

**ARTICLE 27-1500. CITY AND COUNTY ZONING COMMISSIONS AND
CITY AND COUNTY BOARDS OF ADJUSTMENT**

SEC. 27-1501. CITY ZONING COMMISSION CREATED.

There is hereby created a City of Billings zoning commission to consist of five (5) members residing on property, any part of which lies within the limits of the City of Billings. The members are to be appointed by the mayor, subject to confirmation by the city council, for a term of four (4) years and the terms of the members shall be staggered so that a minimum number of terms shall expire in any one (1) year.

The members of said city zoning commission are required to attend all city zoning commission meetings advertised publicly, except in the case of an excused absence. The presence of three (3) members shall constitute a quorum.

The duties and powers of the city zoning commission shall be to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein, and to hold public meetings and make recommendations to the city council on all requests to amend, supplement, change, modify or repeal the regulations, restrictions and boundaries in the zoning districts. The city council shall not hold its public hearing or take any action until it has received a final report from such commission.

SEC. 27-1502. AMENDMENTS TO CHAPTER.

(a) *General.* This chapter, including the official zoning map, may be amended only by the city council but no amendment shall be finally approved by the city council unless it has been submitted to the city zoning commission for review and recommendation. Proposals to amend this chapter, including the official zoning map, may be initiated by the city council or by the board of planning. Proposals to amend this chapter, except for the official zoning map, may also be initiated by the city zoning commission. Before enacting an amendment to this chapter, the city council shall give public notice and hold a public hearing thereon. Before enacting on its own motion an amendment to the official zoning map, the city council shall provide written notification by mail of such amendment to each property owner whose name appears on the last tax record of the property subject to the amendment. The notification shall include what the proposed amendment is, the time, date and place of the public hearing on the proposed amendment. Such notification shall be made no less than fifteen (15) days nor more than thirty (30) days in advance of the date of public hearing.

(b) *Applications for map amendments.* Unless initiated by the city council or board of planning, all applications for official map amendments must be submitted by the owner of such property, the contract purchaser, or the authorized agent of the owner. An application for an amendment affecting the same property shall not be submitted more often than once every twelve (12) months. Each application to amend the official map shall be filed with the zoning coordinator, and each application shall be submitted under the following conditions:

- (1) The applicant or his/her authorized agent shall submit the following pre-application information to the planning department to begin the zone change process:
 - a. Legal description of the subject parcel(s), along with a map showing the dimensions, acreage and location of the parcel(s);

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- b. The names and addresses of the owner(s) and contract purchasers, if any, of the subject property and their agent(s), if any, along with the recorded property owner's signature;
 - c. A zone change plan which shall consist of the following:
 - i. A written description of the proposed zone change including the area in square footage or acres to be included in the zone change.
 - ii. If there are multiple zone changes proposed, the location and area of each specific new zoning district.
- (2) The planning department shall provide a list of surrounding property owners within a radius of three hundred (300) or more feet, as determined by the zoning coordinator, of the exterior boundaries of the tract(s) to the applicant or his/her agent based on the submitted information.
- (3) The applicant or his/her agent shall conduct a pre-application neighborhood meeting to explain the proposed new zoning and receive comment from the surrounding property owners. The applicant or his/her agent shall notify in writing the persons on the surrounding property owner list as provided in subsection (2) and the planning department of the date, time and location of the pre-application neighborhood meeting. The pre-application neighborhood meeting shall be conducted within 2 radius miles of the subject parcel. The written notification shall be mailed at least seven (7) calendar days prior to the scheduled meeting. The written notification shall include all the materials noted in subsection 27-1502 (b) 1. The pre-application neighborhood meeting shall be conducted at least seven (7) calendar days prior to the submittal of the proposed zone change to the planning department. The applicant shall obtain a roster of the names of the persons that attend the pre-application neighborhood meeting and make a record of the minutes of the meeting.
- (4) Once the pre-application neighborhood meeting has been conducted the applicant or his/her agent may submit a zone change application and it shall include but not be limited to the following information:
- a. A legal description of the tract(s) proposed to be rezoned;
 - b. A map showing the dimensions, acreage and location of the tract(s) being changed;
 - c. The names and addresses of the owner(s) of the land and their agents, if any, along with the recorded property owner's signature;
 - d. A certified list of the names, addresses and legal descriptions of the owners of property within a radius of three hundred (300) or more feet, as determined by the zoning coordinator, of the exterior boundaries of the tract(s);
 - e. Gummed mailing labels with the names and mailing addresses typed or printed neatly of all of the property owners indicated on the certified list; and
 - f. Payment of all applicable fees.

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- (3) In the case of a protest petition filed in the matter of any application for rezoning, determine the validity of such petition;
- (4) Publish notice of the application in a newspaper of general circulation at least fifteen (15) days in advance of the date of the city zoning commission public hearing. The notice shall contain: the classification sought, the location of the property, and the date, time and place of the city zoning commission public hearing;
- (5) Notify, by mail, the applicant and/or his/her authorized agent at least five (5) days prior to the date of the city zoning commission public hearing of the date, time and place of such hearing;
- (6) Notify, by mail, all property owners within three hundred (300) feet of the exterior boundaries of the property subject to the rezoning at least fifteen (15) days in advance of the time, date, place of the city zoning commission public hearing and the existing and proposed classification. The zoning coordinator may notify property owners within a radius of more than three hundred (300) feet if he/she determines that the proposed rezoning of the property would likely have a substantial impact on the surrounding land uses;
- (7) Place notice of the city zoning commission public hearing on the property subject to rezoning at least fifteen (15) days in advance of the date of public hearing; and
- (8) Report his/her findings and conclusions in writing to the city zoning commission, which report shall be a matter of public record.

