



City of Boulder Planning and Development Services
1101 Arapahoe Avenue • Boulder, CO 80306
Phone: 303-441-1880 • Web: boulderplandevlop.net

INFORMATION & CRITERIA GUIDE TO BOZA APPLICANTS

The Following Pages Do Not Need to be Submitted with Application Materials

Dear Applicant,

As you begin to prepare your “Variance Application,” the Board of Zoning Adjustment would like to offer you some information and suggestions that we hope you will find helpful.

The Board of Zoning Adjustment is made up of five members who are appointed to five-year terms by the Boulder City Council. Our purpose is to grant or deny your application for a variance. Our rules and procedures require a positive vote of at least three members of the board for your application to be approved.

Please also note that the board is not a policy-making board such as the City Council or Planning Board. The purpose of the Board of Zoning Adjustment is to implement policy. So, while we understand that there may be social/ economic/ political issues that you believe are relevant to your application, those issues are not part of the criteria by which your application will be judged.

Remember that you are asking the board to change the “standard” code requirements for you because of your unique situation. It is important for you to realize that the “burden of proof” lies with you, and that only if you are successful in convincing us that you have met the criteria, will you receive the variance that you are requesting. Please be as complete as you can in furnishing us the necessary information to properly consider your application. Depending on the complexity or scale of the project, you might consider providing information in addition to that required by the “Application Requirements.” This additional information could include renderings (artistic-type drawings that are often in color), models, and written information as to the existing and proposed square footage of the structure.

Lastly, the board tries to maintain a relaxed, somewhat informal atmosphere. However, we are a quasi-judicial board, and our decisions are for all intents and purposes final, and the only appeal of our decision is in District Court, provided that appeal is filed within 30 days from the date of our decision. Also, you should keep in mind that if your request is denied because you have, in our opinion, failed to meet one of more of our criteria, you may not resubmit the same request for a variance for one year, unless it contains “substantial” revisions.

While you can be assured that we will give you and any other parties a full hearing, we occasionally must end discussion either when the discussion is not providing any new information or when practical time constraints require us to move on.

Planning and Development Services can provide you with additional information and input for the application prior to and during the application process. We suggest that you schedule a review of your proposal(s) and application materials with the staff prior to submitting and allow yourself enough time to take their feedback into account. The staff will let you know their recommendation to the board if you contact them 48 hours prior to the hearing time. Please do not contact board members prior to the meeting to discuss your case. We can only answer the most general procedural questions and are not permitted to discuss the specifics of your case outside of the public hearing.

We hope these comments are helpful in the preparation of your application.

Sincerely,
Board of Zoning Adjustment

Section 9-2-3 (d) B.R.C. (1981)

(d) Board of Zoning Adjustment (BOZA): The BOZA may grant variances from the requirements of:

- (1) The setback and separation requirements listed in section 9-7-1, "Schedule of Form and Bulk Standards", B.R.C. 1981;
- (2) The porch setback and size requirements of section 9-7-4 "Setback Encroachments for Front Porches", B.R.C. 1981;
- (3) The total cumulative building coverage requirements for accessory buildings of section 9-7-8, "Accessory Buildings in Residential Zones", B.R.C. 1981;
- (4) The side yard bulk plane and side yard wall articulation requirements listed in section 9-7-9 "Side Yard Bulk Plane", B.R.C. 1981 and section 9-7-10 "Side Yard Wall Articulation", B.R.C. 1981;
- (5) The building coverage requirements of section 9-7-11 "Maximum Building Coverage" or section 9-10, "Nonconformance Standards", B.R.C. 1981;
- (6) The setback and spacing requirements for mobile homes of section 9-7-13, "Mobile Home Park Form and Bulk Standards", B.R.C. 1981;
- (7) The size requirements for accessory units of subsection 9-6-3(a) "Accessory Units", B.R.C.;
- (8) The parking requirements of subsection 9-9-6(d), B.R.C. 1981, with regards to parking in landscaped front yard setbacks;
- (9) Sign code variances and appeals as permitted by subsection 9-9-21(s), B.R.C. 1981;
- (10) The use of a mobile home for nonresidential purposes subject to the requirements of subsection 10-12-6(b), B.R.C. 1981;

In granting any variance, the board may attach such reasonable conditions and safeguards as it deems necessary to implement the purposes of this title.

BOZA VARIANCE CRITERIA

(h) CRITERIA FOR VARIANCES

The BOZA may grant a variance only if it finds that the application satisfies all of the applicable requirements of paragraph (1), (2), (3), OR (4) of this Subsection AND the requirements of paragraph (5) of this Subsection.

