Anaconda – Deer Lodge County Board of Adjustment Agenda
Thursday, April 28th, 2022 @ 4 pm
Community Service Center, 1st Floor Conference Room

Please turn off or silence all cell phones and electronic devices.
Everyone is respectfully asked to follow these Board Rules of Procedure:

- To address the Board, please state your name & address for the record.
- Please speak loud enough for the entire room to hear your comments.
- Please address all comments to the Board as you are not in a debate with other presenters or members of the audience.
- Please be respectful to other speakers, presenters, and members of the audience.
- No sidebar conversations will be allowed. Private conversations and whispering in the audience during the meeting as this is very disruptive so please step out of the room for any such conversations.

I. Call to Order – Donna Kostelecky, Chairperson
   • Review of Board of Adjustment (BOA) Process for Applicants

II. Approval of Minutes from Last Meeting: Thursday, March 31st, 2022
   Discussion and/or action if necessary

III. Public Hearings

Variance 22-005 Dave and Stephanie Cole

A PUBLIC HEARING on a request by David and Stephanie Cole for a variance to allow relief from the Pintler Vista lakeshore setback of roughly 99 feet at this location with intentions to build approximately 75 feet from lakeshore. Property is within the Georgetown Lake Development District and is legally described as:

PINTLER VISTA PHASE 1, S07, T05 N, R13 W, Lot 13, ACRES 1.31 PLAT 299A

Staff Report

Applicant Statement

Board Comments and Questions

Public Comment

At this time, the Board of Adjustment can take action to approve/deny Variance 22-005
IV. New Business

Board of Adjustment Review and Training

V. Miscellaneous

- Matters from the Staff
- Matters from the Board

VI. Public Comment

This is the time for members of the public to comment on items not on the agenda that fall within the Board of Adjustment jurisdiction.

VII. Next Meeting Date: TBD

VIII. Adjournment: Donna Kostelecky, Chairperson
Thursday, March 31st, 2022, at 4 pm | Meeting called to order at 4:05 pm by Donna Kostelecky, Chairperson

Attendance

Members Present: Donna Kostelecky, Chairperson; Judy Barber; Bill Johnston; Jerry Arneson; Steve Boyer
Staff Present: Carl Hamming, Planning Director; Gayla Hess, Planner II; Carlye Hansen Planning Department Secretary
Guests Present: Please see sign-in sheet. See attachment

At this time, Ms. Kostelecky wanted to introduce the newest members of the Board, Mr. Jerry Arneson, and Mr. Steve Boyer.
Ms. Kostelecky reviewed the Board of Adjustment process for all applicants and those attending this meeting.

Approval of Minutes

October 7th, 2022
Motion was made by Bill Johnson to approve minutes from October 7th, 2021; seconded by Jerry Arneson. Motion passes 5-0.

Nomination and Vote for 2022 Chairperson

Motion was made by Bill Johnson to nominate Donna Kostecky as the 2022 Chairperson for the Board of Adjustment; seconded by Judy Barber. Motion passes 5-0.

Public Hearings

Motion was made by Bill Johnson to nominate Judy Barber as the 2022 Vice-Chairperson for the Board of Adjustment; seconded by Jerry Arneson. Motion passes 5-0.

Public Hearings

Variance 22-001 Steve Locati

PUBLIC HEARING on a request by Steve Locati for a variance to allow relief from the Pintler Vista lakeshore setback of roughly 75 feet with intentions to build approximately 50 feet from lakeshore. Property is within the Georgetown Lake Development District and is legally described as:

PINTLER VISTA PHASE 1, S07, T05 N, R13 W, Lot 4, ACRES 1.28, PLAT 299A
Staff Report

Carl Hamming, Planning Director reviewed and presented the staff report put together by he and his office. All content can be located on the ADLC website. Mr. Hamming reviewed the nature of the request by Steve Locati to get relief from the lakeshore setback (75’) agreed upon when the subdivision was approved by Anaconda-Deer Lodge County (ADLC) in 1999. The applicant has stated the the requested setback be 50’ and that the rest of the proposed construction will comply with all other standards.

Mr. Hamming stated that the applicant simply states that he wants to preserve a grove of pine trees on the property as well as grade as little of the property as possible and to maintain a safe buffer between the highway and their future residence.

Mr. Hamming did not receive any calls or inquiries regarding this hearing.

The Planning Department has recommended approval of the variance request and they do have three (3) proposed recommendations, and conditions, and these were gone over in detail.

Questions from the Board

Mr. Johnson asked what the setback is at the lake for other homes that are not part of the subdivision.  Mr. Hamming stated that the Georgetown Lake Protection Zone is 20’, so this is still 30’ outside of that lakefront zone.  This is one of the smaller lots in this subdivision.  The orientation of the lot is between Hwy 1 and the lake, the lake has a 60’ setback with a subdivision having a 75’ setback from the high-water mark.  This doesn’t leave much room for any sort of construction or development.

