

TOWN OF KERSEY LAND USE CODE

TABLE OF CONTENTS

ARTICLE 3– ZONING

	General Provisions.....	
	Purpose.....	
	Zoning Districts and Boundaries	
	Principal and Conditional Uses Permitted by Zoning District.....	
	Matrix of Permitted and Conditional Uses by Zoning District.....	
	Density and Dimensional Standards	
3.7	Conditional Uses.....	3-1
3.8	Nonconforming Uses.....	3-7
3.9	Appeals and Variances	3-8
3.10	Waivers	3-12
3.11	Amendments.....	3-12
3.12	Zoning and Use of Wireless Telecommunication Services, Facilities and Equipment.....	3-18
3.13	Home Occupations.....	3-22

3.7 Conditional Uses

- A. Purpose.** In order to provide flexibility and to help diversify uses within a zoning district, specified uses are permitted in certain districts subject to the granting of a conditional use permit.

Because of their unusual or special characteristics, conditional uses require review and evaluation so that they may be located properly with respect to their effects on surrounding properties. The review process prescribed in this Section is intended to assure compatibility and harmonious development between conditional uses, surrounding properties and the Town at large. Conditional uses may be permitted subject to such conditions and limitations as the Town may prescribe to ensure that the location and operation of the conditional uses will be in accordance with the conditional use criteria. The scope and elements of any conditional use may be limited or qualified by the conditions applicable to the specific property. Where conditions cannot be devised to achieve these objectives, applications for conditional use permits shall be denied.

- B. Conditional Use Review Process.**

1. Step 1: Pre-Application Conference. The applicant shall attend a pre-application conference with a representative from the Town. The purpose of the meeting is to discuss the conditional use submittal requirements and review process.
2. Step 2: Technical Advisory Committee meeting. If deemed necessary, Staff shall schedule a meeting with appropriate referral agencies (i.e., oil and gas companies, Platte Valley RE-7 School District, Weld County Department of Public Health and Environment, Weld County Public Works Department, Kersey Post Office, Kersey Police Department, Platte Valley Fire Protection District, Greeley Gas Company , Xcel, etc.), appropriate Town Staff (i.e., Town Clerk, Town Planner, Town Engineer, Town Administrator, etc.) and the applicant to discuss the project.
3. Step 3: Conditional Use Application Submittal. The applicant shall submit one (1) copy of the complete conditional use application package to the Town Clerk and shall request that the application be reviewed by the Planning Commission and Board of Trustees. Conditional use requests shall include:
 - a. *Land Use Application Form* (from *Workbook*).
 - b. *Conditional Use – Technical Criteria Form* (from *Workbook*).
 - c. *Application Fee and Fee Agreement* (from *Workbook*).
 - d. Written statement and any graphics necessary to describe the precise nature of the proposed use and its operating characteristics and to illustrate how all conditional use review criteria have been satisfied. The written description should address how the proposed development conforms to this Land Use Code (including the *Community Design Principles and Development Standards* and the *Zoning Code*) and the *Comprehensive Plan*.

- e. *Conditional Use Map* - The conditional use map shall be a minimum of twenty-four (24) inches by thirty-six (36) inches (unless otherwise approved by staff) and shall provide the following information:
- i. Title of project.
 - ii. North arrow, scale (no greater than 1"=50') and date of preparation.
 - iii. Vicinity map.
 - iv. Address of project.
 - v. Legal description of property.
 - vi. Name, address and phone number of property owner.
 - vii. Name, address and phone number of person or firm responsible for plan.
 - viii. Lot size (square footage).
 - ix. Bearings and distances of all lot lines.
 - x. Existing and proposed easements and rights-of-way.
 - xi. Existing and proposed paved areas and sidewalks on the site and in the adjacent rights-of-way, all dimensioned, showing how pedestrians will have access to the site and buildings.
 - xii. Gathering areas for people.
 - xiii. Existing and proposed curb cuts on the site and in the adjacent rights-of-way (on both sides of perimeter streets), all dimensioned.
 - xiv. Existing and proposed two (2) -foot contours.
 - xv. Existing waterways on or adjacent to the site.
 - xvi. Finished floor elevations for all structures.
 - xvii. Footprint (including roof overhangs and eaves, decks, balconies, outside stairs and landings) of all proposed structures and their use with their dimensions and locations noted with respect to the property lines.
 - xviii. Existing structures and their use.
 - xix. Square footage of proposed the proposed building(s) and the footprint of the proposed building(s).
 - xx. Proposed structure height.
 - xxi. For commercial and industrial uses, the type of activity, number of employees and hours of operation.
 - xxii. For multi-family residential, the number of: residential units and bedrooms per unit.
 - xxiii. Location of proposed signs and lights.
 - xxiv. Specifications for the signs and lights, including type, height and general conformance to the Code. For commercial and industrial uses, a photometric plan prepared by a qualified electrical or lighting engineer shall be submitted that depicts all lighting fixtures and the light spread (in footcandles) of these fixtures across the site to all property boundaries.
 - xxv. Proposed traffic controls and striping for parking areas (all lanes, driveways, and parking spaces must be dimensioned).

