

BERNALILLO COUNTY

Planning & Development Services
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ZONING SECTION

APPEAL TO COUNTY COMMISSION

Application Date: _____

Application Number: _____

Hearing Date: _____

OWNER/ APPLICANT FOR LAND USE REQUEST		PHONE
MAILING ADDRESS	CITY	ZIP

AGENT (FOR APPELLANT)		PHONE
MAILING ADDRESS	CITY	ZIP

APPELLANT		PHONE
MAILING ADDRESS	CITY	ZIP

SITE ADDRESS	Case #
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DIRECTIONS

LEGAL DESCRIPTION

ZONE MAP PAGE	CURRENT ZONE(S)	PROPERTY SIZE IN ACREAGE
UPC #	PROPOSED ZONE(S)	SUBDIVISION NAME

CASE # & SCOPE OF APPEAL

DETAILED INFORMATION

I hereby acknowledge that I have read this entire application and affirm that all of the provided information is correct. I agree to comply with the requirements of Bernalillo County and the State of New Mexico as outlined in all applicable laws, ordinances and regulations.

Printed Name _____

Signature _____

Date _____

BERNALILLO COUNTY LAND USE APPEALS TO THE BOARD OF COUNTY COMMISSIONERS

- Bernalillo County's ordinances, code, and policies mandate that proposed development follow a review and approval process. Zoning staff's and appointed commission's decisions are appealable to a higher level authority. Any person can appeal any zoning staff or commission decision as long as the appeal deadlines are met and appropriate fees are paid. All decisions can ultimately be appealed to a judicial review (District Court).

-There are two major appeal bodies within the County's land use process: the Board of Adjustment/County Planning Commission (BA/CPC), and the Board of County Commissioners (BCC).

APPEALS TO THE BOARD OF COUNTY COMMISSIONERS

-The Board of County Commissioners shall sustain the recommendation of the Board of Adjustment or the County Planning Commission without modification unless the recommendation is appealed.

-Written application for appeal (either approval or denial) to the Board of County Commissioners must be filed by 12 noon, within fifteen (15) days of the written CPC determination, at the Planning & Development Services Department.

-The BCC shall set the matter for hearing and give notice by mail of the time, place and purpose thereof to the appellant and to any interested party who has requested in writing to be so notified.

-The BCC follows the Rules of Procedure of Appeals (see attached General Rules of Procedure).

-Applicants, agents and those in support or opposition to a request are now required to submit all evidence and presentation materials to the County Planning Commission through the staff. When a recommendation is forwarded from the Planning Commission to the Board of County Commissioners, the Board of County Commissioners may only accept new evidence if good cause is shown. If an appeal is filed, it is possible that it will be remanded to the Planning Commission for consideration if new evidence is presented to the Board of County Commissioners that was not presented to the County Planning Commission. The Board will generally make their decision based solely on the evidence in the record at each County Planning Commission hearing.

-Any such decision by the BCC shall, in all instances, be the final administrative decision and shall be subject to judicial review as may be provided by law.

APPLICATION PROCESS- APPEALS TO THE BOARD OF COUNTY COMMISSION Requirements:

1. Written application must be submitted within fifteen days of the written County Planning Commission determination, using the form "Appeal to the County Commission"
2. A written justification for the appeal must be provided with the appeal application.
3. Appeals will have a fee of:
\$75.00- on lots of one acre or less **or**
\$100.00- on all other appeals

20% Rule Option

- Pursuant to Section 18.G.3 of the County Zoning Code, a protest to invoke the 20% Rule **may** be submitted in opposition to a CPC recommendation, to require a super-majority decision (4 votes) by the BCC to uphold the CPC recommendation.
- The 20% rule requires a written petition signed by owners of record of land that comprises at least 20% of the land proposed for the change in zone, or 20% of the land not proposed for the change in zone but within 100 feet, excluding right-of-way, of the land proposed for the change in zone.
- If the requirements for the 20% rule are met, the 20% rule will apply to the BCC vote on the appeal.
- The 20% rule requirements and application certification and petition are included in this packet.

General Rules of Procedure

Bernalillo County Board of County Commissioners

Procedure for Quasi-Judicial Hearings. The procedures to be followed for appeals are generally follows: [VRCI]

