

# ZONING VARIATION APPLICATION PACKET

CITY OF ST. CHARLES / COMMUNITY DEVELOPMENT DEPT./ PLANNING DIVISION / (630) 377-4443



The Variation process provides a method to grant relief from conformance with the strict letter of the provisions of the St. Charles Zoning Ordinance. To be granted a variation, the Zoning Board of Appeals must determine that conformance would cause a particular hardship or practical difficulty to a specific property and that the relief granted is consistent with the purposes and intent of the Zoning Ordinance.

The Board's determination is based on whether evidence has been submitted substantiating specific criteria have been met. The criteria are listed in the attached *Application for Variation* form.

## **Process to apply for a Variation:**

### **APPLICATION:**

- Consult with City staff to determine if a variation is necessary or if your request is eligible for a variation. A variation can only be requested to:
  - Reduce a yard, setback, or landscape buffer requirement.
  - Increase a fence height.
  - Permit use of a lot with area or width no less than 90% of the requirement.
  - Increase building or lot coverage no more than 20% above the requirement.
- Submit a complete application with attachments. A response must be provided to each item on the application form. Note that a \$300 filing fee and a minimum \$1,000 escrow deposit are required with the application. See the application form for more information regarding fees.

### **PUBLIC HEARING:**

- City staff will schedule the application for public hearing before the Zoning Board of Appeals. The Board meets on the fourth Thursday of each month.
- Applications must be received at least 30 days prior to the hearing date. Between 15 and 30 days prior to the hearing, notice is published in the newspaper and sent to property owners within 250 ft. (If the property is in a Historic District, a recommendation from the Historic Preservation Commission is required prior to the public hearing.)
- At the public hearing, the applicant or a representative presents evidence in support of the variation request. (For information on the public hearing procedures, see the attached *Procedures for Public Hearings* document.)

### **VOTE ON VARIATION:**

- The Board votes to grant or deny the variance. The decision will be based on whether the Board has determined that the ordinance criteria for a variation have been met.
- Please note the following relative to variation approvals:
  - Approval requires 4 affirmative votes (regardless of number of members at meeting)
  - The Board may approve a lesser variation than requested.
  - The Board may place conditions on the variation approval.
  - The Variation approval will lapse after 12 months if no building permit is issued, but an extension may be requested from the Board.
  - The Variation is not applicable to any other property.
  - The Variation does not constitute a building permit or any other approval otherwise required by the City Code.

### **AFTER APPROVAL OR DENIAL:**

- If approved, the applicant may apply for a Building Permit.
- The City will send a letter to the applicant containing the motion made by the Board. This letter will constitute the official approval or denial of the variance.
- The City will reimburse the applicant any unused funds placed in escrow per the Reimbursement of Fees Agreement. If additional funds are needed to cover costs incurred during review of the application, the applicant will receive an invoice. No permit will be issued until this is paid.

**Zoning Board of Appeals**  
CITY OF ST. CHARLES  
TWO EAST MAIN STREET  
ST. CHARLES, ILLINOIS 60174-1984



FOR OFFICE USE
Received _____
File # _____
Fee Paid \$ _____
Receipt _____

**APPLICATION FOR A VARIATION**

PLEASE PRINT AND PROVIDE ALL INFORMATION AS REQUESTED.

**APPLICANT & OWNER:**

Name of Applicant\* \_\_\_\_\_  
Phone \_\_\_\_\_ Email Address \_\_\_\_\_  
Address/City/State/Zip \_\_\_\_\_  
Applicant's interest in the property \_\_\_\_\_  
Name and Phone of Owner(s) of Record\* \_\_\_\_\_  
Applicant is (check one)  Attorney  Agent  Owner  Other: \_\_\_\_\_  
Owner acquired the property on (date): \_\_\_\_\_

