

## PLANNING AND ZONING COMMISSION

### McCALL CITY COUNCIL

#### Workshop Materials

October 22, 2010 – 11 am - 1 pm

McCall City Hall – Lower Level

216 East Park Street, McCall, ID 83638

#### **Purpose**

The purpose of the work session is to have the McCall City Council and McCall Area Planning and Zoning Commission discuss a number of issues that have been identified by the Council, Commission or adopted planning reports. The following are issues for ***potential zoning code amendments*** that will be discussed during the work session:

- I. nonconforming structures and uses
- II. minimum lakefront lot width
- III. sideyard setbacks for multiple structures
- IV. housing size/energy efficiency
- V. downtown parking regulations

A Commissioner also suggested a ***discussion about the zoning boundaries for the CBD zone*** is covered during the work session.

No approvals or formal action will occur at the work session. The meeting is open to public and written comments are welcome and public comments may be entertained if the Commission and Council want to hear from the public in attendance.

**I. NONCONFORMING STRUCTURES AND USES**

Mayor Bailey suggested that Staff, the Commission and the Council review Chapter 11 *Nonconforming Buildings, Structures and Uses*.

The following information is attached:

1. Entire Chapter 11 code.
2. City' s staff position on Chapter 11
3. Administrative Determination on non-conforming structures
4. Administrative Determination on non-conforming residential use in the CBD
5. Don Bailey's proposed changes

ATTACHMENT 1

## Chapter 11 NONCONFORMING BUILDINGS, STRUCTURES AND USES

### 3.11.01: NONCONFORMITIES; PURPOSE:

- (A) Within the zones established under this title or amendments that may later be adopted, there may exist lots, structures, uses of land and structures, and characteristics of use which were lawful before the effective date of the applicable regulations, but which would be prohibited, regulated, or restricted under the terms of this title or future amendment. It is the intent of this chapter to permit these nonconformities to continue until they are removed, but not to encourage their perpetuation. It is further the intent of this chapter that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zone.
- (B) Nonconforming uses are declared by this chapter to be incompatible with permitted uses in the zones involved. A nonconforming use of land or structure, or a nonconforming use of land and structure in combination, shall not be extended or enlarged after passage of this chapter by the addition of other uses of a nature which would be prohibited in the zone.
- (C) To avoid undue hardship, nothing in this chapter shall be taken to prohibit completion of construction of a structure for which a building permit has been issued prior to the adoption of this title.
- (D) Design review (see [chapter 16](#) of this title) is required for all new construction or major exterior remodeling (in the judgment of the administrator) of a principal dwelling unit on nonconforming lots of record. (Ord. 821, 2-23-2006, eff. 3-16-2006)

### 3.11.02: NONCONFORMING LOTS OF RECORD:

In any zone in which single-family dwellings are permitted, notwithstanding limitations imposed by chapters 3 through 7 of this title, a single-family dwelling and customary accessory buildings may be erected on any lot that was of record on the effective date of the applicable regulations. Setback and lot coverage

requirements applicable to those nonconforming lots of record shall be those of the zone with the largest lot area requirement within which the lot would be conforming. A lot which fails to be conforming in any zone shall maintain a front yard of twenty feet (20'), side yards of five feet (5'), rear yard of five feet (5'), and maximum lot coverage of fifty percent (50%). (Ord. 821, 2-23-2006, eff. 3-16-2006)

### **3.11.03: NONCONFORMING STRUCTURES:**

Where a lawful structure existed on the effective date of the applicable regulations, that could not be lawfully built under the terms of current regulations, by reason of restrictions on area, lot coverage, height, yards, location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (A) No such nonconforming structure may be enlarged or altered in a way which increases the nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
  
- (B) Should such nonconforming structure or nonconforming portion of structure be damaged by any means to an extent of more than fifty percent (50%) of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this title; provided, that the owner of such structure may repair or reconstruct the same structure, on the same footprint, and in the process may alter it to decrease its nonconformity, so long as:
  - 1. Within eighteen (18) months after the date of such damage or destruction, the owner commences such repair or reconstruction, and diligently prosecutes the work to completion in accord with then applicable building codes; and
  - 2. No other nonconforming structure was constructed on that site during the eighteen (18) month period.
  
- (C) When a nonconforming structure is moved for any reason over any distance, it shall conform to the regulations for the zone to which it is moved.
  
- (D) A nonconforming residential structure in a residential zone may be enlarged, so long as the addition to the structure conforms to all the requirements of the zone. (Ord. 821, 2-23-2006, eff. 3-16-2006)

### **3.11.04: NONCONFORMING USES OF LAND:**

Where at the time of the adoption of applicable regulations, lawful use of land

existed which would not be permitted by the regulations imposed by this title, and where such use involves no individual structures other than small or minor accessory buildings, the use may be continued so long as it remains otherwise lawful, provided:

- (A) No such nonconforming use shall be enlarged or increased.
  
- (B) No nonconforming use may be moved in whole or in part to any portion of the lot or parcel other than the nonconforming use occupied at the time of the adoption of regulations prohibiting such use.
  
- (C) If any nonconforming use of land ceases for any reason for more than eighteen (18) months, any subsequent use of land shall conform to the regulations specified by this title for the zone in which such land is located; provided, however, that the owner of such land may, in writing, file with the administrator during or before such eighteen (18) month period expires, give notice that the owner intends to suspend the use and intends to preserve the right, not exceeding three (3) years, to resume the use.
  
- (D) No additional nonconforming structure(s) shall be erected in connection with such nonconforming use of land. (Ord. 821, 2-23-2006, eff. 3-16-2006)

**3.11.05: USES PERMITTED UNDER CONDITIONAL USE PROVISIONS:**

A use existing on the effective date of the applicable regulations that is permitted as a conditional use in the zone in which it is located under the terms of this title, shall not be deemed a nonconforming use. Such use shall be considered to exist as a conditional use. The use shall not be expanded spatially or otherwise changed or intensified prior to the approval by the commission of conditions of approval for the use. The scope and conditions upon the conditional use shall be governed by the commission pursuant to [chapter 13](#) of this title; the commission may, after notice and hearing, recommend to the council the imposition of conditions of approval. (Ord. 821, 2-23-2006, eff. 3-16-2006)

**3.11.06: NONCONFORMING USES OF STRUCTURES:**

If lawful use involving individual buildings or structures, or of structure and land in combination, exists on the effective date of the applicable regulations, that could not be lawfully commenced under the terms of current regulations, the use may be continued, subject to the following provisions:

- (A) No existing structure devoted to use not permitted by this title in the zone in which it is located may be enlarged, extended, constructed, reconstructed, moved, or structurally altered unless the use of the structure is changed to a use permitted in the zone.
- (B) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed expressly for such use on the effective date of the applicable regulations, but no such use shall be extended to occupy any land outside such buildings that existed at the time the use became nonconforming.
- (C) Any structure and land, in or on which a nonconforming use is replaced by a permitted use, shall thereafter conform to the use regulations for the zone, and the nonconforming use may not be resumed.
- (D) If any nonconforming use of a structure and land is discontinued or abandoned for eighteen (18) months, the structure and land shall not be used except in conformity with the regulations of the zone in which it is located; provided, however, that the owner of such use may, in writing, file with the administrator during or before such eighteen (18) months period expires, give notice that the owner intends to suspend the use and intends to preserve the right, not exceeding three (3) years, to resume the use.
- (E) Where nonconforming use status applies to a structure and premises, removal or destruction of the structure shall eliminate the nonconforming status of the land. "Destruction" for purposes of this subsection is defined as damage to an extent of more than fifty percent (50%) of the replacement cost at time of destruction. (Ord. 821, 2-23-2006, eff. 3-16-2006)

### **3.11.07: REPAIRS AND MAINTENANCE:**

For any nonconforming structure containing a nonconforming or permitted use, ordinary repairs, repair or replacement of nonbearing walls, fixtures, wiring, or plumbing to an extent not exceeding ten percent (10%) of the current replacement cost of the nonconforming structure or portion of structure may be made. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any nonconforming structure or part thereof declared to be unsafe by the building inspector. (Ord. 821, 2-23-2006, eff. 3-16-2006)

### **3.11.08: NONCONFORMING PARKING, LOADING OR OTHER CHARACTERISTICS OF USE:**

If the characteristics of a use, such as off street parking, off street loading, lighting or other matters required by this title in relation to specified uses of land, water areas, structures or premises, are not in accord with this title, no change shall be made in such characteristics of use which increase nonconformity with such requirements. Change shall be permitted in the direction of conformity to these requirements. (Ord. 821, 2-23-2006, eff. 3-16-2006)

**3.11.09: CONTINUITY OF PRIOR CONDITIONAL USES AND VARIANCES:**

Any valid then "special use" or variance granted prior to March 16, 2006, shall be permitted to continue in accordance with the terms and conditions of approval for such "special" (now known as "conditional") use or variance. (Ord. 821, 2-23-2006, eff. 3-16-2006)

**ATTACHMENT 2**  
**STAFF'S POSITION ON CHAPTER 11**  
**(City Planner and Community Development Director)**

**State of the Code**

Staff believes that the McCall City Code for non-conformities is broken by virtue of the existence of two administrative determinations clarifying the relevant code sections (including the lengthy explaining for non-conforming structures) and the need for additional determinations to address issues beyond just non-conforming structures. However, the current code is serviceable and functional in that staff is familiar with the way the current code is written and the administrative determinations clarify significant and important gaps in the code.

**Revisions**

Based on the current state of the code, staff believes it would be best to continue working with the existing code until such point in the near future when the aforementioned rewrite can be undertaken. Until such point, minor modifications and changes may result in more work, effort, and debate than the outcomes would justify.

