total requirement shall be the sum of the requirements of the individual uses.

15. Shared Parking. At the discretion of the permitting authority (Administrator or Town Council), up to a 30% reduction in the number of parking spaces required for off-street parking may occur under the following circumstances:
  - a. When at least 50% of the parking spaces required by this section are for primarily “night time” uses such as theatres, bowling alleys, bars and related uses, and the parking spaces also serve those uses that are provided by “day time” uses such as banks, offices, furniture stores, retail, wholesale and related uses;
  - b. When at least 50% of the parking spaces required by this section for a religious institution, an auditorium incidental to a school, or a similar use, may be supplied by the off-street parking facilities provided by uses primarily of a “day-time” nature;
  - c. When the joint parking facility is located within 300 feet of either the building or land use for which the parking facility is required;
  - d. When the applicant for a joint use parking facility can demonstrate there is no substantial conflict in the principal operating hours of the buildings and uses for which the joint use is proposed; and
  - e. When a contract providing for shared use for a period of at least 15 years is executed before issuance of a permit.
16. Required Parking for Uses Not Listed. Where a minimum number of parking spaces for a land use is not listed in the table below, the Administrator shall determine the appropriate number of spaces based on (A) the most similar land use described herein, (B) parking requirements from other jurisdictions, and/or (C) published sources of parking standards such as those produced by the Institute of Transportation Engineers and the American Planning Association.
17. Loading Areas.
  - a. Commercial and industrial buildings shall provide one safe, properly signed off-street freight loading area for each 10,000 square feet of gross floor area or outdoor storage.
  - b. Day care centers, schools, health care facilities, places of assembly and similar land uses shall provide at least one safe, properly signed off-street passenger loading area.

c.

**Table 13.0406  
REQUIRED OFF STREET PARKING**

| <b>REQUIRED OFF STREET PARKING</b>                  |                                       |                                    |                               |
|---|---------------------------------------|------------------------------------|-------------------------------|
| Residential   |                                       | Commercial                         |                               |
| 1 & 2 Family, Mobile Home                           | 1/ du                                 | Automobile Service Stations        | 2 per bay                     |
| Bed and Breakfasts                                  | 1/room = 2                            | Gas Stations/Convenience Stores    | 1/300 sq ft of floor area     |
| Multiple Family                                     | 2/ du                                 | Day Cares                          | 1/employee + 1/ 8 pupils      |
| Day Cares   | 1/employee = 1/8 pupils               | Undertaking Parlors                | 1/4 seats                     |
| Group Homes and Community Residential Facilities    | 1/ 4 residents + 1/ employee          | Barber/Beauty Parlor               | One/chair + 1/ employee       |
| Religious/Civic                                     |                                       | General Retail                     | 1/ 500 sq ft of retail area   |
| Churches, Auditoriums, Theatres, Places of Assembly | 0.33/ seat                            | Professional Office                | 1/ 300 sq ft of floor area    |
| Hospitals   | 1/4 beds + 1/ employee                | Medical/Dental Office              | 1/ 200 sq ft of floor area    |
| Commercial or Trade School                          | 1/3 students + 1/employee at capacity | Eating and drinking establishments | 1/ 4 seats                    |
| Cemetery  | 1/employee                            | Shopping centers                   | 4/ 1,000 sq ft of floor area  |
| K-12 Schools  | 1.5 per classroom                     | General merchandise, groceries     | 4 / 1,000 sq ft of floor area |

**13.407 Mobile Homes**

Any mobile home used for residential purposes within any zoning district at the time of passage of this ordinance may continue subject to the following conditions:

1. Any mobile home within any zoning district may be replaced by another mobile home upon issuance of a zoning permit. However, no permit shall be issued unless such replacement mobile home meets all the setback requirements of the zone, or does not infringe upon the setbacks of the original mobile home.
2. On single lots, if a mobile home is removed, it must be replaced by a double-wide providing that:

- a. the minimum width and length is 20 feet wide and 40 feet long
- b. they must be permanently affixed to the land by a permanent foundation
- c. they must be qualified for VA or FHA financing.

#### **13.408 Exceptions to Height Regulations**

1. Height regulations shall not be deemed to limit or restrict the height of belfries, chimneys, clock towers, elevators, bulkheads, cooling towers, grain elevators, penthouses, stacks, water towers, ornamental towers, steeples, flagpoles, wireless towers or any similar appurtenances to buildings or premises, but these structures shall be subject to such restrictions, and regulations as may be imposed by the provisions of this code and other ordinances of the town.
2. Churches, public or semipublic buildings, hospitals, schools, colleges, and private clubs may exceed the height restrictions of the district in which they are constructed; provided, that such structures shall have side yards on both sides, comply with the area regulations of the district, and in addition, the side yards shall be increased one foot in width for each five feet that the building exceeds the height regulations.

#### **13.409 Exceptions to Area Requirements**

1. The front, side, and rear yard setbacks required in the General Commercial District shall be waived when dwellings are erected above stores, shops or other commercial uses.
2. No lot area shall at any time be so reduced or diminished that the front, rear or side yards shall be smaller than prescribed by this title.
3. Every part of the required yard shall be open from its lowest point to the sky unobstructed, except for the ordinary projections of sills, belt courses, cornice and ornamental features; provided that open or closed fire escapes (stairways, balconies, towers, etc.), whether open or enclosed, project into a yard not more than five feet, and the ordinary projections of chimneys and flues, bay or breast windows are not more than eighteen inches.
4. If a residential building is to be erected in the rear of an existing or proposed building on an inside lot, there shall be side yards; provided, that the side yards shall be the same as if the building were on a separate lot, and, there shall be provided a front yard or open space between the rear lot line of the house in front, and the rear house, of not less than twenty feet; and no area shall be included twice in providing for such rear building.
5. In no event shall the eaves, or drips, of any building or structure, extend over or beyond the property line.

## **ARTICLE 5 – CONDITIONAL USE STANDARDS**

In addition to the provisions of Article 4, the following uses must meet these additional standards.

### **13.501 Bed and Breakfast Establishments**

1. The establishment shall be operated by the owner of the home who must live on the property.
2. The bed and breakfast may not contain more than four guest rooms or serve more than 12 guests.
3. Food service may be provided for resident guests only.
4. Bed and breakfasts may not be leased or offered for use as reception space, office space, meeting space or similar events open to non-resident guests.
5. A maximum of one wall sign, which may be externally lit, not exceeding 8 square feet in area, may be displayed.
6. At least one off-street parking space shall be provided per room. If the parcel abuts an alley, access to guest parking shall be from the alley.

### **13.502 Multiple Family Dwellings**

1. Pedestrian Access. A system of walkways connecting each dwelling to public sidewalks, on-site parking, other on-site multiple family dwellings, solid waste disposal areas, mail boxes, recreation areas and storage areas shall be provided.
2. Vehicular Access. At least two roads/approaches accessing public streets shall be provided for more than 15 dwelling units. The circulation pattern must be acceptable to the local fire department.
3. Parking. At least one on-site parking space shall be provided per dwelling unit. No more than 50% of the parking should be provided between the primary buildings and the primary access street.
4. Bulk and Dimension. The minimum setback from the front and back property line shall be 20 feet. Side lines shall be 7.5 feet from the eve. For accessory buildings and garages setbacks are 15 feet on garages entered at 90 degrees from the alley and 5 feet when not entered from the alley.

### **13.503 Mobile Home Parks**

1. Mobile home parks shall contain a minimum of 3 acres of land.
2. Maximum number of mobile homes per acre is 11.
3. Minimum lot size per mobile home is 3,000 square feet
4. A greenbelt planting strip not less than 20 feet in width shall be located along all lot lines of the park not bordering the street. Such greenbelt shall be planted and maintained free of trash.

5. All structures shall have a setback of a minimum of 20 feet from any exterior park boundary and 25 feet from all streets.
6. All structures shall be set back at least 10 feet from interior mobile home park lot lines.
7. Single wide mobile homes are permitted
8. No mobile home shall be older than 12 years on the date of installation and shall be in good repair and have a well-maintained appearance.
9. Underground utility hookups shall be provided to each lot in the park.
10. All lots in the park shall be accessible at all times to emergency vehicles.
11. Off-street parking of at least two parking spaces for each mobile home unit shall be provided. Additional parking spaces may be required depending on the number of beds and use.
12. Streets in the park shall be dedicated public streets, designed and constructed according to standards recommended by the developer's engineer and approved by the Town Engineer.
13. All regulations of Montana regulatory agencies and departments relating to mobile homes shall be complied with.
14. One or more common mailbox facility shall be provided to serve the residents.
15. A school bus stop shall be provided if requested by the school district.

#### **13.504 Hotels/Motels**

1. **Pedestrian Access.** A system of walkways connecting each hotel building to public sidewalks, on-site parking, solid waste disposal areas, mail boxes, recreation areas and storage areas shall be provided.
2. **Vehicular Access.** At least two roads/approaches accessing public streets shall be provided for more than 15 rooms. The circulation pattern must be acceptable to the local fire department.
3. **Parking.** At least 1.2 onsite parking spaces per hotel room shall be provided. No more than 50% of the parking should be provided between the primary buildings and the primary access street.
4. **Bulk and Dimension.** The minimum setback from the front and back property line shall be 20 feet. Side lines shall be 7.5 feet from the eve.

## **ARTICLE 6 – DEFINITIONS**

### **13.601 Definitions**

For the purpose of this ordinance certain words or phrases used herein are defined as follows:

1. Access – The way by which pedestrians and vehicles shall have safe and adequate ingress and egress to the property.
2. Accessory building – A subordinate building, the use of which customarily is incidental to the main building or the main use of the premises such as garages and tool sheds. A second dwelling on a lot zoned for a single family residence is not considered a permitted accessory building.
3. Administrator – The administrative official, designated by the Town Council, to administer and enforce the provisions of this ordinance.
4. Aggregation of Lots – The combination of two or more platted lots into fewer lots that does not involve the vacation of existing easements and does not involve lots with more than one zoning classification.
5. Average Daily Traffic (ADT) – The average number of vehicles crossing a specific point on a roadway during a 24-hour period on the average working day. The projected or estimated ADT for a development shall be based on the most representative land use(s) described in the manual entitled “Trip Generation” (latest edition) published by the Institute of Transportation Engineers, or a similar source.
6. Advertising Sign – See Sign.
7. Alley – A public way which provides only secondary access to abutting property.
8. Amendment – Any change, revision or modification of the text of the ordinance or to the Official Planning and Zoning Map.
9. Animal Hospital or Veterinary Clinic – A place where animals are treated and accommodated by a veterinarian.
10. Apartment – A room or suite of rooms suitable for occupancy as a residence for one family.
11. Bed and Breakfast Establishment – A house in which the resident owner offers overnight accommodations and meal service to guests for compensation.
12. Block – A parcel of land abutting one street and surrounded by public streets, railroad rights-of-way, parks or the boundary line of the Town of Alberton.
13. Board of Adjustment – A body empowered to hear zoning variances and appeals on the enforcement and interpretation of the provisions of this ordinance. The Alberton Town Council maintains the powers of a Board of Adjustment under this ordinance.
14. Building – Any structure intended for shelter and use of persons, animals or property.

15. Building Height – The vertical distance from mean natural grade to the highest point on a building. Building height excludes chimneys, vents and antennae.
16. Community Residential Facility – A foster home, kinship foster home, youth shelter care facility, or youth group home operated under the provisions of 52-2-621 through 52-2-623 MCA.
17. Conditional Use – A use of land which is specifically listed as a conditional use in a zoning district, and which meets the purpose and intent of that district as well as the standards, criteria and procedures for establishing such a use. The Town Council may set specific conditions for such uses, all of which must be met prior to the approval of said use in the district.
18. Day Care – Less than 24 hour, out of home care for children.
19. Developer – Developer is a generic term used in this ordinance which means the landowner or person or firm who proposes to develop land. The developer may appoint a representative for all proceedings by this ordinance.
20. Development – The performance of any building, extraction, clearing, grading or excavating operation; the making of any material change in the use of a building, structure or land; and the division of land into two or more parcels.
21. District (zoning) - A geographic area within which development of certain uses and buildings is permitted and certain other uses and buildings may be developed upon approval of a conditional use permit.
22. Dwelling – Any building or portion thereof intended for residential purposes on a permanent basis.
23. Dwelling, Multiple Family – A building having accommodations for and occupied exclusively by more than two families or households on a permanent basis, which may include apartments, townhouses or condominium buildings.
24. Dwelling, Single Family – A detached building designed for occupancy by one family or household. Also includes manufactured homes that (a) comply with the National Manufactured Home Construction and Safety Standards Act or the Uniform Building Code at the time of production, (b) are at least 1,000 square feet in size, (c) are attached to a permanent foundation, (d) are connected to public water and sewer where available, (d) have a pitched roof, eaves and siding materials that are customarily used on site-built homes in the Town of Alberton, and (e) are built offsite in a factory on or after January 1, 1990. Recreational vehicles, mobile homes and travel trailers are not single family dwellings for the purposes of this ordinance.
25. Dwelling, Two Family – A detached or semidetached building designed for or occupied exclusively by two families or households living independent of each other.
26. Dwelling Unit – A space providing private living quarters for one household. A dwelling unit may include individual cooking and sanitation facilities. An apartment, single family residence and travel trailer are examples of dwelling units.
27. Easement – A grant by the property owner to the public, a corporation, or persons, of the use of land for specific purposes.



