

BYLAWS

MISSOULA COUNTY ZONING BOARD OF ADJUSTMENT

ARTICLE I - Authority

The Missoula County Zoning Board of Adjustment was created on August 25, 1976, by action of the Missoula County Commissioners in accordance with Missoula County Zoning Resolution 76-113 and Chapter 47, Title 16, Revised Codes of Montana, 1947.

ARTICLE II - Objective

The objective of the Missoula County Zoning Board of Adjustment, as established by state law and the Resolution is to provide equality and flexibility in the implementation of county zoning.

ARTICLE III - Definitions

Administrator: The Missoula County Zoning Officer or any county employee acting lawfully on behalf of the Missoula County Zoning Officer (also know as "Administrative Official").

Board: The Missoula County Zoning Board of Adjustment.

Chairman: The Chairman of the Missoula County Zoning Board of Adjustment or, in his absence, the acting Chairman.

Commissioners: The Board of County Commissioners, Missoula County, Montana.

Executive Secretary: The Missoula County Zoning Officer.

Office: The office of the Missoula County Zoning Officer (also known as "Office of the Board.")

Resolution: means Missoula County Zoning Resolution 76-113, all subsequent resolutions adopted under Chapter 47, Title 16, R.C.M., and all amendments hereto.

Staff: The staff from the Office of Community Development.

ARTICLE IV - Powers and Duties.

A.The Board has the power and duty to:

- 1.Adopt operating rules and procedures for public hearings and other business of the Board in accordance with the Resolution.
- 2.Keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in

the office of the Board and shall be a public record.

3. Hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of county zoning.
4. Hear and decide special exceptions as set forth in the zoning district and in accordance with the terms of the Resolution.
5. Authorize upon appeal in specific cases such variance from the terms of the Resolution as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the Resolution will result in unnecessary hardship, and so that the spirit of the Resolution shall be observed and substantial justice done.

ARTICLE V - Membership

The Board shall consist of five (5) members, each to be appointed by the Commissioners for a term of two (2) years, during which term removal may be made by the Commissioners upon written charges and after a public hearing. Vacancies are filled only for the unexpired term.

A. The Board shall consist of five (5) regular members and three (3) alternate members, each to be appointed by the Commissioners for a term of two (2) years, during which term removal may be made by the Commissioners upon written charges and after a public hearing.

B. Alternates shall be called on to serve as regular Board members in the order of their appointment dates, and under the following circumstances:

1. To insure a quorum;
2. To promote the conduct of business by five (5) Board members;
3. To fill the unexpired term of a regular Board member who resigns; and,
4. To advance to regular Board membership as vacancies occur.

C. Only five (5) members shall sit as a Board when hearing and acting on a zoning matter. Further, alternate members shall serve only in the absence of a regular Board member. (History - adopted October 15, 1980)

ARTICLE VI - Officers and Duties:

A. Election

At its first regular meeting in September of each year, the Board shall elect

a Chairman and a Vice-Chairman from among its members. In the event the Chairman is no longer able to serve in that capacity, the Vice-Chairman will succeed to the position of the Chairman and serve the balance of the term. The Board shall elect a new Vice-Chairman to serve the balance of that term.

B.Duties

- 1.Meetings of the Board shall be held at the call of the Chairman.
- 2.The Chairman shall preside at all meetings and hearings, call special meetings, and perform the duties normally conferred by parliamentary usage on such offices, and such other duties as may be properly prescribed.
- 3.The Chairman may enter into discussions of matters before the Board.
- 4.The Chairman shall vote on all issues before the Board.
- 5.When the Chairman is absent, disabled, or disqualified, the Vice Chairman has the authority to act as Chairman.
- 6.In the event of a tie vote on any matter before the Board, the matter will be passed for decision to a following special or regular meeting of the Board.
- 7.In the temporary absence of both the Chairman and Vice Chairman, the Chairman may designate a Board member as acting Chairman.
- 8.The right to vote of all members shall be subject to the provisions of Article VII E.

ARTICLE VII - Meetings

A.Regular Meetings

- 1.The Board shall meet at least once each month.
- 2.The Board shall designate a specific day of the month as its regular meeting period.
- 3.The Executive Secretary shall make arrangements for a suitable meeting place for each meeting of the Board.
- 4.All meetings and business of the Board shall be open to the public.

B.Special Meetings

- 1.Either the Chairman or three (3) members making written request therefore to the Executive Secretary may call a special meeting.

2.The Executive Secretary shall send at least two (2) days in advance, written notice of any special meeting to all members.

C.Quorum

- 1.Three (3) members of the Board constitutes a quorum.
- 2.All action of the Board shall be authorized by a concurring vote of three (3) members present at a regular or special meeting.
- 3.Board members shall not pass on a vote.

D.Parliamentary Authority

Roberts Rules of Order shall apply in all parliamentary matters unless these bylaws otherwise provide.

E.Conflict of Interest

- 1.A conflict of interest exists when a member of the Board:
 - a.has a financial or property interest in a matter under consideration by the Board.
 - b.represents a party having such an interest.
 - c.resides or ow owns property within 300 feet of the subject property of appeal, variance or special exception.
 - d.feels that he should be disqualified for any reason not listed above.
- 2.Before consideration of the matter, the Chairman shall announce the name of any member so disqualified and the reasons therefore, and the disqualification shall be entered in the minutes of the meeting.
- 3.Thereafter, the member shall be excused from the meeting during consideration of the matter and shall not participate in consideration or voting thereon.
- 4.The member may participate as a part of the public in attendance in providing information to the Board.

