

Dates to Remember for Area-Bulk Variance

1. _____ - By Noon
Last day to have completed variance application, building permit application with 8 ½" x 11" site plan, \$225.00 filing fee, and Buffered Parcels Report from St. Clair County Mapping & Platting listing the legal property owners and mailing addresses of the parcels within 250 feet of the property in to the Community Development Department. Please also provide proof of applicant's property interest if the applicant is not the owner. It is recommended that you provide a copy of your Notice of Intent for review at this time.

2. _____ - to _____ -
"Window" for petitioner to send "Notice of Intent" notices to owners within 250 feet of parcel, either in person to owner **OR** by Certified Mail Return Receipt Requested. See Section 158.256 and sample letter attached for notice requirements.

3. _____ (Wednesday before the hearing) - **To Vicki:**
 - > Copy of letter **AND** all green Certified Mail Return Receipts (or envelope returned from Post Office as refused) with receipt showing date received at Post Office attached to each one – **OR** - the original letters signed by owners presented in person.
 - > Statement of Compliance certifying that you have done all that is required of you as outlined in Chapter 158 Articles 13, 14, and 15 of the Code of Ordinances. See the attached sample.

4. _____ -
Public Hearing with Zoning Hearing Officer (City Council Chambers @ 5:00 p.m.)

If you have any questions regarding your petition, please do not hesitate to contact the Community Development Department at (618)624-4500, Extension 4. You may wish to call our office to ensure either the Planner or Vicki will be available when you come in to file.

A copy of the agenda will be mailed to you Friday before the scheduled meeting. The agenda will serve as notice that your petition will be discussed that night. You will want to attend that meeting or have a representative present in your place.

The Zoning Hearing Officer will make his/her decision and will forward the Finding of Facts and the Decision to the Community Development Department within a few days of the hearing. Per Section 158.300(A), "Immediately following the filing of the written decision of the Zoning Hearing Officer on any appeal or variance request under this section, staff shall file a report with the City Council concerning such action. Within 21 days after the Zoning Hearing Officer's decision, the City Council, upon majority vote, may exercise the power of administrative review of any Zoning Hearing Officer decision on an application for an appeal or variance."

PETITION FOR AREA-BULK VARIANCE

Community Development Department, O'Fallon City Hall
 255 South Lincoln Avenue, 2nd Floor
 O'Fallon, IL 62269 Phone (618) 624-4500 Ext. 4

Variance Request No. _____
 Date: _____

(Do not write in this space -- For office use only)

Date set for hearing: _____ Perm. Parcel No. _____ - _____ - _____
 Date hearing held: _____ Fee paid: \$ _____ Date: _____
 Newspaper: _____ Building Permit App. No. _____
 Action by Zoning Hearing Officer: _____ Comments: (indicate other actions such as continuances)
 () Denied _____
 () Approved _____
 () Approved with modification _____

INSTRUCTIONS TO APPLICANTS: All information required by the application must be completed and submitted herewith. Applicants are encouraged to visit the Community Development Department for any assistance needed in completing this form.

1. Name of property owner(s): _____ Phone: _____
 Mailing address: _____ E-Mail: _____
2. Applicant's name: _____ Phone: _____
 Mailing address: _____ E-Mail: _____
3. Property interest of applicant (Owner, Contractor, etc.): _____
4. With respect to any portion of these premises, a previous appeal or petition for variance was made:
 () No. () Yes. If "yes", list all previous appeals and/or petitions, giving dates:

5. Address of property: _____
 Present use of property: _____ Parcel (Tax) ID #: _____ Zone District: _____
6. Do the existing structures comply with all area and bulk regulations for the zone district in which it is located? () Yes () No
 If "no", specify each non-conforming condition:

7. Variance requested: _____

8. Are the conditions of hardship for which you request a variance peculiar only to the property described by this petition?
 () Yes. () No. If "no", how many other properties are similarly affected? _____
9. A sketch plan (drawn to approximate scale) shall be shown on the reverse side or may be attached showing the following:
 - a) Dimensions of the zoning lot;
 - b) Dimensions and use of all buildings;
 - c) Location of proposed use requiring a variance;
 - d) Any additional information as may be reasonably required by the Community Development Department.

10. A use variance is requested for the property described above in conformity with the documents submitted herewith.

I certify that all of the above statements and the statements contained in any papers or plans submitted herewith are true and accurate.

