



Nelson County Board of Zoning Appeals

APPLICATION *for* VARIANCE *or* APPEAL

This document describes the process for filing a case before the Board of Zoning Appeals (BZA). The County's Zoning Ordinance, forms, and additional information are available in the Planning & Zoning office and online: <http://www.nelsoncounty-va.gov/departments/planning-zoning/>

The BZA is a quasi-judicial body, comprised of five (5) members and one (1) alternate member appointed by the Nelson County Circuit Court Judges of the 24th Judicial Circuit Court to hear certain petitions and applications. Specifically, the BZA has the powers and duties to hear and decide cases as noted below:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto.
2. To hear and decide requests for a variance from any requirement of the Zoning Ordinance.
3. To hear and decide appeals from the decision of the Zoning Administrator.
4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary.
5. To hear and decide applications for Special Use Permits where authorized in the Zoning Ordinance or Subdivision Ordinance, including but not necessarily limited to:
 - i. To hear and decide applications for Special Use Permits to erect an accessory building prior to the construction of the primary building on the same lot or parcel, pursuant to Zoning Ordinance Article 14-2-1a.
 - ii. To hear and decide applications for Floodplain Development Special Use Permits, pursuant to Zoning Ordinance Articles 10.13-A and 10.22.
6. To revoke a special exception previously granted by the Board of Zoning Appeals if the board determines that there has not been compliance with the terms or conditions of the permit.

Application Requirements:

An application to the BZA involving a variance or other appeal must be accompanied by the following information to be considered complete:

1. A completed BZA application form;
2. A filing fee, in accordance with the fee schedule, to cover the costs of legal advertisements in the newspaper, mailing of letters to adjacent property owners, and review by County staff;
3. A plat drawn to scale (maximum paper size: tabloid or 11"x17") showing the parcel or property described in the application, location of existing and proposed buildings, alterations, or additions, all setback lines, and the specific dimensions and limits of any variance requested;
4. A location sketch of any property involved showing nearest road intersection(s), and a list of adjoining property owners.
5. Any applicable forms and/or documents, such as an Elevation Certificate.

The above information must be submitted and fee paid to the Zoning Administrator before the required legal advertisements, meeting of the Board, and public hearing can be scheduled.

BOARD *of* ZONING APPEALS: REVIEW PROCESS

Definitions:

What is an *appeal*? An appeal is a request to overturn any order, requirement, decision, or determination made in the administration or enforcement of the Zoning Ordinance. The appeal must be filed within thirty (30) days after the action being appealed was made.

What is a *variance*? Variance means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property; and such need for a variance would not be shared generally by other properties; and provided such variance is not contrary to the purpose of the ordinance. A variance shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional rezoning.

Standard for BZA Review of Variances:

The BZA will make a decision to approve or deny a variance application based on specific criteria set out in Section 15.2-2309 (Code of Virginia) as described below. When preparing a variance application, it is important to demonstrate that all of the items listed below have been satisfied:

1. 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.
2. 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.
3. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.
4. 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.
5. 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.
6. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of Section 15.2-2309 (Code of Virginia) or the process for modification of a zoning ordinance pursuant to subdivision A4 of Section 15.2-2286 (Code of Virginia) at the time of the filing of the variance application.

BZA Meetings:

The BZA meets only when a petition is filed with the Zoning Administrator. When necessary, BZA meetings are held at 7:00pm on the first Monday of each month in the General District Courtroom on the third floor of the Nelson County Courthouse located at 84 Courthouse Square in Lovingston. For months having a legal holiday on the first Monday of the month, BZA meetings will be held on the following Tuesday.

Prior to the hearing for each petition, a notice of public hearing is published once a week for two successive weeks in a newspaper published or having general circulation in the locality, pursuant to Section 15.2-2204 (Code of Virginia). Staff will mail notices of public hearing to adjoining property owners.

At the public hearing, County staff will present each agenda item to the BZA; the applicant or petitioner shall address the BZA; the BZA will conduct the hearing to receive public comments; and the BZA will then discuss the request and take action to approve, deny, approve with conditions, or postpone the agenda item.

