

ZONING BOARD OF ADJUSTMENT - APPLICATION

TOWN OF CHARLOTTE

Office Use Only #ZBA- \_\_\_\_\_ - \_\_\_\_\_

Planning & Zoning

Date Received: \_\_\_\_\_

P.O. Box 119

159 Ferry Road

Charlotte, VT 05445

Phone: 802-425-3533

Fax: 802-425-4713

E-Mail: Gloria@townofcharlotte.com

*Note: Decisions of the Zoning Board of Adjustment may be appealed to the Vermont Environmental Court within 30 days of the date of the Board's written decision. Zoning Permits will not be issued so as to become effective prior to the end of that appeal period.*

Hearing Date: \_\_\_\_\_

Receipt # \_\_\_\_\_ Application Fee \$500 \_\_\_\_\_ Appeal Fee ~~\$250~~<sup>\$500</sup> \_\_\_\_\_ Telecommunications Facilities Fee \$2,000 \_\_\_\_\_

\*APPLICANT/REPRESENTATIVE (if different from owner)

Name \_\_\_\_\_ Name \_\_\_\_\_

Address \_\_\_\_\_ Address \_\_\_\_\_

Phone \_\_\_\_\_ Phone \_\_\_\_\_

\*Representative must submit a letter from the owner of the property authorizing him/her to represent them for permits, hearings, etc.

Map \_\_\_\_\_ Block \_\_\_\_\_ Lot \_\_\_\_\_ Parcel ID # \_\_\_\_\_ Property address \_\_\_\_\_

Zoning District \_\_\_\_\_ Lot size \_\_\_\_\_ Lot frontage \_\_\_\_\_ % of Lot coverage (building) \_\_\_\_\_ (overall) \_\_\_\_\_ Building height \_\_\_\_\_

Existing front yard setback \_\_\_\_\_ Existing side yard setbacks 1. \_\_\_\_\_ 2. \_\_\_\_\_ Existing rear yard setback \_\_\_\_\_

Plot Plan (a plot plan must be submitted showing the lot, existing structures and setbacks, easements, right-of-ways on or abutting the lot, septic primary and replacement areas, well, streams and any other information significant to this application) Submittals no larger than 11" x 17". All measurements must be accurate.

Use attached sheet to list all abutting property owners. Include those across any street, private road or right-of-way .

Applicant will be required to notify adjoining property owners, by certified mail or certificate of service, after a hearing date has been set.

Submit (1) original and (5) copies of complete application.

This application references Zoning Bylaw section(s) \_\_\_\_\_

Conditional Use: \_\_\_\_\_ Variance: \_\_\_\_\_ Thompson's Point Seasonal Dist: \_\_\_\_\_ Appeal: \_\_\_\_\_ Other: describe) \_\_\_\_\_

Describe your request: (When appropriate, make reference to attached documents, letters, photographs, etc.)

APPLICATION MUST BE RECEIVED AT LEAST 23 DAYS PRIOR TO THE HEARING DATE.

BE SURE TO COMPLETE ALL SECTIONS OF THE NECESSARY FORMS AND ATTACHMENTS. ONLY COMPLETE APPLICATIONS WILL BE ACCEPTED.

Signature of applicant \_\_\_\_\_ Date \_\_\_\_\_

## VARIANCES

Note that under Vermont law the board does not have the power to grant use variances because of owner preference. Area, dimensional, and density variances may be granted only for exceptional hardship cases where the unique physical circumstances of the site, such as, its shape, a hill, swamp, stream, ravine, rock outcropping, etc., prevent a permitted use of the property because regulations pertaining to the location of structures cannot be complied with, or where an existing structure must be allowed to be used to avoid depriving the owners of all beneficial use, forcing them to demolish it or have it remain vacant.

