



ZONING VARIANCE APPLICATION

- I. The filing deadline will be Friday, _____, 20____, before 5:00 p.m. Please submit this application to the City of Fort Smith Planning Department, 623 Garrison Avenue, Room 331.

- II. There will be a study meeting of the Planning Commission on Tuesday, _____, 20____, at 11:30 a.m. at the Creekmore Park Community Center. The Board of Zoning Adjustment may need information that is not included on the application. Therefore, the Board of Zoning Adjustment urges all applicants to attend the meeting to represent their application.

- III. The Planning Commission meeting will be Tuesday, _____, 20____, at 5:30 p.m. in the Rose Room of the Creekmore Park Community Center. The Board of Zoning Adjustment may need information that is not included on the application. Therefore, the Board of Zoning Adjustment urges all applicants to attend the meeting to represent their application.

- IV. A processing fee of \$250.00 shall accompany this application to cover the administrative costs of advertising the public notice and notifying neighboring property owners. **This fee is Non-Refundable.**

THE PLANNING DEPARTMENT STAFF WILL POST A SIGN, LIKE THE ONE SHOWN BELOW, AT THE VARIANCE SITE. IF THE SIGN IS POSTED IT MUST BE LEFT IN PLACE UNTIL REMOVED BY THE PLANNING DEPARTMENT STAFF. THE SIGN WILL BE REMOVED BY THE PLANNING DEPARTMENT STAFF THE DAY FOLLOWING THE BOARD OF ZONING ADJUSTMENT MEETING OR SOON THEREAFTER.



CHECKLIST FOR ZONING VARIANCE APPLICATION

Applications must be verified for completeness with the applicant before they are accepted.

- Pre-Application Conference** Pursuant to Section 27-30
- Complete Application**
- Legal Description of Subject Property**
- Street Address of Subject Property**
- Existing or Proposed Zoning Classification**
- Certified Site Plan Drawn to Scale** (Must be prepared by & bearing the stamp of an architect, engineer or land surveyor. The site plan must also contain a written statement regarding the plans accuracy or conformity to specified standards)
- Copy of Proposed or Approved Development Plan** (if applicable)
- List the Specific Variance (s) Requested & Undue Hardship**
- Answer Lot Information Questions**
- Complete List of all Adjacent & Contiguous Property Owners**
- Indicate Whether Restrictive Covenants Apply**
- Owner or Agent Names & Signatures**
- Authorization of Agent** (if using an agent)
- Vicinity, Zoning & Land Use Maps of Subject Property** (Staff will assist applicant in preparing these maps)
- Application Processing Fee of \$250.00**
- Neighborhood Meeting** (Pursuant to Section 27-304 & 27-337-5 (B.))

Zoning Variance Procedures

Variance applications can be obtained from the City Planning Department or downloaded. Applicants are encouraged to contact a member of the planning staff to discuss the application. Oftentimes, the staff can provide the applicant with some useful information that may assist the applicant during the hearing with the Board of Zoning Adjustment. The staff can also help the applicant assess the reasonableness of the request. The initial visit with the staff is especially helpful for someone who has not previously been involved with the variance hearing process.

When a decision is made to proceed with the application, the applicant must execute the application by completing the appropriate information and supplying any backup data that the application requires. The application requires that the applicant provide a list of all persons owning property that is adjacent and contiguous to the subject property. This list, which can be obtained at the County Assessor's Office, is used by the staff to notify these owners of the pending application. Once the application is submitted and the filing fee of two-hundred & fifty dollars (\$250.00) is paid to the Planning Department the review process begins.

Application Review Process

The review of a variance application begins with the City Planning staff and, as needed, may involve the staff of the City Fire and Building, Engineering and Utility Departments. The initial review is to insure the completeness and accuracy of the information that is submitted.

