

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 Zoning Board of Appeals is to hear and record testimony for and against a request for a variation from the requirements of the St. Charles Zoning Ordinance. At the end of the hearing, the Board makes a decision either to grant or to deny the variation. 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 on a request for variation. The Secretary will identify the documents presented to the Board and enter the documents 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 others who wish testify against the request for variation, 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 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 withdraw a variation request during the hearing or ask for a continuation of the hearing until a later date.
- The Board may review and discuss the issues.
- The Board may move to continue the hearing to a specific date, time, and place.
- At the conclusion of the Board's deliberations, a Board member will make a motion which cites the Approval Criteria for Variation listed in St. Charles Zoning Ordinance Section 17.04.310.C.
- If the motion is seconded, the Board will vote on the motion.
- The Board shall vote to grant or deny, wholly or in part, the request. The Board must have four (4) affirmative votes to grant a variation.

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.

Excerpts from the St. Charles Zoning Ordinance, Title 17 of the City Code

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.

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 (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.