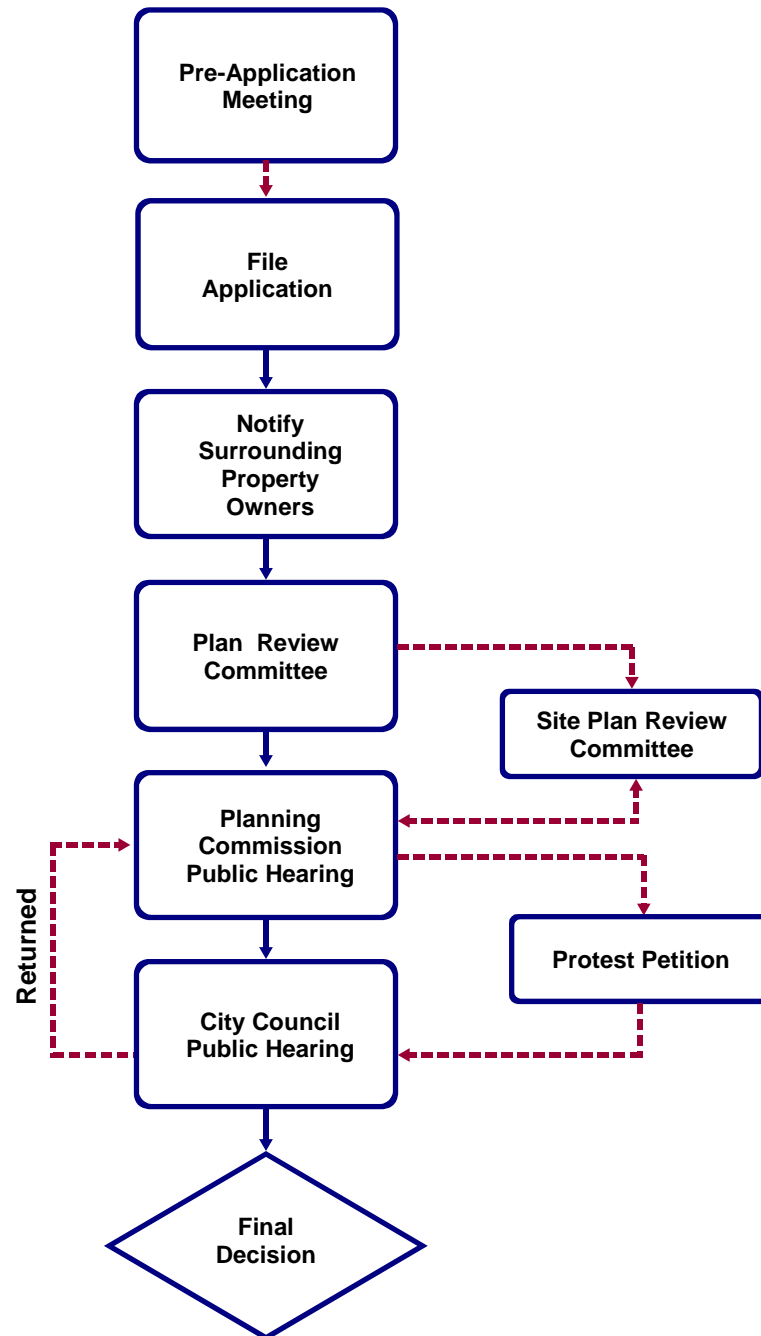


# REZONING & SPECIAL USE PERMITS

## Chapter 3



### LEGEND

- Required —————>
- Optional - - - - ->

# Chapter 3 - Rezoning - Special Use Permits

## Purpose of This Step

Each piece of property in Overland Park is in a particular zoning district. The city's Unified Development Ordinance (UDO) contains regulations for each zoning district that specify permitted uses, required yard setbacks, maximum building height, basic parking requirements and related development standards. Thus, when the city approves a rezoning application, it represents a granting of basic development authority for that particular property.

Some land uses (such as hotels, hospitals, airports or nursing homes) are not listed as a permitted use in any zoning district. These uses are permitted only after the approval of a Special Use Permit (SUP) for a specific use at a specific location. The granting of development authority from a special use permit supplements the development rights granted by the underlying zoning designation, but is not dependent on them. A special use permit for a hotel, for example, can be approved whether the existing zoning designation is R-1, Single-Family Residential District; or M-1, Industrial Park District. Special use permits can be approved for a specific period of time (subject to renewal) or for an indefinite period of time (no renewal required).

