



PART I, SECTION 3: BOARD OF ADJUSTMENTS

A. INTENT

The purpose of the Board of Adjustments hereby created, shall be to provide for, in appropriate cases and subject to additional conditions and safeguards, the ability to make special exceptions to the terms of the Elbert County Zoning Regulations in conformance with its general purpose and intent.

B. POWERS AND DUTIES OF THE BOARD OF ADJUSTMENTS

The Board of Adjustments has the following powers:

1. To hear and act upon requests for a variance to the:
 - a. Minimum area of lot;
 - b. Minimum width of lot;
 - c. Maximum height of structures and fences;
 - d. Minimum front yard;
 - e. Minimum side yard;
 - f. Minimum rear yard;
 - g. Minimum off-street parking requirements; and/or
 - h. Such variances as may be deemed necessary by the Board of County Commissioners where, by reason of exceptional shape, size, topography of the lot, condition of the building or land, practical difficulty or unnecessary hardship would result to the owner of said property from a strict application or enforcement of the Elbert County Zoning Regulations.
2. The concurring vote of four (4) members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of any such administrative official or agency, or to decide in the favor of the appellant.
3. No variance shall be granted by the Board of Adjustments when, in the opinion of said Board, the applicant has not provided reasonable and adequate evidence justifying the request presented, or when the request is determined to be a self-imposed hardship which can be rectified by means other than a variance.

C. GENERAL PROVISIONS

1. The Board of County Commissioners of Elbert County shall appoint a Board of Adjustments consisting of five (5) voting members. Not more than half of the members of such Board may at any time be members of the Planning Commission. Each of the members of the Board of Adjustments shall be a resident of the County. The term of appointed members of the Board of Adjustments shall be three (3) years and until their respective successors have been appointed. The terms of office shall be staggered by making the appointments so that at least one (1) member's term will expire each year.



2. The Board of County Commissioners may appoint two (2) associate members to the Board of Adjustments. Each associate member shall be a resident of the County. In the event that any regular member of the Board of Adjustments is temporarily unable to act, due to absence from the County, illness, interest in a matter before the Board of Adjustments, or any other cause, that member's place may be taken during such temporary disability by the most senior associate member present based upon length of service.
3. Any member of the Board of Adjustments may be removed for non-performance of duty or misconduct by the Board of County Commissioners. Vacancies shall be filled for the unexpired term in the same manner as in the case of original appointments.
4. The Board of Adjustments shall receive reasonable compensation by Elbert County not to exceed thirty dollars (\$30.00) per meeting plus mileage for attending official and special meetings.
5. The Board of Adjustments shall elect from its members a Chairperson and a Vice-Chairperson whose term shall be for one (1) year. Other positions may be created by the Board of Adjustments when needed.
6. The Board of Adjustments shall adopt such rules and regulations governing its proceedings as it may consider necessary or advisable, such rules and regulations shall be consistent with the guidelines of this Section and appropriate State statutes.
7. The Board of Adjustments shall meet as often as necessary to hear and act upon applications and other appropriate requests submitted.
8. The Board of Adjustments may call special meetings for special projects and other important topics for review, discussion and/or recommendation. Alternate hearing dates due to weather conditions and other scheduling difficulties may be considered by the Chairman of the Board of Adjustments.
9. A secretary shall be provided by Community and Development Services to the Board of Adjustments and shall be present at all regular and special meetings of the Board of Adjustments. The minutes shall be made a matter of public record within a practical time after the official meeting of the Board of Adjustments and will be available at Community and Development Services. Anyone wishing to have a transcript of the proceedings may have a court reporter present at their own expense.

D. PROCEDURE FOR A VARIANCE

1. The applicant shall discuss the variance request informally with the Community and Development Services Director to learn what materials and what steps are necessary for the application.



2. A formal application shall be submitted to the Community and Development Services Director and shall consist of the following:
 - a. A completed application form;
 - b. Proof of ownership of the land on which the appeal is requested;
 - c. Application fee - see current fee schedule; and
 - d. If applicable, a site plan indicating what the variance is or where it will be on the affected property. Such plan shall be drawn to scale and include the height and setbacks of all existing and proposed structures, and any other information requested by the Community and Development Services Director, when applicable to the request.

3. Community and Development Services Staff shall review the variance application within ten (10) working days and schedule the request before the Board of Adjustments when it determines that the application is complete.

4. A Community and Development Services Planner shall submit the application to the appropriate referral agencies for review. The prescribed time limits for review of a variance application shall not exceed thirty (30) days.

