



CITY OF NAPERVILLE

T.E.D. BUSINESS GROUP
ZONING BOARD OF APPEALS

ZONING VARIANCE PROCESS

Last Revised November 2, 2009

ZONING BOARD OF APPEALS
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I. INTRODUCTION

The Zoning Board of Appeals serves as a review board for variances to the city's ordinances pertaining to street graphics, tree preservation, and zoning. The Zoning Board of Appeals serves in a fact finding capacity by evaluating variance requests and providing recommendations to City Council.

The Zoning Board of Appeals is comprised of seven members appointed by the Mayor and confirmed by City Council. All of the members are City of Naperville residents from a variety of different backgrounds. The seven members serve three year terms from the date of appointment and confirmation.

II. SUBMITTAL REQUIREMENTS

NOTICE TO APPLICANTS: Applications will not be scheduled for a Zoning Board of Appeals public hearing until all of the requirements listed below are provided and reviewed by staff through the Development Review Team (DRT) review process. Failure to provide a complete submittal may result in the matter being deferred to next available Zoning Board of Appeals agenda.

<u>Zoning Variance Submittal Package-include 10 complete sets</u>	
Application	1 original (signed and notarized) and 10 copies (See Exhibit A)
Disclosure of Beneficiary	1 original (signed and notarized) and 2 copies (Exhibit B). A Trust Disclosure must indicate the petitioner's ownership and interest in the subject property, or if owned by another party, a contract purchaser's authorization from the owner(s) of the subject property and a disclosure of the owner's beneficial interest.
Site Plan	10 copies folded to 9" x 12" and 1 reduced copy (8.5" x 11") - depicting any existing structures, proposed structures, additions, signs, and/or fences (drawn to scale) and the setbacks from lot lines to such improvements.
Legal Description	2 copies (8.5" x 11" with a 1" margin around text - must be legible and include P.I.N.)
Review Fee	\$405.00 total made payable to the City of Naperville (<u>\$325.00</u> filing fee and <u>\$80.00</u> public hearing fee).

III. PUBLIC HEARING REQUIREMENTS

- A. The Zoning Board of Appeals (ZBA) Project Assistant or Community Planner reviews the application packet to ensure that the required number of items and exhibits has been supplied. Please contact the ZBA Project Assistant at (630) 548-2974 to submit the application. Once a packet is accepted, it will be issued a case number and assigned a planner to assist with the coordination of the case.
- B. The ZBA Project Assistant will then route copies of the application packet, including all supporting documents, to the applicable staff for their review. A more detailed review of the application packet and variance request is conducted by staff to ensure the information supplied is complete and accurate, and to evaluate the standards for granting the variance. If there are any deficiencies, the petitioner will be notified as to what items are deficient and the date by which they must be received to retain a place on the Zoning Board of Appeals agenda. If revisions are not received and accepted by staff within the time frame requested, the matter will be deferred to the next available meeting.
- C. Once the application is accepted, it will be scheduled for the next available Zoning Board of Appeals agenda (see **Exhibit G**). The planner assigned will notify the petitioner of the public hearing date.
- D. **The petitioner** is required to post a legible sign on the site of the proposed project at least 15 days prior to the hearing (see **Exhibits C1 and C2** regarding signage). **The petitioner** should consult with staff on the location and the number of signs to be posted. If the hearing is continued, **THE PETITIONER will be required to update the hearing sign to reflect the new date within 48 hours.**
- E. ***Please note that the background color of the sign is to be yellow. Failure to place sign on a yellow background could result in the case being postponed until the next ZBA meeting.***
- F. **The petitioner** must give written notice to the owners of record, as shown in the applicable township assessor's office, of all lots within 250 feet (exclusive of the public right-of-way) from the property lines of the lot for which the rezoning is sought. The written notices shall be delivered personally or may be sent by certified mail or registered mail, with return receipt requests, between 15 and 30 days prior to the hearing. If delivered personally, **the petitioner** shall maintain a log signed by the individual receiving the letter to verify notice was received. (see **Exhibit F**)

According to Section 6-3-9:7 of the Municipal Code, the notice should include the following items:

- Case number
- The place, the nature, and the purpose of the request
- Date, time, and location of the Zoning Board of Appeals Meeting
- The common address or location of the subject property
- The name and address of the applicant and the owner of the subject property

- The office address of the City Clerk where full information concerning the application, including a legal description, may be obtained
(The above information is required. You may include additional information as desired, as long as these necessary points are included. See **Exhibit D** for an example.)

