

CHAPTER 14

APPEAL, VARIANCE AND ACTION BY AFFECTED PERSONS

14-1. GENERAL: The Commission shall consider administrative appeals (1) alleging that an error has been made by the Administrator, (2) applications for variances from the terms of this Ordinance and (3) requests for hearings from affected persons.

14-2. ADMINISTRATIVE APPEALS: Appeals to the Commission concerning interpretation or administration of this Ordinance may be taken by any person aggrieved or by any officer or bureau of the legislative authority affected by any decision of the Administrator. Such appeal shall be taken within twenty-eight (28) days after the decision of the Administrator by filing with the Administrator and with the Commission a notice of appeal specifying the grounds upon which the appeal is being taken. The Administrator shall transmit to the Commission all the papers constituting the record upon which the appeal is based.

14-3. STAY OF PROCEEDINGS: An appeal stays all proceedings in furtherance of the action taken unless the Administrator certifies to the Commission after the notice of appeal is filed with him that by reason of facts stated in the application, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Commission or by a court based upon an application, with notice to the Administrator showing due cause.

14-4. VARIANCE: The Commission may authorize in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship. No nonconforming use of the neighboring lands, structures or building in the same district and no permitted or nonconforming use of lands, structures or buildings in other districts shall be considered grounds for issuance of a variance. Variances shall not be granted on the grounds of convenience or profit, but only where strict application of the provisions of this Ordinance would result in unnecessary hardship.

14-5. APPLICATION AND STANDARDS FOR VARIANCES: A variance from the terms of this Ordinance 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:

- A. Name, address and phone number of applicant;
- B. Legal description of property;
- C. Description of nature of variance requested; and
- D. A narrative statement demonstrating that the requested variance conforms to the following standards:

1. That special conditions and circumstances exist which are not applicable to other lands, structures of buildings in the same district;
2. That a literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
3. That special conditions and circumstances do not result from the actions of the applicant; and
4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same district.

A variance shall 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-mentioned standard and conditions have been met by the applicant.

14-6. SUPPLEMENTARY CONDITIONS AND SAFEGUARDS: Under no circumstances shall the Commission grant an appeal or variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district. In granting any appeal or variance, the Commission may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the appeal or variance is granted, shall be deemed a violation of this Ordinance.

14-7. PUBLIC HEARING: Upon receipt of the application for an appeal or a variance, the Commission shall hold a public hearing, publish notice in a newspaper and give written notice to all parties as required for Special Use Permits. (See Section 15-6).

14-8. VARIANCE PROCEDURE IN CITY AREAS OF IMPACT: In cases where the parcel or property involved in the variance application is located in an Area of City Impact, the applicable City shall have thirty (30) days to review the application. The purpose of this review is to allow the City time to review and evaluate the application with respects to the possible impact on the City or compliance with the City's ordinances and Comprehensive Plan. If the City deems that thirty (30) days are inadequate for a thorough review, it may be granted a thirty (30) day extension upon written request.

After the review, the City shall make a recommendation to the County Commission to approve, conditionally approve, postpone decision for additional information or disapprove the request for variance. Upon making a recommendation the Commission shall specify

- A. The Ordinance and standards used in evaluating the application;
- B. The reasons for the specific recommendation; and
- C. The recommended actions, if any, that the applicant could take to obtain a permit.

14-9. ACTION BY THE COMMISSION: Within twenty-eight (28) days after the public hearing the Commission shall approve, conditionally approve, postpone decision for further study or disapprove the request for appeal or variance. Upon granting or denying an application the Commission shall specify:

- A. The Ordinance and standards used in evaluating the application;
- B. The reasons for approval or denial; and
- C. The actions, if any, that the applicant could take to obtain a permit.

14-10. NOTIFICATION OF APPLICANT: Within seven (7) days after a decision has been rendered, the Administrator shall provide the applicant with written notice of the action on the request.

14-11. APPEAL TO BOARD OR RESPECTIVE COUNCIL: The applicant or any affected persons who appeared in person or in writing before the Commission may appeal the decision of the Commission to the Board or respective Council provided the appeal is submitted to the Council within fourteen (14) days from the date of the Commission's action. Upon receipt of an appeal from the action of the Commission, the Board or respective Council shall set a hearing date to consider all information, testimony and Commission's minutes of the public hearing to reach decision. The Board or respective Council may overrule the Commission by a favorable vote of a simple majority of the full Board or respective Council.

14-12. REQUEST FOR HEARING BY AFFECTED PERSONS: An affected person shall mean one having an interest in real property, which may be adversely affected by the issuance or denial of a permit authorizing the development.

