

City of Ellisville

Zoning Process

**VARIANCE TO THE
BOARD OF ADJUSTMENT**

February 14, 2019

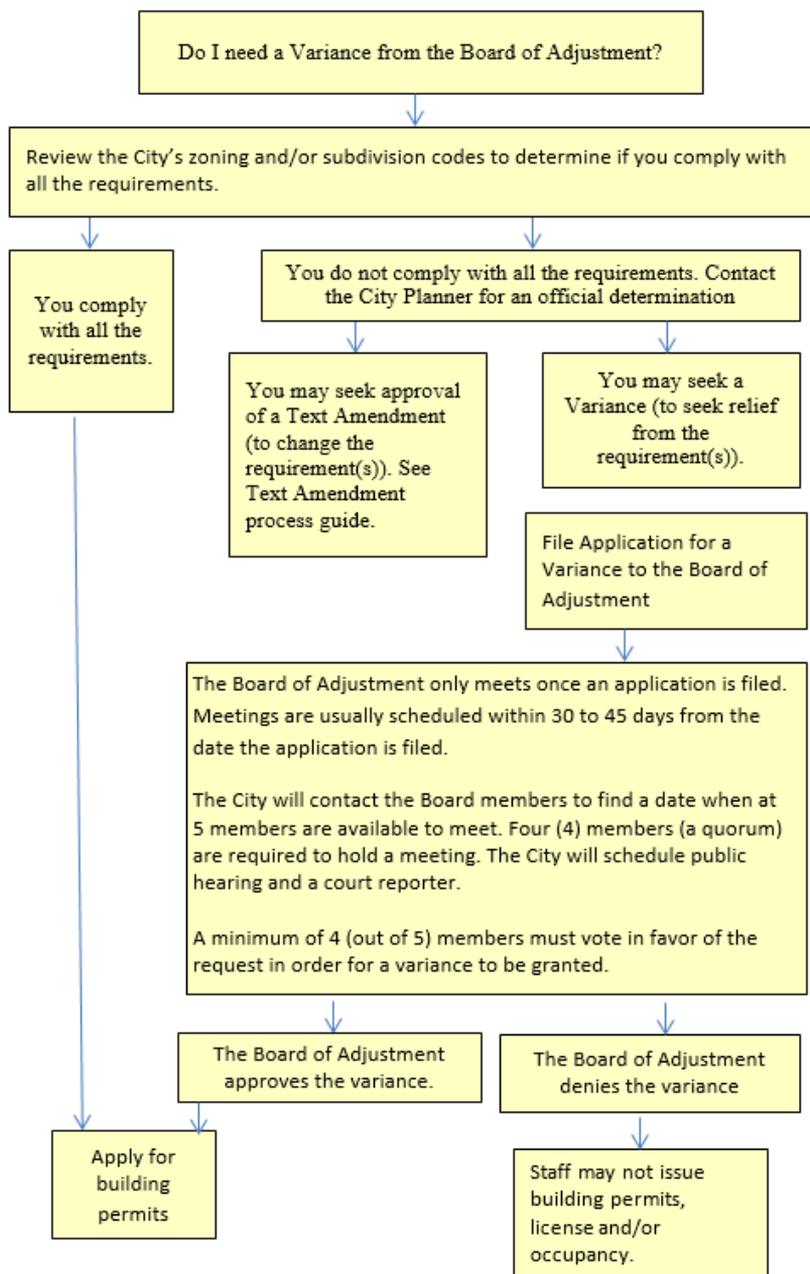


INTRODUCTION

This booklet is intended as a guide for residents and businesses to help with understanding the zoning process. The flow charts in this booklet depict typical scenarios and are not a guarantee as to how the process will unfold.

Residents are urged to review the City's adopted comprehensive plan and municipal code for complete information. You may also contact Ada Hood, Ellisville City Planner for specific information.

Ada Hood, AICP
City Planner
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SUMMARY

The Board of Adjustment- Variance Application can be found on the City's website: www.ellisville.mo.us, then go to the top right tab 'How Do I,' then scroll over to "Apply For,' then scroll down to 'Sign and Zoning Permits.' Both documents can be downloaded and printed from here.

The Board of Adjustment only meets once an application is filed. Meetings are usually scheduled within 30 to 45 days from the date the application is filed. The City will contact the Board members to find a date when at least 5 members are available to meet. Four (4) members (a quorum) are required to hold a meeting. The City will schedule public hearing and a court reporter. A minimum of 4 (out of 5) members must vote in favor of the request in order for a variance to be granted. You or your representative must be present at the hearing.

PROCESS

1. The City offers all applicants the opportunity to meet with City staff at any time to discuss a project. Please contact the City Planner to schedule a meeting: Ada Hood, ahood@ellisville.mo.us or via phone 636-227-9660.
2. All requests for a Variance to the Board of Adjustment by submitting the Application Cover sheet, the Application for Variance to the Board of Adjustment, plans/drawings, applicable fees and deposits.
3. To initiate the process, please submit one digital copy of the plans, all application forms, a letter addressed to the Board of Adjustment. Submittal should be made to the City Planner via email (ahood@ellisville.mo.us). Once the plans, application and letter are reviewed, the City Planner will request seven (7) sets of plans, one (1) original letter and one (1) original application with revisions, if applicable.