For future revisions, it is recommended that staff will undertake a review of non-conforming codes within Idaho, draft a new code based upon the best and more relevant portions of these codes, and then initiate the code amendment process expecting feedback from the relevant bodies, agencies, and groups.

The specific sections of the code that would need the greatest attention to detail would be the non-conforming structures section. Because of the number of structures within the 50 ft setback around the lake, as well encroachments to any and all setbacks elsewhere in town, this section has the greatest potential to be challenged (the same goes for the repairs and maintenance section, as it is integral to the structure code section). The sections relating to purpose and lots of record are not in need of change; others may require only slight modifications. However, if a rewrite of Chapter 11 were to be undertaken, it would likely be prudent to examine every section, if only to confirm their existing functionality and defensibility.

**ATTACHMENT 3**  
**ADMINISTRATIVE DETERMINATION ON NON-CONFORMING STRUCTURES**

**ADMINISTRATIVE DETERMINATION**

Date: August, 2010  
Made By: Community Development Department and endorsed by McCall City Council on August 12, 2010  
Subject: Non-Conforming Structures

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This Administrative Determination is in response to the fact that, in years past, the McCall City Code addressing non-conforming structures has been applied differently, in some cases incorrectly. The different applications have resulted from the change in personnel and a lack of published interpretation from which to operate. The intent of this determination is to provide a singular interpretation so that all future applications of the City Code for non-conforming structures will be consistent and based in an appropriate, accurate, and published interpretation. Because of the variable nature in which previous non-conforming structure situations have been handled, this determination may or may not be a departure from either the interpretation or application of the non-conforming code in the past.

The following Administrative Determination addresses non-conforming structures that violate setback requirements. Other determinations will address the other situations in which structures can be non-conforming.

**Part I – General**

The intent of the non-conforming chapter in the McCall City Code is stated at 3.11.01(A) as follows:

*“It is the intent of this chapter to permit [non-conforming structures or portions thereof] to continue until they are removed, but not to encourage their perpetuation. It is further the intent of this chapter that nonconformities shall not be enlarged upon, expanded or extended...”*

This intent articulates the guiding principles behind the specifics of the non-conforming code sections. In all cases of indeterminacy, dispute or other non-agreement the intent of the code shall be relied upon in determining a resolution.

**Part II – Non-conforming Repairs and Maintenance**

In accord with the above stated intent of the non-conforming portion of the City Code, non-conforming structures may be repaired in a limited fashion. Prior to understanding the details of what repairs and maintenance are allowable, it is crucial to understand some concepts. After the explanation of these concepts, the explanation of what repairs and maintenance are allowable is noted in the “Thresholds” section.

**Non-Conforming Structure vs. Portion of a Non-Conforming Structure**

Both MCC 3.11.03.B and 3.11.07 make reference to the non-conforming portion of a structure. That is, allowing for the portion of a structure that is violating City Code – the portion located in a setback – to be considered as a separate piece from the entire structure. This is important in considering the valuation of non-conforming structures in determining what improvements can or cannot be made.

**Damages vs. Repairs and Maintenance**

MCC 3.11.03.B makes reference to a percentage threshold for the reconstruction of an existing non-conforming structure that has been damaged, whereas MCC 3.11.07 makes reference to a percentage threshold for the repair and maintenance of a non-conforming structure. It is critical to understand the terms “damage” and “repairs and maintenance” in understanding this code section.

The term “damage” includes natural or accidental events, such as fire, flood, lightning, or fallen snow or tree, but does not include incidental harm by the owner to a structure.

The term “repairs and maintenance” includes ordinary repairs, and repairs and replacement of nonbearing walls, fixtures (i.e. doors, windows, etc.), wiring, or plumbing.

**Valuation of Current Replacement Costs**

MCC 3.11.0.B and MCC 3.11.07 reference the current cost of replacement for determining those improvements which are allowed or not allowed by the City Code. The current replacement cost of an entire non-conforming structure, or the replacement cost for the non-conforming portion of a structure, can be determined, as a baseline for the percentage thresholds, by two methods:

*Valuation Method #1*

The applicant may elect to have a qualified third party provide a written estimate detailing the costs of replacement of either the entire structure or non-conforming portion thereof; or

*Valuation Method #2*

The applicant may elect to have the City apply the Building Department's cost-per-square-foot calculation from the Building Permit application process to the square footage of the non-conforming structure, or portion thereof, and utilize the resulting figure.

The current replacement cost needs to be based upon reconstruction to the current basic building codes and requirements.

**Thresholds**

MCC 3.11.03.B and MCC 3.11.07 make reference to percentage thresholds which dictate certain allowable action and articulate certain prohibited action. The threshold in MCC 3.11.03.B, relating to the repair of a "damaged" non-conforming structure works in the following manner:

**If a non-conforming structure, or portion thereof, is damaged to an extent where repair would cost more than 50% of the current cost of replacement, then the structure, or portion thereof, if rebuild in conformance with the current requirements of the McCall City Code, except that the same structure may be built on the same footprint and may be modified to decrease the structure's nonconformity.**

The requirements and stipulations noted above for the reconstruction of a damaged structure also apply in situations in which the cost of the damage is less than 50%.

The threshold in MCC 3.11.07, relating to "repairs and maintenance" works in the following manner:

**If an individual wishes to complete ordinary repairs, repairs or replace nonbearing walls, fixtures, wiring, or plumbing he/she are allowed to do so, as long as these repairs or maintenance do not exceed 10% of the current cost of replacement of the non-conforming structure, or portion thereof. This repair or replacement of the listed features may occur once every 12 months.**

"Repairs and maintenance", as defined above, neither includes nor limits interior remodeling relating to such items as cabinets, flooring, household fixtures (i.e. faucets, lights, etc.), painting and so forth. The exception to the "damage greater than 50% of replacement cost" scenario only allows for the same structure to be built on the same footprint, and does not allow for designs that are "substantially" similar. The term "same" shall mean "identical" in all regards, including, but not limited to, location, size, material (unless potentially hazardous, i.e. asbestos, lead, etc.), and so forth, for all elements and aspects of the to-be-rebuilt structure, or portion thereof, including walls, roofs, windows, decks, doors, and so forth. This exception does not allow for the alteration of the replacement structure, or portion thereof, except for the deletion of non-conforming portions of the structure and those minimal changes necessary to accommodate the deletion(s).

**Safety Exception**

Nothing in this Determination or the City Code shall prevent an individual from strengthening, or restoring to a safe condition, any non-conforming structure, or portion thereof. The term "unsafe" shall have a high standard for interpretation. "Strengthening" and "restoring" are terms to be narrowly construed. To understand the limitations of these terms it is important to look at their definitions. The definition of "restoring" includes:

*"to bring back to a former, original, or normal condition..."*

The definition of "strengthen" includes:

*"to make stronger; give strength to"*

These definitions imply the following, regarding the extent of construction in fixing an "unsafe" situation:

- Limiting the restoration and strengthening to only that portion of the structure that is "unsafe"
- Returning of the "unsafe" condition to its original form, material(s), or design, but not an upgrade of the "unsafe" condition to a new form, material(s), or design (except for those minimal changes necessary to meet current building code)

A report from a structural engineer or certified architect may be required to determine whether or not a structure, or portion thereof, is "unsafe". Once determined "unsafe", plans regarding the repairs to the

structure will need to be submitted as a part of a building permit application. No repairs to unsafe conditions may occur without the issuance of a building permit.

The Community Development Department Administrator will determine whether the "unsafe" clause is being used to circumvent the letter or intent of the McCall City Code relating to the reconstruction of non-conforming structures and is leading to the undue perpetuation of the nonconformity in question.

### **Part III – Expansions and Enlargements of Non-Conforming Structures**

The phrase "shall not be enlarged upon, expanded upon or extended in any way", means that in no way may the dimensions of any part of the structure be increased either by length, width, or height, including any increase through the expansion of inside or outside volume dimensions of the structure. That is to say, alterations that increase any of the measurements or volume of the current non-conforming portion of the structure are prohibited.

### **Part IV – Appendix**

The three major sections relating to non-conforming structures are MCC 3.11.01, 03, and 07. They are copied, in their entirety from the McCall City Code, below:

#### **3.11.01: NONCONFORMITIES; PURPOSE:**

- (A) *Within the zones established under this title or amendments that may later be adopted, there may exist lots, structures, uses of land and structures, and characteristics of use which were lawful before the effective date of the applicable regulations, but which would be prohibited, regulated, or restricted under the terms of this title or future amendment. It is the intent of this chapter to permit these nonconformities to continue until they are removed, but not to encourage their perpetuation. It is further the intent of this chapter that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zone.*
- (B) *Nonconforming uses are declared by this chapter to be incompatible with permitted uses in the zones involved. A nonconforming use of land or structure, or a nonconforming use of land and structure in combination, shall not be extended or enlarged after passage of this chapter by the addition of other uses of a nature which would be prohibited in the zone.*
- (C) *To avoid undue hardship, nothing in this chapter shall be taken to prohibit completion of construction of a structure for which a building permit has been issued prior to the adoption of this title.*
- (D) *Design review (see [chapter 16](#) of this title) is required for all new construction or major exterior remodeling (in the judgment of the administrator) of a principal dwelling unit on nonconforming lots of record.*

#### **3.11.03: NONCONFORMING STRUCTURES:**

*Where a lawful structure existed on the effective date of the applicable regulations, that could not be lawfully built under the terms of current regulations, by reason of restrictions on area, lot coverage, height, yards, location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:*