ARTICLE VIII - Conduct of Meeting

A.1.Unless otherwise voted, the order of business at regular meetings shall be:

- a.Call to Order
 - b.Roll Call
 - c.Reading of minutes and action thereon
 - d.Communications
 - e.Public Hearings
 - f.Old Business
 - g.New Business
 - h.Adjournment
- 2.The Board may vote to dispense with any item on the agenda or to change the order of business.

B.New Business

New business may be introduced for the purpose either of Board action at a future meeting or referral to a committee or the staff for study or consideration.

ARTICLE IX - Public Hearing

A.Notice

- 1.Appeals and special exceptions require a public hearing.
- 2.Variances require a public hearing; however, the Board may elect to delay its decision on a variance until after a public hearing scheduled for the following regular meeting.
- 3.The Executive Secretary shall prepare, publish and post notices of public hearings in accordance with the Resolution.
- 4.Any request for a rehearing shall comply with the same procedures as an original request pursuant to the Zoning Resolution, including the payment of fees. (History - Adopted July 18, 1979)

B.Procedures

- 1.Duties of the Chairman
 - a.Preside at all public hearings.
 - b.State a summary of the questions or issue at the opening of the hearing,

limiting its contents to the subject advertised for hearing.

c. Specify the method of conduct of the hearing.

d. Assure an orderly hearing, having the power to terminate the hearing if, in the Chairman's opinion, persons become unruly.

e. Announce that all questions and comments shall be directed through the Chairman only after the speaker has been properly recognized.

f. Announce that the applicant or his representative must be present, and that absence is a ground for disapproval.

g. Direct each speaker recognized to give their name and address, spelling of their last name, and if appropriate, the name of the person, firm or organization which the speaker represents.

h. Direct that copies of prepared statements and all other material presented at the hearing be given to the Secretary and the Chairman to become a part of the record.

i. Call first for the staff's report then statements from the proponents, then give opponents equal opportunity for comment.

j. Close the hearing to the receipt of public testimony when all who wish to speak have spoke, or if the time limit set by the Board has expired.

k. Declare the hearing to be closed or state the time, place, and date upon which the hearing will be continued, after Board members, being properly recognized at the conclusion of public testimony, have completed questioning of any person presenting testimony.

2. Shall identify the absent member(s) and the presence of any alternate serving on the Board, and shall give the applicant the opportunity to file an objection for the record. If such objection is made, the public hearing shall be conducted and the objection shall thereafter be referred to the County Attorney by the Executive Secretary. (History - Adopted October 15, 1980).

3. The Chairman may:

a. Administer oaths.

b. Compel the attendance of witnesses by subpoena through the Office of the Missoula County Attorney.

4. Duties of Secretary:

a. Read the legal advertisement and announce the dates upon which the advertisement appeared and also the names of the newspapers they appeared in.

b. Take minutes and electronically record the proceeding at each hearing in which an ultimate right of appeal lies to the district court.

c. Incorporate the record of the hearing in the minute book of the Board as a permanent part of its record.

5. Power of Board:

The Board may set a reasonable time limit for the receipt of public testimony.

ARTICLE X - Recommendations and Findings

A. Recommendations

1. Variations and Special Exceptions: The County Zoning Office shall present a written recommendation along with a report of all facts and requirements pertaining to the application.

2. Appeals from the actions of an administrative official: The County Zoning Officer shall present all documents relating to the appeal, including copies of the letter sent to the appellant wherein the issuance of a zoning compliance permit was denied. The County Zoning Officer shall not present any recommendation on the appeal, but may be asked to provide factual information.

B. Findings

1. Variations: The Board is bound by the criteria set forth in Section 8.14 C. of the Resolution. After the Board has reached a decision on the variance, the Chairman shall dictate, draft or instruct the Executive Secretary in preparing the written findings.

2. Appeals: The Board may, in conformity with state law, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to

be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

3. Special Exceptions: In approving special exceptions, the Board shall require full compliance with all applicable standards listed in the Resolution. If the applicant cannot agree to full compliance with the requirements, the application shall be denied and the applicant shall be advised to apply for a variance.

ARTICLE XI - Committees

A. Appointment

The Chairman may appoint special committees for such purposes and terms as the Board provides.

B. Reports

1. A reference to committee shall contain the date for report to the Board.
2. Each committee report may be written and may contain both majority and minority opinion.
3. A copy of each committee report shall be submitted to the Chairman for inclusion in the permanent records of the Board.

C. Staff Attendance

1. The Executive Secretary shall attend committee meetings and participate in discussions, presenting relevant information and alternatives.
2. The Board may request the attendance of other staff personnel.

ARTICLE XII - Legal Assistance

The Board may seek legal assistance from the Missoula County Attorney.

ARTICLE XIII - Amendments

- A. Any bylaw amendment shall be proposed in writing by any member at a regular meeting.
- B. Approval of the proposed amendment requires an affirmative vote of a majority of the Board on second reading at any meeting properly called subsequent to the proposal.