

SECTION 1 - GENERAL ADMINISTRATION

1.1 GENERAL PROVISIONS

1.1.1 Title and Applicability:

These Regulations shall be officially known and referred to as the “Archuleta County Land Use Regulations,” or “these Regulations”. The provisions of these Regulations shall apply to all development of buildings, structures and uses of land throughout unincorporated Archuleta County, whether such development is undertaken by a public, quasi-public or private entity, to the extent allowed by law. It does not apply to land within the territorial limits of any incorporated municipality.

1.1.2 Authority:

The County is required and enabled to control land use within the county by virtue of, among other authorities, Colorado Revised Statutes, as amended, Sections 24-65-101 *et seq.*, 24-67-101 *et seq.*, 24-65.1 *et seq.*, 29-20-101 *et seq.*, 30-28-101 *et seq.*, and these Regulations are hereby declared to be in accordance with all applicable statutes.

1.1.3 Jurisdiction:

These Regulations shall apply to the entire area of Archuleta County, Colorado, except within incorporated municipalities.

1.1.4 Purpose:

These Regulations are for the purpose of protecting the health, safety and general welfare of present and future inhabitants of Archuleta County, including:

- 1.1.4.1 To promote coordinated and sound development and to encourage innovation in agricultural land preservation and residential development or renewal so that housing demands may be met by a greater variety of types and design of housing units.
- 1.1.4.2 To provide for higher quality in site and land planning, to conserve open space and to provide more efficient and attractive open space.
- 1.1.4.3 To encourage use of land for purposes that shall best meet present and future needs of the County, while preserving as much as possible of the rural/small town character.
- 1.1.4.4 To minimize conflicts between the land uses with the interpretation of these Regulations.
- 1.1.4.5 To ensure that proposed developments adequately mitigate potential hazards to protect the rights, health, safety and well being of citizens of Archuleta County in conformance with these Regulations.
- 1.1.4.6 To recognize the rights of the applicant, the citizens and the community and to ensure that any proposed development does not create excessive burdens on County resources.

- 1.1.4.7 To provide for the proper arrangement, width and design of roads, in order to minimize traffic hazards and to provide for safe and convenient vehicular, bicyclist and pedestrian movement.
- 1.1.4.8 To ensure the provision of adequate and convenient: open spaces and recreation; rights-of-way and easements for roads, drainage and utilities; access for fire fighting apparatus; sites for schools and educational facilities; and related structures, light and air.
- 1.1.4.9 To avoid congested use by ensuring that land is subdivided into lots which are of adequate size and configuration for the purpose for which they are intended to be used.
- 1.1.4.10 To protect soil, water, aesthetics and other natural resources of the County from waste or degradation.
- 1.1.4.11 To regulate such other matters as the Planning Commission and Board of County Commissioners may deem necessary in order to protect the best interests of the public and of private property ownership.

1.1.5 Interpretation:

In the interpretation and application of these Regulations, the following criteria shall govern:

- 1.1.5.1 Whenever both a provision of these Regulations and any provision in any other law, ordinance, resolution, rule or regulation of any kind contain any restrictions covering any of the same subject matter, whichever regulations are more restrictive or impose higher standards or requirements shall govern.
- 1.1.5.2 The word “shall” is mandatory. The word “may” is permissive. Words used in the present tense include the future, and words used in the plural number include the singular, unless the context clearly indicates the contrary.
- 1.1.5.3 These Regulations shall not abrogate, abolish, repeal or annul any plat, easement, covenant or agreement placed of record prior to the effective date of these Regulations.

1.1.6 Relationship to Community Plan:

- 1.1.6.1 It is the intention of Archuleta County that these Regulations implement the planning policies adopted in the Community Plan for the County and the Town of Pagosa Springs. While this relationship is reaffirmed, it is the intent of the County that neither these Regulations nor any amendment to them may be challenged on the basis of any alleged nonconformity with the Community Plan.
- 1.1.6.2 Where a development proposal would be in substantial conflict with the Community Plan, an amendment to the Community Plan shall be required prior to any zoning or subdivision approvals for such proposal. A substantial conflict shall exist when a development proposal would result in changes from the designations of the Future Land Use Map in the Community Plan.

