



Denver Zoning Code Text Amendment Modernizing Zoning Variances

Land Use Transportation and Infrastructure Committee DRAFT - 3/15/2023

Denver currently offers two key procedures for allowing flexibility from zoning standards: the administrative adjustment and the variance. A recent survey asked applicants, city staff, and other stakeholders how these procedures could be improved and highlighted key areas for change. The proposed text amendment focuses on updating the thresholds for eligibility and approval criteria to provide greater flexibility and address practical challenges of building in Denver. The Planning Board Draft reflects corrections and minor revisions to the Public Review Draft, which was published on January 24, 2023.

The proposed changes to the Denver Zoning Code include:

- Processing claims based on federal law (such as the American Disabilities Act and Federal Fair Housing Act) as administrative adjustments, rather than variances.
- Allowing approval of a variance or adjustment if the request would result in an increase of income-restricted units.
- Addressing minor errors in permitting and construction through an administrative adjustment or variance.
- Expanding the definition of unusual physical circumstances to support preservation of existing buildings and established trees.
- Updating the allowances for certain administrative adjustments to allow less impactful changes to be approved at the staff level, rather than through a Board of Adjustment hearing.

A Planning Board hearing is scheduled for March 15, 2023. For more information and confirmed hearing dates, please see <https://denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Community-Planning-and-Development/Denver-Zoning-Code/Text-Amendments/> and click on “City Council Initiatives.”

Please send any questions or comments to Alek Miller, Senior City Planner, at alek.miller@denvergov.org

Redline Document Conventions

- Text in red underline is proposed new language.
- Text in ~~red strikethrough~~ is proposed deleted language.
- Text in blue is moved from another location while text in ~~blue strikethrough~~ was deleted from its original location.
- Only pages with changes relevant to this text amendment are included in the review file (with the exception of a few pages inserted for context). You may wish to look at other sections for additional context.
- While efforts are made to ensure document quality, cross-referenced section numbers, figure numbers, page numbers, and amendment numbers may appear incorrect since both new and old text appears in a draft. These will be corrected in the final, “clean” version of the text amendment that is filed for adoption by City Council.
- Additionally, please note that coordination will continue throughout the process to ensure constancy of approach and administration with other ongoing text amendments.

ARTICLE 10. GENERAL DESIGN STANDARDS

required to provide 25 spaces as shared vehicle parking (60 maximum allowed spaces multiplied by 125 percent = 75 allowed spaces. 100 existing spaces minus 75 allowed spaces = 25 spaces required to be provided as shared vehicle parking).

SECTION 10.4.3 BICYCLE PARKING

10.4.3.1 Applicability

Section 10.4.2, General Applicability, shall apply, with the following exceptions:

- A. This Section 10.4.3 Bicycle Parking shall not apply in the D-C, D-TD, or D-CV zone districts. See Section 8.3.1.5, Off-Street Parking Requirements, for applicable bicycle parking standards for these districts.

10.4.3.2 Calculation

- A. When a primary use's required amount of bicycle parking is 2 spaces or less, the use shall provide a minimum of 2 bicycle parking spaces in a fixed rack bicycle parking facility.
- B. In determining the number of bicycle parking spaces required, fractional spaces are rounded to the nearest whole number, with one-half counted as an additional space.
- C. In determining the number of bicycle parking spaces that must be sited in an enclosed bicycle facility or a fixed rack bicycle facility, fractional spaces are rounded to the nearest whole number, with one-half counted as an additional space.
- D. All required spaces "per square feet" are measured as gross floor area, unless otherwise specified.
- E. For residential uses, the bicycle parking requirement shall be calculated separately for separate residential buildings.
- F. Where any building or zone lot contains two or more uses having different bicycle parking requirements, the bicycle parking requirements for each use shall apply proportionally to the extent of that use's gross floor area in the building or on the zone lot.

10.4.3.3 Bicycle Parking Exceptions

A. Reductions in Required Amount ~~of Bicycle Parking by Administrative Adjustment~~

The Zoning Administrator may adjust the bicycle parking requirement in one of the following ways: ~~as described below according to Section 12.4.5, Administrative Adjustment.~~

- 1. A reduction in the overall number of bicycle parking spaces required for a primary use, up to a maximum 20% reduction. A reduction in the overall number of spaces does not change the proportional (%) distribution of the required spaces to an enclosed or fixed bicycle rack parking facility; or
- 2. An ~~adjustment~~ **modification** in the number of bicycle parking spaces that must be provided in either an enclosed or fixed bicycle rack parking facility, up to a maximum 20% adjustment, provided any reduction in the number of spaces provided in one type of parking facility shall be providing in the other type of parking facility.
 - a. For example: When a total of 20 bicycle parking spaces is required and 10 shall be provided in an enclosed storage facility and 10 shall be provided in a fixed bicycle rack parking facility, the Zoning Administrator may ~~modify grant an adjustment to~~ the amount that must be enclosed, resulting in a reduction from the original 10 enclosed spaces to 8 enclosed spaces. That would require a total of 12 spaces in a fixed bicycle rack parking facility.

B. Preservation of Existing Trees

If, in order to comply with bicycle parking requirements, it would be necessary to remove mature, existing trees, the Zoning Administrator may allow reasonable reductions in the number of required bicycle parking spaces. ~~Requests for this exception from the minimum bicycle parking requirements shall be reviewed according to Section 12.4.5, Administrative Adjustment.~~

10.4.3.4 Required Types of Bicycle Parking Facilities

In order to meet the minimum required bike parking spaces, there are two types of bicycle parking facilities that may be required. The description and minimum standards for each type of bicycle parking facility are as follows. Such facilities may be placed on private property or within the public right-of-way. Facilities in the public right-of-way require a permit by the Department of Transportation and Infrastructure ("DOTI").

A. Enclosed Bicycle Parking Facility

An enclosed bicycle parking facility shall be provided through various methods provided it meet the following minimum standards:

1. Shall provide enclosed bicycle storage in lockers, a room within a building, or within a parking structure.
2. All types of enclosed bicycle storage shall be easily accessible to all building occupants and to public entrances and walkways, secure, well lighted and weather resistant.
3. Each storage space shall provide a minimum of 15 square feet in area. The Zoning Administrator may reduce the minimum area up to 6 square feet if a more efficient layout is provided.

B. Fixed Bicycle Rack Parking Facility

A fixed bicycle rack parking facility shall be provided through various methods provided it meet the following minimum design standards:

1. Fixed bicycle racks shall be securely anchored.
2. Fixed bicycle racks must be publicly accessible to building entrances and walkways.
3. Spacing of the racks shall provide clear and maneuverable access.
4. Where two bikes can be locked on both sides without conflict, each side can be counted as one required space.

SECTION 10.4.4 MINIMUM AND MAXIMUM VEHICLE PARKING

10.4.4.1 Applicability

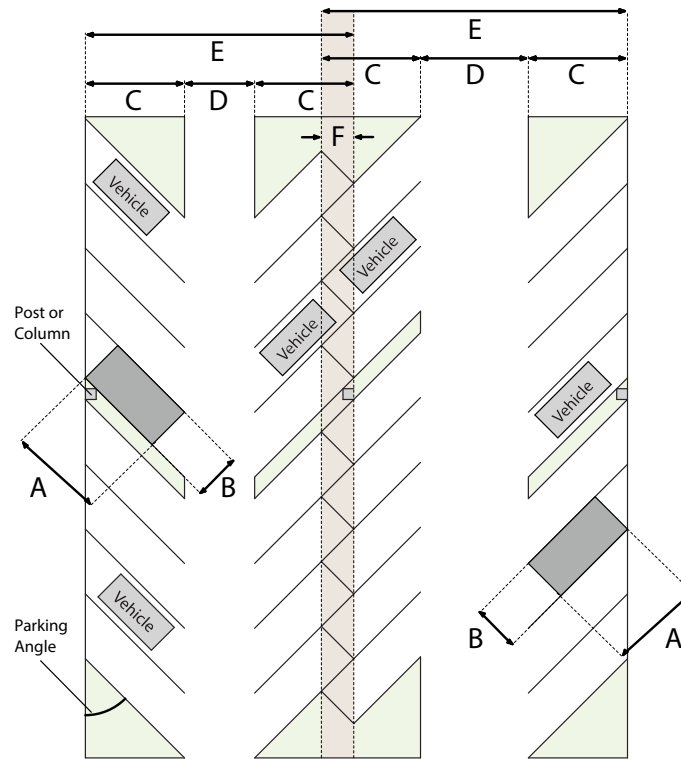
Section 10.4.2, General Applicability, shall apply.

10.4.4.2 Calculations

A. General Rule

1. In determining the minimum number of vehicle parking spaces required or the maximum number of vehicle parking spaces allowed, fractional spaces are rounded to the nearest whole number, with one-half counted as an additional space.
2. Except when shared parking is allowed (see Section 10.4.5.4 Shared Vehicle Parking), when a zone lot is used for a combination of uses, the minimum vehicle parking requirement shall be the sum of the requirements for each use and may be used jointly. In areas where maximum vehicle parking standards apply, except when shared parking for off-site uses is being provided according to Section 10.4.5.4, Shared Vehicle Parking, where a zone lot contains multiple primary uses subject to maximum parking standards, the total

Figure 10.4-4



Not to Scale. Illustrative Only.

10.4.6.3 Vehicular Access and Circulation

A. Internal Drive Dimensions

The following standards shall apply in all zone districts to all Off-Street Parking Areas, excluding single-unit and two-unit dwelling development:

1. Definition

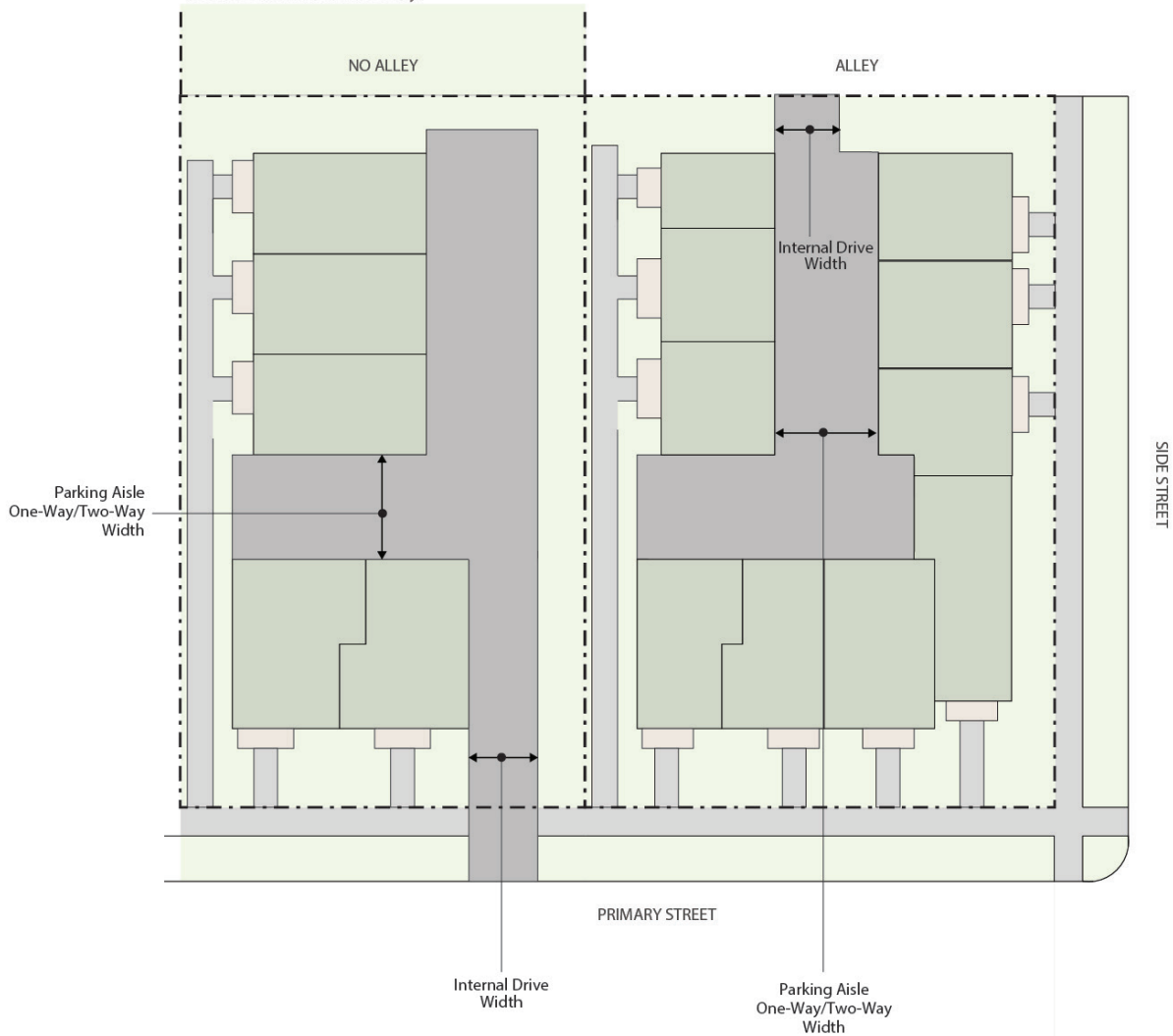
“Internal drives” mean the part of a Off-Street Parking Area used for vehicular circulation, but which do not abut parking stalls in a manner that allows their use for vehicular access to the parking stalls.

2. Minimum Internal Drive Dimensions

- a. Internal drives shall be a minimum width of 10 feet for one-way traffic and shall be a minimum width of 20 feet for two-way traffic except for development under the Town House, Row House, or Garden Court building forms.
- b. Internal drives for development under the Town House, Row House, or Garden Court building forms shall be a minimum width of 12 feet for one-way and/or two-way traffic on Zone Lots that contain no other building forms. (See Figure 10.4-5)

Figure 10.4-5

Not to scale. Illustrative Only.



- c. The Zoning Administrator may reduce the minimum internal drive width standard in accordance with when necessary to relieve hardship associated with providing safe vehicle access and circulation on unusually small or narrow zone lots. Any such request for reduction shall be reviewed according to Section 12.4.5, Administrative Adjustments.

B. Vehicular Access

The following standards shall apply in all zone districts to all Off-Street Parking Areas:

1. Access to and egress from each parking space shall be obtained with no more than a standard two-movement entrance or exit from the parking space by a vehicle parking there.
2. Curb cuts for vehicular access from the public right-of-way and vehicle stacking space on the parking lot proximate to any entry pay station or other control device are subject to review by the Department of Transportation and Infrastructure ("DOTI") according to Section 10.4.6.3.B.3, below. "Vehicular Access from the public right-of-way" means the part of the parking lot used for vehicles to transition between the public right-of-way and the parking lot.

10.5.4.4 Perimeter Surface Parking Lot Landscaping Standards

A. Applicability

Section 10.5.4.1, Applicability and Exceptions, shall apply.

B. Perimeter Surface Parking Lot Landscaping Standards Abutting Street Right-of-Way

1. Standards

- a. To the maximum extent feasible, on-site drainage required for a zone lot shall be integrated into the perimeter planting strip.
- b. The Zoning Administrator may approve Alternatives to required landscape, fence and wall materials may be allowed to better match primary building materials used on the site according to Section 12.4.5, Administrative Adjustment.
- c. The following shall be provided within zone lot boundaries between the boundary of any surface parking lot and street rights-of-way (except as noted):

| CONTEXT AND/OR DISTRICT | PERIMETER PLANTING STRIP REQUIRED | PLANTINGS REQUIRED WITHIN THE PERIMETER PLANTING STRIP | GARDEN WALL REQUIRED | GARDEN WALL HEIGHT | GARDEN WALL MATERIALS | PEDESTRIAN ACCESS REQUIRED |
|---|--|---|--|---------------------------------|---|--|
| Suburban Neighborhood Context I-A and I-B Zone Districts I-MX Zone Districts with Industrial Building Form (See Figure 10.5-4) | Yes, minimum width of 10' | 1 deciduous canopy tree for every 25' of linear frontage Spacing of trees may vary, the maximum spacing is 40'; | No; however may reduce perimeter planting strip width to 5' if provide a garden wall | Min 30 inches; Max 42 inches | Masonry or Ornamental fence with masonry piers spaced not more than 25' | Yes |
| Urban Edge, Urban, General Urban Neighborhood Contexts Campus Master Planned Contexts I-MX Zone Districts with General Building Form (See Figure 10.5-5) | Yes, minimum width of 5'; CMP-NWC-C, CMP-NWC-G, CMP-NWC-F, CMP-NWC-R Zone Districts: Yes, minimum of 10' | CMP-NWC-C, CMP-NWC-G, CMP-NWC-F, CMP-NWC-R Zone Districts: 1 deciduous canopy tree for every 35' of linear frontage. Spacing of trees may vary, the maximum spacing is 40' | Yes; CMP-NWC-C, CMP-NWC-G, CMP-NWC-F, CMP-NWC-R Zone Districts: No | | | |
| Urban Center Neighborhood Context (See Figure 10.5-6) | Not Required | n/a | Yes | | | |
| Downtown Neighborhood Context D-AS-12+, D-AS-20+, D-CPV-T, D-CPV-R, and D-CPV-C Districts only (See Figure 10.5-5) | Yes, minimum width of 8' (may be located in street right-of-way) | 1 deciduous canopy tree for every 25' of linear frontage Spacing of trees may vary, the maximum spacing is 40' | Yes | Min 30 inches; Max 42 inches | | Yes; Min. 3' wide access at max. of 80' intervals along all public street and alley frontages of the parking lot |
| Downtown Neighborhood Context D-C, D-TD, D-LD, D-CV, D-GT, D-AS Districts | See Section 8.10.3 in Article 8 | | | | | |

ARTICLE 11. USE LIMITATIONS AND DEFINITIONS

DIVISION 11.3 CIVIC, PUBLIC AND INSTITUTIONAL PRIMARY USE LIMITATIONS

The Use and Parking Tables in Articles 3 through 9 reference any limitations applicable to permitted primary, accessory, or temporary uses. This Division contains limitations applicable to specific uses within the primary Civic, Public and Institutional Primary Use Classification across multiple zone districts and neighborhood contexts.

