

Variance and Special Exception Procedures

Please refer to the Planning & Zoning Calendar to determine submittal deadlines.

Provide three (3) complete sets of the following:

- Variance or Special Exception Permit Application completely filled out and signed by applicant.
- If applicant does not yet own the property to be developed {for commercial} the applicant will need to provide the City with a notarized document stating that the owner gives his/her permission for applicant to apply for variance.
- Clearly state the purpose for the variance(s) on the application(s) or Special Exception and attach this information to the application.
- Site Plan, signed and sealed
- Review fee (see permit application for fee required)
- Pass through fees (Ord 2013-01)

Upon receipt:

- City Hall staff will date stamp the permit application and provide copies to our Engineer of record, Planner, and any other City staff deemed applicable to provide a review of application.
- City Staff will generate, through use of the Orange County Property Appraiser's {OCPA} website, an address listing of properties within 500' of subject property and send out notice letters at least ten (10) days prior to P&Z Meeting.
- Staff will prepare signage in accordance with City code for applicant to post at property. Applicant will be required to provide a notarized signature that they have posted sign as mentioned in City Code.

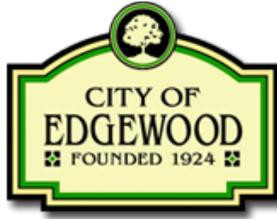
Hearing Process as follows:

- P&Z meets the 2nd Monday of the month.
- Board will be in receipt of comments from City Engineer, Planner, and any other City Staff comments prior to meeting.
- After their review and consideration, the Board will make their recommendation to City Council.
- City Council meets the 3rd Tuesday of the month they will be provided with the same information as P&Z including the recommendation of P&Z Board.

This is the normal process in consideration that there are no unforeseen circumstances (i.e. need for additional information, revision to plan, etc.).

Applicant should attend both meetings, and be prepared to answer any questions.

*all hearings are done pursuant to Florida Statute 119, and Sunshine Law.



Edgewood, Florida, Code of Ordinances » PART II - CODE OF ORDINANCES » Chapter 134 -ZONING»

DIVISION 3 - BOARD OF ADJUSTMENT; APPEALS AND VARIANCES

Sec. 134-103 - Planning and zoning board to act as board of adjustment

The planning and zoning board shall act as the board of adjustment for the city.

(Ord. No. 89-346, § 2(26-18), 3-21-1989)

Sec. 134-104 - Powers.

Generally in individual cases, the board shall have the following powers:

(1)

Appeals. To hear and make recommendations to the city council on appeals where it is alleged that there has been an error in any requirement, order, decision or determination made by the city clerk in the enforcement or interpretation of this chapter.

(2)

Special exceptions. To hear and make recommendations to the city council on such special exceptions as the city is specifically authorized to pass on by this chapter; to decide such questions as are involved in determining whether special exceptions should be granted; and to recommend the granting of special exceptions with such conditions and safeguards as are appropriate under this chapter or to recommend the denial of special exceptions when not in harmony with the purpose and intent of the chapter. A special exception shall not be recommended by the board nor approved by the city council unless and until the board and city council shall make a finding that the granting of the special exception shall not adversely affect the public interest.

a.

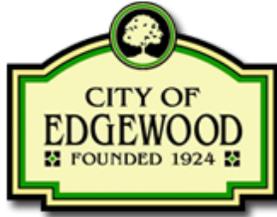
Time limit.

1.

Any special exception recommended by the board and granted by the city council shall expire 12 months after the effective date of such action by the city council, unless the rights of the special exception granted have been exercised prior to the expiration date. Acquisition of necessary building permits, installation of required equipment or initiation of the activity granted shall be considered adequate exercising of the special exception rights.

2.

