

CHAPTER 6. VARIANCES AND ADMINISTRATIVE APPEALS

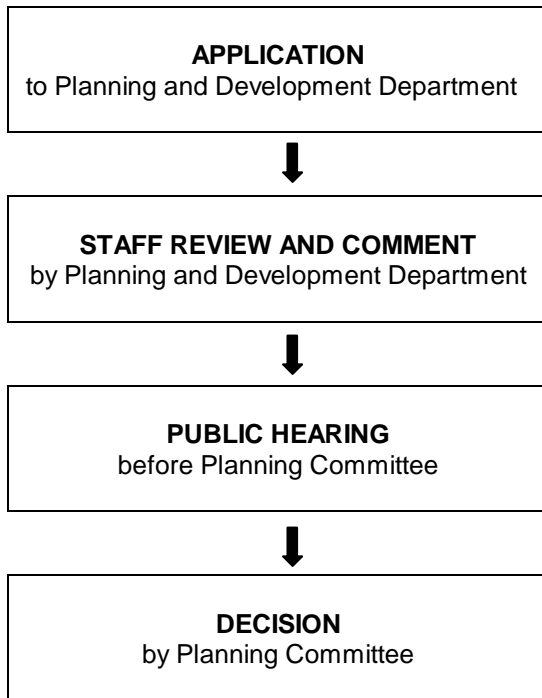
PART 1. VARIANCES

6.1.1. Purpose and Scope

The "variance" process administered by the Planning Committee is intended to provide limited relief from the requirements of this Ordinance in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this Ordinance. It is not intended that variances be granted merely to remove inconveniences or financial burdens that the requirements of this Ordinance may impose on property owners in general. Rather, it is intended to provide relief where the requirements of this Ordinance render the land difficult or impossible to use because of some unique physical attribute of the property itself or some other factor unique to the property for which the variance is requested. Figure 6.1.1. illustrates the process for approval of a variance, as set forth in this Part.

Process for Variances and Administrative Appeals

Figure 6.1.1.



6.1.2. Provision Which May Not Be Varied by the Planning Committee

- (1) In no event shall the Planning Committee grant a variance which would allow the establishment of a use which is not otherwise allowed in a zoning district or which would change the zoning district classification of any or all of the affected property.
- (2) In no event shall the Planning Committee grant a variance from any written conditions attached by the City Council to its approval of the conditional use, subdivision plat, site plan, or from the stated terms of an approved master land use plan for a planned unit development.

6.1.3. Application Requirements; Determination of Completeness

- (1) An application for a variance may be filed only by the owner of the land affected by the variance; an agent, lessee, or contract purchaser specifically authorized by the owner to file such application; or any unit of government which is not the owner of the lot but proposes to acquire the lot by purchase, gift, or condemnation.
- (2) Before filing the application, the applicant is strongly encouraged to meet with representatives of the Planning and Development Department to discuss the proposed variance and to become more familiar with the applicable requirements and approval procedures of the City.
- (3) An application for a variance shall be filed with the Planning and Development Department on a form prescribed by the Department, along with the fee prescribed by the City Council.
- (4) The application shall contain or be accompanied by such information and plans as required on the application form.
- (5) The Director of Planning and Development shall determine whether the application for a variance is complete. If the Director determines that the application is not complete, then he or she shall notify the applicant of any deficiencies and shall take no further steps to process the application until the deficiencies are remedied. Once the application is complete, the Director of Planning and Development shall schedule the application for consideration at a public hearing before the Planning Committee.
- (6) After determining that the application is complete, the Director of Planning and Development shall transmit to the Planning

Committee, prior to the hearing on the application, all applications and other records pertaining to such variance.

6.1.4. Action by the Planning Committee

- (1) Upon receiving the application materials from the Director of Planning and Development, the Planning Committee shall hold a public hearing on the proposed variance. Notice of the public hearing shall be provided in accordance with Section 5.15.1.(4) and the public hearing shall be conducted in accordance with Section 5.15.2. of this Ordinance.
- (2) In considering the application, the Planning Committee shall review the application materials, the general purpose and standards set forth in this Part for the granting of variances, and all testimony and evidence received by the Planning Committee at the public hearing.
- (3) After conducting the public hearing, the Planning Committee may:
 - (a) Deny the application;
 - (b) Conduct an additional public hearing on the application;
 - (c) Grant the requested variance.

Any approval or denial of the request shall be by motion, which includes findings of fact that the variance meets or does not meet each of the standards set forth in Section 6.1.5. below, stating the reasons for such findings.

- (4) The Planning Committee shall not grant any variance unless there is a concurring vote of at least two-thirds of those voting.
- (5) In granting any variance, the Planning Committee may attach such conditions to the approval as it deems necessary and appropriate to satisfy the standards set forth in Section 6.1.5., to reduce or minimize any injurious effect of such variance upon other property in the neighborhood, and to ensure compliance with other terms of this Ordinance.

