



PLANNING COMMISSION WORK SESSION

448 E. 1st Street, Room 190 Salida, Colorado 81201
August 09, 2022 - 6:00 PM

AGENDA

Please register for the Planning Commission Work Session meeting:
<https://attendee.gotowebinar.com/register/7256115246685999119>

CALL TO ORDER BY CHAIRMAN - 6:00 PM

PRESENTATIONS

1. City Attorney - Variance presentation

DISCUSSION ITEMS

2. Land Use Code Sec. 16-4-180 Zoning Variances - Discussion on possible update to Section 16-4-180(e)
3. Discussion on appropriate locations and requirements for additional building height

ADJOURN

Sec. 16-4-180. Zoning Variances

(a) Purpose. Variances are authorization to deviate from the literal terms of this Land Use Code that would not be contrary to the public interest in cases where the literal enforcement of the provisions of this Land Use Code would result in undue or unnecessary hardship. A variance shall not be granted solely because of the presence of nonconformities in the zone district or adjoining districts.

(b) Variances Authorized. Variances from the standards of the underlying zone district shall be authorized only for maximum height, minimum floor area, maximum lot coverage, maximum lot size, minimum setbacks and parking requirements.

(c) Administrative Variances. Because the development of much of historic Salida preceded zoning, subdivision and construction regulations, many buildings within the older neighborhoods of the City do not conform to contemporary zoning standards. In order to encourage restoration and rehabilitation activity that would contribute to the overall historic character of the community, variances from underlying zoning requirements for side and front setbacks may be granted by the Administrator under the following circumstances:

(1) Existing Primary Structure. The Administrator may grant a variance from a setback requirement for an addition to a primary structure if it continues the existing building line. The Administrator shall only consider allowing the encroachment into the setback if it can be shown that maintenance of the building addition can be provided on the subject property and that it is not injurious to adjacent neighbors.

(2) Traditional Neighborhood Setbacks. The Administrator may grant a variance from a front setback requirement for a primary structure if the neighboring properties encroach into the front setback. The variance shall not permit the structure to encroach further into the front setback than the neighboring primary structures. The Administrator shall only consider allowing the encroachment into the setback if it can be shown that such encroachments are the existing development pattern of the block on which the subject property is located and that the encroachment would not be injurious to adjacent neighbors.

(d) Use Variances Not Authorized. Establishment or expansion of a use otherwise prohibited in a zone district shall not be allowed by variance.

(e) Required Showing for Variances. The applicant shall demonstrate the following to the Board of Adjustment before a variance may be authorized:

(1) Special Circumstances Exist. There are special circumstances or conditions which are peculiar to the land or building for which the variance is sought that do not apply generally to land or buildings in the neighborhood;

(2) Not Result of Applicant. The special circumstances and conditions have not resulted from any act of the applicant;

(3) Strict Application Deprives Reasonable Use. The special circumstances and conditions are such that the strict application of the provisions of this Chapter would deprive the applicant of reasonable use of the land or building;

(4) Variance Necessary to Provide Reasonable Use. The granting of the variance is necessary to provide the applicant a reasonable use of the land or building;

(5) Minimum Variance. The granting of the variance is the minimum necessary to make possible the reasonable use of the land or building;

(6) No Injury to Neighborhood. The granting of the variance will not be injurious to the neighborhood surrounding the land where the variance is proposed, and is otherwise not detrimental to the public welfare or the environment; and

(7) Consistency with Code. The granting of the variance is consistent with the general purposes and intent of this Land Use Code.

(f) Authorization to Impose Conditions. The Administrator, in approving an administrative variance, or the Board, in approving the variance, may impose such restrictions and conditions on such approval, and the premises to be developed or used pursuant to such approval, as it determines are required to prevent or minimize adverse effects from the proposed variance on other land in the neighborhood and on the general health, safety and welfare of the City. All conditions imposed upon any variance shall be set forth in the granting of such variance.

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- b. To adopt any rules necessary to transact the business of the Board of Adjustment or to expedite its functions or powers so long as they are not inconsistent with the provisions of this Chapter.
 - c. In the case of properties subject to a public hearing, to publish or cause to be published notice of said hearing or to cause the property to be posted as set forth in Section 16-3-30 of this Chapter.
- (3) Powers. The Board of Adjustment shall have the following powers:
- a. Appeals from decisions of administrative officials. To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative official or agency based on or made in the enforcement of this Chapter.
 - b. Interpretation. To hear and decide requests for interpretation of this Chapter, including any uncertainty as to boundary location or meaning of wording so long as this interpretation is not contrary to the purpose and intent of this Chapter.
 - c. Variances. Exceptions or variances may be granted when the Board of Adjustment finds that all of the following conditions exist:
 1. That peculiar and exceptional practical difficulties or an unnecessary and unreasonable hardship will be imposed on the property owner if the provisions of this Chapter are strictly enforced.
 2. That the circumstances creating the hardship were created through no fault of the appellant.
 3. That the property for which a variance is requested possesses exceptional narrowness, shallowness, shape or topography or any other extraordinary and exceptional situation or condition which does not occur generally in other properties in the same district.
 4. That the variance will not substantially or permanently injure the appropriate use of adjacent conforming properties in the same district.
 5. That the variance, if granted, will not diminish the value, use or enjoyment of the adjacent properties, or curtail desirable light, air and open space in the neighborhood, or change the character of the neighborhood.
 6. That the variance will not alter the essential character of the district in which the property for which the exception is sought is located.
 7. That the variance will not weaken the general purposes of this Chapter or the regulations established herein for the specific district.
 8. That the variance will be in harmony with the spirit and purposes of this Chapter.
 9. That the variance will not adversely affect the public health, safety or welfare.
 - d. Under no circumstance shall a variance be granted on the sole basis of personal convenience, profit or special privilege to the applicant.
- (4) Procedure. The Board of Adjustment shall act in strict accordance with all of the applicable laws of the State and this Chapter.
- a. Appeals to the Board of Adjustment must be made within thirty (30) days after the occurrence of the grievance or decision that is the subject of the appeal.
 - b. An appeal stays all proceedings in furtherance of the action appealed. However, if it is the opinion of the officer whose decision is appealed that a stay would cause imminent peril to life or property, proceedings shall not be stayed unless by a restraining order which may be

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granted by the Board of Adjustment or by a court of record of competent jurisdiction, on notice to the officer from whom the appeal is taken and on due cause shown.

