
Section 8. Variances

§8.1 GENERAL

- A. Purpose.** This Section defines the procedures and required showing to obtain a Variance from the standards of this *LDC*. Variances are authorizations to deviate from the literal terms of this *LDC* that would not be contrary to the public interest in cases where the literal enforcement of the provisions of this *LDC* would result in undue or unnecessary hardship. A Variance shall not be granted solely because of the presence of nonconformities in the zone district or adjoining zone districts.
- B. Use Variances Not Authorized.** Establishment or expansion of uses prohibited in zone districts as identified in Table 2-3 of the *LDC* shall not be allowed by Variance.
- C. Dimensional Standards Variances Authorized.** Variance from the dimensional standards of the underlying zone district shall be authorized only for minimum lot area, maximum height, minimum floor area, minimum building width, maximum lot coverage, minimum setbacks, maximum setbacks, parking requirements, minimum landscape area, and buffer width (Ordinance #8, Series 2016).

§8.2 PROCEDURES

- A. Development Review.** An applicant requesting a Variance shall follow the stages of the City of Gunnison land development process as described in §6.3.
- B. Submit Application.** The applicant shall submit a complete application to the Community Development Director containing those materials listed in §6.5 C, Minimum Application Contents.
- C. Staff Review.** The Community Development Director shall review the application to determine whether it is complete, as specified in §6.6 A., Completeness Review. The Community Development Director shall forward a report to the decision-making body which summarizes the application's compliance with the conditions outlined in §8.3, Required Showing. The Community Development Director may solicit the assistance of other agencies and organizations in drafting the report.
- D. Public Notice.** Public notice that the Zoning Board of Adjustments and Appeals (Board) will conduct a hearing to consider the application for a Variance shall be provided as specified in §6.7, Stage 4: Provision of Public Notice.
- E. Public Action by Board.** The Zoning Board of Adjustments and Appeals shall hold a public hearing to review the conformance of the application with all applicable provisions of this *Land Development Code*. The Board may approve, approve with conditions, or deny the application or remand it to the applicant with instructions for modification or additional information or action. The Board shall deny any application that does not demonstrate the required showing set forth in §8.3, Required Showing.
- F. Actions Following Approval.** The applicant may apply for a building permit following approval of the Variance and the filing and, if applicable, recordation of any documents required by the Variance approval.

§8.3 REQUIRED SHOWING – DIMENSIONAL STANDARDS VARIANCE

The applicant shall demonstrate the following to the Board before a Variance may be authorized:

- A. **Special Circumstances Exist.** Special circumstances or conditions, which are peculiar to the land or building for which the variance is sought, that do not apply generally to land or buildings in the neighborhood;
- B. **Not Result of Applicant.** The special circumstances and conditions that are not the result from any act of the applicant;
- C. **Strict Application Deprives Reasonable Use.** The special circumstances and conditions are such that the strict application of the provisions of this *LDC* would deprive the applicant of reasonable use of the land or building;
- D. **Variance is Necessary to Provide Reasonable Use.** The granting of the Variance is necessary to provide the applicant a reasonable use of the land or building;
- E. **Minimum Variance.** The granting of the Variance is the minimum necessary to make possible the reasonable use of the land or building;
- F. **Not Injurious to Neighborhood.** The granting of the Variance will not be injurious to the neighborhood surrounding the land where the Variance is proposed, and is otherwise not detrimental to the public welfare or the environment; and
- G. **Consistent with *Land Development Code*.** The granting of the Variance is consistent with the general purposes and intent of this *LDC*.

§8.4 BOARD AUTHORIZED TO IMPOSE CONDITIONS

The Board, 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 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 City. All conditions imposed upon any Variance shall be set forth in the granting of such Variance.

§8.5 EXPIRATION OF APPROVED VARIANCE

- A. **Time Limit.** All Variances shall expire 12 months from the date of issuance if no site development permit has been issued to establish the variation authorized, or if the variation does not require a site development permit, unless the variation is established, ongoing, and in operation. Such time period shall not be altered by transfer of ownership.
- B. **Extension.** Upon written request, the Board may grant an extension of the Variance for a period not to exceed six months given reasonable justification. No request for an extension shall be considered unless a written application requesting the extension is submitted to the Community Development Director prior to the date the Variance is to expire. The Variance shall be deemed extended until the Board has acted upon the request for extension. Failure to submit an application for an extension within the time limits established by this Section shall render the Variance null and void.

§8.6 AMENDMENT OF APPROVED VARIANCE

Amendment of an approved Variance that does not have substantive changes may be approved by the Community Development Director. Otherwise, amendment of an approved Variance shall only be approved by the Board by repetition of the procedures and required showing of this Section.