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SECTION 13. VARIANCES

1301. BOARD OF ADJUSTMENT (BOA)

1301.1. Selection and Term

- 1301.1.1. The Board of Adjustment (BOA) shall consist of five (5) regular members and two (2) associate members appointed by the Board of County Commissioners (BOCC).
- 1301.1.2. The term of all members shall be three (3) years, subject to reappointment by the BOCC.
- 1301.1.3. Terms shall be staggered so that the term of at least one (1) member will expire each year.
- 1301.1.4. Each member shall be a resident of the County.
- 1301.1.5. Thirty (30) days prior to the expiration of his/her term, a member shall provide the BOCC, in writing, a statement of his/her desire either to be reappointed or to complete his/her term and retire from the BOA.
- 1301.1.6. Any member may be removed for cause by the BOCC upon written charges and after a public hearing.

1301.2. Officers

- 1301.2.1. At the first regular meeting of each year the members shall elect a Chairperson and Vice-Chairperson from its members, whose term shall be for one (1) year.
- 1301.2.2. At the first regular meeting of each year the members shall elect a Secretary, whose term shall be for one (1) year. Such Secretary is not required to be a member of the BOA.
- 1301.2.3. The Chairperson shall preside at meeting and shall perform all duties usual and ordinary for the presiding officer. The Vice-Chairperson shall perform the duties of the Chairperson in the absence of the Chairperson.
- 1301.2.4. The Secretary shall keep a recording and written detailed summary of all meetings, in accordance with Colorado Revised Statutes (CRS).

1301.3. Meetings and Quorum

- 1301.3.1. Regular meetings of the BOA shall be scheduled at least one per month in the County at a time and place to be determined by the BOA.
- 1301.3.2. Special meetings of the BOA shall be held at the call of the Chairperson and at such other times as determined by the BOA.
- 1301.3.3. All meetings shall be open to the public.
- 1301.3.4. A quorum of the BOA shall consist of three (3) members in attendance at the meeting for the purpose of conducting administrative business, and four (4)

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members in attendance at a meeting for gathering testimony or evidence or reaching decisions on any matter brought to the BOA pursuant to subsections 1302 and 1303 hereof. The concurring vote of four (4) members of the BOA shall be necessary to take affirmative action for:

1301.3.4.1. Variances from the Zoning Regulations; and

1301.3.4.2. Appeals of administrative variance decisions

1301.3.5. In the event that a regular member is absent from a meeting, an associate member shall be appointed to fill the temporary vacancy. Proxies shall not be permitted.

1302. BOARD OF ADJUSTMENT VARIANCES

1302.1. Variances from Zoning Regulations

1302.1.1. The BOA shall hear and decide applications for variances from these Regulations. The BOA may grant a variance for a legal lot or a lot for which an application for legalization under Sections 1505, 1506, or 1507 of the *Clear Creek County Subdivision Regulations* has been submitted to the County. The BOA may grant a variance for a legal structure or a structure for which an application for legalization under Sections 1505, 1506, or 1507 of the *Clear Creek County Subdivision Regulations* has been submitted to the County.

The BOA shall hear and decide applications for variance requests where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the regulation from which a variance is sought, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of such regulation would result in a peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, a variance from the strict application so as to relieve such difficulties or hardship may be granted by the BOA if such relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning regulations.

1302.1.2. The Variance process is not meant to be used to avoid the typical rezoning process. A variance shall not be granted for anything which is prohibited by the zoning regulations. Nor shall a variance be granted for a self-imposed hardship.

1302.1.3. Under no circumstances shall a variance be granted on the sole basis of personal convenience, profit, or special privilege to the owner/applicant.

1302.1.4. Economic hardship alone is not sufficient justification for the granting of variances.

1302.1.5. Any parcel(s) which is the subject of a variance request must otherwise comply with all other zoning regulations.

1302.1.6. A variance is granted for a particular structure or use. It terminates in accordance with Section 1309 of these Regulations.

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1302.2. Request to Encroach into a Setback

The BOA has the authority to authorize the encroachment of new construction into a setback.

1302.3. Acknowledgement of an Existing Setback Encroachment

The BOA has the authority to acknowledge existing setback violations. (Setback encroachments of structures more than five (5) years old as of the date of the application may be acknowledged with an Administrative Variance if there is no other need for a variance from the BOA).

