

# Variance

# Process Guide



## WHAT IS A VARIANCE?

A *variance* is a reasonable deviation from a provision of the Zoning Ordinance when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner. A variance may not allow a use in a district not authorized by the district regulations. This may only be accomplished by a zoning amendment. A granted variance runs with the property.

## HOW IS THE DECISION MADE?

The Zoning Administrator does not have discretionary powers beyond those granted in the Zoning Ordinance. Only the Roanoke City Board of Zoning Appeals (BZA), a quasi-judicial seven (7) member City Council appointed body, has the authority to hear and decide on applications for variances from the provision of the City Zoning Ordinance. The following standards pursuant to *Section 36.2-561 of the Code of the City of Roanoke (1979), as amended*, must be considered by the Board to determine if a hardship exists.

*Standards for considering a variance.* Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and

1. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
2. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
3. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;
4. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
5. The relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance at the time of the filing of the variance application.

## HOW MUCH WILL IT COST?

<b>Application Fee</b>	<b>Legal Ad Fee</b>	<b>TOTAL COST</b>
<b>\$190.00</b>	<b>\$250.00</b>	<b>\$440.00</b>

The application fee covers researching, reviewing, and processing the application. In addition, State Code requires that the City advertise the request two times in the local newspaper. The applicant is responsible for payment of all legal advertisement fees in the amount of \$250.00. If an application is withdrawn and the legal advertisement has already run or it is too late to pull, the applicant remains responsible for the cost.

## **HOW LONG DOES IT TAKE?**

The process takes a minimum of one month once an application is filed. See schedule below for filing deadlines and hearing dates.

## **WHAT IS THE PROCESS?**

All variances follow the same general process as follows:

### **(1) PRE-FILING CONFERENCE**

Applicants should schedule a pre-filing conference with staff to determine the necessity, grounds, completeness, and accuracy of the variance request. To schedule a pre-filing conference, please call (540) 853-1730.

### **(2) APPLICATION SUBMITTAL**

A variance application, consisting of the following components, must be filed in Room 170 of the Noel C. Taylor Municipal Building, 215 Church Avenue, Roanoke, Virginia 24011. An application for a variance may be made by any property owner, tenant, governmental official, department, board, or bureau. Because a variance is a legal matter, it is strongly recommended that an attorney represent you and assist with the preparation of the variance application. Staff will check the application for completeness before accepting it for filing. If there are delinquent real estate taxes owed on the subject property, the application will not be processed until such time as the taxes are paid in full.

- (a) **Application Form.** The application must be signed by the applicant(s). If the applicant(s) is not the property owner(s), the property owner(s) must also sign the application form or submit a consent letter at the time of filing. If a legal representative signs for a property owner, a copy of the executed power of attorney is required.
- (b) **Written Narrative.** An informative yet concise written narrative addressing the following items:
  - a. **Description of the proposed project;**
  - b. **Specific deviation requested from the Zoning Ordinance;**
  - c. **How does the strict application of the provision of the Zoning Ordinance for which you are requesting a variance effectively prohibit or unreasonably restrict use of the property OR how would the granting of the variance alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience;**
  - d. **How is the requested variance in harmony with the intended spirit and purpose of the Zoning Ordinance**
  - e. **Explain how the special condition or situation of the property and the resulting undue hardship are not so general or of a recurring nature as to make reasonably practicable the formulation of a general regulation as an amendment to the Zoning Ordinance; and**
  - f. **Explain why there is no other reasonable option to comply with the Zoning Ordinance without a variance.**
- (c) **Development Plan.** The development plan shall be drawn to a fixed scale. The development plan shall geographically depict the property that is to be considered and shall address any potential land or design issues arising from the request. It is preferred that the development plan be prepared by a professional surveyor, architect, or engineer. If the rendering or drawing is larger than 11" x 17", 10 copies must be provided by the applicant. A development plan must include the following:
  - a. Title, preparer, and date of development plan
  - b. Address and tax map number of the property
  - c. Scale of drawing and north arrow

