

## SECTION 4: THE BOARD OF ADJUSTMENT

(orig. 5-6-46)

### A. Rules of Procedure

#### 1. Meetings

- a. Regular meetings of the Board of Adjustment shall be held on the first Wednesday and the third Wednesday of each month at 9:00 a.m. (orig. 5-6-46; am. 3-17-58; am. 4-30-69)
- b. Special meetings may be called by the Chairman and at such other times as the Board may determine. (orig. 5-6-46; am. 12-17-02)
- c. All meetings shall be open to the public. (orig. 5-6-46; am. 12-17-02)
- d. A quorum of the Board of Adjustment shall consist of 4 members. (orig. 5-6-46; am. 12-17-02)
- e. The members of the Board shall attend meetings of the Board in person. (orig. 5-6-46)
- f. The Chairman, or if absent, the Vice Chairman or the Acting Chairman, may administer oaths and compel the attendance of witnesses. (orig. 5-6-46)
- g. The Board shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failing to vote indicating such fact; and it shall also keep records of its examinations and other official actions, all of which shall be filed immediately in the offices of the Board and shall be a public record. (orig. 5-6-46)
- h. The concurring vote of 4 members of the Board shall be necessary to reverse any order, requirement, or decision or determination of the Zoning Administrator or his/her appointed designee, or to decide in favor of the applicant, any matter upon which it is required to pass under the Zoning Resolution, or to effect any variation herein. An Appeal may be taken from any final action of the Zoning Administrator or his/her appointed designee to the Board of Adjustment by any person aggrieved, or by an officer, department, or board of the County. Such Appeal shall be taken within 30 days after the date of the final decision of the Zoning Administrator or his/her appointed designee, by filing with the Zoning Administrator or his/her appointed designee and the Board of Adjustment, a Notice of Appeal specifying the grounds thereof. (orig. 5-6-46; am. 3-28-00; am. 12-17-02; am. 12-14-04)

#### 2. Cases Before the Board

- a. Every application, appeal or petition to the Board shall be made to the Board on forms especially provided, and shall include the data required in such forms so as to supply all of the information necessary for a clear understanding and intelligent action by the Board. (orig. 5-6-46)
- b. Any communication purporting to be an application, appeal or petition shall be regarded as mere notice of intention to seek relief until it is made in the form required. (orig. 5-6-46)
- c. Upon receipt of any such communication, the writer shall be supplied with the proper forms for presenting an application, appeal or petition. If the required data is not submitted within the time provided for Appeal, the case may be dismissed for lack of prosecution. (orig. 5-6-46)
- d. When an Appeal is filed, the Zoning Administrator or his/her appointed designee shall forthwith transmit to the Board of Adjustment, all papers pertaining to the case. (orig. 5-6-46; am. 3-28-00; am. 12-17-02)

#### 3. Calendar of Cases – Notice of Hearing

- a. Not less than 15 days notice of the time and place of a Board of Adjustment hearing shall be

given by posting a sign in a prominent place on the property which is the subject of such application or appeal. (orig. 5-6-46; am. 12-17-02)

- b. Any applicant or appellant, and any resident or taxpayer of Jefferson County, who desires to oppose the application or appeal and be heard at Board hearing, may appear in person, by agent, or by attorney. (orig. 5-6-46; am. 12-17-02; am. 12-14-04)

#### 4. Final Disposition of Cases

- a. Every decision of the Board on any case shall be by Resolution indicating the reasons of the Board's decision. (orig. 5-6-46; am. 12-17-02)
- b. The final disposition of any Appeal from the Zoning Administrator or his/her appointed designee before the Board of Adjustment shall be in the form of a resolution, either affirming, reversing or modifying the order, requirement, decision or determination appealed from. If a resolution fails to receive 4 votes in favor of the appellant upon appeal or of the applicant for a variation from the zoning regulations, the action will be deemed equivalent to a denial, and a resolution denying such application or appeal shall be formally entered upon the record unless there be a member absent at the roll call and unless the vote of each absent member added to those voting for an applicant or appellant would equal 4, in which case the matter will be laid over for hearing before the full Board. (orig. 5-6-46; am. 3-28-00; 12-17-02)
- c. No application or appeal dismissed or denied can be considered again except on a motion to reconsider the vote or on a request for rehearing. No request to grant a rehearing will be entered unless new evidence is submitted which would not have been with due diligence, presented at the previous hearing. (orig. 5-6-46; am. 12-17-02)
- d. The Board may, on a motion by any member, review any decision that it has made and may reverse or modify such decision, but no such review shall prejudice the right of any person who has, in good faith, acted thereon before ruling is reversed or modified. (orig. 5-6-46)

