

**Staff Report ZC 2013-02**  
**General Updates to the Zoning Regulations**  
**March 11, 2013**

**I. GENERAL INFORMATION**

The definition for garage/carport is hard to find because it is listed as “private” or “public” under the P’s. This should be changed for ease of use. Most codes have a separate definition for carport. Some changes have been made to the definitions pulling from other codes and a definition for carport is proposed. The carport definition ensures that it does not conflict with the definition in the building code.

The existing definition for a private garage or carport also contains two regulatory statements. These regulatory statements should be moved to Section 24-58 which contains provisions for residential garages.

The setbacks for a detached garage or carport are confusing because it currently defines the setback from the opposite alley easement line. Most alleys in Miles City are not easements. They are publicly owned rights of way. Most alleys are 10 feet in width. Current regulations allow construction to the lot line of a detached garages yet the setback definition calls for measurement from the wall or supporting points of the building. This would allow eaves to overhang into the alley right-of-way.

There are instances where the setback or yard requirement is contained in a definition. Further in the case of the definition for “Frontage” the measurement appears to have been meant to apply to certain residential districts, not to all districts. The description of what setbacks are applicable uses differing terminology depending upon the section of code. In order to clarify intent, provide better readability to the code, and to provide consistency concerning setbacks and how those will be measured, the following definitions and text should be changed.

Carport. An accessory structure or a portion of a main building, open on at least two sides, consisting of a roof and either walls or columns designed primarily to and generally used to house vehicles.

~~Private Garage, Private or Carport. An accessory structure or a portion of a main building, designed primarily to and generally used to house vehicles. private garage or carport is one which is accessory to a building used for private residential purposes, single family, multiple family or apartment, as those terms are used and defined in this chapter. If it is a multi-family dwelling for more than three families, or an apartment house, it may have a garage of not more than one car capacity for each family. No business of any kind or character shall be conducted or carried on in a private garage or carport.~~

Public Garage, Public means any garage not included within the definition of private garage where motor-driven vehicles are housed for care, repaired, kept for hire or sale but not including showrooms or exhibition rooms connected with sales of such vehicles.-

(c) Garages/Carports.

(1) Attached Ggarages/carports shall have the same setback requirements as residences.

(2) Setbacks for Detached Ggarages/Carports. Detached garages and carports may be built in the rear yard to the interior lot line. Detached garages that do not have an entrance facing an alley may be built and to the rear lot line or to the alley easement line in the case where the lot includes an alley easement.- Where the entrance to the detached garages faces the alley, the garage shall not be closer than 25 feet from the opposite alley easement line be setback a minimum of 5 feet from the rear lot line or from the alley easement for those lots with such an easement . All detached garages must be at least ten feet from the residence.

(3) Size and Design for single-family and duplexes. and A detached -garage or carport shall not exceed 1200 square feet with sidewalls not to exceed ten feet in height. Garage roof slope must be similar to the residence. Garage exterior siding materials must be compatible with and similar to the residence. Garages shall be of pre-engineered or frame construction.

(4) Size for developments containing three or more units. Detached garages/carports shall not exceed the capacity to accommodate one non-recreational vehicle.

(5) Open Space. Between the rear lot line and the rear of the principal building, Aa continuous open area of not less than ten percent of the total residential/garage building site-lot area located from the rear lot line to the rear of the principal building shall be maintained.

(6) Prohibited Uses. Garages that are not solely used for vehicle storage, residence and grounds maintenance, and other uses directly associated to the primary residential use shall be considered commercial or light industrial in nature and shall not be permitted in residential zones.

**Section 24 - 15. Building setbacks, yard, and lot requirements.**

(1) Non-conformances. Where there is an existing building having a front, side or rear yard smaller than is permitted for new buildings under this chapter, such front, side or rear yard may not be further reduced. Where the erection of any proposed new buildings will have the effect of reducing any front, side or rear yard of an existing building below what is required by this chapter for a new building, a permit for such building shall be denied.

(2) When computing setbacks/minimum yard requirements easements for right of way shall not be included as land area or distance when making those computations.

(3) Where there is no setback indicated for accessory structures, all eaves for those structures shall be at least one foot away from the lot line or right-of-way easement to prevent excess drainage and snow from being shed into the right-of-way.

Right-of-way means the area, either public or private, over which the right of passage exists.

