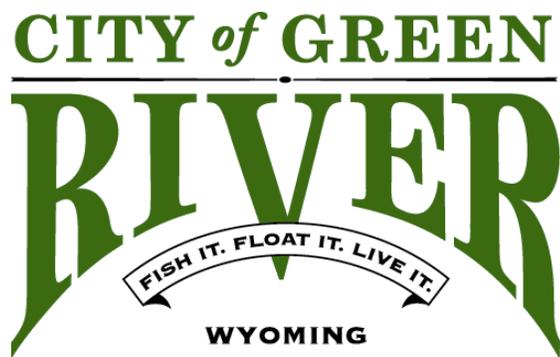


# VariANCES

## Guide: Preparing a Variance Request



# variances

**A zoning variance allows relief from or modification of a zoning-related standard, such as a building setback requirement. Zoning variances are intended to address unnecessary hardships or practical difficulties that occasionally result from unusual circumstances related to such things as oddly shaped parcels, the application of (newer) zoning regulations to older buildings or other site-specific circumstances that are beyond the reasonable control of the property owner. The zoning variance procedures of the zoning ordinance must be followed for all zoning variances.**

## **Which code standards can be varied?**

A variance may be requested from any zoning and development code standard except that a variance may not be granted if the requested variance would:

- Permit a use that is not allowed in a zoning district (often referred to as a “use variance”);
- Modify a subdivision regulation, such as those found in Appendix C of the Green River Code of Ordinances;
- Change a definition of a general term or a use type;
- Change the process required to be following for development or permit approval;
- Change a condition of approval imposed by a review and decision-making body, such as the Planning and Zoning Commission or City Council.

Also, it is important to remember that under the law, zoning variances are not intended merely as a way to avoid complying with applicable code provisions. Consequently, the findings required to support a variance application are intentionally difficult to meet.

## What is the process?

1. Property owners are encouraged to schedule a pre-application consultation with the Director of Community Development before filing a zoning variance application. These early informal visits can help prepare applicants for the process and help avoid delays and confusion down the road.
2. Once the required application form has been completed and all required information has been collected, the zoning variance application must be filed with staff of the Community Development Department, located at 50 East 2<sup>nd</sup> North, Green River, Wyoming.
3. Once a complete application has been received by the department, the staff will review the proposal, prepare a sign for the applicant to post on the property, schedule and advertise a public hearing before the Board of Adjustment and notify surrounding residents and the general public that a zoning variance has been requested.
4. The Board of Adjustment will hold a public hearing on the requested variance, at which time the applicant, city staff and members of the public will be given an opportunity to express their views. Following the close of the public hearing, the Board of Adjustment will vote to approve, approve with modifications, or deny the variance request. In some cases, the hearing will be continued in order to gather additional information or allow time for more public input. There must be at least four (4) votes in favor of the zoning variance in order for it to be approved. At any time during the meeting, the applicant may request tabling the application until more members of the board can be present.
5. After the hearing, Findings of Fact and Conclusions of Law are prepared and signed outlining the reason and decision of the Board of Adjustment.



## How are applications reviewed?

By the authority granted by Wyoming State Statute 15-1-608, the Board of Adjustment, as appointment by the Governing Body of the City of Green River, may vary or adjust the strict application of any of the requirements of the Zoning Ordinance ONLY in the case of any physical condition applying to a lot or building if the strict application would deprive the owner of the reasonable use of the land or building involved. No adjustment in the strict application of any provision of the Zoning Ordinance may be granted unless:

- There are special circumstances or conditions, fully described in the board's findings, which are peculiar to the land or building for which the adjustment is sought and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant subsequent to the adoption of the ordinance;
- For reasons fully set forth in the board's findings, the circumstances or conditions are such that the strict application of the provisions of the ordinance would deprive the applicant of the reasonable use of the land or building, the granting of the adjustment is necessary for the reasonable use thereof and the adjustment as granted is the minimum adjustment that will accomplish this purpose; and,
- The granting of the adjustment is in harmony with the general purposes and intent of the ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

To ensure that the Board of Adjustment does not make decisions contrary to or in violation of the state statute outlined above, the Green River Zoning Ordinance outlines eight minimum conditions (criteria). No variance shall be authorized unless the board finds that all of the eight conditions/criteria exist based on the evidence presented with the variance application and during the public hearing.

**The burden of proof rests with the petitioner** and therefore it is imperative to provide detailed and factual evidence and responses to the Variance Review Criteria portion of the application to support your belief that your property does not have parity with other properties. The following will help you in formulating your responses. The suggestions below are by no means the only or valid justifications for a variance on your property. These examples are provided to allow you to consider the uniqueness of your property in your response to the eight criteria. The Board of Adjustment considers each variance on its unique merits.