BASIC UTILITIES USE CATEGORY

SECTION 11.3.1 UTILITY, MAJOR IMPACT

11.3.1.1 All Residential Zone Districts; All Mixed Use Commercial Zone Districts

In all Residential Zone Districts and in all Mixed Use Commercial Zone Districts, except the Downtown zone districts and the CMP-NWC, CMP-NWC-C, CMP-NWC-G, CMP-NWC-F and CMP-NWC-R zone districts, where permitted with limitations, Major Impact Utility uses are limited to water reservoir, which need not be enclosed.

11.3.1.2 All Open Space Context Zone Districts and O-1 Zone District

In all Open Space Context zone districts and the O-1 zone district, where permitted with limitations, Major Impact Utility uses are limited to water reservoir or, in the OS-B and O-1 zone district only, water filtration plant is also permitted.

11.3.1.3 I-A, I-B Zone Districts; All Downtown Neighborhood Context Zone Districts; CMP-NWC, CMP-NWC-C, CMP-NWC-G, CMP-NWC-F, CMP-NWC-R Zone Districts

In the I-A, I-B zone districts, all Downtown Neighborhood Context zone districts, and the CMP-NWC, CMP-NWC-C, CMP-NWC-G, CMP-NWC-F and CMP-NWC-R zone districts where permitted with limitations:

A. Sanitary Service

All sanitary service utilities shall be located a minimum 500 feet from any Residential Zone District. ~~This requirement may be reduced by the Zoning Administrator if the applicant can prove by a preponderance of evidence that a smaller separation will have no significant effect on the nearby Residential Zone District.~~

B. Solid Waste Facility

All solid waste facilities must be located in a Completely Enclosed Structure and must be located a minimum of 500 feet from any Residential Zone District.

C. Above-Ground Power, Gas, and Other Facilities

The expansion of transmission line capacity shall not require a zoning permit provided such expansion may be accomplished within an existing right-of-way or with existing structures or poles.

11.3.1.4 I-A, I-B Zone Districts; CMP-NWC, CMP-NWC-C, CMP-NWC-G, CMP-NWC-F, CMP-NWC-R Zone Districts

In the I-A, I-B, CMP-NWC, CMP-NWC-C, CMP-NWC-G, CMP-NWC-F and CMP-NWC-R zone districts, where permitted with limitations

A. Spacing Required

The following major impact utilities shall be located a minimum of 500 feet from any Residential Zone District:

1. Sewage disposal plant.

DIVISION 11.4 COMMERCIAL SALES, SERVICE AND REPAIR PRIMARY USE LIMITATIONS

The Use and Parking Tables in Articles 3 through 9 reference any limitations applicable to permitted primary, accessory, or temporary uses. This Division contains limitations applicable to specific uses within the Commercial Sales, Service, and Repair Primary Use Classification across multiple zone districts and neighborhood contexts.

ARTS, ENTERTAINMENT AND RECREATION USE CATEGORY

SECTION 11.4.1 ARTS, ENTERTAINMENT AND RECREATION USES

11.4.1.1 OS-B Zone District

In the OS-B zone district, where permitted with limitations, all permitted arts, entertainment and recreation uses shall comply with the following limitations:

- A. Permitted accessory uses and structures are limited to:
 1. Swimming pools and customary associated buildings;
 2. Tennis, basketball, or other similar playing court;
 3. Buildings or structures intended to house management or maintenance offices, or maintenance or other equipment and supplies related to permitted open space and recreational use;
 4. Playground or picnic shelters/areas; and
 5. Water features and Public Art.
- B. All outdoor lighting shall be extinguished when outdoor facilities are not in use or by 10 p.m. on Sundays through Thursdays or 11 p.m. on Fridays and Saturdays, whichever is earlier.
- C. No portion of any recreation facility that is not in a Completely Enclosed Structure (e.g., basketball or racquet sport courts) shall be located nearer than 50 feet from the boundary of a Single Unit (SU) or Two Unit (TU) zone district. All distance and spacing requirements shall be measured according to the rule of measurement found in Section 13.1.11.

11.4.1.2 All M-IMX and M-GMX Zone Districts

In the M-IMX and M-GMX Zone Districts, Sports and/or Entertainment Arena or Stadium uses, where permitted with limitations, shall comply with the following limitations:

- A. All sports and/or entertainment arena or stadium uses shall be a minimum of 500 feet from a Residential Zone District. All distance and spacing requirements shall be measured according to the rule of measurement found in Section 13.1.11.
- B. ~~The minimum spacing requirement may be reduced by the Zoning Administrator if the applicant proves by a preponderance of the evidence that an analysis of the proposed use, its traffic generation, and other external effects indicates a smaller separation will have no significant effect on the nearby residential district.~~

- h. Pedestrian circulation routes adjacent to and within loading areas
- 3. Additional parking configurations not expressly identified by an approved Parking Operations Plan would require application for and issuance of a new zoning permit.
- 4. The dimensions for and arrangement of loading spaces shall comply with Section 10.4.8, Loading, however permanent delineation of individual loading spaces is not required.

SECTION 11.4.5 SPORTS AND/OR ENTERTAINMENT ARENA OR STADIUM

11.4.5.1 I-MX, I-A, I-B, and All OS Zone Districts

In the I-MX, I-A, I-B, and all OS zone districts, where permitted with limitations, sports and/or Entertainment Arena or Stadium uses shall comply with the following limitations:

- A. All sports and/or entertainment arena or stadium uses shall be a minimum of 500 feet from a Residential Zone District. All distance and spacing requirements shall be measured according to the rule of measurement found in Section 13.1.11.
- B. ~~The minimum spacing requirement may be reduced by the Zoning Administrator if the applicant proves by a preponderance of the evidence that an analysis of the proposed use, its traffic generation, and other external effects indicates a smaller separation will have no significant effect on the nearby residential district.~~

NONRESIDENTIAL USES IN EXISTING BUSINESS STRUCTURES IN RESIDENTIAL ZONE DISTRICTS USE CATEGORY

SECTION 11.4.6 NONRESIDENTIAL USES IN EXISTING BUSINESS STRUCTURES IN RESIDENTIAL ZONES

11.4.6.1 Limited Nonresidential Uses Permitted

In all Residential Zone Districts, where permitted with limitations:

- A. Primary nonresidential and accessory uses permitted in the MS-2x zone district in the same neighborhood context as the subject property (e.g., U-MS-2x) may be operated in an existing business structure. If there is no MS-2x zone district in the same neighborhood context, the primary and accessory uses established by the U-MS-2x zone district shall apply.
- B. Any use established according to this Section 11.4.6 shall comply with the limitations and use review procedure applicable to such use indicated in the Use and Parking Table for the subject MS-2x zone district.
- C. More than one primary nonresidential use may be permitted in the same existing business structure. In addition to any permitted primary nonresidential uses, one or more primary residential uses may also be permitted in the same existing business structure. For example, in a two-story existing building structure meeting the requirements of this Section, one or more nonresidential primary uses may be permitted on the ground story and one or more residential primary uses may be permitted on the second story.

11.4.6.2 Existing Business Structures Only

The primary nonresidential uses permitted under this Section shall be permitted only within an existing structure meeting all of the following conditions:

- A. The applicant is the owner of the subject structure.
- B. The subject structure was legally erected.

SECTION 11.4.22 HEAVY VEHICLE / EQUIPMENT SALES, RENTALS, AND SERVICES

11.4.22.1 All I-MX, I-A; M-IMX Zone Districts

In all I-MX, I-A; and M-IMX, zone districts, where permitted with limitations:

- A. Heavy Vehicle / Equipment Sales, Rentals and Services uses shall be located 500 feet or more from the nearest boundary of any Residential Zone District existing at the time of application for the use.
- B. ~~This 500-foot spacing requirement may be reduced or eliminated by the Zoning Administrator if the applicant proves by a preponderance of the evidence that an analysis of the proposed use, its traffic generation, and other external effects indicates a smaller separation will have no significant effect on the nearby Residential Zone District.~~

11.4.22.2 I-B Zone District

In the I-B zone district, aircraft maintenance and repair shall be located 500 feet or more from the nearest boundary of a Residential Zone District existing at the time of application. ~~This 500-foot spacing requirement may be reduced or eliminated by the Zoning Administrator, if the applicant proves by a preponderance of the evidence that the proposed use, its siting, design, traffic generation, and other external effects indicate a reduced or eliminated separation will have no significant adverse impact on the nearby Residential Zone District.~~

tower, shall be permitted only if the Board of Adjustment finds that the proposed tower is necessary and essential to providing the applicant's telecommunication service.

- B. The Board of Adjustment may place such conditions on the use as will advance the goals contained in Section 11.5.2.1.A, Intent, including but not limited to:
1. Moving the location of the tower or antenna to a more appropriate available site;
 2. Using a different technology that will lessen the impact of the tower or antenna;
 3. Requiring an appropriate alternative tower structure; or
 4. Other actions that will disguise or otherwise lessen the impact of the tower or antenna.

INDUSTRIAL SERVICES USE CATEGORY

SECTION 11.5.3 CONTRACTORS, SPECIAL TRADE, GENERAL

11.5.3.1 All Mixed Use Commercial Zone Districts

In all Mixed Use Commercial Zone Districts, where permitted with limitations:

- A. Trucks having a manufacturer's capacity of more than 2 tons shall not remain on the premises except as necessary to load and discharge contents.
- B. Any unenclosed areas permitted shall be provided with:
1. A fence or wall constructed to a height adequate to conceal any vehicles, equipment or supplies located on the zone lot;
 2. Proper grading for drainage; and
 3. Asphalt, oil or any other dust-free surfacing. These areas shall be maintained in good condition, free of weeds, dust, trash and debris.

11.5.3.2 All Downtown Neighborhood Context Zone Districts

In all Downtown Neighborhood Context zone districts, where permitted with limitations, this use shall be operated within a Completely Enclosed Structure.

11.5.3.3 All Industrial Context Zone Districts, CMP-NWC-F District

In all Industrial Context zone districts and the CMP-NWC-F zone district, where permitted with limitations:

- A. The use shall be located at least 500 feet from any Residential Zone District.
- B. ~~This requirement may be reduced by the Zoning Administrator if the applicant proves by a preponderance of the evidence that an analysis of the proposed use, its traffic generation, and other external effects indicates a smaller separation will have no significant effect on the nearby residential district.~~
- C. In the CMP-NWC-F zone district, all Contractors, Special Trade, General uses must be located a minimum of 50 feet from a South Platte River Primary Street zone lot line.

SECTION 11.5.4 CONTRACTOR, SPECIAL TRADE-HEAVY/CONTRACTOR YARD

11.5.4.1 I-MX, I-A, I-B, CMP-NWC-F, M-IMX and M-GMX Zone Districts

- A. In the I-MX, I-A, I-B, CMP-NWC-F, M-IMX, and M-GMX Zone Districts, where permitted with limitations, a contractor, special trade/heavy use shall be located at least 500 feet from a Residential Zone District.
- B. In the CMP-NWC-F zone district, all Contractor, Special Trade-Heavy/Contractor Yard uses must be located a minimum of 50 feet from a South Platte River Primary Street zone lot line.
- C. ~~This requirement may be reduced or eliminated by the Zoning Administrator if the applicant proves by a preponderance of the evidence that the proposed use, site design, its traffic generation, and other external effects indicates a smaller separation will have no significant effect on the nearby Residential Zone District.~~

SECTION 11.5.5 FOOD PREPARATION AND SALES, COMMERCIAL

11.5.5.1 All Zone Districts

In all zone districts, where permitted with limitations, a Food Preparation and Sales, Commercial use engaged in the production of marijuana-infused products shall be allowed to produce marijuana concentrate through the use of the following extraction processes, provided all of the marijuana concentrate produced shall be incorporated into food products made on site:

- A. Water-based extraction;
- B. Food-based extraction; or
- C. Alcohol- or ethanol-based extraction, but only if the production of marijuana concentrate is done without the application of any heat from a fuel-fired or electrified source and uses no more than 16 ounces of alcohol or ethanol during each extraction process.

SECTION 11.5.6 LABORATORY, RESEARCH, DEVELOPMENT, TECHNOLOGICAL SERVICE

11.5.6.1 All Zone Districts

In all zone districts, where permitted with limitations, a Laboratory, Research, Development, Technological Service use may include sales facilities limited to non-retail sales and sales activities, which shall occupy no more than 20 percent of the gross floor area of the structure. Such use may include indoor storage space for parts and supplies.

SECTION 11.5.7 SERVICE/REPAIR, COMMERCIAL

11.5.7.1 All CC, MX, MS Zone Districts

In all CC, MX, MS zone districts, except in the M-IMX zone districts, where permitted with limitations, Commercial Service/Repair uses are limited to building maintenance service uses only. All other Commercial Service/Repair uses are prohibited.

11.5.7.2 All Downtown Context Zone Districts

In all Downtown Context zone districts, where permitted with limitations, Service/Repair, Commercial uses are limited to: diaper service, linen supply, laundry, metal sharpening, and mirror silvering.

11.5.7.3 All I-A, I-B; CMP-NWC-F; M-IMX Zone Districts

In all I-A, I-B, CMP-NWC-F and M-IMX zone districts, where permitted with limitations:

- A. Commercial Service/Repair uses are limited only to the following specific types:
 1. Repair, rental and servicing of any commodity that is manufactured, processed, fabricated, stored or sold in the zone, and which may involve an environmental hazard as determined by the Denver Fire Code, including but not limited to the following:
 - a. Vehicle body shop,
 - b. Upholstery or top shop,
 - c. Paint shop,
 - d. Refrigeration and air conditioning service and repair,
 - e. Disinfecting and pest control service.
 2. Autoclave;
 3. Laundry, dry cleaning, commercial, industrial.
- B. In the CMP-NWC-F zone district, all Service/Repair, Commercial uses must be located a minimum of 50 feet from a South Platte River Primary Street zone lot line.
- C. All Commercial Service/Repair uses shall be located at least 500 feet from any Residential Zone District. ~~This requirement may be reduced by the Zoning Administrator if the applicant proves by a preponderance of the evidence that an analysis of the proposed use, its traffic generation, and other external effects indicates a smaller separation will have no significant effect on the nearby residential district.~~

MANUFACTURING AND PRODUCTION USE CATEGORY

SECTION 11.5.8 MANUFACTURING, FABRICATION, AND ASSEMBLY - CUSTOM

11.5.8.1 All Zone Districts

In all zone districts, where permitted with limitations, Manufacturing, Fabrication, and Assembly - Custom uses involving the manufacture of malted beverages, wine, brandy or brandy spirits, or distilled and blended liquors shall comply with the following limitations:

- A. On-site manufacturing of malted barley is prohibited.
- B. Unenclosed outdoor storage is prohibited.
- C. Outdoor tasting, serving, and seating areas are permitted as common and customary accessory uses, provided in all zone districts, except in the I-A zone district, such areas shall comply with the limitations stated in Section 11.10.12, for Outdoor Eating and Serving Areas Accessory to Eating/Drinking Establishment Use.

11.5.8.2 All RX and All MX -2x, -2A, -2; MS -2x, -2 Districts

In all RX, and MX-2x, -2A, -2, and MS-2x, -2 zone districts abutting a SU or TU zone district, where permitted with limitations, Manufacturing, Fabrication, and Assembly - Custom uses involving the manufacture of malted beverages, wine, brandy or brandy spirits, or distilled and blended liquors shall comply with the following limitations:

- A. Lighted signage shall be turned off during non-operating hours; and
- B. All outdoor lighting shall be provided with full cut-off fixtures.

SECTION 11.5.10 MANUFACTURING, FABRICATION, AND ASSEMBLY - HEAVY

11.5.10.1 All Zone Districts

- A. In all zone districts, where permitted with limitations, Manufacturing, Fabrication, and Assembly - Heavy uses shall be located 500 feet or more from the nearest boundary of a Residential Zone District existing at the time of application. ~~This 500-foot spacing requirement may be reduced or eliminated by the Zoning Administrator, if the applicant proves by a preponderance of the evidence that the proposed use, its siting, design, traffic generation, and other external effects indicate a reduced or eliminated separation will have no significant adverse impact on the nearby Residential Zone District.~~
- B. Special Exception review is required for the manufacturing, fabrication, and assembly of:
 1. (SIC 3631) Household cooking equipment;
 2. (SIC 3632) Household refrigerators and freezers;
 3. (SIC 3633) Household laundry equipment; or
 4. (SIC 3639) Household appliances.
- C. Petroleum refining is prohibited except for the following activities, which are permitted only in the I-B zone district:
 1. (SIC 295) Asphalt paving and roofing materials; or
 2. (SIC 299) Miscellaneous products of petroleum and coal.
- D. Outdoor tasting, serving, and seating areas are permitted as common and customary accessory uses to a Manufacturing, Fabrication, and Assembly - Heavy use involving the manufacture of malted beverages, wine, brandy or brandy spirits, or distilled and blended liquors.

MINING & EXTRACTION AND ENERGY PRODUCTION SYSTEMS USE CATEGORY

SECTION 11.5.11 OIL, GAS, PRODUCTION, DRILLING

11.5.11.1 I-MX, I-A, I-B, M-IMX and M-GMX Zone Districts

In the I-MX, I-A, I-B, M-IMX and M-GMX zone districts, where permitted with limitations, oil gas, production, drilling uses are limited to geophysical services only. As part of the Site Development Plan review process, the Zoning Administrator shall determine the separation between the proposed use and any adjacent Residential Zone District based on the external effects of the proposed use.

11.5.11.2 O-1 and DIA Zone Districts

In the O-1 and DIA zone districts, where permitted with limitations:

- A. All site plan applications for oil and gas uses shall be reviewed according to Section 12.4.3, Site Development Plan Review, with the addition of a representative from the building inspection division of Community Planning and Development, designated by the Manager, and a representative from the Department of Aviation, designated by the Manager of Aviation.
- B. As part of the Site Development Plan Review, the Manager may recommend conditions on the approval of any oil and gas permit application to ensure the following public health, safety, and welfare objectives:
 1. There shall be adequate financial assurances to insure the city against any claims which may arise due to the applicant's operation under any and all permits issued by the city;

2. The applicant shall provide appropriate protection of the natural environment and adjacent land uses; and
3. The applicant shall assure avoidance of any adverse impact on other permitted uses in the subject zone district.

