

# FLOOD PROTECTION VARIANCE INFORMATION FOR HEARINGS BOARD REVIEW

FEE: \$200 per variance request (*Cash/check only – make check payable to ACC*)

Athens-Clarke County Planning Department – [athensclarkecounty.com/planning](http://athensclarkecounty.com/planning)  
120 West Dougherty Street · Athens, Georgia 30601 · 706-613-3515 · (F) 706-613-3844

Where practical difficulties, unnecessary hardships, and results inconsistent with the general purpose of the Athens-Clarke County Development Regulations may result from the strict application of certain provisions thereof, variance may be granted as provided in Chapter 21 of Title 9 of the Athens-Clarke County code.

The applicant should be aware that, in granting a variance, the Hearings Board may impose conditions to protect the best interests of the surrounding property and property owners, the neighborhood, or the community as a whole and to otherwise achieve the purposes of this Ordinance.

No variance shall be granted for the use of land or building(s) that is prohibited by this Ordinance. The Board shall not grant variances from residential densities.

No petition for the same variance involving the same parcel of land once heard and acted upon by the Hearings Board shall be accepted for a rehearing until the expiration of at least twelve (12) months immediately following the decision by the Hearings Board.

The Athens-Clarke County Hearings Board shall sit in a quasi-judicial capacity to hear and decide all variance requests from the requirements of Chapter 8-2 Flood Protection. A formal written application for a variance shall be filed with the Public Works Director for submittal to the Athens-Clarke County Hearings Board created in Title 9 of the Code of Athens-Clarke County. (The Planning Department staff will process the application for presentation to the Hearings Board)

- (1) The following procedures shall apply to all applications:
  - a. The application for variance shall state the specific variances sought and the reasons for their granting.
  - b. It shall be the applicant's responsibility to provide sufficient justification for granting the variance.
  - c. The Floodplain Administrator shall prepare an evaluation statement concerning each application for variance. The evaluation shall consider the circumstances and supporting documents supplied by the applicant and other generally available technical information pertaining to the variance request. The evaluation statement may include recommendations by the Department of Transportation and Public Works concerning the variance to the Hearings Board.
  - d. In passing upon such applications, the Athens-Clarke County Hearings Board shall consider all technical evaluation and relevant factors presented by the applicant and the government and the standards specified below.
  - e. If a variance is granted, it shall be granted upon findings by the Hearings Board that the following standards have been met:
    1. a determination that the applicant has made a showing of good and sufficient cause;  
and

2. a determination that failure to grant the variance would result in exceptional hardship to the applicant; and
  3. a determination that the granting of a variance will not result in increased flood heights, threats to public safety and extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances; and
  4. a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- f. After hearing and upon consideration of the application, evidence and applicable law, the Athens-Clarke County Hearings Board may attach such conditions to the granting of variances as it deems necessary to further the purpose of this Chapter.
- (2) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
  - (3) Variances may be issued for the reconstruction, rehabilitation or restoration of historic structures, upon determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure without regard to the procedures set forth in the remainder of this section.
  - (4) Any applicant to whom a variance is granted within the area of special flood hazard shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and stating that cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
  - (5) The Floodplain Administrator shall maintain records of all appeal actions and report any variances to the Federal Insurance Administration upon request.
  - (6) Appeals of Variance decisions. The procedure for appealing variances shall be those set forth in the Zoning Ordinance.

**APPLICATION - TYPE IV PROCEDURE:**

Also to be included with such application shall be a statement and evidence showing that all of the following circumstances exist:

**APPLICATION:** Such application shall be accompanied by a legal description of the property and plans and elevations necessary to show the proposed development as well as base flood elevation data and floodway data (see Submission of Materials).

Also to be included with such application shall be a statement and evidence showing that all of the following circumstances exist:

1. a determination that the applicant has made a showing of good and sufficient cause; and
2. a determination that failure to grant the variance would result in exceptional hardship to the applicant; and
3. a determination that the granting of a variance will not result in increased flood heights, threats to public safety and extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances; and
4. a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

The applicant is responsible for providing justification for the requested variance for consideration by the Hearings Board.

