

**CHAPTER 10  
APPEALS AND VARIANCES**

Legend:

Red 8/1/2024 Proposed modifications from Prosecutor Jolley to PZ Commission  
Blue 8/27/2024 PZ Commission Public Hearing - requested modifications to be made and returned for 2<sup>nd</sup> Public Hearing

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SECTION:

10-10-1: Administrative Appeal

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

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

10-10-4: ~~Request For Hearing By Affected Person~~ 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~~5: 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) ~~ten (10)~~ calendar days after receiving the decision of the Administrator by filing with the Administrator a notice of appeal. ~~specifying the grounds upon which the appeal is made.~~ 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. The Administrator shall transmit to the commission all papers constituting the record upon which the appeal is based.~~

~~CB.~~ 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.

~~DC.~~ 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 ~~all those~~ affected persons by mail delivery. in such manner as shall be determined appropriate by the commission.

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 tenth calendar day following the commission's action and follow the procedures set forth in. (Ord. 2012-08, 10-9-2012, eff. 10-26-2012)

#### **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)~~ (10) 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. A transcript of the commission's consideration of the request shall be provided to the Board by the county at the expense of the appellant. The Board shall determine the fee per page to be charged for transcripts. The appellant shall pay the estimated cost of the transcript to the county in advance, and be refunded money or owe additional money when the transcript has been prepared, and the actual cost determined.~~

C. Not more than ~~sixty (60)~~ thirty (30) days following the date the appeal is filed, the preparation of the transcripts, 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. No decision of the Planning and Zoning Commission shall become effective, and if applicable no permits shall be issued until the ~~14~~10-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-~~53~~: 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-~~46~~: 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-~~57~~: 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. (Ord. 2012-08, 10-9-2012, eff. 10-26-2012)

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