

DELTA COUNTY BOARD OF ADJUSTMENTS

**Administration Building – Board Room
560 Dodge St., Delta, CO 81416
Thursday, April 22, 2021 @ 5:30 p.m.**

**TBD, Chair
TBD, Vice-Chair
Carl Holm, Director**

Instructions for Public Participation:

The public can join the meeting remotely by registering in advance of the meeting at:

<https://us02web.zoom.us/meeting/register/tZMuc-CtqzggHNLUNikfepOLfnF3ctYQbR>

After registering, you will receive a confirmation email containing information about joining the meeting.

REGULAR AGENDA

5:30 P.M. – CALL TO ORDER

ROLL CALL

Mike Twamley, District 1
Brett Hilling, District 2
Mark Roeber, District 3

WELCOME AND INTRODUCTIONS

PUBLIC COMMENTS

This is time set aside for the public to comment on matters not on the agenda. The Chair may set a time limit for speakers.

AGENDA ADDITIONS, DELETIONS, AND CORRECTIONS

The Board of Adjustment Secretary will announce changes to the agenda that arose after posting of the agenda.

SCHEDULED ITEMS

1. BOARD OF ADJUSTMENT OFFICERS
RECOMMENDATION: Elect a Chair and Vice-Chair for the Board of Adjustments
2. SCHEDULE
Consider a regular meeting schedule for the Board of Adjustments
RECOMMENDATION: Adopt a regular meeting schedule for the 2nd and 4th Thursday of each month, starting at 5:30 pm.

CERTIFICATION OF POSTING

On 4/16/2021 at 9:30 AM, Kate Kelly did post the above AGENDA as public notice of the 4/22/2021 meeting. The official notice is placed on the front entrance of the Delta County Courthouse located at 501 Palmer, Delta, Colorado and a courtesy copy is sent to the Delta County website at www.deltacounty.com.

3. OVERVIEW AND INTRODUCTION

Discussion of the Board of Adjustment roles and procedures

RECOMMENDATION:

- a. Receive the Board of Adjustment General Rules;
- b. Recommend appeals timelines/process to the Board of County Commissioners;
and
- c. Provide direction to staff if/when the BOA desires to establish more specific rules.

BOARD COMMENTS, REQUESTS AND REFERRALS

This is time set aside for the Board of Adjustments to comment, request, or refer a matter that is not on the agenda for future consideration.

DEPARTMENT REPORT

This is time set aside for the Director to report on matters affecting the Department.

ADJOURNMENT

CERTIFICATION OF POSTING

On 4/16/2021 at 9:30 AM, Kate Kelly did post the above AGENDA as public notice of the 4/22/2021 meeting. The official notice is placed on the front entrance of the Delta County Courthouse located at 501 Palmer, Delta, Colorado and a courtesy copy is sent to the Delta County website at www.deltacounty.com.



STAFF REPORT

Delta County Board of Adjustments

**Delta County Administrative Building
560 Dodge Street, Delta, CO 81416**

Thursday, April 22, 2021 @ 5:30 p.m.

SCHEDULE

**Consider the date and time for a regular Board of
Adjustment meeting schedule**

RECOMMENDATION:

Adopt a regular meeting schedule for the Board of Adjustments.

SUMMARY/DISCUSSION:

There is no specific timeframe required for Board of Adjustment meetings. Staff is recommending a regular meeting schedule for the 2nd and 4th Thursday of each month, pending items that are ready to be scheduled. Staff finds that evening meetings are generally better for applicants and the public to attend so is recommending a start time of 5:30 pm.

Planning Commission (PC) meetings are the 2nd and 4th Wednesday of each month, starting at 5:30 pm, and Board of County Commissioners (BoCC) generally meets the 1st and 3rd Tuesday - Planning items at the BoCC are generally scheduled at 10:00 am. Staff is recommending that the BOA meet on Thursdays to avoid any potential conflict with special meetings/items from the BoCC or PC.

Attached material list, in order as attached:

- None



STAFF REPORT

Delta County Board of Adjustments

**Delta County Administrative Building
560 Dodge Street, Delta, CO 81416**

Thursday, April 22, 2021 @ 5:30 p.m.

OVERVIEW AND INTRODUCTION

Discussion of the Board of Adjustment roles and procedures

RECOMMENDATION:

- a. Receive the Board of Adjustment General Rules (Resolution 2021-R-009)
- b. Recommend timelines for appeals to/from the Board of Adjustments to the Board of County Commissioners for consideration.
- c. Provide direction to staff if/when the BOA desires to establish more specific rules.

SUMMARY:

This (April 22, 2021) will be the first meeting of the newly formed and appointed Board of Adjustments (BOA). Guidance for the role and procedures of the BOA are set forth in the Land Use Code as well as subsequent resolutions adopted by the Board of County Commissioners. On April 6th, the BoCC adopted General Rules for the BOA and requested that the BOA consider the length of the appeal process while the Planning Commission considered defining “aggrieved party”. Staff was directed to return in May with recommendations to be incorporated into the BOA General Rules. In addition, the BOA may adopt supplemental rules of procedure not inconsistent with State Statutes or rules established by the BoCC.