- c. All appeals shall be in writing and in such form as shall be prescribed by the Board of Adjustment and shall include the following information:
 - 1. What provision of this Chapter is involved;
 - 2. What relief from this Chapter is being sought;
 - 3. The grounds upon which such appeal is being sought; and
 - 4. A site plan illustrating the manner in which the appeal or variance, if granted, would affect the subject property and adjacent uses.
- d. The Board of Adjustment shall conduct a public hearing upon all appeals, notice of which shall be given as set forth in Section 16-3-30 of this Chapter.
- e. All applicable fees shall be as set forth in the Fee Schedule, attached as Appendix 16-C to this Code. Any fees must be received prior to the setting of a hearing date on the petition.
- f. At the hearing, any party may appear in person, by agent or by attorney.
- g. The applicant shall have the burden of demonstrating that the applicable standards of Subparagraph (3)c above have been met.

(5) Decisions.

- a. Variances shall be granted only with respect to specific plans. Unless otherwise specified by the Board of Adjustment, a variance may be transferred to successive owners prior to construction if no changes are made to the approved plan and shall run with the land after the construction of any authorized structure or structures and only for the life of such structures.
- b. The Board of Adjustment may condition the granting of a variance on the issuance of a building permit within a specific time period and may require the applicant to pursue completion of the construction with due diligence. If such conditions are not satisfied, the variance shall become null and void.
- c. In order to ensure that the protection of the public good and the intent and purpose of this Chapter is preserved, the Board of Adjustment may impose any other condition upon the grant of a variance.

(6) Appeals from Board of Adjustment. Any appeal from a decision of the Board of Adjustment may be made to a court of competent jurisdiction within thirty (30) days, as provided by law.

(Ord. 789-08 §1)

Sec. 16-2-50. Annexations.

- (a) Annexation generally. In addition to all other applicable requirements of this Code, including but not limited to the water rights conveyance requirements of Sections 13-2-20 and 13-2-40 of this Code regarding withdrawal of nontributary groundwater, all annexations to the City are governed by and must meet the requirements of the Municipal Annexation Act of 1965, Part 1, Article 12, Title 31, C.R.S.
- (b) Annexation maps and petitions.
 - (1) Maps. In addition to all other applicable requirements of law, all maps associated with annexation of land to the City shall contain a reference to Section 13-2-40 of this Code.

12.4.7.5 Review Criteria - Showing of Unnecessary Hardship

The Board of Adjustment may grant a variance only if it finds that there is an unnecessary hardship whereby the application satisfies the criteria of any one of paragraph A. or B. or C. or D. or E. of this subsection and satisfies the criteria of Section 12.4.7.6, Review Criteria - Applicable to All Variance Requests.

A. Disability

1. There is a disability affecting the owners or tenants of the property or any member of the family of an owner or tenant who resides on the property, which impairs the ability of the disabled person to utilize or access the property.

B. Unusual Conditions

1. There are unusual physical circumstances or conditions, including, without limitation:
 - a. Irregularity, narrowness or shallowness of the lot, or
 - b. Exceptional topographical or other physical conditions peculiar to the affected property; or
 - c. Unusual physical circumstances or conditions arising from an existing, nonconforming or compliant structure on the affected property, and
2. The circumstances or conditions do not exist throughout the neighborhood or zone district in which the property is located, or the circumstances or conditions relate to drainage conditions and challenges found consistently throughout the neighborhood or zone district in which the property is located; and
3. The development or use of the property cannot yield a reasonable return in service, use or income as compared to adjacent conforming property in the same district; however, loss of a financial advantage, hardship that is solely financial, or the fact that a more profitable use of the property might be had if a variance were granted are not grounds for a variance; and
4. The unusual physical circumstances or conditions have not been created by the applicant.

C. Designated Historic Property or District

The property could be reasonably developed in conformity with the provisions of this Code, but the building has been designated as a Historic Structure or is in a designated historic district. As part of the review pursuant to D.R.M.C., Chapter 30 (Landmark Preservation), the approving authority has found that development on the Zone Lot conforming to this Code's regulations would have an adverse impact upon the historic character of the individual landmark or the historic district, if a historic district is involved.

D. Compatibility with Existing Neighborhood

1. The property could be reasonably developed in conformity with the provisions of this Code, but the proposed adjustment or variance will result in a building form that is more compatible, in terms of building height, siting, and design elements, with the existing neighborhood in which the subject property is located. In making a determination of whether the subject property, with the proposed variance, would be more compatible with the existing neighborhood, the decision-making body may choose not to consider primary or accessory buildings in the existing neighborhood that have been granted variances or administrative adjustments based on unusual physical circumstances or conditions of such properties.
2. "Existing neighborhood" shall mean:
 - a. For changes in building or site elements within the rear 35% of a zone lot: Any similar zone lot or building on a zone lot which is located on the same face block or on an adjacent face block (i.e., across a rear property line or rear alley).
 - b. For changes in building or site elements within the front 65% of a zone lot: Any zone lot or primary building on a zone lot which is located on the same face block or the face block across a public street from the subject building.
3. For purposes of a variance review only, the Board of Adjustment may consider similar buildings located beyond the same face block, opposite face block, or adjacent face block from the subject building if the Board deems doing so reasonable and necessary to make its determination of

compatibility with the existing neighborhood. This allowance does not apply to review of a request for an administrative adjustment.

E. Nonconforming or Compliant Uses in Existing Structures

A variance to increase the floor area occupied by a nonconforming or compliant use in an existing structure may be granted only if the Board of Adjustment finds the following conditions to exist:

1. The use is a nonconforming or compliant use, as defined in this Code, and such use is in full compliance with all requirements under this Code applicable to nonconforming or compliant uses and is authorized to continue in operation and to exist;
2. The structure in which an increase in floor area is sought was in existence on the date on which the nonconforming or compliant use became nonconforming or compliant, and is in existence at the time of the hearing;
3. On the date on which the use became nonconforming or compliant, the use was in occupancy and in operation on a portion of the floor area of the structure in which an increase in floor area is sought;
4. The applicant does not propose or intend to enlarge the existing structure, does not propose or intend to increase the floor area of such structure, and that any authorized increase in occupancy of floor area by the nonconforming or compliant use will not involve remodeling, changing or altering any load-bearing member of such structure; and
5. That, owing to exceptional and extraordinary circumstances, literal enforcement of the provisions of this Code will result in unnecessary hardship.

12.4.7.6 Review Criteria - Applicable to All Variance Requests

The Board of Adjustment may grant a variance only if the Board finds that, if granted, the variance:

- A. Would not authorize the operation of a primary, accessory, or temporary use other than those uses specifically enumerated as permitted primary, accessory, or temporary uses for the zone district in which the property is located.
- B. Would not grant a change to either (a) a waiver or condition attached to an approved rezoning, or (b) an approved PUD District plan that would constitute an "amendment" under Section 12.3.7.2, Amendments to Approved Applications, Plans and Permits, or (c) an approved GDP that would constitute an "amendment" under Section 12.3.7.2, Amendments to Approved Applications, Plans and Permits.
- C. Would not, other than allowed in Section 12.4.7.5.A. above to accommodate persons with disabilities, relate to either the persons, or the number of persons, who do, will, or may reside in a residential structure.
- D. Would not substantially impair the intent and purpose of this Code.
- E. Would not substantially impair the intent and purpose of the applicable zone district.
- F. Would not substantially or permanently impair the reasonable use and enjoyment or development of adjacent property.
- G. Would be the minimum change that would afford relief and would be the least modification of the applicable provisions of this Code.
- H. Would adequately address any concerns raised by the Zoning Administrator or other city agencies in their review of the application.

