

**DRAFT October 15, 2017:**

**BC Zoning Advisory – Text Amendment regarding Accessory Dwellings**

**1. In Section 3, add three new definitions:**

Accessory Dwelling: A subsidiary Dwelling Unit for use by guests or family members of the residents of the principal Dwelling Unit.

Floor Area, Livable: The sum of the horizontal heated floor area of a Building, measured from the outside faces of the exterior walls or used for dwelling purposes or from the centerline of walls separating non-dwelling areas and other dwelling Buildings. Non-dwelling areas include such areas as attics, utility closets, carports, and garages.

Permitted Use: A Use permitted on a property in accordance with its Zoning Classification.

**2. In Section 6:**

**a. Delete "guest houses" and "caretaker's residences" from Section 6.3, and add "One Accessory Dwelling Unit as provided in Section 15.2.b." after "The packing, storing and processing of produce grown on the land, together with accessory buildings and structures required therefore." in Section 6.2.**

**b. Replace Section 6.6 with the following, and renumber current Section 6.6 as Section 6.7:**

No Accessory Dwelling Unit shall be rented separately from the primary Dwelling Unit on the Parcel such that the two are concurrently occupied by unrelated parties for any period.

**3. Add a new subsection f. to Section 14.4, Nonconforming Structures**

f. A Guest House or Caretaker Residence approved prior to the effective date of this text amendment may continue to be used, subject to continued compliance with the conditions attached to the CUP authorizing such Structure; provided, however, that (i) such Structure shall be deemed the property's Accessory Dwelling. For the avoidance of doubt, any property with such a Structure shall not be entitled to another Accessory Dwelling as a Permitted Use; and (ii) such Guest Houses or Caretaker's Residences that do not meet the requirements of Section 15.2.b shall be deemed Non-conforming Structures for purposes of this Regulation.

**4. Delete Section 15.2.b and replace it with the following:**

b. Accessory Dwelling.

i. Only one Accessory Dwelling per parcel of record is permitted. (Development Right not required.)

ii. An Accessory Dwelling may be an independent living facility located within the principal Dwelling Unit, within another Accessory Building, or a standalone Building.

iii. Maximum square footage of the Accessory Dwelling shall not exceed 1,200 square feet of Livable Floor Area.

iv. The location of a standalone Accessory Dwelling shall not exceed 150 feet from the principal Dwelling Unit.

v. The Accessory Dwelling shall have a shared electrical meter with the principal Dwelling Unit.

vi. The Accessory Dwelling cannot be rented or sold separately from the principal Dwelling Unit.

vii. Driveway access to the Accessory Building shall be the same as the principal Dwelling Unit.

viii. Nothing herein precludes the construction of the principal Dwelling Unit after an Accessory Dwelling is built provided all applicable regulations are met.

ix. A property containing a Guest House or Caretaker Residence approved by the Commission prior to the effective date of this text amendment shall not be entitled to an additional Accessory Dwelling as a Permitted Use, provided however that a previously approved Guest House may add kitchen facilities after acquiring a Land Use Permit therefor. Such Guest Houses or Caretaker's Residences that do not meet the requirements of this Section 15.2.b shall be deemed Non-conforming Structures for purposes of this Regulation.

x. Accessory Dwellings are subject to all restrictions in this Regulation applicable to Principal Dwelling Units or other structures, including but not limited to setbacks and height restrictions.

[xi. The Commission shall have the authority to prescribe additional standards for approval of Land Use Permits or to attach additional conditions

consistent with this Regulation to any Land Use Permit for an Accessory Dwelling.]

## Draft October 15 Text amendment supporting argument

### Background and Summary

Bridger Canyon Property Owners Association submits this text amendment to address immediately, rather than defer to adoption of the proposed new zoning, two issues that have arisen in six Conditional Use Permit applications since 2015, including three in the past two months:<sup>1</sup> whether an additional density right is required for a guest house or caretaker's residence, and whether a guest house or caretaker's residence may be rented separately from the principal residence. BCPOA board members have been advised that several other District residents are awaiting the zoning revisions to file similar applications. One such applicant has informed the board that the Department of Planning & Community Development has encouraged prospective applicants for Guest House or Caretaker's Residence CUPs to defer filing in anticipation of the new zoning.

BCPOA believes that resolution of this issue as promptly as practicable will serve the public interest by replacing the uncertainty of the current Regulation with objective criteria, allowing consistent application by the County that accords with district's General Plan.

The Zoning Advisory Committee has agreed on the substance of the changes proposed in this text amendment. Prior to submitting the proposed amendment BCPOA directors have met with the Planning Department to discuss both text and underlying justification.