*Use your own words in preparing your responses and remember it is up to you to make your case.*

**1. The variance will not authorize a permitted use other than those enumerated in the zoning district in which the variance is sought.**

*The City of Green River does not allow variances for uses. Describe the current use of the property, the proposed use (if different) and compare to the permitted uses in the zoning district in which it is located.*

**2. Owing to extraordinary circumstances or conditions relating to the land or building for which the variance is sought, literal enforcement of the provisions of this ordinance will result in unnecessary hardship and deprive the applicant of a reasonable use of his land or building.**

*The special physical conditions must directly affect, create or contribute to the need for the zoning variance. Examples of physical conditions are:*

*A. Physical features peculiar to the lot:*

- 1. Steep slopes impact \_\_\_\_% of the lot*
- 2. Water bodies, floodplain, drainages, wetlands impact \_\_\_\_% of the lot*
- 3. Unstable soil conditions impact \_\_\_\_% of the lot*

*B. Platting features peculiar to the lot:*

- 1. The lot is not platted*
- 2. The lot is oddly shaped*
- 3. The lot has more than 2 street frontages or no street frontage*
- 4. The lot is impacted to many easements*
- 5. The lot is nonconforming in area, width or depth*

*Once it is established what the physical condition is, you will need to explain how the condition is precluding you from complying with the zoning law. There must be a correlation between what you allege is the physical defect and why your neighbors or others in the same zoning district can do what you want to do without the need for a variance.*

**3. The extraordinary circumstances or conditions were not created by the owner of the property and do not represent a general condition of the district in which the property is located.**

*Provide evidence that the hardship is not self-imposed and that the special conditions and circumstances do not result from the actions of the applicant. You must explain why the need for the variance is due to circumstances that are beyond your control; and that your request for a variance is not solely to make it more convenient for you to use the property. For example:*

- A. *The special conditions and circumstances are:*
1. *The structure was built under different zoning rules and has non-conforming rights*
  2. *The lot is non-conforming in area, width or depth*
- B. *The special conditions and circumstances are more than an inconvenience or financial burden because:*
1. *Removing the encroachment would severely damage the structure*
  2. *Removing the encroachment would render the structure unusable*
  3. *The physical features of the lot limit construction locations and options*
  4. *The access to the lot cannot be physically relocated*
- C. *I considered all the possible conforming alternatives and I am not able to:*
1. *Redesign the structure because \_\_\_\_\_*
  2. *Move the structure because \_\_\_\_\_*
  3. *Move lot lines or replat the property because \_\_\_\_\_*
  4. *Rezone the property because \_\_\_\_\_*
  5. *Acquire abutting property because \_\_\_\_\_*

*Examples of reasons that are self-imposed conditions or resulting from action by the owner include:*

- A. *Constructing a non-compliant structure without obtaining a building permit or in conflict with the approved building permit.*
- B. *Not accurately locating property lines prior to construction, thereby building the structure in violation of setbacks.*
- C. *Purchasing a lot without researching the zoning requirements first (not doing due diligence).*
- D. *Construction will cost more to bring it into compliance with the City's standards.*
- E. *A desire to want a larger structure or otherwise meet personal needs that are not in compliance on property that does not have a physical constraint or established non-conforming setback.*

**4. The variance, if granted, will not substantially or permanently injure any adjacent, conforming property.**

*Your use of the property and variance, if granted, will not make your property, or your neighbors, incompatible with what the Green River Comprehensive Master Plan describes as appropriate for the area; and does not devalue or prevent full use of your neighbor’s property. Examples are:*

- A. *The variance will not*
  - 1. *Give this property special privileges to me above my neighbor*
  - 2. *Increase traffic in the neighborhood*
  - 3. *Change the character of the neighborhood*
  - 4. *Negatively impact the abutting property owners*
  - 5. *Violate the spirit of the zoning regulations*
  - 6. *Place the public health, safety or welfare at risk*
- B. *The encroachment is not visually evident*
- C. *No code enforcement actions have occurred*
- D. *The nonconforming use or structure can be made more conforming if the variance is granted*

**5. The variance will not alter the character of the district in which it is located.**

*Even though granting the variance allows you to deviate from the Code, the variance must not change the intent of the Code or change the character of neighbors who are in the same zoning district. Explain how the variance, if approved, will not alter the character of the zoning district. Examples:*

- A. *The variance will not allow a land use that is not permitted in the zoning district.*
- B. *The land use will not change as a result of the variance.*

**6. The variance, if granted, will not result in an extraordinary gain in use, service or income for the property when compared with adjacent, conforming uses in the same district.**

*Explain how you are not advocating for rights superior to your neighbors or others in the same zoning district. Examples:*

- A. *The variance is not permitting a structure that larger than what would be permitted on a conforming lot*
- B. *The variance will not provide gain or income that exceeds levels of adjacent, conforming properties.*

