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# Chapter 8

## Administration and Enforcement

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## CHAPTER 8 – ADMINISTRATION AND ENFORCEMENT

### **SECTION 8.01 GENERAL PROVISIONS**

#### A. Purpose

The purpose of this chapter is to provide for the efficient, reasonable, and impartial administration and enforcement of these regulations by authorizing a Zoning Officer, and establishing a procedure for compliance with the regulations.

#### B. Fees

1. The governing body shall establish from time to time a schedule of fees, charges, and expenses and a collection procedure for permits, appeals, and other matters pertaining to these regulations. No Zoning Compliance Permit, Conditional Use Permit, Planned Variation, variance, zone change, or special exception shall be issued, nor shall any action be taken on proceedings before the Board of Adjustment until such cost, charges, fees, or expenses have been paid in full to the Zoning Officer.
2. All requests for permits under these regulations must be initiated by the owner(s) or the owner's representative or with the owner's written consent.

#### C. Application Requirements

Each application for a permit shall be accompanied by plans and drawn to scale showing the actual dimensions of the lot or parcel of any existing buildings or structures, the shape, size, height, use and location on the lot or parcel of building or structures proposed to be erected or altered, lighting, the parking, loading and landscaping development, and other such information as may be necessary to provide for the enforcement of the provisions of these regulations. This determination shall be made in consultation with the Planning Office.

#### D. Special Conditions for Approval

The governing body, Missoula Consolidated Planning Board, or Board of Adjustment may impose special conditions on the approval of any application or permit required by these regulations. Such conditions shall be imposed to protect the public health, safety, and general welfare and may include the following:

1. Bond to ensure the removal of a structure or the construction or installation of improvements within a specified period of time.
2. A time period within which the proposed structure shall be erected.
3. Regulation of the points of vehicular ingress and egress.
4. Requiring landscaping and maintenance thereof.
5. Requiring the surfacing of off street parking and loading areas subject to Governing Body specifications.
6. Any other conditions as will make possible the development of the area in an orderly and efficient manner and in conformity with the intent and purposes of this section.

### **SECTION 8.02 ZONING OFFICER**

#### A. Appointment

Subject to confirmation by the Board of County Commissioners, the Chief Planning Officer of the Planning Office is the Zoning Officer.

**B. Duties**

The Zoning Officer or authorized representatives of the Zoning Officer shall:

1. Maintain files and records to document fee receipts, the issuance of permits, petitions, agendas, minutes, record of public hearings, and other matters relating to zoning within Missoula County. Such files and records shall be available and open for public inspection during regular business hours, unless otherwise determined by the County Attorney.
2. Receive and process rezoning petitions and requests for Zoning Compliance Permits, variances, Conditional Uses, Special Exceptions, Planned Variations, and appeals, in accordance with the provisions of these regulations, and collect fees for such petitions and requests.
3. Publish notice of public hearings as required by these regulations and applicable State statutes.
4. Prepare such materials (maps, agendas, property descriptions, survey sheets) as may be necessary for the Missoula Consolidated Planning Board, Board of Adjustment, or the Governing Body to properly conduct meetings for the purpose of administering these regulations.
5. Make written recommendations on petitions and requests to the Missoula Consolidated Planning Board and Board of Adjustment (except on appeals), and governing body, and to provide background information to support such recommendations.
6. Coordinate closely with the Missoula City Zoning Officer on matters relating to annexation to allow for the smooth transition of land uses from one zoning district to another.
7. Ensure all materials and documents relating to zoning within Missoula County are properly filed with the Missoula County Clerk and Recorder as required by the applicable statutes.
8. Act as an administrative agent of the Missoula Consolidated Planning Board and Board of Adjustment.
9. Provide zoning information to the public and government agencies and officials and interpret the meaning and intent of these regulations and otherwise promote procedural uniformity in the administration of these regulations.
10. Initiate appropriate investigatory action for apparent zoning violations.
11. Inspect the premises in the performance of his duties. The Zoning Officer and authorized representatives of the Zoning Officer shall have the right to enter any building or premises for the purpose of investigation and inspection, provided that such entry shall be exercised only at reasonable hours. Except in cases involving an imminent threat to public health, safety, or welfare, or in cases when a warrant has been obtained from a court of competent jurisdiction, entry requires the consent and presence of the owner or tenant(s) of the inspected building or premises.

