TITLE 6
ELMORE COUNTY
ZONING and DEVELOPMENT ORDINANCE

CHAPTER 3 - APPEALS, ENFORCEMENT, WAIVERS, VARIANCES, AND TIME EXTENSIONS

Sections:

6-3-1: **Appeals to Commission on Decisions of the Director**
6-3-2: **Appeals to the Board on Decisions of the Commission**
6-3-3: **General Enforcement**
6-3-4: **Zoning Permits**
6-3-5: **Enforcement, Violations and Penalties**
6-3-6: **Code Enforcement Officer**
6-3-7: **Approval Conditions**
6-3-8: **Waiver**
6-3-9: **Zoning Ordinance Amendments**
6-3-10: **Variances**
6-3-11: **Time Extension**
6-3-12: **Investigation Fees and Work without a Permit**

Section 6-3-1: Appeals to Commission on Decisions of the Director:

A. Appeal to Commission: Any affected or aggrieved person having an interest in real property which may be adversely affected by a decision of the Director made in interpreting or enforcing this Title may appeal such a decision to the Commission by filing a written notice of appeal. A written notice shall be made by submitting the appropriate fee and application to the Director of Elmore County Growth and Development within ten (10) calendar days of the date of such decision. Appeals shall be based on one of the following:

1. The decision was in violation of constitutional or statutory provisions; or

2. In excess of the statutory authority of the agency; or

3. Made upon unlawful procedure; or

4. Not supported by substantial evidence on the record as a whole; or

5. Arbitrary, capricious, or an abuse of discretion.

B. Hearing by Commission: The Commission shall hold a public hearing on all appeals from decisions of the Director after notice has been given in accordance with this Title. The public record shall remain open and the Commission may accept new additional material and testimony.

C. Decision by Commission: After the Public hearing the Commission shall, enter a written order-affirming, reversing or modifying the Director's decision. The order shall also contain the reasons for the Commission's decision.

Section 6-3-2: Appeals to the Board on Decisions of the Commission:

A. Appeal and Reconsideration: Any affected or aggrieved person having an interest in real property which may be adversely affected by the issuance or denial of a permit authorizing development or use by any final action of the Commission may either appeal the decision to the Board and/or request reconsideration by the Commission.

B. Request for Reconsideration on Commission Decision: Upon request of the applicant or an aggrieved party, the application may be reconsidered by the Commission. Reconsideration before the Commission may be granted for good cause. The Commission shall only consider such reconsideration requests once. Good cause includes but is not limited to:

   1. The party requesting reconsideration has new or additional relevant information; and

   2. The relevant information was not previously presented and is in response to something brought up at the previous hearing; and

   3. The information was not previously available.

C. Process for reconsideration: A request for reconsideration shall include supporting information and may be made at any time prior to the deadline for filing an appeal as provided in this section.

   1. A decision by the Commission to deny or approve the reconsideration is not appealable.

   2. Reappearance before the Commission shall be on the appropriate application and submitted to the Director with fees as adopted by the Board.

   3. The Director will confer with the Commission, if the requested changes would not materially affect the Commission's decision, a reconsideration hearing may be permitted.

4. If the applicant has modified the application, the Commission shall determine if the revised application shall be reconsidered or if a new application is required.

5. If the reconsideration hearing is granted, the time to appeal and any pending appeal to be heard before the Commission shall be stayed.

6. The applicant may still exercise applicant's rights to further appeal the Commission's decision to the Board.

7. If reconsideration is granted and the appeal is withdrawn, any appeal fee shall be refunded in its entirety.

D. Written Request; Fee: Reappearance before the Commission may be made by written request to the Director and shall include a fee. This fee shall be refunded if the reconsideration request is denied.

E. Decision to Appeal: Any person aggrieved by a decision of the Commission may appeal such a decision to the Board by filing a written notice of appeal. Appeals shall be based on one of the following:

1. The decision was in violation of constitutional or statutory provisions; or

2. In excess of the statutory authority of the agency; or

3. Made upon unlawful procedure; or

4. Not supported by substantial evidence on the record as a whole; or

5. Arbitrary, capricious, or an abuse of discretion.

F. An appeal shall be made by submitting the appropriate application and fee to the Director of Elmore County Growth and Development within ten (10) calendar days of the Commission's final action.