1302.4. Request to Amend a Previously Approved Variance

The BOA has the authority to approve an amendment to a previously approved variance for only the things listed below if the criteria for granting a variance are satisfied with respect to the proposed amendment. The standards of approval shall be the same as for the original variance. Proposed changes other than those listed below will require submittal of a full variance application. An amendment may be considered for no more than two of the following in a single application:

- a) An increase in square footage, within the same general footprint, of no more than 10% of the total approved structure or deck.
- b) An increase in the approved setback encroachment of no more than 10%.
- c) An expansion of the structure or deck along the approved setback of no more than 10% of the length of the approved structure or deck.
- d) An increase in the approved height variance of no more than 10%.
- e) A change in approved sign square footage of no more than 10% and of no more than 10% in approved sign height.

1302.5. Request to Exceed Sign Restrictions

The BOA has the authority to grant a variance from the strict interpretation of the SIGNS Section of these Regulations (see Subsection 1004 of Section 10 – Development Standards) when the parcel otherwise complies with Zoning Regulations.

1302.6. Request to Exceed Height Restriction

The BOA has the authority to grant a variance from the strict interpretation of the height regulations within any given zoning district when the parcel otherwise complies with Zoning Regulations.

1302.7. Request to Decrease Lots Less than One (1) Acre

The BOA has the authority to grant a variance to decrease the size of a lot which had been legally created and is less than one (1) acre. The parcel must also be zoned M-1 or MR-1 and must contain an existing permitted principal use. This authority coincides with Sections 803.04.3 and 805.02.2 of Article 8 – Boundary Line Adjustments – of the *Clear Creek County Subdivision Regulations*.

1303. PROCESS FOR BOA VARIANCES

This process shall apply to all BOA variance cases:

1303.1. Pre-application Conference: prior to submittal of any variance application, the applicant(s) shall meet with the Planning Department to determine whether the request meets the criteria for a variance and to explain the procedure and submittal requirements.

1303.2. The applicant shall provide the Planning Department with a complete submittal as outlined in Section 1304 below.

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- 1303.3.** The submittal shall be reviewed in a timely manner for completeness by the Planning Department. The applicant shall be notified of any missing or incomplete documentation. An incomplete submittal shall not be processed.
- 1303.4.** The applicant shall pick up public notice signs from the Planning Department. The applicant shall post and maintain signs on the parcel(s) under consideration a minimum of fifteen (15) calendar days prior to the BOA hearing. The signs shall be placed within ten (10) feet of the property line and visible from the right-of-way, and shall be maintained until the BOA makes a decision.
- 1303.5.** The Planning Department shall conduct a site visit to determine any additional submittal requirements needed (other than those requirements identified in Section 1304 below), and will notify the applicant. The applicant is strongly encouraged to be present during the site visit.
- 1303.6.** The Planning Department will notify property owners whose boundaries are within 100 feet of the subject parcel and any referral agencies that may be affected by the proposed variance. The applicable agencies shall be determined per case and based upon the property development considerations.
- 1303.7.** Adjacent property owners and referral agencies shall be given ten (10) calendar days prior to the BOA public hearing to comment.
- 1303.8.** Based upon the submittal documentation, property development consideration, and comments received, the Planning Department will prepare a staff report and provide a recommendation to the BOA for the public hearing.
- 1303.9.** During the public hearing, the BOA shall evaluate the submittals, referral comments, staff report, and public testimony, and make a decision to approve, approve with conditions, or deny the application. The BOA may also decide to continue the public hearing.
- 1303.10.** Following the BOA decision, the Planning Department shall notify the applicant of what is required to finalize the decision, prepare the final resolution and obtain the BOA Chairperson's signature. The fully executed resolution and all applicable attachments shall be filed with the County Clerk and Recorder's Office.
- 1303.11.** All building permit applications are required to complete a Surveyor Setback Verification Form and / or a Building Envelope Compliance Form, prepared by a licensed Colorado surveyor, which shows that all structures are in conformance with the variance that was granted by the BOA, and / or that shows structures are located within the existing building envelope.
- 1304. SUBMITTAL REQUIREMENTS FOR BOA VARIANCES**
In addition to the submittal requirements listed below, the Planning Department or BOA may request other materials or information as deemed necessary to adequately review the application.
- 1304.1.** Prior to accepting a completed application, the Planning Department shall require written approval from the following agencies, if applicable:
- a) Environmental Health Department: to ensure that the request will comply with all current On-Site Wastewater Treatment System (OWTS) regulations. This is only

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required if there is an OWTS system on site or if one could be installed on the property in the future.