The site visit is made by the staff in order to understand and describe the surrounding land use characteristics and to assist in the process of assessing the impact of the proposal on the adjacent land areas. The initial review step concludes with the development of a preliminary staff report. The staff report and recommendations proceed through the review process as follows:

Board of Zoning Adjustment (BZA) Study Session

The final report is submitted to the (BZA) at its study session meeting held at 11:30 a.m. in the Rose Room of the Creekmore Park Community Center. The Board of Zoning Adjustment Study Session is held the Wednesday preceding the public hearing scheduled on the second Tuesday of each month. The applicant is required to attend the Study Session and confer with the Board of Zoning Adjustment on the request.

Board of Zoning Adjustment (BZA) Voting Session

The (BZA) formally hears the application at its public hearing held the second Tuesday of each month at 5:30 p.m. in the Rose Room of the Creekmore Park Community Center.

Following the applicant's presentation and the public discussion, the Board members vote on the application. A simple majority of the Board members present and voting is required to approve the variance request.

Appeal Procedures

A decision of the Board of Zoning Adjustment is final unless their decision is appealed to a court of record having jurisdiction.

Submittal and Review Timetables

Variance applications are required to be submitted to the City Planning Department at least fifteen (15) days prior to the date of the (BZA) meeting. This requirement insures that the public hearing can be appropriately advertised at least seven (7) days prior to the hearing.

The entire review timetable takes approximately twenty (20) calendar days from the time the application is submitted until the time that the Board of Zoning Adjustment has completed their review and has made a decision on the request. If an item is tabled by the Board of Zoning Adjustment for further study during their review, an additional thirty (30) days can typically be added to the timetable for each time the issue is tabled.

Key Staff Contacts

The Planning Department staff can assist persons wishing to inquire about the variance process. The Planning Department is located at 623 Garrison Avenue, Room 331 of the Stephens Building and the phone number is (479) 784-2216. **E-mail Us at:** planning@fortsmithar.gov

Additional Information-Restrictive Covenants

What's the Purpose of Restrictive Covenants?

Restrictions give a development a more standard appearance, and control some of the activities that take place within its boundaries. When enforced, covenants protect property values.

What You'll Always See in Covenants

Restrictive covenants nearly always stipulate the minimum size residence allowed, how many homes may be built on one lot, and what type of construction the homes must (or must not) be.

More Topics You'll See in Restrictive Covenants

- Set backs (how far homes must be from streets and interior lot lines).
- Easements (such as a pathway for power lines or roads).
- Fees for road maintenance or amenities.
- Rules regarding changing or voiding the covenants.
- Rules about pets and other animals (for instance: no breeding for profit, no livestock, and no unchained pets).
- Regulations dealing with in-home businesses and home rentals.
- Rules that limit tree-cutting.
- Clauses that dictate what type of fencing can be used, or that forbid all types of fencing.
- Clauses to reduce clutter on lots, such as prohibiting owners from storing a vehicle that doesn't run within view of others, or parking a recreational vehicle on the property.

Some restrictions limit the paint colors that can be used on a home's exterior. Some might require that all homes have a certain type of siding. In areas where wildfires are a problem, covenants might require you to use only fire retardant building materials.

INSTRUCTIONS FOR FILING REQUEST FOR VARIANCES

A. PRE-APPLICATION CONFERENCE

1. A meeting with the Planning & Zoning Department is required (To be held at least ten (10) days before the submission date. (application deadline)

B. APPLICATION FOR VARIANCE

1. Schedule & attend a pre-application conference with the Planning Department.
2. Complete application.
3. Provide the legal description of the property included in the variance request in the space indicated.
4. Provide the street address of the property.
5. Provide the existing or proposed zoning classification of the property.
6. Provide certified site plan drawn to scale.
7. Provide copy of proposed or approved development plan (if applicable)
8. List the specific variance requested and the undue hardship.
9. The application must be signed by the owner or agent.

B. VARIANCE INFORMATION FORM

1. Give a complete description and demonstrate the hardship according to the literal provisions of the Zoning Code.
2. Answer lot information questions.

