

# **ORDINANCE No. 326**

## **TOWN OF RICO**

### **AN ORDINANCE DESIGNATING THE BOARD OF TRUSTEES TO ACT AS THE BOARD OF ADJUSTMENTS AND ENACTING PROCEDURES AND DUTIES**

WHEREAS, the Board of Trustees finds that it can assume the duties of the Board of Adjustments with more efficiency and can provide a more formal, organized, and regular hearing process for appeals and variance applications;

WHEREAS, C.R.S. sec. 31-23-307 authorizes municipalities to establish the membership, procedures and duties, of the Board of Adjustments by ordinance; and,

WHEREAS, the Board of Trustees finds that the immediate effectiveness of this Ordinance is necessary for the immediate health, safety, and general welfare in order to review a variance application submitted by the Rico Fire Protection District for the construction of a fire station;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF RICO, COLORADO, the following:

**SECTION 1: REPEAL OF SECTION 3., ORDINANCE NO. 274**

Section 3., of Ordinance No. 274 is hereby repealed in its entirety without affecting or amending the remaining provisions of Ordinance No. 274

**SECTION 2: BOARD OF ADJUSTMENTS ESTABLISHED**

The Board of Adjustments is hereby established as provided in this Section 2. The following sections are enumerated as 720 through 729., the proposed enumeration in the draft Rico Land Use Code, and shall be sub-sections of Section 2. of this Ordinance.

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**SECTION 720. BOARD OF ADJUSTMENTS**

Sections 720. through 729. establishes the organization, authority, and duties of the Rico Board of Adjustments, or 'BOA'.

**SECTION 722. MEMBERSHIP**

**722.1 Composition.** The Board of Trustees shall act as the BOA.

**722.2 Terms.** The terms shall correspond with the terms for the Board of Trustees.

**722.3 Qualifications.** Qualifications shall be the same as those for the Board of Trustees.

**722.4 Compensation.** Members shall serve without compensation, except reasonable out-of-pocket expenses.

**722.5 Officers.** The BOA shall elect from its membership a chairperson, whose term shall correspond with that person's BOA term, with eligibility for re-election.

**722.6 Attorney, Planner, Consultants.** With prior approval of the Board of Trustees or the Mayor, the Town Attorney, the Town Planner, or other consultant shall, when requested by the BOA, attend any meetings of the BOA. With the prior approval of the Board of Trustees or the Mayor, any member of the BOA may call upon the Town Attorney or Town Planner for and oral or written opinion relating to any question of law or planning involving matters of the BOA.

**SECTION 723. MEETINGS**

**723.1 Meetings.** Meetings shall be held by the BOA as applications for BOA review or appeals to the BOA are submitted and may be held on the same night as meetings of the Board of Trustees. Meetings may be called by the BOA upon the request of the Chairperson or any four members of the BOA. Each member shall be personally notified at least 24 hours prior to the meeting.

**723.2 Quorum.** Four members of the BOA shall constitute a quorum.

**723.3 Record.** The BOA shall keep a public record of its proceedings.

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**SECTION 724. POWERS AND DUTIES**

- 724.1** The BOA shall have full power and authority to act on matters granted to it this Ordinance and Ordinance No. 274. of the Town of Rico. In general, the BOA shall have such powers as may be necessary to enable it to perform its functions, promote municipal planning, and review development applications.
- 724.2** The BOA shall have the authority to hear and decide appeals from, and review, any order, requirement, decision or determination made by an administration official charged with the enforcement of Ordinance No. 274.
- 724.3** The BOA shall have the authority to hear and decide upon the granting of adjustments, variances, modifications or exceptions to the regulations and requirements of Ordinance No. 274 relating to the construction or alteration of buildings or structures, setbacks, and design regulations.
- 724.4** The BOA shall have the authority to render interpretations of Ordinance No. 274, including any uncertainty as to boundary location or meaning of words and phrases, provided that such interpretation is not contrary to the purpose and intent of Ordinance No. 274.

**SECTION 3. VARIANCE APPLICATIONS**

The following sections are enumerated as 430. through 436., the proposed enumeration in the draft Rico Land Use Code, and shall be sub-sections of Section 2. of this Ordinance.

**SECTION 430. VARIANCE APPLICATIONS**

The Board of Adjustments shall be authorized to permit such Variance or modifications of the building height, setbacks, yard area, site coverage, required off-street parking, and maximum floor area regulations as may be necessary to permit and promote appropriate development of a parcel of land that differs from other parcels in a Zone District by area, shape, slope, or pre-existing improvements that the subject parcel cannot be appropriately developed without such modification.

