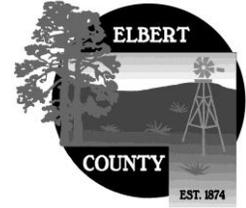




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TITLE 30. GOVERNMENT - COUNTY COUNTY PLANNING AND BUILDING CODES ARTICLE 28. COUNTY PLANNING AND BUILDING CODES PART 1. COUNTY PLANNING

C.R.S. 30-28-118 (2013)

30-28-118. Appeals to board of adjustment

(1) (a) Appeals to the board of adjustment may be taken by any person aggrieved by his inability to obtain a building permit or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of the provisions of the zoning resolution. Appeals to the board of adjustment may be taken by any officer, department, board, or bureau of the county affected by the grant or refusal of a building permit or by other decision of an administrative officer or agency based on or made in the course of the administration or enforcement of the provisions of the zoning resolution. The time within which such appeal shall be made, and the form or other procedure relating thereto, shall be as specified in the general rules provided by the board of county commissioners to govern the procedure of such board of adjustment or in the supplemental rules of procedure adopted by such board.

(b) No such appeal to the board of adjustment shall be allowed for building use violations that may be prosecuted pursuant to [section 30-28-124 \(1\) \(b\)](#).

(2) Upon appeals the board of adjustment has the following powers:

(a) To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, or refusal made by an administrative official or agency based on or made in the enforcement of the zoning resolution;

(b) To hear and decide, in accordance with the provisions of any such resolution, requests for special exceptions or for interpretation of the map or for decisions upon other special questions upon which such board is authorized by any such resolution to pass;

(c) Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the regulation or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation enacted under this part 1 would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, to authorize, upon an appeal relating to said property, a variance from such strict application so as to relieve such difficulties or hardship if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning resolutions. In determining whether difficulties to, or hardship upon, the owner of such property exist, as used in this paragraph (c), the adequacy of access to sunlight for solar energy devices installed on or after January 1, 1980, may properly be considered. Regulations and

restrictions of the height, number of stories, size of buildings and other structures, and the height and location of trees and other vegetation shall not apply to existing buildings, structures, trees, or vegetation except for new growth on such vegetation.

(3) The concurring vote of four members of the board in the case of a five-member board and of three members in the case of a three-member board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or agency or to decide in favor of the appellant.

HISTORY: Source: L. 39: p. 303, § 17.CSA: C. 45A, § 17.CRS 53: § 106-2-17. C.R.S. 1963: § 106-2-17.L. 77: (1) amended, p. 1458, § 2, effective June 9.L. 79: (2)(c) amended, p. 1161, § 7, effective May 25.

ANNOTATION

The board of adjustment has the powers enumerated in this section. *Bd. of County Comm'rs of La Plata County v. Moga*, 947 P.2d 1385 (Colo. 1997).

Requirement of hardship relates to variances, not to special exceptions or special use permits. *Guildner, Way Inc. v. Bd. of Adjustment*, 35 Colo. App. 70, 529 P.2d 332 (1974).

Proof required. In order to obtain rezoning to permit a use which an applicant seeks, he must prove that it is not possible to use and develop the property for any other use enumerated in the existing zoning; similarly, if one seeks a lower classification of zoning than the zone presently existing, he must prove that it is not possible to use and develop the land for any uses permitted in zones which are in between the zone sought and the presently existing zone. *Garrett v. City of Littleton*, 177 Colo. 167, 493 P.2d 370 (1972).

Applicant had the burden of proving that variance would avoid unnecessary hardship or was reasonably necessary for the convenience or welfare of the public. *Monte Vista Prof'l Bldg., Inc. v. City of Monte Vista*, 35 Colo. App. 235, 531 P.2d 400 (1975).

Courts may not substitute their judgment for that of the board or disturb an exercise of the board's discretion in zoning matters unless such discretion is clearly abused. *Monte Vista Prof'l Bldg., Inc. v. City of Monte Vista*, 35 Colo. App. 235, 531 P.2d 400 (1975).

A stop work order issued by a county building inspector for lack of compliance with a zoning variance is an administrative order made in enforcement of a zoning regulation and the board of adjustment has original jurisdiction to hear any challenge to such order. *Bd. of County Comm'rs of La Plata County v. Moga*, 947 P.2d 1385 (Colo. 1997).

A person challenging a stop work order must exhaust administrative remedies by seeking relief from the board of adjustment before requesting judicial intervention. *Bd. of County Comm'rs of La Plata County v. Moga*, 947 P.2d 1385 (Colo. 1997).

An injunction could not be obtained to prevent construction of buildings approved by board of adjustment, although lot was slightly smaller than zoning requirement, since remedy is review by court only to see if board has abused its discretion. *Bacon v. Steigman*, 123 Colo. 62, 225 P.2d 1046 (1950).

Applied in *Johnson v. Bd. of County Comm'rs*, 158 Colo. 311, 406 P.2d 338 (1965); *Murray v. Bd. of Adjustments*, 42 Colo. App. 113, 594 P.2d 596 (1979); *Gramiger v. Crowley*, 638 P.2d 797 (Colo. 1981); *Gramiger v. Crowley*, 660 P.2d 1279 (Colo. 1983).