C. COMPLETE LIST OF ALL ADJACENT & CONTIGUOUS PROPERTY OWNERS

1. Give the names and addresses of the owner(s) of all adjacent and contiguous property. Include all property that touches all property included in the variance request, or which would touch the property if public rights-of-way were removed (i.e., include all property across street, alleys and intersections).

This information may be obtained at the County Assessor's Office located in the Sebastian County Courthouse, Room 107. Please call the Tax Assessor's Office at 783-8948 to schedule an appointment. A small charge will be assessed for this service. (The Planning Department will mail the notices for you.)

D. LETTER REGARDING RESTRICTIVE COVENANTS

1. If you have restrictive covenants, enter any part of the restrictive covenant applicable to the property that appears to prohibit this variance request.
2. If there is no restrictive covenant in effect or no statement in your existing covenants, enter the word **NONE** on the attached statement.

E. CERTIFIED SITE PLAN OF THE SUBJECT PROPERTY

1. A certified site plan of the subject property included in this request must be supplied. Indicate on the site plan all existing and proposed improvement (structures, parking lots, driveways, etc.). Include the proposed variance requested

and any other useful information concerning the property. This site plan must be drawn to scale and include the lot dimensions and total square footage or acreage of the property.

Note: A Certified Site Plan must contain a written statement regarding the accuracy or conformity to specified standards and bearing the seal or stamp of the professional engineer, architect or land surveyor under whose supervision the site plan was prepared.

F. AUTHORIZATION OF AGENT

1. If an agent (i.e. contractor) is acting on behalf of the owner(s), all owners must sign in the space provided. This form is necessary only when the person representing this request does not own all the property.

G. MAPS OF THE AREA

1. Provide a vicinity map showing the location of the property requested for rezoning.
2. Provide a zoning district map.
3. Provide a land use map.

H. FILING FEE AND OTHER COSTS

1. An application processing fee of \$250.00 must be paid to the City of Fort Smith at the time of filing the application. This fee is Non-Refundable.

I. BUILDING PERMIT REQUIRED

1. After the variance request has been approved by the Planning Commission, a building permit shall be required for any improvements to the site. All requirements for obtaining a building permit shall be met.

J. NEIGHBORHOOD MEETING

1. Notify all adjacent and contiguous property owners, and any homeowners association, neighborhood association, or merchants association registered with the Planning and Zoning Department and located within 300 feet of the parcel.
2. Written notice of meeting time & place provided to Planning Department and residents /property owners fourteen (14) days prior to the neighborhood meeting.
3. Provide summary report and attendance list of meeting to Planning Department.
4. See Section 27-337-5 (B.) for conditions in which a neighborhood meeting may be waived by the Director.

APPLICATION FOR VARIANCE

Notice is hereby given that the undersigned, as owner(s) of the following property in the Fort Smith District of Sebastian County, Arkansas, to-wit: (Legal Description)

Address of property _____, Existing or Proposed

Zoning Classification _____, has filed with the Planning Department a written application pursuant to Article 5-6 of Ordinance 2324 of the City of Fort Smith, Arkansas, to secure a variance from the literal provisions of the zoning ordinance as follows:

<u>Office Use Only-List the Specific Variance Requested and Applicant Stated Hardship</u>

FROM

TO

- _____ - _____ Front Yard Setback or Minimum Distance from Right-of-Way
- _____ - _____ Exterior Side Yard Setback
- _____ - _____ Interior Side Yard Setback
- _____ - _____ Rear Yard Setback
- _____ - _____ Maximum Height of Structure
- _____ - _____ Minimum Distance Between Structures on the Same Lot
- _____ - _____ Minimum Lot Area (Square Feet)
- _____ - _____ Minimum Lot Frontage
- _____ - _____ Maximum Size of a Sign
- _____ - _____ Other: _____

The undersigned will present said application to the Board of Zoning Adjustment at the first regular City Planning Commission meeting following the expiration of seven (7) days from the date of this publication, at which meeting the Board of Zoning Adjustment will conduct a public hearing on

said application. All interested persons are invited to attend and are entitled to be heard. This notice is published this _____ day of _____, 20_____.

