

## HOUSE BILL NO. 193

INTRODUCED BY D. SALOMON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROCESSES FOR APPEALING COUNTY ZONING  
5 DECISIONS; PROVIDING THAT A DECISION OF A BOARD OF ADJUSTMENT MAY BE APPEALED TO A  
6 BOARD OF COUNTY COMMISSIONERS IF THE COMMISSIONERS ESTABLISH A PROCESS AND A  
7 DECISION BY A BOARD OF COUNTY COMMISSIONERS OR A BOARD OF ADJUSTMENT MAY BE  
8 APPEALED TO A COURT OF RECORD; AND AMENDING SECTIONS 76-2-226, 76-2-227, AND 76-2-228,  
9 MCA."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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13 **Section 1.** Section 76-2-226, MCA, is amended to read:  
14 **"76-2-226. Appeals to board of adjustment.** (1) Appeals to the board of adjustment may be taken by  
15 a any person or persons, jointly or severally, aggrieved by a decision of the administrative officer or by an officer,  
16 department, board, or bureau of the county affected by any decision of the administrative officer. The appeal must  
17 be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the  
18 appeal is taken and with the board of adjustment a notice of appeal specifying the grounds of the appeal.  
19 (2) The officer from whom the appeal is taken shall transmit to the board in a timely manner all papers  
20 constituting the record upon which the action appealed was taken.  
21 (3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from  
22 whom the appeal is taken certifies to the board of adjustment after the notice of appeal has been filed with the  
23 officer that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril  
24 to life or property. In that case, proceedings may not be stayed except by a restraining order, which may be  
25 granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the  
26 appeal is taken, and on due cause shown.  
27 (4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice  
28 of the hearing as well as due notice to the parties in interest, and decide the appeal within a reasonable time.  
29 (5) At the hearing, a party may appear in person or by the party's attorney."  
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1           **Section 2.** Section 76-2-227, MCA, is amended to read:

2           "**76-2-227. Appeals -- from board of COUNTY COMMISSIONERS OR BOARD OF adjustment to county**  
 3 **~~commissioners -- county commissioners to court of record -- COUNTY COMMISSIONERS MAY ESTABLISH APPEAL~~**  
 4 **~~PROCESS.~~** (1) Any person or persons, jointly or severally, aggrieved by a decision of the board of adjustment or  
 5 a taxpayer or an officer, department, board, or bureau of the county ~~affected by the decision of the board of~~  
 6 ~~adjustment may appeal that decision to the board of county commissioners. The board of county commissioners~~  
 7 ~~shall hold a hearing de novo. The petition of appeal must be presented to the board of county commissioners~~  
 8 ~~within 30 days after the filing of the decision by the board of adjustment. THE BOARD OF COUNTY COMMISSIONERS~~  
 9 ~~SHALL HOLD THE HEARING AND ISSUE THE DECISION WITHIN 60 DAYS AFTER THE PETITION OF APPEAL TO THE BOARD HAS~~  
 10 ~~BEEN FILED: (1) (A) THE BOARD OF COUNTY COMMISSIONERS MAY ESTABLISH IN THE ZONING REGULATIONS A PROCESS~~  
 11 ~~FOR AN APPEAL OF A DECISION BY THE BOARD OF ADJUSTMENT TO THE BOARD OF COUNTY COMMISSIONERS BY ANY~~  
 12 ~~PERSON OR PERSONS, JOINTLY OR SEVERALLY, AGGRIEVED BY A DECISION OF THE BOARD OF ADJUSTMENT OR AN~~  
 13 ~~OFFICER, DEPARTMENT, BOARD, OR BUREAU OF THE COUNTY.~~

14           (B) ~~THE PROCESS, IF ESTABLISHED, MUST PROVIDE THAT AN APPEAL TO THE BOARD OF COUNTY COMMISSIONERS~~  
 15 ~~BE INITIATED BY PRESENTING TO THE BOARD OF COUNTY COMMISSIONERS A PETITION, DULY VERIFIED, SETTING FORTH~~  
 16 ~~THAT THE DECISION IS ILLEGAL, IN WHOLE OR IN PART, AND SPECIFYING THE GROUNDS OF THE ILLEGALITY.~~

17           (C) ~~THE PETITION MUST BE PRESENTED TO THE BOARD OF COUNTY COMMISSIONERS WITHIN 30 DAYS AFTER THE~~  
 18 ~~FILING OF THE DECISION OF THE BOARD OF ADJUSTMENT, AND A FINAL DECISION MUST BE MADE WITHIN 60 DAYS OF~~  
 19 ~~RECEIPT OF THE PETITION.~~

20           (D) ~~THE BOARD OF COUNTY COMMISSIONERS MAY:~~

21           (I) ~~REMAND THE SPECIAL EXCEPTION TO THE BOARD OF ADJUSTMENT;~~

22           (II) ~~REVERSE OR AFFIRM, WHOLLY OR PARTLY, THE DECISION OF THE BOARD OF ADJUSTMENT; OR~~

23           (III) ~~MODIFY THE DECISION OF THE BOARD OF ADJUSTMENT.~~

24           (2) Any person or persons, jointly or severally, aggrieved by a decision of the board of county  
 25 commissioners ~~filed after the hearing required in subsection (1)~~ OR THE BOARD OF ADJUSTMENT may present to a  
 26 court of record a petition, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying  
 27 the grounds of the illegality. The petition must be presented to the court within 30 days after the filing of the  
 28 decision in the office of the APPROPRIATE board of county commissioners.

29           ~~(2)(3)~~ (3) Upon presentation of a petition, the court may allow a writ of certiorari directed to the board of  
 30 adjustment county commissioners OR THE BOARD OF ADJUSTMENT to review the decision of the board of ~~adjustment~~

1 ~~county commissioners~~ and shall prescribe in the writ the time within which a return must be made and served  
 2 upon the relator's attorney, which may not be less than 10 days and may be extended by the court. The allowance  
 3 of the writ may not stay proceedings upon the decision appealed from, but the court may, upon application, on  
 4 notice to the board of county commissioners OR THE BOARD OF ADJUSTMENT, and on due cause shown, grant a  
 5 restraining order. The board of ~~adjustment~~ county commissioners OR THE BOARD OF ADJUSTMENT may not be  
 6 required to return the original papers acted upon by it, but it is sufficient to return certified or sworn copies of the  
 7 original papers or of portions of the original papers that may be called for by the writ. The return must concisely  
 8 set forth other facts that may be pertinent and material to show the grounds of the decision appealed from and  
 9 must be verified.

10 ~~(3)~~(4) If, upon the hearing, it appears to the court that testimony is necessary for the proper disposition  
 11 of the matter, the court may take evidence or appoint a referee to take evidence as it may direct and report the  
 12 evidence to the court with the referee's findings of fact and conclusions of law, which constitute a part of the  
 13 proceedings upon which the determination of the court must be made.

14 ~~(4)~~(5) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for  
 15 review."

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 17 **Section 3.** Section 76-2-228, MCA, is amended to read:  
 18 **"76-2-228. Awarding of costs upon appeal from board decision.** Costs ~~shall~~ may not be allowed  
 19 against the board of county commissioners OR THE BOARD OF ADJUSTMENT unless it ~~shall appear~~ appears to the  
 20 court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from."

21 - END -