

RESOLUTION No. 2012-040

**A RESOLUTION OF THE
BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY**

**Re: Adoption of Revisions to Sections 19.7 and 19.8 of the
Ouray County Land Use Code**

WHEREAS, C.R.S. § 29-20-101, *et seq.*, the Local Government Land Use Control Enabling Act of 1974, and C.R.S. § 30-28-101, *et seq.* provide local governments with broad authority to plan for and regulate the use of land within their respective jurisdictions, including the adoption of zoning regulations; and

WHEREAS, C.R.S. § 30-28-117 provides that the Board of County Commissioners of a county which enacts zoning regulations shall provide for a Board of Adjustment of three to five members and for the manner of the appointment of such members; and

WHEREAS, such Board of Adjustment may hear appeals and grant variances as provided by C.R.S. § 30-28-118 and as provided by the Board of County Commissioners; and

WHEREAS, the Ouray County Land Use Code ("Land Use Code") also provides for regulation of visual impacts of development and review of decisions related to the issuance or denial of building permits based upon such visual impacts; and

WHEREAS, the procedure for review of visual impact appeals did not provide for review by the Board of Adjustment, raising questions as to the validity of such review process; and

WHEREAS, the Board of County Commissioners was advised to make revisions to the pertinent sections of the Land Use Code in order to conform to actual practice and to statutory authority; and

WHEREAS, proposed amendments to Sections 19.7 and 19.8 of the Land Use Code were considered by the Planning Commission after proper notice and public hearing, and recommendations were provided to and considered by the Board of County Commissioners.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO, AS FOLLOWS:

1. Sections 19.7 and 19.8 of the Land Use Code are hereby amended as set forth in Exhibit A attached hereto, effective upon the date of adoption of this Resolution.
2. The Board of County Commissioners is appointed as the Board of Adjustment, effective upon adoption of this resolution, for a term of three years.
3. The Ouray County Clerk and Recorder and the Chair of the Ouray County Planning Commission are appointed as the alternate members of the Board of Adjustment for a term of three years. The alternate members of the Board of Adjustment shall take the place of any regular member of the Board of Adjustment in the event that the regular member is temporarily unable to act, owing to absence from the county, illness, interest in the case before the Board of Adjustment, or any other cause.
4. The regular and alternate members of the Board of Adjustment shall serve until their successors have been appointed and qualified.
5. Resolution 2007-017 is repealed and superseded by this Resolution.

APPROVED AND ADOPTED THIS 11th DAY OF DECEMBER 2012.

Voting for: Commissioners ~~Feder~~, Padgett and Willits
Voting against: None

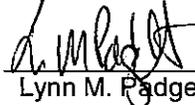
BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO



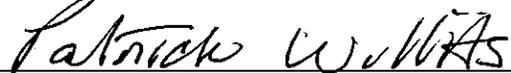

Michelle Nauer, Clerk and Recorder
By: Linda Munson-Haley, Deputy Clerk of
the Board

- ABSENT -

F. Mike Fedel, Chair



Lynn M. Padgett, Vice-Chair



Patrick Willits, Commissioner

19.7 BOARD OF ADJUSTMENT:

A. Establishment: The Board of Adjustment consists of three members, plus two alternate members, appointed by the Board of County Commissioners. All further references to the Board of Adjustment in this Section shall be made to the "Board".

B. Members: Not more than one of the members and one of the associate members may also be members of the Planning Commission. The members shall serve without compensation for service on the Board. Each member shall serve for three (3) years, but may be reappointed for multiple terms. The terms of the members shall be staggered so that the term of one member will expire each year. Any member of the Board may be replaced or removed for cause by the Board of County Commissioners upon written charges and after a public hearing. Vacancies shall be filled for any vacancy whether due to removal, resignation, death, or unexcused absence from three consecutive meeting by the Board of County Commissioners for the remainder of the term. An alternate member may take the place of a member on a temporary basis in the event that a regular member is temporarily unable to act due to absence from the county, illness, interest in a case before the Board, or for any other cause.

C. Meetings: The Board shall be held at the call of the Chairman as necessary to review and hear appeals and matters in its jurisdiction. The Chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses at hearings by application to the district court. At each meeting, the Board shall keep minutes, showing the votes of each member, or the absence of a member from voting, and all other official actions taken.

D. Officers: The Board shall select, at the beginning of each calendar year, a Chairman who shall preside at all meetings, a Vice-Chairman, who shall preside at meetings in the absence of the Chairman, and a Secretary, who shall be responsible for the minutes of the meetings and completeness of the hearings records. The Secretary's duties may be delegated to a county employee.