Mr. Boyer asked about the septic situation. Mr. Hamming stated that this is a DEQ approved system and that Chad Lanes, Tri-County Environmental Health will be following this.  Steve Locati, the applicant, states that they have an engineered system that has been designed and that has been submitted for review and they are waiting to hear back from the engineers on this.  This was an approved system 23 years ago.  The drain field is on the other side of Hwy 1 and there is an existing sleave underneath the highway.  The approved system is just needing to be redesigned a bit to today’s standards and this will be a better performing system.

Applicant Report

Steve Locati, 1007 East Main, Bozeman, MT

Mr. Locati just wanted to state that he is an architect and that this will be a home for his family.  His wife and himself are both native from Butte, both operate businesses in the Butte/Anaconda area, and they have been looking for a place to build on for years.  They are very excited about this and to have been able to purchase lakefront property.

His approach to the design of the property is to minimize the impact to the site.  He is stating that this variance will help to limit the amount of grading they will need to do and to allow the driveway to wrap around the pine trees and then must remove these trees to get the driveway through.

Mr. Locati did bring an aerial view of the property area and did present and discuss this with the members of the board.

Questions from the Board

Mr. Johnston asked if we will be enforcing subdivision covenants or rules at this time.  Mr. Hamming discussed that this subdivision is unique on the base of the plat.  It states that this was the ADLC Planning Department that agreed to this setback, so this was ADLC approved.

Mr. Boyer asked how far the nearest neighbor will be from Mr. Locati and he stated roughly 50 ft.

PUBLIC HEARING

Proponents

There was a letter from the adjoining neighbors, John and Keren Schutter, received and they are in full support of this project.
Opponents
None.

Public Comment
None

Board Discussion
At this time, there was a significant conversation had between the Board and the applicant. They were able to look over his plat and see what his plans for the driveway are and regarding the setback he is requesting.

Motion
Motion is made by Bill Johnson to approve the variance requested by Stephen Locati to get relief from the lakeshore setback (75') agreed upon when the subdivision was approved by Anaconda-Deer Lodge County (ADLC) in 1999, with the proposed conditions and recommendations set forth by the Planning Department Staff; seconded by Steve Boyer. Motion approved 5-0.

Variance 22-002 JT Ranches, LLC
PUBLIC HEARING on a request by Tim Hilmo on behalf of JT Ranches LLC for a variance to allow relief from Sec.24-275(3) of the Development Permit System which requires a minimum lot size of 2.5 acres in the Opportunity Development District. Applicant proposes to create a 2-acre lot separating an existing residence and garage from area used as a hay field. Property is legally described as:

OPPORTUNITY ORIGINAL TOWNSITE, S15, T04 N, R10 W, Lot 63, ACRES 10

Staff Report
Carl Hamming, Planning Director reviewed and presented the staff report put together by he and his office. All content can be located on the ADLC website. Mr. Hamming reviewed the nature of the request by Tim Hilmo, of JT Ranches, LLC, to get relief from Sec.24-275(3) which requires newly subdivided lots to be a minimum of 2.5 acres in the Opportunity Development District (ODD).

Mr. Hamming stated that the applicants intend to subdivide the property to sell the existing house and to irrigate and pasture the remaining 8-acres. The applicant has stated that they are willing to apply agricultural covenants to the proposed irrigated 8-acres if the subdivision and variance are approved.

Mr. Hamming only received one comment from Tri-County Sanitarian, Chad Lanes who stated, “I see no issue with this, there is an existing well and septic for the house and adequate room replacement of facilities. The remaining acreage will be exempt from sanitation review and the 2-acre parcel will also be exempt as it has existing prior approved facilities”.

The Planning Department has recommended approval of the variance request and they do have three (3) proposed recommendations, and conditions, and these were gone over in detail.

Questions from the Board
There were no questions currently.

Applicant Report
Tim Hilmo, 207 S. Leslie, Anaconda, MT 59711
Mr. Hilmo is here today with his wife, Jolene. They own JT Ranches, LLC. This is a cattle and hay ranch in Opportunity, and they also have land in Granite County. They have owned this property for 10 years and it came with the house and acreage as it adjoined their existing hay fields, and they could run cows on this, and they could put up hay and expand on the number of cows on it. It came with the house, several outbuildings, a garage, and a renter. They have maintained this for about ten years now. They are just finding it hard to maintain this place and they don’t necessarily make any money off the rent, so they want to sell the 2-acres and get someone who can take care of this and appreciate it, and have a home in Opportunity, but they also
want to keep the 8-acres for the haying and cattle operation. Therefore, they are willing to put the restrictions on the 8-acres. They don’t want to see more homes or development in this area.

