

CHAPTER 8

APPEAL AND VARIANCE

- 9-8-1: GENERAL STATEMENT
- 9-8-2: ADMINISTRATIVE APPEALS
- 9-8-3: STAY OF PROCEEDINGS
- 9-8-4: ADMINISTRATIVE APPEAL PROCEDURE
- 9-8-5: VARIANCES
- 9-8-6: APPLICATION AND STANDARDS FOR VARIANCES
- 9-8-7: VARIANCE PROCEDURE
- 9-8-8: SUPPLEMENTARY CONDITIONS AND SAFEGUARDS
- 9-8-9: NOTIFICATION TO APPLICANT

9-8-1: GENERAL STATEMENT

The planning and zoning commission shall consider administrative appeals from any decision or determination of the administrator. Appeals of any action of the planning and zoning commission shall be made to the city council. The planning and zoning commission shall also consider variances from the terms of this Title and requests for hearings from affected persons.

9-8-2: ADMINISTRATIVE APPEALS

Appeals to the planning and zoning commission concerning interpretation or administration of this Title may be made 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 made within twenty (20) days after the decision of the administrator by filing with the administrator and with the planning and zoning commission a notice of appeal specifying the grounds upon which the appeal is being made. The administrator shall transmit to the planning and zoning commission all the papers constituting the record upon which the appeal is based.

9-8-3: STAY OF PROCEEDINGS

An administrative appeal shall stay all proceedings in furtherance of the action taken by the administrator, unless the administrator certifies to the planning and zoning commission that a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by a court of competent jurisdiction, based upon an application showing due cause.

9-8-4: ADMINISTRATIVE APPEAL PROCEDURE

- A. Publication of Public Hearing: Upon receipt of an administrative appeal, the planning and zoning commission shall allow all affected persons an opportunity to be heard. Publication of a public hearing shall follow 67-6509 Idaho Code.
- B. Decision: No later than the next regular meeting after consideration of an appeal, the planning and zoning commission shall approve, conditionally approve

or disapprove the appeal. Upon recommending approval or denial of an appeal, the planning and zoning commission shall specify:

1. The ordinance section or standards used in evaluating the application; and
 2. The reasons for approval or denial.
- C. Appeal: The applicant or any affected person may appeal the decision of the planning and zoning commission to the city council within ten (10) days following the planning and zoning commission's action.
1. Upon receipt of an appeal from an action of the planning and zoning commission relating to an administrative appeal, the city council may hold a public hearing following the same publication procedures as set forth in 67-6509 Idaho Code.
 2. The city council shall only overrule the planning and zoning commission by majority vote.
 3. Action by the city council shall be taken within ninety (90) days following submission of an appeal application.

9-8-5: VARIANCES

The planning and zoning commission may recommend in specific cases such "variance", defined in Section 9-2-1 of this Title, from the terms of this Title as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Title would result in unnecessary hardship.

- A. Modification Of Title: A variance is a modification of the requirements of this Title as to the bulk and placement requirements of this Title as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setback, parking space, height of buildings or other Title provision affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots.
- B. Nonconforming Uses: Existing nonconforming use of neighboring lands, structures or buildings in the same district and existing permitted or nonconforming use of lands, structures or buildings in other districts shall not be 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 Title would result in unnecessary hardship.
- C. Considerations: In acting upon a variance, the planning and zoning commission shall consider the following:
 1. That the granting of the variance will not be in conflict with the intent of the Comprehensive Plan and will not affect a change in zoning;
 2. Is not a special privilege for the applicant;
 3. That there is exceptional or extraordinary circumstances or conditions applicable to the property involved; and
 4. The granting of such relief will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements of other property owners, or the quiet enjoyment of such property or improvement.

9-8-6: APPLICATION AND STANDARDS FOR VARIANCES

- A. Application; Required Information: A variance from the terms of this Title shall not be heard by the planning and zoning commission unless and until a written application for a variance is submitted with the required fees to the administrator.
 - 1. Applicant Information: Name, address and phone number of applicant;
 - 2. Property Description: Legal description of property;
 - 3. Description: Description of variance requested; and
 - 4. Statement of Conformance: A statement demonstrating that the requested variance conforms to the following standards:
 - a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;
 - b. That a literal interpretation of the provisions of this Title would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Title; and
 - c. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Title to other lands, structures or buildings in the same district.
- B. Findings Of Fact: A variance shall not be recommended for approval or conditional approval to the city council unless the planning and zoning commission makes specific findings of fact based directly on the particular evidence presented, which supports conclusions that the applicant has met the above standards and conditions.

9-8-7: VARIANCE PROCEDURE

- A. Hearing; Notice: Upon receipt of a variance application, the planning and zoning commission shall allow all affected persons an opportunity to be heard. Publication of a public hearing shall follow 67-6509 Idaho Code. The administrator shall notify property owners within three hundred (300) feet adjoining the parcel under consideration.
- B. Decision: No later than the next regular meeting after consideration of a variance request, the planning and zoning commission shall recommend approval, conditionally approval or denial of the requested variance. Upon approval, conditional approval or denial of a variance, the planning and zoning commission shall specify:
 - 1. The ordinance section or standard used in evaluating the variance request; and
 - 2. The reasons for approval or denial.
- C. Recommendation To City Council: No later than two (2) regular meetings from a planning and zoning public hearing, a recommendation shall be submitted to city council.
 - 1. The city council may hold a public hearing following the same publication procedures as set forth in 67-6509 Idaho Code.

2. The city council may approve, conditionally approve or deny a variance request. The city council shall specify:
 - a. The ordinance section or standard used in evaluating the variance request; and
 - b. The reasons for approval, conditional approval or denial.
3. The city council may reject the planning and zoning commission recommendation by majority vote.
4. Action by the city council shall be taken within ninety (90) days following recommendation from the planning and zoning commission. (Ord. 2010-4)

9-8-8: SUPPLEMENTARY CONDITIONS AND SAFEGUARDS

Under no circumstances shall the planning and zoning commission recommend an administrative appeal or allow a variance, expressly or by implication, prohibited by the terms of this Title. In granting any appeal or variance, the planning and zoning commission may recommend appropriate conditions and safeguards in conformity with this Title. Violation of such conditions and safeguards, when made part of the terms under which the appeal or variance is granted, shall be deemed a violation of this Title.

9-8-9: NOTIFICATION TO APPLICANT

Within ten (10) days after a decision has been rendered, the administrator shall provide the applicant with written notice of the action on the administrative appeal or request for a variance. (Ord. 38, 11-5-1984; Ord. 2008-4)