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Date: August 4, 2021

To: Jefferson County Commissioners

From: LaDana Hintz, Planner

Subject: Jefferson County's Buildings for Lease or Rent Regulations

County Commissioners,

You are scheduled to hold a public hearing on the Jefferson County Buildings for Lease or Rent Regulations on September 7, 2021 at 2:00 p.m. Notice of the public hearing was posted in at least five public places for at least 30 days as required under Section 76-8-107(3), MCA. Notice of the public hearing was published as provided for in 7-1-2121, MCA in the August 4, 2021 and August 18, 2021 Boulder Monitor and Whitehall Ledger.

History:

In 2013, the Montana Legislature enacted Title 76, Chapter 8 of the Montana Code Annotated (MCA), which required local governments to adopt regulations that would regulate the creation of buildings for lease or rent. Jefferson County has yet to adopt the required regulations. Planning Staff has been working with the Planning Board to draft the attached document entitled "*Jefferson County Buildings for Lease or Rent Regulations*" to satisfy the requirement to adopt the required regulations.

Summary of Proposed Regulations:

The proposed regulations are intended to regulate the creation of buildings for lease or rent in the unincorporated areas of Jefferson County. The leasing or rental of buildings on a tract of record may directly impact the property and its surroundings with regard to vehicular access, public health, safety, and welfare, the provision of public services and utilities, and the physical environment. These regulations will be adopted to address the requirements of state law and to allow Jefferson County and landowners to consider and mitigate potential impacts that may result from buildings for lease or rent, to help protect the public's health, safety, and general welfare.

The proposed regulations allow for four buildings for lease or rent for human occupancy before a full review is required. This is consistent with the allowances in Section 76-3-106 & 107, MCA.

As proposed and allowed under 76-3-108(1)(a) a full review would not be required for 29 or less buildings for lease or rent, for items such as storage units, which are not for human occupancy.

The following items are included in the regulations:

- A list of items required to be submitted for review;
- A clearly defined review process;
- Variance provisions to help alleviate undue hardship;
- A fee schedule is established to help cover review costs; and

- Application forms are included.

A building is defined per 76-8-101(1), MCA:

“A structure or unit of a structure with a roof supported by columns or walls for permanent or temporary housing or enclosure of persons or property or for the operation of a business. Except as provided for in 76-3-103(16), MCA, the term includes a recreational camping vehicle, mobile home, or cell tower. The term does not include a condominium or townhome.”

At a minimum, the regulations are required to address the items listed in Section 76-8-107, MCA and may include additional items that address public health, safety, or general welfare.

Items required per Section 76-8-107, MCA include: description of property boundaries; onsite and adjacent offsite streets, roads, and easements; geographic features; existing septic tanks and drainfields; existing wells; and existing and proposed buildings; required adequate water supply and sewage and solid waste disposal facilities; an assessment of potentially significant impacts on the surrounding physical environment and human population in the area to be affected, including conditions if any, that may be imposed on the proposal to avoid and minimize potential significant impacts identified; require adequate emergency medical, fire protection, and law enforcement services; require access to the site; and comply with applicable floodplain requirements. The proposed regulations do address all these requirements. The regulations also include additional items related to public health, safety and general welfare as allowed under Section 76-8-108, MCA. These additional items include property line setback requirements; building height limits; stormwater management; underground utilities; lighting; parking; landscaping and fencing; and dust control.

Planning Board’s Recommendations:

The Planning Board held a public hearing for the proposed regulations on July 14, 2021. No public comments were received prior to or during the public hearing.

Five of the five present board members (Arica, Gerry, Christina, Debra, Rhandi) voted in favor of recommending that the Jefferson County Commissioners consider adopting the proposed Jefferson County Buildings for Lease or Rent Regulations.