**ADDRESS, USE & ZONING OF PROPERTY:**

Address of Property (attach legal description) \_\_\_\_\_  
Present Use (commercial, industrial, residential, etc.) \_\_\_\_\_  
Zoning District \_\_\_\_\_  
To your knowledge, have any previous applications for variations been filed in connection with this property? \_\_\_\_\_  
If YES, provide relevant information \_\_\_\_\_

**ACTION BY APPLICANT ON PROPERTY:**

Permit applied for and denied? (yes or no) \_\_\_\_\_  
An Appeal was made with respect to this property? (yes or no) \_\_\_\_\_  
Appeal Application File Number \_\_\_\_\_  
Appeal approved? (yes or no) \_\_\_\_\_  
Appeal Application accompanies this request for variation? (yes or no) \_\_\_\_\_

*\*In the event that the applicant or owner is a trustee of a land trust or beneficiary of a land trust, a statement identifying each beneficiary by name and address of such land trust and defining his/her interest therein must be attached hereto. Such statement shall be verified by the trustee of such trust.*

**REASON FOR REQUEST:**

A. Variation requested (state specific measurements): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Reason for request: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Purpose for which property will be used: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CRITERIA FOR VARIATION:**

The Board of Zoning Appeals may approve a Variation only when it makes written findings with respect to each requested Variation, based upon the evidence presented at the public hearing, that strict compliance with the regulations and standards of the Zoning Ordinance would create practical difficulties or particular hardships for the subject property, and the requested Variation is consistent with the stated purposes and intent of the Zoning Ordinance.

In making its determination of whether practical difficulties or particular hardships exist, the Board of Zoning Appeals must take into consideration the extent to which evidence has been submitted substantiating the criteria have been met.

**Provide a response under each item to substantiate that the requested variation meets the criteria:**

1. Do the particular physical surroundings, shape or topographical condition of the specific property involved result in a practical difficulty or particular hardship to the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out? (Explain)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Are the conditions upon which the petition for a Variation is based applicable, generally, to other property within the same zoning classification? (Explain)

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\_\_\_\_\_

3. Is the purpose of the Variation based exclusively upon a desire to make more money out of the property? (Explain)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Has the alleged practical difficulty or particular hardship been created by any person presently having an interest in the property? (Explain)

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5. Will the Variation, if granted, alter the essential character of the neighborhood? (Explain)

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6. Will granting of the Variation be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located? (Explain)

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7. Will the proposed Variation impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood? (Explain)

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**ATTACHMENTS REQUIRED:**

- A. PLAT OF SURVEY: One (1) copy of a plat of survey (to scale) of the property showing dimensions of all lot lines, existing and proposed structures and distances from lot lines, easements and adjoining streets or uses.
- B. MAILING LIST: A written certified list (form attached) containing the registered owners, their mailing and tax parcel numbers as recorded in the Office of the Recorder of Deeds in the county in which the property is located and as appears from the authentic tax records of such county, of all property within 250 feet in each direction of the location for which the variation is requested, provided all the number of feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the 250 feet requirement. Registered owner information may be obtained at the St Charles Township Assessor's office, 1725 Dean St., St. Charles, (630) 584-2040. The Kane County Recorder of Deeds is located in the Kane County Government Center, 719 Batavia Ave., Geneva, and (630) 232-5935. The DuPage County Recorder of Deeds is located in the DuPage County Government Center, 421 N. County Farm Rd., Wheaton, and (630) 682-7200.
- C. FILING FEE: Filing fee in the amount of **\$300.00** must be rendered at the time the application is submitted. If payment is made by check, it should be made payable to the City of St. Charles.
- D. REIMBURSEMENT OF FEES AGREEMENT: An original, executed Reimbursement of Fees Agreement and deposit of funds in escrow with the City, as provided by Appendix B of the Zoning

Ordinance. By signing this Agreement, the applicant agrees to reimburse the City all costs incurred during review of the application, including but not limited to: the cost of the newspaper notice publication; certified mailing to surrounding property owners; Court Reporter at the public hearing(s); and City staff time spent on review and administration of the application.