- xxvi. Trash disposal areas and enclosures including specifications for enclosures.
 - xxvii. All oil and gas facilities and the required setback, including existing flowlines, and proposed relocation of flowlines.
 - xxviii. Archaeological or historic site that merit preservation.
 - xxix. Location and size of existing and proposed water and sewer service connections and tap sizes (including those for irrigation systems).
 - xxx. Location and size of water and sewer lines to which the service connections will be or are made.
 - xxxi. Location and size of water meter(s).
 - xxxii. Location and size of backflow-prevention devices.
 - xxxiii. Indication of how and where perimeter drain will drain (if one exists).
 - xxxiv. Location of existing electrical lines and poles on or adjacent to the site.
 - xxxv. Location of proposed electrical service connection and meter location.
 - xxxvi. Location of electric transformer.
 - xxxvii. Location of all fire hydrants. If none exist on site, note distance and direction of the closest hydrant adjacent to the site within 500 feet.
 - xxxviii. Location of detention/retention areas and storm sewer infrastructure with the required drainage easements.
 - xxxix. The distance from the proposed building(s) or structure(s) to adjacent lot lines, easements, and adjacent structures.
 - xl. A land use chart (table).
 - xli. Certificate blocks for signatures of owner, surveyor, utility providers, and Town approval, as applicable (see *Workbook* for samples).
 - xlii. Address how potential impacts of the proposed use on the neighborhood will be mitigated including traffic, noise, odors, hours of operation, light, dust, erosion, building type and scale.
- f. *Grading and Drainage Plan and Report.* This plan and report must be certified by a Colorado registered professional engineer, including storm drainage concepts such as locations for on-site detention or downstream structural improvements and soil erosion and sedimentation control plans and specifications. The plan must comply with the *Town of Kersey Storm Drainage Design Criteria and Construction Specifications*. It must also discuss the impacts on and to any existing floodways and/or floodplains on and adjacent to the site as well as any FEMA applications required.
- g. *Master Utility Plan.* This plan shall be prepared by a registered professional engineer. It is necessary that the engineer consult with the appropriate utility service providers regarding the design of all utilities through the property.
- h. *Landscape Plan.* Refer to Section 2.16 of the *Kersey Land Use Code* for the final landscape plan requirements.
- i. *Final Open Space and Ecological Characterization Plan.* Refer to Section 2.13 of the *Kersey Land Use Code* for the final open space plan and ecological

characterization requirements. This information may be included in the Landscape Plan if it is legible.

- j. *Traffic Study.* This study must be prepared by a professional traffic engineer (if required by Staff).
 - k. *Exterior elevations of proposed structures.*
 - l. *Legal Notice Form.* The legal notice form will be provided by the Town and filled out by the applicant and returned to the Town with an electronic copy of the legal description in MSWord Format.
 - m. *Surrounding and Interested Property Ownership Report* - Provide the Town Clerk with a current list (not more than thirty [30] days old) of the names and addresses of the surrounding property owners (within three hundred [300] feet of the property), mineral interest owners of record, mineral and oil and gas lessees for the property and appropriate ditch companies. The applicant shall certify that the report is complete and accurate (see form in *Workbook*).
 - n. *Public Hearing Notification Envelopes* - one (1) set of stamped, addressed, certified (return receipt requested) envelopes. The envelopes shall have the Town's address as the mailing address and return address and the envelopes shall be addressed to the surrounding property owners (within three hundred [300] feet of the property), mineral interest owners of record, oil and gas lessees for the property, and the appropriate referral agencies.
 - o. *An Electronic Copy of the Complete Application.* Submit an electronic form of the entire application package such as an Adobe pdf file.
 - p. Such additional material as the Town Clerk may prescribe or the applicant may submit pertinent to the application
4. Step 4: Staff Certifies Application is Complete. Within a reasonable period of time, Staff shall either certify that the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. The applicant shall then correct any deficiencies in the application package, if necessary, and submit the required number of copies of the application (as specified in the Conditional Use Technical Criteria form) to the Town Clerk. The original application and all documents requiring a signature shall be signed in blue ink.
5. Step 5: Schedule Conditional Use Public Meeting and Complete Public Notification Process. The Planning Commission shall schedule a public meeting for the purpose of making a recommendation on the Conditional Use. The Town Clerk shall publish notice in a newspaper of general circulation. The meeting may be held no less than fourteen (14) days from the date of advertising.

6. Step 6: Applicant Posts Signs on Property and Provides Signed Affidavit (see Workbook) to Town. The applicant shall post a sign on the property notifying the public of the hearing dates at least fourteen (14) days prior to the hearing. The sign shall include the time and place of the public hearing, the Town's phone number and the applicant's name. The applicant shall submit an affidavit certifying they posted the property. Refer to the *Workbook* for details on the sign and for a sample affidavit.
7. Step 7: Staff Notifies Interested Parties. Not less than fourteen (14) days before the date scheduled for public hearing or Staff decision, Staff shall send information about the application by regular mail to: referral agencies, Weld County, surrounding property owners within three hundred (300) feet, mineral interest owners of record, mineral and oil and gas lessees for the property, ditch companies and other interested parties. The referral information shall include the time and place of the public hearing, the nature of the hearing, the location of the subject property and the applicant's name.
8. Step 8: Staff Reviews Application and Prepares Comments. Staff will complete a review of the Conditional Use based on the Town's Conditional Use review criteria and the referral comments. Staff will then prepare a report identifying any issues of concern that the applicant shall address and forward it to the applicant.
9. Step 9: Applicant Responds to Staff Comments. The applicant shall address the Staff's comments then submit the following to the Town Clerk:
 - a. Letter explaining how all of the comments have been addressed; and
 - b. Revised maps and other documents.
10. Step 10: Planning Commission Public Meeting and Recommendation. The Planning Commission shall hold a public meeting to review the application based on the Conditional Use review criteria. The Planning Commission shall then make a recommendation to the Board of Trustees to approve, conditionally approve or deny the application.
11. Step 11: Applicant Responds to Planning Commission Conditions of Approval. The applicant shall revise the Conditional Use plat based on the Planning Commission's conditions of approval and submit it to the Town.
12. Step 12. Final Staff Review. Staff will complete a final review of the resubmitted materials and then prepare a report to the Board of Trustees explaining how the application is or is not consistent with the review criteria.
13. Step 13: Board of Trustees Public Hearing and Action on the Conditional Use. The Board of Trustees shall hold a public hearing on the conditional use application. Following the public hearing, the Board of Trustees may approve, conditionally approve or deny the conditional use application based on the conditional use review criteria. A conditional use permit may be revocable, may be granted for a limited time period, or may granted subject to conditions as the Board may prescribe. Conditions may include, but shall not be limited to: requiring special setbacks, open spaces, fences or walls, landscaping or screening,

street dedication and improvement, regulation of vehicular access and parking, signs, illumination, hours and methods of operation, control of potential nuisances, prescription of standards for maintenance of buildings and grounds, and prescription of development schedules.

