

## VARIANCE

### INSTRUCTIONS

**Prior to submitting your application, it is very important for you to make an appointment to discuss the proposed application and any possible alternatives. This will prevent any unnecessary expenditure of funds to third parties (i.e. title company, postage, etc.) in the event it is determined that there is an alternative. No refunds will be given for third party fees. Please call 595-3475 and ask for the Planner who coordinates the Variance cases. Please bring the zoning verification and referral sheet completed by the Building Inspections Department planners.**

In order for the variance request to proceed in a timely manner, the application forms must be completed and all items on the checklist must be submitted prior to the deadline. Any application submitted incomplete or after the deadline will not be accepted by Staff. See attached meeting calendar for important deadline dates. Staff cannot draw the site plan, write the letter of request, or give legal advice. Fees cannot be waived and are non-refundable regardless of the BOA's decision. *The Board of Adjustment makes no guarantee for approval of the variance.*

**NOTE: The Applicant or Agent MUST be present at the meeting, and it is the Applicant's burden to show consistency with all variance criteria listed herein.**

**An application is not considered complete until all the following information is received:**

- 1) A detailed letter of request, typed or written in blue or black ink (dated, signed & notarized- notarization is only necessary if an agent will be used), which must include the reason for the variance and must address the variance criteria listed on page 6. The criteria are the basis of the Board of Adjustment's ruling and are taken directly from the Escambia County Land Development Code, Ordinance 96-3 as amended. All criteria must be met in order for a variance to be granted. Do not merely repeat the criterion as stated but answer each with the reason(s) why it is met.
- 2) Original completed application form.
- 3) Attachments listed on the checklist on page 2. (Originals as indicated). If **color copies**, please include 15 copies of each document.
- 4) Completed certification form on page 4. If an agent is handling the request, the owner **must** sign the application and affidavit authorizing said agent to act in his/her behalf.
- 5) Completed Affidavit of Owner and Limited Power of Attorney on page 5, if owner is assigning agent to act in his/her behalf, date and notarize.
- 6) Certified mailings-see page 6.
- 7) Variance application fee - \$500.00.

**NOTE: Whenever an applicant would like any County staff member to appear and testify at a hearing, advance notice is required. Both the Department and the individual staff member must be notified in writing 10 days in advance of the hearing.**

## **VARIANCE APPLICATION CHECKLIST**

1. \_\_\_\_\_ Completed application packet (owner name, address and telephone number).
2. \_\_\_\_\_ Proof of Ownership (Copy of Warranty Deed or Copy of Tax Bill)
3. \_\_\_\_\_ Survey and Legal Description
4. \_\_\_\_\_ Site Plan
5. \_\_\_\_\_ 15 copies of **color** documents (if applicable).
6. \_\_\_\_\_ Letter of Request (typed or written in blue or black ink). Must address Variance criteria (Dated, signed and notarized)
7. \_\_\_\_\_ Copy of citation from Code Enforcement Department (If applicable)
8. \_\_\_\_\_ One CD in PDF format to include items 1 through 7above. (Including any additional evidence submitted).
9. \_\_\_\_\_ Certified mailings- see page 6.
9. \_\_\_\_\_ Variance Application Fee - \$500.00

### **PLEASE TAKE THE TIME TO READ THE FOLLOWING INFORMATION REGARDING HEARING PROCEDURES**

Hearings before the Board of Adjustment are quasi-judicial, which are like evidential hearings in a court of law, but less formal. Nonetheless, all public testimony is taken under Oath and everyone testifying before the BOA is subject to cross-examination. All documents and exhibits the BOA considers are entered into evidence and made part of the record of the hearing (A CD in PDF format is required to be submitted including any evidence presented at the hearing). The giving of testimony or opinion testimony is limited to experts and closing arguments are limited to the evidence of record. After hearing testimony and arguments for and against the proposed action and before making its decision, the BOA considers relevant testimony, exhibits entered into evidence and applicable law.

All decisions by the BOA are final and appealable. This means that anyone who seeks judicial review of the Board's decision must file an appeal in a court of competent jurisdiction within thirty (30) days of the decision of the BOA. Section 2.04.02 of the Escambia County Land Development Code states that, "Because decisions of the BOA are final, unless overturned by a court of competent jurisdiction, the county may issue development permits for properties in accordance with the decisions of the BOA. However, if a property owner or applicant requests the issuance of any such permit and such permit is issued, the permittee, and not the county, shall bear any risk that such decision may be set aside, the permit may be revoked, or the development may be otherwise enjoined by the reviewing court."

