

## Chapter 42

### ZONING\*

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\*State law reference--Municipal zoning, MCA 76-2-301 et seq.

**ARTICLE I. IN GENERAL****Sec. 42-1. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Building* means a structure enclosing a space within its walls, and usually, but not necessarily, covered by a roof. A building includes any structure attached to a building, whether or not the attached structure has walls or a roof. For purposes of this chapter, the term "building" does not include bird houses, dog houses, cat pens, and like objects that meet setback requirements.

*Structure* means any construction, or any production or piece of work artificially built up or composed or parts joined together in some definite manner, including, but not limited to, fences.

(Prior Code, § 11.04.025; Ord. of 5-8-2013)

**Sec. 42-2. Title and statement of authority.**

This chapter shall be known as the "Whitehall zoning ordinance", in accordance with, and exercising the authority granted to the town, by MCA title 76, chapter 2, part 3 (MCA 76-2-301 et seq.).

(Prior Code, § 11.04.010; Ord. of 5-8-2013)

**Sec. 42-3. Purpose.**

The general purposes of this chapter are to promote the health, safety and general welfare of the community and to ensure orderly development within the community and jurisdictional area. The specific purposes of this chapter are as follows:

- (1) Affirm the existing official development district map for the town.
- (2) Generally amend and revise the existing development permit zoning ordinance for the town.
- (3) Provide for and establish a combined planning board/board of adjustment.
- (4) Regulate and restrict the use and location of buildings, structures and land for residential, commercial and industrial uses.

(Prior Code, § 11.04.020; Ord. of 5-8-2013)

**Sec. 42-4. Jurisdiction and incorporation of official development district map.**

(a) Except as provided for in § 76-2-310, MCA (2022), the zoning jurisdiction of the town is limited to the confines of the corporate limits of the town.

(b) The official development district map, with all notations, references and other information shown on the map, is hereby incorporated by reference and made a part of this chapter and is affirmed as the zoning district boundary map for the town.

(c) The official development district map shall be identified by the signature of the mayor, and bear the seal of the town.

(d) Changes to the district boundaries, as approved by the town council, will be noted along with the dates of the changes.

(e) No unauthorized changes shall be made to the official development district map.

(f) One copy of the official development district map will be filed with the county clerk and recorder.

(g) The official development district map, located in the office of the town clerk-treasurer, will be the final authority as to district boundaries.  
(Prior Code, § 11.04.030; Ord. of 5-8-2013)

**Secs. 42-5--42-26. Reserved.**

**ARTICLE II. ADMINISTRATION AND ENFORCEMENT**

**DIVISION 1. GENERALLY**

**Sec. 42-27. Powers reserved to town council.**

Having originally availed itself to the powers conferred by MCA title 76, chapter 2, part 3 (MCA 76-2-301 et seq.) by having appointed a zoning commission to recommend the original zoning districts and appropriate regulations, the town, through the town council, reserves to itself the power to amend, modify, change, alter and repeal, or make exceptions to, the original regulations, ordinances, or zoning districts adopted pursuant to MCA title 76, chapter 2, part 3 (MCA 76-2-301 et seq.).  
(Prior Code, § 11.04.050; Ord. of 5-8-2013)

**Sec. 42-28. Board of adjustments.**

The board of adjustments, as provided by MCA 76-2-321, is hereby combined with the town planning board. The combined town planning board/board of adjustments shall have the dual responsibilities of a board of adjustment as provided by MCA 76-2-321, and a city planning board as provided in MCA title 76, chapter 1 (MCA 76-1-101 et seq.). The membership of the combined town planning board/board of adjustment shall be members of the town planning board and shall be determined by the provisions of MCA 76-1-221 and chapter 2, article IV, division 2 of this Code. (Prior Code, § 11.04.040; Ord. of 5-8-2013)

**Sec. 42-29. Penalties.**

(a) A cease and desist order will be sent to any individual that begins a building project within the jurisdictional district without obtaining an approved permit or a temporary approval permit from the planning board designee; such individual is subject to a fine of \$25.00 for a first offense. Payment of the fine must be made to the town in order for a development permit to be issued to the applicant. If a permit applicant has received permission from a planning board member to begin construction of a building project that is later deemed by either the planning board or the town council to be noncompliant, said permit applicant would be exempt from this fine. Any individual that commits a second or subsequent offense is subject to a fine of \$500.00 prior to obtaining a development permit.

