

Section 19 – Board of Health Administrative Procedures

1. Variances

- a. The purpose of this section is to provide a procedure for the Board of Health to consider variance from the design and/or siting requirements of these Regulations.
- b. Any person whose OWTS application has been denied by the pursuant to Section 4.7 may request a variance from these Regulations by the Board of Health.

2. Prohibitions on Granting a Variance

- a. Variances shall not be granted:
 - i. Where the property can accommodate a conforming OWTS;
 - ii. To mitigate an error in construction involving any element of property improvements;
 - iii. Solely for economic gain;
 - iv. If it will result in a setback reduction to an offsite physical feature that does not conform to the minimum setbacks defined in Table 8-1 of this regulation without the Clear Creek County Board of Health considering any concerns of the owner of property containing said feature. Property lines are considered offsite features. The property owner containing said feature must be notified of the time and date of the hearing.
 - v. If it reduces separation to ground water or bedrock based on the level of treatment in Table 8-2
 - vi. 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.
 - vii. For the waiver of higher level treatment system operation and maintenance requirements as required in Section 16.

3. Criteria of Approval for a Variance

- b. The Board of Health may grant a variance from the provision of these Regulations where it is necessary to provide a functional system if the following criteria are met:
 - i. 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. The following must be considered:
 1. Does granting the variance negatively impact water quality or the environment more than a system meeting these Regulations; and
 2. Does granting the variance create a nuisance.

- ii. Granting the variance does not result in the substantial impairment of these Regulations;
- iii. Granting the variance will comply with all applicable state regulations;
- iv. By reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the property, the strict application of such regulation would result in peculiar and exceptional practical difficulties, or exceptional and undue hardship upon the owner of such property.

4. Minimum Variance Submittal Requirements

- a. Variance applications shall include the following, at a minimum:
 - i. A site-specific request identifying the specific criteria from which a variance is being requested;
 - ii. 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:
 - 1. 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 2N;
 - iii. A discussion of alternatives considered in lieu of the requested variance;
 - iv. 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
 - v. A statement of the hardship that creates the necessity for the variance.
- b. The applicant has the burden of proof to demonstrate that the variance is justified and will pose no greater risk to public health and the environment than would a system meeting the regulations.

5. Public Hearing Procedures

- a. 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.

- b. The applicant will 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.
- c. An application fee, as established by the Board of Health, shall accompany all applications. See Section 3.10 for more detail.
- d. After an application is received, the Board of Health will conduct a public 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 prior to the hearing date.
- e. The Board of Health will take action by written and signed resolution to approve, approve with conditions or deny a request. The required findings and any conditions imposed by the Board on an approval, and the reasons for a denial will be stated in the resolution. A copy of the written and signed resolution will be mailed to the applicant.
- f. Once signed by the Board of Health the variance and any conditions thereof, will be recorded on the deed to the property and any expenses associated with that recorded must be the responsibility of the party obtaining the variance.
- g. The variance and any conditions thereof will be recorded with the office of the Clear Creek County Clerk and Recorder.
- h. The Clear Creek Environmental Health Department may refer variance cases out to other local, state or federal entities for comment prior a hearing, if the Department believes the variance will impact their interests.

6. Variance for Repair of Failing Systems

- a. When a proposed variance for a system repair or upgrade would result in encroachment on minimum distances to physical features on neighboring properties required by the Division, the hearing procedures in Section 20.5 must be followed.
- b. For the repair of or upgrade to an existing system where the existing system does not meet the required separation distances and where conditions other than lot size precludes adherence to the required distances, a variance to the separation distances may be requested. The repairs or upgrade must 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.

7. Appeal of Denial

- a. Any person whose permit application has been denied by the Department pursuant to Section 4.7 may appeal the decision to the Clear Creek County Board of Health. The appeal must be filed with the Department within thirty days of receipt of the notice of denial.
- b. The request must be made in writing and must 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 are seeking.

- c. The applicant will bear the burden of supplying the Clear Creek County Board of Health with sufficient evidence to document that the Department erred in its denial of the permit.
- d. The variance process, not the appeals process, should be followed if a proposed system does not meet these Regulations.
- e. An application fee, as established by the Clear Creek County Board of Health, must accompany all applications.

8. Appeal of Clear Creek County Board of Health Decision

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