

## **ARTICLE 14-18 BOARD OF ADJUSTMENT**

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### **SECTION 14-18-1 CREATION, MEMBERSHIP, TERMS OF OFFICE AND VACANCIES**

A. Creation: The Board of Adjustment of the Town of Mammoth is hereby established. (As of Oct. 2004 the Town Council Town of Mammoth serves as the Board of Adjustments.)

B. Membership: The board shall consist of five (5) members who shall be appointed by the Council and who shall serve without pay. No member of the Board may be a member of the Council or a member of the Planning and zoning advisory commission.

C. Terms of Office: The normal term of office of members of the Board shall be three years. The initial appointment shall be: one member for one year, two members for two years, and two members for three years.

D. Vacancies and Removal for Cause: Vacancies shall be filled by resolution of the Council for the un-expired terms of the membership affected. Members of the Board may be removed from office for cause. The un-excused or unexplained absence of a member from three successive regular or special meetings of the Board, shall be deemed to be cause for termination without the necessity of a hearing or notice, and such action shall be final.

E. automatic Forfeiture of Office: Absence for any reason from one-half of the regularly scheduled meetings of the Board over a six month period shall operate as an automatic forfeiture of a member's position on the Board subject to appeal to the Council.

### **SECTION 14-18-2 OFFICERS, MEETINGS, RULES AND RECORDS**

A. Officers: the Board shall annually elect it's own chairman, vice-chairman, and secretary. The chairman, or in his absence the vice-chairman may administer oaths and compel the attendance of witnesses.

B. Rules of Procedure: The Board shall adopt rules as necessary to the conduct of its

affairs, and in keeping with the provisions of this Article.

C. Meetings: Meetings shall be held at the call of the chairman and at such other times as the Board may determine. All meeting shall be open to the public. A quorum shall consist of three members for the transaction of all business.

D. Records: The Board shall keep, or cause to be kept, 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 of public record and be filed in the office of the Town clerk.

### **SECTION 14-18-3 APPEALS, HEARING AND NOTICES**

An appeal stays all proceedings in the matter appealed from, unless the Zoning Administrator certifies to the Board after the notice of appeal is filed with him, that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. Upon such certification, proceedings shall not be stayed other than by a restraining order granted by the board or by a court of record on application and notice to the Zoning Administrator.

### **SECTION 14-18-5 POWERS AND DUTIES OF THE BOARD (ARS 9-462.06)**

A. "Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the Zoning Administrator in the enforcement of the Zoning Ordinance"

B. "Hear and decide appeals for variances from the terms of the Zoning Ordinance only if, because of special circumstances applicable to the property including its size, shape, topography, location, or surroundings the strict application of the Zoning Ordinance will deprive such property of privileges enjoyed by other property of the same conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located."

C. "Reverse or affirm, wholly or partly, or modify the order, requirement, decision of the Zoning administrator appealed from, and make such order, requirement, decision or determination as necessary."

D. Variances: A variance shall not be granted by the Board unless and until:

1. The property owner has filed a written appeal for variance with the Board through the Zoning Administrator said appeal demonstrates:

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 these 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 alleged hardships caused by literal interpretation of the provision of this Ordinance include more than personal inconvenience and financial hardship and do not result from the actions of the applicant.

d. That granting the variance requested will no confer upon the applicant any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same district.

e. That granting the variance requested will not interfere or injure the rights of other properties in the same district.

2. A public hearing has been held.

3. Notice of public hearing has been posted on the property in question and at the Town Hall, and the owner and applicant or his agent have been notified by certified mail at least fifteen (15) days in advance.

4. The Board finds that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building or structure.

5. The Board finds that granting of the variance will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

#### **SECTION 14-18-6 DECISIONS OF THE BOARD**

In exercising its powers and duties, the Board may, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as the Board deems necessary, and to that end shall have powers of the Zoning Administrator from whom the appeal is taken. The concurring vote of three (3) members of the Board shall be required for all decision.

#### **SECTION 14-18-7 LIMITATIONS OF THE POWERS OF THE BOARD (ARS 9-462.06)**

A. A Board of Adjustment may not:

1. "Make any changes in the uses permitted in any zoning classification or

zoning district or make any changes in the terms of the Zoning Ordinance provided the restriction in this paragraph shall not affect the authority to grant variances pursuant to this Article”

2. “Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner”

B. Every decision of the board shall be based upon findings of fact, and every finding of fact shall be supported in the record of it’s proceedings. The enumerated conditions required to exist on any matter upon which the Board is authorized to pass under this Ordinance shall be construed as limitations on the power of the Board to act. A mere finding of recitation of the enumerated conditions, unaccompanied by the findings of specific fact, shall not be deemed findings of fact and shall not be deemed in compliance with this Ordinance.

### **SECTION 14-18-8 APPEALS FROM THE BOARD**

A person aggrieved by a decision of the Board or a resident or municipal officer may, at any time within thirty (30) days after the filing of the decision in the office of the Board, petition a petition for Special Action for review of the Board’s decision. Allowance for the writ shall not stay proceedings upon the decision appealed from, but the court may on application, on notice to the Board and for good cause shown, grant a restraining order, and on final hearing may reverse or affirm, wholly or partly, or may modify the decision reviewed.

### **SECTION 14-18-9 FEEES**

A. Upon filing an application or appeal, the applicant shall pay a filing fee to the Town Clerk in accordance with a schedule established by resolution of the Council and posted in the office of the Zoning Administrator. No part of any such fee shall be returnable after an application is filed and such fee paid.

B. In case of an application for a variance to more than one provision of this Ordinance, the filing fee shall be the total for all provision as prescribed by the fee schedule.

C. Payment of the filing fee shall be waived when the appeal is made in behalf of or by the town of Mammoth.