#### 5. Zoning Application

- a. No application for a variation from the course prescribed by this Zoning Resolution shall be heard by the Board of Adjustment except in a specific case and from an order, requirement, decision or determination made by the Zoning Administrator or his/her appointed designee upon the ground that the proposed plan or use is contrary to provision of this Zoning Resolution. (orig. 5-6-46; am. 3-28-00; am. 12-17-02)
- b. No such application shall be entertained unless the application is filed within 30 calendar days after the date of the action of the Zoning Administrator or his/her appointed designee. (orig. 5-6-46; am. 3-28-00; am. 12-17-02; am. 12-14-04)
- c. Upon written request by the applicant, a case can be continued or held inactive prior to public hearing for a period not exceeding 60 calendar days. After this time, the application shall be considered withdrawn. (orig. 7-1-03)
- d. As soon as any application is completed by the filing of the necessary data, the County shall fix a reasonable time for the hearing and give due notice thereof to the parties. (orig. 5-6-46; 12-17-02)
- e. At the time of the hearing, the applicant states the case, then the opposition shall be heard and the applicant shall have the opportunity to reply. (orig. 5-6-46)
- f. No application that has been dismissed or denied can be entertained in a case in which the applicant, by filing new plans, has obtained a new decision from the Zoning Administrator or his/her appointed designee, unless the new plans materially change the aspects of the case. (orig. 5-6-46; am. 3-28-00; am. 12-17-02)

## 6. Application Fees

Accompanying each application for an Appeal, Special Exception, or Variance shall be a nonrefundable processing fee in an amount established by the Board of County Commissioners. (orig. 8-7-74; am. 5-21-79; am. 5-3-94)

## B. Establishment

A Board of Adjustment is hereby established, the members of which shall be appointed by the Board of County Commissioners. The word "Board" when used in this section shall be construed to mean the Board of Adjustment. The Board shall consist of 5 members, not more than 2 of whom at any time may be members of the Jefferson County Planning Commission. Each member shall serve 3 years or until their respective successors have been appointed. The terms of office shall be staggered so that the term of at least one member will expire each year. Vacancies shall be filled and associate members may be appointed as provided by law. Members of the Board of Adjustment as constituted at the time of enactment of this Zoning Resolution or any amendment to this section, shall be continued in office for the duration of their appointed terms. (orig. 5-6-46; am. 7-12-94; am. 12-17-02)

## C. Officers

The Board shall, at its first regular meeting of such year, select a Chairman and a Vice Chairman. The Chairman shall preside at meetings and shall perform all duties usual and ordinary for the presiding officer of any Board or group. The Vice Chairman shall perform the duties of the Chairman in the absence of the Chairman. (orig. 5-6-46; am. 12-17-02)

## D. Powers

**The Board shall have the following powers: (orig. 5-6-46)**

### 1. Appeals

To hear and decide upon Appeals where it is alleged by the appellant that there is an error in any order, requirement, decision or refusal made by an administrative official or agency based on or made in enforcement of this Zoning Resolution. (orig. 5-6-46; am. 12-6-71; am. 12-17-02)

### 2. Special Exceptions

To hear and decide requests for Special Exceptions or for interpretations of the Zoning Maps or for decisions upon other special questions upon which the Board is authorized by this section to pass. (orig. 5-6-46; am. 12-6-71)

a. To interpret the Zoning Maps to carry out the intent and purpose of the Zoning Maps where the street or highway layout on the ground varies from the street or highway layout shown on the Zoning Map. (orig. 5-6-46; am. 12-6-71)

b. Mining and attendant operations, previously approved by the Board of Adjustment, shall henceforth be administered and enforced pursuant to the Definitions Section of this Zoning Resolution. There shall be no Special Exceptions approved by the Board of Adjustment to allow mining in the M-C Zone District subsequent to June 1, 1993, the effective date of this Zoning Resolution. (orig. 6-1-93; am. 12-17-02)

c. To permit in any zone district the temporary occupation, for residential purposes, of a temporary living quarter as defined in the Definitions Section of this Zoning Resolution. Temporary living quarters may be permitted only in circumstances where a permanent dwelling is being constructed on the same or abutting property. Such permit may be granted only when the following requirements have been met: (orig. 12-6-71; am. 8-7-74; am. 12-17-02; am. 10-25-05)

(1) Where a permanent dwelling and the temporary living quarters are requested to be constructed, the following must be shown: (orig. 8-7-74; am. 12-17-02)

