

FREMONT COUNTY BOARD OF ZONING ADJUSTMENT VARIANCE HANDOUT INFORMATION

The Fremont County Board of Zoning Adjustment (BOZA) hears requests from property owners for variance from the Fremont County Zoning Resolution, issuance of Medical Hardship Waivers and appeals of interpretations of the Zoning Resolution made by the Fremont County Department of Planning and Zoning (Department).

The BOZA is a quasi-judicial board that consists of five (5) regular members and one (1) associate member (*non-voting unless a regular member is absent or has a conflict of interest with an item being heard*). The members are residents of Fremont County, appointed by the Fremont County Board of County Commissioners to terms of varying length. A Department representative attends the meetings as an ex-officio (*non-voting*) BOZA member.

The BOZA renders final decisions and the only appeal to a BOZA decision is to file for an appeal in District Court within thirty (30) days of the date the decision was rendered. An appeal of the BOZA decision may be filed by the applicant or by a neighborhood property owner if either does not agree with a decision of the BOZA.

The BOZA is not a simple majority board. To grant any variance the concurring vote of a minimum of four (4) members is required.

BOZA meetings are public hearings that must meet all requirements of Colorado State Law regarding such meetings. Each meeting is attended by Department Staff who take meeting minutes and keep the official records of the BOZA. The BOZA regular meeting date is the third (3rd) Tuesday of the month and the regular meeting time is 5:30 p.m. Meetings are held at the Fremont County Administration Building in Room LL3 (615 Macon Avenue, Cañon City, Colorado). The BOZA only meets when applications have been submitted or the BOZA has internal business to administer.

A variance is by definition of the Zoning Resolution “A device which grants a property owner relief from certain provisions of a zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to make more money.”

The BOZA may grant variances 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, if the request does not have negative impacts to the neighborhood, if the request will not create health, safety and welfare concerns for the residents of the County and if the request does not conflict with other rules, regulations or laws. A variance may be granted if the request is consistent with the intent and purpose of the Zoning Resolution. Variances may be granted when the exceptional narrowness, shallowness, shape of a specific property, exceptional topographic condition or an extraordinary and exceptional situation or condition of a property that was created prior to adoption of the current Zoning Resolution and its subsequent amendments results in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the owner

of such property. The BOZA shall have the power to grant variances to the provisions of the Zoning Resolution only where all of the following conditions are found to exist:

1. The variance would not authorize any use other than those enumerated as a use-by-right (*permitted, conditional, special review or temporary use*) in the Zone District of the subject property and that the essential character of the Zone District would not be altered by the granting of said variance.
2. An unnecessary hardship to the owner could be shown to occur if the provisions of the Zoning Resolution were strictly interpreted and enforced.
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 the Zoning Resolution and cannot reasonably be corrected.
4. The variance, if granted, would not be inconsistent with the intent and purpose of the Zoning Resolution and would not prejudicially affect the health, safety and general welfare of the inhabitants of the County.

In general, the BOZA hears requests from applicants that have no other solution to their problem and are not eligible for the issuance of a Building Permit, due to the requirements of the Zoning Resolution. Typically, variance requests are made when the exceptional narrowness, shallowness, shape or due to extreme topographic conditions of a specific property which does not allow the applicant to meet the development requirements (*such as setbacks, lot coverage, maximum building heights, etcetera*) of the Zone District in which the property is located and the applicant has no other means of relief, such as subdivision of the property, property line adjustments or vacation of interior lot lines. The BOZA must determine if the request represents a true hardship upon the property owner, as distinguished from a mere inconvenience or a desire to make more money.

The following is a sequential list of the steps for BOZA application:

1. The applicant shall complete a Department Zoning Verification Form and have it processed by the Department;
2. Applications are made to the BOZA by submitting a minimum of one (1) original set of documents and two (2) copies to the Department along with the appropriate application fee, by 3:00 p.m. on the submittal date. Application submittals shall contain at a minimum the following information:
 - a. A completed application form, in which every item has been addressed and has been signed by the property owner;
 - b. A certified plot plan, prepared, signed and sealed by a Colorado Registered Professional Land Surveyor, that indicates in detail by dimension the size and location of all existing and proposed structures, other manmade improvements (*such as wells, septic systems, utility services, etcetera*), easements along with recording information for the same, natural physical features (*such as streams, gulches, flood plains, cliffs, etcetera*), roadways serving the subject property and other items that may affect the review of the application;
 - c. A copy of the current deed of record for the subject property;
 - d. The appropriate application fee, as set by the Fremont County Board of County Commissioners.

3. The Department will then create a file, conduct research regarding the subject property and its neighborhood, and review the application with its supporting information. *See note.
4. Then the Department will provide the applicant and or their consultant with a Department Comment and Submittal Deficiency Letter. This letter may point out deficiencies in the application that must be corrected and or provide comments that the applicant should address, trying to make sure the application is as adequate for BOZA review as possible. The letter will also tell the applicant how many complete corrected copies of the application must be brought to the Department and provide the applicant with a deadline date for which this must be accomplished.
5. The Department prepares review packets, consisting of Department review information and application information supplied by the applicant for BOZA members and provides them to the BOZA members prior to the scheduled meetings.
6. The Department will prepare a public notice of the public hearing for publication in a local newspaper and delivers the same to the newspaper (*the applicant is responsible for payment of the publication costs to the newspaper and must provide the Department with an executed Affidavit of Publication from the newspaper prior to the meeting*).
7. The Department sends, by regular US Postal delivery, a courtesy notice of the scheduled meeting, to all adjacent property owners and others as may be deemed appropriate by the Department.
8. The applicant or his or her designated representative shall attend the meeting and the BOZA will conduct the meeting taking input regarding the variance request (*anyone wishing to comment on the request may do so*) and either render a decision or may table the request to allow for additional information to be provided for BOZA consideration.

In conclusion, and application to the BOZA should be made as a last resort to resolve the problem. Redesign or relocation of a structure should be considered, prior to application for a variance, if applicable. Subdivision, lot line vacation or lot or boundary line adjustment alternatives should be considered, prior to application for variance. It is recommended that potential applicants schedule an appointment with Department Staff to review the circumstances constituting the need for variance prior to commencing preparation of a BOZA application.

***Note: An additional full application fee will be charged to the applicant, if all deficiencies as per the initial application review letter are not adequately addressed or provided. Each subsequent deficiency review letter will result in another full application fee. All such fees shall be paid along with the deficiency submittal, prior to any further review of the application.**