

October 31, 2022

## Research Summary for Modernizing Zoning Exceptions Project

From: Alek Miller, AICP, Senior City Planner

To: Tina Axelrad, Zoning Administrator

### Attachments:

1. Summary and Select Responses from External Stakeholder Survey
  2. Denver Zoning Code, Section 12.4.5, Administrative Adjustment
  3. Denver Zoning Code, Section 12.4.7, Variance
  4. Denver City Charter, Article III (City Council), Part 2 (Council Powers), Section 3.2.9, Zoning.
- 

## Executive Summary

Research on peer cities' practices, a review of opinions from staff and community stakeholders, and a critical look at the types of variances approved by the Board of Adjustment (BOA) reveal a clear need to re-think and revise the mechanisms for exceptions from Denver's zoning requirements. The current eligibility and approval criteria for administrative adjustments and variances are too limited or rigid to meet the needs of Denver's homeowners, residents, and developers today. The added time in process and unpredictability of results indicate a need for a modernization of the exceptions available to applicants. Conclusions of this report are based on surveys of staff and external stakeholders, small-group interviews with staff, research of practices of peer cities, and analysis of recent variance and administrative adjustment cases.

Recommendations fall into two key categories:

- **Changes to the administrative adjustment criteria.** Some categories of adjustment should be expanded to allow for administrative approval. The approval criteria should be modified to respond more specifically to the requests being made.
- **Changes to the variance approval criteria.** Suggestions include reducing the threshold for approval for some requests and adding tailored criteria that better respond to certain types of variance requests.

## Problem Statement

There are currently two key methods for applicants to request relief from zoning standards: the administrative adjustment, which can be approved by staff, and the variance, which requires approval by the Board of Adjustment. These procedures offer flexibility from zoning standards, but several deficiencies have been identified in the eligibility and approval criteria. The majority of variance applications are based on stating a unique physical condition or circumstance. These circumstances include being an historic property, physical disability of the property owner or occupant, or unique configuration of the property.

In a September 2022 survey, every respondent from a group of community stakeholders (including applicants, developers, attorneys, and subject matter experts) expressed a preference for administrative processes both in the current form and in a potentially expanded future form. Half of the respondents stating that they “rarely or never” prefer using the Board of Adjustment process, with qualitative comments noting the reasons for these choices as the time for processing and unpredictable results. Stakeholders state that the approval criteria do not offer the Board the flexibility to rationalize granting a variance using other approved city plans or policies or basing decisions in what is reasonable. Staff and stakeholders agreed that approval criteria are too rigid for both variances and administrative adjustments and identified a need to develop more nuanced approval criteria to meet present day needs and citywide goals. Examples of priorities that are not adequately addressed by the existing procedures and approval criteria include sustainability, affordable housing, infill development, and preservation of existing structures.

A second issue raised by stakeholders and staff relates to the thresholds for eligibility for administrative adjustments. Many minor requests require variances because they cannot be approved administratively. For example, administrative adjustments are available for some building form standards up to certain thresholds (5 to 20 percent, depending on the building form type and setback type). However, even minor requests must meet the same standard variance criteria described above.

Research shows that other cities use broader variance approval criteria than Denver (e.g., where a project faces practical difficulty), more permissive thresholds for administrative approval (such as a base percentage that applies to all numeric standards), and/or tailored standards that are more responsive to specific situations than traditional hardship criteria. This may offer insight into the types of flexibility that could be added to the Denver Zoning Code to address the concerns about the existing approval criteria for administrative adjustments and variances.

## Project Objective

The objective of this project is to propose code-based solutions to the problems surfaced during discussions, surveys, and research of other cities’ practices. The text amendments that will result from this project will modernize the methods by which zoning code exceptions are requested, processed, and approved.

## Current State

### Administrative Adjustments

The authority and process for staff-granted administrative adjustments are housed within Article 10 and Article 12 of the Denver Zoning Code. The administrative adjustment provisions in Article 10 are specific to certain design standards, such as requirements for bicycle parking and specific design requirements for vehicle access, and are typically processed concurrently with the plan review. Article 12, Section 12.4.5, contains the specific authority for most administrative adjustments by listing which code standards may be adjusted, by how much, and under what criteria. The most common administrative adjustments allowed under Article 12 are authorized upon evidence of “unnecessary hardship” and compliance with qualifying thresholds and limits stated in the table found in Section 12.4.5.3.A. See

Attachment 2 of this document. For example, adjustments to some building setback standards are allowed up to a certain percentage (e.g., a rear setback may be adjusted up to 10%) and other adjustments are only allowed upon demonstrating neighborhood compatibility (e.g., a primary street setback may be adjusted any amount if the result is more compatible with other setbacks on the same block face). Further, to approve an administrative adjustment, staff must find that the review criteria stated in Division 12.4.5.5 (provided in Attachment 2) have been met; those criteria require a finding of the same type of “unnecessary hardship” as defined and established for zoning variances approved by the BOA. Ultimately, this results in an administrative procedure that requires applicants to meet the same threshold for approval as those taking more extensive, complex, or sensitive requests to the Board of Adjustment for variances. There is one key exception: administrative adjustments found necessary to meet mandates under federal law, including the Federal Fair Housing Act and the Religious Land Use and Institutionalized Persons Act of 2000, do not require a showing of an unnecessary hardship and have specific parameters outlined for approval by the Zoning Administrator.