I consent that the entry in or upon the premises described in this application by any authorized official of O'Fallon, Illinois for the purpose of inspecting or of posting, maintaining, and removing such notices as may be required by law.

Date: _____

Signature of Applicant: _____

Date: _____

Signature of Owner: _____

APPLICATION FOR RESIDENTIAL BUILDING PERMIT / CERTIFICATE OF ZONING COMPLIANCE

Community Development Department, O'Fallon City Hall
 255 South Lincoln Avenue, 2nd Floor
 O'Fallon, IL 62269 Phone (618)624-4500 Ext. 4

(Do not write in this space -- For office use only)

Date: _____, 20____ Zoning fee to be paid to City Clerk

() Permit issue No. _____ \$ _____ Date: _____

() Permit denied If denied, cause of denial: _____

() Application appealed No. _____

Variance or Special Permit No. _____

* * * * *

1. Name of property owner(s): _____ Phone: _____

Complete mailing address: _____ E-Mail: _____

2. Applicant () Owner or () Contractor: _____ Phone: _____

Complete mailing address: _____

3. General contractor's name/Agent/Responsible party: _____ E-Mail: _____

Complete mailing address: _____ Phone: _____

4. Property address (9-1-1 approved) of proposed construction: _____

5. Legal description: Parcel #: _____

Lot # and subdivision name including addition: _____

6. Proposed construction or use (please check all that apply):

() Structural

() Electrical – Contractor's name and phone: _____

() Plumbing - Contractor's name, phone, and IL License #: _____

() New residence – Model name or number _____ If multi-family, # of units _____

Have the building plans been previously approved by the City? () yes () no If yes, any alterations? () yes () no

() Addition () Remodel () Accessory structure () Deck

Project description: _____

Cost of improvement: \$ _____ Zone district: _____ Flood zone: _____

Type of structure: () Ranch () 2-story () Split-foyer () Basement () Crawl space () Slab

Sq. ft. area of living space: 1st floor _____ 2nd floor _____ Total of both: _____

Basement area sq. ft.: Finished _____ Unfinished _____ Total basement _____

Garage area: _____ sq. ft. Deck area: _____ sq. ft. Covered porch area: _____ sq. ft.

Accessory structures area and descriptions: _____ sq. ft. _____

Total lot area: _____ sq. ft. Total lot covered by all buildings after construction: _____ sq. ft.Percent of lot coverage (total lot area covered by all buildings divided by total lot area): _____

7. A site plan accompanying your application is required. Please provide the site plan drawing on a separate page if the space below is insufficient (graph paper is available upon request.) Drawn to approximate scale, please include the following:
- Dimensions of the zoning lot;
 - Dimensions and use of all buildings (show overall dimensions of house including garage if applicable);
 - Distance of each building from all zoning lot lines;
 - Distance between principal buildings and accessory structures;
 - Distance of principal building from principal buildings on adjacent lot(s);
 - Location of driveways and off-street parking spaces (show distance from lot lines and overall dimensions);
 - Location of all easements (drainage and utility);
 - Any additional information as may be reasonably required by the Community Development Department and applicable requirements of Section 158.036(D).

PLEASE NOTE: Sidewalk cross slope ¼" per foot maximum. Adjust driveway slopes and building elevations accordingly. All residential driveways serving new homes, or additions of residential attached or detached garages, must be constructed of concrete or asphalt and must be located a minimum of 3 ft. from adjoining property line.

8. Silt control and erosion control measures are to be maintained at all times. I acknowledge that the failure to erect or maintain silt/erosion control at all times may result in citations being issued by the City of O'Fallon indicating a violation of City of O'Fallon Code of Ordinances, Section 155.055-155.059.
9. Application is hereby made for a Temporary Certificate of Zoning Compliance, as required under the Code of Ordinances of the City of O'Fallon, Illinois, for the erection, moving or alteration, and use of buildings and premises. In making this application the applicant represents all of the above statements and any attached maps and drawings to be a true description of the proposed new or altered uses and/or buildings. The applicant agrees that the permit applied for, if granted, is issued on the representations made herein and that any permit issued may be revoked without notice on any breach of representation or conditions. It is understood that any permit issued on this application will not grant right of privilege to erect any structure or to use any premises described for any purpose or in any manner prohibited by the Code of Ordinances, or by other ordinances, codes or regulations of O'Fallon, Illinois.
10. The removal of any material containing asbestos must comply with Illinois EPA Asbestos Unit guidelines. Visit <http://www.epa.state.il.us/air/asbestos/> or call 217-524-0229 for further assistance.

