

ORDINANCE NO. 14-5625

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR a 12.263 acre portion of Tract 1A of C/S 3223, generally located east of Mullowney Lane, south of Elysian Road

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. RECITALS. Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC, provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the ten (10) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the ten (10) criteria required by state law.
2. DESCRIPTION A portion of Tract 1A of Corrected Certificate of Survey No. 3223, Tract 1 Amended, recorded under Document No. 3360294, in the Office of Clerk and Recorder of Yellowstone County said portion being 12.263 acres in area, and more particularly described in Exhibit B of the attached Amended Planned Development Agreement, is presently zoned **Public (P)** and is shown on the official zoning maps within these zones.
3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Public (P) to Planned Development (PD) – Residential Neighborhood** in accordance with the attached Amended Planned Development for Josephine Crossing and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to the **PD-Residential Neighborhood** as set out in Amended Planned Development for Josephine Crossing.
4. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.
5. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading August 25, 2014.

PASSED, ADOPTED AND APPROVED on second reading September 8, 2014.



ATTEST:

BY: Cari Martin
Cari Martin, City Clerk

CITY OF BILLINGS:

BY: Thomas W. Hanel
Thomas W. Hanel, Mayor

**AMENDED PLANNED DEVELOPMENT AGREEMENT
FOR
Josephine Crossing
PD #8**

THIS ORIGINAL AGREEMENT was made and entered into the 12th day of June, 2006 by and between McCall Development, Inc., of 1536 Muldowney Ln Suite 100, Billings, Montana 59102 (hereinafter referred to as the "Owner") and the City of Billings (the "City"), 210 N 27th Street Billings, MT 59101 and filed with the Yellowstone County Clerk and Recorder as Document No. 3383147.

RECITALS

NOW WHEREAS:

A. The parties to the original agreement desire to expand and amend the original Planned Development agreement and substitute this amended agreement for the original filed document and the undersigned is the Owner of all undeveloped or unbuilt properties which fall within the 1st Filing, 2nd Filing, 3rd Filing, 4th Filing and the pending 5th Filing of Josephine Crossing Subdivision in Billings, Montana. The pending 5th Filing is more particularly described as a 12.263 acre portion of Tract 1A of Certificate of Survey 3223, Tract 1 Amended (Exhibit B). Land excepted from the following agreement:

1. That part conveyed to the Suburban Ditch Company, a corporation, by warranty deed recorded June 26, 1896, in Book J, Page 406, records of Yellowstone County, Montana.

B. The Owner and the City have placed building and use restrictions on the above described premises, and desire to amend and restate the building and use restrictions adopted as provided in this agreement.

C. The Owner intends to develop the aforementioned property for multiple use purposes including residential and commercial uses in a pedestrian-oriented development. This property is hereinafter referred to as "Josephine Crossing".

D. Josephine Crossing will be a Traditional Neighborhood Development (TND) in keeping with the tenants of Smart Growth and New Urbanism.

E. The Owner desires to place certain building and use restrictions on the property within Josephine Crossing, specify certain permitted land uses and regulations and create a pattern of development which promotes sustainability, diversity, community, health and safety.

F. The City adopted a Neighborhood Plan for the West Billings Neighborhood to establish development guidelines in West Billings, specifically to meet the community-shared vision of the future of West Billings, enabling it to thrive on growth and change through innovative, aesthetic land use, and responsible development.

G. The Owner intends to utilize smart growth principals with respect to the overlying form of Josephine Crossing.

H. The Owner intends to utilize applicable section of the SmartCode© 6.5 & 7.0 as a comprehensive form-based planning regulation, suited to describing the underlying zoning for Josephine Crossing.

I. The Owner enters into this Amended Agreement with the City to ensure that Josephine Crossing will be developed and maintained as a first class development.

NOW THEREFORE, in consideration of the premises the undersigned hereby establishes this **Amended Planned Development Agreement for Josephine Crossing** to declare the following plan for Josephine Crossing, including such restrictions as set forth herein, which shall be applicable to all of the above described real estate and shall bind all of the present and future property owners to such real estate and shall run with the land.

