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## ARTICLE III

### VARIANCES, ADMINISTRATIVE DECISIONS, AND APPEALS

#### DIVISION 1                    VARIANCES

#### Section 3-100                Variance Authority.

A.     Authority for Variances. The Board of Adjustment is authorized to provide relief in accordance with this Division when a strict application of this Resolution would cause peculiar and exceptional practical difficulties or exceptional and undue hardship. The Board of Adjustment's authority shall be limited to the following requirements imposed by these Land Use Regulations:

1.     Maximum height of a building or structure.
2.     Any structural setback.
3.     Any off-street parking requirement.
4.     Driveway standards as specifically described in section 7-204.

B.     Variance Approval Criteria.

A variance shall be granted only upon a finding by the Board of Adjustment that each of the following criteria are met:

1.     A strict application of this Resolution causes peculiar and exceptional practical difficulties or exceptional and undue hardship by reason of exceptional narrowness, shallowness, or shape of a specific piece of land or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the land; and
2.     The applicant provided reasonable and adequate evidence that the variance request is not a self-imposed hardship that can be rectified by means other than relief through a variance; and
3.     There exists no substantial detriment to any neighbor or to the public by the granting of the variance; and
4.     The intent and purpose of the regulation being varied is not substantially impaired or defeated by the granting of the variance.

C.     Procedure for Application for Variance.

1.     Pre-submittal Meeting Required. The applicant shall consult with the Planning Department to discuss the need for the variance and to identify the procedures applicable to any application for a variance.
2.     Application for Variance – Contents. All applications shall be submitted by an owner of the property affected on forms prepared by and available from the Planning Department. The application shall contain the following information:
  - a.     A completed application in the form approved by the Planning Director;
  - b.     Payment of all required application fees and any review fee deposit;

- c. Evidence of Ownership and Encumbrances as defined by Article IV of these Land Use Regulations;
  - d. A legal description of the property subject to the proposed variance;
  - e. A list of the names and mailing addresses, as this information appears of record with the Park County Assessor's Office, of all owners of Adjacent Property<sup>1</sup> to the property subject to the proposed variance;
  - f. A written description identifying the specific provision of these Land Use Regulations that the owner seeks to vary and the extent to which the provision is proposed to be varied or modified;
  - g. A written description of the reasons justifying the variance detailing how the standards or criteria for approval of the variance provided by Section 3-100(C) are met or satisfied; and
  - h. A site plan indicating how the variance relates to the affected land drawn to scale including the height and setbacks of all existing and proposed structures and any other information requested by Planning Staff.
  - i. Evidence that current property taxes have been paid.
3. Planning Director's Completeness Determination. All applications for variance shall be delivered to the Planning Director or designee. No application shall be processed or scheduled for processing before the Board of Adjustment unless the application is deemed complete by the Planning Director and all required information and documentation is submitted to the Planning Director or designee.
4. Board of Adjustment Public Hearing. The Board of Adjustment shall hold a public hearing on the application for variance in accordance with the Board's Rules of Procedure (see Section 1-203). Notice of the public hearing shall be provided as follows:
- a. Content of Notice. The notice of public hearing shall include the date, time, place, and general purpose of the hearing, and a general description of the property affected. The general description may be stated by: (a) a metes and bounds description the boundaries of which include the property subject to the proposed variance; or (b) by lot and block of a recorded subdivision plat; or (c) by a reference to intersecting roads, compass directions relating the property to the intersection, and a statement of the approximate acreage involved. The Planning Department may include other information deemed appropriate by the Department to apprise the public of the general nature of the action proposed.
  - b. Form of Notice.
    - i. Required Notice. Notice of public hearing shall be published in the official County newspaper or in a newspaper of general circulation within Park County at least fourteen (14) days before the date of the hearing.
    - ii. Additional Notice. The County shall provide additional notice of the proposed variance by mailing and posting in accordance with this section.

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<sup>1</sup> See Article IV, Definitions, "Adjacent Property"

- (a) Mailing. A notice by mail shall be deposited in the United States Mail with postage prepaid or shall be delivered by another comparable service. The deposit in the U.S. Mail or delivery by another comparable service should be made at least (14) days before the date of the hearing. Failure of the addressee to receive a mailed notice shall not be deemed sufficient cause to require a postponement, re-mailing of notice, or invalidation of the hearing. Mailed notice shall be addressed to owners of adjacent property as their names appear in the real property records of the Park County Assessor. For purposes of determining addressees for mailed notice, the County may rely upon the ownership information provided by the Applicant as part of the Application.
  - (b) Posting. A notice shall be made by the Planning Department's posting of a sign containing the content of notice above on or reasonably near the property that is subject to the hearing in a location that is reasonably determined by the Planning Director or designee to provide the greatest degree of visibility to members of the public. In most instances, the posting shall be made along the primary traveled public right-of-way adjacent to the property. Posting should be initially made at least fourteen (14) days before the date of the hearing. Failure of the posted notice to remain in place and visible during the entire posting period prior to the hearing shall not be deemed sufficient cause to require a postponement, re-posting, or invalidation of the hearing.
- 5. Public Hearing and Vote. The Board of Adjustment shall conduct the public hearing and vote in accordance with the Rules of Procedure, Section 1-203 of these Land Use Regulations.
- 6. Conditions of Approval. The Board of Adjustment, in approving the variance, may impose such restrictions and conditions on such approval, and the premises to be developed or used pursuant to such approval, as it determines are required to assure compliance with this Land Use Regulation and to prevent or minimize adverse effects from the proposed variance on other land in the neighborhood and on the general health, safety and welfare of the County. All conditions imposed upon any variance shall be set forth in writing together with the provision of this Land Use Regulation the condition is designed to address.
- D. Post Denial Application. If denied by the Board of Adjustment, the re-submittal of the same or substantially same variance application shall not be accepted within one year from the date of denial by the Board of Adjustment, or in the event of litigation, from the date of the entry of the final judgment. However, if evidence is presented to the Board showing that there has been a substantial change in physical conditions or circumstances, the Board of Adjustment may reconsider the variance. A new application and processing fee shall be required.
- E. No Amendment. Variances may not be amended following approval. Modifications or other changes to an approved variance shall require a new application for variance.