G. Notice of Appeal: The notice of appeal shall state the date and the substance of the decision appealed and the grounds for the appeal.

H. Hearing by The Board: The Board shall conduct a public hearing in accordance to Idaho Code and this Title. The Board shall publish a notice specifying the time, date and place of the public hearing for the appeal and stating the subject of the appeal. The notice shall be published once in the newspaper of general circulation at least fifteen (15) calendar days prior to the hearing. In addition, the same notice requirements as were applicable to

the Commission hearing, if any, at which the decision being appealed was made shall be met. The public record shall remain open and the Board may receive additional information and testimony. Only the matters set forth in the appeal shall be considered by the Board. The appeal hearing and review shall be a de novo review and hearing, but the Board may consider and incorporate the record and decision from the Commission in its deliberations and decision.

I. Decision by The Board: The Board shall enter an order after the hearing affirming, reversing or modifying the Commission's decision. The order shall contain a statement of the reasons for the Board's decision and shall be served on all parties to the appeal. On its own motion, the Board may, within fourteen (14) calendar days of issuing a written decision, reconsider that decision.

J. Request for Reconsideration On Board's Decision: The applicant or an aggrieved party, the application may be reconsidered. Reconsideration before the Board may be granted for good cause. The Board shall only consider such reconsideration requests once. Good cause includes but is not limited to:

1. The party requesting reconsideration has relevant information; and

2. The relevant information was not previously presented and is in response to something brought up at the previous hearing; and

3. The information was not previously available.

K. Process: A request for reconsideration shall include supporting information and may be made at any time prior to the deadline for filing an appeal as provided in this section.

1. A decision by the Board to deny or approve the reconsideration is not appealable.

2. Reappearance before the Board shall be made by written request to the Director and shall include a fee as adopted by the Board. This fee shall be refunded if the reconsideration is denied.

3. The Director will confer with the Board, if the requested changes would not materially affect the Board's decision, a reconsideration hearing may be permitted.

4. If the applicant has modified the application, the Commission shall determine if the revised application shall be reconsidered or if a new application is required.

5. If reconsideration is granted, the time to appeal and any pending appeal to be heard before the Board shall be stayed.

6. The applicant may still exercise applicant's rights to further appeal the Board's decision.

7. If reconsideration is granted and the appeal is withdrawn, the appeal fee shall be refunded in its entirety.

Section 6-3-3: General Enforcement:

A. Duty of Director: It shall be the duty of the Director to enforce these regulations and to issue citations and fines as necessary to enforce this Title. The Director shall also coordinate as necessary with the Prosecuting Attorney to enforce any violations or lack of compliance herewith. The Elmore County Sheriff, and his or her authorized representatives, shall have the authority to enforce this Title and assist the Director in enforcement actions as set forth in Idaho Code and this Title.

B. Sales Before Approval: No owner or agent of the owner of a parcel of land located in a proposed subdivision shall transfer or sell any such parcel before a final plat of such subdivision has been approved by the Board, in accordance with the provisions of these regulations and filed with the Elmore County (Clerk) Recorder of Deeds.

C. Metes and Bounds Description: The subdivision of any lot or parcel of land, by the use of metes and bounds description for the purpose of sale, transfer or lease with the intent of evading these regulations, shall not be permitted. All such described subdivisions shall be subject to all of the requirements contained in these regulations.

D. Issuance of Building Permit: No building permit shall be issued for the construction of any building or structure located on a parcel, lot or plat sold in violation of the provisions of these regulations.

E. Appropriate actions and proceedings may be taken at law or in equity to prevent any violation of these regulations, to prevent unlawful construction, to recover damages, to restrain, correct or abate a violation, to prevent illegal occupancy of a building, structure or premises, and these remedies shall be in addition to the penalties described above.

Section 6-3-4: Zoning Permits:

A. No construction or alteration shall commence until the Director has issued a zoning permit. If no structures are involved, no use shall commence until the Director has issued a zoning permit.

B. No zoning permit shall be issued for any use on a property in violation of this Title or on a property that contains structures or uses in violation of this Title. Any zoning permit secured in violation of State or Federal law shall be invalid.

C. Any application that requires issuance of a zoning permit as a condition of approval shall be deemed complete with the issuance of the zoning permit. This provision shall apply to prior approved applications with issued zoning permits.

