

Chapter 19.06 – BOARD OF ADJUSTMENT

Section 19.06.010 - Conditional Use Permit.

The Board of Adjustment shall hear and decide all applications for Conditional Use Permits, except in those especially defined cases where an Administrative Use Permit or use of a Hearing Examiner is authorized. The following standards, criteria and procedures shall apply to any Conditional Use Permit authorized by this title:

1. A Conditional Use Permit may only be granted for those uses specifically identified and allowed in the applicable use district, subject to the following limitations;
 - a. That the conditional use, and any conditions imposed by the Board of Adjustment will not adversely affect the public health, safety and welfare;
 - b. That the proposed use, and any conditions imposed, will be in harmony with the purposes of the Comprehensive Plan as it relates to the area in question;
 - c. That the proposed use with any conditions imposed will be in compliance with the standards set out in this title for the use district applicable to the proposed use;
 - d. That the findings of fact adopted by the Board of Adjustment to support their decision clearly indicate that the above-listed criteria have been fulfilled.

2. The Board of Adjustment may impose any conditions or safeguards upon granting a conditional use permit which are necessary to insure conformity with the provisions of this title and protection of the public health, safety and welfare. The Planning Office may also impose such conditions for any eligible Administrative Use Permit. Failure to fulfill any condition imposed by the Board of Adjustment shall be in violation of this title, and said permit may be revoked, as provided by Section 19.05.040. Conditions may include but are not limited to any of the following:
 - a. Specify a time limit within which action, for which the Conditional Use Permit is required, shall be begun or completed, or both.
 - b. Require a periodic review of an issued permit to assure compliance with any imposed conditions.
 - c. Increase the required lot size or yard dimensions.
 - d. Limit the height or total lot coverage of buildings.
 - e. Control the number and location of vehicular access points to the property.
 - f. Control the number of off-street parking or loading spaces.
 - g. Require suitable landscaping or drainage control.
 - h. Control signing.
 - i. Control hours of operation.

- j. Control nuisance, generating features in matters of noise, colors, air pollution, wastes, vibration, traffic physical hazards and glare.

Section 19.06.015 - Minimum Standards for Conditional Uses.

Surface Mining and Rock Crushing shall be subject to minimum standards of Sections 19.59 and 19.60.

Section 19.06.020 - Variance.

1. The Board of Adjustment shall hear and decide all applications for variances from the requirements of this title, PROVIDED that any variance granted shall be subject to such conditions as will insure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the standards and limitations applied to other properties in the use district in which the subject property is situated, and that the findings of fact adopted by the Board of Adjustment to support their decision indicate that the following circumstances apply:

- a. That because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the zoning standards is found to deprive the subject property of rights and privileges enjoyed by other properties under identical zone classifications;
 - b. That the granting of the variance will not be detrimental to the public health, safety and welfare or be injurious to other properties and improvements in the vicinity of the subject property;
 - c. That the variance is not required solely due to actions by the applicant that prevent direct compliance with use standards applicable to the subject property;
 - d. That the variance shall not constitute a grant of special privileges inconsistent with the standards and limitations applied to other properties in the use district in which the subject property is situated.
 - e. In the case of a landowner seeking a variance from the 1,500-foot viewshed restriction of Section 19.10.060, the parcel under consideration
 - 1. was in existence at the time of the passage of this ordinance; and
 - 2. has not been subdivided since the passage of this ordinance; and
 - 3. no prior variance has been granted for an existing RHC for that particular viewshed.
2. No variance shall be granted permitting a use not authorized in a zone.

Section 19.06.021 – Administrative Variances

The planning director may grant an administrative variance to the following:

- a. Front yard setbacks within the Agricultural District (Section 19.10.040), after review and approval by the state or local agency with road jurisdiction. If the agency with road jurisdiction should not approve the variance, or if review is

not completed within fifteen (15) days, the applicant may request variance pursuant to 19.06.020.