Signed:

Owner or Agent Name (*please print*)

Owner

or

Owner or Agent Phone Number

Agent

Owner or Agent Mailing Address

Variance # _____

VARIANCE INFORMATION FORM

The following paragraph (Section 27-337-2) of the Fort Smith Unified Development Ordinance defines the criteria for granting a variance:

The Board of Zoning Adjustment shall hear requests for variances from the literal provision of the zoning chapter in instances where strict enforcement of the zoning chapter would cause undue hardship due to circumstances unique to the individual property under consideration, and shall grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the zoning chapter. The Board of Zoning Adjustment shall not permit, as a variance, any use in a zone that is not permitted under the chapter. The Board of Zoning Adjustment may impose conditions in the granting of a variance to insure compliance and to protect adjacent property.

1. To aid the Board of Zoning Adjustment in arriving at a decision on your application, please note the lot information requested and check the appropriate answer to each of the questions that follow.

Yes

No

<input type="checkbox"/>	<input type="checkbox"/>	Is this variance needed because of previous actions taken by yourself?
<input type="checkbox"/>	<input type="checkbox"/>	Is this variance needed because of previous actions taken by a prior owner?
<input type="checkbox"/>	<input type="checkbox"/>	A zoning hardship is present only when a property has no reasonable use without a variance. Do you have use of your property without a variance?
<input type="checkbox"/>	<input type="checkbox"/>	Is the variance needed due to the unique circumstances of the property (such as lot area, lot width, setbacks, yard requirements, or building height)? If yes, please explain on the following page.
<input type="checkbox"/>	<input type="checkbox"/>	Is the lot of an odd or unusual shape?
<input type="checkbox"/>	<input type="checkbox"/>	Does the lot have "radical" topography (steep, unbuildable slopes - streams or bodies of water - unstable or eroded area)?
<input type="checkbox"/>	<input type="checkbox"/>	Does the lot contain required easements other than those that might be located on its perimeter?
<input type="checkbox"/>	<input type="checkbox"/>	Is any part of the lot in a flood plain or flood way?
<input type="checkbox"/>	<input type="checkbox"/>	Is the lot smaller than minimum lot area or minimum frontage for its zoning classification?
<input type="checkbox"/>	<input type="checkbox"/>	Is the lot developed with structures in violation of current zoning requirements?
<input type="checkbox"/>	<input type="checkbox"/>	Does the lot front any street classified as an arterial or collector on the Master Street Plan?

Explanation of question #4 (if applicable)

2. Describe how the strict enforcement of the zoning code causes an undue hardship for your project:

3. List any special circumstances/conditions which exist that have not been created by the owner/applicant and do not apply to other properties in your area:

LIST OF OWNERS OF ALL ADJACENT & CONTIGUOUS PROPERTY

(Please Type or Print)

The Planning Department is required to give notice (in writing) of this application to all surrounding property owners. List the name and address of the owner of every piece of property adjacent and contiguous to any part of the property. This information may be obtained at the County Assessor's Office located in the Sebastian County Courthouse - Room 107. Please call the Tax Assessor's Office at 783-8948 for an appointment. (The Planning Department will mail the notices for you.)

	<u>NAME</u>	<u>ADDRESS</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
F.	_____	_____
G.	_____	_____
H.	_____	_____
I.	_____	_____
J.	_____	_____
K.	_____	_____
L.	_____	_____
M.	_____	_____
N.	_____	_____
O.	_____	_____
P.	_____	_____

LETTER REGARDING RESTRICTIVE COVENANTS

Restrictive covenants are regulations that are maintained and enforced by the property owners of the subject subdivision. These covenants may be found in your abstract or at the County Circuit Clerks Office. Restrictive covenants are often enforced in subdivisions with homeowner's associations and can always be more restrictive but never less restrictive than the City of Fort Smith's Zoning Regulations. *(See attached additional information on restrictive covenants)*

TO: Planning Department

SUBJECT: Legal Description of Property

I have searched all applicable records, and to my best knowledge and belief, there are no restrictive covenants running with the above described land, except as follows:

AUTHORIZATION OF AGENT

If an agent (i.e., contractor) is acting on behalf of the owner(s), all owners must sign in the space provided. This form is necessary only when the person representing this request does not own all the property.