DISCUSSION:

On January 5, 2021, Delta County Board of County Commissioners (BoCC) adopted Resolution 2021-R-001 adopting a new Land Use Code (LUC), including zoning maps. Chapter 1, Section 6.C of the Land Use Code establishes a Board of Adjustments (BOA), and Resolution 2021-R-001 further



defines the membership as three members, one from each commissioner district. Generally, the BOA is charged with review of applications for variances, minor amendments, and appeals of administrative determinations.

On February 16, 2021, the BoCC, via minute action, appointed members of the newly formed Board of Adjustments as follows:

- District 1; Mike Twamley (3-year term);
- District 2; Brett Hilling (2-year term); and
- District 3; Mark Roeber (1-year term)

At the conclusion of each of these initial terms, appointment/reappointment would be for three (3) years. This format is identified in these General Rules.

On April 6, 2021, the Board of County Commissioners (BoCC) adopted Resolution No. 2021-R-009 establishing General Rules for the newly formed Board of Adjustments (BOA). These General Rules govern the organization, procedure, and jurisdiction of the BOA, and are in addition to and intended to be complementary with those rules governing the BOA contained in the Land Use Code, and adopting resolution (**Attached**). The BOA may adopt supplemental rules of procedure not inconsistent with State Statutes or rules established by the BoCC.

The LUC establishes the BOA as the appeal authority for Administrative decisions and determinations (made by the Director). The LUC is silent if the BOA decision is final or there would be opportunity to appeal to the BoCC for a final determination. Section 6.10 of the General Rules establishes the appeal process with the BoCC as the final decision-making body. An appeal to the BOA would be “*de novo*” meaning that the action is considered from the beginning and new information can be introduced. In addition, staff has included the ability for an “aggrieved party” to be able to appeal the BOA decision to the BoCC. As drafted, this appeal to BoCC would be “of record” meaning the hearing would be based only on information considered by the BOA.

Staff is not aware of anything in the statute or the code that says how standing for an appeal is to be evaluated. Statutory authority of the Board is limited to addressing appeals from people who are “aggrieved” by the decision; however, there is no definition of an “aggrieved party”. The language of the administrative appeals section is not limited to the applicant. Per the LUC, a decision is stayed until the appeal matter is resolved.

Staff informed the BoCC that the Planning Commission (PC) had been discussing what constitutes an aggrieved party. The BoCC adopted the BOA General Rules but requested that the PC consider (and recommend) a definition for an “aggrieved party”. Recognizing timing could be of concern, the BoCC also requested that the BOA consider the timeline for processing appeals, with intent of providing adequate time but not extending the time for too long.



An appeal form is being drafted that would include a section that requests information about how the appellant is aggrieved by an Administrative (Director) action. On April 14, the PC voted 8-1 to recommend two definitions:

- 1) Aggrieved Party: Those property owners defined as neighbors AND those property owners who received Notification as determined by the Director.
- 2) Neighbor: Owner of a property adjoining the applicant's property AND, other property owners, entities, groups and organizations as determined by the Director.

The dissenting vote favored having no limitations to who has standing to appeal an application. The concern of the PC was that a decision is stayed until the appeal is resolved. Chapter 12 of the LUC affords 30 days to file an appeal and then the BOA to consider (meaning staff presenting it to the BOA) the appeal within 45 days of filing. The BoCC was interested in the length of the appeal process, including how long the BOA would take to render a decision, which could then be appealed to the BoCC.

Staff prepared instructions (aka Standard Operating Procedures or SOP) outlining the review process (**Attached**). Staff also prepared a matrix that summarizes the different types of applications with a brief overview of the process (**Attached**). These forms were developed by staff with input from the Planning Commission.

The process is generally as follows:

1. Pre-Application Form submitted
2. Pre-Application Conference/Meeting
3. Application package sent to the applicant
4. Application submitted
5. Complete Application processed

There are generally three possible process paths:

1. Director, Appeal to the BOA, Appeal to the BoCC
2. Board of Adjustments, Appeal to the BoCC
3. Planning Commission, Recommendation to the BoCC

Attached material list, in order as attached:

- Resolution 2021-R-009 (General Rules)
- General Development Application Instructions
- Land Use Guidelines Matrix

**RESOLUTION
OF THE
BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DELTA,
STATE OF COLORADO**

RESOLUTION NO. 2021-R-____

**RESOLUTION TO ESTABLISH GENERAL RULES FOR THE DELTA COUNTY BOARD OF
ADJUSTMENTS**

WHEREAS, on January 5, 2021, Delta County Board of County Commissioners adopted Resolution 2021-R-001, repealing Delta County regulations regarding land use and subdivision and adopting a new land use code (including zoning maps); and

WHEREAS, Chapter 1, Section 6.C of the Delta County Land Use Code establishes a Board of Adjustments, including the composition and compensation, powers and duties, and voting requirement; and

WHEREAS, Resolution 2021-R-001 further defines the membership as three members, one from each commissioner district; and

WHEREAS, on February 16, 2021, the Board of County Commissioners, via minute action, appointed three (3) members of the newly formed Board of Adjustments; and

WHEREAS, Delta County Board of County Commissioners (Board) desires to provide general rules to govern the organization, procedure, and jurisdiction of the Board of Adjustment (BOA) pursuant to Colorado Revised Statutes (C.R.S.) 30-28-117(2).

