

BINGHAM COUNTY ORDINANCE 2024-08

**TITLE 10 “ZONING REGULATIONS”
CHAPTER 3 “ADMINISTRATION HEARING REGULATIONS”
and
TITLE 10 “ZONING REGULATIONS”
CHAPTER 10 “APPEALS AND VARIANCES”**

AN ORDINANCE OF BINGHAM COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, TO AMEND BINGHAM COUNTY CODE TITLE 10 “ZONING REGULATIONS” CHAPTER 3 “ADMINISTRATION; HEARING REGULATIONS” AND TITLE 10 “ZONING REGULATIONS” CHAPTER 10 “APPEALS AND VARIANCES”, PROVIDING THAT THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT AS OF ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Bingham County Planning and Zoning Commission (“Commission”) held two Public Hearings, the first on August 27, 2024 and the second on October 9, 2024, to consider amendments to the Bingham County Code Title 10 Chapter 3 “Administration; Hearing Regulations” and Title 10 Chapter 10 “Appeals and Variances” and to receive public testimony on the proposed modifications; and

WHEREAS, at the conclusion of the October 9, 2024 Public Hearing, the Commission provided a recommendation to the Bingham County Board of County Commissioners (“Board”) finding the proposed modifications are reasonably necessary, and in the interest of the public; and should be adopted; and

WHEREAS, the Board held a Public Hearing on November 18, 2024 to receive the Commission’s recommendation and to receive additional public testimony on the proposed modifications; and

WHEREAS, the Board found the proposed amendments to Title 10 Chapter 3 and Title 10 Chapter 10 are reasonably necessary, in the interest of the public, and should be adopted.

NOW THEREFORE, BE IT ORDAINED BY THE BINGHAM COUNTY, BOARD OF COUNTY COMMISSIONERS, AS FOLLOWS:

Section 1: Title 10 Chapter 3 shall be as follows:

**TITLE 10
CHAPTER 3
ADMINISTRATION; HEARING REGULATIONS**

SECTION:

10-3-1: Purpose And General Organization

10-3-2: Zoning Administrator

10-3-3: Planning And Zoning Commission

10-3-4: Expenditures And Staff

10-3-5: Conflict Of Interest

10-3-6: Public Hearings

10-3-7: Appeal of Commission Decision, Reconsideration of a Board Decision, Remand by Board to Commission and Judicial Review

10-3-8: Findings

10-3-9: Transcript Of Public Hearings

10-3-1: PURPOSE AND GENERAL ORGANIZATION:

A. Purpose: This chapter identifies the means and provisions for administration of this title.

B. General Organization: For the purpose of carrying out the provisions of this title, a Zoning Administrator and Planning and Zoning Commission are hereby created. They shall be designated and duly appointed, respectively, by the Board of County Commissioners.

10-3-2: ZONING ADMINISTRATOR:

The Board of County Commissioners may appoint an Administrator or designee to administer the provisions of this title. The Administrator shall manage the relevant staff of the Planning and Zoning Office and, for the purpose of this title, shall have the following responsibilities:

A. Advise interested persons of the ordinance provisions.

B. Notify the news media regarding matters of public interest.

C. Aid applicants in the preparation and expedition of required applications.

D. Make on site examination, or ensure that such examinations are made, of all permit application locations.

E. Oversee the issuance of permits, notifications, publications, and similar administrative duties.

F. Investigate all violations, or ensure that such investigation is made of this and notify the person(s) responsible for such violation(s), ordering the action necessary to correct the same.

G. Assist the Board and commission in carrying out the provisions of this title.

H. In carrying out these duties, the Administrator, or designated personnel, may call upon the services of appropriate County departments or other governmental agencies for assistance in enforcing these provisions.

I. All administrative decisions made in writing shall contain language informing the recipient or other affected persons of their right to an administrative appeal under section 10-10-1 of this title, where appropriate.

10-3-3: PLANNING AND ZONING COMMISSION:

A. Membership:

1. The commission shall consist of nine (9) voting members, a minimum of two (2) from each County Commissioner's district with no more than four (4) from any one district, all appointed by the Board Chairperson and confirmed by majority vote of the Board in compliance with State law.

