

**Article 5 - BOARD OF ADJUSTMENT****Sections:****17.12.5.010 - Establishment.**

Pursuant to 76-2-321, MCA, a Board of Adjustment is established to undertake the responsibilities herein defined.

**17.12.5.020 - Authority.**

- A. **Generally.** The Board of Adjustment shall have the following authority and responsibility:
1. **Appeals.** To hear and decide appeals where it is alleged that an administrative official responsible for administering this Title or the housing or building regulations:
    - a. failed to act as required;
    - b. made an error in issuing a permit or in denying an application;
    - c. made an error in enforcement; or
    - d. made an error in an interpretation or any other determination. (See: 76-2-323 (1), MCA)
  2. **Variations.** To hear and decide variations consistent with this Title. (See: 76-2-323 (1), MCA)
- B. **Powers.** In exercising these powers, the board may compel the administrative official to act as required or reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken. (See: 76-2-323 (2), MCA)
- C. **Chair.** The chair or acting chair may administer oaths and compel the attendance of witnesses. (See: 76-2-321, MCA)

**17.12.5.030 - Composition and appointment of members.**

- A. **Number and appointment.** The board shall consist of five (5) members as appointed by the City Commission.
- B. **Considerations in making appointments.** Board members shall be residents of the City.
- C. **Terms and vacancies.** Each member shall be appointed to hold office for a period of three (3) years and until a successor is appointed and qualified. (See: 76-2-322 (1), MCA) Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. (See: 76-2-322 (2), MCA)
- D. **Conditions for removal.** The City Commission may remove a member for cause upon written charges and after public hearing. (See: 76-2-322 (1), MCA)

**17.12.5.040 - Officers.**

- A. **Election.** At its annual meeting, the board shall elect a chair, vice-chair, and secretary from among its membership by majority vote. If there is more than one (1) nominee for any office, voting shall be by secret ballot.
- B. **Nominations.** Nominations may be made from the floor, provided the nominee consents to the nomination.
- C. **Terms of office.** All elective offices shall be for one (1) year. An officer whose term has expired shall hold office until a successor is elected.

- D. **Limitation on consecutive terms.** No member shall hold the same elective office for more than three (3) consecutive terms.
- E. **Vacancies.** In the event of a vacancy in any office, the chair, upon approval by a majority of voting members present, shall designate a member to fill the unexpired term of the office.
- F. **Rights of chair.** The chair shall have all the rights and privileges of a board member.
- G. **Duties of chair.** The chair shall:
  1. Preside at all meetings of the board,
  2. Plan the agenda for the board,
  3. Act as a liaison between the board and the Planning and Community Development Department,
  4. Execute all legal documents on behalf of the board,
  5. Call special meetings as provided herein, and
  6. Act as the public representative of the board or designate an alternate.
- H. **Duties of vice-chair.** The vice-chair shall perform the duties of the chair in all cases in which the chair is unable to serve or as otherwise directed by the chair.
- I. **Duties of secretary.** The secretary shall:
  1. Maintain the minutes and records of the board and issue calls and notices pertaining to the board,
  2. Distribute the agenda for all meetings at least one (1) week prior to the meeting,
  3. Keep a roll of membership and attendance, and
  4. Supervise the balloting at all elections.
- J. **Delegation of duties.** The board may delegate the duties of the secretary to the Planning and Community Development Department by a majority vote.

*(Ord. No. 3056, § 1, 8-17-2010)*

#### **17.12.5.050 - Board procedures.**

The board may adopt rules of procedure to carry out its purposes. All rules must conform to this Title, other City regulations, and State law and shall be filed in the office of the City Clerk.

#### **17.12.5.060 - Schedule of meetings.**

- A. **Annual meeting.** The board shall meet at least once a year in January to elect officers and for such other business as may arise.
- B. **Regular meeting.** The board shall schedule meetings to review applications for which it has authority to review.
- C. **Special meeting.** Special meetings may be called by the chair or by two (2) members of the board or the City Commission upon written request to the secretary. (See: 76-2-321 (3), MCA)

#### **17.12.5.070 - Voting and quorum.**

- A. **Requirements for quorum.** A quorum shall consist of four (4) voting members.
- B. **Requirements for voting.** The concurring vote of four (4) members shall be necessary to grant a variance or overturn in whole or part an administrative decision, or interpretation. (See: 76-2-324, MCA).
- C.

