

## Section 3.6 VARIANCES

- A. **Applicability.** The BOA shall hear requests for variances where it is alleged that the provisions of this Code inflict unnecessary hardship and practical difficulties upon the Applicant.
- B. **Procedure for Approval of Variances.** Applications for approval of variances shall follow the standard development approval process set forth in Section §3.2 of the Estes Valley Development Code, except for the following modifications:
1. *Step 2: Application Timing.* Applications for variances shall be submitted twenty-one (21) days prior to a regularly scheduled meeting of the BOA.
  2. *Step 4: Review and Action by the BOA.* The staff report on an application for a variance shall be forwarded to the BOA. The BOA shall review the application, staff report and public meeting testimony and take final action by either approving, approving with conditions or denying such application. The BOA's decision on the application shall be final.
- C. **Standards for Review.** All applications for variances shall demonstrate compliance with the standards and criteria set forth below:
1. Special circumstances or conditions exist (e.g., exceptional topographic conditions, narrowness, shallowness or the shape of the property) that are not common to other areas or buildings similarly situated and practical difficulty may result from strict compliance with this Code's standards, provided that the requested variance will not have the effect of nullifying or impairing the intent and purposes of either the specific standards, this Code or the Comprehensive Plan.
  2. In determining "practical difficulty," the BOA shall consider the following factors:
    - a. Whether there can be any beneficial use of the property without the variance;
    - b. Whether the variance is substantial;
    - c. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
    - d. Whether the variance would adversely affect the delivery of public services such as water and sewer;
    - e. Whether the Applicant purchased the property with knowledge of the requirement; and
    - f. Whether the Applicant's predicament can be mitigated through some method other than a variance.
  3. No variance shall be granted if the submitted conditions or circumstances affecting the Applicant's property are of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situations.
  4. No variance shall be granted reducing the size of lots contained in an existing or proposed subdivision if it will result in an increase in the number of lots beyond the number otherwise permitted for the total subdivision, pursuant to the applicable zone district regulations.
  5. If authorized, a variance shall represent the least deviation from the regulations that will afford relief.
  6. Under no circumstances shall the BOA grant a variance to allow a use not permitted, or a use expressly or by implication prohibited under the terms of this Code for the zone district containing the property for which the variance is sought.
  7. In granting such variances, the BOA may require such conditions as will, in its independent judgment, secure substantially the objectives of the standard so varied or modified.
- D. **Lapse.** Failure of an Applicant to apply for a building permit and commence construction or action with regard to the variance approval within one (1) year of receiving approval of the variance shall automatically render the decision of the BOA null and void.