Variance Application

Complete this application in compliance with Article VII of the Unified Development Ordinance. In order to ensure the proposed variance complies with City regulations, we recommend that the applicant review the City of Elizabeth City’s Unified Ordinance; the Ordinance may be accessed at http://www.ci.elizabeth-city.nc.us/. Additional information regarding the Board of Adjustment may be obtained in the Elizabeth City Making Quasi-judicial Decisions brochure.

***NEW POLICY PLEASE READ***

The variance application fee is $500.00. A deposit of $100.00 must be paid when the application is filed. Your application will be reviewed by the Zoning Administrator for completeness and questionnaire response. If, after consultation the applicant elects to proceed with the variance process, the remaining fee balance of $400.00 must be paid immediately. All fees are charged per application and are non-refundable and non-transferrable once paid. Applications will not be processed for Board consideration unless fees have been paid in full.

Applications responses must be typed in black ink. Incomplete and/or illegible applications will be returned. Applications are not accepted via facsimile or email. Submit one (1) original and thirteen (13) sets of the completed application, supporting documents, photographs and materials, with fees to the City of Elizabeth City Planning Department. A current survey prepared and sealed by a Registered Surveyor must be attached at the time of application. A copy of the Site Plan Checklist can be supplied upon request.

Application deadlines are 25 working days prior to the hearing date. Regular Board of Adjustment hearings are held the third Tuesday of each month. You will be notified of your scheduled hearing date and time.

Variances are NOT granted to remove inconveniences or financial burdens. A variance is intended to provide relief where the requirements of the Ordinance render land difficult or impossible to use because of some unique physical attribute to the property. As applicant, you bear the burden of presenting sufficient factual evidence to support findings of fact. If you fail to satisfy the burden of proof, the Board
has no choice but to deny the application.

The Board of Zoning Adjustments does not have unlimited discretion in deciding whether to grant a variance. Under the State enabling act, the Board is required to reach three conclusions as a prerequisite to the issuance of a variance:

(a) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance;
(b) that the variance is in harmony with the general purposes and intent of the Ordinance and preserves its spirit; and
(c) that in granting of the variance the public safety and welfare have been assured and substantial justice has been done.

Please complete all sections of the application. Incomplete applications will be returned to applicant. Indicate ‘not applicable’ or ‘N/A’ where appropriate.

SECTION A – OWNER/APPLICANT INFORMATION

Landowner’s Name: ____________________________________________________________

Street Address: ______________________________________________________________

City/State/Zip Code: __________________________________________________________

Phone Number: ______________________________________________________________

Email Address: ______________________________________________________________

Applicant (if different from owner): ____________________________________________

Street Address: ______________________________________________________________

City/State/Zip Code: __________________________________________________________

Phone Number: ______________________________________________________________

Email Address: ______________________________________________________________

SECTION B – PROPERTY INFORMATION & HISTORY

Property Address: ____________________________________________________________

Parcel ID Nos. (12-digit): ______________________________________________________

Tax Map Number __________________ Block: __________________________ Lot: ____________

Location: This property is located on the __________________ side of __________________ (street)
between ____________________________ (street) and ____________________________ (street)  SR#__________

Zoning Classification ____________________________ Overlay District ____________________________

Subdivision ____________________________ Lot # ____________________________ Lot/Tract Size ____________________________

Deed Book ____________________________ Page ____________________________

Requested Variance (cite the Ordinance article, section, subsection and paragraph numbers, etc.):
___________________________________________________________________________________________________________________________________________________________________________________________________________

If the variance is requested for a limited time only, specify duration requested.
___________________________________________________________________________________________________________________________________________________________________________________________________________

The Board cannot grant a variance to written conditions adopted by the Board that are part of a Special Use Permit or by Council that are part of a Conditional Use Permit, Planned Unit Development, Conditional Use District Rezoning, subdivision plat or site plan approval that will be varied by this request. Are you aware of any such written conditions that pertain to the property? □ Yes  □ No

Did you purchase the property with knowledge of the condition you are seeking to obtain a variance for? □ Yes  □ No

Is this application the result of a violation notice? □ Yes  □ No

Is there any other local hearing pending or planned for this property? □ Yes  □ No  If so, provide case and or reference number: ____________________________________________________________________________________________________________________________

SECTION C – NOTIFICATION

All current property owners within 100 feet of the property being considered for variance must be mailed an Adjacent Property Owner Notification a minimum of 10 days prior to the Board of Zoning Adjustment meeting. The applicant is responsible for supplying a list of the names and mailing address for these property owners, including the name and address for the president of the Property Owners/Homeowners Association. In addition, the applicant must supply stamped, addressed #10 envelopes for each of the property owners within the 100 feet radius. The return address should read:

                   City of Elizabeth City
                   Planning Department
                   PO Box 347
                   Elizabeth City, NC 27909

Current property owner information may be obtained from the Pasquotank County Tax Department.
SECTION D – SUPPORTING EVIDENCE

In a type-written document, indicate the facts that you intend to show and the arguments that you intend to make to convince the Board that it can properly reach the aforementioned three required conclusions.