Questions from the Board

Mr. Johnson would like to ask why they are not doing 2.5 acres as the zoning requires, why just 2-acres? Mr. Hilmo states that there are two areas that are important to them and that this plan will grant them access off Hauser Street and they store all the hay in a staging area for the hay. Therefore, the canopy area is important to them. Mr. Johnson asked how large this area is and it was stated that this is possibly ¼-acre. Mr. Johnson stated that when the zoning commission passed the rules, they received input from everyone, and the county acted on behalf of the people. He states that for the BOA to be granting variances without solid reason, it goes against what the people have decided. Mr. Hilmo stated that they tried to get this as close to 2.5 as they could without interrupting or compromising the ranching operation.

Mr. Boyer asked about any infrastructure. Mr. Hilmo stated that they have fencing to keep in the cows and horses. There are no storage buildings or other buildings.

Ms. Kostelecky asked how they would access this property. Mr. Hilmo stated that they would access this through the field into the hay storage area and they can access this through Hauser Street at times when you cannot drive across the fields.

Mr. Boyer stated that if he understands this correctly, and if this is approved, then there would be an agricultural convenance that will go with this land. The only way a building could go up on this property would be if this was nonresidential and agricultural only.

Jolene Meshnick, 207 S. Leslie, Anaconda

She stated that accessing the property off Hauser is their only access for heavy equipment as the field above is irrigated and there is no access for heavy equipment and there is a weight limitation there, as well.

At this point, there was a significant conversation had between the Board and the applicants. They were able to look at the projected plans and see what the plans are for this area regarding the haying a cow operation, as well as access to the property.

PUBLIC HEARING

Proponents

Rick Hamilton, 109 S. Hauser

Mr. Hamilton lives kitty-corner across Hauser from the property in question. He states that the proposal they are suggesting will not change anything and that this is the way this property has been used forever. What they are proposing has been done before with the Silzly property when she wanted to sell off some of her property when her husband passed away. The Solan family has also done this. This has been allowed and he doesn’t see why this cannot be continued and he feels that the DPS really hasn’t been used to its advantage in Opportunity and he feels that it would be detrimental to Mr. Hilmo and Ms. Meshnick if this variance is not granted and allowed.

Opponents

None

Public Comment

None

Board Discussion

Mr. Arneson realizes that there is a lot of past practice and they have tried to get as close to the 2.5 acres as possible and he feels they have a good reason to notch this out as they have.
Motion

Motion is made by Judy Barber to approve the variance requested by Tim Hilmo to get relief from Sec. 24-275(3), which requires newly subdivided lots to be a minimum of 2.5-acres in the Opportunity Development District (ODD), with the proposed conditions and recommendations set forth by the Planning Department staff; seconded by Jerry Arneson. Motion approved 5-0.

Variance 22-003 Sandy Palakovich on behalf of her parents, Lois and Allyn Harris

PUBLIC HEARING on a request by Sandy Palakovich on behalf of Lois & Allyn Harris to allow relief from Sec. 24-255(5) minimum lot size of 5-acres in the Spring Hill Development District. Applicant proposes to realign boundaries yielding a 4.03-acre and a 3.52-acre lot. Property is legally described as:
S22, T05 N, R12 W, ACRES 10.06, G.LOTS 27, 28 & 44

Staff Report

Gayla Hess, Planner II, reviewed and presented the staff report put together by she and her office. All content can be located on the ADLC website. Ms. Hess reviewed the nature of the request by Sandra Palakovich to get relief from Sec. 24-255(5) which is a minimum lot size of 5-acres in the Spring Hill Development District. Applicant proposes to realign boundaries yielding a 4.03-acre and a 3.52-acre lot.

Ms. Hess did not receive any calls or inquiries regarding this hearing.
The Planning Department has recommended approval of the variance request and they do have two (2) proposed recommendations, and conditions, and these were gone over in detail.

Questions from the Board

Mr. Johnson wants to verify that both lots will be increased in size. He doesn’t understand this. #28 is just slightly above 5 acres, so actually this will be a decrease and #27 will be increased.

Applicant Report

Sandy Palakovich, 483 Valley High Drive, Bozeman, MT
Dale Harris, 513 Olson Gulch Road

Ms. Palakovich states that the property belongs to her parents, and they bought all three lots in question at different times. The original lot is where their home is and then they purchased the other two. They are in the process of trying to sell some of the property as her mom is ill and they are trying to keep her home but want her to have someplace where she can be comfortable and want to sell at least one or two of these pieces to cover future healthcare costs. They do agree that the easement for the drain field is important and that is something they are trying to do as well.

Mr. Harris is Ms. Palakovich’s brother. The lots that were sold during this time frame back when his folks purchased property have set a bit of a precedent as these lots have been subdivided and made smaller across the road.

Questions from the Board

At this point in the meeting, there were multiple folks in attendance, as well as multiple questions and comments. Being in a new venue for the meeting this afternoon made it very difficult to present and folks were coming up to the table to look at the plans in question and there ended up being quite a bit of side conversation that we were not able to capture. This all lead to significant conversation regarding all aspects of the property, including drain field, septic, wells, easements, access, setbacks, buildable area, etc.