Upon written application, filed at least 30 days prior to any expiration date, the city council may renew such special exception for one period of up to 12 months, providing justifiable cause is shown. The term "justifiable cause" shall include, but not be limited to, the following:



- (i) Acts of God and other natural disasters;
- (ii) Material shortages;
- (iii) Interruptions due to strikes and other employee job actions;
- (iv) Fire, explosion, or some similar catastrophe;
- (v) Financial reversals of a temporary nature;
- (vi) Other situations beyond the control of the permit holder.

b.

Conditions. When the board recommends approval of any special exception, or when the city council approves any special exception, it may prescribe appropriate conditions and safeguards in conformity with the intent and provisions of this chapter. Violation of such conditions or safeguards, when made a part of the terms under which the special exception is approved, shall be deemed a violation of this chapter.

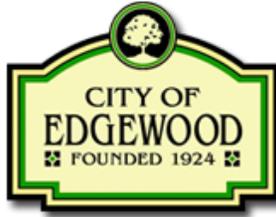
(3)

Variances.

a.

When allowed. Where there are practical difficulties or unnecessary hardships in complying with the strict letter of this chapter, or other chapters of this city Code, if so provided, i.e., sign code (chapter 122), the board may recommend to the city council approval of a variance (except as prohibited herein) so that the spirit of this chapter will be observed; the public health, safety, good order and general welfare will be maintained; the rights of all parties will be equally protected and substantial justice will be done. A variance shall be considered only with regard to a lot or building site area, height, size or location of a structure, size of yards or open spaces, or of those provisions required by this chapter in support of the uses permitted by this chapter, i.e., parking, landscaping, etc., or of those provisions provided for in other chapters of this Code, i.e., sign code (chapter 122). The preservation of any historic or specimen tree as defined in [chapter 130](#) may be considered as a basis for the granting of a variance from the literal application of the provisions of this chapter or subdivision regulations set forth in [chapter 126](#). If, in the determination of the planning and zoning board or designee, the sole basis of the request for a variance is to preserve such tree which would otherwise have to be removed, the planning and zoning board or designee may direct the required variance fee to be waived.

b.



Standards for approval. Prior to recommending approval of any variance from the requirements of this chapter and prior to the granting of the variance, the board and city council shall find:

1.

That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.

2.

That the special conditions and circumstances do not result from the actions of the applicant.

3.

That approval of the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in the same zoning district.

4.

That literal interpretation of the provisions contained in this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.

5.

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

6.

That approval of the variance will be in harmony with the general intent and purpose of this chapter and that such variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

c.

Conditions. When the board recommends approval of any variance, or when the city council approves any variance, it may prescribe appropriate conditions and safeguards in conformity with the intent and provisions of this chapter. Violation of such conditions or safeguards, when made part of the terms under which the variance is approved, shall be deemed a violation of the regulations of this chapter.

d.

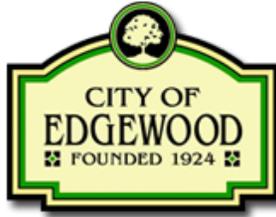
Review. Variances based on specific hardships may be subject to periodic review and the board may recommend to the city council the same be terminated if it is found that the hardship upon which the variance was approved no longer exists, or that the conditions or limitations imposed are not being observed.

e.

Time limit.

1.

Any variance recommended by the board and approved by the city council shall expire 12 months after the effective date of such action by the city council, unless the rights approved by



the variance have been exercised prior to the expiration date. Acquisition of necessary building permits, installation of required equipment or initiation of the activity granted shall be considered adequate exercising of the variance rights.

2.

Upon written application filed at least 30 days prior to any expiration date, the city council may grant an extension of such variance for one period of up to 12 months, provided justifiable cause is shown. The term "justifiable cause" shall include, but not be limited to, the following:

(i)

Acts of God and other natural disasters;

(ii)

Material shortages;

(iii)

Interruptions due to strikes and other employee job actions;

(iv)

Fire, explosion, or some similar catastrophe;

(v)

Financial reversals of a temporary nature;

(vi)

Other situations beyond the control of the permit holder.

f.

