

At the time of filing, this application must be complete.

EUREKA SPRINGS BOARD OF ZONING ADJUSTMENT

APPLICATION FOR NOTICE OF APPEAL

Date \_\_\_\_\_

Name of Applicant

\_\_\_\_\_

Address

\_\_\_\_\_

\_\_\_\_\_

Phone \_\_\_\_\_ Owner \_\_\_\_\_ Tenant \_\_\_\_\_ Contractor \_\_\_\_\_

Other \_\_\_\_\_

Name of Property Owner if different than Applicant

\_\_\_\_\_

Address

\_\_\_\_\_

\_\_\_\_\_

Reason for appeal request

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

What is the proposed use? Hours, days of week, months of operation?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Exhibits that must be provided to the Board of Zoning Adjustment/City Clerk on the Friday of the week prior to the public hearing. The application will not be considered without these exhibits:

- \_\_\_\_\_ 1. Proof of publication of the public notice.
- \_\_\_\_\_ 2. A list of names and current address of all property owners within 200 feet of the property. (This information is available from the Carroll County Assessor’s office in Berryville)
- \_\_\_\_\_ 3. One copy of notification letter sent to surrounding property owners.
- \_\_\_\_\_ 4. Return receipt cards as proof of notification of surrounding property owners at least 10 days prior to public hearing.

I certify that I have read and understand Sections 14.08.10 C, D and E of the Eureka Springs Municipal Code (attached) which apply to the application for which I am seeking approval. I further certify that all of the information furnished is correct to the best of my knowledge.

\_\_\_\_\_  
\_\_\_\_\_

Signature of owner if other than applicant  
signature

Applicant’s

On \_\_\_\_\_ the Board of Zoning Adjustment scheduled a public hearing on

\_\_\_\_\_.

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The Board of Zoning Adjustment of the City of Eureka Springs met in \_\_\_\_\_ regular \_\_\_\_\_ special session on \_\_\_\_\_ to review the above application for an appeal. The application was \_\_\_\_\_ approved \_\_\_\_\_ denied with \_\_\_\_\_ ayes, \_\_\_\_\_ nays and \_\_\_\_\_ abstentions.

The application was approved with the following conditions:

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The application was denied for the following reasons:

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Board Secretary  
Chairman

Board

Date

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File your application and supporting documentation with the City Clerk or Building Official's office. The application will be considered at the next Board of Zoning Adjustment meeting and a public hearing will be scheduled. Additional documentation may be requested.

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INCOMPLETE APPLICATIONS OR APPLICATIONS LACKING SUPPORTING DOCUMENTATION WILL NOT BE CONSIDERED

From the MUNICIPAL CODE OF THE CITY OF EUREKA SPRINGS:

CHAPTER 14 ZONING

14.08.10 C

1. The Board of Zoning Adjustment shall hear and decide appeals from decisions of the city regarding enforcement or application of this chapter. The Board may affirm, reverse, or modify, in whole or in part, such decisions.

2. Any person or entity affected by a decision of the city may appeal that decision to the board for a hearing. The applicant for an appeal must file a notice of appeal with the city within 15 days of the decision. The city must transmit the complete record of the decision to the board within five days of receiving notice of appeal.

The following procedures shall apply:

a. There shall be a public notice of the hearing published at least once in a newspaper of general circulation in the city at least eight days before the hearing, which notice sets forth the time and place of such hearing and the decision which is appealed. The responsibility and cost of the public notice shall be borne by the person filing the appeal.

b. The applicant shall notify all adjacent property owners (within 200 feet of the property lines in every direction) by certified mail, return receipt requested, at least 15 days prior to the public hearing. All return receipts and a copy of the letter with an affidavit of publication by the publisher shall be furnished to the Board of Zoning Adjustment in care of the City prior to the public hearing.

c. The applicant shall post at least one, or more where deemed necessary for adequate notice, conspicuous sign or signs on the property subject to a conditional use hearing at least 15 days prior to said hearing.

Signs for this purpose shall be provided by the city and shall note the time and date of the public hearing. Each sign shall be no smaller than two feet high by three feet wide and to

contain the words **BOARD OF ZONING ADJUSTMENT APPEAL HEARING ON THIS PROPERTY**, printed in bold block letters a minimum of three inches high with a copy of the public notice concerning the conditional use application to be placed on the sign in a clear, weatherproof enclosure.

d. There shall be no hearing without the required public notice. Notice shall not be published before the Board of Zoning Adjustment has scheduled the public hearing.