Plans shall be drawn up at a scale adequate for easy reading, or as may be required by the City and must be folded to approximately **8 ½ x 11 or 8 ½ x 14 IN SIZE.**

SECTION 400.020. BOARD OF ADJUSTMENT ESTABLISHED — PURPOSE — COMPOSITION — APPOINTMENT — REMOVAL — ALTERNATE MEMBERS — OFFICERS — RULES AND REGULATIONS — POWERS AND DUTIES.

A. Establishment And Purpose. The Ellisville Board of Adjustment is hereby established to, in certain circumstances, determine and vary the application of the regulations and provisions relating to the construction or alteration of buildings or structures or the use of land, in harmony with the general purpose and intent of such regulations and provisions, and in accordance with the general or specific rules contained therein and the other provisions set forth herein.

B. Composition, Appointment, Removal. The Board of Adjustment shall consist of five (5) members who shall be residents of the City. The members shall be nominated by the Mayor and appointed by a majority of the Council members. The membership of the first Board appointed shall serve respectively, one (1) for one (1) year, one (1) for two (2) years, one (1) for three (3) years, one (1) for four (4) years, and one (1) for five (5) years. Thereafter members shall be appointed for terms of five (5) years each. Appointments to fill vacancies shall be for the unexpired portion of the term only. The City Clerk shall keep records of the appointments and unexpired terms which may be filled by appointment. All members and alternates shall be removable for cause by the Council upon written charges and after public hearing.

C. Alternate Members. Three (3) alternate members may be appointed to serve in the absence of or the disqualification of the regular members. The term of office for the alternate members shall be five (5) years excepting that the three (3) members first (1st) appointed shall serve respectively for a term of one (1) year, three (3) years and five (5) years; thereafter, alternate members shall be appointed for a term of five (5) years each. Insofar as practical, alternate members shall be called upon to serve in the absence of or the disqualification of the regular members on a rotation basis. An effort should be made by the Mayor and the Council members to equitably distribute the appointed among the districts.

D. Officers. The Board of Adjustment shall elect a Chairman who shall serve for a term of one (1) year. The Board of Adjustment shall annually select a Vice Chairman from among its members.

E. Rules And Regulations. The Board of Adjustment may adopt such rules as necessary from time to time to provide for the exercise of its powers and duties as set forth herein, provided they are not inconsistent with the provisions of this Chapter, this Code, other ordinances of the City, State Statute, or any other applicable law. Meetings of the Board of Adjustment shall be held as called by the Chairman and at such other times as the Board of Adjustment shall determine. The Chairman, or in his/her absence the Acting Chairman, may

administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or if absent or failing to vote, indicating such fact. All testimony, objections thereto and rulings thereon shall be taken down by a reporter employed by the Board for the purpose. It shall keep records of its examinations and other official actions and all records shall be immediately filed in the office of the City Clerk and shall be a public record. The Board shall be represented at all proceedings by either the City Attorney or special counsel.

F. Powers And Duties.

1. The Board of Adjustment shall have the following powers and duties:

a. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official of the City in the enforcement of any regulation or provision adopted by the City relating to the construction or alteration of buildings or structures or the use of land.

b. To hear and decide all matters referred to it and upon which it is required to pass under Chapters 400 and 500 of this Code, including the following:

(1) To authorize variances of the regulations or provisions adopted by the City relating to the construction or alteration of buildings or structures or the use of land upon appeal in accordance with the provisions of Section 400.140 of this Chapter.

(2) To permit the construction and/or use of a building or the use of premises for public utility purposes.

(3) To permit the reconstruction of a non-conforming use or building within the intent of Section 400.120, which has been damaged by explosion, fire, act of God, vandalism, deterioration or public enemy to the extent of more than fifty percent (50%) of its St. Louis County Assessor's office appraised value, where the Board of Adjustment finds some compelling public necessity requiring a continuance of the non-conforming use.

c. In passing upon appeals, where there is practical difficulty or unnecessary hardship in the way of carrying out the strict letter of any regulation or provision adopted by the City relating to the construction or alteration of buildings or structures or the use of land, to vary or modify the application of any such regulation or provision of so that the spirit of Chapters 400 and 500 of this Code shall be observed, public safety and welfare secured, and substantial justice done.

2. In exercising the above-mentioned powers, the Board of Adjustment may, in conformity with the provisions of this Chapter, reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass or to effect any variation in the City's regulations and provisions relating to the construction or alteration of buildings or structures or the use of land.

SECTION 400.140. BOARD OF ADJUSTMENT — APPEALS, PROCEDURE.

