



Application updated May 2022

# 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 - 3301 South M Street (Rose Room). The Planning Commission may need information that is not included on the application. Therefore, the Planning Commission 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. at the Creekmore Park - 3301 South M Street (Rose Room). The Planning Commission may need information that is not included on the application. Therefore, the Planning Commission 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.**  
**TEN DAYS PRIOR TO THE PLANNING COMMISSION MEETING, THE PLANNING DEPARTMENT STAFF WILL POST SIGNS, LIKE THE ONE SHOWN BELOW, AT THE SUBJECT SITE. PLEASE LEAVE THE SIGN IN PLACE UNTIL REMOVED BY THE PLANNING DEPARTMENT STAFF. WE WILL REMOVE THE SIGNS THE DAY FOLLOWING THE PLANNING COMMISSION MEETING OR SOON THEREAFTER.**





## **CHECKLIST FOR SUBDIVISION VARIANCE APPLICATION**

**Applications must be verified for completeness with the applicant before they are accepted.**

- **Pre-Application Conference (Pursuant to Section 27-302)**
- **Complete Application**
- **Legal Description of Subject Property**
- **Street Address of Subject Property**
- **Existing or Proposed Zoning Classification**
- **Certified Site Plan Drawn to Scale**
- **Copy of Proposed or Approved Development Plan (if applicable)**
- **List the Specific Variance (s) Requested & Undue Hardship**
- **Answer Lot Information Questions**
- **Complete List of all Property Owners within 300 feet**
- **Indicate Whether Restrictive Covenants Apply**
- **Owner or Agent Names & Signatures**
- **Authorization of Agent (if using an agent)**
- **Vicinity, Zoning & Land Use Maps of Subject Property  
(Staff will assist applicant in preparing these maps)**
- **Application Processing Fee of \$250.00**
- **Neighborhood Meeting (Pursuant to Section 27-304 & 27-337-5 (B.))**



Application updated May 2022

# Variance Application

## CITY OF FORT SMITH, ARKANSAS SUBDIVISION VARIANCE

<b><i>FOR STAFF USE ONLY</i></b>	<b><i>FEE: \$250</i></b>
<i>Date Application Submitted:</i>	<i>Zone:</i>
<i>Date Accepted as Complete:</i>	
<i>Project Number:</i>	
<i>Public Hearing Date:</i>	

**Application:**

Indicate one contact person for this request:

**Applicant**

**Agent**

***Applicant (person making request):***

***Agent (engineer, surveyor, realtor, etc.):***

Name:

Name:

E-mail:

E-mail:

Address:

Address:

Phone:

Phone:

Fax:

Fax:

Site Address / Location:

Current Zoning District:

Assessor's Parcel Number(s) for property:

Total Acreage:

Specific section of the Unified Development Ordinance which necessitates the subdivision variance request:

Section:

The specific request is as follows:



appeals or variances, the Planning Commission may require such conditions as will, in its judgment, secure substantially the objectives of these regulations.

Variance # \_\_\_\_\_ (STAFF USE ONLY)

**VARIANCE INFORMATION FORM**

The following paragraph (Section 27-516 of the Fort Smith Unified Development Ordinance defines the criteria for granting a subdivision variance.

In considering such appeals, the Planning Commission may, where the literal enforcement of these regulations would result in unnecessary hardship, consider deviation from the strict application of any part of these regulations, where in its judgment the public convenience and welfare will be substantially served, the neighboring property will not be substantially injured, and a reasonable development and improvement of property will be permitted. In approving appeals or variances, the Planning Commission may require such conditions as will, in its judgment, secure substantially the objectives of these regulations. (Ord. No. 101-88, art. 3.5, 121-89; Ord. N. 6-91, subsection 1, 2-6-91)

1. Describe how the strict enforcement of the Development Regulations 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:



§ 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.

### **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: Provide legal description in a word document.

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: ATTACH COVENANTS WITH SUBMISSION



### **Attendance List for Neighborhood Meeting**

List the names, addresses telephone numbers and email of all residents/property owners who attended the meeting.

**Meeting Location**

**Meeting Time & Date**

**Meeting Purpose**

<u>Name</u>	<u>Address</u>	<u>Phone</u>	<u>Email</u>



**LIST OF ALL PROPERTY OWNERS WITHIN 300 FEET**

This information shall be obtained at the County Assessor's Office.