1.1.7 Effective Date:

These Regulations became effective April 18, 2002, and were originally adopted by the Board of County Commissioners on April 18, 2002. Development approved under previous regulations that received vested property rights shall be valid for the duration of that vested property right provided that all terms and conditions of the review procedures are followed. Existing legal uses that may become nonconforming by adoption of these Regulations shall become legal nonconforming uses subject to the provisions of Section 1.3.

1.1.8 Application to Developments in Process:

1.1.8.1 All applications for land use changes initiated on and after May 23, 2006, shall be reviewed pursuant to the review process and standards set forth in these Regulations, as amended by Resolution No.2006-13 and effective on that date. All applications for land use changes submitted for review prior to May 23, 2006, shall be reviewed pursuant to the process and under the criteria set forth in applicable portions of these Regulations in force prior to that date.

1.1.8.2 This entitlement to review all land use applications under prior regulations is limited to review of the then-presently pending stage of the application only; for example, a pending sketch plan application is reviewed under the prior regulations, but once that application is approved, the subsequent preliminary plan application is reviewed under the requirements of these Regulations. Such prior regulations are continued for that limited purpose only. Upon approval or denial of all such remaining applications, the prior regulations shall be deemed repealed. In no event shall resubmission of an application after its rejection or any application filed after the effective date of these Regulations be reviewed under any such prior regulations.

1.1.9 Amendment:

The Board of County Commissioners may amend, add to or delete from these Regulations after giving public notice of any such proposed changes and after holding a public hearing thereon.

1.1.10 Severability:

It is hereby declared to be the legislative intent that the provisions of these Regulations shall be severable as set forth below:

1.1.10.1 If any provision of these Regulations is declared to be invalid by a decision of any court of competent jurisdiction, it is hereby declared to be the legislative intent that the effect of such decision shall be limited to that provision or provisions which are expressly stated in the decision to be invalid. Such decision shall not affect, impair or nullify these Regulations as a whole or any part thereof, but the rest of these Regulations shall continue in full force and effect.

1.1.10.2 If the application of any provision of these Regulations to any parcel of land is declared to be invalid by a decision of any court of competent jurisdiction, it is hereby declared to be the legislative intent that the effect of such decision shall be limited to that parcel of land immediately involved in the controversy, action or proceeding in which the judgment or decree of invalidity was rendered, and such decision shall not

affect, impair or nullify these Regulations as a whole or the application of any provision thereof to any other parcel of land.

1.2 DECISION-MAKING BODIES

In order to carry out these Regulations, the following duties are delegated to the Archuleta County Planning Department, Board of County Commissioners, Planning Commission and the Board of Adjustment.

1.2.1 Planning Department:

All departments, officials and public employees of Archuleta County, vested with the authority to issue permits, shall conform to these Regulations and shall not issue permits, certificates or licenses for uses, buildings or premises in conflict with these Regulations. Any such permit, certificate or license issued in conflict with these Regulations shall be null and void. It shall be the duty of the Planning Department to enforce these Regulations.

1.2.2 Board of County Commissioners:

The Board of County Commissioners, in addition to all other powers and duties, has responsibility to hold meetings and hearings in a timely manner, and to render final decisions on all matters assigned to them by these Regulations.

1.2.3 Planning Commission:

In general, the Planning Commission shall be the land use planning group for the County. The Planning Commission will serve as an investigative and advisory group to the Board of County Commissioners in the administration of these Regulations, including preparation of needed amendments and additions to these Regulations. It may also advise the Board of County Commissioners on any other land use decisions when requested to do so by the Board. In addition, the following specific duties are assigned to the Planning Commission:

1.2.3.1 It shall be the duty of the Planning Commission to review applications for Conditional Use Permits, based on criteria and in accordance with procedures contained in Section 3.2.3 of these Regulations. After review, the Planning Commission shall make a recommendation to the Board for approval with or without conditions, or for disapproval with reasons for recommending disapproval.