(b) Within the jurisdictional limits of this chapter, any owner of land upon which a building, structure, sign, or fence is constructed or used in violation of this chapter, and any builder, contractor, or architect who shall construct or cause to be constructed, any building, structure, sign, or fence in violation of this chapter, may be subject to a fine of not more than \$100.00 per violation of this chapter. Each day a building, structure, sign, or fence is maintained in violation of this chapter shall be deemed a separate offense and violation.

(c) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of this part or of any ordinance or other regulation made under authority conferred hereby, the town, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

(Prior Code, § 11.04.120; Ord. of 5-8-2013)

**State law reference**--Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

**Secs. 42-30--42-46. Reserved.**

## DIVISION 2. DEVELOPMENT PERMIT

**Sec. 42-47. Unlawful to build or repair without development permit.**

Within the jurisdictional limits of this chapter, it shall be unlawful to erect any building, structure, sign, or fence, or to repair or alter any existing building, structure, sign, or fence, which repair or alteration affects the outside horizontal dimensions of the building or structure, or the height or dimensions of the fence or sign, or to change the use of any building or land, without having applied for and having received a development permit as provided by this chapter.

(Prior Code, § 11.04.110; Ord. of 5-8-2013)

**Sec. 42-48. Administration.**

(a) Before any building, structure, sign, or fence is erected or an existing building, structure, sign, or fence is repaired or altered, which repair or alteration affects the outside horizontal dimensions of the building or structure, the height or size of the sign, the height, length and building materials of a fence, or if the use of any building, structure, or land is changed, the owner of the land, by himself or through an agent, shall file with the town clerk-treasurer a written application, giving the intended location of such building, structure, sign, or fence, its dimensions, material, manner of construction, intended use and estimated costs.

(1) *Conforming uses.* Upon the submission to the town clerk-treasurer of a complete development permit application for a conforming use, and the payment of the necessary fee, a development permit shall be forwarded to the planning board for review. The planning board shall make a recommendation to the town council. If the town council finds the proposed development to be a conforming use, the application shall be returned to the town clerk-treasurer for issuance of a development permit.

(2) *Nonconforming uses.* Upon the submission to the town clerk-treasurer of a complete development permit application for a nonconforming use, the application will be referred by the town clerk-treasurer to the planning board for review. The planning board shall make a recommendation to the town council as to whether or not the development permit application for a nonconforming use should be approved. Upon town council approval of the application and the payment of the necessary fee by the applicant, the clerk-treasurer shall issue a development permit.

(b) Fees in the amount established by resolution must be paid before a development permit is issued.

(c) All development permits that are approved and paid for are considered “active” for a period of one year from the date approved by town council. In the event that the building is not completed as per the specs on the permit, the permit is revoked and another permit to continue or re-start must be applied for and submitted for review. The holder of the permit may appeal for a stay by appearing before the planning board prior to the permit’s expiration. If the expiration date passes and the holder has not appeared to appeal, the permit is automatically revoked and the holder must re-apply. Further, the penalty of building without a permit may be applied to an unfinished project that has not applied for renewal.

(Prior Code, § 11.04.110; Ord. of 5-8-2013)

**Sec. 42-49. Review standards for nonconforming uses.**

A development permit allowing a nonconforming use to locate within any district may be issued if the following conditions are met:

- (1) The traffic circulation pattern is designed to secure a safe and smooth flow.
- (2) A sufficient number of off-street parking spaces shall be provided to serve employees, customers and residents.
- (3) Industrial uses, storage areas and other uses posing potential hazards to the public shall be enclosed by a fence at least six feet high. All fences constructed, replaced, or repaired must comply with fence guidelines contained in section 42-76(1) b.6.
- (4) The land use change does not have a significant adverse effect on the character of the surrounding area.
- (5) A two-thirds majority of the property owners within 300 feet of the proposed development approve the proposed development.
- (6) The development permit application for a nonconforming use is approved by the town council.

(Prior Code, § 11.04.080; Ord. of 5-8-2013)

**Sec. 42-50. Pre-December 14, 1994 nonconforming uses of land and locations of structures (grandfathering statement).**

Nonconforming uses of land and locations of structures which have been in continual existence since December 14, 1994, the date of the amended development permit zoning ordinance, are excepted from the rules and regulations set forth in this chapter, provided that a public nuisance, health, or safety hazard does not exist.

(Prior Code, § 11.04.090; Ord. of 5-8-2013)

**Sec. 42-51. Treatment nonconforming uses which are abandoned or destroyed.**

(a) Any nonconforming use of land, building, structure, or fence, either existing prior to December 24, 1994, or for which a development permit has been issued, that has ceased by discontinuance or abandonment for a period of one year, shall conform to this chapter.