Under the proposed amendment (a) Guest Houses and Caretaker's Residences, now Conditional Uses in the Agricultural Exclusive district, will be deleted from the zoning, except to the limited extent described in the second following paragraph; (b) a new term, *Accessory Dwelling*, will be added as a permitted use – not requiring a CUP - in the AE district; and (c) a provision will be added that expressly prohibits rental of the Accessory Dwelling independently of the principal residence. As a result each property in AE will be permitted one Accessory Dwelling, usable for family and guests, subject to obtaining a Land Use Permit from the Planning Department.

Under the amendment, as in the proposed new zoning, an Accessory Dwelling must be less than 1200 square feet, be located not more than 150 feet from the principal dwelling unit, use the same driveway and utilities as the principal dwelling unit, and may not be sold or rented separately from the principal dwelling unit. BCPOA believes these restrictions will minimize any impact on density and traffic, while providing each property owner the opportunity to house friends and relatives. An absentee owner

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<sup>1</sup> Huffman/Spencer, May 2015; Ivey, September 2016; Fox, September 2016; Morrison, December 2016; Olson (October 2017); Cohen (November 2017).

could use the Accessory Dwelling to house a caretaker, as three of the earlier applicants<sup>2</sup> intended to do.

The proposed amendment

- Adds definitions of Accessory Dwelling and two related terms, Livable Floor Area and Permitted Use in Section 3, Definitions,
- Substitutes *one Accessory Dwelling* as a permitted use for *Guest House* and *Caretaker's Residence* as conditional uses in Section 6, Agricultural Exclusive District,
- Sets forth the criteria for an Accessory Dwelling in Section 15, General Standards,
- And makes clear that previously permitted guest houses and caretaker's residences may remain (subject to existing conditions) and will serve as the owner's permitted Accessory Dwelling in Section 14, Non-Conforming Right.

The proposed changes are shown in mark-up format in Attachment A.

### **Evaluation Criteria**

The Evaluation Criteria for Amendments to Part 1 Zoning Regulations are:

1. For the purpose of furthering the health, safety, and general welfare of the people of the county, the county planning and zoning commission hereby is empowered and it shall be its duty to make and adopt a development pattern for the physical and economic development of the planning and zoning district.
2. Such development pattern, with the accompanying maps, plats, charts, and descriptive matter, shall show the planning and zoning commission's recommendations for the development of the districts, within some of which it shall be lawful and within others of which it shall be unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings or within which the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

### **Rationale**

The proposed amendment "further[s] the health, safety, and general welfare of the people of the county:"

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<sup>2</sup> Ivey, Morrison, and Olson.

- ***By providing certainty on two issue that has been contentious, to say the least.*** The Commission, BCPOA, and future applicants will all benefit from an expedited implementation of the new zoning for Accessory Dwellings that should reduce or eliminate the present uncertainty.
- ***By addressing now what all perceive as a problem that will recur with increasing frequency.*** The proposed amendment provides objective criteria that should clarify for applicants and the Planning Department what is and is not permitted. It will also convert the process from a possibly contentious hearing procedure to a permitted use, relieving P & Z from future attention in many instances.
- ***By updating the zoning to reflect the current state of the District.*** In the decades that have followed adoption of District Zoning the District has seen considerable growth as a residential area for a rapidly growing county. Caretaker's Residences in their dictionary sense – a home for a farm manager who in fact looks after the property – have become, all too often, a thinly disguised cover for a full second home, complete with kitchen, for use by a residential owner for visitors. This at once blurs the distinction between Guest Houses and Caretaker's Residences and defies the original purpose of the latter. The proposed amendment eliminates that distinction and substitutes a single structure that is limited in size and location and more accurately reflects 21<sup>st</sup> century concerns about second homes, mother-in-law residences, guest accommodations, and the like.
- ***By preserving the rural character of the District in a manner consistent with both 21<sup>st</sup> century conditions and the General Plan.*** The General Plan, which will remain as part of any revised zoning (see Regulation Section 1.2), places density among the principal underpinnings of the District's citizen-initiated zoning. For example (p. 21): "The intent of the Zoning Regulation is to regulate and promote orderly development of the area. Agricultural preservation is a primary goal which is to be accomplished by limiting development to one (1) dwelling unit per 40 acres or one (1) dwelling unit per twenty (20) or ten (10) acres with a planned unit development except as provided in the Bridger Bowl Base Area." Similarly commercial housing is intended for the Base Area: " The residential areas in the Base Area are expected to accommodate a combination of recreational housing and overnight accommodations." (p. 25) All the limiting criteria on Accessory Dwellings in the proposed amendment – common driveway and utilities, size limitation, proximity to the principal residence, prohibition on separate rental or sale – are intended to minimize adverse impact upon density, traffic, and unsightliness while recognizing that the District's citizens do not wish to see the District become a resort community.

For these reasons BCPOA respectfully requests that the Commission recommend to the County Commissioners that this amendment be adopted.