2. An appointed commission member must be a U.S. citizen and have resided in the County for at least two (2) years prior to appointment; and must remain a resident of the County while serving on the commission.

3. Not more than three (3) commission members may reside within an incorporated City with a population of one thousand five hundred (1,500) or more and at least one-half (1/2) of the commission members must reside outside the boundaries of any city's area of impact; provided however, if this requirement cannot be met, then the procedures set forth in Idaho Code Section 67-6504 shall apply.

4. The term of office shall be three (3) years and a commission member may serve no more than two (2) consecutive terms without specific concurrence by two-thirds (2/3) of the Board as adopted by motion and recorded in the Board's minutes.

5. Vacancies shall be filled in the same manner as the original appointment.

6. Commission members shall be selected without respect to political affiliation and may be removed for cause by a majority vote of the Board.

7. A majority of current commission members shall constitute a quorum.

8. At least one regular meeting shall be held each month for not less than nine (9) months of the year and commission members will receive mileage and a stipend to attend regular or special commission meetings as established by the Board.

B. Organization: The commission shall elect a Chairperson and create other offices that may be deemed necessary. The commission may also establish subcommittees, advisory committees or neighborhood groups to advise or assist in carrying out the commission's responsibilities.

C. Rules, Records And Meetings: Written organization papers or bylaws shall be adopted. Records of meetings, hearings, resolutions, studies, findings, permits, and actions taken by the commission shall be maintained and open to the public.

D. Duties And Responsibilities: The commission shall have the following powers and responsibilities:

1. Full authority of the Board as it applies to this title, excluding the authority to adopt ordinances, zone changes, or final approval of platted subdivisions.

2. Review and make recommendations to the Board on amendments to the plan.

3. Periodically review and initiate proposed amendments to the zoning ordinance, and make recommendations to the Board.

4. Review and hold public hearings for all planned unit development, subdivision and zone change applications, and make recommendations to the Board.

5. Review and hold public hearings for all conditional use and variance applications and make appropriate decisions in accordance with this title.

6. Hear all appeals regarding decisions made by the Administrator.

7. Endeavor to promote understanding and public interest of commission activities by holding citizen informational meetings, consulting with public officials, public utilities, educational or other organizations and by holding hearings, doing informational surveys or using other methods to obtain advice on the planning process.

8. With the express consent of the owner, the commission or County employees in the performance of their duties, may enter upon any land and make examinations.

9. The commission shall have the right to seek judicial process as may be necessary to enable it to fulfill applicable commission functions.

10-3-4: EXPENDITURES AND STAFF:

With the approval of the Board, the commission and/or the Administrator, the commission may receive and expend funds, goods and services in accordance with State law.

10-3-5: CONFLICT OF INTEREST:

A. Conflicts of interest in the planning and zoning process shall be governed by applicable provisions of the Idaho Code, including but not limited to, Idaho Code section 67-6506; title 59, chapter 7; and title 18, chapter 13.

B. In the event that there has been a violation of laws regarding conflicts of interest, any final recommendation or final decision involving the person committing such violation may be vacated after due consideration by disinterested members of the commission.

10-3-6: PUBLIC HEARINGS:

A. Procedures for Subdivision, Planned Unit Development, Ordinance Or Plan Amendment And Rezone Public Hearings: Any person seeking an amendment of the plan, ordinance or zoning map shall submit to the County Zoning Administrator a written petition designating the change desired and the reasons therefor, together with a fee as determined by the Board. Before recommending an amendment to the zoning ordinance, evidence must be submitted to the commission showing that such an amendment is reasonably necessary, is in the interest of the public and is in harmony with the objectives and purposes of this title. The following procedures shall apply:

1. The commission shall conduct at least one public hearing on each: subdivision application; ordinance or plan text and/or map revision in which interested persons shall have an opportunity to be heard.

2. The hearing notice shall give the date, time and place of hearing, the name of the applicant, name of the property owner if not the applicant, identification of the property and such other facts as required by this title. Identification of the property may include (a) the grid address of the location or approximate location if an address has not been assigned; (b) the parcel number and the Township, Range, and Section. If for any reason one of the notification identifiers is inaccurate or contains a scrivener's error, but all other identifiers are accurate, the notice will still be deemed valid and not require a new publication.

