



FREMONT COUNTY – COLORADO

DEPARTMENT OF PLANNING AND ZONING

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STAFF REPORT

Project Name: Rewrite - Chapter 7 Board of Zoning Adjustment

Name(s) Planning and Zoning Director- Daniel Victoria

Request: Rewrite Chapter 7 - B.O.Z.A.

Planning and Zoning has recognized the need for a review and update to the regulations. Staff has made no changes to the following chapter 7 besides a new format, and referenced the new Colorado Rev. Stat., this is noted and highlighted for your review.

Colo. Rev. Stat. § 38-51-108

Current through 2023 Legislative Session

Section 38-51-108 - Improvement location certificate(1) A professional land surveyor may prepare an improvement location certificate for the use of a specific client based upon the professional land surveyor's general knowledge of land boundaries and monuments in a given area whether or not the client is the owner or buyer; except that, if the client is not the owner or buyer, the professional land surveyor shall provide a copy of the certificate to the owner or buyer.(2)(a)(I) A certificate prepared pursuant to subsection (1) of this section shall not be designated as or construed as being a land survey plat or improvement survey plat.(II) Such certificate shall be prominently labeled "improvement location certificate" and contain a statement in the following form:

IMPROVEMENT LOCATION CERTIFICATEI hereby certify that this improvement location certificate was prepared for (individual or firm), that it is not a land survey plat or improvement survey plat, and that it is not to be relied upon for the establishment of fence, building, or other future improvement lines. This certificate is valid only for use by (individual or firm) and describes the parcel's appearance on (date)

I further certify that the improvements on the above described parcel on this date, (insert date), except utility connections, are entirely within the boundaries of the parcel, except as shown, that there are no encroachments upon the described premises by improvements on any adjoining premises, except as indicated, and that there is no apparent evidence or sign of any easement crossing or burdening any part of said parcel, except as noted.

Stamp By (Signed)

or

Seal Date

(b) A professional land surveyor shall assume full liability for each improvement location certificate done by such professional land surveyor or under such professional land surveyor's responsible charge pursuant to paragraph (a) of this subsection (2).

C.R.S. § 38-51-108

Amended by 2013 Ch. 356, § 38, eff. 7/1/2013.L. 94: Entire article R&RE, p. 1521, § 47, effective July 1. L. 2013: (1) and (2)(a)(II) amended, (SB 13-161), ch. 356, p. 2094, § 38, effective July 1.

This section is similar to former § 38-51-105, as it existed prior to 1994.

Proposed Timeline:

Proposed rewrite if viewed as favorable will have an adoption date of April 2024. If any substantial changes are made to this draft, these sections will be presented to this commission for further recommendations.

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CHAPTER 7 Board of Zoning Adjustment (B.O.Z.A.)

Creation and establishment: There is hereby created and established a Board of Zoning Adjustment (B.O.Z.A.), the members of which shall be appointed by the Board of County Commissioners. The Board shall fix per diem compensation for members of B.O.Z.A.

7.1 Membership

- A. Members of the B.O.Z.A. shall be residents of Fremont County.
- B. The B.O.Z.A. shall consist of five (5) regular members and one (1) associate member.
- C. No more than two (2) Planning Commission members can serve on the B.O.Z.A. at the same time.
- D. The associate member, in the event that any regular member is temporarily unable to act because of absence from the County, illness, interest in an item before the B.O.Z.A., or any other cause, shall take the place, temporarily, of the regular member.
- E. The term of a B.O.Z.A. member shall be three (3) years. Members shall be appointed in such a way that at least one (1) member's term of office expires each year.
- F. The Planning Director or his designated representative shall sit, ex-officio, on the B.O.Z.A.
- G. A member or associate member, once qualified, shall thereafter be removed from office by the Board during his term of office only for cause, to include but not be limited to, nonperformance of duty or misconduct or when any member shall fail to be present at three (3) regular meetings during an annual term of the B.O.Z.A., unless such absence is excused by the Chairman and so noted. Removal of a member from office shall occur after written notice to the member, and following a public hearing by the Board, at which the member may be present to address the Board concerning removal from the B.O.Z.A.
- H. In the event of the death, resignation, or removal of any member or associate member before the

expiration of his term, a successor shall be appointed by the Board for the unexpired portion of his term.