AGREEMENT

PERSONS BOUND BY THE PLANNED DEVELOPMENT AGREEMENT

All persons, corporations or other entities who shall hereafter acquire any interest in and to the above described real estate shall be held to agree to conform to and observe the following building and zoning restrictions. These restrictions and stipulations as to the use of the property may be amended from time to time through the zone change process as described in the Unified Zoning Regulations of the City Of Billings and Yellowstone County.

BUILDING AND USE RESTRICTIONS

A. This Planned Development (PD) is created to provide for Josephine Crossing a mixed use Traditional Neighborhood Design (TND) that embraces the tenants of Smart Growth and New Urbanism. A human-scale, pedestrian-oriented design will be essence of the neighborhood's character. The emphasis of Josephine Crossing will be on the people and their living space instead of their cars. Josephine Crossing will emphasize and make feasible other modes of transportation that will enhance social interaction. Large front porches in residential areas and walking paths throughout will knit the fabric of the neighborhood together. The intent is not to create another subdivision but to build a neighborhood. Garage doors will be placed to the rear of homes and boulevards will separate the sidewalk from the street to create a more secure path for pedestrians. The neighborhood may feature a central store with just the necessities. Many homes will have parks for their front yards. The Yellowstone River to the south will provide the perfect setting for the village.

B. This PD shall permit maximum flexibility to meet the demands of the residential and commercial markets as they change over time.

C. This PD will use the SmartCode© as a comprehensive planning tool to define the areas for development within Josephine Crossing. This PD will fall under the category of transect 4 (T4) and transect 5 (T5) and all details to the structure and intent of mixed use will be defined by the geographic cross-sections of T4 and T5.

D. Josephine Crossing is divided into two main sections (See Exhibit A). The Residential Neighborhood is a T4 in all respects. Josephine Crossing Town Square is T5 in all respects. (See Table 1).

E. The Residential Neighborhood will permit only the residential uses allowed by right as shown in Table 1. No other uses commercial or otherwise will be allowed in the Residential Neighborhood.

F. Heritage Corner will permit all uses allowed in the Residential Neighborhood as well as those shown in Table 1.

G. The following uses are prohibited throughout Josephine Crossing:

1. No bars or establishments whose sole purpose is the selling of alcoholic beverages for consumption on premise.
2. No casino or similar type establishment that provides for gambling activities.

TRANSECT 4 (T4) has a denser and primarily residential urban fabric. Mixed-use is usually confined to certain corner locations. This zone has a wide range of building types including single family, sideyard and row houses. Setbacks and street tree settings are variable. Street typically define medium sized blocks.

Land Uses: Medium density residential and home occupations; limited commercial and lodging.

Buildings: Houses and outbuildings, sideyard houses, townhouses, live/work units, corner stores and inns.

Private frontages: Porches and fences.

Public frontages: Raised curbs, narrow sidewalks, bike lanes, continuous planters, street trees in alley.

Thoroughfares: Streets and rear lanes (alleys).

Open Spaces: Squares and playgrounds.

TRANSECT 5 (T5) is the equivalent of the main street area. This zone includes mixed-use building types that accommodate retail, offices and dwellings, including row houses and apartments. This zone is a tight network of streets and blocks with wide sidewalks, steady street tree planting and buildings set close to the frontages.

Land Uses: Medium intensity residential and commercial: retail, offices, lodging, civic buildings.

Buildings: Townhouses, apartment houses, live/work units, shopfront buildings and office buildings, hotels, churches, schools.

Private frontages: Stoops, dooryards, forecourts, shopfronts and galleries.

Public frontages: Raised curbs, wide sidewalks, bike routes, continuous or discontinuous planters, street trees in alley.

Thoroughfares: Boulevards, avenues, couplets, main streets, streets and rear lanes (alleys).

Open Spaces: Squares, plaza and playgrounds.