- (a) Proof of financing has been presented for the permanent dwelling. (orig. 12-6-71)
  - (b) A Building Permit has been obtained for the permanent dwelling. (orig. 12-6-71)
  - (c) A permit for an individual septic system or other sewage disposal facility, approved by Public Health, exists for such temporary living quarters. (orig. 12-6-71; am. 12-17-02; am. 10-13-09)
  - (d) A well permit has been obtained or public water supply exists for such temporary living quarters. (orig. 12-6-71; am. 12-17-02)
  - (e) Any other restrictions as may be deemed necessary by the Board of Adjustment. (orig. 12-6-71)
- (2) The permit may be granted only to the true fee owners of the property on which the permanent home is to be constructed. Only 1 temporary living quarter may be permitted on the property and may be occupied by either the true fee owner or the contractor or builder upon approval by the Board. (orig. 12-6-71; am. 8-7-74; am. 12-17-02; am. 10-25-05)
- (3) Permits may be granted for a period of up to 1 year and may be renewed after a complete rehearing is held thereon by the Board of Adjustment. (orig. 12-6-71; am. 8-7-74; am. 6-14-88; am. 12-17-02; am. 10-25-05)
- d. To permit in any zone district temporary buildings and/or temporary uses as follows: (orig. 5-6-46; am. 12-6-71; am. 1-17-84)
- (1) A building for temporary purposes if such use is authorized by the zoning on the property, or; (orig. 1-17-84)
  - (2) A temporary use of land and/or associated temporary buildings for any purpose or use which is clearly incidental to the development of the property. (orig. 5-6-46; am. 12-6-71; am. 1-17-84)
  - (3) Such Special Exception shall in no case be granted for use of a temporary building for residential occupancy unless a substantial need for security personnel on the property for which the permit is sought has been established. (orig. 5-6-46; am. 12-6-71; am. 1-17-84; am. 10-25-05)
  - (4) When requesting a construction trailer or where a substantial need for security personnel on the property has been shown, the following requirements must be met: (orig. 8-7-74; am. 12-17-02; am 10-25-05)
    - (a) A permit for an Individual Sewage Disposal System or other sewage disposal facility, approved by Public Health, exists for such temporary structure. (orig. 12-6-71; am. 12-17-02; am. 10-25-05; am. 10-13-09)
    - (b) A well permit has been obtained or public water supply exists for such temporary structure. (orig. 12-6-71; am. 12-17-02; am. 10-25-05)
    - (c) Any other restrictions as may be deemed necessary by the Board of Adjustment. (orig. 12-6-71; am. 10-25-05)
  - (5) Such Special Exception, if issued, will be valid for a period of 1 year and thereafter may be renewed annually after a complete rehearing by the Board of Adjustment. A maximum of 5 total years, beginning from the date that the first Special Exception was granted, shall be allowed. (orig. 5-6-46; am. 12-6-71; am. 1-17-84)

NOTE: If an applicant has been granted a Special Exception for a temporary use of land and/or building for 5 years or more, at time of adoption of this change, the Board of

Adjustment may not grant a renewal for a Special Exception for more than 1 additional year. (orig. 1-17-84)

- (6) The Board shall, at the time of approval thereof, establish restrictions on location, access, heights, setbacks, water and sewer facilities, public improvements, and any other reasonable stipulations deemed necessary for the protection of the health, safety and welfare of the citizens of Jefferson County. (orig. 5-6-46; am. 12-6-71; am 1-17-84)
- e. To permit home occupations which do not meet the provisions of the Home Occupations Section of this Zoning Resolution, subject to the following limitations: (orig. 11-15-65; am. 12-6-71; am. 6-23-81; am. 7-11-07)
- (1) The Board shall not permit any home occupation specifically excluded in the Home Occupations Section of this Zoning Resolution. (orig. 6-23-81; am. 7-11-07)
  - (2) Such home occupation shall be approved initially for a period of up to one year and may be renewable for periods of greater duration after complete rehearing thereon by the Board of Adjustment. (orig. 6-23-81)
  - (3) The Board shall, at the time of approval thereof, establish restrictions on location, access, water and sewer facilities and any other reasonable stipulations deemed necessary for the protection of the health, safety and welfare of the citizens of Jefferson County. (orig. 6-23-81)
  - (4) In approval or denial of home occupations herein, the Board of Adjustment shall give consideration to all incidental uses in connection therewith concerning the extent of retail sale of commodities, if any. (orig. 11-15-65; am. 12-6-71)
  - (5) Such home occupation shall be conducted by the inhabitants of the residential property and shall terminate automatically upon any conveyance of possession or termination of lease or rental agreement. (orig. 11-15-65; am. 12-6-71; am. 6-23-81)
  - (6) Such home occupation shall be approved only if it is compatible with the general spirit and intent of this Zoning Resolution and to promote the general welfare. (orig. 11-15-65; am. 12-6-71; am. 12-17-02)
  - (7) The impact of the home occupation shall not adversely affect the character of the surrounding area. (orig. 7-1-03)
  - (8) One wall sign shall be allowed not to exceed 4 square feet. The sign shall have no exterior, interior or neon lighting. (orig. 7-1-03)
  - (9) Maximum number of employees: one. (orig. 7-1-03)
- f. To permit accessory dwelling units subject to the following limitations set forth below: (orig. 12-5-06)
- (1) The Board of Adjustment may permit an accessory dwelling unit within the MR-1, SR-1, SR-2, SR-5, A-1, A-2 or A-35 zone districts or a comparable Planned Development zone district. Such properties shall have a minimum lot size of 1 acre. (orig. 12-5-06)
  - (2) Upon completion of the applicable application by the property owner or his/her representative, submission of supporting documentation and proof of property ownership, the Board of Adjustment may permit in the applicable zone districts noted above such accessory dwelling unit only after finding that: (orig. 12-5-06)
    - (a) The proposed size of the accessory dwelling unit does not exceed 40% of the square footage of the primary dwelling and is no greater than 1,200 square feet. (orig. 12-5-06)