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Delta County as follows:

1. General Rules applicable to the Delta County Board of Adjustments, are hereby attached hereto and incorporated herein by reference as Exhibit A.

ADOPTED AS SET FORTH ABOVE on this ____ day of ____, 2021.

BOARD OF COUNTY COMMISSIONERS
COUNTY OF DELTA
STATE OF COLORADO

ATTEST:

Mike Lane, Chair

Don Suppes, Vice Chair

Teri Stephenson
Delta County Clerk & Recorder

Wendell Koontz, Commissioner

EXHIBIT A
General Rules
The Delta County Board of Adjustment
Effective Date: April 6, 2021

Section 1: Authority

1.1 The Delta County Board of County Commissioners (Board) are authorized pursuant to Colorado Revised Statutes (C.R.S.) 30-28-117(2) to provide general rules to govern the organization, procedure, and jurisdiction of the Board of Adjustment (BOA).

1.2 These General Rules are in addition to and in complementary with those rules governing the BOA contained in the Resolution and Land Use Code adopted by the Board on January 5, 2021 and recorded at reception No. 725219.

1.3 Pursuant to C.R.S. 30-28-117(2) the BOA may adopt supplemental rules of procedure not inconsistent with C.R.S. or rules established by the Board.

Section 2: Board of Adjustment Purpose

2.1 The purpose of the BOA shall be to implement applicable sections of C.R.S. and the Delta County's Land Use Code (LUC); e.g., review of applications for variances, minor amendments, and appeals of administrative determinations.

Section 3: Definitions/Acronyms

3.1 As used herein, "the Board" shall mean the Delta County Board of County Commissioners.

3.2 As used herein, "the BOA" shall mean the Board of Adjustment.

3.3 As used herein, "the Staff" shall mean the Delta County Planning and Community Development Department staff, both individually and collectively.

Section 4: Jurisdictional Area

4.1 The jurisdictional area of the BOA shall be limited to the unincorporated areas of Delta County.

Section 5: Member Duties

5.1 Membership

- a. The BOA shall consist of three members appointed by a majority of the Board.
- b. There shall be one member appointed from each Commissioner District.
- c. Terms shall be for three (3) years unless otherwise specified by the Board. To stagger the membership, initial appointments (beginning 2021) shall be as follows:

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1. District 1, three (3) years
2. District 2, two (2) years
3. District 3, one (1) year

5.2 Attendance

Each BOA member shall have the responsibility of attending all regular and special meetings, including work sessions, of the BOA so that the business of the BOA can be conducted in an effective, efficient and responsible manner.

5.3 Compensation

Members of the BOA, including Associate members if applicable, shall receive as per diem compensation for meetings attended while serving on the BOA as follows: \$50 per meeting and travel expenses.

5.4 Reimbursement

BOA members shall be reimbursed for travel expenses to attend scheduled meetings at a rate established by the Board of County Commissioners. All other expenses incurred while conducting business of the BOA will require Director approval for reimbursement prior to incurring the expense. Such reimbursements that require Director approval include, but are not limited to, conferences and/or meetings in other jurisdictions and travel expenses to such conferences/meetings.

Section 6: Meetings

6.1 Quorum

- a. A quorum of the BOA shall be a minimum of two (2) members present at the beginning of a meeting. No public hearing or meeting shall be held unless a quorum is present. In the absence of a quorum, the BOA shall terminate any scheduled public hearing or meeting within a reasonable time after gathering.
- b. If a public hearing or meeting has not been convened due to lack of quorum; applications that require public notice will not be required to republish notice.

6.2 Official Action

- a. No action of the BOA is official unless authorized by a majority of the members of the BOA present at a regular or special meeting.
- b. In the event a quorum is not present, all items on the agenda will be tabled until the next regular meeting of the BOA or until a special meeting is called.

6.3 Order of Business

The order of business shall be set forth in an agenda prepared by the Staff as follows, unless otherwise ordered by the BOA Chair:

- A. Call to Order.
- B. Approval of minutes from previous meeting(s).
- B. Consideration of and action on applications tabled from a prior meeting.

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- C. New applications.
- D. Other Agenda Business.
- E. New Business.
- F. Adjournment.

6.4 Order of Presentation of Agenda Application Matters

After the BOA Chair has brought the meeting to order, the BOA Chair shall establish the rules of the meeting, after consultation with the Staff and subject to the approval of the BOA. The order of presentation with respect to each application generally will be as follows:

- A. Presentation of the application by Staff.
- B. Questions of the BOA directed to Staff.
- C. Presentation by the Applicant.
- D. Questions of the BOA to the applicant.
- E. Public Comments.
- F. Final comments, rebuttal, from the applicant.
- G. Final questions of the BOA.
- H. Closing of public comments.
- I. Deliberation of the BOA.
- J. Motion and official action by the BOA.

6.5 Establishment of Meeting Agendas

- a. The Staff, in consultation with the BOA Chair, shall establish the agenda for regular and special meetings.
- b. A BOA member may request that a specific matter, directly related to BOA business, be included on a future meeting agenda by making such request as a new business item in a regular meeting. Such matters will be scheduled for discussion in the next available meeting, subject to public notice requirements.

