

Chapter 17.88
BOARD OF ADJUSTMENT

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17.88.010 Creation and organization.

A. A board of adjustment is created, the purpose of the board being to provide for special exceptions to certain of the provisions of this zoning title in conformance with its general purpose and intent and the purpose and intent of this chapter. The term "board of adjustment" and the word "board" when used in this chapter shall mean the board of adjustment established herein.

B. The mayor shall appoint the members of the board of adjustment from among the members of city council. Each of the five members of the board shall be residents of the city. Until otherwise provided, the members of the board shall serve without compensation, except for reimbursement of actual expenses, and each member shall serve for a four-year appointment so long as the member also remains a member of city council.

C. Vacancies shall be filled for an unexpired term in the same manner as in the case of original appointments. The mayor may appoint members of city council or other residents of Leadville as associate members to the board of adjustment and, in the event that any regular member is temporarily unable to act owing to absence from the city, illness, interest in a case or other cause, that person's place may be taken during such temporary disability by an associate member designated for that purpose.

D. The board of adjustment shall elect from its members a chair, whose term of office shall be one year, and other such officers as the board sees fit to create. The board shall adopt such rules and regulations governing its proceedings as it considers necessary or advisable and the board shall meet as often as necessary to hear and act upon applications and other appropriate matters within its duties and powers.

E. All meetings of the board of adjustment shall be open to the public and 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 it shall keep records

of its examinations and other official actions, all of which shall be promptly filed in the office of the board and shall be a public record. Any person(s) wishing to have a transcript of the proceedings of the board may have a court recorder present at their own expense.

(Ord. 99-8 § 1 (part): prior code § 17.26.010)

17.88.020 Powers and duties of the board.

The board of adjustment shall have the following powers and duties, which shall be exercised in accordance with the laws of the state of Colorado and the provisions of this title and in harmony with the public interest and the most appropriate use of the land:

A. To hear and decide appeals when it is alleged by the appellant(s) that there is or has been an error in any order, requirement, decision, denial or refusal made by an administrative officer or agency based on or made in the enforcement of the zoning regulations contained within this title;

B. To interpret the zoning district boundaries and pass upon disputed questions of lot lines and similar questions that may arise periodically in the administration of these zoning regulations;

C. Where there are practical difficulties or unnecessary hardships in the manner of carrying out the strict application of any of these zoning regulations, the board has the power to authorize a variance from such strict and literal application so that the spirit of these zoning regulations is observed, public safety and welfare secured and substantial justice done. The board, however, shall not have the power to grant variances from the uses prohibited or permitted conditionally for the zoning district involved, except as allowed for under Section 17.44.080;

D. To review and decide upon such other matters relating to this title as may be specifically referred to the board by or provisions of this title or by the planning commission or the planning official;

E. In reaching a decision on any appeal to the board requesting a variance, the board shall, among other considerations, take into account: (1) how substantial the variance is in relation to the requirement; (2) whether a substantial change will be produced in the character of the neighborhood or a substantial detriment to adjoining properties created; (3) whether the difficulty can be obviated by some method, feasible for the applicant to pursue, other than a variance; and (4) whether, in consideration of all of

the above factors, the purpose, intent, policies and other provisions of both this title and the Leadville Comprehensive Plan, as amended, will be served.

F. Meetings of the board of adjustment shall be held at the call of the chair and at other such times as the board in its rules of procedure may specify. The chair, or in their absence the acting chair, may administer oaths and compel the attendance of witnesses by application to the municipal court. The court, upon proper showing, may issue subpoenas and enforce obedience by contempt proceedings.

(Ord. 03-10 §§ 1, 2; Ord. 99-8 § 1 (part): prior code § 17.26.020)

17.88.030 Appeals procedure.

A. Appeals to the board of adjustment may be made by any person(s) aggrieved by an inability to obtain a building permit or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of the provisions of this title. Appeals to the board shall be made within thirty (30) days of the order, requirement, decision or refusal alleged to have occurred or to be in error.

B. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official or agency or otherwise to decide in favor of an applicant or an appellant appearing before the board.

C. The board shall set a public hearing date on all appeals. A notice of public hearing shall be published in a legal publication in the city at least seven days prior to the hearing with notification of the hearing date and subject of the hearing.

A copy of the notice shall be deposited in the United States mail by the applicant, first class postage prepaid, postmarked at least fifteen (15) days prior to the scheduled hearing date, to all listed owners of record of all adjacent property. This mailed notice shall also be sent to all adjacent mineral rights owners and lessees and easement holders, as shown on the records of the office of the Lake County assessor. The notice shall include a short narrative describing the relief sought and an announcement of the date, time and location of the scheduled hearing. The applicant shall submit a signed affidavit, in a city-approved form, to the city prior to the date of the hearing evidencing that the required mailing was performed in accordance with this section. Failure to mail such notice shall not affect the validity of any hearing or determination by planning commission or city council, as applicable.

In addition, the applicant shall cause to have posted on the property in question, in a conspicuous location, a sign supplied by the city, stating the time, date, location and

subject of the hearing. Such sign(s) shall be posted at least fourteen (14) days before the scheduled date of the hearing.

D. All appeals to the board of adjustment shall be in writing and on such forms as shall be prescribed by the board. The appropriate filing fee shall accompany the application. Every appeal shall state what provision(s) of the zoning regulation is/are involved, what relief from the provision(s) is being sought, and the grounds on which the relief should be granted to the applicant. The chair of the board shall call a meeting of the board scheduled to take place within thirty (30) days of the submission of the appropriate materials, including proof of notification of a public hearing, and at the same time the board may transmit a copy of the appeal to the planning commission or other appropriate public bodies for review and comment.

E. Appeal applications submitted to the board of adjustment shall include a full and accurate legal description of the land involved.

F. Upon reaching a decision in the manner described above, the board of adjustment shall notify the applicant(s) in writing within ten (10) working days after the board takes action on an appeal or other formal matter placed before it.

G. Where not otherwise specified herein, in state statute or in other city regulations or ordinances, the board shall function administratively and procedurally in the same manner as city council.

H. In any appeal to the board requesting a variance from the setback requirements of this title, the applicant shall provide to the board, along with the application form, a survey prepared by a licensed Colorado surveyor depicting the property line(s) involved in the variance request, unless such property lines are apparent on the ground from monumented boundary corners established by a licensed Colorado surveyor.

(Ord. 02-10 § 2; Ord. 99-8 § 1 (part): prior code § 17.26.030)