14. Step 14: Record Conditional Use Map. The Town Clerk shall record one (1) original mylar of the conditional use map in the office of the Weld County Clerk and Recorder. The recording fee shall be paid by the applicant.

C. Conditional Use Review Criteria. The Town shall use the following criteria to evaluate the applicant's request:

1. The conditional use will satisfy all applicable provisions of the zoning code and subdivision regulations unless a variance is being requested.
2. The conditional use will conform with or further the goals, policies and strategies set forth in the *Kersey Comprehensive Plan*.
3. The conditional use will be adequately served with public utilities, services, and facilities (i.e. water, sewer, electric, schools, street system, fire protection, public transit, storm drainage, refuse collection, parks system, etc.) and not impose an undue burden above and beyond those of the permitted uses of the district.
4. The conditional use will not substantially alter the basic character of the district in which it is in or jeopardize the development or redevelopment potential of the district.
5. The conditional use will result in efficient on- and off-site traffic circulation which will not have a significant adverse impact on the adjacent uses or result in hazardous conditions for pedestrians or vehicles in or adjacent to the site.
6. Potential negative impacts of the conditional use on the rest of the neighborhood or of the neighborhood on the conditional use have been mitigated through setbacks, architecture, screen walls, landscaping, site arrangement or other methods. The applicant shall satisfactorily address the following impacts:
 - a. Traffic;
 - b. Activity levels;
 - c. Light;
 - d. Noise;
 - e. Odor;
 - f. Building type, style and scale;

- g. Hours of operation;
 - h. Dust; and
 - i. Erosion control.
7. The applicant has submitted evidence that all applicable local, state and federal permits have been or will be obtained.

3.8 Nonconforming Uses

- A. Requirements for Nonconforming Uses.** Except as provided in this Section, the lawful use of any building or land existing at the time of enactment of this Article, or of any amendments to this chapter, may be continued even though such use does not conform to the requirements of this Code.
1. Abandonment. Abandonment means whenever a nonconforming use has been discontinued for a period of one hundred eighty (180) days, such use shall not thereafter be reestablished and any future use shall be in conformance with the provisions of this Article.
 2. Completion. Completion means that any building or structure for which a building permit has been issued prior to the date of enactment of this Article may be completed and used in accordance with the plans, specifications and permits on which said building permit was granted, if construction is commenced within sixty (60) days after the issuance of said permit and diligently prosecuted to completion.
 3. Displacement. Displacement means no nonconforming use shall be altered, extended or restored so as to displace any conforming use. A trailer house in any district may be improved or replaced with a newer model trailer house.
 4. Repairs and Maintenance. Repairs and maintenance means ordinary repairs and maintenance of a nonconforming building shall not be deemed an extension of such nonconforming building and shall be permitted.
 5. Restoration. Restoration means a nonconforming building which has been damaged by fire or other causes and which may be restored to its original condition, provided that such work is commenced within one hundred eighty (180) days of such calamity and less than fifty (50) percent of the building is destroyed.
 6. Unsafe Buildings. Unsafe buildings means any nonconforming building or portion thereof declared unsafe by the Building Inspector, which may be replaced, strengthened or restored to a safe condition.

3.9 Appeals and Variances

- A. Purpose.** The Board of Adjustment shall hear and decide appeals from any order, requirement, decision, or determination made by any administrative official charged with the enforcement of this Code. In addition, the Board of Adjustment shall hear and decide all requests for a variance from the requirements of this Code. Such variance shall not be granted if it would be detrimental to the public good, create a conflict with the *Kersey Comprehensive Plan* or impair the intent and purpose of this Code.
- B. Appeal Application.**
1. Any aggrieved person of interest may appeal a denial of a building permit, or any order, requirement, decision, interpretation or determination made by an administrative official charged with the enforcement of this Code.
 - a. An appeal to the Board of Adjustment shall be made within ten (10) days after denial of a building permit or other development permit, or receipt of a written notice of an order, requirement, decision, interpretation or determination by an administrative official of the Town. Failure to make a timely appeal shall be considered a waiver of the appellant's rights to appeal to the Board of Adjustment.
 - b. The applicant shall file with the Town Clerk a written notice of appeal on a form approved by the Board and pay the fee set by the current fee schedule.
 - c. The Town Clerk shall forward a copy of the notice of appeal to the Planning Staff or other appropriate administrative officer, who shall prepare a record of the Town action that is being appealed for consideration by the Board of Adjustment.
- C. Variance Application.** Any person of interest, or an officer or department of the Town may apply to the Board of Adjustment for a variance from the literal interpretation of the provisions this Code.
1. Step 1: Submit Variance Application. For a variance request, the applicant shall submit the following to the Town Clerk:
 - a. *Land Use Application Form* (from *Workbook*).
 - b. *Variance – Technical Criteria Form* (from *Workbook*).
 - c. *Application Fee and Fee Agreement* (from *Workbook*).
 - d. *Title Commitment.* The title commitment must be current and dated no more than thirty (30) days from the date of preliminary plat application submittal.
 - e. *Explanation Letter* – identifying the variance being requested, a citation of the portion of the *Kersey Land Use Code* from which relief is requested and explaining what exceptional condition, practical difficulty, or unnecessary hardship exists to

require the variance. The letter shall also address how the variance, if granted, will not be detrimental to the public good, create a conflict with the *Kersey Comprehensive Plan* or impair the intent and purpose of this Code.