- (b) The structure meets the minimum setback requirements in the applicable zone district for an accessory building; (orig. 12-5-06)
  - (c) Valid water and sanitation has been provided either by an appropriate water and sanitation district or by a valid well permit and septic permit specific to the proposed accessory dwelling unit; (orig. 12-5-06)
  - (d) The applicant has completed a signed affidavit with the County stating that the structure will only be occupied by residents, all of whom are related to at least one member of the primary dwelling by blood, marriage, adoption, or other legal custody arrangement."; (orig. 12-5-06)
  - (e) The proposed accessory dwelling unit will not create adverse traffic congestion or traffic hazards; (orig. 12-5-06)
  - (f) The proposed accessory dwelling unit will not be incompatible with existing or surrounding uses adjacent to the proposal; (orig. 12-5-06)
  - (g) The proposed accessory dwelling unit will be consistent with the architectural style of the primary dwelling and/or the neighborhood character. (orig. 12-5-06)
  - (h) The proposed accessory dwelling unit will provide two (2) additional off-street parking spaces. (orig. 12-5-06)
  - (i) No more than one (1) accessory dwelling unit shall be allowed on a property. (orig. 12-5-06)
  - (j) It is determined that no substantial detriment to the intent of the Zoning Resolution will be caused. (orig. 12-5-06)
- (3) The Board of Adjustment shall review all pertinent information pertaining to the request and render a decision in writing. (orig. 12-5-06)
  - (4) The Board shall, at the time of approval thereof, establish restrictions on location, access, heights, setbacks, water and sewer facilities, public improvements, and any other reasonable stipulations deemed necessary for the protection of the health, safety and welfare of the citizens of Jefferson County. (orig. 12-5-06)
  - (5) Such Special Exception, if granted, will be valid for a period of 1 year and thereafter may be renewed annually after a complete rehearing by the Board of Adjustment to determine that the familial use of the accessory dwelling unit is maintained, and the use is in compliance with the intent and purpose for which the Special Exception was granted. (orig. 12-5-06)
  - (6) Upon an affirmative decision, a Grading Permit, Floodplain Permit, Building Permit, or Miscellaneous Permit may be required prior to commencement of the approved accessory dwelling unit. (orig. 12-5-06)
  - (7) If the appropriate development permit(s) has not been issued for the accessory dwelling unit or, if no permit is necessary, if the approved request is not commenced within 12 months of approval, the approved modification shall become void, unless a six month extension is requested and approved by the Zoning Administrator or his appointed designee at least 30 days prior to the 12 month expiration date. Only one such extension shall be granted. (orig. 12-5-06)
- g. To permit the short-term rental of a single-family dwelling subject to the following criteria: (orig. 11-22-11)
    - (1) The Board of Adjustment may permit a short-term rental within the R-1, RR, MR-1, SR-1, SR-2, SR-5, A-1, A-2 or A-35 zone districts or a comparable Planned Development zone district. (orig. 11-22-11)

- (a) The Board of Adjustment, in reviewing and making its decision upon such applications shall consider the impacts of the proposed use upon property in the surrounding area, including but not limited to: (orig. 11-22-11)
    - (a-1) Traffic impacts, volume of trips, safety and access; (orig. 11-22-11)
    - (a-2) Fire hazards; (orig. 11-22-11)
    - (a-3) Visual and aesthetic impact, including bulk and scale of buildings as they relate to the uses on surrounding properties; (orig. 11-22-11)
    - (a-4) Noise; (orig. 11-22-11)
    - (a-5) Drainage, erosion and flood hazards; (orig. 11-22-11)
    - (a-6) Community character; (orig. 11-22-11)
    - (a-7) Adequate water and sewage disposal availability; (orig. 11-22-11)
    - (a-8) The availability of methods of mitigating the negative impacts of the proposed use upon the surrounding area; (orig. 11-22-11)
    - (a-9) The compatibility of the short-term rental with the existing and allowable land uses in the surrounding area; and (orig. 11-22-11)
    - (a-10) The effect upon health, safety and welfare of the residents in the surrounding area. (orig. 11-22-11)
  - (b) Where reasonable methods or techniques are available to mitigate any negative impacts which could be generated by the proposed use upon the surrounding area, the Board of Adjustment may condition the decision to approve the Special Exception application upon implementation of such methods or techniques. (orig. 11-22-11)
- (2) Limitations upon Short-term Rental Special Exception Applications (orig. 11-22-11)
- (a) The lot, parcel, or boundary area subject to the Special Exception must conform to: (orig. 11-22-11)
    - (a-1) A minimum lot size of one acre, and (orig. 11-22-11)
    - (a-2) Building standards of the underlying zone district. (orig. 11-22-11)
  - (b) The proposed short-term rental shall provide a minimum of one (1) off-street parking spaces, plus one (1) additional off-street parking space per bedroom room. For example, a five-bedroom residence must have seven off-street parking spaces to meet this criterion. (orig. 11-22-11)
  - (c) The property owner shall comply with any defensible space requirements as set forth in the Wildfire Hazard Overlay District. (orig. 11-22-11)
  - (d) Valid water and sanitation must be provided either by an appropriate water and sanitation district or by a valid well permit and individual sewage disposal system (ISDS) permit specific to the property. (orig. 11-22-11)
  - (e) The lot, parcel, or boundary area subject to the Special Exception shall take legal access from a County maintained right-of-way or a private road that meets the minimum standard for private roads and driveways or non-maintained County right-of-way as set forth in the Jefferson County Roadway Design and Construction manual. (orig. 11-22-11)