GENERAL REQUIREMENTS FOR ALL ZONES

A. There is no minimum lot area required in Josephine Crossing. A maximum residential density is set forth in Table 1 and is based on the gross acres of Josephine Crossing not on subdivided lots and blocks. Minimum lot width and maximum lot width shall be as set forth in Table 1.

B. Each lot is allowed one principal building and one accessory building as shown in Table 1. Allowable uses and uses allowed by special review approval in each zone are as shown in the Table 1.

C. Setbacks and access for buildings are as shown in Table 1. Lot coverage by building shall not exceed the maximum shown in Table 1.

D. Building facades shall be built parallel to the principal lot frontage or parallel to the tangent of a curved principal frontage line.

E. Rear setbacks for accessory buildings shall be a minimum of twelve (12) feet measured from the center of the alley or rear lane easement. If there is no alley or rear lane easement, the setback shall be as shown in Table 1.

F. Projections into the required building setback are allowed for awnings, stoops, open porches, balconies and bay windows. Awnings may encroach over the public sidewalk in the designated T5 zone. Stoops in the T4 and T5 zones may encroach up to 100% of the setback. Open porches and awnings in the T4 zone may encroach up to 50% of the setback. Balconies and bay windows in the T4 and T5 zones may encroach up to 25% of the setback.

G. Loading docks, service areas and parking in front or side yards in the T5 zone may only be allowed by variance.

GENERAL PARKING STANDARDS

A. Parking shall be provided as shown in Table 2.

B. On-street parking available along the frontage lines that correspond to each lot shall be counted toward the parking requirement of the building on the lot.

C. Off-street parking shall be accessed by the alley or rear lane where it is provided.

D. Parking may be provided within one-quarter (1/4) mile of the site that it serves with special review approval.

E. Access driveways from the front of lots may provide access to rear lot parking.

F. Parking areas in the T5 zone shall be screened from the street frontage by a building line or in combination with a screen wall between 3.5 feet and 8 feet in height and constructed of a material to match the principal building façade. Screen walls over 4 feet in height shall be at 30% permeable or articulated to prevent a blank wall space.

G. One bicycle rack shall be provided in the Public or Private Frontage area for every ten (10) off-street parking spaces.

GENERAL ARCHITECTURAL STANDARDS

A. Street screens for parking areas and fences, walls, hedges may be located in side and rear yards but not in required front yards. Street screens and fences, walls and hedges may be up to 8 feet in height from finished grade.

B. All openings, including porches, galleries, arcades and windows, with the exception of storefronts, shall be square or vertical.

C. All openings above the first story shall not exceed 50% of the total building wall area. Each façade shall be calculated separately.

D. The facades of Retail buildings shall be detailed as storefronts and glazed no less than 70% of the sidewalk level story.

E. Doors and windows that operate as horizontal sliders are not permitted along frontages.

F. Pitches roofs, if provided, shall be symmetrically sloped no less than 5:12. Porches and attached accessory structures may be no less than 2:12.

G. Flat roofs must be enclosed by parapet walls of no less than 42 inches or as required to conceal roof-top mechanical equipment.

GENERAL LANDSCAPE AND SIGN STANDARDS

A. A minimum of one (1) street tree shall be planted within the private frontage of each lot for each 30 lineal feet of frontage line.

B. Street tree species shall not include evergreen species, Carolina poplar, Canadian poplar, elms, Lombardy poplar, silver leaf poplar, weeping willow, and box elder trees or any street tree species otherwise prohibited by the City of Billings Montana Municipal Code (BMCC).

C. In the T5 zone, the private frontage shall be landscaped or paved to match the public frontage (See Exhibit B).

D. One address number no more than six (6) inches in vertical height shall be attached to the building in proximity to the principal entrance or at a mailbox.

E. One blade sign for each business may be permanently installed perpendicular to the building façade. Blade signs in the T4 zone shall not exceed four (4) square feet. Blade signs in the T5 zone shall not exceed six (6) square feet for each separate business entrance.

F. Signage may be externally lit.

G. In the T5 zone, a single wall sign may be attached to the façade of the building providing that such sign does not exceed three (3) feet in height by any length.

