



## DRIVEWAY VARIANCE APPLICATION

**THIS APPLICATION IS ONLY FOR APPLYING FOR A VARIANCE TO THE DRIVEWAY ORDINANCE – ARTICLE III – CHAPTER 22 OF THE FORT SMITH MUNICIPAL CODE. IF YOU ARE APPLYING FOR VARIANCES TO THE ACCESS MANAGEMENT REGULATIONS IN THE UNIFIED DEVELOPMENT ORDINANCE, USE THE ZONING VARIANCE APPLICATION.**

- I. The filing deadline will be Friday, \_\_\_\_\_, 20\_\_\_\_, before 5:00 p.m. Please submit this application to the City of Fort Smith Planning Department, 623 Garrison Avenue, Room 331.
- II. There will be a study meeting of the Planning Commission on Tuesday, \_\_\_\_\_, 20\_\_\_\_, at 11:30 a.m. at the Creekmore Park Community Center. The Board of Zoning Adjustment may need information that is not included on the application. Therefore, the Board of Zoning Adjustment urges all applicants to attend the meeting to represent their application.
- III. The Planning Commission meeting will be Tuesday, \_\_\_\_\_, 20\_\_\_\_, at 5:30 p.m. in the Rose Room of the Creekmore Park Community Center. The Board of Zoning Adjustment may need information that is not included on the application. Therefore, the Board of Zoning Adjustment urges all applicants to attend the meeting to represent their application.
- IV. A processing fee of \$250.00 shall accompany this application to cover the administrative costs of advertising the public notice and notifying neighboring property owners. **This fee is Non-Refundable.**

IN SOME INSTANCES, THE PLANNING DEPARTMENT STAFF WILL POST A SIGN, LIKE THE ONE SHOWN BELOW, AT THE VARIANCE SITE. IF THE SIGN IS POSTED IT MUST BE LEFT IN PLACE UNTIL REMOVED BY THE PLANNING DEPARTMENT STAFF. THE SIGN WILL BE REMOVED BY THE PLANNING DEPARTMENT STAFF THE DAY FOLLOWING THE BOARD OF ZONING ADJUSTMENT MEETING OR SOON THEREAFTER.



## **APPLICANT'S CHECKLIST FOR DRIVEWAY VARIANCE**

--  
**Please use this checklist to verify that your application is complete.**

- Legal Description of Subject Property
- Street Address
- Existing or Proposed Zoning Classification
- List the Specific Variance (s) Requested
- Application Signature of Owner or Agent
- Describe the Variance Request and Undue Hardship
- Answer Lot Information Questions
- Complete List of Adjacent and Contiguous Property Owners
- Indicate Whether Restrictive Covenants Apply
- Provide Site Plan of the Subject Property
- Authorization of Agent-Owners Names & Signatures  
(If using an agent)

## **Driveway Variance Procedures**

### **Application Review Process**

Variance applications can be obtained from the City Planning Department or downloaded. Applicants are encouraged to contact a member of the Planning Staff to discuss the application. Oftentimes, the staff can provide the applicant with some useful information that may assist the applicant during the hearing with the Board of Zoning Adjustment. The staff can also help the applicant assess the reasonableness of the request. The initial visit with the staff is especially helpful for someone who has not previously been involved with the variance hearing process.

When a decision is made to proceed with the application, the applicant must execute the application by completing the appropriate information and supplying any backup data that the application requires. The application requires that the applicant provide a list of all persons owning property that is adjacent and contiguous to the subject property. This list, which can be obtained at the County Assessor's Office, is used by the staff to notify these owners of the pending application. Once the application is submitted and the filing fee of seventy-five dollars (\$75.00) is paid to the Planning Department the review process begins.

### **Application Review Process**

The review of a driveway variance application begins with the City Planning staff and, as needed, may involve the staff of the City Fire and Building, Engineering and Utility Departments. The initial review is to insure the completeness and accuracy of the information that is submitted.