The total cost of an application typically amounts to approximately \$1,000. However, the cost of each application varies depending on the following:

- Location of the property, due to the number of surrounding property owners and resulting number of certified letters that will be sent.
- Length of the newspaper notice publication which is based on the legal description of the property.
- Length and number of public hearings, which effect the cost of the Court Reporter. Note that if not all Board members are in attendance at the meeting, the applicant may request a continuation of the public hearing in the interest of having more Board members in attendance at a later meeting. If the public hearing is continued, at the request of the applicant or otherwise, the applicant is responsible for the cost of the Court Reporter at the additional public hearing(s).
- Amount of City staff time spent on review and administration of the application.

- E. REIMBURSEMENT OF FEES INITIAL DEPOSIT: Deposit of funds in escrow with the City. For properties less than 5 acres, a deposit in the amount of **\$1,000** is needed. For larger properties, see the table in the Reimbursement of Fees Agreement. These funds will be used to reimburse the City for all costs incurred during review of the application, per the Reimbursement of Fees Agreement. The applicant may need to provide additional funds to cover costs.
- F. LETTER OF AUTHORIZATION: Letter of authorization from the property owner as to the request for the zoning variation must be included, if the applicant is not the property owner.
- G. DISCLOSURE: Disclosure of beneficiaries of a land trust must be included, if the applicant or owner is a land trust.

I (we) certify that all of the above statements and the statements contained in any documents submitted herewith are true to the best of my (our) knowledge and belief.

\_\_\_\_\_  
Signature of Applicant or agent

\_\_\_\_\_  
Print name of applicant/agent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of owner

\_\_\_\_\_  
Print name of owner

\_\_\_\_\_  
Date



**Tax Permanent Parcel No.**

**Name of Registered Owner**

**Mailing Address**

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Tax Permanent Parcel No.

Name of Registered Owner

Mailing Address

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I (We), \_\_\_\_\_, being first duly sworn on oath certify that all of the above statements and the statements contained in any papers or plans submitted herewith are true and correct.

\_\_\_\_\_  
Signature of applicant or authorized agent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of owner

\_\_\_\_\_  
Date

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_.

Notary Public \_\_\_\_\_



**CITY OF ST. CHARLES**  
**REIMBURSEMENT OF FEES AGREEMENT**



City of St. Charles Acct. # \_\_\_\_\_

**I. Owner:**

Owner of Property: \_\_\_\_\_ Date: \_\_\_\_\_

Owner's Address: \_\_\_\_\_

\_\_\_\_\_

Owner's Phone Number: \_\_\_\_\_

If Owner is a Land Trust, the names and addresses of the beneficiaries of the Trust:

\_\_\_\_\_

**II. Person Making Request (Petitioner/Applicant):**

Name of Petitioner/Applicant: \_\_\_\_\_

Petitioner's/Applicant's Address: \_\_\_\_\_

\_\_\_\_\_

Petitioner's /Applicant's Phone Number: \_\_\_\_\_

**III. Location of Property:**

General Location of Property: \_\_\_\_\_

Acreage of Parcel: \_\_\_\_\_

Permanent Index Number(s): \_\_\_\_\_

Legal Description (attach as Exhibit A)

**IV. Reimbursement of Fees:**

If the City determines, in its sole and exclusive discretion, that it is necessary to obtain professional services, including, but not limited to, attorneys; engineers; planners; architects; surveyors; court reporters; traffic, drainage or other consultants, and/or to incur costs related to any required notices or recordations, in connection with any Petition or Application filed by the Petitioner/Applicant, then the Petitioner/Applicant and Owner shall be jointly and severally liable for the payment of such professional fees and costs, as shall actually be incurred by the City.