- (A) *No such nonconforming structure may be enlarged or altered in a way which increases the nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.*
- (B) *Should such nonconforming structure or nonconforming portion of structure be damaged by any means to an extent of more than fifty percent (50%) of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this title; provided, that the owner of such structure may repair or reconstruct the same structure, on the same footprint, and in the process may alter it to decrease its nonconformity, so long as:*
  - 1. *Within eighteen (18) months after the date of such damage or destruction, the owner commences such repair or reconstruction, and diligently prosecutes the work to completion in accord with then applicable building codes; and*

2. *No other nonconforming structure was constructed on that site during the eighteen (18) month period.*
- (C) *When a nonconforming structure is moved for any reason over any distance, it shall conform to the regulations for the zone to which it is moved.*

*A nonconforming residential structure in a residential zone may be enlarged, so long as the addition to the structure conforms to all the requirements of the zone.*

**3.11.07: REPAIRS AND MAINTENANCE:**

*For any nonconforming structure containing a nonconforming or permitted use, ordinary repairs, repair or replacement of nonbearing walls, fixtures, wiring, or plumbing to an extent not exceeding ten percent (10%) of the current replacement cost of the nonconforming structure or portion of structure may be made. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any nonconforming structure or part thereof declared to be unsafe by the building inspector.*

**ATTACHMENT 4  
ADMINISTRATIVE DETERMINATION ON NON-CONFORMING RESIDENTIAL USE IN THE CBD**

**ADMINISTRATIVE DETERMINATION**

Date: August 2008  
Made By: Michelle Groenevelt, Community Development Director  
Bradley Kraushaar, City Planner  
RE: Non-conforming residential use in the Central Business District

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The following Administrative Determination addresses how non-conforming residential uses in the Central Business District (CBD) shall be regarded and handled under Title 3, Chapter 11 of the McCall City Code.

**In a structure in the CBD that contains residential uses, but does not have >50% of the first floor area as commercial uses, such residential use shall be deemed non-conforming. As such, per MCC 3.11.04 the non-conforming residential use shall not be expanded. Further, accessory structures shall be deemed to have the same use of the building or space to which they are accessory (i.e. a garage serving a residential use shall be considered as part of the residential use; ditto a garage serving a commercial use). As such, a structure accessory to a non-conforming use shall also not be expanded.**

Below are the sections of the McCall City Code that relate to this administrative determination:

MCC 3.4.02: COMMERCIAL USE REGULATIONS and Table 3.4.02:

<b>Allowed Use</b>	<b>NC</b>	<b>CC</b>	<b>CBD</b>
Dwelling, multi-family	C <sup>1,2</sup>	C <sup>1,2</sup>	

*Notes:*

1. Subject to subsection [3.4.04\(D\)](#) of this chapter.
2. Single, two-family, or multi-family dwellings are allowed as part of a mixed use development.

MCC 3.4.04: COMMERCIAL ZONE SPECIAL DEVELOPMENT STANDARDS:

- D) Uses: Residential uses are allowed within the CBD and CC zones; provided, that commercial and/or public use development shall be incorporated into any residential development. This can be achieved in several ways, such as:
1. In a multistory structure, provide for commercial space at the street level with residential space above (or below).
  2. Within a parcel, provide for a commercial building facing the primary street, with residential units to the rear or side.
  3. Provide for a combination of living and entrepreneurial spaces, such as artists lofts and quarters or specialized training facilities within a site residence.
  4. In each case, a proposal will be expected to provide at least fifty percent (50%) ground floor area in commercial or public uses. (Ord. 821, 2-23-2006, eff. 3-16-2006)

MCC 3.11.04: NONCONFORMING USES OF LAND:

Where at the time of the adoption of applicable regulations, lawful use of land existed which would not be permitted by the regulations imposed by this title, and where such use involves no individual structures other than small or minor accessory buildings, the use may be continued so long as it remains otherwise lawful, provided:

- (A) No such nonconforming use shall be enlarged or increased.
- (B) No nonconforming use may be moved in whole or in part to any portion of the lot or parcel other than the nonconforming use occupied at the time of the adoption of regulations prohibiting such use.
- (C) If any nonconforming use of land ceases for any reason for more than eighteen (18) months, any subsequent use of land shall conform to the regulations specified by this title for the zone in which such land is located; provided, however, that the owner of such land may, in writing, file with the administrator during or before such eighteen (18) month period expires, give notice that the owner intends to suspend the use and intends to preserve the right, not exceeding three (3) years, to resume the use.
- (D) No additional nonconforming structure(s) shall be erected in connection with such nonconforming use of land. (Ord. 821, 2-23-2006, eff. 3-16-2006)

## Chapter 11 NONCONFORMING LOTS, STRUCTURES AND USES

### 3.11.01: NONCONFORMITIES; PURPOSE:

- (A) Within the zones established under this title or amendments that may later be adopted, there may exist lots, structures, uses of land and structures, and characteristics of use which were lawful before the effective date of the applicable regulations, but which would be prohibited, regulated, or restricted under the terms of this title, or title 9, or future amendment. It is the intent of this chapter to permit these nonconformities to continue until they are removed, but not to encourage their perpetuation. It is further the intent of this chapter that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zone.

Suggested language:

- (A) Within the zones established under this title or amendments that may later be adopted, to limit the number and extent of nonconforming lots, structures and uses by prohibiting the enlargement of any nonconformities, their reestablishment after abandonment, and the alteration or restoration after destruction of the structures.

- (B) Nonconforming uses are declared by this chapter to be incompatible with permitted uses in the zones involved. A nonconforming use of land or structure, or a nonconforming use of land and structure in combination, shall not be extended or enlarged after passage of this chapter by the addition of other uses of a nature which would be prohibited in the zone.

Suggested language:

- (B) While permitting the use and maintenance of existing nonconforming structures, this chapter is intended to limit the number and extent of nonconforming structures by prohibiting their being moved, altered or enlarged in a manner that would increase the discrepancy between existing conditions and the standards prescribed in their chapter and the applicable current building codes and by prohibiting their restoration after destruction.

- (C) A nonconforming use may be continued and a nonconforming structure may continue to be occupied except as both are otherwise provided for in this chapter. A nonconforming use may be changed only to a conforming use.

- (D) To avoid undue hardship, nothing in this chapter shall be taken to prohibit completion of construction of a structure for which a building permit has been issued prior to the adoption or future amendment of this title.

- (E) Design review (see chapter 16 of this title) is required for all new construction or major exterior remodeling (in the judgment of the administrator) of a principal or accessory dwelling unit on nonconforming lots of record. (Ord. 821, 2-23-2006, eff. 3-16-2006)

**Comment [DCB1]:** The problem with this statement is that following sections allow some "perpetuation", whereas it literally means the nonconformities should be removed immediately! I suggest it be deleted or revised as shown.

### **3.11.02: EXCEPTIONS**

- (A) No existing use of land or structure shall be deemed nonconforming because of the lack of off-street parking required by this title.
- (B) No existing use of land or structure shall be deemed nonconforming because of the lack of screening or landscaping required by various chapters of this title or title 9.
- (C) Nothing in this chapter pertaining to nonconforming uses or structures shall be construed or applied so as to require the termination or removal, or so as to prevent the modernization, replacement, repair, alteration or rebuilding of public services or public utility uses, structures, equipment and facilities provided that there is no change of use or increase of those areas utilized.
- (D) A nonconforming structure may be structurally altered or repaired in any way permitted by these regulations.
- (E) Any structure containing a nonconforming use and any nonconforming structure or portion declared unsafe by the building inspector may be strengthened or restored to a safe condition.

### **3.11.02: NONCONFORMING LOTS OF RECORD:**

(A) In any zone in which single-family dwellings are permitted, notwithstanding limitations imposed by chapters 3 through 7 of this title, a single-family dwelling and customary accessory buildings may be erected on any lot that was a lot of record on the effective date of the applicable regulations. Setback and lot coverage requirements applicable to those nonconforming lots of record shall be those of the zone with the largest lot area requirement within which the lot would be conforming. A lot which fails to be conforming in any zone shall maintain a front yard of twenty feet (20'), side yards of five feet (5'), rear yard of five feet (5'), and maximum lot coverage of fifty percent (50%) as defined and calculated per Chapter 3 of this title unless lesser setbacks or lot coverage are indicated, such as for zones R4, R8 and R16. (Ord. 821, 2-23-2006, eff. 3-16-2006)

(B) If two (2) or more lots or a combination of lots and portions of lots with continuous frontage in single ownership are of record at the time of adoption of this Ordinance and if all or part of the lots with no structures do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of the Ordinance and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this title, nor shall any division of any parcel be made which creates a lot with a width or area below the requirements stated in this title.

### **3.11.03: NONCONFORMING STRUCTURES:**

Where a lawful structure existed on the effective date of the applicable regulations, that could not be lawfully built under the terms of current regulations, by reason of restrictions on area, lot coverage, height, yards, location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

(A) No such nonconforming structure may be enlarged or altered in a way which increases the nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.

(B) Should such nonconforming structure or nonconforming portion of structure be damaged by any means to an extent of more than fifty percent (50%) of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this title; provided, that the owner of such structure may repair or reconstruct the same structure, on the same footprint, and in the process may alter it to decrease its nonconformity, so long as:

1. Within eighteen (18) months after the date of such damage or destruction, the owner commences such repair or reconstruction, and diligently prosecutes the work to completion in accord with then applicable building codes; and

2. No other nonconforming structure was constructed on that site during the eighteen (18) month period.

3. The extent of damage or partial destruction shall be based upon the ratio of the estimated cost of restoring the structure to its condition prior to such damage or partial destruction to the estimated cost of duplicating the entire structure as it existed prior thereto. Estimates for this purpose shall be reviewed and approved by the Administrator and shall be based on the minimum cost of construction in compliance with the current building codes.