The site visit is made by the staff in order to understand and describe the surrounding land use characteristics and to assist in the process of assessing the impact of the proposal on the adjacent land areas. The initial review step concludes with the development of a preliminary staff report. The staff report and recommendations proceed through the review process as follows:

### **Board of Zoning Adjustment (BZA) Study Session**

The final report is submitted to the (BZA) at its study session meeting held at 11:30 a.m. in the Rose Room of the Creekmore Park Community Center. The Board of Zoning Adjustment Study Session is held the Wednesday preceding the public hearing scheduled on the second Tuesday of each month. The applicant is required to attend the Study Session and confer with the Board of Zoning Adjustment on the request.

### **Board of Zoning Adjustment (BZA) Voting Session**

The (BZA) formally hears the application at its public hearing held the second Tuesday of each month at 5:30 p.m. in the Rose Room of the Creekmore Park Community Center.

Following the applicant's presentation and the public discussion, the Board members vote on the application. A simple majority of the Board members present and voting is required to approve the variance request.

### **Appeal Procedures**

A decision of the Board of Zoning Adjustment is final unless their decision is appealed to the Board of Directors.

In the event the Planning Commission denies a requested driveway variance so that no recommended action is certified by the Planning Commission, the proponent of such driveway variance request shall have the right to file an appeal of the decision of the Planning Commission with the Board of Directors. Such right shall be exercised by filing a written notice of such appeal with the Office of the City Administrator, or designated agent, during normal business hours on or before the tenth calendar day following the Planning Commission meeting at which the hearing on the driveway variance was held (or following the date on which the Planning Commission handed down its decision of non-recommendation or change if the date of the decision differs from the date of the hearing), otherwise the right of appeal shall have been waived by the proponent.

### **Submittal and Review Timetables**

Variance applications are required to be submitted to the City Planning Department at least fifteen (15) days prior to the date of the (BZA) meeting. This requirement insures that the public hearing can be appropriately advertised at least seven (7) days prior to the hearing.

The entire review timetable takes approximately twenty (20) calendar days from the time the application is submitted until the time that the Board of Zoning Adjustment has completed their review and has made a decision on the request. If an item is tabled by the Board of Zoning Adjustment for further study during their review, an additional thirty (30) days can typically be added to the timetable for each time the issue is tabled.

### **Key Staff Contacts**

The Planning Department staff can assist persons wishing to inquire about the variance process. The Planning Department is located at 623 Garrison Avenue, Room 331 of the Stephens Building and the phone number is (479) 784-2216. **E-mail Us at:** [planning@fortsmithar.gov](mailto:planning@fortsmithar.gov) .

## **Additional Information-Restrictive Covenants**

### **What's the Purpose of Restrictive Covenants?**

Restrictions give a development a more standard appearance, and control some of the activities that take place within its boundaries. When enforced, covenants protect property values.

### **What You'll Always See in Covenants**

Restrictive covenants nearly always stipulate the minimum size residence allowed, how many homes may be built on one lot, and what type of construction the homes must (or must not) be.

### **More Topics You'll See in Restrictive Covenants**

- Set backs (how far homes must be from streets and interior lot lines).
- Easements (such as a pathway for power lines or roads).
- Fees for road maintenance or amenities.
- Rules regarding changing or voiding the covenants.
- Rules about pets and other animals (for instance: no breeding for profit, no livestock, no unchained pets).
- Regulations dealing with in-home businesses and home rentals.
- Rules that limit tree-cutting.
- Clauses that dictate what type of fencing can be used, or that forbid all types of fencing.
- Clauses to reduce clutter on lots, such as prohibiting owners from storing a vehicle that doesn't run within view of others, or parking a recreational vehicle on the property.

Some restrictions limit the paint colors that can be used on a home's exterior. Some might require that all homes have a certain type of siding. In areas where wildfires are a problem, covenants might require you to use only fire retardant building materials.