1.2.3.2 It shall be the duty of the Planning Commission to study each proposed subdivision plat in connection with the Community Plan and the general character of the area, and to take into consideration the general requirements of the County, and the highest and best use of the land to be subdivided. Particular attention will be given to the specific requirements for parks, open space, school sites, public building sites, roads, utility and pedestrian easements, the adequacy of road connections, and the suitability of the land for development.

1.2.3.3 It shall be the duty of the Planning Commission to discourage the subdividing of lands that are far in advance of the need of the County; or that by their location cannot be efficiently served by public utilities, fire protection, police protection, roads maintained or other public services; or that are located in areas subject to flooding, or that are

topographically unsuitable for development; or that for any reason are being unwisely or prematurely subdivided.

1.2.3.4 It shall be the duty of the Planning Commission to encourage the replatting of lands deemed to be unsatisfactorily subdivided, are tax delinquent, and/or are under-developed, and therefore represent an obstacle to the orderly and efficient growth of the County.

1.2.3.5 It shall be the duty of the Planning Commission to encourage the coordinated platting of adjacent small parcels of land, and to this end the Planning Commission may require sketch plans for such coordinated platting, or shall arrange meetings of the several owners of such small parcels of land, or shall carry out the intent of this directive and the Community Plan by other means which are lawful and appropriate.

1.2.3.6 It shall be the duty of the Planning Commission to prepare, review, hold hearings upon, and amend the Community Plan for the County pursuant to C.R.S. 30-28-106, 107 and 108.

1.2.4 Board of Adjustment:

1.2.4.1 Establishment:

A Board of Adjustment (hereinafter referred to in this Section as "BOA") is hereby established.

1.2.4.2 Membership:

The Board of County Commissioners shall appoint the members of the Board of Adjustment, which shall consist of five (5) voting members. Each of the members of the BOA shall be a resident of the County. Until otherwise provided, the members of the BOA shall serve without compensation, except for reimbursement of actual expenses, and each member shall serve for five (5) years.

Until the Board of County Commissioners appoints the members of the BOA, the Board shall sit as the BOA. In that event, the membership of the BOA shall be three (3) members.

1.2.4.3 Powers and Duties:

The Board of Adjustment shall have the powers and duties granted by C.R.S. §30-28-117 and 118, including:

- (1)** To hear and decide appeals where it is alleged by the applicant that there is error in any order, requirement, decision or refusal made by an administrative official or agency based on or made in the enforcement of these Regulations, including the refusal to issue a building permit.
- (2)** To grant, upon an appeal relating to appellant's property, a variance from the strict application of any regulations regarding minimum setbacks, minimum lot width, minimum lot area, minimum floor area, maximum allowable building height or maximum separation permitted between an accessory structure and a

principal structure if, by reason of exceptional narrowness, shallowness, or shape of the specific piece of property at the time of the enactment of these Regulations, or by reason of exceptional topographic conditions, or other extraordinary and exceptional situation or condition of such piece of property, the strict application of these Regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the said property and provided that such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of these Regulations.

No appeal to the BOA shall be allowed for denial of rezoning, Conditional Use Permit, subdivision, PUD or for building use violations that may be prosecuted pursuant to C.R.S. §30-28-124 (1) (b).

1.2.4.4 Standards for the Grant or Denial of Variances:

- (1) The BOA may grant a variance *or Planning Staff may grant an administrative variance*¹ if all of the following are found to exist:
- a. Peculiar and exceptional practical difficulties or an unnecessary and unreasonable hardship will be imposed on the property owner if the provisions of these Regulations are strictly enforced.
 - b. Circumstances creating the hardship were created subsequently through no fault of the appellant.
 - c. That the property for which a variance is requested possesses exceptional narrowness, shallowness, shape or topography or other extraordinary and exceptional situation or condition which does not occur generally in other property in the same zoning or overlay district.
 - d. That the variance, if granted, will not diminish the value, use or enjoyment of the adjacent properties, nor curtail desirable light, air and open space in the neighborhood, nor change the character of the neighborhood.
 - e. The variance, if granted, will not be directly contrary to the intent and purpose of these Regulations or the Community Plan.