4. Existing legal residential uses may be reinstated when the structure in which they were located has been destroyed, provided that the new structure meets the property development standards for the zone in which it is located.

5. A nonconforming structure which has been damaged or destroyed by fire or any other calamity to an extent of fifty percent (50%) or less, may be restored to its preexisting nonconforming condition if a building permit for the work of restoration is obtain within eighteen (18) months from the date of the destruction and the work of the restoration complies with the building and fire codes in effect at the time of the issuance of the new building permit. When the destruction exceeds fifty percent (50%) or the structure is voluntarily razed or is required by law to be razed, the structure shall not be restored except in full conformity with the regulations of the zone in which it is located and any nonconforming use shall not be resumed.

(C) When a nonconforming structure is moved for any reason over any distance, it shall conform to the regulations for the zone to which it is moved.

(D) A nonconforming residential structure in a residential zone may be enlarged, so long as the addition to the structure conforms to all the requirements of the zone. (Ord. 821, 2-23-2006, eff. 3-16-2006)

(E) A nonconforming use shall not be enlarged or extended and a nonconforming structure shall not be enlarged or extended so as to increase the degree of nonconformity. Additions and/or enlargements to existing structures and not considered to be nonconforming or to increase the degree of nonconformity, so long as the additions and/or enlargements comply with the following:

(1) Any additional square footage may be subject to the current requirements of the underlying zone at the discretion of the administrator.

(2) Fifty percent (50%) of the structure footprint and exterior walls of a nonconforming structure must remain unaltered.

### 3.11.04: NONCONFORMING USES OF LAND:

Where at the time of the adoption of applicable regulations, lawful use, [or development](#), of land existed which would not be permitted by the regulations imposed by this title, and where such use involves no individual structures other than small or minor accessory buildings, the use may be continued so long as it remains otherwise lawful, provided:

- (A) No such nonconforming use shall be enlarged or increased [or changed to a different nonconforming use](#). [A nonconforming use may be changed only to a conforming use](#).
  
- (B) No nonconforming use may be moved in whole or in part to any portion of the lot or parcel other than the nonconforming use occupied at the time of the adoption of regulations prohibiting such use.
  
- (C) If any nonconforming use of land ceases for any reason for more than [twelve \(12\)](#) months, any subsequent use of land shall conform to the regulations specified by this title for the zone in which such land is located; provided, however, that the owner of such land may, in writing, file with the administrator during or before such [twelve \(12\)](#) month period expires, give notice that the owner intends to suspend the use and intends to preserve the right, not exceeding three (3) years, to resume the use.
  
- (D) No additional nonconforming structure(s) shall be erected in connection with such nonconforming use of land. (Ord. 821, 2-23-2006, eff. 3-16-2006)

### 3.11.05: USES PERMITTED UNDER CONDITIONAL USE PROVISIONS:

A use existing on the effective date of the applicable regulations that is permitted as a conditional use in the zone in which it is located under the terms of this title, shall not be deemed a nonconforming use. Such use shall be considered to exist as a conditional use. The use shall not be expanded spatially or otherwise changed or intensified prior to the approval by the commission of conditions of approval for the use. The scope and conditions upon the conditional use shall be governed by the commission pursuant to [chapter 13](#) of this title; the commission may, after notice and hearing, recommend to the council the imposition of conditions of approval. (Ord. 821, 2-23-2006, eff. 3-16-2006)

### 3.11.06: NONCONFORMING USES OF STRUCTURES:

If lawful use involving individual buildings or structures, or of structure and land in combination, exists on the effective date of the applicable regulations, that could not be lawfully commenced under the terms of current regulations, the use may be continued, subject to the following provisions:

- (A) No existing structure devoted to use not permitted by this title in the zone in which it is located may be enlarged, extended, constructed, reconstructed, moved, or structurally altered unless the use of the structure is changed to a use permitted in the zone.

- (B) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed expressly for such use on the effective date of the applicable regulations, but no such use shall be extended to occupy any land outside such buildings that existed at the time the use became nonconforming.
- (C) Any structure and land, in or on which a nonconforming use is replaced by a permitted use, shall thereafter conform to the use regulations for the zone, and the nonconforming use may not be resumed.
- (D) If any nonconforming use of a structure and land is discontinued or abandoned for eighteen (18) months, the structure and land shall not be used except in conformity with the regulations of the zone in which it is located; provided, however, that the owner of such use may, in writing, file with the administrator during or before such eighteen (18) months period expires, give notice that the owner intends to suspend the use and intends to preserve the right, not exceeding three (3) years, to resume the use.
- (E) Where nonconforming use status applies to a structure and premises, removal or destruction of the structure shall eliminate the nonconforming status of the land. "Destruction" for purposes of this subsection is defined as damage to an extent of more than fifty percent (50%) of the replacement cost at time of destruction. (Ord. 821, 2-23-2006, eff. 3-16-2006)

### **3.11.07: REPAIRS AND MAINTENANCE:**

For any nonconforming structure containing a nonconforming or permitted use, ordinary repairs, repair or replacement of nonbearing walls, fixtures, wiring, or plumbing may be made [provided that the repair or maintenance does not increase the degree of nonconformity of the used or structure](#). Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any nonconforming structure or part thereof declared to be unsafe by the building inspector. (Ord. 821, 2-23-2006, eff. 3-16-2006)

### **3.11.08: NONCONFORMING PARKING, LOADING OR OTHER CHARACTERISTICS OF USE:**

If the characteristics of a use, such as off street parking, off street loading, lighting or other matters required by this title in relation to specified uses of land, water areas, structures or premises, are not in accord with this title, no change shall be made in such characteristics of use which increase nonconformity with such requirements. Change shall be permitted in the direction of conformity to these requirements. (Ord. 821, 2-23-2006, eff. 3-16-2006)

### **3.11.09: CONTINUITY OF PRIOR CONDITIONAL USES AND VARIANCES:**

Any valid then [conditional use](#) or variance granted prior to March 16, 2006, shall be permitted to continue in accordance with the terms and conditions of approval for conditional use or variance. (Ord. 821, 2-23-2006, eff. 3-16-2006)

## **II. MINIMUM LAKEFRONT LOT WIDTH**

After a code amendment work session, the P&Z Commission directed staff to submit a code amendment application to create a 60 foot lake frontage minimum requirement for all residentially zoned properties. Currently, there is not a minimum lake frontage development standard. Prior to the 2006 code, there was a provision to regulate the width and depth of a lot in residential zones. The impact of this code amendment would only affect future lot splits and rearrangements of lots.

The following information related to the lakefront code amendment is attached:

1. Explanation of Code Amendment
2. Proposed Ordinance
3. Minimum Lot Frontage Diagram
4. CA-09-01 Staff Report- March 1, 2009
5. Memorandum to City Council- September 29, 2010
6. Memorandum to City Council- July 15, 2010
7. Questions from Mayor Bailey with Responses

## Code Amendment- Minimum Lake Frontages CA-09-01

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### **What is the code amendment?**

The proposed code amendment would introduce a 60 foot minimum property frontage along Payette Lake for residentially zoned properties.

### **What is the purpose of the code amendment?**

The reason behind this code amendment is identical to the reasoning behind the minimum street frontage requirements for residentially zoned properties, in that it would lead to more organized, logical development, while avoiding potentially dangerous and unwanted lot arrangements.

### **Why is 60 feet the minimum width for the lakefront?**

The Planning and Zoning Commission selected 60 feet as the minimum standards for the lake front based on the idea that this width is within the character of many locations around the lake and allows enough room for maneuverability of boats into dock areas. The minimum lot width should be based on the desired lot organization which translates into density.

From a zoning perspective, most residential properties around the lake (with the exception of 3 properties) are zoned R4-Low Density Residential. This zone requires a minimum property size of 10,000 sq. ft. and 75 feet of street frontage. If the lots were perfectly rectangular, then the minimum lakefront lot width would be 75 feet. If the minimum lakefront lot widths were 50 feet, then the code amendment would essentially change the density to a lot configuration similar to a R8-Medium Density Residential zone. (see diagram)

### **What are the implications of the code amendment for future lot splits?**

The proposed amendment constitutes the addition of a new dimensional standard that lots would have to meet were they to be rearranged, meaning that the proposed amendment's only impact is when an owner wishes to divide, or otherwise rearrange, their property in a manner that requires a Record of Survey application; it would have to meet one more dimensional standard. For example, if a property owner wanted to split a parcel in the R4 zone on the lake, the new lot would need a minimum of 10,000 sq. ft., 75 ft. of street frontage, and 60 ft of lake frontage. If any of these 3 requirements cannot be met, then a lot cannot be split or rearranged.

### **What are the implications of the code amendment for existing lots?**

The proposed amendment may make some existing lots non-conforming, but in a manner that has no impact except in the aforementioned scenario (lot rearrangement). The implications of this proposal will make some existing lots non-conforming because they will not meet all of the relevant dimensional standards. For lots that are not developed, a single-family dwelling and customary accessory buildings may be constructed on the non-conforming lot. These lots may already be considered "non-conforming" because they do not meet the minimum square footage or street frontage (75' in the R4 zone.) It is useful to remember, and a helpful analogy, that a large number of existing lots do not meet their required street frontage and this has no impact on the ability to develop or use these lots. The proposed frontage requirement would be identical to the street frontage, except it would be measured along a property line abutting the water not a street.

Beyond lot rearrangement scenarios, the only implication of a lot being non-conforming relates to what setbacks the lot uses. To explain, MCC 3.11.02 dictates that when a lot has a non-conforming amount of acreage for its zone, that lot is afforded the setbacks of the zone in which the lot's acreage would be conforming. This is the only way, again, beyond lot rearrangements, in which a lot's status as non-conforming would have an impact – and it doesn't relate to property dimension, rather total acreage.

