



**Boulder  
County**

**Boulder County  
Land Use Department  
Publications**

# **Board of Adjustment Variance Requirements**

**Land Use Department**  
Courthouse Annex Building  
2045 13th Street  
PO Box 471  
Boulder, CO 80302

**Planning Division:**  
Phone: 303-441-3930  
Fax: 303-441-4856  
Email: [planner@bouldercounty.org](mailto:planner@bouldercounty.org)  
Website: [www.bouldercounty.org/lu](http://www.bouldercounty.org/lu)

**Office Hours:**  
Monday — Friday 8 a.m. to 4:30 p.m.  
Closed Tuesdays 8-10 a.m.

## **Board of Adjustment (BOA) Variance Requirements**

### **General Explanation**

Any person may appeal to the Board of Adjustment for a variance from provisions of the Boulder County Land Use Code including setbacks, building height requirements, sign requirements, and flood plain regulations.

The application deadline is the first Wednesday of the month prior to the proposed hearing date (which is typically the first Wednesday of the following month) in order that the staff may meet all deadlines required by State law such as publication in the newspaper and notification to adjacent property owners. Please call 303-441-3930 to arrange for a pre-application conference.

### **Application Materials**

- 1. Application Form**  
Completed and signed (provided in the BOA Variance Requirements packet).
- 2. Application Fee**  
\$500.00 submitted with the application.
- 3. Fee Agreement**  
Completed and signed (provided in the BOA Variance Requirements packet).
- 4. Hardship Statement**  
The hardship statement is the basis for the request and must prove hardship on the property, and a personal hardship if the variance is not approved. The hardship must be neither self-imposed nor financial.
- 5. Site Plan\***  
8-1/2" x 11" showing the proposed setbacks, property lines, and any other features that restrict building such as septic fields, rock outcropping or severe slope. The plans must be drawn to scale.\*
- 6. Building Permit/Plans\***  
A building permit application, with a copy of the site plan, a floor plan with the rooms clearly labeled, and elevations of the exterior of the building, must be submitted in order for the Board to clearly understand the nature of the request. The plans must be drawn to scale.\*
- 7. Public Notice Sign Form and Deposit**  
The Public Notice Sign deposit is \$25.00. If you return the sign, a refund of \$25.00 will be processed and mailed to you within two weeks.

Decisions by the Board are final and appeals to the decision must be made to a court of law.

Any application to the Board of Adjustment which does not include all the above necessary attachment will not be accepted as complete by the secretary to the Board and will not be heard by the Board of Adjustment until complete.

\* Any plans submitted for a variance must be drawn using standard architectural or engineering scales, such as 1/4" = 1', or 1" = 10'.





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 Office Hours: Mon., Wed., Thurs., Fri. 8 a.m. to 4:30 p.m.  
 Tuesday 10 a.m. to 4:30 p.m.

Shaded Areas for Staff Only
Intake Stamp

## Application Form

Project Number		Project Name		
<input type="checkbox"/> Limited Impact Special Use <input type="checkbox"/> Limited Impact Special Use Waiver <input type="checkbox"/> Modification of Special Use <input type="checkbox"/> Site Plan Review <input type="checkbox"/> Site Plan Review Waiver <input type="checkbox"/> Subdivision Exemption <input type="checkbox"/> Exemption Plat <input type="checkbox"/> 1041 State Interest Review <input type="checkbox"/> Other:	Application Deadline: First Wednesday of the Month	Application Deadline: Second Wednesday of the Month		
	<input type="checkbox"/> Variance <input type="checkbox"/> Appeal	<input type="checkbox"/> Sketch Plan <input type="checkbox"/> Preliminary Plan <input type="checkbox"/> Final Plat <input type="checkbox"/> Resubdivision (Replat) <input type="checkbox"/> Special Use/SSDP	<input type="checkbox"/> Rezoning <input type="checkbox"/> Road/Easement Vacation <input type="checkbox"/> Location and Extent <input type="checkbox"/> Road Name Change	
Location(s)/Street Address(es)				
Subdivision Name				
Lot(s)	Block(s)	Section(s)	Township(s)	Range(s)
Area in Acres	Existing Zoning	Existing Use of Property		Number of Proposed Lots
Proposed Water Supply		Proposed Sewage Disposal Method		

### Applicants:

Applicant/Property Owner			Email Address	
Mailing Address				
City	State	Zip Code	Phone	Fax
Applicant/Property Owner/Agent/Consultant			Email Address	
Mailing Address				
City	State	Zip Code	Phone	Fax
Agent/Consultant			Email Address	
Mailing Address				
City	State	Zip Code	Phone	Fax

### Certification (Please refer to the Regulations and Application Submittal Package for complete application requirements.)