The purpose of the rezoning/SUP step is to make sure that the proposed uses are appropriate at the proposed location and compatible with existing or planned uses on the surrounding property. In addition, decisions are typically made at this point that determine the density (or intensity) of development and its general layout and character. These decisions are made only after listening to any concerns that surrounding property owners or members of the general public may have regarding

the proposed development and its impact on the community.

Additionally, the city's design guidelines and standards apply to all development. Applicants should familiarize themselves with the Infill and Redevelopment Design Guidelines, Multifamily Design Guidelines and Commercial Design Guidelines.

The guidelines work in conjunction with the UDO and the Master Plan. Some areas covered by the guidelines include site layout, open space, preservation of natural features, pedestrian and vehicular circulation, landscaping, screening and transitions, lighting and building design. Guidelines can be accessed by visiting [www.opkansas.org/\\_Bus/Zoning\\_and\\_Planning/infill.cfm](http://www.opkansas.org/_Bus/Zoning_and_Planning/infill.cfm)

## Planned Zoning

Virtually all commercial and multifamily residential development in Overland Park is done under what is referred to as a "planned" zoning district. Planned districts are approved subject to a preliminary development plan that is submitted as part of the rezoning application. This plan includes a site plan showing such things as the layout of buildings and parking areas, conceptual building elevations, and the relationship of the proposed development to existing or proposed development on surrounding property. All subsequent development approvals and construction activities are required to be consistent with this preliminary development plan. Making significant revisions to the plan requires going through the same notification and public hearing process that was required for the original rezoning approval. Special use permits are

approved subject to the same type of preliminary development plan.

This chapter describes the rezoning and special use permit approval process. Please contact the Planner-of-the-Day at 913/895-6217 for more information.

## **Downtown Overland Park**

Downtown Overland Park is a unique area in the city and has its own Master Plan, design guidelines and zoning districts specifically intended to enhance and foster development in the downtown area. Downtown Overland Park is roughly bordered by 78th Street on the north, the properties just east of Broadmoor Lane on the east, 83rd Street on the south and Lowell Avenue on the west. The downtown area also has a management agency, the Downtown Overland Park Partnership, which also serves as a business association.

If you are considering a redevelopment or new project in the downtown area, please contact the Planner-of-the-Day at 913/895-6217 for more information. The Downtown Master Plan and design guidelines are available on the city's Web site at [www.opkansas.org](http://www.opkansas.org).

## **Step 1 - Pre-Application Meeting**

It is recommended that the applicant meet with a member of the Current Planning staff prior to submitting a rezoning or special use permit application. Depending on the complexity of the development or known site problems, the Current Planners may ask staff members from Engineering Services or Building Safety to attend. In addition, the applicant may ask that appropriate staff members be present to address particular issues.

This meeting gives the staff the opportunity to identify issues that may be addressed prior to the application

## **Process Improvement Points**

Talk to the staff early and often. The Overland Park planning staff handles dozens of rezoning and special use permit applications each year and thus is very familiar with the process and the expectations of the Planning Commission and City Council. Our goal is to make sure that each application is reviewed promptly, fairly and professionally. Even if we disagree with a particular proposal, the staff is still an excellent source for information and suggestions.

being submitted and to identify special studies needed in conjunction with the application. In addition, the meeting allows the applicant to explain issues that shaped the initial design of the project and to ask questions about rezoning or special use permit 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 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 proposed development. Complicated projects or complex questions, however, may require research before an answer can be given. In these cases, the staff will contact the applicant with a response within a few days.

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 - Filing the Application

Applications for rezoning or a special use permit can be filed at City Hall on any business day between 8 a.m. and 5 p.m. The process typically takes 15 to 30 minutes to complete; however, on application deadline dates, there is often a waiting line in the afternoon. A complete application consists of:

- an application form
- a typed legal description of the property
- an application fee
- five sets of preliminary development plans, collated and stapled (seals not required)
- a digital copy of the plans in PDF format with a

## Process Improvement Points

Make sure your proposal is feasible. Although the development plans that accompany rezoning and special use permit applications are intended to be preliminary in terms of detail, they should not be fictional! It is strongly recommended that you research local real estate market requirements, financing requirements and building code requirements before you prepare development plans. This will increase your chances of gaining approval and of moving forward to actual construction without having to go back for approval of revised plans.