Section 19.06.030 - Flood Management Variance

1. The Board of Adjustment shall hear and decide appeals and requests for variances from the requirements of the Flood Management Overlay District, Chapter 19.50 of this title, following the procedures for variances in this chapter.

2. Conditions for Variances:

- a. A variance may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.
- b. A variance shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- c. A variance shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- d. A variance shall only be issued upon:
 1. a showing of good and sufficient cause;
 2. a determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 3. a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- e. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
- f. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria and otherwise complies with Section 19.50.070, Development Standards.

Section 19.06.040 - Hearing-Notice of Procedure.

1. Upon receipt of application for a conditional use or variance, the Planning Office shall set the time and place for a public hearing and written notice thereof shall be addressed through the United States mail to all property owners of record within a radius of three hundred (300) feet of the exterior boundaries of the subject property. In the case of surface mining and/or rock crushing, this distance notice shall be extended to 1,000 feet

from the surface mining and rock crushing operation. In the case of a marijuana producer, processor, or retailer, the notice distance shall be 1,500 feet. The written notice shall be postmarked not less than twelve (12) days prior to the hearing. In addition to the publication of the notice, the notice shall be posted on the property where the surface mining, and/or rock crushing activity is to take place, and at the point of access of the proposed activity to a public road.

In the case of an application for a Rural Housing Certificate, the distance notice shall be 1,500 feet from the proposed residential building footprint.

2. In addition to the notice provided for in Subsection (1), notice of the public hearing shall be published in the official county newspaper of general circulation at least ten (10) days prior to such hearing.
3. In the case of an application for a project for which a SEPA determination is required of the County and where adverse comments have been received by the responsible official in the SEPA process, the Conditional Use or Variance hearing shall not take place until after the deadline for filing of an administrative appeal of the final threshold SEPA determination of the responsible county official under Whitman County Code 9.04.
4. In the case of a properly and timely-filed SEPA administrative appeal, at least ten days notice of the hearing to consider such appeal shall be given to the parties in the case (administrative official, applicant, and appellant).

Section 19.06.050 – SEPA Appeals.

1. In instances where the Board of Adjustment hears and decides an application for a conditional use permit or flood management variance (the underlying governmental action), the Board of Adjustment shall also hear and decide any appeal from the final threshold SEPA determination of the responsible county official under SEPA and Whitman County Code 9.04.
2. The Board of Adjustment shall hold one consolidated hearing at which it will hear and decide both the underlying governmental action and the SEPA administrative appeal.
3. Procedural determinations made by the responsible county official in the threshold SEPA determination shall be entitled to substantial weight. The SEPA administrative appeal shall be an open-record appeal at which the County, the applicant, and the appellant may present evidence. The threshold determination shall be reviewed and may either be upheld or modified by a majority decision of the Board of Adjustment.
4. In instances where a Hearing Examiner hears and decides an application for a conditional use permit, the Hearing Examiner shall also hear and decide any appeal from the final threshold SEPA determination of the responsible county official under SEPA and Whitman County Code 9.04 or any adequacy of an EIS as allowed by Whitman County Code 9.04.085.

Section 19.06.052 - Administrative Decision Appeals.

1. The Board of Adjustment shall hear and decide all appeals from administrative decisions made by the Planning Director.
2. Standing to appeal administrative decisions to the Board of Adjustment is as follows:

