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§ 180-48. Amendments; variances and rezoning [Amended 3-7-00, Ord. 00-04; 7-8-03, Ord. 03-12; 10-12-04, Ord. 04-16].

A. Amendments.

1. Requirements for change. Whenever the public necessity, safety, general welfare or good zoning practice justifies such action and after consideration and recommendation by the Planning Commission, as provided herein, the Council may change zone district boundaries, use groups or the regulations established by this chapter after a public hearing for which public notice is given.
2. Initiation of change. A proposed change of zone district boundaries or regulations may be initiated by the Council, the Planning Commission or by application of one (1) or more of the owners of property within the area requested to be changed .
3. Area required. Changes in the Zoning District Planning Map of the Town of Frisco involving any zoning district requires a minimum of one (1) acre in area for consideration, unless the area requested for rezoning abuts an existing zone district of the same general classification as that being requested on all or part of one (1) side. **[Amended 12-17-96, Ord. 96-27]**
4. Written statement. All requests for changes in the Zoning District Planning Map of the Town of Frisco must include a written statement outlining the reasons and intent of such a change. **[Amended 12-17-96, Ord. 96-27].**
5. Fees and expenses. All requests for changes in the Zoning Ordinance or the Zoning District Planning Map of the Town of Frisco, except as initiated by the Council or Planning Commission, shall be accompanied by a minimum fee of one hundred dollars (\$100.), together with such other costs as are determined by the town to be reasonable.**[Amended 12-17-96, Ord. 96-27]**
6. Hearing and recommendation. The Planning Commission shall recommend approval or disapproval, either in whole or in part, of a change initiated by an owner or owners of property within the area requested to be rezoned. Recommendations for such changes shall be presented to the Council and an ordinance embodying such changes in whole or in part may be adopted by the Council after public hearing, public notice of which is given. In the event of adoption by the Council of such changes in part, if such partial adoption has not been recommended as such by the Planning Commission, a favorable vote of at least three-fourths (3/4) of the members of the entire membership of the Council shall be necessary.
7. Protest against change. In case of a protest against changes in regulations or restrictions or changes in the zone district applicable to particular land,

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which protest is filed with the Town Clerk at least twenty-four (24) hours prior to the Council's vote on the change and is signed by the owners of twenty percent (20%) or more of the area of land extending a radius of one hundred (100) feet from the land which is subject to the proposed change, disregarding intervening public streets and alleys, such changes shall not become effective except by the favorable vote of two-thirds (2/3) of all the members of the Council.

B. Rezoning procedures. **[Amended 7-8-03, Ord. 03-12]**

1. Application Materials. All requests for rezoning shall be upon written application fifteen (15) copies addressed to the Planning Commission and Town Council, and shall contain the following information:
 - a) The names and addresses of the owners of the property.
 - b) A legal description of the property.
 - c) The names and addresses of all adjacent property owners within a radius of three hundred (300) feet of the property requesting the rezoning.
 - d) A detailed explanation of the request for rezoning, including all reasons for the request
 - e) Supporting documents and maps.
2. Rezoning Criteria. For the purpose of establishing and maintaining sound, stable, and desirable development within the Town, the applicant for rezoning shall establish that at least one of the following criteria is met:
 - a) The land to be rezoned was initially zoned in error or the rezoning is of a technical or corrective nature in order to conform zone district boundaries with lot lines;
 - b) Because of changed or changing conditions in a particular area or in the Town generally, it is in the public interest and reasonably necessary in promotion of the public health, safety or welfare to rezone a property to encourage development or redevelopment;
 - c) The rezoning is necessary to conform to the Town of Frisco Master Plan; or
 - d) The rezoning is necessary to provide land for a community related use that was not anticipated at the time of adoption of the Town of Frisco Master Plan, but which use is generally consistent with the policies and goals of said plan, is in the public interest, and is

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reasonably necessary in promotion of the public health, safety, or welfare.

3. Review Process. The application for rezoning shall be filed with the Community Development Department together with the payment of the associated fee to cover the cost of processing the application, publication and postage.
 - a) A complete application containing all of the application information shall be furnished to the Community Development Department not less than fifty-two (52) days prior to an upcoming Planning Commission meeting. Within this time frame the Community Development Department shall have two working days to determine if the application has the items necessary for review. The applicant shall within two working days supply the department with any items noted as missing from the submittal. If the necessary information has been provided within this period, the application is considered complete. **[Amended 10-12-04, Ord. 04-16]**
 - b) All complete applications will be placed on a Planning Commission meeting agenda for the preliminary hearing on a first come, first served basis. Such scheduling of applications is subject to change if an application is defined on the basis of deficiency as stated herein. Rezoning applications shall be subject to the noticing procedures outlined in Section 180-46.E.
 - c) At the preliminary hearing the Commission shall consider said application, hear comments and objections and request additional information or make preliminary recommendations and shall set the matter for public hearing at the next regular meeting of the Commission.
 - d) At the public hearing, the Planning Commission shall consider all submitted data, comments and objections and shall either continue the matter for further information and study for not more than thirty (30) days or shall render its decision to the Town Council and the applicant, recommending approval, disapproval or conditional approval of the application, and advise all persons present of the date when the matter shall appear on the agenda of the Town Council.
 - e) Upon receiving the recommendation of the Planning Commission, a rezoning ordinance shall be prepared for consideration by the Town Council, and scheduled for public hearing before the Council subject to the noticing procedures specified in Section

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180-46.E. Town Council shall approve, conditionally approve, or deny the application for rezoning.

