

ORDINANCE No. 2007-5
AMENDMENT OF THE OPHIR LAND USE CODE
REGARDING EXISTING STRUCTURES IN THE AVALANCHE HAZARD ZONE DISTRICT

WHEREAS, the Ophir General Assembly met on July 17th, 2007, and agreed to consider amendment of the Ophir Land Use Code pertaining to grandfathered non-conforming structures in the Avalanche Hazard Zone District; and

WHEREAS, the Ophir Planning Commission met on met on September 11th, 2007 and November 13th, 2007, and after conducting a public hearing following mailing and posting notice of such hearing in accordance with **§1405** of the Ophir Land Use Code and considering all comments at such hearing, moved to recommend amendments to the Ophir Land Use Code pertaining to non-conforming structures in the Avalanche Hazard Zone District; and

WHEREAS, the General Assembly conducted public hearings on such Planning Commission recommendations on the 20th day of November, 2007, and the 18th day of December, 2007, after publishing and posting notice of such hearings 10 days in advance, and considered all comments at such hearing in accordance with **§1405** of the Ophir Land Use Code; and

WHEREAS, the General Assembly finds that these amendments to Avalanche Hazard Zone District-related regulations will streamline the Special Use Permit review process for the replacement, relocation, renovation or expansion of existing grandfathered single-family residential structures and the old Town jail; that elimination of mandatory requirements for construction mitigation of such structures will facilitate the reasonable use of land by owners and residents of existing grandfathered single-family residential structures and the old Town jail, provided that the owners thereof acknowledge and assume the risk of construction and occupancy in the Avalanche Hazard Zone District and agree to release and indemnify the Town against possible liability in connection therewith, and will potentially minimize cost to existing owners and residents of such structures for their replacement, relocation, renovation or expansion, and that passage of this Ordinance will promote the affordability of housing within the Town of Ophir and promote the health, safety and general welfare of the Ophir community, improve the administration of the Ophir Land Use Code, and promote the purposes of the Ophir Master Plan sections 2.2 and 2.7; and

WHEREAS, passage of this Ordinance is not intended to create any precedent for approval of new construction or development on vacant lots within the Avalanche Hazard Zone District, insofar as no avalanche hazard risk to any structures or occupants exists with regard to vacant lots, and any construction or development-related risk with respect to replacement, relocation, renovation or expansion of existing grandfathered structures in the Avalanche Hazard Zone District is, at most, incremental.

NOW, THEREFORE, BE IT ORDAINED BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR:

SECTION 1. AMENDMENTS. The following described Ophir Land Use Code provisions are hereby amended as follows:

§307.1 is hereby amended by addition of a new subparagraph D.

§307.1.D. A grandfathered single-family dwelling or accessory building in the Avalanche Hazard Zone District which has received a Variance or Special Use Permit for its replacement, relocation, renovation, or expansion shall not be considered to be non-conforming.

§307.2 is hereby revised and re-enacted as follows:

“§307.2 Expansion. Non-conforming uses or buildings shall not be allowed to increase the non-conforming use or change, renovate, relocate or expand the non-conforming building without approval by the General Assembly through the Variance or Special Use Permit (SUP) process. In the case of proposed replacement, relocation, renovation or expansion of a grandfathered single-family dwelling or accessory building in the Avalanche Hazard Zone, however, the Variance or SUP application shall require only a single hearing by the Planning and Zoning Commission and by General Assembly and may be approved by Resolution of the General Assembly if consistent with the standards and requirements of LUC **§803**. Amendments to any approved SUP or Variance for the replacement, relocation, renovation or expansion of a single family dwelling or accessory building in the Avalanche Hazard Zone may be approved by the Town Administrator subject to the standards and requirements of **§803**, or in his or her discretion, may be referred to the Commission and General Assembly. A grand-fathered single family dwelling in the Avalanche Hazard Overlay Zone means those single family dwellings, together with accessory buildings existing prior to the adoption of the Ophir Zoning Ordinance No. 1 in 1979, located on Lots 1 through 6, Block 24, and those single family dwellings, together with accessory buildings existing prior to the adoption of the Ophir Ordinance 2005-5 Adopting the Town of Ophir Land Use Code in 2005 located on Lots 15 through 17 and 18 through 20, Block Q; Lots 9 through 10, 11 through 12 and 13 through 15, Block M; Lots 9 through 10, 13 through 14 and 15 through 16, Block B, and additional existing single family dwellings and accessory buildings that become included in the Avalanche Hazard Overlay zone district due to future amendments to the Avalanche Hazard Overlay Zone District Map.

