



DPZ Office use only:

CASE NO. _____

DATE FILED _____

**RESIDENTIAL DISTRICT VARIANCE PETITION
TO THE HOWARD COUNTY HEARING EXAMINER**

1. VARIANCE REQUEST

SECTION _____ of the Zoning Regulations (describe) _____

2. PETITIONER'S NAME _____

TRADING AS (IF APPLICABLE) _____

ADDRESS _____

PHONE NO. (W) _____ (H) _____

EMAIL _____

3. COUNSEL FOR PETITIONER _____

COUNSEL'S ADDRESS _____

COUNSEL'S PHONE NO. _____

EMAIL _____

4. PROPERTY IDENTIFICATION

ADDRESS OF SUBJECT PROPERTY _____

ELECTION DISTRICT _____ ZONING DISTRICT _____ ACREAGE _____

TAX MAP # _____ GRID # _____ PARCEL # _____ LOT # _____

SUBDIVISION NAME (if applicable) _____

PLAT NUMBER AND DATE _____

5. PETITIONER'S INTEREST IN SUBJECT PROPERTY

OWNER (including joint ownership)

OTHER (describe and give name and address of owner)

If the Petitioner is not the owner of the subject property, documentation from the owner authorizing the petition must accompany this petition.

**PLEASE READ CAREFULLY
DATA TO ACCOMPANY PETITION**

6. VARIANCE PLAN

No application for a variance shall be considered complete unless the plan indicates the required setback or other requirement, and the requested variance from the subject setback or other requirement. The submitted plans shall be folded to approximately 8 ½ x 14 inches.

The plan must be drawn to scale and must include the items listed below:

- (a) Courses and distances of outline boundary lines and the size of the property
- (b) North arrow
- (c) Zoning of subject property and adjoining property
- (d) Scale of plan
- (e) Existing and proposed uses, structures, natural features and landscaping
- (f) Location and surface material of existing and proposed parking spaces, driveways, and points of access; number of existing and proposed parking spaces
- (g) Location of all building and use restriction lines
- (h) Same as (a) through (g) above, of any adjoining, confronting and vicinal properties as necessary for proper examination of the petition, or, if applicable, a copy of the subdivision plat for the community
- (i) Location of well and private sewerage easement area, if property is to be served by private water and sewer
- (j) Election District in which the subject property is located
- (k) Tax Map and parcel number on which the subject property is located
- (l) Name of local community in which the subject property is located or name of nearby community
- (m) Name, mailing address, telephone number (and e-mail address if any) of the petitioner
- (n) Name, mailing address, telephone number (and e-mail address if any) of attorney, if any
- (o) Name and mailing address of property owner
- (p) Floor area and height of structures, setback distances from property lines, and other numerical values necessary for the examination of the petition
- (q) Location of subject property in relation, by approximate dimension, to the center line of nearest intersection of two public roads
- (r) Ownership of affected roads
- (s) A detailed description of all exterior building materials for all proposed structures
- (t) Any other information as may be necessary for full and proper consideration of the petition

7. VARIANCE

A) Describe why the application of the Zoning Regulations in question to your particular property would result in practical difficulties or unnecessary hardships in complying strictly with the bulk requirements:

1. The physical character of the property is different from the character of the surrounding properties because of its () narrowness, () shallowness, () shape, () topography,

() other; explain: _____

2. The uniqueness of the property prevents me from making a reasonable use of the property because: _____

B) The intended use of the property, in the event the petition is granted: _____

C) Any other factors which the Petitioner desires to have considered: _____

D) Explain why the requested variance is the minimum necessary to afford relief: _____

E) Is the property connected to: public water?: Y___ N___; public sewer?: Y___ N___

F) If the variance is granted, would it impact the water and/or septic/sewer on the site? Y___ N___

G) If the variance is granted, would it increase the intensity of uses on the site? Y___ N___; if yes, explain: _____

H) If the requested variance is granted, would it increase traffic to or from the site? Y___N___; if yes, explain: _____

I) Describe in detail all means of vehicular access onto the site (i.e. width, type of paving, etc.): _____

J) Describe the topography of the site: _____

K) Will the existing or proposed structure be visible from adjacent properties? Y__ N__; if yes, describe any proposed buffering or landscaping: _____

L) Describe any existing buffering or landscaping: _____

8. PRIOR PETITIONS

Has any petition for the same variance, or substantially the same variance as contained herein, for the same property as the subject of this petition, been disapproved by the Hearing Examiner within twenty four (24) months of the date of this petition? () YES () NO

If yes, and six (6) months have elapsed since the last hearing, an affidavit setting forth new and different grounds on which re-submittal is based must be attached.