D. Zoning permits issued in conjunction with a change of use that are not associated with a building permit shall expire if the new use has not commenced within one year of the date of issuance of the zoning permit.

E. The zoning permit may require inspections and approvals specified in the approval of the application, or conditions of approval.

F. If the Director determines the conditions of the zoning permit have been violated, the Director may impose a stop work order on a project until the violation has been remedied.

Section 6-3-5: Enforcement, Violations and Penalties:

A. Enforcement Duties. All Departments, officials and employees of Elmore County vested with the authority to issue permits shall conform to the provisions of this Ordinance and shall issue no permit or license for uses, buildings or purposes in conflict with the provisions of this Ordinance. Any such permit issued in conflict with the provisions of this Ordinance shall be null and void. The Director of the Growth and Development Department shall maintain a zoning enforcement program to promote the abatement of violations of this Ordinance and to provide assistance in the prosecution of such violations. It shall be the duty of the Director of the Growth and Development Department and/or the Building Official, or their authorized agent (s), to enforce the provisions of this Ordinance pertaining to the erection, construction, reconstruction, moving, conversion, alteration, addition, location, or razing of any building or structure. It shall further be the duty of the Director of the Growth and Development Department, or his/her authorized agent(s) to enforce the provisions of this ordinance pertaining to land use regulation, including compliance with the wrecking, salvage, and/or junk yard provisions.

B. Enforcement. Enforcement of this Ordinance may be by criminal prosecution, a civil lawsuit or an abatement action. Selection of the enforcement procedure shall be at the sole discretion of the County and commencement of one procedure shall not preclude commencement of another.

C. No owner, occupant, tenant, manager, person or entity having control of or a legal interest in a property within Elmore County shall maintain a nuisance in common law or nuisance as defined in this Ordinance on said property.

D. Violation of Ordinance Unlawful. Penalties and Restitution. It shall be unlawful for any owner, occupant, tenant, manager or any person or entity having control of or a legal interest in property to violate any requirement or duty imposed by this Ordinance. Upon Conviction of any violation of any of the provisions of this Ordinance such person shall be punished by a fine of not more than one thousand dollars ($1,000.00), or by imprisonment for not more than six (6) months, or both such fine and imprisonment.

Each and every day of continuing violation shall be considered a separate criminal offense. Upon conviction violators shall be responsible for and pay all incurred investigation, prosecution and court costs as determined by the court having jurisdiction over the proceeding.

E. Administrative Procedure: Code Enforcement cases commence by a citizen complaint or any time knowledge of a possible violation becomes know to the County. Complainants may be anonymous or the complainant may leave a name and number so that they can be contacted in the future. Following commencement of the case following administrative procedure is followed:

1. A site inspection is performed to verify that a violation exists on the property.

2. The property owner, tenant, and/or occupant of the property where there exists a violation of the provisions of this Ordinance are then notified that a violation(s) exists. Such notice shall include (1) a description of the property where the violation exists, (2) a description of the details of the violation or violations and that there is a thirty (30) calendar day opportunity to correct the violation(s). This Notice may be made by personal service or certified mail, return receipt requested. The Code Enforcement Officer may extend the thirty (30) calendar day requirement for good cause, but under no circumstances shall the time period be extended for public health and safety issues for longer than one hundred twenty (120) calendar days.

3. A follow up inspection is performed to verify that the violation(s) has/have been corrected.

4. If compliance cannot be achieved through administrative channels, or if the landowner, tenant and/or occupant of the property fails or refuses to respond to said Notice of Violation within the prescribed time period, the County may commence enforcement action.

5. Compliance with the above administrative procedure either completely or partially is at the discretion of the Director and/or Code Enforcement Officer and failure to follow these procedures shall not bar commencement of a criminal, civil, or abatement proceeding by the County.

F. Enforcement Actions.

1. Criminal Actions shall commence by issuance of a misdemeanor criminal citation signed by the Code Enforcement Officer, Director of Growth and Development, any county law enforcement officer, any county employee so authorized by the Board of County Commissioners or by a formal criminal complaint filed by the Elmore County Prosecuting Attorney.

2. Civil Actions shall commence by filing a civil complaint by the Elmore County Prosecuting Attorney in the District Court of the State of Idaho having jurisdiction.