A. By Whom Appeals May Be Taken. Appeals to the Board of Adjustment may be taken by any person aggrieved, by any neighborhood organization, as defined in Section 32.105, RSMo., representing such person, or by any officer, department, board or bureau of the City affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him/her that by reason of facts stated in the certificate a stay would, in his/her opinion, cause immediate peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application or notice to the officer from whom the appeal is taken and on due cause shown. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

B. Application.

1. Time for appeals. Notice of appeal shall be filed within a reasonable time, not to exceed thirty (30) days from the time the event or action appealed from occurred.

2. Filing. Such appeal shall be taken by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal

specifying the grounds thereof. A fee and deposit shall be paid to the City at the time the appeal is filed as set forth in this Code.

3. Procedure. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

4. Public hearing. The Board of Adjustment shall set a date for public hearing and notice of this hearing shall be given according to the provisions of Section 400.050. The hearing shall be held no later than forty-five (45) days from the date the appeal is filed, unless a longer time is required to comply with Subsection (A) hereinabove.

5. Decisions on appeals. Within thirty (30) days of the close of the public hearing, the Board of Adjustment shall affirm or reverse fully or partly or modify the order, requirement, decision or determination or other event or action appealed from. The Board shall be guided in its deliberations by the Comprehensive Plan of the City and any special area plans and the purpose and intent of this Code and all Sections thereof.

6. Stay of proceedings. An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Adjustment after he/she received notice of appeal that by reason of facts certified by him/her, a stay would, in his/her opinion, cause imminent peril to life or property. In such case, the proceedings shall not be stayed otherwise than by a restraining order issued by the Board of Adjustment or a court of record on application or notice to the officer from whom the appeal is taken and on due cause shown.

C. Standards For Variance. The Board of Adjustment shall not grant a variance as authorized herein unless it shall, in each case, make specific written findings of fact directly based upon the particular evidence presented to it that support all of the following conclusions:

1. The variance requested arises from a condition which is unique to the property in question and which is not ordinarily found in the same zoning district and is not created by an action or actions of the property owner of the applicant;

2. The granting of the variance shall not adversely affect the rights of adjacent property owners or residents;

3. The particular physical surroundings, shape or topographical conditions of the property involved would result in a severe practical difficulty or extreme hardship upon or for the owner, lessee and occupant, if the provisions of this Chapter were literally enforced;

4. The variance desired will not adversely affect the public health, safety, order, convenience and general welfare of the community;
5. Granting the variance desired will not violate the general spirit and intent of Chapters 400 and 500 of this Code.
6. The request for a variance is not based exclusively upon the desire of the owner, lessee, occupant or applicant to secure a greater financial return from the property;
7. The granting of the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the property is located;
8. The proposed variance will not impair an adequate supply of light onto adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety and substantially diminish or impair property values within the neighborhood.
9. Any other criteria applicable to specific variance applications, including the following:
 - a. Floodplain management variance. All criteria and requirements set forth in Section 420.050, Floodplain Management Variance Procedures.
 - b. Variance from the yard requirements of any zoning district.
 - (1) There are severe practical difficulties or extreme hardships in the carrying out of the yard requirements due to an irregular shape or size of the lot, the sites of pre-existing buildings, topographical or other site conditions; and
 - (2) The variance shall not have a serious adverse impact on any adjoining property or the general welfare or establish an unsatisfactory precedent for other locations and situations.

D. Conditions And Restrictions. In granting a variance, the Board of Adjustment may impose such conditions and restrictions upon the property benefitted by the variance as may be necessary to comply with the standards set out in Subsection (C) hereinabove to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood and to carry out the general purpose and intent of Chapters 400 and 500 of this Code. Failure to comply with any of these conditions or restrictions shall constitute a violation of this Chapter punishable as provided in Section 400.190(D) of the Municipal Code of Ellisville.

E. Decisions And Records. No decision shall be rendered unless each member voting thereon has physically inspected the property. The Board of Adjustment, within sixty (60) days of the date the appeal was filed or the matter was referred

to the Board, shall render a decision followed by findings of fact and conclusions of law. If no decision is rendered by the Board of Adjustment within sixty (60) days of the date the application was filed or the matter was referred to the Board, the Board of Adjustment decision shall be deemed to support the original ruling, interpretation or decision and the appeal shall be deemed denied unless said time period is extended by mutual agreement in writing. The Board of Adjustment shall render and send to the applicant a written decision on the appeal without unreasonable delay and in no case after more than thirty (30) days of the decision.

F. Period Of Validity. No variance granted by the Board of Adjustment shall be valid for a period longer than one (1) year from the date on which it grants the variance, unless within such period:

1. A building permit is obtained and the construction and alteration of the construction is commenced and pursued diligently toward completion; or
2. An occupancy permit is obtained and a use or occupancy commenced. The Board of Adjustment may grant extensions not exceeding one hundred eighty (180) days each, upon written application, without notice or hearing.

G. Appeals To The Circuit Court. Any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment, any neighborhood organization, as defined in Section 32.105, RSMo., representing such person or persons or any officer, department, board or bureau of the municipality, may present to the Circuit Court of the County or City in which the property affected is located a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the Court within thirty (30) days after the filing of the decision in the office of the Board.

If you stil have questions, contact Ada Hood at ahood@ellisville.mo.us or 636-227-9660.