



VARIANCE/APPEAL INSTRUCTION PACKET

Please include the following documents with the **Variance/Appeal Application**:

- Legal Description:** A digital copy of the legal description in Microsoft Word format. The file can be provided physically through a compact disc, flash drive, or e-mailed to the Principal Planner.
- Site Plan:** A graphic communicating the Applicant's request, if appropriate.
- Written Narrative:** A narrative detailing the Applicant's request.
- Type of Variance/Appeal:**
 - **Non-use Variance:** The burden of proof rests with the Applicant to clearly establish that, as a practical matter, the property cannot be used for a permitted use without coming into conflict with restrictions of the zoning regulations. The following specific criteria shall be considered:
 1. How substantial the variance is in relation to the requirement;
 2. The potential effect of the increased population density produced on the available government facilities;
 3. The potential to produce a substantial change in the character of the neighborhood or a substantial detriment to adjoining property owners;
 4. The ability to obviate the difficulty by some method, feasible for the applicants to pursue, other than the variance; and
 5. In view of the manner in which the difficulty arose, and considering all of the above factors, whether the interests of justice would be served by granting the variance.
 - **Use Variance:** The burden of proof rests with the Applicant to:
 1. Demonstrate an unnecessary hardship which is defined by the following criteria:
 - a) The land in question cannot yield a reasonable return if used only for a use permitted in the zone in which it is located;
 - b) The owner's plight is due to unique and not to general neighborhood considerations; and
 - c) The granting of the variance would not alter the essential character of the locality.
 2. Prove that the relief is necessary because of the unique character of the property;
 3. Prove that the variance will not destroy the preservation of the Comprehensive Plan; and
 4. Prove that granting the variance will result in substantial justice.

In presenting any Variance Application, the burden of proof shall rest with the Applicant to prove that the harm complained is not self-inflicted.

- **Appeal:** The burden of proof rests with the Applicant to demonstrate:
 1. The error in an order, requirement, decision, or determination made by an Administrative Official in the enforcement of a zoning regulation or any adopted Ordinance.

2. The reason why the Board should reverse or modify the order, requirement, decision, or determination of the administrative official.

Fees: The fee for a **Variance Application** includes:

- **Application Fee:** \$185 (due at time of Application)
- **Postage Fee:** The Postage Fee is calculated by the City, based on the number of notices sent by Certified and/or First Class Mail, as required by State Statute. The Postage Fee will be invoiced to the Applicant and is due prior to the Public Hearing before the Planning & Zoning Commission.
- **Publication Cost:** The Publication Cost is the actual cost of publishing the Public Hearing Notice in the newspaper, as required by State Statute. The Publication Cost will be invoiced to the Applicant and is due prior to the Public Hearing before the Board of Adjustment.

Variance Process:

- Pre-Application Meeting:** A Pre-Application Meeting with the **Technical Review Team (TRT)** is required.
- Application:** A complete application including all of the required attachments.
- Review:** The Technical Review Team (TRT) will review the Application and provide the Applicant with questions and/or comments.
- Staff Report:** The Technical Review Team (TRT) will prepare a staff Report to be presented to the Board of Adjustment.
- Preparation of Notice of Public Hearings:** City Staff will prepare the notices of the Public Hearing.
- Public Hearing, Board of Adjustment:** The Board of Adjustment will hold a Public Hearing at a regular meeting; all interested parties may appear and speak concerning the request. The Board of Adjustment will render a decision on the request.