12.4.7.7 Requirements and Limitations After Variance Approval

A. Expiration

1. A variance authorizing construction shall expire unless substantial construction has started within 3 years and is completed within 5 years from the date the variance was granted. Upon the completion of construction, the variance shall run with the land.
2. For variances unrelated to construction, the variance shall run with the land unless the Board of Adjustment specifies otherwise as a condition of the variance.
3. A variance shall automatically lapse and have no further effect if the Zoning Administrator finds that redevelopment of the subject property makes compliance with this Code possible without the previously approved variance.

Section 4.05.020. - Zoning variance.

A. *Conditions for zoning variance.*

1. A variance from the strict application of any zone district requirement or supplementary regulation of this chapter may be granted by the Planning Commission following the procedures and conditions herein, except that no use shall be allowed in any zone district in which it is not listed as a permitted or special use. The Planning Commission may grant a variance provided it finds both Subsections (A)(1)(a) and (b) of this section and either Subsection (A)(1)(c) or (d) of this section are applicable.
 - a. That the variance granted is without substantial detriment to the public good and does not impair the intent and purposes of the Town's regulations, goals, policies and plan, including the specific regulation in question; and
 - b. That the variance granted is the minimum necessary to alleviate the hardship; and
 - c. That there exists on the property in question exceptional topography, shape, size or other extraordinary and exceptional situation or condition peculiar to the site, existing buildings, or lot configuration such that strict application of the zone district requirements from which the variance is requested would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property in question; or
 - d. That such exceptional situation or condition was not induced by any action of the applicant and is not a general condition throughout the zone district.
2. In granting a zoning variance, the Planning Commission shall modify the application of the regulation so that the spirit of the title is observed, public safety and welfare secured, and substantial justice done.
3. Pursuant to C.R.S. § 31-23-307, as amended, the Planning Commission may vary or modify the application of zoning regulations for the purpose of considering access to sunlight for solar energy devices.

B. *Procedures for variance review.*

1. *Application.*
 - a. Each application for a zoning variance shall be made on a form provided by the Town, and signed by the applicant which clearly states the reasons for the request and how it complies with the conditions for variance. The application shall be accompanied by:
 1. Proof of ownership of the land for which the application is made. If the applicant is other than the owner, notarized consent of the owner is required;
 2. A site plan drawn to scale depicting the locations and boundaries of existing and proposed lots and structures;

3. The proper zoning variance fee as set by the Town; and
 4. A list of names and addresses of owners of record of adjacent property.
- b. A minimum of 20 copies of the application, site plan and supporting materials shall be submitted to the Town Planner at least 15 calendar days prior to the Planning Commission meeting at which the variance request is to be reviewed.
2. *Staff/agency review.* The Town Planner shall review the application with appropriate staff or other agencies and shall provide copies of the application and staff or agency comments to the Planning Commission.
3. *Planning Commission review.*
- a. The Planning Commission shall review the zoning variance request at a regular meeting at which it shall hold a public hearing on the application. Public notice shall be given pursuant to Section 4.03.060. The applicant or his representative shall be present to represent the proposal. The Planning Commission shall take one of the following actions:
 - i. Grant the zoning variance, subject to Subsection (A) of this section;
 - ii. Deny the zoning variance, stating the specific reasons for denial; or
 - iii. Continue the hearing pursuant to Chapter 2.20.
 - b. Any decision of the Planning Commission shall be final, from which an appeal may be taken to a court of competent jurisdiction as provided in accordance with C.R.S. § 31-23-307.

(Ord. No. 1986-03, § 4.05.020, 3-5-1986; Amended 6-2-1991)

Sec. 16-24-60. - Variances.

- (a) Subject to the requirements of this section, variances from the requirements of this Chapter may be granted by the Board of Adjustment when the circumstances and conditions of a property are exceptional or extraordinary such that they do not apply to property generally within the City and such that denial of an application for relief from the requirements of this Chapter would result in an inability to reasonably utilize the property. In reviewing applications for variances under this Section, the burden shall be upon the applicant to meet the criteria set forth herein.
- (b) The Board of Adjustment shall not approve a variance from the requirements of this Chapter unless all of the following criteria are met:
- (1) The property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district;
 - (2) The extraordinary or exceptional physical condition of the property will not allow reasonable use of the property in its current zone in the absence of relief;
 - (3) The granting of the variance will not have an adverse impact on the surrounding properties, the neighborhood, or the community as a whole;
 - (4) The granting of the variance will not be detrimental to public health, safety and welfare or injurious to surrounding property values and neighborhood character;
 - (5) The granting of the variance shall not be substantially inconsistent with any plans adopted by the City;
 - (6) The granting of the variance shall not materially weaken the general purpose of this Chapter 16 or any other zoning regulations of the City;
 - (7) The variance, if granted, shall only be to the extent necessary to afford a reasonable use of the property; and
 - (8) The unique conditions of the property under which the variance is sought were not created by the owner of the property or his or her agent.
- (c) No variance authorizing a change in the permitted or conditional uses of property shall be granted.
- (d) Conditions may be imposed upon any variance approval in order to alleviate or mitigate potential adverse impacts. Conditions must relate to the property and may relate to specific persons or organizations which have a direct association with the use of the property as contemplated by the requested variance. Every variance authorized hereunder shall be transferable and shall run with the land unless expired pursuant to subsection (e) below.
- (e) A variance granted pursuant to this Section shall expire within two (2) years from the date of final approval if action has not been taken within said time. This time may be extended with the approval of the Board of Adjustment if the petitioner can show good cause. For purposes of this

Subsection, action means obtaining a building permit or other applicable City permit/license pursuant to the granting of the variance, or if a permit or license is not required, the right that is granted pursuant to the variance is put to use.

- (f) When an application for a variance from the terms of this Chapter has been denied by the Board of Adjustment, no application for the same or substantially the same variance may be filed with the Board of Adjustment for a period of one (1) year after the date the Board of Adjustment's decision denying the previous variance application becomes final.
- (g) The City Manager may administratively review and issue decision on an application for a variance requested as a reasonable accommodation required by the Americans with Disabilities Act (ADA), Fair Housing Act (FHA) or other applicable state or federal law concerning equal access to dwellings. The City Manager shall apply the applicable legal standard, after consultation with the City Attorney, and issue written decision approving, conditionally approving or denying such an application. The decision shall be mailed to the applicant at the mailing address indicated in the variance application. An applicant may appeal the City Manager's decision to the Board of Adjustment pursuant to Section 16-24-30. Notice of a variance application approved or conditionally approved pursuant to this Subsection (g) shall be promptly sent by First Class U.S. Mail to all property owners within one hundred (100) feet of the subject property.