The Planning Department is required to give notice (in writing) of this application to all property owners within a 300 foot radius of the subject property. List the name and address of the owner of every piece of property within 300 feet of any part of the property. This information may be obtained at the County Assessor's Office located in the Sebastian County Courthouse, Room 107, for a small fee. Please call the Tax Assessor's Office at 479-783-8948 to setup an appointment. (The Planning Department will mail the notices for you.) Include map and property owners list from the County Tax Assessor's Office as an attachment to the application packet.

L&R PROPERTIES, LLC  
CT/ BOZE, PATRICK 500 N 7TH ST # 2  
Fort Smith, AR 72901

MITCHELL, DONNA JEAN  
418 N 6TH ST  
FT SMITH, AR 72901

OBERSTE, WILLIAM L & JENNIFER M  
716 N 6TH ST  
FORT SMITH, AR 72901

DIXON RENTALS NO. 1, LLC  
7203 KENSINGTON CT  
FORT SMITH, AR 72903

GANN, HOMER M & BARBARA A  
708 N 7TH ST  
FORT SMITH, AR 72901

FORT SMITH HERITAGE FOUNDATION  
514 N 6TH ST  
FORT SMITH, AR 72901-2006

CULPEPPER, CLIFTON  
404 N 7TH ST  
Fort Smith, AR 72901

KURSH, VELMA  
1912 N L ST  
FORT SMITH, AR 72901

L & R PROPERTIES, LLC ( BOZE,  
PATRICK)  
500 N 7TH ST #2  
Fort Smith, AR 72901

VALENTINI, JOSEPH & BILLIE  
4800 S W ST  
FT SMITH, AR 72903

THOMPSON, DWAYNE  
606 N 8TH ST  
FT SMITH, AR 72901

TIDWELL, JULIA ET AL  
1306 MAY AVE  
FT SMITH, AR 72901

TRAN LIVING TRUST  
1804 FIANNA WAY  
FORT SMITH, AR 72908

HANSEN, LINDA F  
514 N 7TH ST  
FT SMITH, AR 72901

MORROW, CECIL & WIFE  
1306 MAY AVE  
FT SMITH, AR 72901

BROWN, MICHAEL J  
16211 S E 23RD ST  
Choctaw, OK 73020

KURSH, VELMA  
1912 N L ST  
FORT SMITH, AR 72901

QUINN CHAPEL AFRICAN METHODIST  
EPIS  
4200 YOUNG ST  
Fort Smith, AR 72904

BELLE GROVE FUTURE SCHOOL, LLC  
4611 ROGERS AVE STE 201  
Fort Smith, AR 72903

SAMUELSON, SHIRLEY ANN & RONALD  
RYAN  
602 N 8TH ST  
FORT SMITH, AR 72901

DANIELSON, ERIK P  
P O BOX 1150  
BOONEVILLE, AR 72927

GRISSOM, PAULA  
504 N 8TH ST  
FORT SMITH, AR 72901-2206

OBERSTE, WILLIAM L & JENNIFER  
MARIE  
716 N 6TH ST  
FORT SMITH, AR 72901

ROBINSON, DARRELL W & DEBORAH  
GAY  
P. O. BOX 11523  
FT SMITH, AR 72917-1523

L & R PROPERTIES, LLC  
723 N 6TH ST  
FORT SMITH, AR 72901

BEASLEY, CHARLES CAMERON  
518 N 7TH ST  
FORT SMITH, AR 72901

BLANZY, JAMES P  
722 N 6TH ST  
Fort Smith, AR 72901

BRADLEY, SAM B & MITZI 1/2 %  
BRADLEY FAMILY TRUST)  
& LINIMON, STUART LANCE 1/2%  
INTERE 2509 S 87TH ST  
Fort Smith, AR 72903

WILLIAMS, JESS RAY SR  
4209 MUSSETT RD  
Fort Smith, AR 72904

AFRICAN METHODIST EPISCOPAL  
CHURCH, INC  
4200 YOUNG ST  
Fort Smith, AR 72904







**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 subdivision variance by application do hereby authorize \_\_\_\_\_ to act as our agent in the (Print Name of Agent) matter.

(Type or clearly print)

NAMES OF ALL OWNERS.

SIGNATURE OF ALL OWNERS.

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.