6.6 Rules of Order

- a. Evidentiary hearings before the BOA should be conducted in an orderly manner but need not strictly conform to the rules of procedure and evidence necessary in a judicial proceeding. Proceedings may be conducted in an informal manner; the basic requirement is that the principals of fundamental fairness be observed.
- b. Roberts Rules of Order shall govern the BOA in all parliamentary procedures unless otherwise specified in these General Rules.

6.8 Form for Motions on Applications

BOA actions are final, unless appealed to the Board. Motions on applications shall be made for approval, approval with conditions or denial. Application motions shall make reference to the applicable sections of County regulations that may control the recommended action.

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6.9 Continuance of Agenda Item

When the BOA decides to continue or table a matter or application before it, it may do so by motion without any requirement for further notice to the affected parties or the public. The matter postponed shall be scheduled to the nearest future regular or special meeting. No further notice shall be required provided the matter is continued to a date and time certain.

6.10 Appeals.

- a. Decisions and/or determinations by the Director may be appealed to the BOA by an aggrieved party. The hearing before the BOA shall be de novo.
- b. Decisions of the BOA may be appealed to the Board by an aggrieved party. The hearing before the Board shall be of record.
- c. In order to initiate an appeal, an aggrieved party must submit a complete appeal application and filing fee within the prescribed timeline. Said application shall include, but not be limited to, information about how the appellant is aggrieved.

Section 7: Voting Privileges

7.1 Voting Right

Each member, including the BOA Chair and Vice-Chair, shall have one (1) vote and shall exercise that voting right at the appropriate time during the proceedings. Proxies are not to be allowed.

7.2 Conflict of Interest

- a. Any member of the BOA who has a conflict of interest on any matter that comes before the BOA shall disclose the conflict on the record and then shall voluntarily excuse him/herself, vacate his/her seat, leave the room where necessary to avoid any appearance of influence on the matter under consideration, and refrain from discussing or voting on the matter. A conflict of interest includes any situation where a BOA member:
 1. Has a direct financial interest in the matter; or
 2. Will be directly affected by the decision in the matter; or
 3. Believes he or she has a conflict of interest as defined by an applicable law; or
 4. Will gain an advantage to relations, groups, or associations to whom he or she is affiliated.
- b. A member who has an application before the BOA shall recuse his or her position on the BOA as to such application and participate in the matter as the applicant before the BOA without any voting rights in the matter.

Section 8: Officers

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8.1 Elective Office

The elected officers of the BOA shall be the BOA Chair and Vice-Chair who shall be elected by a majority of BOA members.

8.2 Eligibility

Any regular member of the BOA may hold an elected BOA office.

8.3 Duties of the BOA Chair

The BOA Chair shall supervise and manage the BOA and at a minimum shall:

- A. Preside over all meetings of the BOA.
- B. Sign documents of the BOA.
- C. See that all actions of the commission are properly taken.
- D. Advise the Staff on any matters pertaining to the BOA business.
- E. Be the public representative of the BOA.

8.4 Duties of the Vice-Chair

During the absence or disqualification of the BOA Chair, the Vice-Chair shall exercise and perform the duties and responsibilities of the BOA Chair.

8.5 Terms of Office

The term of all elected officers shall be for one (1) year effective on the date of the annual meeting. No elected officer shall serve in that position for more than two (2) consecutive years but may be elected to serve again after a one (1) year hiatus.

8.6 Vacancies

The Vice-Chair shall succeed the BOA Chair if the Chairperson vacates his/her office prior to the expiration of the term. The Vice-Chair shall serve as BOA Chair for the remainder of the unexpired term and the BOA shall elect a new Vice-Chair.

8.7 Nominations

Any member of the BOA can nominate a member of the BOA for the position of any office.

8.8 Elections

If more than one (1) nominee is presented for any office, voting shall be done by secret ballot and a plurality of the votes cast shall be necessary for election. If only one (1) nominee is presented for each office, voting shall be done in a manner specified by the BOA Chair.

Section 9: Committees

9.1 The BOA Chair may appoint members of the BOA to various committees as is necessary to conduct BOA business.

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Section 10: Amendments

10.1 Amendments to these General Rules

These General Rules may be amended at any meeting of the Board by an official action.

Section 11: County Staff

11.1 Functions of the Staff

The Staff will carry out the day to day operations of the Community Development Department. For the BOA, the Staff shall at a minimum:

- A. Review and approve all financial documents and vouchers for the BOA and its members.
- B. Give, serve, post and advertise all public notices as required by the County's regulations.
- C. Prepare, post and distribute the agenda for meetings of the BOA.
- D. Inform the BOA of any changes to the agenda, absences of any BOA member and any matter related to Planning in which the BOA should be informed.
- E. Prepare Staff reports for all applications in accordance with County regulations for review by the BOA.
- F. A member of the Staff or if necessary, another employee of Delta County shall record the minutes of all meetings of the BOA.
- G. Keep the minutes of all meetings in an appropriate manner.
- H. Arrange and coordinate all field tours and travel for the BOA.
- I. Provide timely meeting notices and policies and documents as may be necessary and required for the effective conduct of BOA meetings.