1. **There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance.** The courts have developed three (3) rules to determine whether in a particular situation "practical difficulties or unnecessary hardships" exist. State facts and arguments in support of each of the following:
   a) If he/she complies with the provisions of the Ordinance, the property owner/applicant can secure no reasonable return from, or make no reasonable use of his property. *(It is not sufficient that failure to grant the variance simply makes the property less valuable).*
   b) The hardship of which the applicant complains results from unique circumstances related to the applicant's land. *(Hardships suffered by the applicant in common with his neighbors do not justify a variance. Also, unique personal or family hardships are irrelevant since a variance, if granted, runs with the land).*
   c) The hardship is not the result of the applicant's own actions.

2. **The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.** (State actions and arguments to indicate that the variance requested represents the least possible deviation from the letter of the Ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood).

3. **The granting of the variance secures the public safety and welfare and does substantial justice.** (State facts and arguments to indicate that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant).

In addition to the application responses for the required criteria listed above, include other relevant facts that will allow the Board to evaluate your request. Consider the following questions and attach additional documents, photographs or materials that provide supporting factual evidence.

1. Can the predicament you describe be mitigated through some other method? Explain.
2. Does the variance represent the least deviation from the regulations that will afford relief? Explain how.
3. Will the requested variance have the effect of nullifying or impairing the intent and purposes of
the specific standards, the Ordinance, or future land use plans? Explain.

4. Are the conditions or circumstances found to affect the applicant’s property of so general or recurrent a nature as to make reasonable the formulation of a general regulation (i.e. Ordinance text amendment or Code amendment) to address the conditions or circumstances? Explain.

5. Do you propose to attach conditions to this variance request? If so, specify the condition(s). Examples that might be appropriate include:

   • time limitations that specify the duration that a variance will be in effect, such as in the case of a sign variance, a condition that specifies the duration the nonconforming sign can remain until a conforming sign can be manufactured and erected; or
   
   • conditions that reduce or minimize the injurious effect the variance might have, such as in the case of a buffer width variance, a condition that additional vegetative plantings be installed in the remaining buffer area.

********** APPLICATION CONTINUES ON NEXT PAGE **********
SECTION E – AUTHORIZATION

NOTE: ALL SIGNATURES SHALL BE NOTARIZED

I, _________________________________ (LANDOWNER’S NAME) am the owner of the property located at _______________________________ (PHYSICAL ADDRESS).

I hereby petition the Board of Adjustment for variance from the literal provisions of the City of Elizabeth City Zoning Ordinance because, under the interpretation given to me by the Zoning Administrator, I am prohibited from using the parcel of land described in the above form in a manner shown by the survey attached hereto.

I request a Variance so that the above-mentioned property can be used in a manner indicated by the survey and application responses attached. I understand that the Variance if granted is permanent and runs with the land unless otherwise stated. I authorize the City of Elizabeth City to advertise and City Officials to enter my property to conduct relevant site inspections as deemed necessary to process the application. All information submitted and required as part of the approval process shall become public record. I, as the land owner, hereby CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS TRUE TO THE BEST OF MY KNOWLEDGE; AND BY ACCEPTING THIS variance, if approved, shall in every respect conform to the terms of this application and to the provisions of the Statutes and Ordinances regulating development in City of Elizabeth City. Any VIOLATION of the terms above stated and/or City Code regulations will result in civil penalties.

If the person who is requesting the City of Elizabeth City to take action on the property indicated in the application is not the owner of said property, the property owner hereby authorizes ________________________________ (APPLICANT’S NAME) whose legal relationship to the owner is ________________________________, to appear with their consent before the Board of Adjustment.

If there are any questions, you may contact me, the property owner, at:

Street Address: ___________________________ City/State/Zip Code: ___________________________
Phone Number: ___________ Email Address: ________________________________
Owner’s Signature: ________________________________
Applicant’s Signature: ________________________________

________________________________________
Notary Public

My commission expires: ___________________________

Sworn to and subscribed before me, this the _____ day of ____________, 20____.
As a courtesy to the applicant, the Zoning Administrator will conduct a preliminary review of the application to determine completeness. The Pre-App meeting with the applicant will be scheduled when the application is filed and the $100.00 deposit fee is paid. The property owner or authorized agent/applicant will be asked to acknowledge the occurrence of the meeting and the variance criteria by signing below. If the owner and/or applicant choose to waive this meeting, signature or written statement is also required.