SECTION 11.5.12 SAND OR GRAVEL QUARRY

11.5.12.1 I-MX, I-A, I-B, M-IMX and M-GMX Zone Districts

In the I-MX, I-A, I-B, M-IMX and M-GMX zone districts, where permitted with limitations, a sand or gravel quarry use shall be located at least 500 feet from a Residential Zone District. ~~This requirement may be reduced or eliminated by the Zoning Administrator if the applicant proves by a preponderance of the evidence that an analysis of the proposed use, its traffic generation, and other external effects indicates a smaller separation will have no significant effect on the nearby residential district.~~

SECTION 11.5.13 WIND ENERGY CONVERSION SYSTEM (“WECS”)

11.5.13.1 All Zone Districts

In all zone districts, where permitted with limitations:

A. Zone Lots Containing or Adjacent to Single-Unit or Two-Unit Dwelling Uses or Row House Building Forms

Establishment of a wind conversion energy system use on a zone lot, or adjacent to a zone lot, that contains a single unit dwelling use or two-unit dwelling use, or that contains a Row House Building Form, is permitted according to Section 12.4.9, Zoning Permit with Special Exception Review. The Board of Adjustment may approve such use only upon findings that the proposed wind energy conversion system complies with the following standards:

1. The applicant is the owner of the property and has submitted a site plan of the property that shows the location of the proposed system;
2. The proposed system, including guy wires, will not encroach into any setback and will be no closer than 10 feet to any property line; provided, however, that for any zone lot not containing a single unit or two-unit dwelling use, or a Row House Building Form, the 10 foot setback only applies to zone lot lines abutting such residential zone lots; other setbacks shall be as per the applicable zone district and building form regulations.
3. The proposed system will extend no further than 30 feet above the highest point of existing buildings on the zone lot, unless the zone lot does not have a single unit or two unit dwelling use or Row House building form, in which case the proposed system will extend no further than 35 feet above the highest point of existing buildings on the zone lot, or 60 feet above the ground, whichever is higher;
4. All power transmission lines shall be located underground or inside a structure and that the proposed system, will consist of a tubular pole tower if the proposed system is to be a horizontal axis system;
5. Climbing access to the structure shall be limited by means of a fence 6 feet high around the tower base with a locking gate or by limiting tower climbing apparatus to no lower than 13 feet from the ground, and that at least one sign shall be posted at the base of the tower with the following warning: “WARNING: Wind Energy Electrical Generating System”;
6. Any system with a capacity in excess of 100 kilowatts shall not be installed in a Residential Zone District and shall not be located along the major axis of an existing microwave

- B. The Helipad or Helistop shall be a minimum of 1,000 feet from a Residential Zone District or a PUD District that allows residential uses; except that helipads or helistops in the CMP-H and CMP-H2 zone districts and in the D-GT zone district located south of 8th Avenue shall not be subject to this 1,000 feet distance requirement.
- C. Helipads or helistops in the CMP-H and CMP-H2 districts and in the D-GT zone district located south of 8th Avenue shall be subject to Zoning Permit with Special Exception Review.

11.5.14.3 I-A, I-B Zone Districts

In the I-A, I-B zone districts, where permitted with limitations, the Helipad or Helistop shall be a minimum of 1,000 feet from a Residential Zone District or a PUD District that allows residential uses.

SECTION 11.5.15 RAILROAD FACILITIES

11.5.15.1 I-MX, I-A, I-B Zone Districts

In the I-MX, I-A, I-B zone districts, where permitted with limitations:

- A. A railway facility proposed after January 11, 1991, shall be a minimum of 500 feet from a Residential Zone District; ~~provided, however, this 500-foot spacing requirement may be reduced by the Zoning Administrator for an expansion of an existing facility if the applicant proves by a preponderance of the evidence that an analysis of the proposed use, its traffic generation, and other external effects indicates a smaller separation will have no significant effect on the nearby residential district.~~
- B. All mass transit railroad facilities located within 200 feet of a conforming residential structure shall be reviewed according to Section 12.4.3, Site Development Plan Review.

11.5.15.2 All Downtown Zone districts

In all Downtown zone districts where permitted with limitations, all mass transit railroad facilities located within 200 feet of a conforming residential structure shall comply with review procedures according to Section 12.4.3, Site Development Plan Review.

SECTION 11.5.16 TERMINAL, STATION OR SERVICE FACILITY FOR PASSENGER TRANSIT SYSTEM

11.5.16.1 All Residential Zone Districts

In all Residential zone district, where permitted with limitations, the use shall be limited to a stop or station for the mass passenger transit system only; and parking provided for the use of passengers or employees of the passenger transit provider.

SECTION 11.5.17 TERMINAL FREIGHT, AIR COURIER SERVICE

11.5.17.1 I-MX, I-A, I-B, M-IMX, M-GMX and All Downtown Zone Districts

In the I-MX, I-A, I-B, M-IMX, M-GMX and all Downtown Zone Districts, where permitted with limitations:

- A. Any terminal proposed after January 11, 1991, shall be a minimum of 500 feet from a Residential Zone District; provided, however, this 500-foot spacing requirement does not apply to an increase of an existing use of less than 15 percent gross floor area or gross site area.
- B. ~~The 500-foot spacing requirement may be reduced by the Zoning Administrator for an expansion greater than 15 percent gross floor area or gross site area of an existing facility if the applicant proves by a preponderance of the evidence that an analysis of the proposed use, its traffic generation, and other external effects indicates a smaller separation will have no significant effect on the nearby residential district.~~

WASTE RELATED SERVICES

SECTION 11.5.18 AUTOMOBILE PARTS RECYCLING BUSINESS

11.5.18.1 I-MX, I-A, I-B Zone Districts

In the I-MX, I-A, I-B zone districts, where permitted with limitations:

- A. The use shall be located no less than 500 feet from a Residential Zone District. ~~This requirement may be reduced by the Zoning Administrator if the applicant proves by a preponderance of the evidence that the proposed use, its traffic generation and other external effects indicates a smaller separation will have no significant effect on the nearby Residential Zone District.~~
- B. The use shall comply with the screening and enclosure requirements of Section 9.1.4.7, Required Screening and Enclosure.
- C. Vehicle parts and bodies shall be arranged and/or stacked in an orderly manner. Outdoor aisles shall be graveled or covered with a dust-free surface material, and the site along with abutting street right-of-way areas shall be kept free of weeds and litter. The dismantling area shall not be visible from the street or from abutting residential or business zoned properties. Outdoor storage areas shall be enclosed by a solid wall or fence, except where such business adjoins a similar use along a side or rear lot line. Provision shall be made to control, contain and collect for proper disposal oil, antifreeze and other liquids generated by the dismantling or storage of motor vehicles or parts. Disposal of CFC's (chlorofluorocarbons) from vehicle air conditioners shall be done in accordance with chapter 4 of the Revised Municipal Code and applicable rules and regulations.

SECTION 11.5.19 JUNKYARD

11.5.19.1 I-MX, I-A, I-B Zone Districts

In the I-MX, I-A, I-B zone districts, where permitted with limitations:

- A. **Separation**
The use shall be a minimum of 1,000 feet from any Residential Zone District, Mixed Use Commercial Zone District, or Downtown Neighborhood Context zone district.
- B. **Screening**
The use shall comply with the screening and enclosure requirements of Section 9.1.4.7, Required Screening and Enclosure. The height of such fence or wall shall screen the view from an abutting Primary Street of the stored material and shall not exceed a height of 10 feet. Existing solid walls or fences consisting of prohibited materials shall be replaced with approved materials no later than June 15, 1993.

SECTION 11.5.20 RECYCLING CENTER

11.5.20.1 I-MX, I-A, I-B, M-IMX and M-GMX Zone Districts

In the I-MX, I-A, I-B, M-IMX and M-GMX Zone Districts, where permitted with limitations:

- A. **Separation**
The recycling center facility shall be located at least 500 feet from a Residential Zone District. ~~This requirement may be reduced or eliminated by the Zoning Administrator if the applicant proves by a preponderance of the evidence that the proposed use, site design, its traffic generation, and other external effects indicates a smaller separation will have no significant effect on the nearby Residential Zone District.~~
- B. **Screening**
The use shall comply with the screening and enclosure requirements of Section 9.1.4.7, Required Screening and Enclosure Standards.

SECTION 11.5.21 RECYCLING PLANT, SCRAP PROCESSOR

11.5.21.1 I-MX, I-A, I-B Zone Districts

In the I-MX, I-A, I-B zone districts, where permitted with limitations:

A. Separation

The recycling plant shall be located at least 500 feet from a Residential Zone District. ~~This requirement may be reduced or eliminated by the Zoning Administrator if the applicant proves by a preponderance of the evidence that an analysis of the proposed use, its traffic generation, and other external effects indicates a smaller separation will have no significant effect on the nearby residential district.~~

B. Screening

The use shall comply with the screening and enclosure requirements of Section 9.1.4.7, Required Screening and Enclosure Standards.

WHOLESALE, STORAGE, WAREHOUSE AND DISTRIBUTION USE CATEGORY

SECTION 11.5.22 AUTOMOBILE TOWING SERVICE STORAGE YARD

11.5.22.1 I-MX, I-A, I-B Zone Districts

In the I-MX, I-A, I-B zone districts, where permitted with limitations, an automobile towing service storage yard plant shall be located at least 500 feet from a Residential Zone District. ~~This requirement may be reduced or eliminated by the Zoning Administrator if the applicant proves by a preponderance of the evidence that the proposed use, site design, its traffic generation, and other external effects indicates a smaller separation will have no significant effect on the nearby Residential Zone District.~~

SECTION 11.5.23 MINI-STORAGE FACILITY

11.5.23.1 All MX, MS, and Downtown Zone Districts

In all MX, MS, and Downtown zone districts, where permitted with limitations, a Mini-Storage Facility use shall not have individual entrances to storage units from the exterior of the structure.

11.5.23.2 All MX, MS, CC, and Downtown Zone Districts

In all MX, MS, CC, and Downtown zone districts, where the Zone Lot is located within 1/4 mile of a Rail Transit Station Platform, a Mini-Storage Facility shall be prohibited.

11.5.23.3 All I-A and I-B Zone Districts

In all I-A and I-B zone districts, where the Zone Lot is located within 1/4 mile of a Rail Transit Station Platform, and where permitted with limitations, a Mini-Storage Facility use shall not have individual entrances to storage units from the exterior of the structure.

SECTION 11.5.24 VEHICLE STORAGE, COMMERCIAL

11.5.24.1 All Downtown Neighborhood Context Districts

In all Downtown Neighborhood Context zone districts, where permitted with limitations:

- A. Vehicle Storage is limited to enclosed garage storage for commercial and public utility vehicles only.
- B. Commercial storage of automobiles and light trucks, vans and sport utility vehicles limited to a capacity of not more than one-and-one-half tons shall be reviewed according to Section 12.4.9, Zoning Permit with Special Exception Review.

11.5.24.2 I-A, I-B and CMP-NWC-F Zone Districts

In I-A, I-B and CMP-NWC-F zone districts, where permitted with limitations:

- A. The Vehicle Storage use shall be located at least 500 feet from a Residential Zone District.
- B. In CMP-NWC-F, all Vehicle Storage, Commercial uses must be located a minimum of 50 feet from a South Platte River Primary Street zone lot line.
- C. ~~This requirement may be reduced or eliminated by the Zoning Administrator if the applicant proves by a preponderance of the evidence that the proposed use, site design, its traffic generation, and other external effects indicates a smaller separation will have no significant effect on the nearby Residential Zone District.~~

11.5.24.3 All CC Zone Districts

In all CC zone districts, where permitted with limitations, Vehicle Storage, Commercial shall be limited to the assembling or standing of operable vehicles having a capacity of not more than one and one-half tons.

SECTION 11.5.25 WHOLESALE TRADE OR STORAGE, GENERAL

11.5.25.1 I-MX, I-A, I-B Zone Districts

In the I-MX, I-A, I-B zone districts, where permitted with limitations, all Wholesale Trade or Storage, General uses shall be located a minimum of 500 feet from a Residential Zone District.

SECTION 11.5.26 WHOLESALE TRADE OR STORAGE, LIGHT

11.5.26.1 All CC, MX, MS, CMP, D-AS-12+, D-AS-20+, D-CPV-T, D-CPV-R, and D-CPV-C Zone Districts

In all CC, MX, MS, CMP, D-AS-12+, D-AS-20+, D-CPV-T, D-CPV-R, and D-CPV-C zone districts, where permitted with limitations:

- A. A Wholesale Trade or Storage, Light use proposed on a zone lot greater than 25,000 square feet or is proposed to operate between 10:00 p.m. and 5:00 a.m. shall be reviewed according to Section 12.4.9, Zoning Permit with Special Exception Review.
- B. A Wholesale Trade or Storage, Light use proposed on zone lots fronting 56th Avenue, Tower Road, or Pena Boulevard, or within 300 feet of any boundary with any portion of Adams County other than the Rocky Mountain Arsenal, shall be reviewed according to Section 12.4.2, Zoning Permit Review with Informational Notice, in order to permit review and comment by adjacent jurisdictions.
- C. In CMP-NWC-F, all Wholesale Trade or Storage, Light uses must be located a minimum of 50 feet from a South Platte River Primary Street zone lot line.

- B. Shall be located at least 15 feet from the public right-of-way and any abutting Residential Zone District.
- C. Shall not be permitted in a primary or side street setback or otherwise forward of the Primary Street-facing façade of a Primary Structure on the Zone Lot.
- D. May be located in a side interior or rear setback.
- E. Shall be screened by a 100 percent opaque fence or wall that complies with all of the following standards:
 - 1. The screening fence or wall shall be high enough to completely conceal all general outdoor storage from view from adjacent rights-of-way and from any adjacent Residential Zone District or Mixed Use Commercial Zone District.
 - 2. When a general outdoor storage area is located within 200 feet of a Residential or Mixed Use Commercial Zone District, the screening wall or fence shall have a minimum height of 7 feet and maximum height of 10 feet.
 - 3. When a general outdoor storage area is located within 100 feet of a Residential Zone District or Mixed Use Commercial Zone District, stored materials and products shall not be stacked to a height above that of the screening wall or fence.
- F. No materials or wastes shall be deposited upon a zone lot in such form or manner that they may be transferred off the zone lot by natural causes or forces.
- G. All materials or wastes that may cause fumes or dust, or which constitute a fire hazard, or which may be edible by or otherwise be attractive to rodents or insects, shall be stored outdoors only in closed containers.
- H. The following limitation shall apply to the above-ground storage of certain materials:
 - 1. No flammable gases or solids, combustible or flammable liquids or explosives shall be stored in bulk above ground except that:
 - a. Railroad locomotive fueling, fuel tanks for energy or heating devices or appliances, tanks containing compressed natural gas and the fueling of vehicles operated in association with a permitted use may utilize above-ground tanks, provided they are located a minimum of 1,000 feet from a Protected District protected use.
 - b. Vaulted tanks as approved by the Fire Department may be located above ground.
 - c. The parking of railroad tank cars containing explosive or flammable materials shall be located at least 1,000 feet from a protected use. ~~The 1,000-foot spacing may be reduced by the Zoning Administrator with review and concurrence of the Fire Department, provided the owner proves by a preponderance of the evidence that the proposed storage facility will not create a hazard for nearby protected uses.~~
 - d. For purposes of this provision only, a “protected use” is any residential use, a hospital, or an auditorium or other building used for public assembly.
 - 2. Liquefied petroleum gases shall be stored no closer to any boundary line of a zone lot on which they are located than that permitted by the Denver Fire Code.
 - 3. Explosives shall be stored no closer to any boundary line of the zone lot on which they are located than that permitted by the Denver Fire Code.

SECTION 11.10.18 OUTDOOR STORAGE, LIMITED

11.10.18.1 All Zone Districts

In all zone districts, where permitted with limitations, Limited Outdoor Storage uses shall comply with the following limitations:

- A. Shall only be permitted following approval of a site development plan illustrating the extent of the permitted area for limited outdoor storage and compliance with these limitations.
- B. Shall be limited in area to no more than 10% of the gross floor area of the Primary Structure on the Zone Lot.
- C. Stored materials and products shall not be more than 12 feet in height. This height limitation shall not apply to stored materials and products in the CMP-NWC, CMP-NWC-C, CMP-NWC-G, CMP-NWC-F and CMP-NWC-R zone districts.
- D. Shall be fully screened from view from the public right-of-way, public Off-Street Parking Areas, or adjacent Residential Zone Districts by a 100 percent opaque visual barrier or screen. Chain-link fencing with slats inserted may be considered acceptable for this screening, except where located abutting or across the street from a Residential Zone District. See also Section 10.5.5, Fences and Walls.

E. Location on Zone Lot

The location of limited outdoor storage on a zone lot is subject to the following conditions:

- 1. Shall be located at least 15 feet from the public right-of-way and any abutting Residential Zone District;
 - 2. Shall be located behind the Primary Street-facing façade of a Primary Structure on the same zone lot;
 - 3. May be located to the side of a building, provided it is not located within the required side interior or side street setback.
- F. Vehicles awaiting repair may be stored up to 14 days within the required screened limited outdoor storage area.
 - G. Shopping cart storage areas located within a surface parking lot for the convenience of the primary land use's customers are exempt from the location and screening standards in Sections 11.10.16.1.B, D, and E above.
 - H. No materials or wastes shall be deposited upon a zone lot in such form or manner that they may be transferred off the zone lot by natural causes or forces.
 - I. All materials or wastes that may cause fumes or dust, or which constitute a fire hazard, or which may be edible by or otherwise be attractive to rodents or insects, shall be stored outdoors only in closed containers.
 - J. The following limitation shall apply to the above-ground storage of certain materials:
 - 1. No flammable gases or solids, combustible or flammable liquids or explosives shall be stored in bulk above ground except that:
 - a. Railroad locomotive fueling, fuel tanks for energy or heating devices or appliances, tanks containing compressed natural gas and the fueling of vehicles operated in association with a permitted use may utilize above-ground tanks, provided they are located a minimum of 1,000 feet from a Protected District protected use.
 - b. Vaulted tanks as approved by the Fire Department may be located above ground.
 - c. The parking of railroad tank cars containing explosive or flammable materials shall be located at least 1,000 feet from a protected use. ~~The 1,000-foot spacing may be~~

~~reduced by the Zoning Administrator with review and concurrence of the Fire Department, provided the owner proves by a preponderance of the evidence that the proposed storage facility will not create a hazard for nearby protected uses.~~

- d. For purposes of this provision only, a “protected use” is any residential use, a hospital, or an auditorium or other building used for public assembly.
2. Liquefied petroleum gases shall be stored no closer to any boundary line of a zone lot on which they are located than that permitted by the Denver Fire Code.
3. Explosives shall be stored no closer to any boundary line of the zone lot on which they are located than that permitted by the Denver Fire Code.