E. Appeals to the Board of Adjustment: The Board may make special exceptions, approve variances, interpret zoning maps, or similar questions, as provided by C.R.S. 30-28-117, according to the procedures provided elsewhere in the Land Use Code of Ouray County. Appeals to the Board may be taken by any person aggrieved by his inability to obtain a building permit or by the decision of the land use administrator or other employee of the county made in the course of the administration or enforcement of the zoning resolution and land use code. No appeal may be taken from the enforcement of the building code or building use violations prosecuted pursuant to C.R.S. 30-28-124(1)(b). The Board may hear matters in which the appellant alleges that there is an error in application of the zoning code, whether an error in interpretation or in application, or matters in which the Board is asked to approve a special exception or variance from the zoning code, or to interpret the zoning code. Variances from the provisions of the land use code may be requested by the applicant and granted by the Board where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographic conditions or other extraordinary and exceptional situations or conditions of such piece of property, the strict application of a provision of the land use code would result in peculiar and exceptional

hardship upon the owner of such property, provided that such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the land use code. Any variance granted in accordance with this provision shall expire three years from the date on which it is granted unless the activity, construction or use for which it is requested has taken place. The concurring vote of all three members is required in order to reverse any order, determination, decision or action of the land use administrator or other county employee, or in order to decide in favor of the appellant on requests for a special exception or variance.

F. Time for Appeal: An appellant must appeal any unfavorable decision of the land use administrator or other county employee within thirty (30) days of such action. An appeal is commenced by filing a written request for a hearing and providing the grounds for the appeal, including the pertinent facts, the decision being appealed, the provisions of the land use code being challenged, and the reasons alleged for the decision being in error, or the grounds for a variance or special exception. The Chairman shall call a meeting for the purpose of public hearing to review the appeal within forty-five (45) days of the filing of the appeal, or at such later date as is agreeable to the appellant and the Board. In the case of appeal from a provision of Section 9, the appellant will ask for an advisory opinion from the visual impact review committee prior to filing an appeal with the Board, and the time for filing an appeal to the Board will not begin tolling until the advisory opinion from the visual impact committee has been received.

G. Fee: A fee will be charged for an appeal to the Board of Adjustment to cover administrative costs associated with an appeal of a land use staff decision. There is a different fee for a variance application which covers staff time in reviewing and preparing a staff report and recommendation to the Planning Commission and the Board of Adjustment. The fees are as set forth in the Ouray County Land Use Fee schedule, which is amended from time to time. See Resolution 2011-019, and any subsequent amendments.

H. Appeals from the Board of Adjustment: Any person aggrieved and who is not satisfied by the decision of the Board may commence an action in the district court for Ouray County, or as otherwise provided by law and the rules of civil procedure.

I. Procedures: Notice of any hearing of the Board shall be published at least ten (10) days prior to the date of the hearing. Any property subject to a hearing shall also be posted with notice of the hearing by the appellant at least ten (10) days prior to the hearing. The Board shall act in strict accordance with all of the other applicable laws of the State of Colorado and the applicable land use regulations of the County of Ouray. An appellant shall be provided opportunity to fully present his case to the Board and to rebut the case presented by the land use staff, administrator or other county employee whose decision, action, or lack of action is being appealed. The public shall also be afforded an opportunity to comment at the public hearing, although the testimony and comments of members of the public may be limited at the discretion of the Chair to a reasonable amount of time, with three (3) minutes being considered the minimum reasonable amount of time which may be allowed for comments from a member of the public. All appeals to the Board shall be in writing. The criteria for approval of variances and special exceptions shall be as provided in C.R.S. 30-28-118(2)(c).

19.8 Visual Impact Review Committee:

A. Establishment. The advisory visual impact review committee consists of five (5) members who shall be appointed by the Board of County Commissioners. All further references in this Section to the Visual Impact Review Committee shall be to the Committee.

B. Membership: Members of the Committee shall serve, without compensation, and shall be appointed for three (3) year terms, provided that the terms shall be staggered to ensure continuity on the Committee. The Board of County Commissioners may adjust the term of any member when appointed for the purpose of ensuring continuity. At least three (3) of the members shall be design professionals, either actively practicing or retired. One member shall also be a member of the Planning Commission. The Planning Commission shall recommend one of its members to the Board of County Commissioners for such appointment. Members serve at the pleasure of the Board of County Commissioners. Vacancies may be filled as necessary and for such terms as provided above.

B. Officers: The Committee shall, at its first regular meeting of each calendar year, elect a Chair, a Vice-Chair, and a Secretary to serve for the calendar year. The Chair shall preside at meetings, and the Vice-Chair shall perform the duties of the Chair in the absence of the Chair. The Secretary shall keep minutes of the meetings of the Committee.

C. Purpose: The purpose of the Committee shall be to hear requests for interpretation of Section 9 and to provide advisory comments to the Board of Adjustment in the event of an appeal to the Board of Adjustment. The comments and advice of the Committee are not binding on the Board of Adjustment, nor are any decisions of the Committee final agency action or an action of Ouray County.

D. Procedure: A meeting for the purpose of reviewing a request for interpretation of Section 9 shall be held within thirty (30) days of receipt of such request. The meetings of the Committee shall be published or publicly noticed at least two (2) days in advance of the meeting. Members of the public may be heard at any meeting at the discretion of the Chair. All comments or interpretations of the Committee shall be provided in writing to the person requesting such interpretation, as well as to the Board of Adjustment and shall be provided within ten (10) days of conclusion of the meeting to review the request for interpretation.