I certify that I am signing this Application Form as an owner of record of the property included in the Application. I certify that the information and exhibits I have submitted are true and correct to the best of my knowledge. I understand that all materials required by Boulder County must be submitted prior to having this matter processed. I understand that public hearings or meetings may be required. I understand that I must sign an Agreement of Payment for Application processing fees, and that additional fees or materials may be required as a result of considerations which may arise in the processing of this docket. I understand that the road, school, and park dedications may be required as a condition of approval.

I understand that I am consenting to allow the County Staff involved in this application or their designees to enter onto and inspect the subject property at any reasonable time, without obtaining any prior consent.

**All landowners are required to sign application. If additional space is needed, attach additional sheet signed and dated.**

Signature of Property Owner	Printed Name	Date
Signature of Property Owner	Printed Name	Date

The Land Use Director may waive the landowner signature requirement for good cause, under the applicable provisions of the Land Use Code.



**Boulder County  
Land Use Department  
Publications**

## Planning Review Fee Schedule

**Land Use Department**  
Courthouse Annex Building  
2045 13th Street  
PO Box 471  
Boulder, CO 80302

**Planning Division:**  
Phone: 303-441-3930  
Email: [planner@bouldercounty.org](mailto:planner@bouldercounty.org)  
Website: [www.bouldercounty.org/lu](http://www.bouldercounty.org/lu)

**Office Hours:**  
8 a.m.-4:30 p.m. Mon., Wed., Thurs., Fri.  
10 a.m.-4:30 p.m. Tuesday

## Planning Review Fee Schedule

The fee structure is adopted by the Board of County Commissioners, and attempts to recover actual costs of providing the services.

The non-refundable application fee/deposit is usually exceeded. The Land Use Department will bill on a monthly basis once the fee is exceeded.

Amendments require the same non-refundable fee as the original process.

Every planning process is required to have a pre-application conference prior to an application being submitted.

Process	Non-Refundable Application Fee	Additional Billing*
Pre-application Conference in office	No Charge	N/A
Pre-application Conference on site	\$208.00	N/A
Appeal of Administrative Decision	\$750.00 deposit and time billed for staff up to a total amount of \$2,000. If the appellant prevails with the Board of Adjustment, the deposit and any additional payments will be refunded.	\$103.83/hr up to \$2,000.00
Building Lot Determination: In a platted subdivision or previous Building Lot Determination completed in previous 5-year period.	\$50.00	flat fee
Building Lot Determination: All others.	\$75.00	flat fee
Comprehensive Plan change	\$1,000.00	\$103.83/hr
Correction Plat	\$125.00	flat fee
Construction Development Permit (collected at Building Counter)	\$857.00 (adopted June 2013)	N/A
DPR and Construction Development Permit inspections and ongoing monitoring	In house review of compliance reports/ documents \$103.83/hr, with 2-hour minimum. Inspections 103.83/hr with 2-hour minimum.	\$103.83/hr
Exemption Plat**	\$1,575.00 \$900 due at application, \$675 due one week prior to hearing.	flat fee (if hours exceed 18 hours excess time to be billed at 103.83/hr)
Extension of Approval	\$150.00	N/A
Hazard Mitigation Review	\$260.00	N/A
Location and Extent	\$500.00	\$103.83/hr

\*The hourly billing rate of \$103.83/hr is for planner/engineer time. Administrative time will be billed for non-flat rate items at \$30/hr. Public Notices required as part of a process will be billed for actual costs. Other agencies may require additional fees for review of land use applications, which fees must be paid separately.

\*\*No charge for Exemption Plats and Subdivision Exemptions which remove a unit of density.

