

**APPLE VALLEY  
ORDINANCE O-2022-19**

**NOW THEREFORE**, be it ordained by the Council of the Apple Valley, in the State of Utah, as follows:

**SECTION 1:**        **ADOPTION** “10.07 Administrative And Development Review Procedures” of the Apple Valley Land Use is hereby *added* as follows:

**BEFORE ADOPTION**

10.07 Administrative And Development Review Procedures (Non-existent)

**AFTER ADOPTION**

10.07 Administrative And Development Review Procedures(*Added*)

**SECTION 2:**        **ADOPTION** “10.07.010 Purpose” of the Apple Valley Land Use is hereby *added* as follows:

**BEFORE ADOPTION**

10.07.010 Purpose (Non-existent)

**AFTER ADOPTION**

10.07.010 Purpose(*Added*)

The purpose of this chapter is to set forth procedures and standards for considering various types of land use and development applications to assure that applications of the same type will be processed on a uniform basis consistent with applicable law.

**SECTION 3:**        **ADOPTION** “10.07.020 Scope” of the Apple Valley Land Use is hereby *added* as follows:

**BEFORE ADOPTION**

10.07.020 Scope (Non-existent)

## AFTER ADOPTION

### 10.07.020 Scope(*Added*)

Any proposed land use or development which is subject to a procedure set forth in this chapter shall be submitted, reviewed and acted upon as provided in this chapter.

**SECTION 4:        ADOPTION** “10.07.030 General Requirements” of the Apple Valley Land Use is hereby *added* as follows:

## BEFORE ADOPTION

### 10.07.030 General Requirements (Non-existent)

## AFTER ADOPTION

### 10.07.030 General Requirements(*Added*)

The following requirements shall apply to any application required by this title:

A.        **Application forms.** Applications from a property owner shall be submitted on forms provided by the Zoning Administrator and in such numbers as reasonably required by the Zoning Administrator for a particular type of application.

B.        **Town initiated applications.** The Planning Commission or Town Council may initiate any action under this title without an application from a property owner. Notice, hearing and other procedural requirements of this chapter shall apply to an application initiated by the Town.

C.        **Development review sequence.** No subdivision, site plan or other development application shall be considered unless the approval which is requested in the application is allowed by the zone existing on the subject property. Also, Preliminary Plats may not be submitted until a proposed zoning map amendment has been approved.

D.        **Accurate information.** All documents, plans, reports, studies and information provided to the Town by an applicant in accordance with the requirements of this title shall be accurate and complete.

E.        **Determination of complete application.** After receipt of an application, the Zoning Administrator shall determine whether the application is complete. If the application is not complete, the Zoning Administrator shall notify the applicant in writing and shall:

1. Specify the deficiencies of the application;
2. State the additional information which must be supplied; and
3. Advise the applicant that no further action will be taken on the application until the deficiencies are corrected.

F. **Fees.** When an application is filed, the applicant shall pay to the Town the fee associated with such application as provided in the fee schedule adopted by the Town Council. Any application not accompanied by a required fee shall be returned to the applicant as incomplete.

1. Fees shall be nonrefundable except as provided in subsection G of this section.
2. Fees shall not be required for applications initiated by the Town.

G. **Remedy of deficiencies.** If an applicant fails to correct specified deficiencies within 30 days after notification thereof the Town may deem the application to be withdrawn. If the application is deemed withdrawn, the application and any associated fee shall be returned to the applicant upon request; however, the Town may deduct from the refund the cost of determining completeness of the application.

H. **Decision date.** The effective date of a decision or recommendation made under the provisions of this title shall be the date of the meeting or hearing in which the decision or recommendation is made by the decision-making body or official.

I. **Extensions of time.** Unless otherwise prohibited by this title, upon written request and for good cause shown, any decision-making body or official having authority to grant approval of an application may, without any notice or hearing, grant extensions of any time limit imposed by this title on such application, its approval, or the applicant. The total period of time granted by any such extension or extensions shall not exceed twice the length of the original time period.

**SECTION 5:            ADOPTION** “10.07.040 Public Hearing And Meetings” of the Apple Valley Land Use is hereby *added* as follows:

#### BEFORE ADOPTION

10.07.040 Public Hearing And Meetings (Non-existent)

#### AFTER ADOPTION

10.07.040 Public Hearing And Meetings(*Added*)

Any public hearing or meeting required under this title, as the case may be, shall be scheduled and held subject to the requirements of this section.

A. **Scheduling a public hearing or meeting.** An application requiring a public hearing or meeting shall be scheduled within a reasonable time following receipt of a complete application. The amount of time between receipt of an application and holding a public hearing or meeting shall be considered in light of:

1. The complexity of the application submitted;
2. The number of other applications received which require a public hearing or meeting;
3. Available staff resources; and
4. Applicable public notice requirements.

B. **Notice requirements.** The notice required by this land use ordinance shall be satisfied by actual notice or the notice specified as follows:

1. **Applicant notices.** For each land use application, the Town shall notify the applicant of the date, time, and place of each public hearing and public meeting to consider the application and of any final action on a pending application.

2. **Notice of public hearings and public meetings to consider general plan or modifications.**

a. The Town shall provide:

(1) Notice of the date, time, and place of the first public hearing to consider the original adoption or any modification of all or any portion of a general plan; and

(2) Notice of each public meeting on the subject.

b. Each notice of a public hearing of this section shall be at least ten calendar days before the public hearing and shall be:

(1) Published on Utah Public Notice website;

(2) Mailed to each affected entity; and

(3) Posted in at least three public locations within the Town or on the Town's official website.

c. Each notice of a public meeting of this section shall be posted at least 24 hours before the meeting on Utah Public Notice website and shall be posted in at least three public locations within the Town or on the Town's official website.

3. **Notice on adoption of modification.** Notice of public hearings and public meetings on adoption of modification of the land use ordinance.

a. The Town shall give:

(1) Notice of the date, time, and place of the first public hearing to consider the adoption of any modification of a land use ordinance; and

(2) Notice of each public meeting on the subject.

b. Each notice of a public hearing of this section shall be:

(1) Mailed to each affected entity at least ten calendar days before the public hearing;

(2) Posted for at least 10 calendar days in at least three public locations within the Town or on the Town's official website; and

(3) Published on Utah Public Notice website at least ten calendar days before the public hearing; or mailed at least ten days before the public hearing to:

(A) Each property owner whose land is directly affected by the land use ordinance change; and

(B) Each adjacent property owner within the parameters specified by this title.

c. Each notice of a public meeting of this section shall be at least 24 hours before the meeting and shall be posted in at least three public locations within the Town or on the Town's official website.

C. **Challenge of notice.** If notice required by this section is not challenged in accordance with applicable appeal procedures within 30 days from the date of the hearing or meeting for which notice was given, the notice shall be considered adequate and proper.

D. **Examination and copying of application and other documents.** Upon reasonable request, and during normal business hours, any person may examine an application and materials submitted in support of or in opposition to an application in the appropriate Town office. Copies of such materials shall be made available at reasonable cost.

E. **Public hearing and meeting procedures.** An application shall be considered pursuant to policies and procedures established by the decision-making body or official for the conduct of its meetings.

F. **Withdrawal of application.** An applicant may withdraw an application at any time prior to action on the application by the decision-making body or official. Application fees shall not be refundable if prior to withdrawal:

1. A staff review of the application has been undertaken; or
2. Notice for a public hearing or meeting on the application has been mailed, posted or published.

G. **Record of public hearing or meeting.**

1. Written minutes and a digital or tape recording shall be kept of all public hearings or meetings. Such minutes and a digital or tape recording shall include:

- a. The date, time, and place of the meeting;
- b. The names of members present and absent;
- c. The substance of all matters proposed, discussed, or decided, and a record, by individual member, of votes taken;
- d. The names of all citizens who appeared and the substance in brief of their testimony; and
- e. Any other information that any member requests be entered in the minutes.

2. The minutes, tape recordings, all applications, exhibits, papers and reports submitted in any proceeding before the decision-making body or official, and the decision of the decision-making body or official, shall constitute the record thereof. The record shall be made available for public examination as provided in subsection D of this section.

H. **Notification.** Notice of a decision by the decision-making body or official shall be provided to an applicant within a reasonable time.

**SECTION 6:** **ADOPTION** “10.07.050 General Decision-Making Standards” of the Apple Valley Land Use is hereby *added* as follows:

BEFORE ADOPTION

10.07.050 General Decision-Making Standards (Non-existent)

AFTER ADOPTION

10.07.050 General Decision-Making Standards(*Added*)

The decision-making standards set forth in this section are based on the fundamental distinction between legislative and administrative proceedings: Legislative proceedings establish public law and policy applicable generally, while administrative proceedings apply such law and policy to factually distinct, individual circumstances.

A. Legislative proceedings.

1. The following types of applications are hereby declared to be legislative proceedings:

- a. General plan amendment;
- b. Zoning map amendment;
- c. Land use text amendment; and
- d. Temporary regulations.

2. Decisions regarding a legislative application shall be based on the "reasonably debatable" standard, as follows:

a. The decision-making authority shall determine what action, in its judgment, will reasonably promote the public interest, conserve the values of other properties, avoid incompatible development, encourage appropriate use and development, and promote the general welfare.

b. In making such determination, the decision-making authority may consider the following:

(1) Testimony presented at a public hearing or meeting; and

(2) Personal knowledge of various conditions and activities bearing on the issue at hand, such as, but not limited to, the location of businesses, schools, roads and traffic conditions; growth in population and housing; the capacity of utilities; the zoning of surrounding property; and the effect that a particular proposal may have on such conditions and activities, the values of other properties, and upon the general orderly development of the Town.

c. The decision-making body should state on the record the basis for its decision.

**B. Administrative proceedings.**

1. The following types of applications are hereby declared to be administrative proceedings:

- a. Permitted use review;
- b. Conditional use permit;
- c. Site plan review;
- d. Special exception;
- e. Variance;
- f. Building permit;
- g. Nonconformities;
- h. Sign permit;
- i. Temporary use permit;
- j. Routine and uncontested matter;
- k. Administrative interpretation; and
- l. Appeal of administrative decision.

