



City of Boulder Planning and Development Services

1739 Broadway, third floor • PO Box 791 • Boulder, CO 80306

Phone: 303-441-1880 • Fax: 303-441-3241 • Web: boulderplandev.net

BOZA VARIANCE APPLICATION

**APPLICATION DEADLINE IS 4:00 P.M. ON THE THIRD WEDNESDAY OF EACH MONTH.
MEETING DATE IS 5:00 P.M. ON THE SECOND THURSDAY OF THE FOLLOWING MONTH.**

Submittal of inaccurate or incomplete information will result in rejection of the application.

GENERAL DATA

(To be completed by the applicant.)

- Street Address or General Location of Property: _____
- Legal Description: Lot _____ Block _____ Subdivision _____ (Or attach description.)
- Existing Use of Property: _____
- Description of proposal: _____

*Total floor area of existing building: _____	*Total floor area proposed: _____
*Building coverage existing: _____	*Building coverage proposed: _____
*Building height existing: _____	*Building height proposed: _____

*See definitions in Section 9-16-1, B.R.C. 1981.

- ◆ **Name of Owner:** _____
- Address: _____ Telephone: _____
- City: _____ State: _____ Zip Code: _____ FAX: _____
- ◆ **Name of Contact (if other than owner):** _____
- Address: _____ Telephone: _____
- City: _____ State: _____ Zip Code: _____ FAX: _____

STAFF USE ONLY

Doc. No. _____ Date Filed _____ Zone _____ Hearing Date _____
 Application received by: _____ Date Fee Paid _____ Misc. Rect # _____

APPLICATION TYPES

- Setback, building separation, bulk plane, building coverage, porch setback and size, and side yard wall articulation
- Sign Variance
- Mobile Home Spacing Variance
- Size and parking setback requirements for accessory units
- Use of mobile homes for non-residential purposes
- Parking in landscaped front yard setback

APPLICATION REQUIREMENTS

As a minimum, the following items **MUST** be attached and hereby made a part of this application:

- If applicant is other than owner, the written consent of the owners of the property for which the variance is requested;
- An Improvement Location Certificate or Site Improvement Survey and legal description by a registered surveyor (**4 copies**);
- A site development plan including building heights, setbacks, and proposed floor area (**4 copies**);
- A demolition plan differentiating between proposed and remaining portions of the structure (**4 copies**);
- A written statement thoroughly addressing the criteria for approval - see following pages (**4 copies**);
- Any other information pertinent to the request (**4 copies**);
- An application fee (as prescribed in Section 4-20-43, B.R.C. 1981);
- Sign Posting Acknowledgement Form - see last page.

-Electronic files of all documents are greatly appreciated. If available, please submit them on a CD or thumb drive with your application.

NOTE: The applicant is responsible for posting the property in compliance with city requirements. Signs will be provided to the applicant at the time of submission of the application. The applicant will submit a posting affidavit within 10 days of the date of application. Failure to submit the affidavit may result in the postponement of the hearing date.

NOTE: SEE SECTION 9-2-3(I), B.R.C. 1981 FOR VARIANCE EXPIRATION INFORMATION

Applicant / Owner Signature _____ Date _____



CITY OF BOULDER

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NOTICE TO APPLICANTS

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. (These comments are directed primarily to those seeking setback adjustments. If you are requesting another type of variance from the board, please contact Planning and Development Services.)

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 three members of the board in order for your application to be approved. If one member of the board is absent or removes himself or herself from the hearing, a vote of two in favor and two opposed has the same effect as denial. However, in this case, you are automatically entitled to present the application again at the next scheduled meeting.

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. We suggest that you schedule a review of your application with the staff and allow yourself enough time to take their comments 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.

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) Setback and separation requirements listed in section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981;
- (2) The building coverage requirements of chapter 9-10, "Nonconformance Standards," B.R.C. 1981;
- (3) The spacing requirements for mobile homes of section 9-7-10, "Mobile Home Park Form and Bulk Standards," B.R.C. 1981;
- (4) The porch setback and size requirements of section 9-7-4, "Setback Encroachments for Front Porches," B.R.C. 1981;
- (5) The size and parking setback requirements for accessory units of subsection 9-6-3(a), B.R.C. 1981;
- (6) The total cumulative building coverage requirements for accessory buildings of section 9-7-8, "Accessory Buildings in Residential Zones," B.R.C. 1981;
- (7) The use of a mobile home for nonresidential purposes subject to the requirements of subsection 10-12-6(b), B.R.C. 1981;
- (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; and

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 DWELLING UNITS

The BOZA may grant a variance to the maximum floor area allowed for an accessory dwelling unit under Subsection 9-6-3(a) "Accessory Units," B.R.C. 1981, only if it finds that the application satisfies all of the following applicable requirements:

- (1)** That the interior configuration of the house is arranged in such a manner that the space to be used as the accessory dwelling unit cannot feasibly be divided in conformance with the size requirements;
- (2)** That the variance, if granted, meets the essential intent of this title, and would be the minimum variance that would afford relief; and

- (3) 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.

