



*Powell County*  
Development  
Regulations



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## **CHAPTER 1 - GENERAL PROVISIONS**

**Title** - These regulations shall be known as "The Development Regulations for Powell County, Montana."

**Authority** - These Development Regulations are adopted pursuant to Sections 76-2-201 through 76-2-228, MCA, The County Zoning Enabling Act; and Sections 76-1-101 through 76-6-606, MCA, Local Planning Enabling Act.

**Purpose** - These regulations have both general and specific purposes.

- A. The general purpose of these regulations, in addition to those stated in State Law, is to assure that changes in current land use are:
  - Consistent with the Powell County Comprehensive Plan, and are
  - Minimally impactful to agricultural operations, or are
  - Minimally impactful to existing residential uses, and are
  - Minimally impactful to requests for new single family residences.
- B. The specific purpose of these regulations is to implement the land use goals, objectives and policies set forth in the Powell County Comprehensive Plan as well as those purposes further specified in Appendix C.

**Jurisdiction** - The area included within the jurisdiction of these regulations shall be all of the unincorporated area of Powell County, Montana, except that area located within the jurisdiction of the Deer Lodge City-County Planning Board.

**Separability** - If any section or provision of these regulations is declared unconstitutional or invalid by a court of competent jurisdiction, that decision shall not affect the validity of these Regulations as a whole, or any part thereof other than the part declared to be unconstitutional or invalid.

## **CHAPTER II - DEVELOPMENT CERTIFICATE/ CONDITIONAL USE PERMIT REQUIRED**

These regulations set forth the requirements for Development Certificates and Conditional Use Permits.

- A. Development Certificate** - A Development Certificate must be obtained from the County Certificate Officer before any person changes existing land use to a residential use (through the construction or placement of a single family residence), or expand some existing commercial or industrial uses.

A Development Certificate will be issued only when the proposed change to residential use will meet the requirements specified in Chapter IV, V, and VI (General and Specific Requirements), and the conditions specified in Chapter III, (Procedures), of these regulations.

- B. Conditional Use Permit** - For uses other than those in II.A. a Conditional Use Permit must be obtained from the Permit Board before any person may begin to construct, place, move, or significantly expand approved uses identified in each District.

Such approved uses include new and sometimes expansion of commercial and industrial uses as well as multifamily dwellings, manufactured/mobile home parks. Also included are commercial feed lots, pig farms, and communication towers.

A Conditional Use Permit may be issued only when the proposed building, structure, parcel or use will meet the requirements specified in Chapter IV, V, and VI (General and Specific Requirements), and the conditions specified in Chapter III, (Procedures), of these regulations.

- C. Exceptions** - Nothing in these regulations shall be construed to prevent the use, development or recovery of any agricultural, mineral or forest resource (76-2-209, MCA). However, this exemption does not apply to the processing of agricultural, mineral or timber products.

### CHAPTER III - ADMINISTRATION AND PROCEDURES

- A. **Certificate Officer** - The County Commissioners shall designate a Development Certificate Officer who shall have the authority to receive and approve Development Certificate Applications which are consistent with these regulations.
- B. **Permit Officer** - The County Commissioners shall designate a Permit Officer to administer and enforce these regulations. The permit officer shall have the following duties:
  - 1. The Permit Officer shall receive applications for conditional use permits and variance requests; review such applications and their supporting plans; recommend issuance or denial of such applications; and conduct inspection of premises and properties which have an application filed on them or which have received a permit or variance.
  - 2. The Permit Officer shall serve as an advisor to the Certificate Officer, the Permit Board, the Board of Adjustment and the County Commissioners on matters relating to these regulations; prepare staff reports as required; and prepare and maintain records of all proceedings required or authorized under these regulations.
- C. **Permit Board** - The Powell County Permit Board shall review and act on applications for conditional use permits under the requirements and procedures set forth below.
- D. **Board of Adjustments** - The Powell County Board of Adjustments shall act on applications for variances under the requirements and procedures set forth in Chapter IX.

## **E. Procedures For Application, Review, Granting a Development Certificate**

1. Before commencing a change in land use, involving construction or placement of a single family residence, a person must submit a completed application form to the Certificate Officer. The application must include a sketch plan, showing the dimensions and shape of the lot, the sizes and location of the proposed single family residence and any other existing structures on the parcel. The application shall include a description of the current and proposed uses of buildings and land; the number of dwelling units proposed; and such other matters as may be necessary to determine conformance with these regulations.

Where the parcel of land contains a large acreage of agricultural, timbered, or otherwise undeveloped land, the sketch plan need show only the area currently developed and in which the change of land use will occur. The application should then indicate the approximate amount and location of undeveloped land in the parcel.

2. The Certificate Officer shall review the application to ensure the required information is complete. When the application and submitted information are complete, the Certificate Officer shall analyze whether the proposed building, structure, alteration, or use is permitted at the proposed location, and whether the proposal will comply with the provisions of these regulations.
3. Should the Certificate Officer find the proposed land use change is consistent with these regulations, he/she will approve the application and distribute copies as indicated on the application.
4. Should the Certificate Officer determine the proposed use change is not covered under a Development Certificate, he/she will refer the applicant to the Permit Officer who will rule on the application. A negative ruling by the Permit Officer may be appealed to the Board of Adjustments.
5. Construction, installation, alteration, placement or use must be consistent with the approved plans.
6. A Development Certificate permitting the land use change shall be in effect for one year from the date of approval. Extensions for the start of any construction activity may be given on an individual case basis, upon request of the applicant.

## **F. Procedure for Application, Review, and Granting a Conditional Use Permit**

The purpose of the conditional use permitting process is to provide a more detailed and comprehensive review of certain proposed developments that could significantly impact the community or neighboring properties. Protecting the public health, safety and welfare and assuring that the location or manner of development is appropriate in relation to existing uses.

1. No structure or land may be used for any purpose where the use meets the requirements of a conditional use under Chapter II, Permit Required, of these regulations, unless a conditional use permit has been granted through these procedures.
2. Conditional uses must comply with the requirements of Chapters IV, V, and VI and any additional conditions prescribed by the Permit Board relating to the following:
  - Adequate ingress and egress (legal and physical) to the property and proposed structures with particular concern for automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other emergency.
  - Adequate off-street parking and loading areas, where required, with particular attention to access, traffic flow, vehicular and pedestrian safety, and avoidance of adverse effects on neighboring properties and uses.
  - Absence of significant odor or air, water or noise pollution.
  - Location of garbage containers and garbage pickup to avoid adverse effects on neighboring properties and uses.
  - Availability, capacity, and quality of utilities and community services.
  - Adequate landscaping and adequate screening and buffering, where required (Appendix B).
  - Signs, with attention to preventing glare from lighting, promoting traffic safety, and maintaining harmony with adjacent properties by limiting scale, height, and size of the signs.
  - General compatibility with the Comprehensive Plan.

3. An accurate and complete written application for a conditional use must be submitted to the Permit Board through the Permit Officer. All applications for conditional use permits must be accompanied by plans drawn to scale, showing the dimensions and shape of the lot to be built upon; the sizes and locations on the lot of any existing buildings; the location and dimensions of the proposed buildings or alterations; and information which clearly states how the conditions for the use will be met, including the proposals relation to structures on adjacent parcels.
4. Notice shall be published in the official Powell County newspaper within 30 days of a completed application and at least 14 days in advance of a public hearing before the Permit Board. The owner of the property and immediate neighbors for which a conditional use is sought, or their agents, shall be notified of the hearing by certified mail at the proponents expense.
5. At the public hearing any party may appear in person, or through an agent or attorney, and give written or oral comment.
6. Before granting or denying any conditional use permit, the Permit Board shall make a written statement supporting their finding on the application. The finding will be to (1) approve, (2) approve with conditions, (3) deny, or (4) table the proposal. The written statement will be issued within 15 days of the finding and will identify the factual basis or reason(s) for the finding; cite the statute, rule, ordinance, resolution, or other legal authority for the finding and explain how the legal authority is interpreted by the government entity so as to authorize the finding and; provide information about any appeal or other process by which a person aggrieved by the finding may seek relief from the finding.
7. Following issuance of a Conditional Use Permit the Permit Officer shall periodically inspect the site to insure that the implementing actions are consistent with the approved permit.

## **G. Procedure for Application, Review, and Granting a Conditional Use Permit for Communication Towers**

The following requirements apply to all wireless telecommunications facilities regardless of the zoning district in which they are to be located.

1. In order to be considered for review, the applicant must file an application and demonstrate that the proposed tower or antenna is necessary, that opportunities for collocation on an existing tower are not feasible, and that there are not other alternate sites in the immediate vicinity. Also:
  - a. The applicant shall present a plan that indicates how the telecommunications facility will be screened or concealed from any adjacent residential area.
  - b. The applicant shall demonstrate that the tower must be located where it is proposed in order to service the applicant's service area. There shall be an explanation of why a tower and this proposed site is technically necessary.
2. Wireless telecommunication facilities shall be located on existing structures, including, but not limited to buildings, water towers, existing telecommunications facilities, utility poles and towers, and related facilities, to the extent feasible. In particular, applicants shall consider use of existing telephone and electric utility structures as sites for one or more personal wireless service facilities. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.
3. Some form of a security barrier is required. When fencing is used as a security barrier it shall be eight feet in height and shall surround any tower, its accessory equipment shelter and guy cables. Buffer landscaping is required.
4. Any lattice towers shall be painted a non-contrasting gray or board approved color which minimizes its visibility, unless otherwise required by the FCC or FAA.
5. No advertising is permitted anywhere on the facility, with the exception of identification signage. Such identification signage shall include telephone number of who to contact in the event of an emergency.
6. Towers shall not be artificially lighted except as required by the FAA or other governmental agency.
7. If at any time, the use of the facility is discontinued for 180 days, the facility may be declared abandoned. Upon abandonment or discontinuation of use, the carrier shall physically remove the communication facility within 90 days from the date of abandonment. "Physically remove" shall mean: removal of antennas, mount, equipment shelters and security barriers from the subject property, proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations, and restoring the location of the facility to its previous condition or other board approved condition. A financial guarantee may be required to assure physical removal.

## **CHAPTER IV - GENERAL REQUIREMENTS FOR DEVELOPMENT CERTIFICATE/CONDITIONAL USE PERMIT APPROVAL**

A Development Certificate/Conditional Use Permit will be issued only when the applicant demonstrates that the proposed development will comply with the following standards.

### **A. Developments May Not Interfere With Agricultural Operations**

1. Developments may not impede or diminish the quantity of, add sediments or other contaminants to, or otherwise adversely affect ground or surface water sources used for human consumption, livestock watering, or irrigation.
2. Developments may not obstruct or impair canals, ditches or other irrigation waterways; or interfere with the operation or function of headgates, culverts or other irrigation facilities.
3. Development and subsequent uses may not impede or cause conflict with the normal conduct of agriculture operations or uses.