A variance may be granted by the Board of Adjustment if it concludes that strict enforcement of the Ordinance would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of this Ordinance will be observed, public safety and welfare secured, and substantial justice done both for the landowner and the public at large. Confirm that the applicant has responded to each question. **Staff is not asked to evaluate the quality of response or the validity of the case.** Review the application for the following Board ‘approval criteria’:

1. Strict compliance with the regulation provides the property owner no reasonable use of the property. In other words, can there be beneficial use of the property without the variance? It is not sufficient that the regulation would make use of the property less profitable or marketable. **Question Answered:** ☐ Yes ☐ No

2. The hardship results from application of the regulation to the property. A hardship resulting from a characteristic of the property not affected by the regulation, or from application of a deed restriction, is not a relevant hardship. **Question Answered:** ☐ Yes ☐ No

3. The hardship relates to the applicant’s land and from application of the regulation thereby affecting the property directly, rather than personal circumstances. In other words, do special circumstances or conditions exist on the property (e.g. narrowness, exceptional topographic conditions, or shape, etc.) that are not common to other areas or buildings that are similarly situated? Testimony or evidence about personal inconveniences or financial burdens cannot and will not be considered. The regulation’s hindrance to providing a benefit to neighboring properties or to the public is not a relevant hardship. **Question Answered:** ☐ Yes ☐ No

4. The hardship is unique, rather than one shared by neighbors, surrounding properties, or the general public. The hardship must be due to conditions specific to the property, and not to conditions that are neighborhood-wide or widespread throughout the jurisdiction. **Question Answered:** ☐ Yes ☐ No

5. The hardship is not the result of the applicant’s own actions – that is, special circumstances or conditions causing the hardship exist through no fault of the property owner. The hardship may not be one the property owner inflicted on himself (e.g., due to the owner’s violation of the Ordinance) or could have avoided. **Question Answered:** ☐ Yes ☐ No

6. The variance will neither result in the extension of a nonconforming situation in violation of Article VI Nonconforming Situations nor authorize the initiation of a nonconforming use of land (e.g. extension, enlargement, or replacement of a nonconforming use, sign, structure, etc.). Please reference Ordinance section for details. **Question Answered:** ☐ Yes ☐ No
(7) The variance would be in harmony with the general purpose and intent of the Ordinance and preserve its spirit. As noted above, a variance may not permit the expansion or extension of a nonconforming use or feature which the Ordinance intends to be made conforming or abandoned, and may not permit a land use or basic development intensity not already permitted (varying basic use and intensity regulations that define zoning districts may be done only through the rezoning or text amendment processes). The extent of the variance must be limited to the minimum necessary to alleviate the hardship. Question Answered: □Yes □ No

(8) The granting of the variance will not materially affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use, and will not be materially detrimental to the public welfare or injurious to the property or improvement to such neighborhood. A variance may not permit development that would be dangerous to neighbors, change the essential character of the neighborhood, or create additional difficulties regarding traffic, fire, water supply, sewerage, flooding, etc. Question Answered: □Yes □ No

(9) The granting of the variance is necessary for the preservation and enjoyment of substantial property rights. The harm to the property owner from denying the variance must outweigh the harm to neighbors and the public interest from granting the variance. Question Answered: □Yes □ No

I, ___________________________________ (PRINT YOUR NAME) acknowledge that I have met and reviewed my application with the Zoning Administrator. I hereby also acknowledge that the review of my application is not a Staff Analysis or evaluation of the merits of my case, but an inspection to ensure that all questions have been answered; the requisite site plan/survey is drawn to scale and in a professional-like manner; and supporting documents are assembled in good order. This review does not constitute a favorable outcome or automatic approval by the City of Elizabeth City Board of (Zoning) Adjustment. By signing my name below, I verify my additional understanding that the Board is a quasi-judiciary body; that the Zoning Administrator may request additional information; that I will be asked to provide sworn testimony; that all interested parties will be given opportunity to testify and may ask me questions about the application; that, by State law, an affirmative vote of four-fifths of the Board members is required to grant any variance, whereas a simple majority vote is sufficient to deny an application; and that I am required to record the approved variance with the Pasquotank County Register of Deeds following notification from the City of Elizabeth City Zoning Administrator.

____________________________________
Applicant’s Signature

OR

If you choose to waive the opportunity for pre-application consultation, while also acknowledging your understanding that State and local regulation of variance policies and procedures still apply, please indicate by printing and signing your name below.

____________________________________
Print Name/Signature

APPLICANT ACCEPTED AS COMPLETE BY: ___________________________ DATE: ________________