

WHITEFISH BOARD OF ADJUSTMENT
RULES OF PROCEDURE
GENERAL GOVERNING RULES
ADOPTED: April 7, 2015

The Board of Adjustment is established as authorized by §76-2-321 through §76-2-328, MCA. The Board of Adjustment is responsible for conducting public hearings and making decisions in accordance with the procedures of City zoning ordinance and state law. All meetings of the Board shall be open meetings.

MEMBERSHIP

1. The Board of Adjustment shall consist of seven (7) regular members appointed by the City Council residing in the City.
2. Board members serve without compensation.
3. Members of the Board serve terms of three (3) years, and may be reappointed.

OFFICERS AND DUTIES

1. Chair and Vice-Chair

At its first meeting after January 1, the Board shall elect from its members by a majority vote a Chair and Vice-Chair. The Chair, or in his or her absence or incapacity, the Vice-Chair, shall decide all points of order or procedure and may administer oaths and compel the attendance of witnesses. Both Chair and Vice-Chair shall be voting members and may vote on any or all issues or matters before the board.

2. Recording Secretary

The Recording Secretary shall be a person hired by the City or a member of the staff of the City of Whitefish to take the minutes of the meeting.

3. Record of Meetings

The Planning & Building Department shall keep all records, give notice, conduct all correspondence of the Board, and supervise the clerical work of the Board. The Planning & Building Department shall keep a minutebook of the proceedings of each meeting and each hearing, which shall include the vote of each member on each question, if so desired, or if absent or failing to vote, indicating such fact, the names of all witnesses, a summary of the facts to which they testify and the decision rendered by the Board and other official actions of the Board. These records shall be open and available to the public.

MEETINGS

1. Quorum

- a. A quorum of the Board requires the attendance of at least four (4) members present at the meeting or via phone.
- b. Action by the Board requires the concurring vote of at least four (4) members.

2. Time of Meeting

- a. Meetings shall be held as needed on the first Tuesday of each month at 6:00 P.M., or at such other day and/or hour as the Chair may designate or as legally noticed. In case the first Tuesday of the month is in conflict with a holiday, the regular meeting shall be held on such other date as the Chair may designate. Advance notice of at least 48 hours shall be given by the Chair to each member, by phone or in writing, of any change in meeting day or time.
- b. Special meetings may be called by the Chair at any time, provided that at least 48 hours written notice shall be sent to each member by the Recording Secretary before a special meeting is held. The Chair shall call a special meeting within ten (10) days of receipt of a written request from any two members of the Board. Written notice of a special meeting is not required if the time of the special meeting has been fixed in a regular meeting or if all members are present at the special meeting and waive their notification requirement.

3. Place of Meeting

- a. The regular and special meetings of the Board shall be held at the Whitefish City Council Chambers, as legally noticed, in Whitefish, Montana, or in any other place designated by the Chair. The Chair, either prior to or during the meeting, may change the location of the meeting because of such unforeseen reasons as non-availability of the meeting room or overcrowding.
- b. If a Board member is out of town, but wishes to participate in the meeting, that member may participate via phone, when it is convenient to do so.

4. Cancellation of Meetings

Whenever there is no business to be considered at a regular meeting, the Chair may dispense with such meeting by so notifying each member at least 48 hours prior to the time set for such meeting.

5. Order of Business

Suggested order of business is:

- c. Call to Order and Roll Call.
- d. Approval of Minutes.
- e. Communication from the Public.
- f. Old Business
- g. Public Hearings and Action.
- h. New Business.
- i. Good and Welfare.
- j. Adjournment.

6. Voting on Matters Before the Board

All matters shall be decided by roll call vote. The votes of the members shall be recorded in the minutes.

7. Disqualification of Members

No member of the Board shall sit in hearing, participate in discussion or vote on any matter which shall be in violation of the State of Montana Code of Ethics (2-2-1 01 through 2-3-304, M.C.A) or Whitefish Code of Ethics.