Any decision of the BZA is final; however, any person or persons jointly or separately aggrieved by any decision of the BZA may file an appeal with the Clerk of the Circuit Court within thirty (30) days after the final decision of the BZA.

Attachments:

1. Application Checklist (below)
2. Application
3. Code of Virginia Excerpt

BOARD *of* ZONING APPEALS: APPLICATION CHECKLIST

Forms and Fees

Completed Application

Application Fee

Appeal Request

For an appeal of an action by an administrative officer, include a complete justification statement describing the property or site (if applicable), background information, and the rationale for the appeal.

For an appeal of a notice of violation, include a description of the alleged violation, appropriate drawings showing applicable setbacks and other dimensions associated with the structure or use that is the subject of the violation, and the rationale for the appeal.

Variance Request

Drawing showing all existing and proposed improvements on the property, with dimensions and distances to property lines, all abutting streets, and any special conditions of the property that may justify the request.

Justification statement describing how the request satisfies the criteria set forth in Code of Virginia - Section 15.2-2309 (provided in the Instruction Packet).

BOARD *of* ZONING APPEALS: APPLICATION

Instructions: Please answer the following questions clearly. If additional space is needed to answer the questions, you may list “see attached” and attach the answers on a separate sheet of paper.

1. Please explain, in detail, why 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.

2. Please explain, in detail, why 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.

3. Please explain, in detail, why the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.

4. Please explain, in detail, why the condition or situation of the property for which you are seeking a variance would not be more reasonably addressed by an amendment to the Zoning Ordinance or Subdivision Ordinance (due to the condition or situation either being so general in nature, or of such a recurring frequency).

5. Please explain, in detail, why 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.

6. Please explain, in detail, why the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of Section 15.2-2309 (Code of Virginia) or the process for modification of a zoning ordinance pursuant to subdivision A4 of Section 15.2-2286 (Code of Virginia) at the time of the filing of the variance application.

7. Affidavit: The undersigned applicant(s) and/or property owner(s) certifies that this application and the foregoing answers, statements, and other information herewith submitted are, in all respects, true and correct to the best of their knowledge and belief. Also, the applicant(s) and/or property owner(s) gives permission for members of the Board of Zoning Appeals and County Staff to visit and view the subject property(s).

Signature: _____ Printed Name: _____

Signature: _____ Printed Name: _____

(Please attach additional sheet if more space is needed for applicant(s) / property owner(s) signatures.)

8. Additional information: *(Please attach separate sheet for additional details, explanations, etc.)*

9. Please note: In the event of cancellation or postponement at your request after the initial newspaper advertisement for this application, an additional fee will apply for re-advertisement (determined by the actual cost of the ad). This fee will not apply in cases of Board of Zoning Appeals deferment.

----- **TO BE COMPLETED BY PLANNING & ZONING STAFF** -----

0 **Completed application and fee** (\$_____) **received on:** _____

0 **Legal Notice of Public Hearing published on:** _____

0 **Date of BZA Hearing:** _____

BZA Action: _____

Nelson County Planning & Zoning Department

80 Front Street, Lovingson, Virginia / *(Mailing Address)* P.O. Box 558, Lovingson, Virginia 22949
(Telephone Number) 434 263-7090 or Toll Free 888 662-9400, selections 4 & 1 | *(Fax Number)* 434 263-7086

<http://www.nelsoncounty-va.gov/departments/planning-zoning/board-of-zoning-appeals/>

§ 15.2-2309. Powers and duties of boards of zoning appeals

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.

2. Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

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 (i) 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; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) 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; (iv) 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 (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application.

No variance shall be considered except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

In granting a variance, the board 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 and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

Code 1950, §§ 15-831, 15-850, 15-968.9; 1950, p. 176; 1962, c. 407, § 15.1-495; 1964, c. 535; 1972, c. 695; 1975, cc. 521, 641; 1987, c. 8; 1991, c. 513; 1996, c. 555; 1997, c. 587; 2000, c. 1050; 2002, c. 546; 2003, c. 403; 2006, c. 264; 2008, c. 318; 2009, c. 206; 2015, c. 597.