The County may seek any relief deemed appropriate including, but not limited to, monetary damages, and

3. Abatement. The County may abate any nuisance in Elmore County or any conditions caused by a violation of this Title. The expenses associated with abatement and abatement proceedings (including any expenses arising from contractors hired by the County to perform said abatement, investigatory costs and costs of suit) shall be charged to the owner, occupant or person in charge or possession of the premises or property upon which the nuisance exists. The Prosecuting Attorney may seek recovery of these expenses and costs under I.C. §§ 31-604, 52-202 and 52-205. Said costs shall attach as a lien upon the subject property if unpaid.

Section 6-3-6: Approval Conditions:

Regulation of the subdivision of land and the attachment of reasonable conditions to land subdivision is an exercise of valid police power granted to the County by the Idaho Constitution. The developer has the duty of compliance with reasonable conditions laid down by the Board and Commission for design, dedication, improvement and restrictive use of the land so as to conform to the physical and economical development of the County and to the safety and general welfare of the future plot owners in the subdivision and of the community at large.

Section 6-3-7: Emergency Suspension of Permit:

The County may exercise its responsibility to protect public health, safety, and welfare by immediately suspending an approved permit. If the Director finds that a public emergency exists as a result of non-compliance or lack of performance pertaining to a permit a written notification of suspension of the permit shall be sent by certified mail to the permit holder or by personal service or both. The permit is null and void following service of the notice of suspension and failure to obey the notice of suspension is a violation of this Ordinance. The permit holder shall have 30 days to contest the suspension or bring the permit into compliance. If the suspension is contested the Commission shall conduct a public hearing in accordance with this ordinance. Such hearing shall occur as soon a practical. The permit can only be reinstated by the County when the situation has been corrected or resolved or when the County determines that there was no sufficient basis for suspension. Any decision by the Commission can be appealed to the Board.

Section 6-3-8: Revocation:

All permits of this ordinance are subject to revocation for non-compliance with their terms and conditions. If the Director determines that a permit has been violated he shall notify the permit holder of his intention to revoke the permit and provide the permit holder the

opportunity to contest the revocation. If the permit holder chooses not to contest the revocation of the permit the Commission shall revoke the permit during an open meeting.

The permit holder notified by the department of the intent to revoke shall have thirty (30) days to contest the revocation of the permit by filing a letter of contest and paying a fee established by the Board. The Commission shall conduct a public hearing in accordance with this ordinance for all contested revocations. At such hearing the Commission shall hear evidence from the Director and any other party regarding the alleged violations and why the permit should be revoked. The permit holder shall have the opportunity to provide evidence contesting the violations and why the permit should not be revoked. After hearing evidence, if the Commission upholds the Director's determination of violation it may revoke or modify the permit or find that there was not sufficient evidence to revoke the permit. The decision from the Commission's public hearing may be appealed to the Board in accordance with the provisions of this ordinance.

Section 6-3-9: Waiver:

The Director has the authority to determine, on a case-by-case basis if a partial waiver is warranted in a unique situation. The maximum waiver authority granted to the Director is ten (10%) percent of the Title requirements. The Director can only issue an administrative waiver if the waiver does not negatively affect public health and safety, and does not deviate from the spirit and intent of this Title.

A. The Director, Hearing Examiner, Commission or Board, in a specific situation, may approve a waiver from strict compliance with a Design Standard in this Title if an applicant can demonstrate that the waiver:

    1. Is based on conditions unique to the property in question and not applicable generally to other property, that the property in question demonstrates an extraordinary hardship related to a physical characteristics, surroundings or topographic features; and

    2. Is not detrimental to the public health, safety or welfare; and

    3. Is not injurious to the property of others physically or financially; and

    4. Does not in any way nullify any other provision of this Title or the Elmore County zoning map; and

    5. That the granting of a waiver would better serve an alternative proposal where the applicant can demonstrate that the alternative proposal suggested would better serve the intended use or public.

B. Waivers may also be granted if other Federal, State or local agencies have jurisdiction over the subject matter and they have already issued a waiver that applies to the waiver application before Elmore County.

Section 6-3-10: Zoning Ordinance Amendments:

A. Process:

1. Zoning Ordinance Amendment Initiated by Board: The Board may propose to amend this Title following notice and public hearing procedures in compliance with this Chapter and Title.