The applicant should be aware of the following policies in order to avoid delays:

- Commercial Design Guidelines and Standards
- Multifamily Residential Design Guidelines and Standards
- Infill and Redevelopment Design Guidelines and Standards
- K-150 Corridor Design Guidelines

Now is the time to check with both Johnson County Water District No. 1 and Johnson County Unified Wastewater District to determine the availability of water and sewer services.

You may also want to check with the Engineering Services Division because stormwater management studies often cause delays.

- minimum resolution of 300 dpi
- any special studies required for the project (such as traffic, etc.)
- preliminary stormwater management plan

The application forms, fee schedules and a checklist for preliminary development plans are included in the Appendix and are also available at [www.opkansas.org](http://www.opkansas.org).

Application fees can be paid in cash, with a check or with a credit card (for transactions under \$1,000). Once the application has been entered into the city's computer system and the fee has been paid, the applicant is given a receipt that includes the case number and the date of the initial public hearing before the Planning Commission. The applicant will also be given one or more signs that must be posted on the property. The signs state that a rezoning or special use permit public hearing is scheduled for a particular date. In addition to posting the sign, the applicant is required to mail (by certified mail - return receipt) a written notice of the application and the public hearing to all property owners (including the subject property) within the notification area.

The applicant will also be given an "affidavit packet" that contains a sample letter for the mailed notice, and three affidavits that state:

- the sign was put in place and remained in place for at least 15 days prior to the public hearing
- notices to surrounding property owners were mailed at least 20 days prior to the public hearing
- the applicant either is the owner of the property or is acting as the owner's agent in making the application

These affidavits must be completed and returned to the city prior to the public hearing, along with the mailing receipts for each letter and as many of the return receipts as the applicant receives.

## Process Improvement Points

Pay attention to details. Make sure the legal description that is submitted with the application is accurate and legibly typed. Be sure that required written notices contain all necessary information and are mailed on time to the correct people. Make sure affidavits for posting the sign, mailing the notices and owner's approval are filled out and signed correctly, and turned in on time. Failure to pay attention to these details will result in the application being delayed.

Contact the Department of Records and Tax Administration or contract with a title company to obtain names and addresses of property owners within the notification area.

Once the application is taken, it is possible to submit additional information or drawings. However, significant changes to the project or late submission of required information can result in the delay of the Planning Commission public hearing.

## Step 3 - Plan Review Committee

Every application for rezoning or a special use permit goes through a detailed staff review. Although a member of the Current Planning staff is assigned to coordinate the review of each application, the focal point of the process is the meeting of the Plan Review Committee. This is a staff-only committee consisting of 8 to 10 representatives of various city departments and divisions that reviews each item on the Planning Commission agenda, identifies relevant issues and develops a recommendation. Thus, the recommendation of the staff reflects the consensus of several opinions.

Typically, the following issues are explored for each application:

- Is the application consistent with the city's Master Plan and related development policies?
- Is the proposed zoning district appropriate given the existing or proposed use of surrounding land? Does the development comply with zoning requirements for setbacks, parking spaces, building size and relevant performance standards?
- Is the density/intensity of the project appropriate for its location, within the requirements of the Unified Development Ordinance, and in compliance with any development policies such as the Land Use Intensity System Update?
- Does the Preliminary Stormwater Management plan address:
  - Detention
  - Stream Corridor Issues
  - Corps of Engineer Requirements
  - Flood Plains?

## Process Improvement Points

Be familiar with the Master Plan and development policies. The city has articulated its vision for future development in its Master Plan text (especially the goals and objectives section), in the Future Development Plan map and in a variety of supplementary documents containing specific development policies and standards. Proposals that are consistent with these documents are much more likely to be approved than proposals that are contrary to them.

- Is the appearance of the proposed building(s) appropriate for the intended use, compatible with surrounding development and consistent with any relevant design policies adopted by the city?
- Will the project create a significant traffic impact on the surrounding street system or a significant hazard to safe traffic movements? Are supplementary traffic studies required to adequately evaluate the probable traffic impacts? Will the location and configuration of proposed driveways, parking areas, loading facilities and drive-through lanes result in the safe and efficient flow of traffic into, out of and within the site?
- Are the adjacent streets improved to normal city standards? If not, does additional land need to be dedicated to meet right-of-way standards or does a vertical profile need to be engineered to show how adjacent streets will be graded when they are improved? Are specific street or traffic signal improvements needed concurrent with development to accommodate increased traffic?
- Is the property in a 100-year floodplain or in a drainage basin in which stormwater detention is required? Are there streams that are regulated by the stream corridor ordinance? Are there drainage problems on-site or at site boundaries, or are there deficient drainage structures downstream? These should be addressed in the preliminary stormwater management plan.
- Are there bank-stabilization problems within or adjacent to the proposed project? If so, does the preliminary development plan address these issues?
- Does the site contain “jurisdictional waters”? If so, have you obtained a permit from the Corp of Engineers?
- Is the location, size and general use of the proposed building(s) likely to create any building code problems? Does the site configuration provide adequate Fire Department access? Are water lines and hydrants in the area adequate for fire-fighting or can they be readily expanded?
- Is any land proposed for dedication as a public park? Is it land that would be beneficial to the park