SECTION 11.10.19 RENTAL OR SALES OF ADULT MATERIAL ACCESSORY TO RETAIL SALES OF BOOKS

11.10.19.1 All Zone Districts

In all zone districts, where permitted with limitations, if a bookstore rents or sells adult materials, as described in the definition of “Adult Bookstore” (see Section 11.12.4.1.B.2, Adult Bookstore), as an accessory use, such accessory use shall comply with the following limitations:

- A. The quantity of adult materials displayed or sold shall not exceed the numerical limitations specified in the definition for “Adult Bookstore”;
- B. All adult materials shall be segregated into a separate section of the bookstore and screened from public view; and
- C. Access to the adult materials shall be denied to all persons under the age of 18 years.

DIVISION 11.11 TEMPORARY USE LIMITATIONS

The Use and Parking Tables in Articles 3 through 9 reference any limitations applicable to permitted primary, accessory, or temporary uses. This Division contains limitations applicable to specific temporary uses across multiple zone districts and neighborhood contexts. Temporary uses are permitted according to Section 12.4.1, Zoning Permit Review, and subject to compliance with this Division's use-specific standards, as applicable. Structures used to house permitted temporary uses are not required to comply with primary or accessory building form standards. Temporary uses may occupy one or more minimum required Off-Street Parking Spaces unless specifically prohibited in this Division 11.11's use limitations below.

SECTION 11.11.1 UNLISTED TEMPORARY USES

11.11.1.1 All Zone Districts

In all zone districts, where permitted with limitations:

- A. The Zoning Administrator may allow and impose limitations on unlisted temporary uses according to this subsection 11.11.1.
- B. All such determinations shall be reviewed according to the procedures and review criteria stated Section 12.4.6, Code Interpretations and Determination of Unlisted Uses.

SECTION 11.11.2 AMBULANCE SERVICE

11.11.2.1 All Zone Districts

In all zone districts, where permitted with limitations:

- A. Not more than 2 ambulances at any one location;
- B. Vehicles to be parked in Completely Enclosed Structure when not in use;
- C. No mechanical or maintenance work is to be done on premises and no gasoline is to be stored there;
- D. No office is to be maintained in connection with the temporary ambulance service use; and
- E. Each permit shall be valid for a period of not more than 6 months, but may be renewed; provided, however, that failure to comply with any of these standards shall be cause for revocation of any permit.

SECTION 11.11.3 AMUSEMENT / ENTERTAINMENT USES

11.11.3.1 All Industrial Context Zone Districts; O-1 Zone District; CMP-H Zone Districts; and the CMP-NWC, CMP-NWC-C, CMP-NWC-G, CMP-NWC-F and CMP-NWC-R Zone Districts

In all Industrial Context zone districts, the O-1 zone district, the CMP-H and CMP-H2 zone districts, and the CMP-NWC, CMP-NWC-C, CMP-NWC-G, CMP-NWC-F, and CMP-NWC-R zone districts, where permitted with limitations, a temporary amusement, entertainment or recreational use on the payment of a fee or admission charge shall comply with the following standards:

- A. The temporary use shall not be enclosed.
- B. The temporary use shall be a minimum of 500 feet from a Residential Zone District. ~~This requirement may be reduced or eliminated by the Zoning Administrator if the applicant proves by a preponderance of the evidence that the proposed use, site design, its traffic generation, and other external effects indicates a smaller separation will have no significant effect on the nearby Residential Zone District.~~
- C. Each permit shall be valid for a period of not more than 6 calendar months, but may be renewed.

ARTICLE 12. ZONING PROCEDURES & ENFORCEMENT

SECTION 12.2.5 DEVELOPMENT REVIEW COMMITTEE

12.2.5.1 Creation

The Development Review Committee ("DRC") shall consist of the Manager, the manager of the Department of Transportation and Infrastructure ("DOTI"), and the manager of Parks and Recreation, or their designated representatives, provided that additional agencies may participate at the discretion of the Manager.

12.2.5.2 Authority for Final Action

The Development Review Committee is responsible for final action regarding:

- A. Site Development Plan Review
- B. Minor Deviations and Repeals of General Development Plans
- C. Large Development Review
- D. Infrastructure Master Plan

12.2.5.3 Review Authority

The Development Review Committee shall review and make recommendations to the Zoning Administrator regarding:

- A. Zoning Permit Review, as the Zoning Administrator may determine on a case-by-case basis.

SECTION 12.2.6 BOARD OF ADJUSTMENT

NOTE: These proposed changes would change the length of member terms, to allow staggered terms, and minor changes to the authority to remove members to bring this section in line with similar authority/limits for other city-appointed boards and commissions.

12.2.6.1 Authority for Final Action

The Board of Adjustment is responsible for final action regarding:

- A. Variances (see Section 12.4.7);
- B. Appeals from Administrative Decisions (see Section 12.4.8); and
- C. Zoning Permit with Special Exception Review (see Section 12.4.9).

12.2.6.2 Creation; Alternates; Required Training

- A. ~~Consistent with the City Pursuant to section 3.2.9 of the~~ Charter, city council hereby ~~reestablishes the a~~ Board of Adjustment consisting of 5 members subject to the composition requirements set forth in this section. ~~The members of the Board shall be appointed for a term of 5 years. The newly reestablished Board shall be seated no later than June 1, 2022.~~ Two appointments to the Board of Adjustment shall be made by city council; two appointments shall be made by the mayor; and one appointment shall be made jointly by the mayor and city council. Effective Monday, May 29, 2023, the terms of the current members of the Board of Adjustment shall be altered by their respective appointing authority to the following expiration dates:
 - 1. Two terms shall be altered to expire on June 30, 2024 or until a successor is duly appointed.
 - 2. One term shall be altered to expire on December 31, 2024 or until a successor is duly appointed.
 - 3. Two terms shall be altered expire on June 30, 2025 or until a successor is duly appointed.
 - 4. Subsequent appointments under this section shall be appointed for a term of three years or until a successor is duly appointed.

- B. A member of the Board of Adjustment may be removed by their appointing authority ~~only~~ for cause ~~upon written charges and after public hearing~~. The unexcused absence of any board member from three (3) consecutive meetings, unless the board chair has excused the absence for good and sufficient reasons as determined by the board chair, shall be deemed cause for removal ~~upon written charges being made and after a public hearing~~.
- C. City council and the mayor each may appoint, for a term of 3 years, 1 alternate member of the Board of Adjustment in addition to the 5 members. When a member of the Board is recused or is absent, ~~an alternate member shall act in their place. The Board shall make an effort to alternate between the city council alternate and the mayoral alternate when possible. the alternate member appointed by city council shall be the first to act with full authority followed the next time an alternate is needed by the alternate appointed by the mayor, and rotating accordingly as their service is required on the Board. If, however, the alternate whose turn it is to serve is unable to participate, the other may serve instead, restarting the rotation with the unselected alternate as the next to be selected.~~ Alternates may be removed for cause by their appointing authority. Effective Monday, May 29, 2023, the terms of the current alternates of the Board of Adjustment shall be altered by their respective appointing authority to the following staggered expiration dates:
- One term shall be altered to expire on December 31, 2024 or until a successor is duly appointed.
 - One term shall be altered to expire on June 30, 2025 or until a successor is duly appointed.
 - Subsequent appointments under this section shall be appointed for a term of three years or until a successor is duly appointed.
- D. No member of the Board of Adjustment ~~or an alternate member~~ shall be on the staff of the Board or be employed by Community Planning and Development.
- E. Any vacancy in any appointed position of the Board of Adjustment shall be promptly filled by the appropriate appointing authority to serve the remainder of the unexpired term of the member who vacated the position.
- F. The composition of the Board of Adjustment shall be as follows:
- At least one member shall be an architect.
 - At least one member shall be a licensed attorney ~~currently or formerly engaged in the practice of law~~, with a preference for attorneys with administrative law experience.
 - At least one member shall have background and experience in urban planning, construction, engineering or development.
 - Remaining members, if any, should have a demonstrated interest in zoning, ~~and~~ land use or urban design.
- G. Relevant city agencies shall provide training to the Board of Adjustment on the following subjects as new members are appointed or upon major legal or policy updates:
- The Denver zoning code;
 - Adopted land use, transportation, climate and housing plans of the City and County of Denver;
 - Open meetings and decorum;
 - Proper use of evidence and conducting a quasi-judicial hearing;
 - Proper application of findings of fact as the basis for decisions;



6. Diversity, equity and inclusion, as well as the Fair Housing, Civil Rights, and Americans with Disabilities Acts; and
7. All members shall receive periodic supplemental training on the above topics and any additional topics as deemed necessary by the Chairperson of the Board.

12.2.6.3 Staff

The staff of the Board of Adjustment shall consist of a director and such other assistants as may be authorized by City Council. The director shall be the technical advisor to the Board of Adjustment and custodian of its records, shall conduct official correspondence, and generally supervise the clerical and technical work of the Board of Adjustment. The director shall be appointed by the Board of Adjustment and shall devote all time to the duties of the office. The salary of the director, the number of additional assistants, and the salaries of such additional assistants shall be fixed by City Council.

12.2.6.4 Rules for Proceedings Before Board

The Board of Adjustment shall adopt rules governing all proceedings before it. Such rules of the Board of Adjustment shall be maintained and available for public review in the office of director.

12.2.6.5 Officers

For the purpose of exercising the powers provided under this Code, the Board of Adjustment shall elect a chairperson and vice-chairperson.

12.2.6.6 Oaths and Attendance of Witnesses

The chairperson or, in the chairperson's absence, the vice-chairperson or acting chair shall administer oaths to or accept affirmations from all witnesses, and may compel the attendance of witnesses. A failure or a refusal to appear in response to a subpoena issued by the Board of Adjustment shall constitute a violation of this Code.

12.2.6.7 ~~Delay of Enforcement Stay of Effective Date of Orders~~

A. ~~Delay of Enforcement – Orders to Cease and Desist Operation of Excess Dwelling Units~~

1. Whenever Community Planning and Development has issued an order to cease and desist from the operation of dwelling units in excess of the number authorized by this Code, and the Board of Adjustment also finds that literal enforcement of the provisions of this Code by reason of unique and exceptional circumstances including owner's physical condition, age, or other factors as deemed by the Board of Adjustment to be unique or exceptional, will result in unnecessary hardship, then the Board of Adjustment may order a delay, for no more than 5 years, of the enforcement of such order.
2. Upon expiration of any delayed enforcement or other order, the Board of Adjustment may review, at a public hearing before the Board, an applicant's request for a further extension and grant any such extension not to exceed a cumulative total of 5 years from the date of the original order, should the Board of Adjustment find that condition(s) found in Section 12.2.6.7.A. still exists.
3. All such actions by the Board of Adjustment shall be recorded in the real property records of the Denver County Clerk and Recorder. Such stay shall not be a variance on the use of a premises, shall be personal to the applicant therefor, shall only allow continued operation of the excess dwelling units by the persons occupying such unit at the time of the Board of Adjustment's original order, and shall not be transferable.

12.2.6.8 Six-Month Delay of Enforcement

A. Delay of Enforcement – All Other Orders to Cease and Desist

1. Whenever Community Planning and Development has issued an order to cease and desist from any use not authorized by this Code, except as provided in Section 12.2.6.7, the Board of Adjustment, upon appeal, may find that the literal enforcement of the provisions will result in unnecessary hardship by reason of unique and exceptional circumstances, including but not limited to the owner's physical condition, age, and/or other factors as deemed by the board to be unique or exceptional. The Board of Adjustment may order a delay, for no more than 6 months, of the enforcement of such cease and desist order.
2. Upon expiration of any order delaying enforcement of such cease and desist order, the Board of Adjustment may review, at a public hearing, an applicant's request for an additional 6 months' extension and grant only one such extension should the Board of Adjustment find that the unique and exceptional circumstances justifying the original order to delay still exist.
3. All such actions by the Board of Adjustment shall be recorded in the real property records of the Denver County Clerk and Recorder. Such stay shall not be a variance on the use of a premises, shall be personal to the applicant, and shall not be transferable.

12.2.6.9 Limitations on Powers

A. Concurring Vote Required

1. The concurring vote of 4 members of the Board of Adjustment shall be necessary to reverse any order, ~~requirement~~, decision or determination of any administrative official authorized to act under this Code as described in Section 12.4.8, Appeal of Administrative Decision; ~~or~~
2. The concurring vote of 3 members of the Board of Adjustment shall be necessary to decide in favor of the applicant on any other matter ~~upon for~~ which the Board of Adjustment is the reviewing authority required to pass under this Code ~~or to grant a variance to this Code.~~

B. Recording of Hearings and Findings of Fact

1. All proceedings before the Board of Adjustment shall be recorded.
2. Every decision of the Board of Adjustment shall be based upon findings of fact and every finding of fact shall be supported in the record of its proceedings. The enumerated conditions herein shall be construed as limitations on the power of the Board of Adjustment. Mere recitation of the conditions unaccompanied by findings of specific facts shall not constitute compliance with this Code. All findings of fact shall be available for public review within 21 days from the date of the Board of Adjustment's final decision.

C. Powers Strictly Construed

Nothing herein contained shall be construed to empower the Board of Adjustment to amend the text of this Code, to effect changes in the Official Zoning Map, or to add to the specific uses permitted in any district. The powers of the Board of Adjustment shall be construed to strictly enforce this Code and the Official Zoning Map.

12.2.6.10 Appeals from the Board of Adjustment to District Court

A. Procedure

Any person or any taxpayer aggrieved, the City, or any officer or department of the City may have a decision of the Board of Adjustment reviewed in the manner provided by the Colorado Rules of Civil Procedure. The plaintiff in any appeal to District Court shall be responsible for all

SECTION 12.3.5 EFFECT OF APPROVED APPLICATIONS, PLANS AND PERMITS

All applications, plans and permits approved under this Article 12 and this Code shall be binding upon the applicants, their successors and assigns, shall limit and control the issuance and validity of all subsequent site development plans and zoning permits, and shall restrict and limit the construction, location, use, and operation of all land and structures in accordance with such plans or permits. See also Section 12.3.7, Modification and Amendment of Approved Applications, Plans and Permits, below.

SECTION 12.3.6 LAPSE OF APPROVAL PROVISIONS AND EXTENSION OF APPROVAL PERIOD

12.3.6.1 In General - Lapse of Approved Applications, Plans and Permits

An application, site development plan, or zoning permit approved under this Code may lapse if certain actions related to the approved application are not taken within a specified time period as set forth in Division 12.4, Zoning Application and Review Procedures. Specific actions that must be taken with regard to each application, plan or permit to avoid lapsing of the approval are set forth in Division 4 of this Article for each type of zoning application.

12.3.6.2 Beginning of Approval Period - General Rule

Unless otherwise specified in Division 4 of this Article 12, the approval period of an approved application, plan or permit, after which lapse will occur, shall begin on the date of the decision-making body's final action, which shall be interpreted to mean:

- A. Except as stated in Section 12.3.6.2.B regarding site development plans, for approved plans or permits that this Code requires to be recorded: the date of recordation.
- B. For all other approved applications, plans or permits, including site development plans: the date of the decision-making body's final action, which shall be affixed to all approved applications, plans or permits.

12.3.6.3 Extension of Approval Period

- A. [For extensions of the approval periods for a variance related to construction, the provisions in Section 12.4.7.7.A shall apply instead of this Section 12.3.6.3.](#)
- B. The Zoning Administrator may grant an extension of an approval period up to 12 months according to the process and limitations contained herein.
- C. In no case shall the Zoning Administrator grant an extension if, since the date of the original approval, the subject property's zoning designation has changed or the applicant proposes an amendment to the approved application, plan or permit with the request for extension. See Section 12.3.7, Modification or Amendment of Applications, Plans and Permits, below.
- D. All requests for extensions shall be submitted to Community Planning and Development in writing before the expiration of the approval period. An extension request shall include:
 1. Payment of any required fee for the extension review; and
 2. A narrative stating the reasons for the applicant's or owner's inability to comply with the specified deadlines, listing any changes in the character of the neighborhood, any changes to the Comprehensive Plan or this Code that have occurred since the original approval date and that affect the subject development, and the anticipated time schedule for completing the development.
- E. The Zoning Administrator will review the request for extension and shall approve, approve with conditions, or deny the extension request based on consideration of the following criteria:

- A. All owners of the zone lot have indicated in writing their agreement to the amendment.
- B. A zone lot amendment shall not result in the creation of a new nonconforming or compliant zone lot, structure or land use.
- C. A zone lot amendment shall not increase an existing nonconforming or compliant structure's degree of nonconformity with this Code's standards (e.g., a zone lot amendment that would further decrease an existing compliant side interior setback is not allowed).
- D. A Zone Lot amendment shall not result in the creation of a Zone Lot that contains multiple Zone Districts when any Zone District on the amended Zone Lot(s) is a Protected District.

12.4.4.7 Recordation

The Zoning Administrator shall record all approved zone lot amendments in the real property records in the office of the Denver County Clerk and Recorder.