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



Application updated May 2022

PLANNING DEPARTMENT

VARIANCE APPLICATION

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

Attach all supporting documents with the application.

NOTE: Applications can be submitted Online with Internet Explorer. If another browser is being used, the user will have to follow the instructions for electronic submission via email.

INSTRUCTIONS: To SUBMIT ELECTRONICALLY, please right click on download link and click save-as. Once the application has been downloaded to your device it can be filled out and submitted electronically.

**SECTION 27-516—SUBDIVISION APPEALS AND VARIANCES**

(A.) In order to insure due process relative to the review of all subdivision and development applications, any person aggrieved by an act of failure to act of the City, as a result of the administration and enforcement of the provisions of any part of these regulations, shall have the right of an appeal to the City Planning Commission. Such right shall be exercised by the applicant filing written notice of the appeal with the Planning Department during normal business hours at least twenty (20) days prior to the next City Planning Commission meeting. Said notice shall clearly indicate the specific section of the regulations that is being appealed. The applicant shall pay an application fee of \$250.00 at the time the written notice (application) is submitted to the City. The applicants shall also supply a list of the names and addresses of all property owners within 300 feet of the subject property as reflected in the county tax assessor's record. The City will notify the list in writing of the appeal request. The Planning Commission shall hold a public hearing on the appeal subsequent to the publication of a notice of the public hearing being made in a newspaper of general circulation. Said notice shall be published at least one time, fifteen (15) days prior to the hearing.

(B.) In considering such appeals, the Planning Commission may, where the literal enforcement of these regulations would result in unnecessary hardship, consider deviations from the strict application of any part of these regulations, wherein its judgment of the public convenience and welfare will be substantially served, the neighboring property will not be substantially injured, and a reasonable development and improvement or property will be permitted. In approving

## **LIST OF OWNERS OF ALL PROPERTY WITHIN 300 FEET**

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 owner of every piece of property within 300 feet of any part of the property. 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 setup an appointment. (The Planning Department will mail the notices for you.) Include map and list from the Tax Assessor's Office as an attachment to the application packet.

### **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, and no unchained pets).
- § Regulations dealing with in-home businesses and home rentals.
- § Rules that limit tree-cutting.

## **27-302 Pre-Application Conference**

### **27-302-1 When Required**

A pre-application conference with the Planning and Zoning Department is required for certain development applications, as identified in Table 27-301.1 (Application Procedures) and indicated by the individual application type sections below. The purpose of the meeting is to:

- A. Review the requirements of the Unified Development Ordinance; B. Review the requirements of the Fort Smith Comprehensive Plan;
- C. Discuss the nature and design of the proposed development; and D. Discuss the development application review and approval process.

**27-302-2 Timing** The pre-application conference shall be held at least ten (10) days before the submission date unless otherwise specified by the Director. Applications must be submitted within six months of the conference date or a new conference shall be required.

**27-302-3 Additional Parties** As necessary, the Planning and Zoning Department may include representatives of other departments or agencies at the pre-application conference.

## **27-303 Application Requirements**

### **27-303-1 Materials**

Current development application with submittal requirement instructions is available from the Planning and Zoning Department. Most applications are also available on the City website. All materials submitted in support of a development application become part of the public record and are generally not returned to the applicant(s).

### **27-303-2 Technical Studies**

The Director may require applicants to prepare additional technical studies in support of their applications for rezoning, planned rezoning or special use permits. The cost of the study shall be the applicant's responsibility. If the applicant disagrees with the Director's decision to provide additional technical studies, it may be appealed to the Planning Commission for a final decision. No further action shall be taken to process the development application until the Planning Commission makes a final determination on the appeal.

### **27-303-3 Deadlines**

The Planning and Zoning Department has a list of submission and revision deadlines for the various development applications available at their office. This list is also available on-line at the City's website. Failure to submit a complete or revised application on or before the deadline shall result in the City not placing the application on the scheduled Planning Commission agenda.

**27-303-4 Completeness**

Within three (3) business days of submittal by the applicant, a member of the Planning Staff shall review the development application to ensure that it is complete.

**A. When Complete.**

An application is complete when all of the items required by the UDO and on the application form are prepared and/or answered, and any required supplemental or additional applications (e.g., comprehensive plan amendment) are submitted with the appropriate fees to the Planning and Zoning Department.

