

Section 12.4.16 Delay of Enforcement

12.4.16.1 Intent

This section authorizes a temporary delay in enforcement or provisions of this Code to provide appellants with reasonable time extensions to comply or seek an alternative resolution to violations of this Code.

12.4.16.2 Applicability

- A. The Board of Adjustment may approve a delay of enforcement for any violation listed in Section 12.11.2 of this Code.
- B. This procedure for requesting a delay of enforcement is separate and independent of the variance (Section 12.4.7) or appeal of administrative decision (Section 12.4.8) procedures stated in Article 12. Concurrent applications to request one or more of these reviews may be permitted under Section 12.3.3.9, Concurrent Applications, of this Code.

12.4.16.3 Review Process

A. Initiation

The owner of the subject property, an owner or operator of a business or other land use subject to enforcement, or the authorized agent of an owner or operator, may request a delay of enforcement by making a request in writing to the Board of Adjustment within 30 days after one or more of the following has occurred:

1. Community Planning and Development has issued any order requiring compliance with the Code, or a notice of violation related to the operation of dwelling units in excess of the number authorized by this Code; or
2. Community Planning and Development has issued any order requiring compliance with this Code, or a notice of violation related to any violation listed in Section 12.11.2 of this Code.

B. Application and Fees

All applications for a request to delay enforcement shall be filed in writing according to the rules of the Board of Adjustment. The applicant shall pay all required fees at the same time the application is submitted.

C. Public Hearing and Decision by Board of Adjustment

1. Following notice and a public hearing according to the rules of the Board of Adjustment, the Board of Adjustment shall approve, approve with conditions, or deny the request for delay of enforcement based on whether the Applicant has demonstrated compliance with the applicable review criteria in Section 12.4.16.5, Review Criteria.
2. The Board of Adjustment may attach any condition to a delay of enforcement approval necessary to protect the health, safety, and welfare of the community and minimize adverse impacts on adjacent properties, including but not limited to a condition modifying operating characteristics of a nonconforming use.

12.4.16.4 Review Criteria

When the Board of Adjustment finds that the literal enforcement of the provisions of this Code will result in unnecessary hardship by reason of unique and exceptional circumstances, including the owner's physical condition, age, and other factors as deemed by the Board to be unique or exceptional, then the Board of Adjustment may order a delay of enforcement for no more than:

- A. 5 years for operation of an excess number of dwelling units; or
- B. 6 months for all other violations of this Code.

12.4.16.5 Effect of Approval

- A. A delay of enforcement shall stay all enforcement activities, including accumulation of fees and penalties, on the specific violations subject to the approved delay.
- B. All delays of enforcement approved by the Board of Adjustment shall be recorded in the real property records of the Dener County Clerk and Recorder.
- C. A delay of enforcement shall not be a variance on the use of a premises, shall be personal to the applicant, and shall not be transferable.
- D. A delay of enforcement for the operation of excess dwelling units shall only allow continued operation of the excess dwelling units for use by the persons occupying such unit at the time of the Board of Adjustment's original order.

12.4.16.6 Expiration and Extensions

Upon expiration of any delay of enforcement the Board of Adjustment may review, at a public hearing, an applicant's request for an extension and may grant an extension if the Board of Adjustment finds that original condition(s) found according to Section Section 12.4.16.4, Review Criteria, still exists. Extensions are allowed subject to the following limitations.

- A. Multiple extensions for operation of an excess number of dwelling units, not to exceed a cumulative total of 5 years from the date of the original enforcement action; or
- B. One extension only for a maximum of 6 months for all other violations of this Code.