(Applicant) _____

(This space is for additional information you wish to provide on this project.)

TEMPORARY CERTIFICATE OF ZONING COMPLIANCE

The plans and specifications submitted with this Application are in conformity with the zone district requirements applicable to the subject property. Changes in plans or specifications shall not be made without written approval of the appropriate city officials. Failure to comply with the above shall constitute a violation of the provisions of the City of O'Fallon Code of Ordinances.

Dated: _____, 20____

Community Development Department, City of O'Fallon, Illinois

For office use only: ☐ Flood Plain ☐ Overlay Restrictions ☐ Historic Landmark
 ☐ 8 ½ x 11 Site Plan ☐ Storm Water Plan ☐ Grading Plan ☐ WSFU Plumb

SAMPLE NOTICE OF INTENT

[Date letter is mailed or delivered]

[Applicant name]

[Applicant address]

Dear **[Property Owner's Name Here]**,

Please be advised that I/we have submitted a petition for a variance to the City of O'Fallon Zoning Hearing Officer on **[date petition submitted]**. The variance is to allow **[describe the reason for the variance (i.e. increase the percent of lot coverage from 30% to XX% for construction of a room addition or to extend 5 feet into the required 25 ft rear yard setback for placement of a modular home)]**.

The variance is for the property address of **[subject property address]**, O'Fallon, Illinois.

The name and address of the property owner for this property is **[name and mailing address of the property for the variance]**.

This letter is being sent to you as required by ordinance to the property owners within 250 feet of the variance requested property.

If you have any questions regarding the variance, please contact either the property owner or the O'Fallon Community Development Department at (618)624-4500 ext. 4.

Sincerely,
XXXXX

[Applicant name and signature]

FOR HAND-DELIVERED LETTERS:

If the letter is being hand-delivered to the property owner, please provide them with 2 letters. One they sign and date as received and return to you, the other they keep for their records. Put this on the hand-delivered letters:

I/We hereby acknowledge receipt of the above notification of a Petition for Zoning Variance initiated by **[Applicant name here]**.

Property Owner's Signature, Their Property Address and Date

[Date]

This letter is to certify that I/we, **[applicant(s)]**, have complied with the requirements as outlined in the O'Fallon Code of Ordinances for the Petition for **[subject property address]**, O'Fallon, Illinois, which we filed for on **[filing date]**.

Signed,
[Applicant(s)]

O'Fallon, Illinois Code of Ordinances

**ARTICLE 13:
NOTICES AND HEARINGS****§ 158.255 PUBLICATION NOTICES.**

(A) *Newspaper public notice publication.* Notice of all hearings for zoning text amendments, property rezoning or other approvals subject to this requirement shall be published in one issue of a newspaper published in the city or, if no newspaper is published in the city, a newspaper of general circulation in the city. At least 15 days, but no more than 30 days, shall elapse between the date of such publication and the date set for hearing. It shall be the city's responsibility to make sure said public notice is published pursuant to this section. Notice for text amendments shall include a brief statement describing the requested change.

(B) *Inclusions.* Notice for other amendments or approvals shall include:

(1) Identification or description of the particular location for which the amendment or other approval is sought; as well as

(2) A brief statement describing the proposed amendment or other approval sought.

(Ord. 623, passed 9-8-1970)

§ 158.256 NOTICES OF HEARING TO SURROUNDING PROPERTY OWNERS.

(A) *Mailed notice.* Notice for hearings subject to this subchapter, except hearings for text amendments, shall in addition to the newspaper publication requirement above also require notice to surrounding property owners as follows.

(1) The applicant shall certify and provide the addresses and owners, as recorded in the office of the Recorder of Deeds of the county and as appears from the authentic tax records of the county, of all property within 250 feet in each direction of the location for which the special use is requested.

(2) Making notice of the hearing to the neighboring owners of record is the city's responsibility and shall be sent by regular mail within 15 days of the scheduled hearing, but shall not be sent more than 30 days prior to the scheduled hearing.