Process	Non-Refundable Application Fee	Additional Billing*
<b>Limited Impact Special Review</b> (except as noted below)	\$750.00	\$103.83/hr
<b>Limited Impact Special Review for:</b> <input type="checkbox"/> Accessory Agricultural Sales 4-516(A) <input type="checkbox"/> Accessory Farm Stand 4-516(H) <input type="checkbox"/> Agricultural Accessory Dwellings (4-516(G)(1)(b)) <input type="checkbox"/> Demonstration Farm or Farm Camp 4-516(M) <input type="checkbox"/> Farm Events 4-516(N) <input type="checkbox"/> Farm Store 4-502(B) <input type="checkbox"/> Seasonal Farm Stand 4-502(E) <input type="checkbox"/> Watershed Restoration Project (grading 500 cubic yards or more)	\$450.00	\$300.00 hearing fee, to be collected prior to Board of County Commissioners hearing.
<b>Limited Impact Special Review Waiver</b>	\$450.00	N/A
Preliminary Plan and/or Final Plat	\$850.00	\$103.83/hr
Renewable Energy System; Residential	\$100.00	N/A
Renewable Energy System; non-Residential	\$500.00	N/A
Replat	\$600.00	\$103.83/hr
Rezoning	\$750.00	\$103.83/hr
Road Name Change	\$200.00	N/A
<b>Site Plan Review</b> <input type="checkbox"/> Proposal where the resulting Residential Floor Area exceeds the applicable Presumptive Size Maximum for the neighborhood. <input type="checkbox"/> Commercial telecommunications facility. <input type="checkbox"/> Establishment of use on a previously vacant or abandoned property. <input type="checkbox"/> Changes in use in combination with structural or other significant physical improvements (i.e. parking increase).	\$1,800.00 (flat fee)	N/A
<b>Site Plan Review</b> <input type="checkbox"/> Proposals where the resulting Residential Floor Area is less than the applicable Presumptive Size Maximum for the neighborhood. <input type="checkbox"/> Proposals for non-residential floor area not eligible for SPRW. <input type="checkbox"/> Grading less than 500 cubic yards if not approved through waiver.	\$1,250.00 (flat fee)	N/A
<b>Site Plan Review</b> <input type="checkbox"/> Change in use other than to an Agricultural Use under 4-502 of the Land Use Code with no significant physical improvements.	\$950.00 (flat fee)	N/A
<b>Site Plan Review</b> <input type="checkbox"/> Change in use to an Agricultural Use under 4-502 of the Land Use Code with no significant physical improvements. <input type="checkbox"/> Watershed Restoration project.	\$475.00 (flat fee)	N/A
Site Plan Review Waiver	\$600.00 (flat fee)	N/A
Site Specific Development Plan	\$1,000.00 (flat fee)	N/A
Sketch Plan	\$1,000.00	\$103.83/hr
Subdivision or PUD (combined process SP/PP/FP/SSDP)	\$1,450.00	\$103.83/hr
Subdivision Exemption**	\$500.00	\$103.83/hr
Special District	\$500.00	N/A
Special Use/SSDP	\$1,450.00	\$103.83/hr
Special Use Monitoring	\$125.00	\$103.83/hr
State Interest Reviews (1041)	\$750.00	\$103.83/hr

Process	Non-Refundable Application Fee	Additional Billing*
Substantial Modification Determinations <i>Complex determinations as identified by staff may require staff billing for additional time. Applicants will be notified and given a written estimate for amount anticipated and an additional deposit may be required. If determined to be a Major/Substantial modifications, these fees will be applied to the subsequent required process.</i>	\$160.00	\$103.83/hr
Vacation (road / easement)	\$750.00	\$103.83/hr
Variance	\$500.00	\$103.83/hr
Zoning Verification letter (when a formal zoning verification letter is requested) <i>Zoning compliance verification letter contains information regarding current zoning on the parcel, previous reviews and permits on the parcels and any known unresolved zoning or building code complaints on record.</i>	\$125.00	\$103.83/hr

\*The hourly billing rate of \$103.83/hr is for planner/engineer time. Administrative time will be billed for non-flat rate items at \$30/hr. Public Notices required as part of a process will be billed for actual costs. Other agencies may require additional fees for review of land use applications, which fees must be paid separately.

\*\*No charge for Exemption Plats and Subdivision Exemptions which remove a unit of density.

## Additional Billing

- Additional or repeated inspections: \$155.75
- Re-application fee for incomplete applications:
  - 1st re-application: \$75.00 or 10% of application fee, whichever is greater.
  - 2nd or more re-application: \$155.75 or 15% of application fee, whichever is greater.