**Disqualification or voluntary abstention from voting.** In adjudicative decisions, a member shall abstain from voting on a particular issue or shall be disqualified by majority vote of the remaining members present, if any of the following circumstances apply:

1. The member has a direct financial interest in the outcome of the matter at issue; or
2. The member has such close personal ties to the applicant , the project, or to a party opposing the application that the member can not reasonably be expected to exercise sound judgment in the public interest; or
3. The member owns property within the area entitled to receive written notice; or
4. Participation in the matter might violate the letter or spirit of a member's code of professional responsibility; or
5. Other applicable law that applies.

**17.12.5.080 - Compensation and expenses.**

- A. **Compensation.** Members shall not be compensated for their services on the board.
- B. **Expenses.** Members may be paid for travel and other expenses incurred on board business under procedures prescribed in advance by the City Commission.

**17.12.5.090 - Legal representation.**

The City Commission may appoint legal counsel to represent the board when it deems necessary.

**17.12.5.100 - Board of Airport Hazard Adjustment.**

The board established in this article shall also serve as the Board of Airport Hazard Adjustment consistent with 67-4-312, MCA. The board shall expressly state in its public notice and at the opening of its meetings that it is acting as the Board of Airport Hazard Adjustment.

**Article 32 - VARIANCE**

Note: As described in this article, the City Commission is responsible for considering those variances relating to the subdivision regulations and the Board of Adjustment considers all others.

**Sections:****17.16.32.010 - Legislative findings.**

The City Commission makes the following findings:

1. There may be instances where certain requirements of this Title that if enforced would cause unnecessary hardship to individual landowners.
2. Minor deviations from this Title may help to alleviate those unnecessary hardships without circumventing or undermining the intent of this Title.

**17.16.32.020 - Application and review procedure for variances that do not relate to the subdivision regulations.**

- A. **Submittal of application.** The applicant shall submit a completed application to the Planning and Community Development Department along with the application fee as may be established by the City Commission.
- B. **Determination of completeness.** Within ten (10) days of submittal, the Director of Planning and Community Development shall determine if the application is complete. If the application is deemed incomplete, it shall be returned to the applicant and the applicant has six (6) months to resubmit the application or forfeit the application fee. The director shall take no further steps to process the application until the deficiencies are remedied.
- C. **Notice.** Consistent with Article 4 of this chapter, the director shall provide for public notice, property owner notification, and agency notification.
- D. **Staff report.** The director shall prepare a written staff report as described in this article and mail it to each member of the Board of Adjustment, the applicant, and the applicant's agent, if any, no later than three (3) days prior to the public hearing. He/she shall also provide a copy to interested people upon request.
- E. **Public hearing.** Allowing for proper notice, the Board of Adjustment shall hold a public hearing to review the application.
- F. **Decision.** Within thirty (30) days of the determination of completeness, the Board of Adjustment shall approve the application, approve it with conditions, or deny it. Such decision shall be in writing and shall include the findings in support of its decision and if approved any conditions as may be imposed.
- G. **DNRC notification of decision.** If the variance is related to the floodplain regulations, the Floodplain Administrator shall send a copy of the decision to the Montana Department of Natural Resources and Conservation, Floodplain Management Section.
- H. **Applicant notification.** Within five (5) days following the decision, the director shall mail the applicant the original (signed) copy of the decision and retain a copy for the public record.
- I. **Additional procedural steps.** If the board grants the variance, the applicant shall then follow other review procedures as may be required.

*(Ord. No. 3056, § 1, 8-17-2010; Ord. No. 3102, § 3(Attach. A), 3-5-2013)*

**17.16.32.030 - Application and review procedure for variances that relate to the subdivision regulations.**

- A. **Submittal of application.** The applicant shall submit a completed application to the Planning and Community Development Department along with the application for subdivision as provided in Article 26 of this chapter.
- B. **Procedure.** The application for variance shall be processed simultaneously and as a part of the application for subdivision as provided in Article 26 of this chapter including staff report, Planning Board recommendation and City Commission decision.

*(Ord. 2950, 2007)*

*(Ord. No. 3056, § 1, 8-17-2010)*

**17.16.32.040 - Basis of decision for a dimensional variance.**

A dimensional variance shall only be granted when the evidence shows and a finding can be made that each of the following conditions exists:

1. The variance is not contrary to the public interest.
2. A literal enforcement would result in unnecessary hardship, owing to conditions unique to the property.
3. The spirit of this Title would be observed and substantial justice done by granting the variance.

**17.16.32.050 - Reserved.**

**Editor's note**—Ord. No. 3102, § 3(Attach. A), adopted March 5, 2013, repealed § 17.16.32.050, which pertained to additional findings necessary for a floodplain variance. See also the Code Comparative Table.

**17.16.32.060 - Vote needed for Board of Adjustment action.**

The concurring vote of four (4) members shall be necessary to approve a variance. (See: 76-2-324, MCA)

**17.16.32.070 - Limitations on issuing a variance.**

The following actions shall not be allowed by a variance:

1. Expansion of a nonconforming use.
2. Modification to lot or other requirements so as to increase the permitted density or intensity of use.
3. Any project within a floodway that increases flood velocities or elevations.
4. Continuation of an amortized sign.
5. Establishment of a use not permitted based upon the zoning classification assigned to subject property.

*(Ord. No. 3056, § 1, 8-17-2010)*

**17.16.32.080 - Imposition of conditions.**

In approving a variance, the Board of Adjustment may impose such conditions and restriction as may be necessary to grant approval.

*(Ord. 2950, 2007)*

**17.16.32.090 - Airport height variances.**

If a variance to the height restrictions for the Great Falls International Airport is granted, the City may require the applicant to permit the City, at its expense to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of the an airport hazard. (See: 67-4-314, MCA)

**17.16.32.100 - Notifications regarding specified variances.**

If a variance is granted to allow construction of a structure below the one hundred-year floodplain elevation, the floodplain administrator shall notify the applicant that flood insurance premium rates may be higher than normal and such construction increases risks to life and property.

**17.16.32.110 - Staff report content.**

At a minimum, the staff report shall contain the following information:

1. A summary of the comments received from the interdepartmental/agency review;
2. Findings for each of the decision criteria listed in this article;
3. A preliminary list of conditions if approval is recommended; and
4. A recommendation to approve the application, approve it with conditions, or deny the application.

**17.16.32.120 - Effect of approval.**

An approved variance merely sets aside the rule or regulation from which relief is sought. All other rules and regulations not part of the variance decision must be followed.

**17.16.32.130 - Expiration of approval.**

The variance shall expire one (1) year after the date of issuance unless substantial work has commenced under the permit and continues in good faith to completion.

**17.16.32.140 - Appeal.**

The applicant and/or an aggrieved person may appeal a final decision made pursuant to this article by filing an appeal with a court of competent jurisdiction within thirty (30) days of the final decision. (See: 76-2-327(1), MCA)

**Article 34 - ADMINISTRATIVE APPEAL****Sections:****17.16.34.010 - Generally.**

Any person aggrieved by a decision of an administrative official may file an appeal with the Board of Adjustment consistent with this part.

**17.16.34.020 - Application and review procedure.**

- A. **Submittal of appeal.** The applicant shall submit a written appeal to the Director of Planning and Community Development within two (2) months of the date of the decision being appealed.
- B. **Notification of appeal.** The director shall provide a copy of the appeal to the Board of Adjustment and the officer who made the decision being appealed or who allegedly failed to act as required.
- C. **Compilation and submittal of record.** The officer who made the decision being appealed or who allegedly failed to act as required shall compile a complete and accurate record relating to the same and submit it to the Board of Adjustment.
- D. **Public hearing.** Allowing for proper public notice and notice to the parties in interest, the board shall conduct a public hearing to hear the appeal and consider the written record and testimony as may be provided.
- E. **Decision.** Within forty-five (45) days of the public hearing, the board shall decide to affirm the administrative decision, set aside the decision, or modify the decision.
- F. **Notification of decision.** The board shall notify in writing both the applicant and the officer of its final decision.