8. Continued Absence from Meetings

A member of the board may be removed from the board by majority vote of the city council for cause upon written charges and after a public hearing. Willful disregard of state statutes, city ordinances and the rules of procedures of the board, or absences from three (3) consecutive meetings, including regular and special work sessions, or absences from more than fifty percent (50%) of such meetings held during the calendar year, shall constitute cause for removal. Circumstances of the absences shall be considered by the city council prior to removal. Any person who knows in advance of his inability to attend a specific meeting shall notify the chair or secretary of the board at least twenty four (24) hours prior to any scheduled meeting. (§ 2-3-3C)

PUBLIC HEARINGS

1. Matters Requiring Public Hearing

A public hearing shall be held on appeals in which it is alleged that there is an error in an order, requirement, decision or determination made by the zoning administrator in the enforcement of the zoning regulations and applications for a variance to the terms of the Whitefish zoning jurisdiction regulations, except where such regulations specifically limit the power of the Board.

2. Board Members Site Visit Prior to Public Hearing

a. The Board shall schedule a site visit of the property under review for either an appeal or variance request, if the Board determines it is necessary to do so prior to the public hearing to better understand the request. The Chair shall schedule a date and time convenient for Board members and staff.

b. The purpose of the meeting is to gather facts on the property and the circumstances around the property. Board members will refrain from deliberating on the matter with each other, the applicant and/or neighbors. Staff will be present at this visit to answer questions. Deliberation on the matter may only take place in the public hearing forum.

3. Notice of Hearing

The Whitefish Planning & Building Department shall be responsible for giving notice(s) of the public hearing which may be required by statute, local regulations or ordinances. The public hearing notice, at a minimum, shall include:

- a. Purpose of the hearing;
- b. Description of the property involved (legal and common address);
- c. Location of the property involved;
- d. Date and time when the hearing will be held;
- e. Place where the hearing will be held;
- f. Place where additional information on the variance request or appeal can be obtained; and
- g. How comments can be made on the proposal.

No matter involving public hearing shall be decided until after due notice has been given and a public hearing has been held thereon. The information and file

on the matter involving public hearing shall be available for public review in the Planning & Building Department office during regular office hours.

4. Conduct of Public Hearings

Any person may appear in person, by agent or attorney, at any public hearing. The order of proceedings in the hearing of each case at a public hearing will generally be as follows:

- a. Verification of the public notice for hearing by the Chair.
- b. Report by the staff.
- c. Presentation by the applicant or representative.
- d. Review of written comments submitted prior to meeting.
- e. Witnesses in favor of the proposal or opposed to the proposal.
- f. Rebuttals.

The Chair or any member of the Board may require any witness to swear or affirm that his or her statements of fact are true and may compel the attendance of witnesses.

5. Time Limits of Public Hearings

To ensure the hearing is conducted in an orderly, fair and timely method, the chair, at his or her discretion, may limit the length of time for public comment.

6. Action by the Board

Decisions rendered by the Board on applications for appeal or variances shall be made based upon written findings of fact and conclusions of law establishing the reason for the decision. Staff will prepare a report for the Board to consider as part of their deliberations. The Board, when making a motion to support or reject an application, shall make findings of fact and conclusions of law to support the decision.

Alternatively, the Board can direct staff to assist the Board for particularly complex projects. If the Board directs staff to prepare additional findings of fact and conclusions of law, they will be reviewed and approved by the Board for final action. The Chair shall set a date, time and place to reconvene for final action on the matter.

- a. For an appeal action, the Board shall take one of the following actions:

- i) Uphold the zoning administrator's determination or decision;
 - ii) Overturn the zoning administrator's determination or decision; or
 - iii) Table the decision until a future meeting date.
- b. For a variance request, the Board shall take one of the following actions:
 - i) Approve the variance request;
 - ii) Approve the variance request with conditions;
 - iii) Deny the variance request; or
 - iv) Table the decision until a future meeting date.

7. Board Decisions

A concurring vote of four (4) members of the Board shall be necessary to decide any question or matter before the Board, except a motion for a continuance and motions to elect a chair or vice chair.