SECTION 12.4.5 ADMINISTRATIVE ADJUSTMENT

12.4.5.1 Purpose

The Zoning Administrator may adjust, in minor ways, certain provisions of this Code otherwise applicable to a property pursuant according to the procedures in this Section and consistent with the purpose and intent of this Code. ~~Administrative adjustments may authorize minor changes to pending applications, or to approved plans and permits, and relief from specified standards as stated in this Section. Administrative adjustments are intended to relieve unnecessary hardship in complying with the strict letter of this Code or with overriding federal law, and to promote context-sensitive development in Denver's established neighborhoods. Administrative adjustments are not intended to relieve specific cases of financial hardship, nor to allow circumventing the intent of this Code and its standards.~~

12.4.5.2 Applicability

A. Adjustments to Approved Applications, Plans and Permits

1. General Allowance

~~The Zoning Administrator may grant administrative adjustments to a previously approved application, plan or permit approved pursuant to this Code, except that the Zoning Administrator may grant administrative adjustments to a previously approved site development plan or zoning permit for development in an approved PUD District only when the terms of the PUD District Plan and documents expressly authorize administrative adjustments according to this Section 12.4.5.~~

2. Limits on Authority to Grant Adjustments

~~The Zoning Administrator may approve administrative adjustments to a previously approved plan or permit according to the allowances and limits stated in Section 12.4.5.3, Permitted Types of Administrative Adjustments, below. In no circumstance, however, shall the Zoning Administrator approve an administrative adjustment to a previously approved application, plan or permit that qualifies as an "amendment" under Section 12.3.7.2, Amendments to Approved Applications, Plans or Permits.~~

B. Adjustments to Pending Zoning Applications

~~The Zoning Administrator may grant administrative adjustments as part of the review of a pending zoning application otherwise required by this Code according to the allowances and limits stated in Section 12.4.5.3, Permitted Types of Administrative Adjustments, below, except that the Zoning Administrator may grant administrative adjustments to a pending site development plan or zoning permit for development in an approved PUD District only when the terms of the PUD District Plan and documents expressly authorize administrative adjustments according to this Section 12.4.5.~~

12.4.5.2 Permitted ~~Types of~~ Administrative Adjustments**A. Administrative Adjustments to Ensure Compliance with Overriding Federal Laws****1. Compliance with Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)****a. General Applicability**

The Zoning Administrator may grant administrative adjustments to regulations of this Code as applied to an individual property ~~any use, building form, or design standard stated in Articles 3 through 9, Contexts and Zone Districts, Article 11, Use Limitations, or Article 10, General Design Standards~~ in order to eliminate a substantial burden on free exercise of religion protected religious exercise as guaranteed by the Federal Religious Land Use and Institutionalized Persons Act of 2000, as amended.

b. Limitations-Extent of Adjustment Authorized

i. The Zoning Administrator may grant administrative adjustments to any use, building form, or design standard stated in Articles 3 through 11. In no circumstance shall the Zoning Administrator approve an adjustment that allows a religious assembly use, or any uses/structures/activities accessory to it, in a zone district where Articles 3 through ~~9~~11 prohibit such use or accessory use/structure/activity.

ii. In granting an administrative adjustment, the Zoning Administrator may require conditions that will substantially achieve~~secure~~ substantially the objectives intent of the modified standard and ~~that~~ will substantially mitigate any potential adverse impact on the environment or on adjacent properties, including but not limited to additional landscaping or screening.

c. Conditions of Approval Review Criteria

~~The Zoning Administrator may approve an adjustment authorized under this Section only if the applicant demonstrates that the adjustment is necessary to comply with the Federal Religious Land Use and Institutionalized Persons Act of 2000, as amended. In granting an administrative adjustment, the Zoning Administrator may require conditions that will secure substantially the objectives of the modified standard and that will substantially mitigate any potential adverse impact on the environment or on adjacent properties, including but not limited to additional landscaping or screening.~~

2. Reasonable Accommodations under the Federal Americans with Disabilities Act (ADA) and the Federal Fair Housing Act (FFHA)**a. Applicability**

The Zoning Administrator may grant administrative adjustments to provide reasonable accommodations under the Federal Americans with Disabilities Act (ADA) or the Federal Fair Housing Act (FFHA). In the application for an administrative adjustment under this subsection, the applicant shall identify the type of development at issue housing being provided and cite the specific provisions of the ADA or FFHA

~~Federal Fair Housing Act that require reasonable accommodations be made. for such housing. The Zoning Administrator may grant relief from any standard or definition in this Code to assure reasonable accommodations required by law.~~

b. Extent of Adjustment Authorized

~~The Zoning Administrator may grant relief from any standard or definition in this Code to assure reasonable accommodations required by law. The Zoning Administrator may approve a type of reasonable accommodation different from that requested by the applicant if the Zoning Administrator concludes that a different form of accommodation would satisfy the requirements of the ADA or FFHA Federal Fair Housing Act with fewer adverse impacts on adjacent areas. The decision of the Zoning Administrator shall be accompanied by written findings of fact as to the applicability of the ADA or FFHA Federal Fair Housing Act, the need for reasonable accommodations, and the authority for any reasonable accommodations approved.~~

c. Review Criteria

~~The Zoning Administrator may approve an adjustment authorized under this Section 12.4.5.2.A.2 if the applicant demonstrates that the adjustment is necessary to provide a reasonable accommodation under the ADA or FHA, as amended.~~

~~The decision of the Zoning Administrator shall be accompanied by written findings of fact as to the applicability of the ADA or FFHA Federal Fair Housing Act, the need for reasonable accommodations, and the authority for any reasonable accommodations approved.~~

3. Compliance with Other Federal-Overriding Laws

~~The Zoning Administrator is authorized to grant may approve administrative adjustments necessary to ensure compliance with any other applicable federal or state law, provided the adjustment is no greater than any adjustment specifically authorized by this Section 12.4.5. Requests for adjustments that are not otherwise authorized by this Section may only be approved through a Variance or Official Map Amendment (Rezoning) process.~~

B. Administrative Adjustments for Historic Structures or Properties Located in a Landmark District

Note: This change moved the Designated Historic Property or District variance review criteria in current DZC Section 12.4.7.5.A and revises it into a new type of stand-alone administrative adjustment here.

Designated Historic Property or District

~~The property could be reasonably developed in conformity with the provisions of this Code, but the building has been designated as a Historic Structure or is in a designated historic district. As part of the review pursuant to D.R.M.C., Chapter 30 (Landmark Preservation), the approving authority has found that the development on the Zone Lot conforming to this Code’s regulations would have an adverse impact upon the historic character of the individual landmark or the historic district, if a historic district is involved.~~

1. Applicability

~~This Section 12.4.5.3.C applies only to proposed development on a Zone Lot that:~~

- a. ~~Contains a Historic Structure; or~~
- b. ~~Is located in a district for preservation designated under D.R.M.C., Chapter 30 (Landmark Preservation).~~

2. Extent of Adjustment Authorized

~~The Zoning Administrator may approve an administrative adjustment to any building form standard or design standard stated in Articles 3 through 10 of this Code without limit, except that a height adjustment to a Detached Accessory Dwelling Unit building form cannot exceed 2 stories.~~

3. Review Criteria

~~The Zoning Administrator shall grant an administrative adjustment when the approving authority under D.R.M.C. Chapter 30 has found that development conforming to the requirements of this Code would have an adverse impact upon the historic character of the district or Historic Structure.~~

C. Administrative Adjustments for Public Utility Equipment Placement

1. Applicability

~~The Zoning Administrator may approve an administrative adjustment for ground-mounted structures installed, constructed, owned or operated by a public utility that are necessary for efficient electrical distribution. Specific public utility structures include but are not limited to pedestals, transformers, and switch cabinets. This adjustment~~

excludes electric vehicle charging equipment, batteries or other energy storage equipment or technology and excludes telecommunication facilities regulated under Article 11 of this Code.

2. Extent of Adjustment Authorized

The Zoning Administrator may approve an administrative adjustment to any building form standard or design standard stated in Articles 3 through 10 of this Code, without limit. The adjustment may take into account the area necessary to safely access and operate said structures in accordance with public utility standards.

3. Review Criteria

- a. No other location is practical based on utility siting best practices.
- b. Would not substantially or permanently impair the reasonable use and enjoyment or development of the subject property or adjacent property.
- c. The adjustment is necessary for efficient electrical distribution and/or results in one or more public benefits including but not limited to undergrounding of public utility equipment or facilities.
- d. Would be the minimum change that would afford relief and would be the least modification of the applicable provisions of this Code.

**D. Review Criteria for Open Space in Large Developments Administrative Adjustments
Administrative Adjustments for Alternative Design for Open Space in Large Developments**

1. Applicability

The Zoning Administrator may approve an administrative adjustment to development subject to the Open Space in Large Developments design standards in Section 10.8.1.6.

2. Extent of Adjustment

The Zoning Administrator may approve an administrative adjustment to any of the Open Space in Large Development design standards in Section 10.8.1.6., without limit.

3. Review Criteria

The Zoning Administrator may approve an adjustment authorized under this Section 12.4.5.3.E only if the the requested is an alternative design approach that does not comply with one or more of the specific design standards, but tThe alternative design approach is consistent with the open space intent and purpose stated in Section 10.8.1.1.

E. Administrative Adjustments for Location Limitations on Certain Zoning Uses

Note: In the Article 11 portion of this draft, the Zoning Administrator's ability to waive/reduce location limitations have been deleted and replaced with this administrative adjustment.

1. Applicability

The Zoning Administrator is authorized to grant administrative adjustments for development establishing a Primary or Temporary Use subject to either:

- a. Use limitations stated in Article 11 requiring minimum spacing or density from the same or similar uses; or
- b. Use limitations stated in Article 11 requiring a minimum distance from a Residential Zone District or Residential Use.

2. Extent of Adjustment Authorized

The Zoning Administrator may approve administrative adjustments to the subject minimum spacing or density or the minimum distance use limitations in Article 11, without limit.

3. Review Criteria

a. Primary Use Limitations Requiring Minimum Spacing or Density from Same or Similar Uses

The Zoning Administrator may approve an adjustment authorized under this Section 12.4.5.3.E from the subject use limitation requiring a minimum spacing or density only if the applicant demonstrates that (1) the proposed use and possible external effects and (2) the surrounding built and natural contexts together indicate the adjustment will have no substantial adverse impacts on surrounding conforming land uses contrary to the intent of the minimum spacing or density standard.

b. Primary or Temporary Use Limitations Requiring Minimum Distance from Residential Zone Districts or Residential Uses

The Zoning Administrator may approve an administrative adjustment authorized under this Section 12.4.5.3.E from the subject use limitation requiring a minimum distance from a Residential Zone District or Residential Use only if the applicant demonstrates that (1) the proposed use and possible external effects and (2) the surrounding built and natural contexts together indicate the adjustment will have no substantial adverse impacts on the nearby Residential Zone District or Residential Use.

F. Limited Tolerance for Construction Errors

1. Applicability

- a. CPD approved and issued a zoning permit for construction of a Structure on a Zone Lot permitted for a Single Unit or Two-Unit Dwelling use.
- b. Start of Construction of the Structure has begun, as defined in Article 13 of this Code.
- c. During construction, a violation of one or more of the following Building Form Standards found in Articles 3 through 9 of this Code occurred: setback, bulk plane, height in feet, or building coverage.
- d. The Structure or portion of the Structure containing the violation has been substantially constructed.

2. Extent of Adjustment Authorized

The violation in question represents a deviation of:

- a. No more than a 25% decrease of any side interior, side street, or rear setback standard;
- b. No more than a 10% decrease of a primary street setbacks;
- c. No more than a 1-foot vertical or horizontal encroachment through the applicable bulk plane envelope;
- d. No more than a 1-foot increase in height in feet; or
- e. No more than a 5% increase in building coverage; The 5% adjustment approved is added to the maximum building coverage percentage. For example, if the standard maximum is 37.5% coverage, a 3% adjustment would permit a maximum 40.5% building coverage.

3. Review Criteria

- a. The applicant has made best reasonable efforts to comply with the Code and/or to consider other reasonable paths to compliance before making the request for an administrative adjustment. For purposes of applying this criterion, 'best reasonable efforts' means a diligent, reasonable, and good faith effort to comply with the standard at issue.
- b. The applicant will face substantial and unreasonable difficulties in fully complying with or correcting the zoning violation.
- c. Given the stage of completed construction, the effort or cost to comply with the zoning standard is substantially disproportionate to the type, scale, or size of the error.

G. Administrative Adjustments to Resolve Conflicts Between City Standards

1. Applicability

The Zoning Administrator is authorized to grant administrative adjustments from the applicability of Section 1.1.3.3.A., Conflicting Provisions, when a Standard(s) in this Code conflicts with a Standard(s) adopted by another City department or agency as authorized by the D.R.M.C.

2. Applicant Limitations

A request for an administrative adjustment authorized by this Section 12.4.7.5.G. may only be submitted by the Manager of Community Planning and Development.

3. Extent of Adjustment Authorized

The Zoning Administrator is authorized to waive the applicability of Section 1.1.3.3.A., Conflicting Provisions, and approve an administrative adjustment to any building form standard or design standard stated in Articles 3 through 10 of this Code without limit.

4. Review Criteria

The Zoning Administrator may grant an administrative adjustment when they find, after weighing the relative public benefit(s) gained from implementation of the City policies, priorities or standards in conflict, that the waiver or adjustment of the zoning Standard(s) at issue would reasonably result in greater public benefit(s) without permanent or substantial impairment to the reasonable use and enjoyment or development of adjacent property.

H. Administrative Adjustments to Relieve Unnecessary Hardship to Certain Standards by Applicable Building Form

1. Applicability

The Zoning Administrator may grant administrative adjustments to the following zoning standards shown in the following tables in subsection H.3 below, subject to any limitations stated in the table and subject to compliance with the review criteria stated in Section 12.4.5.5.

2. Extent of Adjustment Allowed

The center columns in Tables 12.4.5.H.3.-1 and -2 below state the extent of administrative adjustments allowed for the standard listed in the corresponding table row.

3. Review Criteria

The last columns in the following Tables 12.4.5.H.3.-1 and -2 state the applicable review criteria and/or refer to the general review criteria in Section 12.4.5.4 that the Zoning Administrator shall apply to determine whether there are justifying circumstances supporting approval of the administrative adjustment.

Modernizing Zoning Variances

| TABLE 12.4.5.H.3-1 ADMINISTRATIVE ADJUSTMENTS AVAILABLE TO ZONE LOTS WITH THE FOLLOWING PRIMARY BUILDING FORMS: SUBURBAN HOUSE, URBAN HOUSE, DUPLEX, TANDEM HOUSE AND ANY ASSOCIATED DETACHED ACCESSORY STRUCTURE BUILDING FORMS | | |
|---|--|--|
| ZONING STANDARD | EXTENT OF ADJUSTMENT ALLOWED | APPLICABLE REVIEW CRITERIA |
| HEIGHT AND BULK STANDARDS | | |
| <ul style="list-style-type: none"> • <u>Maximum height (in stories or feet)</u> • <u>Bulk Plane Dimensions</u> | <p style="text-align: center;"><u>No limit, except:</u></p> <p style="text-align: center;"><u>In all cases, a height adjustment to a Detached Accessory Dwelling Unit building form shall not result in more than 2 stories</u> (same extent)</p> | <p style="text-align: center;"><u>Neighborhood Compatibility, Section 12.4.5.4.A</u></p> |
| | <p style="text-align: center;"><u>No limit, except:</u></p> <ul style="list-style-type: none"> • <u>In all cases, a height adjustment to a Detached Accessory Dwelling Unit building form shall not result in more than 2 stories; and</u> • <u>The subject building and its elements shall be no taller in feet than a similar building form located within the "existing neighborhood" as defined in Section 12.4.5.4.A.3</u> (same extent) | <p style="text-align: center;"><u>Must meet at least one of review criteria stated in either Section 12.4.5.4.B or C</u></p> |
| SITING STANDARDS | | |
| <p style="text-align: center;"><u>Determination of Primary Street Zone Lot Line(s) on Corner Lots of Oblong Blocks or Square Blocks</u></p> | <p style="text-align: center;"><u>The Zoning Administrator may designate either or both Zone Lot Lines parallel to the intersecting streets as a Primary Street Zone Lot Line</u> (same extent)</p> | <p style="text-align: center;"><u>Neighborhood Compatibility, Section 12.4.5.4.A</u></p> |
| <p style="text-align: center;"><u>Minimum Zone Lot Width</u></p> | <p style="text-align: center;"><u>10% (increase from 5%)</u></p> | <p style="text-align: center;"><u>Must meet at least one of review criteria stated in Section 12.4.5.4.A through C</u></p> |
| <p style="text-align: center;"><u>Minimum Zone Lot Depth</u></p> | <p style="text-align: center;"><u>15% (new)</u></p> | <p style="text-align: center;"><u>Must meet at least one of review criteria stated in Section 12.4.5.4.A through C</u></p> |
| <p style="text-align: center;"><u>Minimum Zone Lot Area</u></p> | <p style="text-align: center;"><u>15% (new)</u></p> | <p style="text-align: center;"><u>Must meet at least one of review criteria stated in Section 12.4.5.5.A through C</u></p> |

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LUTI Draft - 4/11/2023

Article 12. Zoning Procedures & Enforcement
Division 12.4 Zoning Application and Review Procedures

| TABLE 12.4.5.H.3-1 ADMINISTRATIVE ADJUSTMENTS AVAILABLE TO ZONE LOTS WITH THE FOLLOWING PRIMARY BUILDING FORMS: SUBURBAN HOUSE, URBAN HOUSE, DUPLEX, TANDEM HOUSE AND ANY ASSOCIATED DETACHED ACCESSORY STRUCTURE BUILDING FORMS | | |
|---|--|--|
| ZONING STANDARD | EXTENT OF ADJUSTMENT ALLOWED | APPLICABLE REVIEW CRITERIA |
| <u>Primary Street Setback</u> | <u>No limit</u> (same extent) | <u>Neighborhood Compatibility, Section 12.4.5.5.A</u> |
| | <u>20% (new)</u> | <u>Must meet at least one of review criteria stated in either Section 12.4.5.5.B or C.</u> |
| <u>Side Interior Setback requirements on Zone Lots greater than 30 feet wide up to and including 40 feet wide</u> | <u>No limit, provided the adjustment results in a Side Interior Setback no less than 3'</u> (same extent) | <u>Neighborhood Compatibility, Section 12.4.5.4.A</u> |
| <u>Setback requirements, all others</u> | <u>25% (increase from 10%)</u> | <u>Must meet at least one of review criteria stated in Section 12.4.5.4.A through C</u> |
| <u>Detached accessory structure location relative to Primary Street-facing façade</u> | <u>No limit (new)</u> | <u>Neighborhood Compatibility, Section 12.4.5.5.A</u> |
| | <u>50%</u> | <u>Must meet at least one of review criteria stated in either Section 12.4.5.5.B or C.</u> |
| <u>Maximum building coverage</u> | <u>5% (same extent)</u> (The % adjustment approved is added to the maximum building coverage %; for example, if the standard maximum is 37.5% coverage, a 3% adjustment would permit a maximum 40.5% building coverage) | <u>Must meet at least one of review criteria stated in Section 12.4.5.4.A through C</u> |
| DESIGN ELEMENT STANDARDS | | |
| <u>Attached Garage - location relative to Primary Street-facing façade</u> | <u>No limit (same extent)</u> | <u>Must meet at least one of review criteria stated in Section 12.4.5.4.A through C</u> |
| OTHER ZONING STANDARDS | | |
| <u>Required Amount of Parking in the Historic Structure Use Overlay District (UO-3) Only</u> | <ul style="list-style-type: none"> <u>Office/art studio use in a Historic Structure: No limit (same extent)</u> <u>Bed and breakfast use in a Historic Structure: 20% (same extent)</u> | <ul style="list-style-type: none"> <u>Unusual Physical Conditions or Circumstances, Section 12.4.5.4.B</u> <u>See also Section 9.4.4.8</u> |

