

Article Excerpts



● ● ● Board of Adjustment

The following regulations are taken from the Boulder County Land Use Code. These regulations, and the attached Supplemental Rules and Procedures, determine the Board of Adjustment's ability to handle appeals and variances.

Article 2 • Administrative & Decision Making Bodies

2-800 Boulder County Board of Adjustment

- A. Short Title
 1. The Boulder County Board of Adjustment may also be referred to as the 'Board of Adjustment.'
- B. Membership, Selection, and Term
 1. The Board of County Commissioners appoints five regular Board of Adjustment members. Members of the Planning Commission may take the place of a regular Board of Adjustment member in the event of a temporary absence or vacancy; however, not more than two members of the Board of Adjustment may concurrently be members of the Planning Commission.
 2. All members must be residents of the County.
 3. The term of regular members is three years.
- C. Duties and Responsibilities
 1. The Board of Adjustment holds regular meetings to hear appeals of any order, requirement, decision, or determination made by the Land Use Director or County Engineer in administering or enforcing Article 4 and related provisions (i.e., definitions in Article 18) of this Code, and to consider certain variances from the requirements of Article 4 of this Code.
 2. The Board of Adjustment does not have the authority to grant any variance:
 - a. from uses permitted in the zoning district;
 - b. from the minimum lot size required or maximum gross density allowed in any zoning district;
 - c. from any definition;
 - d. from the height or yard requirements which may be obtained, or have been denied, through the approval of a special use;
 - e. which authorizes a substantial modification of a planned unit development or special use approved by the Board of County Commissioners; or
 - f. which will cause an increase in the base flood to occur.
 3. In order for the Board of Adjustment to grant a variance, or to decide an appeal which overturns an official decision made in enforcing this Code, at least four members of the Board of Adjustment must vote in favor of the applicant or appellant.

Article 3 • Processes

3-202 Application Submittal Requirements

- A. The following list details the submittal requirements for the various County approvals defined in Section 3-100(A), above. A detailed description of the material to be submitted is included in Section 3-203. Except as may be otherwise required by law, the Director may waive or alter any of these minimum requirements if they are determined to be inappropriate or unnecessary.
 - 1. Appeal of an Interpretation of the Regulations
 - a. Statement of the interpretation being appealed.
 - b. Application Form, Project Description and Fee
 - 19. Variances
 - a. Application Form, Project Description and Fee
 - b. Site Plan
 - c. Description of hardship
 - d. A complete building permit form and fee
 - e. If the application anticipates new surface development, certification of compliance with Article 65.5 of Title 24, C.R.S. (see Section 3-203A.1.d.i.).

3-204 Referral Requirements and Agency Review

- B. Referral Packets
 - 1. Each referral packet shall contain one copy of the site plan (full size or reduced to letter size) and application, and other materials as deemed appropriate by the Director. The number of referral packets required shall be determined by the Director.
 - 2. Referral notices shall be mailed to each owner of estates, rights, or interests in the subject property identified in the title information submitted with the application, and to each identified adjacent property owner (or property owner within 1,500 feet of the subject property) and to appropriate referral agencies. Referral notifications may be distributed via e-mail.
 - 3. Referral notices shall also include the name of the proposal, name of owner of the subject property, docket number, general location, number of acres, proposed use, and any other information as deemed appropriate by the Land Use Director. The notice shall also include information on where to access referral packets on the County's website, and provide staff contact information in case the person receiving the notice wishes to request a hard copy of the referral packet. The complete application referral packet shall be available for public review in hard copy form at the County Land Use Department during business hours.
- C. Review of Applications by Agencies and Individuals
 - 1. Referral responses from agencies and individuals
 - a. Referral responses must be received by the Director within 35 days of transmittal (with the exception of limited impact special review, exemption plats, subdivision exemptions, road name changes, and vacations which are 15 day referrals) in order to insure that recommendations and findings are considered.
 - b. Failure of any office, agency district or individual to respond within the above-mentioned time period, or within the period of an extension which may be expressly granted by the Director, will be regarded as a response with no conflict, unless the Director determines that such failure to respond should be interpreted differently.
 - 2. The Boulder County Public Health Department will review the on-lot sewage disposal reports
 - a. This review will report on the adequacy of existing or proposed sewage treatment systems to handle the estimated effluent and the water quality of the water supply proposed to serve the proposed development.
 - b. The Boulder County Public Health Department may require the applicant to submit additional engineering or geological reports or data and to conduct a study of the economic and engineering feasibility of a sewage treatment works prior to making its recommendations.
 - 3. The Boulder County Public Health Department shall review the potential for radiation hazard.