- f. *Map* – Staff will dictate map requirements based on the variance being requested. The map shall typically consist of a scale drawing depicting the property affected by the variance request, including, but not limited to, required or existing setbacks and proposed setbacks from adjacent lot lines or structures and any other information that will assist the Board of Adjustment in understanding the request.
 - g. *Surrounding and Interested Property Ownership Report*. Provide the Town Clerk with a current list (not more than thirty [30] days old) of the names and addresses of the surrounding property owners (within three hundred [300] feet of the property), mineral interest owners of record, mineral and oil and gas lessees for the property and appropriate ditch companies. The applicant shall certify that the report is complete and accurate.
 - h. *Public Hearing Notification Envelopes*. Provide the Town Clerk with one (1) set of stamped, addressed, certified (return receipt requested) envelopes. The envelopes shall have the Town's address as the return address and the envelopes shall be addressed to the surrounding property owners (within three hundred [300] feet of the property), mineral interest owners of record, mineral and oil and gas lessees for the property, and the appropriate referral agencies (as discussed in pre-application conference).
2. Step 2: Application Certification of Completion. Within a reasonable period to time, Staff shall either certify the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. Applicant shall then correct any deficiencies in the application package, if necessary, and submit the required number of copies of the application (as specified in the *Final Plat Technical Criteria* form) to the Town Clerk. The original application and all documents requiring a signature shall be signed in blue ink.
 3. Step 3: Town Schedules Public Hearing and Complete Public Notification Process. The Town Clerk shall schedule a public hearing for the purpose of taking action on the final plat. The Town Clerk shall publish notice in a newspaper of general circulation. The hearing may be held no less than fourteen (14) days from the date of advertising.
 4. Step 4: Applicant Post Signs on Property and Provides Signed Affidavit (see *Workbook*) to Town. The applicant shall post a sign on the property notifying the public of the hearing dates at least fourteen (14) days prior to the hearing. The sign shall include the time and place of the public hearing and the applicant's name. The applicant shall submit an affidavit certifying they posted the property. Refer to the *Workbook* for details on the sign and for a sample affidavit.

5. Step 5: Staff Refers Application to Interested Parties. Not less than thirty (30) days before the date scheduled for the initial Planning Commission public hearing, Staff shall send information about the application by certified mail to: adjacent municipalities, Weld County, surrounding property owners within three hundred (300) feet, mineral interest owners of record, mineral and oil and gas lessees for the property, and other interested parties. The referral information shall include the time and place of the public hearing, the nature of the hearing, the location of the subject property, and the applicant's name.
6. Step 6: Staff Reviews Application and Prepares Comments. Staff will complete a technical review of the application based on the Town's variance review criteria and referral comments received. Staff will then prepare a report identifying any issues of concern that the applicant will need to address and forward this report to the applicant and the Board of Adjustments.

D. Board of Adjustment Public Hearing and Action on the Appeal or Variance Request. The Board of Adjustment ("Board") shall make the decision on appeals and variances at a regular meeting of the Board.

1. The appellant, or the applicant for a variance, has the burden of proof to establish the necessary facts to warrant favorable action of the Board.
2. The Board shall have all the powers of the applicable Town administrative official on the action appealed. The Board may in whole or in part affirm, reverse or amend the decisions of the applicable Town administrative official.
3. The Board may impose reasonable conditions in its order to be complied with by the appellant in order to further the purposes and intent of the *Kersey Land Use Code*.
4. The Board may impose any reasonable conditions on the issuance of a variance and may amend the variance from that requested.
5. No single decision of the Board sets a precedent. The decision of the Board shall be made on the particular facts of each case.
6. Variances granted by the Board of Adjustment shall be recorded with the Weld County Clerk and Recorder at the expense of the applicant.
7. Any appeal of the decision of the Board of Adjustment may be made to the District Court as provided by law; provided however, that such appeal must be made prior to thirty (30) days following the date of the final action taken by the Board of Adjustment, as provided by Rule 106, Colorado Rules of Civil Procedure.

E. Appeal Criteria for Approval. The Board of Adjustment, in hearing an appeal from an interpretation of the *Kersey Land Use Code*, shall consider:

1. The technical meaning of the provision being appealed;

2. Evidence of the manner in which the provision has been interpreted in the past;
3. The positive or negative impact of the requested appeal on the achievement of stated Town development goals and objectives; and
4. The intent of the provision in implementing the *Kersey Comprehensive Plan*.

In approving a requested interpretation, the Board of Adjustment shall provide a written record of its findings and the staff shall use it to propose amendments that address future interpretation problems.

F. Variance Criteria for Approval.

1. The Board of Adjustment shall not grant a variance to the *Kersey Land Use Code*, which:
 - a. Permits a land use not allowed in the zoning district in which the property is located; or
 - b. Is in the public right-of-way or on public property; or
 - c. Alters any definition of the *Kersey Land Use Code*; or
 - d. Is other than the minimum variance that will afford relief with the least modification possible to the requirements of the *Kersey Land Use Code*; or
 - e. Is based on physical conditions or circumstances of the property so general or recurring in nature as to reasonably make practicable the formulation of a general regulation to be adopted as an amendment to of the *Kersey Land Use Code*; or
 - f. Is based exclusively on findings of personal or financial hardship. Convenience, profit or caprice shall not constitute undue hardship.
2. In order to grant a variance to the *Kersey Land Use Code*, the Board of Adjustment shall find that all the following have been satisfied:
 - a. Is based on physical conditions or circumstances of the property that are general and recurring throughout the Town; and
 - b. The problem complained of must be unique to the particular property for which the variance is requested.
3. The condition of any variance authorized shall be stated in writing in the minutes of the Board of Adjustment with the justifications set forth. Four affirmative votes of the five member Board are required to overturn the decision of the administrative official.