2. Decisions regarding an administrative application shall be based on the "substantial evidence" standard and shall include at least the following elements:

- a. A statement of the standards for approval applicable to the application;
- b. A summary of evidence presented to the decision-making body or official;
- c. A statement of findings of fact or other factors considered, including the basis upon which such facts were determined and specific references to applicable standards set forth in this title or other provisions of this Code; and



d. A statement of approval, approval with conditions, or disapproval, as the case may be.

**SECTION 7:** **ADOPTION** “10.07.060 General Plan Amendment” of the Apple Valley Land Use is hereby *added* as follows:

BEFORE ADOPTION

10.07.060 General Plan Amendment (Non-existent)

AFTER ADOPTION

10.07.060 General Plan Amendment(*Added*)

The general plan and any of its elements may be amended as provided in 10.05.020 of Apple Valley Town Code.

**SECTION 8:** **ADOPTION** “10.07.070 Zoning Map And Text Amendments” of the Apple Valley Land Use is hereby *added* as follows:

BEFORE ADOPTION

10.07.070 Zoning Map And Text Amendments (Non-existent)

AFTER ADOPTION

10.07.070 Zoning Map And Text Amendments(*Added*)

A. **Purpose.** This section sets forth procedures for amending the provisions of this title and the zoning map.

B. **Authority.** The Town Council may from time to time amend the text of this title and the zoning map as provided in this section. Amendments may include changes in the number, shape, boundaries, or area of any zoning district, zoning district regulations or any other provision of this title. The provisions set forth herein shall not apply to temporary land use regulations which may be enacted without public hearing in accordance with [section 10.07.200](#) of this chapter.

C. **Initiation.** Proposed amendments to the text of this title and the zoning map may be initiated by the Town Council, Planning Commission or a property owner affected by a proposed amendment as provided in subsection D1 of this section.

D. **Procedure.** Zoning text and map amendments shall be considered and processed as provided in this subsection.

1. An application shall be submitted to the Zoning Administrator in a form established by the administrator along with any fee established by the Town's schedule of fees. The application shall include at least the following information:

a. The name, address and telephone number of the applicant and the applicant's agent, if any;

b. The name and address of every person or company the applicant represents;

c. The requested amendment and reasons supporting the request; and

d. If the proposed amendment requires a change in the zoning map, the application shall include:

(1) An accurate property map showing present and proposed zoning classifications;

(2) All abutting properties showing present zoning classifications; and

(3) An accurate legal description and an approximate common address of the area proposed to be rezoned.

(4) A letter from power, sewer and water providers, addressing the feasibility and their requirements to serve the project.

e. If the proposed amendment requires a change in the text of this title, the application shall include chapter and section references and a draft of the proposed text.

2. After the application is determined to be complete, the Zoning Administrator shall prepare a staff report evaluating the application.

3. The Planning Commission shall hold a public hearing on the application as provided in [section 10.07.040](#) of this chapter. Following a public hearing the Planning Commission may recommend for approval, approval with modifications, or denial thereof to the Town Council.

4. Following receipt of a recommendation from the Planning Commission, the Town Council shall hold a public meeting on the application as provided in [section 10.07.040](#) of this chapter. The Town Council may approve, approve with modifications, or deny the proposed amendment.

5. The Planning Commission or Town Council may also continue or table an item.

A. If an application is continued it shall be placed on the next meeting agenda and may not be continued more than once after that.

B. If an application is tabled for any reason, it shall be tabled for a specific period of time, but not to exceed 90 days.

C. If an application is not placed back on an agenda within the required times periods, it shall be deemed to be denied.

E. **Approval standards.** A decision to amend the text of this title or the zoning map is a matter within the legislative discretion of the Town Council as described in subsection 10.07.050 A of this chapter. In making an amendment, the following factors should be considered:

1. Whether the proposed amendment is consistent with goals, objectives and policies of the Town's general plan;

2. Whether the proposed amendment is harmonious with the overall character of existing development in the vicinity of the subject property

3. The extent to which the proposed amendment may adversely affect adjacent property; and

4. The adequacy of facilities and services intended to serve the subject property, including, but not limited to, roadways, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection.

F. **Appeal of decision.** Any party adversely affected by a decision of the Town Council to amend the text of this title or the zoning map may, within 30 days after such decision, appeal to the district court as provided in Utah Code Annotated section 10-9a-801, as amended.

G. **Effect of approval.** Approval of an application to amend the provisions of this title or the zoning map shall not be deemed an approval of any conditional use permit, site plan or other permit. Approval of such permits shall be obtained in accordance with applicable provisions of this title.

H. **Effect of disapproval.** Town Council denial of an application to amend the provisions of this title or the zoning map shall preclude the filing of another application covering substantially the same subject or property, or any portion thereof, for one year from the date of the disapproval, except as follows:

1. Another application may be sooner considered if:

a. The Planning Commission determines a substantial change in circumstances has occurred to merit consideration of the application. Substantial change may include:

(1) A significant change in the affected land area;

(2) An agreement with the applicant reducing overall density and incorporating significant design changes including reduced building height, increased setbacks, or other changes resulting in reduced impact on adjacent land uses;

(3) Changes in the neighborhood including recent zone changes or land use amendments and/or new roads or other infrastructure to serve the area proposed for the change.

b. The application is for a change to a different zone.

2. The Town Council or Planning Commission may propose any text or zoning map amendment at any time.

**SECTION 9: ADOPTION** “10.07.080 Permitted Use Review” of the Apple Valley Land Use is hereby *added* as follows:

#### BEFORE ADOPTION

10.07.080 Permitted Use Review (Non-existent)

#### AFTER ADOPTION

10.07.080 Permitted Use Review (*Added*)

**A. Purpose.** This section sets forth procedures for reviewing permitted uses in public facility, commercial, business and industrial zones to determine compliance with applicable requirements of this title. Such review is not required for uses in agricultural, residential, and open space zones.

**B. Authority.** The Zoning Administrator is authorized to review and approve applications for permitted uses in public facility, commercial, business and industrial zones as set forth in this section.

**C. Initiation.** A property owner, the owner's agent, or a lessee may request a permitted use review as provided in subsection D1 of this section.

**D. Procedure.** Permitted use applications shall be considered and processed as provided in this subsection.

1. A complete application shall be submitted to the Zoning Administrator in a form established by the administrator along with any fee established by the Town's schedule of fees. The application shall include at least the following information:

a. The name, address and telephone number of the applicant and the applicant's agent, if any;

b. The address and parcel identification of the subject property;

c. The zone, zone boundaries and present use of the subject property;

d. A description of the proposed use;

e. A plot plan showing the following:

(1) Applicant's name;

(2) Site address;

(3) Property boundaries and dimensions;

(4) Layout of existing and proposed buildings, parking, landscaping, and utilities; and

(5) Adjoining property lines and uses within 100 feet of the subject property; and

f. Other information needed to demonstrate the permitted use conforms to applicable provisions of this title.

2. After an application is determined to be complete, the Zoning Administrator shall approve, approve with conditions, or deny the application pursuant to the standards set forth in subsection E of this section. Any conditions of approval shall be limited to conditions needed to conform the permitted use to approval standards.

3. After making a decision, the Zoning Administrator shall give the applicant written notice of the decision.

4. A record of all permitted use reviews shall be maintained in the office of the Zoning Administrator.

**E. Approval standards.** The following standards shall apply to approval of a permitted use. A permitted use shall:

1. Be allowed as a permitted use in the applicable zone;

2. Conform to development standards of the applicable zone;

3. Conform to applicable regulations of general applicability and regulations for specific uses set forth in this title; and

4. Conform to any other applicable requirements of this Code.

**F. Appeal of decision.** Any person adversely affected by a decision of the Zoning Administrator regarding a permitted use review may appeal to the Appeals Board in accordance with the provisions of [section 10.07.190](#) of this chapter.

**G. Effect of approval.** Approval of a permitted use shall authorize an applicant to engage in the permitted use subject to any conditions of approval. Approval of a permitted use shall not be deemed an approval of any conditional use permit, site plan or other permit. Approval of such permits shall be obtained in accordance with applicable provisions of this title.

**H. Amendments.** The procedure for amending any permitted use approval shall be the same as the original procedure set forth in this section.

**I. Revocation.** A permitted use approval may be revoked upon failure to comply with original conditions.

**J. Expiration.** A permitted use approval shall expire and have no further force or effect if the building, activity, construction or occupancy authorized by the approval is not commenced within 12 months after approval.

**SECTION 10: ADOPTION** “10.07.090 Conditional Use Permit” of the Apple Valley Land Use is hereby *added* as follows:

#### BEFORE ADOPTION

10.07.090 Conditional Use Permit (Non-existent)

## AFTER ADOPTION

### 10.07.090 Conditional Use Permit(*Added*)

**A. Purpose.** This section sets forth procedures for considering and approving conditional use permits for Industrial, Open Space and RV Park Zones.

**B. Authority.**

1. The Planning Commission is authorized to issue conditional use permits for the following uses for Industrial, Open Space and RV Park Zones:

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~~Agricultural industry.~~

~~Agritourism activities.~~

~~Animal specialties.~~

~~Assisted living facility.~~

~~Greater heights than permitted by this Code in all zones except residential and residential agricultural zones.~~

~~Greater size than permitted by this Code in all zones except residential and residential agricultural zones.~~

Industrial- Concrete, Gravel, Asphalt, Mining, Agricultural, Sewage, Wood, Recycling

Open Space- Farm and Buildings, Livestock, ATV Trails, Building Height

RV Park- Sales, Clubhouse, Dwelling

~~Metal building in commercial and residential zones.~~

~~Multi family in commercial zones.~~

~~Public stable.~~

~~Reception center.~~

~~Recreation and entertainment, outdoor.~~

~~2. The Zoning Administrator is authorized to issue conditional use permits for the following uses: Animals and fowl for recreation and family food production. Greater size accessory buildings than permitted by this Code in residential zones. Greater size accessory buildings than permitted by this Code in residential and residential agricultural zones. Greater height accessory buildings than permitted by this Code in residential and residential agricultural zones.~~

**C. Initiation.** A property owner, or the owner's agent, may request a conditional use permit as provided in subsection D 1 of this section.

**D. Procedure.** An application for a conditional use permit shall be considered and processed as provided in this subsection.

