



# Article 15 Variances and Appeals

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## Article 15 Variances and Appeals

### **Section 15.010. Establishment of Office of Hearing Officer**

The position of City of O'Fallon Hearing Officer is hereby created in accordance with 65 ILCS 5/11-13-14.1 and other applicable authority. The Hearing Officer shall be appointed by the Mayor with the approval of the City Council. Alternate Hearing Officers may serve when the Hearing Officer is not available and may be appointed in the same manner as the Hearing Officer.

### **Section 15.020. Powers and Duties**

The Hearing Officer shall have all the powers and duties prescribed by law and by this Ordinance, including the following:

- 1) Appeals: Upon an appeal from a decision by any administrative official, to decide any question involving the interpretation of any provision or term of this Ordinance, including the determination of the exact location of any district boundary if there is uncertainty with respect thereto, or other claimed error in the, decision or determination made by an administrative official in the enforcement of this ordinance; provided that such decision shall be bound by and consistent with the language of the ordinance or regulation at issue;
- 2) Variances: The Hearing Officer may vary the application of the requirements of this Ordinance, except for use variances, as provided in this Article. The Corporate Authorities may reserve, by ordinance, any class of variance for approval only by the Corporate Authorities. In such cases where the Board of Aldermen has reserved decision making authority, the Hearing Officer shall still conduct a hearing and provide notice in compliance with 65 ILCS 5/11-13-6. Any variance granted by the Hearing Officer, not exercised within 12 months from the date of approval, shall be deemed expired and may be revoked by the Hearing Officer.
- 3) Use Variances. To hold public hearing for applications for use variances and to forward a written report containing findings of fact and a separate conclusion recommendation thereon to the City Council, consistent with 65 ILCS 5/11-13-14.1.C(1), which Council may by ordinance without further public hearing adopt any proposed use variance, or the Council may refer it back to the hearing officer for further consideration or deny the use variance request as a final action. For purposes of this Section, "use variances" shall be any variation that authorizes any use or classification of use to continue or commence in a zoning district in which that use is not a permitted use by right. Any proposed use variance which fails to receive the approval of the hearing officer shall not be approved except by the favorable vote of 2/3 of all Council members. No variance shall be granted that shall authorize a use that may be granted by special use or planned use procedures. Use variances are not favored and shall be granted only when failure to authorize the use denies all economically viable use of the property or similar extreme hardship is demonstrated by the evidence presented.
- 4) Airport Zoning: To hear and decide any appeal, exception, or variance as allowed under 620 ILCS 25/27.
- 5) Other authority: To hear and decide all other matters referred to it by the City Council or upon which it is required to pass under applicable ordinance.



## Article 15 Variances and Appeals

### **Section 15.030. Appeals**

An appeal may be taken to the Hearing Officer by any person, firm or corporation aggrieved by a determination or decision of any administrative official charged with the enforcement of any provision of or regulation adopted pursuant to this Ordinance (Chapter 42, zoning code of ordinances), or by any officer, department, board, or bureau of the City relating to such decision.. The appeal shall be taken within 45 days of the action complained of by filing, with the officer from whom the appeal is taken and with the Hearing Officer a notice of appeal, specifying the grounds thereof. The official appealed from shall thereupon transmit to the Hearing Officer all papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the official appealed from certifies to the Hearing Officer after the notice of appeal has been filed with him that by reason of facts stated in the certificate, the stay would, in his opinion, cause eminent 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 the Hearing Officer or by a Court of Record on application, or notice to the official appealed from and on due cause shown. The Hearing Officer 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 Hearing Officer may decide to be fitting and proper to the premises. No challenge to any decision subject to this Section shall filed in any court until or unless a timely appeal has been filed and prosecuted to completion by the applicant as provided for in this Article so as to establish a final appealable decision.

### **Section 15.040. Variances.**

A variance may be sought by filing a written application and payment of applicable fee to the Hearing Officer specifying the specific provision to be varied, the extent of the variation, and the basis therefore and including such requirements as are set forth in Article VIII, Division III or as otherwise established Hearing Officer. The Hearing Officer may grant a variance only if it is in harmony with the general purpose and intent of this Ordinance and in accordance with general or specific rules adopted hereto and only in cases where there are practical difficulties or particular hardship in the way of carrying out the strict letter of any regulation of this Ordinance relating to the use, construction, alteration of buildings, or structures or the use of land, but in no other case. No variance may be granted to any condition or term of a special use permit or planned zoning procedure. The Hearing Officer may impose such conditions, safeguards and restrictions upon the premises, benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations. A request for a variance, other than a use variance, may be granted, upon a finding and determination on the record of the Hearing Officer that the requirements of this Section are met and that all three of the following conditions are satisfied or upon such conditions as may the Hearing Officer establishes as will meet such conditions:

- a) The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the applicable zoning regulations;
- b) The plight of the owner is due to unique circumstances; and
- c) The variance, if granted, will not alter the essential character of the locality.