### **B. Developments Must Be On Suitable Lands - Unless special measures approved by the Permit Board, as appropriate under Chapters III, IV, and V of these regulations, are taken to overcome the associated problems, developments are prohibited on slopes greater than 25%. Further:**

1. All new roads constructed between a public road and the property boundary for land use change purposes must provide legal access and meet County road standards specified in the Powell County Subdivision Regulations to insure ready access by emergency vehicles.
2. Grading and drainage facilities shall be designed to remove storm run-off waters and prevent accumulation of standing water.
3. All plans for approaches onto County roads will be reviewed and approved, in writing, by a County Commissioner prior to construction.
4. In addition, land use changes may need to comply with state or federal rules on some lands. Where such is the case, compliance is the responsibility of the applicant, and proof of such compliance may be required by the Permit Board.

**C. New Development Must Be Compatible With The County's Agricultural and Rural Character**

1. Developments shall be designed and constructed to avoid blocking or altering natural drainages.
2. Developments shall be designed and constructed to minimize the disturbance of stream banks and lake shores and riparian areas abutting such water bodies.
3. Telephone and power transmission lines shall be located with respect to natural terrain and vegetation to minimize visual impact, and to minimize disturbance of soil and vegetation.
4. All soil disturbances associated with land use changes will be treated for noxious weeds and revegetated within the earliest growing season. This responsibility rests with the certificate or permit holder.

## **CHAPTER V - SPECIFIC DISTRICT REQUIREMENTS FOR DEVELOPMENT CERTIFICATE/CONDITIONAL USE PERMIT APPROVAL**

- A. Rural Centers** - A series of land use districts offering a semi-rural living environment with a clustering of homes and supportive uses and a limited range of urban services. Uses within this district are a restricted range of urban activities including moderately high density residential, commercial, and light industrial uses commensurate with the ability to provide necessary services. Institutional, recreational, and light industrial uses are permitted, subject to review for impacts on adjacent properties. Site specific locations for different land uses are not designated.

In addition to the general requirements of Chapter IV, any additional Overlay District requirements shown in Chapter VI; and Landscape Buffers, if required (see Appendix B); the following specific standards apply.

**1. Permitted Land Uses (No Development Certificate Required)**

- a. Agricultural Uses, including accessory structures, except for commercial feed lots or pig farms.
- b. Home Occupations

**2. Permitted Land Uses (Development Certificate Required)**

- a. Single family residential uses including agricultural residences.
- b. Expansion of existing commercial uses by less than 1/3.

**3. Conditional Land Uses (Conditional Use Permit Required)**

- a. Expansion of existing commercial uses by more than 1/3.
- b. Expansion of existing industrial uses.
- c. New commercial or industrial uses.
- d. Multiple family dwellings.
- e. Manufactured/Mobile home parks.
- f. RV Parks.
- g. Communication Towers.

**4. Minimum Specifications for Certificates and Permits**

- a. Lots for residential construction must be at least 1 acre in size or be able to accommodate a water and sewage system.
- b. Lot size for commercial and industrial use shall be large enough to accommodate structural and traffic circulation needs, and to accommodate a water and sewage system.

**B. Agricultural District #1** - A land use district offering a semi-rural living environment with no urban services. Permits residential development at a moderate rural density. Commercial activities are generally those referred to as "cottage industries" and which meet the definition of Home Occupation. Light industrial and recreational uses may be permitted subject to review of site location, impacts on surrounding property and availability of services. Agriculture is recognized as an interim use.

In addition to the general requirements of Chapter IV, any additional Overlay District requirements shown in Chapter VI; and Landscape Buffers, if required (see Appendix B); the following specific standards apply.

**1. Permitted Land Uses (No Development Certificate Required)**

- a. Agricultural Uses, including accessory structures, except for commercial feed lots or pig farms.
- b. Home Occupations

**2. Permitted Land Uses (Development Certificate Required)**

- a. Single family residential uses including agricultural residences.

**3. Conditional Land Uses (Conditional Use Permit Required)**

- a. New commercial or industrial uses or expansion of such uses.
- b. Communication Towers.

**4. Minimum Specifications**

- a. New land divisions for single family residential use shall be 5 acres or larger.

- C. Agricultural District #2** - A land use district offering a rural living environment with no urban services. Permits residential development in a rural setting at a moderately low density. Encourages agricultural related uses and outdoor or seasonal recreational and related commercial uses. Industrial uses having a special need to locate in this rural area may be permitted subject to review.

In addition to the general requirements of Chapter IV, any additional Overlay District requirements shown in Chapter VI; and Landscape Buffers, if required (see Appendix B); the following specific standards apply.

**1. Permitted Land Uses (No Development Certificate Required)**

- a. Agricultural Uses, including accessory structures, except for commercial feed lots or pig farms.
- b. Home Occupations

**2. Permitted Land Uses (Development Certificate Required)**

- a. Single family residential uses including agricultural residences.

**3. Conditional Land Uses (Conditional Use Permit Required)**

- a. New commercial or industrial uses or expansion of such uses.
- b. Communication Towers.
- c. Campgrounds.

**4. Minimum Specifications**

- a. New lots created for single family residential use shall be 20 acres or larger.
- b. Lot size for commercial and industrial uses shall be large enough to accommodate necessary structures and traffic circulation needs and to accommodate a water and sewage system.

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- D. Agricultural District #3** - A land use district that is predominately agricultural and timber operations and other related activities. This district emphasizes protection of open space, watersheds, grazing lands, wildlife resources, soil and water resources, and the agricultural lifestyle and economy of the District. Permitted uses are outdoor recreational activities including accessory commercial uses and on-site resource-oriented industrial uses including agricultural and timber related operations.

The districts guidelines discourage residential development which is not consistent with agricultural or timber operations but allows rural residential development at a very low density that does not have negative consequences to agricultural and timber operations and other related activities. In order to provide flexibility and allow creativity in subdivision design, clustering of residences and seasonal homes through the use of Planned Unit Developments and other innovative concepts are permitted when they are located in areas suitable for such development.

In addition to the general requirements of Chapter IV, any additional Overlay District requirements shown in Chapter VI; and Landscape Buffers, if required (see Appendix B); the following specific standards apply.

**1. Permitted Land Uses (No Development Certificate Required)**

- 8
- a. Agricultural uses, including, accessory structures, except for commercial feed lots and pig farms.
  - b. Home Occupations.

**2. Permitted Land Uses (Development Certificate Required)**

- a. Single family residential uses including agricultural residences which may or may not require a mortgage exemption.

**3. Conditional Land Uses (Conditional Use Permit Required)**

- a. Expansion of existing commercial or industrial uses including outfitting and guiding operations and facilities and mineral or timber processing facilities.
- b. New commercial or industrial uses including new outfitting and guiding facilities and mineral or timber processing facilities.
- c. Commercial feed lots and pig farms.
- d. Communication towers.

#### 4. Minimum Specifications

- a. New lots created for residential, commercial or industrial uses shall be 160 acres or larger. Except as specified in (b) below.
- b. Any subdivision containing lots smaller than 160 acres must be part of a Planned Unit Development (PUD), and have an average density of not less than 160 acres and be authorized by a Conditional Use Permit. Such PUD's must address impacts on natural and cultural resources and social values and their effect on existing uses. It is intended that smaller lots be the exception, and be justified solely by topographic or geologic necessity, to conserve ecologically sensitive areas, and maintain the agricultural and open-space lifestyle of this District.
- c. Family transfers as listed in the State Subdivision and Platting Act are allowed provided they are not an attempt to evade Subdivision Regulations.
- d. Multiple residential structures on parcels of less than 160 acres in size are not allowed. More than one residential structure may be allowed on parcels of 160 acres and larger under a Conditional Use Permit. In addition to the Conditional Use Permit criteria of Chapters II, III and IV the residential structures must be located in reasonably close proximity to each other.

#### Add to Definitions

RESIDENTIAL STRUCTURE - A structure used as a private dwelling place or a sleeping place for one or more persons.

- E. Agricultural District #4** - A land use district in which the dominate uses are of agricultural and timber operations and other related activities. This district emphasizes protection of open spaces, watersheds, grazing lands, wildlife resources, soil and water resources, and the agricultural lifestyle and economy of the District. Permitted outdoor recreational activities including accessory commercial uses and on-site resource-oriented industrial uses including agricultural, mineral and timber related operations.

The district guidelines allow residential development consistent with agricultural or timber operations and permits rural residential development that does not have negative consequences to agricultural and timber operations and other related activities. In order to provide flexibility and allow creativity in subdivision design, clustering of residences and seasonal homes through the use of Planned Unit Developments and other innovative concepts are encouraged when they are located in areas suitable for such development.

In addition to the general requirements of Chapter IV, any additional Overlay District requirements shown in Chapter VI; and Landscape Buffers, if required (see Appendix B); the following specific standards apply.

**1. Permitted Land Uses (No Development Certificate Required)**

- a. Agricultural Uses, incl.accessory structures, except for commercial feed lots and pig farms.
- b. Home Occupations

**2. Permitted Land Uses (Development Certificate Required)**

- a. Single family residential uses including agricultural residences.
- b. Expansion of existing commercial or industrial uses.

**3. Conditional Land Uses (Conditional Use Permit Required)**

- a. New commercial or industrial uses including mineral and timber processing.
- b. Multiple family dwellings.
- c. Manufactured/Mobile home parks.
- d. Commercial feed lots and pig farms.
- e. Communication Towers.
- f. Campgrounds.

**4. Minimum Specifications**

- a. New lots created for single family residential use must be at least one acre in size or be able to accommodate a water and sewer system.
- b. Lot size for commercial and industrial uses shall be large enough to accommodate structural and traffic circulation needs, and to accommodate a water and sewage system.

## CHAPTER VI - SPECIFIC OVERLAY DISTRICT REQUIREMENTS

In addition to the requirements of Chapter IV and V, the following standards apply for uses and facilities in the Overlay Districts.

**A. Airport Safety Overlay District** - See Official County Land Use map, on file in the County Planning Office for location of this district.

1. **Basic Performance Standards** - The performance standards for this district are detailed in Federal Aviation Regulations Part 77 Objects Affecting Navigable Air Space.
2. **Use Restrictions** - No use within any district established by this chapter shall create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and other lights, result in glare in the eyes of pilots using the airport or otherwise impair visibility in the vicinity of the airport, created bird strike hazards, or in any way endanger or interfere with the operation of aircraft.

There shall be no residential use (including accessory residences ) within any approach district.

**B. Floodplain Overlay District** - This district is defined on some streams by the maps on file in the County Planning Office.

1. **Basic Performance Standards**

- a. See Title 76, Chapter 5, Montana Code Annotated.