GENERAL ENVIRONMENTAL STANDARDS

A. In the T4 zone sound levels shall not exceed 65 decibels between 7 am and 7 pm and 55 decibels between 7 pm and 7 am. Sound levels shall be measured at any exterior property line.

B. In the T5 zone sound levels shall not exceed 70 decibels between 6 am and midnight and 55 decibels between midnight and 6 am. Sound levels shall be measured at any exterior property line.

C. Average lighting levels measured in foot-candles shall not exceed 2.0 fc at the building frontage in the T4 zone. Average lighting levels measured in foot-candles shall not exceed 5.0 fc at the building frontage in the T5 zone.

D. Outdoor storage shall be screened from view from any frontage by a street screen or solid fence.

Exhibit "A"

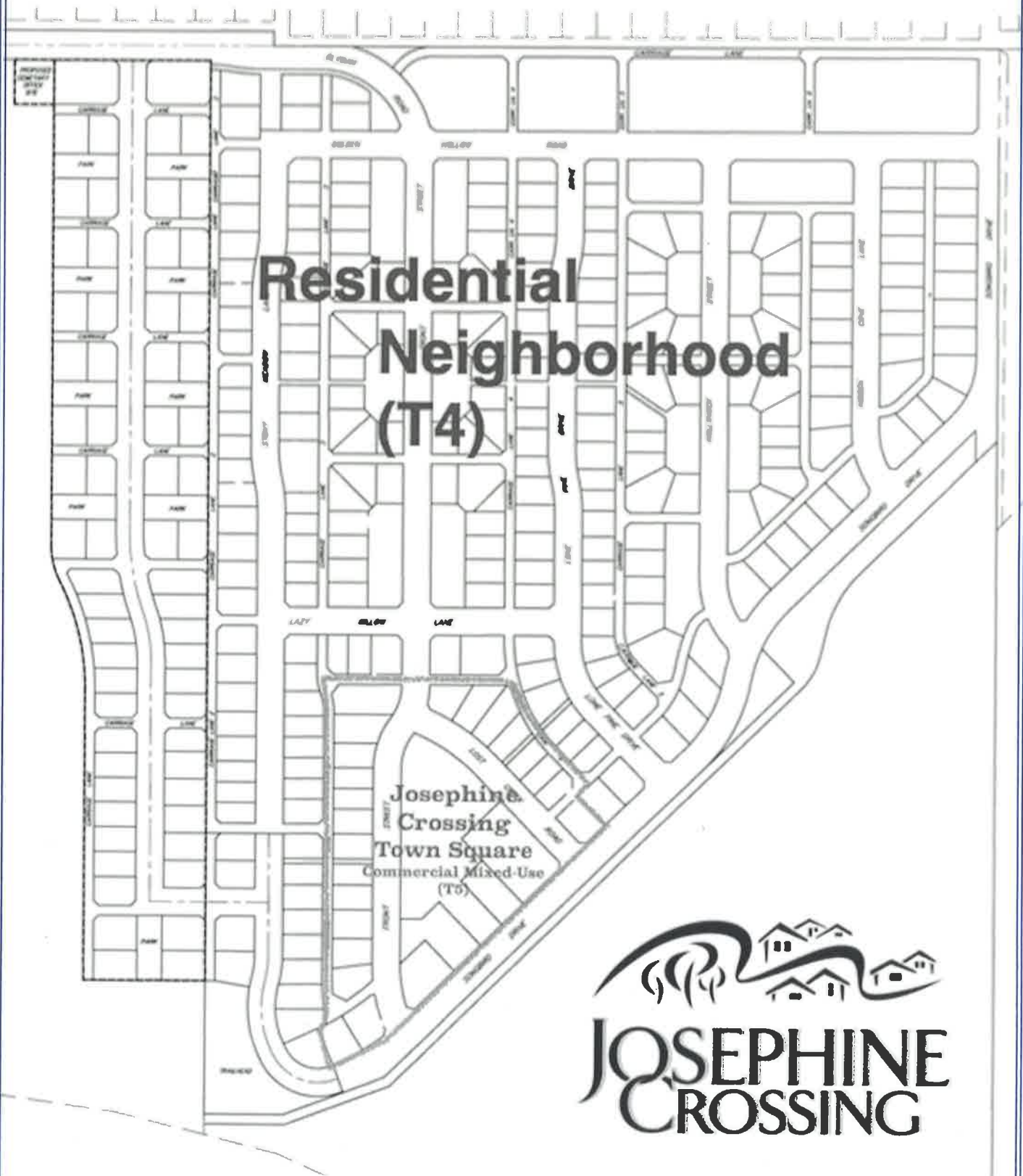


Exhibit "B"

A portion of Tract 1A of Corrected Certificate of Survey No. 3223, Tract 1 Amended, as recorded under Document No. 3360294, in the Office of the Clerk and Recorder of Yellowstone County, Montana; said portion being more particularly described as follows:

Beginning at a point being the northeast corner of said Tract 1A; thence, from said Point of Beginning, S 00°11'11" E along the east line of said Tract 1A, a distance of 1858.00 feet; thence, leaving said east line, S 89°49'46" W a distance of 246.00 feet; thence N 00°11'11" W a distance of 585.63 feet; thence along a curve to the left with a central angle of 27°15'58" a radius of 480.00 feet, and a length of 228.42 feet (chord bears N 13°49'10" W a distance of 226.27 feet); thence along a reversing curve to the right with a central angle of 27°15'58", a radius of 150.00 feet, and a length of 71.38 feet (chord bears N 13°49'10" W a distance of 70.71 feet); thence N 00°11'11" W a distance of 983.78 feet to a point on the north line of said Tract 1A; thence N 89°49'46" E along said north line, a distance of 316.00 feet to the Point of Beginning;

