

# NOTICE TO APPLICANTS

Dear Applicant:

Before you begin to prepare your “Variance Application,” please read this notice carefully. The Board of Adjustment (also known as “BOA”) determines whether a variance request may be granted based on certain criteria found in the Land Development Code. If your application meets the criteria, the BOA may consider granting your request.

Please read and respond to the criteria carefully. The criteria are printed on the next page. In making a decision on your case, the BOA must determine:

1. That there are specific physical attributes (e.g., lot slope, topography, lot shape) about your property which creates a practical difficulty;
2. That the practical difficulty, which exists, was not created by you;
3. That the physical attribute, which is causing the practical difficulty, is not found throughout the neighborhood;
4. That the variance, if granted, is the minimum variance that will make possible use of the land, structure, or building;
5. That the variance, if granted, would not be of substantial detriment to the public interest, the property, or adjoining property.

**Please note: “Aesthetics” and financial difficulty are not factors that the BOA may consider, although the BOA may consider whether the requested variance will create a substantial change in the character of the neighborhood.**

If you decide to proceed with your variance application and to present it before the BOA, please indicate on the written application how you have met the criteria listed above. Remember, the purpose of the BOA is to make variance decisions based on the rules set forth in the Land Development Code. So, while we understand there may be social, economic, or personal issues which you believe are relevant to your request, those issues are not to be considered by the BOA in judging your application for a variance.

Sincerely,

Board of Adjustment

### **3.20.8 Approval Criteria**

A Variance application may be approved only if the BOA finds that all of the following criteria have been met:

- A. Special circumstances or conditions exist (e.g., exceptional topographic conditions, narrowness, shallowness, or the shape of the property) that are not common to other areas or buildings similarly situated and practical difficulty may result from strict compliance with this Code's standards, provided that the requested variance will not have the effect of nullifying or impairing the intent and purposes of either the specific standards, this Code, or the Comprehensive Plan.
  
- B. In determining "practical difficulty," the BOA shall consider the following factors:
  - 1. Whether there can be any beneficial use of the property without the variance;
  - 2. Whether the variance is substantial in relation to the requirement or standard;
  - 3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
  - 4. Whether the variance would adversely affect the delivery of public services such as water and sewer;
  - 5. Whether the variance would adversely affect the risk of property damage or personal injury from flood, fire, or other natural disaster;
  - 6. Whether the Applicant purchased the property with knowledge of the requirement; and
  - 7. Whether the Applicant's predicament can be mitigated through some method other than a variance.
  
- C. No variance shall be granted if the submitted conditions or circumstances result from the actions or prior actions of the Applicant.
  
- D. No variance shall be granted reducing the size of lots contained in an existing or proposed subdivision if it will result in an increase in the number of lots beyond the number otherwise permitted for the total subdivision, pursuant to the applicable zoning district regulations.
  
- E. If authorized, a variance shall represent the least deviation from the regulations that will afford relief.
  
- F. The existence of nonconforming uses of neighboring lands, structures, or buildings in the same zoning district, or permitted or nonconforming use of lands, structures, or buildings in other zoning districts, shall not be considered grounds for the issuance of a variance.

### **3.20.9 Conditions on Approvals**

In granting such variances, the BOA may require such conditions as will, in its independent judgment, secure substantially the objectives of the standard so varied or modified.

### **3.20.10 Effect of Approval/Lapse**

- A. A Variance shall lapse and have no further effect two (2) years after its effective date or at such alternative time specified in the approval unless:
  - 1. A Building Permit has been issued and construction diligently pursued;
  - 2. A Certificate of Occupancy has been issued; or
  - 3. The structure is established.
  
- B. A Variance shall automatically lapse and have no further effect if the rights granted by it are discontinued for 180 consecutive days.