7.2 Duties

- A. To vote at the first meeting of each calendar year to elect a chairman and vice chairman from the regular members appointed to the B.O.Z.A. The chairman, or vice chairman in the chairman's absence, shall be responsible for the normal administrative duties of the position.
- B. To meet monthly (if necessary) or at the call of the chairman.
- C. To adopt any rules necessary to transact the B.O.Z.A. business or to expedite its functions consistent with Colorado State Statutes and the provision of this Resolution
- D. To permit the public to attend and to be heard at its meetings.
- E. To keep minutes of its proceedings indicating the vote of each member upon each question; absences and abstentions. To keep records of its examinations and other official action. To file minutes and records in the offices of the Department as public records.
- F. To publish notice of hearings to be held by the B.O.Z.A. Such publication shall be in an official County newspaper at least ten (10) days prior to the hearing and shall be paid for by the applicant. Said notice shall contain:
 - a. Legal description of the property and its street address.
 - b. Present zoning classification of the property and the nature of the variance requested.
 - c. Date, time, and place of hearing.
- G. To vote upon the granting of a variance from the requirements of the zoning resolution. To reverse any order, requirement, decision, or determination of any administrative official or to decide in favor of the applicant or appellant, the concurrence of four (4) members of the B.O.Z.A. shall be required.
- H. To hear and vote on appeals taken by any person aggrieved by an 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.
- I. Any member of the B.O.Z.A. who has a direct or indirect interest in any property or in the decision relating to such property, which is the subject matter of, or is affected by, a decision of the B.O.Z.A., shall be disqualified from participating in discussion, decision, or proceedings of the B.O.Z.A. in connection therewith.
- J. The chairman, or in his absence the vice chairman, may administer oaths and compel the attendance of witnesses upon application to the district court.

7.3 Powers

- A. Interpretation: The B.O.Z.A. shall have the power to interpret this resolution, including any uncertainty as to boundary location, or meaning of wording, so long as this interpretation is not contrary to the purposes and intent of this Resolution.
- B. Upon application for variance, the B.O.Z.A. shall have the power to grant a variance from strict application of the zoning resolution to relieve 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 zoning maps and zoning resolution. Such variance may be granted when the exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the regulation or when exceptional topographic conditions or other extraordinary

and exceptional situation or condition of a parcel of property results in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property.

- C. The B.O.Z.A. shall have the power to grant variances from the provisions of this resolution, but only where all of the following conditions are found to exist:
- a. The variance would not authorize any use other than those enumerated as a use-by-right in the zone district and that the essential character of the zone district would not be altered.
 - b. An unnecessary hardship to the owner could be shown to occur if the provisions of this Resolution were strictly interpreted
 - c. The circumstances found to constitute a hardship either were not created by the owner or were in existence at the time of the passage of this Resolution and cannot reasonably be corrected.
 - d. The variance would not be inconsistent with the intent and purpose of this Resolution or would not prejudicially affect the health, safety, and general welfare of the inhabitants of the County.

7.4 Medical Hardship Waiver:

The B.O.Z.A. shall have the power to grant a temporary waiver of provisions of the zoning resolution in cases where an extreme medical hardship can be shown to exist. This waiver would allow for the temporary placement of one (1) single-wide manufactured home, or one (1) manufactured home on a lot, tract, or parcel that contains an existing dwelling, manufactured home, or single-wide manufactured home. This waiver may only be granted in zone districts that allow single-wide manufactured homes or manufactured homes. The B.O.Z.A. may terminate a hardship waiver if the circumstances of hardship change or if an alternative form of relief for the applicant becomes available. Medical hardship waivers shall be granted for a time period not to exceed one (1) year. Extensions may be granted on a case-by-case basis and shall be done on a yearly basis on a date specified by the B.O.Z.A.

