

Board of Zoning Appeals Variance Application Package



County Of Page Virginia

Page County Zoning Department
101 S. Court Street
Luray, VA 22835

Phone: 540.743.1324

Fax: 540.743.1417

Website: www.pagecounty.virginia.gov

(Revised 3/2008)

VARIANCE APPLICATION INSTRUCTIONS

1. Complete the Variance Application

It is the responsibility of the applicant to complete this form in its entirety and as precisely as possible. Please take sufficient time to fully complete this application. Since your application is photocopied for the Board members, they must be completed in ink or typed. All supporting materials must also be legibly photocopied.

2. Supporting materials for your application that shall be submitted:

- a) A copy of the deed to the property (may be obtained from the Circuit Court of Page County).
- b) A copy of the paid real estate tax receipt for the parcel (may be obtained from the Page County Treasurer's Office).
- c) A copy of a survey plat (if one is available) by a registered land surveyor (licensed in Virginia) or a hand-drawn sketch showing the dimensions of the property. On this plat or hand-drawn sketch draw all existing buildings and the proposed structure including measurements to property lines.
- d) A vicinity map showing land use surrounding the property within five hundred (500) feet, existing zoning of the tract and abutting lots, an indication of the availability of water and sewer facilities, and principle highway access to the property.
- e) You must have the last page of this application completed by all applicable agencies, including the property owners association of the subdivision prior to submitting the application.
- f) All other evidence or exhibits should be submitted along with this application.

ADDITIONAL INFORMATION MAY BE REQUIRED IF THE ZONING ADMINISTRATOR DETERMINES IT NECESSARY TO ENSURE CONFORMANCE AND TO PROVIDE ENFORCEMENT OF THIS ORDINANCE.

A \$500.00 non-refundable fee is due when this application is returned. Please make checks payable to Page County Treasurer.

Variances will be discussed by the Board of Zoning Appeals and/or the Planning Commission of Page County, Virginia.

VARIANCE/APPEAL PERMIT FEES

The fee for a variances application is \$500.00; for an appeal \$600.00. This fee is due upon submittal of the completed application and is non-refundable. There is also a \$50.00 refundable deposit for a public hearing sign. Upon submittal of you application a public hearing sign will be provided to you. The sign is to be posted on the land that is to have a variance and/or appeal so that it is visible from adjoining roads and property. It must be posted at least 14 days prior to the public hearing. **Failure to post the sign will result in your application being tabled.** The sign is to be returned after the Board of Zoning Appeals act on the application. Please make check payable to the County of Page.

Applications for a variance or appeal are heard by the Page County Board of Zoning Appeals.

VARIANCE APPLICATION

DATE: _____

DENSITY RANGE: _____

RECEIPT #: _____

FEE PAID: _____

- 1. The applicant is the owner _____ other _____ (Check one)
- 2. OWNER OCCUPANT (If other than owner)

Name _____ Name _____

Address _____ Address _____

Phone no. _____ Phone no. _____

- 3. Location of property (give exact directions)

- 4. Property size _____
Tax map number _____
Magisterial District _____

- 5. List specific reason(s) why the variance is being sought in terms of:
~exceptional narrowness, shallowness, size or shape of the property or
~ exceptional topographic conditions or other extraordinary situation or condition of property, or
~ the use or development of property immediately adjacent thereto

- 6. It is desired and requested that the property be varied from _____ to _____.

- 7. It is proposed that the property will be put to the following use: _____

- 8. It is proposed that the following buildings will be constructed: _____

- 9. Present Zoning: Park-Recreation _____ Agriculture _____
Woodland-Conservation _____ Residential _____
Commercial _____ Industrial _____ (Check one)

- 10. If zoned **Residential**: On site water and sewer _____ Public water and sewer _____ Public water OR sewer _____ (Check one)

Applicants additional comments, if any _____

I (We), the undersigned, do hereby certify that the above information is correct and true. I (We) further understand that in granting approval of this application, the Board of Zoning Appeals may require that I (we) comply with certain conditions and that such approval shall not be considered valid until these conditions are met.

Signature of Owner _____

Signature of Applicant _____

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**COMMENTS BY ZONING ADMINISTRATOR**

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

\_\_\_\_\_  
ZONING ADMINISTRATOR

\_\_\_\_\_  
DATE

.....  
**OFFICE USE ONLY**

**BOARD OF ZONING APPEALS**

Dates Public Hearing Was Advertised \_\_\_\_\_

Date Public Hearing Was Held \_\_\_\_\_

Action of Board of Zoning Appeals \_\_\_\_\_

\_\_\_\_\_  
Chairman, Board of Zoning  
Appeals \_\_\_\_\_

**SUBMIT NAMES AND COMPLETE MAILING ADDRESSES OF ALL ADJACENT LANDOWNERS, INCLUDING LANDOWNERS ACROSS ANY ROAD OR RIGHT-OF-WAY. (Continue on back, if necessary.)**

Names and addresses of owners may be found in the Real Estate and Land Use Office at the Commissioner of Revenue's Office.