28. Group Home – An assisted living facility or nursing home; a residence for developmentally, mentally or disabled persons; a youth foster home, transitional living facility or the like; a halfway house, and a licensed adult foster care facility.
29. Height – see building height.
30. Home Occupation – Any occupation or profession carried out by members of a family residing on the premises, which is clearly incidental and secondary to the use of the dwelling purposes and does not change the character thereof. Home occupations do not include equipment or processes that create noise, vibration, glare, fumes, odors or electrical interference detectable to normal senses off the lot. In the case of electrical interference, no equipment or process is used that creates visual or audible interference in any radio or television receivers or causes fluctuations in line voltage off the premises.
31. Hotel – A building in which lodging is provided, with or without meals, and open to transient guests.
32. Improvements – Street grading and surfacing, curbs and gutters, sidewalks, crosswalks, water mains, sanitary and storm sewers, survey monuments and other facilities.
33. Large Scale Development – A large scale development is a project that will contain 50 or more residential lots or units, or is projected to generate 500 or more ADT.
34. Loading Space – An off-street space on the same lot as the use for the temporary parking of a commercial vehicle, while loading or unloading merchandise or material, which has appropriate means of access.
35. Lot – A tract of land of at least sufficient size to meet minimum zoning requirements for use, area, and to provide such yards and other open spaces as are herein required.
36. Lot Area – The total area within the boundary lines of the lot or parcel of land not including the public right-of-way.
37. Lot, Corner – A lot abutting upon two streets at their intersection.
38. Lot Line Adjustment – A change of an existing platted boundary line between fewer than 5 adjoining lots that meets the following criteria: a) Does not involve lots within more than one zoning classification; b) Is not one lot line adjustment in a series of lot line adjustments proposed as a way to circumvent the subdivision process; and c) Where both of the resulting parcels conform to the minimum lot area and width for zoning purposes. Lot line adjustments that do not meet those criteria are reviewed as subdivisions.
39. Lot of Record – A lot, the description of which is recorded in the Office of the Register of Deeds at the time of adoption of this ordinance.
40. Material (as in a material change to an application or plat) – Significant, substantially altering the proposal or having an impact on any of the review criteria, bringing the proposal out of compliance, or impacting the public's ability to have meaningful participation and comment.
41. Minor Change of Occupancy - A change in the use of a lot or primary structure on a lot. A minor change is one that has identical or lesser parking requirements, similar traffic generation potential, creates no additional signage (measured by square footage), and has, as determined by the zoning administrator, similar or lesser impacts on neighboring land uses.

42. Mobile Home – A detached residential dwelling unit designed for transportation after fabrication on streets or highways on its own wheels or in a trailer arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary supports, connections to utilities and the like.
43. Mobile Home Park – A tract of land designed and developed to accommodate mobile homes on lots on a lease or rental basis.
44. Non-conforming Use – A building, structure or use of land existing at the time of enactment of this ordinance which does not conform to the provisions of this ordinance.
45. Official Planning and Zoning District Map – The map showing the zoning districts of the Town of Alberton officially adopted by the Alberton Town Council.
46. Ordinance Permit – Any permit issued under this ordinance including a permit customarily called a zoning compliance permit, preliminary or final plat approval, rezoning, certification, amendment, variance, demolition or other action having the effect of permitting development.
47. Parking Space – An area surfaced for the purpose of, and sufficient area within, for storing one parked automobile and which accesses onto a street or alley. A typical parking space is 9' x 20'.
48. Plat – A map of subdivision recorded in the office of the Register of Deeds.
49. Setback – The shortest distance between the lot line and the building line, at grade, or any above grade extension that projects more than three feet from the outer wall at grade, of any building.
  - a. The front setback is measured from the lot line paralleling the public street on which the building is addressed to the nearest principal or accessory building.
  - b. The rear setback is measured from the rear lot line to any building. The rear lot line is generally parallel to the street. Corner lots have two rear yards, but except as provided in (a) above, may treat either as a side yards for the purpose of measuring setbacks.
  - c. The side setback is measured from the side lot line to the closest building.
50. Sign – Any outdoor advertising having a permanent location on the ground or attached to or painted on a building, including bulletin boards, billboards and name plates.
51. Street – A right-of-way, dedicated to public use, providing vehicular and pedestrian traffic.
52. Structure – Anything built, constructed, or erected which requires a permanent location on the ground, but not including fences.
53. Subdivision – The division of a tract or parcel into two or more lots for the purpose, whether immediate or future, of sale or lease for building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights-of-way, whether public or private, for access to or from such lots, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces.
54. Travel Trailer – Any portable unit designed to be used as a temporary dwelling for travel or recreational purposes. The term includes those units that contain toilet and lavatory facilities and those that do not. Travel trailer is synonymous with the term recreational vehicle.

55. Un-subdivided Land – Improved or unimproved land not divided into lots or parcels on any map of record.
56. Variance – A relaxation of the provisions of this ordinance so that it will not be contrary to the public interest and the purpose and intent of this ordinance.

**ARTICLE 7 – ORDINANCE EFFECT AND FORCE**

**13.701 Effect and Force**

This ordinance shall take effect and be in force from and after its passage and publication by the Town Council of the Town of Alberton.