## **INSTRUCTIONS FOR FILING REQUEST FOR DRIVEWAY VARIANCES**

### **A. APPLICATION FOR DRIVEWAY VARIANCE**

1. Provide the legal description of the property included in the variance request in the space indicated.
2. Provide the street address of the property.
3. Provide the existing or proposed zone classification of the property.
4. List the specific variance request.
5. The application must be signed by the owner or agent.

### **B. DRIVEWAY VARIANCE INFORMATION FORM**

1. Note the specific variance requested.
2. Give a complete description and demonstrate the hardship according to the literal provisions of the Zoning Code.
3. Answer lot information questions.

### **C. LIST OF ADJACENT AND CONTIGUOUS PROPERTY OWNERS**

1. Give the names and addresses of the owner(s) of all adjacent and contiguous property. Include all property that touches all property included in the variance request, or which would touch the property if public rights-of-way were removed (i.e., include all property across street, alleys and intersections). This information may be obtained at the County Assessor's Office located in the Sebastian County Courthouse, Room 107. Please call the Tax Assessor's Office at 783-8948 to schedule an appointment. (The Planning Department will mail the notices for you.)

### **D. LETTER REGARDING RESTRICTIVE COVENANTS**

1. If you have restrictive covenants, enter any part of the restrictive covenant applicable to the property that appears to prohibit this variance request.
2. If there is no restrictive covenant in effect or no statement in your existing covenants, enter the word **NONE** on the attached statement.

### **E. SITE PLAN OF THE SUBJECT PROPERTY**

1. A sample "site or plot plan" of the subject property included in this request must be supplied. Indicate on the plan all existing and proposed improvement (structures, parking lots, driveways, etc.). Include the proposed driveway variance requested and any other useful information concerning the property. This plan must be drawn to scale and include the lot dimensions and total square footage or acreage of the property.

### **F. AUTHORIZATION OF AGENT**

1. If an agent (i.e. contractor) is acting on behalf of the owner(s), all owners must sign in the space provided. This form is necessary only when the person representing this request does not own all the property.

**G. FILING FEE AND OTHER COSTS**

1. A processing fee of \$250.00 must be paid to the City of Fort Smith at the time of filing the application. This fee is Non-Refundable.

**H. BUILDING PERMIT REQUIRED**

1. After the driveway variance request has been approved by the Planning Commission, a building permit shall be required for any improvements to the site. All requirements for obtaining a building permit shall be met.

**APPLICATION FOR DRIVEWAY VARIANCE**

**Variance from Driveway Ordinance – Fort Smith Municipal Code Article III.**

Notice is hereby given that the undersigned, as owner(s) of the following property in the Fort Smith District of Sebastian County, Arkansas, to-wit: (Legal Description)

Address of property \_\_\_\_\_, Current or Proposed

Zoning Classification \_\_\_\_\_, has filed with the Planning Department a written application pursuant to Chapter 22, Article III (Driveway approaches and curbs) of the City of Fort Smith, Arkansas, to secure a variance from the literal provisions of the driveway ordinance as follows:

<b><u>Office Use Only-List the Specific Driveway Variance Requested</u></b>

**Note the specific driveway ordinance variance(s) requested:**

**FROM:** \_\_\_\_\_  
\_\_\_\_\_

**TO:** \_\_\_\_\_  
\_\_\_\_\_

The undersigned will present said application to the Board of Zoning Adjustment at the first regular City Planning Commission meeting following the expiration of fifteen (15) days from the date of this publication, at which meeting the Board of Zoning Adjustment will conduct a public hearing on said application. All interested persons are invited to attend and are entitled to be heard. This notice is published this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Signed:

\_\_\_\_\_  
Owner or Agent Name (*please print*)