2. **Use Restrictions**

- a. **Blackfoot River (Including the North Fork of the Blackfoot River)** - No new residential, commercial, or industrial structures are allowed within 25 yards of rivers edge or rivers floodplain. This does not apply to accessory agricultural structures.
- b. **Clark Fork River** - No residential, commercial, or industrial structures are allowed within the rivers floodplain. This does not apply to accessory agricultural structures.
- c. **Little Blackfoot River** - No residential, commercial, or industrial structures are allowed within the rivers floodplain. This does not apply to accessory agricultural structures.

**C. Important Wildlife Area Overlay District** - The District is generally defined by maps on file in the County Planning Office. Field reviews may result in adjustments to these maps.

**1. Basic Performance Standards**

(Reserved)

**2. Use Restrictions**

- a. Residential densities in this Overlay District shall be no more than one residence per 80 acres when expanding into this area. Residential use that fills in existing residential areas not affected by this restriction.

**D. Ground Water Recharge Overlay District** - This district is defined by maps on file in the County Planning Office.

**1. Basic Performance Standards**

(Reserved)

**2. Use Restrictions**

- a. Residential densities in this Overlay District shall be no more than one residence per 20 acres.

**E. Planned Unit Development (PUD) Overlay District** - This District is designated by the Planning Board upon petition by a land owner.

**1. Basic Performance Standards**

(See Powell County Subdivision Regulations)

**2. Use Restrictions**

(See Powell County Subdivision Regulations)

## **CHAPTER VII - NONCONFORMING USES AND STRUCTURES (RESERVED)**

## **CHAPTER VIII - AMENDMENTS TO THESE REGULATIONS**

- A. Proposals** - Proposals to amend, supplement, modify or repeal any of the provisions of these regulations may be initiated by the County Commissioners, the Planning Board or by petition of any interested resident or property owner. A Development Regulation Amendment Application shall be submitted to the County Commissioners through the Planning Board, which shall review the petition, consider its merits and make a recommendation to the County Commissioners.
  
- B. Planning Board Recommendation** - The Planning Board shall make timely written recommendations to the County Commissioners regarding proposed amendments to these Regulations.
  
- C. Procedures by County Commissioners**
  - 1. The County Commissioners shall follow procedures established in Section 76-2-205, MCA.

## **CHAPTER IX - BOARD OF ADJUSTMENT**

**A. Board of Adjustment** - A Board of Adjustment is hereby established in accordance with Sections 76-2-221 through 76-2-228, MCA. The County Commissioners shall appoint 5 members to the Board, each for a term of 2 years except that in the initial appointment, 2 members shall be appointed for a term of one year, and 3 members for a term of 2 years. Members of the Board may be removed from office by the County Commissioners for cause upon written charges and after public hearing. Vacancies on the Board shall be filled by resolution of the County Commissioners for the unexpired term of the member affected.

**B. Powers of the Board of Adjustment** - The Board shall have the following powers:

1. To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative official in the enforcement of these regulations.
2. To grant variances from the requirements of these regulations because of hardship when the granting will not be contrary to the public interest or this ordinance. "Hardship" refers to circumstances peculiar to the particular property or a non self imposed financial or economic difficulties.
3. To approve, conditionally approve, or deny any request for a variance from the requirements of these regulations. The Board must act on requests for variances in accordance with Subsection E, Requirements Governing Granting of a Variance.

**C. Proceedings of the Board of Adjustment**

1. The Board shall select one of its members as chairman and shall adopt rules necessary to conduct its affairs in keeping with the provisions of these regulations. Meetings shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. Meetings shall be open to the public.
2. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if a member is absent or fails to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the Board.

#### **D. Procedures for Variance Requests**

1. Requests for a variance from the Board of Adjustment are initiated by filing an Application for Variance with the Permit Officer. The Application for Variance must specifically set forth the reasons for requesting the variance.
2. The Board shall fix a reasonable time for the hearing of the variance request, give notice of the hearing at least 7 days prior to holding a public hearing, and shall notify the applicant by certified mail.
3. At the hearing any party may appear in person or be represented by an agent or attorney, and give comment, written or oral.

#### **E. Requirements for Granting a Variance**

1. To grant a variance the Board must make a finding that the granting of the variance will be in harmony with the general purpose and intent of these regulations, will not be injurious to the neighborhood, is the minimum variance that will make possible the reasonable use of the land, building or structure, and will otherwise not be detrimental to the public welfare.
2. In addition the Board must determine that:
  - a. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.
  - b. A literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of these regulations.
  - c. The special conditions and circumstances do not result from the action of the applicant.
  - d. Granting the requested variance will not confer on the applicant any special privilege that is denied by these regulations to other lands, structures, or buildings in the jurisdiction.
  - e. The result of granting of the variance will not conflict with the comprehensive plan.

#### **F. Procedures for Hearing and Acting on Appeals from Actions of Permit Board**

1. The Board of Adjustment shall hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by the Permit Board in the enforcement of these regulations.
2. Any person or any officer of the county government may file a notice of appeal of any decision made by an administrative person or body within 60 days of date the subject decision was made. The notice of appeal, submitted to the Permit Officer, must comply with the rules adopted by the Board of Adjustment.
3. The Permit Officer shall promptly transmit to the Board of Adjustment the notice of appeal and all papers constituting the record of the subject decision.
4. The Board of Adjustment shall fix a reasonable time for a hearing of the appeal, give public notice and notify the affected parties and neighbors. At the hearing any party may appear in person or be represented by agent or attorney.
5. The Board of Adjustment, in conformity with the provisions of these regulations, may reverse, affirm, wholly or in part, or modify the order, decision or action appealed and may make such order, decision, or action as deemed necessary, and to that end shall have the powers of the administrative official whose decision is appealed.