Modernizing Zoning Variances

| TABLE 12.4.5.H.3-1 ADMINISTRATIVE ADJUSTMENTS AVAILABLE TO ZONE LOTS WITH THE FOLLOWING PRIMARY BUILDING FORMS: SUBURBAN HOUSE, URBAN HOUSE, DUPLEX, TANDEM HOUSE AND ANY ASSOCIATED DETACHED ACCESSORY STRUCTURE BUILDING FORMS | | |
|---|---------------------------------|--|
| ZONING STANDARD | EXTENT OF ADJUSTMENT ALLOWED | APPLICABLE REVIEW CRITERIA |
| Required Parking for Limited Nonresidential Uses Permitted in Existing Business Structures | No limit (same extent) | <ul style="list-style-type: none"> • Unusual Physical Conditions or Circumstances, Section 12.4.5.4.B • See also Section. 11.4.6 |
| Minimum Landscaping Standards | No limit (same extent) | <p>Adjustment permitted when Zoning Administrator finds the adjustment meets one of the following criteria:</p> <ul style="list-style-type: none"> • (1) Is necessary to preserve an existing Established Tree(s); • (2) Is necessary to mitigate excessive improvement costs compared to the extent or scale of the subject development; or • (3) Meets Unusual Physical Conditions or Circumstances, Section 12.4.5.4.B; • See also Section 10.5.4.1 |

| TABLE 12.4.5.H.3-2 ADMINISTRATIVE ADJUSTMENTS AVAILABLE TO ZONE LOTS WITH BUILDING FORMS OTHER THAN THOSE LISTED IN TABLE 12.4.5.H.3-1 | | |
|--|--|---|
| ZONING STANDARD | EXTENT OF ADJUSTMENT ALLOWED | APPLICABLE REVIEW CRITERIA |
| SITING STANDARDS | | |
| Determination of Primary Street Zone Lot Line(s) on Corner Lots of Oblong Blocks or Square Blocks | Zoning Administrator may designate either or both Zone Lot Lines parallel to the intersecting streets as a Primary Street Zone Lot Line (same extent) | Neighborhood Compatibility, Section 12.4.5.4.A |
| Minimum Zone Lot Width | No limit (increase from 5%) | Neighborhood Compatibility, Section 12.4.5.4.A |
| | 15% (increase from 5%) | Must meet at least one of review criteria stated in either Section 12.4.5.4.B or C. |
| Primary Street Setback | 20% (decrease from no limit) | Must meet at least one of review criteria stated in Section 12.4.5.4.A through C |
| Setback requirements, All others, except primary street setback in the C-CCN Zone Districts | 20% (same extent) | Must meet at least one of review criteria stated in Section 12.4.5.4.A through C |
| Build-to requirement -- Adjustment applies only to the min/max range of required build-to (e.g., an adjustment is permitted to the 0' to 5' range, but not to the minimum 70% build-to portion of the standard). | Not to exceed a min/max build-to range of 0' to 15' (same extent) | Must meet at least one of review criteria stated in Section 12.4.5.4.A through C |
| Build-to requirement to accommodate required water quality and/or detention/retention facilities. | Adjustment to allow a build-to alternative (e.g., a garden wall) to count up to 40% (e.g., a standard states up to 25% of the 70% build-to may be met by a garden wall - with adjustment, 25% may be increased to 40%) (same extent) | Must meet at least one of review criteria stated in Section 12.4.5.4.A through C |

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| TABLE 12.4.5.3.A-2 ADMINISTRATIVE ADJUSTMENTS AVAILABLE TO ZONE LOTS WITH BUILDING FORMS NOT LISTED IN TABLE 12.4.5.3.A-1 | | |
|--|---|--|
| ZONING STANDARD | EXTENT OF ADJUSTMENT | APPLICABLE REVIEW CRITERIA |
| <u>Build-to requirement - Adjustment applies only to zone lots that are 80' wide or less.</u> | <u>No limit, provided the build-to adjustment is necessary to provide the required minimum internal drive dimension for public street access required by the City.</u> (same extent) | <u>Must meet at least one of review criteria stated in Section 12.4.5.4.A through C</u> |
| <u>Build-to requirement - Adjustment applies only to sites with gas station uses existing on June 25, 2010.</u> | 40% (same extent) | <u>Unusual Physical Conditions or Circumstances, Section 12.4.5.4.B</u> |
| <u>Siting of outdoor trash storage areas for multi-unit and nonresidential development in MS Zone Districts</u> | <u>Setback reduction allowed to no less than 10'</u> (new) | <u>Must meet at least one of review criteria stated in Section 12.4.5.4.A through C and the Zoning Administrator finds that the adjustment: (1) will have no substantial adverse impacts on the abutting Residential Zone District or Residential Use; and (2) is consistent with the intent and purpose of the Main Street zone district.</u> |
| DESIGN ELEMENT STANDARDS: | | |
| <u>All Building Configuration Form Standards</u> | 15% (same extent) | <u>Must meet at least one of review criteria stated in Section 12.4.5.4.A through C</u> |
| OTHER ZONING STANDARDS | | |
| <u>Required Amount of Parking in the Historic Structure Use Overlay District (UO-3) Only</u> | <ul style="list-style-type: none"> <u>Office/art studio use in a Historic Structure: no limit (same extent)</u> <u>Bed and breakfast use in a Historic Structure: 20% (same extent)</u> | <ul style="list-style-type: none"> <u>Unusual Physical Conditions or Circumstances, Section 12.4.5.4.B</u> <u>See also Section 9.4.4.8</u> |
| <u>Required Parking</u> | <u>No limit (new)</u> | <u>Must meet Unusual Physical Conditions or Circumstances, Section 12.4.5.4.B, and the Zoning Administrator finds the adjustment is necessary to allow reasonable siting of required electric vehicle charging equipment.</u> |
| <u>Minimum Width of Parking Aisles or Internal Drives in Off-Street Parking Areas</u> | <u>No limit (same extent)</u> | <u>Must meet Unusual Physical Conditions or Circumstances, Section 12.4.5.4.B, and Zoning Administrator finds the adjustment is necessary to provide safe vehicle access.</u> |
| <u>Minimum Landscaping Standards</u> | <u>No limit (same extent)</u> | <u>Adjustment permitted when Zoning Administrator finds the adjustment meets one of the following:</u> <ul style="list-style-type: none"> <u>(1) Is necessary to preserve existing an Established Tree(s);</u> <u>(2) Is necessary to mitigate excessive improvement costs relative to the valuation of the subject development project; or</u> <u>(3) Meets Unusual Physical Conditions or Circumstances, Section 12.4.5.4.B</u> <ul style="list-style-type: none"> <u>See also Section 10.5.4.1.</u> |

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| ZONING STANDARD | MAXIMUM ADJUSTMENT "NA" = NOT APPLICABLE OR AVAILABLE | |
|--|---|---|
| | Suburban House, Urban House, Duplex, Tandem House and Any Associated Detached Accessory Structure Building Forms Only | All Other Building Forms |
| HEIGHT AND BULK STANDARDS: | | |
| 1. NON-HISTORIC STRUCTURES | | |
| • Maximum height (in stories or feet) | May exceed maximum standards, but the subject building and its elements shall be no taller in feet than a similar building form located within the "existing neighborhood" as defined in Section 12.4.7.5.D.2, "Compatibility with Existing Neighborhood." In addition, a height adjustment to a Detached Accessory Dwelling Unit building shall not result in more than 2 stories. | na |
| • Bulk Plane Dimensions | May exceed maximum standards, but the subject building and its elements shall be no taller in feet than a similar building form located within the "existing neighborhood" as defined in Section 12.4.7.5.D.2, "Compatibility with Existing Neighborhood." In addition, a height adjustment to a Detached Accessory Dwelling Unit building shall not result in more than 2 stories. | na |
| 2. HISTORIC STRUCTURES | | |
| • Maximum height (in stories or feet) | The Zoning Administrator may approve an adjustment that results in a structure taller than a similar building form located within the existing neighborhood, as defined in Section 12.4.7.5.D.2, "Compatibility with Existing Neighborhood," if the landmark approving authority (pursuant to D.R.M.C., Chapter 30, Landmark Preservation) finds specifically that development on the Zone Lot conforming to this Code's height or bulk regulations would have an adverse impact upon the historic character of the individual landmark or the historic district, if a historic district is involved. | |
| • Bulk Plane Dimensions | The Zoning Administrator may approve an adjustment that results in a structure taller than a similar building form located within the existing neighborhood, as defined in Section 12.4.7.5.D.2, "Compatibility with Existing Neighborhood," if the landmark approving authority (pursuant to D.R.M.C., Chapter 30, Landmark Preservation) finds specifically that development on the Zone Lot conforming to this Code's height or bulk regulations would have an adverse impact upon the historic character of the individual landmark or the historic district, if a historic district is involved. | |
| SITING STANDARDS: | | |
| Determination of Primary Street Zone Lot Line(s) on Corner Lots of Oblong Blocks or Square Blocks | Zoning Administrator may designate either or both zone lot lines parallel to the intersecting streets as a Primary Street Zone Lot Line, provided the resulting street setback standards shall be more compatible with an established pattern of street setbacks for buildings on the same face blocks containing the subject property: | |
| Minimum zone lot width requirements | 5% | 5% |
| Primary Street Setback | No limit, provided the resulting Primary Street setback shall be more compatible with an established pattern of Primary Street setbacks for buildings on the same Face Block as the subject building: | |
| Side Interior Setback requirements on Zone Lots greater than 30 feet wide up to and including 40 feet wide | No limit when based on a finding of neighborhood compatibility (see Section 12.4.7.5.D); provided the adjustment results in a side interior setback no less than 3' | na |
| Setback requirements, all others, except primary street setback in the C-CCN Zone Districts | 10% | 20% |
| Build-to requirement -- Adjustment applies only to the min/max range of required build-to (e.g., an adjustment is permitted to the 0' to 5' range, but not to the minimum 70% build-to portion of the standard): | na | Adjustment for irregularly shaped lots only, not to exceed a min/max build-to range of 0' to 15' |
| Build-to requirement to accommodate required water quality and/or detention/retention facilities: | na | Adjustment to allow a build-to alternative (e.g., a garden wall) to count up to 40% (e.g., a standard states up to 25% of the 70% build-to may be met by a garden wall -- with adjustment, 25% may be increased to 40%) |
| Build-to requirement -- Adjustment applies only to zone lots that are 80' wide or less: | na | Adjustment to the required minimum internal drive dimension for the purposes of public street access required by the City: |

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| ZONING STANDARD | MAXIMUM ADJUSTMENT "NA" = NOT APPLICABLE OR AVAILABLE | |
|---|---|---|
| | Suburban House, Urban House, Duplex, Tandem House and Any Associated Detached Accessory Structure Building Forms Only | All Other Building Forms |
| Build-to requirement – Adjustment applies only to sites with gas station uses existing on June 25, 2010: | na | Adjustment not to exceed 40%. The adjustment is permitted only when compliance with the build-to requirement is not feasible because of the impracticality of moving existing underground fuel tanks. |
| Maximum building coverage | 5% | na |
| DESIGN ELEMENT STANDARDS: | | |
| Building Configuration | na | 15% |
| Attached Garage | Attached garage may be located closer to the minimum Primary Street setback line than the Primary Street-facing façade(s) of the primary structure enclosing the primary use, provided the resulting attached garage shall be more compatible with a predominant established pattern on the same or opposite face block as the subject property. | na |
| Upper Story, Primary Street Step-back for individual landmarks and structures in historic districts | The Zoning Administrator may approve an adjustment if the landmark approving authority (pursuant to D.R.M.C., Chapter 30, Landmark Preservation) finds specifically that development on the Zone Lot conforming to this Code's stepback regulations would have an adverse impact upon the historic character of the individual landmark or the historic district, if a historic district is involved. | |
| OTHER STANDARDS: | | |
| Garden wall alternative to build-to standards | na | Adjustment permitted for use of alternative garden wall materials when Zoning Administrator finds alternative garden wall materials will better complement primary building materials. |
| Required Amount of Parking in the Historic Structure Use Overlay District (UO-3) Only | <ul style="list-style-type: none"> Required parking for office/art studio use in a Historic Structure: no maximum limit if applicant can show compliance with required parking is physically impossible. Required parking for bed and breakfast use in a Historic Structure: 20% See Section 9.4.4.8 | |
| Required Parking for Limited Nonresidential Uses Permitted in Existing Business Structures | Adjustment permitted to relieve hardship due to physical limitations of the site <ul style="list-style-type: none"> See Section 11.4.6 | na |
| Required Amount of Parking to Preserve Established Trees | na | Adjustment permitted when Zoning Administrator finds the adjustment is necessary to preserve existing, mature trees See Section 10.4.5. and Section 10.5.3 |
| Required Bicycle Parking and Required Mix of Bicycle Parking Facilities | na | 20% See Section 10.4.3.3. |
| Minimum Width of Parking Aisles or Internal Drives in Off-Street Parking Areas | na | Adjustment permitted when Zoning Administrator finds adjustment is necessary to relieve hardship associated with providing safe vehicle access and circulation on unusually small or narrow lots. |
| Minimum Landscaping Standards | na | Adjustment permitted when Zoning Administrator finds the adjustment is necessary to: (1) preserve existing, mature trees; (2) mitigate excessive improvement costs; (3) relieve impractical hardship due to physical limitations of the site. See Section 10.5.4.1. |
| Open Space in Large Developments – Design Standards in Section 10.8.1.6 | Adjustment permitted when Zoning Administrator finds the Open Space in Large Developments, with the adjustment(s) in design standards, is consistent with the intent and purpose for the open space stated in Section 10.8.1.1. | |
| As expressly permitted in other parts of this Code, the Zoning Administrator may grant administrative adjustments according to the allowances and limits expressed, and according to the procedures in this Section 12.4.5. | | |

12.4.5.3 Review Process

A. Initiation

The owner of the subject property, ~~or the owner's authorized agent, a public utility, or the Manager of Community Planning and Development~~ may initiate an application for an administrative adjustment.

B. Pre-Application Meeting

A pre-application meeting is mandatory before submittal of an application for administrative adjustment. See Section 12.3.2, Pre-Application Meeting/Concept Plan Review.

C. Application and Fees

1. ~~Concurrent Review for Administrative Adjustments~~

~~Requests for administrative adjustments may be submitted concurrently with any other required zoning application according to Section 12.3.3.9, Concurrent Applications. In such cases, the Zoning Administrator shall review and take action on the administrative adjustment during the review of the primary application.~~

2. Submittal in Writing

All applications for administrative adjustments shall be filed in writing with Community Planning and Development. The applicant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Submission of Applications.

D. Timing of Administrative Adjustment Requests

1. Adjustments Authorized for Pre-Development Requests

- a. The Zoning Administrator may approve administrative adjustments in response to a written request made prior to the formal submittal of a Site Development Plan, zoning permit, or Zone Lot amendment application. The Zoning Administrator may approve a pre-development decision on the requested adjustment if it is necessary to enable the applicant to submit a complete development application for review.
 - i. For example, the Zoning Administrator may approve a request to adjust the Primary Street Setback before formal review of the construction of a new single unit dwelling, because a final decision on the Primary Street Setback is necessary for the applicant to prepare development plans for the new dwelling that demonstrate compliance with all applicable zoning standards.
- b. The Zoning Administrator shall not approve administrative adjustments prior to formal submittal of a Site Development Plan or zoning permit for development in an approved PUD District, unless the terms of the PUD District Plan and documents expressly authorize administrative adjustments according to this Section 12.4.5.

2. Administrative Adjustments to Pending Zoning Applications

The Zoning Administrator may ~~grant approve~~ administrative adjustments ~~as part of the review of a pending zoning application otherwise required by this Code according to submitted concurrently with any other required zoning application according to Section 12.3.3.9, Concurrent Applications, the allowances and limits stated in Section 12.5.3, Permitted Types of Administrative Adjustments, below;~~ except that the Zoning Administrator may ~~grant approve~~ administrative adjustments to a pending ~~sSite dDevelopment pPlan~~ or zoning permit for development in an approved PUD District only when the terms of the PUD District Plan and documents expressly authorize administrative adjustments according to this Section 12.4.5.

3. Administrative Adjustments to Approved Applications, Plans and Permits

1. General Allowance

- a. The Zoning Administrator may ~~grant~~ approve administrative adjustments to a previously approved application, plan or permit approved pursuant to this Code, ~~except that~~
- b. ~~t~~The Zoning Administrator may only ~~approve~~ grant administrative adjustments to a previously approved ~~s~~Site ~~d~~Development ~~p~~Plan or zoning permit for development in an approved PUD District ~~only~~ when the terms of the PUD District Plan and documents expressly authorize administrative adjustments according to this Section 12.4.5.

2. Limits on Authority to Grant Adjustments

- c. The Zoning Administrator ~~may approve administrative adjustments to a previously approved plan or permit according to the allowances and limits stated in Section 12.4.5.3, Permitted Types of Administrative Adjustments, below. In no circumstance, however, shall the Zoning Administrator~~ shall not approve an administrative adjustment to a previously approved application, plan or permit that qualifies as an "amendment" ~~under~~ according to Section 12.3.7.2, Amendments to Approved Applications, Plans or Permits.