We the undersigned, being owners of real property, and requesting a variance by application do hereby authorize _____ to act as our agent in the matter.
(Print Name of Agent)

(Type or clearly print)

NAMES OF ALL OWNERS.

SIGNATURE OF ALL OWNERS.

1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____
11. _____	_____
12. _____	_____
13. _____	_____

This form is necessary only when the person representing this request does not own all the property.

ATTENDANCE LIST FOR NEIGHBORHOOD MEETING

List the names, addresses & telephone numbers of all residents/property owners who attended the meeting.

Meeting Location _____

Meeting Time & Date _____

Meeting Purpose _____

	<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE #</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____
7.	_____	_____	_____
8.	_____	_____	_____
9.	_____	_____	_____
10.	_____	_____	_____
11.	_____	_____	_____

27-302 Pre-Application Conference

27-302-1 When Required

A pre-application conference with the Planning and Zoning Department is required for certain development applications, as identified in Table 27-301.1 (Application Procedures) and indicated by the individual application type sections below. The purpose of the meeting is to:

- A. Review the requirements of the Unified Development Ordinance;
- B. Review the requirements of the Fort Smith Comprehensive Plan;
- C. Discuss the nature and design of the proposed development; and
- D. Discuss the development application review and approval process.

27-302-2 Timing The pre-application conference shall be held at least ten (10) days before the submission date unless otherwise specified by the Director. Applications must be submitted within six months of the conference date or a new conference shall be required.

27-302-3 Additional Parties As necessary, the Planning and Zoning Department may include representatives of other departments or agencies at the pre-application conference.

27-303 Application Requirements

27-303-1 Materials

Current development application with submittal requirement instructions is available from the Planning and Zoning Department. Most applications are also available on the City website. All materials submitted in support of a development application become part of the public record and are generally not returned to the applicant(s).

27-303-2 Technical Studies

The Director may require applicants to prepare additional technical studies in support of their applications for rezoning, planned rezoning or special use permits. The cost of the study shall be the applicant's responsibility. If the applicant disagrees with the Director's decision to provide additional technical studies, it may be appealed to the Planning Commission for a final decision. No further action shall be taken to process the development application until the Planning Commission makes a final determination on the appeal.

27-303-3 Deadlines

The Planning and Zoning Department has a list of submission and revision deadlines for the various development applications available at their office. This list is also available on-line at the City's website. Failure to submit a complete or revised application on or before the deadline shall result in the City not placing the application on the scheduled Planning Commission agenda.

27-303-4 Completeness

Within three (3) business days of submittal by the applicant, a member of the Planning Staff shall review the development application to ensure that it is complete.

A. When Complete.

An application is complete when all of the items required by the UDO and on the application form are prepared and/or answered, and any required supplemental or additional applications (e.g., comprehensive plan amendment) are submitted with the appropriate fees to the Planning and Zoning Department.

B. Return of Incomplete Applications.

Incomplete applications shall be returned to the applicant with a written description of the missing information, defects, or other problems. The Director shall take no further action on incomplete applications. Appeals of this determination are made to the Planning Commission, which is the final decision-making body. No further action shall be taken to process the application until after the Planning Commission's determination. Applications that have been returned to an applicant for revisions shall not be processed until such revisions have been determined to be complete by the Director.

A. Processing Complete Applications.

The applicant will be notified that the application is complete and processed in accordance with this Chapter.

B. Failure to Act.

If the Director fails to act within three (3) business days, the application shall be deemed complete.