Complete applications shall include all of the required information for the specific action requested, on a signed application form, and tender of the appropriate application fee. Incomplete applications are subject to return to the applicant. The Planning Staff will inform the applicant of deficiencies within five (5) days of initial submission. The incomplete application will be held until all deficiencies are addressed. The applicant has thirty (30) days in which to submit a complete application or the application will be returned to the applicant and will not be placed upon Hearings Board agendas. If a complete application is received, it will be placed upon the next Hearings Board agenda as determined by the Hearings Board Application schedule. If a complete application is not received within the thirty day timeframe, a new application, complete with filing fees, must be submitted if the applicant wishes to pursue the request for a variance. No application shall be deemed accepted until the Planning Director in consultation with the Public Works Director or their designees, have certified that it is complete.

#### **SUBMISSION OF MATERIALS:**

All applications and materials for variance requests must be submitted to the Planning Department staff. (see Hearings Board Application Schedule) Complete applications for variances requiring a decision of the Hearings Board must be submitted at least 30 days prior to the next regular monthly hearing calendar of the Hearings Board in order to be assigned to that calendar.

A complete application must contain the following:

1. Twenty (20) completed, collated, and signed copies of the variance application;
2. Twenty (20) copies of development plans that include topographic mapping, base flood elevations, floodplain and floodway delineations and data, and any other information needed to fully describe the associated flood hazards and the need for a variance from the Flood Protection Ordinance, collated.
3. One (1) electronic copy on CD;
4. Legal description of the property (metes and bound description);
5. An 11" x 17" (**to scale**) reduction of the site plan if the site plan is full size;
6. Filing fee: (See fee schedule); and
7. Power of Attorney from property owner designating a specific individual to handle the request, if applicable.

#### **STANDARDS FOR THE REVIEW OF VARIANCES:**

The Hearings Board may authorize such variance from the terms of these regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of provisions of this Ordinance will, in an individual case, result in unnecessary hardship. The Hearings Board may grant such variance in such individual case of unnecessary hardship upon a finding that:

1. a determination that the applicant has made a showing of good and sufficient cause; and
2. determination that failure to grant the variance would result in exceptional hardship to the applicant; and
3. a determination that the granting of a variance will not result in increased flood heights, threats to public safety and extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances; and
4. a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

#### **MEETING DATES:**

Please see the schedule for the Hearings Board's regular meetings available in our office or on line at [athensclarkecounty.com](http://athensclarkecounty.com).

**PROCEDURE:**

Applications for a variance will be accepted only after a Site Review permit has been denied. It is the responsibility of the applicant to present the request and demonstrate hardship within the application and to justify the granting of a variance. Approval of variances is not a Building Permit or Certificate of Zoning Compliance. It does not relieve the owner/agent of the responsibility for filing for and obtaining a Building Permit, Site Review permit or Certificate of Appropriateness and following all other applicable codes and ordinances of Athens-Clarke County, Georgia.

**PUBLIC NOTICE:**

Every variance application, regardless of whether it is reviewed by Staff or the Hearings Board, requires public notice. The formats are as follows:

**Registry:** Every variance application to the Hearings Board shall be entered in a Registry available to the public in the Planning Department, setting forth:

1. The location of property affected, by street address, tax map number or other easily understood geographic reference to the subject property;
2. The date of the hearing or conference; and the date the decision will be final;
3. A description of the decision to be made.
4. A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria will be made available for inspection at no cost and copies will be provided at a standardized per-page cost to be determined by Athens-Clarke County.

**Hearings Board:** Notice shall be published in a newspaper of general circulation in Athens-Clarke County at least fifteen (15) days, but not more than forty-five (45) days, before the date on which the Hearings Board hearing shall be held, and shall contain the location of the property by street address, and in addition, the following information:

1. The date, time, place and purpose of the hearing before the Hearings Board;
2. For Type IV variance requests, notice containing the same information required above shall be posted on the subject property by the planning department at least 15 days, but not more than 45 days, prior to the date of the public hearing before the Athens-Clarke County Hearings Board.