Section 12: Professional Performance

12.1 Bias

The BOA must hear land use matters that come before them without bias, and without any appearance of bias. This is necessary to instill and maintain public confidence and trust in governing bodies.

BOA members provide input to the Board through various on-the-record actions. BOA members who publicly voice opinions or state positions on these matters create an appearance of impropriety to the public.

It is therefore inappropriate for a member of the BOA to speak in favor of, or in opposition to, an application that was previously before the BOA at any subsequent BOA or Board meeting or other public venue including social media or the news outlets involving the referenced land use matter. In the event that the Board were to refer a matter to the BOA for consideration or recommendations, a BOA member's statement of

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opinion or position to the Board on the matter would create the appearance of predetermination, which seriously undermines the public trust.

12.2 Gifts

A BOA member shall not accept any compensation, gift, or service which would violate the provisions of Article XXIX of the Colorado Constitution or applicable C.R.S.

12.3 Ex Parte

A BOA member shall not engage in an ex parte communication regarding any active application that will be heard by the BOA in any quasi-judicial proceeding. An ex parte communication is a communication between a BOA member and a member of the public or an applicant that takes place outside a noticed public hearing or meeting on an application that will be heard by the BOA. A BOA member who engages in ex parte communication shall disclose it to the BOA and consider abstaining from voting if such ex parte communication creates an appearance of impropriety, creates a conflict of interest, or otherwise affects due process in the decision making proceedings.

12.4 Colorado Open Meetings

- a. Meetings of the BOA, including site visits and work sessions shall be open to the public pursuant to C.R.S. 24-6-401 et seq. The BOA may meet in executive session as allowed by law.
- b. BOA members should avoid written and oral communications (including email and social media communications) with other members outside of scheduled meetings concerning any application or other quasi-judicial matter pending before the BOA or that has been considered by the BOA in the past as well as individuals and groups that may appear before the BOA with respect to such applications. Such communications can meet the definition of a public meeting and must be avoided to prevent potential violations of the Colorado Open Meetings Law.



LAND USE GUIDELINES

ALL USES

- Land uses, including subdivisions, must comply with all applicable standards of the Land Use Code, generally found in:
 - Chapter 3, *Lots, Buildings, and Structures*
 - Chapter 4, *Site Design and Environmental Stewardship*
 - Chapter 5, *Public Facilities, Infrastructure, and Services*
- A pre-application meeting is required for all land use applications to determine the process and materials required. An application and fee is required to initiate a pre-application meeting.
- Following the pre-application meeting, a letter will be sent with a checklist of materials required for an application, including application forms and fees.
- The fee for the pre-application meeting will be applied (credited) to the application fee if an application is submitted within three months.
- County refers projects within an Urban Growth Boundary to the appropriate municipality for comment relative to their regulations.
- Public notice (if applicable) shall be made at least 14 days prior to the hearing date in accordance with Chapter 7, Section 4, *Public Notice*.

PERMITTED USES

- Permitted Uses are subject to Administrative Review of a Zoning Permit (ministerial permit).
- Applications for a Zoning Permit are reviewed for compliance with all applicable standards of the Land Use Code.
- Once the application is determined to comply with the applicable standards, the Director shall approve the Zoning Permit.
- The Director can refer the matter to the Planning Commission for recommendation to the Board of County Commissioners.
- An Aggrieved Party can appeal the Director's decision to the Board of Adjustments.
- Other types of permits may be required (e.g.; well, septic, access).

LAND USES ALLOWED-BY-RIGHT

- Land uses listed as being allowed-by-right do **NOT** require a permit; however, landowners must comply with all applicable standards of the Land Use Code.
- Other types of permits may be required (e.g.; well, septic, access)

LIMITED USES

- Limited Uses are subject to Administrative Review of a Zoning Permit and Site Plan (discretionary permit).
- Applications for a Zoning Permit are reviewed for compliance with all applicable standards of the Land Use Code.
- Applications for Limited Uses may be referred to specific referral agencies.
- Certain Limited Uses require public notice 14 days prior to a final determination.
- Once the application is complete, and notice provided (as applicable), the Director shall approve, conditionally approve, or deny the Zoning Permit.
- The Director can refer the matter to the Planning Commission for recommendation to the Board of County Commissioners.
- An Aggrieved Party can appeal the Director's decision to the Board of Adjustments.
- Other types of permits may be required (e.g.; well, septic, access).