**SECTION 8.03 MISSOULA CONSOLIDATED PLANNING BOARD****A. Establishment**

Pursuant to the Interlocal Agreement for Land Use Planning Services between the City and County of Missoula, there is established the Missoula Consolidated Planning Board.

**B. Membership**

The Missoula Consolidated Planning Board is established as the Missoula County Zoning Commission. The Missoula Consolidated Planning Board shall consist of nine (9) members as specified by Montana Code Annotated §76-1-201 through §76-1-204.

C. Duties

1. The Missoula Consolidated Planning Board shall act in an advisory capacity to the Governing Body on matters as specified below.
2. The Missoula Consolidated Planning Board shall adopt written procedures for the conduct of its affairs provided for in these regulations.
3. The Missoula Consolidated Planning Board shall make recommendations to the governing body on the following matters:
  - a. The establishment or amendment of zoning regulations and the creation of zoning district boundaries, in accordance with Montana Code Annotated §76-2-204.
  - b. The adoption or amendment of a growth policy and any other planning document designed to be a guide for the orderly development of the community and any other matter referred to it by the governing body not inconsistent with the Interlocal Agreement or Montana Code Annotated §76-1-106.
  - c. All other duties provided for by statute
  - d. The Missoula Consolidated Planning Board shall keep minutes of its proceedings, examinations and other official proceedings, all of which shall be filed in the Planning Office as public records.

**SECTIONS 8.04 – 8.18 [Repealed]**

**SECTION 8.19 BOARD OF ADJUSTMENT**

A. Membership

There is created the Missoula County Board of Adjustment which shall consist of five (5) members, each to be appointed a term of two (2) years. Members may be removed for cause by the governing body upon written charges and after a public hearing. The governing body shall fill any vacancies occurring only for the unexpired term.

B. Duties

1. The Board of Adjustment shall adopt procedures as may be necessary to efficiently administer the provisions of these regulations and as required by State law.
2. The Board shall keep minutes of its proceedings showing absences and the vote or failure to vote of each member upon each question, and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the Board (Planning Office) and shall be public record.
3. The Board shall hear and decide appeals when it is alleged there has been an error in any order, requirement, decision, or determination made by an administrative official in the enforcement of these regulations.
4. The Board shall hear and decide variances.
5. The Board shall hear and decide special exceptions to the terms of these regulations upon which the Board is required to pass under these regulations.
6. The Board shall hear and decide changes to nonconforming uses of land and structures in accordance with Sections 7.03 and 7.05 of these regulations.

C. Minor Plan Adjustments

1. The Zoning Officer may approve minor adjustments to a plan approved by the Board of Adjustment. Minor adjustments are those changes which may affect the precise dimensions

of buildings and the siting of buildings, but which do not affect the basic character or arrangement of buildings, the density of the development, or the open space requirement.

## **SECTION 8.20 CREATION & AMENDMENT OF DISTRICT BOUNDARIES & REGULATIONS**

### **A. Authority**

1. The governing body, Missoula Consolidated Planning Board, a property owner or a designated representative may initiate the creation or amendment of zoning district boundaries.
2. The Governing Body or the Missoula Consolidated Planning Board may initiate the creation or amendment of zoning district regulations, including Special Districts and Rural Zoning Districts.
3. A property owner or a designated representative may initiate the creation or amendment of zoning district regulations for Special Districts and Rural Zoning Districts.