6.1.5. Standard of Review

The Planning Committee shall not grant a variance unless it makes the following findings:

- (1) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings located in the same zoning district;
- (2) That the literal interpretation and strict enforcement of the provision to be varied would deprive the applicant of rights commonly enjoyed by other properties

located in the same zoning district under the terms of this Ordinance;

- (3) That the special conditions and circumstances do not result from the actions of the applicant; and
- (4) That granting the proposed variance will not confer on the applicant any special privilege that this Ordinance denies to other land, structures, or buildings located in the same zoning district.

6.1.6. Effect of Approval or Denial

- (1) After the Planning Committee approves a variance, the applicant shall follow the procedures set forth in Chapter 5 for the approval of all permits, certificates, and other approvals required in order to proceed with development of the property. All other decisions, determinations, and interpretations made by administrative officers under those procedures shall be consistent with the variance granted to the applicant by the Planning Committee.
- (2) The Director of Planning and Development shall not accept any application which has been denied within the last 12 months.

6.1.7. Appeals

- (1) Appeal to City Council. Any appeal from the decision of the Planning Committee shall be by petition for appeal to the City Council. Any such petition to the City Council shall be filed with the Planning and Development Department no later than 3 days after the date the decision is filed with the Planning and Development Department. Notice of the Council meeting date shall be sent to the applicant and all known opposition. The City Council shall act on the appeal either by confirmation, modification of conditions or rejection by majority vote.
- (2) Appeal to Courts. Appeal from the decision of the City Council shall be by petition for appeal to the Lee County Circuit Court. Any such petition to the Court shall be filed with the Court Clerk no later than 30 days after the date the decision is entered into the Official Minutes of the City of Tupelo.

PART 2. APPEALS OF ADMINISTRATIVE DECISIONS

6.2.1. Purpose and Scope

Appeals to the Planning Committee from the decisions of the Planning and Development Department staff are allowed under this Ordinance in order to ensure that any enforcement action taken by such an administrative officer pursuant to duties assigned by this Ordinance is consistent with the

terms and purposes of this Ordinance and any related policies adopted by the City. It is the intention of this Part that all questions arising in connection with the enforcement of this Ordinance shall be presented to the Building Department or the Planning and Development Department, that such questions shall be presented to the Planning Committee only on appeal from the decisions of those departments, and that recourse from the decision of the Planning Committee shall be to the City Council.

6.2.2. Decisions Which May be Appealed

Any order, requirement, permit, decision, determination, or refusal made by any administrative officer in enforcing the provisions of this Ordinance may be appealed to the Planning Committee.

6.2.3. Persons Who May File An Appeal

An appeal to the Planning Committee may be brought by any person, firm, corporation, office, department, board, bureau or commission aggrieved by the order, requirement, permit, decision, or determination which is the subject of the appeal.

6.2.4. Filing of Appeal, Effect of Filing

- (1) An application for an appeal shall be filed with the Planning and Development Department on a form prescribed by the Department.
- (2) The application shall be filed no later than 30 days after the date of the contested action.
- (3) The application shall contain or be accompanied by the information required on the application form.
- (4) Once the application is submitted, the Director of Planning and Development shall schedule the appeal for consideration at a hearing before the Planning Committee.
- (5) Prior to the hearing, the Director of Planning and Development and the administrative officer from whom the appeal is taken shall transmit to the Planning Committee all applications and other records pertaining to such appeal.
- (6) The filing of an appeal shall stay all proceedings in furtherance of the contested action, unless the Director of Planning and Development certifies to the Planning Committee, that, in his or her opinion by reason of facts stated in the certification, such a stay would cause imminent peril to life and property. In such case, proceedings shall not be stayed except by a restraining order granted by the Planning Committee or by the Lee County Circuit Court on notice to the administrative official from whom the appeal is taken, with due cause shown.

6.2.5. Action by the Planning Committee

- (1) Upon receiving the application materials from the Director of Planning and Development, the Planning Committee shall hold a hearing on the appeal. The hearing shall be conducted in accordance with Chapter 5, Part 15 of this Ordinance.
- (2) Either at the hearing or a subsequent meeting, the Planning Committee shall adopt a motion reversing, affirming, or modifying the contested action.
- (3) In reversing, affirming, or modifying the contested action, the Planning Committee shall have all relevant powers of the administrative officer from whom the appeal is taken.
- (4) The Planning Committee shall not reverse or modify the contested action unless it finds that the administrative officer erred in the application or interpretation of the terms of this Ordinance or related policies adopted by the City.
- (5) The Planning Committee shall not reverse or modify the contested action unless there is a concurring vote of a least two-thirds of the members voting.

6.2.6. Effect of Reversal or Modification

In the event that the Planning Committee reverses or modifies the contested action, all subsequent actions taken by administrative officers with regard to the subject matter shall be in accordance with the reversal or modification granted by the Planning Committee.

6.2.7. Appeal from Planning Committee

Any appeal from the decision of the Planning Committee shall be to the City Council. Any such petition to the City Council shall be filed with the Planning Department no later than 3 days after the date of the decision of the Planning Committee.