9. ADDITIONAL MATERIAL, FEES, POSTING, AND ADVERTISING

- a) If desired, supplemental pages may be attached to the petition. The following number of petitions, plans and supplemental pages must be submitted:
 - *If the subject property adjoins a State road- original and 19 copies (application & plans)*
 - *If the subject property adjoins a County road- original and 16 copies (application & plans)*
- b) The undersigned agrees to furnish such additional plats, plans, reports or other material as may be required by the Department of Planning and Zoning and/or the Hearing Examiner in connection with the filing of this petition.
- c) The undersigned agrees to pay all costs in accordance with the current schedule of fees.
- d) The undersigned agrees to properly post the property at least fifteen (15) days prior to the hearing and to maintain the property posters as required, and submit an affidavit of posting at, or before the time of the hearing.
- e) The undersigned agrees to insert legal notices, to be published one (1) time in at least two (2) newspapers of general circulation in Howard County, as prepared and approved by the Department of Planning and Zoning, within at least fifteen (15) days prior to the hearing, and to pay for such advertising costs; and further agrees to submit two (2) approved certificates of the text and publication date(s) of the advertisement at or before the time of the hearing.

10. PLANNING BOARD REVIEW

The Hearing Examiner may, at its discretion, refer a residential district variance petition to the Planning Board for review and a recommendation.

11. 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.

Petitioners Name (please print)

Petitioner's Signature

Date

Counsel's Name (please print)

Counsel's Signature

Date

**For DPZ office use only: (Filing fee is \$300.00 plus \$25.00 per poster.)
(Make checks payable to "Director of Finance")**

Hearing fee: \$ _____

Poster fee: \$ _____

TOTAL: \$ _____

Receipt No. _____

PLEASE CALL 410-313-2350 FOR AN APPOINTMENT TO SUBMIT YOUR APPLICATION

County Website: www.howardcountymd.gov

Revised: 07/12

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PETITIONER _____

PROPERTY ADDRESS _____

Affidavit made pursuant to the pertinent provisions of Title 22 of the Howard County Code as amended.

THE UNDERSIGNED DOES HEREBY DECLARE THAT NO OFFICER OR EMPLOYEE OF HOWARD COUNTY, WHETHER ELECTED OR APPOINTED, HAS RECEIVED PRIOR HERETO OR WILL RECEIVE SUBSEQUENT HERETO, ANY MONETARY OR MATERIAL CONSIDERATION, ANY SERVICE OR THING OF VALUE, DIRECTLY OR INDIRECTLY, UPON MORE FAVORABLE TERMS THAN THOSE GRANTED TO THE PUBLIC GENERALLY IN CONNECTION WITH THE SUBMISSION, PROCESSING, ISSUANCE, GRANT OR AWARD OF THE ATTACHED APPLICATION FOR A RESIDENTIAL DISTRICT VARIANCE AS REQUESTED FOR THE PROPERTY REFERENCED ABOVE.

I WE, DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE AFOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY, OUR, KNOWLEDGE, INFORMATION AND BELIEF.

Witness

Signature

Date

Witness

Signature

Date

Witness

Signature

Date

HOW A REQUEST FOR A VARIANCE IS EVALUATED

All requests for variances are evaluated based upon the following criteria of Section 130.B.2.a.(1) through (5) of the Howard County Zoning Regulations:

- (1) That there are unique physical conditions, including irregularity, narrowness or shallowness of lot or shape, exceptional topography or other existing features peculiar to the particular lot; and that as a result of such unique physical conditions, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.
- (2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.
- (3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.
- (4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum variance necessary to afford relief.
- (5) That no variance be granted to the minimum criteria established in Section 131 for special exception uses, except where specifically provided therein or in an historic district. Nothing herein shall be construed to prevent the granting of variances in any zoning district other than to the minimum criteria established in Section 131 except as provided therein.

To be approved, a variance request must comply with all of the criteria noted above. For a general explanation of what the criteria mean from a legal standpoint and how they are viewed by the Hearing Examiner, please read the attached Variances: The Exception to the Zoning Rule.

For an explanation of the official procedures that are followed in the processing, hearing and decision-making of a variance request, you may obtain a copy of the Rules of Procedure of the Hearing Examiner from the Department of Planning and Zoning.