### **B. Procedure**

1. Written applications or notices of intent to create or amend a zoning district boundaries or regulations must be submitted to the Zoning Officer.
2. The Missoula Consolidated Planning Board shall hold a public hearing on the application. The Zoning Officer shall give notice of the hearing in accordance with Section 8.21 of these regulations.
3. The Zoning Officer shall deliver a copy of the application and a written recommendation to each member of the Missoula Consolidated Planning Board before the public hearing.
4. The applicant or a designated representative shall be present at the public hearing. Failure to appear is grounds for disapproval.
5. Requirements for Special Districts are set forth in Chapter 5 of these regulations.
6. When the proposal is to rezone a geographic area from C-A2, C-A3, C-RR1, C-RR2, C-RR3, C-R1, C-R2, and C-R3 to any other county zone, the applicant must address the issue of sand and gravel mining by:
  - a. agreeing to a condition to the rezoning that prohibits sand and gravel mining, including all accessory buildings and uses; or
  - b. agreeing to conditions of the rezoning that address the impacts of sand and gravel mining on natural resources and surrounding residents and uses, including but not limited to: Geographic extent of the mining operation, duration of the mining operation, vehicle ingress and egress, lighting, hours of operation dust, smoke and odor, noise, vibration, size and location of any sorting, batching, or manufacturing equipment to be used on-site, public safety, reclamation, impacts to natural resources, and impacts to adjacent land uses.
7. These procedures do not apply to interim zoning resolutions, which are subject to Montana Code Annotated §76-2-206.

### **C. Criteria for Review**

1. In reviewing the application, the Missoula Consolidated Planning Board or governing body shall ensure that the proposal is:
  - a. made in accordance with the Growth Policy; and,
  - b. designed to:
    - i) secure safety from fire and other dangers;

- ii) promote public health, public safety, and general welfare; and,
  - iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.
2. In the adoption of zoning regulations, the following shall consider:
- a. reasonable provision of adequate air and light;
  - b. the effect on motorized and non-motorized transportation systems;
  - c. compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;
  - d. the character of the district and its peculiar suitability for particular uses; and,
  - e. conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

**D. Decision**

- 1. The Missoula Consolidated Planning Board shall recommend to the governing body that the proposal be:
  - a. Denied and set forth reasons therefore;
  - b. Approved as requested; or,
  - c. Approved with modifications as set forth in Section 8.01 of these regulations.
- 2. The Zoning Officer shall deliver the recommendation, in writing to the governing body, along with a copy of the Missoula Consolidated Planning Board’s meeting minutes.
- 3. If the Governing Body approves the proposal, the Governing Body shall adopt a resolution and publish notice of the resolution of intention per Section 8.21.
- 4. For 30 days after first publication of notice that the Board of County Commissioners have passed a resolution of intention to create a zoning district and/or adopt zoning regulations for the district, the Board of County Commissioners will receive written protests to the creation and/or amendment of the zoning districts or the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county. Within 30 days after the expiration of the protest period, the Board of County Commissioners may in its discretion, after consideration of any written protests as public comment, adopt the resolution creating the zoning district or establishing regulations for the district.

**SECTION 8.21 NOTICE REQUIREMENTS**

When a notice or public hearing is required by these regulations or state law, the following procedures, along with any applicable procedures in Montana Code Annotated §7-5-2121, -2122, shall be met.

**A. Notice Procedure**

The Zoning Officer shall do all of the following:

- 1. For actions under Section 8.20, post a notice in at least five (5) public places at least forty-five (45) days prior to a public hearing, in compliance with Montana Code Annotated §76-2-205(1). For all other matters, post a notice in a conspicuous place on the property or other location likely to be visible to the greatest number of people, at least fifteen (15) days prior to a public hearing.
- 2. Publish a notice once a week for two (2) weeks in a newspaper of general county circulation, with at least six (6) days separating each publication.
- 3. Send written notification to property owners according to the following procedures:

- a. Mailing lists shall include all persons listed on the last-completed tax assessment roll who own property within a proposed or amended rural zoning district or within three hundred (300) feet of property proposed for a zone change or other permit, approval, or appeal sought under these regulations.
- b. The mailing shall be made at least fifteen (15) days prior to a public hearing.
- 4. Resolution of Intention
  - a. For actions under Section 8.20 the Governing Body shall publish notice of passage of the resolution of intention in accordance with this section.