(B) *Notice of intent to surrounding property owners.* It shall be the applicant's responsibility to submit a notice of intent to surrounding property owners by certified mail. The notice shall contain the time and place of the public hearing and a statement regarding the purpose of the hearing, including, but not limited to, the following.

(1) The notice shall contain a statement regarding the proposed changes in the chapter or in the boundaries of the zone or district.

(2) Where the hearing is for an application that relates to specific property, the property shall be designated by its legal description and general street location.

(Ord. 623, passed 9-8-1970; Ord. 3718, passed 6-20-2011)

§ 158.257 PUBLIC HEARINGS.

When the consideration of an application requires a public hearing, the following shall apply.

(A) *Purpose.* The purpose of a public hearing is to provide the applicant and all other interested parties a reasonable and fair opportunity to be heard, to present evidence relevant to the application and to rebut evidence presented by others.

(B) *Minutes.* A journal of minutes of the proceedings shall be made for all public hearings.

(C) *Rules of procedure.* All testimony by witnesses in any hearing shall be given under oath. The governing body, Commission and Board may adopt additional rules of procedure for public hearings by resolution or by- laws.

(D) *Continuance.* Any applicant or authorized agent shall have the right to one continuance of a public hearing before the Commission, governing body or Zoning Hearing Officer. No additional notices shall be required, except if a hearing is continued to an unspecified date, notice pursuant hereto shall be required to officially schedule the subsequent date and place of the continued hearing. If a second continuance is required it shall be treated as a new public hearing. Notice for the new hearing shall be accordance with §§ 158.255 and 158.256 of this chapter.

(Ord. 623, passed 9-8-1970)

ARTICLE 14: GENERAL APPLICATIONS AND PROCEDURES

§ 158.270 GENERAL.

The following requirements apply to all applications for zoning text amendments, property rezonings, special use permits and other applications subject to this chapter, unless otherwise specified.

(Ord. 623, passed 9-8-1970)

§ 158.271 APPLICATIONS.

(A) All applications shall be made on forms provided by the city.

(B) If an application is filed by, or on behalf of, a landowner, an affidavit of ownership shall be submitted to the city with the application.

(C) If an application is filed by an agent of a landowner, an affidavit of the landowner establishing the agent's authorization to act on behalf of the landowner shall also be submitted with the application.

(D) All applications shall be accompanied with the appropriate fees made payable to the city.

(E) The affidavits required by this section shall be on forms provided by the city or in such form as is acceptable to the Director and shall be submitted at the time of filing the application.

(F) All applications shall include proof of service to the County Soil and Water Conservation District for comment pursuant to ILCS Ch. 70, Act 405, § 22.02a, of a copy of any application for text amendment, property rezoning variance or application for relief from existing zoning regulation shall be sent.

(Ord. 623, passed 9-8-1970)

§ 158.272 PRE-APPLICATION CONFERENCE.

(A) A pre-application conference with the Director or his or her designee shall be required prior to submission of any application for a variance, rezoning, special use permit, sketch plan, preliminary development plan or preliminary plat.

(B) The purpose of this conference is to:

(1) Acquaint the applicant with the procedural requirements of this chapter;

(2) Provide for an exchange of information regarding applicant's proposed development and the regulations, restrictions and requirements of this chapter, the Comprehensive Plan and other development requirements;

(3) Advise the applicant of any technical studies or public sources of information that may aid the application;

(4) Identify policies and regulations that create opportunities or pose significant restraints for the proposed development;

(5) Review any proposed concept plans and consider opportunities to increase development benefits and mitigate undesirable project consequences;

(6) Review whether the application is compatible with adjacent proposed or existing development; and

(7) Permit assistance by city staff with the development's general design.

(Ord. 623, passed 9-8-1970)

§ 158.273 GENERAL APPLICATION REQUIREMENTS.