SPECIFIC USES - Chapter 2, Section 5(B) identifies <i>Use Specific Standards</i> for: - Intensive Agriculture - Rural Residential - Ag Support & Rural Industry - Community Uses - Commercial Uses - Rural Recreation & Hospitality - Utilities, Communications, Mining, Energy, Transportation, Disposal - Specific Uses are generally processed as a Limited Use. - If the use-specific standards cannot be met, a Specific Use is processed as a Conditional Use - Other types of permits may be required (e.g.; well, septic, access).	CONDITIONAL USES - Conditional Uses are subject to Public Hearing Process (discretionary permit). - Applications for a Conditional Use Permit are reviewed for compliance with all applicable standards of the Land Use Code. - Applications for Conditional Use Permits are submitted to specific referral agencies and adjacent property owners. - Following review of the application, the Director will send a letter with comments that could include Recommended Revisions. - Once the application is complete, and notice provided, the Planning Commission shall conduct a public hearing and make a recommendation to the Board of County Commissioners. - The Board of County Commissioners shall conduct a public hearing to approve, conditionally approve, or deny the Conditional Use Permit. - Other types of permits may be required (e.g.; well, septic, access).
VARIANCES - Variances are considered an extraordinary remedy to diverge from quantifiable standards (lot size, setbacks, etc.). Neither a nonconforming use of neighboring lands or structures in the same zoning district, nor a permitted or nonconforming use of lands or structures in other zoning districts shall be grounds for the issuance of a variance. Under no circumstances shall the BOA grant a variance to allow a use that is prohibited by this Code in the zoning district in which the subject property is located. - No variance shall be authorized unless all of the findings in Chapter 10, Section 2(A)(2) can be made: - Unusual Conditions (lot size/shape, exceptional topographic conditions, etc.); - Special Circumstances (unique difficulties or hardship, not a special privilege); and - Consistent with Master Plan and Land Use Code (not detrimental to the public good). - Variation to Lot Size also requires meeting the findings in Chapter 3, Section 1(A)(3). - The Board of Adjustments (BOA) is the authority to consider variance requests. An Aggrieved Party can appeal the Director's decision to the Board of County Commissioners.	MINOR PLAT, REPLAT/LOT LINE ADJUSTMENT - Minor Plats and Replats are subject to Administrative Review. - Minor Plat is a 2-lot subdivision. Replat consists of <i>minor</i> amendments to an approved final plat (lot lines, map notes, right of way, or easements) - all lands must be part of a previously approved plat, no additional lots or building site are created, no impacts to county roads or other service providers is created, or the revision corrects minor errors on the plat. - Applications for a Minor Plat or Replat/Lot Line Adjustment are reviewed for compliance with all applicable standards of the Land Use Code. - Applications for Minor Plat may be referred to specific referral agencies. - Minor Plats where one lot does not meet the minimum lot size requires approval of a variance in order to find the map in compliance. - Once the application is determined to comply with the applicable standards, the Director shall issue an approval. An Aggrieved Party can appeal the Director's decision to the Board of Adjustments. - The Director may refer the application to the Planning Commission for review and recommendation to the Board of County Commissioners. - Other approvals may be required in accordance with Chapter 7, Section 3(A)(2) - Minor (Final) Plats may be recorded when County accepts all public improvements shown on the map and conditions are met to the satisfaction of the Director.

PRELIMINARY PLAT • Preliminary Plats are subdivisions with 3+ lots. • Subdivisions are reviewed for compliance with all applicable standards of the Land Use Code, including Chapter 6, Land Dedication, Fire Impact Fees, Development Improvement Agreements • Applications for Subdivisions are submitted to specific referral agencies and adjacent property owners. • Once the application is complete, and notice provided, the Planning Commission shall conduct a public hearing and make a recommendation to the Board of County Commissioners. • The Board of County Commissioners shall conduct a public hearing to approve, conditionally approve, or deny the Conditional Use Permit. • Final Plats may be recorded after the Board of County Commissioners, at a noticed meeting, accepts all public improvements shown on the map and determines that conditions are met.	BOUNDARY ADJUSTMENTS • Boundary Adjustments are intended for adjustment or revisions of established, undisputed, existing boundary lines between parcels not previously subdivided, and where such adjustment does not result in the creation of an additional lot less than 35 acres. • All parties interested in a Boundary Adjustment shall complete an application provided by the Planning Department and provide a draft plat from the applicant's surveyor showing the existing boundary and the proposed boundary adjustment of all affected parcels. • Once the Director verifies that no new lots are being created and no violation of Codes is being created, they shall forward the draft Plat to the County Surveyor. • The County Surveyor shall review the Plat for accuracy.
APPEALS • The Board of Adjustments (BOA) shall hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by the Director in the administration of this Code. • An Aggrieved Party must file their appeal in writing with the Director within 30 days following the action or decision of the Director from which the appeal is taken. • The BOA hearing is de novo, meaning the matter is reviewed as if no prior action has been taken. • An appeal determination by the BOA may be appealed to the Board of County Commissioners. The BOCC may reverse or affirm, wholly or partly, or may modify the BOA order, requirement, decision or determination based on the record (no new information following the BOA hearing).	REZONING • Rezoning changes the land use designation of a parcel or parcels (legislative action). • Once the application is complete, and notice provided, the Planning Commission shall conduct a public hearing and makes a recommendation to the Board of County Commissioners relative to the proposed rezone consistency with the Master Plan and any adopted Special Area Plans. • The Board of County Commissioners shall conduct a public hearing to approve or disapprove a rezone, based on standards/criteria laid out in Chapter 8, Section 2(B). No lot, tract, or unplatted land will contain multiple zones within its boundaries as a result of the rezoning.



General Development Application Instructions

Pre-Process Investigation: Prior to initiating an application for a land use permit.

