

# BOARD OF ZONING APPEALS BULLETIN

## What is the Board of Zoning Appeals?

The Board of Zoning Appeals is a 5-member quasi-judicial body appointed by the Circuit Court charged with a specific limited mission as defined under Section 15.2-2309 of the Code of Virginia, 1950, as amended. The Board by hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of those items covered under Article 7 of Title 15.2 of the Code of Virginia. In addition to this review authority, the Board may grant certain variances from the requirements of the Chesapeake Zoning Ordinance, provided a hardship, as narrowly defined under Section 15.2-2201 of the Code of Virginia, is clearly evident.

## What are the specific powers of the Board of Zoning Appeals?

- To hear and decide *appeals* from the decisions or determinations of the zoning administrator in the administration or enforcement of the zoning ordinance.
- To authorize *variances*, from the strict application of the terms of the zoning ordinance.
- To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary.

## What is a “variance”?

A variance is a relaxation of the zoning ordinance standards relating to the required dimensions, distances to property lines or characteristics of land and structures, including the size, area, bulk or location of buildings or structures. There are instances where a property may qualify for the granting of a variance by the Board of Zoning Appeals. However, the circumstances under Virginia law for the granting of variances by the Board are very specific.

To be granted a variance by the Board the applicant for a variance must meet all the following requirements:

- That the property was acquired by the applicant in good faith.
- That due to the particular physical surroundings, size, shape, topographical condition or other extraordinary situation or condition of the specific property involved or of the condition, situation or development of property immediately adjacent thereto the strict application of the terms of this ordinance would effectively prohibit or unreasonably restrict the utilization of the property; or where the strict application of the terms of this ordinance would constitute a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or mere inconvenience.

- That the strict application of the ordinance would produce undue hardship. Economic hardship alone cannot be the grounds for the granting of a variance.
- That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the zoning district will not be changed by the granting of the variance.
- That 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 this ordinance.

For example, an applicant for a building permit is planning an addition to the rear of the existing one-story residence that falls below the minimum setbacks (distances to property lines), but otherwise could comply with the zoning ordinance by re-locating the addition, reducing the size of the addition, or building a 2<sup>nd</sup> story. The applicant would not qualify for a variance as the applicant already is using the property as a dwelling and has other alternatives, so the “hardship” is not a true hardship approaching confiscation of the property but rather an inconvenience. The setbacks imposed upon the applicant are shared throughout the area and the zoning district, and the granting of a variance in this case by the Board has the potential of changing the “character” of the zoning district.

In another example, a property owner wants to build a new dwelling on a lot that is of comparable size and area to surrounding dwellings but cannot meet the required setbacks because of any number of topographical restrictions including but not limited to utility easements, location of a septic field, etc. In this case the Board, based upon the evidence supplied by the applicant for a variance, may be able to grant a variance in order to place the dwelling on the property because to not do so would effectively prohibit the use of the land as zoned for a residence.

### **What is an “appeal”?**

The Board of Zoning Appeals is also authorized under Virginia law to hear appeals from any order, requirement, decision or determination made by the zoning administrator or designee in the interpretation, administration or enforcement of the zoning ordinance. In this capacity, the Board’s task is to determine whether the zoning administrator was correct in the interpretation and application of this ordinance. In doing so, the board considers the purpose, intent and meaning of the ordinances, laws and regulations in question. The decision of the zoning administrator is presumed to be correct, with the burden being upon the applicant to demonstrate error. Any decision of the board shall be supported by findings of fact and a conclusion that the decision of the zoning administrator was: (1) correct in the interpretation and application of the zoning ordinance; (2) plainly wrong in the interpretation of the zoning ordinance; or (3) plainly wrong in the application of the zoning ordinance to the particular facts presented. The board in this case may, in conformity with the provisions of the zoning ordinance, reverse or affirm wholly or partly or may modify the order, requirement, decision or determination appealed from.

