



The Board of Adjustment meets at 7:00 p.m., on the second Monday of each month at City Hall, 139 South Kirkwood Road. Meetings are open to the public. A court reporter is present to record the proceedings. Agendas are posted on the City Website, at: [www.kirkwoodmo.org](http://www.kirkwoodmo.org)

FOR MORE INFORMATION, CONTACT  
THE BUILDING COMMISSIONER'S  
OFFICE AT 314-984-6943.



WHERE COMMUNITY AND SERVICE MEET

## PURPOSE ~ PROCESS ~ RESPONSIBILITIES

### What is the Board of Adjustment?

- The Board of Adjustment (BOA) is a state-chartered board that holds hearings similar to a court proceeding
- BOA has the authority to grant variances from Kirkwood Zoning Code requirements. A variance provides relief to a landowner who would suffer a hardship from a strict application of a particular zoning code.
- BOA decides appeals of alleged errors in a zoning determination made by the City.
- BOA has five volunteer members and three substitute members, who are appointed by the Kirkwood City Council.

### Board Responsibilities:

- 1) Grant non-use variances of area, height, density, setbacks, and line restrictions when **practical difficulties or unnecessary hardships** exist.
- 2) Hear appeals regarding Building Commissioner decisions.
- 3) Approve reconstruction of a non-conforming damaged building. (See Zoning Decision Appeals)
- 4) Address zoning map inconsistencies.
- 5) Approve variances to parking / loading regulations when they impose unreasonable hardship.
- 6) Permit the extension of a district where the zoning boundary line divides a lot held in single ownership.
- 7) Approve use variances when permitted uses deprive property of all beneficial use.
- 8) Powers regarding fences :
  - ◆ Grant appeals of Building Commissioner's decisions
  - ◆ Grant variances on grounds of undue hardship

### Applicant Responsibilities:

- 1) Attend a pre-submittal hearing with staff
- 2) Provide all requested information for application submittal
- 3) Attend the meeting and be prepared to present evidence of hardship and/or difficulty and answer direct questions from Board members

Please note: Anyone planning to petition the Board and present evidence at such a hearing, but who are unfamiliar with hearing proceedings, should consider observing a hearing prior to their own, to become familiar with the procedures.

### Non-Use Variances:

Property owners whose proposed improvement does not meet all the requirements in the Zoning Code can petition the Board for variances. A variance authorizes a deviation or departure from the literal requirements of the zoning regulations in order to avoid unnecessary hardships or practical difficulties to a landowner. A variance usually deals with some measurable physical requirements or conditions that are unusual or unique to the property, such as height, area, or setbacks, and is based on a finding that granting such variance will not be contrary to public interest.

The variance mechanism is not to be used in hardship situations that are the result of an action by the landowner, but only when the particular physical surroundings, shape of the property, or topographic conditions render strict compliance with the Zoning Code impractical.

### Procedure:

After a complete application is received, a reasonable time for the hearing of the variance request will be set by the Board. Not less than 15 days' public notice of the hearing must be given in a generally circulated



newspaper (The St. Louis Countian, for example) in the City of Kirkwood. Notice is also sent to property owners located within 300 feet of the proposed variance. At the hearing, anyone may appear in person or through a representative. After hearing all interested persons, the Board votes to approve or disapprove, based on evidence submitted.

### **Meeting Overview / Process:**

When your case is called, the City shall first present its evidence and then the petitioner will be called to come forward and be sworn by the Court Reporter before beginning to present testimony. The petitioner bears the burden of presenting sufficient oral and written evidence to show that he or she has an undue hardship or practical difficulty in complying with the strict application of the Code (cost or expense is generally not considered a hardship).

Testimony by citizens for or against a variance can provide useful evidence regarding the nature of the potential impact on the neighborhood. Citizens giving sworn testimony are asked to focus their statement on the requested variance. Broader matters, such as zoning issues or whether or not a particular building should be built, are neither appropriate nor relevant to the narrow issue of the requested variance and are outside the scope of the Board.

After the close of all evidence, board members publicly discuss among themselves the evidence, testimony, and their views on the request. Thereafter, a motion to approve the variance is made and further discussion may ensue. If a member is opposed to granting the variance, he or she will vote "not in favor." If at least four of the five members vote "in favor," the Chair will read a resolution by which the variance is granted and officially documented. The resolution recites

portions of the state statute and ordinance under whose authority the board operates. At least four board members must vote in favor of the resolution for its passage.

In analyzing the evidence, the Board may consider prior rulings and court-developed factors, including:

- 1) How substantial the variance is in relation to the Code requirement;
- 2) Whether there is a feasible alternative;
- 3) Whether a substantial change will be produced in the character of the neighborhood or be a detriment to adjoining properties;
- 4) Considering all the factors, whether the variance is reasonable.

Each variance is considered separately, impartially, and objectively on its own facts as shown in relevant oral testimony and written evidence. Members vote based on the evidence and are not to deny variances based on personal preferences or to achieve some other end.

### **ZONING DECISION APPEALS**

Any person may petition the Board to appeal a zoning decision of the Building Commissioner.

Appeals shall be filed with the Building Commissioner within 30 days, specifying the grounds for the appeal. The Building Commissioner then forwards the appeal to the Board of Adjustment.

The action the Building Commissioner plans to take is stayed (delayed) unless the Building Commissioner determines that such a stay would cause imminent peril to life or property. In such a case, proceedings would be stayed only by a restraining order.

The Board of Adjustment will conduct a hearing to gather evidence about the appellant's and the Building Commissioner's positions on the matter.

### **Procedure**

After a petition is received, a reasonable time for the hearing of the appeal or variance will be set by the

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Board. Not less than 15 days' public notice of the hearing must be given in a generally circulated newspaper (*The St. Louis Countian*) in the City of Kirkwood. Notice is also sent to property owners located within 300 feet of a proposed variance.

At the hearing, anyone may appear in person or through a representative. The Building Commissioner will present evidence in support of the City's determination, and then the appellant presents evidence in support of his/her position. After hearing all interested persons, the Board votes to approve or disapprove, based on the evidence submitted at the hearing.

### **Please Note:**

This brochure provides general information only. Complete information regarding the Board of Adjustment is contained in the City's Code of Ordinances and in the Missouri State Statutes. The City's Code of Ordinances can be found in its entirety on the City's Website. Additional information can be obtained from the City Clerk's Office at Kirkwood City Hall, 139 S. Kirkwood Road, or by email request to: [montanbk@kirkwoodmo.org](mailto:montanbk@kirkwoodmo.org).



WHERE COMMUNITY AND SPIRIT MEET®

For information about this brochure or other publications of the City of Kirkwood, please contact the Public Information Office, 139 S. Kirkwood Road, Kirkwood, MO 63122, 314-822-5894. Revised: August 2013