(Prior code 23-428; Ord. 07-09 §4; 2009; Ord. 10-14 §7, 2014; Ord. 2015-16, §1 2015; Ord. 2018-14 §4, 2018)

Chapter 17.23
VARIANCES AND MODIFICATIONS

SECTIONS:

17.23.010 Variances

17.23.020 Administrative Modifications

17.23.010 Variances

A. Purpose. The variance process is intended to provide limited relief from the requirements of the Land Use Code in cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this Code. A hardship may be defined as an instance when the code renders the land difficult or impossible to use due to unique physical site attributes or other unique characteristics. It is not intended that variances be granted to (1) allow a use in a zoning district where it is not permitted by Code; or (2) to remove inconveniences or financial burdens that the requirements of this Code may impose on property owners in general. State and/or federal laws or requirements may not be varied by the City.

B. Applicability. A variance is an exception from the numerical requirements of this Title excluding the numerical standards contained in Chapter 13 (Design Standards) and Chapter 15 (Signs). Variances to allowed or conditional uses are not permitted.

1. Board of Adjustment Approval Required

- a. The owner of a property or business seeking relief from the regulations and development standards, or an authorized representative may make such request to the Board of Adjustment.
- b. This may be done when the strict application of this Code will deprive a property of the privileges enjoyed by other property of the same zoning classification in the same zone district because of special circumstances applicable to a property, including its size, shape, topography, location, or surroundings.
- c. Variance applications may be initiated concurrently with other land use applications.

C. Procedure. Variances are reviewed and acted upon at a public hearing before the Board of Adjustment with the exception of variances for signs which are reviewed and acted upon at a public hearing before the City Council as per Chapter 08.

1. Variances shall be processed in accordance with the Procedures outlined in Section 17.07.040, Common Development Review Procedures.
 - a. Final Decision. Any decision of the Board of Adjustment shall be final, from which an appeal may be taken to a court of competent jurisdiction, as provided in accordance with Section 31-23-307, C.R.S.

- b. Reconsideration of Denial of Variance. Whenever the Board of Adjustment denies an application for a variance, such action may not be reconsidered by the Board for one (1) year unless the applicant clearly demonstrates that circumstances affecting the subject property have substantially changed, or new information is available that could not with reasonable diligence have been presented at the previous hearing.
 - i. Nothing contained in this Section shall preclude the submission of a substantially new application as determined by the Community Development Director or the City Engineer.

D. Approval Criteria. The Board of Adjustment may approve a variance request upon finding that the variance application meets or can meet the following approval criteria:

1. The variance granted is without substantial detriment to the public good and does not impair the intent and purposes of this Title and the Comprehensive Plan, including the specific regulation in question;
2. By reason of exceptional narrowness, shallowness, depth, or shape of a legal lot of record at the time of enactment of this Title, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such property, the strict application of the subject regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the owner of such property;
3. A variance from such strict application is reasonable and necessary so as to relieve such difficulties or hardships, and the variance will not injure the land value or use of, or prevent the access of light and air to, the adjacent properties or to the area in general or will not be detrimental to the health, safety and welfare of the public;
4. The circumstances found to constitute a hardship are not due to the result or general conditions throughout the zone, was not induced by any action of the applicant, and cannot be practically corrected, and;
5. The variance granted is the minimum necessary to alleviate the exceptional difficulty or hardship.

17.23.020 Administrative Modifications.

A. Purpose. The administrative adjustment procedure is intended to allow minor modifications or deviations from the dimensional or numeric standards of this Code with approval by the Director. Administrative adjustments are intended to provide greater flexibility when necessary, without requiring a formal zoning amendment or variance. The administrative adjustment procedure is not a waiver of current standards of this Code and shall not be used to circumvent the variance procedure.

B. Applicability

1. *Exceptions for Energy Efficiency.* The Community Development Director may approve exceptions to the dimensional restrictions of the Land Use Code to accommodate the addition of energy production systems or energy efficiency systems or equipment in or on existing buildings when no other practical solution exists, due to unique site circumstances.

2. *Exceptions for Building Code Compliance.* The Community Development Director may approve exceptions to the dimensional restrictions of the Land Use Code to accommodate improvements required to achieve compliance with building, fire, or accessibility codes in or on existing buildings when no other practical solution exists, due to unique site circumstances.

C. Allowed Administrative Adjustments. The following administrative modifications are permitted, subject to review and approval by the Community Development Director.

Table 17.23.020.C: Allowed Administrative Adjustments	
Code Standard	Allowable Administrative Adjustment (maximum percentage)
Site Standards	
Lot area, minimum	15%
Lot coverage, maximum	15%
Lot Dimensional Standards	
Front setback, minimum	10%
Side setback, minimum	10%
Rear setback, minimum	10%
Encroachment into setback	10%
Building Standards	
Building height, maximum (excludes wireless communication facilities)	10%
Accessory building height, maximum (excludes wireless communication facilities)	10%
Development Standards	
Number of required parking spaces, maximum or minimum	15%
Minimum landscaping requirements	15%

1. *Reasonable Accommodations for Energy Efficiency or Building Code Compliance*
 - a. In response to a written application identifying energy efficiency or building code compliance that require that reasonable accommodations be made, the Director is authorized to take any of the following actions in order to provide reasonable accommodations without the need for a rezoning or variance:
 - i. Modify any facility spacing, building setback, height, lot coverage, or landscaping requirement by no more than ten (10) percent; or
 - b. The Director may approve a type of reasonable accommodation different from that requested by the applicant if the Director concludes that a different form of accommodation would satisfy the requirements of the energy efficiency or building code compliance with fewer impacts on adjacent areas. The decision of the Director shall be accompanied by written findings of fact.
 - c. Requests for types of accommodation that are not listed above may only be approved through a variance or rezoning process.

D. Limitations on Administrative Adjustments.

- 1. Except when requested as a reasonable accommodation for energy efficiency and building code compliance purposes, a request for an Administrative Adjustment shall not be used to further modify a development standard that, as applied to the subject property, already qualifies as an exception to, or modification of, a generally applicable development standard required under this Title.
- 2. The administrative adjustment procedure shall not apply to any proposed modification or deviation that results in:
 - a. An increase in the overall project density;
 - b. A change in permitted uses or mix of uses;
 - c. A deviation from building or fire codes;
 - d. A deviation from the City's Engineering Standards;
 - e. Requirements for public roadways, utilities, or other public infrastructure or facilities; or
 - f. A change to a development standard where that same standard was already modified through a separate administrative adjustment or variance.