- b) Road & Bridge: to determine if the request will have an adverse impact on County roads and if any mitigation will be required. This is only required if the requested variance will impact setbacks from a County road.

1304.2. Application form as provided by the Planning Department.

1304.3. A narrative and / or supplemental materials which address the requirements of 1302.1, including the following:

- a) the hardship imposed by the zoning regulations and why the requested use cannot comply with the current zoning regulations.
- b) how the variance request will not confer a personal convenience, profit, or special privilege to the owner/applicant.
- c) how the hardship has not been self-imposed by the owner/applicant.

1304.4. The appropriate fee, as established by the BOCC.

1304.5. Deeds or other proof of ownership for the subject property(s). A Deed of Trust is not proof of ownership.

1304.6. A notarized letter of authority from the landowner permitting a representative to process the application, if the applicant is other than the owner(s) of record. The original shall be submitted.

1304.7. Scaled Site Plan – the drawing shall, at a minimum, depict the following:

- (i) Scale and north arrow designated at true north.
- (ii) All existing structures, roads, driveways, easements, rights-of-way, streams, utilities, wells, leach field, and other features.
- (iii) All proposed structures, roads, driveways, and other features.
- (iv) Boundaries of the property on which the variance is proposed.
- (v) Delineate all applicable setbacks. For any setback affected by an approved variance, a surveyor setback verification form will be required for existing structures. For proposed structures, a surveyor setback verification form may be required as part of the building permit process.

1305. PLANNING MANAGER

1305.1.1 The Planning Manager shall have the authority to grant administrative variances from the Zoning Regulations specifically referred to in Section 1306. The Planning Manager may grant a variance for a legal lot or a lot for which an application for legalization under Sections 1505, 1506, or 1507 of the *Clear Creek County Subdivision Regulations* has been submitted to the County. The Planning Manager may grant a variance for a legal structure or a structure for which an application for legalization under Sections 1505, 1506, or 1507 of the *Clear Creek County Subdivision Regulations* has been submitted to the County.

The Planning Manager shall decide applications for variance requests where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the regulation from which a variance is sought, or by reason of

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exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of such regulation would result in a peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, a variance from the strict application so as to relieve such difficulties or hardship may be granted by the Planning Manager if such relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning regulations.

- 1305.1.2.** The Variance process is not meant to be used to avoid the typical rezoning process. A variance shall not be granted for anything which is prohibited by the zoning regulations. Nor shall a variance be granted for a self-imposed hardship.
- 1305.1.3.** Under no circumstances shall a variance be granted on the sole basis of personal convenience, profit, or special privilege to the owner/applicant.
- 1305.1.4.** Economic hardship alone is not sufficient justification for the granting of variances.
- 1305.1.5.** Any parcel(s) which is the subject of a variance request must otherwise comply with all other zoning regulations.
- 1305.1.6.** A variance is granted for a particular structure or use. It terminates in accordance with Section 1309 of these Regulations.

1306. ADMINISTRATIVE VARIANCES

An administrative variance may be issued by the Planning Manager in the following situations:

- 1306.1. Acknowledgement of an Existing Setback Encroachment at Least Five (5) Years Old**
The Planning Manager can acknowledge existing setback violations on structures built under a building permit, or structures for which an application for legalization under Sections 1505, 1506, or 1507 of the *Clear Creek County Subdivision Regulations* has been submitted to the County, more than five (5) years old, as of the date of the application.
- 1306.2. Request an Increase in Footprint Density on Commercially Zoned Parcels**
The Planning Manager has the authority to authorize a footprint for all proposed buildings and structures greater than twenty percent (20%), but not more than twenty-five percent (25%) parcel coverage for construction on vacant parcels with the following zoning designations:
- a) Commercial – Retail/Office (C-RO)
 - b) Commercial – Tourism/Recreation (C-TR)
 - c) Commercial – Outdoor/Recreation (C-OR)
 - d) Commercial – Light Manufacturing (C-LM)
 - e) Commercial – Light Use (C-1) – *Only for requests on parcels greater than one and one-half (1.5) acres.*
- 1306.3. Flexibility in Height Restrictions for Fences and Walls**
The Planning Manager can provide for flexibility in height restrictions for fences and walls, pursuant to Subsection 1006 – Fencing, Walls, and Landscaping Standards - of Section 10 – Development Standards – of these regulations.