The City Administrator is hereby authorized to assign the above described services to the City staff or to consultants, as they deem appropriate. When the City staff renders any services contemplated by this agreement, then in such case the City shall be reimbursed for its cost per productive work hour for each staff person providing said services.

At the time the Petitioner/Applicant requests action from the City, he shall deposit the following amounts with the City as an initial deposit to collateralize the obligation for payment of such fees and expenses:

Number of Review Items	Under 5 Acres	5-15 Acres	16-75 Acres	Over 75 Acres
1	\$1,000	\$2,000	\$3,000	\$4,000
2 or 3	\$2,000	\$4,000	\$5,000	\$7,000
4 or more	\$3,000	\$5,000	\$7,000	\$10,000

As the review proceeds, the City shall deduct incurred expenditures and costs from the funds deposited. If the remaining deposit balance falls below \$500.00, the petitioner/applicant, upon notice by the City, shall be required to replenish the deposit to its original amount. The Petitioner/ Applicant shall replenish the deposit amount within fifteen (15) days of receipt of an invoice directing the replenishment of said deposit. Failure to remit payment within fifteen (15) days will cause all reviews to cease.

A petitioner/applicant who withdraws his petition or application may apply in writing to the Director of Community Development for a refund of his initial deposit. The City Administrator may, in his sole discretion, approve such refund less any actual fees and costs, which the City has already paid or incurred relative to the Petition or Application.

Upon the failure to the Petitioner/Applicant or Owner to reimburse the City in accordance with this Agreement, no further action shall be undertaken on any Petition or Application by the Mayor and City Council, or by any other official or quasi-deliberations, the granting of any relief or approvals, and the execution or recording of any documents, until all such outstanding fees are paid in full and/or the initial deposit is restored to its full amount. Further, the City may deny any application for a grading, building or other permit if such amounts have not been paid in full.

Upon any failure to reimburse the City in accordance with this section, the City may in its discretion, apply any or all of the initial deposit to the outstanding balance due and/or elect to place a lien against any real property associated with the Petitioner/Applicant's Petition or Application. In the event such amounts are not paid in full within sixty (60) days after the date when the statement of such amounts due is delivered or deposited in the U.S. mail by the City, such amounts due shall be deemed delinquent and finance charges in accordance the City's policy for accounts receivable shall be added to the amount due until such amount due, including all delinquency charges, is received by the City. Said lien shall be in an amount equal to the outstanding amount owed to the City.

The remedies available to the City as set forth hereinabove are non-exclusive and nothing herein shall be deemed to limit or waive the City's right to seek relief of such fees against any or all are responsible parties in a court of competent jurisdiction.

Any remaining balance of funds deposited pursuant to this Agreement shall be refunded upon the later occurring of the following events: completion of City deliberation on the petition or application, recordation of all necessary documents associated with the petition or application, or issuance of a building permit upon the real property in question.

BY SIGNING BELOW, THE PETITIONER/APPLICANT AND OWNER ACKNOWLEDGE THAT EACH OF THEM HAS READ THE FOREGOING PARAGRAPHS AND EACH OF THEM FULLY UNDERSTANDS AND AGREES TO COMPLY WITH THE TERMS SET FORTH HEREIN. FURTHER, BY SIGNING BELOW, EACH SIGNATORY WARRANTS THAT HE/SHE/IT POSSESSES FULL AUTHORITY TO SO SIGN.

THE PETITIONER/APPLICANT AND OWNER AGREE THAT PETITIONER/APPLICANT AND OWNER SHALL BE JOINTLY AND SEVERALLY LIABLE FOR PAYMENT OF FEES REFERRED TO IN APPLICABLE SECTIONS OF THE ORDINANCES OF THE CITY OF ST. CHARLES, AND AS SET FORTH HEREIN.