Where feasible, special exception may be made for the purpose of providing access to sunlight for solar energy devices.

7.5 Appeals to B.O.Z.A

Appeals to the B.O.Z.A. may be submitted to the Department by any person aggrieved by an inability to obtain a building permit or by the decision of any administrative official or agency based upon or made in the course of the administration or enforcement of the provisions of the zoning resolution. Appeals to the B.O.Z.A. shall be made in writing and must be made within thirty (30) days from the date on which the appellant was aggrieved by such action. The appeal shall be filed with the Department, which shall schedule a hearing for the next regularly scheduled meeting of the B.O.Z.A. The administrative official whose decision is being appealed shall provide the B.O.Z.A. with all documents constituting the record upon which the appeal is based. The official shall also provide the B.O.Z.A. with a written statement of findings of fact and justification for the decision. The B.O.Z.A. shall have the right to require further information from the appellant or administrative official as it deems necessary. A copy of all documents submitted to the B.O.Z.A. by either the appellant or the administrative official shall be provided to the opposing party at least one week prior to the B.O.Z.A. meeting at which the appeal is heard. The fee for appeals shall be the same as variance requests that are established by resolution of the Board. If the B.O.Z.A. finds in favor of the appellant, the appeal fees will be refunded to the appellant. No appeal to the B.O.Z.A. shall be allowed for building use violations that may be prosecuted pursuant to C.R.S. 30-28-124 (1) (b) as amended.

7.6 Procedure

The B.O.Z.A. shall act in strict accordance with all of the laws of the State of Colorado and regulations or ordinances of the County of Fremont. All applications and appeals to the B.O.Z.A. shall be in writing and on

such form as shall be prescribed by the B.O.Z.A. Every application and appeal shall indicate what provisions of this Resolution are involved, what relief is being sought, and the grounds upon which such appeal is being sought.

7.7 Variance Submittals:

Submittal requirements shall be provided to the Department, accompanied by a non-refundable application fee, as established by the Board. The submittal shall be at least twenty (20) days prior to the regularly scheduled B.O.Z.A. meeting.

- A. One hardcopy and electronic copy of a complete application accompanied by application fees and the following:
- B. An improvement location certificate or a survey plat for the property, evidencing the location of existing improvements and all proposed improvements. The certificate or plat shall be performed, signed, and sealed by a professional land surveyor registered with the State of Colorado and shall conform to the requirements of C.R.S. ~~38-51-100.3~~ **38-51-108**.
- C. A complete building permit application.

7.7.1 Medical Hardship Waiver

- A. A completed B.O.Z.A. application
- B. A statement on a form provided by the Department from a doctor licensed to practice in the State of Colorado indicating the medical need for a hardship waiver and the requirement of daily assistance.
- C. A letter from the applicant requesting the waiver, explaining the circumstances of the waiver, and listing the occupants of both living units.
- D. A notarized letter on a form provided by the Department from the property owner indicating their knowledge of how the medical hardship waiver is administered and stating that the temporary single-wide manufactured home or the temporary manufactured home shall be removed within ninety (90) days of the date the hardship ceases or the B.O.Z.A. terminates the waiver.
- E. An improvement location certificate or a survey plat for the property evidencing the location of existing improvements and all proposed improvements. The certificate or plat shall be performed, signed, and sealed by a professional land surveyor registered with the State of Colorado.
- F. A complete building permit application.
- G. Extensions of a Medical Hardship Waiver: Extensions may be granted in one (1) year increments provided the following is submitted to the Department by the submittal deadline of the monthly B.O.Z.A. meeting for the month in which the waiver is to expire:
 - a. A letter from the applicant stating that the circumstances found to constitute the hardship still exist and have not materially changed;
 - b. A letter from a doctor advising the B.O.Z.A. on the status of the medical hardship.
 - c. In addition to the above, no extension will be granted until the Department performs an on-site inspection to determine if the applicant is in compliance with the conditions of the waiver for which extension is being sought.