(1) Physical Conditions or Disability

- (A) There are:
 - (i) Unusual physical circumstances or conditions, including, without limitation, irregularity, narrowness or shallowness of the lot, or exceptional topographical or other physical conditions peculiar to the affected property; or
 - (ii) There is a physical disability affecting the owners of the property or any member of the family of an owner who resides on the property which impairs the ability of the disabled person to utilize or access the property; and
- (B) The unusual circumstances or conditions do not exist throughout the neighborhood or zoning district in which the property is located; and
- (C) Because of such physical circumstances or conditions the property cannot reasonably be developed in conformity with the provisions of this chapter; and
- (D) Any unnecessary hardship has not been created by the applicant.

(2) Energy Conservation

- (A) The variance will permit construction of an addition to a building that was constructed on or before January 1, 1983;
- (B) The proposed addition will be an integral part of the structure of the building;
- (C) The proposed addition will qualify as a "solar energy system" as defined in Section 9-16, "Definitions," B.R.C. 1981, or will enable the owner of the building to reduce the net use of energy for heating or cooling purposes by a minimum of 10% over the course of a year of average weather conditions for the entire building; and
- (D) The costs of constructing any comparable addition within existing setback lines so as to achieve comparable energy purposes would be substantially greater than the cost of constructing the addition which is proposed for the variance.

(3) Solar Access

- (A)** The volume of that part of the lot in which buildings may be built consistent with this code has been reduced substantially as a result of the provisions of Section 9-9-17, "Solar Access," B.R.C. 1981;
- (B)** The proposed building or object would not interfere with the basic solar access protection provided in Section 9-9-17, "Solar Access," B.R.C. 1981; and
- (C)** The volume of the proposed building to be built outside of the building setback lines for the lot will not exceed the amount by which the buildable volume has been reduced as a result of the provisions of Section 9-9-17, "Solar Access," B.R.C. 1981.

(4) Designated Historic Property

The property could be reasonably developed in conformity with the provisions of this chapter, but the building has been designated as an individual landmark or recognized as a contributing building to a designated historic district. As part of the review of an alteration certificate pursuant to Chapter 9-11, "Historic Preservation," B.R.C. 1981, the approving authority has found that development in conforming locations on the lot or parcel would have an adverse impact upon the historic character of the individual landmark or the contributing building and the historic district, if a historic district is involved.

(5) Requirements for All Variance Approvals

- (A)** Would not alter the essential character of the neighborhood or district in which the lot is located;
- (B)** Would not substantially or permanently impair the reasonable use and enjoyment or development of adjacent property;
- (C)** Would be the minimum variance that would afford relief and would be the least modification of the applicable provisions of this title; and
- (D)** Would not conflict with the provisions of Section 9-9-17, "Solar Access," B.R.C.1981.

(i) FLOOR AREA VARIANCES FOR ACCESSORY UNITS

The BOZA may grant a variance to the maximum floor area allowed for an attached accessory dwelling unit or for a detached accessory dwelling unit under Subsection 9-6-4(a) "Accessory Units," B.R.C. 1981, only if it finds that the application satisfies all of the following applicable requirements of either subparagraph (i)(1) or (i)(2):

- (1)
 - (A) That the interior configuration of the structure is arranged in such a manner that the space to be used as the attached accessory dwelling unit or detached accessory dwelling unit cannot feasibly be divided in conformance with the size requirements;
 - (B) That the variance, if granted, meets the essential intent of this title, and would be the minimum variance that would afford relief; and
 - (C) That the strict application of the provisions at issue would impose an undue and unnecessary hardship on the individual and that such hardship has not been created by the applicant;

or

- (2)
 - (A) That there are unusual physical circumstances or conditions in the design of the existing structure the accessory unit would be in, including without limitation the thickness of exterior walls or framing, that affect the total allowed interior floor area of the accessory unit;
 - (B) That the unusual circumstances or conditions do not exist through the neighborhood or the zoning district in which the property is located;
 - (C) That the variance, if granted, would not alter the essential character of the neighborhood or zoning district the property is in;
 - (D) That the variance, if granted, would be the minimum variance that would afford relief; and
 - (E) That the accessory unit would be clearly incidental to the principal dwelling unit.