(d) *City zoning commission action.* The city zoning commission shall review and take action upon each application in accordance with the provisions of this chapter, and after a public hearing at which the application has been legally advertised. Each application shall be presented to the city zoning commission by the zoning coordinator, together with his/her findings and conclusions on the matter. The city zoning commission may, by a majority vote of the members present, delay action for a period not to exceed thirty (30) days, without prejudice to the applicant. A report of the commission's recommendation and the zoning coordinator's findings and conclusions shall be submitted to the city council. The city zoning commission shall make a recommendation to the city council to:

- (1) Deny the application; or
- (2) Grant the application.

The city zoning commission shall submit its recommendations in writing along with a statement indicating its reasons for the recommendation to grant, deny, or allow withdrawal of the amendment within fifteen (15) days following the public hearing. In no case shall the city zoning commission make a recommendation that an amendment be granted for an amendment that was not legally advertised.

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In making its recommendation to the city council for an amendment to the official map or text of this chapter, the city zoning commission shall consider, among other things, the following:

- (1) Whether the new zoning is designed in accordance with the growth policy;
- (2) Whether the new zoning is designed to secure from fire and other dangers;
- (3) Whether the new zoning will promote public health, public safety and general welfare;
- (4) Whether the new zoning will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
- (5) Whether the new zoning will provide adequate light and air;
- (6) Whether the new zoning will effect motorized and non-motorized transportation;
- (7) Whether the new zoning will promote compatible urban growth;
- (8) Whether the new zoning considers the character of the district and the peculiar suitability of the property for particular uses;
- (9) Whether the new zoning will conserve the value of buildings; and
- (10) Whether the new zoning will encourage the most appropriate use of land throughout the City of Billings.

(e) *City council public hearing.* Before taking action on an application for an amendment to the official map, and after presentation of the city zoning commission report, the city council shall hold a public hearing on the application.

As provided in Montana Code Annotated, Section 76-2-305(2), in the event of a protest petition against such zone change signed by the owners of twenty-five (25) percent or more of: (1) the area of the lots included in any proposed change; or (2) those lots or units, as defined in MCA 70-23-102, one hundred fifty (150) feet from a lot included in a proposed change, such proposed amendment shall not become effective except by the favorable vote of two-thirds (2/3) of the present and voting members of the city council. For purposes of this protest provision, each unit owner is entitled to have the percentage of the unit owner's undivided interest in the common elements of the condominium, as expressed in the declaration, included in the calculation of the protest. If the property, as defined in 70-23-102, spans more than one lot, the percentage of the unit owner's undivided interest in the common elements must be multiplied by the total number of lots upon which the property is located. The percentage of the unit owner's undivided interest must be certified as correct by the unit owner seeking to protest a change or by the presiding officer of the association of unit owners. The protest petition must be received in the planning department office by 5:00 p.m. on the Friday preceding the first reading of the amendment by the city council.

(f) *City council action.* Before taking any action on an application for an amendment to the official map, or amendment to the text of this resolution/ordinance, the city council shall first consider the findings and recommendations of the city zoning commission. In no case shall the city council approve an amendment for a classification other than the one advertised. The city council shall:

- (1) Approve the application;
- (2) Deny the application;

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- (3) Allow withdrawal of the application; or
- (4) Delay the application for a period not to exceed thirty (30) days.

When such proposed amendment has been denied by the city council neither it nor one involving the same tract shall be submitted for adoption within one (1) year after such denial.

SEC. 27-1503. SPECIAL REVIEW BY CITY ZONING COMMISSION.

(a) *General.* Although each zoning district is primarily intended for a predominant type of use, there are a number of uses which may or may not be appropriate in a particular district depending upon all the circumstances of the individual case. For example, the location, nature of the proposed use, the character of the surrounding development, traffic capacities of adjacent streets, and potential environmental effects, all may indicate that the circumstances of the development should be individually reviewed. It is the intent of this chapter to provide a system of review of such uses so that the community is assured that the uses are compatible with their locations and with surrounding land uses, and will further the purpose of this chapter and the objectives of the comprehensive plan.

(b) *Application for special review; procedure.* An application for a special review may be filed by the property owner, contract purchaser, or his/her authorized agent. Such application shall be filed with the zoning coordinator and shall be submitted under the following conditions:

- (1) The application shall include, but not be limited to the following information:
 - a. A legal and general description of the tract(s) upon which the special review use is sought;
 - b. A map showing the dimensions, acreage and location of the tract(s);
 - c. The names and addresses of the owner(s) of the tract and his/her agent, if any, along with the recorded property owner's signature;
 - d. A site plan showing major details of the proposed development including but not limited to: the location of proposed and existing buildings and structures; off-street parking and loading; service and refuse areas; means of ingress and egress; landscaping, screening, signs, and open space areas;
 - e. A certified list of the names, addresses and legal descriptions of the owners of property within a radius of three hundred (300) or more feet, as determined by the zoning coordinator, of the exterior boundaries of the tract(s);
 - f. Gummed mailing labels with the names and mailing addresses typed or printed neatly of all of the property owners indicated on the certified list;
 - g. The application must be accompanied by the payment of all applicable fees; and

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(d) *City zoning commission action.* The city zoning commission shall consider each application in accordance with the provisions of this chapter, and at a public hearing at which time the application has been legally advertised. Each application shall be presented to the city zoning commission, by the zoning coordinator or his/her designee, together with his/her conclusions and findings on the matter. The city zoning commission may, by a majority vote of the members present, delay action for a period not to exceed thirty (30) days, without prejudice to the applicant. A written report of the commission's decision and recommendation and the zoning coordinator's report shall be submitted to the city council.

The city zoning commission shall make a recommendation to the city council to:

- (1) Deny the application;
- (2) Approve the application; or
- (3) Conditionally approve the application.

Recommendations from the city zoning commission shall be based on findings of fact and shall be transmitted to the applicant or his/her agent, and the city council within fifteen (15) days of the date of the public hearing before the commission.

Before approving a special review use, the city zoning commission shall find that the contemplated use:

- (1) Complies with all requirements of this chapter;
- (2) Is consistent with the objectives and purposes of this chapter and the comprehensive plan; and
- (3) Is compatible with surrounding land use or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

Further, the city zoning commission shall consider and may impose modifications or conditions concerning, but not limited to the following:

- (1) Street and road capacity;
- (2) Ingress and egress to adjoining streets;
- (3) Off-street parking;
- (4) Fencing, screening and landscaping;
- (5) Building bulk and location;
- (6) Usable open space;
- (7) Signs and lighting; and/or
- (8) Noise, vibration, air pollution and similar environmental influences.

(e) *City council action.* The recommendation of the city zoning commission shall be published in a newspaper of general circulation and at least fifteen (15) days after the first publication of such notice, a public hearing shall be held by the city council. Before taking any action on an application for a special review use, the city council shall first consider the findings and recommendations of the city zoning commission. In no case shall the city council approve a special review use other than the one advertised. The city council shall:

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- (1) Approve the application;
- (2) Conditionally approve the application;
- (3) Deny the application;
- (4) Allow withdrawal of the application; or
- (5) Delay the application for a period not to exceed thirty (30) days.

SEC. 27-1504. CLASSIFICATION OF NEWLY ANNEXED AREA.

(a) Annexations of land into the City of Billings may be effected under several statutory procedures. When a parcel of land is annexed to the city under any procedure except annexation by petition, the appropriate zone shall be determined as follows:

- (1) Immediately subsequent to the adoption of resolution/ordinance of intent to annex, the zoning coordinator and planning staff will determine the most appropriate zone. They will work closely with the owner of the land. The land owner shall have adequate opportunity to have full input, but the final classification shall be made by the zoning coordinator and the planning staff.
- (2) Upon determination of the classification the zoning coordinator shall follow the procedure set forth in above BMCC section 27-1502(C) except that the report, findings and conclusions shall be submitted to the city council prior to or concurrently with the services report that is required by the annexation statutes.
- (3) A public hearing on the zoning classification shall be held concurrently with the public hearing on the annexation before the city council, provided that the hearing shall not be sooner than fifteen (15) days after notice of the proposed zone has been given.
- (4) If the zoning classification is not approved by the city council, the land shall retain the zone classification it had in the county; provided, that if the county classification is not identical to the city classification the city classification established will be the closest equivalent zone.

(b) When the proposed annexation is by petition pursuant to MCA Title 7, Chapter 2, Part 46 (section 7-2-4601, et seq.), the petitioners shall, concurrently with the petition for annexation, make an application for change of zoning that the petitioner may desire. All fees shall be paid by petitioner upon filing the application for zoning. Upon filing the application, the zoning coordinator shall follow the procedure set forth in above Section 2. If no application is filed or the application is denied the land shall retain the same zone classification it had in the county provided, that if the county classification is not identical, the city classification established will be the closest equivalent zone. The provisions of this subsection shall not be construed to preclude the city from fixing the zone classification as provided in subparagraph (a). hereinabove.

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SEC. 27-1505. CITY BOARD OF ADJUSTMENT.

(a) *Created.* There is hereby created for the City of Billings, a board of adjustment as provided by statute, consisting of seven (7) members appointed by the mayor, with the consent of the city council. The terms of each member shall run concurrent to that of the mayor's. Vacancies shall be filled for the unexpired terms of any members whose terms are interrupted for any reason.

(b) *Proceedings.* The city board of adjustment shall schedule regular meetings, along with special meetings which may also be called by the chairperson. The chairperson may cancel the regularly scheduled meeting if no matters are pending for the board's consideration. The chairperson, or in his/her absence, the acting chairperson may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

The board shall keep minutes of its proceedings, showing the vote of each member, or if absent or failure to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and shall be filed in the office of the Yellowstone County board of planning. Whenever the city board of adjustment grants an application for a variance, the minutes shall specifically state the hardship upon which the variance is granted. The official minutes of the board's proceedings shall be signed by the chairperson or acting chairperson. The decision of the board shall become effective immediately, unless otherwise directed by the board. The zoning coordinator in coordination with each board shall designate a secretary of the board and shall be custodian of all records of the meetings, findings, conclusions and orders of the board.

(c) *Hearings, appeals, notices.* Appeals to the city board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decisions of the administrative office made under the terms of this chapter. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the city board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

The city board of adjustment shall fix a reasonable time for the hearing of appeal, not to exceed thirty (30) days, give public notice thereof, as well as due notice to the parties in interest, and render a decision within a reasonable time, not to exceed ten (10) days thereafter. At the hearing, any party may appear in person or by agent or attorney.

(d) *Appeals; stay of proceedings.* An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the city board of adjustment, after the notice of appeal shall have been filed with him/her, that by reason of facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed other than by a restraining order which may be granted by the city board of adjustment or by a court of record upon application to same and notice to the officer from whom the appeal is taken and on due cause shown.

(e) *Powers and duties.* The city board of adjustment shall have the following powers:

- (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the

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enforcement or interpretation of this chapter or of any resolution/ordinance adopted pursuant thereto; and

- (2) To authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done.
- (f) *Decisions, appeals, rehearing.* In exercising the above mentioned powers, the city board of adjustment may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the office from whom the appeal is taken.

The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under such resolution/ordinance, or to effect any variation in the application of this chapter.

Any person aggrieved by any decision of the city board of adjustment, or any affected taxpayer, or any officer, department, board, or bureau of the city may appeal the decision by presenting a petition to a court of record. The petition must set forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) calendar days after the filing of the decision of the board.

If the city board of adjustment fails to act on a matter that is before it or scheduled to be before it for any reason other than on motion duly continuing the matter, the applicant may deem the matter be denied and may immediately proceed by appeal as provided in this subsection (f).

If an application for an administrative review or variance is denied by the city board of adjustment, another application shall not be filed within a period one (1) year from the date of denial.

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SEC. 27-1506. CITY VARIANCES.

(a) *Authority.* The city board of adjustment shall have the authority to grant a variance from the terms of this chapter in specific cases where it is found that the granting of the variance will not be contrary to the public interest and where, because of special conditions with respect to the lot shape or topography, a literal enforcement of the provisions of the chapter would result in unnecessary hardship.

(b) *Applications.* An application for a variance shall be filed with the zoning coordinator under the following conditions:

- (1) The application shall include, but not be limited to the following:
 - a. A legal and general description of the tract(s) upon which a variance is sought;
 - b. The names and addresses of the owner(s) of the land subject to the variance, and his/her agent, if any, along with the recorded property owner's signature;
 - c. A certified list of the names, addresses and legal descriptions of the owners of property within a radius of three hundred (300) or more feet of the exterior boundaries of the tract(s); and
 - d. Gummed mailing labels with the names and mailing addresses typed or printed neatly of all of the property owners indicated on the certified list.
- (2) The applicant shall present a map showing the location of the property for which the application is submitted, and its relation to adjoining property;
- (3) The applicant shall present a dimensioned site plan of the property for which the application is submitted which shall include, but not necessarily be limited to, the following:
 - a. The location and dimension of all vehicular points of ingress and egress, drives, off-street parking spaces, channelizations and traffic circulations;
 - b. The location and size of all existing and proposed buildings, structures and improvements; and
 - c. The existing buildings, structures and improvements shall be labeled as such and indicated by a solid line. The proposed buildings, structures and improvements shall be labeled as such and indicated by a dashed or dotted line.
- (4) The application shall state reasons why the variance is being sought and shall specify the facts of hardship upon which the request for a variance is based;
- (5) The application must be submitted at least twenty (20) days prior to the date of the public hearing;
- (6) The application must be accompanied by payment of all applicable fees; and
- (7) An application for a variance may not be withdrawn or amended by the applicant after the legal advertising as required by this chapter shall have first appeared.

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However, the city board of adjustment may, by majority vote of members present, allow the application to be withdrawn without prejudice with respect to the twelve (12) month limitation of this chapter.

(c) *Planning department action.* The zoning coordinator, upon receiving an application for a variance shall do the following:

- (1) Consult with other departments of the city and/or county to fully evaluate the impact of the variance contemplated under the application upon public facilities and services;
- (2) Study each application with reference to its appropriateness and effect on existing and proposed land uses; and its relationship to the comprehensive plan;
- (3) Place notice of the time, date and place of the public hearing in a newspaper of general circulation fifteen (15) days in advance of the date set for the public hearing;
- (4) Notify, by mail, the owner of the property and/or his/her agent, of the time, date and place of the public hearing five (5) days in advance of that date;
- (5) Notify the property owners, by mail, within three hundred (300) feet of the exterior boundaries of the subject property of the time, date, place and proposed variance. The zoning coordinator may notify property owners within a radius of more than three hundred (300) feet if he/she determines that the proposed variance would likely have a substantial impact on the surrounding land uses;
- (6) Place a notice of the time, date and place of the public hearing on the property fifteen (15) days prior to the hearing date; and
- (7) Report his/her findings, in writing, to the city board of adjustment which report shall be a matter of public record.

(d) *City board of adjustment action.* The city board of adjustment, before it grants a variance shall determine:

- (1) That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district;
- (2) That a literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district;
- (3) That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other land in the same district;
- (4) That the granting of the variance will be in harmony with the general purpose and intent of this chapter and with the comprehensive plan;
- (5) In granting any variance, the board may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this chapter;

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- (6) The board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and
- (7) Under no circumstances shall the board grant a variance to allow a use not permissible under the terms of this chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.

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SEC. 27-1507. COUNTY ZONING COMMISSION CREATED.

There is hereby created a Yellowstone County zoning commission to consist of five (5) members residing on property, any part of which lies within the Unincorporated Jurisdictional Area of this chapter but outside the limits of the City of Billings. The members are to be appointed by the board of county commissioners for a term of two (2) years and the terms of the members shall be staggered so that a minimum number of terms shall expire in any one (1) year. At the first regular meeting of the county zoning commission, the commission shall select a chairman and adopt written procedures for the conduct of its responsibilities as established in this section.

The members of said county zoning commission are required to attend all county zoning commission meetings advertised publicly, except in the case of an excused absence. The presence of three (3) members shall constitute a quorum.

The duties and powers of the county zoning commission shall be to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein, and to hold public meetings and make recommendations to the board of county commissioners on all requests to amend, supplement, change, modify or repeal the regulations, restrictions and boundaries in the zoning districts. The board of county commissioners shall not take any action until it has received a final report from such commission.

SEC. 27-1508. AMENDMENTS TO CHAPTER.

(a) *General.* The regulations, restrictions and boundaries set forth in this chapter may, from time to time, be amended, supplemented, changed or repealed by the board of county commissioners provided, however, that no action on any application for amendment, change or repeal may be taken until the application has first been processed and advertised in accordance with the provisions of this chapter.

