

## What do I need to have to apply?

- Pre-application form signed by Development Department. Pre-application meetings are by appointment only.
- Complete application packet. Please see the [Administrative Variance and Variance application packets](#) for full requirements.
- Application fee

## Do I need an attorney or other representation?

An attorney or contractor is not required to file a variance request, and many homeowners decide to go through the entire process themselves without a representative. Development Department staff is committed to guiding City residents through the process and making every step as clear as possible.

At the same time, some applicants choose to have a representative handle the application process and public hearing for them, especially in cases that may be complex or controversial. Representatives are often attorneys, or contractors that may have experience dealing with variance cases. Each case is unique, and the decision about whether to have a representative is up to the applicant.

## What is a variance?

A variance is a modification of the requirements of the City's Unified Development Ordinance (UDO) when the strict enforcement of the UDO would cause an unnecessary hardship unique to the individual property in question. Many variance cases are the result of building permits that have been denied. Common variances for residential properties include those for setbacks (to allow structures to be closer to property lines than would otherwise be permitted), stream buffer encroachments, excessive impervious surface, and accessory structure location. Some parts of the UDO, such as home occupation regulations or restrictions on uses in various zoning districts, may not be modified through a variance.

## What is the variance process?

All variances require a pre-application meeting with City staff to review proposed plans and make sure the correct variances are being applied for. Once you have a site plan for your proposed project, contact the Development Department to set up a pre-application meeting. For variances requiring a public hearing, pre-application meetings must be held at least one week before the application deadline.

Some variances can be processed administratively by City staff. For single-family residential properties, encroachments of no more than 10% of the required front setback, no more than 2.5' into the required side setback, and no more than 5' into the required rear setback can be processed administratively, provided that all other requirements are met. Staff can determine whether a proposed variance can be handled administratively at your pre-application meeting. Approval of administrative variances is at the discretion of the Development Director, based on criteria from the UDO.

All non-administrative variances require a public hearing, at which the applicant presents their case for the variance, with those wishing to support or oppose the variance also having an opportunity to speak. Approval or denial is at the discretion of the Mayor & City Council. This process typically takes approximately a month and a half, with application deadlines around the beginning of each month. For a calendar of application deadlines and public hearing dates, please contact the Development Department.

## What happens if my variance is approved or denied?

Approved variances often include conditions of approval at the discretion of the Development Director or Mayor & Council. These conditions place additional restrictions on the project, such as requiring adherence to a specific site plan or building plans. Conditions of approval must be met for a permit to be issued and cannot be waived without going through the variance process again.

Approved variances continue to be in effect on a property in perpetuity, even if the property is sold.

If the Development Director denies an administrative variance, the applicant may file an appeal within 15 days to be heard by the Mayor & Council, who will make a final decision after a public hearing. If the Mayor & Council denies a variance or appeal, the applicant has 30 days to appeal to Superior Court of DeKalb County.

## What criteria are variance decisions based upon?

All variance applications must include a Letter of Intent, which is a description of the project and an explanation of how it meets the review and approval criteria for a variance. For Administrative Variances, there are two criteria that must be addressed:

1. *The strict application of the requirements of this zoning ordinance would cause undue and unnecessary hardship to the property owner or authorized agent; and*
2. *The intent and continued integrity of the zoning ordinance can be achieved with equal performance and protection of public interests through grant of the administrative variance.*

For variances requiring a public hearing, five criteria must be addressed:

1. *There are extraordinary and exceptional conditions pertaining to the particular property in question because of its size, shape or topography; and*
2. *The application of this UDO to the particular piece of property would create an unnecessary hardship; and*
3. *Such conditions are peculiar to the particular piece of property involved; and*
4. *Such conditions are not the result of any actions of the property owner; or*
5. *Relief, if granted, would not cause substantial detriment to the public good nor impair the purposes or intent of this zoning ordinance.*

Letters of Intent for stream buffer variances must address the following:

1. *The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;*
2. *The locations of all streams on the property, including along property boundaries;*
3. *The location and extent of the proposed buffer or setback intrusion;*
4. *Whether alternative designs are possible which require less intrusion or no intrusion;*
5. *The long-term and construction water-quality impacts of the proposed variance; and*
6. *Whether issuance of the variance is at least as protective of natural resources and the environment.*

## Do I need a survey?

While most variance requests will require a survey, some will not. Please see the Variance and Site Plan Checklists page in the [Administrative Variance and Variance](#) application packets for complete site plan instructions.

All variance applications require an accurate, to-scale site plan showing existing and proposed structures and site features, as well as the proposed construction requiring a variance. In some cases, this may be done without a survey at the discretion of the Development Department. However, a survey is usually preferable, and often required to accurately show the proposed variance. Stream buffer variances in particular typically require a survey to accurately show the location of streams and buffers and the extent of encroachment by proposed construction.

## Can I find out whether my variance is likely approved before I apply?

While Development Department staff cannot make any guarantees of whether the Mayor & City Council will approve or deny a variance request, staff will assist applicants in understanding applicable review criteria. For all non-administrative cases, staff will prepare a report with an analysis of the proposed project and whether it fulfills the applicable review criteria. Staff will recommend approval or denial of each case, along with proposed conditions of approval. The Mayor & City Council take this report and recommendation into consideration (along with the applicant's application and letter of intent, the public hearing, and other pertinent factors), but ultimately make their own decision based on the merits of each request.