

MISSOULA COUNTY ZONING BOARD OF ADJUSTMENT

Amended December 13, 2018

ARTICLE I - Authority

A1213201801

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. Amendments to the bylaws are in accordance with the Missoula County Zoning Regulations and MCA 76-2-221.

ARTICLE II - Objective

The objective of the Missoula County Zoning Board of Adjustment, as established by state law and the Zoning Regulations, 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 lawfully acting on behalf of the Missoula County Zoning Officer (also known as "Administrative Official").

Board: The Missoula County Zoning Board of Adjustment.

Chair: A member of the Board who is designated to preside over the Board of Adjustment meetings.

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

Community and Planning Services: The Missoula County Planning Office, also known as "CAPS".

Executive Secretary: The Missoula County Zoning Officer.

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

Staff: The staff from the Missoula County Planning Office.

Vice-Chair: A member of the Board who is designated as immediately subordinate to the Chair and serves in the Chair's absence.

Zoning Regulations: The Missoula County Zoning Regulations, as amended.

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 zoning regulations.
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 an 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 zoning regulations.
5. Authorize a variance from the zoning regulations if the variance is found to not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the regulations will result in unnecessary hardship. The spirit of the zoning regulations shall be observed, and substantial justice done.

ARTICLE V - Membership

A. Membership

1. 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. Term Limits

1. Members will serve two-year terms except as needed to stagger terms in order to ensure that a minimum number of terms expire in any year. If a member is appointed to a one-year term for the purpose of staggering terms, the one-year term shall not be included in the term limit established for appointed members.
2. Beginning January 1, 2019, members may serve no more than five consecutive two-year terms. Past members can reapply to the board after a 1 year waiting period. If they are reappointed to the board, their term limits start over.

- C. Alternates shall be called on to serve as regular Board members based on seniority in the order of their appointment dates, and under the following circumstances:
 - 1. To ensure 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.
- D. 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. Alternate members may participate in Board discussion of any matter, but they shall neither make motions nor vote unless they are sitting for a regular member.

C. Resignations, Expirations, and Terminations

- 1. Board members resigning before completion of their term are expected to submit written resignations to the Director of CAPS who, in turn, shall report such resignation to the Commissioners.
- 2. A resignation is effective on the date indicated in the resignation, or if no date is specified, it is effective on the date submitted.
- 3. Any member whose term expires may serve until a successor is appointed; however, this extended service term shall not exceed one year.
- 4. If a member has absences for three consecutive meetings during a 12-month period or is absent for more than 35% of the meetings during the calendar year, staff shall notify the Commissioners. The Commissioners may consider removal of the member from the Board due to insufficient attendance.
- 5. The Commissioners shall attempt to fill a vacancy for the unexpired portion of a term within 60 days after it has occurred.

ARTICLE VI - Officers and Duties

A. Officers

- 1. Chair. A Chair shall serve a term of one year.
- 2. Vice-Chair. A Vice-Chair shall serve a term of one year.

3. Board members shall vote to elect a Chair and a Vice-Chair. The election of officers shall take place at the first regularly scheduled meeting of each calendar year.
4. The Board may, at any time, remove any officer from his/her duties upon a majority vote of the Board.

B. Duties

1. Chair

- a. Meetings of the Board shall be held at the call of the Chair.
- b. The Chair 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.
- c. The Chair may enter into discussions of matters before the Board.
- d. The Chair shall vote on all issues before the Board, except as otherwise provided in Article VII.G.

2. Vice Chair

- a. When the Chair is absent, disabled, or disqualified, the Vice Chair has the authority to act as Chair.
3. In the temporary absence of both the Chair and Vice Chair, a Board member may be designated as acting Chair.

ARTICLE VII - Meetings

A. Regular Meetings

1. The Board shall meet at least once each month. Staff may cancel meetings if there is no business to come before the Board.
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 Chair or three (3) members making a written request to staff 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. Special meetings are required to comply with all notification requirements of Article VII (C).

C. Open Meeting

All meetings of the Board and its committees shall comply with Montana Law as it applies to open public meetings. (MCA 2-3-201, et. seq.)

D. Quorum

1. Three (3) members of the Board constitute 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. For purposes of establishing a quorum, alternate members sitting in place of absent regular members shall be included in the quorum count.

E. Voting

1. All voting members who do not declare a conflict of interest shall vote; votes may be registered as aye (or yes), nay (or no). Board members shall not pass on a vote unless there is a conflict of interest as described in Article VII Section G. After an initial count of votes, the Chair may provide members wishing to change their votes the opportunity to do so.
2. A concurring vote of three members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any Administrative Official; to decide in favor of the applicant or any matter upon which the Board is required to pass under, or to affect any variation. In the event of a tie vote, the item shall be reconsidered or continued to another hearing.
3. When the Board vote deviates from staff's recommendation, the Board motion shall include findings of fact for the reason of their vote.
4. The right to vote of all members shall be subject to the provisions of Article VII G.

F. Parliamentary Authority

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

G. 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. Has an immediate family member with a financial or property interest in a matter under consideration by the Board.
 - c. represents a party having such an interest.
 - d. resides or owns property within 300 feet of the subject property of appeal, variance or special exception.
 - e. feels that he/she should be disqualified for any reason not listed above.
2. Before consideration of the matter, this disqualification shall be entered in the minutes of the meeting.
 - a. Thereafter, the member shall be excused from the Board during consideration of the matter and shall not participate in consideration, debate, or voting thereon.
 - b. The member may participate as a part of the public in attendance and provide public comment to the Board.
3. If a member has received prior communication from such a party, it shall be passed to the Executive Secretary for subsequent communication to the Board at a meeting.

