

VARIANCES: USES BY RIGHT 59-54(2)a.*

Every piece of property has certain uses, which are allowed (or not allowed) depending on the type of zoning assigned under the City's zoning code. If literal enforcement of the code results in undue hardship to you as the property owner and you can prove that hardship, a Variance from the code may be granted. You must prove that exceptional and extraordinary circumstances exist and that deviation from the code will not harm the public interest. A Variance generally runs with the land, but may be personal to you as the appellant.

The Board of Adjustment may grant a variance, if it meets the following ten conditions:

1. The Variance will not authorize a use other than those uses specifically enumerated as uses by right for the district in which the property is located for which the Variance is sought (For example, an apartment in an R-1 zone.)
2. Owing to exceptional and extraordinary circumstances, literal enforcement of the provision of this chapter will result in unnecessary hardship (Hardship can be many things, depending on the type of case: the need for privacy or security; the need to continue existing building lines; the fact that no other place is suitable for the structure/addition due to trees, yard, plumbing, heating, etc.; the need for more room for family, equipment, etc.; the fact that the applicants bought property unaware of existing violations; etc. NOTE: The Colorado Court of Appeals has ruled that financial hardship by itself is not considered a hardship. (Variances cannot be used just to increase a profit.) *Kinder-Care Learning Centers v. Board of Adjustment of the City and County of Denver*, 721 P. 2d 162, (Colo. App. 1986).)
3. The circumstances were NOT created by the owner of the property and are not due to or the result of general conditions in the district in which the property is located (You did not knowingly create the circumstances and they are not due to general conditions in the zone district that all property owners face).
4. Development or use of the property for which the Variance is sought, if limited by a literal enforcement of the provisions of this chapter, cannot yield a reasonable return in service, use or income as compared to adjacent conforming property in the same district (The applicant is more restricted in the use of the property than neighbors are in the use of theirs.)
5. The Variance will not substantially or permanently injure the appropriate use of the adjacent conforming property in the same district (You must show that neighboring properties will not be harmed by the action being sought. The neighbors' input is critical here.)
6. The Variance will not alter the essential character of the district in which the property is located for which the Variance is sought (e.g., the Variance will not allow an oversized two-story home to be built in an area of small one-story homes.)
7. The Variance will not weaken the general purposes of this chapter or the regulations herein established for the specific district (A variance can not approach or exceed regulations for the next or a less restrictive zone district, e.g., R-2 to R-2-A)
8. The Variance will be in harmony with the spirit and purposes of the ordinance
9. The Variance will not adversely affect the public health, safety or welfare (For example, it will not allow for a use or exception that will cause an unhealthy situation to then exist. This is a basic principle of Zoning.)
10. All concerns raised by the Department of Zoning Administration or other city agencies have been addressed (If Public Works, the Fire Department, or Parks and Recreation have an issue, it must be addressed before the hearing and that information presented at the hearing.)

* SECTION 59-54(2)a. D.R. M. C. A Variance granted on or after September 3, 1982, shall lapse and become void unless the construction has started within three (3) years from the date that said Variance was granted and is completed within five (5) years from the date that said Variance is granted. A two-year extension of these time periods may be granted by the Zoning Administrator upon a showing of proof by the owner that the project was delayed by economic or physical problems beyond the owner's control.