*(Ord. No. 3056, § 1, 8-17-2010)*

**17.16.34.030 - Vote needed for board action.**

The concurring vote of four (4) board members shall be necessary to reverse any administrative decision. (See: 76-2-324, MCA)

**17.16.34.040 - Effect of appeal.**

An appeal shall stay all legal proceedings in furtherance of the action from which appeal is made, unless the officer from whom the appeal is taken certifies to the board that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application, with notice to the officer from whom appeal is made, and on due cause shown. (See: 76-2-326(3), MCA)

**17.16.34.050 - Appeal.**

Within thirty (30) days of the final decision made pursuant to this article, the applicant and/or an aggrieved person may file an appeal with a court of competent jurisdiction. (See: 76-2-327(1), MCA)

**Article 20 - DESIGN WAIVER****Sections:****17.16.20.010 - Legislative findings.**

The City Commission makes the following findings:

1. There may be instances where certain design requirements of this Title that if enforced may cause unintended and unwanted results, as opposed to a hardship where a variance may be the appropriate remedy.
2. Minor deviations from this Title may help to promote a better development and protect environmental and cultural resources.
3. A mechanism is needed to allow an administrative deviation from this Title when it can be shown that the grant of relief will avoid unintended and unwanted results and result in a better development.
4. Such a mechanism should be simple, handled at the administrative level, and be consistently and fairly applied.
5. Issuance of a design waiver does not imply or guarantee subsequent approval or conditional approval of any review process required by this Title.

**17.16.20.020 - Application and review procedure.**

- A. **Submittal of application.** The applicant shall submit a completed application, as described in this article, to the Planning and Community Development Department along with the application fee as may be established by the City Commission.
- B. **Determination of completeness.** Within ten (10) days, but not sooner than four (4) days, of submittal, the Director of Planning and Community Development or appropriate City department director shall determine whether the proposed application is complete or incomplete and notify the applicant of any deficiencies. If the application is incomplete, the applicant has six (6) months to resubmit the application or forfeit the application fee. The director shall take no further steps to process the application until the deficiencies are remedied.
- C. **Decision.** Within fifteen (15) days after submittal, the director shall review the request and approve it, approve it with conditions, or deny it based on the decision criteria established in this article.
- D. **Applicant notification of decision.** Within five (5) days following the decision, the director shall mail the decision to the applicant.
- E. **Ratification by reviewing authority.** The board, commission, or official responsible for a subsequent review shall ratify the issuance of the waiver or revoke the waiver if it was not issued in compliance with this article.

*(Ord. No. 3056, § 1, 8-17-2010)*

**17.16.20.030 - Basis of decision.**

The director of the appropriate City department shall not approve the application unless he/she makes a positive finding, based on substantial competent evidence, on each of the following:



1. The requirement would cause an unintended or undesirable result if applied to the particular circumstance and if relaxed would result in a better overall development design and/or protect environmental or cultural resources.
2. The exceptional and unique circumstances do not result from the actions of the applicant.
3. The applicant has no other option to improve the development's design or avoid negative impacts on environmental and/or cultural resources.
4. The request is not based exclusively upon a desire to reduce the cost of developing the site or to maximize the developer's profit.
5. The granting of the design waiver will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.
6. The effect of the proposed design waiver is in harmony with the general intent of this Title and the specific intent of the relevant subject area(s).
7. The design waiver requested is the minimum necessary to accomplish the intent of this part.

**17.16.20.040 - Limitations on issuing a design waiver.**

The waiver is limited to design requirements only. In no case shall a City department director modify lot size or other requirements to increase the permitted density or intensity of use or consider any waiver application that should be considered a variance.

**17.16.20.050 - Imposition of conditions.**

In issuing a design waiver, a City department director may impose such conditions and restrictions upon the premises benefited as may be necessary to allow a positive finding to be made on any of the foregoing factors.

**17.16.20.060 - Application form and content.**

The application submittal shall include the following:

1. An application.
2. Other information as may be necessary for the appropriate City department director to make the findings as required.

**17.16.20.070 - Expiration of approval.**

A design waiver shall be personal to the owner of record at the time of its approval and shall expire either eighteen (18) months after the date of approval or by earlier action by the director issuing the waiver or the City Commission, unless construction has commenced and continues in good faith to completion.

**17.16.20.080 - Appeal.**

Because the nature of a design waiver is discretionary, an applicant may not appeal the decision of the City department director to deny a design waiver application. If the board, commission, or official responsible for a subsequent review ratifies the issuance of the waiver, an aggrieved person may appeal that decision to the Board of Adjustment.