



CITY OF HAGERSTOWN, MARYLAND

Planning and Code Administration Department

BOARD OF ZONING APPEALS – VARIANCE APPLICATION

Submittal Requirements:

- Original application with original signatures and 9 copies
- 10 copies of all site drawings and any additional supporting documentation
- Filing fee (please consult [current fee schedule](#))

Case No. Z - _____
Office Use Only

Location of Property: _____
(Please include street address, if known)

Size of Property (acres/square feet): _____

Applicant's Interest in Property:

Owner (including joint ownership) Other (describe your interest in the property on the lines below and provide the name, address, and telephone number of the owner. **Attach written authorization from the owner of the property that they consent to this appeal, or have them sign this application form as a co-applicant.**

Proposed Use (Number and types of dwellings, area and use of commercial and industrial buildings):

Applicant's Name: _____

Trading As (if applicable): _____ Email: _____

Mailing Address: _____

Daytime Telephone: _____ Fax: _____

Attorney (legal counsel is not required, but if an attorney will represent you, please complete this section):

Name of Attorney: _____ Email: _____

Mailing Address: _____

Telephone: _____ Fax: _____

This Chart for Staff Use Only	Munis #:		
Date Accepted for Processing:	Drawing Attached:	Yes	No
Zoning District:	Posting Deadline:		
Assigned Hearing Date:	Opinion Due:		

Variance Requests:

	See Below	Section of Zoning Ordinance (Article 4, LMC)	Type of Regulation (front setback, parking, etc.)	Ordinance Requirement	Proposed Dimension (Variance Requested) *See Below
Example		F.5.a.	Front yard setback	15 feet	5 feet
1.					
2.					
3.					
4.					
5.					

** For applications involving multiple lots or properties, use this column to identify the specific lot that is the subject of this individual request. If only one property is involved in this application, please disregard this column.

*** The variance requested is the proposed dimension. Using the example above, if the setback requirement is 15 feet and you propose to go 10 feet into that requirement and have a new setback from the property line of 5 feet, the variance request is 5 feet.

Example: Requirement (15 feet) minus incursion into bulk requirement (10) feet = variance (new setback) requested (5 feet).

Description of Existing and Proposed Uses:

A. Present or most recent use of the subject property:

B. Proposed use of property, including any existing or permitted uses of the property that would be conducted on the site, size of proposed improvements (if construction is proposed):

Variance Exhibit:

In order for the Board of Zoning Appeals to have a clear understanding of the unique conditions of your property and your variance request(s), you must submit with this application a drawing of the property, showing the property lines, the property's relationship to adjacent streets and buildings, the location of existing buildings on the site, and proposed improvements that would occur if the variance(s) is/are granted. Attach a copy to the original application form and each of the nine copies submitted.

Attached to this application is a sample drawing for you to use as an example and guide in preparing a drawing for your application.

Board of Zoning Appeals Variance Criteria:

The Board will make a decision on your application based on conformance with the six criteria found at the end of this application. The following spaces are provided to assist you in preparing your testimony to the Board based on these criteria. If you need additional space, please attach additional sheets. A more detailed explanation is provided on pages 5 and 6 of this application.

A. Explain the unique physical conditions associated with your property and how compliance with the strict letter of the regulations would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

B. Explain how the requested variance(s) are the minimum reasonably necessary to overcome the conditions described in A. above.

C. Explain how enforcement of the provision from which the variance is requested would deprive the property owner of uses commonly enjoyed by other similar properties in the same district.

D. Explain how the variance(s) requested will not confer special treatment on the applicant.

E. Explain how the property owner or applicant has not created the conditions that they now use as justification for seeking a variance.

F. Explain how the requested variance will not be contrary to the intent of the Zoning Ordinance, will not be injurious to the neighborhood or the public welfare.

Additional Materials, Fees, Posting, and Advertising:

A. If desired, supplemental pages may be attached to this application.

This original application form and nine (9) copies of the application must be submitted. If the applicant desires to submit additional materials, pages, etc., ten (10) copies are required. However, additional copies of original photographs and large graphic exhibits are not required. Single copies of original photographs and large graphic exhibits are sufficient. Please do not mount large exhibits to foam core or other rigid backing, as the exhibit can be damaged when removed for placement in the file.

B. The undersigned agrees to properly post the property at least ten (10) days immediately prior to the hearing and maintain the poster(s) during the period the property is required to be posted. Failure to comply with this requirement will delay the Board hearing the case.

C. The undersigned agrees to pay all costs in accordance with the current fee schedule adopted by the Mayor and City Council. Checks are to be made payable to the “City of Hagerstown.”

Signatures

The undersigned hereby affirms that all of the statements and information contained in, or filed with, this petition are true and correct. The undersigned has read the instructions on this form, filing herewith all of the required accompanying information.

