

# VARIANCE OF USE



## *Guide to Applying for a Variance from the Board of Zoning Appeals*

### **Background**

Zoning regulations are intended to protect and serve the public good. To do so, they should be applied universally and consistently. Sometimes, however, because of atypical conditions unique to a particular property, carrying out the strict letter of a zoning regulation would not allow reasonable use of that property. To avoid unjust and unnecessary imposition of such extreme hardships on property owners, the Auburn Unified Development Ordinance provides a relief from the standards in unique circumstances. The Ordinance authorizes the Board of Zoning Appeals to grant variances from zoning regulations.

### **Definition**

A variance is a waiver from compliance with a specific provision of the Unified Development Ordinance. A Variance of Use is the approval of a use that is not listed as a permitted or special exception use in a district. A property owner can request a variance to allow any use upon the property. The variance is specific to the use requested and cannot be for a general use such as a “commercial use”.

### **Conditions**

Submission of an application for a variance does not guarantee approval. The Board of Zoning Appeals must find the zoning regulation in question cases a hardship. A hardship relates to the physical characteristics of the property, not the personal circumstances of the owner or user. The applicant must show the need for the variance arises from some condition peculiar to the property involved and that the approval does not interfere with the Auburn Comprehensive Plan. The applicant must also show the public health safety and welfare are not adversely affected by their request.

If these legal tests cannot be met, a variance should not be granted. A variance is not appropriate as a matter of convenience, or if it would grant special privileges to an individual property. Economic considerations alone do not constitute a hardship if a reasonable use for the property exists under the Unified Development Ordinance.

### **Process**

Applications for variances are reviewed by city staff and the Board of Zoning Appeals. Any person considering seeking a zoning variance must first contact the Building, Planning and Development Department staff, who will explain the review process and provide the necessary forms, checklists, and deadlines.

To request a hearing, an application must be submitted to the Building, Planning and Development Department prior to the filing deadline. The case will be scheduled for review at the next Board of Zoning Appeals meeting. Staff will review the application for completeness and consistency with applicable plans and ordinances. Staff will contact the applicant if additions or revisions to the application are necessary. Staff prepares a report containing its findings and a recommendation of approval or denial.

In addition to review by City staff and officials, the application is subject to comment from the general public.

## Public Notices

City staff prepares and publishes a legal notice in The Star newspaper for the public hearing to be held on the application.

City staff prepares and mails a notice to all adjacent property owners for the public hearing.

Costs for the legal notice and neighbor notices are included in the application filing fee.

## Decision

The granting of variances in Auburn is the responsibility of the Board of Zoning Appeals. The Board is comprised of five members: three who are appointed by the Mayor, one who shall be a member of the Plan Commission; one appointed by the Common Council; and one who is appointed by the Plan Commission from its members that represent the Extra-Territorial Jurisdiction. The Board meets on the fourth Tuesday of each month, as needed.

In reviewing zoning variances, the Board of Zoning Appeals acts much like a panel of judges. It holds a hearing to allow the staff, applicant, and other interested parties to present competent, substantial, and material factual evidence relating to the required conclusions. It then makes findings of fact supported by the presented evidence. Based on those findings, the Board decides whether it can reach each of the required conclusions, it may approve a variance request only after it reaches all the required conclusions. The Board may approve an application subject to conditions reasonably necessary to allow it to reach the required conclusions.

The Board's decision is final as far as the City's process is concerned. The Mayor and Common Council cannot overrule or alter the Board's decision. If anyone feels a variance was improperly granted or denied, including the Mayor and Common Council, the Board's decision must be appealed to the Circuit Court of the County within 30 days of the date the Board decision is made.