(j) VARIANCES FOR PARKING SPACES IN FRONT YARD SETBACKS

The BOZA may grant a variance to the requirements of Section 9-9-6, "Parking Standards," to allow a required parking space to be located within the front yard setback if it finds that the application satisfies all of the following requirements:

- (1) The dwelling unit was built in a RR-1, RR-2, RE, or RL-1 zoning district.
- (2) The dwelling unit originally had an attached carport or garage that met the off-street parking requirements at the time of initial development or, at the time of initial construction, an off-street parking space was not required and has not been provided;
- (3) The garage or carport was converted to living space prior to January 1, 2005;
- (4) The current property owner was not responsible for the conversion of the parking space to living area and can provide evidence as such;

- (5) A parking space in compliance with the parking regulations of Section 9-9-6 cannot reasonably be provided anywhere on the site due to the location of existing buildings, lack of alley access, or other unusual physical conditions;
- (6) Restoring the original garage or carport to a parking space would result in a significant economic hardship when comparing the cost of restoration to the cost of any other proposed improvements on the site; and
- (7) The proposed parking space to be located within the front yard setback space shall be paved, shall comply with Section 9-9-5, "Site Access Control," shall not be less than 9 feet in width or more than 16 feet in width, and shall not be less than 19 feet in length. No parking space shall encroach into a public right of way or obstruct a public sidewalk.

SOLAR ACCESS EXCEPTIONS

(Excerpt from Section 9-9-17(f), B.R.C. 1981)

(f) EXCEPTIONS

- (6) Review Criteria: In order to grant an exception, the approving authority must find that each of the following requirements has been met:
 - (A) Because of basic solar access protection requirements and the land use regulations:
 - (i) Reasonable use cannot otherwise be made of the lot for which the exception is requested;
 - (ii) The part of the adjoining lot or lots that the proposed structure would shade is inherently unsuitable as a site for a solar energy system; or
 - (iii) Any shading would not significantly reduce the solar potential of the protected lot; and
 - (iv) Such situations have not been created by the applicant;
 - (B) Except for actions under subparagraphs (f)(6)(D), (f)(6)(E), and (f)(6)(F) of this section, the exception would be the minimal action that would afford relief in an economically feasible manner;
 - (C) The exception would cause the least interference possible with basic solar access protection for other lots;
 - (D) If the proposed structure is located in a historic district designated by the city council according to section 9-11-2, "City Council May Designate or Amend Landmarks and Historic Districts," B.R.C. 1981, and if it conformed with the requirements of this section, its roof design would be incompatible with the character of the development in the historic district;

- (E) If part of a proposed roof which is to be reconstructed or added to would be incompatible with the design of the remaining parts of the existing roof so as to detract materially from the character of the structure, provided that the roof otherwise conformed with the requirements of this section;
- (F) If the proposed interference with basic solar access protection would be due to a solar energy system to be installed, such system could not be feasibly located elsewhere on the applicant's lot;
- (G) If an existing solar system would be shaded as a result of the exception, the beneficiary of that system would nevertheless still be able to make reasonable use of it for its intended purpose;
- (H) The exception would not cause more than an insubstantial breach of solar access protected by permit as defined in paragraph (d)(3) of this section; and
- (I) All other requirements for the issuance of an exception have been met. The applicant bears the burden of proof with respect to all issues of fact.

SIGN CODE VARIANCE CRITERIA

(Excerpt from Section 9-9-21(s), B.R.C. 1981)

(s) APPEALS AND VARIANCES

- (4) Setbacks, spacing of freestanding and projecting signs, and sign noise limitations are the only requirements which the BOZA may vary. If an applicant requests that the BOZA grant such a variance, the board shall not grant a variance unless it finds that each of the following conditions exists:
 - (A) There are special physical circumstances or physical conditions, including, without limitation, buildings, topography, vegetation, sign structures, or other physical features on adjacent properties or within the adjacent public right of way that would substantially restrict the effectiveness of the sign in question, and such special circumstances or conditions are peculiar to the particular business or enterprise to which the applicant desires to draw attention and do not apply generally to all businesses or enterprises in the area; or
 - (B) For variances from the noise limitations of subparagraph 9-9-21(b)(3)(L), "Sound," B.R.C. 1981, the proposed variance is temporary in duration (not to exceed 30 days) and consists of a temporary exhibition of auditory art; and
 - (C) The variance would be consistent with the purposes of this chapter and would not adversely affect the neighborhood in which the business or enterprise or exhibition to which the applicant desires to draw attention is located; and
 - (D) The variance is the minimum one necessary to permit the applicant reasonably to draw attention to its business, enterprise, or exhibition.