Attorney’s Signature (if applicable)

Applicant’s Signature (if different from owner)

Property Owner’s Signature (if other than applicant)

What is a Variance and what are the Standards Used by the Board to Make a Decision?

A variance is a deviation from the bulk requirements required by the Zoning Ordinance, such as setbacks, building height, number of parking spaces, etc. For example, if you want to build an addition to your house and you need to construct it ten feet from the property line, but the Ordinance requires that you keep it 20 feet from the property line, you need to apply for a variance. This process exists to provide reasonable accommodation of plans for properties that may be impacted by unique

physical conditions such as shape of the lot, topography, etc. The six criteria below are used by the Board of Zoning Appeals to evaluate whether a variance is appropriate. The variance process does not exist to simply waive the Ordinance requirements with which an applicant may find undesirable. In order to approve a variance, the Board of Zoning Appeals must make positive findings on each of the following six criteria (*simplified explanations and examples of what is an appropriate variance and what is not are provided in italics*).

1. Whereby reason of exceptional narrowness, shallowness, shape, topographical conditions, or other unusual situations or conditions peculiar to a specific parcel of property or of the use of the property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or undue hardship upon, the owner of the property; and

Example: An applicant wants to build a two-car garage like most of his neighbors have. Because of the shape of his property, or the location of the existing house, he cannot do it without building in violation of the setback. This is a reasonable argument for a variance. Requesting a variance to adjust a setback to build a four-car garage when most of his neighbors have only two-car garages is an example of when a variance is not appropriate. Simply wanting to build the garage closer to a property line because that is where he desires to place it, or seeking a variance in order to build improvements that are excessive compared to surrounding properties are not grounds for a variance.

2. The variance requested is the minimum reasonably necessary to overcome the unusual conditions applicable to the property; and

The applicant will need to demonstrate that the request she makes is the minimum necessary to accomplish her needs. She should not ask for a variance to reduce a setback to ten feet if she could reasonably build her desired improvements 12 feet from the property line. The applicant needs to determine the minimum that she needs and request that amount.

3. The literal interpretation of the provisions of this Ordinance would deprive the applicant of uses commonly enjoyed by other similar properties in the same district under the terms of this Ordinance; and

The applicant will need to demonstrate that failure to obtain the variance would not permit him to make similar use of his property as other similar properties in the same zoning district. For example, if the applicant's property is 5,000 square feet and most other lots of that size have two-car garages, the applicant needs to show that his request would allow him to construct improvements that are typical of the surrounding area; and if he does not obtain the variance, he would not be allowed to improve his property comparably to similar properties.

4. That granting the variance will not confer on the applicant any special privilege that is denied by this Ordinance to other lands or structures within the same zoning district; and

The applicant will need to demonstrate that her property meets these criteria, and that the Board will not be giving her special treatment by granting a variance that does not meet these standards. The Ordinance not permitting her to build what she desires is not grounds for approval of a variance.

5. No variance shall be granted in any case where the applicant or their agent has created or caused to be created a situation which would or has necessitated the issuance of a variance in order for such property to comply with the Ordinance; and

The applicant will need to demonstrate that he did not create the problem for which he now seeks a variance. For example, if a property owner desires to build an addition on a house and place it in a location that needs a variance, he will need to demonstrate that there is no other side or area on the house that could reasonably be used to construct the addition without the variance. Also, he will need to show that the addition is a reasonable size (i.e., the Board is not granting a variance to allow him to build an addition that would make his house significantly larger than other houses in the area). Desire to place more improvements on a property than it would normally be accommodated by a similar property is not grounds for a variance.

6. That the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The Board may prescribe appropriate and specific conditions and safeguards, including location, construction, maintenance, and operation in conformity with the Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be a violation of this Ordinance.

The applicant will need to demonstrate that her request will not harm her neighbor's reasonable use and enjoyment of their property, and will not damage the public welfare. An example of damaging the public welfare would be building an addition too close to a street intersection that the improvements block traffic visibility approaching the intersection, creating an unsafe traffic condition.

It is these standards that you should be prepared to address at your hearing in order for the Board of Zoning Appeals to be able to approve your variance.

In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with the Zoning Ordinance and the criteria considered above. Violation of such conditions and safeguards when made a part of the terms under which a variance is granted, shall be deemed to be a violation of the Zoning Ordinance, subject to enforcement action.

NOTE: Per Maryland law, the Board of Zoning Appeals is prohibited from granting a variance for a use that is not permitted in the district in which the property is located. For example, the BZA would be prohibited from approving a variance to establish a retail store or a car repair business in a residential district when the residential districts do not permit these uses.

For more information, please contact:

Hagerstown Planning and Code Administration Department

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F: 301.791.2650

Email: planning@hagerstownmd.org

Last Amended: 2/2016

This drawing is an example of what will need to be provided as an exhibit with your variance application.

