
APPEAL TO THE BOARD OF ADJUSTMENT (BOA)

1.1. PURPOSE

The purpose of this procedure is to establish a consistent process for submission and review of an appeal to the Board of Adjustment of a written administrative determination or administrative action of the PCD Director as specifically provided for by Section 5.5.2(B)(1) and 2.2.3(B)(2) of the LDC.

1.2. BACKGROUND

The LDC establishes uniform standards for the development and use of land. These standards were established to preserve and improve the public health, safety and general welfare of the citizens and businesses of El Paso County including promoting predictability, consistency and efficiency in the land development process for residents, neighborhoods, businesses, agricultural and development interests and being fair to all by ensuring due consideration is given to protecting private property rights, the rights of individuals and the rights of the community as a whole.

The administrative determination provisions are designed to allow the PCD Director to interpret the LDC. The LDC specifically authorizes an administrative determination to classify uses of property which are not expressly identified as one of the land uses authorized in a zoning district or overlay zoning district, or defined by the LDC. An administrative determination may also be used by the PCD Director to interpret the LDC as it applies to a specific piece of property. In addition, the LDC delegates to the PCD Director various administrative permitting and enforcement action.

The Board of Adjustment may only specifically hear appeals authorized by C.R.S. § 30-28-118 and Section 5.5.2.(B)(1) of the LDC (See Section 1.3 of this procedure). Generally, where the administrative determination takes the form of a written code interpretation regarding use or a general code interpretation, the code interpretation may only be appealed to the Board of County Commissioners (pursuant to this Procedures Manual) except when the code interpretation or action by the PCD Director involves a dimensional standard. Where an applicant for administrative determination, alleged violator or any other party is aggrieved by an administrative determination or enforcement action of the PCD Director relating to a nonconforming lot determination, administrative relief request, interpretation of a dimensional development standard, setback interpretation, the aggrieved party, as defined by the LDC, may appeal the administrative determination to the Board of Adjustment. An appeal may result from the inability to secure a building permit, site plan approval, or site development plan approval for failure to meet specific standards of the LDC. Where the administrative determination, code interpretation, or action involves a dimensional standard it may be appealed to the Board of Adjustment as a Dimension Variance or Appeal to the Board of Adjustment (pursuant to this Procedures Manual) application.

1.3. APPLICABLE STATUTES AND REGULATIONS

C.R.S. §§30-28-111, 113, and 114 authorize Boards of County Commissioners to adopt and amend zoning regulations for the regulation by districts or zones of the location, height, bulk, and size of buildings and other structures, percentage of lot which may be occupied, the size of lots, courts, and other open spaces, the density and distribution of population, the location and use of buildings and structures for trade, industry, residence, recreation, public activities, or other

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purposes, access to sunlight for solar energy devices, and the uses of land for trade, industry, recreation, or other purposes including methods for the administration of such regulations.

C.R.S. §30-28-118(1) authorizes the Board of Adjustment to take appeals by any person aggrieved by an inability to obtain a building permit or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of the provisions of the zoning resolution. Appeals to the Board of Adjustment may be taken by any officer, department, board, or bureau of the county affected by the grant or refusal of a building permit or by other decision of an administrative officer or agency based on or made in the course of the administration or enforcement of the provisions of the zoning resolution.

C.R.S. §30-28-118(1)(b) does not allow the Board of Adjustment to hear an appeal for building use violations that may be prosecuted pursuant to C.R.S. §30-28-124(1)(b), which states in pertinent part that it is unlawful to use any building, structure, or land in violation of any regulation in, or of any provision of, any zoning resolution, or any amendment thereto, enacted or adopted by the Board of County Commissioners.

