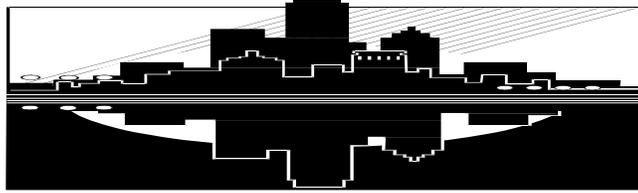


**CITY OF MURFREESBORO, TENNESSEE
BOARD OF ZONING APPEALS**



SUMMARY OF CODE PROVISIONS

VARIANCE

IN ORDER TO OBTAIN A VARIANCE, AN APPLICANT MUST SHOW THE BOARD OF ZONING APPEALS (“BZA”):

1. That there are practical difficulties, the narrowness, shallowness, or shape, topography or other condition of the land makes it extraordinarily difficult to comply with generally applicable regulations.

AND

2. That there are unusual characteristics, the property's physical features are unusual when compared to other property in the same zoning district.

AND

3. That neither the practical difficulties nor the unusual characteristics of the property resulted from any deliberate action of the landowner.

BEFORE GRANTING A VARIANCE, THE BZA MUST MAKE SPECIFIC FACTUAL FINDINGS THAT:

4. The variance will not impair an adequate supply of light and air to adjacent property.

AND

5. The variance will not unreasonably increase the congestion in public streets.

AND

6. The variance will not increase the danger of fire.

AND

7. The variance will not endanger the public health, safety, comfort, morals or welfare of city residents.

THE BZA MAY CONDITION GRANTING A VARIANCE ON:

- Screening
- Landscaping
- Location
- Limiting the length (time) of the variance
- Other conditions necessary to preserve the character of the area and to protect property in the vicinity of the variance

The applicant always has the burden of proof; granting a variance is always a discretionary act.

SPECIAL USE PERMIT

IN ORDER TO OBTAIN A SPECIAL USE PERMIT, AN APPLICANT MUST SHOW THE BZA:

1. That the proposed building or use will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other matters affecting the public health, safety and general welfare.

AND

2. That the proposed building or use will be constructed, arranged, and operated so as to be compatible with the immediate vicinity and so as not to interfere with the development and use of adjacent property in accordance with the applicable district regulations.

AND

3. That the proposed building or use will be served adequately by essential public facilities and services such as highways, streets, parking spaces, drainage structures, refuse disposal, fire protection, water and sewers OR that the persons or agencies responsible for the establishment of the proposed use will provide adequately for such services.

AND

4. That the proposed building or use will not result in the damage, loss, or destruction of any feature determined by the BZA to be of significant natural, scenic, or historic importance.

AND

5. That the proposed building or use complies with all additional standards imposed on it by the particular provision of this zoning ordinance authorizing such special use.

An applicant who shows compliance with all of these conditions by a preponderance of the evidence is entitled to a special use permit. The BZA may condition granting the special use permit as necessary to prevent or minimize any adverse effects of such special use upon, and to ensure the compatibility of the special use with, other property in the vicinity of such special use.

SIGN VARIANCE

BEFORE GRANTING A SIGN VARIANCE, THE BZA MUST FIND THAT EACH OF THE FOLLOWING MATTERS HAS BEEN PROVEN, OR IT MUST DENY THE REQUEST. ANY MOTION TO GRANT A SIGN VARIANCE MUST SPECIFICALLY ADDRESS HOW EACH OF THE REQUIRED FINDINGS WAS MET OR SATISFIED BY THE EVIDENCE PRESENTED TO THE BZA.

THE APPLICANT MUST PROVE:

1. That the conditions upon which the request is based would not be generally applicable to other property within the same zoning district.

AND

2. That the condition complained of is not a general or widespread condition: financial factors alone are not a basis for granting a sign variance.

AND

3. That the alleged difficulty or hardship has not been created by any person having an interest in the property after May 9, 1991.

AND

4. That the sign variance will not increase the danger of fire or endanger the public safety.

AND

5. That the sign variance request does not violate the limitations set forth in section 25-1/4 (D) or (E). (The BZA may reasonably rely on staff's calculation as to the applicability of these nuisance limitations.)