- d. All lot dimensions
- e. Location and dimensions, to scale, of all existing and proposed structures
- f. Setback measurements from property lines for all existing and proposed structures
- g. Location and dimensions of all driveways, parking spaces, and loading spaces
- h. Location, width, and name of all existing or platted streets or other public rights-of-way within or adjacent to the property
- i. Physical features of the property such as sever slopes (show contours if applicable), rock formations, substantial tree or vegetative cover, natural watercourses, and flood plain restrictions, if application to the request
- j. All public or other easements affecting the property, if applicable to the request
- k. Water and sewer line locations serving the property, if application to the request
- l. Dimensions and location of any outdoor play areas, storage yards, or similar existing or proposed improvements, which are applicable to the request
- m. Delineation of any required landscaping, including location, size and description of required planting areas and planting materials.

**(d) Elevation rendering or drawing to scale of any proposed building or building addition.** If the rendering or drawing is larger than 11" x 17", 10 copies must be provided by the applicant.

**(e) Filing Fee.** Check for \$440.00 made payable to *Treasurer, City of Roanoke*.

### **(3) POST-FILING PROCESS:**

- (a) Staff Review:** Once an application has been filed, it is distributed to City departments, affected neighborhood organizations, and adjoining localities (if applicable) for comment. Staff then prepares a report and recommendations for the BZA's consideration which include pertinent code sections, facts of the case, and issues as they relate to the standards for the granting of a variance. A copy of the staff report is mailed to the applicant approximately one week prior to the public hearing.
- (b) Public Notice:** Notice of public hearing is published two times as a legal advertisement in the Roanoke Times and mailed to adjoining property owners, including those immediately across the street. The notice includes a general description of the variance request as well as the time and location of the public hearing
- (c) Board of Zoning Appeals Public Hearing:** The BZA's public hearing is held the second Wednesday (see page 2 for specific dates) of each month at 1:00 p.m. on the 4<sup>th</sup> floor of the Noel C. Taylor Municipal Building in Council Chambers. Applicant's are not required to attend the public hearing, but attendance is highly recommended. Anyone from the public may speak or submit written comments in favor of, or in opposition to, any request.

At the BZA's public hearing, the applicant presents the request; staff presents its report and recommendation; the BZA takes public comment; and the BZA discusses the request and takes action. The concurring vote of a majority of the membership of the BZA is necessary to grant a variance. This means at least four (4) members of the seven (7) member BZA must vote in favor of granting the variance for it to be approved, even if there are only four (4) members present. In authorizing a variance, the BZA may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest (*Virginia Code §15.2-2309(2)*).

Any decision of the Board is final; however, the applicant or an aggrieved party may file an appeal with the Clerk of the Circuit Court within thirty (30) days after the final decision of the Board. Once the board considers and renders a decision on an application the board cannot reconsider a substantially similar request for one (1) year, except when the decision is the subject of a motion to rehear as set forth in the Board's bylaws.

# Variance

# Application

Planning Building and Development  
Room 166, Noel C. Taylor Municipal Building  
215 Church Avenue, S.W.  
Roanoke, Virginia 24011  
Phone: (540) 853-1730

- Application Checklist:
- Application Form
  - Right to Sign Docs (if applicable)
  - Written Narrative
  - Development Plan
  - Elevation
  - Filing Fee

Date:

## Property Information:

Street Address:

Official Tax No(s):

Size of Property (acres or square feet):

Base Zoning District:  Overlay Zoning District:

Request is made for a variance from Section 36.2- , Zoning, Code of the City of Roanoke (1979), as amended.

Briefly describe the proposed project and specific deviation requested from the Zoning Ordinance:

## Applicant Information:

Name:  Phone Number:

Address:  E-Mail:

Applicant's Signature: *(Right to sign documents may be required for Corporations and LLCs)*

## Owner Information:

Name:  Phone Number:

Address:  E-Mail:

Owner's Signature: *(Right to sign documents may be required for Corporations and LLCs)*

Application accepted as submitted in accordance with the provisions of Chapter 36.2, Zoning, Code of the City of Roanoke (1979), as amended.

Secretary to the Board's Signature

Intake Date

Public Hearing Date