

**APPEAL OF A DECISION OF THE ZONING ADMINISTRATOR  
TO THE BOARD OF ZONING APPEALS (BZA)**

A citizen may appeal a zoning ordinance decision of the Zoning Administrators of the Board of Zoning Appeals (BOZA). The BOZA is a five-member board appointed by the Circuit Court Judges of the 23<sup>rd</sup> Judicial circuit to hear these appeals.

To appeal, a citizen must file a Petition for Appeal with the Zoning Administrator. The BOZA will meet and hear the appeal and decide if a variance should be granted. A variance is granted by the BOZA upon the affirmative vote of at least three of its members.

The BOZA is restricted by certain requirements of state law in granting variances. State law does **not allow the BOZA to grant a variance as a personal accommodation,** or because **no one objects,** or because it accomplishes what one might consider a **“fair”** result.

In order to grant a variance under Virginia law, the BOZA must find **(1)** that the strict application of the zoning ordinance would produce undue hardship, **(2)** that even if the hardship exists, it is not shared generally by other properties in the same zoning district and vicinity, and **(3)** that authorization of a variance will not be of substantial detriment to adjacent properties and the character of the zoning district will not be changed by its grant.

State law provides that a variance is appropriate only when the application of the zoning ordinance to a particular piece of property is adversely affected by reason of the “exceptional narrowness, shallowness, size or shape of a specific” parcel, and the application of the zoning ordinance **“would effectively prohibit or unreasonably restrict the use of the property”** or cause **“a clearly demonstrable hardship approaching confiscation”**.

You must produce evidence (your petition, a map, if available, and your oral presentation) of the three factors mentioned above at the hearing before the BOZA. The Supreme Court of Virginia has stated that a variance is a remedy that is properly applicable only in rare circumstances. The Court has narrowly interpreted the provisions of Virginia law to amount only to a **“constitutional safety valve”** which avoids confiscation by the operation of the zoning ordinance alone.

Please provide as much detail as you can in the Petition that is provided to you by the Zoning Administrator. We hope that this explanation is some benefit to you in deciding whether to appeal to the BOZA.

**PROCEDURE FOR FILING A PETITION  
OF APPEAL TO THE BOARD  
OF ZONING APPEALS**

A petition of appeal to the Board of Zoning Appeals involving a variance or other appeal of a decision of the Zoning Administrator must be accompanied by eleven (11) copies of the following information:

1. A completed Petition of Appeal form;
2. A filing fee, in accordance with the fee schedule, to cover the costs of legal advertisements in the newspaper, the posting of signs on any property involved (where applicable), mailing of letters to adjacent property owners, and review by the City staff;
3. A certified plat (legal size paper maximum) drawn to scale showing the lot or property described in the application; location of existing and proposed buildings, alterations, or additions; all setback lines; and the limits of any variance requested;
4. A location sketch of any property involved showing nearest street intersection; and
5. Any applicable forms and/or documents, such as a certificate of elevation.

The above information must be submitted to the Zoning Administrator before the required Public Hearing, legal advertisements, and meeting of the Board can be scheduled.

**PETITION FOR APPEAL TO**  
**THE BOARD OF ZONING APPEALS**

1. PETITIONER(S):

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2. TYPE OF APPEAL:      VARIANCE\_\_\_\_\_      OTHER\_\_\_\_\_  
(IF "OTHER", DO NOT ANSWER QUESTION #5)

Explanation and description of reason(s) for appeal:

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3. LOCATION AND CHARACTERISTICS OF ANY PROPERTY INVOLVED WITH APPEAL:

a.      Legal owner(s) of property (if other than petitioner):

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b.      Address of property:\_\_\_\_\_

c.      Subdivision:\_\_\_\_\_

d.      Official tax map number:\_\_\_\_\_

e.      Size:\_\_\_\_\_

f.      Present use:\_\_\_\_\_

g.      Present zoning classification:\_\_\_\_\_

h.      Zoning classification of surrounding properties:\_\_\_\_\_

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4. Will the appeal, if granted, have any effect on present or Future street right-of-ways, setbacks, and other improvement plans? (Refer to the City Comprehensive Plan and/or Roanoke Valley Area 1975- 1995 Transportation Plan, if applicable.)

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5. The Code of Virginia (Sec. 15.2 - 2309) and State case law contain specific requirements for the granting of a variance. Variance requests issued for reasons not related to these criteria constitute an invalid application of Board authority. The fact that the Board feels it is doing “justice”; the request is considered necessary and essential by the applicant for personal, health, or other reasons; or the request is not opposed by nearby property owners do not, when standing alone, constitute valid reasons for the granting of a variance. The State Code requires that no variance shall be authorized unless the Board finds:

- a. The strict application of the ordinance would produce undue hardship.
- b. The hardship is not generally shared by other properties in the same zoning district and the same vicinity (i.e., the zoning requirement from which the variance is sought would not similarly restrict other properties which are zoned the same as the as the subject property).
- c. The authorization of the requested variance would not be a detriment to adjacent property nor would the character of the zoning district be changed if granted (i.e., the request would not reduce the amount of protection generally provided between adjoining properties under the existing Zoning

Ordinance or would not permit a use or development which would be permitted if the property were rezoned to another zoning classification).

- d. The condition of the property or the proposed use is not of such a recurring nature in the community as to make the adoption of a general Zoning Ordinance amendment practical which would otherwise permit the proposed use by right (i.e., the variance would not have the effect of resolving recurring zoning problems shared generally by other property owners in the same district or vicinity).
- e. Approval of this and other similar requests would not have the effect of ultimately nullifying the zoning restriction.
- f. Financial loss is not the only hardship that would be inflicted by the Zoning Ordinance requirement but is a factor to be considered.
- g. The hardship is not self-inflicted in any manner.

**Under State law, applicants must show how their request meets the following criteria for the granting of a variance:**

- a. The exceptional narrowness, shallowness, size or shape of the property, its topographic conditions, or other extraordinary condition of the property, or use of immediately adjacent property effectively prohibit or unreasonably restrict the use of such property in a manner consistent with Zoning Ordinance requirements.

Identify any such special physical conditions associated with the property or adjacent property that justify the granting of a variance:

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- b. The granting of the requested variance would alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience.

Identify and explain the hardship involved: \_\_\_\_\_

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**6. AFFIDAVIT:**

The undersigned petitioner certifies that this petition and the foregoing answers, statements, and other information herewith submitted are in all respects true and correct to the best of their knowledge and belief. Also, the petitioner understands that a “Notice of Zoning Request” sign will be posted by the City on any property, which is involved with an appeal.

Signed \_\_\_\_\_ Date \_\_\_\_\_

Mailing Address \_\_\_\_\_

\_\_\_\_\_

Telephone Number \_\_\_\_\_