(b) Any nonconforming building or structure which has been destroyed or damaged to the extent of 50 percent or more of its replaced valuation shall thereafter conform to this chapter. Where more than 50 percent of the replaced valuation of the building or structure remains after such damage, such building may be restored to the same nonconforming use as existed before such damage.

(Prior Code, § 11.04.100; Ord. of 5-8-2013)

**Secs. 42-52--42-75. Reserved.****ARTICLE III. ZONING DISTRICTS****Sec. 42-76. Zoning districts; permitted uses and location of structures.**

The following uses and locations are permitted upon issuance of a conformance development permit by the town after determining that the following specified standards are met:

(1) *Residential district.*

- a. The following uses are permitted within the residential district:
  1. Single and duplex residential buildings, including manufactured housing as defined in MCA 76-2-302(4).
  2. Playgrounds and parks.
  3. Churches.
  4. Mobile/trailer home on individual lots.
- b. Residential district standards.
  1. *Lot size.* All buildings must be located on a lot no less than 50 feet by 150 feet, or 7,500 square feet.
  2. *Setbacks.* Buildings shall be set back a minimum of 25 feet from the front property line, eight feet from a side property line, and five feet from the rear property line. The front property line is defined as that property line which is parallel to the street which determines the address of the property.
  3. *Parking.* Every residential property use shall provide at least one off-street parking space for each dwelling unit within the lot boundary. All other uses shall provide sufficient off-street parking to meet the

anticipated needs of users.

4. *Drainage.* The site shall be graded, and appropriate culverts or other drainage facilities shall be provided to remove surface run-off in a manner that will not adversely affect adjacent properties or public roads.
5. *Signs.* No more than one sign, not larger than two square feet in size, is allowed per lot. Neon, buzzing, whistling, flashing, or moving signs are not permitted.
6. *Fences.* All fences must comply with the following fence guidelines contained in subsection (1) b.6 of this section:
  - (i) All fences will be built on property lines. If not built on a property line, the fence must be maintained (both sides) by the property owner.
  - (ii) Side fences facing a street are limited to four feet (48 inches) in height.
  - (iii) Verification that adjacent property owners have seen the plans for the new fence by signing acknowledgment form. If a fence is constructed on the property line, a signed agreement by both property owners addressing construction and maintenance is to be filed permanently at the clerk-treasurer's office.
  - (iv) Back fences are to be no higher than six feet (72 inches).
  - (v) Front fences are to be no higher than four feet (48 inches).
  - (vi) Side fences are to be no higher than four feet (48 inches) for the first 25 feet to match setback regulations. Height may be then raised to match the back fence.
  - (vii) No barbed-wire fences.
  - (viii) Shrubs or hedges used as fences must be kept trimmed so as not to obstruct sidewalks or alleys. The standard height requirements in subsections (1)(b)6. (iv), (v), and (vi) of this section apply.
  - (ix) Corner lots. Fences must not obstruct the view from the street for traffic safety concerns.
  - (x) Posts, if wooden, must be cedar or butt-treated wood.
  - (xi) Decorative sheet metal may be used under certain circumstances.
  - (xii) Permit fee in the amount established by resolution is paid and the planning board approves before construction of the fence begins.
  - (xiii) Dog runs and dog kennels do not have to meet these standards of restriction, but they are prohibited in the first 25 feet of the



setback area.

(xiv) Chapter guidelines do not apply to preexisting fences, but if preexisting fences are replaced, they must be in conformity with these fence guidelines.

(xv) Chapter guidelines do not apply to fences under current repair or reconstruction/replacement.

c. Mobile Home Standards for individual lots

1. Residents who move a mobile/trailer home into or within the Town of Whitehall must first obtain a zoning permit from the Town Clerk and post a deposit of \$250.00 which will be refunded if the following requirements are fulfilled within six (6) months. Failure to complete the following requirements within (6) six months from the date the zoning permit is issued will result in a fine of \$25.00 per day, for each day the mobile/trailer home is not in compliance with this section
2. A mobile/trailer home is defined as a residential use in which one mobile/trailer home is located on a single lot.
3. "Trailer Home or Housetrailer" means a form of housing designed to be moved from one place to another by an independent power connected to the trailer home which is either 8 feet wide or less or 45 feet long or less (MCA 15-24-201 (2)).
4. "Mobile/Trailer Home" means form of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to the mobile home or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principle residence (MCA 15-24-201(4)).
5. Only one mobile/trailer home shall be allowed on a lot of 150 foot by 50 foot. Each mobile/trailer home shall be setback a minimum of 25 feet from the front property line 8 from the side property line. The front property line is defined as that which is parallel to the street which determines the address of the lot.
6. Permanent foundations for mobile/trailer homes shall be any of the following: cement footings, EPA approved treated timber, cement blocks, concrete pad or basement. Tie downs shall be required if the mobile/trailer home is not permanently attached to a foundation.
7. All mobile/trailer homes shall be skirted with exterior plywood or siding, metal or fiberglass skirting and shall be painted to match or compliment the mobile/trailer.
8. Mobile/trailer homes manufactured more than 20 years old shall not be