## Variances

The procedure for variances allows applicants to request relief from most zoning standards. As stated in the Denver Zoning Code:

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 where, 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 of the provisions of this Code will result in unnecessary hardship.

There are five categories under which a request may meet the definition of “unnecessary hardship”:

- A. Disability
- B. Unusual Physical Conditions or Circumstances
- C. Designated Historic Property or District
- D. Compatibility with Existing Neighborhood
- E. Nonconforming or Compliant Uses in Existing Structures

In addition to fulfilling the criteria in any of the above categories A-E, a variance request must also meet the criteria in Section 12.4.7.6, Review Criteria – Applicable to All Variances. Combined, these variance approval criteria result in two key challenges: First, review criteria are not tailored in any way to reflect the specific type or extent of the variance request; all requests are held to the same high standard of showing unnecessary hardship. Second, there is no relief available when a request for an exception from the code is reasonable based on the circumstances of a case but does not rise to the highly prescriptive “unnecessary hardship.” These challenges are addressed in more detail in the research outlined in this report.

## Common Variance Requests

### Residential Setback Encroachments

Within the 125 cases before the Board of Adjustment in 2021, there were 88 requests for setback variances and 66 of those 88 (75 percent) of those were granted by the Board.<sup>1</sup> The overwhelming majority of these setback variances were for residential one- and two-unit properties. These setback encroachments ranged from less than one percent of the required setback up to 100 percent of the setback.

Setback and Degree of Variance Requested (2021)				
	Primary Street	Side Interior	Side Street	Rear
Median Granted*	52%	59%	100%	75%
Total Granted	7	22	3	11
Range of Requests	0.75-100%	3.4-100%	25-100%	4.2-100%
*Percentage of encroachment as compared to the size of the required setback.				

The table above identifies the frequency of variances by each type of setback. It's clear that the side interior setback was the most common request at that time. Currently, administrative adjustments are available for all setbacks, but they are limited by building form and context. The AA available for the side interior on most residential building forms is limited to 10 percent, while the median percentage encroachment variance granted by the Board is 59 percent.

The specific reasons for the setback variances requested also provide insight into the current cases that go before the Board: 16 percent of granted setback variances related to additions to existing structures and

Reason for Setback Variance Request (2021)				
	Addition	Shed/Garage/ Pergola	ADU	Zone Lot Amendment
<b>Granted</b>	11	20	14	11
<b>Denied</b>	1	29	8	0

that number rises to 21 percent for accessory dwelling units (or ADUs). This indicates that there may be an opportunity to remove a barrier to improving and reusing existing structures by allowing staff to approve a greater adjustment to setback requirements than is currently allowed, or by crafting standards that address sheds, storage, or other structures in a more tailored way.

The proportion of granted and denied variance requests also can inform what action should be taken to modify the code requirements for the types of zoning relief. For example, 11 variance requests were made for setback encroachments that were the result of zone lot amendments and every request was granted by the Board. This type of request may be an ideal candidate for a new administrative adjustment, particularly when physical changes are not involved. Similarly, the Board approved 40

<sup>1</sup> The Board of Adjustment reviewed a total of 125 cases. However, each case can contain multiple requests for variances. Thirty-six individual cases included one or more setback variance requests.



percent of setback variances related to pergolas, garages, or other accessory structures in 2021. This indicates that there was not a consistent response to these types of structures and it would be appropriate to continue Board of Adjustment review of these nuanced requests.

---

*“[Bulk Plane/Height Adjustment] Should be allowed for the preservation of an existing structure that will have a bulk plane violation based on a new zone lot line.”*  
– Staff Comment

---

### **Common Issues for Zoning Exceptions**

In general, survey responses from staff were supportive of keeping the existing adjustments. The staff that proposed modifications to these adjustments tended to offer similar solutions or raise similar concerns in their comments. Following are the common trends that survey and discussion comments highlighted:

**Pop-Tops:** Staff comments highlight a need for additions to existing structures to have an administrative path to approval or, alternatively, variance criteria that can be used to evaluate additions. The prime example cited is pop-tops, which are full or partial second stories added to existing structures, because they are seen as method for preserving existing buildings. For an existing structure with compliant or nonconforming setbacks to meet current setback requirements, the addition of a second story would result in a wedding cake effect, with the upper story stepped in a greater distance than the first story. The variance requests for these often cites simpler construction and engineering to support the second story or architectural compatibility, neither of which are found in the approval criteria. Further, the research on recent BOA cases also indicates that the degree of exception being requested in these cases is typically relatively minor (i.e., a few feet of encroachment to align the second story with the existing first story).