said described portion having an area of 12.263 acres (534,187 square feet).

JOSEPHINE CROSSING –USES & BUILDING SETBACKS

A= Allowed

SR = Special Review

TYPE OF USE	TRANSECT 4 (T4)	TRANSECT 5 (T5)
Apartment Building	A	A
Row House	A	A
Duplex House	A	A
Sideyard House	A	A
Cottage	A	A
House	A	A
Accessory Unit	A	A
Temporary Tent	SR	SR
Live/Work Unit	A	A
Inn up to 12 rooms		A
Inn up to 5 rooms		A
S.R.O. Hostel		SR
School Dormitory		A
Office Building		A
Open-market Building		A
Retail Building		A
Display Gallery		A
Restaurant		A
Kiosk		A
Bus Shelter		A
Fountain or Public Art		A
Library		A
Playground		A
Surface Parking Lot (not associated with principal building)		SR

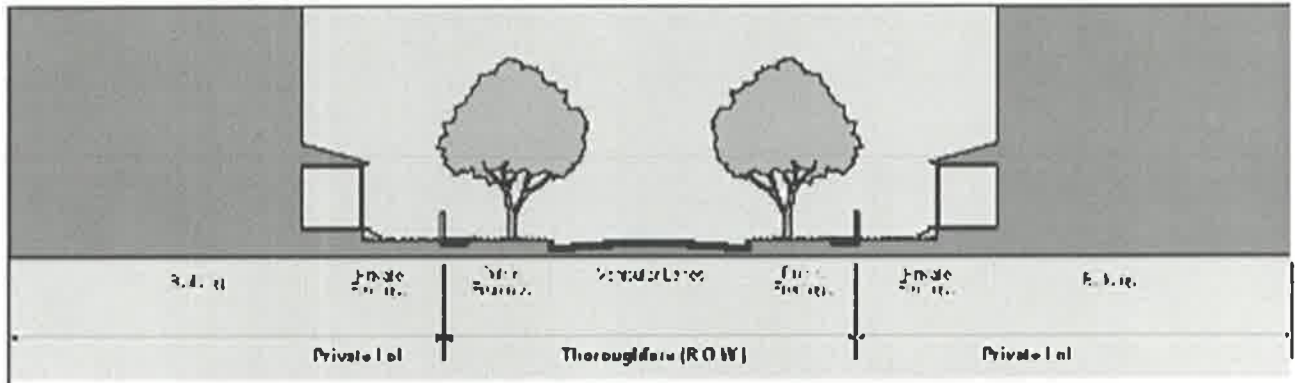
Kennel		SR
Fire Station		A
Police Station		A
Cemetery		SR
Funeral Home		A
Medical Clinic		SR
High School		SR
Elementary School		A
Other- Childcare Center		A
Electric Substation		SR
MAXIMUM RESIDENTIAL DENSITY	6 units/gross acre	10 units/gross acre
MAXIMUM BLOCK PERIMETER	3000 lineal feet	2400 lineal feet
LOT WIDTH	18 feet min. 96 feet max.	18 feet min. 180 feet max.
LOT COVERAGE	70% maximum	80% maximum
BUILDING SETBACK FRONT	5 feet min. 18 feet max.	0 feet min. 12 feet max.
BUILDING SETBACK SIDE	0 feet min.	0 feet min. 24 feet max.
BUILDING SETBACK REAR	3 feet min. OR 12 feet min. from center of alley	3 feet min. OR 12 feet min. from center of alley
MAXIMUM BUILDING HEIGHT	Principal Building = 4 stories Accessory Building = 2 stories	Principal Building = 6 stories Accessory Building = 2 stories