B. Content of the Notice

The notice shall contain:

- 1. A brief statement of the type of application being sought or action being proposed, and for proposed, and for proposed or amended zoning regulations the general character of those proposed regulations;
- 2. The location of the subject property, or the boundaries of a proposed or amended zoning district;
- 3. The date, time, and place of the public hearing or other action;
- 4. The address and telephone number where further information may be obtained; and,
- 5. A statement that the application or proposed action is on file for public inspection at the Planning Office. For proposals to create or amend a zoning district under Section 8.20, the application or proposed action shall also be available for review at the Missoula County Clerk and Recorder office.

C. Notice of a Continuation

Hearings may be adjourned and continued at a subsequent meeting, subject to the following requirements:

- 1. If the Commissioners or Planning Board announce at adjournment that the continued hearing will take place at another regularly scheduled public meeting, no further public notice is required and the continued hearing shall be carried over onto the agenda for the announced regularly scheduled public meeting. However, if the continued hearing will address new issues not stated on the original hearing notice, then the Commissioners or Planning Board shall post notice of those new issues at least forty-eight (48) hours in advance of the continued hearing.
- 2. If the continued hearing will take place at a time other than a regularly scheduled public meeting, then the Commissioners or Planning Board shall schedule the continued hearing by posting notice of the continued hearing at least forty-eight (48) hours in advance.

## **SECTION 8.22 ZONING COMPLIANCE PERMITS**

- A. A Zoning Compliance Permit is required before any structure, or part of a structure, is created, erected, changed or converted, wholly or in part, in its use, occupancy, or construction. A Zoning Compliance Permit is also required before any new use is established or any existing use is changed wholly or in part. Other permits may be required to be obtained from other federal, state, or local agencies to ensure compliance with other codes and regulations.
- B. Zoning Compliance Permits are valid for six months or until the expiration of a building permit.

**SECTION 8.23 CONDITIONAL USES**A. Authority

Applications for Conditional Use Permits may be initiated by the property owner or the designated representative.

B. Procedure

1. Applications are submitted to the Zoning Officer, specifying the intended use.
2. The Zoning Officer may request that the applicant provide such information and specifications as may be necessary to evaluate the application.

C. Criteria for Review

The Zoning Officer shall evaluate the application using applicable standards contained in Chapters 2, 3, and 4 of these regulations.

D. Decision

The Zoning Officer shall:

1. Deny the application and give reasons for the denial, in writing, to the applicant; or,
2. Approve the application and issue a Zoning Compliance Permit with conditions specified thereon.

**SECTION 8.24 SPECIAL EXCEPTIONS**A. Authority

Applications for Special Exception Permits may be initiated by the property owner or the designated representative.

B. Procedure

1. Applications are submitted to the Zoning Officer, specifying the intended use.
2. The Zoning Officer may request that the applicant provide such information and specifications as may be necessary to evaluate the application.

C. Criteria for Review

1. Written application for a Special Exception Use Permit must be submitted to the Zoning Officer.
2. The Board of Adjustment shall hold a public hearing. The Zoning Officer shall give notice of the hearing in accordance with Section 8.21 of these regulations.
3. The Zoning Officer shall deliver a copy of the application and written recommendation to each member of the Board of Adjustment before the public hearing.
4. The applicant or his designated representative shall be present at the public hearing. Failure to appear is grounds for disapproval.
5. The Board of Adjustment, in reviewing any application for a special exception, shall give due consideration to the following:
  - a. The location, character and natural features of the property and surrounding properties;

- b. Non-economic situations which prevent the utilization of the property for the full range of uses allowed in that zone;
- c. The use sought would enhance and promote the development of the immediate neighborhood as outlined in the comprehensive plan;
- d. That the use conforms generally to the objectives of the adopted comprehensive plan and to the purpose of these regulations;
- e. That the use meets the overall density, setback, height and other requirements of the zone in which it is located;
- f. That the use will not adversely affect nearby properties or their occupants;
- g. Site plan design amenities intended to promote the appearance of the proposed use and mitigate adverse neighborhood impacts, including but not limited to: landscaping, fencing, screening, access, parking, pedestrian circulation, signs and lighting;
- h. Vegetation, topography and natural drainage;
- i. The availability of public utilities and services;
- j. Expressed public opinion on the above consideration;
- k. Recommendations of the Zoning Officer; and,
- l. Applicable standards of Chapter 4 shall be included in the review.

