

Chapter 17.23
VARIANCES AND MODIFICATIONS

SECTIONS:

17.23.010 Variances

17.23.020 Administrative Modifications

17.23.010 Variances

- A. Purpose.** The variance process is intended to provide limited relief from the requirements of the Land Use Code in cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this Code. A hardship may be defined as an instance when the code renders the land difficult or impossible to use due to unique physical site attributes or other unique characteristics. It is not intended that variances be granted to (1) allow a use in a zoning district where it is not permitted by Code; or (2) to remove inconveniences or financial burdens that the requirements of this Code may impose on property owners in general. State and/or federal laws or requirements may not be varied by the City.
- B. Applicability.** A variance is an exception from the numerical requirements of this Title excluding the numerical standards contained in Chapter 13 (Design Standards) and Chapter 15 (Signs). Variances to allowed or conditional uses are not permitted.
1. **Board of Adjustment Approval Required**
 - a. The owner of a property or business seeking relief from the regulations and development standards, or an authorized representative may make such request to the Board of Adjustment.
 - b. This may be done when the strict application of this Code will deprive a property of the privileges enjoyed by other property of the same zoning classification in the same zone district because of special circumstances applicable to a property, including its size, shape, topography, location, or surroundings.
 - c. Variance applications may be initiated concurrently with other land use applications.
- C. Procedure.** Variances are reviewed and acted upon at a public hearing before the Board of Adjustment with the exception of variances for signs which are reviewed and acted upon at a public hearing before the City Council as per Chapter 08.
1. Variances shall be processed in accordance with the Procedures outlined in Section 17.07.040, Common Development Review Procedures.
 - a. **Final Decision.** Any decision of the Board of Adjustment shall be final, from which an appeal may be taken to a court of competent jurisdiction, as provided in accordance with Section 31-23-307, C.R.S.

- b. Reconsideration of Denial of Variance. Whenever the Board of Adjustment denies an application for a variance, such action may not be reconsidered by the Board for one (1) year unless the applicant clearly demonstrates that circumstances affecting the subject property have substantially changed, or new information is available that could not with reasonable diligence have been presented at the previous hearing.
 - i. Nothing contained in this Section shall preclude the submission of a substantially new application as determined by the Community Development Director or the City Engineer.

D. Approval Criteria. The Board of Adjustment may approve a variance request upon finding that the variance application meets or can meet the following approval criteria:

1. The variance granted is without substantial detriment to the public good and does not impair the intent and purposes of this Title and the Comprehensive Plan, including the specific regulation in question;
2. By reason of exceptional narrowness, shallowness, depth, or shape of a legal lot of record at the time of enactment of this Title, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such property, the strict application of the subject regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the owner of such property;
3. A variance from such strict application is reasonable and necessary so as to relieve such difficulties or hardships, and the variance will not injure the land value or use of, or prevent the access of light and air to, the adjacent properties or to the area in general or will not be detrimental to the health, safety and welfare of the public;
4. The circumstances found to constitute a hardship are not due to the result or general conditions throughout the zone, was not induced by any action of the applicant, and cannot be practically corrected, and;
5. The variance granted is the minimum necessary to alleviate the exceptional difficulty or hardship.

17.23.020 Administrative Modifications.

A. Purpose. The administrative adjustment procedure is intended to allow minor modifications or deviations from the dimensional or numeric standards of this Code with approval by the Director. Administrative adjustments are intended to provide greater flexibility when necessary, without requiring a formal zoning amendment or variance. The administrative adjustment procedure is not a waiver of current standards of this Code and shall not be used to circumvent the variance procedure.

B. Applicability

1. *Exceptions for Energy Efficiency.* The Community Development Director may approve exceptions to the dimensional restrictions of the Land Use Code to accommodate the addition of energy production systems or energy efficiency systems or equipment in or on existing buildings when no other practical solution exists, due to unique site circumstances.

2. *Exceptions for Building Code Compliance.* The Community Development Director may approve exceptions to the dimensional restrictions of the Land Use Code to accommodate improvements required to achieve compliance with building, fire, or accessibility codes in or on existing buildings when no other practical solution exists, due to unique site circumstances.