- 1) A property owner must have a permitted access and address in order to initiate application for a land use entitlement. See *Access/Address Application Instructions*.
- 2) Identify the zoning designation of the subject parcel. Zoning maps can be found on the County website at: [www. https://www.deltacounty.com/6/Planning-and-Community-Development/...](https://www.deltacounty.com/6/Planning-and-Community-Development/...)
- 3) Review the Land Use Category table in the Land Use Code (LUC). This table can be found in Chapter 2, Section 2.B, Tables 2.b, pages 30-31, or on the County website at: [www. https://www.deltacounty.com/6/Planning-and-Community-Development/...](https://www.deltacounty.com/6/Planning-and-Community-Development/...) The following is a summary of the types of permits and processes:
 - a. Allowed Uses (“A”) and Temporary Uses do not require any permit from the County but must comply with applicable standards in the Land Use Code (Chapters 2, 3, 4, 5 LUC)
 - b. Permitted Uses (“P”) require consideration of a Zoning Permit by the Community Development Director. A permit is approved if all standards are met (ministerial).
 - c. Limited Uses (“L”) require a Zoning Permit and Sketch/Site Plan from the Director. Uses that include “n” in the table will require a public notice. These permits are discretionary meaning they can be approved, conditionally approved, or denied.
 - d. Conditional Uses (“C”) require consideration of a Conditional Use Permit by the Planning Commission and Board of County Commissioners. These permits are discretionary meaning they can be approved, conditionally approved or denied.
 - e. Uses not listed in the table are not allowed unless determined to be similar in nature to a listed use by the Community Development Director.
 - f. Rezoning, and/or text amendments to the Land Use Code, requires consideration by the Planning Commission and Board of County Commissioners. These are legislative actions at the discretion of the County if a change is desired.
 - g. Variances require consideration by the Board of Adjustments.
 - h. Minor Plats (2-Lots), Replats, Lot Line (Boundary) Adjustments require Administrative Review by the Community Development Director; and are discretionary meaning they can be approved, conditionally approved or denied. Upon completion of improvements and condition compliance for Minor Plats, a Final Map must be accepted by the Director.
 - i. Subdivisions (3+ Lots) require consideration off a Preliminary Plat by the Planning Commission and Board of County Commissioners; and are discretionary meaning they can be approved, conditionally approved, or denied. Upon completion of improvements and condition compliance, a Final Map must be accepted by the Board of County Commissioners (public notice).

Pre-Application Meeting: First step in the Review Process for all land use entitlements. The purpose is to review preliminary information to provide guidance on the next steps.

- 1) Pre-application forms for all land use permits are available and can be filled out on line. Application Form: <G:/Shared Drive/Planning & Community Development/Applications/Pre-Application>. Owner/Representative submits a pre-application form with concept (sketch) plans/plats and materials, including a review fee (that will be credited to the application fee), to the Community Development



(Planning) Department. Information provided should include preliminary information about the site (existing structures, access, ditches, waterways, utilities, easements, etc).

NOTE: See instructions for submitting applications/materials.

- 2) In preparation for the meeting, staff will print an aerial photo of the site and surrounding area and review information provided. Staff may perform a site visit to get familiar with the area and take photos, and/or ask the applicant for additional information to help clarify what is being proposed (e.g. staking and/or flagging).
- 3) Within one week of receiving a pre-application:
 - a. Planning will schedule a pre-application meeting between the applicant and the assigned staff. If the Director determines that the matter is minor enough in nature, the pre-application meeting can be waived (move to Step 5).
 - b. Meetings may also include the Director and/or other staff/agencies (Environmental Health, Roads & Bridges, Engineering, Fire, etc) as determined by the Director.
 - c. Consider application relative to Inter-Government Agreement(s) (IGAs) between County and municipalities, including the following key, common points:
 - Urban Growth Boundary (UGB) and Sphere of Influence (SOI) boundaries shall be mapped using GIS such that the data can be used to help identify parcels subject to the IGA.
 - For all Subdivision (minor plat, preliminary plat), Limited Use, Conditional Use, and Rezone applications located within the Growth Management Boundary:
 1. County informs a municipality as part of the pre-application stage in the County's land use review process.
 2. County invites the applicable municipality to attend the pre-application meeting which is to identify applicable review procedures (by County or municipality) and potential issues before an application is filed.
 - All subdivision (minor plat, preliminary plat) requests to the County within the municipality's Sphere of Influence (maps attached) shall be redirected to the municipality for processing. If the municipality declines to process the request, the County will process the request, subject to terms of the IGA.
 - A property owner applying for a Limited Use, Conditional Use, and/or Rezoning within the Sphere of Influence will be required to consult with the municipality as to the ability to annex.
 - No Medium or Large Animal Feeding Operations are allowed within the Growth Management Boundary regardless of the underlying zoning.
- 4) Pre-Application meeting format:
 - a. Applicant presents and explains their request.
 - b. Planner asks clarifying questions to understand the request.
 - c. Planner provides direction if the plan needs to be amended to meet LUC requirements, and could offer possible suggestions to amend the project to better meet standards of the LUC and/or good planning/design.
 - d. Planner explains the review process, and that a letter will be sent including a development application form and a checklist of materials needed for the application.
- 5) Within three (3) weeks from the meeting, Planner sends a package to the applicant that includes:
 - a. General Land Use Application form will be prepared and sent by staff. Sections required to be completed by the applicant will be highlighted (checked): [G\Planning\Applications/Land Use Application](#).