E. Administrative Adjustment Procedure.

- 1. Application Submittal and Handling.
 - a. An application for an administrative adjustment shall only be submitted to address a project under construction or existing conditions. It is not applicable to applications going through a review.
 - b. Each code standard in Table 17.23.070.C shall be considered a separate administrative adjustment request as it relates to the approval criteria in Subsection F, but multiple adjustments may be considered in one (1) administrative adjustment application.
- 2. Review and Decision.
 - a. The Community Development Director must first determine that the visual impact of the exemption is minimal and that no other reasonable way to implement energy production or efficiency or code compliance exists. The Director may require notice be provided to adjacent landowners.
 - b. The Director shall review the application and shall approve, approve with conditions, or deny the adjustment based on the criteria in Subsection F. Approval shall be in the form of a recordable administrative decision.
- 3. Effect of Approval. Approval of an administrative adjustment authorizes only the particular adjustment of standards approved, and only to the subject property of the application.
- 4. Expiration of Administrative Adjustment. An administrative adjustment shall automatically expire if the associated development is later adjusted, modified, or redeveloped as part of a land use application or building permit that brings the property or building into compliance with the applicable code requirement.

F. Administrative Adjustment Approval Criteria. In reviewing a proposed administrative adjustment, the Director shall consider whether and to what extent the adjustment:

1. Will not result in incompatible development;
2. Will not result in adverse impacts unless adequately mitigated; and
3. Is of a technical nature and is required to:
 - a. Compensate for an unusual site condition; or
 - b. Eliminate a minor inadvertent failure to comply with a Code standard; or
 - c. Protect a sensitive resource, natural feature, or community asset.



Variances Application Guide & Checklist

Economic & Community Development Department
101 W. 8th Street
Glenwood Springs, CO 81601
(970) 384-6411

OVERVIEW

A variance is limited relief from a particular requirement of the Municipal Code. The decision to approve or deny a variance is a discretionary decision made by the Planning and Zoning Commission at a public meeting. The Commission’s decision to grant a variance depends on whether the application meets seven criteria. The criteria relate to whether there is some unusual aspect of a property which results in a hardship to the property owner not caused by their own actions, and whether granting the variance will harm the public’s interest. Examples of variances include:

- A property is so unusually narrow that the owner cannot build a home on it without encroaching into required setbacks;
- The geologic hazards on a property are so extreme that it is necessary to construct a wall exceeding the maximum 6-foot height limit to protect existing structures on the property from possible debris flows hazards; or
- The structural aspects of an existing commercial building make it infeasible to comply with a certain design requirement during an exterior remodel of the building.

VARIANCE CRITERIA

In reviewing a variance application, the Planning and Zoning Commission must determine that **all of the following** exist:

1. The subject property has an exceptional shape, topography, building configuration or other exceptional site condition that is not a general condition throughout the zone district;
2. The strict application of the Code standards for which a variance is sought would produce undue hardship;
3. The applicant did not create the hardship by his/her own actions;
4. The variance requested does not harm the public and does not impair the intent or purposes of this Code, goals, and policies, including the specific regulation for which the variance is sought;
5. The variance request demonstrates exceptional hardship not related to purposes of convenience or financial burden;
6. The variance request will not violate building or fire code requirements; **and**
7. The variance is the minimum variance that will afford relief of the subject standards of the Code.

IS A VARIANCE NECESSARY?

Variances are intended as relief from a Municipal Code requirement in the unusual situation where compliance with the Code causes undue hardship. The hardship must relate to some unusual aspect of the property and may not be financial in nature.

We suggest that you review the applicable variance criteria to make sure that they apply to your situation prior to pursuing a variance application. You may also consider whether there are any creative design solutions that would meet your needs as well as the Municipal Code requirements. In many cases, a creative design modification will meet the Code requirement, your desires, and eliminate the need to go through the variance process. This may be a preferable alternative, depending on the details of your project. In other situations, your property conditions may be so unusual and result in such great hardship that compliance with the Code simply is not infeasible and a variance application your only relief.

REVIEW PROCESS

All variances require an application and public hearing before the Planning and Zoning Commission following the process outlined below.

- 1. Pre-application Conference.** Contact one of the planners in the Community Development Department prior to submitting your variance application. We will discuss the review procedures, application requirements, application deadlines, and the City’s goals, policies, and development standards as they relate to your proposed project.

At least 10 days prior to your scheduled conference, please submit one electronic copy of the following items:

- a. A completed Planning Application. The application is available [here](#), or on the City’s website at www.cogs.us. It is in “Forms, Permits & Applications” on the Community Development Department page.
- b. A written description of the proposed project & need for a variance.
- c. Conceptual drawings showing the location, layout, and primary elements of the proposal.
- d. Proposed uses, location of uses, and densities.

If your project involves more than one development action for the same property, your applications can be reviewed concurrently. For example, if your proposed project involves variances and Site/Architectural Plan Review or a special use permit, you could have them processed and decided concurrently. Community Development Department planners will discuss the concurrent review process and application requirements with you during your pre-application conference.

- 2. Prepare Your Application.** During the pre-application conference you will receive a checklist of information that we will need to process your request. This information



Citizens Guide to Variances

Board of Adjustments and Appeals City of Greenwood Village

This guide discusses the purpose, application requirements, review criteria, and process for a variance.

What is a variance?

A variance is a deviation from the City’s development regulations. A variance can be requested when a proposed residential project does not comply with zoning regulations of the Land Development Code (LDC). If a building permit does not comply with regulations, the homeowner may either revise the project to bring it into compliance or apply for a variance for review by the Board of Adjustments and Appeals (BOAA).

Who reviews a variance?

Planning staff will review the application and serve as the case manager. The BOAA, a citizen board that is appointed by the City Council, reviews all variance requests in a public hearing and renders a decision. The BOAA is granted authority by the Greenwood Village Charter and Municipal Code (Charter Section 10.02 and Municipal Code Chapter 2, Article 12), in accordance with Colorado State Law.

What is the process for a variance?

Step ONE: Pre-application Meeting

- Meet with Planning staff to discuss the variance request. Bring a drawing of the site with the proposed project design. The discussion will include the applicable zoning regulations and the nature of the request.

Step TWO: Alternative Design

- Explore design alternatives with Planning staff. In the evaluation of alternative designs, applicants should consider the variance review criteria established in the Land Development Code (see page 3 of this guide).
- If the alternative design process does not yield a plan that conforms to regulations, the homeowner will have the choice to proceed with the variance application.

Step THREE: Submit Application

- Requires a hard copy and digital copy of the following information:
 - Complete notarized application form
 - \$50 application fee
 - Proof of ownership
 - Letter of description and justification

- Alternative design
- Site plan
- Land survey
- Elevation drawings and floor plans (if applicable)
- Neighborhood input is encouraged. Letters of support on behalf of neighboring properties are appropriate.
- The hearing will be scheduled once the application is reviewed and deemed complete (generally 30 days after the application is submitted).

