



**AGENDA  
CITY OF CREVE COEUR  
BOARD OF ADJUSTMENT  
CITY COUNCIL CHAMBER  
JULY 24, 2025  
4:00 PM**

**CALL TO ORDER**

**ROLL CALL**

Mr. Ted Armstrong  
Mr. James Kostelc  
Mr. James Gerst  
Mr. Robert Mooney  
Mr. Arnold Mayersohn  
Ms. Judy Pass (Alternate)

Mr. Carl Lumley, City Attorney  
Mr. Jason Jaggi, AICP, Director of Community Development  
Ms. Bethany L. Moore, AICP, City Planner  
Ms. Claralyn Bollinger, Recording Secretary, Administrative Services Supervisor

**APPROVAL OF MINUTES**

- 1. June 19, 2025 Board of Adjustment Draft Meeting Minutes**

**ACCEPTANCE OF THE AGENDA**

**UNFINISHED BUSINESS**

**NEW BUSINESS**

**BUSINESS FROM STAFF**

- 2. New Member Training**
- 3. Election of Chair and Vice Chair**

**ADJOURNMENT**

**Pursuant to Section 610.022 RSMO, the Board of Adjustment could, at any time during the meeting, vote to close the public meeting and move to closed session to discuss matters relating to litigation, legal actions and/or confidential or privileged communications with the City Attorney as provided under Section 610.021(1) RSMO or other matters as permitted by Chapter 610.**



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4:00 PM**

Posted by: \_\_\_\_\_  
Date/Time posted: \_\_\_\_\_

***If you need special accommodations to attend a meeting, services may be arranged by contacting the Office of the City Administrator in advance.***



**MINUTES  
CITY OF CREVE COEUR  
BOARD OF ADJUSTMENT  
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JUNE 19, 2025  
4:00 PM**

**CALL TO ORDER**

A regular meeting of the Board of Adjustment Commission of the City of Creve Coeur was called to order by Chair Glen Wilen at the City Council Chamber, 300 North New Ballas Rd, City of Creve Coeur Government Center, Creve Coeur, MO 63141 on Monday, June 19, 2025, at 4:00 PM.

**ROLL CALL**

**Mr. Glenn Wilen (Chair)**  
**Mr. James Kostelc**  
**Mr. James Gerst**  
**Mr. Robert Mooney - absent**  
**Mr. Arnold Mayersohn**

**Mr. Carl Lumley, City Attorney**  
**Mr. Jason Jaggi, AICP, Director of Community Development**  
**Ms. Bethany L. Moore, AICP, City Planner**  
**Ms. Claralyn Bollinger, Recording Secretary, Administrative Services Supervisor**

**APPROVAL OF MINUTES**

**1. May 15, 2025 Board of Adjustment Draft Meeting Minutes**

**RESULT: APPROVED (UNANIMOUS)**  
**MOVER:** Mr. Kostelc  
**SECONDER:** Mr. Mayersohn  
**AYES:** Mr. Gerst, Mr. Kostelc, Mr. Mayersohn and Mr. Wilen  
**NAYS:** None

The vote on the motion being 4 ayes and 0 nays, motion carried.

**ACCEPTANCE OF THE AGENDA**

**RESULT: ACCEPTED (UNANIMOUS)**  
**MOVER:** Mr. Gerst  
**SECONDER:** Mr. Kostelc  
**AYES:** Mr. Gerst, Mr. Kostelc, Mr. Mayersohn and Mr. Wilen  
**NAYS:** None



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The vote on the motion being 4 ayes and 0 nays, motion carried.

**UNFINISHED BUSINESS**

There was no unfinished business.

**NEW BUSINESS**

**2. Application #25-9810: Variance Request For The Property At 9810 Warington Square for a 5-Foot Encroachment into the Required 45-Foot Front Yard Setback in Order to Construct A New Single-Family House**

The hearings on this matter and the next were consolidated.