C.R.S. §30-28-118(2) specifically grants the Board of Adjustment the following powers: (a) To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, or refusal made by an administrative official or agency based on or made in the enforcement of the zoning resolution; (b) To hear and decide, in accordance with the provisions of any such resolution, requests for special exceptions or for interpretation of the map or for decisions upon other special questions upon which such board is authorized by any such resolution to pass; and (c) Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the regulation or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation enacted under this part 1 would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, to authorize, upon an appeal relating to said property, a variance from such strict application so as to relieve such difficulties or hardship if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning resolutions. In determining whether difficulties to, or hardship upon, the owner of such property exist, as used in this paragraph (c), the adequacy of access to sunlight for solar energy devices installed on or after January 1, 1980, may properly be considered. Regulations and restrictions of the height, number of stories, size of buildings and other structures, and the height and location of trees and other vegetation shall not apply to existing buildings, structures, trees, or vegetation except for new growth on such vegetation.

Section 5.3.6 of the LDC defines administrative determination as the process used by the PCD Director to decide a written request to interpret the provisions of this Code or in issuing any other written interpretation of this Code. The interpretation of the provisions of a concomitant agreement will be treated as an interpretation of this Code. An administrative determination of the provisions of this Code clarifies conflicting or ambiguous wording, or the scope or intent of the provisions of this Code. A request for an administrative determination shall relate to a specific site, zoning district, use or application. An administrative determination of this Code issued by the PCD Director shall have the same effect as any provision of this Code. An administrative determination of this Code remains in effect until rescinded in writing by the PCD Director, until such time as the administrative determination is overturned on appeal, or until such time as an

amendment to the Code results in a change affecting the administrative determination. An administrative determination generally requires analysis and comparison of various code provisions to arrive at a decision as opposed to a nondiscretionary review where compliance can be determined based on objective standards

Section 2.1.4 of the LDC provides the authority for the PCD Director to establish standards for processing development applications.

Section 2.2.1.(H) of the LDC gives the Board of County Commissioners the power to interpret and hear appeals to the LDC as to the type, nature and rights of uses, conforming and nonconforming, as allowed under the LDC. Except for those procedures expressly prescribed for appealing of certain administrative decisions to the Board of Adjustment, all interpretations or applications by the PCD Director as they relate to uses under this Code and believed to be erroneous or inapplicable may be appealed to the Board of County Commissioners. Violations of use restrictions shall only be heard by the Board of County Commissioners as specifically limited by the LDC.

Section 2.2.3.B(2) of the LDC gives the Board of Adjustment the authority to hear an appeal of an administrative determination (including code interpretation) where the administrative determination of the PCD Director is related to a nonconforming lot determination, interpretation of a dimensional development standard, or setback interpretation. Violations of use restrictions shall be not be heard by the Board of Adjustment as specifically limited by C.R.S. §30-28-124 (1)(b).

Section 2.2.4 of the LDC establishes the authorities of the PCD Director.

Section 5.5.2.(A) of the LDC provides for any person aggrieved, as defined by the LDC, by the inability to obtain a building permit or by any order, requirement or decision made by an administrative officer or agency in the administration, interpretation or enforcement to appeal to the Board of Adjustment.

Section 5.5.2.(B)(1) of the LDC limits the Board of Adjustment's appeal authority to appeals where it is alleged that there is an error in any order, requirement, decision or refusal made by the PCD pertaining to the application or enforcement, under the LDC, of:

- A zoning district's development requirements or a use standard relating to physical dimension, structural location, or bulk limitation;
- Nonconforming building provisions;
- Nonconforming lot or parcel or merger by contiguity provisions;
- Parking and development requirements;
- Landscape requirements;
- On-premise signs (dimensional, location, and number requirements only) provisions, and off-premise sign separation distances;
- Distance separation requirements required for daycare applications;
- Appeal of an action regarding administrative relief;
- Determination of wildfire hazard or zoning district boundary;
- Any other matter appealable to the Board of Adjustment under the provisions of the LDC.

Section 5.3.5 of the LDC establishes the basis for administrative determinations and code interpretations generally.

1.4. RESOURCES

Not applicable

1.5. GENERAL SUBMITTAL LIST

The applicant shall submit the required number of each of the following:

- Where the appeal involves a specific property, the Letter of Intent shall be accompanied by a Development Application Map Exhibit.
- Copy of the administrative determination or enforcement action and all original application materials, if applicable.
- Proof of ownership, which may include a copy of the deed or affidavit of ownership.
- Evidence of authority to represent the property owner, if applicant is not the property owner.

1.6. STEP BY STEP REVIEW PROCEDURE

1.6.1. Summary of Steps

(A) Step 1 Early Assistance Meeting (Optional)

(B) Step 2 Neighborhood Meeting (Optional)

(C) Step 3 Application Submitted

(D) Step 4 Determination of Completeness

(E) Step 5 Resubmission of Application (if required)

(F) Step 6 Application Referral

(G) Step 7 Consolidation of Comments and Request to Applicant

The comments are received and provided to the applicant via EDARP. The PCD planner determines whether additional information must be provided to ensure the Board of Adjustment has adequate information for review of the appeal. The PCD planner transmits the comments to the applicant for response. The applicant or PCD may request a conference at this point to discuss the issues identified. If a conference is requested, the PCD planner schedules a meeting with appropriate agency representatives. If criteria can be met and all necessary material has been submitted, Step 9 is initiated.

(H) Step 8 Applicant Submits Information Requested

(I) Step 9 Staff Report and Recommended Action

(J) Step 10 Hearing Scheduled

(K) Step 11 Notice of Hearing

(L) Step 12 Hearing Held

(M) Step 13 Decision Concerning Development Permit

The Board of Adjustment either upholds or reverses the PCD Director's administrative decision. The decision including any reasons for the decision is documented in the record.

(N) Step 14 Development Permit Closeout

A copy of the decision is uploaded to EDARP by the PCD planner. If the PCD Director's decision is reversed, the administrative determination record is corrected by the PCD planner. The appeal is filed in the appeal file and a copy of the decision is placed in the original development application, or administrative decision file. The original development application is maintained on EDARP with a copy of the decision.

1.6.2. Criteria for Consideration

Only an aggrieved party, as defined in the LDC, may submit an appeal. An application for an appeal must be made within 30 days after the PCD Director makes a written decision on the matter being appealed. The 30 days shall start to run the date the decision is uploaded to EDARP.

The Board of Adjustment may only consider an application for appeal where an official written administrative determination has been prepared by the PCD Director or a development permit has been denied by the PCD Director. The appeal must involve a nonconforming lot determination, interpretation of a dimensional development standard, setback interpretation, and/or the aggrieved party alleges that the PCD Director has made an error in interpretation of the LDC. More specifically, in accordance with Section 5.5.2.(B)(1) of the LDC, the appeal shall involve:

- The development requirements of the zoning district or a use standard relating to physical dimension, structural location, or bulk limitation;
- Nonconforming building provisions;
- Nonconforming lot or parcel or merger by contiguity provisions;
- Parking and development requirements;
- Landscape requirements;
- On-premise signs (dimensional, location, and number requirements only) provisions, and off-premise sign separation distances;
- Distance separation requirements required for daycare applications;
- Appeal of an action regarding administrative relief;
- Determination of wildfire hazard or zoning district boundary;
- Any other matter appealable to the Board of Adjustment under the provisions of the LDC.

If the decision is appealable to the Board of Adjustment, the decision is not appealable to the Board of County Commissioners; however, all decisions not appealable to the Board of Adjustment shall be considered appealable to the Board of County Commissioners.

1.7. REVIEW PERIOD

An appeal is classified as a Type D Development Application. The timeline for reviewing a Type D Development Application is dependent upon several factors, including, but not limited to, staffing, workload, project size and/or complexity, and quality and completeness of submittal materials.

1.8. NOTICE

Notice to adjoining property owners is not required, but may occur at the discretion of the PCD Director. If the PCD Director determines notice is required, notice shall meet the notice requirements of public notice.

1.9. FORM OF ACTION

An appeal shall be considered final as of the date of decision by the Board of Adjustment. The appeal may be acted on by motion or resolution and is only appealable to District Court. A negative decision by the Board is not a final action for judicial review purposes if the disputed matter could be resolved by the appellant through a separate application process.

1.10. EXPIRATION (IF APPLICABLE)

Not Applicable

1.11. SIMILAR PROCEDURES

Not applicable