**“Existing Neighborhood” Definition:** Many comments suggest expanding the area to be evaluated for administrative adjustments when looking at neighborhood compatibility. For example, when establishing a primary street setback, the Zoning Administrator is limited to evaluating the setback pattern on the same face block as the subject property. In many cases it would be appropriate to look at the opposite face block, as well, to determine compatibility. Currently, the standard for evaluating neighborhood compatibility for administrative adjustments is more limited than the standard for variances.

**Setbacks:** Although most staff respondents recommend retaining the existing adjustment(s) for setbacks, multiple respondents suggest expanding the percentages that may be modified with an administrative adjustment (for both primary and accessory structures), which aligns well with the types of variances that were granted by the Board of Adjustment in 2021 and with thresholds seen in other peer cities.

**Landmark Preservation Redundancy:** For variances involving historic structures or districts, there is a requirement that the applicant receive a recommendation from the Landmark

Preservation Commission. This means that applicants with historic properties are required to go through two hearings for a variance request. There may be an opportunity to modify the eligibility criteria for certain requests for historic structures that receive a recommendation for approval from the LPC, so that they can go through an administrative process, rather than a second hearing.

**Zone Lot Width and Area:** The minimum zone lot width currently can be reduced by five percent through an administrative adjustment; 25-30 percent of staff respondents suggested that this threshold should be modified (depending on the building form). Most comments on this adjustment suggested increasing the available percentage. These modifications will be further explored in the suggested recommendations. In addition, some comments suggested that an administrative adjustment for minimum zone lot area would be an improvement.

**Other City Plans:** One comment frequently offered in the staff survey and interviews, is a proposal to modify approval criteria to allow for adjustments to standards based on Blueprint Denver, small area plans, or other adopted City documents. These plans establish a vision for the city or an area and zoning is used as a tool to implement those plans. Allowing new or expanded flexibility through the administrative adjustment and variances procedures will support the implementation of these plans by providing a safety valve in the aspects where zoning regulations have not yet caught up.

**Setback adjustments:** Staff and external stakeholders identified the limits on eligibility for administrative adjustments to setbacks as a shortcoming. For example, the rear and side street setback adjustments are limited to 10 percent for the most common one and two-unit residential building forms. Setback encroachments are discussed at length in the preceding section and may provide an opportunity for processing more requests through the administrative adjustment, rather than the variance.

## Peer Cities Research

A review of more than 20 peer cities reveals that many cities have expanded administrative authority to grant exceptions from zoning standards and some have developed tailored criteria for both administrative adjustments and variances. Generally, many other cities

## Potential Alternative Variance Approval Criteria, as provided in survey

Preservation of an existing structure to accommodate reasonable continuing use of the structure

Preservation of historic character for non-historic structures on zone lots that contain a historic structure or are within a historic district

Achieving alternative compliance, where the proposed exception meets the stated design or building form intent more than the original code standard

Preservation or creation of affordable housing

Greater flexibility for reducing parking minimums

Economic or financial hardship when no other hardship exists (e.g., it costs too much to fully comply with a zoning standard or the project will yield more financial return with the variance than without)

Relief from code compliance when zoning permits are issued in error by city staff and there is substantial reliance on the error

Reasonable modifications for specialized commercial and industrial building types (e.g., a building needs to house specialized equipment/machinery which requires more-than-typical floor-to-ceiling height that results in a building height violation)

still rely on the “unnecessary hardship” and “unique physical circumstances” that Denver’s variance criteria use. A few key trends stand out as informative for the types of problems that have been identified in Denver:

*Administrative adjustment by percentage:* The most common difference between Denver and its peers is that many allow for a blanket administrative adjustment of any numeric development standard. In some jurisdictions, this adjustment is as large as 35 percent (Boise, ID). The largest administrative allowance found in a Colorado city was 25 percent, while the Denver Zoning Code limits administrative adjustments to 5 percent in some cases.

*Tiered approach for variances and adjustments:* Cities such as Bend, Oregon maintain a tiered approach to the noticing, procedures, and approval criteria for granting relief from zoning standards. This tiered system increases the amount of notice required and the threshold for approval with increased complexity or sensitivity of the type of relief requested.