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**SECTION 432. APPLICATION SUBMITTAL REQUIREMENTS**

The Applicant shall file eight (8) copies of an application requesting a Variance. The application shall be accompanied by or show the following:

- A. The street address and legal description of the property affected;
- B. A site plan and any and all other information necessary to clearly demonstrate eligibility for the requested Variance based upon the required findings in Section 436. below; and
- C. A \$50.00 application fee.

**SECTION 434. REVIEW PROCEDURES.**

- A. Reviewing Board. The Board of Trustees shall act as the Board of Adjustments and shall review and render decisions on all Variance applications. Variance applications shall be approved by a majority vote.
- B. Public hearing required. The Board of Adjustments shall conduct a public hearing on any application for a Variance prior to rendering its decision.
- C. Notice. Public hearings for Variance applications shall be posted at the Town Hall and Post Office and shall be published in the designated official paper of record at least 5 days prior to the hearing. Written mailed notice shall be provided to the property owners within 100 feet of the subject property, such notice shall be mailed at least 10 days prior to the hearing. Notice shall also be posted on the subject property. Notice shall include the present Zone District classification, the proposed Variance; the time, date, and place of the hearing; and the name, address, and phone number of the Applicant and a statement that the application is available for public inspection in the Town Clerks office along with office hours.
- D. Conditions. The Board of Adjustments has the authority to recommend approval of a Variance with conditions, including but not limited to: required improvements, required additional off-street parking, covenants restricting further development, requirement to bring non-conformities into compliance with Ordinance No. 274.

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- E.**     Appeal. The decision of the Board of Adjustments shall be the final decision of the Town and may be appealed to the District Court within 30 days of the date of the meeting where the decision was rendered.
  
- F.**     Records. A file containing all documents relevant to the application and disposition of such Variances shall be maintained by the Town Clerk.

**SECTION 436.                   STANDARDS FOR REVIEW**

The following standards shall apply to review of Variance applications by the Board of Adjustments.

- A.**     There are special circumstances existing on the property on which the application is made related to size, shape, area, topography, surrounding conditions, access, and location that do not apply generally to other property in the same area and Zone District; and,
  
- B.**     The Variance will not unduly impact the underlying purposes of setbacks, including but not limited to: snow removal, street scapes, separation of buildings for fire protection, and opportunity for off-street parking, which are provided by minimum setbacks; solar access, protection of neighbors views to the surrounding mountains, continuity of street scapes, minimization of visual impacts on hillside development, which are provided by maximum building heights; continuity of design, minimization of visual impact, and provision of minimal yard area which is provided by maximum floor areas (particular attention shall be given to the impacts of the Variance on neighbors); and,
  
- C.**     The Variance, if granted, will not constitute a material detriment to the public welfare or injury to the use, enjoyment or value of property in the vicinity; and,
  
- D.**     The Variance is not sought to relieve a hardship to development of the property which has been created by the Applicant; and,
  
- E.**     That the proposed use is a permitted use in the underlying Zone District; or,

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- F. The Variance is required to provide of construct an essential public service, including but not limited to: Public utilities, improvements by the Town of Rico, and improvements by the Rico Fire Protection District.

**SECTION 4. EMERGENCY CLAUSE**

The Board of Trustees finds that the Rico Fire Protection District has submitted a variance application for the construction of a fire station, which will provide essential emergency services, and that the immediate effectiveness of this Ordinance is necessary to preserving the health, safety, and general welfare in order to establish a board which can review such application on a timely basis.

**SECTION 5: EFFECTIVE DATE AND PUBLICATION**


After final adoption, the Town Clerk shall cause a copy of this ordinance to be published in accordance with Ordinance No. 323. This Ordinance shall become effective immediately upon publication rather than 30 days after publication for the immediate preservation of the health, safety and general welfare.

**SECTION 6. SEVERABILITY**


If any provision of this ordinance or portion thereof is held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other provision which can be given effect without the invalid portion.

**READ, PASSED, AND ADOPTED BY THE BOARD OF TRUSTEES OF THE TOWN OF RICO this 24<sup>th</sup> day of September, 1996.**

  
By: Robert Small, Mayor

  
Attest: Linda Yellowman, Town Clerk

[Town Seal]

  
Approved as to Form: Eric James Heil, Esq.  
Town Attorney