## Other Development Review Fees and Waivers

- A Public Notice Sign Deposit (refundable if sign is returned) of \$25.00 is required at time of application, as applicable.
- Fees for applications not specifically listed in this fee schedule will be determined by the Land Use Director based on the hourly rate and actual time spent.
- Fees for certain conditional use permit and site plan applications may be reduced, at the discretion of the Board of County Commissioners subsequent to the conclusion of the review process, when the County's cost of review is less than the applicable fee.

## Payment

Checks should be made out to **Boulder County Treasurer**.

## Credit/Debit Card Convenience Fee

A Credit/Debit Card Convenience Fee of 2.5% applies to all credit card and debit card transactions.



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**Fee  
Agreement**

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**Office Hours:**  
 Monday — Friday 8:00 AM to 4:30 PM

**Fee Agreement**

Agreement for payment of Land Use Department Application Fees and for processing of Application in accordance with the Boulder County Land Use Code.

I/We (applicant),

as Property Owner of Record/Applicant ("APPLICANT"), AGREE AS FOLLOWS with the County of Boulder and its Land Use Department (collectively "COUNTY"), in consideration of the County's acceptance of Applicant's application for the land use approval as further described below:

1. Applicant has submitted to County an application for approval of:

Application Type:

2. Applicant acknowledges and understands that Board of County Commissioners has established and amends from time to time a fee structure for County Land Use Department applications for most applications, this includes a non-refundable deposit which must be paid prior to the Department's acceptance of any application for processing, and provision for billing the Applicant for any costs of processing applications which may accrue above the non-refundable deposit amount. The Applicant acknowledges and agrees that this Agreement shall govern the payment of fees for the processing of the Application.
3. The Application shall not be accepted for processing unless the property owner of record of the property included in the Application signs this Agreement. In the case of multiple property owners, the Director of the County Land Use Department ("Director") shall have the discretion to determine which owner(s) shall sign. A person other than the property owner of record may sign the Application and this Agreement only if the Land Use Director, for good cause shown, waives the requirement for landowner signature under the applicable provisions of the Land Use Code.
4. The Applicant shall be billed by the County Land Use Department ("the Department") for all direct and indirect costs (including but not limited to staff time of the Department, the County Attorney's Office, and the County Transportation, Public Health, and Parks Departments); mailing, copying, recording, and publication fees and costs; and authorized consultants' fees incurred by the County), which the Department has accrued to date in processing the Application. The Department will continue to bill the Applicant until all costs have accrued and are paid.
5. The Applicant agrees to pay all such bills in full, and by whatever manner of payment is specified as acceptable by the Director, by delivery made to the Department no later than one month after the billing date. The Director shall have the discretion to suspend processing of the Application if any payments under this Agreement are not made on time. This suspension may involve the postponement of scheduled Planning Commission or Board of County Commissioner hearings or meetings, and the incurrence of additional costs such as for remodification or republication. Similarly, the Director shall have the discretion to terminate the processing of any Application for which any billed payment is more than three months overdue.
6. The person/address whom the Applicant designates to receive all billings for fees under this Agreement are as follows:

Mailing Address		
City:	State:	ZIP Code:

Any billing mailed to this person/address and not returned to the Department shall be deemed received. The Applicant may change the billing address under this Paragraph by providing written notification of such change to the Department.

