

appoint five members to the Board [under 76-2-322, MCA., the Board may comprise 5 to 7 members], each for a term of three years except that in the initial appointment, one member shall be appointed for a term of one year, two members for a term of two years, and two members for a term of three years. Members of the Board may be removed from office by the town council for cause upon written charges and after public hearing. Vacancies on the Board shall be filled by resolution of the Town council for the unexpired term of the member affected.

#### B. Powers of the Board of Adjustment

The Board shall have the following powers:

1. To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this ordinance.
2. To grant, upon application, variances from the requirements of this Ordinance specified below as will not be contrary to the public interest, where owing to special physical configurations of a property a literal enforcement of the provisions of this ordinance will result in unnecessary hardship, and that the spirit of the ordinance shall be observed. "Hardship" refers to circumstances peculiar to the particular property. Financial or economic difficulties, or actions by the property owner are not "hardships" for zoning purposes. More specifically, the Board may, approve, conditionally approve, or deny any request to modify the following requirements of this ordinance:
  - (a) setback requirements
  - (b) yard requirements
  - (c) area requirements
  - (d) height and width requirements
  - (e) parking requirements
  - (f) loading requirements

#### C. Proceedings of the Board of Adjustment

1. The Board shall select one of its members as chairman and shall adopt rules necessary to conduct its affairs in keeping with the provisions of this ordinance. Meetings shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. Meetings shall be open to the public.
2. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing 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 be immediately filed in the office of the Board.

#### D. Procedures for Variance Requests

1. Applications for a variance may be submitted to the Board of Adjustment by any person as provided by the rules of the Board, by filing with the Zoning Administrator an Application for Variance.
2. The Application for Variance must specifically set forth the grounds for the variance, as indicated on the Application form.
3. The Board shall fix a reasonable time for the hearing on the variance request, publish notice of the hearing at least 7 days prior to holding a public hearing, and shall notify the person requesting the variance by mail.
4. At the hearing any party may appear in person or be represented by agent or attorney.

E. Requirements Governing Granting of Variances

1. To grant a variance the Board must make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, will not be injurious to the neighborhood, is the minimum variance that will make possible the reasonable use of the land, building or structure, and will not be detrimental to the public welfare.
2. In addition the Board must determine:
  - 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 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;
  - c. That the special conditions and circumstances do not result from the action of the applicant;
  - d. That granting the requested variance 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.
3. Under no circumstances may the Board of Adjustment grant a variance, nor the Town council grant an appeal, that would 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 the district.
4. Neither the non-conforming use of neighboring lands, structures or buildings in the same district, nor the permitted or non-conforming use of lands, structures or buildings in other districts are grounds for the issuance of a variance.

F. Procedures for Hearing and Acting on Appeals from Actions of Zoning Administrator

1. The Board of Adjustment shall hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by any administrative official or body in the enforcement of this Ordinance.
2. Any person or any officer of the municipal government may file a notice of appeal
3. of any decision made by an administrative person or body within 60 days of date