

Zoning Board of Adjustment (ZBA)

The Zoning Board of Adjustment (ZBA) is a quasi-judicial board comprised of seven members, appointed by the City Council, representing such disciplines as engineering, architecture, construction and real estate. The ZBA meets on the **second and fourth Thursday of each month** (except November and December) beginning at 2PM in the City Council Chambers on the 3rd Floor of City Hall. A quorum at any meeting of the ZBA consists of four (4) members. The concurring vote of two-thirds of the members present is needed to approve a request or to render a decision in an appeal. Since the ZBA is a quasi-judicial board, its decision can only be appealed to the Circuit Court of Jefferson County and, in accordance with state law, such an appeal must be filed within 15 calendar days of the date of the decision. No other appeal is permitted.

WHAT DOES THE ZBA DO?

The **ZBA** has three main responsibilities:

1) To consider requests for a VARIANCE from the terms of the Zoning Ordinance when it is not contrary to the public interest.

A **variance** is a **relaxation** of the terms of the Zoning Ordinance where such variance will submit a request, accomplish a specific function, and state specific and unique circumstances that exist that would authorize consideration from the Board. Request must demonstrate they will not be contrary to the public interest and where, owing to conditions peculiar to the property the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship but where the spirit of the Ordinance shall be observed and substantial justice done. No such variance shall be granted absent an affirmative finding of fact on each of the following standards based upon the evidence presented by the applicant.

Physical Characteristics of the Property. The exceptional narrowness, shallowness or shape of a specific piece of property, exceptional topographic conditions, or other extraordinary and exceptional conditions of such property would result in peculiar and exceptional practical difficulties to, or exceptional or undue hardship upon the owner of such property upon the strict application of any regulation enacted by the ordinance codified in this Ordinance.

Unique Characteristics. The specific conditions cited are unique to the subject property and generally not prevalent to other properties in the general area, that the granting of the application is necessary for the preservation and enjoyment of a property right, and not merely to serve as a convenience to the applicant.

Hardship Not Self-Imposed. The alleged difficulty or hardship has not been created by the previous actions of any person having an interest in the property.

Financial Gain Not Only Basis. Financial gain is not the sole basis for granting the variance.

No Injury to Neighboring Property. The granting of the variance will not be injurious to other property or improvements in the area, impair an adequate supply of light and air to adjacent property, or substantially diminish or impair property values within the area.

No Harm to Public Welfare. The granting of the variance will not be detrimental to the public welfare, increase the congestion in public streets, or increase the danger of fire, or imperil the public safety, or in any other respect impair the health, safety, comfort, morals, or general welfare of the inhabitants of the City of Birmingham, and will not substantially impair the intent and purpose of this Ordinance.

2) To determine whether to approve or deny an application for a SPECIAL EXCEPTION to normal zoning rules when such a use or development is specifically not authorized or limited in the zoning ordinance.

A Special Exception is a use not permitted by right, but it may be allowed in any zoning district or limited to certain zoning districts, provided that certain conditions are met. The primary condition is that the Special Exception use **will not impair the health, safety, convenience, or comfort** of the area, especially the adjoining properties.

3) To hear and decide appeals of the zoning ordinance when it has been alleged that there is an error in any order, requirement, decision or determination made by a city official in the administration of the zoning ordinance.

The ZBA can hear an Appeal of the Decision of the Director of the Department provided that the decision has been given in writing to the owner within (15) days. In hearing this appeal, the ZBA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from; and may make such order, requirement, decision or determination as ought to be made; to that end shall have all the powers of the Director of the Planning, Engineering, and Permits Department.

4) To consider requests for a MODIFICATION from the terms of the Zoning Ordinance when it is not contrary to the public interest.

A modification is an adjustment of the strict application of the provisions of the Zoning Ordinance where such a modification may cause a permit to be issued upon a reasonable condition prescribed in the following conditions:

The extension of a district for a distance of not more than 50 feet where the boundary line of a district divides a lot or tract held in single ownership at the time of the passage of the Ordinance.

The determination of the proper district applicable to particular land in cases of ambiguity or doubt arising from a difference between the actual street layout on the ground and the street layout as shown on the zone map.

Reduction in the parking and loading requirements of the Ordinance whenever the character or use of a building or premises is such as to make unnecessary the full provision of parking or loading facilities, or where a public parking lot or deck is available within walking distance, equal to 1,320 feet, or where the applicant can demonstrate that a surplus of on-street parking, in a commercial, mixed-use, manufacturing or industrial district, exist and is within walking distance of the subject use.

HOW DO I FILE A ZBA CASE?

There are **2 MAIN STEPS** involved in the process of filing a request for an action from the ZBA.

STEP 1 – Filing and completing the APPLICATION PROCESS

The Application process consists of two parts: the **application and a site plan.**

APPLICATION –Applications are available in Room 210 of City Hall at the main counter, can be emailed to you or can be downloaded on-line from the City’s website at www.birminghamal.gov . Staff will be glad to assist with completing the application. **The filing deadline is four (4) weeks prior to the next agenda date.**

Key parts of the application are:

- The **owner and applicant** (if different) **both MUST** sign the application, and
- A **detailed** description of the proposed variance, special exception, modification or appeal must be listed and the **hardship/justification MUST** be included.

SITE PLAN – If the request is for a variance, special exception, or a modification a **site plan MUST** be included with an application. This is a drawing or plan (minimum of 8 ½ by 11 inches in size) drawn to scale, that **shows what is, or will be, placed or built on the subject property.**

The Site Plan MUST include:

- Accurate property lines.
- Location, size, and height of all **existing and/or proposed** structures.
- Setback (front, side and rear yard) dimensions for all existing **and/or** proposed structures, including main buildings, accessory structures, including driveways and walkways and, if a commercial development, the dumpster location and landscaping.

Once the **Application** and **Site Plan** have been completed, staff will accept your case and notify the appropriate neighborhood association, who will be

expected to render a recommendation prior to the ZBA meeting date.

STEP 2 – Presenting the request before the ZONING BOARD of ADJUSTMENT **During the ZBA meeting**

- The Planning staff will present a brief overview of the request
- The applicant or his agent may present additional information on the request.
- The public will be allowed to speak for or against the request

The Zoning Board of Adjustment:

- Usually vote on the request on the date it is presented, or continue a case to another date
- May approve exactly, or in part, what was requested
- May place certain requirements or conditions on the action (conditions are binding)
- May deny the request
- An aggrieved party may appeal the decision of the Board*

* An appeal of a decision of the ZBA **MUST** be filed with the Circuit Court of Jefferson County within **(15) calendar days of the date of that decision.**

HOW LONG WILL IT ALL TAKE?

Once a completed application has been received, (“completed” means that all the information listed in **STEP 1 has been provided**) and all fees paid, your request should be heard by the Board within **4 weeks**.

What: The Zoning Board of Adjustment

Who: Angelica Moton (205)-279-8917

When: 2nd and 4th Thursdays of each month at 2pm

Where: Council Chambers, 3rd Floor City Hall

How long: 4 weeks

How much: **\$150.00 residential**

\$500.00 commercial

\$300.00 appeals

Staff is always available to assist you.
Please phone the main number (254-2478);
visit us on-line at www.birminghamal.gov or
in Room 210 of City Hall.

ZONING BOARD OF ADJUSTMENT

CITY OF BIRMINGHAM

RANDALL L. WOODFIN
MAYOR



PUTTING PEOPLE FIRST
WWW.BIRMINGHAMAL.GOV

**DEPARTMENT OF
PLANNING, ENGINEERING
AND PERMITS**

KATRINA R. THOMAS, DIRECTOR