

## CHAPTER 5

**ENFORCEMENT AND ADMINISTRATION**

## SECTION:

- 9-5-1 : Zoning Administrator, Building Inspector And Compliance Officer
- 9-5-2: Permit Modifications; Zoning Administrator Authority
- 9-5-3: Powers And Duties
- 9-5-4: Planning And Zoning Commission
- 9-5-5: Variances
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9-5-1: **ZONING ADMINISTRATOR, BUILDING INSPECTOR, AND COMPLIANCE OFFICER:** There is hereby established in Cassia County, state of Idaho, the offices of Zoning Administrator, building inspector, and compliance officer which shall be under the jurisdiction of the Board of County Commissioners of Cassia County, state of Idaho. The Board of County Commissioners shall appoint the officers who shall be charged with the administration and enforcement of this title, but the Board of County Commissioners may from time to time entrust the administration and enforcement, in whole or in part, to any other officer of the county.

9-5-2: **PERMIT MODIFICATIONS; ZONING ADMINISTRATOR AUTHORITY:**

- A. Any permit issued under Title 9, Cassia County Code shall be modified or amended only in compliance with the procedures for such permit under Title 9 by the Zoning Administrator, the Cassia County Planning and Zoning Commission, or Board of County Commissioners, as appropriate:

- B. The Zoning Administrator shall have discretion to act upon those modifications or amendments to any matter under Title 9, Cassia County Code that the Zoning Administrator is authorized to approve.
- C. The Planning and Zoning Commission shall have discretion to act upon those modifications or amendments to any matter under Title 9, Cassia County Code that the Planning and Zoning Commission is authorized to approve. The Planning and Zoning Commission shall review and may grant or deny a modification or amendment to such permits, approvals, or matters. The Planning and Zoning Commission shall also make recommendations to the Board of County Commissioners as to those requested modifications or amendments to a confined animal feeding permit under Title 9, Chapter 11, Cassia County Code but not limited to, those that would:
1. alter the external boundary of a permitted use or permitted site in a manner that implicates the regulations or setbacks;
  2. that would increase total animal units or animal unit density previously approved;
  3. that is proposed to meet federal, state or regulatory agency requirements;
  4. that is proposed or is likely to affect air quality, water quality, or water quantity as a result of modification or amendment to a CAFO permit;
  5. that would modify the facilities, operations, acreage, or herd composition of a CAFO, including any changes to CAFO Property that are subject to a permit and in a manner that implicates the regulations or setbacks, including, but not limited to, those set forth in Section 9-11-2 or the permitted densities for CAFOs set forth in Section 9-11-3.
- Any hearing before the Planning and Zoning Commission on such modifications or amendments, or on a recommendation to the Board of County Commissioners, on a modification or amendment to either a permit under Title 9, Chapter 11, Cassia County Code or the conditional use permit, for or a CAFO, shall be conducted under notice and hearing provisions as set forth within applicable provision of Title 9, Cassia County Code, or if no applicable code, then as directed and determined by the Planning and Zoning Commission.
- D. The Board of County Commissioners shall have discretion to act upon those modifications or amendments to any matter under Title 9, Cassia County Code that the Board of County Commissioners is authorized to approve. The Board of County Commissioners shall review and may grant or deny a modification or amendment to such permits, approvals, or matters. Where the Board of County Commissioners acts upon a recommendation from the Planning and Zoning Commission regarding an application for a permit either a permit under Title 9, Chapter 11, Cassia County

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Code or the conditional use permit, for or a CAFO, it shall not act until the requested modification or amendment has been reviewed by the Planning and Zoning Commission and it has made a recommendation to the Board of County Commissioners. Any hearing before the Board of County Commissioners on such modifications or amendments shall be conducted under notice and hearing provisions as set forth within applicable provision of Title 9, Cassia County Code, or if no applicable code, then as directed and determined by the Board of County Commissioners.

- E. Notwithstanding any other provision of this Chapter, any permit issued under Title 9, Chapter 11, Cassia County Code for a CAFO, may be considered for modification, extension, or enlargement, administratively by the Zoning Administrator for the following limited matters:
1. relocation of previously approved structures within a CAFO site, where such relocation complies with the regulations and/or setbacks set forth in Section 9-11-2, and that said structures remain of the same function as originally approved; or
  2. modification or substitution of real property within a CAFO for purposes of animal unit density calculations, with removal or substitution of other real property, so long as such modification or substitution does not implicate or involve compliance with the regulations and/or setbacks set forth in Title 9 of Cassia County Code, including, but not limited to those set forth in Section 9-11-2.

