

CHAPTER 19

APPEAL, VARIANCE, AND ACTIONS BY AFFECTED PERSONS

- 19-1. GENERAL. The Planning and Zoning Commission shall consider Administrative Appeals where it is alleged that an error has been made by the Administrator, where a question arises concerning the terms of this Ordinance, and where an affected person(s) requests a hearing. (Amended 11-9-06, 10-20-08)
- 19-2. ADMINISTRATIVE APPEALS. Appeals to the Planning and Zoning Commission concerning interpretation or administration of this Ordinance may be initiated by a person(s) aggrieved by an officer or bureau of the legislative authority affected by a decision of the Administrator. Such Appeal shall be made within twenty (20) days following the questioned decision of the Administrator, and it shall be filed with the Administrator and with the Planning and Zoning Commission as a notice of Appeal, specifying the grounds for the Appeal. The Administrator shall make available to the Planning and Zoning Commission all materials, which constitute the record upon which the Appeal is based. (Amended 11-9-06, 10-20-08)
- 19-3. PERMIT ISSUANCE. No permit shall be issued until the time for appeal has expired. Commencing a permit before a permit is issued will constitute a violation of this Ordinance. The Administrator is only authorized to issue the permit after the appeal time has expired. (Amended 6-5-03)
- 19-4. VARIANCE. The Planning and Zoning Commission may authorize a Variance from the terms of this Ordinance if it is not contrary to the public interest and if, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship. A non-conforming use of neighboring lands, structures or building in the same district, or in other districts, shall not be considered as grounds for granting a Variance. A Variance shall be granted only when a strict application of the provisions of this Ordinance would result in unnecessary hardship because of the characteristics of the site and the Variance is not in conflict with public interest. (Amended 5-12-97, 11-9-06, 10-20-08)
- 19-5. APPLICATION AND STANDARDS FOR VARIANCE
- 19-5.01 A Variance from the terms of this Ordinance shall not be considered by the Planning and Zoning Commission unless a written application for a Variance has been submitted to the Administrator and the Planning and Zoning Commission containing the following: (Amended 11-9-06, 10-20-08)
- a. The name, address, and telephone number of the applicant(s).

- b. Legal description of the property.
- c. Description of the nature of the Variance requested.
- d. A narrative statement indicating the ways in which the requested Variance conforms to the following standards:
 - (1) That special conditions and circumstances exist which are not applicable to other lands, structures or buildings in the same district.
 - (2) That a literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.
 - (3) That special conditions and circumstances do not result from the actions of the applicant.
 - (4) That granting the Variance will not confer on the applicant a special privilege that is denied by this Ordinance to uses in other lands, structures, or buildings in the same district.

19-5.02 When it grants a request for Variance, the Planning and Zoning Commission shall declare those specific findings from the presented evidence which demonstrate that the standards for Variance have been satisfied. (Amended 11-9-06, 10-20-08)

19-5.03 All applications for Special Use Permit, which include a structure that exceeds the maximum height requirement of this Ordinance, shall include a Variance request with the application and the Special Use Permit and Variance shall be considered in one application. All existing uses that have a Special Use Permit shall obtain a Variance if a structure which exceeds the maximum height requirement of this Ordinance is added to the site. (Added 3-21-02)

19-6. SUPPLEMENTARY CONDITIONS AND SAFEGUARDS

19-6.01 The Planning and Zoning Commission shall not grant an Appeal or Variance which would allow a use prohibited under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district. In granting an Appeal or Variance, the Planning and Zoning Commission shall prescribe the appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when they have been made a part of the terms under which the Appeal or Variance is granted, shall be a violation of this Ordinance. (Amended 11-9-06, 10-20-08)