Commission Action Requested:

The following actions should be taken by the Commission:

- All public comments received must be addressed before the regulations are adopted. (*Section 76-8-107(3), MCA*)
- Discuss and decide on increasing the minimum number of buildings created for lease or rent that are subject to review by the governing body pursuant to Section 76-8-107, MCA. Note: Increasing the number of buildings requires a majority vote of the governing body. (*Section 76-8-108(1)(a), MCA*)
- Discuss and decide on adopting additional items beyond the requirements of Section 76-8-107, MCA that help to address public health, safety, or the general welfare. Note: Per 76-8-108(2) this action required a supermajority vote of the governing body.
- Discuss and adopt findings of fact to support decision. Potential findings of fact are included below.
- Adopt Resolution 23-2021 – *A Resolution Adopting Jefferson County Buildings for Lease or Rent Regulations.*

If the Commissioners elect to adopt the Jefferson County Buildings for Lease or Rent Regulations, the following findings of fact could support that decision:

1. Finding: Adoption of the Jefferson County Buildings for Lease or Rent Regulations will meet the intent provided under statute because these regulations offer a new process for review of buildings that are created for lease or rent on a single tract of land.
2. Finding: The Jefferson County Buildings for Lease or Rent Regulations provide for an applicant's due process by establishing a review process and timeline requiring notification of completeness, as well as the governing body's decision and justification, that will be administered consistently as it applies to buildings for lease or rent.
3. Finding: The fee schedule to be imposed for the review of buildings for lease or rent projects is justified because it is commensurate with the amount of time and the level of review necessary to adequately consider such proposals.
4. Finding: The Jefferson County Buildings for Lease or Rent Regulations will not place an undue burden on property owners seeking to lease or rent certain buildings or portions of buildings on a tract of land because the regulations identify circumstances under which buildings are exempt from the requirements of this new process.
5. Finding: The Jefferson County Buildings for Lease or Rent Regulations will not place an undue burden on property owners seeking to lease or rent certain buildings or portions of buildings on a tract of land because the regulations provide for a new review process that is abbreviated yet considers impacts from the proposed development and allows for adequate mitigation as a result of the potential impact.
6. Finding: The Jefferson County Buildings for Lease or Rent Regulations protect public health, safety, and welfare because existing and proposed water and wastewater facilities are required to be identified in the application materials, and because review by the governing body will ensure that adequate water supply, sewage and solid waste disposal facilities are required.
7. Finding: The Jefferson County Buildings for Lease or Rent Regulations protect public health, safety and welfare because adequate access to and circulation onsite will be considered by the governing body as part of the application review and will be a requirement of approval.
8. Finding: The Jefferson County Buildings for Lease or Rent Regulations protect public health, safety, and welfare because adequate emergency medical, fire and law enforcements services will be considered by the governing body as part of the application review and will be a requirement of approval.
9. Finding: The Jefferson County Buildings for Lease or Rent Regulations protect public health, safety, and welfare by requiring the governing body assess the potential significant impacts to the environment and human population within the area affected by

the proposed development and allows the governing body to mitigate through conditions or denial to avoid or minimize the impact(s) anticipated.

10. Finding: The Jefferson County Buildings for Lease or Rent Regulations protect public health, safety, and welfare because they will require development to comply with applicable floodplain requirements.
11. Finding: The additional regulations included require public hearings as part of the review process. Such processes are reasonable and necessary to protect the public health, safety and/or general welfare because they will enable the public to participate in the local governing body's review of the proposed development, and ensure those persons immediately affected have an opportunity to provide written and verbal comment on the proposal.
12. Finding: The additional regulations included minimal development standards that address property line setback requirements, building height limits, stormwater management, underground utilities, lighting, parking, landscaping, fencing, and dust control. Such minimal development standards are reasonable and necessary to protect the public health, safety and/or general welfare. The development standards protect adjacent properties from nuisances resulting from denser development such as parking conflicts, stormwater management onsite, lighting control, and dust management. The development standards also help to reduce the potential of fire spread and enable fire departments to better defend fires.
13. Finding: Increasing the number of buildings for lease or rent that are not for human occupancy to 29 before requiring review under these regulations will not impact the public health, safety, and welfare because the impact of such buildings is minimal since they are not for human occupancy. These units will not be served by water or wastewater facilities, will not create significant amounts of solid waste for disposal, will prompt emergency medical, fire or law enforcement services infrequently, and will result in intermittent traffic.