C. Revisions Following Determination.

Following a determination of completeness, any further revisions to the application by the applicant without the approval of the Director, or modifications which are contrary to the directions of the Planning Commission or Board of Directors shall void the determination of completeness and trigger a new three (3) day review period. All processing of the application shall stop until a new, complete application has been filed.

D. Determination Not Substantive.

A determination of completeness shall not constitute a determination of compliance with the substantive provisions of the UDO.

27-303-5 Fee Schedule

Application fees shall be set in an amount to recover the costs of processing, publicizing, and reviewing development applications. The Board of Directors shall set the fee schedule, which shall be included as an appendix to this Code. The Board may periodically review and modify the fee schedule based on the cost changes associated with the development application.

27-304 Neighborhood Meeting

27-304-1 When Required

A neighborhood meeting is required for certain development applications, as identified in Table 27-201.1 (Application Procedures) and indicated in the individual application type sections below. When not required, applicants are encouraged by the Board of Directors, Planning Commission and Planning Staff to meet with property owners who may be affected by the proposed development.

27-304-2 Neighborhood Identification

Generally, the neighborhood shall include all parcels located within 300 feet of the boundaries of the parcel proposed for development, and any homeowners association, neighborhood association or merchants association registered with the Planning and Zoning Department and located within 300 feet of the parcel.

27-304-3 Meeting Arrangements

The applicant shall be responsible for providing a meeting location and conducting the meeting at a time and place reasonable to the residents of the neighborhood. Written notice of the location and time of the meeting shall be provided by the applicant to the Planning and Zoning Department and residents of the area defined as the neighborhood at least fourteen (14) days prior to the meeting.

27-304-4 Meeting Content

At the meeting, the applicant shall present a full and accurate description of the proposed development plans, describe projected impacts of development, describe plans to mitigate or off-set impacts, and facilitate a discussion of neighborhood questions and comments. The Planning Staff shall attend the meeting, but shall not be responsible for organizing the meeting or presenting information about the project.

27-304-5 Meeting Report

Following the neighborhood meeting, the applicant shall provide the Planning and Zoning Department with a mailing list of the people who attended the meeting and a written summary of the discussion and comments. All documents and materials which detail the proceedings of the neighborhood meeting shall become part of the public record for the development application and should be submitted to the Planning and Zoning Department.

27-337-5 Application and Review Procedures

A. Determination of Completeness. Applications shall be submitted to the Director for a determination of completeness pursuant to Section 27-303.

B. Neighborhood Meeting. The applicant shall comply with the requirements for a neighborhood meeting pursuant to Section 27-304, except the applicant shall notify adjacent and contiguous property owners and any homeowners association, neighborhood association, or merchants association registered with the Planning and Zoning Department and located within 300 feet of the parcel. The Director may waive the requirement for a neighborhood meeting where:

1. The proposed variance shall allow development in compliance with surrounding land uses.

2. The variance request represents a minor change to the development requirements that shall have little or no effect on surrounding properties.

C. Staff Review. Following a Determination of Completeness, the Staff shall review the application pursuant to Section 27-305.

D. Notice and Public Hearing. Following the completion of Staff review and required neighborhood meetings, the application shall be scheduled for a public hearing before the Board of Zoning Adjustment.

1. Notice shall be provided pursuant to Section 27-308.

27-337-6 Action

A Action. Following the public hearing, the Board of Zoning Adjustment may approve, approve as amended, or deny the application for variance.

B Conditions. The Board of Zoning Adjustment may impose conditions on the granting of a variance to insure compliance and to protect adjacent properties.

C Requirements. All variance approvals shall include:

1. A requirement that construction commence within six (6) months or at an appropriate time as identified by the Board of Zoning Adjustment. Any extension request must be approved by the Director.

2. A requirement that the project conforms to the approved plans.

27-337-7 Appeal of Board of Zoning Adjustment Decisions

Decisions of the Board of Zoning Adjustment in respect to the above shall be subject to appeal only to a court of record having jurisdiction.