allowed to be placed on individual lots within the Town of Whitehall. The manufactured date of a mobile/trailer home shall be determined by the date of manufacture listed on the title of the mobile/trailer home.

(2) *Commercial district.*

- a. The following uses are permitted within the commercial district:
  1. All uses permitted in the residential district.
  2. Retail and wholesale commercial businesses, including, but not limited to businesses that sell, trade, or otherwise dispense commodities or goods to the public or other retail businesses for a profit, excepting any business that is offensive in nature as provided under town ordinance, chapter 26, article II, or not classified as industrial.
  3. Offices, including, but not limited to, medical, dental, law, real estate, insurance, accounting and government.
  4. Services, including, but not limited to, motels, restaurants, lounges, bowling alleys, movie theaters, gas stations, truck stops, mechanic shops, and repair shops.
  5. Mobile home parks.
  6. Multi residential developments in excess of two units per lot.
  7. Manufactured homes which do not meet the standards of MCA 76-2-302(4).
- b. Commercial district standards.
  1. *Lot size.* All buildings must be located on a lot no less than 50 feet by 150 feet, or 7,500 square feet.
  2. *Setbacks.* Buildings shall be set back a minimum of eight feet in alleyways or fire lanes.
  3. *Parking.* Residential uses shall provide at least one off-street parking space for each dwelling unit within the lot boundary. All other uses shall provide sufficient off-street parking to meet the anticipated parking needs of employees and customers.
  4. *Loading areas.* Loading areas shall be provided which allow commercial and service trucks to maneuver safely and to load and unload. Loading areas shall be located to separate service traffic from customer traffic. Appropriate loading or service ramps shall be

provided, and service doors designed to accommodate the movement of products or equipment shall be provided.

5. *Screening.* Where the rear or the side of a commercial use abuts a residential use, a screen at least six feet high shall be put up by commercial owner. A residence located in a commercial zone is responsible for putting up a screen if deemed necessary. The screen must be a sight- obscuring fence, shrubbery, or trees. All fences constructed, replaced, or repaired must comply with fence guidelines contained in subsection (1)b.6 of this section.
6. *Drainage.* The site shall be graded, and appropriate culverts or other drainage facilities shall be provided to remove surface run-off in a manner that will not adversely affect adjacent properties or public roads.
7. *Signs.* No sign shall exceed a total area of 200 square feet. Signs shall not exceed a height of 45 feet above ground level. Buzzing, whistling, or moving signs are not permitted.
8. *Mobile home park guidelines.*
  - (i) A mobile/trailer home park is defined as a residential use in which two or more mobile/trailer homes are located on a single lot.
  - (ii) A person who owns or operates a mobile/trailer home park within the town shall possess a current license issued by the state.
  - (iii) The term "trailer home or house trailer" means a form of housing designed to be moved from one place to another by an independent power connected to the trailer home, for instance, a 5<sup>th</sup> wheeler which is either eight feet wide or less, or 45 feet long or less.
  - (iv) The term "mobile/trailer home" means a form of housing known as "trailers," "house trailers," or "trailer coaches" exceeding eight feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to the mobile home, or any trailer, house trailer, or trailer coach up to eight feet in width or 45 feet in length used as a principle residence.
  - (v) Each mobile/trailer home in a mobile/trailer home park shall have at least 25 feet of space separating each mobile/trailer home, including porches and additions. Mobile/trailer homes shall be set back a minimum of 25 feet from the front property line, five feet from the rear property line, and eight feet from the side

property line. The front property line is defined as that which is parallel to the street and which determines the address of the trailer park.

- (vi) Permanent foundations for mobile/trailer homes shall be any of the following: cement footings, EPA-approved treated timber, cement blocks, concrete pad, or basement. Tie-downs shall be required if the mobile/trailer home is not permanently attached to a foundation.
- (vii) All mobile/trailer homes in a mobile/trailer park shall be skirted with exterior plywood or siding, metal or fiberglass skirting, and shall be painted to match or compliment the mobile/trailer home.
- (viii) Access to each mobile/trailer home space must be provided at least one hard surface off-street parking space of compacted gravel, asphalt, concrete, cement, or brick pavers.
- (ix) Mobile/trailer homes manufactured more than 20 years old shall not be allowed to be placed on individual lots within the Town of Whitehall. The manufactured date of a mobile/trailer home shall be determined by the date of manufacture listed on the title of the mobile/trailer home.