D. Decision

The Board of Adjustment shall decide that the application be:

1. Denied provide finding for such denial;
2. Approved as requested; or,
3. Approved with modifications as set forth in Section 8.01 of these regulations.

**SECTION 8.25 PLANNED VARIATION**

A. Authority

Planned variations are initiated by the property owner or the designated representative.

B. Areas of Application

Subject to the limitations set forth in this section, the governing body may approve a request to modify space and bulk requirements for specific property in any zoning district created under these regulations in order to permit innovative approaches to housing and environmental design. Such a request shall not be made to relieve hardship.

C. Procedure

1. Written applications for planned variations must be submitted to the Zoning Officer.
2. Submittal requirements for a Planned Variation include a project summary, a proposed development site plan, a landscape plan, utility plan, and where applicable, covenants.
3. The Missoula Consolidated Planning Board shall hold a public hearing. The Zoning Officer shall give notice of the hearing in accordance with Section 8.21 of these regulations.
4. The Zoning Officer shall deliver a copy of the application and a written recommendation to each member of the Missoula Consolidated Planning Board before the hearing.

5. The applicant or the designated representative shall be present at the hearing. Failure to appear is grounds for disapproval.

D. Permitted Variations

1. Minimum lot size and maximum density may be varied as follows:
  - a. Minimum lot size may be reduced by fifty percent (50%).
  - b. A density bonus of ten percent may be granted over the maximum residential density allowed by the zone.
2. Front and rear yard setback requirements shall not be modified by a reduction of more than fifty percent (50%).
3. Side yard setback requirements shall not be modified for side yards adjacent to property not part of the site for the planned variation.
4. Side yard setbacks within the site may be eliminated.
5. Lot width requirements shall not be reduced by more than seventy-five percent (75%).
6. Height requirements shall not be increased by more than fifty percent (50%).

E. Design Standards

1. Each building shall be an element of an overall development plan for the site.
2. Where possible, buildings shall be oriented with respect to scenic vistas, natural landscape features, topography, and natural drainage areas.
3. Landscaping shall conform to the requirements of Section 3.05.
4. All utilities shall be installed underground wherever possible. All transformer boxes, substations, pumping stations, and meters shall be located and designed so as not to be unsightly or hazardous to the public.
5. Residual open space accumulated by modifying space and bulk requirements within the allowable density limits shall be usable for recreational or other outdoor living purposes and for preserving large trees, tree groves, ponds, streams, natural drainage areas, rock outcrops, native plant life, and wildlife cover. The use of any open space may be further limited or controlled at the time of Planned Variation approval where necessary to protect adjacent properties or uses.
6. If any or all of the common open space is to be reserved for use by the resident, the formation and incorporation by the developer of a homeowner's association shall be required prior to final approval.
  - a. Covenants for mandatory membership in the association setting forth the owner's rights and interests in the association and the common land shall be approved and included in the deed for each lot.
  - b. The association shall have the responsibility of maintaining the common open space(s) and operation and maintenance of recreational facilities within such open space(s).
  - c. The association shall levy annual charges against all property owners to defray the expenses connected with the maintenance of open space(s) and recreational facilities.
  - d. The developer or subdivider shall maintain control of such open space(s) and be responsible for the maintenance until development sufficient to support the association has taken place, or alternately, the objectives of clustering have been met. Such determination shall be made by the Zoning Officer upon request of the association or the developer or subdivider.