2. Zoning Ordinance Amendment Initiated by Property Owner (Including Planned Communities, Planned Unit Developments, and Planned Unit Development Districts): The applicant shall complete a pre-application conference with the Director prior to submittal of an application for a zoning ordinance amendment. An application and fees shall be submitted to the Director on forms provided by the Growth and Development Department.

3. Application; Review: The Board shall apply the standards listed in subsection B of this section and the findings listed in subsection C of this section to review the zoning ordinance amendment.

4. Approval; Reversal of Action: If the Board approves a zoning ordinance map amendment pursuant to a request from a property owner, the Board shall not subsequently reverse its action or otherwise change the zoning classification as set forth in Idaho Code section 67-6511(d).

B. Standards: For zoning ordinance map amendments, the subject property shall meet the minimum dimensional standards of the proposed base zone.

C. Required Findings: Upon recommendation from the Commission, the Board shall make a full investigation and shall, at the public hearing, review the application. In order to grant a map or text amendment to the zoning ordinance, the Board shall make the following findings:

1. The zoning ordinance amendment complies with the applicable Comprehensive Plan; and

2. The zoning ordinance amendment complies with the regulations outlined for the proposed base zone, specifically the purpose statement; and

3. The zoning ordinance amendment shall not be materially detrimental to the public health, safety, and welfare; and

4. The zoning ordinance amendment shall not result in an adverse impact upon the delivery of services by any political subdivision providing public services within the planning jurisdiction including, but not limited to, school districts.

Section 6-3-11: Variances:

Applications for floodplain variance shall comply with the regulations of the Floodplain Chapter within this Title and are not subject to the regulations of this variance section within this Title.

A. Process:

1. The applicant shall complete a pre-application conference with the Director prior to submittal of an application for a variance; and

2. An application and fees shall be submitted to the Director on forms provided by the Growth and Development Department; and

3. The Commission and Board shall both conduct public hearings in accordance with Idaho Code and this Ordinance and apply the standard listed in subsection B of this section and the findings listed in subsection C of this section to review the variance.

B. Standard: The variance shall comply with Idaho Code section 67-6516.

C. Required Findings: In order to grant a variance, the Commission and Board shall make the following findings:

1. The variance shall not grant a right or special privilege that is not otherwise allowed in the base zone; and

2. The variance relieves an undue hardship due to characteristics of the site; and

3. The variance shall not be detrimental to the public health, safety, and welfare.

Section 6-3-12: Time Extension:

The Director shall review an application for a time extension. The time extension shall commence from the date of expiration of the previous approval, except in the case of an appeal of a Board approval, when the time extension shall commence from the final resolution of such appeal.

A. Process:

1. An application and fees shall be submitted to the Director on forms provided by the Growth and Development Department.

    a. The application shall include a written request indicating the need for a time extension.

    b. The application shall be prior to expiration date of the original approval.

2. At the discretion of the Director, other agencies may be notified of the time extension request in order to solicit their comments and recommendations for consideration.

3. The Director shall apply the standards listed in subsection B of this section and the findings listed in subsection C of this section to review the time extension.

4. The Director may impose additional conditions in an approval of a time extension for an approved development (excluding final plats).

B. Standards:

1. The applicant or owner for an approved development (excluding final plats) may apply for a one (1) time extension for a period not to exceed one year.

2. The applicant or owner for an approved final plat may apply for one (1) time extension for each phase of the final plat. The time extension shall be for a period not to exceed one year.

C. Required Findings: In order to grant a time extension, the Director shall make the following findings:

1. The time extension meets the standards listed in subsection B of this section; and

2. The applicant and/or owner have adequately justified the need for a time extension.

Section 6-3-13: Investigation Fees and Work without a Permit:

A. Investigation: Whenever any work, use or action has been commenced without first obtaining a approval for which approval is required, and/or a permit for which a permit is required by the adopted Building Code Standard and/or the Planning and Zoning Regulations of Elmore County, a special investigation shall be made by the Building Official and/or Planning and Zoning Director before approval, use, or action and/or a permit may be issued or resumed for such work.

B. Fee: An investigation fee, in addition to an application and/or the permit fee shall be collected whether or not an application and/or permit is then or subsequently issued. The

investigation fee shall be equal to the amount of the application fee and/or permit fee required by the adopted Building Code Standard or the Planning and Zoning Regulations of Elmore County, whichever applies. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this Title nor from any penalty prescribed by this Title or by law.