PUBLIC HEARING

Proponents

Aprill Barber, 640 Olson Gulch Road
Ms. Barber is walking the line of both pro and opposing, only because her home is right on the border of their property and she is worried that if someone builds, it will end up being 10 ft away from her garage. Mr. Harris stated that he didn’t feel that would be a problem as the location that she is talking about has no room for a septic system. The setbacks for these lots would be based on the approach and how they would want to place a future residence. There are the issues with the drain field and there are well isolation zones that would also determine where a home could be built. Mr. Johnson again asked what setbacks are for the Spring Hill Development District and the front lot line setback is 35' and the side and rear setbacks are 10'.

Ed Jones, 177 Coyote Drive

Mr. Jones' property states that there is only a corner of their property that touches the property being discussed. He is pro for folks being able to subdivide a bit with there being a right situation. He is concerned about the same thing that Ms. Barber is concerned about and part of the reason he is here is for the same questions that she has asked. As a neighbor, he is friendly with all the Harris’, but is just really interested in whether the spot in question is truly buildable. This is the only concern that he has. He states that this is a very steep embankment and a prime spot to build would be on top, in which there is no access to, so the next best space would be in the bottom and his question is just whether Dale has investigated placement of a septic, well, and everything based on the proximity of the house and the existing septic.

Opponents
None

Public Comment
None.

Board Discussion
Again, much conversation was had on this between the applicants, the board, and folks in attendance.

Motion
Motion is made by Bill Johnson to approve the variance requested by Sandy Palakovich to get relief from Sec. 24-255(5), which requires a minimum lot size of 5-acres in the Spring Hill Development District, with the proposed conditions and recommendations set forth by the Planning Department staff; seconded by Jerry Arneson. Motion approved 5-0.

Variance 22-005 QRS Signs on behalf of Trish Handy

PUBLIC HEARING on a request by QRS Signs on behalf of Trish Handy to allow relief from Sec.8-186(b) of the county code of ordinances which limits two signs per property. The applicant proposes to install 4 signs to advertise a business within the Highway Commercial Development District. Property is legally described as:

S02, T04 N, R11 W, ACRES 0.41, TRIANG TK IN S2

Staff Report
Gayla Hess, Planner II, reviewed and presented the staff report put together by she and her office. All content can be located on the ADLC website. Ms. Hess reviewed the nature of the request by QRS Signs to get be granted relief from Sec.8-186 (b) which limits the number of signs per property to two. The applicants propose to install three signs to advertise a business within the Highway Commercial Development District (HCDD) Ms. Hess did receive several comments on this variance request.

The first was from Commissioner Kevin Hart stating that these looked very professional and would not interfere with oncoming traffic. Commissioner Hart also continued by saying that this blended well with the current businesses, and he would be in favor of the request.
We did have a negative comment from Mark Syverson, who suggested to keep the two-sign rule in place. She did receive a phone call from a neighboring property owner, Mr. Gary Warner, and he is in favor of the third sign and that this would make sense and that the business would need to advertise.

The Planning Department has recommended approval of the variance request and they do have three (3) proposed recommendations, and conditions, and these were gone over in detail.

Questions from the Board
None

Applicant Report
Bob Smiley, QRS Signs, behalf of Tricia Handy

Mr. Smiley states that given the uniqueness of the property being sandwiched between Park and Commercial, and the small side street, they are just requesting to have that sign on the east elevation so that the traffic coming into town on Hwy 1 would be able to see the business before they passed it as the two signs would be parallel with Commercial and Park Street.

Questions from the Board
Mr. Arneson asked if the sign in question would be like the one in the photo. Mr. Smiley stated that it will be a 4’ round sign that would be closer to Commercial than Park.

Mr. Johnson asked if the county had any guidelines for the Board as far as signs and Mr. Hamming stated that this would still be up to the Board’s discretion. With the new sign ordinance, there was no criteria for the Board of Adjustment to evaluate a situation such as this.

Ms. Kostelecky stated that because they are in between two major properties and at the end of town, that they three signs do make sense, and this was also agreed upon by Mr. Arneson.

Public Hearing
Proponents
None

Opponents
None

Public Comment
None

Board Discussion
None

Motion
Motion is made by Jerry Arneson to approve the variance requested by QRS Signs to get relief from Sec.8-186(b) which limits the number of signs per property to two with the proposed conditions and recommendations set forth by the Planning Department staff; seconded by Bill Johnson. Motion approved 5-0.
New Business

Ms. Kostelecky and Mr. Hamming just wanted to let the Board know that after the last meeting, in which Mr. and Mrs. Wargo were denied their variance, it was discussed with Ben Krakowka, County Attorney, and he determined that with the lack of members, and the majority rule, that Mr. and Mrs. Wargo’s variance should have been approved. Mr. and Mrs. Wargo were notified of this.