Step FOUR: Noticing Requirements - Mailed Notice and Sign Posting

- Mailed Notice - Applicant must mail a notice of the public hearing to adjacent property owners and the Homeowners Association of record for the property if applicable (LDC Sec. 16-2-580). Staff will provide an address list based on Arapahoe County records. The letter should be reviewed by staff prior to mailing. The notice is to be sent by the applicant via First Class mail a minimum of 15 days prior to the scheduled hearing date. The Affidavit of Mailing must be submitted to staff prior to the BOAA hearing.
- Posted Notice - A sign will be provided to the applicant by the City to notify the public of the date and time of the hearing. The sign must be posted on the property facing the public street(s) and public open space (if adjacent) a minimum of 15 days prior to the hearing. The Affidavit of Posting and a photo of the sign must be submitted to staff prior to the BOAA hearing. Please return the sign to the City after the hearing.

Step FIVE: Marking or staking the property with the location of the Variance request(s).

- BOAA members will visit the site a week before the hearing. This helps to gain a full understanding of the request, the site and the neighborhood.
- If applicable, please mark the location of the proposed variance and encroachment. Suggested material includes: stakes, flagging tape, spray paint, or similar markings. This illustrates the proposed footprint of the structure or fence that is the subject of the variance request.
- By completing and signing the variance application, the applicant authorizes BOAA members to visit the site at an undisclosed time prior to the hearing. Please do not communicate with BOAA members regarding the case. The BOAA is instructed not to communicate with the applicant or the residents in the area prior to the public hearing in order to ensure a fair hearing.

Step SIX: Public Hearing and BOAA Decision

- Staff will present the case to the BOAA. This includes the findings based on the review criteria established in the Land Development Code (Section 16-2-120) and a recommendation to approve or deny the request(s).
- The applicant or representative are given an opportunity to present. Visual aids are preferred. BOAA members will ask the applicant questions about the proposal.
- Public hearings are open for comment. Neighbors and the general public are encouraged to attend.
- The BOAA will deliberate and render a decision at the public hearing.

What are the criteria for a variance?

The Land Development Code establishes criteria for reviewing a variance (LDC Section 16-2-120). The applicant is responsible for demonstrating that the variance meets the review criteria. Staff will make findings on the criteria and a recommendation to approve or deny the request(s) based on the findings. The BOAA will apply the same criteria to approve or deny an application.

The variance request(s) must meet ALL of the criteria listed in Section A, and at least ONE of the criteria listed in Section B.

<p>In order for a variance to be granted, the request must meet ALL of the following four criteria:</p>	<p>AND</p>	<p>At least ONE of the following three criteria:</p>
<p>Section A</p> <ul style="list-style-type: none"> (1) The variance will not constitute a grant of special privilege inconsistent with the limitations upon similar properties or buildings in the vicinity and in the same zone district; AND (2) The variance will be in harmony with and not alter or weaken the spirit and purpose or essential character of the zoning for the zone district in which the property is located; AND (3) The variance will not substantially or permanently injure the appropriate use of adjacent property in the same zone district; AND (4) The variance will not be detrimental to the public health, safety or welfare. 		<p>Section B</p> <ul style="list-style-type: none"> (1) The existence of special conditions or circumstances, such as size, shape, location, topography or surroundings of the land, structure or building involved, which deprive the applicant of privileges enjoyed by owners of other properties in the vicinity or in the same zone district; OR (2) The variance is necessary and appropriate to make possible the reasonable use of the land or the structures on the property; OR (3) The variance will ameliorate a difficulty which did not result from the acts or omissions of the applicant.

What are the possible outcomes of a variance hearing?

Approval: If the variance request(s) is approved, the applicant/homeowner may apply for building permit(s). The applicant will have one year in which to complete the modifications subject to the variance or a modified time period as approved by the BOAA. The applicant may request an extension.

Denial: If the variance request is denied, the improvements cannot proceed. The applicant cannot apply for another variance that is substantially similar for a period of one year.

Continuance: The applicant can request a continuance to provide the opportunity to modify the design. The motion for a continuance would establish a date for the case to come back before the BOAA. The applicant would be given the opportunity to modify the design.

Withdrawal: The applicant can withdraw the application at the hearing if it is evident that the Board cannot support the request in its current configuration. Should the applicant proceed with a different design, then a new application is required.

Contact Information:

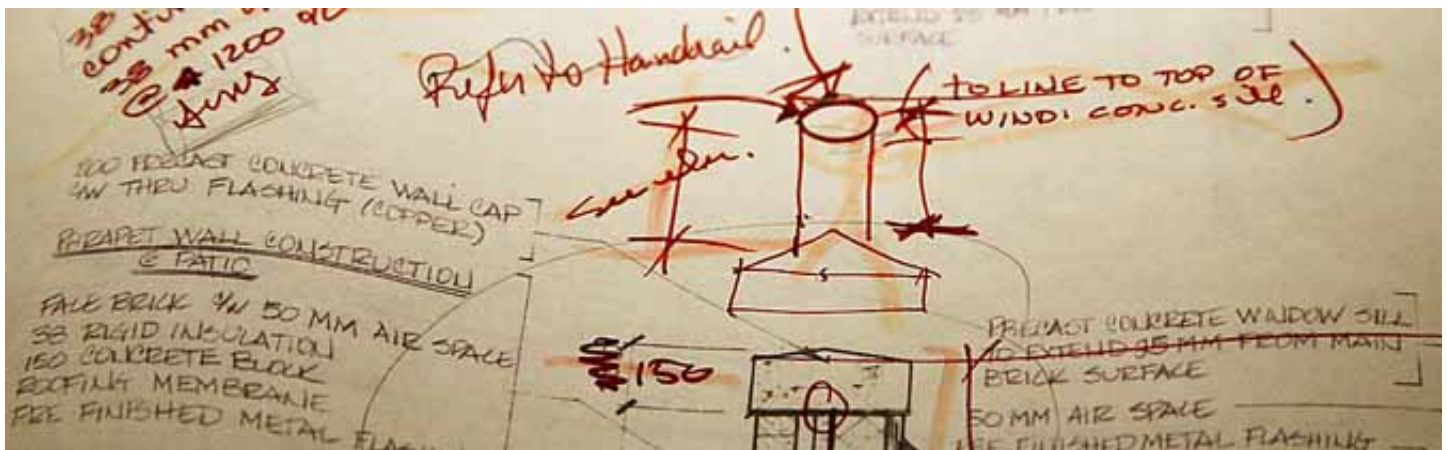
To discuss a variance, please contact the Planning Staff in the Greenwood Village Community Development Department to set up a meeting.

