

## SECTION 12

### **EXCEPTIONS, SPECIAL EXCEPTIONS, EXEMPTIONS AND VARIANCES**

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#### **12.1 EXCEPTIONS:**

The Board of County Commissioners may grant exceptions to this Code, as the Code relates to the division of land and illegal non-conforming parcels. Any exception granted will be subject to the procedures and criteria in Section 12.3

#### **12.2 EXEMPTION FROM DEFINITION OF SUBDIVISION:**

In addition to the exemptions from the definition of subdivision set forth in Section 2 of this Code, the BOCC may, by resolution, exempt from this definition any division of land if the BOCC determines that said division is not within the purpose of this Code.

#### **12.3 PROCEDURES AND CRITERIA FOR EXCEPTIONS AND EXEMPTIONS:**

- A. An application for any **exception** shall be made by a verified petition of the landowner, stating fully the grounds of the application and the facts relied upon by the petitioner. In the case of an application for exception which relates to a PUD, the petition shall be filed with the preliminary development plan.
- B. An application for an **exemption** from the definition of “subdivision” shall be made by a verified petition of the landowner, stating fully the grounds of the application and the facts relied upon by the petitioner.
- C. An Applicant shall pay the requisite fees at the time of filing the application.
- D. An Applicant for either an exemption or an exception shall mail postcards, available from the Land Use Office, stamped and addressed to all landowners adjacent, adjoining, abutting, and across the road from the affected parcel, as determined by the staff. The postcards will contain sufficient pertinent information about the application to provide notice to the adjacent landowners, including information about how to file comments either in support or opposition to the application.
- E. Prior to being heard by the BOCC, the application shall be reviewed at a properly noticed public hearing, and a recommendation made by, 1) the appropriate Joint Planning Board in the case of an application for an exception or exemption located within an UGMA or an AOI or 2) the County Planning Commission, as provided by the Ouray County Land Use Code.

(12.3)

**F.** In the event the appropriate Joint Planning Board or County Planning Commission fails to make a recommendation on the application as soon as possible, but within sixty (60) days after such referral, the BOCC may proceed to make a finding thereon. The Joint Planning Board or Planning Commission may recommend approval and the BOCC may grant an exception or exemption only upon a finding of all of the facts under either set of criteria contained in subparagraphs (1) and (2) herein below as follows:

**(1)** The applicant/landowner has conveyed real property to the County, subsequent to the effective date of the resolution adopting this section , for easements, public rights-of-way, or for other public projects or public purposes, which results in a division of the said property not occurring as a result of any legal proceeding including, but not limited to, an eminent domain action or inverse condemnation. The granting of the request will not increase the density, which is otherwise allowed by the underlying zoning, by more than one additional unit of density.

or;

**(2)** There are special and unusual circumstances or conditions affecting the property and;

**(a)** The exception or exemption improves the condition of the County as envisioned in the Ouray County Master Plan or, at a minimum, has no net negative impact and;

**(b)** The granting of the exception or exemption will not be detrimental to the public welfare or demonstrably injurious to other property rights and;

**(c)** Granting the request will be consistent with and secure the objectives of this Code and shall be in accordance with any applicable intergovernmental agreements affecting land use or development and;

**(d)** Granting the request will not increase the density otherwise allowable in the underlying zone, unless the applicant provides proof satisfactory to the full Board that:

**i.** This requirement is impractical for the particular request and;

**ii.** the granting of the request will provide substantial benefits for the general public, in which case this requirement must be waived with a unanimous vote of the full Board members present and eligible to vote.



**12.5 APPEALS TO THE BOARD OF ADJUSTMENT (BOA):**

A. The BOA may make special exceptions, approve variances, interpret zoning maps, or similar questions, as provided by C.R.S. 30-28-117, according to the procedures herein.