Any affected person may at any time prior to final action on Rezone, Special Use, or Variance Permit, if no hearing has been held on the application, petition the Commission or Board or respective Council in writing to hold a hearing as required above in Section 14-7 through petition for a hearing, the hearing shall be held.

After a hearing, the Commission Board or respective City Council may:

- A. Grant or deny a permit; or
- B. Delay such a decision for a definite period of time for further study or hearing not to exceed sixty (60) days.

An affected person aggrieved by a decision may within thirty (30) days after all remedies have been exhausted under local Ordinances seek judicial review under the procedures provided by Section 67-5215(b) through (g) and 67-5216, Idaho Code.

14-13. APPLICATION AND STANDARDS FOR APPEALS: An administrative appeal or a decision of the Commission shall not be considered until an appeal is submitted in writing to the Administrator and/or Board or applicable City Council containing:

- A. Name, address and phone number of appellant;
- B. Legal description of property;
- C. Description of nature of the appeal requested;
- D. A narrative statement demonstrating legal basis and reason for the appeal; and
- E. Applicable fee as established by the Board or applicable City Council.

Any decision as a result of an appeal becomes valid when the specific findings of fact based directly on the particular evidence presented to it, approved and signed.

14-14: MEDIATION:

- A. Application for Mediation. Mediation may be requested in writing by any applicant, or an affected person for any decision of the Planning and Zoning Commission or Council with respects to this zoning ordinance. The application for mediation may be made at any time prior to filing of a lawsuit with the District Court.. If the application or decision concerns a parcel located within the corporate limits of any city, mediation may also be requested by the Mayor, the City Council, the Planing and Zoning Commission, any department head of the City, a Planing and Zoning Commission member or member of the City Council. If the application or decision concerns a parcel located outside the corporate limits of any city, mediation may also be requested by the Board of County Commissioners, the Planing and Zoning Commission, any department head of the County, a Planing and Zoning Commission member or member of the Board of County Commissioners
- B. Mediation Session: The applicant and any person(s) objecting to the application for mediation shall participate in at least one mediation session. The Board of or the respective City Council shall select the mediator and shall pay the expense of mediation for the first meeting among mediating parties, if the mediation has been requested by the Board, the respective City Council or Planning and Zoning Commission. If mediation is not requested by the Board, a respective City Council or the Planning and Zoning Commission, or in the case of subsequent sessions of the mediation when the Board, respective City Council or the Planning and Zoning Commission requested mediation, compensation of the mediator shall be determined among each party participating in the mediation prior to or at the outset of the first mediation. If not so determined, then the Board or respective City Council may require the parties to the mediation to share the costs as it determines. A party requesting mediation, other than the Board, respective City Council or Planning and Zoning Commission, shall at the time of request of mediation tender to the County or City Clerk in full the estimated mediator's fees for one session of mediation as determined by the Clerk as a condition of going

forward with the mediation. Such prepayment is without prejudice to the parties or Board of County Commissioners or City Council determining which parties shall actually bear the cost of the meditation as above provided.

- C. Participation: The applicant and any party or parties objecting to the application shall participate in at least one (1) mediation session if mediation is requested by any party referred to in the foregoing subparagraph, except as herein provided. If the first mediation session has been requested by the Planning and Zoning Commission, Board of ~~County Commissioners~~ or City Council, all parties to the controversy shall be required to participate in at least one session of mediation as a condition precedent to other relief. However, an applicant may decline to participate in mediation which has been requested by an affected person and an affected person may decline to participate in a mediation requested by the applicant.
- D. Time Limitation: Upon request for mediation, any time limitation shall be tolled. Such tolling shall cease when ~~at~~ the first of any of the following occurs:
1. When the applicant or any affected person(s) has participated in at least one (1) mediation session and states in writing that no further participation by that party is desired. The person making such statement is obligated to serve or deliver a copy of same to all parties entitled to notice; ~~or~~
 2. Upon receipt by the County or City as well as the applicant or affected person of a written refusal by the applicant or affected person to mediate when such person is not obligated to mediate as herein provided. The party declining to mediate shall have the obligation of giving notice of the same to all parties to whom notice should be given; or,
 3. Upon notice of a request for mediation where no mediation session is scheduled for at least twenty-eight (28) days from the date of such a request.
- E. Public Hearing: A public hearing shall be held before the Board of County Commissioners or the respective City Council where a resolution through mediation occurs following a final decision on an application made the basis for such mediation.
- F. Not Part of Official Record: The mediation process shall not be part of the official record regarding consideration of the application upon which the mediation is based.

