

Height Exception

Facts to Know



RELATED FACTS TO KNOW:

Bulk Standards (for the relevant zone district), Development Plan, Fees, Conditional Use Permits, Neighborhood Meeting, Pre-Application Meeting, and Severed Mineral Rights.

INTRODUCTION:

Each zoning district classification identifies a maximum height for structures within that zoning district. Upon occasion, there are unique situations when the strict application of the Land Development Code (LDC) is inappropriate or unachievable. The height exception process is intended to provide some flexibility for these unique situations. Please note that the height exception process is for structures that are directly related to primary operations on site that surpass the zoning district's maximum allowable height. Extended heights for fences, outdoor storage, and accessory structures are processed using the traditional height exception application.

GENERAL TIMEFRAME:

- In order to maximize the efficient processing of an application, **it is in the applicant's best interest to ensure that a complete and thorough application has been submitted** and any subsequent submittals adequately address any comments that were provided.
- No building permit may be submitted for review until all development review applications have been approved.
 - ➔ The length of time to process a height exception can vary depending on the complexity of the request and whether or not the height exception is accompanied by another development review application. A stand-alone height exception application can generally be processed in **10 to 16 weeks**.

GENERAL NOTES:

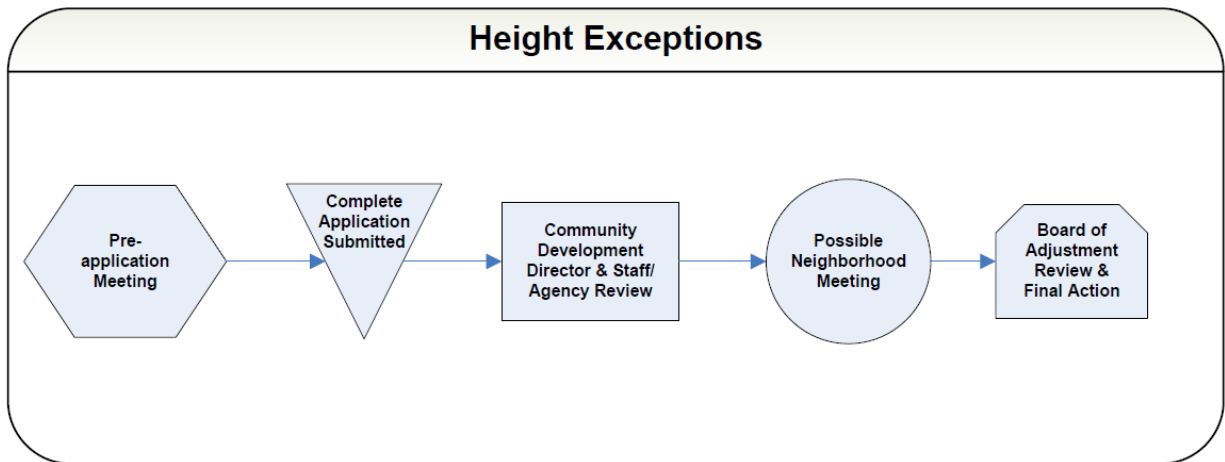
- Building Permit:** If the height exception request is approved, the applicant may proceed with the building permit process through the Building Division. No building permit will be allowed, reviewed, or approved without an approved height exception in place.
- Pursuant to state law, certain findings must be made to grant a height exception, and the height exception procedure cannot be used to allow a land use that is not authorized by the applicable zoning classification.
- Except for the specific situations outlined below (which require a Variance), no structure or building shall exceed the height limitations provided in this land development code without first obtaining a height exception.
 - (a) Telecommunications structures;
 - (b) Structures that exceed the approved height limit on the effective date of this land development code. Any such structure shall not be considered a non-conforming structure due to its height only;

FTK: Height Exception

- (c) Development according to the terms and conditions of a final PUD permit or final subdivision plat that was approved prior to the effective date of this land development code and that has not lapsed in any way. Any structure exceeding the maximum height permitted in a zoning district, but which is developed in accordance with such approved final plan or plat, shall not be considered a nonconforming structure due to its height only;
 - (d) Development consistent with the intent, terms, and recommendations of an applicable comprehensive plan, or other special plan adopted by the city, when such plan specifically recommends and anticipates development of structures exceeding the maximum allowed height permitted in a zoning district, but which is developed in accordance with such approved comprehensive plan or other sub-area plan, shall not be considered a non-conforming structure due to its height only.
- Review:
 - ➔ The director and the DRT review height exception applications, and the director provides a report to the Board of Adjustment regarding an application’s acceptability in light of the approval criteria listed below.
 - ➔ Applications are considered by the Board of Adjustment at a public hearing. After the hearing, the Board of Adjustment is authorized to approve, approve with conditions, or deny the application based on the approval criteria listed below.
 - Occasionally, the city may require a neighborhood meeting when it appears that an application may have impacts to the surrounding area.
 - Failure to comply with any conditions of approval may result in the revocation of the height exception by the Board of Adjustment.
 - The applicant or a qualified representative of the applicant must be present at the public hearing. If the applicant or a qualified representative is not present, the request may be postponed to a future hearing date.
 - An approval shall authorize only the development described in the approved application.
 - If granted, height exceptions **run with the land** and are in effect for the life of the property, regardless of ownership, unlike Conditional Use Permits or Uses-by-Permit, which are granted to the applicant only.
 - Lapse:** A height exception shall lapse unless a building permit is issued and construction is substantially completed within three years from the date of approval, unless another time frame is listed as an element of the approval of a related application (such as a conditional use permit). Amendments to a related development plan shall not affect the lapse period unless otherwise provided.
 - Note:** The existence of nonconforming uses of neighboring lands, structures, or buildings in the same zone district, or permitted or nonconforming use of lands, structures, or buildings in other zoning districts, shall not be considered grounds for the issuance of a height exception.