**NAME**

**ADDRESS**

|       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

ADJOINING PROPERTY OWNER VERIFICATION:

AS APPLICANT FOR THIS VARIANCE REQUEST, I \_\_\_\_\_  
HEREBY ACKNOWLEDGE THAT I HAVE FAITHFULLY AND CORRECTLY PROVIDED  
NAMES AND COMPLETE MAILING ADDRESSES OF ALL OF MY ADJOINING PROPERTY  
OWNERS AND THOSE DIRECTLY ACROSS THE ROAD OR RIGHT-OF-WAY. I  
UNDERSTAND THAT FAILURE TO PROVIDE ALL ADJOINING PROPERTY OWNERS WILL  
LEAVE ME LIABLE FOR ADDITIONAL COSTS FOR RE-ADVERTISEMENT AND NOTICES  
MAILED **AND** THAT MY REQUEST COULD BE DELAYED UNTIL PROPER NOTIFICATION  
HAS BEEN GIVEN TO ALL ADJOINING PROPERTY OWNERS AND THOSE PROPERTY  
OWNERS ACROSS THE ROAD OR RIGHT-OF-WAY.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF APPLICANT

PLEASE HAVE THE FOLLOWING AGENCIES ENTER THEIR COMMENTS BELOW BEFORE SUBMITTING THIS APPLICATION TO THE ZONING ADMINISTRATOR.

VIRGINIA DEPARTMENT OF HIGHWAYS & TRANSPORTATION  
P. O. BOX 308/STATE ROUTE 675  
LURAY, VA 22835  
743-6585

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DATE

VDOT OFFICIAL

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PAGE COUNTY HEALTH DEPARTMENT  
75 NORTH COURT LANE  
LURAY, VA 22835  
743-6528

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DATE

HEALTH OFFICIAL

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PAGE COUNTY BUILDING OFFICIAL  
101 SOUTH COURT STREET  
LURAY, VA 22835  
743-6674

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DATE

BUILDING OFFICIAL

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SUBDIVISION PROPERTY OWNERS ASSOCIATION

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DATE

PRESIDENT OR SECRETARY

proposed application and report its findings and recommendation to the governing body along with any appropriate explanatory materials. Failure of the Commission to report to the governing body within 180 days shall be deemed a referral without recommendation. If the Commission does not report within 180 days, unless a longer period shall have been established, the governing body may act on the application without the recommendation of the Commission.

- (2) The governing body shall hold a public hearing and approve or deny any special use permit application within 12 months after receiving the Commission's recommendation or referral without recommendation. Failure to act on any permit within this twelve-month period shall be deemed denial of the permit.
  - (3) Any special use permit granted shall be null and void two years after approval by the governing body if the use or development authorized by the permit is not commenced to a degree that, in the opinion of the Zoning Administrator, clearly establishes the intent to utilize the granted special use permit in a period of time deemed reasonable for the type and scope of improvements involved or upon a statement of abandonment of the special use permit, in writing, by the permit holder.
  - (4) Special uses which are approved by the governing body shall run with the land.
  - (5) Special uses which are approved by the governing body shall be granted for finite and defined periods of time, except that:
    - (a) Activities or uses approved by a special use permit which are discontinued for a period of more than two consecutive years shall not be reestablished on the same property unless a new special use permit is issued in accord with this chapter.
    - (b) A special use permit shall be subject to immediate review pursuant to Subsection D(5) above if, at the time of the commencement of the authorized use, activity, or structure, the site for which the permit has been granted contains other uses, activities or conditions not in place at the time of the issuance of the special use permit.
    - (c) The governing body may, as a condition of the permit, establish a specific time period or conditions during which the permit shall be valid.
- F. Appeals: Any appeal of the decision of the governing body denying or approving an issuance of a special use permit may be taken by any aggrieved party to the Circuit Court. Any such appeal shall be filed within 30 days of the action of the governing body.

#### § 125-55. Board of Zoning Appeals.

- A. A board consisting of five members shall be appointed by the Circuit Court of Page County. Members of the Board may receive such compensation as may be authorized by the governing body. Members shall be removable for cause by the appointing authority upon written charges and after public hearing. Appointments for vacancies occurring

otherwise than by expiration of term shall in all cases be for the unexpired term. A member whose term expires shall continue to serve until his successor is appointed and

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- qualifies. Members of the Board shall hold no other public office in the County except that one may be a member of the County Planning Commission. [Amended 3-9-1992]
- B. The terms of office shall be for five years, except that of the first five members appointed, one shall serve for five years, one for four years, one for three years, one for two years and one for one year. One of the five appointed members may be an active member of the Planning Commission. [Amended 3-9-1992]
- C. Any member of the Board shall be disqualified to act upon a matter before the Board with respect to property in which the member has a legal interest.
- D. With the exception of its Secretary, the Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. The Board may elect as its Secretary either one of its members or a qualified individual who is not a member of the Board. A Secretary who is not a member of the Board shall not be entitled to vote on matters before the Board.
- E. The Secretary of the Board shall notify the Court at least 30 days in advance of the expiration of any term of office and shall also notify the Court promptly if any vacancy occurs.