Appeals to the BOA are allowed and outlined in Section 1.2.4.5

- (2) Under no circumstances shall a variance be granted on the sole basis of personal convenience, profit or special privilege to the applicant.
- (3) Under no circumstance shall the BOA grant a variance to allow a use not permissible under the terms of these Regulations in the appropriate zone district.
- (4) Variances shall be granted only with respect to specific plans. Unless otherwise specified by the BOA, a variance may be transferred to successive owners prior to construction if no changes are made to the approved plan and shall run with the land after the construction of any authorized structures or structures and only for the life of such structures.

¹ Amended July 2010 (Res. 2010-32)

- (5) The BOA may condition the granting of a variance on the issuance of a building permit within a specific time period and may require the applicant to pursue completion of the construction with due diligence. If such conditions are not satisfied, the variance shall become null and void.
- (6) In order to insure that the protection of the public good and the intent and purpose of these Regulations is preserved, the BOA may impose any other condition upon the grant of a variance, including those categories of conditions which may be placed upon conditional use permits under Section 3 of these Regulations.

1.2.4.5 Procedure:

- (1) Appeals to the BOA must be made within thirty (30) days after the occurrence of the grievance or decision that is the subject of the appeal.
- (2) All appeals shall be in writing and in such form as shall be prescribed by the BOA. Every appeal shall indicate what provision of these Regulations is involved, what relief from these provisions are being sought, the ground upon which such appeal is being sought, and a site plan illustrating the manner in which the appeal or variance, if granted, would affect the subject property and adjacent uses. The applicant shall have the burden of demonstrating that the applicable standards of Section 1.2.4.4 have been met.
- (3) If the Board of County Commissioners acts as the BOA, decisions shall require a two-thirds concurring vote. If the Board of County Commissioners has appointed a separate BOA, the concurring vote of four out of five of the seated members of the BOA shall be necessary to reverse any order, requirement, decision or determination of any administrative official or agency or to decide in favor of the appellant.

1.2.4.6 Appeal from BOA Decisions:

Appeals from decisions of the BOA may be made to the District Court, as provided by law, with the BOA as defendant and with the full right and authority to appeal subsequent adverse rulings and decisions.

1.3 NON-CONFORMING LAND USE

1.3.1 Non-Conforming Lots:

- 1.3.1.1** In any district where permitted, a single family dwelling and customary accessory structures may be *erected and/or maintained on any single lot of record which exists as such at the time of adoption of these Regulations*². This provision shall apply even though such lot fails to meet the requirements of the zoning or overlay district in which it is located for area, or width, or both, provided, however, that the

² Amended October, 2006 (Res. 2006-29)

requirements of the zoning or overlay district for minimum setback dimensions shall be met unless a variance to said requirements has been granted by the BOA.

1.3.2 Non-Conforming Structures:

- 1.3.2.1** Structures lawfully existing prior to the effective date of these Regulations may be maintained in reasonable repair and subject to minor alterations and shall be exempt from these Regulations.
- 1.3.2.2** A structure conforming as to use but nonconforming as to height, setback, or lot coverage may be altered or extended providing the alteration or extension does not result in further violation of these Regulations or increase the nonconformity.
- 1.3.2.3** If a nonconforming structure or a structure containing a nonconforming use is destroyed by fire, flood, wind, explosion or act of God to an extent exceeding fifty (50) percent of the cost of replacement of the structure using new materials, a future structure or use on the property shall conform to the provisions of these Regulations. If destruction is determined to be less than fifty (50) percent, restoration shall be started within twelve (12) months of such calamity and completed within eighteen (18) months of initiating restoration.
- 1.3.2.4** Nothing in these Regulations shall require any change in the plans, construction, alteration, or designated use of a building for which construction work has commenced prior to the adoption of these Regulations, except that if the designated use shall be nonconforming, it shall be a discontinued use if not in operation within two (2) years of adoption of these Regulations.