4. The following referral agencies shall respond to issues dealing with water in accordance with state law:
 - a. The State Engineer
 - (i) The Engineer will issue an opinion regarding material injury likely to occur to decreed water rights by virtue of diversion of water necessary to be used to supply the proposed development.
 - (ii) The State Engineer will also give an opinion as to the adequacy of the proposed water supply to meet requirements of the development.
 - (iii) If the State Engineer finds material injury to decreed water rights or finds inadequacy, then the State Engineer shall express this finding in writing to the Director, stating the reason for the finding, including, but not limited to, the amount of additional or exchange water that may be required to prevent such injury.

3-205 Public Review

- A. The Board of Adjustment shall hold a public hearing on all applications for variances and appeals subject to the following conditions:
 1. The applicant shall submit all written or other materials to be used in the hearing no later than 14 days prior to the hearing. If the applicant plans to call any expert witnesses on its behalf, the applicant shall submit a written summary of the expert's anticipated testimony to the Director within this same time period.
 2. The Director shall provide the Board of Adjustment and make available to the public copies of the recommendations, decisions and supporting material 7 days prior to the hearing at which the variance or appeal is to be considered.
 3. A notice of the hearing shall be published in a newspaper of general circulation within Boulder County at least 14 days prior to the hearing date.
 4. In the case of an application for a variance to the provisions of this Code, the Land Use Department Staff shall mail a written notice of the hearing by first class mail at least 14 days prior to the hearing date to the applicant, owners and interest holders in the property, and to owners of property adjacent to the property. Failure to mail this notice to every property owner shall not affect the validity of any hearing or determination of the Board of Adjustment. In addition, this notice shall not be deemed to qualify as, or substitute for, the applicant's independent obligation under Article 65.5 of Title 24, C.R.S., regarding the identification of and notice to any mineral estate owners or lessees that own less than full fee title in the property which is the subject of the application.
 5. If the applicant has signed a certification pursuant to Article 65.5 of Title 24, C.R.S., identifying the existence of any mineral estate owners or lessees that own less than full fee title in the property which is the subject of the application, the Applicant shall sign an additional certification confirming that the applicant has, at least 30 days prior to the initial public hearing on the application, transmitted to the County and to the affected mineral estate owners and lessees the notices required by Article 65.5 of Title 24, C.R.S.
 6. In the case of an application for an appeal, the staff shall mail a written notice of the hearing at least 14 days prior to the hearing to the appellant and any member of the public requesting this notice. Failure to mail this notice to every individual requesting it shall not affect the validity of any hearing or determination of the Board of Adjustment.
 7. For all variances, a sign shall be posted on the subject property in a conspicuous manner at least 14 days prior to the Board of Adjustment hearing. The sign shall note the name of the docket, with the docket number, and the address and telephone number of the Land Use Department where materials relating to the proposal may be reviewed prior to the hearing.
 8. In all Board of Adjustment hearings, the Director or designated representative, shall be considered to officially represent the position of Boulder County. Boulder County shall retain any authority it may have to appeal any decision made by the Board of Adjustment to District Court.