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**POWERS AND DUTIES:**

- A. Compliance With Provisions Required: Neither the Zoning Administrator nor the building inspector shall grant a permit for the construction of any building or structure, or for the moving of the building into a lot, or for the change in any use of land, building or structure if such construction, alteration, moving or change in use would be in violation of any of the provisions of this title, nor shall any other officer of the county grant any permit or license for the use of any building or land if such would be in violation of this title.
- B. Agricultural Building Siting Permit: The County shall regulate and ensure compliance with road setbacks and utility easements with respect to agricultural buildings. Agricultural buildings shall otherwise be exempt from building codes pursuant to Title 11, Chapter 1. Applicants for Agricultural Building Siting Permits shall file an application for such permit, on a form approved by the County, with the Zoning and Building Department, and pay such fee as is determined by the Board for said permit.

- C. Re-inspection Costs/Duplicate Inspection Cards: Upon appointment being set by owner or contractor of any permitted development, and building inspector's attendance at the site for purposes of conducting such inspection, and the purpose for the inspection not being completed, then owner or contractor shall pay a re-inspection fee to the County, as set by resolution of the Board of County Commissioners, before any further inspection shall take place by the building inspector. If the Inspection Card is not readily available to the building inspector at such time as the inspection is requested, then Inspector shall cease inspection and owner or contractor shall pay for a re-inspection fee and a duplicate inspection card fee, at such rates as determined by the Board of County Commissioners and thereafter set by resolution.
- D. Business Licenses: No business license or permit shall be issued by an officer or employee of Cassia County, state of Idaho, until the application for the permit or license has been first reviewed by the Zoning Administrator as to conformance with the provisions of this title. A permit or license, if issued in conflict with the provisions of this title, shall be null and void.
- E. Notice Of Violation: Whenever the Zoning Administrator, building inspector, or the compliance officer shall observe any apparent violation or infraction of this title, they shall send a notice to the property owner on whose land the apparent violation occurs, setting forth the nature of the alleged violation, and a statement that said alleged violation must be corrected within a reasonable time to be specified in the notice.
- F. Multiple Applications: Multiple applications under this title on the same real property, e.g., conditional use permit and variance, may be made at the same time, and upon payment of only one application fee, plus the additional advertising costs, if any.
- G. Work Proceeding Without Permit or Approval. Where any work for which a permit or approval, to include plan, administrative, Commission or Board approval, is required by County regulations, or by the codes enumerated in Title 39, Chapter 41, Idaho Code, is started or proceeds forward prior to obtaining said approval or permit, and after notice to such person doing or causing such work to be done, and such person continues or causes to continue to work, the fees specified by the County will be doubled. The payment of such double fee will not relieve any persons from fully complying with the requirements of Title 39, Chapter 41, Idaho Code, or the County's regulations, in the execution of the work nor from any other penalties prescribed by law or County Ordinance.

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**PLANNING AND ZONING COMMISSION:**

- A. Creation: There is hereby created a Planning and Zoning Commission to administer this title with powers and duties as hereinafter set forth. Said commission shall consist of seven (7) members appointed by resolution of the Board of County Commissioners.
- B. Duties: For the purpose of this title, the Planning and Zoning Commission shall have the following duties:
  - 1. Future Development; Comprehensive Plan: To plan for the future growth and development of the county and to fulfill the mandates for the implementation, review and updating of the county's comprehensive plan pursuant to Idaho Code sections 67-6507 and 67-6508;
  - 2. Amendments: Initiate proposed amendments to this title and from time-to-time, conduct a review of the complete zoning and subdivision ordinances;
  - 3. Review Of Amendments: Review all proposed amendments to this title, the subdivision ordinance, or other related ordinances;
  - 4. PUD Review: Review all planned unit developments;
  - 5. Conditional Use Permits: Grant conditional use permits as specified in this title and under the conditions as herein specified with such additional safeguards as will uphold the intent of this title and make recommendations to the Board of County Commissioners regarding conditional use permits relating to CAFOs;
  - 6. CAFOs: Review applications for permits under Title 9, Chapter 11, Cassia County Code and make recommendations to the Board of County Commissioners to grant or deny a such a permit, together with recommending appropriate conditions of approval thereto;
  - 7. Appeals: Hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation or determination made by the Zoning Administrator, building inspector, and/or the compliance officer;
  - 8. Variances: Authorize such variances from the terms of the zoning and subdivision ordinances as will not be contrary to the public interest where, owing to the special conditions, a literal enforcement of such ordinances will result in unnecessary hardship, and so that the intent of the ordinances shall be observed and substantial justice done; and
  - 9. Rules Of Procedure: Adopt rules of procedure not inconsistent with the provisions of this title or state law for the conduct of its business and procedures.