## Article 15 Variances and Appeals

### Section 15.050. Procedure

- 1) General. The Hearing Officer shall act in accordance with the procedure specified by law and by this Ordinance. All appeals and applications to the Hearing Officer shall be in writing. Every appeal or application shall refer to the specific provision of the Ordinance involved, and shall exactly set forth the interpretation that is claimed, the use for which the variance or special permit is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. The City may appear by any designated official of the City Council and be heard as a party in interest in any hearing before the Hearing Officer, and the City may appeal any decision of the Hearing Officer to a court of competent jurisdiction.
- 2) Notice of hearing. No action of the Hearing Officer shall be taken on any petition for variance until after notice has been given therefor in accordance with applicable state law and including newspaper notice as required for Zoning Text Amendments as provided for in Article VIII, Section 8.050 and any specific statutory requirements. The Hearing Officer shall fix a reasonable time for the hearing of the appeal or application and shall give due notice thereof to the parties and decide the matter within a reasonable time.
- 3) Hearings Procedure. All hearings conducted by the Hearing Officer shall be open to the public, held at the call of the Hearing Officer and at such times as he or she may determine. At hearings conducted by the Hearing Officer, any interested person may appear in person or by duly authorized agent or attorney. All testimony before the Hearing Officer shall be given under oath. The Hearing Officer shall administer oaths and may compel attendance of witnesses. The Hearing Officer shall keep minutes of his or her proceedings and other official actions. The Hearing Officer shall adopt his or her own rules and procedures, not in conflict with this Ordinance or applicable Illinois statutes.
- 4) Decision and Findings of Fact. Every variation decision shall be accompanied by findings of facts and shall refer to any exhibits containing plans and specifications for the proposed use or variation, which shall remain a part of the permanent records of the Hearing Officer. The findings of facts shall specify the reason or reasons for making the variation. The terms of the relief granted shall be specifically set forth in a conclusion or statement separate from the findings of fact. Property for which relief has been granted shall not be used in violation of the specific terms of the findings of fact, as the case may be, unless its authorized use is changed by subsequent variance or ordinance. Every rule, regulation, decision or determination of the Hearing Officer shall immediately be filed with the Zoning Official and shall be public record.
- 5) Expiration of variance approval. Any construction or use authorized by a variance approval shall substantially commence not later than six months after the date of the decision granting the variance, or such other time as may be specified in the variance approval.
- 6) Cost. For any application to the Hearing Officer, a fee shall be charged by the City for processing, plus the cost of advertising of public notice in an amount as established by the Council.



## Article 15 Variances and Appeals

### **Section 15.060. City Council Power of Administrative Review**

Immediately following the filing of the written decision of the Zoning Hearing Officer on any appeal or variance request under this Section, staff shall file a report with the City Council concerning such action. Within 21 days after the Zoning Hearing Officer's decision, the City Council, upon majority vote, may exercise the power of administrative review of any Zoning Hearing Officer decision on an application for an appeal or variance.

Upon adoption of the motion to exercise the power of review, the City Council may act on the matter directly or first refer the matter to committee. Before acting on the variance or appeal, the City Council may set the matter for hearing before the committee or the City Council. The City Council will give written notice of any such hearing to the applicant and all other persons who appeared and spoke at the public hearing before the Zoning Hearing Officer. In addition, the City Council may, in its discretion, notify and allow to be heard at the hearing any other person who the Council believes may be aggrieved by any decision or action concerning the application.

Following its review, the City Council may affirm, reverse, or modify, in whole or in part, any determination of the Zoning Hearing Officer. An affirmative majority vote of the City Council shall be required to overturn or modify a decision by the Zoning Hearing Officer. The decision of the City Council shall be made within 45 days of the Zoning Hearing Officer vote, unless extended for specified cause by a majority vote of the Council, or the Zoning Hearing Officer decision shall become final. In making any decision, the Council may adopt and rely on the record of the hearing officer or may hold a new hearing to establish a record for final decision.

Unless the City Council exercises its power of review of administrative review, the decision of the Zoning Hearing Officer shall become effective after 21 days following its decision.

(#3561; 02-04-08)

### **Section 15.070. Judicial Review of Final Decision**

Any officer, department, board or bureau of the City or any person whose legal rights, duties, or privileges have been affected by any final decision of the Hearing Officer, or any party affected by the decision of the Council where such decision has been reserved or appealed to the Council, may present to the Circuit Court having jurisdiction in the county, a complaint, duly verified, stating that such decision is illegal in whole or in part, specifying the grounds of the illegality and otherwise proceeding pursuant to the Administrative Review Law, Section 735 ILCS 5/3-101, et seq. which shall govern such appeals including as authorized in 65 ILCS 5/11-13-14.1. Such complaint shall be presented to the court within 35 days after the filing of the final decision. The costs of preparing and certifying the record of proceedings for filing with the Circuit Court in an administrative review proceeding shall be paid to the City by the appellant prior to the filing of such records with the Court. To the full extent permitted by law, unless review is sought of an administrative decision within the time and in the manner herein provided, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of such administrative decision.

(#3561; 02-04-08)