- A. Appeal or Public Hearing Time Limits: A fifteen (15) minute time limit on each party's argument before the Commission may be established with the understanding that the Chair may alter the time limit when the case is unusually complex. Where numerous speakers sign up to present argument, the Chair may assign a time limit of two (2) minutes per speaker, but in any event, each party's argument shall not exceed the total time allowed. In all cases, the maximum time available for proponents should be equal to the maximum time allowed for the opponents. If necessary, a staff person shall be assigned by the County Manager to be the official timekeeper.
- B. In order to focus the Board of County Commissioners on the issues the party is presenting on appeal, they are encouraged to cite to the facts in the record from the County Planning Commission, and present legal arguments based on the facts in the record. No new evidence shall be presented on appeal to the Board of County Commissioners except as provided in paragraph 22.J below.
- C. The County Manager or designee shall describe the quasi-judicial item to be considered and make a presentation pertaining to the item. This presentation shall be limited to five (5) minutes. The Chair shall then inquire as to whether any Commissioner has questions for the staff members who made the presentation.
- D. The zoning applicant, or appellant, or his/her representative will [VRCI] make a presentation pertaining to the application or appeal. This presentation shall be limited to ten (10) minutes. The Chair will once again inquire as to whether Commissioners have questions of the applicant/appellant and the applicant's/appellant's representatives.
- E. The opponents will make a presentation pertaining to the application or appeal. The presentation will be limited to fifteen (15) minutes. The Chair will once again inquire as to whether Commissioners have questions of the opponents or the opponent's representatives.
- F. There will be an opportunity for applicant/appellant rebuttal and summation. This presentation shall be limited to five (5) minutes.
- G. Staff will then be provided an opportunity to present closing comments. There shall be a time limit of two (2) minutes for closing comments.
- H. The Chair will then inquire of the Commissioners as to whether they have further questions of staff, the applicant/appellant or the opponents and will recognize Commissioners who wish to question the parties or staff.
- I. The Chair will then inquire of the Commissioners as to whether they are prepared to vote on the issue of the application/appeal before them.
- J. No new evidence shall be presented by the applicant/appellant or the opponents. If a party shows good cause why new evidence is necessary for the Commission to act on the case and why the evidence was not available to be presented to the County Planning Commission, the Board of County Commissioners shall either:
 - i. Remand the case to the County Planning Commission to hear the new evidence and any rebuttal evidence, or;
 - ii. If the proposed new evidence is brief and concise in nature and will not prejudice the other party's opportunity to respond to it the Commission may allow the evidence to be presented and considered; swear any witness; allow the opposing party to rebut the new evidence, and; allow for brief cross examination on the new evidence presented through the Chair.
- K. The Commission shall then take action on the item.

20% RULE
CERTIFICATION OF OPPOSITION TO PROPOSED LAND USE CHANGE

The 20% rule may apply to appeals filed before the Board of County Commissioners only! Certification of Protest under the 20% rule must be submitted to the Bernalillo County Planning & Development Services Department no later than one week prior to the scheduled BCC appeal hearing. The department will verify the information presented for the protest and make a determination prior to the hearing date as to whether the 20% rule applies to the appeal. If the 20% rule requirements are met, the 20% rule will apply to the case and the proposed change in land use must be approved by a vote of four members of the BCC.

APPLICATION PROCESS:

1. Obtain an Appeal Application and a Certification of Opposition to Proposed Zoning Change and Petition Protesting Change in Zoning Regulations forms.
2. Complete the form as follows:
3. Name of Contact person for protest
Address
Phone Number

SUBMITTAL REQUIREMENTS: (20% RULE)

1. A copy of the NOTICE OF DECISION for the case under appeal.
2. Forms with name, address, and signature for each owner asking to be included in the protest.
3. A copy of the Zone Atlas Page for the area indicating the property under consideration for a change in zoning regulation and highlights each of the properties included in the form submitted as part of this protest. The properties should be numbered to match the listings of property owners in the attached forms.

20% Rule Form

**CERTIFICATION OF OPPOSITION TO PROPOSED ZONING CHANGE
(to be completed, when the 20% rule is invoked only)**

Contact person for protest:

Name _____

Address _____

Phone Number: Work: _____ Home: _____

Submittal requirements:

- A copy of the notice of decision for the case under appeal.
- Petition forms with name, address, and signature for each owner asking to be included in the protest. (provided in this packet)
- A copy of the zone atlas page for the area indicating the property under consideration for a change in zoning regulation and highlighting each of the properties included in the form submitted as part of this protest. The properties should be numbered to match the listings of property owners in the attached forms.

Note: The 20% rule applies to appeals filed before the Board of County Commissioners only, not the County Planning Commission. Certification of protest under the 20% rule must be submitted to the Bernalillo County Planning & Development Services Department no later than one week prior to the scheduled BCC appeal hearing. The department will verify the information presented for the protest and make a determination prior to the hearing date as to whether the 20% rule applies to the appeal. If the 20% rule does apply to the case, the proposed change in zoning regulation must be approved by a vote of four members of the Board of County Commissioners.

For Planning & Development Services Department Use:

Hearing Date: _____ 20% Rule applies: Yes _____ No _____

Received By: _____ Verified by: _____

Date Submitted: _____

20% RULE (to be submitted for the 20% rule)

PETITION PROTESTING CHANGE IN ZONING REGULATIONS

Site of Proposed Change: _____

Case Number: _____

Action Being Protested:

THIS SECTION FOR OFFICIAL USE

#	Name of Owner (Not Tenant) <i>(Please Print)</i>	Address of Parcel	Signature	Legal Description	UPC Code	Size of Property
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						

THIS SECTION FOR OFFICIAL USE

#	Name (Print)	Address of Parcel	Signature	Legal Description UPC Code Size of Property
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				
21.				
22.				
23.				
24.				
25.				
26.				