**7. The variance, if granted, is the minimum variance and the least modification that will afford the relief sought.**

*You must explain why this variance will give this property parity with its neighbors and nothing more. That you are asking for the least relief from that zoning law that is possible to allow a reasonable use of the property. Explain that are no other alternatives, such as redesigning the structure, scaling down the size to a size that provides standard reasonable use. In other words, a variance is the last resort to allow a reasonable and equitable use of the property.*

**8. The variance will be in harmony with the spirit of this ordinance and will not adversely affect the public health, safety or welfare.**

*Explain how the variance does not alter Fire Department or safety standards, traffic, clear visions areas, and health and safety standards for air or water quality, noise levels, etc.*

## **What kind of public notice is required?**

At least 15 days before the required public hearing, the applicant must post a sign that is visible from the public right-of-way on the subject property. The sign will be prepared by the Community Development Department and you will be contacted when it is ready for you to pick it up at the Community Development office.

City staff will provide the newspaper and mailed property notices in accordance with the City's Zoning Ordinance. The public hearing notice will be published for two consecutive weeks in the Green River Star a minimum of 15 days prior to the scheduled public hearing. Letters will be mailed to all property owners within a 200 foot radius of the subject property a minimum of one week prior to the public hearing. All comments received will be presented into the record during the public hearing.

## **How much is the fee?**

A filing fee of \$200 must be submitted at the time of your application submittal as part of your complete application packet. The fee helps to cover a portion of the advertising and postage costs. Cash, check or credit card payments are all acceptable forms of payment. Returned checks will cause a delay in processing your application.

## What do I have to submit?

You will need to submit a City of Green River “Application for Zoning Variance” on the form provided by the City of Green River along with all of the information required as outlined in the application. Missing items will constitute an incomplete application that will not be processed. You may pick up an application in the Community Development Office. The application is also available on the City of Green River website: [www.cityofgreenriver.org](http://www.cityofgreenriver.org).

## What is the site plan and what does it show?

The site plan is the probably the most critical component to your application submittal. The site plan is a “bird’s eye view” drawing of your property that shows the existing development of your property as well as the development that is proposed with your variance request. To prevent delays in the review of your request, it is vital that the site plan shows everything in detailed and is accurate. If the variance is approved, the variance stays with the property, and therefore, will remain in the City of Green River address file for the property for future use and reference. When preparing the site plan, utilize the following checklist. All items are required.

- **Title block that includes:**
  - Name of project
  - Street Address
  - Name & mailing address of owner and applicant (if different)
  - Name & mailing address of architect or engineer (if applicable)
  - Date of plan preparation
  - North point indicator
  - Scale of drawing (i.e. ¼” = 1 foot)
- Overall site dimensions and accurate depiction of property lines (A legal survey may be required).
- Any easements pertinent to the site
- Adjacent streets and street right-of-way
- Dimension, height and setbacks of existing and proposed building(s)
- Sidewalks, walkways, driveways and property access points (existing and proposed)
- **Computation table to include the following:**
  - Total site area
  - Total building area
  - Total open space
- Locations of existing and proposed objects and structures on the site such as fences, trees, utility poles and structures, signs, etc. (indicate which existing objects are to remain and which existing objects will be removed)
- **Commercial Only:**
  - Exterior signs (existing & proposed)
  - Exterior lighting (existing & proposed)
  - Parking spaces (including space dimensions and aisle widths)
  - Traffic flow both on-site and off-site (existing and proposed)
  - Landscaped areas (existing & proposed)

## When do I submit my application?

The Board of Adjustment meets on the second Wednesday of every month at 6:30 p.m. in the City Hall Council Chambers, unless otherwise scheduled. To meet the required public hearing notice deadlines, applications for Zoning Variances must be received no later than 5:00 p.m. 20 days prior to the meeting at which the variance will be scheduled. Late application submittals will result in unnecessary delays. Please refer to Figure 1 for a complete listing of meeting dates and application deadlines.

| Application Deadline | Board Meeting Date |
|----------------------|--------------------|
| 5/22/14              | 6/11/14            |
| 6/19/14              | 7/9/14             |
| 7/24/14              | 8/13/14            |
| 8/21/14              | 9/10/14            |
| 9/18/14              | 10/8/14            |
| 10/23/14             | 11/12/14           |
| 11/20/14             | 12/10/14           |
| 12/22/14             | 1/14/15            |
| 1/22/15              | 2/11/15            |
| 2/19/15              | 3/11/15            |
| 3/19/15              | 4/8/15             |
| 4/23/15              | 5/13/15            |
| 5/21/15              | 6/10/15            |

Figure 1: Submittal Deadlines

## Who do I contact if I have any questions?

If you have any questions, you may call the Community Development Department at 307-872-6140. We will be happy to schedule a time for you to come in to meet with us so we can assist you with your application submittal.