7.8 Additional Requirements:

In granting a variance, the B.O.Z.A. may impose additional requirements on the applicant as a condition of approval.

7.9 Attendance of Applicant

All applicants and/or their representative must attend the B.O.Z.A. meeting at which their request is to be heard. In addition, the B.O.Z.A. may require the presence of the applicant at its meeting for which a hardship waiver extension is to be considered.

7.10 Term of Variance

Construction for all variances granted shall be completed within one (1) year after date of approval of variance.

7.11 Appeals of a decision by the B.O.Z.A

Any further appeal from the decision of the B.O.Z.A. shall be made to the Court, as provided by court rule or state statute.

7 BOARD OF ZONING ADJUSTMENT:

7.1 Creation and establishment: There is hereby created and established a Board of Zoning Adjustment (*B.O.Z.A.*), the members of which shall be appointed by the Board of County Commissioners. The Board shall fix per diem compensation for members of *B.O.Z.A.*

7.2 Membership:

7.2.1 Members of the *B.O.Z.A.* shall be residents of Fremont County.

7.2.2 The *B.O.Z.A.* shall consist of five (5) regular members and one (1) associate member.

7.2.2.1 No more than two (2) Planning Commission members can serve on the *B.O.Z.A.* at the same time.

7.2.2.2 The associate member, in the event that any regular member is temporarily unable to act because of absence from the County, illness, interest in an item before the *B.O.Z.A.*, or any other cause, shall take the place, temporarily, of the regular member.

7.2.3 The term of a *B.O.Z.A.* member shall be three (3) years. Members shall be appointed in such a way that at least one (1) member's term of office expires each year.

7.2.4 The Planning Director or his designated representative shall sit, ex-officio, on the *B.O.Z.A.*

7.2.5 A member or associate member, once qualified, shall thereafter be removed from office by the Board during his term of office only for cause, to include but not be limited to, nonperformance of duty or misconduct or when any member shall fail to be present at three (3) regular meetings during an annual term of the *B.O.Z.A.*, unless such absence is excused by the Chairman and so noted. Removal of a member from office shall occur after written notice to the member, and following a public hearing by the Board, at which the member may be present to address the Board concerning removal from the *B.O.Z.A.*

7.2.6 In the event of the death, resignation, or removal of any member or associate member before the expiration of his term, a successor shall be appointed by the Board for the unexpired portion of his term.

7.3 Duties:

7.3.1 To vote at the first meeting of each calendar year to elect a chairman and vice chairman from the regular members appointed to the *B.O.Z.A.* The chairman, or vice chairman in the chairman's absence, shall be responsible for the normal administrative duties of the position.

- 7.3.2** To meet monthly (*if necessary*) or at the call of the chairman.
- 7.3.3** To adopt any rules necessary to transact the B.O.Z.A. business or to expedite its functions consistent with Colorado State Statutes and the provision of this Resolution.
- 7.3.4** To permit the public to attend and to be heard at its meetings.
- 7.3.5** To keep minutes of its proceedings indicating the vote of each member upon each question; absences and abstentions. To keep records of its examinations and other official action. To file minutes and records in the offices of the Department as public records.
- 7.3.6** To publish notice of hearings to be held by the B.O.Z.A. Such publication shall be in an official County newspaper at least ten (10) days prior to the hearing and shall be paid for by the applicant. Said notice shall contain:
- 7.3.6.1** Legal description of the property and its street address.
- 7.3.6.2** Present zoning classification of the property and the nature of the variance requested.
- 7.3.6.3** Date, time, and place of hearing.
- 7.3.7** To vote upon the granting of a variance from the requirements of the zoning resolution. To reverse any order, requirement, decision, or determination of any administrative official or to decide in favor of the applicant or appellant, the concurrence of four (4) members of the B.O.Z.A. shall be required.
- 7.3.8** To hear and vote on appeals taken by any person aggrieved by an 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.
- 7.3.9** Any member of the B.O.Z.A. who has a direct or indirect interest in any property or in the decision relating to such property, which is the subject matter of, or is affected by, a decision of the B.O.Z.A., shall be disqualified from participating in discussion, decision, or proceedings of the B.O.Z.A. in connection therewith.
- 7.3.10** The chairman, or in his absence the vice chairman, may administer oaths and compel the attendance of witnesses upon application to the district court.