- G. **Petitioner files a sworn** (notarized) statement with the City Clerk that proper notice has been given. This statement must be on file with the City Clerk prior to the Public Hearing and must list all property owners notified by address, where the notification was sent and corresponding tax parcel identification numbers (P.I.N.). (see **Exhibit E** for example) If notices were hand delivered, a copy of the signature log (see **Exhibit F**) must be attached for verification. **Failure to comply with this requirement will result in rescheduling of the matter at the petitioner's expense.**
- H. Staff will publish a legal notice in a local paper of general circulation in the City at least once before the public hearing. This notice will be published at least 15 days prior to the hearing and no sooner than 30 days prior to the hearing.

IV. ZONING BOARD OF APPEALS MEETINGS

- A. The ZBA holds a Public Hearing on the matter in Council Chambers at 7 p.m. on the scheduled date at which time **the petitioner, or his designated representative**, will provide a brief overview of the requested rezoning. Members of the general public are invited to attend and are permitted to give testimony. Written comments are also accepted (letters should be sent through the ZBA Project Assistant Samula McCarthy in the Development Services Team, P.O. Box 3020, Naperville, IL 60566-7020).
- B. Once all verbal testimony has been received, the ZBA will close the public hearing and discuss the case.
- C. Once the ZBA has finished discussing the case, they will vote on the matter. A minimum of 4 votes is required to carry a motion.
- D. ZBA decisions are only advisory in nature and do not constitute a final ruling. After the ZBA has offered a recommendation, the variance request will be considered by City Council during their regular meeting schedule. City staff will contact the applicant to notify them of the City Council meeting at which their variance request will be considered. City Council has the final decision making authority regarding the zoning variance request.

NOTE: If a meeting must be continued, the chairman or a board member must attend at the regular meeting time and place announcing that the meeting has been continued to another time and/or place. The agenda must not be changed. Unless these conditions are met, another public notice must be published, another sign must be posted and neighbors must be re-notified by petitioners where applicable.

The Zoning Administrator processes all items via the Zoning Board of Appeals Project Assistant. For more information, contact Samula McCarthy at [\(630\) 548-2974](tel:6305482974).

CITY OF NAPERVILLE
ZONING BOARD OF APPEALS
APPLICATION FOR A ZONING VARIANCE

ADDRESS OF SUBJECT PROPERTY: _____

APPLICANT'S NAME: _____

DAYTIME PHONE: _____

FAX Number _____

E-MAIL ADDRESS _____

APPLICANT'S ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

OWNER OF PROPERTY: _____

DAYTIME PHONE: _____

OWNER'S ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

LEGAL DESCRIPTION ATTACHED (*Attach as an exhibit*) _____

Property Identification Number(s) (PINs): _____

ZONING OF PROPERTY: _____

AREA OF PROPERTY (Acres or sq ft): _____

List Improvements on property (buildings, fences, pools, decks, etc.)

Detailed description of requested variance(s)

(Provide relevant Section numbers of the Municipal Code – attach additional pages if needed)

A zoning variance can only be granted if there are specific practical difficulties in carrying out the strict requirements of the ordinance for a particular piece of property. There must be some land-related hardship to grant the variance.

The full burden of proof in determining the hardship rests with the applicant. Certain “Standards for Variances” as described in Section 6-3-5:2 of the Municipal Code must be verified. Other criteria are NOT sufficient evidence to prove hardship, specifically:

Self-inflicted hardships are not eligible for a variance.

Greater profit or increased property value is not sufficient cause to warrant a variance.

STANDARDS FOR ZONING VARIANCES
(attach additional pages as needed)

1. Describe how the variance is in harmony with the general purpose and intent of the Zoning Ordinance:

2. Describe how the strict enforcement of the Zoning Ordinance would result in practical difficulties and impose exceptional hardships due to special and unusual conditions which are not generally found on other properties in the same zoning district:

3. Describe how the property cannot yield a reasonable return if permitted to be used only under the conditions allowed by the Zoning Ordinance:

4. Describe how the variance, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to adjacent property:

APPLICANT SIGNATURE

NOTARY PUBLIC

**CITY OF NAPERVILLE
DISCLOSURE OF BENEFICIARIES**

In compliance with Ordinance 85-193, An Ordinance amending Title 1 (Administrative) of the Naperville Municipal Code, as amended, by adding Chapter 12 thereto requiring disclosure of certain interests by persons applying for permits, licenses, approvals or benefits from the City of Naperville.