City of St. Charles

\_\_\_\_\_  
Petitioner/Applicant

By: \_\_\_\_\_  
City Administrator

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Attest

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# PROCEDURES FOR PUBLIC HEARINGS BEFORE THE ZONING BOARD OF APPEALS



COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT

CITY OF ST. CHARLES

The purpose of a public hearing before the St. Charles Zoning Board of Appeals is to hear and record testimony for and against a request for a variation to the Zoning Ordinance or an appeal to a decision made by the Building & Code Enforcement Division Manager. At the end of the hearing, the Board makes a decision either to grant or to deny the variation or the appeal to the decision. The following rules have been established so that everyone who appears before the Board is treated fairly. Your cooperation is appreciated.

The Mayor and the City Council appoint the members of the Zoning Board of Appeals, and they serve without pay. The Board makes its decision based on the Zoning Ordinance and the facts presented at the public hearing.

Attached please find a copy from the St. Charles Municipal Code, Title 17, Section 17.04.310 "Variations." If there are any questions on any of the information within this Section, please contact the Community & Economic Development Department at (630) 377-4443.

It is the responsibility of the petitioner or his/her representative to present testimony and evidence to support his/her request for variation to the Board members. This evidence may include verbal testimony, witnesses either in person or by letter, pictures, drawings, plans, or any other documentation to support their request. Any evidence submitted in the form of documentation will remain in the Variation Application file.

For evidence submitted prior to the public hearing, a single copy may be sent or delivered to the Community & Economic Development Department. For any evidence submitted at the public hearing, a minimum of 12 copies must be submitted.

## Hearing Procedures

- The Chairman opens the hearing and the Secretary calls roll. The Chairman presents the minutes from the previous hearings for approval or corrections.
- The Chairman opens the hearing on a request for variation or an appeal to a decision by the Building & Code Enforcement Division Manager. The Secretary will identify the documents presented to the Board into the record.
- The Chairman swears in the petitioner(s), or the representative of the petitioner, others present who wished to testify in favor of the request for variation or appeals or others who wish testify against the request for variation or appeals, and any City staff who will be providing testimony.
- Once the petitioner or the representative of the petitioner is sworn in he/she may then give a short presentation.
- The members of the Board may question the petitioner or the representative of the petitioner.
- Others present who wish to testify in favor or against the request for variation or appeal may give testimony. In order to assure that every person has an opportunity to be heard, the Board may impose a time limit on the length of each testimony.
- The petitioner or representative may respond to the testimony and make a final statement. The petitioner may amend or withdrawn a request or appeals during the hearing or ask for a continuation of the hearing until a later date.
- The Board may review and discuss the issues.

- In the case of a request for variation, the Board shall vote to grant or deny, wholly or in part, the request. In the case of an appeal to a decision by the Building & Code Enforcement Division Manager, the Board shall vote to affirm or deny, wholly or in part, or modify the decision in question. The Board may move to continue the hearing to a specific date, time, and place. By Illinois law, the Board must have four (4) affirmative votes to grant a variation or reverse a decision of the Building & Code Enforcement Division Manager.

### **If You Wish To Speak At The Hearing**

- The Chairman must swear you in.
- At the beginning of your statement, state your name, spell it, and give your address.
- Speak loudly and clearly. Address your comments to the Chairman.
- Be brief. Avoid repeating what others have said before you.
- The Board has the right to impose a time limit on testimony. In order to assure that every person has an opportunity to be heard, the Board may impose a time limit on the length of each testimony.
- Submit written information whenever possible. All documents submitted at the hearing shall be formally entered into the record as exhibits and become the property of the city, unless permission is given to withdraw the original and submit copies. The minimum number of copies of documents submitted at the hearing is 12 copies.
- Testimony shall include facts and specific reasons, not just opinions.
- All oral testimony given at the hearing shall be recorded by a court reporter and on audiotape.

## **From the St. Charles Zoning Ordinance – City Code Title 17**

### **17.04.100 GENERAL PROCEDURES FOR APPLICATIONS**

#### **A. Who is Authorized to Apply**

An application for a Variation or Appeal may be filed by the owner or lessee of the subject property, or by an agent or contract purchaser with specific written authorization from the owner.