Douglas Cohen, owner of Douglas Properties, gave his presentation. He said his company has built 50 homes in Creve Coeur over the last 30 years, 350 total homes built in the last 40 years, and he builds about 8-10 homes per year.

Mr. Cohen owns 9810 and 9820 Warington Square. 9820 is one lot to the west of 9810. There is a lot of detrimental water flow from east and south of the backyards. Seller told him City earmarked \$200,000 for water mitigation and drainage correction. Public Works hired an engineer. Money was in fact not earmarked. City acknowledged there is a problem with poor drainage.

Volz Engineering was hired by Mr. Cohen. Mr. Cohen owns two homes, and he is negotiating with one other homeowner. He can only pay about 25% of the finished home for the lots. All the homes were set at 40-foot setback from Warington Square street. One home has been pre-sold. Moving up the homes from 45 feet to 40 feet allows him to address the drainage problems more effectively. Subdivision residents will be happy because the homes will be set at the same setback as the other homes on the street.

Mr. Wilen: Current home is 40 feet from the street?

Mr. Cohen: Yes, same setback as existing.

Mr. Gerst: If variance is not granted and you have to re-grade, how much would that cost?

Mr. Cohen: Each house would cost an additional \$10,000 he thinks.

There are two new homes on the corner of Graeser Road and Graeser Lane. MSD has no sewer inlets on that street. There is a grading plan that protects all the neighboring streets and residences. City regulates the grading process to protect the neighbors and the street.

Ms. Moore gave the City's presentation. Two votes will be required because it is for two



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variance requests. Warson Square plat 2 with 1957 approval by the City. This is a B Zoning district. There is a 40-foot front yard platted setback.

Some aspects of the setback have changed including the front yard setback. All ten houses were built within 5 years of the plat approval and appear to adhere to the 40-foot setback. Current zoning code is 45-foot setback. Sundown Square runoff comes into Warington Square because Sundown neighborhood sits a little bit higher than Warington Square.

Cynthia Gish, co-owner of 9830 Warington Square, spoke. She is horrified that water mitigation of stormwater has not been done by the City. 9,840 yard is eroding into the creek there was lots of rain this spring. She is concerned about reviewing plans with Mr. Cohen.

Ms. Gish is in favor of stormwater improvement. Mr. Cohen has a good reputation for building homes. These are big homes. All the neighborhoods nearby have been rebuilt. Will we have a say in the water runoff? Areas will be built up from the drawing. Neighbors were ecstatic when thought the City was doing the grading.

Mr. Cohen: I don't know how wide the homes will be.

Ms. Moore: The proposal will adhere to the rear and side yard setbacks.

Warren Gish, co-owner of 9830 Warington Square, spoke. Water flows into a tributary of Deer Creek. He is concerned about stormwater runoff. If you grant the 40-foot variance, there will be more runoff from a larger building.

Mr. Cohen: Downspout goes into a drywall that is channeled underground, and the drywell is 10-12 feet wide x 10-12 feet deep.

Mr. Jaggi: We do have a separate process to ensure no adverse effect and make sure the tradeoffs do not make anything worse. I can get you in touch with the City Engineer.

Mr. Lumley entered items into the record.

<p><b>RESULT: APPROVED (UNANIMOUS)</b> <b>MOVER:</b> Mr. Wilen <b>SECONDER:</b> Mr. Mayersohn <b>AYES:</b> Mr. Gerst, Mr. Kostelc, Mr. Mayersohn and Mr. Wilen <b>NAYS:</b> None</p>
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The vote on the motion being 4 ayes and 0 nays, motion carried.

**3. Application #25-9820: Variance Request For The Property At 9820  
Warington Square for a 5-Foot Encroachment into the Required 45-Foot**



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**Front Yard Setback in Order to Construct A New Single-Family House**

**RESULT: APPROVED (UNANIMOUS)**  
**MOVER:** Mr. Wilen  
**SECONDER:** Mr. Kostelc  
**AYES:** Mr. Gerst, Mr. Kostelc, Mr. Mayersohn and Mr. Wilen  
**NAYS:** None

The vote on the motion being 4 ayes and 0 nays, motion carried.