1.3.3 Non-Conforming Uses:

- 1.3.3.1** A nonconforming use lawfully in existence prior to the adoption of these Regulations shall be allowed to continue as a nonconforming use despite transfer of ownership.
- 1.3.3.2** When a nonconforming use is discontinued for a period of one (1) year, such use of the area shall be discontinued, and further use of the property shall be for a conforming use.
- 1.3.3.3** Any existing use, including a salvage junk yard, which is nonconforming with respect to provisions for screening shall be discontinued if such screening is not provided within such time as is prescribed, or later adjusted, by the Board of County Commissioners.
- 1.3.3.4** A nonconforming use may not be changed to another nonconforming use.
- 1.3.3.5** A nonconforming use may not be enlarged.
- 1.3.3.6** Any nonconforming use in existence at the time of the effective date of these Regulations that has an assessed value of all improvements of one thousand dollars

(\$1,000.00) or less shall be discontinued within two (2) years from the effective date of nonconformance.

1.4 ENFORCEMENT

1.4.1 Responsibility for Enforcement:

The Director of County Development, or designee, shall be responsible for enforcing these Regulations, unless otherwise specifically stated.

1.4.2 Violations:

1.4.2.1 Types of Violations:

Any of the following shall be a violation of these Regulations and shall be subject to the remedies and penalties provided for in these Regulations:

- (1) **Use or Structure Without Permit or Approval:** To allow any use, or place any structure upon land that is subject to these Regulations without all of the approvals required by these Regulations;
- (2) **Activities Inconsistent with Land Use Regulations:** To erect, construct, reconstruct, remodel, alter, maintain, move, or use any building, a structure, or to engage in development or subdivision of any land in contravention of any regulation contained in these Regulations;
- (3) **Activities Without Permit or Approval** To engage in any subdividing, development, construction, remodeling or other activity of any nature upon land that is subject to these Regulations without all of the approvals required by the these Regulations;
- (4) **Activities Inconsistent with Permit:** To engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with the terms and conditions of any permit, approval, certificate or other form of authorization required in order to engage in such activity;
- (5) **Activities Inconsistent with Conditions:** To violate, by act or omission, any term, condition, or qualification placed by a Decision Making Body, upon any permit or other form of authorization;
- (6) **Increasing Intensity of Use:** To increase the intensity of use of any land or structure, except in accordance with the procedural requirements and substantive standards of these Regulations;
- (7) **Failure to Remove Improvements:** To fail to remove any improvement installed, created, erected or maintained in violation of these Regulations, or for which the permit has lapsed.

1.4.2.2 Continuing Violations

Each day that a violation remains uncorrected after receiving notice of the violation from the County shall constitute a separate violation of these Regulations.

1.4.3 Remedies and Enforcement Powers

The County shall have the following remedies and enforcement powers:

1.4.3.1 Withhold Permits:

- (1) The County may deny or withhold all approvals, certificates or other forms of authorization on any land or structure, or improvements thereon, upon which there is an uncorrected violation of a provision of these Regulations or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by the County, until the violation is corrected. This enforcement provision shall apply regardless of whether the current owner or applicant is responsible for the violation in question.
- (2) The County may deny or withhold all approvals, certificates or other forms of authorization on any land or structure or improvements owned or being developed by a person who owns, has developed or otherwise caused an uncorrected violation of these Regulations until the violation is corrected. This provision shall apply regardless of whether the property for which the permit or other approval is sought is the property in violation

1.4.3.2 Permits Approved with Conditions:

Instead of withholding or denying a permit, or other authorization, as described in Section 1.4.3.1(2), the County may grant such authorization subject to the condition that the violation is corrected.