BEFORE GRANTING A SIGN VARIANCE, THE BZA MUST FIND:

6. That such relief may be granted without substantial detriment to the public good.

AND

7. That such relief may be granted without substantially impairing the intent and purpose of the sign ordinance, zone plan, and zoning ordinance.

AND

8. That strict application of the sign ordinance would result in peculiar and exceptional practical difficulties or exceptional or undue hardship.

* This Summary has been prepared by staff for the convenience of the public and the BZA. The full text of the relevant Murfreesboro City Code provisions (Appendix A, Zoning, Section 10 for variances; Appendix A, Zoning, Sections 8 and 9, for special use permits; and, Section 25 ¼-6 for sign variances) may be requested from the City Recorder or a member of the Planning Department.

Adopted this 8th day of April, 1997.

John L. Rodgers, Chair

RULES OF PROCEDURE

1. Purpose of Rules. The Board of Zoning Appeals for Murfreesboro, Tennessee, has been created pursuant to authority granted by state law, Tennessee Code Annotated Section 13-7-205 et seq. and the Murfreesboro City Charter, Section 5. This authority was exercised through the adoption of ordinances now codified as Appendix A to the Murfreesboro City Code. These provisions of law empower the Board of Zoning Appeals ("Board") to adopt rules of procedure. It is the Board's intent in adopting these rules to provide for the lawful and orderly exercise of all powers granted to it by state and local laws. It is the intent of the Board that these rules be interpreted to be consistent with applicable laws.
2. Meetings. The regular meeting of the Murfreesboro Board of Zoning Appeals is generally held on the fourth Wednesday of each month at 1:00 p.m. at the Murfreesboro City Hall. (However, the official BZA calendar governs submittal deadlines and meeting dates.)
3. Special Meetings. (a) An applicant may request that a special meeting of the Board be held. A special meeting is not a matter of right. If the applicant has a good reason for the request, if the staff can establish a date and time for which a quorum can be present, and if adequate public notice can be given, then the Chair may call a special meeting. Generally, not more than one (1) special meeting a month may be held.
(b) The Board may set a special meeting independently of any request by an applicant.
4. Officers. (a) The Board shall elect one of its members to Chair the Board. The Chair shall be responsible for: approving the scheduling of special meetings; calling meetings to order; maintaining order; determining the order of business at a meeting; recognizing members of the Board and members of the public for purposes of speaking; putting any motion as a question to be voted upon; ruling on the result of any vote; conducting public hearings, including the imposition of any limitations of time; and, as necessary, certifying the accuracy of the minutes and records of the Board.
(b) The Board shall elect one of its members to be the Vice Chair of the Board. The Vice Chair shall be responsible for performing the duties of the Chair in the Chair's absence.
(c) After election, the Chair and Vice Chair may hold such offices for the balance of their term on the Board.
5. Applications to be Complete. The Board must provide an applicant with a public hearing within the time limits established by ordinance. These time limits begin only when an applicant has submitted a complete application. If an application is submitted without the supporting information required by ordinance, the staff shall inform the applicant of the information needed and the application will not be set for a public hearing until the required information or items are received.
6. Notice. The staff shall be responsible for giving the notices required by state and/or local law and it shall be presumed that such notice has been given unless a specific objection to the legal adequacy of the notice is raised at the outset of a public hearing.
7. Tour. The staff shall arrange a tour of sites, which are the subject of applications, prior to a regularly scheduled Board meeting. Members of the Board are encouraged, but not required, to participate. Members shall not discuss or debate the merits of the application while on tour; however, members may question the staff about the site. Visual observations made by a member during the tour or an independent inspection of the site may be considered in voting upon an application.