Miscellaneous

Matters from the Staff

Mr. Hamming just wanted to give a huge thanks to the Board for their continued time and commitment to the Board and wanted to welcome both new members to the Board.

Mr. Hamming also wanted to discuss that they received another variance application four days after notice was put out for this afternoon’s meeting and he is hoping that we can schedule another meeting on April 28th, 2022, to hear this variance. Everyone agreed that this could take place. Mr. Johnson will be unavailable for this meeting.

Matters from the Board

None

Public Comment

None

Next Meeting

Thursday, April 28th, 2022

Adjournment

Motion was made to adjourn by Judy Barber; seconded by Jerry Arneson. Motion approved 5-0.

Final Minutes Approved

Respectfully Submitted,
Carlye Hansen
ADLC Planning Department Secretary

Attachment: Guest Sign-In List
A report to the ADLC Board of Adjustments on a request from Mr. David Cole for a variance to allow a residential structure to encroach upon the Georgetown Lake shoreline setback as established by the Pintler Vista Subdivision.

**Applicant:** David and Stephanie Cole  
35 Saddle Spur Rd  
Bozeman, MT 59715

**Property is legally described as:**  
18261 MT Highway 1, Anaconda MT 59711  
PINTLER VISTA PHASE 1, S07, T05 N, R13 W, Lot 13, ACRES 1.31, PLAT 299A

**Project Files:** [https://www.adlc.us/DocumentCenter/View/2782/Variance-22-05-Cole-application](https://www.adlc.us/DocumentCenter/View/2782/Variance-22-05-Cole-application)

**Summary of Request:**  
Applicant requests relief from the lakeshore setback (100’) agreed upon when the subdivision was approved by Anaconda-Deer Lodge County (ADLC) in 1999.

The applicant has stated that the requested setback be 75’ and that the rest of the proposed construction will comply with all other standards set forth in Section 24.

**Surrounding Neighborhood:** The subject property is located in a residential subdivision that fronts Georgetown Lake.
Applicant’s justification for requesting the variance:
Applicant states that “with the setback off of Highway 1 (60ft) and setback off of lake (100ft) on this lot, does not allow for house to fit N to S on the lot. Only leaves roughly 45ft. for house to fit.”
Figure 2: Aerial image of the subject property (Lot 13 from MT Cadastral)

Figure 3: View from the proposed building site looking west from Hwy 1 (Google Street View)
Figure 4: Image of the Pintler Vista plat recorded in 1999. A dashed line through lots 13 and 12 indicate how the shoreline setback varies from 100’ in Lot 13 to 75’ in Lot 12.

**Variance Criteria:** Per Sec. 24-33(5), in order to grant relief from the provisions of the Development Permit System (DPS), the Board must find that:

a. *The variance is necessitated due to exceptional and/or extraordinary circumstances or conditions that are unique to the subject property and are not generally characteristic of similarly situated properties.*

ADLC staff agrees that the existing lot is one of the narrowest that was created through the Pintler Vista subdivision process. With the 60’ setback required by fronting Highway 1 and the 100’ setback from the shoreline of the lake, there is very limited space for new construction on the subject property.

b. *Approval of the variance(s) will preserve a property right or use that is generally enjoyed by owners of similarly situated properties, and conversely, approval of a variance will not bestow a special privilege on the applicant that is not generally enjoyed by the owners of a similarly situated properties.*

Variances from the shoreline setback within the Pintler Vista subdivision have previously been approved by the ADLC Board of Adjustments. Including two to neighbors to the south for a smaller setback distance of 50’.

c. *The alleged hardship has not been created by the applicant.*
The applicant has not created any hardship.

d. Specific relief from these DPS Regulations shall be the minimum necessary to accomplish the applicant’s stated objectives.

The requested 75’ setback falls in line with the setback on the majority of lakefront properties within the subdivision. Previously approved variances within the subdivisions have allowed a shorter setback of only 50’.

e. Adverse impacts associated with granting relief from the DPS Regulations are avoided or effectively mitigated.

Staff believes that adverse impacts to residential neighbors and wildlife will be minimal and does not require any mitigation.

Comments received by April 25, 2022:

No comments received.

Findings and Recommendation:

Planning Department staff recommend that the petitioner, Mr. and Mrs. Cole, be granted a variance to encroach into the 100’ Georgetown lakeshore corridor setback established by the Pintler Vista Phase I subdivision. Applicant may construct a single residential house no closer than 75’ to the high-water mark of the Georgetown Lake (6429.5’ elevation contour).