1.4.3.3 Revoke Approval:

Any development approval or other form of authorization required under these Regulations may be revoked when the Director of County Development, or designee, determines: (1) that there is a departure from the plans, specifications, or conditions as required under terms of the approval, (2) that the development approval was procured by false representation or was issued by mistake, or (3) that any of the provisions of these Regulations are being violated.

Written notice of such revocation shall be served upon the owner, the owner's agent or contractor, or upon any person employed on the building or structure for which such approval was issued, or shall be posted in a prominent location; and, thereafter, no such construction shall proceed.

1.4.3.4 Stop Work:

With or without revoking any approval or authorization, the County may stop work on any land (including, but not limited to, road construction or site grading) or on any structure or building, on which there is an uncorrected violation of a provision of these Regulations or of a permit, or other form of authorization issued hereunder, in accordance with its power to stop work under its building codes.

1.4.3.5 Revoke Plan or Other Approval:

Where a violation of these Regulations involves a failure to comply with approved plans or conditions to which the approval of such plans was made subject, the Board of County Commissioners may, upon notice to the applicant and other known parties in interest (including any holders of building permits affected) and after a public hearing, revoke the plan or other approval or condition its continuance on (1) strict compliance with these Regulations; (2) the provision of security to ensure that construction is completed in compliance with approved plans, or (3) such other conditions as the Board may reasonably impose.

1.4.3.6 Injunctive or Other Equitable Relief:

The County may seek an injunction or other equitable relief in court, to stop any violation of these Regulations or of a permit, certificate or other form of authorization granted hereunder.

1.4.3.7 Abatement:

The County may seek a court order in the nature of mandamus, abatement, injunction or other action or proceeding, to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation.

1.4.3.8 Penalties:

The County may seek such criminal or civil penalties as are provided by Colorado law.

1.4.3.9 Other Remedies:

The County shall have such other remedies as are, and as may be from time to time, provided by Colorado law for the violation of land use, zoning, subdivision, sign or related land use standards and provisions.

1.4.3.10 Other Powers:

In addition to the enforcement powers specified in this Section, the County may exercise any and all enforcement powers granted by Colorado law.

1.4.3.11 Continuation:

Nothing in these Regulations shall prohibit the continuation of previous enforcement actions, undertaken by the County, pursuant to previous and valid ordinances and laws.

1.4.3.12 Remedies Cumulative:

The remedies and enforcement powers established in this Section shall be cumulative, and the County may exercise them in any order.

1.4.4 Enforcement Procedures:**1.4.4.1 Non-Emergency Matters:**

In the case of violations of these Regulations that do not constitute an emergency or require immediate attention, the Director of County Development or designee, shall give notice of the nature of the violation to the property owner, the permit holder or to any other interested party, after which the persons receiving notice shall have thirty (30) days from the date of the notice, to correct the violation before further enforcement action shall be taken. Notice shall be given in person or by United States Mail to the address provided by the owner on its application or to the address of the owner of record in the Archuleta County Assessor's Office. If the violation appears to endanger the public health or safety, the Director of County Development or designee may also post a notice in a visible location at the property location. Notices of violation shall state the nature of the violation and the time period for compliance and may state the corrective steps necessary and the nature of subsequent penalties and enforcement actions should the situation not be corrected.

1.4.4.2 Emergency Matters:

In case of violations of these Regulations that constitute an emergency situation, as a result of safety or public concerns or violations that will create increased problems or costs if not remedied immediately, the County may use the enforcement powers available under this Section without prior notice. However, the Director of County Development or designee shall attempt to give notice, simultaneously with beginning enforcement action. Notice may be provided to the property owner, to any other interested party, and to applicants for any relevant permit. Notice may be attempted to be given in person, or by United States Mail, to the address provided by the owner on its application, or to the address of the owner of record in the Archuleta County Assessor's Office, or by posting a notice in a visible location at the property location. Notices of violation shall state the nature of the violation and the nature of subsequent penalties and enforcement actions should the situation not be corrected.