**BUSINESS FROM STAFF**

**4. Meeting Procedures Discussion**

Transcript snippets of a past meeting were distributed to the Commission members by Ms. Bollinger.

Mr. Jaggi: We have to remember that these are transcribed hearings.

Ms. McLaughlin: She stated that it's getting hard for her to hear to transcribe accurately when there are multiple people speaking at the same time.

Mr. Jaggi: These meetings are quasi-judicial hearings, and we need to button up the hearing a little bit.

Mr. Lumley said that on the variance at 575 Graeser, the City has submitted outside counsel to appeal the Board's decision. It was at the direction of the City Council to file the appeal. Mr. Lumley also gave an update on the 7 Sherwyn Lane case.

**ADJOURNMENT**

Meeting adjourned at 4:58 p.m.

Submitted by:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Chair

## Creve Coeur Board of Adjustment – Introductory Statement (July 2025)

The matter(s) on the agenda today are requests for variances from specific provisions of the City Zoning Code. If a variance is granted, then an exception is created to the requirements of the Code. It must be used within a year or it lapses.

The Board of Adjustment has authority to grant such variances when unique circumstances create undue hardship or practical difficulties related to land development. The Board must not only consider the circumstances of the applicant and their property, but also any impacts on neighboring properties and the City as a whole.

The Board does not have authority to grant favors to meet the personal preferences of property owners. The Board does not have authority to grant variances to address problems created by the property owner or their predecessors.

By law, at least four members of the Board must vote in favor, or the variance request will be denied.

Our proceedings are on the record, like a court hearing. That means that everything is transcribed by the reporter. Speakers must be sworn in before testifying. Only one person may speak at a time, so please wait to be recognized by me. Speakers must remain at the podium and use the microphone. There is a pointer to use with presentations displayed on the wall.

The Board makes its decision based upon the evidence presented.

After the hearing, a written decision will be prepared and signed and then provided to the applicant and others who participated in the hearing. Decisions are available to the public as well.

# Board of Adjustment 101

July 2025

# Background – Planning and Zoning

- The **comprehensive plan** is a critical basis for local zoning regulations. It is exclusively developed and adopted by the planning commission. (89.340-89.370).
- **Zoning regulations** must be made in accordance with a comprehensive plan. (89.040). The plan is considered to only be a guide and not enforceable independent of the zoning ordinance.

# Background – cont.

- Pursuant to Sections 89.010 and 89.140, cities can **promote health, safety, morals and general welfare** through zoning district regulations concerning **location and use** of buildings, height and size of buildings, lot coverage, yard sizes, population density, and historical preservation.
- These regulations (and the plan) can be **amended** by legislative action.

# Background – cont.

- Variances from the strict requirements of the zoning ordinance can be obtained in **hardship** circumstances by application to the local board of adjustment, pursuant to these statutes.
- Variances offer relief in **unique** situations, not a means of circumventing the plan or zoning code.

# Board of Adjustment – Statutory Basis

Section 89.080 mandates the creation of a local board of adjustment consisting of **five** members. The board hears appeals concerning alleged **errors** in application of the zoning ordinance as well as requests to **vary** the strict terms of the ordinance “where there are practical difficulties or unnecessary hardship.” (89.090). **Four** of the five members must approve a variance, although the decision must also be made on the **record** and subject to **judicial review**. (89.090-89.120).

# Board – Local ordinance 405.1040

“The Board of Adjustment shall consist of five (5) members and three (3) **alternates** who shall be residents of the City. The members and alternates shall be **appointed** by the Mayor with the consent and approval of a majority of the City Council. Appointments shall be for **terms** of five (5) years with an expiration date of June thirtieth (30th). Appointments to fill vacancies shall be for the unexpired portion of the term only. Compensation for services on the Board of Adjustment shall be determined periodically by the City Council. Members of the Board of Adjustment may be removed for cause by the City Council. A member thus removed may request and receive a written statement of charges and a public hearing before the City Council.”