**G. Stay of Proceedings** - An appeal stays any further proceedings of the action appealed until the Board of Adjustment has heard and decided on the appeal under 76-2-226 (3), MCA.

#### **H. Appeals From Decisions of the Board of Adjustment**

1. Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, any taxpayer, or any officer, department or board of the county may present to the district court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within 30 days after the filing of the decision by the Board.
2. Upon submittal of a petition appealing a decision by the Board of Adjustment, the court and Board of Adjustment shall proceed in accordance with the provisions of 76-2-227 and 76-2-228, MCA.

## **CHAPTER X - FEES AND ENFORCEMENT**

- A. The County Commissioners shall establish, by resolution, a schedule of fees and charges and a collection procedure for conditional use permits, variances and appeals. Established fees are intended to cover any cash expenses of the county incurred as necessary public expenses related to processing the application. No action may be taken on any application or appeal until all applicable fees and charges have been paid in full.
- B. Enforcement
1. Whenever noncompliance of these regulations occurs, or is alleged to have occurred, any person including the Permit Officer may file a written complaint. The complaint, stating fully the causes and basis of the noncompliance, shall be filed with the Permit Officer. The Permit Officer shall properly record the complaint and immediately investigate and file a written report with the Permit Board.
  2. The Permit Officer through the Permit Board shall notify in writing the owner of the property alleged to be in noncompliance, by first class mail or by posting notice on the site. The notice shall describe the noncompliance, cite the sections of these regulations, and order the owner to attain compliance within 30 days.
  3. Any person who has been notified of a noncompliance of these regulations may:
    - a. Request an inspection by the Permit Officer to show that the property has been brought in compliance within the allowed 30-day period;
    - b. File a written request for an extension of time to attain compliance, and enter into good faith negotiations with the Permit Board to resolve the noncompliance; or
    - c. File an appeal to the Board of Adjustment in accordance with the provisions of Chapter IV of these regulations.
  4. Where a person fails to attain compliance within the specified time period, or to show on appeal that a violation did not occur, the Permit Board shall request that the county attorney commence legal action, as authorized under 76-2-210 or 76-2-211, MCA.
  5. Failure to comply with any requirements of these regulations, including conditions and safeguards established in connection with the granting of a variance or conditional use permit or any of the requirements for conditions imposed by the County Commissioners, shall constitute a misdemeanor. Penalties for a misdemeanor are contained in 76-2-211, MCA.

6. The owner or tenant of any building, structure, premises or part thereof, and any architect, builder, contractor, agent or other person who commits, participates in, assists, or maintains such failure to comply may be found guilty of a separate offense and suffer the penalties specified above.
7. Nothing set forth in this section shall prevent the County from taking other lawful action as is necessary to prevent or remedy any violation.

**DEFINITION OF TERMS USED IN THESE REGULATIONS**

**ACCESSORY:** Accessory buildings and uses are those customarily associated with and clearly subordinate to a principal building or use. On farms and ranches this included the normal types of outbuildings.

**ADJACENT:** Adjacent includes all lots or parcels that directly border a lot or parcel and all lots or parcels separated from that lot or parcel by only a public or private easement or right-of-way, including roads, railroads, and irrigation canals.

**AGRICULTURE:** Any use of land for the production of crops or livestock, or other animals including ranching, farming, dairying, grazing, pasturage, husbandry of poultry, forestry, horticulture and floriculture; "agriculture" includes:

- 1) any buildings, structures, machinery, equipment and practices associated with such production;
- 2) those accessory facilities and activities necessary to load, transport, store or dispose of agriculture products produced solely by the owner or operator on the premises;
- 3) any agricultural residence as defined in these regulations; or
- 4) any land classified as agricultural by the Powell County Assessor at the time of application.

"Agriculture" does not include commercial agricultural uses, as defined in these regulations, nor does it include "game farms".

**AGRICULTURAL RESIDENCE:** A residence located on a tract of agricultural land which contains more than 160 acres or a quarter section, provided the residence is occupied by the owner, operator or employee(s) of the agricultural operation.

**CAMPGROUNDS:** An area used for recreational purposes including temporary residence in tents, RV's, or trailers.

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**COMMERCIAL AGRICULTURE:** Any premises, facility, or use of land for the processing, storage, disposal, loading or transporting of (1) agricultural products produced off the premises or by other than the owner of facility, or (2) commercial products for use by agricultural operators. "Commercial agriculture" includes, but is not limited to, facilities such as grain elevators, railroad loading facilities, crop and meat processing plants, rendering plants, slaughterhouses, fertilizer plants, alfalfa dehydration plants and commercial feedlots as defined in these regulations.

**COMMERCIAL FEEDLOT:** Any premise on which at least 100 head of cattle or the equivalent number of animal units of other livestock animals are confined for the purpose of feeding or fattening for market, and where 25 percent or more of the animals are not produced by the owner or the facility. "Commercial feedlot" does not include the normal seasonal feeding or wintering of livestock in a traditional ranching manner.

**COMMERCIAL USE:** Any use of land for the sale, offering for sale, purchase, or any other transaction involving the handling or disposition of any article, commodity, substance, or service; also the occupancy or management of office buildings, and the use of structures or premises by professions and trades or persons rendering services.

