

CLEAR CREEK COUNTY Public and Environmental Health	Board of Health Administrative Procedures	Section 11
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1. Variances

- A. The purpose of this section is to provide a procedure for the Board of Health to consider variances from the design and/or siting requirements of these Regulations.

- B. Any person whose OWTS application has been denied by the health officer pursuant to Section 4.6 may request a variance from these Regulations by the Board of Health. The variance application shall be filed with the Department 30 days after receipt of the notice of denial.

- C. Prohibitions on Granting Variances
 - 1. Variances shall not be granted:
 - a. Where the property can accommodate a conforming OWTS;
 - b. To mitigate an error in construction involving any element of property improvements;
 - c. If it will result in a setback reduction to an offsite physical feature that does not conform to the minimum setbacks defined in Table A-1 of Appendix A without the written consent of the owner of property of said feature. Property lines are considered offsite features;
 - d. If it reduces the separation to ground water or bedrock based on the level of treatment as provided in Table A-2 of Appendix A;
 - e. If it reduces the horizontal setback from a well, unless it also meets the variance requirements of the Board of Examiners of Water Well Construction and Pump Installation Contractors;
 - f. For systems that shall be expanded to provide for additional volume; or
 - g. Solely for economic gain to the property owner.

- D. Criteria for Approval of Variances
 - 1. The Board of Health may grant variances from the provisions of these Regulations where it is necessary to provide a functional system if the following criteria are met:

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- a. Granting the variance does not endanger the public health, safety, and welfare and will result in no greater risk to the public health and environment than a system meeting these Regulations. Consider the following:
 - i. Does granting the variance negatively impact water quality or the environment more than a system meeting these Regulations; and
 - ii. Does granting the variance create a nuisance.
 - b. Granting the variance does not result in the substantial impairment of these Regulations;
 - c. Granting the variance will comply with all applicable state regulations; and
 - d. 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 peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the owner of such property.
- E. Variance Submittal Requirements
1. Variance applications shall include the following:
 - a. A site-specific request identifying the specific Regulation(s) from which a variance is being requested;
 - b. Technical justification by a professional engineer or professional geologist, which indicates the specific conditions which exist and/or the measures which will be taken that support a finding that the variance will result in no greater risk than that associated with compliance with the requirements of these Regulations. Examples of conditions which exist, or measures which might be taken, include but are not limited to the following: evidence of a natural or manmade physical barrier to the movement of effluent to or toward the feature from which the variance is requested; placement of a manmade physical barrier to the movement of effluent to or toward the feature from which the variance is requested; soil replacement with sand filter media to reduce the infiltration rate of the effluent such that the travel time of the effluent from the soil treatment area to the physical feature is no less than the travel time through the native soils at the prescribed setback and treatment level 2;
 - c. A discussion of alternatives considered in lieu of the requested variance;

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- d. Technical documentation for selected alternative, which may include a testing program, which confirms that the variance does not increase the risk to public health and to the environment; and
- e. A statement of the hardship that creates the necessity for the variance.

F. Variance for an Existing System

1. When a proposed variance for a system repair or upgrade would result in encroachment on minimum distances to physical features on neighboring properties, the hearing procedures in Section 11.1.G shall be followed.
2. For the repair of or upgrade to an approved existing system where the existing system does not meet the required separation distances and where the size of the lot precludes adherence to the required distances, a variance to the separation distances may be requested. The repairs or upgrade shall be no closer to features requiring setbacks than the existing facilities. Variances requesting setbacks no closer than existing setbacks do not have to provide technical justification from a professional engineer or professional geologist.

G. Hearing Procedures

1. Every application for a variance shall be made to the Board of Health on a form provided by the Department and shall include all data and documentation that supports the variance request so as to provide all of the information necessary for clear understanding and intelligent action by the Board of Health.
2. The applicant shall bear the burden of supplying the Board of Health with sufficient evidence to document that the variance is justified and meets the criteria for approval.
3. An application fee, as established by the Board of Health, shall accompany all applications.
4. After an application is received, the Board of Health will conduct a hearing at a regularly scheduled meeting to consider the variance. All adjacent property owners will be mailed written notice of the hearing at least 20 days before the hearing.
5. The Board of Health will take action by resolution to approve, approve with conditions, or deny a request. The required findings and any conditions imposed by the Board of Health on an approval, and the reasons for a denial, will be stated in the resolution. A copy of the resolution will be mailed to the applicant.

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6. The variance, and any conditions thereof, will be recorded with the office of the Clear Creek County Clerk and Recorder.

2. Appeal of OWTS Applications Denied by the Health Officer

- A. Any person whose OWTS application has been denied by the health officer pursuant to Section 4.6 may appeal the decision to the Board of Health. The appeal shall be filed with the Department 30 days after receipt of the notice of denial.
- B. The request shall be made in writing and shall state the facts upon which the applicant bases their request for review, the reasons entitling them to relief and the specific relief or outcome that they seek.
- C. The applicant shall bear the burden of supplying the Board of Health with sufficient evidence to document that the health officer erred in its denial of the permit and the proposed system meets these Regulations.
- D. The variance process, not the appeals process, should be followed if the proposed system does not meet these Regulations.
- E. An application fee, as established by the Board of Health, shall accompany all applications.
- F. Hearing Procedures
 1. After an appeals request is received, the Board of Health will conduct a hearing at a regularly scheduled meeting to consider the appeal. The applicant will be mailed written notice of the hearing at least 20 days before the hearing sent by registered or certified mail, return receipt requested.
 2. The Board of Health will take action by resolution to uphold or overrule the denial of the permit. The findings by the Board of Health will be stated in the resolution. A copy of the resolution will be mailed to the applicant by registered or certified mail, return receipt requested.

3. Appeal of Board Decisions

- A. An applicant may seek judicial review of the Board of Health's decision under the provisions of §25-1-515 C.R.S.