~~The right of way shall not be considered as land area when computing lot size.~~

~~Setback means the line within a property defining the required minimum distance measured at the narrowest point from the wall or supporting points of the building or between any structure or use and to adjacent right-of-way or the property line of any lot or to the adjacent right-of-way easement whichever is closer.~~

~~Street Frontage means the portion of a lot which directly abuts a street. front yards of buildings which are so placed that a front yard is entirely unoccupied by any building or part thereof having a dept of not less than 25 feet; in blocks where buildings have already been erected having a front yard of less than 25 feet, the depth of the front yard for any new building may be equal to the depth of the nearest adjacent building, provided that no front yard shall have a depth of less than 15 feet, and provided, further, that the front yard for all buildings on corner lots shall be not less than 25 feet deep.~~

The following excerpt would take the regulatory language out of the definition for “Frontage” and place it in the some of the residential sections because it was assumed that this is what it was meant to apply to. There was some previous discussion about deleting this flexibility. Quite a number of variance requests result from the lack of flexibility on setbacks. One solution not shown as draft text would be to reconsider the current treatment of a corner lot where the side setback is the same as the front setback. The residential C district was originally adopted with 25 foot setbacks for all frontages except the rear which was 20. The Board of Adjustment changed this to 20 in the front and 12 on the side for the only development that has been constructed in that zone. Staff recommends a change to those setbacks to encourage more flexible multi-family development and will explain some alternatives at the next meeting before drafting new text.

The example below is an expert from Section 24-53 (c) but the language should apply to Section 24-53 (d) , (e), and (f); Section 24-54 (b); and Sec 24-55 (c)(2).

## **Section 24 - 53. A Residential District.**

### ***(c) District Regulations for single-family dwelling.***

#### **(2) Setback Requirements.**

- a. Minimum of 25 feet from all street frontages to the primary structure ~~line from all frontages~~ except in blocks where existing buildings have a depth of less than 25 feet. Where the pattern of setbacks in a block typically does not meet this standard, the setback may be reduced to be equal to that of the nearest adjacent building provided that in no case it shall be less than 15 feet.
- b. Rear yard: Minimum of 20 feet from the primary structure ~~line~~ to the rear lot line, or to the adjacent alley easement whichever is closer. exclusive of a ten-foot easement for an alley.
- c. Interior yard/side setback: Minimum of eight feet from the structure to the side interior lot line.
- d. Setbacks for detached garages are governed by Section 24-58 (c).

In Section 24-53, 24-54, and 24-55 under permitted uses the reference for home occupations refers the reader to “this chapter”. The city code governing home occupations has not been adopted as a part of the zoning code but instead was adopted separately under Chapter 6, Article VI of the Municipal Code. Therefore the reference needs changed.

**Change the following text in Sections 24-53, 24-54, and 24-55 as follows:**

Home occupations as per ~~this chapter.~~ Article VI, Chapter 6 of the Municipal Code.

The duties of the board of adjustment are to hear appeals of decisions made by any officer, board, or department and to determine when a variance to the code is warranted. Their duties as set up in State statute do not include design review. Further, design review if desired, should not be at the request of one individual whose job it is to inspect buildings for structural, electrical, and plumbing issues, etc. Generally an inspector is not trained in architectural review and without criteria for that review the probability arises of unequal treatment.

**Delete the following:**

~~Appearance Review—The board of adjustment may provide for a review of any new building or alteration at the request of the building inspector in regard to compatibility of external design with existing structures and location with respect to topography and finished grade elevations.~~

The townhouse code, **Section 24-58 (d)**, contains setback requirements that are the same for all townhouses regardless of the number of units. The code could be consolidated to reflect that consistency and where there are differences, show the differences in a table to create greater ease of use such as the following table.

No. Units	Minimum Open Space	Total minimum site area before subdivision
	Amount in Square Feet	
2	1,000	6,000
3	1,500	6,640
4	2,000	8,160
5	2,500	9,860
6	3,000	11,560
7	3,500	13,260
8	4,000	14,960

The same table format can be used for parking. When this table concept was converted to a square foot requirement which is in the current code it became apparent that the square footage

requirement was not a good measurement of parking demand. At the point that the Commission realized this, a number of rezone applications came in and the issue was not resolved. The Commission had suggested that parking should be based on the number of bedrooms in a unit instead of a per unit basis. Some codes use this and it is a very good measure of parking demand. Attachment A gives a comparison chart. What is also apparent from this comparison is that the parking requirements in the residential zones are higher in the Miles City code ( 3 ½ per unit) than any other code. This high requirement for parking has the probability to hurt new development because of the cost to acquire that much land for parking. It also becomes a design constraint on many residentially zoned parcels. Given this situation, staff would suggest some changes. One would be to lower the parking demand in all residential zones. Two would be to go to a table format for ease of use. The last would be to consolidate the parking requirements into its own section or under Section 24-58.