3. At least twenty-two (22) days prior to the hearing, notice of the time and place and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the jurisdiction. Notice shall also be made available to other newspapers, radio and television stations serving the jurisdiction for use as a public service announcement.

4. A summary of the proposed action shall be sent to all political subdivisions providing services within the planning jurisdiction, including fire districts, school districts, utility companies, etc., at least twenty-two (22) days prior to the hearing.

5. Notice shall be provided by regular parcel post to all property owners within three hundred feet (300') beyond the external boundaries of the land being considered for the proposed application at a minimum of twenty-two (22) days prior to the meeting. Comprehensive Plan changes and changes to this title, which do not relate to a specified real property, do not require mailed individual notices.

6. Notice shall be posted on the premises, not less than fifteen (15) days prior to the hearing. Should the property be inaccessible to the public, additional notice shall be posted at the closest public access of the site.

7. When notice is required for two hundred (200) or more property owners or purchasers of record, in lieu of mailing notification, the following alternate form of notice may be followed: The notice shall be published three (3) times in a newspaper of general circulation in the County, the last publication of such notice shall be at least ten (10) days before the date set for the public hearing.

8. No more than two (2) pages of written testimony will be accepted less than eight (8) calendar days before a hearing.

9. Before recommending an amendment to the zoning ordinance, evidence must be submitted to the commission showing that such an amendment is reasonably necessary, is in the interest of the public and is in harmony with the objectives and purposes of the zoning ordinance.

10. If after the public hearing, the commission makes a material change to the advertised application, a second hearing shall be held before the commission unless a hearing will be held before the Board.

11. The Board, prior to adopting, revising or denying a zone change application as recommended by the commission, shall conduct at least one public hearing using the same notice and hearing procedures as the commission.

12. If the Board makes a significant material change from what was presented at the public hearing, further notice and hearing shall be provided before the Board adopts the amendment.

13. Amendments shall require a majority of the members of the Board before an amendment can be effective.

14. No Comprehensive Plan (and/or map) amendments shall be effective unless adopted by Resolution by definitive reference to the specific plan document.

15. A record of the hearings, findings made, and action taken shall be maintained.

B. Procedures for Conditional Use Permit and Variance Hearings:

1. The Planning and Zoning Commission shall conduct at least one public hearing on each conditional use permit or variance application in which interested persons shall have an opportunity to be heard.

2. The hearing notice shall give the date, time and place of hearing, the name of the applicant, name of the property owner if not the applicant, identification of the property and such other facts as required by this title. Identification of the property may include (a) the grid address of the location or approximate location if an address has not been assigned; (b) the parcel number and the Township, Range, and Section. If for any reason one of the notification identifiers is inaccurate or contains a scrivener's error, but all other identifiers are accurate, the notice will still be deemed valid and not require a new publication.

3. At least twenty-two (22) days prior to the conditional use hearing, notice of the time and place and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the jurisdiction. Notice may also be made available to other newspapers, radio and television stations serving the jurisdiction for use as a public service announcement.

4. Notice shall be provided by regular parcel post to all property owners within three hundred feet (300') beyond the external boundaries of the land being considered for the proposed application at a minimum of twenty-two (22) days prior to the conditional use hearing and a minimum of fifteen (15) days prior to the variance hearing.

5. Notice shall be posted on the premises, not less than fifteen (15) days prior to the conditional use hearing. Should the property be inaccessible to the public, the notice shall additionally be posted at the closest public access of the site.

6. Alternate notice; when notice is required for two hundred (200) or more property owners or purchasers of record, in lieu of mailing notification, the following alternate form of notice may be followed: The notice be published three (3) times in a newspaper of general circulation in the County, the last publication of such notice shall be at least ten (10) days before the date set for the public hearing.