(b) *Application for map amendments.* Unless initiated by the board of planning or board of county commissioners, all applications for an amendment to the official map, or to the text of this chapter must be submitted in person by the property owner, the contract purchaser or the authorized agent of the property owner. Proposals to amend this chapter, except for the official zoning map, may also be initiated by the county zoning commission. An application for an amendment affecting the same property shall not be submitted more than once every twelve (12) months.

Each application to amend the official map or text shall be filed with the zoning coordinator, and each application shall be submitted under the following conditions:

- (1) The applicant or his/her authorized agent shall submit the following information to the planning department to begin the zone change process:
 - a. Legal description of the subject parcel(s), along with a map showing the dimensions, acreage and location of the parcel(s);
 - b. The names and addresses of the owner(s) of the subject property and contract purchasers, if any, and their agent(s), if any, along with the recorded property owner's signature;
 - c. A zone change plan which shall consist of the following:

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- i. A written description of the proposed zone change including the area in square footage or acres to be included in the zone change.
 - ii. If there are multiple zone changes proposed, the location and area of each specific new zoning district.
- (2) The planning department shall provide a list of surrounding property owners within a radius of three hundred (300) or more feet, as determined by the zoning coordinator, of the exterior boundaries of the tract(s) to the applicant or his/her agent based on the submitted information.
- (3) The applicant or his/her agent shall conduct a pre-application neighborhood meeting to explain the proposed new zoning and receive comment from the surrounding property owners. The applicant or his/her agent shall notify in writing the persons on the surrounding property owner list as provided in subsection (2) and the planning department of the date, time and location of the pre-application neighborhood meeting. The written notification shall be mailed at least seven (7) calendar days prior to the scheduled meeting. The written notification shall include all the materials noted in subsection 27-1508 (b) 1. The pre-application neighborhood meeting shall be conducted at least seven (7) calendar days prior to the submittal of the proposed zone change to the planning department. The applicant shall obtain a roster of the names of the persons that attend the pre-application neighborhood meeting and make a record of the minutes of the meeting.
- (4) Once the pre-application neighborhood meeting has been conducted the applicant or his/her agent may submit a zone change application and it shall include, but not be limited to, the following information:
 - a. A legal description of the tract(s) proposed to be rezoned;
 - b. A map showing the dimensions, acreage, and location of the tract(s) and adjacent land uses;
 - c. The present and proposed classification for the tract(s);
 - d. A certified list of the names, addresses and legal descriptions of the owners of property within a radius of three hundred (300) or more feet, as determined by the zoning coordinator, of the exterior boundaries of the tract(s);
 - e. Gummed mailing labels with the names and mailing addresses typed or printed neatly of all of the property owners indicated on the certified list;
 - f. The names and addresses of the owner(s) of the land and their agents, if any, along with the recorded property owner's signature; and
 - g. Payment of all applicable fees.
 - h. A signed statement affirming the pre-application neighborhood meeting was conducted in conformance with the requirements of Section 27-1508 (b) 3, and the zone change application is based on material presented at the meeting. The signed statement shall include a copy of the meeting notice, any written materials provided to the surrounding property

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owners, a brief synopsis of the meeting results, a roster of the persons attending the meeting and audio or written minutes of the meeting.

- (5) Any application for an amendment to the official map must be submitted together with all applicable fees, to the zoning coordinator twenty (20) days prior to the date of the public hearing before the Yellowstone County zoning commission.
 - (6) An application may be withdrawn at any time prior to the publication of the legal advertisement for the public hearing before the county zoning commission without respect to the twelve (12) month waiting period. After legal notice for the county zoning commission public hearing has been published, the request for withdrawal shall be submitted to the planning department office at least twenty-four (24) hours prior to the public hearing. The county zoning commission may allow withdrawal of the application, after advertisement of the zoning commission public hearing has been published, by a majority vote of the members present, without prejudice with respect to the twelve (12) month waiting period after the application has first been submitted. However, no application shall be allowed to be withdrawn more than once within the twelve (12) month period after the application shall have first been submitted.
 - (7) An applicant requesting a zone change may request a thirty (30) day delay on the hearing of his/her application before the county zoning commission. The request for the delay and reasons must be submitted in writing to the planning office or chairman of the county zoning commission twenty-four (24) hours in advance of the public hearing. Approval of a delay shall require a majority vote of the members present, without requiring county commission approval of the delay. Only one such delay shall be allowed on any application.
- (c) *Planning department action.* The zoning coordinator, upon receiving an application for rezoning an area or a particular piece of property, shall do the following:
- (1) Consult with other departments of the city and/or county to fully evaluate the impact of any zoning change upon public facilities and services including, but not limited to schools, drainage, traffic and related facilities;
 - (2) Study each application with reference to its appropriateness and effect on existing and proposed land uses, and its correspondence with the growth policy;
 - (3) Publish notice of the application in a newspaper of general circulation at least fifteen (15) days in advance of the date of the county zoning commission public hearing. The notice shall contain: the classification sought, the location of the property, the date, time and place of the county zoning commission public hearing and that the proposed zone change information is on file for public inspection at the office of county clerk and recorder;
 - (4) Notify, by mail, the applicant and/or his/her authorized agent at least five (5) days prior to the date of the county zoning commission public hearing of the date, time and place of such hearing;
 - (5) Notify, by mail, all property owners within three hundred (300) feet of the exterior boundaries of the property subject to the rezoning of the date, time and

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place of the county zoning commission public hearing and the existing and proposed classification at least fifteen (15) days in advance of that date. The zoning coordinator may notify property owners within a radius of more than three hundred (300) feet if he/she determines that the proposed rezoning of the property would likely have a substantial impact on the surrounding land uses;

- (6) Place notice of the county zoning commission public hearing and Board of County Commissioners public hearing on the property subject to rezoning and in four (4) other public places at least forty-five (45) days in advance of the date of the Board of County Commissioners public hearing; and
- (7) Report his/her findings and conclusions in writing to the county zoning commission, which report shall be a matter of public record.