1. A complete application shall be submitted to the office of the Zoning Administrator in a form established by the administrator along with any fee established by the Town's schedule of fees. The application shall include at least the following information:

- a. The name, address and telephone number of the applicant and the applicant's agent, if any;
- b. The address and parcel identification of the subject property;
- c. The zone, zone boundaries and present use of the subject property;
- d. A description of the proposed conditional use;
- e. A plot plan showing the following:
  - (1) Applicant's name;
  - (2) Site address;
  - (3) Property boundaries and dimensions;
  - (4) Layout of existing and proposed buildings, parking, landscaping, and utilities; and
  - (5) Adjoining property lines and uses within 100 feet of the subject property;
- f. Traffic impact analysis, if required by the Town Engineer or the Planning Commission;



- g. A statement by the applicant demonstrating how the conditional use permit request meets the approval standards for the conditional use desired; and
  - h. Such other and further information or documentation as the Zoning Administrator may deem necessary for proper consideration and disposition of a particular application.
- 2. After the application is determined to be complete, the Zoning Administrator shall schedule a public meeting before the Planning Commission as provided in [section 10.07.040-7-4](#) of this chapter or shall review the application to determine if it meets the standards for an administrative conditional use permit.
- 3. A staff report evaluating the application shall be prepared by the Zoning Administrator for a conditional use permit that will be reviewed by the Planning Commission.
- 4. The Planning Commission shall hold a public meeting and shall thereafter approve, approve with conditions, or deny the application pursuant to the standards set forth in subsection E of this section. A conditional use shall be approved if reasonable conditions are proposed or can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards. If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with the applicable standards, the conditional use may be denied.
- 5. After the Planning Commission or Zoning Administrator makes a decision, the Zoning Administrator shall give the applicant written notice of the decision.
- 6. A record of all conditional use permits shall be maintained in the office of the Zoning Administrator.

**E. Approval standards.** The following standards shall apply to the issuance of a conditional use permit:

- 1. A conditional use permit may be issued only when the proposed use is shown as conditional in the zone where the conditional use will be located, or by another provision of this title.
- 2. Standards for each use must be reviewed. Specific standards are set forth for each use in subsections E2a through E2hg of this section:
  - a. *Standards for a reception center.*

- (1) Hours of operation must be compatible with adjoining uses and comply with Town noise regulations.
- (2) Parking must be provided.
- (3) The use of on street parking to provide up to 40 percent of the required parking may be permitted if adjoining uses are not residential uses and the street is fully improved.
- (4) The center must have an approved site plan.
- (5) If beer, wine, or other alcoholic beverages are served, the center must be licensed by the state alcohol control board.

b. *Standards for an agricultural industry.*

- (1) Adequate fencing and/or enclosures must be provided to ensure animals and fowl are confined safely and in conformance with acceptable animal husbandry standards.
- (2) Applicant must provide a plan for how manure will be handled to prevent it becoming a nuisance and must follow the plan.
- (3) Evidence must be provided on how the applicant will maintain control of flies and vermin.
- (4) Animal enclosures used for intensive animal feeding operations must be at least 25 feet from any adjacent parcel that, at the time the applicant first seeks the conditional use, is zoned residential or residential-agricultural pursuant to chapters 13 or 14 of this title.

~~e. *Standards for a public stable.*(1) Adequate fencing and/or enclosures must be provided to ensure horses are confined safely and in conformance with acceptable animal husbandry standards.(2) Applicant must provide a plan for how manure will be handled to prevent it becoming a nuisance and must follow the plan.(3) Evidence must be provided on how the applicant will maintain control of flies and vermin.(4) Site must contain adequate off-street parking for customers. All trailers must be contained on site.(5) Barns must be located at least 30 feet from any adjacent parcel that, at the time the applicant first seeks a conditional use permit, is zoned residential or residential-agricultural.d. *Standards for an assisted living facility.*(1) The facility shall comply with building, safety, and health regulations applicable to similar structures.(2) The facility shall be licensed by the state.(3) A site plan shall be approved for the facility to ensure adequate parking and landscaping are installed.e. *Standards for greater heights than permitted by this Code.*(1) The height may not be~~

greater than two stories or 1.5 times the average height of the immediately adjacent buildings, whichever is greater and the building must be of compatible architecture with immediately adjacent buildings.(2)——A greater height conditional use permit may not be issued for a flag lot if the proposed structure is higher than the average height of all residential structures within a 300-foot radius of the proposed structure.(3)——A greater height accessory building must be set back a minimum of five feet from side and rear property lines when the adjoining property is zoned or used for single family residential use.f.——Standards for greater size than permitted by this Code.(1)——The greater size building desired must be of compatible architecture with immediately adjacent buildings.(2)——At least 50 percent of the lot on which the building is located must remain free of buildings.(3)——The building must be for a use permitted in the zone in which it is located.g.——*Standards for animals and fowl for recreation and family food production.*(1)——Adequate fencing must be provided to ensure animals and fowl are confined safely.(2)——Applicant must provide a plan for how manure will be handled to prevent it becoming a nuisance and must follow the plan.(3)——Evidence must be provided on how the applicant will maintain control of flies and vermin.(4)——The number of fowl will be limited by the point system used in section 10-37-15 of this title.(5)——Livestock numbers may be limited at the administrator's discretion based on the size of the lot and the facilities available to contain and protect the animals.h.——*Standards for metal buildings.*(1)——In residential (R-1) zones the height and size may not be greater than permitted in the zone.(2)——The building must meet the following design standards:(A)——Exterior building materials shall be durable, require low maintenance, and be of the same or higher quality as surrounding developments.(B)——Details of proposed colors and materials, including color chips, samples, and colored building elevations, shall be shown on building plans when a development project application is submitted. Colors shall be compatible with surrounding structures.(C)——Reflective surfaces or colors which may produce excessive reflections or glare that may create a potential safety problem are prohibited.(D)——The faces of the building visible from nearby streets must include architectural relief items of non-metal materials including wood, stone, or stucco.i.——*Standards for animal specialties.*(1)——Adequate fencing and/or enclosures must be provided to ensure animals are confined safely and in conformance with acceptable animal husbandry standards.(2)——Applicant must provide a plan for how manure will be handled to prevent it becoming a nuisance and must follow the plan.(3)——Evidence must be provided on how the applicant will maintain control of flies and vermin.(4)——Animal enclosures used for intensive animal feeding operations must be at least 25 feet from any adjacent parcel that, at the time the applicant first seeks the conditional use, is zoned residential or residential agricultural pursuant to chapters 13 or 14 of this title.j.——*Standards for agritourism activities.*(1)——Hours of operation must be compatible with adjoining uses and comply with Town noise regulations.(2)——On-site parking must be provided.(3)——The use of on street parking to provide up to 40 percent of the required parking may be permitted if adjoining uses are not residential uses and the street is fully improved.(4)——In agricultural zones, this use must be accessory to an established agricultural

~~use.k. In order to promote and preserve commercial growth and to allow infill development of empty and vacant lots in the area designated as downtown on the general map, vacant parcels zoned for commercial uses as listed in this title may, as a conditional use, be allowed for multi-family residential use if the following criteria are met:1. No habitable building has been on the parcel for the previous three years.2. The land use on at least two sides of the property is residential use at the time of application. Property on the opposite side of a public road or right-of-way shall be considered adjacent for these criteria. Properties that do not meet these criteria may be approved for mix use development as listed below.3. Mix use is allowed. If the proposed development is a mix of commercial use and residential use, then residential units shall be placed on a floor above the commercial use, or in a way to allow commercial buildings to front onto the public roadways. If mixed use, the commercial shall comply with the commercial zoning standards and housing shall comply with RM-3 zoning standards.4. Homes in the downtown area shall have the front of buildings face public roadways. The only exception for this requirement is for mix use developments and for parcels that would allow development of units behind units that front the public right-of-way. Every effort should be made to ensure the frontage of roadways are faced with the frontage of buildings. Walls, fences, and the rear of buildings fronting on to public right-of-way should be avoided.5. Dwelling units and sites shall comply with RM-3 zoning standards and density. RM-3 minimum required area shall not apply.~~

**F. *Appeal of decision.*** Any person adversely affected by a decision of the Planning Commission regarding the transfer, issuance, or denial of a conditional use permit may appeal such decision to the Appeals Board by filing written notice of appeal stating the grounds therefor within 14 days from the date of such decision.

**G. *Appeal of decision by Zoning Administrator.*** Any decision of the Zoning Administrator regarding the issuance or denial of a conditional use permit, shall, upon request by the applicant within ten days after a determination by the Zoning Administrator, be submitted for a de novo review and decision by the Planning Commission at their next available meeting.

**H. *Effect of approval.*** A conditional use permit shall not relieve an applicant from obtaining any other authorization or permit required under this title or any other title of this Code.

1. A conditional use permit may be transferred so long as the use conducted thereunder conforms to the terms of the permit.
2. Unless otherwise specified by the Planning Commission and subject to the provisions relating to amendment, revocation or expiration of a conditional use permit, a conditional use permit shall be of indefinite duration and shall run with the land.

**I. Amendment.** The procedure for amending any conditional use permit shall be the same as the original procedure set forth in this section.

**J. Revocation.** A conditional use permit may be revoked as provided in [section ~~10-9-6~~10.20.100](#) of this title.

1. In addition to the grounds set forth in [section ~~10-9-6~~10.20.100](#) of this title, any of the following shall be grounds for revocation:

- a. The use for which a permit was granted has ceased for one year or more;
- b. The holder or user of a permit has failed to comply with the conditions of approval or any Town, state, or federal law governing the conduct of the use;
- c. The holder or user of the permit has failed to construct or maintain the site as shown on the approved site plan, map, or other approval materials; or
- d. The operation of the use or the character of the site has been found to be a nuisance or a public nuisance by a court of competent jurisdiction in any civil or criminal proceeding.

2. No conditional use permit shall be revoked against the wishes of the holder or user of the permit without first giving such person an opportunity to appear before the Planning Commission and show cause as to why the permit should not be revoked or the conditions amended. Revocation of a permit shall not limit the Town's ability to initiate or complete other legal proceedings against the holder or user of the permit.

**K. Expiration.** A conditional use permit shall expire and have no further force or effect if the building, activity, construction, or occupancy authorized by the permit is not commenced within one year after approval.