7. No more than two (2) pages of written testimony will be accepted less than eight (8) calendar days before a hearing.

8. A record of the hearings, findings made, and action taken shall be maintained.

10-3-7: APPEAL OF A COMMISSION DECISION, RECONSIDERATION OF A BOARD DECISION, REMAND BY BOARD TO COMMISSION AND JUDICIAL REVIEW:

A. The procedures for an appeal of a commission decision, reconsideration of a Board decision, Remand by the Board to the commission and judicial review are defined in this title, Chapter 10.

10-3-8: FINDINGS:

Whenever the Board or commission grant or deny an application, a written decision in compliance with Idaho Code section 67-6535 or its successor shall be approved. The date of the Board or commissions decision, once approved, is the effective date of the decision.

10-3-9: TRANSCRIPT OF PUBLIC HEARINGS:

Digital recordings of public hearings shall be made available to any person for a fee as determined by the Board. Any person requesting a transcript of the proceedings shall have the burden of all expenses for preparing said transcript except as provided for by Idaho Code.

Section 2: Modifications to Title 10 Chapter 10 shall be as follows:

**TITLE 10
CHAPTER 10
APPEALS AND VARIANCES**

SECTION:

10-10-1: Administrative Appeal

10-10-2: Appeal of a Planning and Zoning Commission Decision

10-10-3: Reconsideration of a Decision by the Board of County Commissioners

10-10-4: Remand by Board of County Commissioners to the Planning and Zoning Commission

10-10-5: Judicial Review

10-10-6: Request for Hearing by Affected Persons

10-10-7: Variances

10-10-1: ADMINISTRATIVE APPEAL:

Appeals to the commission concerning interpretation or administration of this title may be made by any person or agency aggrieved or affected by any decision of the Administrator.

A. Such appeal shall be made within fourteen (14) calendar days after receiving the decision of the Administrator by filing with the Administrator a notice of appeal. The appeal shall be accompanied with the filing fee, in an amount set by the Board of County Commissioners and adopted by Resolution, which shall be paid at the same time the appeal is filed. The written appeal must specify which portions of the decision the appellant finds to be in error and explain the appellant's reasons for determining that the decision is in error and contrary to the provisions of this title. Any supplemental information regarding the appeal must be submitted no later than seven (7) days prior to the date set for the appeal.

B. An administrative appeal shall not stay all proceedings in furtherance of the action taken by the Administrator unless granted by the Board or by a court based upon an application showing due cause.

C. Upon receipt of an administrative appeal, the commission shall allow all affected persons, within 300 feet of the subject parcel and the appellant(s), an opportunity to be heard. At least seven (7) days prior to said opportunity, notice shall be given to those affected persons by mail delivery.

D. The Administrator shall transmit to the commission all papers constituting the record upon which the appeal is based.

E. The commission shall approve, conditionally approve or disapprove the appeal. Upon granting or denying an appeal, the commission shall specify:

1. The ordinance, facts and standards used in evaluating the application; and
2. The reasons and rationale for approval or denial.

F. The commission shall make their decision within a reasonable time.

G. Once the decision is made, the applicant, any affected person, or the Administrator may appeal the decision of the commission to the Board. The appeal shall be filed with the Administrator before five o'clock (5:00) P.M. of the fourteenth calendar day following the commission's action and follow the procedures set forth in Section 10-10-2.

10-10-2: APPEAL OF A PLANNING AND ZONING COMMISSION DECISION:

A. Any applicant or any other affected person may file an appeal of the commissions' decision within fourteen (14) days of the commissions' written decision once approved in writing. The Board shall serve as the decision-making body for appeals of decisions of the commission. Notice of the appeal shall be filed with the Planning Administrator, in writing, and in accordance with Idaho Code Section 67-6535. The appeal shall be accompanied with the filing fee, in an amount set by the Board and adopted by Resolution, and shall be paid at the same time the appeal is filed. The written appeal must specify which portions of the decision the appellant finds to be in error and explain the appellant's reasons for determining that the decision is in error and contrary to the provisions of this title. Any supplemental information regarding the appeal must be submitted no later than seven (7) days prior to the date set for the appeal.