# Officers

“The Board of Adjustment shall elect a Chairman who shall serve for a term of one (1) year. The Board of Adjustment shall annually select a Vice Chairman from among its members.”

# Proceedings

- The Board of Adjustment may adopt such **rules** (i.e. Roberts Rules) as necessary from time to time to carry out the provisions of the Zoning Code, provided they are not inconsistent with the provisions of the Code or other ordinances of the City.
- **Meetings** of the Board of Adjustment shall be held as called by the Chairperson and at such other times as the Board of Adjustment shall determine.
- The Chairman, or in his/her absence the Acting Chairperson, court reporter or City Clerk, may administer **oaths** and compel the attendance of witnesses.
- All meetings of the Board shall be **open** to the public.

# Proceedings –cont.

- The Board shall keep **minutes** of its proceedings, showing the vote of each member upon each question or if absent or failing to vote, indicating such fact.
- All testimony, objections thereto and rulings thereon shall be taken down by a **reporter** employed by the Board for the purpose.
- It shall keep records of its examinations and other official actions and all records shall be immediately filed in the office of the City Clerk and shall be a **public record**.

# Board of Adjustment - Role

- The board of adjustment creates a pressure relief valve, taking into account **unique characteristics** of property, **hardships** that are not self-imposed, impacts on neighbors and the general public, and the general intent of the applicable regulations.

# Powers and duties – 405.1040

1. To hear and decide all matters referred to it and upon which it is required to pass under the Zoning Code.
2. To interpret the provisions of the Zoning Code in such a way as to carry out its intent and purpose.
3. To hear **appeals** in a manner prescribed in [Section 405.1110\(I\)](#) of this Chapter, where it is alleged there is error in any order, requirement, decision or determination made in the enforcement or interpretation of this Chapter.

# Powers and duties – cont.

4. To authorize **variances** upon appeal in accordance with the provisions of [Section 405.1110](#) of this Chapter.

5. To permit a variance in the yard requirements of any district where there are **severe practical difficulties or extreme hardships** in the carrying out of these provisions due to an irregular shape or size of the lot, the sites of pre-existing buildings, topographical or other site conditions; **provided, that such variance shall not have a serious adverse impact on any adjoining property or the general welfare or establish an unsatisfactory precedent for other locations and situations.**

6. To permit the extension of a district where the boundary line of a district divides a lot held in a single ownership on the date of adoption of this Chapter.

# Applicants

- Under section 89.100, any person or entity **aggrieved** by a decision of a municipal officer can appeal to the board of adjustment.
- Likewise, section 89.110 establishes the same **“aggrieved”** standard for subsequent court review of the board of adjustment decision, including a designated representative of the city if the board rules against it.

# Applicants for Variances – ordinance 405.1110

“Applications may be filed by any governmental body or person who either owns property that would be affected by the proposed **variance** or who has a financial, contractual or proprietary interest in property that would be affected by the proposed variance and also submits the property owner's consent to the application.”

# Applications for Variances

The application shall contain the following information, as well as such additional information as the Board of Adjustment may prescribe by regulation:

- a. The particular requirements of the Zoning **Code** which prevent the proposed construction;
- b. The **characteristics** of the subject property which prevent compliance with the requirements of the Code;
- c. The particular **hardship** which would result if the specific requirements of the Code were applied to the subject property; and
- d. The reduction of the minimum requirements of the Code which would be **necessary** to permit the proposed construction.

# Applicants for Appeals – 405.1110

Appeals to the Board of Adjustment may be taken by any person aggrieved by any decision of the administrative officer or by the interpretation or administration of the Zoning Code;

**provided however, that the Board of Adjustment shall not have jurisdiction to hear appeals from conditional use permits (see [Section 405.1070](#)), residential designed development (see [Section 405.450\(C\)](#)) or other decisions from the City Council related to the zoning ordinance.**

# Time for Appeals – 405.1110

Notice of appeal shall be filed within a reasonable time, not to exceed thirty (30) days from the event or action appealed from occurred.