3.10 Waivers

- A. Purpose.** The Board of Trustees may authorize waivers from the *Kersey Land Use Code* in cases where, due to exceptional conditions peculiar to the site, practical difficulties or an unnecessary hardship is placed on the landowner. Such waiver shall not be granted if it would be detrimental to the public good, create a conflict with the *Kersey Comprehensive Plan* or impair the intent and purpose of this Code.
- B. Waiver Application.**
1. Waiver Requests In Conjunction with Other Applications. The applicant shall submit the following to the Town Clerk in conjunction with another application (i.e. zoning amendment):
 - a. *Explanation Letter* – identifying the waiver being requested and explaining what exceptional condition, practical difficulty, or unnecessary hardship exists to require the waiver. The letter shall also address how the waiver, if granted, will not be detrimental to the public good, create a conflict with the *Kersey Comprehensive Plan* or impair the intent and purpose of this Code.
- C. Waiver Criteria for Approval.** The condition of any waiver authorized shall be stated in writing in the minutes of the Board of Trustees with the justifications set forth. Waivers may be granted only if they meet the following criteria:
1. The waiver, if granted, will not alter the essential character of the neighborhood or district in which the property is located, nor diminish the value, use or enjoyment of adjacent property.
 2. The waiver, if granted, is the minimum variance that will afford relief and is the least modification possible of the subdivision ordinance provisions which are in question.
 3. That such practical difficulties or unnecessary hardship has not been created by the applicant.

3.11 Amendments

- A. Initiation of Amendments to Text or Official Zoning Map.** The Board of Trustees may from time to time, amend, supplement, change or repeal the regulations and provisions of this Article. Amendments to the text of the zoning code may be initiated by the Board of Trustees, Town Staff, the Planning Commission, or by written application of any property owner or resident of the Town. Amendments to the zoning district map may be initiated by the Board of Trustees, Town Staff, the Planning Commission, or by a real property owner in the area to be included in the proposed amendment.

- B. General Rezoning of the Town.** Whenever the zoning district map is in any way to be changed or amended incidental to or as part of a general revision of the zoning code, whether such revision be made by repeal of the existing zoning code and enactment of a new zoning code or otherwise, the requirement of an accurate survey map or other sufficient legal description of, and the notice to and listing of names and addresses of owners of real property in the area of the proposed change, shall be waived. However, the proposed zoning map shall be available for public inspection in the Town Hall during regular business hours for fifteen (15) days prior to the public hearing on such amendments.
- C. Zoning Amendment Application Process.**
1. Step 1: Optional Pre-Application Conference. The applicant may attend a pre-application conference with a representative from the Town. The purpose of the meeting is to discuss the zoning amendment, submittal requirements and review process.
 2. Step 2: Zoning Amendment Application Submittal. The applicant shall submit one (1) copy of the complete zoning amendment application package to the Town Clerk and shall request that the application be reviewed by the Planning Commission and Board of Trustees. Note: In the case of text amendments, only Items a through d are required.
 - a. *Land Use Application Form (from Workbook).*
 - b. *Conditional Use – Technical Criteria Form (from Workbook).*
 - c. *Application Fee and Fee Agreement (from Workbook).*
 - d. A written description of the proposed change to the text of this Article, including the citation of the portion of the Article to be changed and the wording of the proposed change. The description must provide the rationale for the proposed change, citing specific difficulties with the existing text and similar provisions in zoning codes of other jurisdictions that support the rationale of the proposed change. Particular attention should be given to addressing the criteria listed in Subsection E.
 - e. A legal description for all property to be considered for rezoning (hard copy and electronic copy in MS Word format);
 - f. Current proof of ownership in the form of title commitment issued within thirty (30) days of submission of the application (for zoning map amendments only).
 - g. A zoning amendment map of the area included in the proposed change, twenty-four (24) inches high by thirty-six (36) inches wide, with the following information:
 - i. North arrow, scale (1" = 100' or 1" = 200'), title of project and date of preparation.

- ii. The subdivision or block and lot name of the area to be zoned (if applicable) at the top of each sheet.
 - iii. Legal description of area to be zoned (entire area and individual zoning districts). In unsubdivided property, zone boundaries shall be determined by a metes and bounds description.
 - iv. Location and boundaries, including dimensions, of the property(s) proposed for rezoning. Note: Zone boundaries are to be the center lines of physical streets, roads, highways, alleys, railroad rights-of-way, and channelized waterways, or such lines extended.
 - v. The acreage or square footage contained within the property proposed for rezoning.
 - vi. All existing land uses in the proposed rezoning area.
 - vii. Zoning and existing land uses on all lands adjacent to the proposed rezoning.
 - viii. The location and dimensions for all existing public rights-of-way including streets, and centerlines of water-courses within and adjacent to the rezoning.
 - ix. The names of all adjoining subdivisions with lines of abutting lots, and departing property lines of adjoining properties not subdivided.
 - x. Certificate blocks for Surveyor, Planning Commission, Board of Trustees, and Weld County Clerk and Recorder (see *Workbook* for examples).
 - xi. An AutoCAD™ drawing file (release 12 or higher) of the zoning amendment map on CD or by other acceptable electronic transfer shall also be provided.
- h.** A written statement describing the proposal and addressing the following points:
- i. Need for the proposed rezoning;
 - ii. Present and future impacts on the existing adjacent zone districts, uses, and physical character of the surrounding area;
 - iii. Impact of the proposed zone on area accesses and traffic patterns;
 - iv. Availability of utilities for any potential development;