B. Not more than sixty (60) following the date the appeal is filed, the Board shall meet to consider the appeal. The hearing shall not be a public hearing, but shall be open to the public, and shall be an "on the record review." During the hearing, county staff and legal counsel shall be available to present the application and answer questions; however, oral testimony will not be received from the audience or the appellant. The Board shall consider such findings, reports, minutes, comments, and recommendations as were provided to them by the commission in rendering their decision. Any applicant or other affected person may request a reconsideration of the Board's decision.

C. Additional or new evidence may be received at the appeal hearing only if the Board remands the application/decision back to the commission. The Board may remand the application/decision, one time, when the appellant or affected party requests leave to present additional evidence. To remand an application/decision, the Board must find, in writing, that the additional evidence is

material, relates to the validity of the underlying decision, and there was good reason for failure to present the additional evidence before the original decision-making body. The Board shall issue an Order remanding the matter and shall describe the nature of the additional evidence to be presented. The presentation of additional evidence on remand shall be limited to the evidence described in the Board's Remand Order. The additional evidence shall be presented at a duly noticed public hearing following the procedures contained in Section 10-3-6. An appellant or affected person may seek reconsideration of the resulting decision in accordance with the procedures set forth in this section.

D. The decision may be affirmed, reversed, or modified after compliance with applicable procedural standards. The final decision of the Board shall be issued in writing with findings and conclusions. The written decision shall be provided to the appellant within thirty (30) days of the appeal hearing and the commission shall also receive notice of the Board decision.

E. In the event more than one Board commissioner is required to recuse themselves from the appeal, the commission decision shall be deemed final and the appellant may proceed to judicial review without reconsideration.

F. Upon denial or approval of an appeal with adverse conditions, the applicant may request a regulatory takings analysis as per Idaho Code Section 67-8003.

G. No decision of the Planning and Zoning Commission shall become effective, and if applicable no permits shall be issued until the 14-day appeal period has elapsed.

10-10-3: RECONSIDERATION OF A DECISION BY THE BOARD OF COUNTY COMMISSIONERS:

A. Any applicant or any other affected party may request a reconsideration of the Board's decision within fourteen (14) days of the Boards' decision once approved in writing and in accordance with Idaho Code Section 67-6535. The reconsideration request must be in writing and must identify the specific deficiencies in the decision for which reconsideration is sought and shall be accompanied by the filing fee, in an amount set by the Board and adopted by Resolution. The Board of County Commissioners shall provide a written decision to the applicant or affected person within sixty (60) days of receipt of the reconsideration request or the request is deemed denied. For purposes of judicial review, the decision of the Board of County Commissioners is not considered final unless the process for reconsideration as set forth in this title and in Idaho Code has been followed. Any applicant or affected person seeking judicial review must first request reconsideration of the decision.

B. The Reconsideration hearing shall not be a public hearing, but shall be a meeting open to the public. The hearing shall be an "on the record review." The Board shall only consider the underlying record, the written request for reconsideration, and written specific deficiencies in the decision submitted by affected persons if any. The hearing shall be limited to consideration of the issue(s) included in the request for reconsideration. No oral testimony will be allowed from the audience or by the appellant. The Board may request legal advice from county legal counsel.

C. The Board may affirm, reverse, or modify the underlying decision. The Board may reverse or modify the underlying decision only if: (1) the Board finds that the substantial rights of the

appellant or affected party has/have been prejudiced; and (2) the underlying decision is in violation or excess of constitutional or statutory authority; made upon unlawful procedure; not supported by substantial evidence; or arbitrary, capricious, or an abuse of discretion. The Board shall not have the authority to waive any requirement of this title or to take any action that is contrary to the specific provisions of this title.

D. Pursuant to Idaho Code Section 67-6535, a decision shall not be deemed final for purposes of judicial review unless the process required in this subsection has been followed. The twenty-eight (28) day time frame for seeking judicial review is tolled until the date of the written decision regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first.

E. No decision of the Board shall become effective, and if applicable no permits shall be issued, until the 14-day reconsideration period has elapsed or until the Board of County Commissioners has made a decision upon the reconsideration.