(d) *County zoning commission action.* The county zoning commission shall review and take action upon each application in accordance with the provisions of this chapter, and after a public hearing for which the application has been legally advertised. Each application shall be presented to the county zoning commission by the zoning coordinator or his/her designee, together with his/her findings and conclusions on the matter. The county zoning commission may, by a majority vote of the members present, delay action for a period not to exceed thirty (30) days, without prejudice to the applicant. A report of the commission's recommendation and the zoning coordinator's findings and conclusions shall be submitted to the board of county commissioners.

The county zoning commission shall make a recommendation to the board of county commissioners to:

- (1) Approve the application; or
- (2) Deny the application.

The county zoning commission shall submit its recommendations in writing along with a statement indicating its reasons for the recommendation, or allow withdrawal of the amendment within fifteen (15) days following the public hearing. In no case shall the county zoning commission make a recommendation that an amendment be granted for an amendment that was not legally advertised.

In making its recommendation to the board of county commissioners for an amendment to the official map or text of this chapter, the county zoning commission shall consider, among other things, the following:

- (1) Whether the new zoning is designed in accordance with the growth policy;
- (2) Whether the new zoning is designed to secure from fire and other dangers;
- (3) Whether the new zoning will promote public health, public safety and general welfare;
- (4) Whether the new zoning will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
- (5) Whether the new zoning will provide adequate light and air;
- (6) Whether the new zoning will effect motorized and non-motorized transportation;

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- (7) Whether the new zoning will be compatible with urban growth in the vicinity of cities or towns;
- (8) Whether the new zoning considers the character of the district and the peculiar suitability of the property for particular uses;
- (9) Whether the new zoning will conserve the value of buildings; and
- (10) Whether the new zoning will encourage the most appropriate use of land throughout Yellowstone County; and
- (11) Whether the new zoning will, as nearly as possible, be compatible with the zoning of nearby cities and towns.

(e) *Board of county commissioners action.* Notice of the board of county commissioners public hearing shall be published once a week for two weeks in a newspaper of general circulation. The notice shall contain the time, date and place of the board of county commissioners public hearing, the boundaries of the proposed district, the general character of the proposed zoning district or regulations and that the proposed zoning regulations or district boundary change are on file for public inspection at the office of the county clerk and recorder. Before taking any action on an application for an amendment to the official map, or amendment to the text of this chapter the board of county commissioners shall first consider the findings and recommendations of the county zoning commission. In no case shall the board approve an amendment for a classification other than the one advertised. The board shall:

- (1) Approve the application;
- (2) Deny the application;
- (3) Allow withdrawal of the application; or
- (4) Delay action on the application for a period not to exceed thirty (30) days.

SEC. 27-1509. SPECIAL REVIEW BY COUNTY ZONING COMMISSION.

(a) *General.* Although each zoning district is primarily intended for a predominant type of use, there are a number of uses which may or may not be appropriate in a particular district depending upon all the circumstances of the individual case. For example, the location, nature of the proposed use, the character of the surrounding development, traffic capacities of adjacent streets and potential environmental effects, all may indicate that the circumstances of the development should be individually reviewed. It is the intent of this chapter to provide a system of review of such uses so that the community is assured that the uses are compatible with their locations and with surrounding land uses, and will further the purpose of this chapter and the objectives of the comprehensive plan.

(b) *Application procedure.* An application for a special review may be submitted by the property owner, contract purchaser or his/her authorized agent. Such application shall be filed with the zoning coordinator and shall be submitted under the following conditions:

- (1) The application shall include, but not be limited to, the following information:
 - a. A legal and general description of the tract(s) upon which the special review use is sought;

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- b. A map showing the dimensions, acreage and location of the tract(s);
 - c. The names and addresses of the owner(s) of the tract(s) and his/her authorized agent, if any, along with the recorded property owner's signature;
 - d. A certified list of the names and addresses of the owners of property within a radius of three hundred (300) or more feet, as determined by the zoning coordinator, of the exterior boundaries of the tract(s);
 - e. Gummed mailing labels with the names and mailing addresses typed or printed neatly of all of the property owners indicated on the certified list;
 - f. A site plan showing major details of the proposed development including but not limited to: the location of proposed and existing buildings and structures; off-street parking and loading; service and refuse areas; means of ingress and egress; landscaping, screening, signs and open space areas;
 - g. The application must be accompanied by the payment of all applicable fees; and
 - h. Any other information the applicant believes will support his/her request or other information as requested by the zoning coordinator or planning department.
- (2) An application may be withdrawn or amended at any time prior to the publication of the legal advertisement for the public hearing before the county zoning commission. After legal notice for the county zoning commission public hearing has been published, the request for withdrawal shall be submitted to the planning department office at least twenty-four (24) hours prior to the public hearing. The county zoning commission may allow withdrawal of the application, after advertisement of the zoning commission public hearing has been published, by a majority vote of the members present, without prejudice with respect to the twelve (12) month waiting period after the application has first been submitted. However, no application shall be allowed to be withdrawn more than once within the twelve (12) month period after the application shall have first been submitted.
- (3) An applicant may request a delay for a period not to exceed thirty (30) days on the hearing of his/her application before the county zoning commission. The request for the delay and reasons must be submitted in writing to the planning office or chairperson of the county zoning commission twenty-four (24) hours in advance of the public hearing. Approval of a delay shall require a majority vote of the members present, without requiring county commission approval of the delay. Only one (1) such delay shall be allowed on any application.
- (4) The application must be submitted, together with all applicable fees, to the zoning coordinator twenty (20) days prior to the date of the public hearing.
- (c) *Planning department action.* The zoning coordinator, upon receiving an application for a special review use, shall do the following:

