



The Henrico County Zoning Ordinance authorizes the Board of Zoning Appeals to grant variances in the following circumstances:

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 the piece of property, or of the condition, situation, 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 -- 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.

To assist you in addressing the pertinent issues, please answer the following questions (attach additional sheets if necessary):

1. How does the zoning ordinance prohibit, or unreasonably restrict, the use of this property? Is there a hardship so severe that it keeps you from using the property? **IF NOT, DO NOT CONTINUE.**

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2. What is the problem with the size, shape or topography of this property that does not apply generally to other property in the area?

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3. How would this variance affect other property in the area? Would the building, if any, be visible from neighboring property?

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4. Describe why you cannot make other arrangements to comply with the Zoning Ordinance without a variance.

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## **What is a variance and when should one be approved?**

A variance is an approval of the size of a lot, or the size or location of a structure that does not meet the requirements of the zoning ordinance. The Board of Zoning Appeals, a body of five citizens appointed by the Circuit Court, may grant a variance if they find that, because of some unusual characteristic of the property, a strict application of the zoning ordinance would result in a hardship so severe that it was almost the same as taking the property.

Before a variance can be granted, the applicant (usually the owner of the property) must show the zoning regulations "actually prohibit or unreasonably restrict" the use of the property. In other words, it must be impossible or unreasonable to use the property without the variance. Mere convenience, or a desire to maximize profit, does not justify a variance. If the applicant caused the hardship, the hardship is considered "self-imposed," and a variance is not justified.

The Supreme Court of Virginia has determined that "[t]he threshold question for the BZA in considering an application for variance as well as for a court reviewing its decision, is whether the effect of the zoning ordinance upon the property under consideration, as it stands, interferes with 'all reasonable beneficial uses of the property, taken as a whole.' If the answer is in the negative, the BZA has no authority to go further." The board has no authority to grant a variance where the owner is able to make reasonable beneficial use of the property without it. The BZA can grant a variance only if the applicant demonstrates that the zoning ordinance interferes with all reasonable beneficial uses of the property.

If the board finds evidence of a hardship approaching confiscation, it must consider three other factors. There must be some exceptional condition of size, shape or topography; the variance must not cause substantial detriment to adjacent property; and the circumstances must not be shared generally by other properties in the vicinity.

## **Board of Zoning Appeals Procedure**

All variance requests must be filed on the attached form. Applications are processed according to a schedule of deadlines and public hearing dates, which is published each year. The County is required to advertise applications in the *Richmond Times-Dispatch* and mail notices to the owners of all adjoining property.

The fee of \$300 covers a portion of the cost of advertising, researching, reviewing and processing the application. If an application is withdrawn before the advertisement is prepared, the County may refund part of the fee. After the advertisement has been prepared, the fee cannot be refunded.

The applicant or a representative is required to attend the public hearing. At the hearing anyone may speak in favor of, or in opposition to, any application. Written comments may also be submitted. After hearing all comments, the Board will take the matter under advisement, and hear the next case. After all of the day's cases have been heard, the Board will act on each one.

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Phone: 804-501-4602, Fax: 804-501-4379, Web: [www.co.henrico.va.us/planning](http://www.co.henrico.va.us/planning)

## Standard for Review of Variance Applications

The Supreme Court of Virginia recently clarified the legal standard that the Board of Zoning Appeals (BZA) must apply when reviewing variance applications. The court summarized the standard as follows:

"The threshold question for the BZA in considering an application for variance as well as for a court reviewing its decision, is whether the effect of the zoning ordinance upon the property under consideration, as it stands, interferes with 'all reasonable beneficial uses of the property, taken as a whole.' If the answer is in the negative, the BZA has no authority to go further." *Cochran v. Fairfax County Bd. of Zoning Appeals*, 267 Va. 765 (2004)

The BZA can grant a variance only if the applicant demonstrates that the zoning ordinance interferes with all reasonable beneficial uses of the property. The applicant should be aware of this, as the application fee cannot be refunded once a case has been advertised, regardless of the board's decision.

I acknowledge that the Permit Center staff has discussed the "Standard for Review of Variance Applications" with me. If I am not the owner of the property, I agree to give this information to the owner.

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**Signature**

\_\_\_\_\_  
**Name** (please print)

\_\_\_\_\_  
**Date**

Owner    Applicant    Representative