7.4 Powers:

7.4.1 Interpretation: The B.O.Z.A. shall have the power to interpret this resolution, including any uncertainty as to boundary location, or meaning of wording, so long as this interpretation is not contrary to the purposes and intent of this Resolution.

7.4.2 Upon application for variance, the B.O.Z.A. shall have the power to grant a variance from strict application of the zoning resolution to relieve 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 zoning maps and zoning resolution. Such variance may be granted when the exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the regulation or when exceptional topographic conditions or other extraordinary and exceptional situation or condition of a parcel of property results in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property.

7.4.3 The B.O.Z.A. shall have the power to grant variances from the provisions of this resolution, but only where all of the following conditions are found to exist:

7.4.3.1 The variance would not authorize any use other than those enumerated as a use-by-right in the zone district and that the essential character of the zone district would not be altered.

7.4.3.2 An unnecessary hardship to the owner could be shown to occur if the provisions of this Resolution were strictly interpreted.

7.4.3.3 The circumstances found to constitute a hardship either were not created by the owner or were in existence at the time of the passage of this Resolution and cannot reasonably be corrected.

7.4.3.4 The variance would not be inconsistent with the intent and purpose of this Resolution or would not prejudicially affect the health, safety, and general welfare of the inhabitants of the County.

7.4.4 Medical Hardship Waiver: The B.O.Z.A. shall have the power to grant a temporary waiver of provisions of the zoning resolution in cases where an extreme medical hardship can be shown to exist. This waiver would allow for the temporary placement of one (1) single-wide manufactured home, or one (1) manufactured home on a lot, tract, or parcel that contains an existing dwelling, manufactured home, or single-wide manufactured home. This waiver may only be granted in zone districts that allow single-wide manufactured homes or manufactured homes. The B.O.Z.A. may terminate a hardship waiver if the circumstances of hardship change or if an alternative form of relief for the applicant becomes available. Medical hardship waivers shall be granted for a time period not to exceed one (1) year. Extensions may be granted on a case-by-case basis and shall be done on a yearly basis on a date specified by the B.O.Z.A.

7.4.5 Where feasible, special exception may be made for the purpose of providing access to sunlight for solar energy devices.

7.5 Appeals to the Board of Zoning Adjustment: Appeals to the B.O.Z.A. may be submitted to the Department by any person aggrieved by an inability to obtain a building permit or by the decision of any administrative official or agency based upon or made in the course of the administration or enforcement of the provisions of the zoning resolution. Appeals to the B.O.Z.A. shall be made in writing and must be made within thirty (30) days from the date on which the appellant was aggrieved by such action. The appeal shall be filed with the Department, which shall schedule a hearing for the next regularly scheduled meeting of the B.O.Z.A. The administrative official whose decision is being appealed shall provide the B.O.Z.A. with all documents constituting the record upon which the appeal is based. The official shall also provide the B.O.Z.A. with a written statement of findings of fact and justification for the decision. The B.O.Z.A. shall have the right to require further information from the appellant or administrative official as it deems necessary. A copy of all documents submitted to the B.O.Z.A. by either the appellant or the administrative official shall be provided to the opposing party at least one week prior to the B.O.Z.A. meeting at which the appeal is heard. The fee for appeals shall be the same as variance requests that are established by resolution of the Board. If the B.O.Z.A. finds in favor of the appellant, the appeal fees will be refunded to the appellant. No appeal to the B.O.Z.A. shall be allowed for building use violations that may be prosecuted pursuant to C.R.S. 30-28-124 (1) (b) as amended.