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- (1) Consult with other departments of the city and/or county to fully evaluate the impact of the use contemplated under the special review application upon public facilities and services;
- (2) Study each application with reference to its appropriateness and effect on existing and proposed land uses, and its correspondence with the comprehensive plan;
- (3) Advertise notice of the application in a newspaper of general circulation fifteen (15) days in advance of the date of the county zoning commission public hearing. The notice shall contain the time, date and place of the county zoning commission public hearing;
- (4) Notify, by mail, the applicant and/or his/her authorized agent, of the time, date and place of the public hearing five (5) days in advance of that date;
- (5) Notify the property owners, by mail, within three hundred (300) feet of the exterior boundaries of the tract(s) subject to the special review of the time, date, place and proposed use at least fifteen (15) days prior to the public hearing date. The zoning coordinator may notify property owners within a distance greater than three hundred (300) feet if he/she determines that the proposed use would be such as to have a substantial environmental impact on the surrounding land uses;
- (6) Place notice of the public hearing on the property subject to the special review fifteen (15) days in advance of the public hearing; and
- (7) Report his/her conclusions and findings, in writing, to the county zoning commission, which report shall become a matter of public record.

(d) *County zoning commission action.* The county zoning commission shall consider each application in accordance with the provisions of this chapter, and at a public hearing at which time the application has been legally advertised. Each application shall be presented to the county zoning commission, by the zoning coordinator or his/her designee, together with his/her conclusions and findings on the matter. The county zoning commission may, by a majority vote of the members present, delay action for a period not to exceed thirty (30) days, without prejudice to the applicant. A written report of the commission's decision and recommendation and the zoning coordinator's report shall be submitted to the board of county commissioners.

The county zoning commission shall make a recommendation to the board of county commissioners to:

- (1) Approve the application;
- (2) Conditionally approve the application; or
- (3) Deny the application.

Recommendations from the county zoning commission shall be based on findings of fact and shall be transmitted to the applicant, or his/her agent and the board of county commissioners within fifteen (15) days of the date of the public hearing before the commission.

Before approving a special review use, the county zoning commission shall find that the contemplated use:

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- (1) Complies with all requirements of this chapter;
- (2) Is consistent with the objectives and purposes of this chapter and the comprehensive plan; and
- (3) Is compatible with surrounding land use or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

Further, the county zoning commission shall consider and may impose modifications or conditions concerning, but not limited to the following:

- (1) Street and road capacity;
- (2) Ingress and egress to adjoining streets;
- (3) Off-street parking;
- (4) Fencing, screening and landscaping;
- (5) Building bulk and location;
- (6) Usable open space;
- (7) Signs and lighting; and/or
- (8) Noise, vibration, air pollution and similar environmental influences.

(e) *Board of county commissioners action.* Notice of the board of county commissioners public hearing shall be placed in a newspaper of general circulation. The notice shall contain the time, date and place of the board of county commissioners public hearing. Before taking any action on an application for a special review use, the board of county commissioners shall first consider the findings and recommendations of the county zoning commission. In no case shall the board approve a special review use other than the one advertised. The board shall:

- (1) Approve the application;
- (2) Conditionally approve the application;
- (3) Deny the application;
- (4) Allow withdrawal of the application; or
- (5) Delay the application for a period not to exceed thirty (30) days.

SEC. 27-1510. COUNTY BOARD OF ADJUSTMENT.

(a) *Created.* There is hereby created a Yellowstone County board of adjustment consisting of five (5) members residing on property, any part of which lies within the unincorporated jurisdictional area of this chapter, but outside the limits of the City of Billings. The members are to be appointed by the board of county commissioners for a term of two (2) years and the terms of the members shall be staggered so that a minimum number of terms shall expire in any one (1) year.

(b) *Proceedings.* Meetings of the county board of adjustment shall be scheduled at a regular time each month and special meetings may also be called by the chairperson. The

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chairperson may cancel the regular monthly meeting if no matters are pending for the board's consideration. The chairperson, or in his/her absence, the acting chairperson may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. In exercising its powers and duties under this chapter, not less than three (3) members of the board shall constitute a quorum.

The board of adjustment shall keep minutes of its proceedings, showing the vote of each member, or if absent or failure to vote, indicating such fact. The board shall keep records of its examinations and other official actions, all of which shall be public record and shall be filed in the office of the Yellowstone County board of planning, with copies forwarded to the board of county commissioners and zoning coordinator within thirty (30) days. The official minutes of the board's proceedings shall be signed by the chairperson or acting chairperson. The decision of the board shall become effective immediately, unless otherwise directed by the board. The board shall adopt bylaws for the conduct of its affairs and responsibilities under this chapter.

(c) *Hearing, appeals, notices.* Appeals to the county board of adjustment may be taken by any person aggrieved or by any office, department or bureau of the county affected by any decisions of the administrative officer. Such appeal shall be taken within a reasonable time, not to exceed thirty (30) days, by filing a notice of appeal specifying the grounds thereof with the officer from whom the appeal is taken and with the county board of adjustment. The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

The county board of adjustment shall fix a reasonable time for the hearing of appeal, not to exceed thirty (30) days, give public notice thereof, as well as due notice to the parties in interest, and render a decision within a reasonable time not to exceed ten (10) days thereafter. At the hearing any party may appear in person, by agent or attorney.