5. At least thirty (30) days prior to a public hearing before the Board of Adjustments, notice of hearing shall be published in a newspaper of general circulation in Elbert County at least once. Publication of said notice shall be the responsibility of the applicant and shall read as follows:

"NOTICE OF PUBLIC HEARING BEFORE THE BOARD OF ADJUSTMENT"

"Variance from ___ feet to ___ feet for _____ setback"

"Notice is hereby given that on _____ (day of week), _____ (month) ____ (year), at ____ (time A.M./P.M.), or as soon as possible thereafter, in the Hearing Room of the Elbert County Commissioners at Kiowa, Colorado, or at such other time and place as this hearing may be adjourned, Board of Adjustment public hearing will be held upon the application on file with the Elbert County Community and Development Services, 215 Comanche Street, Kiowa, Colorado 80117, Telephone: 621-3136, by _____ (name of applicant) for a variance pursuant to the current Elbert County Zoning Regulations. The affected property is located approximately _____ (distance and direction from nearest major intersection)."

Project Name and Number:
 Legal Description of Property:
 Reason:
 Date of Application:
 Published In: _____ (name of newspaper),
 _____ (date of Publication).



*Publishers affidavit verifying the above publication shall be submitted to Community and Development Services at least five (5) working days prior to the public hearing.

6. At least thirty (30) days prior to the day of the public hearing before the Board of Adjustments, the applicant shall mail a notice of said hearing by Certified Mail, Return Receipt requested, to owner(s) of property adjacent to, and within thirteen hundred twenty feet (1320') of, the property under consideration for the Variance and to the mineral right's owners and lessees and easement holders, as shown in the records of the office of the Elbert County Assessor.

7. At least twenty-four (24) days prior to the day of the public hearing before the Board of Adjustments, the applicant shall submit to Community and Development Services, the following: the white postal receipts for Certified Mail mailed to the adjacent property owners and the property owners within thirteen hundred twenty feet (1320') of the proposed site as required by these Variance Procedures and requirements; a copy of the note mailed to said property owners; and a list, in alphabetical order, of the adjacent property owners and a map illustrating the location and proximity of the adjacent property owners and property owners within thirteen hundred twenty feet (1320') of the proposed site.

At least five (5) working days prior to the date of the Public Hearing before the Board of Adjustments, the applicant shall submit to Community and Development Services, the green postal Domestic Return Receipts mailed to the adjacent property owners and property owners within thirteen hundred twenty feet (1320') of the proposed site as required by these Variance Procedures and Requirements.

8. The applicant shall also be required to post notice on the property for which the variance is requested at least thirty (30) days prior to the day of the public hearing before the Board of Adjustment. Such notice shall consist of at least one (1) sign facing parallel to each adjacent right-of-way. Such sign(s) shall measure not less than four feet by four feet (4' x 4'), size of letters shall be a minimum of three (3) inches high and such signs shall be erected no further than ten (10) feet beyond the edge of the adjacent right-of-way, on posts which shall locate the bottom of the sign no less than three (3) feet above the ground. All signs shall be clearly legible to persons on the adjacent right-of-way and shall be completed and installed in a neat and professional manner. All signs shall be visible and legible throughout the entire period, and shall read as follows:



"NOTICE OF PUBLIC HEARING"

"Variance from _____ feet to _____ feet for _____ setback."

"Notice is hereby given that the property upon which this sign is posted shall be considered for a change in _____ from _____ to _____ pursuant to the current Elbert County Zoning Regulations. Further information may be obtained by calling Community and Development Services at 621-3136. The public hearing is to be held on _____ (day of week), _____ (month) _____ (year), at _____ (time AM), or as soon as possible thereafter. Said hearings to be held in the Hearing Room of the Elbert County Commissioners at Kiowa, Colorado."

Name of Proposal:
Project Number:
Date of Posting:

- 9. Signs advertising the variance in Elbert County must be photographed and submitted to the applicant's file in Community and Development Services per the following form:

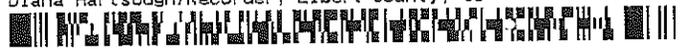
(ATTACH PHOTO HERE)

The above sign was posted on _____, pursuant to the current Elbert County Zoning Regulations by _____ (name of applicant).