- a. Appeal may be taken to the Board of Adjustment by any person aggrieved, or by any officer, department, board, or bureau of Whitman County affected by any decision of an administrative nature pursuant to this title.
- b. Appeal of a decision pursuant to Section 19.10.060 of this title may be taken to the Board of Adjustment by the following persons, provided that such appeal is submitted to the Planning Office not more than twenty (20) days after the issuance of the written decision by the Planning Director:
 1. Any applicant for a Rural Housing Certificate subject to administrative approval by the Planning Director; or
 2. Any aggrieved owner of property within 1500 feet of a proposed residential building footprint for which application for a Rural Housing Certificate has been submitted.
3. When appealing an administrative decision which was made pursuant to Section 19.10.060 of this title, the appellant shall submit a written notice of appeal to the administrative official containing statements and information as follows:
 - a. I, (name of appellant) appeal the proposed decision to (grant or deny) a Rural Housing Certificate to the property owned by (name of original applicant), such being signed and dated (date).
 - b. The appellant shall attach a statement specifying how the proposed development would impact their property and stating why they think the decision to grant or deny the Rural Housing Certificate was in error.
4. Upon the filing of an appeal from an administration determination, the Board of Adjustment shall set the time and place at which the matter will be considered. At least twelve (12) days notice of the time and place shall also be given to the adverse parties of record in the case. The officer from whom the appeal is being taken shall forthwith transmit to the Board of Adjustment all of the records pertaining to the decision being appealed from, together with such additional written report as he deems pertinent.
5. The Board of Adjustment shall hear all evidence, on an appeal from an administrative decision, order, interpretation or determination of a requirement, and may, in conformity with the provisions of this title, reverse, affirm, or modify, wholly or in part, the decision, order, or requirement appealed from. The Board may call on expert witnesses for testimony at its own request or at the request of either party to the appeal. Decisions of the Board shall be based on the standards and requirements of this title and any applicable sources or types of information, or other state or County regulations, referenced by that section of this title. A verbatim record shall be made of all proceedings at the hearing. If a hearing is continued to allow collection of additional information, the Board at its hearing shall specify and announce the date, time, and place to which the hearing will be continued. The Board shall formulate written findings of fact supporting its decision to approve or deny an appeal. The decision shall have all the powers of the official from whom the appeal is taken.

Section 19.06.055 – Hearing Examiner

All other provisions of this chapter notwithstanding, all powers and duties vested in the Board of Adjustment by this chapter shall also be vested, and shall be exercised, by a Hearing Examiner instead of the Board of Adjustment, if the application is for a commercial and non-residential energy generating facility. In the event of an application for a commercial non-residential energy generating facility, the Director of Public Works shall appoint a qualified Hearing Examiner, (a licensed attorney in the State of Washington and experienced in area of land use), to conduct the actions that would otherwise be done by the Board of Adjustment under this chapter. The applicant will be required to commit to paying the cost of such Hearing Examiner and must pay such cost.

All other provisions of this chapter notwithstanding, all powers and duties vested in the Board of Adjustment by this chapter shall also be vested, and may be exercised by a Hearing Examiner, upon the request of the applicant, in the following circumstances:

- a. If at any time a quorum of the Board of Adjustment is not available to meet, consider, and decide one or more of the issues covered by this chapter; or
- b. If the estimated final value of the project is at least \$5 million;

and if the applicant commits to paying the cost of the Hearing Examiner, and does pay the cost, the Director of Public Works shall appoint a qualified Hearing Examiner, (a licensed attorney in the State of Washington and experienced in area of land use), to conduct the actions that would otherwise be done by the Board of Adjustment under this chapter.

A Hearing Examiner shall follow the procedures listed in this chapter for the Board of Adjustment. All decisions of the Hearing Examiner shall be given the same effect as the decisions of the Board of Adjustment.

Section 19.06.058 – Fees

All applicants shall be required to pay all fees in accordance with the fee schedule of the Public Works Department in effect at the time of the filing of the application.

Section 19.06.060 - Action Final-Writs.

The action by the Board of Adjustment or Hearing Examiner on an application for a conditional use permit or a variance, or on appeal from a SEPA determination, or on an appeal from the decision of an administrative official, shall be final unless the original applicant or an adverse party makes a prompt and timely application to a court of competent jurisdiction in accordance with R.C.W. 36.70C et. Seq., or makes a prompt and timely application for a writ of prohibition, or a writ of mandamus.

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