**VARIANCE APPLICATION**

Owner's Name: \_\_\_\_\_

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

Telephone: (        ) \_\_\_\_\_ - \_\_\_\_\_ Fax: (        ) \_\_\_\_\_ - \_\_\_\_\_

**LOCATION OF PROPERTY**

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

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

Property Reference Number: (Can be obtained at the Property Appraiser's Office at 434-2735)

Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_ Parcel \_\_\_\_\_ Lot \_\_\_\_\_ Block \_\_\_\_\_

**DESCRIPTION OF REQUEST – Cite Applicable LDC Sections(s)**

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

**FOR OFFICE USE ONLY:**

Application Number **V-**\_\_\_\_\_ Taken by \_\_\_\_\_

Zoning \_\_\_\_\_ Future Land Use \_\_\_\_\_

Board of Adjustment Meeting Date \_\_\_\_\_

Fees Paid \_\_\_\_\_ Receipt # \_\_\_\_\_ Date \_\_\_\_\_

**VARIANCE APPLICATION**  
**CERTIFICATION FORM**

**By my signature, I hereby certify that:**

- 1) I am duly qualified as owner or authorized agent to make such application, this application is of my own choosing, and staff has explained all procedures relating to this request; and
- 2) All information given is accurate to the best of my knowledge and belief, and I understand that deliberate misrepresentation of such information will be grounds for denial or reversal of this application and/or revocation of any approval based upon this application; and
- 3) I understand that there are no guarantees as to the outcome of this request, and that the application fee is non-refundable; and
- 4) I authorize County staff to enter upon the property referenced herein at any reasonable time for purposes of site inspection; and
- 5) I authorize placement of a public notice sign(s) on the property referenced herein at a location(s) to be determined by County staff.

_____ Signature of Owner	_____ Date
_____ Signature of Agent	_____ Date

Name of Agent: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: (     ) \_\_\_\_\_ - \_\_\_\_\_ Fax #: (     ) \_\_\_\_\_ - \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, year of \_\_\_\_\_, by \_\_\_\_\_, who (    ) did (    ) did not take an oath. He/she is (    ) personally known to me, (    ) produced Florida/Other Driver's License, and/or (    ) produced current \_\_\_\_\_ as identification.

_____ Signature of Notary Public	_____ Name of Notary Public Printed	_____ Date
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_____ My Commission Expires	_____ Commission Number – Notary Seal must be affixed
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**AFFIDAVIT OF OWNER AND LIMITED POWER OF ATTORNEY**

As owner of the property located at \_\_\_\_\_, Pensacola, Florida,  
Property Reference Number \_\_\_\_\_, I hereby designate  
\_\_\_\_\_, for the sole purpose of completing this  
application and making a presentation to the Board of Adjustment to request a Variance.

This Limited Power of Attorney is granted on the \_\_\_\_\_ day of \_\_\_\_\_, the year  
of \_\_\_\_\_, and is effective until the Board of Adjustment has rendered a decision on this request  
and any appeal period has expired. The owner reserves the right to rescind this Limited Power of  
Attorney at any time with a written notarized notice to the Development Services Bureau.

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Printed Name of Property Owner

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, year of \_\_\_\_\_ by \_\_\_\_\_  
who ( ) did ( )did not take an oath. He/she is ( ) personally known to me, ( ) produced  
Florida/Other Driver’s License, and/or ( ) produced current \_\_\_\_\_  
as identification.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Name of Notary Public Printed

\_\_\_\_\_  
Date

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Commission Number – Notary Seal must be affixed

VARIANCE REQUIREMENTS

CERTIFIED MAILINGS

I FURTHER CERTIFY THAT I AM FULLY AWARE THAT IT IS MY RESPONSIBILITY AS THE APPLICANT AND/OR AGENT TO PROVIDE TO THE PLANNING AND ZONING DEPARTMENT AT MY EXPENSE:

- A. A list of all owners of property directly abutting the subject property (excluding properties across the street).
  
- B. **ADDRESSED AND STAMPED** (not metered) envelopes, with completed certified mail cards, return receipt requested and payment receipts showing the names and addresses of those on the above referenced list. **An envelope for the applicant and/or agent should also be included. To be secured at the applicant's/agent's expense.** The return address to be used is:

Escambia County Development Services Bureau  
1190 W. Leonard Street  
Pensacola, FL 32501

I AM AWARE THAT PUBLIC HEARING NOTICES FOR THE REQUEST SHALL BE PROVIDED FOR MAIL-OUT PURPOSES, BY THE DEVELOPMENT SERVICES BUREAU.