An application for a Map Amendment, Special Use or Planned Unit Development may be filed by the owner of the subject property, by an agent, contract purchaser or lessee with specific written authorization from the owner, or by the City. If the City files the application, it need not have authorization from the property owner.

An application for a Text Amendment or Zoning Interpretation may be filed by any property owner, resident, or business owner within the City, or by the City.

#### **B. Filing of Applications**

Applications shall be submitted on forms provided by the City and shall be filed in such number as the instructions provide. Applications shall include the information and plans specified in Appendix A (Submittal Items). Additional information may be required by the Director of Community Development, Building & Code Enforcement Division Manager, Historic Preservation Commission, Plan Commission, Board of Zoning Appeals, or City Council to determine whether the application will conform to the applicable requirements.

#### **C. Completeness**

The Director of Community Development or Building & Code Enforcement Division Manager shall determine whether the application is complete and the required fees have been paid in accordance with Appendix B, and shall notify the applicant of any deficiencies. The City is under no obligation to notice for a public hearing, conduct a full application review, or to place the application on a public meeting agenda until all required submittal items, including filing fees, have been received. Once an application is deemed complete, the application shall be reviewed and scheduled for consideration by the appropriate staff and review bodies.

#### **E. Withdrawal of Application**

An applicant shall have the right to withdraw an application at any time prior to the decision on the application by a City official, City Council, Commission or Board. Such withdrawal shall be in writing. There will be no refund of fees unless the withdrawal is made prior to the time the City has determined the application is complete and prior to scheduling of public meetings and/or commencement of formal review of the application.

### **17.04.150 PUBLIC HEARINGS**

The procedure for all public hearings conducted under this Title shall conform to the following provisions and any additional procedures adopted by the body conducting the public hearing:

- A.** All interested parties may appear for themselves or be represented by a person of their choosing. Written statements will be accepted prior to the hearing to be entered into the public hearing record.
- B.** All testimony and evidence shall be given under oath, or by affirmation, to the body conducting the hearing, and shall be entered into the record. Any person may appear at a hearing and submit evidence, upon receiving recognition from the Chair of the body

conducting the hearing. Each person who submits evidence shall identify themselves and their address. Any person may ask relevant questions of other witnesses, provided that the questions and responses are orderly and pertinent to the issues at hand, as determined by the Chair.

- C. The Chair, with consent of a two-thirds ( $\frac{2}{3}$ ) majority of the body conducting the hearing, may limit testimony to a specific amount of time to provide a reasonable opportunity for all interested persons to testify.
- D. The body conducting the hearing is not bound by strict rules of evidence, but the Chair may exclude irrelevant, immaterial, incompetent or unduly repetitious testimony or evidence.
- E. Any public hearing for a Variation, Zoning Map Amendment, Special Use or Planned Unit Development application concerning property that is within a historic district or is a designated Landmark shall not be concluded until the Historic Preservation Commission provides its recommendation in accordance with Section 17.04.040.
- F. A public hearing may be concluded (see Paragraph 1 below) or continued (see Paragraph 2 below) by approval of a motion of the body conducting the hearing. If the body conducting the hearing determines that additional testimony or written evidence is expected to be submitted at a future date by the applicant or others with standing in relation to the application, the public hearing shall be continued.

**1. Concluded Hearing**

Once a public hearing is concluded, the body conducting the hearing shall not accept any additional testimony regarding the petition except:

- a. A staff report analyzing the application based on the evidence presented at the public hearing, and adopted City plans, policies, codes and ordinances.
- b. Any person presenting testimony or information in response to a specific question from the body that conducted the hearing.
- c. Any person presenting testimony that directly rebuts sworn testimony presented at the hearing.