**Would the code amendment create non-conforming structures?**

The proposed amendment would have no impact on the status of structures as either conforming or non-conforming. Structures are typically deemed non-conforming because they do not meet setbacks, but they are not, and cannot, be deemed non-conforming because the lot upon which they sit is non-conforming. While the proposed amendment may make some lots non-conforming, there is no impact on structures.

**ORDINANCE NUMBER \_\_\_\_**

AN ORDINANCE OF THE CITY OF McCALL, VALLEY COUNTY, IDAHO AMENDING MCCALL CITY CODE 3.3.03 AND TABLE 3.3.03 TO PROVIDE FOR A MINIMUM PROPERTY FRONTAGE ALONG THE PAYETTE LAKES IN THE RESIDENTIAL ZONES.

WHEREAS, an application for approval of a code amendment, pursuant to MCC 1-1-3, was submitted by the City of McCall on December 4, 2009; and

WHEREAS, the code amendment would introduce a minimum property frontage for residentially zoned properties along the Payette Lakes; and

WHEREAS, the McCall Area Planning and Zoning Commission held a properly noticed and regularly scheduled public hearing on January 5, 2009 to consider the proposed code amendment; and

WHEREAS, the McCall Area Planning and Zoning Commission recommended the proposed Code Amendment for approval by the McCall City Council at the January 5, 2009 meeting; and

WHEREAS, the proposed code amendment was approved by the McCall City Council at a regularly scheduled and properly noticed public hearing on February 11, 2010 and March 11, 2010.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MCCALL, IDAHO, AS FOLLOWS:

Section 1: McCall City Code Section 3.3.03 and Table 3.3.03 is amended with the following changes:

**3.3.03: RESIDENTIAL ZONE GENERAL DEVELOPMENT STANDARDS:**

The following property development standards shall apply to all land and permitted or conditionally permitted buildings located within their respective residential zones. Table 3.3.03 of this section lists the site development standards required for residential development properties. [Chapter 10](#) of this title provides special provisions for planned developments.

**TABLE 3.3.03**  
**DIMENSIONAL STANDARDS BY RESIDENTIAL ZONE**

<b>Dimensional Standard</b>	<b>RR</b>	<b>RE</b>	<b>R1</b>	<b>R4</b>	<b>R8</b>	<b>R16<sup>5</sup></b>
Nominal property size	10.0 acres	5.0 acres	1.0 acre	4 units/acre	8 units/acre	16 units/acre
Minimum property size per unit	360,000	180,000	40,000	10,000	5,000	2,500

(square feet)						
Street frontage, minimum (in feet) <sup>1</sup>	300	200	100	75	50	25
<u>Lake Frontage, minimum (in feet)</u>	<u>60</u>	<u>60</u>	<u>60</u>	<u>60</u>	<u>60</u>	<u>60</u>
Setback (in feet) from:						
1. Any property line on an arterial or collector street	30	30	30	25	20	20
2. Front property line on a minor or private street	25	25	25	20	20	15 <sup>5</sup>
3. Front property line where alley provides access to garage or where the garage is side loaded	25	20	20	15	15	10 <sup>5</sup>
4. Interior side property line <sup>2,5,9</sup>	50	30	3	3	3	3
5. Rear property line <sup>2,5,9</sup>	50	30	8	8	8	8
6. Side property line on minor or private street <sup>2,4,5,9</sup>	25	25	20	3	3	3
Maximum height (in feet)	35	35	35	35	35	50 <sup>6</sup>
Minimum distance between buildings (in feet) <sup>7</sup>	20	20	20	10	10	10

Notes:

1. Measured at the setback line; for flag lots, the setback starts at the end of the pole section.
2. See section 3.10.08 of this title, regarding development standards.
3. See figure 3.3.04 of this chapter to determine minimum setbacks and section 3.3.041 of this chapter regarding snow shedding roof setback. However, no building element shall be closer to a side property line than ½ the building element height (see chapter 2, "Definitions", of this title); use the greater of this measurement or that determined from section 3.3.04 and figure 3.3.04 of this chapter.
4. If vehicle access is restricted on such street, a setback of 15 feet is permitted.
5. A conditional use permit may be applied for requesting a reduced setback, taking into consideration the surrounding zones, terrain, watercourse features, wetlands, or need for snow storage.
6. Exception to height allowances as noted in chapter 7, "Special Districts", of this title. All buildings over 35 feet in height will require a conditional use permit. 50 percent of the units gained by the additional height, if permitted, shall be community housing units.

7. To points of building elements in opposition.
8. Determine rear setback using section 3.3.05 of this chapter.
9. For zero lot line developments, the maximum lot coverage standard shall be increased by 10 percent for each lot line with a 0 foot setback. For example, for a lot with 1 zero lot line and a size of 10,000 square feet, the percent of lot coverage would be:  $30\% + 10\% \times (30\%) = (30+3)\% = 33\%$ .

Section 2: This Ordinance shall take effect immediately upon its passage and approval.

PASSED AND APPROVED BY THE MAYOR AND COUNCIL OF THE CITY OF McCALL, IDAHO, THIS \_\_\_ DAY OF \_\_\_\_\_, 2010.

Approved:

By \_\_\_\_\_  
Donald C. Bailey, Mayor

Attest:

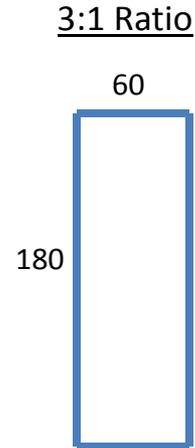
By \_\_\_\_\_  
BessieJo Wagner, City Clerk

**Current Zoning Dimensions**

	R4	R8
Minimum Property Size	10,000 sq. ft.	5,000 sq. ft.
Street Frontage	75 ft.	50 ft.

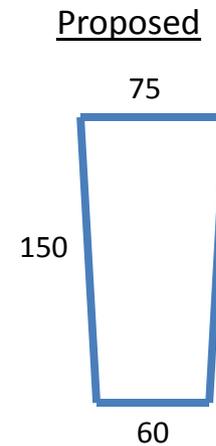
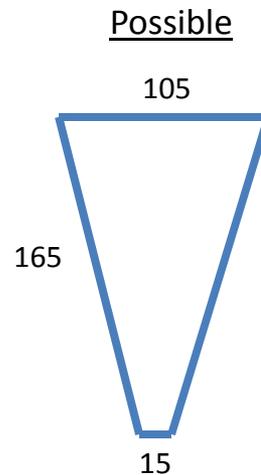
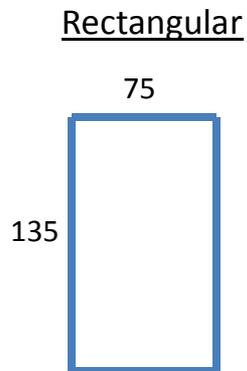
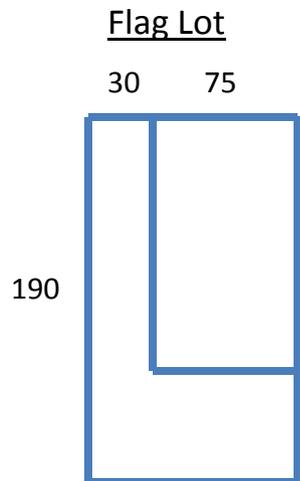
*Note: All lots depicted are drawn to the same scale and are approximately 10,000 sq. ft.*

**Old Code (pre- 2006)**



**Existing Code (post-2006)**

**Proposed Code (2010)**



**McCall City Council  
Staff Report**

**CA-09-01**

March 1, 2010

Applicant: City of McCall

Application: A Code Amendment application to introduce a minimum lake frontage to residentially zoned properties.

Zoning: All Residential Zones (RR, RE, R1, R4, R8, and R16)

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**Description**

This staff report discusses a Code Amendment application to add a new development standard to all residentially zoned properties requiring a minimum of 60' of frontage on the lake. An application for the approval of a Code Amendment was submitted on December 14, 2009 pursuant to McCall City Code Title III, Chapter 15, by the City of McCall Community Development Department.

The City of McCall properly posted, in the local newspaper, the public notification of the January 5, 2010 public hearing and also noticed the public hearing several times for City Council. An ad was also placed in the newspaper and additional information is available on the City's website.

The proposed code amendment would introduce a 60 foot minimum property frontage along Payette Lake for residentially zoned properties. The reason behind this code amendment is identical to the reasoning behind the minimum street frontage requirements for residentially zoned properties, in that it would lead to more organized, logical development, while avoiding potentially dangerous and unwanted lot arrangements.

The implications – or lack thereof – of this proposal relates to conforming or non-conforming status of structures and lots. Existing lots are either conforming or non-conforming. If they are conforming, they meet all of the relevant dimensional standards articulated in MCC 3.3.03 and Table 3.3.03. A lot is non-conforming if it fails to meet these same standards. Conforming lots may be altered, divided, or otherwise rearranged according to the Record of Survey procedure articulated in MCC 9.1.05. In rearranging an existing lot, in a manner that requires the Record of Survey procedure, there is a presumption of approval by the McCall Area Planning and Zoning Commission (were the proposed rearrangement to meet all of the relevant dimensional standards and other relevant code sections).

However, were the proposed rearrangement to articulate resulting lots that would not meet the dimension standards, there would not be a presumption of approval, and the Commission would have the ground upon which to deny the proposed rearrangement.