Variations: The Exception to the Zoning Rule

by
Thomas P. Carbo

So, Mr. Joe Homeowner, you've finally decided to build that family room addition you've talked about. Your house just isn't big enough for your growing family. Since you can't afford to move, expansion is the only way to go.

You've decided that the best place for the addition is on the side of your house, because you put a deck on the back last year. Besides, who wants to use up more of that spacious back yard? You hire a contractor to draw up plans and he assures you that his work will meet all governmental requirements. Then, he tells you that you have one little problem – the planned family room will encroach into the side yard setback. Before he can get a building permit and start work, you'll have to get a zoning variance.

"A variance," you ask, "what's that?" "Don't worry," he replies, "you fill out some forms, submit them to the County, they have a little hearing, and you've got your variance." Piece of cake, right?

Sorry, Joe, but it's not that easy. It is a common misconception that variance approvals flow from local zoning authorities like water. This may be because, once upon a time, they practically did. Recent Maryland case law, however, has instructed that the free-flow of variances is contrary to the letter and intent of the zoning laws.

A variance is an exception to the area requirements of the local zoning laws, such as front, side, or rear yard setbacks, height restriction, building size, lot widths, or the like. A variance must be reviewed and approved by the local Board of Appeals after a public hearing.

Maryland's courts have directed that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. The reason for such stringency is rooted in the very purpose of the zoning laws. Zoning is the process whereby the local jurisdiction's comprehensive land use plan is put into effect. It divides an area into zones and defines, among other things, the permitted uses and area requirements of each zone. Zoning presumes that each district is peculiarly suitable for certain uses and, therefore, demands a high degree of uniformity within the zone. With respect to setback requirements, for example, zoning presumes that a certain amount of space between uses is necessary for the public benefit.

A variance on the other hand, allows that which is otherwise prohibited and is presumed to be detrimental to the public. Moreover, a variance erodes the uniformity of the zoning district. If variances were easily or lightly granted, the zoning ordinance would be emasculated and zoning

would be rendered meaningless.

Consequently, variances must be regarded as the exception rather than the rule. An applicant for a variance bears the burden of overcoming the presumption that the proposed use is unsuitable. That is done, if at all, by fully satisfying the statute authorizing the variance.

Howard County's variance criteria are typical of most zoning ordinances. Generally, a variance applicant must show that (1) the applicant's property is disproportionately impacted by the zoning restriction to the applicant's detriment, and (2) the variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

Many variance applications fail because they cannot meet the first of these tests. In order to show that a property is disproportionately impacted by the zoning regulations, the applicant must first prove that the lot is "unique" or "peculiar" – that is, the physical condition of the property, such as its size, narrowness, shallowness, topography, or environmental conditions, must be different from the nature of surrounding properties. Moreover, the uniqueness of the property must cause a "practical difficulty" in complying with the zoning restriction. In other words, the applicant must show that the peculiarity of the site prevents him from making a reasonable and permitted use of the property in compliance with the zoning regulations.

Zoning law includes several important caveats to the "disproportionate impact" test:

- The alleged hardship must relate to the land itself and not to the personal circumstances of the owner. Family or financial circumstances may not be taken into consideration.
- "Uniqueness" does not refer to the extent of the improvements upon the property – so that the location of a house restricting the buildable area on the land is not cause for a variance.
- Any claimed hardship cannot be "self-created." For example, an applicant (or a previous owner) may not erect an improvement within a setback and then claim that it would be a "practical difficulty" to remove the structure.
- The variance must be the minimum reasonably necessary to afford relief. This means that the encroachment must be minimized and the improvement must be of reasonable and customary size.

Joe Homeowner is not likely to get his variance. First, the fact that Joe has a growing family and "needs" a new family room is a personal consideration and not relevant to his variance request. Second, if he is not able to meet his burden of proving that his lot is different from others in the neighborhood – for example, that it is peculiarly narrow or small compared to others in his area – then the inquiry will end there. Even then, he must show that the peculiarity causes a practical

difficulty in erecting a reasonable addition to his house. Because his lot has ample room to build in the rear, however, it is not likely that he can establish the necessary hardship or that his variance is the minimum necessary to afford relief. What's more, he won't be able to argue that the location of the deck prevents him from building at the rear of the house because its prior construction will likely be regarded as "self-created" and not the type of "unique" condition warranting a variance.

Unwary homeowners, like Joe, need to be made aware that Howard County's Board of Appeals is, for its part, attempting to follow the courts' lead and stem the tide of unwarranted variance approvals. While this trend is perhaps not to our friend Joe's liking, it is good news for the preservation of the County's comprehensive land use plans.