**2. Continuance**

The body conducting a public hearing may continue the hearing to a future date, time and place. When a hearing is continued, no new notice shall be required, provided that the date, time and place of the continued hearing is publicly announced at the hearing and placed in the minutes. If the hearing is adjourned, rather than continued to a date specified, all notices must be given that are required for a new public hearing.

**17.04.160 PUBLIC NOTICES**

**A. Published Notices**

For all applications that require a public hearing, the City shall cause a notice to be published as required by law. The notice shall include the date, time, place and purpose of the public hearing, the name of the applicant and the address or common location of the subject property. Such notice shall be published not less than fifteen (15) days nor more than thirty (30) days in advance of the scheduled hearing date.

**B. Mailed Notification**

- 1. For public hearings for Zoning Map Amendments, Variations, Special Uses and Amendments to Special Uses the applicant shall submit with the application a written certified list containing the names and mailing addresses of all owners of all property within two-hundred and fifty (250) feet of the property for which the application is requested, as they appear on the authentic tax records of the county in which the property is located. The two-hundred and fifty (250) feet shall be measured in all

directions from the perimeter of the subject property, provided that the number of feet occupied by public roads, streets, alleys and other public ways, as well as railroad rights of way, shall be excluded in computing the two-hundred and fifty (250) foot distance.

2. The Director of Community Development shall send by first class certified mail, not more than thirty (30) days nor less than fifteen (15) days before the hearing, written notice to the owners appearing on the list furnished by the applicant. The notice shall include the date, time, and place of the public hearing, the name of the applicant and the address or common location of the subject property, and a brief statement of the nature of the applications to be considered at the public hearing.

#### **17.04.170 FEES**

##### **A. Payment of Fees Required**

Any person, firm, corporation or agent who files an application pursuant to this Title shall pay all fees, costs, and expenses for review of the application, plans and documents reviewed by or on behalf of the City, and for meetings and site visits necessary to evaluate the application, in accordance with the schedule established by the City and included in Appendix B (Fee Schedule). Payment generally will include an application fee and reimbursement of City costs as well as the cost of experts retained by the City. Fees and reimbursements shall be paid regardless of whether the application is approved, denied or withdrawn.

In the case of Appeals, Variations, and Design Review, reimbursement for all costs incurred in connection with the review of the application shall be paid prior to issuance of any permit in connection with the requested action.

In the case of Text and Map Amendments, Special Uses, Amendments to Special Uses, Planned Unit Developments, amendments to Planned Unit Developments, and Annexations, reimbursement of all costs incurred in connection with the review of the application shall be paid prior to final action by the City Council, such as passage of an ordinance approving the application or a resolution disapproving it.

Notwithstanding anything to the contrary in this Section 17.04.170, any unit of federal, state, or local government that files an application pursuant to this Title shall only be responsible for reimbursing the City for outside consultant services and miscellaneous expenses, as described in Paragraphs 17.04.140 E and F, and shall not be responsible for filing fees or reimbursement for the cost of City staff review time.

##### **B. Filing Fees**

Filing fees are intended to cover the cost of providing information to the public about an application, preparing notices, distributing plans to City departments and other agencies, preparing agenda packets and minutes for the Board of Zoning Appeals, Plan Commission, Historic Preservation Commission, City Council, and other applicable review bodies, and other administrative tasks.

##### **D. Reimbursement for City Staff Review of Applications**

The applicant shall reimburse the City for the cost per productive work hour for the time spent by each City staff member to participate in meetings, visit the site, review plans, prepare reports, conduct inspections and participate in any other activity pertaining to review of the application.



**F. Reimbursement for Miscellaneous Expenses**

The applicant shall reimburse the City for miscellaneous costs incurred relative to any application or petition including, but not limited to:

- a. Publication of legal notices.
- b. Court reporter and transcript fees.
- c. Mailing (postage) costs.
- d. Recording fees.

