

SECTION 26 VARIANCE STANDARDS AND PROCEDURES *(Amended 4/13/05)*

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2601 Intent

A variance may be requested from the Board of Adjustment for relief from certain provisions of this Resolution when a strict application of this Resolution would cause peculiar and exceptional practical difficulties or exceptional and undue hardship. [§30-28-118, C.R.S.]

2602 Variance Limitations

2602.01 Variances shall be limited to:

- minimum area of a lot
- maximum height of structures or fences
- minimum setbacks
- minimum off-street parking requirements
- maximum devegetated area for keeping livestock (*Section 24*)

2602.02 A variance for the following shall be strictly prohibited:

- A Use Variance - to permit a use other than those listed in a specific zoning district; or
- A Variance authorizing a zoning violation [§30-28-118(1)(b), C.R.S.] - for a building or use that is subject to prosecution pursuant to [§30-28-124(1), C.R.S.]

2603 Variance - Approval Criteria

2603.01 A variance shall be granted only upon the finding that a strict application of this resolution causes peculiar and exceptional practical difficulties or exceptional and undue hardship by reason of exceptional narrowness, shallowness, or shape of a specific piece of land or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the land. [§30-28-118(1)(c), C.R.S.]

2603.02 The applicant shall provide reasonable and adequate evidence that the variance request is not a self-imposed hardship which can be rectified by means other than relief through a variance.

2603.03 A variance may be granted provided that no substantial detriment to the public good is created and that the intent and purpose of this Resolution are not impaired.

2603.04 The concurring vote of three members of the Board of Adjustment shall be necessary for a variance. (*Amended 1/10/17*)

2604 Administrative Variance (*Amended 10/9/12*)

The Director may grant up to a 20% adjustment in the zoning requirements for those items listed in 2602.01, in accordance with the approval criteria listed in 2603.01 to .03, without going to the Board of Adjustment. The applicant shall submit the fee and the information required herein to the Planning Office. The applicant shall notify abutting landowners, affected by the appeal, of the request. Such notification shall be either a notice of the variance request sent by certified mail, return receipt requested, at least 10 days prior to the Director's consideration of such request, or the applicant may obtain a signed statement from the abutting landowners stating that they were notified of the variance request and submit these signatures with the application. (*Amended 9/27/22*)

A decision by the Director to deny such variance may be appealed to the Board of Adjustment in accordance with the procedure in Section 26A. A written appeal shall be submitted by the applicant to the Planning Office within 30 days of such denial.

2605 Procedure for Variance

2605.01 The applicant shall discuss the variance informally with Planning staff to discuss the procedures and submittal requirements.

2605.02 The applicant shall submit the following to the Planning Office:

2605.02.1 A completed application form.

2605.02.2 Proof of ownership of the land which is the subject of the variance.

2605.02.3 Application fee (*fee schedule available from the Planning Office*).

2605.02.4 A site plan, when applicable, indicating how the variance relates to the affected land drawn to scale including the height and setbacks of all existing and proposed structures and any other information requested by Planning staff.

2605.02.5 An explanation in narrative form explaining the variance and how it meets the criteria in 2602 and 2603 herein.

2605.03 The submittal shall be reviewed for completeness and the applicant notified of any inadequacies. An incomplete submittal shall not be processed.

2605.04 Once the submittal is determined to be complete, Planning staff shall submit the application to the appropriate referral agencies and schedule the variance before the Board of Adjustment and notify the applicant of the date and time of the public hearing.

2605.05 The applicant is responsible for posting notice on the property and notifying the abutting landowners in accordance with the public notice requirements in 2606 herein.

2605.06 The Board of Adjustment shall evaluate the application, referral agency comments, staff report and public testimony, and shall approve, conditionally approve, table for further study, or deny the variance based on the evidence presented compliance with the applicable criteria.

2606 Public Notice Requirements

In calculating the time period for public notification the day of posting or mailing shall be counted toward the total number of days required. The day of hearing shall not be counted toward this total.