- (f) The short-term rental shall offer overnight accommodations in the primary single family dwelling in existence on the property, not in an accessory dwelling unit. The entire property including accessory uses in the corresponding zone district may be utilized by the guests of the short-term rental. (orig. 11-22-11)
- (g) The property owner may not, at the time of application for the Special Exception, be the subject of an ongoing zoning violation other than the short-term rental of a single-family dwelling. (orig. 11-22-11)
- (h) No substantial detriment to the intent of the Zoning Resolution will be caused.
- (3) Such Special Exception, if granted, will be valid for a period of six months and thereafter may be renewed annually after a complete rehearing by the Board of Adjustment to determine that the use is in compliance with the intent and purpose for which the Special Exception was granted. (orig. 11-22-11)
- (4) Upon an affirmative decision, the applicant shall submit a request for a Short-term Rental Permit including documentation that all requirements of the Special Exception granted pursuant to this section have been fulfilled. (orig. 11-22-11)

### 3. Variances

To authorize Variances from the strict application of this Zoning Resolution, so as to relieve difficulties or hardships where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this Zoning Resolution or amendment thereof, or by reason of exceptional topographic condition or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any zoning regulation adopted would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the owner of such property; provided however, that such relief may be granted only without substantial detriment to the public good and without substantially impairing the intent and purpose of this Zoning Resolution and the Zoning Maps. (orig. 5-6-46; am. 12-6-71; am. 12-17-02)

#### a. Access Construction Criteria

The Board of Adjustment, upon application thereto, may authorize a Variance to the access standards, defined in the General Provisions Section of this Zoning Resolution, for the purpose of relieving difficulties or hardships due to topographic conditions; limited opportunities for the realignment of the access; or other difficulties which constrain or prohibit compliance with the General Provisions Section of this Zoning Resolution. In such cases the Board of Adjustment must consider the following. (orig. 12-5-95; am. 12-17-02; am. 7-11-07)

- (1) A drawing of the subject access drawn to scale, submitted by the applicant and signed and sealed by a licensed surveyor or engineer, which depicts the existing or proposed access and which clearly indicates those criteria in the Roadway Design and Construction Manual or the Zoning Resolution, which are and are not satisfied. (orig. 12-5-95; am. 12-17-02)
- (2) A letter from the appropriate fire protection district which evaluates the suitability of the existing and/or proposed access for fire protection services. (orig. 12-5-95)
- (3) A report submitted by the applicant for property located within the Wildfire Hazard Overlay Zone which describes those site and building-related factors which contribute to the risks associated with wildfire and those building-design and technology-based factors, either existing or proposed, which mitigate the hazards associated with wildfire. Examples of contributing factors are: marginal water supplies and delivery systems, either on-site or off-site; the capabilities and response time of the local fire protection district; the presence of "heat traps" such as decks and roof overhangs; fuel sources, and topography. Examples of building design and technology based mitigation strategies are: exceptional water supplies and delivery systems, either on-site or off-site; fire resistive construction

techniques and materials; irrigated lawns or groundcovers around the structure; fire department-approved suppression systems; monitored suppression systems and/or monitored detection/alarm systems. (orig. 12-5-95)

b. Access Width Criteria

In determining whether to grant a Variance for access, the Board of Adjustment shall consider the evaluation by the fire protection district and shall only grant a Variance contrary to such evaluation upon detailed findings that support a conclusion that no substantial detriment to the public good nor harm to the general purpose and intent of the Zoning Resolution will be caused thereby. (orig. 12-5-95; am. 12-17-02)

c. Parking

(1) Where it is found by the Board of Adjustment, upon application thereto, that the parking demand engendered by the different uses, included in any joint arrangements to provide parking stalls required herein, occurs at definite different times of day, as in the case of a theater generating demand for parking after normal daytime business hours and a store generating demand for parking during such daytime hours and in such similar cases, the Board may reduce the total number of parking stalls to be jointly provided. (orig. 12-9-57; am. 8-6-80)

(2) In a case where any public or private off-street parking facility, to be opened for public use free of charge or at reasonable rates, is planned or in process of development and where the Board of Adjustment has reasonable assurance that such development will be carried to completion and will, when completed, relieve the parking demand in an area within 500 feet thereof, the Board may establish a reasonable time period within which such area shall be provided with the required space of all or any portion of such development. The provisions of paragraph 3 above may be applied by the Board of Adjustment. (orig. 12-9-57; am. 8-6-80)

(3) In a case where it is clearly shown by the applicant, to the satisfaction of the Board of Adjustment, that the provision of the amount of the space required herein for parking stalls, because of the particular nature of a proposed use, would be unnecessary, particularly difficult or create unnecessary hardship, the Board of Adjustment may reduce such requirements. (orig. 12-9-57; am. 8-6-80)

d. To hear and decide requests for Variances from the requirements of the Flood Plain (F-P) Overlay Zone District, and to hear and decide Appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Zoning Administrator or his/her appointed designee in the enforcement or administration of the Flood Plain Overlay Zone District. (orig. 5-31-88; am. 12-17-02)

(1) In ruling upon such Appeals and Variance requests, the Board shall consider all technical evaluations, relevant factors, standards specified in other sections of this Zoning Resolution, and the following: (orig. 5-31-88; am. 12-17-02)

(a) The danger that materials may be swept onto other lands to the injury of others. (orig. 5-31-88)

(b) The danger to life and property due to flooding or erosion damage. (orig. 5-31-88)

(c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners. (orig. 5-31-88)

(d) The importance of the services provided by the proposed facility to the County. (orig. 5-31-88)

(e) The necessity to the facility of a waterfront location, where applicable. (orig. 5-31-88)

- (f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage. (orig. 5-31-88)
  - (g) The compatibility of the proposed use with the existing and anticipated development. (orig. 5-31-88)
  - (h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area. (orig. 5-31-88)
  - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles. (orig. 5-31-88)
  - (j) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site. (orig. 5-31-88)
  - (k) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, streets and bridges. (orig. 5-31-88)
- (2) The Board may grant a Variance provided that the following conditions are met. (orig. 5-31-88)
- (a) Generally, Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base level, providing items (a) through (f) of paragraph D.3.d.(1) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the Variance increases. (orig. 5-31-88; am. 12-17-02)
  - (b) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places without regard to the procedures set forth in the remainder of this section. (orig. 5-31-88)
  - (c) Variances shall not be issued within any designated floodway (high hazard area) if any increase in flood levels during the base flood discharge would result. (orig. 5-31-88)
  - (d) Variances shall only be issued upon a determination that the Variance is the minimum necessary, considering the flood hazard, to afford relief. (orig. 5-31-88)
  - (e) Variances shall only be issued upon the following. (orig. 5-31-88)
    - (e-1) A showing of good and sufficient cause. (orig. 5-31-88)
    - (e-2) A determination that failure to grant the Variance would result in exceptional hardship to the applicant. (orig. 5-31-88)
    - (e-3) A determination that the granting of a Variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in paragraph D.3.d.(1) or conflict with other sections of this Zoning Resolution. (orig. 5-31-88; am. 12-17-02)
  - (f) Any applicant to whom a Variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk from the reduced lowest floor elevation. (orig. 5-31-88)

- (3) Upon consideration of the factors of paragraph D.3.d.(1). and the purposes of this Zoning Resolution, the Board may attach such conditions to the granting of Variances as it deems necessary to further the purposes of this Zoning Resolution. (orig. 5-31-88; am. 12-17-02)
  - (4) The Zoning Administrator or his/her appointed designee shall maintain the records of all Appeal actions, including technical information, and report any Variances to the Federal Emergency Management Agency. (orig. 5-31-88; am. 12-17-02)
- e. To hear and decide requests for Variances from the requirements of the Mountain Ground Water Overlay District, and to hear and decide Appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Zoning Administrator or his/her appointed designee in the enforcement or administration of the Mountain Ground Water Overlay District. (orig. 7-11-07)
- (1) In ruling upon such Appeals and Variance requests, the Board shall consider all technical evaluations, relevant factors, standards specified in other sections of this Zoning Resolution, and the following:
    - (a) The proposed land use and well yield for the lot/parcel is sufficient to support the proposed development. (orig. 7-11-07)
    - (b) The compatibility of the proposed use with the existing and anticipated development. (orig. 7-11-07)
  - (2) It shall be the responsibility of the applicant to supply the Board of Adjustment with the requested data and documentation. (orig. 7-11-07)
  - (3) The Board may grant a Variance provided that the following conditions are met. (orig. 7-11-07)
    - (a) Variances may be granted for new construction and substantial improvements to be erected on a lot/parcel providing items (a) and (b) of paragraph D.3.e.(1) have been fully considered. (orig. 7-11-07)
    - (b) Variances may be granted for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places without regard to the procedures set forth in the remainder of this section. (orig. 7-11-07)
    - (c) Variances shall only be granted upon the following.
      - (c-1) A showing of good and sufficient cause, supported by technical data or additional material requested by the Board. (orig. 7-11-07)
      - (c-2) A determination that failure to grant the Variance would result in exceptional hardship to the applicant. (orig. 7-11-07)
  - (4) Upon consideration of the factors of paragraph D.3.e.(1). and the purposes of this Zoning Resolution, the Board may attach such conditions to the granting of Variances as it deems necessary to further the purposes of this Zoning Resolution. (orig. 7-11-07)
- f. To permit in any Geologic Hazard (G-H) Overlay Zone District specially excepted uses enabled by the Geologic Hazard Overlay District Section of this Zoning Resolution, more particularly those uses permitted in the underlying zone district, provided that the following conditions and restrictions are met by the applicant, and the Board of Adjustment determines, based on the evidence submitted and restrictions imposed, that the use will not significantly increase the danger from the geologic hazard to the public health and property. (orig. 1-20-76; am. 12-17-02, am. 7-11-07)

- (1) It shall be the sole responsibility of the applicant to supply the Board of Adjustment with the following data and documentation: (orig. 1-20-76)
  - (a) All pertinent data submitted to the Board of County Commissioners relative to the zoning of the subject property to G-H Overlay Zone District. (orig. 1-20-76)
  - (b) A site plan depicting: (orig. 1-20-76)
    - (b-1) The location of the subject geologic hazard(s). (orig. 1-20-76)
    - (b-2) The location of the proposed land use(s). (orig. 1-20-76)
    - (b-3) The location of the surrounding land uses(s). (orig. 1-20-76)
    - (b-4) The location of the surrounding geologic hazard(s). (orig. 1-20-76)
  - (c) A written report on the area depicted in the site plan, including: (orig. 1-20-76)
    - (c-1) Description of subject geologic hazard(s) and proposed land use(s). (orig. 1-20-76)
    - (c-2) Description of surrounding geologic hazard(s) and surrounding land use(s); (orig. 1-20-76)
    - (c-3) The effects of the subject geologic hazard(s) on the proposed use(s) and surrounding land use(s). (orig. 1-20-76)
    - (c-4) The effects of the proposed use(s) on the subject geologic hazard(s) and surrounding geologic hazard(s). (orig. 1-20-76)
  - (d) Any additional material required by the Board of Adjustment relating to special design criteria for any proposed land use(s). (orig. 1-20-76)
- (2) Geologic Hazard Abatement:

In addition to the data and documentation required in paragraphs D.3.f.(1)(b) through (d) above, an applicant who proposes to abate the geologic hazard shall further submit: (orig. 1-20-76; am. 12-17-02; am. 7-11-07)

- (a) A detailed report of the proposed method of abating the geologic hazard. (orig. 1-20-76)
- (b) An addendum to the site plan, written report, and additional material required by paragraphs D.3.f.(1)(b) through (d) above, which shall state the projected effect of: (orig. 1-20-76; am. 12-17-02; am. 7-11-07)
  - (b-1) Abatement procedures on subject geologic hazard(s), surrounding geologic hazard(s) and surrounding land use(s). (orig. 1-20-76)
  - (b-2) Abated geologic hazard(s) on proposed land use(s), surrounding land use(s) and surrounding geologic hazard(s). (orig. 1-20-76)
- (c) Any geologic hazard abatement procedures required by the Board of Adjustment shall be inspected and the results certified by a professional geologist qualified in the field of engineering geology as being in compliance with plans submitted or additional restrictions imposed by the Board of Adjustment within time limits established by the Board of Adjustment. (orig. 1-20-76; am. 6-15-76)

- (3) All geologic reports and items in paragraphs D.3.f.(1)(c), D.3.f.(1)(d), D.3.f.(2)(a) and D.3.f.(2)(b) above, shall be prepared by a professional geologist qualified in the field of engineering geology and all engineering reports and items in paragraphs D.3.e.(1)(b), D.3.f.(1)(d), D.3.f.(2)(a) and D.3.f.(2)(b) above, shall be prepared by a registered professional engineer (as defined by C.R.S., 1974, 12-25-103, or as amended) qualified in the appropriate field(s). (orig. 1-20-76; am. 6-15-76; am. 12-17-02; am. 7-11-07)
  - (4) Any building for which the Board of Adjustment requires special engineering criteria shall be inspected and construction certified by a registered professional engineer as to compliance with plans submitted or additional restrictions imposed by the Board of Adjustment within time limits established by the Board of Adjustment. (orig. 1-20-76; am. 12-17-02)
- g. To hear and decide upon wildfire mitigation site plans submitted as a request for a Special Exception for any property located within the Wildfire Hazard (W-H) Overlay Zone District, provided that the following conditions and restrictions are met by the applicant; and the Board of Adjustment determines, based on the evidence submitted and restrictions imposed, that the wildfire mitigation site plan for the subject property will lead to a reasonable reduction in the dangers from the wildfire hazard. (orig. 1-27-76; am. 12-5-95; am. 7-11-07)
- (1) It shall be the sole responsibility of the applicant to supply the Board of Adjustment with the following data and documentation: (orig. 1-27-76)
    - (a) A written report consisting of the following: (orig. 12-5-95)
      - (a-1) A narrative description of the physical characteristics of the site, including topography, major landforms, and aspect/orientation. (orig. 12-5-95)
      - (a-2) A description of the major existing plant communities and timber types, including assessment of age, condition presence of disease, timber stand densities, and types and quantities of ladder fuels, if present. (orig. 12-5-95)
      - (a-3) A general description of the type and location of wildfire hazards and existing land uses within 1/4 mile of the site. (orig. 12-5-95)
      - (a-4) An evaluation of the site based on the analysis of the characteristics, as outlined above, to define areas of low, moderate, and high wildfire hazards, including fire chimneys and saddles. (orig. 12-5-95)
      - (a-5) An evaluation of the existing land uses in relation to the on-site wildfire hazards and adjoining land uses and wildfire hazards. (orig. 12-5-95)
    - (b) A site plan depicting the following: (orig. 1-27-76)
      - (b-1) The location of the subject wildfire hazard(s) based on an assessment of the written report. (orig. 1-27-76; am. 12-5-95)
      - (b-2) The location of the existing land uses and/or structures, including roads and driveways, and other relevant infrastructure improvements. (orig. 12-5-95)
      - (b-3) The location of the surrounding land use(s), roadways, and other relevant infrastructure within 1/4 mile of the site. (orig. 1-27-76; am. 12-5-95)
      - (b-4) The location of the surrounding wildfire hazard(s) within 1/4 mile of the site. (orig. 1-27-76 am. 12-5-95)
    - (c) A detailed wildfire mitigation report describing the following: (orig. 12-5-95)
      - (c-1) The techniques and/or strategies to be used to mitigate wildfire within the