7.6 Procedure: The B.O.Z.A. shall act in strict accordance with all of the laws of the State of Colorado and regulations or ordinances of the County of Fremont. All applications and appeals to the B.O.Z.A. shall be in writing and on such form as shall be prescribed by the B.O.Z.A. Every application and appeal shall indicate what provisions of this Resolution are involved, what relief is being sought, and the grounds upon which such appeal is being sought.

7.6.1 Variance: At least ten (10) copies of the following submittal requirements shall be provided to the Department, accompanied by a non-refundable application fee, as established by the Board. The submittal shall be at least twenty (20) days prior to the regularly scheduled B.O.Z.A. meeting.

7.6.1.1 A completed B.O.Z.A. application.

7.6.1.2 An improvement location certificate or a survey plat for the property, evidencing the location of existing improvements and all proposed improvements. The certificate or plat shall be performed, signed, and sealed by a professional land surveyor registered with the State of Colorado and shall conform to the requirements of C.R.S. ~~38-51-100.3~~.

7.6.1.3 A complete building permit application.

7.6.2 Medical Hardship Waiver: At least ten (10) copies of the following submittal requirements shall be provided to the Department, accompanied by a non-refundable

application fee, as established by the Board. The submittal shall be at least twenty (20) working days prior to the regularly scheduled B.O.Z.A. meeting.

7.6.2.1 A completed B.O.Z.A. application.

7.6.2.2 A statement on a form provided by the Department from a doctor licensed to practice in the State of Colorado indicating the medical need for a hardship waiver and the requirement of daily assistance.

7.6.2.3 A letter from the applicant requesting the waiver, explaining the circumstances of the waiver, and listing the occupants of both living units.

7.6.2.4 A notarized letter on a form provided by the Department from the property owner indicating their knowledge of how the medical hardship waiver is administered and stating that the temporary single-wide manufactured home or the temporary manufactured home shall be removed within ninety (90) days of the date the hardship ceases or the B.O.Z.A. terminates the waiver.

7.6.2.5 An improvement location certificate or a survey plat for the property evidencing the location of existing improvements and all proposed improvements. The certificate or plat shall be performed, signed, and sealed by a professional land surveyor registered with the State of Colorado.

7.6.2.6 A complete building permit application.

7.6.2.7 Extensions of a medical hardship waiver extensions: Extensions may be granted in one (1) year increments provided the following is submitted to the Department by the submittal deadline of the monthly B.O.Z.A. meeting for the month in which the waiver is to expire:

7.6.2.7.1 A letter from the applicant stating that the circumstances found to constitute the hardship still exist and have not materially changed;

7.6.2.7.2 A letter from a doctor advising the B.O.Z.A. on the status of the medical hardship.

7.6.2.7.3 In addition to the above, no extension will be granted until the Department performs an on-site inspection to determine if the applicant is in compliance with the conditions of the waiver for which extension is being sought.

7.7 ADDITIONAL REQUIREMENTS FOR VARIANCE OR MEDICAL HARDSHIP WAIVER: In granting a variance, the B.O.Z.A. may impose additional requirements on the applicant as a condition of approval.

7.8 Attendance of Applicant: All applicants and/or their representative must attend the B.O.Z.A. meeting at which their request is to be heard. In addition, the B.O.Z.A. may

require the presence of the applicant at its meeting for which a hardship waiver extension is to be considered.

7.9 Term of variance: Construction for all variances granted shall be completed within one (1) year after date of approval of variance.

7.10 Appeal of a decision by the B.O.Z.A.: Any further appeal from the decision of the B.O.Z.A. shall be made to the Court, as provided by court rule or state statute.