10-10-4: REMAND BY BOARD OF COUNTY COMMISSIONERS TO THE PLANNING AND ZONING COMMISSION:

A. The Board may direct that a matter previously heard by the commission be remanded to the commission for additional fact finding on a specific issue and reconsideration of the commissions' previous decision in light of that additional fact finding as set forth in Section 10-10-2(D). The following hearing procedures shall apply:

1. The Board shall issue an Order remanding the matter and shall describe the nature of the additional evidence to be presented.
2. The taking of additional testimony and evidence shall be limited to those issues stated by the Board as per its written Remand Order, at a duly noticed public hearing following the procedures found in Section 10-3-6 herein. Notice of the remanded hearing shall be delivered by regular U.S. Mail and shall also be sent to the applicant and to any parties who presented testimony or evidence regarding the application.
3. The notice shall list the limitations on testimony as per the Board's directive.

B. After hearing the new testimony or evidence, the commission shall issue new findings of fact and conclusions of law which shall be sent to the Board for further action.

C. If under appeal, the appeal may be withdrawn, or a different appeal may be filed by an affected party.

10-10-5: JUDICIAL REVIEW:

An affected person aggrieved by a decision may, within twenty-eight (28) days after all remedies have been exhausted under this title, seek judicial review under the procedures provided by Idaho Code title 67, chapter 52.

10-10-6: REQUEST FOR HEARING BY AFFECTED PERSON:

- A. At any time prior to final action on an appeal application, if no hearing has been held, any affected person may petition the Board in writing to hold a hearing.
- B. If twenty (20) affected persons petition for a hearing, the hearing shall be held.
- C. The hearing and notice procedure shall comply with chapter 3 of this title and Idaho Code section 67-6509.

10-10-7: VARIANCES:

The commission may authorize in specific cases such variance, as herein defined, from the terms of this title as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this title would result in unnecessary hardship. A variance shall not be considered a right or a special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest.

A. Application and Standards for Variances: A variance from the terms of this title shall not be granted by the commission unless and until a written application for a variance is submitted to the Administrator and the commission, containing:

1. Name, address and phone number of applicant.
2. Legal description of property.
3. Description of variance requested.
4. A statement demonstrating that the requested variance conforms to the following standards:
 - a. That unique site characteristics exist which are peculiar to the land involved and which are not applicable to other lands.
 - b. That a literal interpretation of the provisions of this title would deprive the applicant of rights commonly enjoyed by other properties in the same zone under the terms of this title.
 - c. That granting the variance requested will not confer on the applicant any special privilege that is denied by this title to other lands, structures or buildings in the same zone.
 - d. That the public interest will not be harmed.
5. A variance may not be granted unless the commission makes specific findings of fact based directly on the particular evidence presented to it which supports conclusions that the above standards and conditions have been met by the applicant.

6. A variance may be granted in compliance with Idaho Code section 67-6516, and notice and an opportunity to be heard shall be provided to property owners adjoining the subject property.

B. Variance Procedure: Upon receipt of an application for a variance, the commission shall allow all affected persons an opportunity to be heard. The commission shall use the hearing procedures in chapter 3 of this title.

C. Supplementary Conditions and Safeguards: Under no circumstances shall the commission grant or allow a variance, expressly or by implication, prohibited by the terms of this title. In granting any variance, the commission may prescribe appropriate conditions and safeguards in conformity with this title. Violation of such conditions and safeguards, when made part of the terms under which the appeal or variance is granted, shall be deemed a violation of this title.

D. Notification To Applicant: Within ten (10) days after a decision has been rendered, the Administrator shall provide the applicant with written notice of the action on the request for variance.

E. Appeal To Board Of County Commissioners: The applicant or any affected person may appeal the decision of the commission relating to a variance, to the Board, provided the appeal follows the procedures as identified in section 10-10-2 of this chapter.

Section 3: That all other portions of Bingham County Code Title 10 Chapter 3 and Title 10 Chapter 1 not herein amended shall remain in full force and effect.

Section 4: This Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

PASSED AND APPROVED on this 18 day of December, 2024.


BOARD OF COUNTY COMMISSIONERS
BINGHAM COUNTY, IDAHO




Whitney Manwaring, Chairman


Erick Jackson, Commissioner


Drew Jensen, Commissioner

Attest: 
Pamela W. Eckhardt
County Clerk