7. In the event of nonpayment of fees, the County shall have the right to file a fee collection action against any or all of the persons signing this Agreement or the Application as Applicant. Any resulting judgment for fees may be enforced in any legal manner whatsoever and may be filed as a judgment lien against the real property which is the subject of the Application, as well as against any real property owned in whole or in part by any judgement debtor hereunder.
8. Any agreement by the Director or County to forego any of the judicial or administrative remedies available to them under this Agreement in response to the late payment or nonpayment of fees, shall not in any way constitute a waiver of the Director's or County's rights to collect fees or appropriately adjust the processing of the Application as provided herein.
9. In submitting the Application and signing this Agreement, the Applicant acknowledges and agrees that the Application is subject to the applicable processing and public hearing requirements set forth in the Boulder County Land Use Code. The Applicant acknowledges that the Applicant has obtained or has access to the Boulder County Land Use Code, and that, prior to filing the Application, the Applicant has had the opportunity to consult the relevant provisions governing the processing of and decision on the Application.
10. In submitting the Application and signing this Agreement, the Applicant acknowledges and agrees that the Applicant is authorized to make available to the County, for purposes of copying and distributing for public review, all of the documents and information which the Applicant submits with or in support of the Application. Upon demand from the County, the Applicant agrees to indemnify and defend the County and its officials, agents and employees, and to hold them harmless from, any action, claim, suit, loss, cost, damage, or expense which may be brought or assessed against the County or any of its officials, agents or employees on account of any allegation by the Applicant or any person that the County may have violated federal copyright law, or violated any law, agreement, or provision allegedly protecting the confidentiality of or restricting public review of the Application materials which the Applicant submits to the County for review as part of the Application.
11. In submitting the Application and signing this Agreement, the Applicant acknowledges and agrees that the County Land Use Department and any other County staff involved in processing the Application or their duly authorized representatives will need to enter upon the property which is the subject of the Application and conduct inspections thereof to evaluate the Application pursuant to the applicable criteria of the Land Use Code, and perform related tasks. The Applicant hereby consents to allow the County staff or their designees to enter upon and inspect the subject property at any time for this purpose without obtaining the Applicant's separate consent at the time of inspection. This consent extends to inspections while the Application is in process, as well as after it has been approved to assure that any imposed conditions of approval are met.
12. The Applicant agrees to waive any requirements for the Applicant's written consent to extend voluntarily any public hearing or other deadline associated with processing the Application, if the Applicant or its representative agrees orally to any such extension.
13. The Applicant acknowledges that the Applicant executes this Agreement freely, voluntarily, and without threat of compulsion. The Applicant understands that the Applicant may consult an attorney or any other person concerning the Application or this Agreement prior to executing this Agreement, if the Applicant so chooses.
14. Acceptance of the Application for filing and receipt of the Application fee deposit do not necessarily mean that the Application is complete under the applicable requirements of the Land Use Code.
15. This Agreement shall become effective once signed by the Applicant and the County. It shall remain in effect throughout the processing of the Application Form, and until all obligations of the Applicant under this Agreement and under any County approval of the Application Form are met.
16. This Agreement shall be construed and enforced in accordance with the law of the State of Colorado.

**Applicant Signature:**

Property Owner must sign this document per Paragraph 3.

Property Owners Signature:	Date:

**Boulder County:**

Land Use Director or Designee:	Date:
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**For Land Use Department Use**

Docket Name:	Docket Number:	Deposit Amount: \$	Date Received:
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Intake Stamp:
Docket #:

## Board of Adjustment (BOA) Hardship Statement

Explain how the following hardship criteria for granting a variance have been satisfied. Please feel free to attach your statements using a separate piece of paper.

**A.** There exists 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 up 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.


Applicant or Agent Signature:	Date:
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# 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

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### 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

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### 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.
- D. No appeals to the Board of Adjustment or requests for variances before the Board of Adjustment are permitted for any matters under Article 12, Development Plan Review for Oil and Gas Operations.

## 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.



# Board of Adjustment



## ● ● Supplemental Rules and Procedures

### Board of Adjustment Supplemental Rules and Procedures

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Supplemental Rules and Procedures, as adopted October 29, 1985, and amended December 7, 1993, and January 3, 1996.

#### Supplemental Rules and Procedures

##### I. Authority, Powers, and Duties

- A. These Supplemental Rules and Procedures are adopted by the Board of Adjustment of the County of Boulder ("the Board") pursuant to the authority provided in C.R.S. §§ 30-28-117 and -118, and Article 2, 3, and 4 of Boulder County Land Use Code ("the Land Use Code").
- B. The powers and duties of the Board shall be as provided in the pertinent sections of Articles 2, 3, and 4 of the Land Use Code, a copy of which is attached to and incorporated into these Rules as Exhibit A.

##### II. Membership, Appointments, and Officers

###### A. Membership, Selection, and Term

(See the relevant provisions in Article 2 of the Land Use Code, Exhibit A hereto.)

###### B. Vacancy

In the event of vacancy on the Board, the Board of County Commissioners shall point a replacement to serve out the unexpired term within 30 days after such vacancy, or as soon as practicable. During any period of vacancy the Chair of the Board shall name an alternate member to fill the vacant seat.

###### C. Removal

The Board of County Commissioners may remove a member of the Board of Adjustment from office only for cause, upon written charges and after a public hearing. The Board of County Commissioners shall provide notice of written charges and of the public hearing to all members of the Board of Adjustment and to the charging party in advance of the public hearing.