*Tailored Criteria:* When provided, tailored variance criteria are geared toward specific challenges and priorities of the peer cities. For example, Indianapolis had specific provisions for exceptions that would help to prevent flooding, while Boulder, CO offers a variance that specifically allows for accessory dwelling units (ADUs) to be built within setbacks in certain cases where an existing primary structure limits the location of the new ADU. Another clear example of a city putting its priorities into its variance criteria also comes from Bend, OR, where preservation of significant trees is built into variance criteria.

One of the best examples of administrative adjustment approval criteria comes from Chicago: The Windy City offers administrative adjustments that use approval criteria that emphasizes flexibility while seeking to prevent impacts to the character of the surrounding neighborhood. The general criteria even refer to a greater level of flexibility that would promote preservation and rehabilitation of existing structures – this is an issue that was raised often in Denver’s context. In addition to the three simple approval criteria, many of the administrative adjustments include one or two specific standards that speak directly to the impacts of the adjustment being requested. For example, an administrative adjustment may be granted for an upper story addition to an existing building if the addition follows the existing setback of the exterior wall below, which mirrors many requests for residential additions in Denver.

## Conclusion and Recommendations

### Modifications to Eligibility and Approval Criteria

In keeping with trends around the country and with the sentiments expressed by survey respondents, the eligibility thresholds for administrative adjustments should be updated to allow for staff approval of more requests.

For both variances and administrative adjustments, tailored criteria would help to focus evaluation of proposals on preventing *impacts* of proposals, rather than on precise unique circumstances. This would allow for greater flexibility and a more focused approach to evaluating requests from a reasonableness perspective. For example, to be reasonable, the Board

occasionally needs to be flexible to grant a request, rather than using a strict reading of whether the criteria has been met. During recent deliberations on variance requests, members of the Board have highlighted frustration that there is no path to approval for reasonable requests that do not demonstrate an unnecessary hardship and that denials of variances could incentivize tearing down existing structures. In keeping with the approval criteria, the Board denied the variance request, but not without multiple Board members expressing some regret that there was not another path to approval.

#### **Chicago, Illinois Administrative Adjustment Approval Criteria**

- *Allow development that is more in keeping with the established character of the neighborhood, as opposed to development that is in strict compliance with zoning standards;*
- *Provide flexibility that will help promote rehabilitation and reuse of existing buildings when such flexibility will not adversely affect nearby properties or neighborhood character; and*
- *Provide limited flexibility for new construction when necessary to address unusual development conditions when such flexibility will not adversely affect nearby properties or neighborhood character.*

---

*"I believe that administrative adjustments should be available in more instances that currently require going through the variance process. Administrative adjustments by CPD staff should be preferred in almost all circumstances when noncompliance with a requirement of the zoning code is de minimis (which could also be coupled with expanding the % of non-compliance that staff could deem acceptable), as well as when the noncompliance predates zoning (i.e., homes constructed in the early 20<sup>th</sup> century)." – External Stakeholder Survey Comment*

---

### Operational Implications and Process Changes

A move to re-allocate a substantial number of cases from the Board of Adjustment to staff may require additional staffing to handle the case load. A strategy may be needed to delineate how new administrative adjustments are reviewed and approved. Currently, in many cases, the Zoning Administration Team receives administrative adjustment requests through referral by residential reviewers. However, in some cases, the administrative adjustments listed in Article 10 are processed as

a part of the review. A clear, consistent process will be necessary for ensuring consistency across reviews and to avoid inundating residential reviewers with new discretionary responsibilities.

---

*“Variance for hardship is an important ‘safety valve’ for the zoning code. Hardship criteria need to be updated to allow for them to be followed closely while still getting the outcomes we reasonably need. A strict reading of the current variance hardship critters would result in very few variances, even noncontroversial and reasonable ones, being granted. BOA public hearings are also important for the much more rare case of appealing administrative decisions not related to Variance...”*

*– External Survey Respondent*

---

### Notes of Caution

Both staff and external stakeholders raised concerns and offered notes of caution related to changing too much in this project. Many staff members involved in development review and enforcement have identified a concern that if too much flexibility is added to the zoning code, then Denver’s thoughtfully written zoning regulations would be weakened. If this project is to provide the desired increase in flexibility through an administrative process, the eligibility criteria and approval criteria need to be very clear to provide the predictability that both the development community and staff identify as a high priority. One of the key challenges of this project will be to identify areas for improvement where flexibility may be added without undermining the standards that have been developed over the years.

In surveys and discussion, staff expressed also expressed concerns related to the following potential variance criteria proposed:

**Economic/financial hardship:** Some cities around the country allow economic hardship to be used as a rationale for granting a variance. However, staff were generally opposed to this possibility, citing the difficulty in evaluating financial hardship.