The proposed amendment constitutes the addition of a new dimensional standard that lots would have to meet were they to be rearranged, meaning that the proposed amendment's only impact is when an owner wishes to divide, or otherwise rearrange, their property in a manner that requires a Record of Survey application; it would have to meet one more dimensional standard.

Regarding existing properties, the proposed amendment may make some existing lots non-conforming, but in a manner that has no impact except in the aforementioned scenario (lot rearrangement). It is useful to remember, and a helpful analogy, that a large number of existing lots do not meet their required street frontage and this has no impact on the ability to develop or use these lots. The proposed frontage requirement would be identical to the street frontage, except it would be measured along a property line abutting the water not a street.

Beyond lot rearrangement scenarios, the only implication of a lot being non-conforming relates to what setbacks the lot uses. To explain, MCC 3.11.02 dictates that when a lot has a non-conforming amount of acreage, for its zone, then that lot is afforded the setbacks of the zone in which the lot's acreage would be conforming. This is the only way, again, beyond lot rearrangements, in which a lot's status as non-conforming would have an impact – and it doesn't relate to property dimension, rather total acreage.

Lastly, the proposed amendment would have no impact on the status of structures as either conforming or non-conforming. Structures are typically deemed non-conforming because they do not meet setbacks, but they are not, and cannot, be deemed non-conforming because their lot upon which they sit is non-conforming. While the proposed amendment may make some lots non-conforming, there is no impact on structures.

#### **Code Narrative**

Current the residential zones have a development standard for the minimum width of property frontage on a street or road, but none exists for lake frontages. This amendment would introduce this requirement. See attached "Explanation" document for the rationale behind this amendment.

#### **Comments**

*Agency* – Idaho Department of Lands has indicated their support of the amendment. The Payette Lakes Watershed Advisory Group has indicated that there may be code amendments that better achieve water quality. The City Engineer indicated that they found no fatal flaws with the proposal.

*Public* –

#### **Staff Recommendation**

Staff recommends the City Council approve this code amendment as drafted.

MEMORANDUM

Date: September 29, 2010

To: McCall City Council

From: Michelle Groenevelt, Community Development Director

Re: **CA-09-01, Minimum Lake frontage for Residential Zones and Alternatives**

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After a code amendment work session, the McCall Area Planning & Zoning Commission directed staff to submit a code amendment application to create a 60 foot lake frontage minimum requirement for all residentially zoned properties. Currently, there is not a minimum lake frontage development standard. Prior to the 2006 code, there was a provision to regulate the width and depth of a lot in residential zones. Since 2006, this has created a void in the code and this code amendment would address that void along Payette Lake. The impact of this code amendment would affect future lot splits and rearrangements of lots.

During a properly noticed public hearing on January 5, 2010, the Planning and Zoning Commission reviewed CA-09-01 and recommended the application for approval by the McCall City Council. The City Council held a public hearing and discussed the issue on the February 11, March 11, April 8, and June 10, 2010, July 22, 2010 meetings. The code amendment was presented to the Valley County Board of Commissioners on March 15, 2010. They directed staff to bring the amendment back in July with additional information after additional public notice including a mailed notification to all the potentially affected property owners. Staff has notified the County Commissioners on the status of the code amendment.

At the last City Council meeting, there was discussion on the proposed amendment and some alternatives. It was decided that staff would identify the work necessary to fully analyze the impact of the proposed amendment on each lot around the lake and present it to Council on October 14, 2010. Staff worked this summer to compile the parcel layer in the GIS system for properties around the lake to better a sense of the impact of this code amendment. This information is in the process of being developed.

**Staff Recommendation**

Staff recommends that the City Council not take action on the proposed code amendment and discuss the code amendment with McCall Area Planning and Zoning Commission at the October 22 work session. Based on the outcome of that meeting, staff will provide additional information and prepare the necessary documents for the November 18 meeting.

MEMORANDUM

Date: July 15, 2010

To: McCall City Council

From: Michelle Groenevelt, Community Development Director

Re: **CA-09-01, Minimum Lake frontage for Residential Zones and Alternatives**

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The purpose of this memo is to briefly explain the proposed amendment and provide alternatives to the amendment. The following are 3 options to consider:

*Option #1: Do nothing.* This option would not require Council to not take any action on the proposed code amendment (CA-09-01) and not give direction to staff to initiate any other code amendments related to this issue. While there is currently a void in the code, this option confirms the void is not an issue in the City of McCall.

*Option #2: Approve proposed code amendment or similar.* This option would create a 60 foot (or similar) lake frontage minimum requirement for all residentially zoned properties. This option will create some non-conforming lots but in a manner that has no impact except for the property owners that wish to divide, or otherwise rearrange, their property in a manner that requires a Record of Survey application. Most of the public comments opposing this code amendment, highlighted issues that were inaccurate or would not affect the development or redevelopment of existing lots. (See Code Amendment Min. Lake Frontages for further an explanation.) If the Council is more comfortable with another width like 50 ft., as mentioned in previous meetings, then the proposed code amendment could be modified.

*Option #3: New Code Amendment for Lot Length.* This option would require the staff to develop a new code amendment that would need to be publically noticed and go back to the P&Z Commission. This code amendment would add language to the code that existed in all the residential zones (R-10, R-5, R-1, Zone A, and Zone B) prior to the 2006 code revision that states, "Lot Length: The length of any lot shall not be greater than three (3) times the average width." This option would apply the same standards to all residentially zoned properties and be consistent with the development standards in place prior to 2006. This code amendment would again result in creating non-conforming lots in the City of McCall and the Impact Area. Again, this has no practical implications for existing lots and would only affect the development pattern for future lot splits.

**Staff Recommendation**

Staff recommends that the City Council not take action on the proposed code amendment and direct staff to develop a code amendment as outlined in Option #3. This code amendment will be developed and brought forth to the P&Z and Council with other minor code amendments.

### **III. SIDEYARD SETBACKS FOR MULTIPLE STRUCTURES**

A code amendment application has been submitted to clarify whether or not development standards apply to accessory dwelling units in the same manner as primary dwelling units. The code seeks to note that the development standards are not applied to each of the two dwelling units on a property separately, but rather that the entire lot, including the accessory structure, is treated as a single entity.

The P&Z Commission reviewed this code amendment at the October 2, 2010 meeting and did not feel they had enough information on the issue to make a recommendation to City Council.

The following information is attached:

1. CA-10- Staff Report
2. Proposed Ordinance
3. Current Code on sideyard setbacks (residential) MCC 3.3.04

**McCall Area Planning and Zoning Commission  
Staff Report**

**CA-10-04**

*Accessory Dwelling Unit Code Amendment*

September 13, 2010

Applicant: City Council  
Agent: Community Development Staff  
Application: A Code Amendment to clarify the application of development standards to accessory dwelling units  
Zoning: All Zones

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**Description**

A code amendment application has been submitted to clarify whether or not development standards apply to accessory dwelling units in the same manner as primary dwelling units. The code seeks to note that the development standards are not applied to each of the two dwelling units on a property separately, but rather that the entire lot, including the accessory structure, is treated as a single entity.

**Code Narrative**

See attached amendment.

**Staff Comments**

Staff recommends that the Commission recommend CA-10-04 for approval by the City Council.

**ORDINANCE NUMBER \_\_\_\_**

AN ORDINANCE OF THE CITY OF McCALL, VALLEY COUNTY, IDAHO AMENDING MCCALL CITY CODE 3.8.11 TO CLARIFY THE APPLICATION OF DEVELOPMENT STANDARDS TO ACCESSORY DWELLING UNITS.

WHEREAS, an application for the code amendment, pursuant to MCC 3.8.11, was initiated by the McCall City Council on July 22, 2010; and

WHEREAS, the code amendment would clarify the application of development standards to accessory dwelling units; and

WHEREAS, the McCall Area Planning and Zoning Commission held a properly noticed and regularly scheduled public hearing on September 14, 2010 to consider the proposed code amendment; and

WHEREAS, the McCall Area Planning and Zoning Commission recommended the proposed Code Amendment for approval by the McCall City Council at the September 14, 2010 meeting; and

WHEREAS, the McCall City Council held a properly noticed public hearing on September 23, 2010 to consider the proposed code amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MCCALL, IDAHO, AS FOLLOWS:

Section 1: McCall City Code Section 3.8.11 is amended with the following changes:

**3.8.11: ACCESSORY USE, BUILDINGS AND STRUCTURES:**

- (A) Accessory dwelling units may be used for lease or rental purposes by obtaining a business license for rental. See chapter 13, "Permits And Applications", of this title. Accessory dwelling units are not considered for purposes of determining development density. An accessory dwelling unit must meet the requirements of the city code, where applicable, for separate water connections, and shall be separately connected to a municipal sewer main, or meet all governmental standards for water and sewage systems where municipal systems are not available.
- (B) An accessory building shall have the same exterior finishing colors and textures as the principal building to which it is accessory, unless some other design or materials are approved by the commission under the procedures for a conditional use; provided, that if the building roof does not comply with fire mitigation standards, materials which do meet those standards may be substituted.
- (C) Accessory dwelling units intended for rental or lease (greater than 30 days), are considered long term rentals; short term, or vacation, rentals are intended for rental periods of thirty (30) days or less.

(D) All development standards for the zone in which an accessory dwelling unit is constructed will apply, such a lot line setbacks, building height, and lot coverage (where lot coverage calculation will include both the main dwelling unit and accessory dwelling unit footprints, if separate structures).

Section 2: This Ordinance shall take effect immediately upon its passage and approval.

PASSED AND APPROVED BY THE MAYOR AND COUNCIL OF THE CITY OF McCALL, IDAHO, THIS \_\_\_ DAY OF \_\_\_\_\_, 2010.