**CONDITIONAL USE PERMIT:** A permit granted by the Permit Board as authorizing a specific change in land use in accordance with the Conditional Use Permit provisions of these regulations.

**COVENANT:** An agreement, in writing, of two or more parties by which any of the parties pledges himself to the others that something is done or will be done.

**DENSITY:** The number of dwelling units per gross acre. For the purposes of these regulations, density is based on gross acreage includes the entire development (roads, common open spaces, etc.). Density is not synonymous with lot size.

**DEVELOPMENT:** Any action which is required to receive approval and a Development Permit from Powell County under Chapter II of these regulations.

**DEVELOPMENT PERMIT:** A document issued by Powell County, authorizing a specific change in land use, as required under Chapter II. of these regulations.

**DWELLING UNIT:** A building or portion of a building providing separate cooking, eating, sleeping and living facilities for one family.

**EXCAVATION:** Excavation is the removal of soil, rubble, tailings, or other earth materials. Tillage (plowing, disking, harrowing, etc.) for agricultural, gardening, and landscaping purposes is not excavation. Excavation is included in the term grading, which also includes filling.

**EXPANSION:** Expansion is any remodeling, addition to, or replacement of a nonconforming structure that alters its exterior dimensions and/or results in an increase in lot coverage; or any change in a nonconforming use that expands the area occupied: i.e. an increase in the area occupied by parking spaces, outdoor sales or display area, or outdoor materials storage.

**HOME OCCUPATION:** A home occupation shall mean an accessory use consisting of a vocational activity conducted inside a dwelling unit or its accessory structures, and used only by the individuals who reside therein and one employee, provided that the home occupation:

- a. Does not result in noise or vibration, light, odor, dust, smoke, or other air pollution noticeable at or beyond the property line,
- b. Is clearly subordinate to the use of the lot for dwelling purposes and does not change the character of the lot,
- c. Does not include the outside unscreened storage of goods, materials, or equipment,
- d. Has signage limited to a nonilluminated identification sign two square feet or less in size,
- e. Does not exceed one-half the total floor area of the dwelling including activities carried out in an accessory structure with the exception of child care which may exceed this limit,
- f. Does not produce traffic volumes exceeding that produced by the dwelling unit by more than 16 average daily trips, and
- g. Does not include nursing homes, restaurants, or boarding houses.

**INDUSTRIAL USE:** Any use of land for the manufacture, fabrication, processing, reduction, or destruction of any article, substance, commodity, or any other treatment in such a manner as to change the form, character or appearance thereof, including warehouses, wholesale storage, storage elevators, truck storage yards, and gasohol or ethanol plants.

**MANUFACTURED HOME:** A structure, transportable in one or more sections, which, when erected on site, is 320 or more square feet, and which is built on a permanent chassis. These homes are designed to be used for residential purposes, with or without a permanent foundation when connected to the required utilities, and contain the necessary plumbing, heating, air-conditioning, and electrical systems. A home which does not meet the minimum size requirements stated above, is a manufactured home if it either (1) is certified as such by HUD pursuant to the federal Manufactured Home Construction and Safety Standards Act, 41 U.S.C Section 778 5401. et.seq., as amended, or (2) complies with the NFPA 501BANSI A 119.1 (1973, 1974 and 1975 editions).

**MANUFACTURED HOME PARK:** A parcel upon which two or more manufactured homes, occupied or intended to be occupied for dwelling purposes, are located.

**MANUFACTURED HOME SPACE:** A portion of ground within a manufactured home park designated for the permanent location of one manufactured home.

**MINIMIZE:** For the purposes of these regulations, "to minimize" (as in the number of access points or impacts on visually sensitive areas) means to show that no alternative plan for the proposed development will result in a smaller impact.

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**MOBILE HOME:** A transportable STRUCTURE which exceeds either 8 feet in width or 32 feet in length, is built on a chassis and is designed, when connected to the required utilities, to be used as a year round DWELLING UNIT with or without a permanent foundation.

**MOBILE HOME PARKS:** An area under single ownership or control designed primarily for the rental of portions of the area as spaces for occupied MOBILE HOMES.

**OUTDOOR MATERIAL HANDLING OR STORAGE:** Stockpiling, storage, processing, or packaging of materials for any reason (it need not be for commercial use), including the long term storage of construction materials and inoperative machinery or vehicles, that is not enclosed in a building and that is visible from a public street or road.

**PARCEL OF LAND:** Any contiguous quantity of undivided land in the ownership of the same person, group of persons, corporation or claimant.

**PERMIT BOARD:** The Powell County Permit Board formed pursuant to Title 76, Chapter 2, Part 2, MCA. Membership of the Permit Board is the same as the Planning Board but it operates separate from the Planning Board.

**PIG FARM:** An area where more than two pigs are kept for commercial purposes or as pets.

**PLANNED UNIT DEVELOPMENT (P.U.D.):** A land development project consisting of residential clusters, industrial parks, shopping centers, office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in a common ownership or use.

**PLANNING BOARD:** The Powell County Planning Board formed pursuant to Title 76, Chapter 1, MCA.

**PUBLIC FACILITY:** Any structure or facility constructed to serve the residents of a subdivision or the general public, such as parks, streets and roads, sidewalks, curbs, gutters or drainage swales, street lighting, utilities, and systems for water supply and sewage disposal.

**RESIDENTIAL USE:** The use of land for the location of a structure to be used as the private dwelling place or sleeping place of one or more persons.