§ 801 is hereby revised and reenacted as follows:

“§801. INTENTION AND PURPOSE. The Avalanche Hazard Zone is intended to define areas where avalanche hazard threatens the health, safety and welfare of persons and property, and to restrict development in those areas other than (a) the replacement, relocation, renovation or expansion of existing grand-fathered single family dwellings and accessory buildings in accordance with standards and procedures of the provisions of §307.2 and §803; and (b) the replacement, renovation or expansion of the old jail building located on Lots 9 and 10, Block T. The Avalanche Hazard Zone boundaries are established on the official Hazards Overlay Map of the Town of Ophir.

§ 803 is hereby revised and reenacted as follows:

§803. USES PERMITTED ON REVIEW - REQUIREMENTS. Any construction or development activity in the Avalanche Hazard Zone must, in addition to the owner obtaining a Variance or Special Use Permit, meet the following requirements:

§803.1 Prior to issuance of a building permit, the property owner, on behalf of itself and its successors-in-interest, must agree to indemnify and hold harmless and release the Town of Ophir, its officials, employees, attorneys, insurers and authorized agents, from and against any and all damages, costs, expenses, losses, claims, or liability asserted by any person for damage or destruction to property, injury or death arising out of or resulting directly or indirectly from (a) the construction, development, use or occupancy of a single family dwelling and/or accessory buildings in the Avalanche Hazard Zone; and (b) the approval or permitting of such construction, development, use or occupancy by the Town of Ophir and its officials, employees and authorized agents. The indemnity and release shall acknowledge that the property owner assumes all risk of danger by reason of construction, development, use or occupancy of the structure(s), and shall be in a form approved by the Town Administrator, shall run with the land, shall be binding upon the property-owner's successors-in-interest, and shall be recorded in the records of the San Miguel County Clerk and Recorder. The property owner and its successors-in-interest shall keep and maintain in effect at all times a general liability insurance policy, if available. Notwithstanding anything else in the Land Use Code to the contrary, in the event that the property owner or its successors-in-interest fail to fully indemnify and hold harmless the Town in accordance with this section 803.1, the Town Administrator or Land Use Code Enforcement Official shall be authorized to revoke

the Certificate(s) of Occupancy for any structure(s) or improvement(s) on the subject property and to withhold building permits until such time as full indemnification has occurred.

§803.2 No structures or accessory buildings, other than replacement, relocation, renovation or expansion of a grandfathered single-family dwelling or accessory building, or the old jail building located on Lots 9 and 10, Block T, as may be approved pursuant to a Variance or the Special Use Permit process in accordance with the standards and requirements of **§803**, shall be permitted in areas designated on the Hazards Overlay Map as High or Moderate Avalanche Hazard.

§803.3 The provisions of this **§803** shall be administered by the Town Administrator or his/her designee. All certificates and indemnification agreements shall be submitted in a form reasonably acceptable to the Town Administrator.

§ 804 is hereby revised and reenacted as follows:

§804. AVALANCHE HAZARD ZONE ADOPTED;
DISCLAIMER. The Town of Ophir has adopted a Hazards Overlay Map, which designates areas of High Avalanche Hazard and Moderate Avalanche Hazard. This designation is based on scientific and engineering considerations, which are inherently limited by available data and scientific assumptions used at the time of designation. Compliance with the provisions of **§803** cannot ensure freedom from risk to life, safety or property. Approval of a Variance or Special Use Permit for the replacement, relocation, renovation or expansion of a single family dwelling or accessory building in the Avalanche Hazard Zone shall not create liability on the part of the Town of Ophir nor any officer or employee or consultant thereof for any injury, death or damage to persons or property that may result from such approval or reliance on any provision of this Code or the Hazards Overlay Map. The designation of certain areas as hazard areas, high hazard areas, or moderate hazard areas does not imply in any way that areas not so designated are free from risk or have less risk to life, safety or property.

SECTION 2. PUBLICATION. After final adoption, a public notice shall be published which notice shall contain the number and title of this ordinance, a brief description of the ordinance, its effective date and a notice that copies of the ordinance are available for inspection at the Town Clerk's office.

SECTION 3. SEVERABILITY:

If any one or more sections or parts of this Ordinance or the Town of Ophir Land Use Code is adjudged unenforceable or invalid by a court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance or Town of Ophir Land Use Code, the intention being that the various provisions herein are severable.

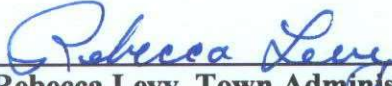
SECTION 4: EFFECTIVE DATE:

This Ordinance shall take effect immediately upon final adoption.


Introduced, Read, Amended and Approved on First Reading by the General Assembly on the 20th day of November, 2007.

Approved and Adopted As Amended on Second and Final Reading by the General Assembly of the Town of Ophir on the 18th day of December, 2007.

By: 
Randy Barnes, Mayor

Attest: 
Rebecca Levy, Town Administrator

Approved as to Form:


Town Attorney