- v. Present and future impacts on public facilities and services, including, but not limited to, fire, police, water, sanitation, roadways, parks, schools, and transit;
 - vi. The relationship between the proposal and the *Kersey Comprehensive Plan*; and
 - vii. Public benefits arising from the proposal.
- i. *Surrounding and Interested Property Ownership Report* - Provide the Town Clerk with a current list (not more than thirty [30] days old) of the names and addresses of the surrounding property owners (within three hundred [300] feet of the property), mineral interest owners of record, mineral and oil and gas lessees for the property and appropriate ditch companies. The applicant shall certify that the report is complete and accurate.
 - j. *Public Hearing Notification Envelopes* - one (1) set of stamped, addressed, certified (return receipt requested) envelopes. The envelopes shall have the Town's address as the mailing address and return address and the envelopes shall be addressed to the surrounding property owners (within three hundred [300] feet of the property), mineral interest owners of record, oil and gas lessees for the property, and the appropriate referral agencies.

It is the applicant's responsibility to ensure that accurate and complete information is provided.
 - k. *Electronic Copy of Application Package*. Provide an Adobe pdf file of the complete application package.
3. Step 3: Zoning Amendment Application Certification of Completion. Within a reasonable period of time, Staff shall either certify the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. Applicant shall then correct any deficiencies in the application package, if necessary, and submit the required number of copies of the application (as specified in the Zoning Amendment *Technical Criteria* form) to the Town Clerk. The original application and all documents requiring a signature shall be signed in blue ink.
 4. Step 4: Final Staff Review and Report to Planning Commission. Staff shall complete a final review of the resubmitted materials and prepare a report to the Planning Commission explaining how the application is or is not consistent with the Criteria for Amendments to the Official Zoning Map or Criteria for Amendments to the Text of the Zoning Code.
 5. Step 5: Set Zoning Amendment Public Hearing and Complete Public Notification Process. The Town Clerk shall send notice of public hearing to the applicant, all property owners of record within three hundred (300) feet of the property in question, to the appropriate referral agencies and other interested parties no less than fourteen (14) days before the

initial Planning Commission public hearing. Such notice shall not be required for text amendments. The notice shall include the time and place of the public hearing, the nature of the hearing, the location of the subject property, and the applicant's name. The Town Clerk shall also publish notice in a newspaper of general circulation. For zoning map amendments, the Town Clerk shall prepare a public hearing notification sign to be posted on the property by the applicant. The hearing may be held no less than fourteen (14) days from the date of property posting and newspaper publication. If the zoning amendment request is accompanying another application which is scheduled for public hearings before the Planning Commission and Board of Trustees, one public hearing may be held on both applications.

6. Step 6: Planning Commission Public Hearing and Action on the Zoning Amendment. The Planning Commission shall hold a public hearing to review the zoning amendment based on the Criteria for Amendments to the Official Zoning Map or the Criteria for Text Amendments to the Zoning Code. The Commission shall then make a recommendation to the Board of Trustees to approve, conditionally approve, or deny the zoning amendment application.
7. Step 7: Set Board of Trustees Public Hearing and Complete Public Notification Process. The Town Clerk shall schedule a public hearing for the purpose of taking action on the zoning amendment. The Town Clerk shall publish notice and notify interested parties in a newspaper of general circulation. The hearing may be held no less than fifteen (15) days from the date of advertising. This step may be performed in conjunction with Step 5.
8. Step 8: Board of Trustees Public Hearing and Action on the Zoning Amendment. The Board of Trustees shall, after receiving the report and recommendations from the Planning Commission, hold a public hearing and act upon the proposed amendment. Following the required hearing, the Town Board shall consider the comments and evidence presented at the hearing and evaluate the application in accordance with the criteria listed below and approve, approve with conditions, or deny the application, in whole or in part.
9. Step 9: Post Approval Actions.
 - a. Upon approval of an amendment to the official zoning map by the Board of Trustees, the Town Clerk shall cause an appropriate revision of the official zoning map to be prepared for recording with the Weld County Clerk and Recorder. In the event the zoning amendment was initiated by an interested party, the petitioner shall pay the Town's cost for the preparation of the revision to the official zoning map.
 - b. Upon approval of an ordinance amending, changing or repealing part of the text of this Article, the Town Clerk shall certify a copy of the ordinance and place it in the official records of the Town and make appropriate supplements to this Article.
 - c. The applicant initiating the official zoning map amendment shall have thirty (30) days after approval of the amendment by the Board of Trustees to submit to the

Town Clerk two (2) original drawings of the approved zoning amendment map for recording, along with the recording fees and all other costs billed by the Town relative to the zoning amendment. In addition, the petitioner shall submit one 11" x 17" mylar reduction of the final zoning amendment map and an AutoCAD™ drawing file (release 12 or higher) of the final zoning amendment map on CD, or by other acceptable electronic transfer.

- d. Within thirty (30) days of receipt of the zoning amendment map, the Town Clerk shall review the documents for compliance with the Board of Trustee's approval, obtain the Town Officials' signatures and submit the approved zoning amendment map and the ordinance amending the official zoning map to the Weld County Clerk and Recorder's Office for recordation.

D. Criteria for Amendments to the Official Zoning Map. For the purpose of establishing and maintaining sound, stable and desirable development within the Town, the official zoning map shall not be amended except:

1. To correct a manifest error in an ordinance establishing the zoning for a specific property;
2. To rezone an area or extend the boundary of an existing district because of changed or changing conditions in a particular area or in the Town generally; or
3. The land to be rezoned was zoned in error and as presently zoned is inconsistent with the policies and goals of the *Kersey Comprehensive Plan*, or
4. The proposed rezoning is necessary to provide land for a community-related use that was not anticipated at the time of the adoption of the *Kersey Comprehensive Plan*, and the rezoning will be consistent with the policies and goals of the *Comprehensive Plan*; or
5. The area requested for rezoning has changed or is changing to such a degree that it is in the public interest to encourage development or redevelopment of the area; or
6. A rezoning to Planned Unit Development overlay district is requested to encourage innovative and creative design and to promote a mix of land uses in the development.

