
APPEAL TO THE BOARD OF COUNTY COMMISSIONERS (BOCC)

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 County Commissioners of a written administrative determination, code interpretation, or administrative action of the PCD Director. It does not apply to those appeals specifically authorized for review by the Board of Adjustment pursuant to C.R.S. §30-28-118 and Sections 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 actions.

The Board of County Commissioners hears any appeal not specifically authorized to be heard by the Board of Adjustment by C.R.S. §30-28-118 and Section 5.5.2.(B)(1) of the LDC (See Section 1.3 of this procedure). The Board of County Commissioners' authority to hear appeals is broadly defined pursuant to Section 2.2.1.(H) of the LDC. 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 except when the code interpretation or action by the PCD Director involves a dimensional standard, which is heard by the Board of Adjustment. Where an applicant for administrative determination, alleged violator or any other party is aggrieved by an administrative determination of the PCD Director relating to a nonconforming lot determination, interpretation of a dimensional development standard, setback interpretation, or enforcement, the aggrieved party, as defined in the LDC, may appeal the administrative determination to the Board of Adjustment. Where the administrative determination, code interpretation or action involves a dimensional standard it may be appealed to the Board of Adjustment as a Dimension or Numeric Relief Standard Relief application.

An appeal to Board of County Commissioners is most commonly of a general nature, but it may result in an interpretation which is applicable to a specific property or occur in conjunction with the processing of a development 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 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. §§30-28-124 (1)(b).

Section 1.6.7 of the LDC provides that the listing of any use as being permitted in a particular zoning district shall be deemed to be an exclusion of the use from any other zoning district in which the use is not listed. For uses not listed in any zoning district, an administrative determination concerning whether the use is allowed within the zoning district may be requested.

Section 5.1.6 of the LDC provides that when a use is expressly defined in the LDC, or when a use is categorized by an administrative determination, similar uses which are not listed or defined shall fall within the same category of use by character, descriptor, and intensity as determined by the PCD Director.

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

Section 5.1.3 and 5.1.4 and the associated Table 5-1 and 5-2 of the LDC establish the general uses allowed by right, as special uses, as temporary uses, and as accessory uses.

Section 5.1.6 of the LDC allows the PCD Director to classify any unlisted use based on similar uses. If no similar use can be identified by the PCD Director, the PCD Director may initiate an

amendment to the text of the LDC to clarify where the unlisted use is allowed, or the applicant for an unlisted use may file an application to amend the LDC following the prescribed procedures.

Section 5.3.6 of the LDC establishes the basis for administrative determinations and code interpretations generally.

Section 5.5.2.(A) of the LDC provides for any person aggrieved 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 may appeal to the Board of Adjustment.

1.4. RESOURCES

Not applicable

1.5. GENERAL SUBMITTAL LIST

The applicant shall submit 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**
- (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 sent onto the applicant via EDARP. The PCD planner determines whether additional information must be provided to ensure the Board of County Commissioners 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 County Commissioners 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. Any enforcement action is modified, as necessary, or the decision on any applicable development permit is finalized or adjusted based on the decision. The appeal is filed in the appeal file and a copy of the decision is uploaded into the EDARP file for the development application or administrative decision file. A copy of 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.

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 County Commissioners. 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