Action by the Board of Zoning Adjustment on appeals.

a. The Board shall hear the appeal at the public hearing and shall consider the applicant's reasons for the appeal as well as public comments. The applicant must be present at the meeting for the matter to be considered. If the applicant is unable to attend, written authorization from the applicant authorizing representation must be presented to the board for the matter to be considered. Any decisions made by the designated agent shall be binding on the landowner.

b. The Board shall either grant or deny the appeal within a reasonable time, imposing such conditions, if any, deemed necessary and appropriate to protect the character of the neighborhood. If approved, the appeal is thereby granted unless appealed to the City Council. Consideration shall be given to the concerns listed in subsection 14.08.08 as for a conditional use, to the extent relevant. Particular consideration shall be given to the impact on adjacent property

#### 14.08.10 D Variances and Waivers

(1) The Board of Zoning Adjustment shall also have the power to grant variances from or to waive the literal provisions of this chapter. Variances and waivers can include, but are not limited to, matters such as setback lines, frontage requirements, height limits, lot size, density requirements, and yard regulations. A variance or waiver from the literal provision of this chapter shall not be granted unless written application is made demonstrating:

a. Literal enforcement of the provisions of this chapter would result in undue or unnecessary hardship.

b. Special circumstances exist which are unique to the property in question and which do not apply to other properties in the same district.

c. The special circumstances do not result from the actions of the applicant.

d. Literal enforcement would deprive the applicant of rights commonly enjoyed by other properties in the same district.

e. Granting the waiver or variance will be within the spirit and intent of this chapter and not against public interest.

(2) Nonconforming uses of lands, or variances or waivers granted affecting lands, in the same or another district shall not be grounds for a waiver or variance.

(3) A public hearing shall be held and public notice shall be given. The Board of Zoning Adjustment shall grant a variance or waiver only to the extent needed to relieve the unnecessary hardship.

(4) To grant a waiver or variance, the Board of Zoning Adjustment must find:

a. That the requirements set forth above have been met by the applicant;

b. That the reasons set forth in the application justify the granting of the waiver or variance;

c. That the variance is the minimum variance that will make possible the reasonable use of the land, building or structure;

d. That the granting of the waiver or variance will be in harmony with the general purpose and intent of this chapter, and will not be detrimental to the neighborhood or detrimental to the public welfare.

(5) The Board of Zoning Adjustment shall not permit, as a variance, any use in a zone that is not permitted under this chapter.

(6) The action of this Board of Zoning Adjustment in granting any variance or waiver of any provision of this chapter shall not be deemed a waiver or variance of any provision of any protective code or other laws.

(7) In granting any variance or waiver, the Board of Zoning Adjustment may require appropriate conditions and safeguards to ensure compliance and to protect adjacent property. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

E. Appeals from the Board of Zoning Adjustment.

(1) 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, in the manner provided by the laws of the State of Arkansas.

(2) An appeal of a Board of Zoning Adjustment decision to a court shall stay all proceedings in furtherance of that decision, unless the city certifies to the board in writing that a stay would cause imminent peril to life or property. The certificate shall state the Building Official's supporting reasons and facts. In such a case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board or by a court of record on application, after notice to the building inspector from whom the appeal is taken, and on due cause shown.

F. It is the intent of this chapter that questions of interpretation and enforcement shall be first presented to the mayor, or the person designated by the Mayor for such purpose ("the city"). Such questions shall be presented to the Board of Zoning Adjustment only on appeal from the decision of the city, and recourse from the decisions of the Board of Zoning Adjustment shall be to the courts as provided by state law.

It is further the intent of this chapter that the duties of the City Council in connection with this chapter shall not include hearing and deciding questions of interpretation and enforcement that may arise. The procedure of deciding such questions shall be as stated in this section and this chapter. (Ord. No. 1816, 11-2-2000)

SAMPLE LETTER OF NOTIFICATION

TO: (Name) \_\_\_\_\_

(Address) \_\_\_\_\_

(City, State Zip Code) \_\_\_\_\_

(Date) \_\_\_\_\_

Dear \_\_\_\_\_,

This letter is to inform you that \_\_\_\_\_ has  
purchased/owns the property at \_\_\_\_\_  
----- in Eureka Springs, Arkansas.

I/We have applied to the Planning Commission or Board of Zoning Adjustment  
for a (type of variance) \_\_\_\_\_ variance at (street address or  
property location ) \_\_\_\_\_.

If you wish to make comments in support or protest of this project, you may  
submit them in writing to: The Board of Zoning Adjustment, City Hall, 44 S. Main St.,  
Eureka Springs, AR 72632 and/or attend the public hearing at 6 p.m. on  
\_\_\_\_\_ in the Western District  
Carroll County Courthouse, 44 S. Main St., Eureka Springs, AR.

Sincerely,

(Your name)

Note: One copy of your letter of notification, the list of surrounding property owners and  
the return receipt cards must be presented to the Planning Commission or Board of  
Zoning Adjustment before or during the public hearing.