Should the Board find that the criteria for granting relief from the Pintler Vista Phase I lakeshore setback standards which limits residential development within 100’ of the high-water line of Georgetown Lake, and therefore, takes action to grant the requested variance; staff recommends the following conditions:

1. Administrative Development Permit and Building Permit be secured prior to construction.
2. Due to the proximity to Georgetown Lake, a siltation fence must be installed and maintained during construction.
3. Variance to construct the house no closer than 75’ to the Georgetown Lake high-water mark (6429.5’), is valid for 12 months with an option for a 12-month extension (in writing).

Attachments:
(1) Variance Application

References:
(1) Plat 299 A-2 Pintler Vista

Available online:
(1) ADP application
(2) Building permit application
ANACONDA-DEER LODGE COUNTY
Variance Permit Application
(Applicant – Please fill out #1 through #10 in full)

Variance: Lake side setback
Date: 3-28-2022

1. Legal Description: Lot 13 Pratte Vista, 5-0765M, R-13W
Geo Code: 30-1375-07-1-01-15-0000

2. Property Owner Name: David + Stephanie Cole
Telephone: 406-209-0149

3. Physical Address of Property: 18261 Highway 1
Anaconda, MT. 59711

4. Contractor: Full Construction LLC
ADLC License #: 5741

5. Contractor Address: 3272 Beaver Creek Ln
Manhattan, MT
Telephone: 406-573-4734

6. Architect or Engineer (if applicable)

7. Architect or Engineer Address: Telephone:

8. Describe the activity for which a variance is requested (please attach complete plans for project):
   New Single Family Home

9. Describe the undue hardship by which the variance is justified:
   With setback off of Highway 1 (60ft)
   and setback off of lake (100ft) on this lot does not allow for house to fit
   10 to 5 on the lot. Only leaves roughly 45ft for house to fit.

10. Signature:

    This signature acknowledges that all information on this application and that attached plans is true and correct, AND that
    the activity permitted will be conducted in full compliance with all ordinances of Anaconda-Deer Lodge County, State and
    Federal law, AND that the activity conducted will be in full compliance with any and all conditions imposed on this variance’s
    approval or the approval of previous permits required. Note that conditions attached to approval of a variance will be
    binding no future development permits issued on the site.

    This permit expires in one year if the activity authorized is not commenced and diligently pursued toward completion,
    OR if the activity is commenced but abandoned for one year at any time before completion.

    [Signature]
    Applicant Signature/Representative 3-28-2022

At this time, are there any open or upcoming court cases regarding the property involved in this variance? Yes □ No X

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Board of Adjustments – Overview and Background Information

With a couple of new members on the Board and a short agenda, we figured it would be a good opportunity to provide some Board information.

Please see Sec. 2-42 through 2-272 which details specifics about this board, its membership, and jurisdiction. (All this information available through the ADLC Municode website).

The variance requests all board members to review:

- Building regulations (Chapter 6)
- Development Permit System (Chapter 24) - our county’s zoning regulations with each district have specific area standards for development (such as setbacks) and allowable uses.

The local code will often reference Montana Code Annotated (MCA) https://leg.mt.gov/bills/mca/index.html. An example of a MCA citing is 2-2-103 (Title-Chapter-Provision).

The BOA’s decision to grant or deny relief from the code, unlike other (advisory) county boards, does not require final approval by the County Commission so your attendance at board meetings is important. The board may only conduct business with a quorum. Public hearings are subject to advertising requirements and the applicants must pay for this public notice. If you are unable to attend a scheduled meeting, please contact Carlye (chansen@adlc.us and 406-563-4010) for an excused absence as soon as possible to ensure a majority of the board will be available for the meeting.

At least 48-hours prior to your meeting, the agenda will be available online through the Agenda Center of the county website. A few notes on meeting agendas, minutes, and open meeting laws are attached along with the county’s resolution outlining public hearings.

Let us know if you have any questions or concerns. Thank you for volunteering to be a member of this board!

Thanks,

The Planning Department
Carl Hamming
Carlye Hansen
Gayla Hess
James See
Preparing for your Meeting

By Paul Lachapelle

Preparing for your board meeting and ensuring that board members have all of the necessary materials to be prepared for the meeting is critical. The agenda should be provided well in advance and as required in 2-3-103, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the board.

Board member packets can also be prepared and distributed to members prior to the meeting, and can contain the:

- Agenda
- Unapproved minutes from previous meeting
- Notes from members / governing body
- Committee and other reports
- Details of proposed actions
- Any supporting information (correspondence, reports, etc.)
- Other useful documents

The agenda can be structured as follows:

1. **Roll Call**
2. **Approval of Minutes**: These are the minutes from the previous meeting. The body should vote to approve without changes or approve with changes.
3. **Public Comment**: This is the time set aside for the public to comment on any subject over which the board has jurisdiction or regarding a agenda item. The subject does not have to be on the agenda, but the council cannot act on anything during public comment. If council action is required, the item must be placed on the next meeting agenda.
4. **Old Business**:
   a. Officer reports: for example, the treasurer may have a report to provide and explain
   b. Committee Reports: these can include a report of current activities or special committee reports
5. **New Business**:
   a. Approval of consent items if any; these are routine items, voted on in a single motion to approve
   b. Other scheduled matters
6. **Unscheduled matters / Concerns**: This is a time when members can bring a concern forward before the body that is not otherwise listed on the agenda. No action can be taken at this time.
7. **Adjournment**
Notice and Opportunity to be Heard