E. Review, Referral and Final Decision by Zoning Administrator

- 1. The Zoning Administrator may refer the administrative adjustment application to other affected or interested parties and agencies for review and comment, as deemed necessary to make a decision on the application.
- 2. In deciding to approve, approve with conditions, or deny the proposed adjustment, the Zoning Administrator shall consider relevant comments of all interested parties and agencies.
- 3. The Zoning Administrator may attach any condition to approval of an administrative adjustment reasonably necessary to protect the health, safety and welfare of the community, to secure substantially the objectives of the modified standard, and to minimize adverse impacts on adjacent properties.

12.4.5.4 Review Criteria

~~Except for the administrative adjustments allowed in Section 12.4.5.2.A through F above, t~~The Zoning Administrator may approve an ~~A~~administrative ~~A~~adjustment only upon finding that ~~the adjustment complies with at least one of the following review criteria supporting justifying circumstances:~~

- A. ~~The adjustment is necessary to satisfy the federal requirements for reasonable accommodation of housing for protected groups under the Federal Fair Housing Act as provided in Section 12.4.5.3.B.2.; or~~
- B. ~~The adjustment is necessary to eliminate a substantial burden on religious exercise as guaranteed by the federal Religious Land Use and Institutionalized Persons Act of 2000 as provided in Section 12.4.5.3.B.1.; or~~
- C. ~~The adjustment is necessary to satisfy the mandates under any other federal law or requirements as provided in Section 12.4.5.3.B.3.; or~~
- D. ~~All of the following criteria have been met.; or~~
 - 1. ~~The requested adjustment is consistent with the stated intent and purpose of this Code.~~

2. ~~The requested adjustment is consistent with the stated intent and purpose of the applicable zone district.~~
3. ~~The requested adjustment is consistent with the stated intent and purpose of a previously approved PUD District Plan, as applicable.~~
4. ~~The requested adjustment will have no significant adverse impact on the health, safety, or general welfare of surrounding property owners or the general public, or such impacts will be substantially mitigated.~~
5. ~~The requested adjustment is needed to compensate for unnecessary hardship. For purposes of satisfying these administrative adjustment review criteria, determination of "unnecessary hardship" shall mean the application satisfies the review criteria for a zoning variance stated in Sections 12.4.7.5 and 12.4.7.6, except compliance with the criteria stated in Section 12.4.7.5.E, Nonconforming or Compliant Uses in Existing Structures, shall not be applicable to an application for administrative adjustment.~~

E. Neighborhood Compatibility

The Zoning Administrator may grant an administrative adjustment when:

1. The property could be reasonably developed in conformity with the provisions of this Code, but the proposed adjustment will result in a building form that is more compatible than a project that complies with this Code, in terms of building height, siting, and design elements, with similar building forms in the existing neighborhood in which the subject property is located; or
2. A proposed adjustment to Zone Lot area or Zone Lot dimensions will result in a Zone Lot that is as or more compatible with the pattern of Zone Lots in the existing neighborhood in which the subject property is located.
3. For purposes of making a determination of whether the subject property, with the proposed adjustment, would be more compatible with the existing neighborhood, "existing neighborhood" means any Zone Lot or similar building form on a Zone Lot that is located on the same Face Block, opposite Face Block, or adjacent Face Block to the subject property. The "existing neighborhood" may extend beyond the aforementioned limits if the Zoning Administrator deems it reasonable and necessary to make a determination of compatibility with the most relevant existing neighborhood.
4. An Applicant shall not request an administrative adjustment according to this Section 12.4.5.4.A, Neighborhood Compatibility when the subject property contains a Historic Structure or is located in a Landmark District. Instead, the Applicant may seek an administrative adjustment according to Section 12.4.5.2.B, Administrative Adjustments for Historic Structures or Properties Located in a Landmark District.

F. Unusual Physical Conditions or Circumstances

The Zoning Administrator may grant an administrative adjustment when the adjustment is necessary to provide reasonable relief from unusual physical conditions or circumstances and the Applicant shows that all the following criteria (F.1 through F.5) are met:

1. There are unusual physical circumstances or conditions, including but not limited to:
 - a. Irregularity, narrowness or shallowness of the lot;
 - b. Exceptional topographical or other physical conditions peculiar to the affected property;
 - c. The circumstances or conditions relate to drainage conditions and challenges, not including location in a designated floodplain;
 - d. Presence of Established Trees that would otherwise be removed with the strict application of standards; or

- e. Unusual physical circumstances or conditions arising from a Nonconforming or Compliant Structure existing on the subject property or on an abutting Zone Lot.
- i. For example, an applicant proposes combining two zone lots (a zone lot amendment). One of the zone lots contains an existing single-unit residence that is located 7.5 feet from one of the side interior zone lot lines. After the proposed zone lot combination, the new zone lot is much wider than what it was before, which triggers a change in the zoning side interior setback requirement for the existing home, increasing from 7.5 feet to 10 feet. Just sitting still, with no proposed physical expansion of the existing home's footprint, the existing structure would violate the new 10-foot setback standard after the proposed zone lot combination as it relates to the existing zone lot line that will remain unchanged. In this case, the applicant may seek an administrative adjustment of the required side interior setback standard under this subsection to allow the zone lot amendment to be approved. The request should meet the criterion that, if granted, the adjustment will neither create a new zoning violation nor increase the amount or degree of noncompliance for the exterior wall that sits in the newly required 10-foot side interior setback from the zone lot line that will remain unchanged – the home was setback 7.5 feet from the zone lot line that will remain unchanged before the zone lot amendment and will still be setback at 7.5 feet after the zone lot amendment, if the adjustment is granted.
 - ii. For example, an applicant proposes to convert the interior space of their single-unit dwelling's attached garage from vehicle storage to habitable/living space. No physical expansions or additions to the building are proposed. The exterior wall that enclosed the attached garage currently violates the side setback standard (per this Code, the structure is compliant as to the side setback). When changed from garage space to living space, the applicable zoning side setback actually increases. Although no physical change or expansion of the exterior wall is proposed, the change in use of the interior space results in an increase in the degree/amount of the existing structure's noncompliance with the side setback standard. In this case, the applicant may seek an administrative adjustment of the required side setback standard under this subsection to allow the change in interior space. The request should meet the criterion that, if granted, the adjustment will neither create a new zoning violation nor increase the amount or degree of noncompliance for the exterior wall in the side setback.
 - iii. For example, a proposed a zone lot amendment changes the location of side zone lot lines and, therefore, it affects the location where the base plane measurements are taken. The existing structure pierces the bulk plane prior to the zone lot amendment (per this Code, the structure is compliant as to the bulk plane). Although no physical change or expansion is proposed, the change to the elevation measurements results in an increase in the degree of nonconformity because the base plane is lowered and that affects where height and bulk plane are measured. In this case, the applicant may seek an administrative adjustment of the required bulk plane standard under this subsection to allow the zone lot amendment to be approved. The request should meet the criterion that, if granted, the adjustment will neither create a new zoning violation nor increase the amount or degree of noncompliance for the exterior wall or roofline that currently sits in the newly established bulk plane.
2. The circumstances or conditions do not exist throughout the neighborhood or zone district in which the property is located, ~~or the circumstances or conditions relate to drain-~~

~~age conditions and challenges found consistently throughout the neighborhood or zone district in which the property is located; except for those adjustments based on drainage conditions, as described in subsection F.1.c above, or those based on Nonconforming or Compliant Structures, as described in subsection F.1.e. above.~~

3. The unusual physical circumstances or conditions have not been created by the Applicant.
4. Would not substantially or permanently impair the reasonable use and enjoyment or development of the subject property or adjacent property.
5. The unusual physical condition or circumstance causes the need for the adjustment.
6. The proposed design addresses any concerns raised by the Zoning Administrator or other city agencies in their review of the request.

G. Affordable Housing

The Zoning Administrator may grant an administrative adjustment when:

1. The proposed development or design would result in more Income Restricted Units than would be created without the administrative adjustment;
2. The adjustment to the subject standard cannot be accomplished through any specific incentives available in this Code or in mandates for the provision of Income Restricted Units under other City laws;
3. The purpose of the adjusted standard will still be achieved or substantially advanced if the adjustment is approved;
4. Would not substantially or permanently impair the reasonable use and enjoyment or development of the subject property or adjacent property.
5. The proposed design addresses any concerns raised by the Zoning Administrator or other city agencies in their review of the request.

H. Other Required Findings

For administrative adjustments to certain standards by building form authorized by Section 12.4.5.2.G, and where the right-most column of Tables 12.4.5.G.3-1 and 12.4.5.G.3-2 refer to applicable review criteria that are not specifically stated in this Section 12.4.5.4, the Zoning Administrator shall apply those particular review criteria stated in the Tables.

12.4.5.5 Requirements and Limitations After Administrative Adjustment Approval

A. Administrative Adjustments to Approved Plans or Permits

Adjustments to an approved plan or permit shall be noted on a revised plan or permit, which shall be plainly marked as "Revised," and submitted to the Zoning Administrator. The Zoning Administrator shall note the terms of the approved administrative adjustment directly on the revised plan or permit and affix ~~his~~their signature and the date of approval. If the original plan or permit was required to be recorded, the Zoning Administrator shall record such revised plan or permit in the real property records of the Denver County Clerk and Recorder within 30 days of the Zoning Administrator's approval of the adjustment.

B. Noted on Pending Application

The Zoning Administrator shall specify any approved administrative adjustment from building form or design standards and the justifications for such adjustment on the pending zoning application for which the adjustments were sought. Alternately, the Zoning Administrator may include such final determination, in writing, as part of staff report for a required public hearing.



C. Expiration

1. Administrative adjustments approved under Section 12.4.5.3.D.1. Adjustments Authorized for Pre-Development Requests, expire 180 days after the approval date unless either (1) a complete application for a Site Development Plan including the approved administrative adjustment is submitted; or (2) an application for a Zoning Permit including the approved administrative adjustment is submitted.
2. As applicable, an approved administrative adjustment shall be valid for the same time frame as the approval with which it was joined or for the same time frame as the originally approved plan or permit.
3. In all other cases, an administrative adjustment shall be valid for the same time frame and have the same effect as the zoning application with which it is joined, as such application is ultimately approved.

SECTION 12.4.6 CODE INTERPRETATIONS AND DETERMINATION OF UNLISTED USES

12.4.6.1 Purpose and Applicability

- A. This Section establishes a procedure whereby interpretation of this Code’s provisions may be sought and determined, including but not limited to:
 1. Interpretations of terms, words, and phrases not otherwise defined in this Code;
 2. Interpretations of Code provisions when additional clarity is required to apply such provisions to a specific case or to guide general application of the Code;
 3. Determination which of two or more conflicting provisions apply generally or to a specific case;
 4. Determination of whether a specific unlisted primary, accessory, or temporary use type may be permitted in one or more zone districts, and what type of use review is required (i.e., no zoning permit, ZP, ZPIN, or ZPSE); and
 5. Interpretations regarding disputed boundaries of zone districts shown on the Official Zone Map.
- B. The provisions of this Section shall not apply to permit any specific use that is expressly prohibited in a zone district or by this Code's provisions. If, pursuant to this Section, a specific use type cannot clearly be determined to be in a use classification or category permitted in a particular zone district or by this Code's provisions, such use may be incorporated into the zoning regulations only by a text amendment to this Code, as provided in Section 12.4.11.

12.4.6.2 Authority to Make Code Interpretations

The Zoning Administrator shall be the final decision-maker for all Code Interpretations and Determinations of Unlisted Uses.

12.4.6.3 Review Process

A. Initiation

Any of the following persons may initiate a request for Code Interpretations and Determinations of Unlisted Uses:

- b. Any processing done on the premises, including assembly, manufacturing, warehousing, shipping, distribution; and any dangerous, hazardous, toxic, or explosive materials used in the processing;
- c. The nature and location of storage and outdoor display of merchandise; whether storage is enclosed, open, inside, or outside the principal building; and predominant types of items stored (such as business vehicles, work-in-process, inventory, and merchandise, construction materials, scrap and junk, and raw materials including liquids and powders hazardous or not);
- d. The type, size, and typical massing of buildings and structures associated with the unlisted use;
- e. Transportation requirements, including the modal split for people and freight, by volume type and characteristics of traffic generation to and from the site; trip purposes and whether trip purposes can be shared by other uses on the site;
- f. Parking requirements, turnover and generation, ratio of the number of spaces required per unit area or activity, and the potential for shared parking with other uses;
- g. The amount and nature of any external effects generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation and fumes;
- h. Any special public utility requirements for serving the proposed use, including but not limited to water supply, waste water, pre-treatment of wastes and emissions required or recommended, and any significant power structures and communications towers or facilities; and
- i. The type and extent of impacts on adjacent properties created by the proposed use in comparison to impacts from other uses permitted in the zone district.

SECTION 12.4.7 VARIANCE

12.4.7.1 ~~When Authorized Purpose~~

The Board of Adjustment may authorize variances from the terms of this Code ~~pursuant to the charter~~, subject to terms and conditions fixed by the Board of Adjustment, as will not be contrary to the public interest ~~and where owing to justifying circumstances, deviation from ,owing to unusual conditions or disability or owing to a property’s historic designation, or where a variance would produce a more compatible development~~, literal enforcement ~~or application~~ of the provisions of this Code is reasonable. ~~will result in an unnecessary hardship.~~

12.4.7.2 Related Procedure

Under certain circumstances, modifications of this Code’s standards may be permitted according to the ~~Administrative Adjustment~~ procedure in Section 12.4.5, without resorting to this ~~Variance~~ procedure. ~~The Zoning Administrator may grant administrative adjustments to relieve unnecessary hardship and practical difficulties, without review by the Board of Adjustment for a variance.~~

12.4.7.3 Applicability and Limitations on Variances for Signs

A. Applicability

The Board of Adjustment may approve variances to all Zone Lot, Building Form, and Development standards found in Articles 1 through 10 and to use limitations found in Article 11 of this Code, unless expressly prohibited or limited by this Section 12.4.7.3.

B. Limitations on Variances to Uses, Zone District Waivers/Conditions, and PUD District Plans

The Board of Adjustment may approve a variance only if the variance:

1. Would not authorize the operation of a ~~P~~primary, ~~a~~Accessory, or ~~t~~Temporary ~~u~~Use other than those uses specifically enumerated as permitted ~~P~~primary, ~~a~~Accessory, or ~~t~~Temporary ~~u~~Uses for the zone district in which the property is located.
 2. Would not grant a change to either (a) a waiver or condition attached to an approved rezoning, or (b) an approved PUD District plan that would constitute an "amendment" under Section 12.3.7.2, Amendments to Approved Applications, Plans and Permits, or (c) an approved GDP that would constitute an "amendment" under Section 12.3.7.2, Amendments to Approved Applications, Plans and Permits.
- C. Administrative Adjustment Required Before Variance Application**
An application for a variance shall not be submitted to the Board of Adjustment unless the applicant shall have first submitted a request for an administrative adjustment to the Zoning Administrator and such request has been finally denied. This provision shall only apply when the subject of the variance application falls within the Zoning Administrator's authority to provide relief according to Section 12.4.5, Administrative Adjustments.
- D. General Limitations on Sign Variances**
No variance from the provisions of Division 10.10, Signs, on permitted signs shall be granted or authorized by the Board of Adjustment, which would result in any of the following:
1. Any variance from the provisions of Section 10.10.21, Outdoor General Advertising Devices;
 2. An existing roof sign that is higher than 32 feet above grade or a new or existing projecting sign that is higher than 32 feet above grade;
 3. A new roof sign;
 4. A new projecting sign that exceeds 20 square feet in sign area in a Residential Zone District or in the MX-2x, MS-2x, or O-1 zone districts; or that exceeds 50 square feet in sign area in the MX-2A, MX-2, MX-3A, MX-3, MS-2, MS-3, I-MX, I-A, or M-IMX zone districts; or that exceeds 80 square feet in sign area in all other zone districts;
 5. A new or existing projecting sign where more than 1 other sign is maintained or is to be maintained for the same primary use on the same building front;
 6. A new or existing ground sign that is higher than 32 feet above grade, except that a variance permitting the maintenance of an existing ground sign that is not higher than 35 feet above grade may be granted where said ground sign and all other signs for the same primary use comply with all other applicable provisions of Division 10.10, Signs;
 7. A new or existing sign with a sign area larger than that which is permitted under the provisions of Division 10.10, Signs, for the primary use in the zone district in which the primary use is or will be maintained, except that a variance permitting the maintenance of an existing sign with a sign area up to 50 percent larger than the maximum sign size permitted under the provisions of Division 10.10, Signs, for the primary use in the zone district in which the use by right is maintained may be granted where no other signs are maintained for the same primary use on the same building front and where the total area of signs maintained for the same primary use does not exceed that permitted under the applicable provisions of Division 10.10, Signs; or
 8. A greater total area of signs than that which is permitted under the provisions of Division 10.10, Signs, for the primary use in the zone district in which the primary use is or will be maintained.

E. Variances for Signs for Religious Assembly Uses

Notwithstanding the limitations set forth in this Section 12.4.7.3.C, Limitations on Variances for Signs, the Board of Adjustment shall have the power to grant variances from the provisions of Division 10.10, Signs, for signs that identify Religious Assembly uses when such signs are located on the same Zone Lot as the permitted Religious Assembly use.

12.4.7.4 Review Process

A. Initiation

The owner of the subject property, ~~or~~ the owner's authorized agent or a public utility may initiate an application for a variance.

B. Mandatory Pre-Application Meeting

A pre-application meeting between the Applicant and CPD is mandatory before submittal of an application for variance to the Board of Adjustment. See Section 12.3.2, Pre-Application Meeting/Concept Plan Review.

C. Application and Fees

All applications for variance shall be filed in writing according to the rules of the Board of Adjustment. The applicant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Application.

D. Public Hearing and Decision by Board of Adjustment

1. Following notice and a public hearing according to the rules of the Board of Adjustment, the Board of Adjustment shall approve, approve with conditions, or deny the variance request based on whether the ~~a~~Applicant has demonstrated compliance with evidenced an unnecessary hardship according to the review criteria in both Sections 12.4.7.5 and 12.4.7.6 below, and subject to any limitations in Section 12.4.7.3~~7~~ regarding variances for signs.
2. The Board may attach any condition to a variance approval necessary to protect the health, safety and welfare of the community and minimize adverse impacts on adjacent properties, including but not limited to a condition changing the location or dimensions of a proposed development directly related to the request for a variance.