(A) *Application requirements.* Unless otherwise indicated in this chapter or by the Director, all applications shall contain or be accompanied by the following items and materials;

(1) Date prepared;

- (2) Name, address and telephone number of the applicant and the name, address and telephone number of the landowner if different than the applicant;
- (3) Affidavit of ownership pursuant to § 158.271 of this chapter;
- (4) Such information and certifications required by § 158.256 of this chapter;
- (5) Name, address and telephone number of all persons preparing any technical studies, maps, drawings and documents submitted with the application;
- (6) Form provided by Director, signed by both the landowner and the Director, that shows a pre-application conference has occurred as required herein;
- (7) Accurate legal description of the property for which the application is submitted;
- (8) Any technical studies that may be required by the Director;
- (9) Statement regarding adequate public facilities and services for the proposed development;
- (10) Small key map with north arrow indicating the location of the property within the city;
- (11) A statement of the reasons for the request; and
- (12) A statement of when development of the land area covered by the application is contemplated to commence after the application is approved.

(B) *Map submission requirements.* Unless otherwise indicated in this chapter or by the Director, each map required by this chapter shall be on paper that is 24 inches by 36 inches. An 11-inch by 17-inch version of and/or a digital copy of all applications may also be required, as needed, by the Director. The maps in the number of copies as required by the Director shall contain the following:

- (1) Date prepared;
- (2) Name, address and telephone number of the person who prepared, or person responsible for preparing, the map;
- (3) Graphic, engineering scale;
- (4) North arrow;
- (5) Location of property lines of the subject property;
- (6) Approximate existing and proposed grades based on U.S.G.S. datum at ten-foot contour intervals or spot grades for preliminary submissions (including sketch plans), and five- or two-foot contour intervals for final submissions (including final development plans); and
- (7) Existing conditions showing the following:
 - (a) All existing streets and rights-of-way on the land area covered by the application and on all property within 250 feet of the boundaries of the property, including street name and widths of pavement and rights-of-way;
 - (b) Names of any abutting subdivisions, and the names of owners of abutting property on unsubdivided parcels;

- (c) Land use and zoning classification with district boundary lines of all property abutting and all property within 250 feet of the boundaries of the property covered by the application;
 - (d) All existing drainage channels on the land area covered by the application;
 - (e) The location and size of all existing utilities and easements on the land area covered by the application; and
 - (f) The location and elevation of all areas designated as 100-year floodplain areas by the Federal Emergency Management Agency on the land area covered by the application.
- (Ord. 623, passed 9-8-1970)

§ 158.274 SUBMISSION OF TECHNICAL STUDIES.

(A) Technical studies required by the Director.

- (1) The Director may require applicants to submit any technical studies that the Director deems necessary to enable the appropriate person or entity to fully evaluate the application.
- (2) Examples of technical studies that may be required shall include, but not be limited to, traffic studies, engineering studies, geologic or hydrogeologic studies, flood studies, environmental impact assessments, noise studies or surface water management/drainage studies. The persons or firms preparing the studies shall be approved by the Director.
- (3) The costs of all studies shall be borne by the applicant.

(B) Technical studies required by Commission or governing body. Notwithstanding the fact that the Director did not require submission of a technical study in support of an application, either the Commission or the governing body may require the submission of a technical study prior to taking action on an application. In this case, the persons or firms selected to perform the study shall be approved by the entity requesting that the study be performed. Any decision of the Commission or the governing body to require that a study be performed or to disapprove the person or firm selected by the applicant to perform the study shall be final. The persons or firms preparing the studies shall be approved by the Director. The costs of all studies shall be borne by the applicant.

(Ord. 623, passed 9-8-1970)

§ 158.275 WHEN APPLICATIONS DEEMED COMPLETE.

No application shall be deemed complete until all items required to be submitted by this chapter have been submitted. Upon receipt of a complete application the Department shall note the filing date on the application and shall make a permanent record thereof. If the applicant fails to submit required elements, the application will not be considered complete, the application shall not be processed, and the filing, notification and advertising process established by this chapter will not begin until all required elements have been submitted in the form required by this chapter.

(Ord. 623, passed 9-8-1970)

§ 158.276 APPLICATION AND SUBMISSION DEADLINES.

(A) The Director or the Commission may administratively provide for submission deadlines for materials required in support of any application provided for in this chapter. These deadlines shall be provided to the applicant at the pre-application conference.

(B) Compliance with these deadlines is required before the application will be placed on an agenda to be heard by the appropriate entity.

(Ord. 623, passed 9-8-1970)

§ 158.277 DUAL APPLICATIONS.

In an instance where an applicant seeks approval of two requests simultaneously, such as a property rezoning and a special use permit, the applicant shall submit all necessary documents, plans, maps and other required information in accordance with the provisions relating to both of the submitted applications and pay all appropriate fees for both applications.