FTK: Height Exception

HEIGHT EXCEPTION FLOWCHART:



REVIEW PROCESS:

- A request for a height exception is usually initiated by the property owner or a qualified representative following a Pre-Application Meeting with staff.
- A complete application is submitted for review.
 - ➔ At the time of submittal, staff will determine if the application is complete (incomplete applications will not be accepted and will be returned without review).
 - ➔ The city will refer the application out to various departments within the city and to outside organizations for review and comment.
 - ➔ After a review period of approximately 6 weeks, the case is discussed at the internal Development Review Team (DRT) meeting. After the DRT meeting, the applicant will receive a comment letter identifying necessary revisions and questions to be answered.
 - ➔ The applicant will address the comments and resubmit to the city for an additional review cycle of approximately 5 weeks. This process will continue until all comments are resolved and the application is ready to be scheduled for public hearing.
- Once an application is ready for public hearing, the property will be posted with a sign for 7 to 10 days, a public hearing notice will be placed in the newspaper, and neighbors will be notified in writing of the request.
- Approximately one week before the Board of Adjustment hearing, the applicant will receive a copy of the staff report and a meeting agenda.
- The final approval or denial of a height exception is determined by the Board of Adjustment at a public hearing.

FTK: Height Exception

- ➔ The Board of Adjustment hearings take place on the 2nd Tuesday of every month in the City Council Chambers, located at 7887 East 60th Avenue, and begin at 5:30 p.m. (staff determines whether or not an application is ready to be heard by the Board of Adjustment).
- ➔ The Board of Adjustment is made up of five sitting members, and it takes four affirmative votes in order to approve a request.

HEIGHT EXCEPTION APPROVAL CRITERIA:

In order to approve a height exception request, the Board of Adjustment must find that all of the following criteria have been met:

- (a) The structure and development, if applicable, complies with all other standards not specifically waived by the city;
- (b) The exception would have minimal effect upon adjacent properties with respect to solar access, visual access, and rights of privacy, light, and air;
- (c) The exception will not interfere with the city's ability to provide public services to the site at the level currently enjoyed by the area, or at adequate levels per existing city policies and regulations;
- (d) There is no evidence to suggest that the exception would interfere with or complicate emergency services or otherwise impair public safety; and

In addition, one of the following is met:

- (a) The exception provides a demonstrated benefit to the city; or
- (b) The architecture and character of the proposed building or structure that will exceed the height standards are compatible with existing development on surrounding or adjacent parcels.

SUBMITTAL REQUIREMENTS FOR A HEIGHT EXCEPTION:

Please note that incomplete submittals will not be accepted for review. Any inaccurate or incomplete information provided by the applicant may cause the application to be returned to the applicant and/or delay review cycles which may impact the case completion time frame. Please visit c3gov.com/etrakit for complete information for submitting for this application type. The following items will need to be included in your submittal package.

- Property Owner Authorization and the non-refundable review fee.
- General warranty deed, with a complete legal description for the subject property.
- Site plan that shows the following (example site plans are available):
 - ➔ The location of all proposed and existing buildings with their distance to all property lines.
 - ➔ The location of all existing and proposed landscaping.

FTK: Height Exception

- ➔ The location of all proposed outdoor storage areas (if applicable).
- ➔ The surface material of all portions of the site.
- ➔ The location and type of all fencing.
- ➔ The location and dimensions of all existing and proposed parking spaces.
- ➔ Any other items that may be necessary in order to adequately review the proposed application.

- Building elevations or a development plan.
- If new buildings are proposed and a development plan is required, a complete development plan application (staff will help determine if this is required).
- Narrative for the project.
 - ➔ The required questions to be answered can be found at the end of this handout.
- Facts to Know for Severed Mineral Rights (if applicable).
- Any other information or technical studies that may help to illustrate how the request complies with the height exception approval criteria.
- The Board of Adjustment or staff may require additional information or technical studies on a case-by-case basis.

NARRATIVE QUESTIONNAIRE HEIGHT EXCEPTION

A. General Property Information:	
1.	Property Address or Parcel Identification Number (PIN):
2.	Applicant's Name:
3.	Property Owner's Name:
4.	Current Zoning of the Subject Property:
5.	Future Land Use Plan Designation:

B.	Background Information:	YES	NO	
1.	Is this request an amendment to an existing land use case?			If yes, what was the previous case number?
2.	Is this application an attempt to correct a violation of some kind?			If yes, please provide a copy of the violation.

The following pages contain specific questions about the nature of your request. Therefore, it is in your best interest to answer them in as much detail as possible, to help limit the number of follow-up questions and review cycles.

DO NOT ANSWER WITH A 'YES' OR 'NO' OR 'N/A' – PLEASE BE SPECIFIC!