ARTICLE VIII - Conduct of Meeting

A. Order of Business

1. Unless otherwise voted, the order of business at regular meetings shall be:
 - a. Call to order.
 - b. Roll call.
 - c. Approval of minutes and action thereon.
 - d. Public comment on non-agenda items.
 - e. Staff announcements.
 - f. Public hearings.

- g. Communications and special presentations.
 - h. Committee reports.
 - i. Old business.
 - j. New business and referrals.
 - k. Comments from Board members.
 - l. Adjournment.
2. Upon a call to order and roll call, the Board may vote to dispense with any item on the agenda, other than the public hearings, or to change the order of business.

B. New Business

1. Only those items included on the agenda may be acted upon at that particular meeting.
2. New business may be introduced without prior notice 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 Procedures

A. Notice

1. Variances, appeals, and special exceptions require a public hearing.
2. Staff shall prepare, publish and post notices of public hearings in accordance with the zoning regulations.
3. Any request for a rehearing shall comply with the same procedures as an original request pursuant to the zoning regulations, including the payment of fees.

B. Procedures

1. The Chair shall:
 - 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 and may set a reasonable time limit for the receipt of public testimony.
 - d. Assure an orderly hearing, having the power to terminate the hearing if, in the Chair's opinion, persons become unruly.
 - e. Announce that all questions and comments shall be directed through the Chair 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, the 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 Executive Secretary and the Chair to become a part of the record.
 - i. Call first for the staff's report then statements from the proponents, then give opponents and others equal opportunity for comment.
 - j. Close the hearing to the receipt of public testimony when all who wish to speak have spoken, or if the time limit set by the Chair 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.
 - l. 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 staff.
3. The Chair may:
 - a. Administer oaths.
 - b. Compel the attendance of witnesses by subpoena through the Office of the Missoula County Attorney.
 4. The Executive Secretary shall:
 - a. Take minutes or record the content of all presentations, public hearings, discussion, and decisions of duly constituted regular or special meetings of

the Board. These minutes shall include a list of those members present at any meeting and those members absent. They shall also denote whether a quorum was present and those alternate members voting in place of absent regular members.

- b. Incorporate this record in the minutes book of the Board as a permanent part of its record.
- c. Furnish copies of the minutes of the Board in the materials mailed to the Board members prior to the next monthly Board meeting for approval.

Article X – Communications

- A. **Personal Communications of Members.** Any individual member shall not speak on behalf of the Board or sign written communications to others using the Board name, unless approved by all other members.
- B. **Informal Communications.** It is understood that informal discussions between individual members of the Board and members of the community on issues that are before the Board will occur from time to time. It is the expectation that Board members will report the content of these conversations to the rest of the Board at the next regularly scheduled meeting in order to assure that the views expressed are known to the entire Board.
- C. **Electronic Communications.** Electronic communications such as email may be used to address logistical issues such as polling the board, sending meeting materials, etc.; however, Board members shall not hold discussions via electronic means regarding topics of potential public interest and shall instead discuss those items at the next Board meeting.

Article XI - Staff Assistance

- A. The Board may seek assistance regarding county legal issues from the County Attorney's Office.
- B. The Board may seek support from staff in the form of clerical assistance, staff reports and recommendations, training, and use of the resource library.

ARTICLE XII - Recommendations and Findings

A. Recommendations

1. **Variances 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. **Variances:** The Board is bound by the criteria set forth in Section 8.26 of the Zoning Regulations. After the Board has reached a decision on the variance, the Chair shall dictate, draft or instruct the staff in preparing the written findings. If the Board vote deviates from the recommendation of staff, the Board shall include a concise statement of the reason for their vote.
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. The Board may make such order, requirement, decision, or determination 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 Regulations. 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. The Board shall give due consideration of the criteria found in Section 8.24.
4. **Conditions:** The Board may impose special conditions on the approval of any application. Such conditions shall be imposed to protect the public health, safety, and general welfare and may include the following:
 - a. Bond to ensure the removal of a structure or the construction or installation of improvements within a specified period of time.
 - b. A time period within which the proposed structure shall be erected.
 - c. Regulation of the points of vehicular ingress and egress.
 - d. Requiring landscaping and maintenance thereof.

- e. Requiring the surfacing of off-street parking and loading areas subject to Governing Body specifications.
- f. 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.

ARTICLE XIII - Committees

A. Appointment

The Chair may appoint Board members to special committees for purposes and terms as he/she sees fit.

B. Report

1. A referral to the committee may set forth the date for reporting back to the Board.
2. Each written committee report shall contain both majority and minority opinion.
3. A copy of each committee report shall be submitted to the Chair for inclusion in the permanent records of the Board.

C. Staff Attendance

At the request of the Chair, staff shall attend committee meetings and participate in discussions, and present relevant information and alternatives.

ARTICLE XIV - Amendments

- A. Any proposal to amend these bylaws shall be presented in writing to staff by any Board member for inclusion on the Board agenda as new business.
- B. Approval of a proposed amendment requires an affirmative vote by a majority of the voting members provided that a quorum is present, and the meeting is properly called for purposes of acting on the proposal.
- C. Any amendment to these bylaws that is adopted by the Board shall not become effective until approved by the Commissioners.

ZONING BOARD OF ADJUSTMENT

B. Rastgoufar
Babak Rastgoufar ^{Acting}, Chair

COUNTY OF MISSOULA:

David Strahmaier
David Strahmaier, Chair County Commissioners

NOT AVAILABLE FOR SIGNATURE

_____, Commissioner

Nicole Rowley
Nicole Rowley, Commissioner

APPROVED AS TO FORM:

John Hart
John Hart, Deputy County Attorney

ATTEST:

Tyler Gernant
Tyler Gernant
Clerk and Recorder