Uses not specifically listed as allowed or allowed by special review are prohibited.

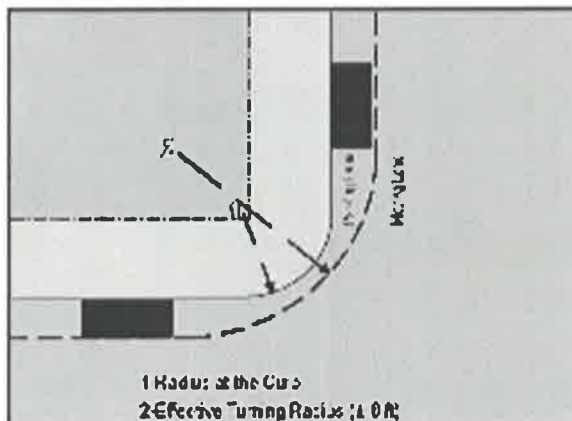
SMARTCODE
municipality

TABLE 4 DEFINITIONS ILLUSTRATED

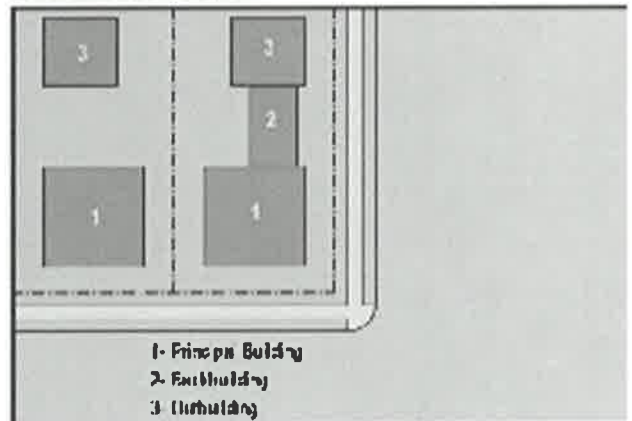
a. THOROUGHFARE & FRONTAGES



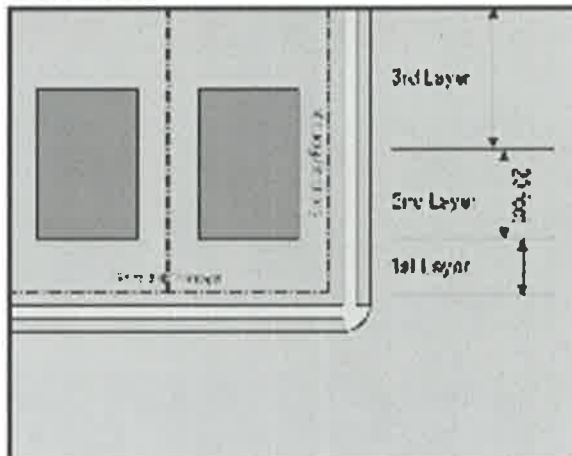
b. TURNING RADIUS



c. BUILDING DISPOSITION



d. LOT LAYERS



e. FRONTAGE & LOT LINES

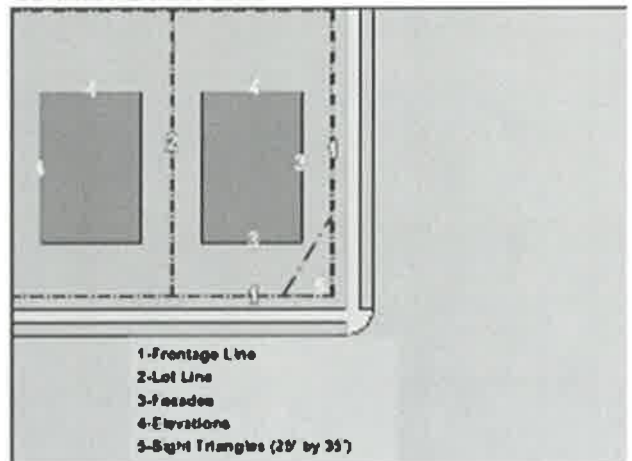


TABLE 3
SHARING FACTOR

1. ADJUSTED DENSITY or
2. EFFECTIVE PARKING

SHARED PARKING FACTOR

**For Example: *Ten* actual parking spaces are available for a residential building site and *ten* actual spaces are provided for an office site.
 $(10+10=20 \times 1.4=28)$ Effective parking spaces divided equally between the two uses is 14 spaces. Thus the *Adjusted Density* of the residential building can be increased from 10 to 14 units; likewise the office building can be adjusted from 5,000 to 7,000 square feet.**

For Example: A residential building with ten units has ten Required Parking spaces, and a neighboring 5,000 square foot office building also has ten Required Parking spaces. $(10+10=20/1.4=14.29)$ Round up to the nearest parking space equals an *Effective Parking* requirement of 15 parking spaces.

DEFINITIONS OF TERMS

The terms herein defined are in addition to those contained within the Unified Zoning Regulations of the City of Billings and Yellowstone County. Where terms or phrases are not defined, they shall have the plain meaning of the word or words as found in the most recent edition of the Merriam-Webster Dictionary of the English Language.

Accessory Building: An Accessory Building, usually located towards the rear of the same lot as a Principal Building. Accessory Buildings shall not exceed 600 square feet of habitable space, excluding parking areas.