(Ord. 623, passed 9-8-1970)

§ 158.278 CITY STAFF REVIEW.

The city staff shall review all applications, plans, information and data submitted in support of an application by the applicant. After reviewing such information, the city staff shall prepare a staff report discussing the submitted data. This report shall be provided to the applicant, all appropriate city officials and be available for public review. The staff report may contain a recommendation for approval, approval with conditions or denial.

(Ord. 623, passed 9-8-1970)

§ 158.279 CONDITIONAL APPROVALS.

In the consideration of any application authorized by this chapter, the recommending and the approving authority may stipulate that the recommendation or approval, as the case may be, is subject to compliance with certain specified conditions, including, but not limited to, limitations on permitted uses; time of performance requirements; limitation on hours of operation; and provision of services and/or facilities to ensure that adequate public services and facilities are available to serve the development proposed by the application.

(Ord. 623, passed 9-8-1970)

§ 158.280 WRITTEN FINDINGS NOT REQUIRED; WHEN.

Unless otherwise specifically provided in this chapter or by other applicable law, written findings are not required for a final decision on any application. However, any decision may be expressly made subject to the subsequent adoption of written findings and, if expressly made subject to written findings, the decision shall not be final until the findings are adopted.

(Ord. 623, passed 9-8-1970)

§ 158.281 FINAL DECISION WHERE ORDINANCE REQUIRED.

(A) In the case of a decision to approve an application where adoption of an ordinance is required, the decision shall be final on the date that the governing body adopts the ordinance approving the application.

(B) A decision to deny an application is final when:

- (1) The governing body votes to deny the application; or
- (2) An ordinance with respect to such application fails to receive number of votes required by law.

(Ord. 623, passed 9-8-1970)

§ 158.282 APPEALS OF FINAL DECISIONS.

Except where this chapter provides for an appeal to another body, any person, official or agency who is aggrieved by a final decision on an application provided for in this chapter, and who desires to appeal the decision, shall file the appeal in the appropriate court of jurisdiction, as the case may be, within 30 days after the decision is made.

(Ord. 623, passed 9-8-1970)

ARTICLE 15: VARIANCES AND APPEALS

§ 158.295 ESTABLISHMENT OF OFFICE OF HEARING OFFICER.

The position of City Hearing Officer is hereby created in accordance with ILCS Ch. 65, Act 5, § 11-13-14.1, and other applicable authority. The Hearing Officer shall be appointed by the Mayor with the approval of the City Council. Alternate Hearing Officers may serve when the Hearing Officer is not available and may be appointed in the same manner as the Hearing Officer.

(Ord. 3382, passed 11-7-2005)

§ 158.296 POWERS AND DUTIES.

The Hearing Officer shall have all the powers and duties prescribed by law and by this chapter, including the following.

(A) *Appeals*. Upon an appeal from a decision by any administrative official, to decide any question involving the interpretation of any provision or term of this chapter, including the determination of the exact location of any district boundary if there is uncertainty with respect thereto, or other claimed error in the, decision or determination made by an administrative official in the enforcement of this chapter; provided that, such decision shall be bound by and consistent with the language of the ordinance or regulation at issue.

(B) *Variances*. The Hearing Officer may vary the application of the requirements of this chapter, except for use variances, as provided in this subchapter. The corporate authorities may reserve, by ordinance, any class of variance for approval only by the corporate authorities. In such cases where the City Council has reserved

decision making authority, the Hearing Officer shall still conduct a hearing and provide notice in compliance with ILCS Ch. 65, Act 5, § 11-13-6. Any variance granted by the Hearing Officer, not exercised within 12 months from the date of approval, shall be deemed expired and may be revoked by the Hearing Officer.

(C) *Use variances*.

(1) To hold public hearing for applications for use variances and to forward a written report containing findings of fact and a separate conclusion recommendation thereon to the City Council, consistent with ILCS Ch. 65, Act 5, § 11-13-14.1.C(1), which Council may by ordinance without further public hearing adopt any proposed use variance, or the Council may refer it back to the Hearing Officer for further consideration or deny the use variance request as a final action. For purposes of this section, **USE VARIANCES** shall be any variation that authorizes any use or classification of use to continue or commence in a zoning district in which that use is not a permitted use by right. Any proposed use variance which fails to receive the approval of the Hearing Officer shall not be approved, except by the favorable vote of two-thirds of all Council members. No variance shall be granted that shall authorize a use that may be granted by special use or planned use procedures.