19-7. PUBLIC HEARING

19-7.01 Upon receipt of the application for an Administrative Appeal, the Planning and Zoning Commission shall hold a public hearing, publish a notice in the official newspaper or paper of general circulation within the jurisdiction fifteen (15) days prior to the date of the hearing, and give written notice to all parties as required for Special Use Permits. (Amended 5-12-97, Added 4-17-03, 11-9-06, 10-20-08)

19-7.02 Upon receipt of the application for a Variance, the Planning and Zoning Commission shall hold a public hearing, publish a notice in the official newspaper or paper of general circulation within the jurisdiction fifteen (15) days prior to the date of the hearing, and give written notice to property owners adjoining the parcel under consideration for a Variance. (Added 5-12-97, 11-9-06, 10-20-08)

19-8. ACTION BY THE PLANNING AND ZONING COMMISSION. (Amended 11-9-06, 10-20-08)

19-8.01 Within thirty (30) days after the public hearing, the Planning and Zoning Commission shall either approve, approve with appended conditions, or deny the request for Appeal or Variance. (Amended 11-9-06, 10-20-08)

19-8.02 Upon granting or denying an application, the Planning and Zoning Commission shall specify the Ordinance and standards used in evaluating the application, the reasons for the action of approval or denial, and the actions, if any, that the applicant might take with respect to a re-application for Appeal or Variance. (Amended 11-9-06, 10-20-08)

19-8.03 The applicant, or any affected person(s), who appears in person or in writing before the Planning and Zoning Commission may appeal the decision of the Planning and Zoning Commission to the Board provided that the Appeal is submitted to the Board within fifteen (15) days of the Planning and Zoning Commission signing the written Finding of Facts and Conclusions of Law. (Amended 3-25-04, 11-9-06, 10-20-08)

19-9. NOTIFICATION TO APPLICANT

19-9.01 Within ten (10) days after a decision has been rendered, the Administrator shall provide the applicant with written notice of that decision.

19-10. APPEAL TO THE BOARD OF JEROME COUNTY COMMISSIONERS

19-10.01 Unless otherwise ordered by the Board the record and transcript shall be prepared as set out in this section. The staff report and all evidence admitted for consideration by the Planning and Zoning Administrator and Planning and Zoning Commission shall constitute the record. An estimate of cost for production of sufficient copies of the record and the transcription of all recorded hearings in front of the Planning and

Zoning Commission and sufficient copies thereof shall within 10 days be provided to the person(s) appealing. The person(s) appealing shall have 14 days from the time they are mailed by regular mail notification of the estimate of cost to then pay for the estimate for the record and transcript and sufficient copies thereof on appeal and shall pay for any balance on the completion thereof. If the person(s) appealing do not pay for the estimated cost of the record and transcript and sufficient copies thereof the appeal may be dismissed by the County. Upon payment by the person(s) appealing the record, transcript shall be prepared. Once the record and transcript are prepared the Board shall immediately set a hearing date. The Board shall decide to uphold, to conditionally uphold, or to overrule the decision of the Planning and Zoning Commission. The Board shall make its decision by a simple majority vote of the entire membership of the Board. (Amended 9-9-04, 11-9-06, 10-20-08)

19-11. REQUEST FOR HEARING BY AN AFFECTED PERSON

- 19-11.01 An affected person shall mean one having an interest in real property, which may be adversely affected by the issuance or denial of a permit authorizing the development. (Amended 6-5-03)
- 9-11.02 Any affected person may at any time prior to final action on a Rezone, Special Use, Livestock Confinement Operation, Land Division or Variance Permit petition, in writing, the Board to hold a hearing as required by this Ordinance. (Amended 6-5-03)
- 19-11.03 After a hearing, the Board shall either:
- a. Grant a permit.
 - b. Deny a permit, or
 - c. Defer its decision for a specified time interval to enable additional study or hearing.
- 19-11.04 An affected person, aggrieved by a decision, may, after all remedies under local Ordinances have been exhausted, seek judicial review under the procedure provided by Idaho Code or as the section may be amended. (Amended 3-28-94)