- (1) Appeals to the BOA may be taken by any persons aggrieved by their inability to obtain a building permit or by the decision of the land use administrator or other employee of the county made in the course of the administration or enforcement of the zoning resolution and land use code.
- (2) No appeal may be taken from the enforcement of the building code or building use violations prosecuted pursuant to C.R.S. 30-28-124(1)(b).
- (3) The BOA may hear matters in which the appellant alleges that there is an error in application of the zoning code, whether an error in interpretation or in application, or matters in which the BOA is asked to approve a variance from the zoning code, or to interpret the zoning code.
- (4) The criteria for review of all appeals and applications for variances shall be as provided in C.R.S. 30-28-118(2)(c), which provides as follows:

Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the regulation or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation enacted under the Land Use Code would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, to authorize, upon an appeal relating to said property, a variance from such strict application so as to relieve such 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 zone plan and zoning resolutions. In determining whether difficulties to, or hardship upon, the owner of such property exist, as used in this paragraph (c), the adequacy of access to sunlight for solar energy devices installed on or after January 1, 1980, may properly be considered. Regulations and restrictions of the height, number of stories, size of buildings and other structures, and the height and location of trees and other vegetation shall not apply to existing buildings, structures, trees, or vegetation except for new growth on such vegetation.

- (5) Any variance granted in accordance with this provision shall expire three years from the date on which it is granted unless the activity,

construction or use for which it is requested has taken place.

(12.5A)

- (6) The concurring vote of all three members is required in order to reverse any order, determination, decision or action of the land use administrator or other county employee, or in order to decide in favor of the appellant on requests for a special exception or variance.

**B. Time for Appeal:**

- (1) An appellant must appeal any unfavorable decision of the land use administrator or other county employee within thirty (30) days of such action.
- (2) An appeal is commenced by filing a written request for a hearing and providing the grounds for the appeal, including the pertinent facts, the decision being appealed, the provisions of this Code being challenged, and the reasons alleged for the decision being in error, or the grounds for a variance or special exception.
- (3) The Chair shall call a meeting for the purpose of public hearing to review the appeal within forty-five (45) days of the filing of the appeal, or at such later date as is agreeable to the appellant and the BOA.
- (4) In the case of appeal from a provision of Section 9, the appellant will ask for an advisory opinion from the visual impact review committee prior to filing an appeal with the BOA, and the time for filing an appeal to the BOA will not begin tolling until the advisory opinion from the visual impact committee has been received.

**C. Fees**

- (1) A fee will be charged for an appeal to the BOA to cover administrative costs associated with an appeal of a land use staff decision.
- (2) A different fee will be charged for a variance application which covers staff time in reviewing and preparing a staff report and recommendation to the Planning Commission and the BOA.
- (3) The fees are as set forth in the Ouray County Land Use Fee schedule, which is amended from time to time. See Resolution 2015-005, and any subsequent amendments.

(12.5)

**D. Procedures**

- (1) Notice of any hearing of the BOA shall be published at least ten (10) days prior to the date of the hearing.
- (2) Any property subject to a hearing shall also be posted with notice of the hearing by the appellant(s) at least ten (10) days prior to the hearing.
- (3) The BOA shall act in strict accordance with all of the other applicable laws of the State of Colorado and the applicable land use regulations of the County.
- (4) Appellants shall be provided opportunity to fully present their case to the BOA and to rebut the case presented by the land use staff, administrator or other county employee whose decision, action, or lack of action is being appealed.
- (5) The public shall also be afforded an opportunity to comment at the public hearing, although the testimony and comments of members of the public may be limited at the discretion of the Chair to a reasonable amount of time, with three (3) minutes being considered the minimum reasonable amount of time which may be allowed for comments from a member of the public.
- (6) All appeals to the BOA shall be in writing.
- (7) Appeals of BOA Decisions: Any persons aggrieved and who are not satisfied by the decision of the BOA may commence an action in the district court for the County, or as otherwise provided by law and the rules of civil procedure.