# Effect of Filing Appeal

An appeal stays all proceedings that concern the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Adjustment after he/she received notice of appeal that by reason of facts certified by him/her, a stay would, in his/her opinion, cause imminent peril to life or property. In such case, the proceedings shall not be stayed except in the following:

- a. In accordance with a restraining order issued by the Board of Adjustment or a court of record;
- b. If the appellant shows good cause why a stay should not be allowed and upon notice to the officer or department from whom the appeal is taken and that there is to be no stay of proceedings.

# Pre-meeting process

- An application for variance or appeal shall be **filed** in the office of the Zoning Administrator with the required fee.
- The Zoning Administrator shall **review** the application to determine whether it complies with all applicable requirements. In an appeal, the involved person shall provide their records.
- Next, the Zoning Administrator shall promptly:
  - a. Forward the application to the Board of Adjustment, Mayor and City Council;
  - b. Cause **notice** of the application to be publicly posted at the Government Center in the same manner as Commission meeting agendas,
  - c. Cause a sign regarding the application to be posted on the affected property, and
  - d. Cause the application to be made publicly available on the City website, all at least ten (10) days prior to the date of the meeting of the Board of Adjustment at which the application is first considered.
- The Zoning Administrator shall prepare a **report** describing the circumstances of the application, and forward the report and any recommendations or actions of any other City department or agency to the Board of Adjustment, Mayor and City Council in advance of the meeting at which the application is scheduled to be considered, and cause such analysis and report to be made publicly available on the City website in advance of the meeting.

# Process cont.

The Board of Adjustment shall hold a public **hearing** on each application. The City Clerk shall **publish notice** in accordance with the provisions of [Section 405.1120](#). The Board of Adjustment shall also send written notice by first class **mail** stating the nature of the proposed variance or appeal to all owners of property located within three hundred (300) feet of the boundaries of the property for which a variance or appeal is sought as well as to the owners of the subject property.

# Deadline for hearings on appeals – 405.1110

The hearing on an appeal shall be held no later than sixty (60) days from the date the appeal is filed.

# The Record

- **BOA decisions must be made on the basis of the evidence** presented on the record at the hearing. If there is a further appeal to court, the decision will be reviewed strictly on the record made during the local proceedings.
- Similar to a judge-tried case in circuit court.
- Should not occur frequently, but Board members should identify any personal knowledge upon which they intend to rely in making their decision, and make sure it is legitimate evidence, i.e. not hearsay.

# Ex parte contacts must be avoided

- Because decision must be based on the record, the **merits** of cases should not be discussed other than at the public meeting
- Including by email
- Scheduling etc. can be discussed
- Political influence not relevant or permissible
- An application does not grant license to enter private property

# Criteria for All Variance Decisions

The Board of Adjustment **shall not grant a variance as authorized herein unless** it shall, in each case, make specific written findings of fact directly based upon the particular evidence presented to it that support all of the following conclusions:

1. The variance requested arises from a **condition** which is **unique** to the property in question and which is not ordinarily found in the same zoning district;
2. The variance requested is because of a **unique hardship** not created by the applicant or owner of the property;
3. The granting of the variance shall **not adversely affect** adjacent property owners or residents;
4. The strict application of the provisions of the Zoning from which a variance is requested will cause severe **practical difficulty or extreme hardship** for the property owner represented in the application;
5. The variance desired will **not adversely affect** the public health, safety, order, convenience or general welfare of the community; and
6. Granting the variance desired will **not violate** the general spirit and intent of the Zoning Code.

# Types of Variances

- Area or non-use variances – concern location and dimension, etc.
- Use variances – very unusual – no other beneficial use of property possible under Code

# Further Criteria for Area/Non-Use Variance Decisions

1. By reason of exceptional narrowness, shallowness or shape of the specific piece of property or where by reason of exceptional topographical conditions or other extraordinary or exceptional circumstances that the **strict application of the terms of the zoning regulations actually create a hardship** to the property in a manner **dissimilar** to that of other similarly situated property in the zoning district in which it is located.
2. Granting the variance would not result in the diversion of additional **stormwater** that would adversely affect adjacent property.