This declaration of criteria for zoning map amendments shall not control an amendment that occurs incidentally to a general revision of the zoning map.

E. Criteria for Text Amendments to the Zoning Code. For the purpose of establishing and maintaining sound, stable and desirable development within the Town, the text of this Article shall not be amended except:

1. To correct a manifest error in the text of this Article; or
2. To provide for changes in administrative practices as may be necessary to accommodate changing needs of the community and the Town Staff; or

3. To accommodate innovations in land use and development practices that were not contemplated at the adoption of this Article; or
4. To further the implementation of the goals and objectives of the *Kersey Comprehensive Plan*.

F. Map – Amendment upon Zoning Establishment or Modification. Upon enactment of any ordinance annexing and establishing zoning or modifying existing zoning for any property, and upon final passage thereof, the Town shall amend the prior existing official maps to include the annexed area with the proper zoning classification or show the amended classification, as the case may be. Such updated, current official map shall contain, in table form, the date and number of the ordinance amending it, the date the map was amended to reflect each amendment and the initials of the person who checked and approved the change to the map.

<p>3.12 Zoning and Use of Wireless Telecommunication Services, Facilities and Equipment</p>
--

- A. Permitted Zoning District.** Wireless telecommunication services facilities shall be permitted only in the industrial zoning districts (I, D or BLI).
- B. Use Permitted by Conditional Review.** It is unlawful for any person to install or operate such a wireless telecommunication services facility unless a conditional use review has first been approved by the Board of Trustees as provided in Section 3.7 of this Article. The approval of such conditional use review does not relieve the operator from otherwise complying with all applicable regulatory requirements of the Town, state and federal governments.
- C. Application Requirements.**
 1. Land Use Application Form (from *Workbook*).
 2. Application Fee and Fee Agreement (from *Workbook*).
 3. Site Plans. The site plans for a wireless telecommunication service facility shall be submitted on one (1) or more plats or maps, at a scale not less than 1" = 50', showing the following information:
 - a. The proposed size, location and boundaries of the commercial mobile radio service facility site, including existing and proposed topography at two (2) foot intervals, referenced to USGS data, state plane coordinates and a legal description of the proposed site;
 - b. Elevations of all towers and equipment, indicating materials, overall exterior dimensions and colors;
 - c. True north arrow;

SECTION 3.12 ZONING AND USE OF WIRELESS TELECOMMUNICATION SERVICES, FACILITIES AND EQUIPMENT

- d. Locations and size of existing improvements, existing vegetation, if any; location and size of proposed improvements, including any landscaping;
 - e. Existing utility easements and other rights-of-way of record, if any;
 - f. Location of access roads;
 - g. The names of abutting subdivisions or the names of owners of abutting, unplatted property within three hundred (300) feet of the site; zoning and uses of adjacent parcels; and
 - h. Current proof of ownership in the form of title commitment issued within thirty (30) days of submission of the application.
4. Vicinity Maps. The vicinity maps submitted with an application under this Article shall include one (1) or more maps showing the location of existing and planned commercial mobile radio service facilities belonging to the applicant, within five (5) miles of the proposed facility. Planned facilities may be identified in general terms and need not be address specific.
5. Written Narrative. The application shall include the following in narrative form:
- a. The applicant's and surface owner's names, addresses, signatures and designation of agent, if applicable;
 - b. An explanation of the need for such a facility, operating plan and proposed coverage area;
 - c. If a freestanding facility is proposed, an analysis of alternatives to a freestanding facility within a one-mile radius of the facility;
 - d. A list of all permits or approvals obtained or anticipated to be obtained from local, state or federal agencies other than the Federal Communications Commission (FCC);
 - e. Affirmation that the proposed facility, alone or in combination with other like facilities, will comply with current FCC standards for cumulative field measurements of radio frequency power densities and electromagnetic fields;
 - f. Affirmation that the facility will comply at all times with current FCC regulations prohibiting localized interference with reception of television and radio broadcasts;
 - g. Affirmation that the facility will not interfere with any public safety frequencies servicing the Town and its residents;

- h. Affirmation that, if approved, the applicant and surface owner will make the facility available, on a reasonable basis, to other service providers; and
- i. An explanation of compatibility with the *Kersey Comprehensive Plan*.

D. **Review Criteria.** The recommendation of the Planning Commission and the decision of the Board of Trustees shall be based on whether the applicant has demonstrated that the proposed wireless telecommunications services facility meets the following standards:

1. The site plan complies with the foregoing requirements;
2. The vicinity map complies with the foregoing requirements;
3. The narrative for the application complies with the foregoing requirements;
4. When applicable, compliance with the setback and height requirements;
5. When applicable, compliance with the accessory building requirements; and
6. When applicable, compliance with conditional mitigation co-location requirements as set forth.

The review criteria shall be included in the ordinance granting approval of the conditional use.

E. **Height and Setback Requirements.** In all performance districts where wireless telecommunications service facilities are allowed as uses by conditional review, the following apply:

1. Roof- or building-mounted commercial mobile radio service facilities may protrude no more than five (5) feet above the parapet line of the building or structure, nor more than two and one-half (2½) feet outside of the building wall unless sufficient screening methods are demonstrated and accepted as part of the approval;
2. Roof- or building-mounted whip antenna(s) of no more than three (3) inches in diameter, in groupings of five (5) or less, may extend up to twelve (12) feet above the parapet wall; and
3. Applicable zoning setback requirements of this Article must be met. At a minimum, all freestanding facilities shall be set back at least three hundred (300) feet from all residentially zoned properties or residential structures on properties otherwise zoned.