- f) No request for a rezoning shall be reconsidered by the Planning Commission or Town Council until the expiration of six (6) months or a substantial change of circumstances shall have first occurred.
- g) Upon approval of any request for rezoning, the Community Development Department shall forthwith note the amendment of the official Zoning Map of the Town of Frisco, keep appropriate records thereof and notify the Clerk and Recorder of Summit County of said amendment of the official Zoning Map.

C. Power to authorize variances.

1. In establishing the provisions of this part, the Planning Commission hereby finds and determines that there may be exceptional or extraordinary circumstances or conditions which are applicable to properties within the Town that do not generally apply to the property, and such that denial of an application for relief would result in an inability to reasonably utilize property. Therefore, it is necessary to provide for such extraordinary relief in the form of variances. In reviewing such applications for variances, the burden shall be upon the applicant to meet the criteria set forth in this part.
2. Non-Use Variances. Authorization. Subject to the requirements of this part and this Zoning Code, Non-Use Variances are hereby authorized.
3. Due diligence. An applicant for a variance must prove that due diligence was exercised by the applicant before the condition giving rise to the request for a variance occurred. Due diligence shall require a persistent and reasonable inquiry to investigate relevant and applicable facts through both personal and professional actions required of any reasonably prudent person acting as a fiduciary exercising professional judgment and common sense. If an applicant fails to exercise due diligence in discovering, preventing or attempting to remedy a non-conforming condition the request for a variance shall be denied.
4. Criteria for Granting a Non-Use Variance. The variance application shall be reviewed on its own merits and Planning Commission shall not approve the variance unless all of the following criteria are met: **[Amended 12-17-96, Ord. 96-27]**
 - a) The property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district; and

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- b) That the extraordinary or exceptional physical condition of the property will not allow reasonable use of the property in its current zone in the absence of relief; and
 - c) That the granting of the variance will not have an adverse impact on the surrounding properties, the neighborhood, or the community as a whole.
 - d) The granting of a variance will not be detrimental to public health, safety and welfare or injurious to surrounding property values and neighborhood character.
 - e) The granting of the variance shall not be substantially inconsistent with any plans adopted by the Town.
 - f) The granting of the variance shall not materially weaken the general purpose of the Zoning Ordinance or its regulations.
 - g) The variance, if granted, shall only be to the extent necessary to afford a reasonable use of the property.
- (5) No variance authorizing a change in the permitted uses of property shall be granted.

(6) Application.

An application for a Non-Use Variance shall be filed with the Community Development Department with the appropriate fee. No other applications may be submitted concurrently with a variance application. An applicant must have received approval of a non-use variance prior to submitting any development application or any other related application. Additional application materials may be required at the discretion of the Community Development Department as needed to clarify the variance request. **[Amended 12-17-96, Ord. 96-27]**

(7) Hearings and notice.

The application for a Non-Use Variance shall be reviewed by the Planning Commission. Provisions for a public hearing, notice and appeals of a Planning Commission decision shall be in accordance with Section 180-46 of the Town Code. A complete application containing all of the applicable information shall be presented not less than fifty-two (52) days prior to the regular Planning Commission meeting at which it will be heard. The Community Development Department may, at its discretion and for good cause, require a longer submittal period. The applicant must contact the Community Development Department for further information on the application submittal process. **[Amended 10-12-04, Ord. 04-16]**

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(8) Conditions of approval.

Special conditions may be imposed upon any variance approval in order to alleviate or mitigate potential adverse impacts. Conditions must relate to the property and/or vehicle and may relate to specific persons or organizations which have a direct association with the use of the property as contemplated by the requested variance. Every variance authorized hereunder shall be transferable and shall run with the land.

(9) Expiration and termination of right.

A Non-Use Variance, together with the accompanying site or development plan granted pursuant to this Section shall expire within two years from the date of final approval if action has not been taken within said time. This time may be extended with the approval of the Planning Commission or Town Council, if the petitioner can show due cause. For purposes of this Subsection, action means obtaining a building permit or other applicable Town permit/license pursuant to the granting of the variance, or if a permit or license is not required, the right that is granted pursuant to the variance is put to use.