### **Section 3-101 Appeals of Variance Decisions by Board of Adjustment.**

Final decisions of the Board of Adjustment on variance applications shall be subject to appeal in accordance with Rule 106(a)(4) of the Rules of Colorado Civil Procedure. Such appeal shall be limited, as provided by Rule 106(a)(4) to a determination of whether the Board of Adjustment exceeded its

jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer.

## **DIVISION 2                    ADMINISTRATIVE DECISIONS AND APPEALS**

### **Section 3-200                    General Administrative Interpretations.**

The Planning Director is authorized to issue, amend and repeal general administrative interpretations concerning the requirements and applications of these Land Use Regulations. These interpretations shall be collected and retained by the Planning Director and made available for public inspection during normal business hours. A copy of each interpretation shall be provided to each member of the Planning Commission, Board of Adjustment and the Board of County Commissioners. Administrative interpretations are intended to facilitate the uniform application of these land use regulations and to support the administrative action necessary to implement them.

### **Section 3-201                    Specific Administrative Decisions.**

Upon request by any owner of property or any applicant for land use approval, the Planning Director is authorized to issue written administrative interpretations or decisions concerning the proper or intended application of these Land Use Regulations to a specific circumstance associated with a pending application for land use approval or to a specific property. An administrative decision issued pursuant to this section may be appealed as provided by Section 3-204 of these Land Use Regulations.

### **Section 3-202                    Administrative Forms.**

The Planning Director is authorized to promulgate and require the use of standardized application forms and other written materials deemed by the Planning Director as necessary or helpful to the administration of these Land Use Regulations.

### **Section 3-203                    Publication of Administrative Decisions**

County staff shall post administrative decisions near the Board of County Commissioners hearing room, in the Planning Department offices, and on the county website ([www.parkco.us](http://www.parkco.us)).

### **Section 3-204                    Appeal Authority.**

- A. Authority for Appeal. The Board of County Commissioners is authorized to hear and decide appeals where it is alleged there is error in any written administrative interpretations or decisions made by the Planning Director or any other administrative reviewing agency or body in the enforcement or administration of these Land Use Regulations. No appeal pursuant to this Division shall be available for:
1. Determination of a building code violation that may be prosecuted in accordance with the uniform building code and/or C.R.S. § 30-28-124(1)(b);
  2. Determination of a use violation that may be prosecuted in accordance with C.R.S. § 30-28-124; or
  3. Any determination for which another right of appeal is provided by these Land Use Regulations, e.g., appeals of administrative lot consolidations that are subject to an appeal process specified by Section 6-905.
- B. Deadline for Appeal. An appeal shall be filed in accordance with this Division within ten (10) days after the date of the written administrative interpretations or decisions.
- C. Appeal – Approval Criteria. The Board of County Commissioners shall overturn or reverse administrative interpretations or decisions where the Board finds that the administrative interpretations or decisions is unreasonable and is unsupported by these Land Use Regulations.

D. Procedure for Application for Appeal.

1. Application for Appeal - Contents. All applications for appeal of administrative decisions shall be submitted by the owner of the property subject to the administrative interpretations or decisions to the Chief Administrative Officer or designee to the Board of County Commissioners. Such application shall contain the following information:
  - a. A completed application in the standard form approved by the Planning Director or designee;
  - b. Payment of all required application fees and any review fee deposit;
  - c. A copy of the written administrative interpretations or decisions being appealed;
  - d. A written description of the reasons justifying the appeal; and
  - e. Any other documentation deemed appropriate by the Applicant.
2. Delivery and Completeness Determination. The Applicant shall deliver one (1) original and ten (10) copies of all application materials required by this Section to the Chief Administrative Officer or designee to the Board of County Commissioners. No application shall be processed or scheduled for processing before the Board of County Commissioners unless the Chief Administrative Officer or designee deems the application complete and all required information and documentation is submitted to the Chief Administrative Officer or designee.
3. Board of County Commissioners Public Hearing. The Board of County Commissioners shall hold a public hearing on the application for appeal in accordance with the Board's Rules of Procedure. Notice of the public hearing shall be provided as follows:
  - a. Content of Notice. The notice of public hearing shall include the date, time, place, and general purpose of the hearing. The Chief Administrative Officer or designee may include other information deemed appropriate to apprise the public of the general nature of the action proposed.
  - b. Form of Notice – Required.
    - i Notice of public hearing shall be published in the official County newspaper or in a newspaper of general circulation within Park County at least fourteen (14) days before the date of the hearing.
    - ii Notice by mail to the applicant for the appeal shall be deposited in the United States Mail with postage prepaid or shall be delivered by another comparable service. The deposit in the U.S. Mail or delivery to another comparable service shall be made at least fourteen (14) days before the date of the hearing. Failure of the applicant to receive notice shall not be deemed sufficient cause to require a postponement, re-mailing of notice, or invalidation of the hearing.

Section 3-205

Appeals of Decisions by the Board of County Commissioners

Final decisions of the Board of County Commissioners on decisions regarding administrative interpretations or decisions shall be appealed in accordance with Rule 106(a)(4) of the Rules of Colorado Civil Procedure. Such appeal shall be limited, as provided by Rule 106(a)(4) to a determination of

whether the Board of County Commissioners exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer.