

Article 4: Applications, Permits and Hearings

Part 1: General Information

Section 76: Permits Required

- A. Permits shall be required in accordance with the Franklin County Land Use Regulations
- B. All permits are issued under these regulations only when a review of the application submitted, including any plans contained therein, indicates that the development will comply with these regulations if completed as proposed. Approved plans and applications are incorporated into any permit issued and all development shall occur strictly in accordance with such approved plans and applications.
- C. Physical improvements to land to be subdivided may not be commenced until after final plat approval by the Planning Director for minor subdivisions and permitted major subdivisions or in accordance with the conditional use permit issued by the Planning and Zoning Commission for major subdivisions.
- D. All permits shall be issued in the name of the applicant, shall identify the property involved and, if applicable, the proposed use. The permit shall incorporate by reference all information included in the application and the plans submitted in support of the application. If applicable, the permit shall also incorporate any special conditions or requirement lawfully imposed by the permit issuing authority, the appropriate agency or office or the governing body.

Section 77: No Occupancy, Use, or Sale of Lots until Requirements Fulfilled

- A. Issuance of a conditional use permit authorizes the recipient to commence the approved activity or to commence work designed to construct, erect, move, or substantially alter buildings and other substantial structures, or to make necessary improvements to a subdivision.
- B. No permit shall be issued to any applicant while said applicant is in violation of any of the provisions of these regulations, unless permission therefore is specifically granted by the permit issuing authority. The only exception to this provision shall be for permits specifically intended to remedy said violation(s).

Section 78: Who May Submit Permit Applications

- A. Applications will be accepted only from persons having the legal authority to take action in accordance with the permit or the subdivision approval or by persons who have permission from persons having the legal authority to take action. By way of illustration, in general this means that applications should be made by the owners or lessees of property, or his or her agents, or persons who have contracted to purchase property contingent upon his or her ability to acquire the necessary permits under these regulations, or the agents of such persons (who may make application in the name of such owners, lessees, or contract vendees).
- B. The Planning Staff may require an applicant to submit evidence of his or her authority to submit the application in accordance with Subsection A whenever there appears to be a reasonable basis for questioning this authority.

Section 79: Applications to be Complete

- A. All applications must be complete before the permit issuing authority shall consider the application. Failure to submit a complete application shall result in the application not being accepted. If an application is turned in and is incomplete, improper or not timely, the application will be rejected and

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sent back with reasoning as to why the application was rejected. The Planning and Zoning Department may, at his or her discretion, contact the applicant to inform them of missing information prior to rejecting the application for failure to be complete.

- B. Subject to Subsection C, an application is complete when it contains all of the information that is necessary for the permit issuing authority to decide whether or not the request, if completed as proposed, will comply with all of the requirements of these regulations and all fees have been paid in full.
- C. In these regulations, detailed or technical design requirements and construction specifications relating to various types of improvements (streets, sidewalks, etc.) are set forth in one or more of the appendices to these regulations. It is not necessary that the application contain the type of detailed construction drawings that would be necessary to determine compliance with these requirements, so long as the plans provide sufficient information to allow the permit issuing authority to evaluate the application in light of the substantive requirements set forth in this text of these regulations.
- D. All of the information set forth herein is necessary to satisfy the requirements of this section. However, it is recognized that each development is unique, and therefore the permit issuing authority may allow less information or require more information to be submitted according to the needs of the particular case.
- E. All applications shall be submitted on forms provided by the Planning and Zoning Department.
- F. Any application which is heard before the Planning and Zoning Commission or the Board of Zoning Adjustment shall be turned in to the Planning and Zoning Department at least thirty (30) days before the next scheduled meeting and deemed complete.

Section 80: Staff Consultation before Formal Application

- A. To minimize development planning costs, avoid misunderstanding or misinterpretation, and to ensure compliance with the requirements of these regulations, pre-application consultation between the applicant and the planning staff is encouraged or required, as provided in these regulations.
- B. See Article 8 for information regarding submitting an application for a conditional use permit authorizing a development that consists of or contains a major subdivision.

Section 81: Staff Consultation after Application Submitted

- A. Upon receipt of a formal application the planning staff shall review the application and confer, as needed, with the applicant to ensure that he understands the planning staff's interpretation of the applicable requirements of these regulations and that he has submitted all of the information that he intends to submit for the proposed use.
- B. If the application is for a Conditional Use Permit, rezoning, preliminary plat, appeal or variance, the planning staff shall place the application on the meeting agenda when the applicant indicates that his or her application is as complete as the applicant intends to make it. However, if the Planning Director believes that the application is incomplete, a recommendation to the Planning and Zoning Commission or Board of Zoning Adjustment that the application be denied on that basis or a recommendation of denial be made in applications of rezonings or preliminary plats shall be made..

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Section 82: Notice of Hearing

The Planning Department shall give notice of any public hearing required as follows:

- A. Notice shall be given to the appellant or applicant by mailing not later than seven (7) days before the hearing.
- B. Notice shall be given to neighboring property owners by mailing a written notice not later than fifteen (15) days before the hearing to those persons who have real property which is located within 600 feet of the parcel that is the subject of the application or appeal.
- C. The notice required by this section shall state the date, time and place for the hearing, reasonably identify the lot that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

Section 83: Record

- A. All public hearings shall be transcribed.
- B. All documentary evidence present at a hearing, as well as other types of physical evidence, shall be made a part of the record of the proceedings and shall be kept by the County for at least two (2) years.

Section 84: Burden of Presenting Evidence; Burden of Persuasion

- A. The burden of presenting a complete application (which shall be complete, as described in Section 79 and 81) to the permit issuing authority shall be upon the applicant.
- B. The burden of presenting evidence is on the person advocating that position.
- C. The burden of persuasion is on the person advocating that position.

Section 85: Completing Development in Phases

- A. If a development is constructed in phases or stages in accordance with this section, then, the provisions of Section 77 (No Occupancy, or Use Until Requirements Fulfilled) and Section 97 (exceptions to Section 77) shall apply to each phase or stage as if it were the entire development.
- B. If a development that is to be built in phases or stages includes improvements that are designed to relate to, benefit, or be used by the entire development, then, as part of the application for development approval, the developer shall submit a proposed schedule for completion of such improvements. The schedule shall relate completion of such improvements to completion of one or more phases or stages of the entire development. Once a schedule has been approved and made part of the permit by the permit issuing authority, no land may be used, and no buildings may be occupied except in accordance with the schedule approved as part of the permit, provided that:
 - 1. If the improvement is one required by these regulations then the developer may utilize the provisions of Section 97, A.
 - 2. If the improvement is an amenity not required by these regulations or is provided in response to a condition imposed by the Planning and Zoning Commission, then the developer may utilize the provisions of Section 97, B.

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Section 86: Approval or Denial of Permits

For purposes of this section, the permit, within the jurisdiction of the Planning and Zoning Commission and Board of Zoning Adjustment, is:

- A. Approved or denied when the Planning and Zoning Commission or Board of Zoning Adjustment votes to approve or deny the application.
- B. A permit is issued when the applicant has completed all (if any) conditions listed on the permit. No activity shall commence, unless otherwise stated, before the permit is issued.
- C. For the purpose of appeals, time for appealing starts when the Commission or Board votes to approve or deny even though the written decision may be issued later.

Section 87: Written Decisions

- A. Any decision made by the Board of Zoning Adjustment or Planning and Zoning Commission regarding an appeal, variance or issuance or revocation of a conditional use permit shall be reduced to writing and served upon the applicant or appellant.
- B. In addition to a statement of the ultimate disposition of the case and any other information deemed appropriate, the written decision shall state the findings and conclusions, as well as supporting reasons or facts, whenever these regulations require then same as a prerequisite to taking action.

Section 88: Amendments to and Modifications of Permits

- A. Insignificant deviations from the permit (including approved plans) approved or issued by the Planning and Zoning Commission or the Planning Director are permissible, and the Planning Director may authorize such insignificant deviations. A deviation is insignificant if it has no discernible impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.
- B. Minor design modifications or changes in permits (including approved plans) are permissible with the approval of the permit issuing authority. Such permission may be obtained without a formal application, public hearing, or payment of any additional fee. For purposes of this section, minor design modifications or changes are those that have no substantial impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.
- C. All other requests for changes in approved plans will be processed as new applications. If such requests are required to be acted upon by the Planning and Zoning Commission, new conditions may be imposed in accordance with Section 96, but the applicant retains the right to reject such additional conditions by withdrawing his or her request for amendment, and may then proceed in accordance with the previously issued permit.
- D. The Planning Director shall determine whether amendments to and modifications of permits fall within the categories set forth above in Subsections A, B, and C.
- E. A developer requesting approval of changes shall submit a written request for such approval to the Planning Director, and that request shall identify the changes. Approval of all changes must be given in writing.

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Section 89: Transferability of Permits

- A. A conditional use permit, sign permit and variance may be conveyed with the land unless otherwise stated. Nothing in this Article shall be construed to alter the expiration date of permits or the authority of the Planning and Zoning Commission to revoke a permit.
- B. No persons (including successors or assigns of the person who obtained the permit) may make use of the land or structures covered by the permit except in accordance with the terms and conditions of that permit or other permitted uses within the applicable zoning district.
- C. A permit cannot be assigned or transferred to a different parcel of land.

Section 90: Lapse and Expiration of Permits.

- A. Conditional Use Permits and Sign Permits may expire automatically after one year, after the issuance of such permits, according to the following criteria. No public hearing will be required. This decision may be appealed in accordance with the procedures stated in Part 3, Section 102.
 - 1. If no substantial construction, erection, alteration, demolition, or similar work is necessary and the use authorized by the permit has not commenced within one year, the conditional use permit shall lapse and become void.
 - 2. If less than 10 percent of the total cost of all construction, erection, alteration, demolition or similar work relating to the development authorized by the permit has been completed within one year, the conditional use permit or zoning permit shall lapse and become void.
 - 3. If the permitted use has commenced and then is discontinued for one year, the conditional use permit or zoning permit shall lapse and become void.

The one year time limit shall start on the date all appeals are finalized and the final decision is resolved.

- B. A conditional use permit shall be valid for a specific period of time if so stated in the permit. A permit may be renewed upon application for a Conditional Use Permit as per the procedure described in Section 91.

Part 2: Conditional Use Permits

Section 91: General Requirements

- A. An application for a conditional use permit shall be submitted to the Planning and Zoning Department.
- B. Subject to Subsection C, the Planning and Zoning Commission shall issue the requested permit unless it concludes, based upon the information submitted at the hearing, that:
 - 1. The requested permit is not within its jurisdiction according to Article 7, or
 - 2. The application is incomplete, or
 - 3. If completed as proposed in the application, the development will not comply with one or more requirements of these regulations (not including those the applicant is not required to comply with under the circumstances specified in Article 6, Nonconforming Situations),
- C. Even if the Planning and Zoning Commission finds that the application complies with all other

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provision of these regulations, the Planning and Zoning Commission may still deny the permit if it concludes, based upon clear and convincing evidence submitted at the hearing, for the following jurisdictional requirements:

1. The use will be significantly detrimental to public health, safety, morals, or general welfare.
2. The use will cause serious injury to neighboring property use or values.
3. The use will not be compatible with the plan for the area in question and will not comply with all applicable zoning standards and regulations.

Section 92: Hearing Actions Before the Planning and Zoning Commission

- A. Before making a decision on a conditional use permit, the Planning and Zoning Commission shall hold a public hearing on the application.
- B. Subject to Subsection C, the hearing shall be open to the public and all persons interested in the outcome shall be given an opportunity to present evidence and arguments.
- C. Planning and Zoning Commission will allow up to fifteen (15) minutes for the presenter(s) of the application and up to five (5) minutes per witness on the presentation of evidence and arguments, not including the questions posed by the Planning and Zoning Commission. The Planning and Zoning Commission will then allow a three (3) to five (5) minute rebuttal of the presenter. The Planning and Zoning Commission reserves the right to modify the time parameters. If the time parameters are to be modified such will be set forth in the “Notice of Hearing.”
- D. The Planning and Zoning Commission may vote to continue the hearing until a subsequent meeting, or designated time, and may keep the record open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be published unless a period of six weeks or more elapses between hearing dates.

Section 93: Written Comments

- A. The Planning and Zoning Department will receive written comments, on behalf of the Planning and Zoning Commission, from the date of filing until close of business on the day of the hearing in accordance to the Administrative Written Testimony Procedures Policy.
- B. The Planning and Zoning Department will retain all written comments and forward said comments to the Planning and Zoning Commission as a part of the official record of the public hearing.
- C. The Planning and Zoning Commission reserves the right to amend the Administrative Written Testimony Procedures Policy depending on the file at hand.

Section 94: Recommendations on Conditional Use Permits

- A. When presented to the Planning and Zoning Commission, the application shall be accompanied by a report setting forth the Planning Staff’s proposed findings concerning the application’s compliance with Section 79 and other requirements of these regulations, as well as any other staff recommendations. If the Planning Staff report proposes a finding or conclusion that the application fails to comply with Section 79 or any other requirement of these regulations, it shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

- B. The Planning and Zoning Commission shall consider the application and the attached staff report in a timely fashion.

Section 95: Decisions on Conditional Use Permit Applications

In considering whether to approve an application for a conditional use permit, the Planning and Zoning Commission shall proceed according to the following format:

- A. The Planning and Zoning Commission shall consider whether there is substantial credible evidence to support the application. If the Planning and Zoning Commissions determines there is substantial credible evidence supporting the application they shall make a motion to approve the application and determine what conditions are necessary.
- B. If the Planning and Zoning Commission concludes there is no substantial credible evidence to support the application, based on the record as a whole, the application shall be denied.

Section 96: Additional Conditions on Conditional Use Permits

- A. Subject to Subsection B of this section, in granting a conditional use permit, the Planning and Zoning Commission may, but need not, impose additional conditions consistent with the jurisdictional questions set forth in Section 91 above.
- B. The Planning and Zoning Commission may not attach additional conditions that modify or alter the specific requirements set forth in these regulations unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements.
- C. Without limiting the foregoing, the Planning and Zoning Commission may attach to a permit a condition limiting the permit to a specified duration, as well as the transferability of a permit.
- D. All conditions shall be entered on the permit.
- E. All conditions authorized by this section are enforceable in the same manner and to the same extent as any other applicable requirement of these regulations.
- F. A vote may be taken on proposed conditions before consideration of whether the permit should be denied for any of the reasons set forth in Section 91, Subsections B or C.

Section 97: Authorizing Use, Occupancy, or Sale Before Completion of Development Under Conditional Use Permits

- A. In cases when, other factors beyond the control of the conditional use permit recipient (exclusive of financial hardship), it would be unreasonable to require the permit recipient to comply with all of the requirements of these regulations prior to commencing the intended use of the property or occupying any buildings, the Planning and Zoning Commission may authorize the commencement of the intended use or the occupancy of buildings if the permit recipient provides a performance bond or other security satisfactory to the Planning and Zoning Commission to ensure that all of the requirements of these regulations will be fulfilled within a reasonable period (not to exceed 24 months).
- B. When the Planning and Zoning Commission imposes additional conditions upon the permit recipient in accordance with Section 96 or when the developer proposes in the plans submitted to install amenities beyond those required by these regulations, the Planning and Zoning Commission may authorize the permittee to commence the intended use of the property or to occupy any building

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before the additional requirements are fulfilled or the amenities installed if it specifies a date by which or a schedule according to which such requirements must be met or each amenity installed and if it concludes that compliance will be ensured as the result of any one or more of the following:

1. A performance bond or other security satisfactory to the Planning and Zoning Commission is furnished,
2. A condition is imposed establishing an automatic expiration date on the permit, thereby ensuring that the permit recipient's compliance will be reviewed when the application for renewal is made,
3. The nature of requirements or amenities is such that sufficient assurance of compliance is given by Section 114 (Penalties and Remedies For Violation) and Section 115 (Permit Noncompliance Actions).

Section 98: Reconsideration of Actions

- A. Whenever the Planning and Zoning Commission denies or revokes a conditional use permit application such action shall not be reconsidered by the board at a later time unless the applicant clearly demonstrates that:
 1. In the sole discretion of the Planning and Zoning Commission, circumstances affecting the property that is the subject of the application have substantially changed, or
 2. In the sole discretion of the Planning and Zoning Commission, new information is available that could not with reasonable diligence have been presented at a previous hearing. A request to be heard on this basis must be filed with the Planning Staff within the time for an appeal to the Board of Zoning Adjustment or to circuit court, respectively. However, such a request does not extend the period within which an appeal must be taken.
- B. Notwithstanding Subsection A, the Planning and Zoning Commission may at any time consider a new application affecting the same property as an application previously denied or revoked. A new application is one that, in the sole discretion of the Planning and Zoning Commission, differs some substantial way from the one previously submitted.

Section 99: Revocation of Conditional Use Permits

- A. A Conditional Use Permit may be revoked by the Planning and Zoning Commission for any one of the following reasons:
 1. The permit holder made material misrepresentations or false statements of fact in the application or during the hearing on the application and such material misrepresentations or false statements were discovered after the decision was issued;
 2. The provisions or conditions of the Land Use Regulations have been violated;
 3. The conditions placed upon such use as part of the Conditional Use Permit approval are not being met;
 4. The business or permit holder is in violation of any other regulations; or
 5. Permit owner has commenced improvements in compliance with Section 90, but the approved use has not commenced within 2 years.

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- B. Before a Conditional Use Permit is revoked, a written notice that a violation has occurred shall be delivered to the permit holder by regular mail from the Planning Director or the Zoning Enforcement Officer. The notice shall afford the permit holder a specific time period to abate the violation or otherwise correct the problem. If the violation is not remedied within the allotted time period, the permit holder will be notified of the date of a public hearing before the Planning and Zoning Commission at which time the sole issue shall be whether or not the permit should be revoked. The Planning and Zoning Commission shall conduct a public hearing and make a decision on the matter in compliance with Sections 92 (Hearing Actions Before the Planning and Zoning Commission) and 87 (Written Decision) of these regulations. The second notice shall also be delivered by regular mail.
 - 1. In situations where there is a Conditional Use Permit for any Special Events Permit (Occasional or Periodic) no prior notice or time to abate the violation needs to be given. If the applicant of a Special Event Permit violates any or all conditions, a notice of violation shall be sent notifying the applicant of the violation and the date of a public hearing before the Planning and Zoning Commission.
 - 2. In cases when delay or time to abate a violation on a Conditional Use Permit would seriously threaten the effective enforcement of these regulations or pose a danger to the public health, safety, or welfare, no prior notice needs to be given.

Section 100: Expiration of Conditional Use Permit Approval

- A. A Conditional Use Permit approval may expire for any of the following reasons:
 - 1. There is no time frame listed on the face of the approved permit and it has been one (1) year or more since approval, and conditions still have not been met.
 - 2. There is a specific time frame on the face of the approved permit and the conditions have not been met by the time listed.
- B. Before a Conditional Use Permit approval expires, a written notice shall be delivered to the applicant by regular mail from the Planning Director or the Zoning Enforcement Officer notifying the applicant of what conditions have not been met. The notice shall afford the permit holder a specified time period to complete those conditions.
- C. If the conditions are not complete within the specified time period, the permit holder will be notified, by regular mail, of the date the permit application will be brought before the Planning and Zoning Commission for their determination on whether or not the permit has expired. The applicant will be given an opportunity to speak to the Planning and Zoning Commission.
- D. If the Planning and Zoning Commission determines the application has expired, a letter will be sent to the applicant notifying them of the expiration.

Part 3: Appeals and Variances to the Board of Zoning Adjustment

Section 101: Hearing Actions Before the Board of Zoning Adjustment

- A. Before making a decision on an appeal from a zoning enforcement action or interpretation, a Conditional Use Permit issued by the Franklin County Planning and Zoning Commission or an application for a variance, the Board of Zoning Adjustment shall hold a hearing thereon as required by Missouri Law.

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- B. Subject to Subsection C, the hearing shall be open to the public and all persons interested in the outcome shall be given an opportunity to present evidence and arguments.
- C. The Board of Zoning Adjustment may place reasonable and equitable limitations on the presentations or evidence and arguments so that the matter at issue may be heard and decided without undue delay. Cross examination of witnesses shall not be permitted.
- D. The Board of Zoning Adjustment may continue the hearing until a subsequent meeting, or designated time, and may keep the record open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be published unless a period of six weeks or more elapses between hearing dates. A vote by a majority of those board members present will be made to determine whether the hearing shall remain open and be continued to a later date.

Section 102: Written Comments

- A. The Planning and Zoning Department will receive written comments, on behalf of the Board of Zoning Adjustment, from the date of filing until close of business on the day of the hearing in accordance to the Administrative Written Testimony Procedures Policy.
- B. The Planning and Zoning Department will retain all written comments and forward said comments to the Board of Zoning Adjustment as a part of the official record of the public hearing.
- C. The Board of Zoning Adjustment reserves the right to amend the Administrative Written Testimony Procedures Policy depending on the file at hand.

Section 103: Appeals

- A. Appeals to the Board of Zoning Adjustment may be taken by any owner, lessee or tenant of land or by a public officer, department, board or bureau or other persons or entities as defined by state law affected by any decision of the administrative officer administering these regulations or, in the case of Conditional Use Permits, the Planning and Zoning Commission.
- B. Appeals Procedures
 - 1. All appeals of conditional use permit decisions issued by the Franklin County Planning and Zoning Commission or from the decisions of administrative officials shall be submitted to the Franklin County Board of Zoning Adjustment for review in accordance with Section 64.870 RSMo.
 - 2. Any appeal must be filed not more than three (3) months from the date of the approval or denial by the Planning and Zoning Commission or thirty (30) days from the decision of the administrative official.
 - 3. All such appeals shall be filed on forms provided by the Franklin County Planning and Zoning Department and must be verified and accompanied by the appropriate filing fee which will from time to time be established by the County Commission. All such appeals shall be filed in the office of the Franklin County Planning and Zoning Department.
 - 4. Whenever an appeal is filed, the planning staff shall transmit to the Board of Zoning Adjustment the transcript relating to the action appealed from.
 - 5. Appeals from any decision issued by the Franklin County Board of Zoning Adjustment shall

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be filed with the Circuit Court of Franklin County in accordance with the provisions of Section 64.870 RSMo.

6. The Board of Zoning Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement or decision or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the board shall have all the powers of the officer from whom the appeal is taken. Votes shall be taken in accordance with the by-laws, if any, adopted by the Board.
7. An appeal stays all proceedings in furtherance of the action appealed from, unless the Planning Director or Zoning Enforcement Officer certifies to the Board of Zoning Adjustment that (because of facts stated in the certificate) a stay would, in his or her opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed except by order of the Board of Zoning Adjustment or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the Planning Director or Zoning Enforcement Officer.
8. The Board of Zoning Adjustment shall be authorized to consider any evidence which it deems relevant in carrying out the boards duties. Written evidence may be received into evidence as directed in the by-laws, if any, adopted by the Board.

Section 104: Variances

- A. An application for a variance shall be submitted to the Board of Zoning Adjustment by filing an application with the Planning and Zoning Department. Applications shall be handled in the same manner as applications for conditional use permits in conformity with the provisions of Sections 78 and 79.

A variance may be granted by the Board of Zoning Adjustment if the applicant provides sufficient evidence that the hardship relates solely to the applicants land and where, by reason of exception narrowness, shallowness, shape or topography or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation would result in peculiar and exceptional difficulties to or exceptional and demonstrable undue hardship upon the owner of the property as an unreasonable deprivation of use as distinguished from the mere grant of a privilege, to authorize, upon an appeal relating to a property, a variance from the strict application so as to relieve the demonstrable difficulties or hardships, provided the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the zoning regulations and map.

- B. In granting a variance, the Board of Zoning Adjustment :
1. Shall require the variance to be recorded with the County Recorder of Deeds by the Planning and Zoning Department and any costs of recording be paid by the applicant;
 2. Shall issue an order stating the findings of fact and conclusions of law for reaching the decision.
- C. Burden of Proof: The burden of presenting evidence sufficient to allow the Board of Zoning Adjustment to reach the conclusions set forth in Section 103, Subsection A, as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

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D. Actions

1. A motion to affirm a variance may be made on the basis that the criteria set for in Section 103, Subsection A has been met. A motion to affirm a variance is adopted as the Board's decision if supported by four-fifths (4/5) of the board's membership (excluding vacant seats).
2. A motion to deny a variance may be made on the basis that the criteria set for in Section 103, Subsection A has not been met. Insofar as practicable, such a motion may or may not include statement of the specific reasons or findings of fact that support it. This motion is adopted as the Board's decision if supported by more than one-fifth (1/5) of the board's membership (excluding vacant seats).

Section 105: Reconsideration of Actions

- A. Whenever the Board of Zoning Adjustment disapproves an application for a variance on any basis other than the failure of the applicant to submit a complete application, such action shall not be reconsidered by the board at a later time unless the applicant clearly demonstrates that:
1. Through the sole discretion of the Board of Zoning Adjustment, circumstances affecting the property that is the subject of the application have substantially changed, or
 2. Through the sole discretion of the Board of Zoning Adjustment, new information is available that could not with reasonable diligence have been presented at a previous hearing. A request to be heard on this basis must be filed with the planning staff within the time for an appeal to the County Commission or to circuit court, respectively. However, such a request does not extend the period within which an appeal must be taken.
- B. Notwithstanding Subsection A, the Board of Zoning Adjustment may at any time consider a new application affecting the same property as an application previously denied. A new application is one that, at the sole discretion of the Board of Zoning Adjustment, differs some substantial way from the one previously considered.

Section 106: Appeals from the Board of Zoning Adjustment

Decisions from the Board of Zoning Adjustment may be appealed according to Missouri Law.

Sections 107 through 110: Reserved