

## VARIANCE / ZONING APPEAL

### Application and Procedures



### MIDDLESEX COUNTY

Department of Planning and Community Development

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#### NOTICE

This guide is for information only. Please refer to the applicable laws and regulations for specific technical and procedural requirements. In some cases, you will need professional help in such areas as land survey, engineering and law.

Although every effort has been made to ensure accuracy and completeness, the procedures contained in this guide are not guaranteed to be inclusive. Permitting procedures, fees and times are subject to periodic review and change. Any errors and omissions in this guide will not relieve any applicant or property owner of the responsibility, obligation or liability in fulfilling all of these legal requirements. Fees quoted in this document are accurate as of January 2003 and are subject to change. Please check with the Department of Planning and Community Development to confirm all fees.



## VARIANCE APPLICATIONS

### What is a variance?

A variance is a relaxation to the terms or requirements of the Middlesex County Zoning Ordinance. An application for a variance may be made by any property owner when, owing to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.

Please note that variances cannot relax the lists of permitted uses and special exception uses in the Middlesex County Zoning Ordinance. If you are interested in using a property in a way that is not generally permitted in that property's zoning district, you will have to look into applying for a special exception or rezoning.

A variance may be granted when conditions are unique to the property and not the result of the applicant's actions. The applicant must show a demonstrable hardship that unreasonably restricts the use of the property in a way that is not generally shared by other properties in the same zoning district and vicinity.

### Who can grant a variance?

The Board of Zoning Appeals has the authority to grant variances in cases where strict application of the Zoning Ordinance would result in unnecessary hardship for the property owner. The Planning Director may administratively grant a variance of fifty percent (50%) of any building setback requirement if there is no objection from abutters to the request.

### What is the Board of Zoning Appeals (BZA)?

The BZA is a five-member board consisting of Middlesex County residents. The BZA hears and considers requests for variances to the Middlesex County Zoning Ordinance and appeals of the Zoning Administrator's decisions.

### What is the basis for a variance?

Under Section 20-2-B of the Zoning Ordinance, the Board of Zoning Appeals cannot approve a variance unless it makes the following findings:

1. That the strict application of the ordinance will produce undue hardship approaching unconstitutional confiscation without compensation;
2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
3. That financial loss to the applicant is not the sole basis for the requested variance;
4. That the hardship claimed is not self-inflicted, either deliberately or ignorantly;
5. That the authorization of such variance will not be of substantial detriment to adjacent properties and that the character of the district will not be changed by the granting of the variance; and
6. That the condition or situation of the affected property or the intended use of the property is not of such general or recurring nature as to make reasonable practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In authorizing a variance, the Board of Zoning Appeals may impose conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.

*Before applying for a variance, discuss your situation with staff from the Department of Planning and Community Development. A solution may be discovered without the use of a variance.*

**What must I provide to obtain approval for a variance?**

The following information should be submitted for a variance request:

- A completed "Variance Application" signed and dated by the applicant and the property owner.
- A copy of a survey of the property.
- The application fee in accordance with the Middlesex County Fee Ordinance.

**What is the fee for a variance application?**

A fee of \$250 is required for all variance applications, and a fee of \$50 is required for all administrative variance applications. Applications will not be reviewed until this fee has been provided. This fee is applied to the cost of advertising, notification of adjacent property owners and other expenses incidental to reviewing and processing the application. Such fee is not returned whether the application is granted, denied or withdrawn.

**What is the process for approval of a variance application?**

In the case of variances before the Board of Zoning Appeals, the following process is utilized:

1. A pre-submission conference between the applicant and the Department of Planning and Community Development is recommended to discuss the proposal.
2. The applicant must submit a variance application and all associated materials/fees by the established deadline (the 10<sup>th</sup> of every month).
3. The Department advertises the request and public hearing once a week for two (2) consecutive weeks in the Southside Sentinel. Such notice specifies the time and place of hearing at which persons affected may appear and present their views. In addition, the Department notifies the property owner(s) and the owners of adjacent properties for which the variance is being requested.
4. The Department reviews the application as submitted and prepares a staff report on the request.
5. The Department forwards the variance application to the Board of Zoning Appeals for their review. The Board of Zoning Appeals considers the variance on the third Monday of the month at 7:30 PM at the Woodward Building Boardroom of the County Courthouse Complex, or in such other place as the Board deems necessary. The Board of Zoning Appeals holds a public hearing on the request and will grant approval or denial of the application.

In the case of administrative variances, the following process is utilized:

1. A pre-submission conference between the applicant and the Department of Planning and Community Development is recommended to discuss the proposal.
2. The applicant must submit a variance application and all associated materials/fees.
3. The Department notifies the property owner(s) and the owners of adjacent properties for which the variance is being requested. If any adjacent property owner objects to the administrative variance request within twenty-one (21) days, the case cannot be reviewed administratively and will require a public hearing before the BZA.
4. The Department reviews the application as submitted and will grant approval or denial of the application.

**How long does a typical variance process take?**

The typical variance process, either BZA or administrative, takes one (1) month from submission to action.

**Can I appeal the decision of the BZA?**

Yes. You have thirty (30) days to appeal the decision of the BZA to the Circuit Court.

## ZONING APPEALS

### **What is an appeal?**

A zoning appeal is when the decision or determination of the Zoning Administrator is questioned. Any person affected by any decision of the Zoning Administrator may appeal this decision to the Board of Zoning Appeals.

### **When must an appeal be filed?**

An appeal must be made within thirty (30) days of a decision from the Zoning Administrator.

### **Who decides an appeal?**

The Board of Zoning Appeals has the authority to render a decision regarding an appeal.