###### D. Officers

- (1) A Chair and Vice-Chair shall be elected annually by a majority of the membership of the Board. The Chair shall be responsible for conducting all meetings and hearings of the Board. The Vice-Chair shall substitute for the Chair in the absence of the Chair. In the absence of the Chair and Vice-Chair, a majority of the Board present at the meeting shall vote to appoint an acting Chair for that meeting.
- (2) The County Land Use Director, who also serves as the County Zoning Administrator ("the Director"), shall be the Secretary to the Board. It shall be the Director's responsibility to prepare necessary forms, received and review applications, schedule meetings and hearings of the Board, publish notice, notify property owners and other interested persons, prepare agendas, keep the official records of the Board, and do such other administrative acts as are required by the Board and these Rules.

### III. Meeting and Hearing Procedures

#### A. Date, Time, and Place

The Board shall meet at least once a month, as necessary to hear requests for variances or appeals of the administrative decisions, or to conduct other appropriate business of the Board. Meetings of the Board should ordinarily be held on the first Wednesday of each month at 4:00 p.m. in the Hearing Room of the Board of County Commissioners, or at such other time and place as is specified in the public notice for the meeting.

#### B. Special Meetings

Special meetings of the Board may be called by the Chair or the Director at such times as may be necessary, subject to any applicable notice requirements.

#### C. Public Meetings

- (1) All meetings or hearings of the Board at which three or more members are present, and at which any public business is discussed or any formal action taken, shall be open to the public at all times, in accordance with the Colorado Open Meetings Law, Part 4 of Article 6 of Title 24, C.R.S., as amended. Chance meetings or social gatherings at which the discussion of public business is not the central purpose shall not be required to be noticed or held in public, as provided in the Open Meetings Law.
- (2) Upon the affirmative vote of two-thirds of the members present, the Board may hold an executive session at a regular or special meeting or hearing, for the sole purpose of considering any of the matters set forth in Section 24-6-402(4)(b), (c), or (g) of the Open Meetings Law (receiving legal advice from the attorney for the Board on specific legal questions; considering matters required to be kept confidential by federal or state law or rules and regulations; or considering any documents protected by the mandatory nondisclosure provisions of the Colorado Open Records Act, Part 2 of Article 72 of Title 24, C.R.S.). The Chair shall announce the general topic of the executive session prior to convening the session. No adoption of any proposal policy, positions, resolution, rule regulation, or formal action shall occur at any executive session, which is not open to the public.

#### D. Record of Proceedings

- (1) The Board shall keep a record of its meetings and hearings in accordance with this Section. The Director shall keep minutes of the Board's meetings and hearings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact. Written summaries of the Board's meetings and hearings shall be considered adequate minutes provided they indicate the votes as required in the preceding sentence.
- (2) The Director shall make a tape recording of all meetings and hearings, which shall constitute the official record of the Board's proceedings. The Director shall provide a transcription of such recording or a copy of the tape itself at cost to any person requesting it.
- (3) The Director shall keep the Board's minutes, tape recordings, and all other written, photographic, or other materials submitted to the Board as part of the Board's official proceedings, and shall make the record of the Board's proceedings available to the public as required by the Colorado Open Records Act, Part 2 of Article 72 of Title 24, C.R.S.

#### E. General Meeting Procedures

- (1) The Director shall be responsible for preparing the agendas for the meetings and hearings of the Board. The Director shall provide copies of the agenda to the members and alternate members of the Board, the County Attorney, and any member of the public requesting the agenda.
- (2) At the meeting the Chair ordinarily will call the items listed for hearing and discussion in the order shown on the agenda. However, the Chair shall have the discretion to alter the order of items shown on the agenda if appropriate in light of the relative anticipated length of items, the presence or absence of interested persons, or other reasonable considerations.
- (3) The Board shall have the discretion at any of its meeting to act by majority vote to amend its agenda to consider items not specifically listed, provided that no hearing on an application for an appeal from an administrative decision or for a variance from the terms of Article 4 of the Land Use Code shall be held in this manner.
- (4) Three members of the Board shall be the required quorum to conduct official business of the Board, with the exception of public hearings on variance and appeal applications where at least four members of the Board must be present and vote in favor of the Applicant/Appellant to overturn the decision of the Director or the County Engineer, as applicable.