Expansion. Structures involving variances may be built only by or for the applicant and become legal nonconforming structures. Any proposed expansion of the variance granted shall be subject to a new variance proceeding before the board and the city council as provided above.

(4)

Variances or special exceptions prohibited.

a.

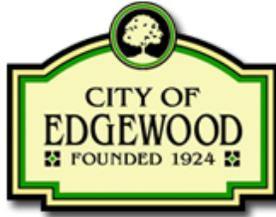
The board shall not consider or recommend nor shall the city council approve any variance or special exception which is otherwise prohibited or which includes any of the following:

1.

A use which is specifically permitted in another district.

2.

Under no circumstances permit a use not generally or by special exception permitted in the zoning district involved, or any use expressly or by implication prohibited in the zoning district. No nonconforming use of the neighboring lands, structures or buildings in the same zoning district and no permitted use of the lands, structures or buildings in other zoning districts shall be considered grounds for the authorization of a variance. A variance or



special exception which would violate requirements or regulations of other departments or agencies shall be invalid.

b.

The city clerk shall refuse to accept an application for a variance or special exception which would be prohibited under the provisions of this chapter.

(5)

Expiration of variances or special exceptions. Whenever a privilege approved by variance or special exception shall be voluntarily removed or abandoned for a period of six months, such privilege shall be considered terminated. The time limits stated herein may be extended up to six months by the city council, upon written request of the applicant stating sufficient reasons for not exercising privileges previously granted.

(6)

Effect of denial of variance request. Whenever the city council has denied a variance request, it shall not reconsider that variance request nor shall it consider a request for any variance greater than or equal to that already denied, except:

a.

Where a period of three years has run since the date of the council's prior action on the variance request. The right to reapply for a variance request after the passage of three years shall not prevent the city from applying the doctrine of administrative res judicata; or

b.

Where the relevant circumstances surrounding the variance request have substantially and materially changed since the city council's earlier decision.

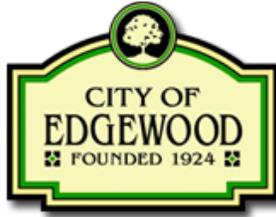
(Ord. No. 89-346, § 2(26-19), 3-21-1989; Ord. No. 2001-13, § 6, 8-21-2001; Ord. No. 2004-03, §§ 8—10, 5-4-2004)

Sec. 134-105. - Hearing; notice required; decision.

(a)

The board shall fix a reasonable time for the hearing of all applications. Upon the filing of an application for special exceptions and variances, the board shall mail a copy of a notice, by United States mail, with the postage prepaid, at least ten days prior to the date of the hearing as set forth in said notice, to the owner of the property and owners of all property located within 500 feet to the subject property to their last known addresses. The name of the owner of record of the property which is the subject of the hearing and a list of the owners of all property located within 500 feet thereof setting forth their last known addresses shall be furnished to the city clerk at the time of filing the application. Such notice shall be prescribed by the city council. The notice shall, at least, contain the name of the party applying for relief, the owner's name as shown by the public records of the county on the date of the filing of the application, the purpose of the hearing, the legal description of the property that is the subject of the hearing, and the date, time and place of the hearing.

(b)



In addition to such notice, at least ten days prior to the date of public hearing before the board, the person filing the application shall cause to be placed in a conspicuous and easily visible location on the property subject to the application, a sign furnished by the board, setting forth in boldface letters the relevant facts pertaining to the application and the date, time and place when the hearing shall be heard.

(c)

Notice requirements for all other hearings shall be set by the city council from time to time.

(d)

The procedure for the hearings shall be set from time to time by the board, but any party may appear in person or by agent or attorney.

(e)

The board shall render its decision within 30 days after the completion of the hearing, which decision shall be filed with the city clerk. The city clerk shall immediately mail a copy of the decision to the applicant and transmit a copy of the same to the mayor and to each city council member as provided below.