- C. Conflict Of Interests<sup>1</sup>: A member or employee of the Planning and Zoning Commission shall not participate in any proceedings or action when the member or his employer, or employee, business partner, business associate or any person related to him by blood or marriage within the second degree has an economic interest in the procedure or action. Any actual or potential interest in any proceedings shall be disclosed at or before any meeting at which the action is being heard or considered.

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**VARIANCES:**

- A. Variance: The Planning and Zoning Commission may authorize in specific cases such variance from the terms of the zoning and subdivision ordinances as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of such ordinances would result in unnecessary hardship. No nonconforming use of neighboring lands, structures or buildings in other districts shall be considered grounds for issuance of a variance. Variances shall not be granted on the grounds of convenience or profit, but only where strict application of the provisions of this title would result in unnecessary hardship.
- B. Application and Standards For Variances: A variance from the terms of this title shall not be granted by the Planning and Zoning Commission unless and until a written application for a variance is submitted to the Zoning Administrator and the Planning and Zoning Commission containing:
1. Fee: A fee per application as set by the county;
  2. Personal Information: Name, address and phone number of applicant(s);
  3. Legal Description: Legal description of property;
  4. Nature Of Variance: Description of nature of variance requested and the specific section of this title that relates to the requested variance; and
  5. Statement Of Conformity: A narrative statement demonstrating that the requested variance conforms to the following standards:
    - a. Special Circumstances: That special conditions and circumstances exist which are not applicable to other lands, structures or buildings in the same district;
    - b. Deprivation Of Rights: That a literal interpretation of the provisions of the title would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the title;
    - c. Circumstances Unavoidable: That such special conditions and circumstances do not result from the actions of the applicant;

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<sup>1</sup> IC § 67-6506

- d. Not A Special Privilege: That granting of the variance requested will not confer on the applicant any special privilege that is denied by this title to other lands, structures or buildings in the same district; and
  - e. Minimum Change: That the variance requested is the minimum change necessary to alleviate the hardship. A variance shall not be granted unless the Planning and Zoning Commission makes specific findings of fact based directly on the particular evidence presented to it which support conclusions that the above mentioned standards and conditions have been met by the applicant.
- C. Supplementary Conditions And Safeguards: Under no circumstances shall the Planning and Zoning Commission grant a variance to allow a use not permissible under the terms of this Title in the zone involved, or any use expressly or by implication prohibited by the terms of this title in said zone. In granting any variance, the Planning and Zoning Commission may prescribe appropriate conditions and safeguards in conformity with the title. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this title.
- D. Public Hearing: Upon receipt of the application for a variance, the Planning and Zoning Commission shall schedule a public hearing. The applicant shall publish a notice thereof in a newspaper and give written notice to all parties as required for conditional use permits, and file proof of giving such notice with the Zoning Administrator.
- E. Action By Planning and Zoning Commission: Within sixty (60) days after the public hearing, the Planning and Zoning Commission shall either approve, conditionally approve, or disapprove the request for a variance. Upon granting or denying an application the Planning and Zoning Commission shall specify:
  - 1. Evaluation Standards: The ordinance and standards used in evaluating the application;
  - 2. Reasons: The reasons for approval or denial; and
  - 3. Actions To Grant A Variance: The actions, if any, that the applicant could take to obtain a variance or be granted an administrative appeal.
- F. Notification Of Applicant: Within twenty (20) days after a decision has been rendered, the Zoning Administrator shall provide the applicant with written notice of the action on the request to:
  - 1. Grant or deny a variance; or
  - 2. Delay such a decision for a definite period of time.
- G. Variances Included With CAFO Permits. If a request for a variance is included as part of a CAFO permit, then it shall be reviewed with such CAFO permit consistent

with the requirements and procedures set forth in Title 9, Chapter 11 and Title 9, Chapter 13. The Planning and Zoning Commission shall make a recommendation to the Board of County Commissioners regarding such a variance included as part of a CAFO permit.