- b. The project planner will complete a checklist of materials and information required to be included with the application. Checklist Form can be found at: [G\Planning\Applications/Land Use Application.](G:\Planning\Applications/Land Use Application.)
- c. Required fee to process the application. The checklist will identify the fee(s) required at the time of submittal. The pre-application fee will be credited to the application fee if a complete application is submitted within three (3) months.

Application: The formal review process for all land use entitlements is initiated with submittal of an application package.

- 1) Owner/Representative submits an application package completed in accordance with the pre-application letter and Application Checklist. *NOTE: See instructions for submitting applications/materials.*
- 2) Completeness Review (1 week). Planner reviews the package to assess if all materials required in the checklist have been submitted, including the processing fee. Review to be completed within one (1) week of submittal.
- 3) Planner sends a letter notifying the applicant that the application is
 - a. Incomplete. Return the entire package including the fee to the applicant. Include a description of what is needed to make the application complete.
 - b. Complete. The application moves on to Sufficiency/Technical review.*NOTE: An incomplete application is not considered filed.*
- 4) Sufficiency/Technical Review (3 weeks).
 - a. Planner reviews application materials for consistency of information and adequacy to demonstrate compliance with the applicable Land Use Code requirements.
 - b. Concurrent with Planner's review, refer applications to agencies, consultants and adjacent property owners. The referral period can be extended for up to one month with mutual consent of the applicant and Director.
 - c. All reviews to be completed and comments received within three (3) weeks of submittal.
- 5) Planner sends a letter notifying the applicant that the sufficiency/technical review is complete, and informs them any fees required to be paid to the referral agencies and/or consultants must be paid before proceeding. Letter to include recommended revisions to address comments received, and date when materials are to be submitted.
- 6) Applicant resubmits materials addressing recommended revisions and comments.
- 7) Planner reviews the resubmitted materials and may refer back out to the commenting agency.*NOTE: Additional fees may be assessed with more than three rounds of resubmittal. Action by the applicant is required within 10 business day. If not, the application is deemed to be stale unless the applicant submits a request for, and the Director agrees to, additional time (up to six months maximum).*
- 8) If the item requires notice, the assigned planner prepares a draft notice for review by the Director. See *Public Noticing instructions below.*
- 9) If there are no recommendations or when the recommendations have been addressed sufficiently, the item is scheduled for action:
 - a. Administrative. The assigned planner prepares a letter (addressed to the applicant) notifying them of the action, including any conditions. A draft letter is submitted to the Director for review and approval.
 - b. BOA. The assigned planner prepares a staff report and resolution recommending conditions and findings supporting staff's recommendation, and schedules a hearing date with the BOA.



- c. PC/BOCC. The assigned planner prepares a staff report and resolution identifying findings supporting staff's recommendation, and schedules a hearing date with the PC. Following action by the PC, the assigned planner prepares a staff report and resolution identifying findings/conditions recommended by the PC, and schedules a hearing date with the BOCC.
- 10) Final Maps. All Final Maps routed to departments with conditions applied to verify that applicable conditions have been met (cleared). Once the applicant complies with all of the conditions (all departments) and completes the required public improvements (R&B, Engineering):
 - a. Preliminary Plat. Planner schedules and notices for the BOCC to accept the final map, including any right of way dedication.
 - b. Minor Plat. If applicable, planner schedules acceptance of right of way dedication by the BOCC prior to Director accepting the Final Map. Planner issues a public notice for the Director to accept the map (*see Public Notice instructions below*).
- 11) Once a final map is signed and accepted, the owner records the map with the County Recorder. Separate fees are required for this service.

Instructions for Public Noticing

- 1) Chapter 7, Section 4 of the LUC identifies the noticing requirements.
- 2) Review Table 7.c to identify the type of notice required, based on the type of application (Publication, Posting, Mail1, or Mail2).
- 3) Standards for what is required based on the type of notice is identified in Section 4.E
- 4) Table 7.b identifies the duration of noticing, which is required at least 14 days before the hearing.
- 5) There are two types of mailing:
 - a. Mail1 goes to adjacent property owners
 - b. Mail2 includes all property owners where their property is touched by drawing a 1,000 foot radius from the project property boundary.
- 6) Contents of the notice is provided in Section 4.B
- 7) Retain an email list of people that express interest to receive notice. This list receives all public notices for land use applications.
- 8) Create a Public Notice page on the Planning & Community Development website. Post all notices on this page for the duration prescribed by the LUC (14 days prior to the hearing).

Instructions for submitting materials

- 1) Pre-Application Forms are available on line ([www.https://www.deltacounty.com/126/Permit-Information](https://www.deltacounty.com/126/Permit-Information)) as fillable forms that can be signed and submitted electronically or printed signed and scanned. Other application forms and checklists will be provided following receipt of a completed pre-application form and fee.
- 2) If the application and related materials are submitted electronically, one hard copy is also required. If submitting the application as a hard copy, an electronic copy of all materials submitted is also required. This can be in the form an USB thumb drive.