(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.

SIGN CODE VARIANCE CRITERIA

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

(s) **APPEALS AND VARIANCES**

- (1) Any aggrieved person who contests an interpretation of this chapter which causes denial of a permit, or who believes a violation alleged in a notice of violation issued pursuant to paragraph 9-9-21(t)(2) or (3), B.R.C. 1981, to be factually or legally incorrect, may appeal the denial or notice of violation to the BOZA or Board of Building Appeals in a manner provided by either such board under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, or may, in the case of a denial, request that a variance be granted. An appeal from a denial and a request for a variance may be filed in the alternative.

- (A) An appeal from an interpretation which causes denial of a permit or from a notice alleging a violation of Subsections 9-9-21(l), "Structural Design Requirements," 9-9-21(m), "Construction Standards," 9-9-21(n), "Electric Signs," and 9-9-21(o), "Sign Maintenance," B.R.C. 1981, shall be filed with the BOZA.
 - (B) An appeal from any other interpretation alleging any other violation of this chapter shall be filed with the BOZA.
 - (C) An appellant shall file the appeal, request for variance, or both in the alternative with the BOZA within fifteen days from the date of notice of the denial or the date of service of the notice of violation. The appellant may request more time to file. If the appellant makes such request before the end of the time period and shows good cause therefore, the City Manager may extend for a reasonable period the time to file with either board.
- (2) No person may appeal to or request a variance from the BOZA if the person has displayed, constructed, erected, altered, or relocated a sign without a sign permit required by paragraph 9-9-21(b)(2), B.R.C. 1981. The boards have no jurisdiction to hear an appeal nor authority to grant any variance from the permit requirements of this chapter. But the BOZA has jurisdiction to hear an appeal of a notice of violation alleging violation of the permit requirements if the appeal is from the manager's interpretation that a permit is required, and the appellant's position is that the device is not a sign or that it is exempt from the permit requirements under Subsection 9-9-21(c), "Signs Exempt from Permits," B.R.C. 1981.
- (3) An applicant for an appeal or a variance under this Section shall pay the fee prescribed by Subsection 4-20-47(b), B.R.C. 1981.
- (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.
- (5) If an applicant requests that the Board of Building Appeals approve alternate materials or methods of construction or modifications from the requirements of Subsections 9-9-21(l), "Structural Design Requirements," 9-9-21(m), "Construction Standards," 9-9-21(n), "Electric Signs," and 9-9-21(o), "Sign Maintenance," B.R.C. 1981, the board may approve the same under the standards and procedures provided in the city building code, Chapter 10-5, "Building Code," B.R.C. 1981.
- (6) Except as provided in Subsection (8) of this Section, the BOZA has no jurisdiction to hear a request for nor authority to grant a variance that would increase the maximum permitted sign area on a single property or building, or from the prohibitions of paragraph 9-9-21(b)(3), "Specific Signs Prohibited," B.R.C. 1981. But the BOZA has jurisdiction to hear an appeal of a permit denial or of a notice of violation alleging that a sign would exceed the maximum permitted sign area or is prohibited if the appellant's position is that the sign does not exceed such area or is not prohibited by such Subsection.
- (7) The BOZA or Board of Building Appeals may make any variance or alternate material or method approval or modification it grants subject to any reasonable conditions that it deems necessary or desirable to make the device that is permitted by the variance compatible with the purposes of this chapter.
- (8) The City Manager's denial or notice of violation becomes a final order of the BOZA or Board of Building Appeals if:

 - (A) The applicant fails to appeal the manager's denial or order to the board within the prescribed time limit;
 - (B) The applicant fails to appeal the order of the board to a court of competent jurisdiction within the prescribed time limit; or
 - (C) A court of competent jurisdiction enters a final order and judgment upon an appeal filed from a decision of the board under this chapter.

Ordinance No. 5377 (1991).

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