Approved:

By \_\_\_\_\_  
Donald C. Bailey, Mayor

Attest:

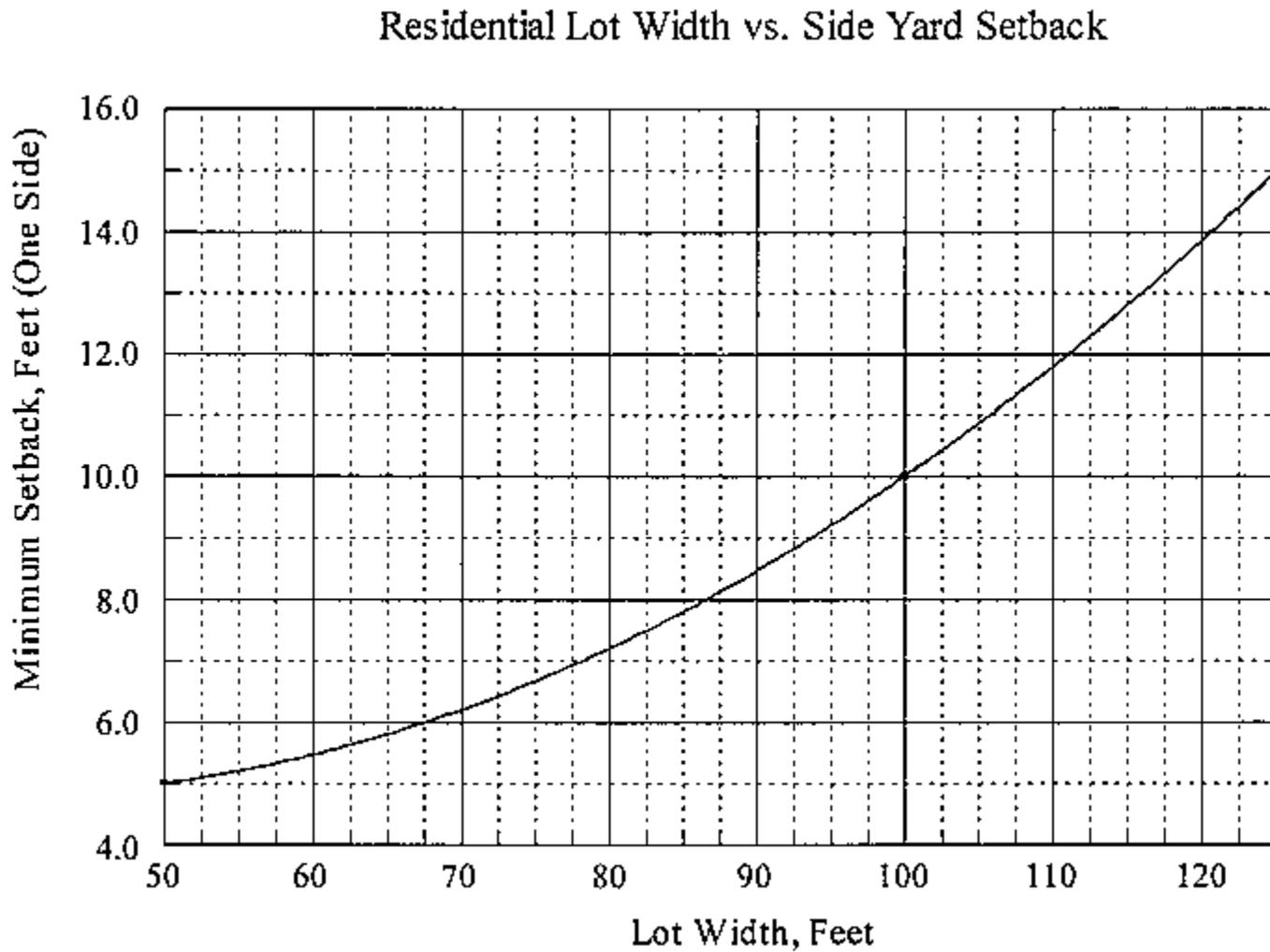
By \_\_\_\_\_  
BessieJo Wagner, City Clerk

### 3.3.04: RESIDENTIAL ZONE LOT WIDTH VERSUS SIDE YARD SETBACK:

See figure [3.3.04](#) of this section to determine side yard setback. For example:

Home sites less than 50 feet wide	5 foot minimum either side
Home sites 100 feet wide	10 foot minimum either side
Home sites equal to or greater than 125 feet wide	15 foot minimum either side

Figure [3.3.04](#)



However, for lots up to one hundred feet (100') wide, the sum of both side yard setbacks shall equal a minimum of twenty percent (20%) of the lot width when measured at the location of the setback. For lots over one hundred feet (100') in width, the requirement is for the sum of both side yard setbacks to equal at least thirty percent (30%) of the lot width when so measured. The administrator may approve, for lots up to one hundred twenty five feet (125') wide, a relaxation of total side yard setback to up to twenty five percent (25%) of the lot width if conditions of topography, adjacent buildings, vegetation, or wetlands impact the location of the proposed building site. (Ord. 821, 2-23-2006, eff. 3-16-2006)

#### **IV. HOUSING SIZE/ENERGY EFFICIENCY**

The subject of housing size/energy efficiency standards is an issue that has been discussed by Planning and Zoning Commissioners numerous times in the last 3 year. Some communities, especially in mountain towns, have adopted regulations in the zoning, building, or both codes that set a maximum square footage. For instance, if the square footage is exceeded then there needs to be some way to offset the impact on the environment or community. There are often two issues at play in this discussion; one is the issue of regulating size and bulk of structures and the other issue is that of regulating energy efficiency or green building techniques.

The Council and Commission should consider or discuss the following:

1. Is the City Council and Commission interested in having staff research this issue? (This may include research of similar communities who have implemented regulations for size and green building code, what are standards uses, legal justification, etc.)

## Question from Mayor Bailey

**So that the Council may more clearly see the impact of this proposed amendment, please have some added information for the table, "Average Lake front lot widths in Feet" provided, including the following:**

*Staff: Areas around the lake were classified into "zones" based on similar lot configurations. Community Development staff created another Table to analysis a random sample from each zone (#1-7) to look at a sample of street frontages of lakefront properties. Based on a lack of data (incomplete parcel layer or original parcel maps) and using a more cost effective method of staff time/resources, the GIS random sample methodology was used to generate actual street frontages and lakefront widths for the different zones.*

- 1. For a few typical 100 - 120 foot width lots (on the lake front), what are the other lot dimensions and the frontage on the street(s)?** Generally, lots on the lake are rectangular in shape. Therefore, for lots that are 120 ft. wide at the lakefront, these lots also have 120 ft. of street frontage. See Table for dimensions.
- 2. For some of the wider lots (200 up) can these lots be split into four lots with 50 feet frontage and still be compliant? A minimum of 300 ft. of street frontage is required regardless of the width of the lake frontage for 4 lots. Split into three or two lots?**
  - 2 lots- A min. of 150 ft. street frontage regardless of the width of the lake frontage*
  - 3 lots- A min. of 225 ft. street frontage regardless of the width of the lake frontage*
  - 4 lots- A min. of 300 ft. street frontage regardless of the width of the lake frontage*
- 3. Are the typical lots with smaller lake front frontage currently compliant? Or are some or most non-compliant?** Most of the lots with smaller lakefront frontage are already considered non-conforming lots because these lots do not have 75 ft. of street frontage (although they have enough square footage.)

The following are approximate ranges of *lot lengths* based on zones 1-7:

<u>Zone</u>	<u>Range of Lot Lengths</u>
1	235-400 ft.
2	90 ft.
3	133-490 ft.
4	188-300 ft.
5	165-245 ft.
6	342-480 ft.
7	206-224 ft.

**In other words, if the 60 foot frontage was approved, would this result in preventing splitting of larger lots, assuming the split would otherwise be compliant with the Zone?**

*Prior to the adoption of the 2006 code, "The length of any lot shall not be greater than three times the average width." (Ord. 615, 3-24-94) Most parcels would not be able to have a 60 ft. lake frontage because the length exceeded 180 ft. This proposed code amendment is less restrictive than the pre-2006 code.*

*Based on the random sample, there a few lots that have over 200 ft. of street frontage; in these cases, the parcels can be split into 2 lots based on the street frontage. It is more likely that the existing street frontage requirement will prevent lot splits than the proposed lakefront code minimum of 60 ft. It should also be noted that these larger parcels a developed estate type of properties.*

**Or would it be more logical to reduce the frontage to, say, 50 feet?** *It is staff's recommendation that the minimum lakefront is not less than 60 ft. because then it would essentially be changing the density around the lots in future lot splits. It may be more appropriate for the lake frontage standard to be 75 ft. to match the street frontage requirement and promote new rectangular lots. Policy on development standards should be determined based on desired results rather than a few properties that may not be able to further split their lots. Prior to 2006, the lot split creating long skinny lots was not permitted. Also, as most (or all??) of the lake front lots are in a R4 zone, it looks to me like many of these lots are already non-compliant for that zone (frontage on street, lot size, etc.) judging from the zoning map. Correct.*

**Maybe the zoning should be changed in some of these areas??** *Staff does not think rezoning areas around the lake is necessary unless it is the City's position to increase density around the lake. While there are numerous lots that are considered 'non-conforming' lots, this status does not preclude a property owner from selling lots, constructing new structures or expanding existing structures according to setbacks.*

**We will need this information, and anything else you feel would be helpful, for the continuation of the debate scheduled for March 11.**

**Thanks, Don Bailey**

**V. DOWNTOWN PARKING REGULATIONS**

The City of McCall Community Development Department commissioned DESMAN Associates to conduct a parking needs assessment of McCall’s Central Business District and the immediate surrounding areas. The report presents the findings of the parking study and needs assessment, including the existing conditions. A summary of stakeholder meetings and recommendations were also included.