F. **Accessory Buildings Requirements**

1. Accessory buildings located on the ground shall be no larger than four hundred (400) square feet and must be constructed of durable, low maintenance materials, architecturally compatible and integrated with existing buildings and structures. Sites with greater than one hundred (100) cubic feet of cabinet area, visible from a public right-of-way or residentially zoned or used area, must enclose the equipment in accessory buildings.

2. Accessory buildings and facilities are to be screened, to the extent possible, from public streets and sidewalks, either by screening, landscaping, location or other techniques deemed sufficient.
- G. **Building- or Roof-Mounted Facilities Requirements.** Building- or roof-mounted facilities are to be screened from public view, either by screening, location or other techniques deemed sufficient and in compliance with any requirements of the International Building Code latest adopted edition.
- H. **Freestanding Wireless Telecommunications Facilities Requirements.** All freestanding wireless telecommunications facilities shall be designed and constructed in such a manner that they are:
1. Capable of serving, through original construction, expansion or replacement, a minimum of two (2) users;
 2. Constructed as a monopole, which tapers toward the top of the pole to the degree allowed by structural requirements, unless some other decorative type of structure is proposed and approved;
 3. Of a neutral color, including fencing, buildings and cabinets, or to match existing buildings;
 4. Hold only lighting required by the Federal Aviation Administration; and no signage;
 5. No higher than fifty (50) feet from the ground, with an additional twenty (20) feet per co-locating user permitted, up to seventy (70) feet. Exceptions may be granted upon request by the applicant; and
 6. Constructed in accordance with a certified engineer's specifications and in compliance with all applicable U.B.C. provisions.
- I. **Conditional Mitigation Measures Co-location**
1. The Town encourages co-location of wireless telecommunications facilities to minimize the number of sites.
 2. No wireless telecommunications facility owner or operator shall unfairly exclude a competitor from using the same facility or location. Unfair exclusion of use by a competitor may result in the revocation of the use by conditional review or site development plan.
- J. **Application Fees.** Each applicant shall pay a non-refundable processing fee of five hundred dollars (\$500.00) to reimburse the Town for the legal, engineering and land planning costs of reviewing the application. Legal publication costs are in addition to the five hundred dollars (\$500.00) and will be billed separately by the Town. No permit will be issued until all fees are paid.
- K. **Abandonment.** At the request of the Town, the operator must furnish a statement to the Town indicating the operational status of the facility. If the use has been discontinued, the date on which the facility was last used shall also be provided. Commercial mobile radio service facilities not

used for a continuous period of six (6) months shall be disassembled within twelve (12) months of the last use.

- L. **Penalty.** Any person who constructs, installs or uses, or who causes to be constructed, installed or used, any wireless telecommunications facility in violation of any provision of this Article or of the conditions and requirement of the conditional use permit, may be punished as provided in Article 6 of this Code. Each day of unlawful operation constitutes a separate violation.
- M. **Civil Action.** In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered or used or any land is or is proposed to be used in violation of any provision of this Article or the conditions and requirements of the commercial mobile radio service facility special use permit, the Town Attorney, in addition to the other remedies provided by law, ordinance or resolution, may institute an injunction, mandamus, abatement or other appropriate action or proceeding to the prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration or use.

3.13 Home Occupations

- A. **Home Occupations.** Home occupations shall be allowed as a permitted accessory use provided that all of the following conditions are met:
 - 1. Such use shall be conducted entirely within a dwelling and carried on by the inhabitants living there, or such use shall be conducted entirely within an accessory building located on the premises with the dwelling in which the persons carrying on the occupation live;
 - 2. Such use shall be clearly incidental and secondary to the use of the dwelling and shall not change the character thereof;
 - 3. If the occupation is located in the dwelling, the total area used for such purposed shall not exceed twenty percent (20%) of the floor area of the dwelling, except where the home occupation is a licensed board and care home or a day care home which meets the applicable state requirements;
 - 4. There shall be no exterior advertising or use of any signs except for the one (1) unlighted sign not larger than two (2) square feet;
 - 5. There shall be no exterior storage on the premises of material or equipment used as a part of the home occupation;
 - 6. There shall be no offensive noise, vibration, smoke, dust, odors, heat or glare noticeable at or beyond the property line;
 - 7. Home occupations shall provide additional off-street parking area adequate to accommodate all needs created by the home occupation;

8. Express permission for the home occupation shall be obtained from the Town before a home occupation is commenced. The home occupation may be granted by the Town Administrator only if the criteria set forth in this Section are met and the home occupation would not change or threaten to change the residential character of the neighborhood, considering the nature of the proposed home occupation itself and the presence of pre-existing home occupations in the neighborhood;
9. A home occupation shall not be interpreted to include the following:
 - a. Animal hospital;
 - b. Nursing homes;
 - c. Restaurants;
 - d. Automotive repair garages;
 - e. Kennels;
 - f. Barber shops; or
 - g. Beauty shops.
10. All home occupations shall obtain a Town business license prior to commencing the home occupation. The application fee for a home occupation permit shall be the fee as set forth in the Kersey centralized fee resolution as may from time to time be adopted by the Board of Trustees.
11. If a home occupation request is denied by the Town Administrator, the applicant may appeal such denial to the Board of Trustees. The appeal shall be filed with the Town Clerk within fifteen (15) days after the denial by the Town Administrator, and the appeal shall be acted on by the Board of Trustees within sixty (60) days after denial.

3.14 – XX Reserved.