**Reliance on a permit in error:** This suggested new variance criteria was offered as a possible relief valve for those times when a permit has been issued in error and an applicant can demonstrate that they have substantially relied on that erroneous approval to their detriment. This could be an area where a new procedure would help to prevent legal challenges and to resolve issues that come up from time to time. However, one group of supervisors suggested that there would need to be clear guardrails around what could be allowed and raised concerns whether such a path could be abused by a savvy developer.

### Charter of the City and County of Denver

The Charter of the City and County of Denver currently includes very specific provisions creating and describing the appointment and powers of the Denver Board of Adjustment, including by what criteria the Board may review and grant variances and exceptions<sup>2</sup>. Having this level of detail in a home rule Charter versus in a city council adopted ordinance is highly unusual, as confirmed in staff’s peer cities

---

<sup>2</sup> These provisions are found in the Denver City Charter, Article III (City Council), Part 2 (Council Powers), Section 3.2.9, Zoning.



research. Because only a vote of the people can amend the Charter provisions, any comprehensive effort to modernize and update the process and criteria for zoning exceptions in the Denver Zoning Code will quickly bump into the narrow purview the Charter created for the Board of Adjustment to grant variances and exceptions. Accordingly, to succeed in modernizing the zoning code's exceptions process, choice of decision maker (BOA, staff, hearing officer, etc.), and criteria, an amendment to the Denver Charter is necessary.

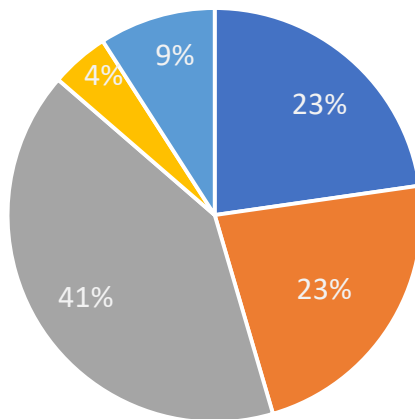
To this end, Councilwomen Amanda Sandoval and Robin Kniech are preparing a proposal to revise the Denver City Charter to remove extraneous and duplicative language about the creation and appointment of the BOA that is already in the Denver Zoning Code (and Former Chapter 59), and to pave the way for comprehensive updates to the Denver Zoning Code regarding how zoning exceptions should be made, by whom, under what circumstances, and by which specific criteria/standards. The Charter changes are considered by the full Council and then referred to an election ballot for citywide vote; it is expected the proposed Charter changes regarding the Board of Adjustments will appear on the April 2023 ballot. If the Charter changes are approved by Denver voters, only then could a proposed amendment to the Denver Zoning Code (like the changes described in this document) proceed to be heard and decided by the full City Council, after the noticed public hearing required for all zoning code amendments.

**Attachment 1. Summary and Select Responses from External Stakeholder Survey**

## Summary of External Stakeholder Survey Results

Number of Respondents: 20

### Background of Respondents:

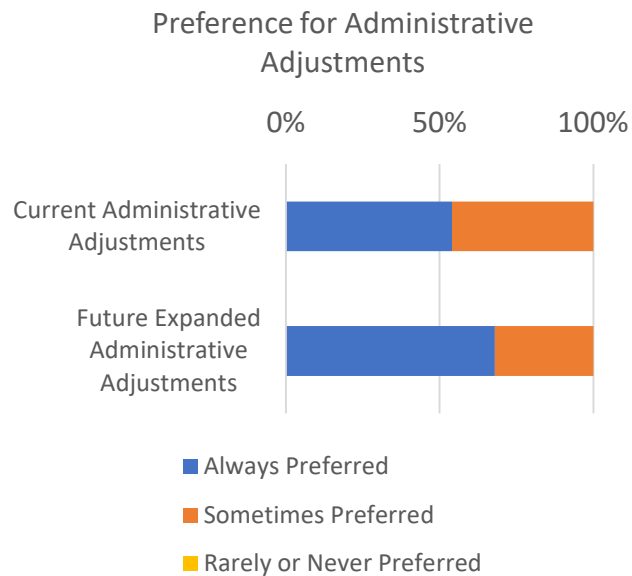


- Current or former member of the BOA or Planning Board
- Property owner
- Development or construction professional representing clients
- Attorney representing clients
- Other

Experience with Requesting Variances, Adjustments or Exceptions	
Extensive	44%
Occasional	40%
Rare, once, or occasionally over many years	13%
None of the above	4%