project area. The techniques and/or strategies should be directly related to identified wildfire hazards within the project area and should include those site and building factors which contribute to the risks associated with wildfire. Examples of contributing factors are: marginal water supplies and delivery systems, either on-site or off-site; the capabilities and response times of the local fire protection district; the presence of "heat traps" such as decks and roof overhangs; fuel sources, and topography. Examples of building design and technology-based mitigation strategies are: fire resistive construction techniques and materials; irrigated lawns or groundcovers around the structure; fire department-approved suppression systems; monitored suppressions systems and/or monitored smoke detection/alarm systems. (orig. 12-5-95)

(c-2) A detailed assessment describing the projected effect of the mitigation procedures on subject wildfire hazard(s) and surrounding land use(s). (orig. 12-5-95)

(d) Any additional material required by the Board of Adjustment. (orig. 1-27-76; am. 12-5-95)

(2) Preparation

All wildfire reports and items described above shall be prepared and supervised by a graduate forester with a minimum of 2 years wildfire fighting experience in the Rocky Mountain Area. (orig. 1-27-76; 12-5-95)

(3) Evaluation

The wildfire assessment and any related documentation shall be evaluated as to accuracy and adequacy by the Colorado State Forest Service or other review entities as deemed qualified by the Zoning Administrator or his/her appointed designee. (orig. 12-5-95; am. 12-17-02)

(4) Completion

Any wildfire hazard mitigation work approved by the Board of Adjustment as part of the wildfire hazard mitigation site plan, or for mitigation work for which the Board of Adjustment requires special implementation plans, shall be inspected and the results certified as to compliance with the plans submitted or additional restrictions imposed within time limits established by the Board of Adjustment. Inspections and certifications shall be conducted by the Colorado State Forest Service or other entities as deemed qualified by the Board of Adjustment. (orig. 12-5-95)

4. To hear and decide requests for variances from the requirements of the cut/fill vertical disturbance area for private roads and driveways that do not meet the provisions of the Land Disturbance Section of this Zoning Resolution. In ruling upon such Variance requests, the Board shall consider any technical evaluations presented, and all relevant factors, and standards including the following: (orig. 11-12-02; am. 12-17-02; am. 7-11-07)

- a. The visibility of the disturbance from off-site properties. (orig. 11-12-02)
- b. The ability to revegetate the disturbance area. (orig. 11-12-02)
- c. The ability to effectively address erosion control and drainage issues (orig. 11-12-02)
- d. The technical reports that slope stability has been adequately addressed. (orig. 11-12-02)
- e. The availability of alternate building sites or fewer building sites (orig. 11-12-02)

- f. Compliance with the provisions of the Land Disturbance Section of this Zoning Resolution. (orig. 11-12-02; am. 12-17-02; am. 7-11-07)
  - g. Whether the variance request presents the most appropriate means of minimizing the disturbance area, or whether alternate methods (e.g., selecting a different route or incorporating retaining walls) would be preferable. (orig. 11-12-02)
5. No relief, variance or exception shall be granted which shall effectively change a land use on a permanent basis. (orig. 12-6-71; am. 1-27-76)
  6. No relief, variance or exception shall be granted from a provision of the Land Development Regulation. (orig. 12-6-71; am. 1-27-76; am. 12-17-02)
  7. No relief, variance or exception shall be granted in circumstances which are self-imposed by the applicant. (orig. 12-6-71; am. 1-27-76; am. 12-17-02)
  8. No Variance shall be granted based solely on economic hardship. (orig. 12-17-02)
  9. Affected state and public agencies shall be requested to comment on applications made pursuant to the above paragraphs D.1. through D.3., prior to consideration by the Board of Adjustment. (orig. 7-13-76; am. 12-17-02)