## F. General Hearing Procedures

- (1) These procedures shall apply to the Board's hearings on applications for appeals from an administrative decision as authorized under Articles 2 and 4 of the Land Use Code ("Appeals"), and for variances from the terms of Article 4 of the Land Use Code as authorized under Articles 2 and 4 of the Land Use Code ("Variances"). Application and pre-hearing procedures which apply separately to Appeals and Variances are set forth in Article 3 of the Land Use Code (see Exhibit A).
- (2) Four members of the Board shall be the required quorum to conduct any hearing on an application for a Variance or an Appeal. If only four members of the Board are present for a hearing, the Appellant/Applicant may request that the hearing be tabled to the next regular meeting of the Board when five members are expected to be present. Permission to table the hearing under these circumstances shall be freely granted by the Board.
- (3) No member of the Board shall participate in or vote with respect to any matter pending for a hearing before the Board, if that member has a financial, personal, or official interest in, or conflict with, the matter, of such nature that it prevents or may prevent that member from acting on the matter in an impartial manner. Any member having such an interest or conflict shall reveal such fact, to the extent possible, prior to any official Board hearing of or action on the matter, and shall refrain from sitting and participating with the Board in its consideration of and decision on such matter.  
Moreover, no such member shall testify before the Board as a member of the public on any such matter, in order to avoid the appearance of undue influence on the other Board members.
- (4) The appellant in an Appeal ("Appellant") shall have the burden to show that the Director (or County Engineer, as applicable) erred in making the decision or interpretation being appealed. The applicant for a Variance ("Applicant") shall have the burden to show that all criteria necessary to allow a variance to be granted under Article 4 of the Land Use Code have been met.
- (5) Hearing participants may submit documentary evidence to the Board, in addition to testimony, including but not limited to letters of support or opposition, photographs, surveys, or other relevant information. Any documentary evidence submitted to and accepted by the Board shall be kept by the Director as part of the official record of the Board. Exceptions may be made if the evidence is in a form which is difficult to reproduce for keeping by the Director, in which case the person offering and keeping the evidence must safeguard the evidence, and make it available if needed to complete the record of the Board in the event of a rehearing or judicial review.
- (6) All decisions of the Board shall be made based only on the testimony and evidence presented at the hearing and made part of the official record. Decisions shall be made only on a motion incorporating findings as may be reasonably required either to grant or deny the Appeal (that the Director or County Engineer, as applicable, erred in its order or decision pursuant to Article 4 of the Land Use Code), or to grant or deny the Variance (pursuant to the criteria set forth in Article 4 of the Land Use Code). All decisions to grant an Appeal or Variance shall require the concurring vote of four (4) members of the Board.
- (7) In granting any Appeal or Variance, the Board shall have the discretion to impose appropriate conditions and safeguards in harmony with the purposes and intent of Article 4 of the Land Use Code, and in accordance with the public interest and the most appropriate development of the neighborhood.
- (8) If the Board determines at any hearing that it requires additional information to make a decision, or if the Appellant/Applicant or an opposing member of the public makes a reasonable request to the Board to delay its hearing or decision for additional information for other appropriate reason, the Board shall have the discretion to table its hearing or decision for a reasonable period of time. If the Board tables its hearing or decision to a time and date specified in the tabling motion, no additional public notice of the tabled hearing or decision shall be required. If the Board does not specifically close the public hearing in its tabling motion, the public hearing, as well as the Board's decision, shall be deemed tabled as stated in the motion.
- (9) Hearings before the Board shall be conducted in an orderly but informal manner, which need not strictly conform to the rules of procedure and evidence required in a judicial proceeding. [See *Monte Vista Professional Bldg., Inc. vs. City of Monte Vista*, 35 Colo. App. 235, 531 P.2d 400 (1975).]