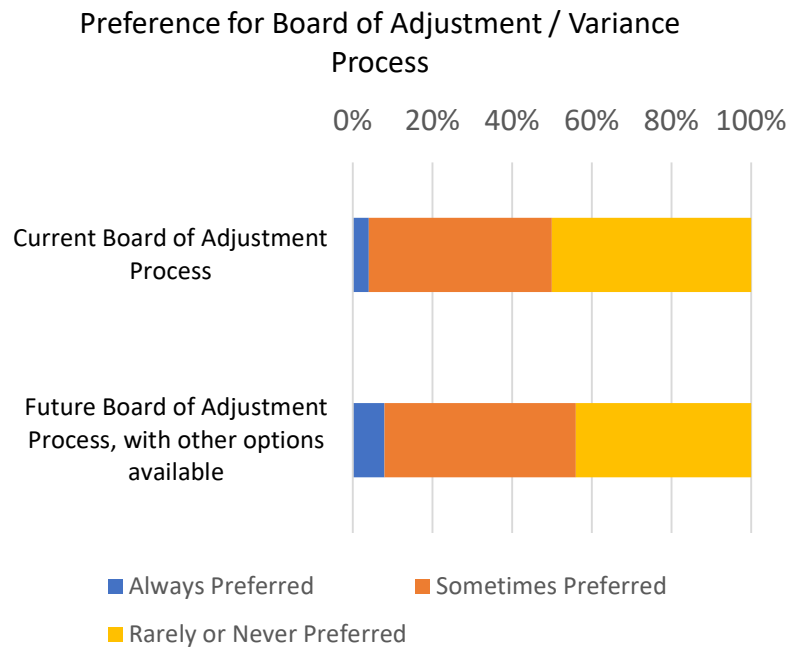
## Administrative Adjustment Responses



### Related Responses:

- If minor exceptions are needed, having administrative relief helps streamline review time. Not every decision should be administrative.
- Admin adjustments should allow for quicker resolution for exceptions or considerations outside of the standard code requirements that are typically granted.
- If there are clear criteria and limitations, Administrative Adjustment should be possible and not unduly withheld... (Right now there's some arbitrariness in AA application when Landmark needs to be referenced — Landmark is inconsistent in their opinions and replies across otherwise similar cases, leading to unpredictability in access to AA where it is needed for neighborhood compatibility.)
- Staff has better knowledge of desired goals and the overall vision for the city and its neighborhoods.
- Shorter, more predictable process. Allows for negotiating compromise between standard and proposed solution

## Variance Responses



### Related Responses:

- Public hearings create a space for greater accountability and allow public buy-in on projects seeking variations from the agreed upon zoning code. Providing community an opportunity to come share their perspective on proposed projects is a benefit.
- The BOA makes a judgement based on a limited set of criteria in a limited amount of time. A public hearing should be necessary [for] an appeal to the administrative decision.
- Should not hear minor adjustments; criteria should be much higher for denying requests and should include IF the request increases Denver's moderate to affordable housing stock.
- Not consistent; too static to implement broader changes. BOA is stuck implementing details that applied to Denver 10 years ago; they do not have discretion to apply to today's needs and should have more general criteria or omitted.

One question asked what respondents would do to improve the approval criteria for variances. Below are select responses to that question:

- Better design than zoning code form standard (i.e. suburban house form often creates the wedding cake)

- None [proposed variance criteria] seem to be applicable to Xcel Energy. It is a regulatory hardship (electrical design and construction is regulated by federally adopted NESC). Xcel Energy doesn't install residential or commercial/industrial structure(s) - it is equipment that is necessary to serve the community.
- Greater flexibility to fit in a historic context; greater flexibility to implement adopted plans
- Greater flexibility when the outcome will provide infill housing in single family neighborhoods (e.g. when a garage or a historic garage can be converted to a residential dwelling for family or a long term rental but the setbacks/lot coverage/length of wall/bulk plain don't meet new criteria b/c it is a historic district.
- I would very strongly support adding the "equitable estoppel" basis for hardship. As a matter of fairness, based on relative expertise and resources, a property owner/appellant should not bear the cost of the City's errors if they rely in good faith on the City's representations.
- I very strongly support a hardship basis for preservation or creation of affordable housing. I would go so far as to create a presumption in favor of a variance if the proposed development meets certain conditions for affordability/lower-cost/higher density. Of course, the devil would be in the details here -- and in my ideal world, the Code would be changed to make building lower-cost housing easier as a matter of right -- but as a general matter I support this hardship criteria.

Another question asked for suggestions for improving the zoning exceptions options not listed (i.e., suggestions that would not fall under the categories of approval criteria, eligibility criteria, or introducing an administrative hearing officer):

- Recreate the BOA to be more progressive and responsive to the needs of residents of the city and the needs of Denver. Let people make the case for approval of zone adjustments based on criteria: safety issue, equity, alignment with city goals, the intent of the rule is met. Let staff decide based on the criteria and only have BOA review where staff cannot say yes all criteria. Let the new BOA help development review get out of the way of development that implements city plans, goals, and initiatives.
- If current BOA structure is generally maintained, pre-application meetings of some sort would greatly help. I have a few projects where CPD staff misdirection was realized at hearing and added months to the process
- I think we should have a close look at the variances being requested and granted now (and over the past several years) and try to address some of the more common issues with changes to the code, ie text amendments.
- There are significant number of RNOs with formal zoning committees comprised of local residents knowledgeable about land use and development issues and regulations. RNO representatives should be considered important contributors to the process and should be able to present information at the hearings, both administrative and BOA. They should have a role in the hearing, not simply just stating a position. The issues are complicated and the more insight and information available to decision makers, the better. And if the city doesn't have faith in the

RNOs, then perhaps create a new role/position and appoint a resident/citizen zoning officer for each district to participate in hearings.