Block – A block is the aggregate of private lots, passages, rear lanes and alleys, circumscribed by public streets.

Building Height: The height of a building is the vertical extent of a building measured in stories, not including a raised basement or a habitable attic. Height limits do not apply to belfries, clock towers, chimney flues, water tanks, elevator bulkheads and similar structures. Building Height shall be measured from the average grade of the frontage street.

Civic: A term used to define non-profit organizations dedicated to the arts, culture, education, recreation, government, transit and municipal services.

Commercial: A term used to collectively define workplace, office and retail functions.

Density: The number of dwelling units within a standard measure of land area usually given as units per acre.

Driveway: A vehicular lane within a lot usually leading to a garage. A Driveway that enters a lot from a street frontage may be no more than 18 feet in width.

Edgeward Building: A building that occupies the center of its lot with setbacks on all sides.

Façade: The exterior wall of a building that is set along a Frontage Line.

Frontage Line: Those lot lines that coincide with a public frontage.

Live-Work Unit: A dwelling unit that contains, to a limited extent, a commercial component. A live-Work Unit is a fee simple unit on its own lot with the commercial component limited on the ground level.

Lodging: A premises available for daily and weekly renting of bedrooms. The area allocated for food service shall be calculated and provided with parking according to retail use.

Lot Width: The length of the principal Frontage Line of a lot.

Office: A premises available for the transaction of general business but excluding retail, artisans and manufacturing uses.

