

ARTICLE 18

APPEALS AND VARIANCES

18.01 Planning and Zoning Commission

The Planning and Zoning Commission has been duly established by the City Council of DeKalb, Illinois, as set forth in Chapter 21 of the DeKalb Municipal Code. Except as provided for in Article 16, "Administration and Enforcement," the Planning and Zoning Commission is authorized to take action on appeals and variances with regard to this Ordinance and other applicable Illinois State Statutes. Rules and procedures governing the conduct of the Commission are contained in its adopted bylaws and as may be amended from time to time.

18.02 Appeals

An appeal may be taken to the Planning and Zoning Commission by any person aggrieved, or by an officer, department, Commission or commission of the City affected by a decision of the Community Development Director or designee relative to this Ordinance. Such appeal shall be taken within forty-five (45) days of the action complained of by filing with the Community Development Director or designee a notice of appeal, specifying the grounds thereof and by paying a fee to the City of DeKalb of such amount as may be established from time to time by the City Council. The Community Development Director or designee shall forthwith transmit to the Commission all of the papers constituting the record upon which the appeal action was taken.

An appeal shall stay all proceedings in furtherance of the action that has been appealed, unless the Community Development Director or designee certifies to the Planning and Zoning Commission, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent 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 a court of record on application, on notice to the Community Development Director or designee and on due cause shown.

The Commission shall hear appeals under this Ordinance and as to any such appeal shall follow the rules herein contained.

18.02.01 Hearing Required

The Planning and Zoning Commission shall hear an appeal at one of their regularly scheduled meetings and give due notice thereof to the parties and shall render a decision of the appeal without unreasonable delay. No hearing shall be held upon an appeal unless the parties thereto receive at least seventy-two (72) hours' notice of such hearing. Any party to the proceeding may appear and testify at the hearing, either in person or by duly authorized agent or attorney.

18.02.02 Decision

1. The Commission 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 Commission may decide to be fitting and proper, and to that end the Commission shall also have all the powers of the officer from whom the appeal is taken.

The concurring vote of four (4) members of the Commission shall be necessary to reverse any order, requirements, decision or determination of the Community Development Director or to decide in favor of the applicant.

2. All final orders, requirements, and decisions of the Commission shall bear the signature of the Chair (or Vice-Chair if the Chair is unavailable). It shall be the duty of the Community Development

Director or designee to give proper notification of the final orders, requirements, and decisions and draft them if so instructed by the Commission.

18.03 Variances

When a property owner shows that a strict application of the terms of this Ordinance relating to the construction or alteration of buildings or structures imposes upon him practical difficulties or particular hardship, then the Commission may determine and vary their application of the regulations of this Ordinance in harmony with their general purpose and intent when the Commission is satisfied under the evidence heard before it that a granting of such variation will not merely serve as a convenience to the applicant, but is necessary to alleviate some demonstrable hardship or difficulty so great as to warrant a variation from the strict letter of the regulations of this Ordinance. No variance shall authorize a use not among the uses specified by this Ordinance, as permitted in the zoning district in which such property is located.

18.03.01 Hearing Required

No variation shall be made by the Planning and Zoning Commission except after a public hearing of which notification of time and place of the hearing shall be provided in the following manner:

1. At the time of submitting an application for a variance, the applicant shall furnish to the City a list of owners and their mailing addresses of all property within two hundred fifty (250) feet of the property that is the subject of the proposed variance. This distance shall be measured in all directions from the boundaries of the subject property and shall not include distances devoted to adjoining or nearby public rights-of-way. In all instances, the furnished list shall include the names and addresses of a minimum of ten (10) property owners. Should the two hundred fifty (250) foot notification area not result in list of ten (10) property owners, then the notification area shall be appropriately expanded until this minimum has been met. In expanding the notification area, preference shall be given towards those properties comprised of urban-sized lots or in areas most likely to be affected by the proposal.
2. The Community Development Director or designee shall be responsible for preparing a public hearing notice providing the time, date, and place of the required public hearing, along with a summary of the request and legal description of the property that is the subject of the hearing. The public hearing notice required by this section does not need to include a metes and bound legal description of the area proposed for the variance if the notice includes a common street address or addresses and the property index number (PIN) or numbers of all the property proposed for the variance. The applicant shall publish the public hearing notice at least once in a newspaper having general circulation in the City of DeKalb not more than thirty (30) nor less than fifteen (15) days before the hearing date.
3. The applicant shall mail a notice of the public hearing to those property owners within two hundred fifty (250) feet of the subject property. Notice of the public hearing shall be mailed to all applicable governmental agencies, including but not limited to: School District, Park District, Kishwaukee Water Reclamation District, Township, Drainage District and Soil and Water Conservation District.

18.03.02 Application Procedures

1. *Application:* The petitioner shall submit an application, on forms available from the Community Development Department. The application shall also include the following information:
 - a. The legal and common description of the property on which the variance is to be considered.
 - b. The variance requested, and the reasons for the request.
 - c. The property's present zoning classification.