(2) Use variances are not favored and shall be granted only when failure to authorize the use denies all economically viable use of the property or similar extreme hardship is demonstrated by the evidence presented.

(D) *Airport zoning*. To hear and decide any appeal, exception or variance as allowed under ILCS Ch. 620, Act 25, § 27.

(E) *Other authority*. To hear and decide all other matters referred to it by the City Council or upon which it is required to pass under applicable ordinance.

(Ord. 3382, passed 11-7-2005)

§ 158.297 APPEALS.

(A) An appeal may be taken to the Hearing Officer by any person, firm or corporation aggrieved by a determination or decision of any administrative official charged with the enforcement of any provision of or regulation adopted pursuant to this chapter, or by any officer,

department, board or bureau of the city relating to such decision. The appeal shall be taken within 45 days of the action complained of by filing, with the officer from whom the appeal is taken and with the Hearing Officer a notice of appeal, specifying the grounds thereof. The official appealed from shall thereupon transmit to the Hearing Officer all papers constituting the record upon which the action appealed from was taken.

(B) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the official appealed from certifies to the Hearing Officer after the notice of appeal has been filed with him or her that by reason of facts stated in the certificate, the stay would, in his or her opinion, cause eminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Hearing Officer or by a Court of Record on application, or notice to the official appealed from and on due cause shown.

(C) The Hearing Officer may reverse or affirm wholly or partly, or may modify or amend the order, requirement, decision or determination appealed from to the extent and in the manner that the Hearing Officer may decide to be fitting and proper to the premises. No challenge to any decision subject to this section shall be filed in any court until or unless a timely appeal has been filed and prosecuted to completion by the applicant as provided for in this subchapter so as to establish a final appealable decision.

(Ord. 3382, passed 11-7-2005)

§ 158.298 VARIANCES.

(A) A variance may be sought by filing a written application and payment of applicable fee to the Hearing Officer specifying the specific provision to be varied, the extent of the variation, and the basis therefore and including such requirements as are set forth in this subchapter or as otherwise established Hearing Officer. The Hearing Officer may grant a variance only if it is in harmony with the general purpose and intent of this chapter and in accordance with general or specific rules adopted hereto and only in cases where there are practical difficulties or particular hardship in the way of carrying out the strict letter of any regulation of this chapter relating to the use, construction, alteration of buildings, or structures or the use of land, but in no other case.

(B) No variance may be granted to any condition or term of a special use permit or planned zoning procedure. The Hearing Officer may impose such conditions, safeguards and restrictions upon the premises, benefitted by the variance as may be necessary 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 these regulations.

(C) A request for a variance, other than a use variance, may be granted, upon a finding and determination on the record of the Hearing Officer that the requirements of this section are met and that all three of the following conditions are satisfied or upon such conditions as may the Hearing Officer establishes as will meet such conditions:

(1) The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the applicable zoning regulations;

(2) The plight of the owner is due to unique circumstances; and

(3) The variance, if granted, will not alter the essential character of the locality.

(Ord. 3382, passed 11-7-2005)

§ 158.299 PROCEDURE.

(A) *General.* The Hearing Officer shall act in accordance with the procedure specified by law and by this chapter. All appeals and applications to the Hearing Officer shall be in writing. Every appeal or application shall refer to the specific provision of the ordinance involved, and shall exactly set forth the interpretation that is claimed, the use for which the variance or special permit is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. The city may appear by any designated official of the City Council and be heard as a party in interest in any hearing before the Hearing Officer, and the city may appeal any decision of the Hearing Officer to a court of competent jurisdiction.

(B) *Notice of hearing.* No action of the Hearing Officer shall be taken on any petition for variance until after notice has been given therefor in accordance with applicable state law and including newspaper notice as required for zoning text amendments as provided for in § 158.255 of this chapter and any specific statutory requirements.

The Hearing Officer shall fix a reasonable time for the hearing of the appeal or application and shall give due notice thereof to the parties and decide the matter within a reasonable time.