Principal Building: The main building on a lot usually located towards the frontage.

Rear Alley: A vehicular driveway located to the rear of lots providing access to service areas and parking and containing utility easements.

Rearyard Building: A building that occupies the full frontage line leaving the rear of the lot as the sole yard. A Rearyard Building provides a continuous façade along the Frontage Line. When used for residential purposes this defines a row house.

Residential: Premises available for long-term housing.

Retail: Premises available for the sale of merchandise and food service.

Setback: The area of a lot measured from the lot line to a building façade or elevation. This area must be maintained clear of permanent structures with the exception of fences, porches, stoops, balconies, bay windows and other permitted encroachments.

Sideyard Building: A building that occupies one side of the lot with a setback to the other side.

Story: A habitable level within a building of no more than 14 feet in height from finished floor to finished ceiling. Attics and raised basements are not considered stories for the purposed of determining building height.

Streetscreen: A free-standing wall built along the frontage line or coplanar with the building façade, often for the purpose of masking a parking lot from the public street.

Transect: A system of ordering human habitats in a range from the most natural to the most urban. The SmartCode © is based upon six Transect Zones which describe the physical character of place at any scale, according to the density and intensity of land use and urbanism.

Transect Zone: Transect Zones are administratively similar to the land use zones in conventional zoning codes except that in addition to the usual building use, density, height and setback requirements, other elements of the intended habitat are integrated.

CONDITIONS OF USE

- The text and diagrams appearing in this document are the property of Duany Plater-Zyberk & Company (DPZ). Their reproduction and use are permitted with "Credit: Duany Plater-Zyberk & Company" in print.
- The complete SmartCode in printed form will be available from MuniCode.com.
- The complete SmartCode in electronic, editable format is available at DPZ.com.
- A SmartCode User's Manual will be available from wwright@balch.com.
- Information on implementation seminars and consultants is available from placemakers.com.

PLANNED DEVELOPMENT AGREEMENT AMENDMENTS OR CHANGES

Any modification of the approved development plan requested by the developer shall be processed using the same procedures for a new application, as set forth in above Unified Zoning Regulations

Sections 27-1304 through 27-1309. However, minor modifications may be approved by the zoning coordinator if he/she makes the following findings:

- (1) No change in the overall character of the development;
- (2) No increase in the number of residential units greater than two (2) percent;
- (3) No additional allowed uses;
- (4) No reduction in open space greater than two (2) percent; and
- (5) No change in the approved minimum setbacks, maximum lot coverage or maximum allowed height.

VARIANCE PROCEDURES

The procedure to vary from the absolute standards for building height, setback, landscaping, lighting, vehicle access, signage, fencing and minimum lot area shall follow the process in the Unified Zoning Regulations of Yellowstone County. In no case shall a variance be granted for a use not listed within this agreement or for uses prohibited within the Unified Zoning Regulations of Yellowstone County.

EFFECT OF THIS AGREEMENT

The provision of the Planned Development Agreement shall remain in full force and effect as to Owner and any and all persons becoming an owner of all or any portion of the property and all of such Owner's heirs, personal representatives, successors and assigns.

RIGHT TO ENFORCE

The provisions of the Planned Development shall be enforced as provided for in the Unified Zoning Regulations of the City of Billings and Yellowstone County in effect at the time of enforcement.

DATED this ____ day of _____, 20__

BY: _____
McCall Development, Owner

ATTEST:

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 20__ before me a Notary Public for the State of Montana personally appeared Gregory J. McCall known to me to be the Vice-President of McCall Development, Inc. and acknowledged to me that he executed the within instrument on behalf of said corporation, having first been authorized so to do.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first hereinabove written.

Printed Name
Notary Public for the State of Montana
Residing at Billings, Montana
My commission expires: _____

PASSED by the City Council on first reading August 25, 2014.

PASSED, ADOPTED AND APPROVED on second reading September 8, 2014, 2006.

Printed Name _____
 Notary Public for the State of Montana
 Residing at Billings, Montana
 My commission expires: _____