F. Criteria for Review

1. The purposes of the Missoula County Zoning Regulations shall be upheld.
2. There shall be compliance with all State and local codes and regulations.
3. The location, character and natural features of the property and surrounding properties;
4. Non-economic situations which prevent the utilization of the property for the full range of uses allowed in that zone;
5. The use sought would enhance and promote the development of the immediate neighborhood as outlined in the comprehensive plan;
6. That the use conforms generally to the objectives of the adopted comprehensive plan and to the purpose of these regulations;
7. That the use meets the overall density, setback, height and other requirements of the zone in which it is located;
8. That the use will not adversely affect nearby properties or their occupants;
9. Site plan design amenities intended to promote the appearance of the proposed use and mitigate adverse neighborhood impacts, including but not limited to: landscaping, fencing, screening, access, parking, pedestrian circulation, signs and lighting;
10. Vegetation, topography and natural drainage;
11. The availability of public utilities and services;
12. Expressed public opinion on the above consideration; and,
13. Recommendations of the Zoning Officer.

G. Decision

1. The Missoula Consolidated Planning Board shall recommend to the governing body that the application be:
  - a. Denied and provide findings for such denial;
  - b. Approved as requested; or,
  - c. Approved with modifications as set forth in Section 8.01 of these regulations.
2. Within (10) ten working days of the Planning Board's action, the Zoning Officer shall deliver the recommendation, in writing, with an unofficial copy of the minutes, to the governing body.
3. Upon receipt of the Missoula Consolidated Planning Board's recommendation, the governing body shall reach a decision within thirty (30) days.
4. A Planned Variation applies to a specific property and is available to any subsequent owner until it expires or is effectively revoked.

**SECTION 8.26 VARIANCES**A. Intent

A variance is a relaxation of specific provisions of these regulations when a literal enforcement of the Resolution would result in unnecessary or undue hardship.

B. Authority

Variations are initiated by the property owner or the designated representative.

C. Areas of Application

Subject to the limitations herein set forth, the Board of Adjustment may approve a request to modify the following requirements of these regulations:

1. Setback requirements;
2. Area requirements;
3. Height requirements, except within a glide pattern of any airport;
4. Parking and loading space requirements;
5. Landscaping and buffering requirements;
6. Sign requirements; and,
7. Replacement of nonconforming uses as provided in Sections 7.03 and 7.05 of these regulations.

D. Procedure

1. Written applications for variances shall be submitted to the Zoning Officer .
2. The Board of Adjustment shall hold a public hearing. The Zoning Officer shall give notice of the hearing in accordance with Section 8.21 of these regulations.
3. The Zoning Officer shall deliver a copy of the application and a written recommendation to each member of the Board of Adjustment before the hearing.
4. The applicant or his designated representative shall be present at the hearing. Failure to appear is grounds for disapproval.

E. Criteria for Review

1. A variance from the terms of these regulations shall not be granted by the Board of Adjustment unless and until the applicant demonstrates all of the following:
  - a. The proposed variance will not amount to a change in the use of the property to a use which is not permitted in the zone;
  - b. Special conditions exist that are unique to the property, such as size, shape, topography or location, which are not applicable to other lands in the same zoning classification;
  - c. Literal enforcement of the provisions of these regulations will result in unnecessary hardship that is not of the applicant's own making; for example, if literal enforcement would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same zone under the terms of these regulations, or if literal enforcement would preclude an effective design solution to the unique circumstance, thus preventing improvement of the livability, operation and efficiency, or appearance or proposed use of the building; and
  - d. Granting the variance will be in harmony with the general purpose and intent of these regulations and the Missoula County Growth Policy and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. In making this determination the Board of Adjustment may consider the review criteria listed below.
    - i. The location, character and natural features of the property and surrounding properties;
    - ii. Non-economic situations which prevent the utilization of the property for the full range of uses allowed in that zone;
    - iii. The use sought would enhance and promote the development of the immediate neighborhood as outlined in the comprehensive plan;
    - iv. That the use conforms generally to the objectives of the adopted comprehensive plan and to the purpose of these regulations;

- v. That the use meets the overall density, setback, height and other requirements of the zone in which it is located;
  - vi. That the use will not adversely affect nearby properties or their occupants;
  - vii. Site plan design amenities intended to promote the appearance of the proposed use and mitigate adverse neighborhood impacts, including but not limited to: landscaping, fencing, screening, access, parking, pedestrian circulation, signs and lighting;
  - viii. Vegetation, topography and natural drainage;
  - ix. The availability of public utilities and services;
  - x. Expressed public opinion on the above consideration;
  - xi. Recommendations of the Zoning Officer; and,
  - xii. Applicable standards of these regulations shall be included in the review.
- e. The fact that property may be utilized more profitably will not be an element of consideration before the Board of Adjustment.

