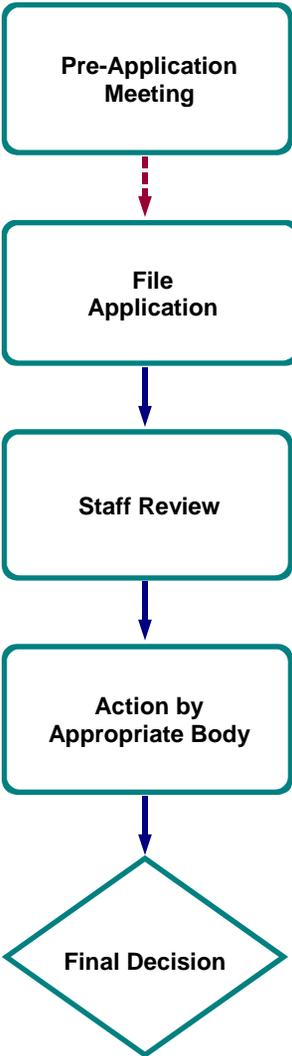

APPEALS & VARIANCES

Chapter 9



LEGEND

- Required —————>
 - Optional - - - - ->
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Chapter 9 - Appeals and Variances

Purpose of this Step

No matter how well any ordinance is written, there will almost assuredly be a situation in which (1) the ordinance creates an unfair hardship, (2) the requirements of the ordinance as applied to a particular situation create a result that is inconsistent with the ordinance's intent, or (3) the application of the ordinance to a particular situation is ambiguous or undefined. In the case of the ordinances regulating the development and construction process, the frequency with which these situations occur increases substantially due to the complexity of the requirements and the wide variations between development conditions on different projects. As a result, the city has several procedures for requesting relief from many requirements of the zoning regulations, subdivision regulations, building codes or engineering design standards.

This chapter will give an overview of the general process and the specific application requirements and decision-making criteria unique to each type of variance or appeal. The details on how to obtain relief from a specific requirement vary significantly depending upon whether the requirement is contained in the zoning regulations, subdivision regulations, the building code or the engineering standards. Thus, each step in the general process will contain subsections dealing with each major option.

It is important to point out that the city does not approve variances or appeals simply because complying with a particular requirement is inconvenient or more expensive. There must be a solid justification for why an ordinance requirement that is typically applied to every project should not be applied to a particular project.

Types of Variances and Appeals

Zoning Variance

The development requirements established by the city's zoning regulations as they apply to a particular piece of property can be modified or eliminated by the Board of Zoning Appeals. Variance requests are reviewed in light of five criteria specified by state statute that are intended to evaluate the uniqueness of the property, the impact on adjacent property owners, the hardship caused by the requirement, public safety and welfare and the intent of the requirement. This process applies only to property contained within one of the city's conventional zoning districts; i.e., not one of the "planned" zoning districts. The Board consists of seven members, appointed by the Mayor and the City Council, who meet on the second Wednesday of each month.

Zoning Deviation

This process is very similar to the Zoning Variance except that it applies to property located in a "planned" zoning district. Since the development plans that are a part of each planned zoning district are approved by the Planning Commission, variances or deviations from the normal zoning requirements and design guidelines are also reviewed by the Planning Commission. The Commission consists of 11 members appointed by the Mayor and the Council. Planning Commission meetings are held on the second and fourth Mondays of each month.

Zoning Appeal

The application of a particular zoning requirement to a particular piece of property or a particular develop-

ment proposal often involves some judgement on the part of the city staff. If a property owner or a developer believes that the decision of the staff is based on an incorrect interpretation of the ordinance, then that interpretation can be appealed to the Board of Zoning Appeals. The deliberation of the Board will focus on the wording and intent of the ordinance provision, not on a specific location or piece of property. Thus, the decision of the Board will affect all subsequent interpretations of that ordinance provision. The Board of Zoning Appeals meets on the second Wednesday of each month.

Nonconforming Situation Permit

When property is legally developed but later becomes nonconforming due to a change in the zoning ordinance, that property can legally remain as developed for an indefinite period of time. Where the nonconformity involves a site improvement (such as a parking lot or storm drainage improvements), buildings on the site cannot normally be expanded or renovated without also correcting the nonconforming site improvement. If bringing the site improvements into compliance with current regulations is not reasonably possible and the proposed expansion or renovation of the property will not adversely effect adjacent property owners, then a Nonconforming Situation Permit can be approved to allow the work to take place. This approval can either waive the requirement for bringing site improvements into compliance or can require only partial compliance. Requests for a Nonconforming Situation Permit are reviewed and approved by either the Board of Zoning Appeals (in the case of a conventional zoning district) or the Planning Commission (in the case of a “planned” zoning district).

Building Code Variance

The requirements of the city’s building codes can be modified by the Code Board of Appeals when it can be demonstrated that an alternative design or an equivalent

form of construction will comply with the intent of the codes and result in a structure that adequately protects the public safety. The Code Board of Appeals is a five-member board (with three alternates) that is appointed by the Mayor and the Council. The membership of the Board is divided between architects, engineers and contractors. They meet on an as-needed basis, generally within 10 days of when an application is filed.