12.4.7.5 Review Criteria - Unnecessary Hardship - Justifying Circumstances

The Board of Adjustment may grant a variance only if it finds that there are justifying circumstances ~~there is an unnecessary hardship~~ whereby the application satisfies the criteria of **any one of Sections 12.4.7.6.A. through G in addition to satisfying the general review criteria in Section 12.4.7.5.** ~~paragraph A. or B. or C. or D. or E. of this subsection and satisfies the criteria of Section 12.4.7.5, Review Criteria - Applicable to All Variance Requests.~~

~~A. Disability~~

1. ~~There is a disability affecting the owners or tenants of the property or any member of the family of an owner or tenant who resides on the property, which impairs the ability of the disabled person to utilize or access the property.~~

A. Unusual Physical Conditions or Circumstances

The variance is necessary to provide reasonable relief from unusual physical conditions or circumstances and the Applicant shows that all the following criteria (1-5) are met:

1. There are unusual physical circumstances or conditions, including, without limitation:
 - a. Irregularity, narrowness or shallowness of the lot; ~~or~~

- b. Exceptional topographical or other physical conditions peculiar to the affected property; ~~or~~
 - c. Circumstances or conditions related to drainage conditions and challenges, not including location in a designated floodplain;
 - d. Presence of Established Trees that would otherwise be removed with the strict application of standards; or
 - e. Unusual physical circumstances or conditions arising from a ~~Nonconforming or Compliant Structure~~ existing on the affected property or on an abutting Zone Lot.
2. The circumstances or conditions do not exist throughout the neighborhood or zone district in which the property is located; except for those adjustments based on drainage conditions, as described in subsection A.1.c above, or those based on Nonconforming or Compliant Structures, as described in subsection A.1.e. above.); ~~or the circumstances or conditions relate to drainage conditions and challenges found consistently throughout the neighborhood or zone district in which the property is located;~~
 3. The unusual physical circumstances or conditions have not been created by the applicant.
 4. The unusual physical condition or circumstance causes the need for the variance.
- B. Neighborhood Compatibility with Existing Neighborhood**
1. The property could be reasonably developed in conformity with the provisions of this Code, but the proposed ~~adjustment or~~ variance will result in a building form that is more compatible than a project that complies with this Code, in terms of ~~b~~Building ~~H~~height, siting, and design elements, with the existing neighborhood in which the subject property is located; or ~~In making a determination of whether the subject property, with the proposed variance, would be more compatible with the existing neighborhood, the decision-making body may choose not to consider primary or accessory buildings in the existing neighborhood that have been granted variances or administrative adjustments based on unusual physical circumstances or conditions of such properties.~~
 2. A proposed variance to Zone Lot area or Zone Lot dimensions will result in a Zone Lot that is as or more compatible with the pattern of Zone Lots in the existing neighborhood in which the subject property is located.
 3. For purposes of making a determination of whether the subject property, with the proposed variance, would be more compatible with the existing neighborhood, "existing neighborhood" shall mean any ~~Z~~zone ~~L~~lot or similar building form on a ~~Z~~zone ~~L~~lot that is located on the same ~~F~~face ~~B~~block, opposite ~~F~~face ~~B~~block, or adjacent ~~F~~face ~~B~~block to the subject property. The "existing neighborhood" may extend beyond the aforementioned limits if the Board of Adjustment finds the expansion is reasonable and necessary to make a determination of compatibility with the most relevant existing neighborhood.
 - a. ~~In making a determination of whether the subject property, with the proposed variance, would be more compatible with the existing neighborhood, the decision-making body may choose not to consider primary or accessory buildings in the existing neighborhood that have been granted variances or administrative adjustments based on unusual physical circumstances or conditions of such properties.~~
 4. ~~For changes in building or site elements within the rear 35% of a zone lot: Any similar zone lot or building on a zone lot which is located on the same face block or on an adjacent face block (i.e., across a rear property line or rear alley):~~
 5. ~~For changes in building or site elements within the front 65% of a zone lot: Any zone lot or primary building on a zone lot which is located on the same face block or the face block across a public street from the subject building.~~

6. ~~For purposes of a variance review only, the Board of Adjustment may consider similar buildings located beyond the same face block, opposite face block, or adjacent face block from the subject building if the Board deems doing so reasonable and necessary to make its determination of compatibility with the existing neighborhood. This allowance does not apply to review of a request for an administrative adjustment.~~

C. Nonconforming or Compliant Uses in Existing Structures

A variance to increase the floor area occupied by a ~~n~~Nonconforming or ~~e~~Compliant ~~u~~Use in an existing structure may be granted only if the Board of Adjustment finds the following conditions to exist:

1. The use is a ~~n~~Nonconforming or ~~e~~Compliant ~~u~~Use, as defined in this Code, and such use is in full compliance with all requirements under this Code applicable to ~~n~~Nonconforming or ~~e~~Compliant ~~u~~Uses and is authorized to continue in operation and to exist;
2. The structure in which an increase in floor area is sought was in existence on the date on which the ~~n~~Nonconforming or ~~e~~Compliant ~~u~~Use became ~~n~~Nonconforming or ~~e~~Compliant, and is in existence at the time of the hearing;
3. On the date on which the use became ~~n~~Nonconforming or ~~e~~Compliant, the use was in occupancy and in operation on a portion of the floor area of the structure in which an increase in floor area is sought;
4. The applicant does not propose or intend to enlarge the existing structure, does not propose or intend to increase the floor area of such structure, and that any authorized increase in occupancy of floor area by the nonconforming or compliant use will not involve remodeling, changing or altering any load-bearing member of such structure; and
5. That, owing to exceptional and extraordinary circumstances, literal enforcement of the provisions of this Code will result in unnecessary hardship.

D. Affordable Housing

1. The proposed development or design would result in more Income Restricted Units than would be created without the variance;
2. The variance to the subject standard cannot be accomplished through any specific incentives available in this Code or in mandates for the provision of Income Restricted Units under other City laws; and
3. The purpose of the adjusted standard will still be achieved or substantially advanced if the variance is approved.

E. Permits Issued in Error

1. A zoning permit for construction was issued wherein the Applicant or Zoning Administrator made an error in measurement, calculation or application of one or more Building Form Standards found in Articles 3 through 9 of this Code excluding maximum height in stories;
2. Start of Construction has begun as that term is defined in Article 13 of this Code, and the building element at issue (allowed only because of the error in the permit approval) has been substantially constructed;
3. The permittee reasonably relied on the approved zoning permit for construction in good faith; and
4. Given the stage of completed construction, the effort or cost to comply with the zoning standard is substantially disproportionate to the type, scale, or size of the error/violation.

F. Limited Tolerance for Construction Errors

1. CPD approved and issued a zoning permit for construction of a Structure;
2. Start of Construction of the Structure has begun, as "Start of Construction" is defined in Article 13 of this Code;
3. During construction, a violation of one or more Building Form Standards found in Articles 3 through 9 of this Code, except maximum height in stories, occurred;
4. The Structure or portion of the Structure containing the violation has been substantially constructed;
5. The Applicant will face substantial and unreasonable difficulties in fully complying with or correcting the zoning violation; and
6. Given the stage of completed permanent construction, the effort or cost to comply with the zoning standard(s) is substantially disproportionate to the type, scale, or size of the error/violation.

12.4.7.6 Review Criteria - Applicable to All Variance Requests

The Board of Adjustment may grant a variance only if the Board finds that, if granted, the variance meets all of the following criteria:

- A. ~~Would not authorize the operation of a primary, accessory, or temporary use other than those uses specifically enumerated as permitted primary, accessory, or temporary uses for the zone-district in which the property is located.~~
- B. ~~Would not grant a change to either (a) a waiver or condition attached to an approved rezoning, or (b) an approved PUD District plan that would constitute an "amendment" under Section 12.3.7.2, Amendments to Approved Applications, Plans and Permits, or (c) an approved GDP that would constitute an "amendment" under Section 12.3.7.2, Amendments to Approved Applications, Plans and Permits.~~
- C. ~~Would not, other than allowed in Section 12.4.7.5.A. above to accommodate persons with disabilities, relate to either the persons, or the number of persons, who do, will, or may reside in a residential structure.;~~
- D. Except as allowed in Section 12.4.7.5, w~~W~~ould not be justified solely on grounds of loss of a financial advantage, hardship that is solely financial, or a more profitable use of the property might be had if a variance is granted.
- E. Would not substantially impair the intent and purpose of this Code.
- F. Would not substantially impair the intent and purpose of the applicable zone district.
- G. Would not substantially or permanently impair the reasonable use and enjoyment or development of the subject property or adjacent property.
- H. Would be the minimum change that would afford relief and would be the least modification of the applicable provisions of this Code.
- I. Would adequately address any concerns raised by the Zoning Administrator or other City agencies in their review of the application.

12.4.7.7 Requirements and Limitations After Variance Approval

A. Variances for Construction

1. Expiration - Effect of Approval

A variance authorizing construction shall expire unless Start of Construction has occurred ~~substantial construction has started~~ within 3 years and is completed within 5 years from the date the variance was granted. Upon the completion of construction, the variance shall run with the land.

2. Requests for Extension

- a. The Zoning Administrator may grant up to a 2-year extension of the 3-year or 5-year approval periods for a variance according to the proces and limitations contained herein.
- b. In considering a request to extend the approval period for a variance, the Zoning Administrator shall consider whether the extension, if granted, would be contrary to the purpose or intent of any text amendment to this Code or change in the zoning designation of the subject property adopted after the original approval date.
- c. All requests for extensions shall be submitted to Community Planning and Development in writing before the expiration of the approval period. An extension request shall include:
 - i. Payment of any required fee for the extension review; and
 - ii. A narrative stating the reasons for the applicant's or owner's inability to comply with the specified deadlines, listing any text amendments to this Code or changes in the property's zoning designation that have occurred since the original variance approval date and which affect the subject development; and
 - iii. The anticipated time schedule for completing the development.
- d. The Zoning Administrator will review the request for extension and shall approve, approve with conditions, or deny the extension request based on consideration of the following criteria:
 - i. The Applicant's showing of good cause for the extension, including but not limited to a showing that development was delayed by economic or physical problems beyond the applicant's or property owner's control; and
 - ii. Consistency with the intent of any text amendments to this Code or changes in the property's zoning designation that have occurred since the original variance approval date and which affect the subject development.
- e. The grant of an extension shall be effective and counted as of the date of the original variance's approval period expiration date and not the date the extension request is approved.
- f. If the extension is denied, the applicant may re-submit a new application for the same variance, subject to the fees, standards, and procedures in effect at the time of re-submittal.

B. Variances Unrelated to Construction

For variances unrelated to construction, the variance shall run with the land unless the Board of Adjustment specifies otherwise as a condition of the approved variance.

C. Lapse of Approved Variances Upon Redevelopment

A variance shall automatically lapse and have no further effect if the Zoning Administrator finds that redevelopment of the subject property makes compliance with this Code possible without the previously approved variance.

SECTION 12.4.8 APPEAL OF ADMINISTRATIVE DECISION

12.4.8.1 Review Process

A. Initiation

1. Any person aggrieved or any officer or department of the City may appeal to the Board of Adjustment from any administrative order, requirement, or any decision or determination made by a Community Planning and Development administrative official in the enforcement of this Code.
2. Such appeal shall be filed within the time provided by the rules of the Board of Adjustment and must specify the particular grounds upon which the appeal is taken.

B. ~~Application~~ Appeal and Fees

1. ~~Appeal and Fees~~

All appeals of an administrative order or decision shall be filed in writing according to the rules of the Board of Adjustment. The appellant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Submission of Applications.

C. ~~Effect of Appeal—Stay of Enforcement Proceedings~~ **[Moved to Enforcement & Penalties**

Division 12.11

~~An appeal to the Board of Adjustment of a cease and desist order issued by Community Planning and Development shall stay all enforcement proceedings of the cease and desist order unless the Zoning Administrator certifies that, by reason of the facts stated in the certificate, a stay in the Zoning Administrator's opinion would cause imminent peril to life or property. When such a certificate is filed, proceedings shall not be stayed except by a restraining order granted, after due notice to Community Planning and Development, by the Board of Adjustment or a court of proper jurisdiction.~~

D. Stay of Proceedings Upon an Administrative Appeal

An appeal to the Board of Adjustment of any action, decision or permit issued by Community Planning and Development shall stay all actions and proceedings in furtherance of the action being appealed unless the Zoning Administrator certifies that, by reason of the facts stated in the certificate, a stay would cause unnecessary or undue risk of damage or disruption to life or property, or would conflict with efforts to address a public health emergency as defined in Section 11.2.12.2.B of this Code. When such a certificate is filed, proceedings shall not be stayed except by a restraining order granted, after due notice to Community Planning and Development, by a court of proper jurisdiction.

E. **Action by Zoning Administrator**

Upon receipt of a notice of appeal, the Zoning Administrator shall transmit to the Board of Adjustment all of the original documents and materials, or true copies thereof, constituting the record upon which the order or decision appealed from was based.

F. **Public Hearing and Decision by Board of Adjustment**

Following notice and a public hearing according to the rules of the Board of Adjustment, the Board of Adjustment shall approve or deny the appeal based on the presumption and review criteria in Section 12.4.8.1.G below.

G. **Presumption and Review Criteria**

1. **Presumption**

Any order or decision of an administrative official authorized to act under this Code shall be presumed to be correct unless clear and convincing evidence introduced before the Board of Adjustment supports a contrary determination or finding.

2. Review Criteria

The Board of Adjustment shall consider whether or not the action by the administrative officer complied with the applicable portions of this Code when approving or denying an administrative appeal.

SECTION 12.4.9 ZONING PERMIT WITH SPECIAL EXCEPTION REVIEW

12.4.9.1 Applicability

Zoning permit with special exception review is required for the following:

- A. Establishment, expansion or enlargement of any use listed as a “Special Exception” use (“ZPSE”) in the Use and Parking Tables found in Articles 3 through 9.
- B. Establishment, expansion or enlargement of any use where an applicable use limitation in Articles 3 through 9, or in Article 11, Use Limitations and Definitions, or any other provision of this Code, states that Special Exception review under this Section is required.

12.4.9.2 Review Process

A. Initiation

The owner of the subject property or the owner’s authorized agent may initiate an application for a zoning permit with special exception review.

B. Pre-Application Meeting

A pre-application meeting with the Zoning Administrator is mandatory for review of a use qualifying as a zoning permit with special exception review under this Section. See Section 12.3.2, Pre-Application Meeting/ Concept Plan Review. Pre-application meetings for all other special exceptions are optional.

C. Application and Fees

1. Submittal in Writing

All applications for zoning permit with special exception review shall be filed in writing with the Zoning Administrator. The applicant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Submission of Applications.

2. Concurrent Applications

The applicant may submit an application for zoning permit with special exception review concurrent with other applications according to Section 12.3.3.9, Concurrent Applications. In no case, however, shall the City issue a building permit, as applicable, until the Board of Adjustment approves the special exception use and Community Planning and Development issues a zoning permit.

D. Public Notice Requirements

Public notice shall be required and provided according to the rules of the Board of Adjustment.

E. Review, Referral, and Recommendation by Zoning Administrator

- 1. The Zoning Administrator shall refer the application to the Board of Adjustment. The Board of Adjustment shall schedule the application for review and final decision at a public hearing, according to the rules of the Board of Adjustment.
- 2. The Zoning Administrator may refer the application to other affected or interested agencies for review and comment.
- 3. The Zoning Administrator shall consider the comments from all interested agencies, prepare a written recommendation based on the application's compliance with the review criteria below, and submit a written recommendation to the Board of Adjustment according to the rules of the Board of Adjustment.

12.11.6.2 General Penalties Apply

Any person violating any provision of this Code shall be subject to the general penalties provided by D.R.M.C., Section 1-13, by action brought in a court of appropriate jurisdiction.

12.11.6.3 Remedies Are Cumulative

The penalties, remedies, and enforcement powers established in this Division 12.11 shall be cumulative, and the City may exercise them in any order.

12.11.6.4 Additional Remedies

A. In General

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of this Code, in addition to, or in lieu of, any administrative remedy allowed by the D.R.M.C., the Manager or any person with standing under applicable law may institute any appropriate action or proceedings to prevent or enjoin such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of the building, structure or land or to prevent or enjoin any illegal act, conduct, business or use in or about such premises. The imposition of any penalty hereunder, including any inspection for compliance fee, shall not preclude the City or any person with standing under applicable law from instituting any appropriate action or proceeding to require compliance with the provisions of this Code, and with administrative orders and determinations made hereunder.

B. Suspend or Rescind Permits or Final Authorization

Any permit issued or other form of authorization under this Code may be suspended or rescinded when the Manager determines:

1. That there is a material departure from the plans, specifications, or conditions required under the terms of the approved permit or plan;
2. That the approved permit or plan was procured by false representation or was issued by mistake;
3. That any of the provisions of this Code are being violated; or
4. In the case of a zoning permit for a temporary use only, that substantial complaints that one or more conditions of the permit are being violated are reported to the Zoning Administrator.

Unless the Manager determines there is imminent peril to life or property, the Manager shall provide the permittee with notice and an opportunity to be heard prior to any final decision to suspend or revoke a permit. No work, construction, or other development activity shall proceed after service of the suspension or revocation notice.

12.11.6.5 Continuation of Previous Enforcement Actions

Nothing in this Code shall prohibit the continuation of previous enforcement actions, undertaken by the City pursuant to previous and valid ordinances and laws.

12.11.6.6 Stay of Zoning Enforcement Proceedings upon Appeal

An appeal to the Board of Adjustment of a ~~final enforcement action or order~~ ~~cease and desist order~~ issued by Community Planning and Development shall stay all enforcement proceedings of the ~~cease and desist~~ ~~action or~~ order unless the Zoning Administrator certifies that, by reason of the facts stated in the certificate, a stay in the Zoning Administrator's opinion would cause ~~unnecessary or undue risk of damage or disruption~~ ~~imminent peril to life or property, or would conflict with efforts to address a public health emergency as defined in Section 11.2.12.2.B of this Code~~. When such a certificate is filed, proceedings shall not be stayed except by a restrain-

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ing order granted, after due notice to Community Planning and Development, by ~~the Board of Adjustment or~~ a court of proper jurisdiction.