- (10) The following hearing procedures are guidelines, which can be expected to govern the hearings before the Board. The Chair shall have the discretion to enforce or alter the following procedures as necessary to ensure that the Board conducts its hearings in an efficient manner while observing principles of fundamentals fairness with respect to all interested parties.
- (a) Ordinarily, the Chair will call for a presentation by the Director (or County Engineer, as applicable), followed by a presentation by the Appellant/Applicant. The hearing will then be opened to the public for comment on any issues relevant to the hearing. Thereafter, the Director (or County Engineer, as applicable), the Appellant/Applicant, and if appropriate, members of the public, will be given an opportunity to respond. Members of the Board may ask questions of these persons testifying at any time. Since the Appellant/Applicant has the burden of proof, the Chair shall ensure that the Appellant/Applicant has a fair and sufficient opportunity to present its case and to respond to adverse comments, within the general time constraints specified below.
  - (b) Ordinarily, the Director's (or County Engineer's, as applicable) opening presentation shall be limited to 5 minutes. The Appellant's/Applicant's opening presentation shall be limited to 10 minutes in the case of a Variance, and 15 minutes in the case of an Appeal. Each member of the public wishing to speak shall be limited to 5 minutes. Response times shall be limited to 5 minutes per person testifying, including the Director (or County Engineer, as applicable) and members of the public, except that the Appellant/Applicant shall be allowed 10 minutes to respond. The Chair may refuse to allow repetitive or irrelevant testimony regardless of allowable time limits.
  - (c) Any Appellant/Applicant or other person wishing to testify who desires more time to speak than is allowed in the preceding Subsection, must request additional time from the Director at least 15 days in advance of the hearing, to allow the Director to prepare the meeting agenda accordingly. The Director shall allow for additional time if the request is reasonable. If the Director denies the request for additional time, the person requesting additional time may renew its request before the Board at the hearing.
  - (d) Ordinarily, cross-examination is not conducted at hearings. However, the Chair in its discretion may allow for cross-examination if the Director (or County Engineer, as applicable), Appellant/Applicant, or an objecting adjacent property owner requests it, and demonstrates to the Chair that cross-examination is necessary to allow that party to develop an adequate factual record before the Board. If cross-examination is allowed, the Chair shall extend the same right to other participants in the hearing as necessary to assure a fair proceeding. Cross-examination shall be limited to 10 minutes per person cross-examined, unless the person desiring to cross-examine requests additional time in accordance with the preceding Subsection.
  - (e) Ordinarily, witness oaths will not be administered. All persons testifying at a hearing before the Board shall be truthful in their testimony at all times.
  - (f) Ordinarily, the Chair does not compel the attendance of witnesses through subpoenas. However, if an Appellant/Applicant, the Director (or County Engineer, as applicable), or an opposing member of the public, submits a written request which the Chair and the County Attorney receive within 10 days in advance of the hearing, and which demonstrates to the satisfaction of the Chair that a subpoena is necessary to compel attendance of a material witness to the requesting person's case, the Chair may request that the County Attorney apply to the District Court for a subpoena pursuant to C.R.S. § 30-28-117(4). The witness's full name(s), current residence and mailing address, and a statement of the need for and relevance of the witness's testimony, must be submitted with any subpoena request. If the subpoena request is made by an opposing member of the public, that person shall be responsible for timely serving the subpoena once obtained, and for paying any required witness and mileage fees.

#### **IV. Variance And Appeals: Application and Pre-Hearing Requirements**

(See the relevant provisions in Article 3 of the Land Use Code, attached as Exhibit A.)

#### **V. Rehearing**

- A.** In the event the Board denies a Variance request, such request shall not be reconsidered for 12 months after the date of the decision, except as provided below.
- B.** Any decision of the Board may be reheard only if the Appellant/Applicant (or a person opposed to the application who testified at the hearing where the application was granted) files a request for rehearing with the Director, within 20 days after the date of the hearing at which the decision was made. The request shall state the reasons for which the Appellant/Applicant (or opposing person) seeks a rehearing.
- C.** If no request for a rehearing is filed, the decision of the Board shall be considered final for purposes of judicial review as of the date of the hearing on which the decision was made. If a request for a rehearing is filed but denied by the Board, the Board's decision shall be considered final for purposes of judicial review on the third day after the date on which the Director mails notice of the Board's denial of the rehearing to the person requesting a rehearing.
- D.** The Board may approve a rehearing request on the grounds that the hearing or decision was based on fraud, mistake, or inadequate information; needs clarification; or there is a strong indication that there were procedural problems with the prior hearing. The decision to rehear any matter may be made without public hearing by the assent of three members of the Board who were present at the prior hearing. The Board shall have the discretion to limit the scope of the rehearing to the matters, which the assenting members determine are appropriate to rehear, based upon their knowledge of the prior hearing and the stated reasons for the rehearing request.
- E.** Any rehearing shall be treated in all respects as a new hearing. The concurring vote of four members of the Board shall be required to reverse or alter the decision made at the prior hearing.

#### **VI. Amendments to Supplemental Rules**

The Board may amend these Rules upon an affirmative vote of three regular members.

#### **VII. Conflict**

Whenever there is any conflict between these Rules and either the Land Use Code or the Colorado State Statutes, the State Statutes and Land Use Code shall prevail.