**SECTION 11: ADOPTION** “10.07.100 Site Plan Review” of the Apple Valley Land Use is hereby *added* as follows:

#### BEFORE ADOPTION

10.07.100 Site Plan Review (Non-existent)

#### AFTER ADOPTION

10.07.100 Site Plan Review (*Added*)

A. Purpose. This section sets forth procedures for considering and approving preliminary site plans and site plans. These procedures are established to encourage adequate advanced planning and assure a good quality environment for the Town. Such procedure is intended to provide for orderly, harmonious, safe, and functionally efficient development consistent with priorities, values, and guidelines stated in the various elements of the Town general plan, this title, and the general welfare of the community. B. Authority. The Planning Commission is authorized to approve preliminary and final site plans as provided in this section; provided, however, that the Zoning Administrator shall be authorized to approve final site plans for industrial buildings in approved industrial subdivisions in accordance with the requirements of this title when requested by the applicant and when such approval is deemed by the Zoning Administrator to be of a routine or uncontested nature which presents no issue requiring consideration by the Planning Commission. Any resulting decision of the Zoning Administrator shall, upon request by the applicant within ten days after a determination by the Zoning Administrator, be submitted for a de novo review and decision by the Planning Commission at their next available meeting. C. Initiation. A property owner, or the owner's agent, may request approval of a preliminary site plan and/or site plan as provided in subsection D of this section. 1. A site plan shall be required for any of the following uses unless expressly exempted from such requirement by another provision of this title: a. Any multiple-family residential use; b. Any public or civic use; c. Any commercial use; or d. Any industrial use. 2. When site plan approval is required, no building permit for the construction of any building, structure, or other improvement to the site shall be issued prior to approval of a site plan. No cleaning, grubbing, drainage work, parking lot construction, or other site improvement shall be undertaken prior to site plan approval. D. Procedure. The Zoning Administrator shall determine if the scope of the project requires both preliminary site plan and site plan approvals or solely site plan approval. Both preliminary site plan approval and site plan approval shall be required for zone changes to planned development overlay or changes to an approved planned development overlay. An application for preliminary site plan approval and/or site plan approval shall be considered and processed as provided in this subsection. 1. A complete application shall be submitted to the Zoning Administrator in a form established by the administrator along with any fee established by the Town's schedule of fees. 2. A preliminary site plan shall be drawn to scale and shall show a realistic layout reflecting how property reasonably could be developed considering existing and envisioned conditions on the subject property and adjoining property, and the development standards of the zone in which the property is located. a. A preliminary site plan shall include at least the following information: (1) The name, address and telephone number of the applicant and the applicant's agent, if any; (2) Location, topography showing two-foot contours, identification of 30 percent or greater slopes, and layout of proposed uses; (3) Location of open space; (4) Proposed access to the property and traffic circulation patterns; (5) Preliminary utility plan, including water, sewer, and storm drainage plans, and including access points to utilities; (6) Proposed reservations for parks, playgrounds, schools, and other public facility sites, if any; (7) Adjoining properties and uses; (8) Tables showing the number of acres in the proposed development and a land use summary; (9) A phased development plan if applicable. b. A preliminary site plan is not intended to permit actual development of property pursuant to such plan but shall be prepared merely to represent how the property could be developed. Submittal, review, and approval of an application for a preliminary site plan shall not create any vested

rights to development. 3. A site plan application shall include at least the following information: a. The name, address and telephone number of the applicant and the applicant's agent, if any; b. The uses for which site plan approval is requested; c. A set of development plans showing the information required in subsections D3c(1) to D3c(5) of this section. The information required by each subsection shall be shown on separate sheets. Plans shall be drawn at a scale no smaller than one inch equals 100 feet. Except for the landscaping plan, the plans shall be prepared, stamped and signed by a professional engineer licensed by the state. The Zoning Administrator shall reasonably determine the number of sets of plans required to undertake the review required by this section. One set of plans, reduced to fit on 11-inch by 17-inch paper, shall be provided. (1) Site plan showing the following: (A) All facilities related to the project located within 250 feet of the site boundary; (B) Layout, dimensions, and names of existing and future road rights-of-way; (C) Project name, north arrow, and tie to a section monument; (D) The boundary lines of the project site with bearings and distances; (E) Layout and dimensions of proposed streets, buildings, parking areas, and landscape areas; (F) Location, dimensions, and labeling of other features such as bicycle racks, dumpsters, trash cans, fences, signage, mechanical equipment; (G) Location of manmade features including irrigation facilities, bridges, railroad tracks, and buildings; (H) A tabulation table, showing total gross acreage, square footage of street rights-of-way, square footage of building footprint, square footage of total building floor area, square footage of landscaping, number of parking spaces, and if any, the number and type of dwellings, and the percentage devoted to each dwelling type and overall dwelling unit density; and (I) Identification of property, if any, not proposed for development. (2) Grading and drainage plan showing the following: (A) North arrow, scale, and site plan underlay; (B) Topography contours at two-foot intervals; (C) Areas of substantial earth moving with an erosion control plan; (D) Location of existing watercourses, canals, ditches, springs, wells, culverts, and storm drains, and proposed method of dealing with all irrigation and waste water; (E) Location of any designated floodplain and/or wetland boundaries; (F) Direction of stormwater flows, catch basins, inlets, outlets, waterways, culverts, detention basins, orifice plates, outlets to off-site facilities, and off-site drainage facilities, when necessary, based on adopted Town requirements; and (3) Utility plan showing the following: (A) North arrow, scale, and site plan underlay; (B) All existing and proposed utilities including, but not limited to: sewer, culinary water, secondary water, fire hydrants, storm drains, subsurface drains, gas lines, power lines, communications lines, cable television lines, and streetlights; (C) Minimum fire flow required by the uniform fire code for the proposed structures, and fire flow calculations at all hydrant locations; (D) Location and dimensions of all utility easements; and (E) A letter from power, sewer and water providers, addressing the feasibility and their requirements to serve the project. (4) Landscaping plan, consistent with the development and area the requirements of chapter 32 of this title. (5) Building elevations for all buildings showing the following: (A) Accurate front, rear, and side elevations drawn to scale; (B) Exterior surfacing materials and colors, including roofing material and color; (C) Outdoor lighting, furnishings and architectural accents; and (D) Location and dimensions of signs proposed to be attached to the building or structure. d. Where one or more conditions of unusual soil, vegetation, geology or slope exist, resulting in increased fire, flood or erosion hazards, traffic circulation problems, sewage disposal problems and potential property damage from extensive soil slippage and subsidence, an applicant shall, upon request of the Planning Commission or Town Engineer, provide contour and drainage



plans, cut and fill specifications, and soil and geologic reports. The required details of such reports and plans may vary depending on the severity of the unusual conditions, but in any event, such plans and reports shall be reviewed and approved by the Town prior to final approval of a development project. e. Any necessary agreements with adjacent property owners regarding storm drainage or other pertinent matters. f. Evidence of compliance with applicable federal, state, and local laws and regulations, if requested by the Zoning Administrator. g. A traffic impact analysis, if requested by the Town Engineer or the Planning Commission. h. Warranty deed or preliminary title report or other document showing the applicant has control of the property, if requested by the Zoning Administrator. i. Parcel map(s) from the county recorder's office showing the subject property and all property located within 400 feet thereof, if requested by the Zoning Administrator. 4. After the application is determined to be complete, the Zoning Administrator shall schedule a public meeting before the Planning Commission as provided in section 10.07.040 of this chapter. 5. The Planning Commission shall hold a public meeting and thereafter shall approve, approve with conditions, or deny the application pursuant to the standards set forth in subsection E of this section. Any conditions of approval shall be limited to conditions needed to conform the site plan to approval standards. a. In the case of a preliminary site plan for a planned development, Planning Commission approval shall not be effective unless and until a corresponding planned development overlay zone is approved by the Town Council. E. Standards for approval. The following standards shall apply to the approval of a site plan: 1. Site development. The entire site shall be developed at one time unless a phased development plan is approved. 2. Compliance with standards. A site plan shall conform to applicable standards set forth in this title and other applicable provisions of this Code. Conditions may be imposed as necessary to achieve compliance with applicable Code requirements. 3. Agreement; letter of credit. In order to assure that the development will be constructed to completion in an acceptable manner, the Town may require the applicant to enter into an agreement and provide a satisfactory letter of credit or escrow deposit. The agreement and letter of credit or escrow deposit shall assure timely construction and installation of improvements required by a site plan approval. 4. Planned center uses. In a planned center, individual uses shall be subject to the following requirements: a. The overall planned center shall have been approved as a conditional use which shall include an overall site plan, development guidelines and a list of uses allowed in the center. b. Development guidelines for a planned center shall, at a minimum, address the following topics: (1) General site engineering (e.g. storm drainage, provision of utilities, erosion control, etc.); (2) Architectural guidelines, including building setbacks, height, massing and scale, site coverage by buildings, materials, and colors; (3) Landscaping and open space standards; (4) Signage; (5) Exterior lighting; (6) Parking, pedestrian and vehicular circulation, and access to the site; (7) Rights of access within the center (use of cross easements, etc.); (8) Development phasing and improvements/amenities to be completed with each phase; (9) Outdoor sales, storage and equipment; (10) Fencing and walls; and (11) Maintenance standards and responsibilities. c. After approval of a planned center, individual uses therein may be approved pursuant to a building permit. Building permits for individual uses with an approved planned center shall be reviewed by the Zoning Administrator for compliance of the proposed use to the overall site plan, development guidelines and approved use list for the planned center. The Zoning Administrator shall approve, approve with conditions, or deny the permit based on compliance with applicable conditions of the site plan and provisions of this title. F.