1. Applicant: _____
Address: _____

2. Nature of Benefit sought: _____

3. Nature of Applicant (Please check one):

- | | | | |
|------------------------|--------------------------|------------------|--------------------------|
| a. Natural Person | <input type="checkbox"/> | d. Trust/Trustee | <input type="checkbox"/> |
| b. Corporation | <input type="checkbox"/> | e. Partnership | <input type="checkbox"/> |
| c. Land Trust/ Trustee | <input type="checkbox"/> | f. Joint Venture | <input type="checkbox"/> |

4. If applicant is an entity other than described in Section 3, briefly state the nature and characteristics of applicant:

5. If in your answer to Section 3 you checked box b, c, d, e or f, identify by name and address each person or entity which is a 5% shareholder in the case of a corporation, a beneficiary in the case of a trust or land trust, a joint venture in the case of case of a joint venture, or who otherwise has a proprietary interest, interest in profits and losses or right to control such entity:

- a. _____
b. _____
c. _____
d. _____

6. Name, address and capacity of person making this disclosure on behalf of the applicant:

IMPORTANT NOTE: In the event your answer to Section 5 identifies entities other than a natural person, additional disclosures are required for each entity.

VERIFICATION

I, _____, being first duly sworn under oath, depose and state that I am the person making this disclosure on behalf of the applicant, that I am duly authorized to make this disclosure, that I have read the above and foregoing Disclosure of Beneficiaries, and that the statements contained therein are true in both substance and fact.

Signature: _____

Subscribed and Sworn to before me this _____ day of _____, 20__.

Notary Public

Sample Sign (for properties 10 acres in size or less)

4.0' Minimum

NOTICE OF PUBLIC HEARING

ZBA Case #: _____

Description of Request:

Public Hearing Date/Time: _____ / _____

Location: City of Naperville Council Chambers / 400 S. Eagle Street

For Details, Contact the Planning Services Team at (630) 420-6694

3.0' Minimum

Heading
4" Min. Red Lettering

2" Min. Black Lettering
(all other text)

YELLOW Background

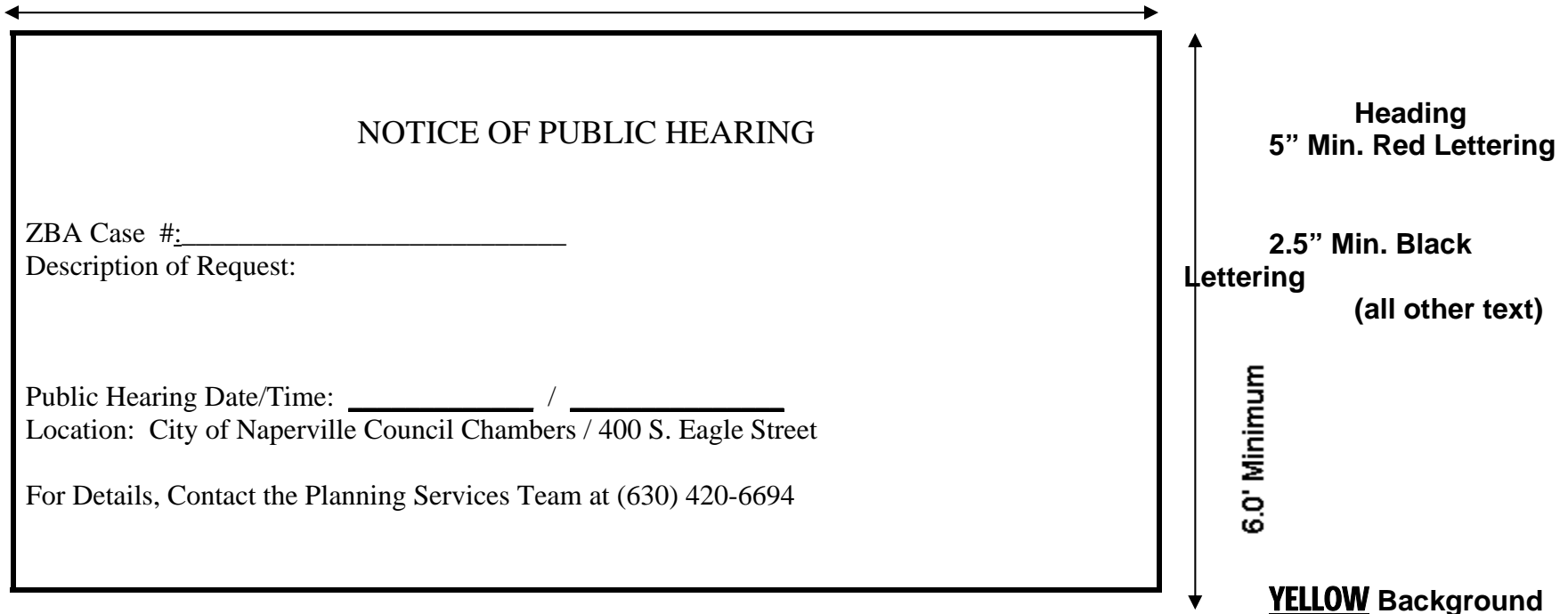
Required

Notes:

This sheet is merely an example of the signage requirements. Refer to the details listed in this handout or ordinance #99-113 for additional details. Please coordinate with the Planner assigned to the case for details on sign placement and number of signs to be posted on the property by calling (630) 548-2974.

Sample Sign (for properties in excess of 10 acres)

8.0' Minimum



Required

Notes:

This sheet is merely an example of the signage requirements. Refer to the details listed in this handout or ordinance #99-113 for additional details. Please coordinate with Planner assigned to the case for details on sign placement and number of signs to be posted on the property by calling (630) 548-2974.

SAMPLE NOTICE TO SURROUNDING OWNERS

NOTICE OF PUBLIC HEARING

PUBLIC NOTICE is hereby given to all persons interested that [enter name of the applicant], (Applicant), has filed with the Office of the Zoning Board of Appeals (Office of the City Clerk), 400 S. Eagle Street, Naperville, Illinois, a petition for a variance under the provisions of the Naperville Zoning Ordinance No. 80-5 (as amended), for the property located [*enter general description of the location*] with a common street address of [*enter address if applicable*].

The Owner of the Property is [*insert name of the property owner*]. The variance requested in the [insert applicable zoning designation] Zoning District is for [describe the type of conditional use] under said ordinance. The petition and Legal Description are on file as ZBA Case # [**insert Case # assigned**] and may be viewed in the Office of the City Clerk located at 400 S. Eagle Street, Naperville, Illinois (Naperville Municipal Center).

A public hearing will be held on said petition before the Naperville Zoning Board of Appeals in the Council Chambers, 400 S. Eagle Street, Naperville, Illinois, on [insert date of the public hearing] at 7:00 p.m. at which time the Zoning Board of Appeals will hear the evidence presented on this matter and such other matters as may properly come before the Zoning Board of Appeals.

Objections to, or support in favor of said application, may be offered verbally at the hearing or may be submitted in writing to and filed with the Office of the Zoning Board of Appeals, P.O. Box 3020, Naperville, Illinois, 60566-7020.

Dated at [*enter name and state of town mailed from*] this [*enter date and year*]

Petitioner (or Attorneys for Petitioner)

By: _____

Information on this matter can be obtained from:

[*Attorney's Group Name and Address*] or: Ms. Pamela LaFeber, City Clerk
City of Naperville
400 S. Eagle Street
Naperville, Illinois

SAMPLE AFFIDAVIT

AFFIDAVIT

Re: (NAME OF CASE)
ZBA Case No.: _____

The undersigned, being first duly sworn on oath, deposes and says that the attached notice, marked Exhibit A and made a part hereof, has been, in accordance with the procedures of the City of Naperville, served by certified mail, return receipt requested, or hand-delivered to all persons listed in Exhibit B attached hereto and made a part hereof. Said mailings being post marked *[enter date of posting]*, which is between fifteen and thirty days prior to the meeting date of *[enter meeting date]*, are to the best of the Affiant's knowledge, a true and complete list containing the names of all the persons to whom the current real estate tax bills are sent of those premises lying within 250 feet, excluding rights-of-way, in all directions of the property lines of the premises for which the application has been made.

Further, Affiant says that a sign setting forth notice of the application and the meeting date was posted on said premises by *[enter date of posting]*, which is between fifteen and thirty days prior to the meeting date of *[enter meeting date]*, all in accordance with the procedures of the City of Naperville.

Further, this Affiant sayeth not.

[Type Name of Applicant or Attorney Filing the Affidavit]

By: _____

SUBSCRIBED and SWORN to before me
This *[enter date]* day of *[enter month]*, *[enter year]*

Notary Public

[Affix Seal]

EXHIBIT E

ZONING BOARD OF APPEALS
FREQUENTLY ASKED QUESTIONS

1. Please describe the variance process.

In order to begin the variance process, a property owner must complete an application for either a zoning variance or signage variance and submit it to the Development Review Team (DRT) (630) 420-6692. In addition to a completed application, a \$405 fee (\$325 filing fee and \$80 public hearing fee) along with all supplemental supporting documentation must be submitted at the time of application. Please refer to the variance application for further details regarding the specific submittal requirements.