## Timeline

- Pre-application review with City staff
- Complete application
- **30 days before BZA hearing**
  - Filing deadline
    - Submit a completed application
    - Submit sketch plan for property
    - Complete application checklist
    - Pay filing fee
  - Staff Review
    - Site photographs
    - Prepare Staff Report
- **At least 10 days prior to BZA hearing**
  - *Notices of the public hearing mailed*
  - *Legal notice published in newspaper*
- **BZA hearing**
  - Held on 4<sup>th</sup> Tuesday of month, as necessary

# **VARIANCE OF USE APPLICATION CHECKLIST**



*A completed application must include the following:*

- A completed application form.** The application form is available in the Building, Planning and Development Office located on the 2<sup>nd</sup> floor of City Hall or at [www.ci.auburn.in.us](http://www.ci.auburn.in.us).
- A filing fee of three hundred twenty five dollars (\$325.00)** payable to the City of Auburn.
- Ownership affidavit; copy of deed; or other proof of ownership OR ownership consent form.**
- One copy of a sketch**, drawn to scale, showing the lot(s) included in the application; the existing structure(s); and any proposed structure(s) necessitating the variance requested. All appropriate dimensions and any other information that would be helpful to the Board in consideration of the application should be included.

*Applicant may also submit the following:*

- Any written statement, documents, photographs, plans or supporting information justifying the variance requested.**
- Proposed findings of fact to support the variance request.**







# BOARD OF ZONING APPEALS – USE VARIANCE

Department of Building, Planning, & Development

210 S Cedar St PO Box 506 Auburn IN 46706 | 260.925.6449 | 260.920.3342 fax | bpd@ci.auburn.in.us

## APPLICANT INFORMATION

Provide Contact Name, Company Name (if applicable), Mailing Address, Phone, and Email for each individual.

Applicant \_\_\_\_\_

Applicant Address \_\_\_\_\_

Applicant Phone \_\_\_\_\_ Email \_\_\_\_\_

Property Owner \_\_\_\_\_

## PROJECT INFORMATION

Name \_\_\_\_\_

Location \_\_\_\_\_

Description \_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

## CERTIFICATION

By signing below, I certify the following:

- I am the owner or legal agent of the subject property;
- The information provided in this application is true and accurate to the best of my knowledge;
- I understand the application will be routed to applicable government and utility agencies;
- I understand fees associated with this application are non-refundable once paid;
- I understand my presence (or my legal counsel’s presence) is required at the Board of Zoning Appeals meeting concerning this project.

\_\_\_\_\_  
*Applicant Signature*

\_\_\_\_\_  
*Applicant Printed Name*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Applicant Signature*

\_\_\_\_\_  
*Applicant Printed Name*

\_\_\_\_\_  
*Date*

## OFFICE USE ONLY

Received Date: \_\_\_\_\_ LOGOS#: BZA- \_\_\_\_\_

Received By: \_\_\_\_\_ LOGOS Address: \_\_\_\_\_

Payment Type: \_\_\_\_\_ Receipt Number: \_\_\_\_\_



## BOARD OF ZONING APPEALS – USE VARIANCE

### FINDINGS OF FACT

*The Board of Zoning Appeals must make detailed Findings of Fact based on the application and presentation of the request at the meeting. Failure to present evidence in support of the Findings of Fact may result in a denial of the request. Please complete the following statements with regard to this project.*

FINDING #1: The proposed project will not be injurious to the public health, safety, morals, and general welfare of the community because...

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FINDING #2: The use and value of the area adjacent to the proposed project will not be affected in a substantially adverse manner because...

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FINDING #3: The need for the use variance arises from some condition peculiar to the property involved which is...

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FINDING #4: The strict application of the terms of the UDO will constitute an unnecessary hardship if applied to the property for which the variance is sought because...

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FINDING #5: The proposed project does not interfere substantially with the Auburn Comprehensive Plan because...

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### SUBMITTAL REQUIREMENTS CHECKLIST

*A detailed list of submittal requirements can be found in Chapter 150 Unified Development Ordinance, Article 9. Below is a generalized list of submittal requirements for Board of Zoning Appeals applications.*

- Pre-application meeting
- Completed Application
- Owners Affidavit – if application is not signed by owner
- Recorded Property Deed
- Site Plan showing property lines, rights-of-ways, structures, etc.
- Complete description of proposed use with days/hours of operation, number of employees, etc.
- Other items, as required by the Zoning Administrator
- Application Fee