Appeal of decision. Any person adversely affected by a decision of the Planning Commission or Zoning Administrator regarding approval or denial of a site plan may appeal to the Appeals Board in accordance with the provisions of section 10.07.190 of this chapter. G. Effect of approval. Every site for which a site plan has been approved shall conform to such plan. 1. A building permit shall not be issued for any building or structure, external alterations thereto, or any sign or advertising structure until the provisions of this section have been met. No structures or improvements may be constructed unless shown on an approved site plan or required by law. 2. Approval of a site plan shall not be deemed an approval of any conditional use permit or other permit. Approval of such permits shall be obtained in accordance with applicable provisions of this title. However, the Zoning Administrator may allow the application for a conditional use permit to be considered concurrently with the site plan application. H. Amendments. Except as may be provided for elsewhere in this title, no element of an approved site plan shall be changed or modified without first obtaining approval of an amended site plan as follows: 1. Alteration or expansion of an approved site plan may be permitted by the Zoning Administrator upon making the following findings: a. Any proposed use is consistent with uses permitted on the site; b. Existing uses were permitted when the site plan was approved, or have received a conditional use permit; c. The proposed use and site will conform to applicable requirements of this Code; d. The proposed alteration or expansion meets the approval standards of subsection E of this section; e. The architecture of the proposed alteration or expansion, and landscaping, site design and parking layout are compatible with facilities existing on the site; and f. The site can accommodate any change in the number of employees on the site or any change in impact on surrounding infrastructure. 2. If the Zoning Administrator cannot make the findings required in the foregoing subsection, a conditional use permit or amended site plan, as the case may be, shall be approved before any alteration or expansion occurs. 3. The procedure for approval of an amended site plan shall be the same as the procedure for approval of an original site plan as set forth in this section. I. Revocation. A site plan approval may be revoked, as provided in section 10.09.060 of this title. J. Expiration. A site plan approval shall expire and have no further force or effect If the building, activity, construction or occupancy authorized by the approval is not commenced within one year.

**SECTION 12:**            **ADOPTION** “10.07.110 Special Exception” of the Apple Valley Land Use is hereby *added* as follows:

#### BEFORE ADOPTION

10.07.110 Special Exception (Non-existent)

#### AFTER ADOPTION

10.07.110 Special Exception(*Added*)

A. Purpose. A "special exception" is an activity or use incidental to or in addition to a principal use permitted in a zone or an adjustment to a fixed dimensional standard permitted as an exception to the requirements of this title. A special exception has less potential impact than a conditional use but still requires careful review of such factors as location, design, configuration and/or impacts to determine the desirability of authorizing its establishment on any given site. This section sets forth procedures for considering and approving special exceptions to the provisions of this title. B. Authority. The Appeals Board is authorized to approve special exceptions to the provisions of this title as provided in this section. 1. The following special exceptions are authorized subject to the provisions of this section: a. A temporary building for residential, commercial, or industrial use may be permitted for up to one year when the building is incidental to a permitted use. b. Where a zone boundary line divides a lot in single ownership when this title is enacted, a use authorized by the zone on either portion of such lot may extend up to 50 feet into the other portion of the lot. c. Reserved. d. A nonconforming building or noncomplying structure, or a building or structure occupied by a nonconforming use, may be added to or enlarged. e. A nonconforming building or noncomplying structure, or a building or structure occupied by a nonconforming use, may be relocated on a lot. f. The amount of off street parking required may be reduced when the acquisition of land for such use would cause exceptional hardship. 2. The Appeals Board may, by motion, designate any special exception authorized by this section as a routine and uncontested matter for decision by the Zoning Administrator pursuant to the procedures set forth in section 10.07.170 of this chapter subject to the approval standards for special exceptions in this section. C. Initiation. A property owner, or the owner's agent, may request a special exception to the provisions of this title as provided in subsection D1 of this section. D. Procedure. An application for a special exception shall be considered and processed as provided in this subsection. 1. A complete application shall be submitted to the Zoning Administrator in a form established by the administrator along with any fee established by the Town's schedule of fees. The application shall include at least the following information: a. The name, address and telephone number of the applicant and the applicant's agent, if any; b. The address and lot identification of the subject property; c. The zone, zone boundaries and present use of the subject property; d. A complete description of the proposed special exception; e. A plot plan showing the following: (1) Applicant's name; (2) Site address; (3) Property boundaries and dimensions; (4) Layout of existing and proposed buildings, parking, landscaping, and utilities; and (5) Adjoining property lines and uses within 100 feet of the subject property; and f. Such other and further information or documentation as the Zoning Administrator may deem necessary for full and proper consideration and disposition of a particular application. g. If the special exception application is for a sign, a sign permit application shall be submitted. 2. After an application is determined to be complete, the Zoning Administrator shall schedule a public meeting before the Appeals Board as provided in section 10.07.040 of this chapter. 3. A staff report evaluating the application shall be prepared by the Zoning Administrator. 4. The Appeals Board shall hold a public meeting and thereafter shall approve, approve with conditions or deny the application pursuant to the standards set forth in subsection E of this section. Any conditions of approval shall be limited to conditions needed to conform the special exception to approval standards. 5. After the Appeals Board makes a decision, the Zoning Administrator shall give the applicant written notice of the decision. 6. A record of all special exceptions shall be maintained in the office of the Zoning Administrator.

E. Approval standards. The following standards shall apply to the approval of a special exception: 1. Conditions may be imposed as necessary to prevent or minimize adverse effects upon other property or improvements in the vicinity of the special exception, upon the Town as a whole, or upon public facilities and services. These conditions may include, but should not be limited to, conditions concerning use, construction, character, location, landscaping, screening, parking and other matters relating to the purposes and objectives of this title. Such conditions shall be expressly set forth in a motion authorizing the special exception. 2. The Appeals Board shall not authorize a special exception unless the evidence presented establishes the proposed special exception: a. Will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity; b. Will not create unreasonable traffic hazards; and c. Is located on a lot of sufficient size to accommodate the special exception. F. Appeal of decision. Any person adversely affected by a decision of the Appeals Board regarding a special exception may, within 30 days after such decision, appeal to the district court in accordance with state law. G. Effect of approval. A special exception shall not authorize the establishment of any use nor the development, construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize the preparation, filing, and processing of applications for any approvals or permits that may be required by this title or other applicable provisions of this Code. H. Amendments. The procedure for amending a special exception shall be the same as the original procedure set forth in this section. I. Revocation. A special exception may be revoked. J. Expiration. A special exception shall expire and have no further force or effect if the building, activity, construction or occupancy authorized by the special exception is not commenced within 180 days after approval.

**SECTION 13:            ADOPTION** “10.07.120 Variance” of the Apple Valley Land Use is hereby *added* as follows:

#### BEFORE ADOPTION

10.07.120 Variance (Non-existent)

#### AFTER ADOPTION

10.07.120 Variance(*Added*)

A. Purpose. This section sets forth procedures for considering and approving a variance to the provisions of this title. Variance procedures are intended to provide a narrowly circumscribed means by which relief may be granted from particular unforeseen applications of the provisions of this title that create unreasonable hardships. B. Authority. The Appeals Board is authorized to hear and decide variances to the provisions of this title as provided in this section. C. Initiation. A property owner, lessee, or holder of a beneficial interest in property, or the agent thereof, may request a variance to the provisions of this title as provided in subsection D1 of

this section. All such applications shall be signed by the owner of property for which the variance is sought. D. Procedure. An application for a variance shall be considered and processed as provided in this subsection. 1. A complete application shall be submitted to the Zoning Administrator in a form established by the administrator along with any fee established by the Town's schedule of fees. The application shall include at least the following information: a. The name, address and telephone number of the applicant and the applicant's agent, if any; b. The address and parcel identification of the subject property; c. The specific feature or features of the proposed use, construction or development that require a variance; d. The specific provision of this title from which a variance is sought; e. A statement of the characteristics of the subject property that prevent compliance with the provisions of this title and result in unnecessary hardship; f. A statement of the amount of variation needed to permit the proposed use, construction or development; g. An explanation of how the application satisfies the variance standards set forth in subsection E of this section; h. A plot plan showing the following: (1) Applicant's name; (2) Site address; (3) Property boundaries and dimensions; (4) Layout of existing and proposed buildings, parking, landscaping, and utilities; and (5) Adjoining property lines and uses within 100 feet of the subject property; i. An elevation plan drawn to scale showing elevations of existing and proposed structures; j. When the variance involves building height, a streetscape plan showing the height of all buildings within 150 feet of the subject property; k. When a variance involves grade changes, a topographical drawing prepared by a licensed surveyor or civil engineer, showing existing topography in dashed lines at two-foot intervals and showing the proposed grade in solid lines at two-foot intervals; l. When a variance involves retaining walls, a plan showing all retaining walls, including their height relative to proposed grades; and m. Any other information reasonably determined by the Zoning Administrator to be pertinent to a requested variance. 2. After the application is determined to be complete, the Zoning Administrator shall schedule a public meeting before the Appeals Board as provided in section 10.07.040 of this chapter. 3. A staff report evaluating the application shall be prepared by the Zoning Administrator. 4. The Appeals Board shall hold a public meeting and thereafter shall approve, approve with conditions or deny the application pursuant to the standards set forth in subsection E of this section. Any conditions of approval shall be limited to conditions needed to conform the variance to approval standards. 5. After the Appeals Board makes a decision, the Zoning Administrator shall give the applicant written notice of the decision. 6. A record of all variances shall be maintained in the office of the Zoning Administrator. E. Approval standards. The following standards shall apply to a variance: 1. The Appeals Board may grant a variance only if: a. Literal enforcement of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title; b. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district; c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district; d. The variance will not substantially affect the general plan and will not be contrary to the public interest; and e. The spirit of this title is observed and substantial justice done. 2. The Appeals Board may find an unreasonable hardship exists only if the alleged hardship is located on or associated with the property for which the variance is sought and comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood. The Appeals Board may not find an unreasonable hardship exists if the hardship is self-imposed or economic. 3. The Appeals Board may find that special

circumstances are attached to the property and exist only if the special circumstances relate to the hardship complained of and deprive the property of privileges granted to other properties in the same zoning district. 4. An applicant shall bear the burden of proving that all of the conditions justifying a variance have been met. 5. A use variance may not be granted. 6. In granting a variance, Appeals Board may impose additional requirements on an applicant that will mitigate any harmful effects of the variance, or serve the purpose of the standard or requirement that is waived or modified. 7. A variance more restrictive than that requested by an applicant may be authorized when the record supports the applicant's right to some relief but not to the extent requested. 8. A variance shall not be granted to a lot in a proposed subdivision that would reduce the lot area below the minimum lot area required in the zone in which the subdivision is located. F. Appeal of decision. Any person adversely affected by a decision of the Appeals Board regarding a variance may, within 30 days after such decision, appeal to the district court as provided in Utah Code Annotated section 10-9a-801, as amended. G. Effect of approval. A variance shall not authorize the establishment of any use nor the development, construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize the preparation, filing, and processing of applications for any approvals or permits that may be required by this title or other applicable provisions of this Code. H. Amendments. The procedure for amending any variance decision shall be the same as the original procedure set forth in this section. I. Expiration. Variances shall not expire but shall run with the land.