**Community Development Department
Greenwood Village City Hall
6060 S. Quebec Street
Greenwood Village, CO 80111**

(303) 486-5783

comdev@greenwoodvillage.com

Variances



General Description of the Variance Process

A Variance is a form of relief or an exception from the specific requirements in the Development Code. Typical variance requests include relief from setback requirements, parking or landscaping requirements, over height fences, maximum sign area, or extension of non-conforming structures and uses. An application for a Variance can only be approved by a decision-making body such as the Board of Adjustment or the Planning and Zoning Commission. Generally, home renovation projects, signs, and any other project that is not tied to another development application (such as Site Plan Review, Conditional Use, etc.) are reviewed by the Board of Adjustment. All other projects that require some other form of discretionary application (such as new commercial development), or any application requesting a height variance, are reviewed by the Planning and Zoning Commission.

Board of Adjustment and Appeals Variances

If your project does not involve another development application and would go through Building Department review if not for the variance, the process is as follows:

STEP 1. [File an application for Board of Adjustment Variance.](#) The fee is \$100 for a single-family dwelling, or \$250 for signs and non-conforming structures and uses.

Because this is a public hearing process, all property owners within a 300-foot radius must be notified. You are required to submit, with your application, a list of property owners within a 300-foot radius. The list can be obtained from the Boulder County Assessor's Office at 1325 Pearl Street, 2nd Floor, Boulder, or by phone at: (303) 441-3530. You must provide a mailing label for each property owner, affixed to a pre-stamped (not metered) envelope.

Variance Application Submittal Requirements:

- A completed application form, signed by the property owner(s), and fees
- An Improvement Location Certificate (ILC) or survey, prepared by a licensed surveyor or civil engineer. The document must show the location of all property lines and setbacks from all structures to the property line.
- One set of stamped, addressed envelopes for all property owners within a 300-foot radius, and a list of all the persons listed on the envelopes.
- Cover letter and written narrative of the proposal

- Seven copies of the site plan and architectural elevations (building elevations must have roof midpoint height from grade noted, or scale drawings must be provided)

STEP 2. Board of Adjustment meetings are held once a month at 7 pm in the City Council Chambers at 350 Kimbark St. Applications received four weeks prior to a scheduled meeting will be heard at the following meeting. The City will notify each applicant when their project will be scheduled.

At the public hearing, any member of the public may speak and/or comment about the proposed variance request. When making a decision on whether to approve the Variance, the Board of Adjustment must find that it meets the following criteria:

1. The subject property has exceptional topographic conditions, such as being exceptionally narrow, shallow, or of an irregular shape which precludes meeting code for a proposed development.
2. The strict application of the zoning regulation would result in a peculiar, exceptional, and undue hardship upon the owner of the property.
3. The requested variance would not create a substantial detriment to the public good, would not substantially impair the intent and purpose of the zoning ordinance or Comprehensive Plan for the City, nor result in significant adverse impacts to the natural environment.
4. There are exceptional circumstances that apply to this specific piece of property, which do not generally apply to other properties in the same zoning area or neighborhood.

Sign Variances

If the variance application involves signs, the following review criteria must be met:

1. Strict application of the sign regulations would result in peculiar, exceptional and undue hardship on the property owner which is not self-imposed
2. The proposed sign variance would not result in significant adverse impacts to surrounding properties or neighborhoods, or the natural environment, nor impair the intent and purposes of the zoning ordinance, nor the comprehensive plans of the city
3. The proposed sign variance would not create a safety hazard
4. The proposed sign variance is based on the finding the sign(s) is/are consistent with the purposes of the sign code and will not adversely impact adjacent properties or neighborhoods, the colors, materials and architectural style and size of the sign(s) is/are compatible with the principal building(s) on the site, the proposed sign(s) will not negatively affect the visual character of the area, cause future variance requests or contribute to the degradation of the visual environment through sign proliferation
5. The proposed sign variance requested is the least deviation from the code to achieve relief

STEP 3. If your variance request is approved, you may apply for Building Permits.

Planning and Zoning Commission Variances

Projects that request relief from maximum height requirements, or projects that require other development review applications, such as Site Plan Review, Conditional Use, etc., and are requesting a Variance, must have their application reviewed by the Planning and Zoning Commission.

In order to approve a Variance request, the Planning and Zoning Commission must find that the application meets the following criteria:

1. The requested variance is generally consistent with the Longmont Area Comprehensive Plan and with the stated purposes of the Development Code.
2. The proposed variance presents an alternative site or development design that: 1.) meets the purpose and intent of the standard being modified, and ii.) represents an improvement in quality over what could have been accomplished through strict application of the standard, and iii.) does not result in, or substantially mitigates, any detriment to surrounding properties or neighborhoods, the natural environment or to the City's ability to provide services and maintain public facilities.
3. The requested variance will not result in significant adverse impacts to surrounding properties or neighborhoods, or the natural environment.
4. The proposed variance does not create a safety hazard.
5. The decision-making body shall not grant a variance reducing the size of lots contained in an existing or proposed subdivision if it will result in the subdivision exceeding the density limit of the applicable zoning district.
6. The requested variance shall be the least deviation from the regulations that will afford relief.

18.1.146 - Zoning variance conditions.

A variance from the strict application of any zone district requirement may be granted by the Commission, except that no use shall be allowed in any zone district in which it is not listed as a permitted use or special review use, and no single-family dwelling shall be permitted that does not meet the minimum structural width and area requirements in that zone. The Commission may grant a variance, provided that it shall find:

- (1) That the proposed variance is without substantial detriment to the public good and does not impair the intent or purposes of this Code or the Comprehensive Plan, including the specific regulation in question;
- (2) That there exists on the subject property exceptional topography, shape or other extraordinary or exceptional situation, or a condition peculiar to the site, existing buildings or lot configuration, such that strict application of the zone district requirement from which the variance is requested would result in exceptional practical difficulties to or undue hardship upon the owner of the subject property;
- (3) That such exceptional situation or condition, pursuant to this Section, was not induced by any action of the applicant and is not a general condition throughout the zone district;
- (4) That the hardship or the exceptional practical difficulty pursuant to this Section cannot practically be corrected by a means other than a variance; and
- (5) That the variance granted is the minimum necessary to alleviate the hardship or the exceptional practical difficulty.

(Ord. 1 §1, 2006)



Planning Division
135 N. Animas Street
Trinidad, CO 81082 Phone
719-846-9843 ext. 120
Fax 719-846-4140

Variance Review

This guide describes the Variance process. It should be used in conjunction with the City of Trinidad Municipal Code (See Chapter 14 Land Use Code), the Comprehensive Plan, and the guide to Pre-Application Review.

Purpose

A Variance is a request for relief from certain provisions of the Zoning Ordinance. A property owner may request a Variance when a strict application of the rules and regulations causes peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon their property. Examples of unique physical circumstances or conditions could be irregularity, narrowness or shallowness of the lot, or steep slopes, etc. A common Variance request is a modification to building height or setback standards.