Article 4 • Zoning

4-407 Floodplain Development Permit

- E. Permit Expiration, Certification Enforcement
 - 1. The County Building Official shall not issue any building permit for, nor shall the Director issue any use permit involving any building, structure, or other development within the FO district unless a floodplain development permit has been granted for the development.
 - 2. A floodplain development permit shall expire two years after the date of issuance if the permittee has not commenced construction under the permit.
 - 3. Whenever the County Engineer has personal knowledge of any violation of the provisions of this section, written notice shall be given to the violator to correct such violation within thirty days after the date of such notice.
 - a. Should the violator fail to correct the violation within this 30 day period, the County Engineer may request that the sheriff of the County issue a summons and complaint to the violator, stating the nature of the violation with sufficient particularity to give notice of said charge to the violator.
 - b. The summons and complaint shall require that the violator appear in County Court at a definite time and place stated therein to answer and defend the charge.

4-409 Appeals and Variances

- A. Appeals to the Board of Adjustment may be taken by any person aggrieved by his inability to obtain a floodplain development permit or by the decision of the County Engineer based upon or made in the course of the administration or enforcement of the provisions of this Section

4-1200 Board of Adjustment

4-1201 Appeals to the Board of Adjustment

- A. Appeals to the Board of Adjustment may be taken by any person aggrieved by any decision of the Land Use Director or County Engineer made in the course of the administration or enforcement of Article 4 or any related provision of this code.
- B. An application for an appeal must be made within 30 days after the Director or County Engineer makes a written decision on the matter being appealed. The 30 days shall start to run on the third day after the date of mailing of the decision to the last known address of the person concerning whom the decision is made. If not appealed to the Board of Adjustment the decision shall be final.
- C. The process for filing an appeal and specifics regarding the public hearing before the Board of Adjustment are outlined in Article 3 of this Code.

4-1202 Standards of Review

- A. Interpretations of this Code
 - 1. In hearing an appeal of an administrative decision or interpretation, the Board of Adjustment shall consider the following:
 - a. the technical meaning of the provision being appealed;
 - b. evidence as to the past interpretation of the provision;
 - c. the principles of interpretation and rules of construction in Article 1 of this code; and
 - d. the effect of the interpretation on the intent of this Code and the implementation of the Comprehensive Plan and any applicable intergovernmental agreement affecting land use or development.
- B. Requests for a Variance from the Provisions of this Code
 - 1. The Board of Adjustment shall not grant a variance to this Code which allows:
 - a. a use in a zoning district other than those as allowed in Section 4-100 of this Code;
 - b. a variance to the minimum lot area requirements or maximum gross density;
 - c. the alteration of any definition;
 - d. a substantial modification to any planned unit development or special use allowed approved by the County Commissioners;
 - e. any increase in the base flood level;
 - f. a change in the height or yard requirements which could be obtained, or have been denied, through special review; or
 - g. A decrease in the spacing requirements for Medical Marijuana Centers under the Additional Provisions of Article 4-512.G. of this Code.
 - 2. In order to grant a variance, the Board of Adjustment shall find that the following criteria have been satisfied:
 - a. there exist exceptional or extraordinary physical circumstances of the subject property such as irregularity, narrowness, shallowness, or slope;
 - b. because of these physical circumstances, the strict application of this Code would create an exceptional or undue hardship upon the property owner;
 - c. the hardship is not self-imposed;
 - d. the variance, if granted, will not adversely affect the use of adjacent property as permitted under this code;
 - e. that the variance, if granted, will not change the character of the zoning district in which the property is located, and is in keeping with the intent of this Code and the Boulder County Comprehensive Plan; and
 - f. that the variance, if granted, does not adversely affect the health, safety, and welfare of the citizens of Boulder County and is in accordance with the Comprehensive Plan and any applicable intergovernmental agreement affecting land use or development.

4-1203 Expiration

- A. Unless otherwise stated in the motion made by the Board of Adjustment, all rights to permits authorized by the granting of any variance shall expire one year from the time approval for a variance is final.

4-1204 Extensions

- A. An extension of up to six months for good cause shown may be granted by the Board of Adjustment