All applications and plans must be submitted through the Project Portal https://Cityworks.BrookhavenGA.gov/ProjectPortal



Variances in General

The City of Brookhaven offers two types of variances: a Variance with the Board of Appeals and an Administrative Variance. The Board of Appeals shall determine whether the requested Variance or Special Exception meets the applicable requirements. The Community Development Director shall determine whether the requested Administrative Variance meets the applicable requirements.

Both types of variances require a pre-application meeting.

Some aspects of development are not eligible for variances, including requests that would:

- 1. Allow a structure or use not authorized in the subject zoning district or a residential density of development that is not authorized within the subject district;
- 2. Allow an increase in maximum building height;
- 3. Waive, vary, modify or otherwise override a condition of approval attached to an amendment, special land use permit or other development approval under this zoning ordinance;
- 4. Reduce, waive or modify in any manner the minimum lot area or lot width required for any lot;
- 5. Allow the reestablishment of any nonconforming use that has been abandoned or lost its nonconforming rights;
- 6. Extend the time period for a temporary outdoor social, religious, entertainment or recreation activity approved by the community development director;
- 7. Increase lot coverage more than three and one-half percent over the applicable district limit for the installation or construction of a backyard cottage;
- 8. Decrease open space requirement in the Peachtree Road district, unless approved by city council;
- 9. Allow the expansion or enlargement of any nonconforming use; or
- 10. Allow customer contact for a home occupation authorized by this zoning ordinance.

Pre-Application Meetings

All types of variances and special exceptions require a pre-application meeting. To initiate a request for a Variance or Special Exception within the City of Brookhaven, an applicant must schedule and hold a pre-application meeting with the Planning & Zoning staff. Pre-Application meetings can be scheduled by emailing planning@brookhavenga.gov

Pre-Application meetings for BOA Variances <u>must take place by the deadline of 4pm on the Friday</u> preceding the application submission deadline on the last Wednesday of the month. These meetings are scheduled as needed and the purpose of the pre-application meeting is to establish an expectation on the part of both staff and the applicant for the zoning appeal process.

The applicant shall provide preliminary/finalized site plans, a letter of intent regarding the request, and/or other illustrative documents as necessary at the time of the pre-application meeting. The applicant will then provide an overview of their proposed application and their reasoning for why the application is necessary. Staff can then inform the applicant of the City's process to consider the proposed change, and offer a preliminary analysis for strength and/or weakness of the proposal.

Following the pre-application meeting, applicants can submit their application and required supplemental materials (detailed in the following checklist) by the deadline of 4pm on the last Wednesday of each month online at:



Board of Appeals Variances

The Board of Appeals (BOA) is a body of 7 residents in the City of Brookhaven who are appointed by the Brookhaven Mayor & City Council, and volunteer their time to evaluate variance requests. The Board of Appeals <u>meets on the third Wednesday of each month at 7:00 PM</u> in the <u>Brookhaven City Hall Council Chambers, located at 4362 Peachtree Road, Brookhaven, GA 30319.</u>

The Board of Appeals Variance process for the City of Brookhaven takes approximately 2 months and involves one public hearing, where the item(s) will be heard and a decision will be made in front of the public. Processing schedules are dictated by The State of Georgia (O.C.G.A. § 36-66-1) which regulates zoning hearings procedures and sets the minimum and maximum amounts of time for public notice. <u>Applications cannot be expedited due the state minimum notification requirements.</u>

The Board of Appeals can grant variances from the Zoning Ordinance, Stream Buffer Ordinance, Sign Ordinance, and other exceptions within the Land Development Code.

Decisions by the Board of Appeals are based on the applicant's submittal information, the Staff Recommendation, and feedback from the public. The Community Development Department Recommendation weighs the variance request(s) against the applicable criteria outlined on page 2 of the Variance Application Checklist packet, based on application submission, City & County records, outside research, and feedback from the surrounding community.

PRE-APPLICATION MEETING

Applicant meets with Planning & Zoning Staff by 4pm the Friday before application deadline.

APPLICATION

Complete
application must be
received prior to
4pm on the last
Wednesday of the
Month.

APPLICATION ACCEPTED

All required materials have been provided. Staff will notify applicant via e-mail.

FEES PAID

Fees may be paid by credit card through the Project Portal, or by check or credit card in person at City Hall.