- d. A site plan showing the subject property and its dimensions.
 - e. The location of all existing and proposed buildings, structures and other improvements, building sizes including square footage, and their distances from adjacent lot lines.
 - f. List of owners and their mailing addresses as required in Subsection 18.03.01.
 - g. Any other information which the Planning and Zoning Commission or Community Development Director or designee requests.
2. *Burden of Proof:* In submitting an application for a variance, the burden of proof shall rest with the applicant to clearly establish that the findings of fact required in Subsection 18.03.03, Paragraph 2 are met.
 3. *Review Procedure:* The Community Development Director or designee shall review the variance petition. The Community Development Director or designee shall solicit the opinions and comments of other City staff members and, along with the comments received from property owners, governmental agencies, etc., shall forward to the Planning and Zoning Commission their recommendation of approval or denial of the variance petition or approval of a modified version of the variance petition.

18.03.03 Hearing Procedures

1. The Planning and Zoning Commission shall hold a public hearing and shall consider the variance petition and relevant facts presented by the applicant or their representative, City staff other governmental agencies, or by an interested citizen. (2019-025)
2. *Findings of Fact:* Upon review of the application and information presented at the public hearing, the Commission shall consider and adopt findings of fact sustaining each of the following criteria, which are consistent with the rules provided to govern determinations of the Planning and Zoning Commission as referenced by the Illinois Compiled Statutes.
 - a. The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that district.
 - b. The extraordinary or exceptional conditions of the property, requiring the request for the variance, were not caused by the applicant.
 - c. The proposed variance will alleviate a peculiar, exceptional, or undue hardship, as distinguished from a mere inconvenience or pecuniary hardship.
 - d. The denial of the proposed variance will deprive the applicant the use of his/her property in a manner equivalent to the use permitted to be made by the owners of property in the immediate area.
 - e. The proposed variance will result in a structure that is appropriate to and compatible with the character and scale of structures in the area in which the variance is being requested.
 - f. The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located. (2019-025)
 - g. The proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

3. *Variances*: When a property owner shows that a strict application of the terms of this ordinance relating to the construction or alteration of buildings or structures imposes upon him practical difficulties or particular hardship, then the Commission may grant a variance to said ordinance in harmony with its general purpose and intent, when the Commission is satisfied under the evidence heard before it, that a granting of such variation will not merely serve as a convenience to the applicant, but is necessary to alleviate some demonstrable hardship or difficulty so great as to warrant a variation from the comprehensive plan by this ordinance created and set forth. The Commission may grant variations from the regulations of this ordinance only in the following instances:
- a. To permit the reconstruction of a non-conforming building which has been damaged by any means to an extent of more than fifty percent (50%) of its replacement cost at the time of damage where the Commission shall find some compelling public necessity requiring a continuance of the non-conforming use.
 - b. To permit the erection of a building in any location for a public service corporation for public utility purposes which the Commission deems reasonably necessary for the public convenience or welfare.
 - c. To permit a yard, setback or landscape buffer of a lesser dimension than required by the applicable regulations.
 - d. To allow a fence in excess of the height limitations required by the applicable regulations.
 - e. To permit the use of a lot of a use otherwise prohibited solely because of the insufficient area or width of the lot or lots, but in no event shall the respective area and width of the lot be less than eighty percent (80%) of the required area and width.
 - f. To reduce the applicable off-street parking or loading facilities required by not more than twenty percent (20%).
 - g. To increase the maximum height requirement of any district.
 - h. To increase the maximum site coverage.
 - i. To vary the height, size or location requirements for signs.
 - j. To make a variance where, by reason of an exception situation, surroundings, or condition of a specific piece of property, or by reason of exceptional narrowness, shallowness or shape of a specific piece of property or record, or by reason of exceptional topographical conditions, the strict application of any provision of this ordinance would result in peculiar and exceptional practical difficulties or particular hardship upon the owner of such property and amount to a practical confiscation of property as distinguished from a mere inconvenience to such owner provided such relief can be granted without substantial detriment to the public good and without substantial detriment to the public good and without substantially impairing the general purpose and intent of the comprehensive plan as established by the regulations and provisions contained in this ordinance.

The concurring vote of four (4) members of the Commission shall be necessary to reverse any order, requirement, decision, or determination of the Community Development Director or designee to decide in favor of the applicant any matter upon which it is authorized by this Ordinance to render decision, or to effect any variance. (1993-063, 2017-044, 2019-025)

4. *Non-conformity as Basis for Variance*: The existence of any non-conformity anywhere in the City shall not itself be considered grounds for the issuance of a variance for other property.

5. Conditions imposed on Variances:
 - a. In granting variances, the Commission may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.
 - b. A variance may be issued for an indefinite duration or for a specified duration only.
 - c. The nature of the variance and any conditions attached to it shall be entered on the face of the Commission's order, or the Commission's order may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this Ordinance.
6. *Notification of Decision*: All final orders, requirements, and decisions of the Commission shall bear the signature of the Chair (or Vice-Chair if the Chair is unavailable). It shall be the duty of the Community Development Director or designee to give proper notification of the final orders, requirements and decisions and draft them if so instructed by the Commission.
7. *Period of Validity*: No order of the Commission permitting the erection or alteration of a building shall be valid for a period longer than six months, unless a building permit for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

No order of the Commission permitting a use of a building or premises shall be valid for a period longer than six (6) months, unless such use is established within such period; provided, however, that where such use is permitted is dependent upon the erection or alteration of a building, such order shall continue to force and effect if a building permit for said erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

18.04 Appeal of Final Actions

No decision of the Planning and Zoning Commission shall be subject to review, reversal or modification by the City Council but shall be subject to judicial review pursuant to the provisions of the Code of Civil Procedure concerning Administrative Review Law.