Variance Review

To apply for a Variance, you must schedule a Pre-Application Meeting with the Development Services Office. This meeting provides you with the opportunity to discuss your proposal and to help you in identifying the requirements and process for the application. Following the Pre-application Meeting, a formal Variance application and fee shall be submitted. A Variance application will be reviewed by the PZVC during a public hearing and approved, approved with conditions or denied.

Variance Criteria for Zoning

The PZVC may grant a Variance only if it makes findings that all of the following requirements, insofar as applicable, have been satisfied:

- ❖ That there are unique physical circumstances or conditions, such as irregularity, narrowness or shallowness of the lot, or exceptional topographical or other physical conditions peculiar to the affected property;
- ❖ That the unusual circumstances or conditions do not exist throughout the neighborhood or district in which the property is located;
- ❖ That because of such physical circumstances or conditions, the property cannot reasonably be developed in conformity with the provisions of the Zoning Ordinance;
- ❖ That such unnecessary hardship has not been created by the applicant;
- ❖ That the Variance, if granted, will not alter the essential character of the neighborhood, the Historic Preservation District, or other district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property; and
- ❖ That the Variance, if granted, is the minimum Variance that will afford relief and is the least modification possible of the Zoning Ordinance provision which is in question.

REVIEW PROCESS

Step 1: Pre-Application Conference. A pre-application conference in accordance with Section 14-24 is required before the City will accept a variance application for processing.

Step 2: Variance Application Submittal. The applicant shall submit a complete variance application to the Planning Division that includes the following items:

1. Land Use Application Form.
2. Development Review fee of \$700.00.
3. Completed Variance Review Process Public Information Guide Checklist.

4. Proof of Ownership.
5. Variance Review Criteria Statement. Written statement identifying the variance being requested, citation of the portion of the Trinidad Land Use Code from which relief is requested and explaining how the review criteria have been satisfied.
6. Map. Staff will dictate map requirements based on the variance being requested. The map shall typically consist of a scale drawing depicting the property affected by the variance request, including, but not limited to, required or existing setbacks and proposed setbacks from adjacent lot lines or structures and any other information that will assist the Commission in understanding the request.
7. Interested Property Ownership Report. Provide a current list (not more than thirty (30) days old) of the names, addresses and mailing addresses of property owners, mineral interest owners of record, mineral and oil and gas lessees for the property and ditch companies with legal interests in the property. The applicant shall certify that the report is complete and accurate.
8. Any other information deemed necessary by the Staff to make a fully informed and deliberate review of the variance.

Step 3: Application Certification of Completion. Within a reasonable period of time, Staff shall either certify the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. Applicant shall then correct any deficiencies in the application package, if necessary, and submit the revised application to the Planning Division.

Step 4: Refer Application. Staff shall circulate the complete application to referral individuals and agencies.

Step 5: Staff Reviews Application and Prepares Comments. Staff will complete a review of the conditional use permit based on the conditional use review criteria, and referral comments received. Staff will then prepare a report and forward the report to the applicant.

Step 6: Applicant Addresses Staff Comments. The applicant shall submit the following to the Planning Division:

1. Letter addressing Staff comments; and
2. Revised conditional use map and other documents, as required.

Step 7: Final Staff Review and Report to Planning, Zoning, and Variance Commission. Staff will complete a final review of the resubmitted materials and then prepare a report to the Commission.

Step 8: Schedule Public Hearing and Complete Public Notification Process. At least ten (10) days prior to the Planning, Zoning, and Variance Commission public hearing date, the City will provide notice of the public hearing to the abutting property owners by certified mail and publish the public notice in the local newspaper of general circulation. Notice shall include application type, the date of the application, the date of the hearing and such other information as may be required to fully apprise the public of the nature of the application.

Step 9: Planning, Zoning, and Variance Commission Action. The variance application shall be presented to the Planning, Zoning, and Variance Commission for its review and action. The applicant and/or applicant agent must be present at the public hearing to address any questions by the Commission or members of the public. The Commission may approve, conditionally approve or deny the variance based on the variance review criteria.

Step 10: Notice of Decision. After the conclusion of the hearing, the Commission shall render its decision in writing. The applicant shall be issued a copy of the written decision of the Commission as soon as practicable after the decision has been rendered. Unless such decision is appealed to the City Council in accordance with Section 14-113 of the Code, the decision shall become final when the appeal period lapses.

Ft. Collins

The Board may grant variances where it finds that the modification of the standard would not be detrimental to the public good. Additionally, the variance request must meet at least one of the following justification reasons:

1. By reason of exceptional physical conditions or other extraordinary and exceptional situations unique to the property, including, but not limited to physical conditions such as exceptional narrowness, shallowness, or topography, the strict application of the code requirements would result in unusual and exceptional practical difficulties or undue hardship upon the occupant/applicant of the property, provided that such difficulties or hardship are not caused by an act or omission of the occupant or applicant (i.e.; not self-imposed);
2. The proposal will promote the general purpose of the standard for which the variance is requested equally well or better than would a proposal which complies with the standard for which the variance is requested;
3. The proposal will not diverge from the Land Use Code standards except in a nominal, inconsequential way when considered in the context of the neighborhood.

Golden

Acceptable “Hardship” Criteria

- Exceptional narrowness, shallowness, or shape of the lot
- Exceptional topographic or other conditions of the property
- Strict applications of certain regulations would result in peculiar and exceptional and undue hardship upon the owner

Relief may be granted only without substantial detriment to public good, without altering the essential character of the neighborhood, and without substantially impairing the intent and purpose of the zoning chapter or Growth Plan of the city.

Under certain conditions, relief from certain zoning regulations can be granted without demonstrating “hardship.” This process is described in [Section 18.12.030](#) (3), and mainly pertains to setback and height regulations that may be adjusted, provided that it would be without “substantial detriment to the public good.”

Ft. Morgan

Review Criteria. The applicant or proponent of any variance or appeal carries the burden of proving that the granting of the variance or appeal is justified by reasons which are substantial, serious and compelling, and must be prepared to satisfy the Board that, to the extent applicable, the following criteria are met:

- (1) Owing to exceptional circumstances, literal enforcement of the provisions of this Chapter would result in unnecessary hardship.
- (2) The specific conditions in detail which are unique to the applicant's land and do not exist on other land in the same zone.
- (3) The manner in which the strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land in the manner equivalent to the use permitted other landowners in the same zone.
- (4) The unique conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is requested.
- (5) The granting of the variance will not be detrimental to the public health, safety or welfare and will not alter the essential character of the neighborhood.
- (6) The applicant cannot derive a reasonable use of the property without a variance.
- (7) The variance will not be injurious to adjacent properties or improvements.