



AN ACT REVISING THE APPEAL PROCESS FOR COUNTY ZONING DECISIONS; CLARIFYING THAT AN APPEAL FROM A BOARD OF ADJUSTMENT TO A BOARD OF COUNTY COMMISSIONERS IS A DE NOVO REVIEW; AND AMENDING SECTION 76-2-227, MCA.

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

Section 1. Section 76-2-227, MCA, is amended to read:

"76-2-227. Appeals -- board of county commissioners or board of adjustment to court of record -- county commissioners may establish appeal process. (1) (a) The board of county commissioners may

establish in the zoning regulations a process for an appeal of a decision by the board of adjustment to the board of county commissioners by any person or persons, jointly or severally, aggrieved by a decision of the board of adjustment or an officer, department, board, or bureau of the county.

(b) The process, if established, must provide that an appeal to the board of county commissioners be initiated by presenting to the board of county commissioners a petition, duly verified, ~~setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality~~ specifying the grounds of the appeal.

(c) The petition must be presented to the board of county commissioners within 30 days after the filing of the decision of the board of adjustment, and a final decision must be made within 60 days of receipt of the petition.

(d) The board of county commissioners shall properly notice and hold a public hearing de novo ~~may:~~

(i) ~~remand the special exception to the board of adjustment;~~

(ii) ~~reverse or affirm, wholly or partly, the decision of the board of adjustment; or~~

(iii) ~~modify the decision of the board of adjustment.~~

(2) Any person or persons, jointly or severally, aggrieved by a decision of the board of county

commissioners or the board of adjustment may present to a court of record a petition, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within 30 days after the filing of the decision in the office of the appropriate board.

(3) Upon presentation of a petition, the court may allow a writ of certiorari directed to the board of county commissioners or the board of adjustment to review the decision of the board and shall prescribe in the writ the time within which a return must be made and served upon the relator's attorney, which may not be less than 10 days and may be extended by the court. The allowance of the writ may not stay proceedings upon the decision appealed from, but the court may, upon application, on notice to the board of county commissioners or the board of adjustment, and on due cause shown, grant a restraining order. The board of county commissioners or the board of adjustment may not be required to return the original papers acted upon by it, but it is sufficient to return certified or sworn copies of the original papers or of portions of the original papers that may be called for by the writ. The return must concisely set forth other facts that may be pertinent and material to show the grounds of the decision appealed from and must be verified.

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

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

- END -

I hereby certify that the within bill,
SB 135, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2021.

Speaker of the House

Signed this _____ day
of _____, 2021.

SENATE BILL NO. 135

INTRODUCED BY S. FITZPATRICK

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