The degree of accuracy required for the information contained in these public notices shall be that of substantial compliance with the provisions of this section. Substantial compliance for these public notices shall be determined by the Board of Adjustment. *(Amended 3/28/01)*

2606.01 WRITTEN NOTICE *(Amended 3/2/81)*

At least 14 days prior to the Board of Adjustment hearing, the applicant shall mail a written notice by first-class mail to the address of each abutting landowner as such addresses are shown in the records of the Douglas County Assessor's Office and shall submit a certificate of mailing to the Douglas County Planning Office seven (7) days prior to the hearing. The notice shall indicate:

- the date, time and location of the hearing;
- an explanation of the variance;
- the location of the land that is the subject of the request (*distance and direction from nearest major intersection*),
- the file name and number; and
- that questions should be directed to the Douglas County Planning Office, 303-660-7460.

The person completing the mailing of the written notice shall execute a certificate of mailing. Such certificate shall read as follows:

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the attached written notice was placed in the U.S. mail, first-class, postage prepaid this ___ day of _____, 20___, and addressed as follows:

(list of addresses)

(signature of person completing the mailing)

In the event the applicant fails to mail a notice to an abutting landowner or otherwise fails to comply with the written notice required in this section, the landowner who did not receive such complying notice may waive such notice by submitting a written waiver to the Douglas County Planning Office prior to the hearing.

2606.02 POSTED NOTICE *(Amended 3/28/01)*

At least 14 days prior to the Board of Adjustment hearing, the applicant shall post a notice on the land under consideration. The sign posting shall consist of at least one (1) sign facing each abutting public or private street open for travel, within 10 feet of the lot line abutting such street, placed on posts at least 4 feet above ground level. In the event the staff planner determines a sign cannot be placed abutting such street and be visible from such street or that there is no abutting public or private street open for travel, the staff planner may require an alternate location for a sign. Each sign shall measure not less than 3' by 4'. Letter size shall be a minimum of three inches high, and a minimum of six inches high for the sentence that reads, "For more information call Douglas County Planning at 303-660-7460." *(Amended 11/6/2018)*. The notice shall read:

NOTICE OF PUBLIC HEARING BEFORE THE BOARD OF ADJUSTMENT

This land shall be considered for (a variance/appeal) pursuant to the Douglas County Zoning Resolution to allow (specify the request; i.e., a reduction in the side setback from 10' to 7'). The public hearing is (date), in the Commissioners' Hearing Room, 100 Third Street, Castle Rock, CO, at (time). For more information call Douglas County Planning, 303-660-7460.

File No./Name: _____

An affidavit of sign posting shall be submitted for the file in the Planning Division at least seven (7) days prior to the hearing. The sign(s) shall be photographed by the applicant and attached to the affidavit as follows:

(attach photo here)	
(Sign lettering must be legible in photo)	
I, _____ (print name of applicant/representative/person posting sign) _____, attest that the above sign was posted on (date) abutting (name of street).	
_____ (signature)	File No./Name: _____
STATE OF COLORADO)) ss.
COUNTY OF _____)	
Acknowledged before me this ____ day of _____, 20____ by _____.	
My commission expires: _____	
Witness my hand and official seal	
_____ Notary Public	

The sign shall be removed by the applicant within two (2) weeks following the Board of Adjustment decision, or withdrawal of the application.

2606.03 Additional public notice may be required by the Director.

2607 Post Approval Action

Construction pursuant to approval of a variance shall be completed within five (5) years from the date the variance was granted, unless otherwise specified by the Board of Adjustment or the approval shall terminate. The Director may grant an extension of time, for good cause shown, upon a written request by the applicant.

2608 Post Denial Application

If denied by the Board of Adjustment, a resubmittal of the same or substantially same variance application shall not be accepted within one year from the date of denial by the Board of Adjustment or in the event of litigation, from the date of the entry of the final judgment. However, if evidence is presented to the Board of Adjustment showing that there has been a substantial change in physical conditions or circumstances, the Board of Adjustment will reconsider the variance. A new application and processing fee shall be required.