C. Allowed Administrative Adjustments. The following administrative modifications are permitted, subject to review and approval by the Community Development Director.

Table 17.23.020.C: Allowed Administrative Adjustments	
Code Standard	Allowable Administrative Adjustment (maximum percentage)
Site Standards	
Lot area, minimum	15%
Lot coverage, maximum	15%
Lot Dimensional Standards	
Front setback, minimum	10%
Side setback, minimum	10%
Rear setback, minimum	10%
Encroachment into setback	10%
Building Standards	
Building height, maximum (excludes wireless communication facilities)	10%
Accessory building height, maximum (excludes wireless communication facilities)	10%
Development Standards	
Number of required parking spaces, maximum or minimum	15%
Minimum landscaping requirements	15%

1. *Reasonable Accommodations for Energy Efficiency or Building Code Compliance*
 - a. In response to a written application identifying energy efficiency or building code compliance that require that reasonable accommodations be made, the Director is authorized to take any of the following actions in order to provide reasonable accommodations without the need for a rezoning or variance:
 - i. Modify any facility spacing, building setback, height, lot coverage, or landscaping requirement by no more than ten (10) percent; or
 - b. The Director may approve a type of reasonable accommodation different from that requested by the applicant if the Director concludes that a different form of accommodation would satisfy the requirements of the energy efficiency or building code compliance with fewer impacts on adjacent areas. The decision of the Director shall be accompanied by written findings of fact.
 - c. Requests for types of accommodation that are not listed above may only be approved through a variance or rezoning process.

D. Limitations on Administrative Adjustments.

1. Except when requested as a reasonable accommodation for energy efficiency and building code compliance purposes, a request for an Administrative Adjustment shall not be used to further modify a development standard that, as applied to the subject property, already qualifies as an exception to, or modification of, a generally applicable development standard required under this Title.
2. The administrative adjustment procedure shall not apply to any proposed modification or deviation that results in:
 - a. An increase in the overall project density;
 - b. A change in permitted uses or mix of uses;
 - c. A deviation from building or fire codes;
 - d. A deviation from the City's Engineering Standards;
 - e. Requirements for public roadways, utilities, or other public infrastructure or facilities; or
 - f. A change to a development standard where that same standard was already modified through a separate administrative adjustment or variance.

E. Administrative Adjustment Procedure.

1. Application Submittal and Handling.
 - a. An application for an administrative adjustment shall only be submitted to address a project under construction or existing conditions. It is not applicable to applications going through a review.
 - b. Each code standard in Table 17.23.070.C shall be considered a separate administrative adjustment request as it relates to the approval criteria in Subsection F, but multiple adjustments may be considered in one (1) administrative adjustment application.
2. Review and Decision.
 - a. The Community Development Director must first determine that the visual impact of the exemption is minimal and that no other reasonable way to implement energy production or efficiency or code compliance exists. The Director may require notice be provided to adjacent landowners.
 - b. The Director shall review the application and shall approve, approve with conditions, or deny the adjustment based on the criteria in Subsection F. Approval shall be in the form of a recordable administrative decision.
3. Effect of Approval. Approval of an administrative adjustment authorizes only the particular adjustment of standards approved, and only to the subject property of the application.
4. Expiration of Administrative Adjustment. An administrative adjustment shall automatically expire if the associated development is later adjusted, modified, or redeveloped as part of a land use application or building permit that brings the property or building into compliance with the applicable code requirement.

F. Administrative Adjustment Approval Criteria. In reviewing a proposed administrative adjustment, the Director shall consider whether and to what extent the adjustment:

1. Will not result in incompatible development;
2. Will not result in adverse impacts unless adequately mitigated; and
3. Is of a technical nature and is required to:
 - a. Compensate for an unusual site condition; or
 - b. Eliminate a minor inadvertent failure to comply with a Code standard; or
 - c. Protect a sensitive resource, natural feature, or community asset.