- Administrative alternates to solving issues like setback or height issues that provide other concessions for relief would help with early planning efforts and afford development community alternates to evaluate in the context of an overall site.

## Attachment 2. Denver Zoning Code, Section 12.4.5, Administrative Adjustment

- 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 to the procedures in this Section. 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.

### 12.4.5.3 Permitted Types of Administrative Adjustments

#### A. Administrative Adjustments to Relieve Unnecessary Hardship

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

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		na
2. HISTORIC STRUCTURES		
• Maximum height (in stories or feet)  • 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'

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 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.
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"><li>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.</li><li>Required parking for bed and breakfast use in a Historic Structure: 20%</li><li>See Section 9.4.4.8</li></ul>	
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"><li>See Section. 11.4.6</li></ul>	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.



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
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.		

## B. Administrative Adjustments to Ensure Compliance with Federal Law

### 1. Compliance with Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)

#### a. General

The Zoning Administrator may grant administrative adjustments to 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 religious exercise as guaranteed by the Federal Religious Land Use and Institutionalized Persons Act of 2000, as amended.

#### b. Limitations

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 prohibit such use or accessory use/structure/activity.

#### c. Conditions of Approval

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 Federal Fair Housing Act (FFHA)**

- a. The Zoning Administrator may grant administrative adjustments to provide reasonable accommodations under the Federal Fair Housing Act. In the application for an administrative adjustment under this subsection, the applicant shall identify the type of housing being provided and cite the specific provisions of the 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. 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 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 Federal Fair Housing Act, the need for reasonable accommodations, and the authority for any reasonable accommodations approved.

**3. Compliance with Other Federal Laws**

The Zoning Administrator is authorized to grant administrative adjustments necessary to ensure compliance with any other applicable federal 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.

**12.4.5.4 Review Process**

**A. Initiation**

The owner of the subject property or the owner's authorized agent 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. All Other Requests for Administrative Adjustments**

All applications for administrative adjustment 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. 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.

#### **12.4.5.5 Review Criteria**

The Zoning Administrator may approve an Administrative Adjustment only upon finding that:

- 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. **Review Criteria for Open Space in Large Developments Administrative Adjustments**  
Or, applicable only to adjustments to the Open Space in Large Developments design standards in Section 10.8.1.6., the requested adjustment is an alternative design approach that does not comply with one or more of the specific design standards, but the alternative design approach is consistent with the open space intent and purpose stated in Section 10.8.1.1.

#### **12.4.5.6 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 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. 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.
2. 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:

1. A member of the City Council;
2. A member of the Planning Board;
3. The City Attorney;
4. The Manager;
5. The manager or director of any other city department or agency; or

### Attachment 3. Denver Zoning Code, Section 12.4.7, Variance

- 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**

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 where, 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 of the provisions of this Code will result in 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 resort 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 Limitations on Variances for Signs**

#### **A. 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.

**B. Variances for Signs for Religious Assembly Uses**

Notwithstanding the limitations set forth in this Section 12.4.7.3, 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 religious assembly use.

**12.4.7.4 Review Process**

**A. Initiation**

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

**B. 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.

**C. 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 applicant has evidenced an unnecessary hardship according to the review criteria below, and subject to any limitations in Section 12.4.7.7 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 - Showing of Unnecessary Hardship**

The Board of Adjustment may grant a variance only if it finds that there is an unnecessary hardship whereby the application satisfies the criteria of **any one of** paragraph A. **or** B. **or** C. **or** D. **or** E. of this subsection **and** satisfies the criteria of Section 12.4.7.6, 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.

**B. Unusual Physical Conditions or Circumstances**

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. Unusual physical circumstances or conditions arising from a nonconforming or compliant structure existing on the affected property; and
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 drainage conditions and challenges found consistently throughout the neighborhood or zone district in which the property is located; and
3. The unusual physical circumstances or conditions have not been created by the applicant.

**C. 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 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.

**D. 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, in terms of building height, siting, and design elements, with the existing neighborhood in which the subject property is located. 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. "Existing neighborhood" shall mean:
  - a. 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).
  - b. 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.
3. 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.