(C) *Hearings procedure.* All hearings conducted by the Hearing Officer shall be open to the public, held at the call of the Hearing Officer and at such times as he or she may determine. At hearings conducted by the Hearing Officer, any interested person may appear in person or by duly authorized agent or attorney. All testimony before the Hearing Officer shall be given under oath. The Hearing Officer shall administer oaths and may compel attendance of witnesses. The Hearing Officer shall keep minutes of his or her proceedings and other official actions. The Hearing Officer shall adopt his or her own rules and procedures, not in conflict with this chapter or applicable state statutes.

(D) *Decision and findings of fact.* Every variation decision shall be accompanied by findings of facts and shall refer to any exhibits containing plans and specifications for the proposed use or variation, which shall remain a part of the permanent records of the Hearing Officer. The findings of facts shall specify the reason or reasons for making the variation. The terms of the relief granted shall be specifically set forth in a conclusion or statement separate from the findings of fact. Property for which relief has been granted shall not be used in violation of the specific terms of the findings of fact, as the case may be, unless its authorized use is changed by subsequent variance or ordinance. Every rule, regulation, decision or determination of the Hearing Officer shall immediately be filed with the Zoning Official and shall be public record.

(E) *Expiration of variance approval.* Any construction or use authorized by a variance approval shall substantially commence not later than six months after the date of the decision granting the variance, or such other time as may be specified in the variance approval.

(F) *Cost.* For any application to the Hearing Officer, a fee shall be charged by the city for processing, plus the cost of advertising of public notice in an amount as established by the Council.

(Ord. 3382, passed 11-7-2005)

§ 158.300 CITY COUNCIL POWER OF ADMINISTRATIVE REVIEW.

(A) Immediately following the filing of the written decision of the Zoning Hearing Officer on any appeal or variance request under this section, staff shall file a report with the City Council concerning such action. Within 21 days after the Zoning Hearing Officer's decision, the City Council, upon majority vote, may exercise the power of administrative review of any Zoning Hearing Officer decision on an application for an appeal or variance.

(B) Upon adoption of the motion to exercise the power of review, the City Council may act on the matter directly or first refer the matter to committee. Before acting on the variance or appeal, the City Council may set the matter for hearing before the committee or the City Council. The City Council will give written notice of any such hearing to the applicant and all other persons who appeared and spoke at the public hearing before the Zoning Hearing Officer. In addition, the City Council may, in its discretion, notify and allow to be heard at the hearing any other person who the Council believes may be aggrieved by any decision or action concerning the application.

(C) Following its review, the City Council may affirm, reverse or modify, in whole or in part, any determination of the Zoning Hearing Officer. An affirmative majority vote of the City Council shall be required to overturn or modify a decision by the Zoning Hearing Officer. The decision of the City Council shall be made within 45 days of the Zoning Hearing Officer vote, unless extended for specified cause by a majority vote of the Council, or the Zoning Hearing Officer decision shall become final. In making any decision, the Council may adopt and rely on the record of the Hearing Officer or may hold a new hearing to establish a record for final decision.

(D) Unless the City Council exercises its power of review of administrative review, the decision of the Zoning Hearing Officer shall become effective after 21 days following its decision.

(Ord. 3382, passed 11-7-2005; Ord. 3561, passed 2-4-2008)

§ 158.301 JUDICIAL REVIEW OF FINAL DECISION.

Any officer, department, board or bureau of the city or any person whose legal rights, duties or privileges have been affected by any final decision of the Hearing Officer, or any party affected by the decision of the Council where such decision has been reserved or appealed to the Council, may present to the Circuit Court having jurisdiction in the county, a complaint, duly verified, stating that such decision is illegal in whole or in part, specifying the grounds of the illegality and otherwise proceeding pursuant to the Administrative Review Law, ILCS Ch. 735, Act 5, §§ 3-101 et seq. which shall govern such appeals including as authorized in ILCS Ch. 65, Act 5, § 11-13-14.1. Such complaint shall be presented to the court within 35 days after the filing of the final decision. The costs of preparing and certifying the record of proceedings for filing with the Circuit Court in an administrative review proceeding shall be paid to the city by the appellant prior to the filing of such records with the Court. To the full extent permitted by law, unless review is sought of an administrative decision within the time and in the manner herein provided,

the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of such administrative decision.

(Ord. 3382, passed 11-7-2005; Ord. 3561, passed 2-4-2008)