**SET BACK:** The horizontal distance required between any structure and a specified object, boundary, lot line or right-of-way line.

**SKETCH PLAN:** A sketch plan is a general or conceptual site plan of a development. It must include the approximate location of all lot lines and streets, the approximate location and exterior dimensions all structures, the approximate location, size, and circulation pattern of all parking areas, and the approximate location and dimensions of all landscaped buffers.

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**STRUCTURAL ALTERATION:** The modification of a building that changes its exterior dimensions or its roof line(s).

**STRUCTURE:** Any object constructed or placed at a fixed location on the ground. Structures include buildings, mobile homes, walls, fences, and signs.

**SUPERFUND:** Refers to federal laws and programs addressing the problem of hazardous and toxic substances.

**VARIANCE:** The approved relaxation of the strict application of the terms of these regulations, where owing to special conditions a literal enforcement of the provisions of these regulations will result in an unnecessary hardship, where it will not be contrary to the public interest, and where the spirit of the ordinance will be observed and substantial justice done.

## BUFFERING/SCREENING REQUIREMENTS

**PURPOSE** - Landscaping requirements are an essential element in mitigating potential land use conflicts. The purpose of this appendix is to assure that the landscaped buffers required by these regulations effectively accomplish that goal. Screening requirements are added to the buffer requirements in some development districts.

**MINIMUM BUFFER REQUIREMENTS** - The width of required buffers shall vary with the nature of the uses being separated, the height of the buildings being separated, and the construction of the buffer. Table B.1. shows the basic buffer width required where the buffer consists of a level or gently sloping area of sod or ground cover and at least four major trees per hundred lineal feet of buffer. That table also shows where a solid fence, wall or berm is required as part of a buffer in order to block headlight glare.

**BUFFER WIDTH REDUCTION: BERMS** - The basic width requirements may be reduced where a vegetated berm is included in the buffer. The width reduction shall be twice the height of the berm, but the maximum permitted reduction shall be 10 feet. No berm shall have a slope of more than 3:1, except where a retaining wall is incorporated into the berm on the side opposite the use or public way being buffered.

**BUFFER WIDTH REDUCTION: ADDITIONAL PLANTINGS** - The basic buffer width requirements may be reduced where a greater density and diversity of plantings is included or retained in the buffer. The buffer width reductions permitted this section are cumulative and may result in a total reduction of up to 30%. The buffer width reductions permitted here are also cumulative with those permitted here.

- a. Major Trees - The required buffer width shall be reduced by 10% where five or more major trees per hundred lineal feet are planted or retained.
- b. Understory Trees - The required buffer width shall be reduced by 10% where five or more understory trees per hundred lineal feet are planted or retained. The understory trees must be of a different species than the major trees.
- c. Shrubs - The required buffer width shall be reduced by 10% where 20 or more shrubs per hundred lineal feet are planted or retained.

**MINIMUM BUFFER WIDTH** - No required buffer shall be less than half the basic buffer width or less than 10 feet in width, regardless of any reductions permitted above.

**BUFFER CROSSING/INCLUSIONS** - Buffers may be crossed by access driveways, utility lines, and pedestrian trails. A pedestrian trail may run along the length of a buffer, with its width, up to a maximum five feet, being included in the required buffer width.

TABLE B.1. - BUFFERING/SCREENING REQUIREMENTS

USE	USE IMPACTED	BASIC BUFFER WIDTH (FT.)	HEADLIGHT SCREENING
All Industrial	Any residential use or district	50	For Parking
Commercial	Any residential use or district	30	For Parking
Higher Density Residential	Any lower density residential use or district	30	

PLANT MATERIALS SPECIFICATIONS - Plant materials installed in required buffers shall be warranted for one year. Plant materials shall meet the American Standard for Nursery Stock and the following minimum specifications:

- a. All trees, major and understory, shall be containerized or bagged and burlapped stock in good conditions, with a caliper of at least 1.5 inch (measured one foot above grade) for deciduous trees and a height of at least six feet for coniferous trees; and
- b. All shrubs shall be minimum one gallon containerized stock in good condition.

MAINTENANCE - Perpetual maintenance of required buffers is required. Such requirement will be written in the covenants of a subdivision and be a requirement of any conditional use permit.

The Montana Supreme Court ruled in *Lowe v. City of Missoula*, 165 Mont. 38, 525 P.2d 551 (1974), that when cities and towns propose zoning or rezoning, they must consider the 12 points set forth in 76-2-304, MCA - the purpose section of the Municipal Zoning Enabling Act - and that a zoning regulation or rezoning is invalid unless it is enacted in accordance with the 12 criteria. Because 76-2-203, MCA, of the County Zoning Enabling Act, contains the same language, the *Lowe* ruling also applies to counties by inference.

A. Additional specific purposes of these development regulations is to promulgate and adopt such regulations that:

1. Are designed in accordance with the comprehensive plan.
2. Are designed to lessen congestion in the streets.
3. Will secure safety from fire, panic, and other dangers.
4. Will promote health and the general welfare.
5. Will provide adequate light and air.
6. Will prevent the overcrowding of land.
7. Will avoid undue concentration of population.
8. Will facilitate the adequate provision of transportation, schools, parks, and such other public requirements.
9. Give reasonable consideration to the character of the district.
10. Give reasonable consideration to the district's peculiar suitability for particular uses.
11. Give reasonable consideration to the conserving the value of buildings.
12. Will encourage the most appropriate use of land throughout the jurisdictional area.