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1306.3.1. A written statement from the Colorado Parks and Wildlife Agency or a qualified professional stating there are no significant, unmitigated adverse impacts to wildlife will be required for all variances applied for under this Subsection.

1306.4.

Request to Vary from the Parking Requirements

The Planning Manager has the authority to grant a variance from the strict interpretation of the Off-Street Parking Requirements of these Regulations (see Subsection 1005 of Section 10 – Development Standards), subject to the standards set forth in each zoning designation of these Regulations.

1306.4.1. An application shall include a written explanation describing the hardship, and the reason why the proposed parking cannot or need not be constructed in compliance with the zoning regulations.

1306.5.

Unique Proposal for Parking

The Planning Manager can authorize a variance from the Regulations, where the Parking Index, pursuant to Subsection 1005 – Off-Street Parking Requirements – of Section 10 – Development Standards – of these regulations, does not include the type of uses proposed, and/or there is credible evidence supporting a reduction in the number of spaces needed, for any of the following cases:

- a) Unique Development: when the Parking Index does not include the type of use proposed.
- b) Shared Parking: When a proposal for shared parking is presented.
- c) Satellite Parking: If the number of off-street parking spaces required by the Parking Index cannot reasonably be provided on the same lot where the principal use associated with these parking spaces is located, then spaces may be provided on adjacent or nearby lots.
 - i) If the above is applied for, an application shall address, at a minimum, the criteria below:
 - (1) Detailed explanation and supporting data clearly demonstrating that the Parking Index requirement for off-street parking spaces is inappropriate to meet the needs of the development.
 - (2) A traffic and off-street parking plan, prepared by a transportation engineer or transportation planner who is a member of the Institute of Transportation Engineers. Such plan shall include, but not be limited to, the number of vehicle trips likely to be generated by the proposed development during peak hours, and existing and proposed transportation systems and traffic impacts.

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1307. PROCESS FOR ADMINISTRATIVE VARIANCES

This process shall apply to all administrative variance cases:

- 1307.1.** Pre-application Conference: prior to submittal of any variance application, the applicant(s) shall meet with the Planning Department to determine whether the request meets the criteria for a variance and to explain the procedure and submittal requirements.
- 1307.2.** The applicant shall provide the Planning Department with a complete submittal as outlined in Section 1308 below.
- 1307.3.** The submittal shall be reviewed in a timely manner for completeness by the Planning Department. The applicant shall be notified of any missing or incomplete documentation. An incomplete submittal shall not be processed.
- 1307.4.** The applicant shall pick up public notice signs from the Planning Department. The applicant shall post and maintain signs on the parcel(s) under consideration a minimum of fifteen (15) calendar days prior to the Planning Manager's decision. The signs shall be placed within ten (10) feet of the property line and visible from the right-of-way, and shall be maintained until the Planning Manager makes a decision.
- 1307.5.** The Planning Department shall conduct a site visit to determine any additional submittal requirements needed (other than those requirements identified in Section 1308 below), and will notify the applicant. The applicant is strongly encouraged to be present during the site visit.
- 1307.6.** The Planning Department will notify property owners whose boundaries are within 100 feet of the subject parcel and any referral agencies that may be affected by the proposed variance. The applicable agencies shall be determined per case and based upon the property development considerations.
- 1307.7.** Adjacent property owners and referral agencies shall be given ten (10) calendar days to comment.
- 1307.8.** Upon tentative approval of an administrative variance by the Planning Manager, the Planning Department will notify the applicant of any modifications or requirements needed to finalize the approval. If none, or upon satisfying those conditions, the Planning Manager will issue a written decision, and the fully executed decision and attachments, if applicable, shall be filed with the County Clerk and Recorder's Office. The final decision shall clearly identify findings of fact in support of the variance and confirming that all applicable criteria have been met.
- 1307.9.** Appeals of the Planning Manager's decision may be filed by any affected party and must be submitted in writing to the Planning Department within thirty (30) calendar days following the Planning Manager's final decision. Appeals shall be heard by the BOA as original cases, as if they had not been considered in the administrative process, in accordance with the standards and procedures set forth in this Section 13. Regular variance fees shall apply.
- 1307.10.** Building permit applicants may be required to complete a Surveyor Setback Verification Form and / or a Building Envelope Compliance Form, prepared by a licensed Colorado surveyor, which shows that all structures are in conformance with the administrative variance that was granted, and / or that shows structures are located within the existing building envelope.