**How do I apply for a variance or an appeal?**

Variance and appeal applications use the same form and can be downloaded (in pdf format) [here](#). Instructions, filing fees and general information are included in the form. If you have any questions, please call the Board of Zoning Appeals Secretary at (757) 382-6466 or 382-8454.

## INSTRUCTIONS

The following is provided to assist in completing an application for a variance and/or appeal of the Zoning Administrator's decision. On the following page you will find a blank application form with certain areas numbered in yellow. Attach a copy of your survey with your variance request application showing all existing buildings, including porches, stoops, steps, bay windows, accessory buildings, roof overhangs, and the proposed structure or alteration requiring the variance.

An explanation of the information required for each numbered area is listed below:

1. Describe your request for a variance and/or appeal detailing the action sought from the BZA. Be as specific and detailed as possible. Additional pages may be attached.
2. Location of the property involved in this request to include the following:
  - a) Address of the property
  - b) Lot number, block, section, phase/part, subdivision and borough - this information can be found on your physical survey or in the Real Estate Assessor's Office in the tax records of the property.
3. List the legal property owner(s)'s name as found on the real estate tax records.
4. The Applicant Information section requires the Applicant's name and/or company name, if applicable, mailing address including zip code and a daytime phone number are required information. This information will be given to the local newspaper for billing purposes for the legal ad as a result of the required advertisement of your application.
5. Indicate the appropriate status of the applicant. Take note that other than the legal property owner must submit an executed Power of Attorney form (included in this package). Signature of the applicant is required.
6. **The filing fee per application is \$100.00.** Cash, checks and Discover/Novus credit cards are accepted as methods of payment. Checks should be made payable to the City of Chesapeake. The applicant will be billed separately by the Chesapeake Clipper for legal ad costs.

**Applicants or their property representative must appear before the BZA.** The enclosed Power of Attorney must be notarized and submitted with the application if the property owner is not going to be present at the public hearing.

In variance cases, the applicant will be provided a Public Notice Sign. It is the applicant's responsibility to post the sign on the property involved in the application 14 days prior to the public hearing and remove it within 10 days following the public hearing. The sign shall be displayed in a location on the property where it can easily be read. Failure to correctly post the sign could result in delay or denial of the application.

An appeal of the BZA decision may be petitioned to the Chesapeake Circuit Court and must be filed within 30 days of the date on which the BZA decision was made.



APPLICATION  
TO  
Board of Zoning Appeals  
City of Chesapeake, Virginia

Please print or type

I (we) the undersigned do hereby apply to the Chesapeake Board of Zoning Appeals for a Hearing on the following request:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ 1 \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

use extra sheets if necessary

- Location of Property involved in this request -

\_\_\_\_\_  
Address  
Legal Description: \_\_\_\_\_ 2 \_\_\_\_\_  
Lot Block Section Phase/Part  
Subdivision Borough  
Property Owner(s): \_\_\_\_\_ 3 \_\_\_\_\_  
Real Estate Number: \_\_\_\_\_

- Application Information -

\_\_\_\_\_  
Name  
\_\_\_\_\_  
Mailing Address 4 \_\_\_\_\_  
\_\_\_\_\_  
City/State/Zip  
\_\_\_\_\_  
Telephone Number

**\*\*Applicants Interest In Property\*\***

5  Owner  Contract Purchaser\*  Owner's Agent\*  Lessee/Tenant\*

Other (explain) \_\_\_\_\_ \* Power of Attorney required

Respectfully Submitted:

\_\_\_\_\_  
Applicant's Signature

**Office Use Only**  
Zoning District: \_\_\_\_\_  
Zoning Map Number: \_\_\_\_\_  
Date Received: \_\_\_\_\_  
Receipt Number: \_\_\_\_\_ 6 \_\_\_\_\_