Each board must develop procedures and adopt rules to facilitate public participation in decisions that are of significant interest to the public (2-3-103). The procedures include a schedule of regular meeting times and agenda prepared and posted sufficiently in advance to provide notice of the topics to be discussed and actions to be considered. The public must also be afforded a reasonable opportunity to offer information and opinions, either orally or written, before final decisions are made. A matter of significant public interest is defined as one “involving any non-ministerial decision or action...which has meaning to, or affects a portion of the community.” 13 Discrepancies as to whether a meeting is of a significant public interest should always err on the side of transparency and opportunities for public participation. Regarding the amount of time required for noticing a meeting, the Attorney General has opined that, “Forty-eight hours is generally considered sufficient to notify the public of contemplated action. ...The amount of notice given should increase with the relative significance of the decision to be made.” 14 It is critical to follow the established procedures and to make the procedures known to the public. There is no violation in the law by giving more notice or opportunity to be heard than is required.

The agenda for a meeting, as defined in 2-3-202, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the board’s jurisdiction. However, the board may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. There are exception to the noticing statutes and include those that involve a decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety or a decision involving no more than a ministerial act (2-3-112).

For municipalities, there is additional statutory language that states, “In any meeting required to be open to the public, the governing body, committee, board, authority, or entity shall adopt rules for conducting the meeting, affording citizens a reasonable opportunity to participate prior to the final decision” (7-1-4143). Cities and towns are required by statute to specify by resolution a public location for posting and provide a posting board. When notice is required, the document must be placed on the board and a copy made available at the municipal office (7-1-4135).

Board members should note that meetings can be statutorily different than hearings regarding the noticing requirements. See the specific statutes describing your board and the corresponding publication or mail requirements (for example, 7-1-2121 and 7-1-2122 for counties, and 7-1-4127, 7-1-4129 and 7-1-4131 for municipalities).
RESOLUTION NO. 17-35

A RESOLUTION ESTABLISHING PROCEDURES FOR CONDUCTING PUBLIC HEARINGS IN ANACONDA-DEER LODGE COUNTY

WHEREAS, the Board of Commission of Anaconda-Deer Lodge County conducts public hearings for the purpose of providing reasonable opportunity for citizen participation prior to final decisions; and

WHEREAS, a public hearing is an opportunity for the public to offer comments on the record regarding any matter which is the subject of the public hearing; and

WHEREAS, MCA §7-1-4131 sets forth minimum standards that local governments shall abide by when conducting public hearings; and

WHEREAS, the Board of Commission of Anaconda-Deer Lodge County finds it necessary to establish procedures for conducting public hearings in order to ensure a reasonable opportunity for citizen participation prior to final decisions;

NOW, THEREFORE, BE IT RESOLVED by the Anaconda-Deer Lodge County Board of Commission that:

1) Public Hearings shall be conducted at a regular or special meeting of the Commission.
2) Except where otherwise provided in Montana Code Annotated or Anaconda-Deer Lodge County Code, all public hearings shall require at least a 15-day public notice in the legal section of the local newspaper.
3) Petitions and written letters shall be received by the Commission or Chief Executive prior to the public hearing and entered by reference into the Commission minutes and considered as testimony received at the public hearing.
4) The Commission Chair shall open the presentation for the matter which is the subject of the public hearing.
5) Department staff shall explain the matter which is the subject of the public hearing.
6) The Commission Chair shall open the public hearing.
7) Proponents will present testimony. The Commission Chair shall call for Proponents three times. All citizens coming to the microphone shall give their name and address for the record.
8) Opponents will present testimony. The Commission Chair shall call for Opponents three times. All citizens coming to the microphone shall give their name and address for the record.
9) The Commission Chair shall close the public hearing after everyone has given their testimony.
10) In the event that a member of the public requests answers to specific questions, his or her request shall be submitted to the Clerk of Commission to be forwarded to the
appropriate department head or Commissioner who will respond to the individual at a time subsequent to the public hearing.

Effective this 21st day of November, 2017.

Terry Vermeire, Chairman
Anaconda-Deer Lodge County Commission

Attest:

__________________________
Julie K. Pooley
Clerk of the Commission
Minutes

Council meeting minutes are required by law 2-3-212, MCA and may one day be read in court to support or defend some claim against the city/town. Therefore, an accurate record of what the substance of all matters proposed, discussed or decided is essential.

Usually the clerk takes minutes at the meeting. This can be done by hand or use of a recording device for later transcription. The clerk will later prepare the minutes of each meeting (regular, special, or public hearing). The minutes should be prepared as soon as is practical after each meeting.