IN BETWEEN APPLICATION ACCEPTANCE AND HEARING DATE

PUBLIC HEARING NOTICE

Staff publishes the following public hearing notices per State Zoning Procedures Law:

- Newspaper Notice
- Mailed Notice: Notice shall be mailed to the applicant, all owners of property within 250 feet of the subject property
- Posted Notice: Notice signs shall be posted on the subject property

STAFF RECOMMENDATION

Community Development Department reviews the application and issues a recommendation to the Brookhaven Board of Appeals.

ONE WEEK BEFORE HEARING

Staff recommendation is published to the City website and sent to applicant.

PUBLIC HEARING

Case will be heard by the Board of Appeals, and a decision will be issued.

FINAL ACTION LETTER

A final action letter will be issued in the days following the public hearing, detailing the Board of Appeals decision and conditions.

PERMITTING

If variance is approved, regular permitting protocol must be followed in accordance with Final Action Letter.



Details about the Public Hearing

At the Public Hearing, the Chair of the Board of Appeals will call the meeting to order. Each case on the agenda will be called individually and follow the outline below:

Intoduction of Case

City Staff will introduce variance request and outline its recommendation based on the criteria of section 27-1098

Public Hearing - Support

Applicant, Property Owners, and all in attendance who support the request share 10 minutes to present their case.

This can include any testimony and other evidence in support of the variance request.



Immediately following the applicant and other supporters' time, any in attendance who are in opposition are permitted 10 minutes to present their testimony and evidence.



Any time that is left from the applicant's initial ten minutes can be used to rebut the opposition's testimony.

Board Discussion & Decision

Public Comment is closed and the Board begins discussion. The Board discusses the case publicly, but the public may not interject during Board discussion unless directly addressed by a member of the Board of Appeals.

Potential Outcomes include:

- Approval what has been presented is approved as is
- Approval Conditional what has been presented is approved subject to conditions outlined by the Board of Appeals
- Denial what has been presented is denied and the same variance cannot be requested for 2 years
- Withdrawal without Prejudice applicant wishes to withdraw their application without damaging their right to have the matter heard at a later date
- Deferral The Board, Staff, or applicant may request a deferral if additional information or time is needed



Administrative Variances

The Administrative Variance process does not require a public hearing, but does require public notice. The Community Development Director issues a decision within 30 calendar days for an administrative variance or within 45 calendar days for an administrative stream buffer variance. The decision date calendar begins on the date that a complete application is received by City Staff. The public is invited to provide comments to City Staff during the required 15-day public comment period. The Community Development Director shall determine whether the requested administrative variance meets the applicable requirements.

The Community Development Director is authorized to consider the following administrative variances:

- (1) Reduction of front or rear setback requirements by up to ten percent, but not including any transitional buffer;
- (2) Reduction of street side (corner lot) setback requirement in RS-100, RS-85, RS-75 and RS-60 districts by up to five feet on a lot that does not exceed the minimum lot width required in the subject zoning district,
- (3) Reduction of interior side setback requirements by up to one foot or 5%, whichever is greater;
- (4) Reduction of minimum building spacing requirements for multiple buildings on a single lot by up to ten percent as long as the reduction does not reduce the minimum requirement imposed by chapter 7;
- (5) Increase in the maximum retaining wall height by no more than two feet; and
- (6) Reduction of the minimum retaining wall setback and distance requirements by no more than two feet.
- (7) Reduction of minimum off-street parking and loading ratios by up to one space or ten percent, whichever is greater;
- (8) Reduction of minimum off-street parking ratios for any lot located within 1,000 feet of the boundary of a MARTA rapid transit station by up to three spaces or 25 percent, whichever is greater.

PRE-APPLICATION MEETING

Applicant meets with Planning & Zoning Staff by 4pm the Friday before application deadline.

APPLICATION

Complete application must be received to initiate the calendar day review process.

APPLICATION ACCEPTED

All required materials have been provided. Staff will notify applicant via e-mail.

FEES PAID

Fees may be paid by credit card through the Project Portal, or by check or credit card in person at City Hall.

BETWEEN APPLICATION ACCEPTANCE AND FINAL DECISION

15-DAY PUBLIC COMMENT PERIOD

- Following acceptance of application, staff will generate public notice signage.
- Staff will notify applicant when signage is ready for pickup at City Hall.
- Applicant posts signage along street frontage to be visible by the traveling public, and email photos of signage to staff to begin the 15-day public comment period.

STAFF SUMMARY

Staff reviews the application and issues a summary to the Planning & Zoning Manager.

DECISION LETTER

A decision letter will be issued on or before the decision deadline.

PERMITTING

If variance is approved, regular permitting protocol must be followed in accordance with Decision Letter.