# Further Criteria for Use Variances Decisions

1. The applicant must be suffering unnecessary hardship in carrying out the strict letter of the ordinance. Unnecessary hardship can be shown by the applicant if he/she demonstrates the following:
  - a. He/she is deprived of **all beneficial use** of the property or that he/she would incur unwarranted economic hardship in achieving a permitted use;
  - b. The conditions causing the hardship are **unique** and peculiar to the applicant's property and are not prevalent in the neighborhood; and
  - c. The hardship must be due to conditions **not personal** to the owner, but rather to conditions affecting the land, thereby making the land unsuitable for the permitted uses in the zone in which it lies.
2. The applicant must prove that relief is necessary because of the **unique** character of the property.
3. The proposed variance will **not conflict** with the City's Comprehensive Plan.
4. The use proposed by the applicant must be specific and must be a use that is **allowed** as a permitted use in at least one (1) other zoning district in the City.

# Criteria for Decisions on Appeals

- “The Board of Adjustment shall be guided in its deliberations by the Comprehensive Plan of the City and any special area plans and the purpose and intent of this [Zoning] Code and all Sections thereof.”

# The Decision

- The board's decision must be fully stated in writing, with findings of fact and conclusions of law.
- The applicant has the burden of proving their case.
- Again, decision must be based on the record.

# The Decision – cont.

- The Board of Adjustment shall render and send to the applicant a written decision on an application for a **variance** without unreasonable delay and in no case after more than thirty (30) days of the decision. The Zoning Administrator shall be informed of the decision and shall be responsible for enforcement.
- **Within thirty (30) days of the close of the public hearing**, the Board of Adjustment shall affirm or reverse, fully or partly, or modify the order, requirement, decision or determination or other event or action **appealed** from.

# Post-decision process

The Zoning Administrator shall promptly:

1. Forward the decision to the Mayor and City Council;
2. Forward the decision to all persons who participated in the public hearing and the property owner; and
3. Make the decision publicly available on the City website.

# Period of Validity of Variance

No variance granted by the Board of Adjustment shall be valid for a period longer than three hundred sixty-five (365) days from the date on which it grants the variance, unless within such period:

1. A building permit is obtained and the construction or alteration of the structure is commenced and pursued diligently toward completion; **or**
2. An occupancy permit is obtained and a use or occupancy commenced.

The Board of Adjustment may grant extensions not exceeding one hundred eighty (180) days each, upon written application, without notice or hearing.

# Appeal to Court

- Section 89.110 governs challenges to decisions of local boards of adjustment. It requires that a verified petition be filed in court within **30 days** of the “filing” (entry) of the **decision**.
- “The decision” is the approval of the written decision, not the preliminary vote.

# Appeal – cont.

- The reviewing court will by and large only be considering the evidence that was presented to the board, in order to determine whether the decision was ***reasonable*** (supported by competent and substantial evidence), **legal**, and **not arbitrary** or capricious.
- However, section 89.110 does permit the introduction of additional evidence concerning the procedures before the board or new developments such as would bear upon potential mootness (not the merits of the case).

# Other Considerations

- Due process – fair notice and opportunity to be heard – lawful and reasonable decision
- Takings – reason for the relief valve
- Ethics – conflicts of interest – separate training – Code Chapter 130, Statutes Chapter 105 – disclosure reports due within 30 days of appointment and by **May 1** annually
- Sunshine law – open meetings and deliberations
- Legal advice – closed session
- Staff advice – open session

# Recent Cases

- The City appealed a BOA decision granting a variance to a homeowner to build pursuant to preferred architectural plan, where options existed that did not require a variance
- Court reversed the BOA decision

# Recent Cases (cont.)

- Homeowner appealed denial of variances to front yard setback and stream buffer requirements
- Case remains pending