**SECTION 14:**        **ADOPTION** “10.07.130 Building Permit” of the Apple Valley Land Use is hereby *added* as follows:

#### BEFORE ADOPTION

10.07.130 Building Permit (Non-existent)

#### AFTER ADOPTION

10.07.130 Building Permit(*Added*)

A. Purpose. This section sets forth procedures for determining zoning compliance of a building permit application. B. Authority. The Zoning Administrator is authorized to review building permits for zoning compliance as provided in this section. C. Initiation. Any person may apply for a building permit as provided in the building codes adopted by the Town. D. Procedure. A building permit application shall be reviewed for zoning compliance as provided in this subsection. 1. A complete building permit application shall be submitted to the Building Official in a form established by the Building Official along with any fee established by the Town's schedule of fees. The application shall include at least the following information: a. The name, address and telephone number of the applicant and the applicant's agent, if any; and b. A plot plan showing the following: (1) Applicant's name; (2) Site address; (3) Property boundaries and dimensions; (4) Layout of existing and proposed buildings, parking,

landscaping, and utilities; and (5) Adjoining property lines and uses within 100 feet of the subject property. 2. After the application is determined to be complete, the Building Official shall transmit the application to the Zoning Administrator. The Zoning Administrator shall approve, approve with conditions, or deny the zoning compliance request pursuant to the standards set forth in subsection E of this section. Any conditions of approval shall be limited to conditions needed to conform the permit to approval standards. 3. After making a decision, the Zoning Administrator shall give the Building Official written notice of the zoning compliance decision. 4. A record of all zoning compliance reviews shall be maintained in the office of the Building Official. E. Approval standards. The following standards shall apply to determine zoning compliance of a building permit application: 1. No building permit shall be approved for zoning compliance unless the proposed building, structure or use when built and the land on which it is located will conform to applicable provisions of this title and any applicable conditions of approval required under a permit applicable to the subject property. 2. No building permit shall be issued unless the property or lot for which the building permit is to be issued fronts a dedicated street which meets the width requirement specified by this Code and has been improved according to Town standards, except where a variance has been approved by the Appeals Board, or as follows: a. In the event that property for which a building permit is sought fronts a dedicated street which requires additional footage on each side of the street in order to meet the width requirements of the road master plan or official map, a building permit may be issued if one-half of the additional footage is dedicated by the owner of said property for use by the public as a Town street. b. In lieu of requiring completion of all improvements to a dedicated Town street prior to the issuance of a building permit, a building permit may be issued if: (1) The road is traversable by normal vehicular traffic, including law enforcement, fire and other emergency vehicles; and (2) A written agreement is executed by the owner of the property for which the building permit is to be issued, stating the owner will deposit with the Town an amount equal to the cost of improving the street frontage of the owner's lot before receiving a certificate of occupancy for which the permit is issued. At the option of the Town, the owner could, in lieu of paying for or installing the missing improvements, sign an Improvement Delay Agreement to promise to pay for or install the missing improvements at a future date, if requested to do so by the Town. Said agreement shall be recorded at the County Recorder's office. F. Appeal of decision. Any person adversely affected by a decision of the Zoning Administrator regarding zoning compliance of a building permit may appeal to the Appeals Board in accordance with the provisions of section 10.07.090 of this chapter. G. Effect of approval. Approval of zoning compliance shall authorize an applicant to proceed with the building permit review process. The requirements of this section shall be in addition to any other requirements for the issuance of a building permit, as contained in this Code. H. Amendments. The procedure for amending any zoning compliance decision shall be the same as the original procedure set forth in this section. I. Expiration. A building permit shall expire and have no further force or effect if the building, activity, construction or occupancy authorized by the permit is not commenced within the time provided by the building code adopted by the Town.

**SECTION 15:**        **ADOPTION** “10.07.140 Nonconforming Use” of the Apple Valley Land Use is hereby *added* as follows:

BEFORE ADOPTION

10.07.140 Nonconforming Use (Non-existent)

AFTER ADOPTION

10.07.140 Nonconforming Use(*Added*)

**A.     Purpose.** This section sets forth procedures for determining the existence, expansion, or modification of a noncomplying structure, nonconforming use, lot, or other nonconformity.

**B.     Authority.** The Appeals Board is authorized to make determinations regarding the existence, expansion or modification of a noncomplying structure, nonconforming use, lot, or other nonconformity as provided in this section.

**C.     Initiation.** A property owner, or the owner's agent, may request a determination regarding the existence, expansion or modification of a noncomplying structure, nonconforming use, lot, or other nonconformity affecting the owner's property as provided in subsection D1 of this section.

**D.     Procedure.** An application for a determination of the existence, expansion or modification of a noncomplying structure, nonconforming use, lot, or other nonconformity shall be considered and processed as provided in this subsection.

1.     A complete application shall be submitted to the Zoning Administrator in a form established by the administrator along with any fee established by the Town's schedule of fees. The application shall include at least the following information:

a.     The name, address and telephone number of the applicant and the applicant's agent, if any;

b.     The noncomplying structure, nonconforming use, lot, or other nonconformity in question;

c.     A description of the action requested by the applicant; and

d.     Grounds for finding the noncomplying structure, nonconforming use, lot, or other circumstance is nonconforming or for allowing expansion or modification of the nonconformity.

2. After the application is determined to be complete, Appeals Board shall approve, approve with conditions or deny the application pursuant to the standards set forth in subsection E of this section. Any conditions of approval shall be limited to conditions needed to conform the nonconformity, its expansion or modification to approval standards.

3. After making a decision, the Appeals Board shall give the applicant written notice of the decision.

4. A record of all nonconforming use or noncomplying structure determinations shall be maintained in the office of the Appeals Board.

**E. Standard for decision.** A determination regarding the existence, expansion or modification of a noncomplying structure, nonconforming use, lot, or other nonconformity shall be based on applicable provisions of chapter 12 of this title.

**F. Appeal of decision.** Any person adversely affected by a decision of the Appeals Board regarding a noncomplying structure, nonconforming use, lot, or other nonconformity may, within 30 days after such decision, appeal to the district court as provided in Utah Code Annotated section 10-9a-801, as amended.

**G. Effect of decision.** An applicant may continue, expand or modify a noncomplying structure, nonconforming use, lot, or other nonconformity, as determined by the Appeals Board.

**H. Expiration.** Determinations regarding nonconformities or noncomplying structures shall not expire but shall run with the land.

**SECTION 16:            ADOPTION** “10.07.150 Sign Permit” of the Apple Valley Land Use is hereby *added* as follows:

BEFORE ADOPTION

10.07.150 Sign Permit (Non-existent)

AFTER ADOPTION

10.07.150 Sign Permit(*Added*)

**A. Purpose.** This section sets forth procedures for considering and approving a sign permit.



**B. Authority.** The Zoning Administrator is authorized to issue sign permits as provided in this section.

**C. Initiation.** Any person may apply for a sign permit as provided in subsection D1 of this section.

**D. Procedure.** An application for a sign permit shall be considered and processed as provided in this subsection.

1. A complete application shall be submitted to the Zoning Administrator in a form established by the administrator along with any fee established by the Town's schedule of fees. The application shall include at least the following information:

a. The name, address and telephone number of the applicant and the applicant's agent, if any;

b. A statement by the applicant demonstrating how the sign permit request meets the approval standards of subsection E of this section;

c. A plot plan showing the following:

(1) Applicant's name;

(2) Site address;

(3) Property boundaries and dimensions;

(4) Layout of existing and proposed buildings, parking, landscaping, and utilities; and

(5) Adjoining property lines and uses within 100 feet of the subject property; and

d. An elevation drawing showing:

(1) Type of sign;

(2) Sign location in relation to nearest property line;

(3) Sign face design, if an on premises sign;

(4) Sign height;

(5) Sign face area;

(6) Sign illumination details; and

(7) Reflective elements and materials.

2. After the application is determined to be complete, the Zoning Administrator shall approve, approve with conditions or deny the application pursuant to the standards set forth in subsection E of this section. Any conditions of approval shall be limited to conditions needed to conform the sign permit to approval standards.

3. After making a decision, the Zoning Administrator shall give the applicant written notice of the decision.

4. A record of all sign permits shall be maintained in the office of the Zoning Administrator.

**E. Approval standards.** The following standards shall apply to the issuance of a sign permit:

1. A sign shall conform to applicable provisions of [chapter 22](#) of this title.

2. All signs shall be inspected by a designated officer of the Town immediately after installation. The permittee shall request an inspection within five business days after installation. Any sign not conforming to the requirements of [chapter 22](#) of this title shall be made to conform or be removed.

**F. Appeal of decision.** Any person adversely affected by a decision of the Zoning Administrator regarding a sign permit may appeal to the Appeals Board in accordance with the provisions of [section 10.07.190](#) of this chapter.

**G. Effect of approval.** Approval of a sign permit shall authorize an applicant to:

1. Construct the sign as indicated on the permit, if no building and electrical permits are required.

2. If building and electrical permits are required, such permits shall be obtained prior to construction.

**H. Amendments.** The procedure for amending any sign permit shall be the same as the original procedure set forth in this section.

**I. Revocation.** A sign permit may be revoked.

**J. Expiration.** A sign permit shall expire and have no further force or effect if the sign authorized by the permit is not installed within 180 days after approval.

**SECTION 17:        ADOPTION** “10.07.160 Temporary Use Permit” of the Apple Valley Land Use is hereby *added* as follows:

**BEFORE ADOPTION**

10.07.160 Temporary Use Permit (Non-existent)

**AFTER ADOPTION**

10.07.160 Temporary Use Permit(*Added*)

**A.     Purpose.** This section sets forth procedures for considering and approving a temporary use permit.

**B.     Authority.** The Zoning Administrator is authorized to issue temporary use permits as provided in this section.

**C.     Initiation.** Any person may apply for a temporary use permit as provided in subsection D1 of this section.

**D.     Procedure.** An application for a temporary use permit shall be considered and processed as provided in this subsection.