All appeals for variances must be heard by the Zoning Board of Adjustment. In support of your application please address each of the following criteria. The Board shall grant variances and render a decision in favor of the appellant, if all the following facts are found, and a finding is specified in its decision. **All five criterions must be met.**

In granting a variance under 24 V.S.A. §4469, the record must show that

**1. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.**

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**2. Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.**

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**3. Unnecessary hardship has not been created by the appellant.**

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**4. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.**

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**5. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.**

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Signed \_\_\_\_\_

**Section 9.7 Variances**

(A) The Board of Adjustment shall hear and decide requests for variances in accordance with the Act [ §§4424(E), §4469(a)] and associated appeal procedures under Section 9.6(A). A variance may be granted upon approval of the Board only if enforcement of these regulations will result in an undue hardship. **The Board may grant a variance, and render a decision in favor of the appellant, only if *all* of the following facts are found, and the findings are specified in its written decision:**

- (1) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located.
- (2) Because of these physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is necessary to enable the reasonable use of the property.
- (3) The unnecessary hardship has not been created by the appellant.
- (4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.
- (5) The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

(B) **Renewable Energy Structures.** Where a variance is requested for a structure that is primarily a renewable energy resource structure (solar structure, wind generator, and other similar renewable energy structures), in accordance with the Act [§4469(b)], **the Board may grant such variance only if *all* of the following facts are found in the affirmative and specified in its written decision:**

- (1) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with these regulations.
- (2) The hardship was not created by the appellant.
- (3) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.
- (4) The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

(C) **Variances within the Flood Hazard Area.** In addition to requirements under Subsection (A), variances for development within the Flood Hazard Overlay District shall be granted by the Board of Adjustment only in accordance with all of the following:

- (1) in accordance with the Act [§§1403(B), 4424, 4469] and the criteria for granting variances found in 44 CFR Section 60.6 of the National Flood Insurance Program regulations;
  - (2) upon determination that during the base flood discharge the variance will not result in increased flood levels;
  - (1) upon determination that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; and,
  - (2) Any variance issued within the Flood Hazard Area Overlay District shall include, in writing over the signature of a community official as part of the decision, a statement that: "The issuance of a variance to construct a structure below the base flood elevation increases risk to life and property and will result in increased flood insurance premiums up to amounts as high as \$25 for \$100 of coverage." Such notification shall be maintained with a record of all variance actions.
- (D) In granting a variance under this section, the Board of Adjustment may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect. In no case shall the Board of Adjustment grant a variance for a use or condition prohibited in the applicable zoning district, or a variance which results in a density increase.

**VARIANCES (this worksheet is to help the applicant understand the five criteria)**

When the Zoning Board receives an application for a variance, the Board is required to review the request under the standards set forth in *Title 24 VSA §4469(a)*. The Board must conclude that the requested variance meets **all five standards set forth in this section**.

In preparing an application for a variance request, the applicant should address each of these five standards with the reasons they feel they meet the criteria of the state statute. The Board cannot make a finding in favor of the applicant without having sufficient information on which to base their decision.

The following is a guideline in assisting an applicant(s) in preparing their presentation to the Zoning Board of Adjustment. The applicant should be prepared to address all five criteria.

The Board must conclude that:

1. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning regulations in the neighborhood or district in which the property is located.
    - (a) A hardship means the deprivation of all beneficial use of land, or in a commercial sense the inability to generate a reasonable return from the land.
    - (b) The hardship must focus on land, and not the personal plight of the landowner.
    - (c) The unique physical circumstances or conditions often relates to topographic features (i.e. ravine, gully, ledge).
    - (d) The unique physical circumstances or conditions may include manmade arrangements (i.e. small lot size or unusual lot shape).
    - (e) The unique physical circumstances or conditions must prevent development of land consistent with zoning requirements.
    - (f) The hardship must relate to the property and not be caused by the zoning in the neighborhood (i.e. no hardship exists if residential development required by zoning is in an area commercially developed).
    - (g) The inability to realize the maximum financial gain does not constitute hardship; maximum profit is not the standard.
    - (h) A personal inconvenience does not qualify as a hardship.
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2. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that a variance is therefore necessary to enable the reasonable use of the property.
    - (a) This criterion is not satisfied if any reasonable use is possible that is in strict conformity with the zoning; the landowner must be able to get a reasonable use of the property.
    - (b) If the property is already developed and being used for some purpose, the owner is not deprived of a reasonable use.
    - (c) Any lots already improved with existing buildings, that are providing a reasonable return or are devoted to a reasonable use, can not be granted a variance.
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3. That the unnecessary hardship has not been created by the appellant(s).
- (a) A financial hardship is often self-created (i.e. developer pays premium price and argues financial hardship).
  - (b) The purchase of property itself does not constitute self-created hardship if the previous owner would be entitled to variance (i.e., seller conveys pre-existing nonconforming lot to buyer).
  - (c) If a smaller parcel is carved out of a larger parcel, the resulting hardship is self-created.
  - (d) A willful or accidental violation of ordinance is a self-created hardship (i.e., a house constructed too close to a lot line and builder seeks a variance, even if this is a mistake, this is a self-created hardship).
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4. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.
- (a) The applicant must show a lack of detriment to neighborhood. Examples of detriment might be an office building in a residential neighborhood or traffic generated by a proposed use which imperils children's safety.
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5. That the variance, if granted, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the Plan.
- (a) The least possible deviation from zoning requirements.
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**(C) Public Notice.**

- (1) In accordance with the Act [§4464], a warned public hearing shall be required for conditional use review (Section 5.4), appeals and variances (Sections 9.6 and 9.7), and preliminary and final subdivision approval (Sections 6.4 and 6.5). Any notice for a public hearing required under these proceedings shall be given at least 15 days prior to the date of the hearing by *all* of the following:
  - (a) publication of the date, place and purpose of the hearing in a newspaper of general circulation in the town;
  - (b) posting of the same information in three (3) or more public places within the town in conformance with the requirements of state statute [1 V.S.A. §312(c)(2)], including the posting of a hearing notice within view from the public right-of-way nearest to the property for which the application is being made;
  - (c) written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public or private rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the proceeding is a prerequisite to the right to take any subsequent appeal;
  - (d) for hearings required in association with the review of subdivision plats located within 500 feet of a municipal boundary, to the clerk of the adjoining municipality; and
- (2) Public notice of all other types of quasi-judicial proceedings, including site plan review hearings under Section 5.5, shall be given not less than seven (7) days prior to the date of the public hearing, and at minimum shall include the following:
  - (a) Posting of the date, place and purpose of the hearing in three (3) or more public places within the municipality in conformance with the requirements of state statutes [1 V.S.A. §312 (c)(2)], and
  - (b) written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public or private rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the proceeding is a prerequisite to the right to take any subsequent appeal.
- (3) The applicant shall be required to bear the cost of the public warning and the cost and responsibility of notifying adjoining property owners. The applicant shall be required to demonstrate proof of delivery to adjoining property owners either by certified mail, return receipt requested, or by notice hand delivered or mailed to the last known address supported by a sworn certificate of service.
- (4) In accordance with the Act [§4464(a)(5)], no defect in the form or substance of a notice under Subsections (C)(1) or (C)(2) shall invalidate an action of the Board of Adjustment or Planning Commission where reasonable efforts have been made to provide adequate posting and notice. An action will be invalid when the defective posting or notice was materially misleading in content.

**(D) Meetings & Hearings.**

- (1) **Board of Adjustment & Planning Commission.** In accordance with the Act [§§4461, 4464], all meetings and hearings of the Board of Adjustment and Planning Commission, except for deliberative and executive sessions, shall be open to the public. In addition:
  - (a) **Quorum.** To conduct a meeting and to take any action a quorum shall be not less than a majority of the members of the Board or Commission.
  - (b) **Records.** The Board and Commission shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating this, and shall keep records of its examinations and other official actions which shall be filed in the Town Office as public records.