## Process Improvement Points

Detention is required for development in designated areas of the city. Detention may also be required as a solution to drainage problems revealed in a flood study or stormwater management plan submitted by the applicant.

system? Is the proposed project in compliance with the Greenway Linkage Plan (the city's system of linear parks and bike/hike trails) or does there need to be a dedication of land or easements?

- Does everything conform with the Design Guidelines?
- Is the property or existing structure historical in nature?

Within one or two days following the Plan Review Committee meeting, a staff member will contact the applicant to discuss the staff's recommendation. In many cases, the staff will offer suggestions for modifying the application that would increase the level of staff support. Any changes agreed to by the applicant need to be made as soon as possible to avoid delays in the Planning Commission hearing date. If extensive changes are being made or if additional traffic or engineering studies are required, then the staff will request that the application be "continued;" i.e., rescheduled, to a later Planning Commission meeting date to allow time for the necessary work to be completed.

Following the Plan Review meeting and any subsequent discussions with the applicant, the staff will prepare a written staff report describing the rezoning or special use permit application and action recommended by the staff. In many cases, the staff will suggest conditions that should be considered if the application is approved. The staff report is typically ready for release the Thursday prior to the Planning Commission meeting and it is mailed to the applicant and owner for each item on the agenda. The staff report is also available online the Friday before a Planning Commission meeting.

## Step 4 - Site Plan Review Committee

All rezoning applications involving multi-family development are required to be reviewed by a subcommittee of the full Planning Commission known as the

## Process Improvement Points

If property being requested for rezoning or special use permit is within 500 feet of the environs of a structure on the state or national historic register, the Kansas State Historical Society will have to review the rezoning or special use permit application.

If the property is an Overland Park landmark, the city's Landmark Commission will be required to review and make a recommendation to the Governing Body on the proposed rezoning or special use permit application.



Site Plan Review Committee. In addition, the Planning Commission or the staff may refer other rezoning or special use permit requests to the Site Plan Review Committee where there are design issues that merit review and discussion in a more informal setting. This three-person Committee will listen to brief presentations by both the applicant and the staff, and then will try to resolve any differences relating to the design, layout or density of the project. The Committee will make a recommendation to the Planning Commission and may suggest changes to the preliminary development plans that would increase the level of Committee support. Again, if extensive changes are being made or if more information is needed to adequately review the application, then the application may be “continued” to a later Planning Commission meeting.

## **Step 5 - Planning Commission Public Hearing**

Every rezoning and special use permit application is reviewed by the Planning Commission at a public hearing. The Commission consists of 11 appointed citizens who meet on the second and fourth Mondays of each month at 1:30 p.m. in the City Council Chamber.

Staff and applicants making presentations in the City Council Chamber have access to a number of features designed to enhance presentations. Features are described in detail on page 3.10 and 3.11.

For each item on the agenda, the staff will make a presentation of the staff report and the applicant will be given an opportunity to make their own presentation. Presentations should be concise and to-the-point and need not be elaborate. At the end of both presentations, the Commission members may ask questions. Next, the Chairperson will open the public hearing and invite anyone in the audience to speak who has an interest in the application. If issues or concerns are raised by the public, the applicant is typically given an opportunity to respond. Finally, the public hearing

## **Process Improvement Points**

Talk to surrounding residents and property owners. Development applications are never considered in isolation. The city always takes into account the existing and planned development on adjacent property and the opinions of nearby residents and property owners. Applicants should know the positions of adjacent owners and consider their concerns as much as possible to maximize the chances for approval.

portion of the meeting is closed, and the Planning Commission discusses the action that should be taken and the reasons for that action.