(d) *Appeals, stay of proceedings.* An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the county board of adjustment, after the notice of appeal shall have been filed with him/her, that by reason of facts stated in the certificate, a stay would in his/her opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed other than by a restraining order which may be granted by the county board of adjustment or by a court of record upon application to same and notice to the officer from whom the appeal is taken and on due cause shown.

(e) *Powers and duties.* The county board of adjustment shall have the following powers:

- (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or interpretation of this chapter or of any resolution/ordinance adopted pursuant thereto;
- (2) To authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done.

(f) *Decision and appeals.* In exercising the above mentioned powers, the county board of adjustment may, in conformity with the provisions of this chapter, reverse or affirm,

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wholly or partly, or modify the order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the office from whom the appeal is taken. The concurring vote of three (3) members of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under such resolution/ordinance, or to effect any variation in the application of this chapter.

Any person aggrieved by any decision of the county board of adjustment, or any affected taxpayer, or any officer, department, board or bureau of the county may appeal the board's decision, subject to the following procedure:

- (1) Present to a court of record a petition setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the decision of the board;
- (2) That all action permitted by a grant of variance pursuant to the authority granted herein shall be stayed pending a petition to a court of record. The stay shall continue until the court has made a final determination;
- (3) If the county board of adjustment fails to act on a matter that is before it or scheduled to be before it for any reason other than on motion duly continuing the matter, the applicant may deem the matter denied and may immediately proceed by appeal as provided in this BMCC section 27-1510(F).

If an application for an administrative review or variance is denied by the county board of adjustment, another application shall not be filed within a period of one (1) year from the date of denial.

SEC. 27-1511. COUNTY VARIANCES.

(a) *Authority.* The county board of adjustment shall have the authority to grant a variance from the terms of the chapter in specific cases where it is found that the granting of the variance will not be contrary to the public interest and where, because of special conditions with respect to the lot shape or topography, a literal enforcement of the provisions of the chapter would result in unnecessary hardship.

(b) *Application procedure.* An application for a variance shall be filed with zoning coordinator under the following conditions:

- (1) The application shall include, but not be limited to, the following:
 - a. A legal and general description of the tract(s) upon which the variance is sought;
 - b. The names and addresses of the owner(s) of the land subject to the variance, and his/her agent, if any, along with the recorded property owner's signature;

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- c. A certified list of the names, addresses and legal descriptions of the owners of property within a radius of three hundred (300) or more feet, as determined by the zoning coordinator, of the exterior boundaries of the tract(s); and
 - d. Gummed mailing labels with the names and mailing addresses typed or printed neatly of all of the property owners indicated on the certified list.
- (2) The applicant shall present a map showing the location of the property for which the application is submitted, and its relationship to adjoining property;
 - (3) The applicant shall present a dimensioned site plan of the property for which the application is submitted which shall include, but not be limited to, the following:
 - a. The location and dimension of all vehicular points of ingress and egress, drives, off-street parking spaces, channelizations and traffic circulation;
 - b. The location and size of all existing and proposed buildings, structures and improvements; and
 - c. The existing buildings, structures and improvements shall be labeled as such and indicated by a solid line. The proposed buildings, structures and improvements shall be labeled as such and indicated by a dashed or dotted line.
 - (4) The application shall state reasons why the variance is being sought and shall specify the facts of hardship upon which the request for a variance is based;
 - (5) The application must be submitted at least twenty (20) days prior to the date of public hearing;
 - (6) The application must be accompanied by the payment of all applicable fees; and
 - (7) An application for a variance may not be withdrawn or amended by the applicant after the legal advertising as required by this Section shall have first appeared. However, the county board of adjustment may, by a two-thirds vote of all members, allow the application to be withdrawn without prejudice with respect to the twelve (12) month limitation of this chapter.
- (c) *Planning department action.* The zoning coordinator, upon receiving an application for a variance, shall do the following:
- (1) Consult with other departments of the city and/or county to fully evaluate the impact of the variance contemplated under the application upon public facilities and services;
 - (2) Study each application with reference to its appropriateness and effect on existing and proposed land uses, and its correspondence with the comprehensive plan;
 - (3) Place notice of the time, date and place for the public hearing in a newspaper of general circulation fifteen (15) days in advance of the date set for the public hearing;
 - (4) Notify, by mail, the owner(s) of the property and/or his/her agent, of the time, date and place of the public hearing five (5) days in advance of that date;

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- (5) Notify the property owners, by mail, within three hundred (300) feet of the exterior boundaries of the property subject to the variance of the time, date, and place of the public hearing and the proposed variance request at least fifteen (15) days prior to the public hearing. The zoning coordinator may notify property owners within a radius of more than three hundred (300) feet, if he/she determines that the proposed variance would likely have a substantial impact on the surrounding land uses;
 - (6) Place a notice of the time, date and place of the public hearing on the property fifteen (15) days prior to the hearing date; and
 - (7) Report his/her findings, in writing, to the county board of adjustment, which report shall be a matter of public record.
- (d) *County board of adjustment action.* The county board of adjustment, before it grants a variance shall determine:
- (1) That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district;
 - (2) That a literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district;
 - (3) That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other land in the same district;
 - (4) That the granting of the variance will be in harmony with the general purpose and intent of this chapter and with the comprehensive plan;
 - (5) In granting any variance, the board may prescribe appropriate conditions and safeguards in conformity with this Resolution/Ordinance. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this Resolution/Ordinance;
 - (6) The board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and
 - (7) Under no circumstances shall the board grant a variance to allow a use not permissible under the terms of this Resolution/Ordinance in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the same district.