(Ord. No. 89-346, § 2(26-21), 3-21-1989)

- **Sec. 134-106. - Staying of activities and legal proceedings.**

An applicant shall cease all activity which directly relates to the item contained in the application upon which the board is to act until the board's recommendation has been acted upon by city council unless the board shall determine that to do so would cause imminent peril to life or property. The city council shall have the right to review such determination and to issue a restraining order to the applicant. Further, the filing of an application shall stay any legal proceedings brought against the applicant because of a violation of this chapter until such time as the matter has been acted upon by the city council.

(Ord. No. 89-346, § 2(26-22), 3-21-1989)

- **Sec. 134-107. - Administering oaths and compelling attendance of witnesses.**

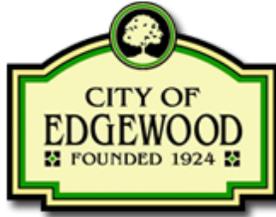
The chairperson of the board, or in his absence the vice-chairperson, shall have the power to administer oaths and to compel the attendance of witnesses at all hearings.

(Ord. No. 89-346, § 2(26-23), 3-21-1989)

- **Sec.134-108. - Review of board's decisions or recommendations.**

(a)

Generally. All decisions of the board shall be in the form of recommendations to the city council. All such recommendations shall automatically go to the city council for its review and final decision at a duly called council meeting. The city council shall not be bound by the submitted recommendation and it may accept,



reject, modify or table the same. However, the city council may not reject, modify or table a decision unless the city council shall first hold a public hearing thereon as provided in subsection (c) of this section. Otherwise, no formal hearing will be held unless an application for the same is filed as provided for in subsections (b) and (c) of this section.

(b)

Appeals. Any person aggrieved by any recommendation of the board acting either under its general powers or as a board of adjustment may file a notice of appeal to the city council within seven days after such recommendation is filed with the city clerk. The person appealing shall file a notice of appeal upon the form, if any, prescribed by the city council. The city clerk shall forthwith transmit to the city council all the papers, photographs and exhibits constituting the record upon which the action appealed from was taken, or properly certified copies thereof in lieu of originals.

(c)

Notice of hearing. Upon the filing of the notice of appeal, or if the city council determines to reject, modify or table the recommendation, the city council shall promptly mail notice of a new public hearing by United States mail, postage prepaid, to the appellant, to the original applicant, to the owner of record of the subject property and, in the case of recommendations of the board acting on variances or special exceptions, the owners of property furnished by the person who filed the original application, and to each attorney at law appearing for any person at the hearing before the board.

(d)

Fees and costs. Fees and costs for said appeals shall be set from time to time by the city council.

(e)

Oaths; witnesses. The president of the city council, or in his absence the acting president, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The city council shall keep minutes of its meetings, showing the vote of each member on each hearing, or if absent or failing to vote, indicating such fact. It shall also keep records of its examination and other official actions.

(f)

Determinations of city council. The city council shall conduct a "de novo" hearing upon any appeal taken and for any hearing required by subsection (a) of this section and shall hear the testimony of witnesses and other evidence offered by the aggrieved person and interested parties above and may in conformity with this chapter accept, reverse, or affirm, in whole or in part, or may modify the recommendation of the board.

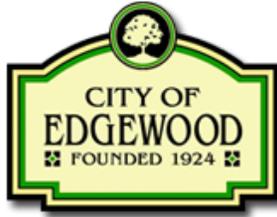
(g)

Time frame for decision. The city council shall render its decision within 45 days after the hearing.

(h)

Variances and special exceptions. The city council shall utilize, and all variances and special exceptions shall be subject to, the same standards for special exceptions and variances as provided elsewhere in this chapter including, but not limited to, time and conditions.

(Ord. No. 89-346, § 2(26-24), 3-21-1989)



- **Sec. 134-109. - Board actions subject to approval by city council.**

The board shall not obligate the city without prior approval by the city council. All actions taken by the board shall be subject to approval or disapproval by the city council as provided hereafter. All actions of the board may be appealed to the city council as provided for herein.

(Ord. No. 89-346, § 2(26-25), 3-21-1989)