F. Decision

1. The Board of Adjustment shall decide that the application be:
  - a. Denied and provide findings for such denial;
  - b. Approved as requested; or,
  - c. Approved with modifications as set forth in Section 8.01 of these regulations.
2. In making its decision, the Board of Adjustment shall set forth, in writing, a justification for that decision and in the instance of granting a variance, shall demonstrate that the variance is the minimum variance that will make possible a reasonable use of the land, building, or structure.
3. A variance is given for a specific property and is available to any subsequent owner until it expires or is effectively revoked.

## **SECTION 8.27 APPEALS**

A. Authority

1. Appeals to the Board of Adjustment may be made by any person, board, association, corporation, or official allegedly aggrieved by the granting or refusal of a Zoning Compliance Permit, or by any other administrative decision provided for in these regulations. Appeals may not be made until all other remedies provided in these regulations have been exhausted.
2. Any appeal related to a variance may be filed only after refusal of issuance or revocation of a permit by the Zoning Officer.
3. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after the notice of appeal shall have been filed with the officer, that by reasons of facts stated in the certificate, a stay would, in the officer's opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order, which may be granted by the Board of Adjustment or by a court of record, on application or notice to the officer from whom the appeal is taken and on due cause shown.

B. Procedure

1. Appeals shall be filed by letter with the Zoning Officer, a minimum of thirty (30) days in advance of a regular meeting of the Board of Adjustment. All information required shall be furnished by the applicant.

2. The Board of Adjustment shall hold a public hearing. The Zoning Officer shall give notice of the hearing in accordance with Section 8.21 of these regulations.
3. Following the filing of the appeal, the Zoning Officer shall transmit a copy of the appeal to the Board of Adjustment, together with the officer’s report.

C. Criteria for Review

1. Written reports of the Zoning Officer which document administrative actions relevant to the appeal.
2. Testimony of the appellant and the public which is relevant to the appeal.

D. Decision

1. The purposes of these regulations shall be upheld.
2. Hardship shall not be grounds for approving an appeal.
3. The Board of Adjustment shall make a decision to either approve or deny the appeal.
4. Following the action by the Board of Adjustment on the appeal, the Zoning Officer shall return one (1) copy of the appeal to the appellant, after the officer shall have marked such copy either as approved or disapproved, and attested the same with a signature on such copy. The original of the application, similarly marked shall be retained as part of the official records of the Board of Adjustment.
5. Any appeal from the decision of the Board of Adjustment may be made by petition to the District Court within thirty (30) days after filing of the decision by the Zoning Officer and shall specify the grounds of appeal.

**SECTION 8.28 COMPLAINTS AND VIOLATIONS**

- A. Whenever a violation of these regulations occurs, or is alleged to have occurred, any person may file a written complaint, fully stating the causes and basis thereof, with the Zoning Officer. The Zoning Officer shall record the complaint, and may investigate and take action thereon as provided by these regulations. If the Zoning Officer finds that any of the provisions of these regulations are being violated, the officer may submit a written investigation report to the County Attorney’s office.
- B. A violation of these regulations is a misdemeanor and may be punishable by a fine not exceeding five hundred dollars (\$500) or imprisonment in the county jail not exceeding six (6) months, or both.
- C. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of Montana Code Annotated §76-2-201 et. seq. or of any resolution made under authority conferred thereby, the proper authorities of the county, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful conversion, maintenance, or use, to restrain, correct, demolish or abate such violation, to prevent the occupancy of such building, structure or land, or to prevent any illegal act, conduct, business, or use in or about such premises.