**B. Return of Incomplete Applications.**

Incomplete applications shall be returned to the applicant with a written description of the missing information, defects, or other problems. The Director shall take no further action on incomplete applications. Appeals of this determination are made to the Planning Commission, which is the final decision-making body. No further action shall be taken to process the application until after the Planning Commission's determination. Applications that have been returned to an applicant for revisions shall not be processed until such revisions have been determined to be complete by the Director.

**A. Processing Complete Applications.**

The applicant will be notified that the application is complete and processed in accordance with this Chapter.

**B. Failure to Act.**

If the Director fails to act within three (3) business days, the application shall be deemed complete.

**C. Revisions Following Determination.**

Following a determination of completeness, any further revisions to the application by the applicant without the approval of the Director, or modifications which are contrary to the directions of the Planning Commission or Board of Directors shall void the determination of completeness and trigger a new three (3) day review period. All processing of the application shall stop until a new, complete application has been filed.

**D. Determination Not Substantive.**

A determination of completeness shall not constitute a determination of compliance with the substantive provisions of the UDO.

**27-303-5 Fee Schedule**

Application fees shall be set in an amount to recover the costs of processing, publicizing, and reviewing development applications. The Board of Directors shall set the fee schedule, which shall be included as an appendix to this Code. The Board may periodically review and modify the fee schedule based on the cost changes associated with the development application.

## **27-304 Neighborhood Meeting**

### **27-304-1 When Required**

A neighborhood meeting is required for certain development applications, as identified in Table 27-201.1 (Application Procedures) and indicated in the individual application type sections below. When not required, applicants are encouraged by the Board of Directors, Planning Commission and Planning Staff to meet with property owners who may be affected by the proposed development.

### **27-304-2 Neighborhood Identification**

Generally, the neighborhood shall include all parcels located within 300 feet of the boundaries of the parcel proposed for development, and any homeowners association, neighborhood association or merchants association registered with the Planning and Zoning Department and located within 300 feet of the parcel.

### **27-304-3 Meeting Arrangements**

The applicant shall be responsible for providing a meeting location and conducting the meeting at a time and place reasonable to the residents of the neighborhood. Written notice of the location and time of the meeting shall be provided by the applicant to the Planning and Zoning Department and residents of the area defined as the neighborhood at least seven days prior to the meeting. The meeting should also be held at least six days before the planning commission voting meeting.

### **27-304-4 Meeting Content**

At the meeting, the applicant shall present a full and accurate description of the proposed development plans, describe projected impacts of development, describe plans to mitigate or offset impacts, and facilitate a discussion of neighborhood questions and comments. The Planning Staff shall attend the meeting, but shall not be responsible for organizing the meeting or presenting information about the project.

### **27-304-5 Meeting Report**

Following the neighborhood meeting, the applicant shall provide the Planning and Zoning Department with a mailing list of the people who attended the meeting and a written summary of the discussion and comments. All documents and materials which detail the proceedings of the neighborhood meeting shall become part of the public record for the development application and should be submitted to the Planning and Zoning Department.

## **27-337-5 Application and Review Procedures**

- A. Determination of Completeness.** Applications shall be submitted to the Director for a determination of completeness pursuant to Section 27-303.
- B. Neighborhood Meeting.** The applicant shall comply with the requirements for a neighborhood meeting pursuant to Section 27-304 and 27-516.





The Director may waive the requirement for a neighborhood meeting where:

**1. The proposed variance shall allow development in compliance with surrounding land uses.**

**2. The variance request represents a minor change to the development requirements that shall have little or no effect on surrounding properties.**

**C. Staff Review.** Following a Determination of Completeness, the Staff shall review the application pursuant to Section 27-305.

**D. Notice and Public Hearing.** Following the completion of Staff review and required neighborhood meetings, the application shall be scheduled for a public hearing before the Board of Zoning Adjustment.

1. Notice shall be provided pursuant to Section 27-308.

**27-337-6 Action**

**A Action.** Following the public hearing, the Planning Commission may approve, approve as amended, or deny the application for variance.

**B Conditions.** The Board of Zoning Adjustment may impose conditions on the granting of a variance to insure compliance and to protect adjacent properties.

**27-337-7 Appeal of Board of Zoning Adjustment Decisions**

Decisions of the Board of Zoning Adjustment in respect to the above shall be subject to appeal only to a court of record having jurisdiction.