Building Code Appeal

The application of the building code requirements to a specific construction project often involves some judgement on the part of the city staff. If a designer or contractor believes the staff has made a decision based on an incorrect interpretation of the code provisions, then that decision can be appealed to the Code Board of Appeals. In addition, if a designer or contractor believes that a staff decision is based on a code provision that does not apply to the proposed project, then that decision may be appealed as well.

Engineering Variance or Exception

The application of ordinances and engineering design standards to a specific construction project often involves some judgement on the part of the city staff. If a designer or developer believes that the decision of the staff is based on an incorrect interpretation of ordinances or inappropriate application of design standards, then that decision can be appealed to the City Council through review and recommendation of the Public Works Committee of the City Council. This committee consists of five councilmembers (one from each ward) appointed by the Mayor. They meet on the fourth Wednesday of each month. The applicant for this type of variance needs to demonstrate that the application of the normal standards would create some type of hardship and that the intent of the requirements can be met in some other way.

Step 1 - Pre-Application Meeting

It is recommended that the applicant meet with the staff prior to submitting an application. This meeting gives the staff the opportunity to identify issues that may be able to be addressed prior to the application being submitted and to identify particular drawings or information that may be needed in conjunction with the application. In addition, the meeting allows the applicant to explain development issues that shaped the design of the project and to ask questions regarding appeal or variance procedures. This exchange of information can often make the rest of the process go more smoothly.

It is not necessary to have detailed plans drawn prior to the pre-application meeting. However, the more information that can be brought to the meeting (even in sketch form), the more thorough and specific the staff can be in response.

The staff members attending the meeting will answer questions and give an initial reaction to the variance or appeal request. It is important to point out that staff feedback from a pre-application meeting is preliminary. The staff cannot guarantee that all relevant issues will be identified at this initial meeting or that the initial reaction of an individual staff member will reflect the final staff recommendation.

Step 2 - Making an Application

Zoning

Applications for zoning variances and deviations, zoning appeals and nonconforming situation permits can be obtained and filed at the Planning counter. Contact the Planner-of-the-Day at 913/895-6217 for information. Applications are available at www.opkansas.org. Once a completed application is received, it will be scheduled for a specific meeting of either the Board of Zoning

Process Improvement Points

Talk to the staff as soon as the need for a variance or an appeal becomes apparent. The staff may be able to suggest alternative ways to resolve the problem or ways to improve your chances for obtaining a positive decision. In addition, the staff can usually provide a reasonable estimate of your chances for approval, although there is obviously no way that the staff can predict every decision.

Make sure you can justify your request in light of the standards that will be used for review. A variance, for example, normally will be approved only if there are unique circumstances involved. If your property is similar to other property throughout the city, a request to amend the ordinance might be more appropriate than a variance.

Appeals or the Planning Commission. Variance requests require that the applicant send a written notice of the application to property owners within the notification area of the property in question prior to the meeting. Instructions on sending this notice will be given to the applicant along with an affidavit that must be completed after the mailing is done. The application fee for zoning variances and appeals is \$120. Zoning deviations are normally handled as part of a final development plan application, and the fee varies from \$150 to \$500 depending upon the size of the project. There is no fee for a nonconforming situation permit.

Building Code

Applications for the Code Board of Appeals can be obtained at the Building Safety counter. Contact the Plans Examiner-of-the-Day at 913/895-6225 for more information or to have an application form faxed. The applicant will be contacted with the date of the meeting once it has been set. A notice is published in the city newspaper, but written notice to adjacent property owners is not required. The application fee is \$150.

Engineering

An engineering variance can be requested by contacting either the Administrator of Engineering Services or the Director of Public Works. Although there is no application form, the nature of the request and the justification for the variance must be submitted in written form. The variance will normally be considered at the next regularly scheduled meeting of the Public Works Committee if it is received by the 10th of the month. There is no application fee.

Process Improvement Points

Base the justification for your request on reasons that are relevant to Overland Park. Requests that are based on a corporate preference for standardization across the country or on the rules followed by other jurisdictions are less likely to get approved.

Step 3 - Review

All variance and appeal applications are reviewed by the staff and a written staff report and recommendation is prepared by the staff for the appropriate decision-making body. A copy of this staff report will be made available to the applicant prior to the meeting at which it is reviewed.

Step 4 - Action

At the meeting, the staff will be asked to give a brief presentation. Next, the applicant will be able to make a presentation. Finally, any members of the public who are affected by the application will be given an opportunity to speak.

Items heard by the Board of Zoning Appeals must receive at least four affirmative votes to be approved. Items heard by the Code Board of Appeals must receive three affirmative votes to be approved. Items reviewed by the Public Works Committee and the City Council must receive a majority vote to be approved.

Process Improvement Points