**RESPONSIBILITIES OF THE HEARINGS BOARD:**

It is the intent of the Development Regulations that the Hearings Board interprets provisions of the various ordinances and to provide relief from partial requirements of the Development Regulations, Street Graphics, Driveway and Flood Protection Ordinances when actual unique hardship can be established. The administrative hearing will be conducted by the Hearings Board in accordance with the procedures set forth in Sec. 9-4-10. In response to each complete application for a variance,

- The Hearings Board's report shall be rendered within five (5) business days after the administrative hearing, with proposed conditions of approval attached as appropriate. The Hearings Board shall make written findings and conclusions for each action requested.

The Hearings Board shall not issue opinions or decisions involving changes to standards contained in the Ordinances, nor shall the Hearings Board evaluate requests for conditional use status. The establishment of permitted uses and granting of conditional uses shall solely be the responsibility of the Mayor and Commission of Athens-Clarke County.

**DECISIONS:**

A zoning decision is determined to be final as follows:

1. Type IV (Variances reviewed by the Hearings Board) -- Decision becomes final, five (5) business days after the date of decision, should no request for administrative hearing before the planning commission be filed.

**APPEALS:**

The decision of the Planning Commission shall be the final decision of Athens-Clarke County on all planning actions subject to the Type IV Planning Procedure (such as variances considered by the Hearings Board).

**Appeal Procedures:**

Appeals of Type IV decisions shall be heard and decided by the Athens-Clarke County Planning Commission.

- a. The appeal shall be filed within five (5) business days after the final decision is rendered, as defined in 9-4-14.
- b. The appeal shall be in writing and filed with the Athens-Clarke County Planning Department. Such appeal shall include the appellant's name, address, and specifically state the grounds for which the Hearings Board's decision should be overturned, based on the applicable criteria or procedural irregularity.
- c. The appeal hearing shall be scheduled for a regular Athens-Clarke County Planning Commission meeting allowing adequate time to meet the Public Notice requirements of Section 9-4-9.
- d. The Planning Commission shall receive a complete record of the Hearings Board's action, including all information presented by the applicant, proponents, and opponents prior to the appeal hearing. Such record shall also include the adopted findings and conclusions of the Hearings Board.
- e. The hearing before the Athens-Clarke County Planning Commission shall be confined to a review of the record of the administrative hearing for error based on insufficiency of evidence to support the findings and conclusions of the Hearings Board that applicable criteria were or were not met, or based on procedural irregularity. At such hearing, the Athens-Clarke County Planning Commission shall first hear argument from the appellant, then from the appellee, followed by a brief rebuttal from the appellant. Each side shall be confined to ten (10) minutes, with appellant's rebuttal not to exceed three (3) minutes. No new evidence shall be admitted or considered. After concluding the hearing, the Athens-Clarke County Planning Commission may affirm the original planning decision, affirm the decision with conditions, deny the original planning decision, or remand the planning action back to the Hearings Board for further development of the record.

Appeals or petitions for judicial review may only be filed by parties to the planning action. "Parties" shall be defined as the following:

1. The applicant. Parties fitting this description may appeal all planning decision types (Types I-IV and Staff Permits).
2. Adjoining property owners and owners of properties that are affected by the proposed change differently than the general public as determined by standards set forth in Georgia law. Parties fitting this description may appeal planning decision Types I-IV, including variances which follow a Type IV procedure.

3. The Unified Government. The Athens-Clarke County Mayor and Commission may appeal all planning decisions made by the Hearings Board.

NOTE: THE APPLICANT IS RESPONSIBLE FOR THE ACCURACY OF ALL INFORMATION ON THE APPLICATION AND FOR REQUESTING ALL NEEDED VARIANCES. PLANS PREPARED BY AN ARCHITECT, OR ENGINEER ARE REQUIRED FOR SUBMITTAL. SUBMITTAL FOR THE APPROPRIATE PERMIT PROCESS (PLANS REVIEW AND/OR BUILDING PERMIT) IS REQUIRED PRIOR TO MAKING APPLICATION FOR A VARIANCE. THE PERMIT PROCESS IS INITIATED IN THE PLANNING DEPARTMENT.

If you have questions regarding the application or procedures,  
Please call the Planning Staff at (706) 613-3515