



PROCEDURE FOR VARIANCE APPLICATION

The Zoning Board of Appeals (ZBA) may authorize, upon appeal in specific cases, such variances from the terms of the Zoning Code not contrary to the public interest where, owing to special conditions, a strict application of the provisions of the Zoning Code would result in undue hardship or practical difficulty. Variances shall not be granted on the grounds of convenience or profit, rather, the Board must make specific findings of fact that support conclusions as listed in Section 1103.16 of the Zoning Code.

PUBLIC HEARING

The Board generally meets the third Monday of each month for a public hearing on an Application for Variance. City staff gives written notice by regular mail to property owners within two hundred (200) feet of the property in question as listed on the most recent Shelby County Tax Duplicate.

In addition, public notice of such hearing as to the time, place, and date and subject of the hearing, is published in a newspaper of general circulation within the City prior to the date of the hearing. Any party in interest may appear and be heard at the hearing in person, by agent, or by attorney.

PROCEDURES AND REQUIREMENTS FOR GRANTING OF VARIANCES.

- (1) **Authorization.** As permitted by Section 1103.16(g)(2) of the Zoning Code, the Board may authorize, upon appeal in specific cases, such variance from the terms of this Zoning Code as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Zoning Code would result in undue hardship or practical difficulty. Variances from the regulations of this Zoning Code shall not be granted unless the Board makes specific findings of fact based directly on the particular evidence presented to it, which support conclusions that the standards and conditions imposed have been met by the applicant. Variances shall not be granted on the grounds of convenience or profit, but only where strict application of the provisions of this Zoning Code will result in undue hardship or practical difficulty.
- (2) **Appeal for Variance.** Variances shall only be considered in cases where an application for a zoning permit has been previously filed with the City Manager or his designee and rejected. The applicant, or his agent, shall file an appeal for variance on forms provided by the City. The completed application form shall also be accompanied by one copy of a site plan showing:
 - The boundaries and dimensions of the lot.
 - The size and location of existing and proposed improvements, including, but not limited to, buildings, structures, facilities, signs, lighting, access-ways, walks, off-street parking spaces, loading berths and landscaping.

- The proposed use of all parts of the lot and improvements.

(3) **Public Hearing on Variance.** The Board shall select a time and place for the public hearing on a variance application and shall publish one notice of the time, place and date of such hearing in a newspaper of general circulation of the City at least seven days prior to the hearing, and give written notice thereof to all owners of property located within 200 feet in any direction of the property affected by the variance application.

(4) **Variances.** When desired or required, a variance may be granted from the strict application of any provisions of the Zoning Code related to area, distance, dimensions or location. A variance is not an appeal from a decision of the Administrator but is intended to provide relief from strict application or literal enforcement of the requirements of the Zoning Code. No variance from any provision of the Zoning Code related to density, or use shall be permitted.

1. **Hearing and Decision.** The Board shall review the application in a public hearing, and shall approve, approve with modifications, or deny an application. The decision of the Board shall be final upon the date of the mailing of its written decision to the applicant, which shall include written findings of fact and conclusions of law.
2. **Approval.** The Board shall not grant a variance unless it finds that all the following conditions apply:
 - a. There are special circumstances or conditions applying to the land, building or use referred to in the application and the literal enforcement of the Zoning Code would cause the applicant to suffer practical difficulties;
 - b. The granting of the variance is necessary for the preservation and enjoyment of substantial property rights; and
 - c. The granting of the application will not materially affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use and will not be materially detrimental to the public welfare or injurious to property or improvements in such neighborhood.
3. **Practical Difficulties.** In determining whether the literal enforcement of the Zoning Code will result in practical difficulties, Board shall consider and weigh all of the following factors to determine whether (an applicant need not satisfy all of the factors and no single factor shall be determinative):
 - a. The property in question will yield a reasonable return or whether there can be any beneficial use of the property without a variance;
 - b. The variance is substantial;
 - i. The essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
 - ii. The variance would adversely affect the delivery of government services (i.e., water, sewer, garbage);
 - iii. The property owner purchased the property with knowledge of the zoning restriction;

- iv. The property owner's predicament feasibly can be obviated through some method other than a variance;
- v. The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance; and
- vi. There are any other relevant factors that may assist the Board in weighing and balancing the public and private benefits and harms to determine if the requested relief is necessary.

4. Approval with Modification. In granting a variance, the Board may impose such modifications, safeguards and restrictions upon the premises benefitted by the variance as may be necessary to comply with the standards set forth above to reduce or minimize potential injurious effects of such variance upon neighboring properties, and to carry out the general purpose and intent of this The Zoning Code. Such modifications, safeguards and restrictions may be in the form of approval of a lesser variance for the projection, height or size of an existing or new building, structure, facility or sign than requested by the applicant, however, may not result in a use variance.

5. Expiration. Variances shall expire one year from the date of issuance, unless within such one-year period, the applicant is issued a building permit, site plan permit, or other permit as appropriate in accordance with the granted variance or an extension of time has been granted by the Board. There shall be no modification of variances except by further action of the Board. Once the time limit pursuant to this subsection has expired, a request for a variance shall require a new application for a variance.

YOU WILL NEED

- a completed Application for Variance and three (3) copies of required site plans, if applicable
- any additional information not submitted with the original permit application, which the staff or applicant feels the Board should review.

FEES

Each Application for Variance shall be accompanied by a fee of one hundred and twenty-five dollars (\$125.00).

PROCEDURE

1. Obtain, complete, and submit an Application for Variance and related site plans at least 14 days prior to the scheduled public hearing.
2. Applicant(s) should attend the public hearing and be prepared to answer questions relevant to the application.
3. The ZBA will determine if it has the authority to grant the request.
4. The Board may render a decision the same date as the public hearing, or may continue the matter for further review.
5. The ZBA must make a finding that the reasons set forth in the application are valid and justify the granting of the variance. Any granted variance must remain in harmony with the

general purpose of the Zoning Code, so that the public health, safety, convenience, comfort, prosperity or general welfare will be conserved and substantial justice done.

6. The Board shall render a written decision on the application without unreasonable delay on all cases, within 45 days after the close of the public hearing.
7. Approval of a variance does not preclude the need for applicable zoning and building permits.

QUESTIONS?

If you have any questions or need assistance in the application process, please contact:

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