8. Quorum. A quorum of the Board shall be present and the Board shall be able to transact business when three (3) or more members are present.
9. Order of Business. Generally, the staff shall send the Board the minutes for the prior meeting and an agenda for the upcoming meeting in advance of a meeting. The order of business shall generally be: Consideration of the minutes of the prior meeting, any old business; requests for variances; requests for special use permits; requests for site plan approvals; requests for sign ordinance variances; amendment or revocation of special use permits; appeals from administrative decisions; staff reports; and, any other business to come before the Board. The order of business for a meeting may be modified by the staff or by the Chair.
10. Public Hearings. The Chair shall conduct all public hearings before the Board. The Chair shall require that complete and accurate records of all public hearings be maintained. A public hearing shall generally begin with a summary by the staff of the issues presented. The Chair shall require each speaker to be recognized and to identify him or herself prior to speaking. The Chair, or the Board, may impose a reasonable time limitation on the presentation by a speaker. The amount of time allowed may vary if the speaker is the applicant or the representative of a group. The Chair may direct the order of speakers at a public hearing, e.g. requiring all speakers in favor of the application to speak before all speakers opposed to the application. All members of the Board shall have an opportunity to review any document or other exhibit to be considered and a copy of same shall be retained in the applicant's file. The Board may consider written statements submitted from persons supporting or opposed to an application provided a copy of any such statement is made available for public inspection at the time of the public hearing. The Board may also consider written or oral reports from staff describing support or opposition to a particular application, provided that these staff reports are also made public. All members of the Board shall be able to question the staff, the applicant, and persons present.
11. Withdrawal of Application. An applicant may withdraw an application, after notice of the public hearing has been given and before a vote to approve or deny the application has been taken, once as a matter of right. If the application is submitted and withdrawn after notice of the public hearing has been given a second time, the application may not be resubmitted for eighteen (18) months, unless the Board votes to waive the waiting period.
12. Motions. (a) In the absence of an objection, the Chair may call for the minutes to be adopted or for the meeting to be adjourned without a motion being made, seconded and voted upon.
(b) The Board may discuss applications prior to a motion on such application being made.
(c) The Chair may make, second, and discuss motions.
(d) If a motion is adopted which incorporates staff recommendations by reference, the staff recommendations adopted are to be described in detail in the minutes of the meeting.
(e) A motion to reconsider may only be made at the same meeting and on the same matter by a member of the Board who voted on the prevailing side of the motion.
13. Conflicts of interest. Board members shall announce direct and indirect conflicts of interest as required by state law or local ordinance. A member with a direct conflict of interest shall not participate in the discussion of the application or vote upon it. A member with an indirect conflict of interest may participate in the discussion and vote or may abstain.
14. Record and Findings. In voting on applications, the Board members shall consider only information presented at the public hearing which is a part of the public record and that which is observable from the site and its surroundings. The Board members shall not base a decision on an application on information which is not public. The Board shall make factual findings as necessary to support its decisions. Board decisions shall be based only on grounds and reasons allowed by law.

15. Voting. (a) A motion must be made and seconded by different members of the Board before the Chair puts the question to a vote. A motion is adopted if a majority of those present and voting, affirmatively or negatively, vote in favor of the motion. If a member is present but does not vote affirmatively or negatively (“abstention”) for reasons including but not limited to a conflict of interest, that member shall not be considered in determining whether a majority voted in the affirmative. A motion which receives an equal number of affirmative and negative votes fails. (b) If all five (5) members of the Board are not present at a meeting, and the Board is unable to adopt a motion to approve an application, or to approve with special conditions, or to deny it, the application shall be deferred until the next meeting of the Board. If all five (5) members of the Board are present and are unable to adopt a motion on an application, it shall be deemed denied.

16. Other procedural issues. To the extent questions of procedure arise which are not covered by these rules, the ruling of the Chair shall be controlling, unless the Board votes to the contrary. Roberts' Rules of Order Newly Revised may be used as a reference in making procedural determinations.

17. Effective Date. These Rules shall be effective from and after adoption.

Adopted this 17th day of June, 1994.

Membership

Davis Young
Ken Halliburton
Tim Tipps
Frances Mosby
Julie King

Staff

Marina Rush, Principal Planner
Amelia Kerr, Sign Administrator
David Ives, Assistant City Attorney
Brenda Davis, Recording Secretary