(3) *Industrial district.*

- a. The following uses are permitted within the industrial district:
  - 1. All uses permitted in the residential and commercial districts.
  - 2. Manufacturing or processing.
  - 3. Storage yards, including, but not limited to, fuel, oil and construction supplies and equipment.
  - 4. Mini storage units.
- b. Industrial standards.
  - 1. *Setbacks.* Buildings shall be set back at least 25 feet from the front lot line, 25 feet from the side property line, and 20 feet from the rear lot line.
  - 2. *Parking.* Industrial uses shall provide one off-street parking space for each employee, plus one space for each vehicle maintained on the premises or used for business. Residential uses shall provide at least one off-street parking space for each dwelling unit within the lot boundary.

All other uses shall provide sufficient off-street parking to meet the anticipated parking needs of employees and customers.

3. *Loading.* One off-street loading space shall be provided for each use requiring delivery of goods having a gross floor area of up to 5,000 square feet, with additional loading space provided for each additional 10,000 square feet, or fraction thereof.
4. *Screening.* Where the rear or the side of an industrial use abuts a residential use, a screen at least six feet high shall be put up by industrial owner. A residence located in an industrial zone is responsible for putting up a screen if deemed necessary. The screen shall be a sight-obscuring fence, shrubbery, or trees. All fences constructed, replaced, or repaired must comply with fence guidelines contained in subsection (1)b.6 of this section.
5. *Drainage.* The site shall be graded, and appropriate culverts and other drainage facilities shall be provided to remove surface runoff in a manner that will not adversely affect adjacent properties or public roads.
6. *Signs.* No sign shall exceed a total area of 200 square feet. Signs shall not exceed a height of 45 feet above ground level. Buzzing, whistling, or moving signs are not permitted.
7. *Fences.* In addition to fencing or screening fences required in subsection (3) b.4 of this section, all fences constructed, replaced, or repaired must comply with fence guidelines contained in subsection (1)b.6 of this section.

(Prior Code, § 11.04.060; Ord. of 5-8-2013)

**Sec. 42-77. Zoning districts; nonpermitted uses.**

(a) No use of land shall be permitted or conditionally permitted within the town that is in violation of federal, state, or local law.

(b) This provision applies only to applications for new business licenses after May 8, 2013, and not to renewal of existing business licenses.

(Prior Code, § 11.04.065; Ord. of 5-8-2013)

**Secs. 42-78-42-97. Reserved.**

**ARTICLE IV. SUPPLEMENTAL REGULATIONS**

**Sec. 42-98. Standards for subdivisions when developed within the town limits.**

Requirements for any subdivision, before being granted annexation to the town limits, are as follows:

- (1) All water lines must be looped into the current system, leaving no dead-ends.
- (2) Sewer connections to be determined by the public works director.
- (3) Curbs, gutters and sidewalks on all streets (sidewalks decided on a case-by-case basis).
- (4) Paved streets 28 feet wide, with 60-foot easement measurements.
- (5) Streetlights approved by the town.
- (6) At least one through-street accessible by all lots; no cul-de-sacs if at all possible (cul-de-sacs must be a minimum of 120 feet in diameter, if necessary).
- (7) Fire hydrants at each street intersection, and at intermediate points between intersections, as recommended by the fire marshal (spacing may range from 350 feet to 600 feet, depending on the area being served).
- (8) Weed control plan as mandated by the county and state.
- (9) All major utilities will be placed underground.
- (10) Storm sewer or drainage plan in place.
- (11) Park space (state law requires one-ninth of total land space) that is deemed usable by the town, or cash in lieu of park space.
- (12) Off-street parking for each lot, as per current town ordinance.
- (13) Water and sewer infrastructure all done at the beginning of the project, regardless of lots sold.
- (14) Paving and sidewalks within one year.
- (15) Covenants to be determined by developer, in accordance with town ordinance.
- (16) Subdivisions either developed or undeveloped wanting to be annexed into the town must meet all subdivision requirements.
- (17) All subdivisions where development is planned or done in phases will not be grandfathered in by requirements at the time of subdivision approval. Each phase as completed will be held to the most current subdivision standards as per ordinance or state law.

(Prior Code, § 11.04.068; Ord. of 5-8-2013)