### **What must be submitted to apply for an appeal?**

The following information should be submitted for an appeal:

- A completed “Zoning Appeal Application” signed and dated by the applicant and the property owner.
- The application fee in accordance with the Middlesex County Fee Ordinance.

### **What is the fee for an appeal?**

A fee of \$250 is required for an appeal. Applications will not be reviewed until this fee has been provided. This fee is applied to the cost of advertising, notification of adjacent property owners and other expenses incidental to reviewing and processing the application. Such fee is not returned whether the application is granted, denied or withdrawn.

### **What happens after I apply for an appeal?**

After making an application to appeal a decision, adjoining properties are notified and a public hearing is conducted at a regular Board of Zoning Appeals meeting. Final decision is rendered by vote of the Board of Zoning Appeals.

### **How long does a typical appeal process take?**

The typical process takes one (1) month from submission to Board of Zoning Appeals action.

### **Can I appeal the decision of the BZA?**

Yes. You have thirty (30) days to appeal the decision of the BZA to the Circuit Court.



# MIDDLESEX COUNTY

Department of Planning and Community Development  
P.O. Box 427, Saluda, VA 23149  
Phone: 804-758-3382 Fax: 804-758-0061

## VARIANCE APPLICATION

### OFFICE USE ONLY

Application #: \_\_\_\_\_

Variance Classification/Fee:  Variance (\$250)  Administrative Variance (\$50)

Tax Query:  Current  Delinquent

Reviewing Authority: \_\_\_\_\_ Hearing Date: \_\_\_\_\_

Decision:  Approved  Denied

Conditions/Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Zoning Administrator Signature

\_\_\_\_\_  
Date

### APPLICANT INFORMATION

Name: \_\_\_\_\_

Address: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_

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

### PROPERTY OWNER INFORMATION

Name: \_\_\_\_\_

Address: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_

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

### PROPERTY INFORMATION

Parcel Number(s): \_\_\_\_\_ E911/Street Address: \_\_\_\_\_

Magisterial District: \_\_\_\_\_ Zoning District: \_\_\_\_\_

Existing Land Use: \_\_\_\_\_ CBPA District: \_\_\_\_\_

### VARIANCE REQUEST

The undersigned owner of the following described property applies for a variance from the provisions of Article \_\_\_\_\_, Section \_\_\_\_\_ of the Zoning Ordinance of Middlesex County, Virginia.

*Please answer the following questions:*

1. Describe the variance requested. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. Provide a narrative statement demonstrating that the requested variance conforms to the following standards:
- (A) The property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of the property at the time of the effective date of the Zoning Ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or conditions of such piece of property or of use or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property.
- (B) That special conditions and circumstances do not result from the actions of the owner.

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3. How would this variance affect other property in the area? \_\_\_\_\_

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4. Describe why you cannot make other arrangements to comply with the Zoning Ordinance without a variance. \_\_\_\_\_

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**APPLICANT STATEMENT**

I hereby certify that I have the authority to make the foregoing application, that the information given is complete and correct to the best of my knowledge, and that development and/or construction will conform with the regulations as set forth in the Middlesex County Zoning Ordinance as written and also with the description contained in this application.

\_\_\_\_\_  
Applicant's Signature (if not Property Owner)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant's Signature (if not Property Owner)

\_\_\_\_\_  
Date

**PROPERTY OWNER(S) STATEMENT**

I hereby certify that I/we own the above described property, that the information given is complete and correct to the best of my knowledge, that development and/or construction will conform with the regulations as set forth in the Middlesex County Zoning Ordinance as written and also with the description contained in this application, and that the above person(s), group, corporation or agent has the full and complete permission of the undersigned owner(s) to make application for a variance as set forth in the Middlesex County Zoning Ordinance as written.

\_\_\_\_\_  
Property Owner's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Property Owner's Signature

\_\_\_\_\_  
Date

**CONDITIONS**

1. This permit application is not valid unless all property owner(s) signatures are affixed and dated.
2. All permit application charges are nonrefundable, regardless of whether the permit application is approved or denied once submitted. All checks for payment should be made payable to Middlesex County.
3. Any approval of a variance is issued on the basis of plans and applications approved and authorizes only the use, arrangement and construction set forth in such approved plans and applications. Any deviations from the plans and applications submitted shall render an approved variance null and void.



## APPLICANT STATEMENT

I hereby certify that I have the authority to make the foregoing application and that the information given is complete and correct to the best of my knowledge.

\_\_\_\_\_  
Applicant's Signature (if not Property Owner)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant's Signature (if not Property Owner)

\_\_\_\_\_  
Date

## PROPERTY OWNER(S) STATEMENT

I hereby certify that I/we own the above described property, that the information given is complete and correct to the best of my knowledge, and that the above person(s), group, corporation or agent has the full and complete permission of the undersigned owner(s) to make application for an appeal as set forth in the Middlesex County Zoning Ordinance as written.

\_\_\_\_\_  
Property Owner's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Property Owner's Signature

\_\_\_\_\_  
Date

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\_\_\_\_\_  
Applicant's Signature (if not Property Owner)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant's Signature (if not Property Owner)

\_\_\_\_\_  
Date

## PROPERTY OWNER(S) STATEMENT

I hereby certify that I/we own the above described property, that the information given is complete and correct to the best of my knowledge, and that the above person(s), group, corporation or agent has the full and complete permission of the undersigned owner(s) to make application for an appeal as set forth in the Middlesex County Zoning Ordinance as written.

\_\_\_\_\_  
Property Owner's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Property Owner's Signature

\_\_\_\_\_  
Date

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