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**ADMINISTRATIVE APPEALS:**

- A. General: The Planning and Zoning Commission shall consider administrative appeals where it is alleged that an error has been made by the Zoning Administrator or building inspector.
- B. Administrative Appeals: Administrative appeals to the Planning and Zoning Commission concerning interpretation or administration of this title may be taken by any person aggrieved or by any officer or department of the county affected by any decision of the Zoning Administrator or building inspector. Such administrative appeal shall be taken within twenty eight (28) days after the decision of the Zoning Administrator or building inspector by filing with the Zoning and Building Department a notice of administrative appeal specifying the grounds upon which the appeal is being taken and payment of a fee as set by the county. If not filed within twenty eight (28) days after issuance of a written decision, the appeal shall not be accepted. Upon notification of such appeal, the Zoning Administrator shall transmit to the Planning and Zoning Commission all the papers constituting the record upon which the administrative appeal is based.
- C. Stay Of Proceedings: An administrative appeal automatically stays all proceedings in furtherance of the action taken, upon filing and payment of fees, unless the Zoning Administrator certifies to the Planning and Zoning Commission after the notice of administrative appeal is filed with him that by reason of facts stated in the application, a stay would, in his opinion, cause imminent peril of life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by a court of competent jurisdiction based upon an application, with notice to the Zoning Administrator showing due cause.
- D. Supplementary Conditions And Safeguards: Under no circumstances shall the Planning and Zoning Commission grant an administrative appeal to allow a use that is not permissible under the terms of this Title in the zone involved, or any use expressly or by implication prohibited by the terms of this title in said zone. In granting any administrative appeal, the Planning and Zoning Commission may prescribe appropriate conditions and safeguards in conformity with the title. Violation of such conditions and safeguards, when made a part of the terms under which the administrative appeal is granted, shall be deemed a violation of this title.
- E. Public Hearing: Upon receipt of the application for an administrative appeal, the Planning and Zoning Commission shall schedule a public hearing. The applicant for

the appeal shall publish a notice thereof in a newspaper and give written notice to all parties as required for conditional use permits, and file proof of giving such notice with the Planning and Zoning Commission.

- F. Action By Planning and Zoning Commission: Within sixty (60) days after the public hearing, the Planning and Zoning Commission shall either grant or deny the administrative appeal in writing. Upon granting or denying an appeal the Planning and Zoning Commission shall specify:
  - 1. Evaluation Standards: The ordinance and standards used in evaluating the administrative appeal;
  - 2. The reasons for the grant or denial of the administrative appeal; and
  - 3. Actions To Grant Appeal: The actions, if any, that the applicant could take to be granted an administrative appeal.
- G. Notification Of Applicant: Within twenty (20) days after a decision has been rendered in writing, the Zoning Administrator shall provide the applicant with written notice of the action on the request to:
  - 1. Grant or deny an administrative appeal; or
  - 2. Delay such a decision for a definite period of time.

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**APPEALS TO BOARD OF COUNTY COMMISSIONERS.**

- A. Appeal: Any decision or action under Title 9 and/or Title 10 by the Planning and Zoning Commission, including its decisions on administrative appeals under Section 9-5-6 may be appealed as set forth in this section. Any appellant shall be an affected person as defined in the Local Land Use Planning Act, 67-6501 et seq. If an appellant is not an affected person, that shall be reason sufficient for denial of an appeal. A person aggrieved by a final decision or action within the jurisdiction of the Planning and Zoning Commission may appeal to the Board of County Commissioners.
- B. Application And Fees: Appeals of a final decision or action of the Planning and Zoning Commission shall be filed with the County Clerk within twenty eight (28) days after the date of the final decision or action, or it shall not be accepted. An application and fees, as set forth in this chapter, shall be submitted to the County Clerk on forms provided by the Zoning and Building Department. Upon receipt of the appeal, the County Clerk shall calculate the cost of notice and prior to scheduling the public hearing on such appeal shall notify the appellant and the appellant shall be responsible for the payment of fees and costs of notice.

- C. Scheduling Of Hearing And Notice: The Board of County Commissioners shall schedule, then hold a public hearing and make a decision pursuant to the procedures set forth in this Title applicable to the permit or application that is subject to the decision or action. The hearing by the Board of County Commissioners on the appeal to be held not less than thirty (30) nor more than ninety (90) days from the payment of fees and costs of notice by the appellant unless otherwise stipulated by the parties. The Clerk of the Board of Commissioners shall give notice of the appeal to the parties in interest, provided, however, that the appellant is responsible for the cost of such notice, including mailing, posting, and publication thereof. Notice of the hearing shall be given consistent with the procedures set forth in this Title applicable to the permit or application that is subject to the decision or action being appealed.
- D. Hearing: At the public hearing, the Board of County Commissioners shall consider the order, requirement, permit, decision, or determination of the Zoning Administrator or Planning and Zoning Commission, and any attached conditions thereto. The Board of County Commissioners shall only consider any evidence that was made part of the record in the underlying decision.
- E. The Board of County Commissioners may affirm, reverse, modify, in whole or in part the order, requirement, permit, decision, or determination appealed from, or make or substitute any additional conditions that in its deliberations it may find warranted. The Board of County Commissioners shall provide a written decision in accordance with the Local Land Use Planning Act. The Clerk of the Board shall provide a copy of the written decision to the parties in the appeal and to the Zoning and Building Department.
- F. Judicial Review: A person aggrieved by a final decision or action of the Board of County Commissioners may seek judicial review as provided by the Local Land Use Planning Act as it may be amended from time to time.