Upon submittal of the application package, the DRT Project Manager will conduct an initial review of the packet to ensure that the required number of items and exhibits has been supplied. Once a packet is accepted, it will be routed to the Zoning Board of Appeals Project Assistant who will issue a case number and assign a planner (zoning variance) or code enforcement representative (signage variance) to the case. The planner or code enforcement representative will assist the DRT Project Manager with coordination of the case.

The Zoning Board of Appeals Project Assistant will then route copies of the application packet, including all supporting documents, to the applicable staff for their review. A more detailed review of the application packet and variance request is conducted by staff to ensure the information supplied is complete and accurate, and to evaluate the standards for granting a variance. If there are any deficiencies, the petitioner will be notified as to what items are deficient and the date by which they must be received to retain a place on the Zoning Board of Appeals agenda. If revisions are not received and accepted by staff within the time frame requested, the matter will be deferred to the next available meeting.

Once the application is accepted, it will be scheduled for the next available Zoning Board of Appeals agenda. The planner or code enforcement representative assigned will notify the petitioner of the public hearing date.

The petitioner must give proper public notification of the public hearing. Additional details regarding the mandatory notification requirements can be obtained within the variance application.

The planner or code enforcement representative assigned to the case will prepare a memorandum for the Zoning Board of Appeals indicating staff's recommendation on the variance. The Zoning Board of Appeals will conduct the public hearing in accordance with the procedures outlined above. Note that the petitioner is expected to attend the Zoning Board of Appeals meeting to provide an overview of the variance request. At the conclusion of the public hearing, the Zoning Board of Appeals will make a recommendation to approve or deny the request.

The Zoning Board of Appeals decisions are only advisory in nature and do not constitute a final ruling. After the Zoning Board of Appeals has offered a recommendation, the variance request will be scheduled for the next available City Council agenda. The planner or code enforcement representative assigned to the case will notify the petitioner of the public hearing date. The petitioner is expected to attend the City Council meeting in order to respond to questions, as needed. City Council has the final decision making authority regarding the zoning variance request.

ZONING BOARD OF APPEALS
FREQUENTLY ASKED QUESTIONS (continued)

1. How long does the variance process take?

The variance process includes a minimum of one hearing before the Zoning Board of Appeals and one meeting in front of the City Council. On average, the process typically takes three to four months to complete from the date of application to the DRT.

2. What is the fee for filing a variance request with the city?

The city charges a \$325.00 administrative review fee to cover staff time dedicated to processing each variance request as well as a \$80.00 fee for publication of the legal notice in a local newspaper. These fees do not cover additional costs incurred by the applicant throughout the variance process (plan preparation, attorney fees, etc.).

3. How do I find out what my property is zoned?

The zoning designation for your property can be obtained on the city's website at <http://gis.naperville.il.us/YourPlace/>.

4. What are the submittal and Public Hearing time limits?

The city must publish a public hearing notice in the news paper at least 15 days before the ZBA meeting. Applications must be submitted to the Development Review Team at least 30 days prior to the ZBA Meeting date to maintain eligibility for the next available ZBA Meeting.

* **Please Note:** *That submitting at least 30 days prior to the ZBA date does not guarantee scheduling on the next available agenda.*

A city staff representative will contact the petitioner with a ZBA meeting date once the submittal packet has been reviewed.

5. How do I access the City of Naperville's Municipal Code?

The Municipal Code is available online at <http://www.naperville.il.us/municipalcode.aspx>. The city's Street Graphics Code (signage variances) can be found within Title 5 of the Municipal Code and the city's Zoning Code (zoning variances) is contained within Title 6 of the Municipal Code.

6. If I receive City Council approval of a variance, can I immediately begin construction?

Once City Council has approved a variance, construction cannot begin until a permit has been issued by the city. If a permit has not been applied for prior to City Council approval, a permit application must be completed and submitted to the Development Services Desk to allow for full review of the proposal.

7. If my property is located within the Historic District and I receive approval of a variance from City Council, do I still need to receive approval of a Certificate of Appropriateness.

Variances approved by City Council do not usurp the authority of the Historic Sites Committee to consider and approve Certificates of Appropriateness. A Certificate of Appropriateness is required prior to any modifications being made to the exterior elevations. Additional information regarding the Certificate of Appropriateness process can be obtained from the city's Historic Sites Commission webpage, available online at http://www.naperville.il.us/dynamic_content.aspx?id=64.