The minutes should start with a heading that includes the type of meeting, the place, and the date and time of the meeting. Minutes must list the members of the government who are present at the meeting, i.e., mayor, council members, clerk and department heads. A “sign in” sheet for those citizens attending is not required. A majority of the whole number of the members of the council constitutes a quorum and must be present to conduct business. If a quorum is not present, the meeting must be rescheduled. The minutes should follow the agenda of each meeting. A short description of the agenda items is helpful with only as much information as may be necessary for clarity. A verbatim transcript of the discussions is not required. All motions made by a member of the council require a second and a roll call vote. The mayor will call for the vote. The clerk records each council member’s vote as aye, nay, abstain or absent.

Example: Moved by council member Jones that . . . (body of the motion). Second by council member Smith. Motion passed, Record of the roll call votes. (See Attachment 2.5, Chapter II, Part 1 for a model voting record.)

Prepare a sign-in sheet for those present at public hearings. The sign in sheet should include:

- Heading - reason for meeting, date and time
- Signature
- Printed Name
- Physical address

Print the minutes on the minute paper. Pages must be sequentially numbered. Have someone proof read the draft minutes, for typos, understanding, clarity, etc. Minutes should be made available within a reasonable time after the meeting. Minutes circulated before approval by the council should be stamped or otherwise identified as DRAFT, as they can be changed by the council (prior to approval). The minutes of the meeting do not need to be read aloud prior to approval because they are in the council packet prior to the meeting.

The council will approve the minutes at the next regular meeting. If there are any changes approved, make the changes in ink. After approval the mayor and clerk will sign the minutes. Stamp the signature page with the city/town seal. Insert the minutes in the record or minute book. When the minute book is full make sure to secure the book so pages cannot be removed. In some instances you will have more than one set of minutes that need to be approved. They should be considered in the same order as the meeting occurred.
Correction of Minutes

The council may amend the minutes prior to approval. The amendment should be in a motion and state clearly the correction to be made and included in the minutes. The clerk will make the correction by lining through deletions. Then write or print clearly in ink in the margin of the minutes the correction, amendment, or addition. Do not erase the original minute entry.

Public Hearing Minutes

A complete audio recording should be made of the entire public hearing. However, it isn’t necessary for the clerk to prepare a verbatim paper transcript of the recording unless required for a trial. The minutes of a public hearing should include:

- **Written evidence produced at hearing**: Make appropriate reference to any written evidence in the form of statements, affidavits, reports, photographs, maps, correspondence, or other objects filed with the clerk prior to the hearing or at the hearing, and included as part of the record. Place the written evidence in the corresponding public hearing file.
- **Oral testimony**: Identify by name all persons who testify and whether testimony was FOR or AGAINST the hearing subject.
- **Arguments and debates**: Briefly note arguments and debates.

Montana Code Annotated References (2019)

2-3-212. Minutes of meetings — public inspection. (1) Appropriate minutes of all meetings required by 2-3-203 to be open must be kept and must be available for inspection by the public. If an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an official recording is made, a written record of the meeting must also be made and must include the information specified in subsection (2).

(2) Minutes must include without limitation:
(a) the date, time, and place of the meeting;
(b) a list of the individual members of the public body, agency, or organization who were in attendance;
(c) the substance of all matters proposed, discussed, or decided; and
(d) at the request of any member, a record of votes by individual members for any votes taken.

(3) If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting.

(4) Any time a presiding officer closes a public meeting pursuant to 2-3-203, the presiding officer shall ensure that minutes taken in compliance with subsection (2) are kept of the closed portion of the meeting. The minutes from the closed portion of the meeting may not be made available for inspection except pursuant to a court order.

History: En. Sec. 3, Ch. 159, L. 1963; amd. Sec. 3, Ch. 567, L. 1977; R.C.M. 1947, 82-3403; amd. Sec. 1, Ch. 65, L. 2011; amd. Sec. 29, Ch. 348, L. 2015.

7-1-204. Board minutes. An administrative board, district, or commission created under 7-1-201 through 7-1-203 shall submit the minutes of its proceedings within 30 days after the minutes have been
approved by that body for electronic storage and retention in accordance with the provisions of Title 2, chapter 6, part 12. The administrative board, district, or commission shall submit the minutes for electronic storage to the county clerk and recorder of each county within the jurisdiction of the administrative board, district, or commission.

History: En. Sec. 3, Ch. 262, L. 2015.

7-1-4141. Public meeting required. (1) All meetings of municipal governing bodies, boards, authorities, committees, or other entities created by a municipality shall be open to the public except as provided in 2-3-203.

(2) Appropriate minutes shall be kept of all public meetings and shall be made available upon request to the public for inspection and copying.

History: En. Sec. 17, Ch. 455, L. 1979.