#### § 125-56. Powers of the Board of Zoning Appeals.

The Board of Zoning Appeals shall have the following powers and duties:

- A. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this chapter or of any ordinance adopted pursuant thereto.
- B. To authorize, upon appeal or original application in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship, provided that the spirit of this chapter shall be observed and substantial justice done, as follows:
- (1) When a property owner can show that his property was acquired in good faith and where, by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this chapter or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property or of the use or development of property immediately adjacent thereto, the strict application of the terms of this chapter would effectively prohibit or unreasonably restrict the use of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of this chapter.
  - (2) No such variance shall be authorized by the Board unless it finds that the strict application of this chapter would produce undue hardship, that such hardship is not

- shared generally by other properties in the same zoning district and the same vicinity and that the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
- (3) No such variance shall be authorized except after notice and hearing as required by § 15.1-431 of the Code of Virginia 1950, as amended.
  - (4) No variance shall be authorized unless the Board finds that the condition or the situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this chapter.
  - (5) In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guaranty or bond to ensure that the conditions imposed are being and will continue to be complied with.
  - (6) The existence of a nonconformance in the same or other zoning district shall in or of itself not be considered grounds for the granting of a variance.
  - (7) Economic gain or economic hardship shall not be considered grounds for the granting of a variance.
- C. To hear and decide appeals from the decision of the Zoning Administrator. No such appeal shall be heard except after notice and hearing as provided by § 15.1-431 of the Code of Virginia 1950, as amended.
- D. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question and after public hearing with notice as required by § 15.1-431, the Board may interpret the map in such way as to carry out the intent and purpose of this chapter for the particular section or district in question. The Board shall not have the power to change substantially the locations of district boundaries as established by ordinance, and the Board shall not have authority to rezone property.

#### § 125-57. Rules and regulations.

- A. The Board of Zoning Appeals shall adopt such rules and regulations as it may consider necessary.
- B. The meeting of the Board shall be held at the call of its Chairman or at such times as a quorum of the Board may determine.
- C. The Chairman or, in his absence, the Acting Chairman may administer oaths and compel the attendance of witnesses.
- D. 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. It shall keep records of

its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

- E. All meetings of the Board shall be open to the public.
- F. A quorum shall be at least three members.
- G. The concurring vote of a majority of the membership of the Board shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter or to effect any variance from this chapter.

#### § 125-58. Appeal to the Board of Zoning Appeals.

An appeal to the Board may be taken by any person aggrieved or by any officer, department, board or bureau of the County or municipality affected by any decision of the Zoning Administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this chapter or any ordinance adopted pursuant thereto. Such appeal shall be taken within 30 days after the decision appealed from by filing with the Zoning Administrator and with the Board a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the Board or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

#### § 125-59. Appeal procedure.

- A. Appeals and applications for special exceptions shall be mailed to the Board of Zoning Appeals, c/o the Zoning Administrator, and a copy of the appeal mailed to the Secretary of the Planning Commission. A third copy should be mailed to the individual official, department or agency concerned, if any.
- B. The County Planning Commission may send a recommendation to the Board of Zoning Appeals or appear as a party at the hearing.

#### § 125-60. Public hearing.

The Board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within 60 days. In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify an order, requirement, decision or determination appealed from. The concurring vote of a majority of the membership of the Board shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter or to effect any variance from this chapter. The Board shall keep a full public record of its proceedings and

shall submit a report of its activities to the governing body at least once each year. The Chairman of the Board or, in his absence, the Acting Chairman may administer oaths and compel the attendance of witnesses. All hearings shall be advertised in accordance with § 15.1-431 of the Code of Virginia 1950, as amended.

#### § 125-61. Decision of Board of Zoning Appeals.

Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals or any taxpayer or any officer, department, board or bureau of the County or municipality may present to the Circuit Court of the County a petition specifying the grounds on which aggrieved within 30 days after the filing of the decision in the office of the Board.

- A. Upon the presentation of such petition, the Court shall allow a writ of certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the Court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the Court may, on application, on notice to the Board and on due cause shown, grant a restraining order.
- B. The Board of Zoning Appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or such portions thereof as may be called for by such writ. The return shall concisely set forth such facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
- C. If, upon the hearing, it shall appear to the Court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the Court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the Court shall be made. The Court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
- D. Costs shall not be allowed against the Board, unless it shall appear to the Court that it acted in bad faith or with malice in making the decision appealed from. In the event that the decision of the Board is affirmed and the Court finds that the appeal was frivolous, the Court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making a return of the record pursuant to the writ of certiorari.

### ARTICLE IX General Provisions

#### § 125-62. Issuance of permits.

All departments, officials and public employees of this jurisdiction which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this chapter. They shall issue permits for uses, buildings or purposes only when they are in harmony with