1.     A complete application shall be submitted to the Zoning Administrator in a form established by the administrator along with any fee established by the Town's schedule of fees. The application shall include at least the following information:

a.     The name, address and telephone number of the applicant and the applicant's agent, if any;

b.     The name and address of the applicant and the name and address of every person or company the applicant represents;

c.     The person chiefly responsible for the event or use and/or the sponsoring organization and its chief officer;

d.     The requested temporary use;

e.     The place, date, time of the event, and hours of operation of the proposed use;

f. A statement of the approximate number of persons, animals, and/or vehicles which will participate in the event or be generated by the temporary use and an explanation of how said number was derived, such as number of presold tickets, available seating and/or parking, and past experience with similar activities;

g. The following maps, plans, and documents evidencing sufficient measures to be taken to reasonably protect the health, safety, and welfare of patrons and the public in general:

(1) A scaled drawing of the area in which the event is to be held or the use conducted, showing the location of any existing structures and improvements on the site of the proposed temporary use, including, but not limited to, parking areas, curbs, gutter, sidewalks, and outside storage areas; and

h. Other such items as reasonably requested by the Zoning Administrator to determine the feasibility of the temporary use.

2. After the application is determined to be complete, the Zoning Administrator shall solicit recommendations from the Town Fire Chief, Police Chief, Town/county Health Department, and Town Engineer. Thereafter the Zoning Administrator shall approve, approve with conditions or deny the application pursuant to the standards set forth in subsection E of this section. Any conditions of approval shall be limited to conditions needed to conform the temporary use permit to approval standards.

3. After making a decision, the Zoning Administrator shall give the applicant written notice of the decision.

4. A record of all temporary use permits shall be maintained in the office of the Zoning Administrator.

**E. Approval standards.** The following standards shall apply to the issuance of a temporary use permit.

1. A temporary use shall conform to:

a. Any recommendations received from the Town Fire Chief, Police Chief, Town/county Health Department, and Town Engineer.

2. No temporary use permit shall be issued unless the Zoning Administrator finds the proposed temporary use:

- a. Will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working within the vicinity, or injurious to property, improvements or the public in general;
- b. Will not substantially interrupt the safe and orderly movement of public transportation or other vehicular and pedestrian traffic in the area, nor block traffic lanes or hinder traffic during peak commute hours on weekdays on any primary arterial street or principal commuter route designated by the Town;
- c. Will not conflict with construction or development in the public right-of-way or at public facilities;
- d. Will not unduly interfere with the movement of police, fire, ambulance, or other emergency vehicles on the streets, nor require the diversion of so great a number of police, fire, or other essential public employees from their normal duties as to prevent reasonable police, fire, or other public services protection to the remainder of the Town;
- e. Will not conflict with nor be incompatible with the permitted uses and regulations of the zone within which the temporary use is located; and
- f. Is in compliance with regulations, conditions and licensing requirements of applicable provisions of this Code.

**F. Appeal of decision.** Any person adversely affected by a decision of the Zoning Administrator regarding a temporary use permit may appeal to the Appeals Board in accordance with the provisions of [section 10.07.190](#) of this chapter.

**G. Effect of approval.** Approval of a temporary use permit shall authorize an applicant to engage in the temporary use subject to conditions of approval as may be imposed by the Zoning Administrator.

**H. Amendments.** The procedure for amending a temporary use permit shall be the same as the original procedure set forth in this section.

**I. Revocation.** A temporary use permit may be revoked.

**J. Expiration.** A temporary use permit shall expire. Extensions of time shall be prohibited.

**SECTION 18: ADOPTION** “10.07.170 Routine And Uncontested Matters” of the Apple Valley Land Use is hereby *added* as follows:

## BEFORE ADOPTION

10.07.170 Routine And Uncontested Matters (Non-existent)

## AFTER ADOPTION

10.07.170 Routine And Uncontested Matters(*Added*)

**A. *Purpose.*** This section allows the Zoning Administrator to decide administratively a routine and uncontested matter which would otherwise be decided by the Appeals Board.

**B. *Authority.*** The Appeals Board may designate classes of matters as routine and uncontested. The Zoning Administrator is authorized to issue permits for such routine and uncontested matters as provided in this section.

**C. *Initiation.*** A property owner, or the owner's agent, may request approval of a routine and uncontested matter affecting the owner's property as provided in subsection D1 of this section.

**D. *Procedure.*** An application for approval of a routine and uncontested matter shall be considered and processed as provided in this subsection.

1. A complete application shall be submitted to the Zoning Administrator in a form established by the administrator along with any fee established by the Town's schedule of fees. The application shall include at least the following information:

a. The name, address and telephone number of the applicant and the applicant's agent, if any;

b. The specific matter for which approval is requested; and

c. Specific facts which illustrate the nature of the request and how it relates to applicable provisions of this title.

2. After the application is determined to be complete, the Zoning Administrator shall review and decide the matter in accordance with applicable provisions of this title and the guidelines determined by the Appeals Board for such class of matters.

3. After making a decision, the Zoning Administrator shall give the applicant written notice of the decision.

4. A record of all decisions on routine and uncontested matters shall be maintained in the office of the Zoning Administrator.

**E. Approval standards.** Any class of matters designated by the Appeals Board as routine and uncontested shall be accompanied by a statement of guidelines for approval of the matters so designated. A list of such matters and associated guidelines shall be kept on file in the office of the Zoning Administrator. The Zoning Administrator shall follow such guidelines in deciding any routine and uncontested matter.

**F. Appeal of decision.** Any person adversely affected by a decision of the Zoning Administrator regarding a routine and uncontested matter may appeal the decision to the Appeals Board in accordance with the provisions of [section 10.07.190](#) of this chapter.

**G. Effect of approval.** Approval of a routine and uncontested matter shall be deemed to relate to, and be for the benefit of, the use or lot in question rather than the owner, lessee or operator of a use, or lot. A permit for a routine and uncontested matter shall authorize only the matter in question and shall not be deemed to negate any need for other permits required under this title.

**H. Amendments.** A permit for a routine and uncontested matter may be amended, varied or altered only pursuant to the procedures, standards and limitations provided in this section for its original approval.

**I. Revocation.** A permit for a routine and uncontested matter may be revoked.

**J. Expiration.** Approval of a routine and uncontested matter shall expire and have no further force or effect if the building, activity, construction or occupancy authorized by the approval is not commenced within 180 days after approval.

**SECTION 19:        ADOPTION** “10.07.180 - Administrative Interpretation” of the Apple Valley Land Use is hereby *added* as follows:

BEFORE ADOPTION

10.07.180 - Administrative Interpretation (Non-existent)

AFTER ADOPTION

10.07.180 - Administrative Interpretation(*Added*)

**A. Purpose.** The provisions of this title, though detailed and extensive, cannot as a practical matter address every specific situation to which these provisions may be applied. This section allows the Zoning Administrator to interpret a provision of this title in light of the general and specific purposes for which it was enacted and as applied to specific circumstances.

**B. Authority.** The Zoning Administrator is authorized to render interpretations of the provisions of this title, and any rule or regulation adopted pursuant thereto, as provided in this section.

**C. Initiation.** Any person may request an administrative interpretation as provided in subsection D1 of this section.

**D. Procedure.** An application for an administrative interpretation shall be considered and processed as provided in this subsection.

1. A complete application shall be submitted to the Zoning Administrator in a form established by the administrator along with any fee established by the Town's schedule of fees. The application shall include at least the following information:

a. The name, address and telephone number of the applicant and the applicant's agent, if any;

b. The specific provision or provisions of this title for which an interpretation is requested;

c. Specific facts of the situation which illustrate the need for an administrative interpretation;

d. The interpretation claimed by the applicant to be correct; and

e. When a use interpretation is requested the application shall include:

(1) A statement explaining why the proposed use should be deemed as included within a use category allowed by the zone applicable to the property; and

(2) Documents, statements, and other evidence demonstrating that the proposed use will conform to all use limitations established by the zone applicable to the property.

2. After the application is determined to be complete, the Zoning Administrator shall review the request and make an interpretation in accordance with the standards set forth in subsection E of this section.



3. After making a decision, the Zoning Administrator shall give the applicant written notice of the decision.
4. A record of all administrative interpretations shall be maintained in the office of the Zoning Administrator.

**E. Standards for making administrative interpretations.** The following standards shall apply to administrative interpretations:

1. Administrative interpretations shall not add to or change the provisions of this title.
2. Questions about the location of zone boundaries shall be resolved by applying the standards set forth.
3. An administrative interpretation shall be consistent with:
  - a. The provisions of this title; and
  - b. Any previously rendered interpretations based on similar facts.
4. A use interpretation shall also be subject to the following standards:
  - a. Any use specifically listed as "not permitted" in a table of permitted and conditional uses for a particular zone shall not be allowed in that zone;
  - b. No use interpretation shall allow a use in a zone unless evidence is presented demonstrating the use will conform to development standards established for the zone;
  - c. No use interpretation shall allow a use in a particular zone unless the use is substantially similar to a use allowed in the zone;
  - d. If a proposed use is most similar to a conditional use authorized in the zone in which it is proposed to be located, any interpretation allowing such use shall require that the use be approved only as a conditional use pursuant to [section 10.07.090](#) of this chapter; and
  - e. No use interpretation shall permit the establishment of any use that would be inconsistent with the statement of purpose of the zone in which it would be located.

**F. Appeal of decision.** Any person adversely affected by an administrative interpretation rendered by the Zoning Administrator may appeal to the Appeals Board in accordance with the provisions of [section 10.07.190](#) of this chapter.

**G. Effect of approval.** An administrative interpretation shall apply only to the property for which an interpretation is given.

1. A use interpretation finding a use to be a permitted or conditional use in a particular zone shall be deemed to authorize only that use on the subject property. A use interpretation shall not authorize another allegedly similar use for which a separate use interpretation has not been issued.

2. A use interpretation finding a particular use to be a permitted or conditional use shall not authorize the establishment of such use nor the development, construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize the preparation, filing, and processing of applications for any approvals or permits that may be required by this title or other applicable provisions of this Code.

**SECTION 20: ADOPTION** “10.07.190 Appeal Of Administrative Decision” of the Apple Valley Land Use is hereby *added* as follows:

#### BEFORE ADOPTION

10.07.190 Appeal Of Administrative Decision (Non-existent)

#### AFTER ADOPTION

10.07.190 Appeal Of Administrative Decision(*Added*)

**A. Purpose.** This section sets forth procedures for appealing an administrative decision applying provisions of this title.