\_\_\_\_\_  
Owner's signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Agent's signature

\_\_\_\_\_  
Date

VARIANCE CRITERIA

## VARIANCE CRITERIA

**NOTE: THE REFERENCED CRITERIA MUST BE ADDRESSED IN THE APPLICANT'S LETTER OF REQUEST.**

According to Section 2.05.02 of the Escambia County Land Development Code, the Board of Adjustment may grant a variance(s) to the height, bulk, area, yard, parking, or open space zoning requirement(s) of this Code and a variance to any of the standards contained in Articles 4 and 7 through 12 in specific cases when such variance(s) will not be contrary to public interests. Where, owing to special conditions, a literal enforcement of the provisions of this Code will result in unnecessary hardship, a variance may be granted so that the spirit and intent of this Code is observed and substantial justice done. Such special conditions shall be limited to unusual physical characteristics inherent in the specific piece of property and not common to properties similarly situated. Such physical characters include, but are not limited to, exceptional narrowness, shallowness, shape, topographic conditions, or the presence of sensitive environmental resources, any or all of which will result in peculiar or practical difficulties in the quiet enjoyment and use of the property. No variances shall be authorized under this provision unless the Board finds that all of the following conditions exist:

- 1) The special circumstances or conditions applying to the building or land in question are peculiar to such property and do not apply generally to other land or buildings in the vicinity.
- 2) The variance is the necessary for the preservation and enjoyment of a substantial property right as defined herein and not only to serve as a convenience to the applicant.
- 3) The authorization of the variance will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, the danger of fire, imperil the public safety, unreasonably diminish or impair established property values within the surrounding area or in any other respect impair the health, safety, comfort, or general welfare of the inhabitants of Escambia County.
- 4) The variance will not, in any manner, alter other provisions of this Code or the Comprehensive Plan, except this Code and the Plan may be amended in the manner prescribed by the law.
- 5) The variance is the minimum necessary to make possible the use of the land, building or other improvements as approved by the BOA.

*GUIDELINES REGARDING TESTIMONY  
BEFORE THE ESCAMBIA COUNTY BOARD OF ADJUSTMENT*

The Escambia County Board of County Commissioners adopted Resolution No. R96-34 (3-28-96), creating rules of procedure in accordance with Florida Law following the Florida Supreme Court's decision in Brevard County v. Snyder, 627 So.2d 649 (Fla. 1993). A copy of Resolution #R96-34 can be obtained from the Clerk to the Board of County Commissioners. The following procedural rules govern testimony in a quasi-judicial proceeding:

- 5.4 Laymen and Expert Witnesses: The following rules of evidence shall serve as a Board's guideline when determining how much weight should be afforded the testimony received in a Quasi-Judicial proceeding:
- (a) General: The Board shall not consider the testimony of a witness unless:
    - (1) The witness has personal knowledge of the facts to which the witness will testify, and
    - (2) In the case of testimony consisting of opinions or inferences, the testimony is qualified under paragraph 5.4(b) or (c).
  - (b) Layman Witnesses: Testimony of a witness other than an Expert witness is qualified under paragraph (b) only if:
    - (1) The witness cannot readily, and with equal accuracy and adequacy, communicate what he perceived to the Board without testifying on the form of opinions or inferences; and
    - (2) The opinions and inferences do not require a special knowledge, skill, experience or training.
  - (c) Expert Witnesses: Testimony of an Expert witness is qualified under this paragraph (c) only if the Board determines:
    - (1) Whether the subject matter is proper for Expert testimony because scientific, technical, or other specialized skill will help the Board understand the evidence being presented, or help to establish a fact in issue; and
    - (2) Whether the witness is adequately qualified to express an opinion on the matter.
  - (d) Qualifying a Witness as an Expert: For purposes of paragraph (c) of this section, a witness is qualified as an Expert Witness only if the Board determines so in accordance with the following procedure:
    - (1) An Interested Party has the burden of requesting, and this request shall be made prior to proffering the testimony, the Board to make a determination the witness is an Expert;
    - (2) By majority vote, the Board will determine whether the witness satisfies the criteria in section 5.4(c), supra;
    - (3) If the Board determines the witness is qualified to testify as an Expert, the witness will testify and be cross-examined for the record and the Board may give weight and consideration to the Expert's opinion; or
    - (4) If the Board determines that the witness does not qualify to testify as an Expert, or if an Interested Party fails to request the Board to determine the qualifications of the Expert in accordance with this paragraph, the witness may still testify and be cross-examines for the record, however, the Board shall not give any weight or consideration to the opinion of the witness.
- 5.5 Qualifications of County Staff: County Staff members testifying before a Board in a Quasi-Judicial proceeding must:
- (a) State for the record their qualifications, or
  - (b) Place on record a resume listing their qualifications.