**Board of Zoning Appeals Use Only**  
 Approved  Denied  
Conditions:  
\_\_\_\_\_



APPLICATION  
TO  
Board of Zoning Appeals  
City of Chesapeake, Virginia

Please print or type

I (we) the undersigned do hereby apply to the Chesapeake Board of Zoning Appeals for a Hearing on the following request:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

use extra sheets if necessary

- Location of Property involved in this request -

\_\_\_\_\_  
Address

Legal Description: \_\_\_\_\_

_____	_____	_____	_____
Lot	Block	Section	Phase/Part
_____	_____	_____	_____
Subdivision	Borough		

Property Owner(s): \_\_\_\_\_

Real Estate Number: \_\_\_\_\_

- Application Information -

\_\_\_\_\_  
Name

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

\_\_\_\_\_  
City/State/Zip

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

**\*\*Applicants Interest In Property\*\***

Owner     Contract Purchaser\*     Owner's Agent\*     Lessee/Tenant\*

Other (explain) \_\_\_\_\_ \* Power of Attorney required

Respectfully Submitted:

\_\_\_\_\_  
Applicant's Signature

<b>Office Use Only</b> Zoning District: _____ Zoning Map Number: _____ Date Received: _____ Receipt Number: _____
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<b>Board of Zoning Appeals Use Only</b> <input type="checkbox"/> Approved <input type="checkbox"/> Denied Conditions: _____
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**POWER OF ATTORNEY**

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the below-signed individuals do hereby appoint \_\_\_\_\_, mailing address of \_\_\_\_\_, as their Attorney-In-Fact and grant and confer to them the following powers with respect to the property located at \_\_\_\_\_, Chesapeake, Virginia:

- 1. Full authority to file an application with the Chesapeake Board of Zoning Appeals for a variance and/or appeal of a decision rendered by the Zoning Administrator.
- 2. The power to amend in whole or in part any of the documents relating to the above-referenced application to the Chesapeake Board of Zoning Appeals.
- 3. Full authority to appear before the Chesapeake Board of Zoning Appeals at such time as the Board may consider the Application for Variance and /or appeal.

The powers confirmed herein above shall terminate upon a final determination by the Chesapeake Board of Zoning Appeals on the application for variance and/or appeal.

\_\_\_\_\_  
Property Owner

\_\_\_\_\_  
Property Owner

STATE OF VIRGINIA,  
CITY OF CHESAPEAKE, to wit:

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF VIRGINIA,  
CITY OF CHESAPEAKE, to wit:

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## ACKNOWLEDGEMENT

APPLICATION NUMBER: \_\_\_\_\_

### DECLARATION OF BOARD OF ZONING APPEALS INTEREST:

State whether any member of the Board of Zoning Appeals owns or has any personal or financial interest in the land which is subject to the application, or has any personal or financial interest in the outcome of the decisions, as defined by the Virginia Conflict of Interest Act.

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### DECLARATION OF ACCURACY:

I, the undersigned, certify that this application is complete, accurate and contains all required and requested information, documents and other submittals, and that all statements made herein are, to the best of my knowledge, true and correct. I further certify that I have exercised due diligence to obtain the most recent, complete and correct information available. I understand that wrongful certification or failure to provide required or requested documents that become available after the initial submittal of this application may result in a delay in, or invalidation of, any official governmental action taken. Fraudulent representations may lead to additional penalties under law.

### DECLARATION OF FINANCIAL RESPONSIBILITY FOR ADVERTISING COSTS:

I understand that the cost of newspaper advertising for public hearing notification purposes is my responsibility and agree to pay all notices of payment due and bills associated with advertising costs for this application, including all re-advertisements for continuances and appeals.

### DECLARATION OF CONSENT:

By signing below, the applicant/agent consents to entry upon the subject property by public officers, employees, and agents of the City of Chesapeake wishing to view the site for purposes of processing, evaluating or deciding this application.

Name: (signature) \_\_\_\_\_

Name: (printed or typed) \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_