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Also in the subsection related to townhouses, the Zoning Commission is identified as having authority for site plan review. In Montana law, townhouses are not reviewed as site plans but are regulated as subdivisions. The Planning Board is the review body for subdivisions except in the case where the Board has delegated the review of a minor subdivision to staff. Part 8 of subsection 24-58 was changed to comply with the Montana Subdivision and Platting Act. Part (9) should have been eliminated as well. Subdivision requires the provision of adequate utilities and access so these two criteria were eliminated as redundant.

(8) Review of Townhouse Developments. The Planning Board or its staff shall review proposed townhouse developments. The Board or its staff shall make a recommendation to the City Council based on the following criteria:

- a. Neighborhood character.
- b. Exterior treatment of building.
- c. Provision and treatment of open space.
- d. Provision of off\_street parking.
- ~~e. Public utility adequacy for proposed development density.~~
- ~~f.e. Access to existing and future structures.~~

~~(9) Site Plan Approval. The City Council shall require a site plan review. The City Council may approve, conditionally approve or disapprove the application for a building permit.~~

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The creation of the Zoning Commission and duties/authorities should be separated.

Letters requesting confirmation of correct zoning or confirmation of a legal non-compliance are currently handled by the Planning Office. Due to a circumstance where that person may not be available (i.e. last vacancy that went unfilled for several months) this was drafted to allow a member of the Zoning Commission to perform this service.

The section on non-compliance is proposed to be eliminated because this is not generally a standard practice in either Montana or elsewhere. An individual would be unlikely to request a

written confirmation that they do not comply with code. Likely this was meant to address legal non-conformances which have been drafted to be included as text in the Certificates of Zoning Compliance section.

**Change the following:**

**Section 24-86. ~~Authority of the Zoning Commission~~ Established.**

- (a) In order to avail itself of the powers conferred by this chapter, the City Council shall appoint a commission, to be known as the Zoning Commission, ~~to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The City Council shall not hold its public hearings or take action until it has received the final report of such commission.~~
- (b) The Zoning Commission shall consist of five members, who shall be appointed for staggered three-year terms and shall be removable for cause by the appointing authority upon written charges and public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

**Section 24-87. Duties of the Zoning Commission.**

The duties of the Zoning Commission are as follows:

- (1) ~~To Recommend zoning districts and the boundaries of those districts together with the appropriate regulations to be enforced therein.~~ the zoning affairs of the City.
- (2) ~~Prepare~~ Make a preliminary report, ~~hold hearings thereon, and submit~~ to the City Council ~~on Zoning r~~Recommendations to establish zoning districts and regulations to be enforced therein.
- (3) ~~Establish procedures necessary for the submission of applications, and notice of zoning hearings;~~
- (2)(4) ~~Thereafter, recommend the zoning affairs of the City~~
- (3)(5) ~~Conduct hearings on zoning amendments;~~ and
- (4) ~~Submit a final report to the City Council on Zoning Recommendations.~~
- (5)(6) ~~Establish procedures necessary for the submission of applications, notice of zoning hearings, and setting and accounting for fees.~~
- (6)(7) ~~In the absence of a zoning administrator, I~~ issue certificates of zoning compliance upon request.
- (7)(8) ~~Issue certificates of zoning noncompliance upon a zoning change.~~

## Section 24-88. Certificates of Zoning Compliance.

~~A~~ Certificates of zoning compliance may be issued by the appointed Zoning Administrator or in the absence of an administrator by the chair of the Zoning Commission. Such certificates will only be issued upon request together with the fee set by City Council and may be issued for the following:

(a) For new or altered permitted uses for which all applicable permits have been approved.

(b) For existing permitted uses where the record can be shown that the use was properly permitted at the time of construction or at the commencement of such a use;

(c) For existing uses where the record can be shown that the use became a legal non-conforming use due to regulations that were adopted subsequent to the date of construction or subsequent to commencement of the use which does not currently comply with uses allowed for the zone in which it is located.

~~for new or altered permitted uses and, upon request, for existing permitted uses, may be issued by the Zoning Commission.~~

## ~~Section 24-89. Certificates of Noncompliance.~~

~~A writ of noncompliance shall be issued by the Zoning Commission when in fact the use is not in compliance with this chapter, if requested. The specific reason for noncompliance may be set forth in writing.~~

## II. REVIEW CRITERIA

## III. RECOMMENDATION