

CHAPTER 7 – APPEAL & VARIANCE PROCEDURES

11-7-1: PURPOSE:

This chapter enacts §76-2-321, et seq., MCA by adopting procedures for appeals from Staff decisions. This chapter specifically does not, however, enact §76-2-323(b), MCA, which allows for special exceptions.

11-7-2: APPLICABILITY:

The Staff decisions that may be appealed are:

- A. Staff's determination that an application or appeal form is incomplete, as required by Sections 11-5-4.A, 11-6-4.A, or 11-7-4.A.
- B. Staff's approval or denial of an application for a zoning permit, as authorized by Section 11-5-5.D or E.
- C. Staff's issuance of a warning of violation, as authorized by Section 11-9-12.
- D. Staff's interpretation of zoning district boundaries as provided by Section 11-11-3.

11-7-3: FILING AN APPEAL:

- A. Appeals must be filed using the application form provided by the City.
- B. An appeal or notice of appeal must be filed within ten (10) business days following the decision being appealed. A notice of appeal may request additional time to prepare a complete appeal, but no more than 30 business days.
- C. The appeal or notice of appeal must be accompanied by the appeal fee established by the Council as provided by Section 11-3-6.D.

11-7-4: REVIEWING AN APPEAL OR VARIANCE:

- A. Staff will determine whether the appeal/variance application is complete. Incomplete applications will be returned to the applicant with a written list of what is missing.
- B. If the application is complete, Staff will consult with the Chair of the BOARD OF ADJUSTMENTS to schedule a public hearing on the appeal. BOA hearings are held at the call of the Chair, but must be scheduled within thirty (30) business days of the receipt of a complete application.
- C. Notice of the BOA hearing shall be published at least once, not more than thirty (30) business days before, and at least ten (10) business days before the hearing

required by B, above, in a newspaper of general circulation in the City. That notice shall also be made available to all other media platforms and posted on the City's website.

- D. Notice of the BOA hearing shall be sent by first-class mail to the applicant and to the owners of record of all properties within one hundred fifty feet (150') of the perimeter of the lot on which an appeal/variance is proposed. The width of PUBLIC WAYS (streets, alleys, trails, and other rights-of-way dedicated to the public) shall be excluded in measuring that one hundred fifty feet (150'). Staff may expand the radius required for mailed notice.
- E. The BOA will review the Staff report, hear public statements, then review the appeal/variance. The applicant must be present to answer questions (they may or may not choose to make a statement) or the hearing will be continued.
- F. For appeals of Staff decisions: The BOA will decide appeals where there is an alleged error in a decision, determination, interpretation, or notice made by Staff, as provided by Section 11-7-2. The BOA will decide the appeal based on compliance with these regulations and affirm or reverse, in whole or in part, or modify the Staff decision.
- G. If the BOA upholds an appeal or approves a variance, a letter that details the findings supporting the decision as well as all conditions imposed, if any, shall be sent to the applicant and made available to the public within ten (10) business days after that decision.
- H. If the BOA denies an appeal or a variance, a letter detailing the reasons for denial shall be sent to the applicant and made available to the public within ten (10) business days after that decision.

11-7-5: ADDITIONAL PROCEDURES FOR VARIANCES:

- A. A request for a variance from a requirement of these regulations is a type of appeal that is specifically authorized by §76-2-323.1(c), MCA, as amended and for which the findings listed in C, below must be made.
- B. §76-2-323, MCA, as amended, requires that an application for a zoning permit must have been submitted and rejected before a request for a variance may be filed following the appeal procedures established in this chapter.
- C. Staff will prepare a report that includes a variance checklist when necessary and which may include recommended conditions of approval that will be sent to the BOA and the applicant, and made available to the public, at least four business days before the hearing.

- D. To approve a variance, the BOA must, at the hearing required by Section 11-7-4, find that it will not be contrary to the public interest; that where, owing to special conditions, literal enforcement of the provisions of these regulations will result in unnecessary hardship which shall not be self-imposed; and that the spirit of the ordinance will be observed and substantial justice done. The BOA must also find that the variance is the minimum necessary to allow the appellant a reasonable use of their property.
- E. If the BOA cannot make the required findings, it will deny the appeal of the variance stating its reasons in writing.

11-7-6: APPEAL OF BOA DECISIONS:

§76-2-327, MCA provides that appeals from decisions of the BOA be taken to district court.