In the case of a rezoning or special use permit, the Planning Commission's action is a recommendation to the City Council to either approve, approve with conditions (referred to as "stipulations") or deny the application. The Planning Commission may also vote to continue an application to a later meeting to allow further study or the submission of either more information or revised information by the applicant or the staff. A majority vote of the Commission members present is needed to pass any motion.

It is important to point out that both the Planning Commission and City Council encourage public participation in zoning decisions. As a result, it is strongly recommended that applicants meet with surrounding land owners and residents prior to initiating a rezoning or special use permit application. The more the application can address the concerns of this group, the better its chance of being approved by the city. Although the opinions of adjacent land owners and residents are not the only factors considered, they are an important component in the democratic process that leads to land use decisions in Overland Park.

Prior to the City Council meeting, an ordinance will be prepared in case the Council decides to approve the application. The ordinance will be sent to the official city newspaper and they will determine the cost of publishing the ordinance (required of all municipal ordinances in Kansas). The applicant will be informed of the cost of publication and that cost must be paid to the city by the applicant prior to the application being heard by the Council. Should the application be denied or withdrawn, this money will be refunded.

## Process Improvement Points

Be reasonable and flexible. There are many opinions on what is the best development pattern for any given area in the city. Although the city tries to plan for the future so that development patterns can be at least somewhat predictable, unexpected ideas or issues often crop up during the approval process. Applicants whose development plans are both reasonable and flexible stand a far better chance of successfully adapting to unforeseen ideas or issues.

Forms and details about filing a protest petition are available from the Planner-of-the-Day in the Developmental Center, or you can call 913/895-6217.

## Step 6 - Protest Petition

Within 14 days of the date the Planning Commission makes its initial recommendation, the property owners within the notification area of the rezoning or special use permit boundary can submit a protest petition. If the owners of 20 percent of the land within the notification area sign the petition, then the application can be approved with 10 or more votes of the Governing Body, regardless of how many members of the Governing Body are present.

## Step 7 - City Council Public Hearing

Once the Planning Commission has made a recommendation, a hearing (typically three weeks later) will be scheduled before the City Council.

The Overland Park City Council meets Monday evenings starting at 7:30 p.m. in the City Council Chamber. The format of the public hearing for a rezoning or special use permit request is similar to that used by the Planning Commission and applicants should plan on making a similar type of presentation.

Staff and applicants making presentations in the City Council Chamber will have access to a number of features designed to enhance presentations, which are described below.

The podium is equipped with a touch panel display for the control of presentation devices and lights. The display allows the direct viewing of the presentation images or video and includes telestrator technology to allow the presenter to draw or highlight items on the images that are projected. The podium also includes a camera-based overhead projector for letter size or smaller documents. It also has DVD, CD or VHS video playback capabilities and includes network and device connectivity for a wide range of storage formats (compact flash, USB jump drives, memory sticks etc.).

## Process Improvement Points

The podium also includes a cabinet/table for the projection of large format plans. Plans will be positioned on the cabinet top. A camera mounted in the ceiling will display the image.

Additionally, two large format flat panels are mounted on both sides of the chamber for public viewing of presentations. Several monitors are also located in the ceiling to provide viewing for those at the rear of the room.

During the meetings, there will be staff available to assist with the presentation equipment.

After the City Council has listened to the presentations and to any public comments, they will discuss the application and then take action. They may approve the application, approve with stipulations, deny the application, or continue it to a later meeting. The Council may also return the application to the Planning Commission for further consideration. If the Council disagrees with the recommendation of the Planning Commission, the application must be returned to the Planning Commission for reconsideration at least once unless the Council overrides the Planning Commission's recommendation by at least 9 or more affirmative votes of the Governing Body, regardless of how many members are present.

If the rezoning or special use permit application is approved, the ordinance is published in the official City newspaper the same week and becomes effective immediately upon publication.

## **Coordinating with Outside Agencies**

Overland Park does not provide water service, sanitary sewer service, electrical service, telephone service or gas service. Consequently, applicants for a rezoning or special use permit should be in contact with these utility providers to make sure that appropriate service

## **Process Improvement Points**

Lack of developer coordination or understanding of the time frames and approval processes for water and sanitary sewer service is one of the top causes for project delays. These utility agencies are not under the jurisdiction of the city and staff can not influence these outside agencies.

is available or can be extended in a reasonable manner. In addition, applicants should become familiar with the timetables, submission requirements and service costs of each agency. A list of contacts and phone numbers is included in the Development Directory in the Appendix.