Project Name and Number:
Signature of Applicant/Representative:
Signed and sworn before me this date:

NOTARIZED BY:

Project Review:



Further requirements include:

- a. Notarized affidavit verifying the date of the sign posting required at least thirty (30) days prior to the Board of Adjustments hearing date.
 - b. This affidavit must be submitted to Community and Development Services at least twenty-four (24) days prior to the Board of Adjustments hearing date.
10. As part of the variance process, all work on the structure(s) involved must cease immediately. Failure to stop building will result in an automatic denial of the variance.
11. Appeal on any action (other than continuance) of the Board of Adjustment is to the District Court in and for Elbert County. Such appeal must be filed within thirty (30) days of the date the Board of Adjustments took action.

E. ADMINISTRATIVE VARIANCE

The Community and Development Services Director, or person designated from Community and Development Services by the Community and Development Services Director, shall have the ability to grant an Administrative Variance.

Per Resolution 94-252, approved December 21, 1994, the Administrative Variance provisions shall be invoked only in cases where the applicant can demonstrate that their request is minor in nature and meets the threshold/criteria established below and within Part I, Section 3 (E).

1. The Community and Development Services director may grant an Administrative Variance, upon prior approval by the Board of County Commissioners, for those items listed in Part I, Section 3(B)(1)a, et seq., where the total encroachment/adjustment does not exceed 15%. If the Board of County Commissioners recommends that an applicant proceed through the discretionary variance process, this Administrative Variance procedure shall not be used.
 2. A decision by the Community and Development Services director to deny such Administrative Variance request may be appealed to the Board of Adjustments in accordance with Part I, Section 3(E)(g) of the Zoning Regulations.
1. Procedure
- a. The applicant shall discuss the variance request informally with Community and Development Services to learn what materials and what steps are necessary for the application:
 - b. A formal application shall be submitted to Community and Development Services and shall consist of the following:
 - 1) Completed application form.



- 2) Proof of ownership of the land on which the appeal is requested.
- 3) Application fee - see current fee schedule.
- 4) A site plan indicating what the variance is and where it will be on the affected property. Such plan shall be drawn to scale and include the height and setbacks of all existing and proposed structures.
- 5) Any other information Community and Development Services may deem necessary.

- c. Community and Development Services shall review the variance application and conduct a site inspection within ten (10) working days.
- d. Upon receiving notification by Community and Development Services that the application is complete, the applicant shall mail the following notice by certified return receipt mail to owners of property adjacent to, and within thirteen hundred twenty feet (1320'), of the property and to the mineral right's owners and lessees and easement holders, as shown in the records of the Office of the Elbert County Assessor. The notice shall be mailed at least fifteen (15) days prior to the action date.
- e. As part of the administrative variance process, all work on the structure(s) involved must cease immediately. Failure to stop building will result in an automatic denial of the administrative variance.

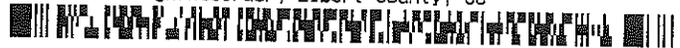
"NOTICE OF PUBLIC HEARING BEFORE THE ADMINISTRATIVE VARIANCE HEARING OFFICER"

"Variance from ___ feet to ___ feet for _____ setback."

"Notice is hereby given that on _____ (day of week), _____ (month) ____ (year), at _____ (time A.M./P.M.), or as soon as possible thereafter, the Community and Development Services Director will act upon the Administrative Variance application on file with Elbert County Community and Development Services, 215 Comanche Street, Kiowa, Colorado 80117, Telephone: 621-3136, by _____ (name of applicant) for a Variance pursuant to the current Elbert County Zoning Regulations. The affected property is located approximately _____ (distance and direction from nearest major intersection. Any comments must be submitted in writing to Elbert County Community and Development Services, P.O. Box 7, Kiowa, CO 80117, by _____ (date)."

Project Name and Number: _____
 Legal Description of Property: _____
 Reason for Variance: _____
 Date of Application: _____

- e. At least five (5) days prior to the action date the applicant shall submit to Community and Development Services:
 - 1) The white postal receipts from the notices mailed.
 - 2) A copy of the notice mailed.
 - 3) An alphabetical list and a map illustrating the location and proximity of owners of property adjacent to, and within thirteen hundred twenty feet (1320') of the



- property under consideration.
- f. On the action date a public hearing will be conducted by a designated Administrative Variance Hearing Officer and a Secretary.
 - g. By the action date the applicant must submit to Community and Development Services the green postal receipts.
 - h. Any party wishing to object to the decision made by the Community and Development Services Director, or designated Administrative Variance Hearing Officer, shall file their objection(s) within fifteen (15) days from the action date to Community and Development Services. The letter of appeal will be submitted to the Board of County Commissioners at their first available scheduled meeting after receipt of the letter. The Board of County Commissioners will consider the appeal and make a decision based on their best judgment.