The Council and Commission should consider the Downtown Parking Study and discuss if staff should start the process to revise the downtown parking regulations or wait until the Downtown Master Plan is complete.

**In the report the following approaches to Downtown Parking were identified:**

The following are different approaches and combinations to provide downtown parking in McCall:

1. Keep the existing system. This system requires new development to provide parking on-site or off-site with either shared parking agreements or in-lieu fees. Parking minimums are identified in land use/parking tables and can be modified based on actual demand.
2. Create a Business Improvement District, Special Service District or equivalent. If businesses and landowners decide to create a district that contributes to centralized parking improvements and other parking improvements, then the City of McCall could create a parking overlay or use the CBD boundary to exempt the parking requirements.
3. Modify the existing system with a combination of strategies including reduction of the retail/commercial parking requirements in the CBD and/or reduction of the in-lieu fees.

A summary of approaches and the advantages and disadvantages of each are shown in **Table 16** and a narrative is provided below.

Approach	Advantages	Disadvantages
<b>Approach 1-Existing System</b>		
Provide parking according to zoning ordinance, use shared parking agreements, or pay in lieu fee for every parking space not provided. Current fee is \$20,000 per space.	<ul style="list-style-type: none"> <li>• Allows developer to contribute fee if they cannot reasonably provide on-site parking or adjacent parking to meet the zoning ordinance requirements.</li> <li>• Allows more of the site to be developed if using in-lieu fee or shared parking agreement.</li> </ul>	<ul style="list-style-type: none"> <li>• No guarantee to the developer or business that the money will actually be available to build a parking within a reasonable time or location.</li> <li>• Amount of money needed to develop an effective parking garage is substantial.</li> <li>• Cost prohibitive for smaller business wanting to be in downtown that do not have on-site parking.</li> </ul>
<b>Approach 2-Business Improvement District, Special Service District, or Equivalent</b>		
Business Improvement District, Special Service Area or District, or Parking Overlay zone	<ul style="list-style-type: none"> <li>• Contributing businesses benefit from the improvements in the district.</li> <li>• Allows for other</li> </ul>	<ul style="list-style-type: none"> <li>• Requires a majority of the businesses in the district to become members.</li> <li>• Added tax or assessment for</li> </ul>

	<p>improvements in the downtown such as marketing downtown, sidewalks, street lights and signage, etc.</p> <ul style="list-style-type: none"> <li>• Improved public parking areas exempted from parking requirements so land values are increased with more developable area.</li> </ul>	<p>downtown businesses.</p> <ul style="list-style-type: none"> <li>• Parking is not necessarily the only focus of the BID or SSA, because the intent is usually to provide a range of improvements or amenities.</li> <li>• Limited parking benefit if business already provides its own on-site parking, or has public parking nearby to serve its needs.</li> </ul>
<b>Approach 3-Reduced Retail/Commercial Parking Requirements in Downtown Core</b>		
<p>Reduce parking requirement in the downtown core area for a specified number of retail/commercial square feet, or eliminating parking requirements for retail/commercial uses.</p>	<ul style="list-style-type: none"> <li>• Promotes development in the downtown area by reducing or eliminating the parking requirement or fee in lieu payment for retail and commercial uses.</li> <li>• Recognizes the current availability of public parking supply in the downtown area which can be used to support some additional retail and commercial development.</li> <li>• Allows for intense use of downtown land for development.</li> </ul>	<ul style="list-style-type: none"> <li>• Available parking may not be immediately adjacent to the new business or development.</li> <li>• Limited by the number of public parking spaces available in the downtown area.</li> </ul>

DESMAN Associates

**Approaches to Downtown Parking from Report**

**Downtown Parking Study and Needs Assessment  
Recommendations and Timeline for Implementation  
Community Development, Public Works, Police, and Parks & Recreation**

<b>Recommendations</b>	<b>Timeline</b>	<b>Department</b>	<b>Notes</b>
<b><i>Paid Parking</i></b>			
Implement an introductory public education program about paid parking	Start Dec. 2009	Police	Newsletter (police & CD), Star News, public meeting, update parking brochure
Explore installing single-space parking meters for the on-street parking in the downtown core*	Start Dec. 2009 for research issue	Public Works/ Police Department	Time intensive to determine meter type & PW develops master striping plan
<b><i>Code</i></b>			
Revising the parking codes in	6 months to	Community	Need to work with

Title 3*	1 year	Development	businesses to encourage the development of a BID
<b>Timbercrest Garage</b>			
Clarify public parking within the structure and update agreements	Start Nov. 2009	Community Development	Look at past recorded and unrecorded agreements- letter to new owner
Commit to garage completion in order to help resolve public parking issues	Start Nov. 2009	Community Development	Included in list for new owner of Timbercrest Downtown
Make the Timbercrest garage available for public parking to support the downtown businesses, including the ice rink patrons	Unknown	Community Development	Depends on completion of the Timbercrest Downtown development
Supplement the signage for the Timbercrest garage to make parking easier to find.	Within next 6 months	Community Development/ Public Works	PW-Need money to fund signs. CD will look at size and cost.
<b>Downtown Snow Removal</b>			
The Public Works Department should develop an official snow removal plan for the downtown	Within 1 year	Public Works	Project for Public Works Director and in-house engineer.
<b>Development of Public Lots</b>			
Formalized and develop into functional surface parking lots	On-going	Community Development/ Public Works	The lot or realignment of Idaho to Railroad Ave. will be considered in a CDBG related to the senior center. The 1 <sup>st</sup> Street lot may be developed with the Grand Payette development.
<b>Recommendations</b>	<b>Timeline</b>	<b>Department</b>	<b>Notes</b>
<b>Boat and Snowmobile Trailer Parking</b>			
Do not allow boat or snowmobile trailer parking on city streets*	Within 1 year	Police	Allow on-street parking where developed but not drop trailer off.
Designate premium boat trailer parking in the Urban Renewal Lot. (Charge \$4-\$5 per day to park in this area)*	Within 1 year	Parks & Recreation/ Police/ Community Development/ Public Works	Annual, Weekly, Daily parking pass. Signing cost for program. Fees are earmarked for reinvestment for improvements in the area.
No overnight boat trailer parking in Urban Renewal Lot	n/a	Police	Maximum parking for 72 hours.
The City should revisit the grant agreement with IDPR to	Within 6 months	Parks & Recreation	Dennis will look into this issue.

charge a fee for the area that was designated for boat trailer parking*			
<b>Wayfinding and Regulatory Signage</b>			
Install additional blue "Public Parking" signs similar to the ones currently in place. These signs should be slightly larger at the major access points to the public parking areas	Within 6 months	Community Development/ Public Works	Identify locations and funding additional signs.
Consider installing additional two-hour parking signs at mid-block to help remind patrons of the time limits	Depends	Police/ Public Works	If installing meters, then no need for signs.
<b>Pedestrian Access/ Sidewalks</b>			
City develop a program with business owners to create sidewalks in the downtown	ASAP	Community Development/ Chamber/ Economic Dev. Specialist	Need to develop projections for revenue generation.
Reconfiguration of parking, particularly Park Street in the vicinity of the library and City Hall	Within 6 months	Community Development/ Public Works	Need immediate and future parking layout plan (design by in-house engineer)
<b>Parking Enforcement</b>			
Parking enforcement patterns are not predictable so customers do not use this knowledge to their advantage to circumvent the system	ASAP	Police	This depends on staffing situation.
<b>Recommendations</b>			
	<b>Timeline</b>	<b>Department</b>	<b>Notes</b>
Allow parking enforcement personnel to issue citations on private property only with permission of the property owner, as long as "No Public Parking" signs are posted	Current	Police	Already the current policy.
Provide hand-held ticket writers to the parking enforcement personnel	Within 3 years?	Police	Have parking revenue pay for this equipment if needed- depend on volume.
<b>Colorado Street</b>			
If on-street parking remains desirable, consider making Colorado Street a one-way street in order to safely	Within 8 months	Community Development/ Public Works/ Police/	

accommodate on-street parking*		Park & Recreation	
If one-way traffic is not desirable, pave and widen Colorado Street to provide parallel parking where feasible*	Within 2 years	Community Development/ Public Works/ Police/ Park & Recreation	
Relocate school buses from Colorado Street to Stibnite Street except when on an established route to pick-up or drop-off children	Within 1 year	Community Development	This will depend partially on the street section for Colorado Street.
<b><i>Sight Distance at Intersections</i></b>			
Do not allow on-street parking within 30 feet of an intersection by designating parking spaces at least 30 ft. away from intersections accompanied by appropriate signage*	Within 6 months	Public Works	Public Works Director develops an official policy for Council's approval and create new striping plan for on-street parking locations.
<b><i>Parking Management</i></b>			
Create a mission statement for the City's parking program	n/a	City of McCall	Found within parking study- no action necessary
Department position that is solely responsible for the oversight of parking services	n/a	City of McCall	Point person in PW Department & coordinate parking efforts.
<b><i>Bicycle Parking</i></b>			
Add convenient bicycle racks in the downtown area to encourage people to ride their bicycles	On-going	Parks & Recreation	Use extra space near intersections - do not congest sidewalks. Bike racks in all City parks.
<b>Recommendations</b>	<b>Timeline</b>	<b>Department</b>	<b>Notes</b>
Encourage businesses to voluntarily add bicycle parking and require racks through the development review process	Within 1 year/on-going	Community Development/Parks & Recreation	Convenient locations-sharing among businesses. LOT funding every year for 5 new racks.