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1308. SUBMITTAL REQUIREMENTS FOR ADMINISTRATIVE VARIANCES

In addition to the submittal requirements listed below, the Planning Department may request other materials or information as deemed necessary to adequately review the application.

1308.1. Prior to accepting a completed application, the Planning Department shall require written approval from the following agencies:

- a) Environmental Health Department: to ensure that the request will comply with all current On-Site Wastewater Treatment System (OWTS) regulations. This is only required if there is an OWTS system on site or if one could be installed on the property in the future.
- b) Road & Bridge: to determine if the request will have an adverse impact on County roads and if any mitigation will be required. This is only required if the requested variance will impact setbacks from a County road.

1308.2. Application form as provided by the Planning Department.

1308.3. A narrative and / or supplemental materials which address the requirements of 1302.1, including the following:

- a) the hardship imposed by the zoning regulations and why the requested use cannot comply with the current zoning regulations.
- b) how the variance request will not confer a personal convenience, profit, or special privilege to the owner/applicant.
- c) how the hardship has not been self-imposed by the owner/applicant.

1308.4. The appropriate fee, as established by the BOCC.

1308.5. Deeds or other proof of ownership for the subject property(s). A Deed of Trust is not proof of ownership.

1308.6. A notarized letter of authority from the landowner permitting a representative to process the application, if the applicant is other than the owner(s) of record. The original shall be submitted.

1308.7. Scaled Site Plan – the drawing shall, at a minimum, depict the following:

- (i) Scale and north arrow designated at true north.
- (ii) All existing structures, roads, driveways, easements, rights-of-way, streams, utilities, wells, leach field, and other features.
- (iii) All proposed structures, roads, driveways, and other features.
- (iv) Boundaries of the property on which the variance is proposed.
- (v) Delineate all applicable setbacks. For any setback affected by an approved variance, a surveyor setback verification form will be required for existing structures. For proposed structures, a surveyor setback verification form may be required as part of the building permit process.

1309. TIME LIMITATIONS FOR VARIANCES

If commencement of, or a substantial step toward, construction of a structure for which a variance has been approved does not occur within five (5) years from the date of final approval by the BOA or Planning Manager, the variance will expire (unless by its terms it would expire earlier). The time period may be extended by the approving body, following demonstration on behalf of the applicant(s) that they had

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preceded toward beginning construction with diligence and the failure to begin construction within that time period had been beyond their reasonable control. Application to extend that time period must be submitted by the applicant to the Planning Department not later than fifteen (15) calendar days before the expiration of the variance.

1310. APPEALS OF ADMINISTRATIVE DECISIONS

- 1310.1.** The BOA shall hear and decide appeals where it is alleged by the applicant that there is an error in any order, requirement, decision or refusal of any administrative officer or agent based upon or made in the course of the administration or enforcement of these Regulations including, but not limited to, interpretation of zoning maps.
- 1310.2.** The BOA shall, in conformity with the provision of law, reverse or affirm, in whole or in part, or modify the order requirement, decision, or refusal appealed from.
- 1310.3.** Such appeals shall be filed within thirty (30) calendar days after the date of the administrative decision by filing a written notice with the Planning Department specifying the grounds of the appeal.
- 1310.4.** When an appeal to administrative decision is requested, the following submittal requirements shall be required:
- (i) The applicant shall provide a detailed explanation and supporting data describing why they believe this decision was made in error.
 - (ii) The Planning Department shall provide a detailed explanation and supporting data describing the administrative decision.

1311. APPEALS OF BOA DECISIONS

Decisions made by the BOA may be appealed only to the District Court of the State under Rule 106 of the Colorado Rules of Civil Procedure. BOA decisions may not be appealed to the Board of County Commissioners.