**17.04.310 VARIATIONS**

**A. Purpose**

The Variation process provides a method to grant relief from conformance with the strict letter of the provisions of this Title, where conformance would cause a particular hardship or practical difficulty to a specific property and where the relief granted is consistent with the purposes and intent of this Title.

**B. Hearing and Decision**

The Board of Zoning Appeals shall hold a public hearing in accordance with Section 17.04.150 (Public Hearing), at which evidence in support of the Variation must be presented by, or on behalf of, the applicant, and any evidence presented by interested parties shall be heard. Notification of the public hearing shall be provided in accordance with Section 17.04.160. The public hearing shall be held not more than 90 days after filing of an application, and a decision shall be made not more than 30 days after the conclusion of testimony at the public hearing or the Board's next regular meeting after the conclusion of testimony, whichever is later.

**C. Approval Criteria**

The Board of Zoning Appeals may approve a Variation only when it makes written findings with respect to each requested Variation, based upon the evidence presented at the public hearing, that strict compliance with the regulations and standards of this Title would create practical difficulties or particular hardships for the subject property, and the requested Variation is consistent with the stated purposes and intent of this Title.

In making its determination of whether practical difficulties or particular hardships exist, the Board of Zoning Appeals must take into consideration the extent to which evidence has been submitted substantiating the following:

1. The particular physical surroundings, shape or topographical condition of the specific property involved would result in a practical difficulty or particular hardship to the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
2. The conditions upon which the petition for a Variation is based would not be applicable, generally, to other property within the same zoning classification;
3. The purpose of the Variation is not based exclusively upon a desire to make more money out of the property;
4. The alleged practical difficulty or particular hardship has not been created by any person presently having an interest in the property;
5. The Variation, if granted, will not alter the essential character of the neighborhood.
6. The granting of the Variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located; and
7. The proposed Variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

#### **D. Authorized Variations**

The Board of Zoning Appeals may grant Variations from the regulations of this Title only in the following instances and in no others:

1. To permit a yard, setback or landscape buffer of a lesser dimension than required by the applicable regulations.
2. To allow a fence in excess of the height limitations required by the applicable regulations.
3. To permit the use of a lot for a use prohibited solely because of insufficient area or width, but the area or width of the lot shall in no event be varied to an extent that reduces the requirement to less than ninety percent (90%) of the required lot area or width.
4. To increase the permitted maximum building or lot coverage, but the maximum building or lot coverage shall in no event be varied to an extent that increases the maximum by more than twenty percent (20%).

#### **E. Conditions**

The Board of Zoning Appeals may require such conditions and restrictions concerning use, construction, character, location, landscaping, screening and other matters in granting a Variation, upon a finding that such conditions and restrictions are necessary to prevent or minimize adverse effects upon other property and improvements, that would reasonably be expected to occur if the Variation were granted without such conditions and restrictions. All such conditions and restrictions shall be expressly set forth in the written record of the Board's approval of the Variation. Failure to comply with such conditions and restrictions as may have been imposed shall constitute grounds for revocation of the Variation.

#### **F. Limitations**

1. A Variation shall automatically lapse twelve (12) months after the date it is granted, unless the construction (pursuant to a building permit) authorized by the Variation commences within that twelve (12) month period. However, the Board of Zoning Appeals may extend this period, upon written request from the applicant showing good cause.
2. A Variation is granted to a specific property and authorizes the conduct of the Variation only on the property identified in the application and is not transferable to other properties.
3. The approval of a Variation authorizes the relief from strict conformance with specific provisions of this Title, but does not authorize the establishment or extension of any use, development, construction, reconstruction, alteration or moving of any building or structure prior to obtaining all other required approvals, including building permits and occupancy permits.

#### **G. Variation Less than Requested**

When consistent with the notice of Public Hearing, the Board of Zoning Appeals may grant a Variation less than, or different from, that requested when the record supports the applicant's right to some relief, but not to the entire relief requested.