

MUNICIPAL CODE OF THE CITY OF EUREKA SPRINGS 2007

CHAPTER 14 ZONING

14.08.10 D Variances and Waivers

(1) The Board of Zoning Adjustment shall also have the power to grant variances from or to waive the literal provisions of this chapter. Variances and waivers can include, but are not limited to, matters such as setback lines, frontage requirements, height limits, lot size, density requirements, and yard regulations. A variance or waiver from the literal provision of this chapter shall not be granted unless written application is made demonstrating:

a. Literal enforcement of the provisions of this chapter would result in undue or unnecessary hardship.

b. Special circumstances exist which are unique to the property in question and which do not apply to other properties in the same district.

c. The special circumstances do not result from the actions of the applicant.

d. Literal enforcement would deprive the applicant of rights commonly enjoyed by other properties in the same district.

e. Granting the waiver or variance will be within the spirit and intent of this chapter and not against public interest.

(2) Non-conforming uses of lands, or variances or waivers granted affecting lands, in the same or another district shall not be grounds for a waiver or variance.

(3) A public hearing shall be held and public notice shall be given. The Board of Zoning Adjustment shall grant a variance or waiver only to the extent needed to relieve the unnecessary hardship.

(4) To grant a waiver or variance, the Board of Zoning Adjustment must find:

a. That the requirements set forth above have been met by the applicant;

b. That the reasons set forth in the application justify the granting of the waiver or variance;

c. That the variance is the minimum variance that will make possible the reasonable use of the land, building or structure;

d. That the granting of the waiver or variance will be in harmony with the general purpose and intent of this chapter, and will not be detrimental to the neighborhood or detrimental to the public welfare.

(5) The Board of Zoning Adjustment shall not permit, as a variance, any use in a zone that is not permitted under this chapter.

(6) The action of this Board of Zoning Adjustment in granting any variance or waiver of any provision of this chapter shall not be deemed a waiver or variance of any provision of any protective code or other laws.

(7) In granting any variance or waiver, the Board of Zoning Adjustment may require appropriate conditions and safeguards to ensure compliance and to protect adjacent property. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

E. Appeals from the Board of Zoning Adjustment.

(1) Decisions of the Board of Zoning Adjustment in respect to the above shall be subject to appeal only to a court of record having jurisdiction, in the manner provided by the laws of the State of Arkansas.

(2) An appeal of a Board of Zoning Adjustment decision to a court shall stay all proceedings in furtherance of that decision, unless the city certifies to the board in writing that a stay would

cause imminent peril to life or property. The certificate shall state the Building Official's supporting reasons and facts. In such a case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board or by a court of record on application, after notice to the building inspector from whom the appeal is taken, and on due cause shown.

F. Duties of Building Inspector, Board of Zoning Adjustment, City Council and Court on matters of appeal

It is the intent of this chapter that questions of interpretation and enforcement shall be first presented to the mayor, or the person designated by the Mayor for such purpose ("the city"). Such questions shall be presented to the Board of Zoning Adjustment only on appeal from the decision of the city, and recourse from the decisions of the Board of Zoning Adjustment shall be to the courts as provided by state law.

It is further the intent of this chapter that the duties of the City Council in connection with this chapter shall not include hearing and deciding questions of interpretation and enforcement that may arise. The procedure of deciding such questions shall be as stated in this section and this chapter. (Ord. No. 1816, 11-2-2000)

SAMPLE PUBLIC NOTICE

For Zoning Variance

Place as a Legal Notice in Carroll County News to run at least 10 days prior to meeting.

Return Affidavit/Proof of Publication to BOZA staff before the Public Hearing.

The applicant must pay for this notice, not the City of Eureka Springs.

Public Notice

An application has been filed by _____ for a (type of variance)

_____ at (street address or property location)

_____, Eureka Springs, Arkansas. A Public Hearing will

be held at 6 p.m. _____ (day and date) _____ in the Western District

Carroll County Courthouse, 44 South Main Street, Eureka Springs, Arkansas, by the Eureka

Springs Board of Zoning Adjustment. Comments on the application will be heard or read aloud.

**SAMPLE LETTER OF NOTIFICATION
For Zoning Variance**

Send Certified Registered Return Receipt to adjoining property owners within 200 feet at least 15 days prior to the Public Hearing. Turn in both parts of receipts to Planning Commission staff.

(Date) _____

TO: (Name) _____
(Address) _____
(City, State Zip Code) _____

Dear _____,

This letter is to inform you that Paul Minze is interested in purchasing the property at 37 Mountain Street in Eureka Springs, Arkansas.

I have applied to the Board of Zoning Adjustment for a **Setback Variance for a single family dwelling at 37 Mountain Street, Eureka Springs, Arkansas.**

If you wish to make comments in support or protest of this application, you may submit them in writing to: Eureka Springs Board of Zoning Adjustment, City Hall, 44 South Main Street, Eureka Springs, AR 72632 and/or attend the public hearing at **6 p.m. on May 14, 2013** in the Western District Carroll County Courthouse, 44 South Main Street, Eureka Springs, AR.

Sincerely,

(Your name)

**SAMPLE PUBLIC NOTICE
For Conditional Use Permit**

Place as a Legal Notice in Carroll County News to run at least 8 days prior to meeting. Return Affidavit/Proof of Publication to Commission staff. Applicant must pay for publication.

Public Notice

An application has been filed by _____ for a Conditional Use Permit (CUP) for _____ at (street address or property location) _____.

A public hearing will be held at 6 p.m. _____ (day and date) _____ in the Western District Carroll County Courthouse, 44 S. Main St., by the Eureka Springs Planning Commission. Comments on the application will be heard or read aloud.