**E. Nonconforming or Compliant Uses in Existing Structures**

A variance to increase the floor area occupied by a nonconforming or compliant 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 nonconforming or compliant use, as defined in this Code, and such use is in full compliance with all requirements under this Code applicable to nonconforming or compliant 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 nonconforming or compliant use became nonconforming or compliant, and is in existence at the time of the hearing;
3. On the date on which the use became nonconforming or 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.

**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:

- 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. Would 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 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 addresses 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. Expiration**

1. A variance authorizing construction shall expire unless 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. For variances unrelated to construction, the variance shall run with the land unless the Board of Adjustment specifies otherwise as a condition of the variance.
3. 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**

###### **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**

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. 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.

##### **E. 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.F below.

Attachment 4. Denver City Charter, Article III (City Council), Part 2 (Council Powers), Section 3.2.9, Zoning.

### § 3.2.9 - Zoning.

- (A) *Grant of power.* For the purpose of promoting health, safety, morals or the general welfare of the community, the Council of the City and County of Denver is hereby empowered to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes.
- (B) *Districts.* For any or all of said purposes, the Council may divide the City and County of Denver into Districts of such manner, shape and area as may be deemed best suited to carry out the purposes of this Charter; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one District may differ from those in other Districts.
- (C) *Purposes in view.* Such regulations shall be made in accordance with a Comprehensive Plan prepared by the Department of Community Planning and Development and the City Council as provided in subsection 2.13.3(B) and adopted by ordinance.
- (D) *Method of procedure.* The Council shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established and enforced, and from time to time amended, supplemented or changed. However, no such regulation, restriction or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in an official publication in the City and County of Denver.
- (E) *Changes.* Such regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change, signed by the owners of twenty per cent or more, either of the area of the lots included in such proposed change or of the area to a distance of two hundred feet from the perimeter of the area proposed for change, such amendment shall not become effective except by the favorable vote of ten of the members of the Council of the City and County of Denver. The provisions of the previous Section relative to public hearings and official notice shall apply equally to all changes or amendments.
- (F) *Remedies.* 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 Charter, or of any ordinance, or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction,

reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct or business or use in or about such premises.

- (G) *Conflict with other laws.* Whenever the regulations made under authority of this Section require a greater width or size of yards, courts or other open spaces, or require a lower height of buildings or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this Section shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this Section, the provisions of such statute or local ordinance or regulation shall govern.
- (H) *Board of Adjustment; creation by Council.* The Council may provide for the appointment of a Board of Adjustment, and in the regulations and restrictions adopted pursuant to the authority of this amendment may provide that the said Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.
- (I) *Board of Adjustment; appointments.* The Board of Adjustment shall consist of five (5) members, each member to be appointed for a term of five (5) years. The appointing authority may remove a member for cause, upon written charges and after public hearing. Vacancies shall be filled by the appointing authority for the unexpired term of any member whose term becomes vacant.
- (J) *Board of Adjustment; powers.* The Board of Adjustment shall have the following powers:
  - (i) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this Section or of any ordinance adopted pursuant thereto.
  - (ii) To hear and decide special exceptions to the terms of the ordinance upon which such Board is required to pass under such ordinance.
  - (iii) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.
  - (iv) In exercising the above-mentioned powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that

end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance.

- (K) *Board of Adjustment; procedures.* The Board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this Section. Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine. Such Chairperson, or in his or her absence, the acting Chairperson may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Office of the Board and shall be a public record.
- (L) *Board of Adjustment; appeals to Board.* Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of an administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
- (M) *Board of Adjustment; effect of appeal.* An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with the officer that by reason of facts stated in the certificate a stay would in his or her opinion cause imminent peril to life or property. In such cases proceedings shall not be stayed except by a restraining order, which may be granted by the Board of Adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.
- (N) *Board of Adjustment, notice and hearing of appeals.* The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.
- (O) *Board of Adjustment; appeals to court.*
  - (i) Any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment or any taxpayer, or any officer, department, board or bureau of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is

illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the Office of the Board.

- (ii) Upon the presentation of such petition the court may allow a writ of certiorari directed to the Board of Adjustment to review such decision of the Board of Adjustment, and shall prescribe therein the time wherein which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may on application, on notice to the Board and on due cause shown grant a restraining order.
- (iii) The Board of Adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
- (iv) If upon the hearing it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct, and report the same to the court with the referee's findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
- (v) Costs shall not be allowed against the Board unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

(Charter 1960, B1.13, B1.14, B1.15, B1.16, B1.17, B1.19, B1.20, B1.21; amended May 15, 1923; amended September 10, 1968; amended May 8, 2001; Ord. No. 427-02, § 1, 6-3-02, elec. 8-13-02; Ord. No. 428-02, § 1, 6-3-02, elec. 8-13-02)