**B. Authority.** The Appeals Board shall hear and decide appeals from administrative decisions applying the provisions of this title as provided in this section.

**C. Initiation.** Any person, or any officer, department, board or bureau of the Town, adversely affected by a decision administering or interpreting a provision of this title may appeal to the Appeals Board as provided in subsection D1 of this section. A complete application for an appeal shall be filed within 14 days of the decision which is appealed.

1. Only decisions applying this title may be appealed to the Appeals Board.

2. A person may not appeal, and the Appeals Board may not consider, any amendment to this title. Appeals may not be used to waive or modify the terms or requirements of this title.

**D. Procedure.** An appeal of an administrative decision to the Appeals Board shall be considered and processed as provided in this subsection.

1. A complete application shall be submitted to the Zoning Administrator in a form established by the administrator along with any fee established by the Town's schedule of fees. The application shall include at least the following information:

a. The name, address and telephone number of the applicant and the applicant's agent, if any;

b. The decision being appealed;

c. Grounds for the appeal; and

d. A description of the action claimed by the applicant to be incorrect.

2. After an application is determined to be complete, the Zoning Administrator shall schedule a public meeting before the Appeals Board as provided in [section 10.07.040](#) of this chapter. Prior to the hearing the Zoning Administrator shall transmit to the Appeals Board all papers constituting the record of the action which is appealed.

3. Upon receipt of a complete application for an appeal all further proceedings concerning the matter appealed shall be stayed as provided in subsection 10.08.060 of this title.

4. The Appeals Board shall hold a public meeting and thereafter shall approve, approve with conditions, or deny the application. Any conditions of approval shall be limited to conditions needed to conform the matter appealed to applicable approval standards.

5. After the Appeals Board makes a decision, the Zoning Administrator shall give the applicant written notice of the decision.

6. A record of all appeals shall be maintained in the office of the Zoning Administrator.

**E. Standards for decision.**

1. The Appeals Board may reverse or affirm, wholly or in part, or may modify an administrative decision. To that end the Appeals Board shall have all the powers of the officer from whom the appeal was taken, may attach appropriate conditions, and may issue or direct the issuance of a permit.

2. The board shall review an administrative decision for correctness and shall give no deference to the reasonableness of the decision being appealed.

3. The person making an appeal shall have the burden of proving that an error has been made.

4. Because this title is in derogation of a property owner's common law right to unrestricted use of property, provisions herein restricting property use should be strictly construed, and provisions permitting property use should be liberally construed in favor of the property owner.

**F. Appeal of decision.** Any person adversely affected by a decision of the Appeals Board regarding an appeal of an administration decision may, within 30 days after such decision, appeal to the district court as provided in Utah Code Annotated section 10-9a-801, as amended.

**SECTION 21: ADOPTION** “10.07.200 Temporary Regulations” of the Apple Valley Land Use is hereby *added* as follows:

#### BEFORE ADOPTION

10.07.200 Temporary Regulations (Non-existent)

#### AFTER ADOPTION

10.07.200 Temporary Regulations(*Added*)

**A. Authorized.** The Town Council may, without a public hearing, enact an ordinance establishing a temporary land use regulation for any part or all of the area within the Town if the Council makes a finding of compelling, countervailing public interest; or the area is un-zoned.

1. A temporary land use regulation may prohibit or regulate the erection, construction, reconstruction, or alteration of any building or structure, or subdivision approval.

2. A temporary land use regulation may not impose an impact fee or other financial requirement on building or development.

3. A temporary land use regulation shall not exceed six months in duration.

**B. EIS or MIS areas.** The Town Council may, without a public hearing, enact an ordinance establishing a temporary land use regulation prohibiting construction, subdivision approval, and other development activities within an area that is the subject of an environmental impact statement or a major investment study examining the area as a proposed highway or transportation corridor.

1. A land use regulation under this subsection B:

a. May not exceed six months in duration; and

b. May be renewed, if requested by the state transportation commission created under Utah Code Annotated section 72-1-301, for up to two additional six-month periods by ordinance enacted before the expiration of the previous temporary land use regulation.

2. Notwithstanding subsection B1 of this section, a temporary land use regulation enacted pursuant to this subsection B shall be effective only as long as the environmental impact statement or major investment study is in progress.

**SECTION 22:            ADOPTION** “10.07.210 Review Of Constitutional Taking Issues” of the Apple Valley Land Use is hereby *added* as follows:

#### BEFORE ADOPTION

10.07.210 Review Of Constitutional Taking Issues (Non-existent)

#### AFTER ADOPTION

10.07.210 Review Of Constitutional Taking Issues(*Added*)

**A. Purpose.** The purpose of this section is to provide advisory guidelines for the Town to assist the Town in identifying actions that may involve physical taking or exaction of private real property and may have constitutional taking issues.

**B. Definitions.** As used herein:

1. "Constitutional taking issues" means actions involving the physical or regulatory taking of private real property by the Town that might require compensation to a private real property owner under:

- a. The Fifth or Fourteenth Amendment of the Constitution of the United States;
- b. Article I, Section 22 of the Utah Constitution; or
- c. Any recent court rulings governing the physical or regulatory taking of private real property by a governmental entity.

**C. Guidelines.** The following guidelines shall be considered by the Town when taking any action that may result in the physical or regulatory taking of private real property. The Town should review the guidelines to determine and identify whether a proposed governmental action raises constitutional taking issues.

- 1. Does the action result in a permanent physical occupation of private property?
- 2. Does the action require a property owner to dedicate property or grant an easement to the Town?
- 3. Does the action deprive the property owner of all economically viable uses of the property?
- 4. Does the action have a severe impact on the property owner's economic interest?
- 5. Does the action deny a fundamental attribute of ownership?

**D. Analysis.** If the Town determines that a governmental action involves constitutional taking issues, the proposed action should be reviewed by the Town to analyze the possible taking and to determine action to be taken. In reviewing proposed action, the following factors shall be considered:

- 1. The effect the potential taking would have on the use or value of the private property;
- 2. The likelihood that the action may result in a constitutional taking;
- 3. Any alternatives to the proposed action that would fulfill the Town's lawful objectives and reduce the risk of a constitutional taking;
- 4. The cost to the Town for payment of compensation if a taking is determined;
- 5. The governmental interest involved and its nexus to the potential taking; and

6. If the action is roughly proportional or reasonably related to the impact of any proposed development.

**E. Appeal.** Any owner of private property whose interest in the property is subject to an alleged physical or regulatory taking by the Town, pursuant to a final and authoritative decision or action of the Town, may appeal the Town's decision or action by filing a written notice of appeal and statement of the grounds for the appeal in the Town Recorder's office within 30 days from the date of the Town's decision or action. The Town Council or its designee shall hear all evidence regarding the appeal and render a decision and findings in writing within 14 days from the date the appeal was filed.

**F. Limitations.** The guidelines set forth herein shall be advisory only and shall not be construed to expand or limit the scope of the Town's liability for a constitutional taking. The Town shall have no legal liability to any person, firm, or entity of any nature whatsoever and a court may not impose liability upon the Town for failure to comply with the provisions of this section.

**SECTION 23: ADOPTION** “10.07.220 Procedural Irregularities” of the Apple Valley Land Use is hereby *added* as follows:

#### BEFORE ADOPTION

10.07.220 Procedural Irregularities (Non-existent)

#### AFTER ADOPTION

10.07.220 Procedural Irregularities(*Added*)

**A. Validity of action.** Notwithstanding any provision of this title which sets forth a procedure for any matter herein, no action, inaction or recommendation regarding the matter which is the subject of the procedure shall be void or invalid or set aside by a court due to any error (including, but not limited to, any irregularity, informality, neglect or omission) which pertains to a petition, application, notice, finding, record, hearing, report, recommendation or any other procedural matter whatsoever unless:

1. The procedure is required by state or federal law; and
2. In an examination of the entire circumstances, including the evidence of record, the court is of the opinion that the procedural error complained of was prejudicial to a substantial right of the complainant as shown by the following:

a. Had the error not occurred the decision made pursuant to the procedure would have been different, and

b. Because of the error the complainant suffered an injury for which relief must be given.

**B. Assumption of validity.** The court shall presume that action taken pursuant to a procedure was done in good faith and shall not presume that an error is prejudicial or that an injury occurred. The complainant shall have the burden of the proof by a preponderance of the evidence to show that an error is prejudicial or that an injury occurred.

**C. Applicability.** All procedures within this title shall be subject to this section.

**SECTION 24: ADOPTION** “Grading Permit By Exception” of the Apple Valley Land Use is hereby *added* as follows:

#### BEFORE ADOPTION

Grading Permit By Exception (Non-existent)

#### AFTER ADOPTION

Grading Permit By Exception(*Added*)

#### **11.02.190 Grading Permit By Exception**

Notwithstanding any other provision in this title to the contrary, the Zoning Administrator shall be authorized, upon an affirmative vote of the Town Council, to issue a grading permit for property not scheduled for immediate or reasonably imminent development upon such terms and conditions as may be deemed necessary by said Town Council to guarantee the protection of the property and neighboring properties against problems resulting from such grading, including, but not limited to, the accumulation of weeds, soil erosion, surface drainage and dust.

#### **HISTORY**

Adopted by Ord. [O-2022-11](#) on 4/21/2022



**SECTION 25:**            **REPEALER CLAUSE** All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

**SECTION 26:**            **SEVERABILITY CLAUSE** Should any part or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinances a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

**SECTION 27:**            **EFFECTIVE DATE** This Ordinance shall be in full force and effect from \_\_\_\_\_ and after the required approval and publication according to law.

PASSED AND ADOPTED BY THE APPLE VALLEY COUNCIL

\_\_\_\_\_.

	<b>AYE</b>	<b>NAY</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Mayor   Frank Lindhardt	_____	_____	_____	_____
Council Member   Andy McGinnis	_____	_____	_____	_____
Council Member   Barratt Nielson	_____	_____	_____	_____
Council Member   Kevin Sair	_____	_____	_____	_____
Council Member   Robin Whitmore	_____	_____	_____	_____

Attest

Presiding Officer

\_\_\_\_\_  
Jenna Vizcardo, Town Clerk, Apple Valley

\_\_\_\_\_  
Frank Lindhardt, Mayor, Apple Valley