\_\_\_\_\_  
Owner

or

\_\_\_\_\_  
Owner or Agent Phone Number

\_\_\_\_\_  
Agent

\_\_\_\_\_  
Owner or Agent Mailing Address

Variance # \_\_\_\_\_

**VARIANCE INFORMATION FORM**

The following paragraph (Section 12-500; Subsection B) of the Fort Smith Zoning Ordinance defines the criteria for granting a variance:

The Board of Zoning Adjustment shall hear requests for variances from the literal provision of the zoning chapter in instances where strict enforcement of the zoning chapter would cause undue hardship due to circumstances unique to the individual property under consideration, and shall grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the zoning chapter. The Board of Zoning Adjustment shall not permit, as a variance, any use in a zone that is not permitted under the chapter. The Board of Zoning Adjustment may impose conditions in the granting of a variance to insure compliance and to protect adjacent property.

1. Describe how the strict enforcement of the driveway ordinance causes an undue hardship for your project:

---

---

---

---

2. List any special circumstances/conditions which exist that have not been created by the owner/applicant and do not apply to other properties in your area:

---

---

---

---

---

3. To aid the Board of Zoning Adjustment in arriving at a decision on your application, please note the Lot information requested and check the appropriate answer to each of the questions that follow.

Yes

No

\_\_\_\_\_

\_\_\_\_\_

Is the lot of an odd or unusual shape?

\_\_\_\_\_

\_\_\_\_\_

Does the lot have “radical” topography (steep, unbuildable slopes - streams or bodies of water - unstable or eroded area)?

\_\_\_\_\_

\_\_\_\_\_

Does the lot contain required easements other than those that might be located on its perimeter?

\_\_\_\_\_

\_\_\_\_\_

Is any part of the lot in a flood plain or flood way?

\_\_\_\_\_

\_\_\_\_\_

Is the lot smaller than minimum lot area or minimum frontage for its zoning classification?

\_\_\_\_\_

\_\_\_\_\_

Is the lot developed with structures in violation of current zoning requirements?

\_\_\_\_\_

\_\_\_\_\_

Does the lot front any street classified as an arterial or collector on the Master Street Plan?

**LIST OF ADJACENT AND CONTIGUOUS PROPERTY OWNERS**

(Please type or print)

The Planning Department is required to give notice (in writing) of this application to all surrounding property owners. List the name and address of the surrounding property owners. This information may be obtained at the County Assessor's Office located in the Sebastian County Courthouse - Room 107. Please call the Tax Assessor's Office at 783-8948 for an appointment. (The Planning Department will mail the notices for you.)

NAME

ADDRESS

1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____
12.	_____	_____
13.	_____	_____
14.	_____	_____
15.	_____	_____
16.	_____	_____
17.	_____	_____

## **LETTER REGARDING RESTRICTIVE COVENANTS**

Restrictive covenants are regulations that are maintained and enforced by the property owners of the subject subdivision. These covenants may be found in your abstract or at the County Circuit Clerks Office. Restrictive covenants are often enforced in subdivisions with homeowner's associations and can always be more restrictive but never less restrictive than the City of Fort Smith's Zoning Regulations. *(See attached additional information on restrictive covenants)*

TO: Planning Department

SUBJECT: Legal Description of Property

I have searched all applicable records, and to my best knowledge and belief, there are no restrictive covenants running with the above described land, except as follows:

**AUTHORIZATION OF AGENT**

If an agent (i.e., contractor) is acting on behalf of the owner(s), all owners must sign in the space provided. This form is necessary only when the person representing this request does not own all the property.

We the undersigned, being owners of real property, and requesting a driveway variance by application do hereby authorize \_\_\_\_\_ to act as our agent in the matter.

(Print Name of Agent)

(Type or clearly print)

NAMES OF ALL OWNERS.

SIGNATURE OF ALL OWNERS.

1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____
11. _____	_____
12. _____	_____
13. _____	_____

*This form is necessary only when the person representing this request does not own all the property.*