

CHAPTER 17.36

VARIANCES		PAGE
17.36.010	Purposes	1
17.36.020	Variance Procedures	1-2
17.36.030	Powers and Duties	2-3
17.36.040	Hearing Minutes	3
17.36.050	Recording of Notice of Variance	3
17.36.060	Appeals To The Court	4

THIS PAGE INTENTIONALLY BLANK

CHAPTER 17.36
VARIANCES

17.36.010 **PURPOSES**

- A. This chapter is adopted:
 - 1. To establish procedures for granting relief from the requirements of this title subject to the standards of this chapter in order to preserve equitable implementation of the law, prevent special treatment to particular parties and preserve the various rights established by the Montana and United States Constitutions of all persons subject to this title;
 - 2. To provide through appeals of administrative interpretations, a procedure for consideration of and resolution of disputes;
 - 3. To provide through zoning variances, a procedure for flexibility, as a means to support creativity and excellence of design, in the application of the standards of this title in overlay districts as provided for in this title;
 - 4. To provide through zoning variances, a procedure for relief from the occasional inequities created by the physical standards of this title relating to zoning when such standards create a substantially unequal burden on a particular land in a fashion that would otherwise prevent the reasonable use of property, due to physical circumstances unique to that parcel;
 - 5. To prohibit the granting of zoning variances that would be contrary to the public interest and endanger public health, safety and welfare;
 - 6. To allow for appeals from decisions made by the Administrative Official or Zoning Commission approving, approving with conditions or denying applications for development approval.

- B. The Board of Adjustment will review all standards set in this title.

Enc Ord 433 December 5, 2012, Revised Ord 460 September 5, 2018

17.36.020 **ZONING VARIANCE PROCEDURES**

- A. Appeals to the Board of Adjustment may be taken by a person aggrieved or by an officer, department, board, or bureau of the municipality affected by any decision of the Administrative Officer or the Zoning Commission. An appeal shall be heard within sixty (60) business days of the submission of a properly completed appeal application provided by the City and with all supporting documents. If in the judgment of the Administrative Official the application is incomplete, it will be returned until the application is in compliance with this title including specifying the grounds for the appeal. The fee set by City Council shall be paid upon submittal of the application and is non-refundable. The applicant will provide a list of property owners immediately adjacent within two hundred (200) feet and is certified by the Beaverhead Clerk and Recorder as correct. The measurement standard is the property lot line of the site to the property lot line of the adjacent property(s).

- B. All meetings and hearings of the Board of Adjustment are open to the public.

- C. All documents supplied by the applicant and any letters or emails received by the City will be provided to the board members five (5) days prior to the hearing. The Administrative Official shall attend all hearings. One copy of all documents, letters and emails shall be available at City Hall prior to hearing.
- D. The appeal stays all proceedings in furtherance of the action appealed from unless a contrary order is entered by a court of competent jurisdiction.
- E. Public notice of the hearing shall be published as required by Chapter 17.100, Noticing and Hearing Procedure and a notice shall be posted at the site ten (10) days before the hearing.
- F. The Board of Adjustment may request a member of the Planning Board, Zoning Commission, Fire Marshall/Fire Chief or Police Chief to attend or any other resource to determine if the decision will protect the public health safety and general welfare of the public. It may be necessary to recess the meeting and set another meeting to hear and obtain further facts provided that the meeting shall be held within ten (10) business days.
- G. Hearing Process:
 - 1. At the hearing, any party may appear in person or by the party's attorney.
 - 2. One complete packet shall be available for the public at hearing.
 - 3. All letters or emails will be read by the Administrative Official.
 - 4. Minutes shall be kept and the vote of each member recorded. A written report shall be prepared within ten (10) business days of the decision. A copy will be sent to the applicant and a copy submitted to the City Council.
 - 5. Any additional hearing procedures as outlined in 17.100, Noticing and Hearing Procedure shall be followed.

Enc Ord 433 December 5, 2012, Revised Ord 460 September 5, 2018

17.36.030 POWERS AND DUTIES

The Board of Adjustments shall have the following powers:

- 1. to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Administrative Official or the Zoning Commission in the enforcement of this title.
- 2. to hear and decide special exceptions to the ordinance;
- 3. to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the intent of the ordinance shall be observed and substantial justice done.
- 4. An unnecessary hardship shall not be construed to be an event or situation caused or created by the applicant or property owner(s).
- 5. The concurring vote of four (4) members of the Board of Adjustment shall be necessary to reverse any administrative order, requirement, decision, or

determination of any such matter upon which it is required to pass under any such ordinance; or to effect any variation in such ordinance.

Enc Ord 433 December 5, 2012, Revised Ord 460 September 5, 2018

17.36.040 HEARING MINUTES

- A. Upon considering an application for a zoning variance, the Board shall designate such lawful conditions as will secure substantial protection for the public health, safety and general welfare, and such approval shall not be final unless the Board finds that the following conditions have been met:
1. Such zoning variance shall not be inconsistent with the intent and purpose of this title and the Growth Policy.
 2. That strict compliance with the provisions of this title would create unnecessary hardship or unreasonable situation on a particular property due to unusual or extreme topography, unusual shape of the property, or the prevalence of similar conditions in the immediate vicinity of the property.
 3. That such approval shall have minimal adverse affect on abutting properties or the permitted uses hereof.
 4. That the lawful conditions stated in the approval are deemed necessary to protect the public health safety, morals, and general welfare, which provisions may include:
 - a. A time period within the proposed structure shall be erected.
 - b. Requiring the surfacing and marking of off-street parking and loading areas.
 - c. Any other conditions as will make possible the development of the City in an orderly and efficient manner and in conformity with the intent and purpose set forth in this title.
 - d. Compliance with all other terms of this title.
 5. A written report from the Board showing each member's vote will be sent to the applicant within ten (10) business days and a copy sent to the City Council.

Enc Ord 433 December 5, 2012

17.36.050 RECORDING OF NOTICE OF VARIANCE

Notice of the grant of a variance and its conditions shall be recorded in the records of Beaverhead County at the owner's cost. If the variance is based on a pre-ordinance non-conforming dimensions, the notice will contain a finding of that fact and a description of the non-conformance.

Enc Ord 433 December 5, 2012

17.36.060 APPEALS TO THE COURT

- A. Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality may present to the court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Board.

Enc Ord 433 December 5, 2012