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VARIANCE APPLICATION

Submittal Date: _____ Case Number: _____

Pre-application Conference Date: _____ Hearing Date: _____

Request: _____

Applicant Name: _____

(The Applicant(s) must be all Land Owners, or an authorized agent, lessee, or contract purchaser.)

Address: _____

Phone Number: _____ Fax Number: _____

Email Address: _____

Owner Name (If different from Applicant): _____

Address: _____

Phone Number: _____ Fax Number: _____

E-Mail Address: _____

All applicant(s) must sign and have their signatures notarized on the last page

Are any Continuation Sheets attached? Yes No If yes, how many?: _____

VARIANCE REQUEST

1. Provide the following information for the property affected.

Site Address: _____

PIN #: _____ Lot #: _____ Block: _____

Subdivision: _____ Phase or Section: _____

Total lot/tract size: _____ Existing Zoning District: _____

2. List the LDO provision(s) from which a variance is sought:

3. Describe with specificity the type, dimensions and location of the variance requested. For example, "side yard setback variance of 3 feet to allow a 7-foot setback rather than the required setback of 10 feet." Attach a sketch of the proposed placement of future structures drawn on a current survey of the property, or provide a current survey of the existing structure if applicable. (Show applicable pertinent information such as provision for access, parking, etc.)

Describe: _____

Sketch attached? Yes No

4. The board cannot grant a variance to written conditions attached by the Town Council to its approval of a Special Use; subdivision plan or site plan; conditional use district; or aspect of an approved planned development master plan. Are you aware of any such written conditions that pertain to the property? Yes No

5. 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 'Yes' to either of the above, explain: _____

6. Explain how this request meets the "Approval Criteria" for a variance by answering the questions below:

A. Would unnecessary hardship result from the strict application of the ordinance?

Yes No

(Note: It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.)

Explain: _____

- B. Does the hardship result from conditions that are peculiar to the property, such as location, size, or topography? Yes No
(Note: Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.)

Explain: _____

- C. Did the hardship result from actions taken by the applicant or the property owner? Yes No
(Note: The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.)

Explain: _____

- D. Is the requested variance consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured, and substantial justice is achieved? Yes No

Explain: _____

7. Do you propose to attach any conditions to this variance request? Yes No
If yes, specify the condition(s). (Examples that might be appropriate include conditions that reduce or minimize any injurious effect the variance might have, such as in the case of a buffer width variance, a condition that you install and maintain increased vegetative plantings in the remaining buffer area.)

Proposed Conditions:

- A _____ [describe type and size] fence will be constructed at _____
- A landscape buffer that meets Cary's planting standards for a Type___ (specify either A [opaque] or B [semi-opaque]) shall be installed at (specify location):

- Other: _____

APPLICANTS' CERTIFICATION

I, _____, the undersigned, being first duly sworn, depose and say that I am the _____ owner, _____ attorney, _____ attorney-in-fact, _____ agent, _____ lessee, or _____ representative of the owner(s) of the property described and which is the subject matter of this application; that all answers to the questions in this application, and all sketches, data and other supplementary information attached to this application are honest and true to the best of my knowledge and belief. If I am not the owner of the property, I have attached a notarized authorization from the owner(s) to submit with this application.

Date Signature

_____ COUNTY, STATE OF NORTH CAROLINA

Signed and sworn to or affirmed before me this day by _____.

Date Notary Public

(Official Seal) My commission expires: _____

NOTARIZED AUTHORIZATION OF ALL OWNERS

I/We certify that I/we am/are all of the Owner(s) of the property which is the subject of this application, that I/we have authorized the applicant to make this application and that I/we agree to be bound by the application, the representations made and the decision in the same manner as if I/we were the applicant.

- [If the owner is:
- a corporation, this must be signed by an, authorized corporate officer;
 - a partnership, this must be signed by a general partner;
 - a limited liability company, this must be signed by the Manager for a manager managed LLC, or all the members for a member managed LLC.]

Date Signature of Owner(s)

Date Signature of Owner(s)

_____ COUNTY, STATE OF NORTH CAROLINA

Signed and sworn to or affirmed before me this day by _____.

Date Notary Public

(Official Seal) My commission expires: _____

General Information About Variances and the Zoning Board of Adjustment

These instructions are intended to provide general information about variances. Staff has made every effort to ensure that this information is and remains accurate. However, if there is a conflict between this information and state law, the Town Code, the Town Land Development Ordinance (LDO), or Town policies (collectively 'law'), the law controls.

What Is a Variance and When Can One Be Granted?

As defined in the LDO, a variance is:

Permission to depart from certain provisions of the zoning requirements for a specific parcel, except for the use of land, without changing the zoning ordinance or the zoning district applicable to the property. A variance is needed when the provisions of the minor modification section are not sufficient to address a particular hardship. A variance is only granted upon demonstration of hardship based on special or peculiar circumstances applicable to the property that [the LDO] deprives such property of privileges enjoyed by other properties in the same vicinity and zoning district.

Variances are **NOT** granted to remove inconveniences. A variance is intended to provide relief where the requirements of the LDO result in an unnecessary hardship. The Zoning Board of Adjustment (ZBOA) is authorized to grant variances to the following standards of the LDO:

- (A) Any of the development or zoning district standards listed in Table 3.19-1 or any building encroachment into a required setback, but only when the Minor Modification procedures in Section 3.19 are unable to address the hardship; and,
- (B) Any other provision of this Ordinance, so long as the Ordinance does not provide a mechanism for modification or waiver of the provision, and the requested variance would not constitute a use variance.

Please note that the ZBOA may not grant a variance from any written conditions attached by the Town Council to its approval of a Special Use (Section 3.8), conditional use district (Section 3.4), aspect of an approved planned development master plan (Section 3.4) or preliminary development plan or site plan associated with a mixed use district zoning (Section 3.4.5). Development standards for subdivisions and site plans (Section 3.9) that were approved by Town Council but could, by current standards, be approved administratively may be eligible for a variance.

Before filing a variance application, the applicant shall request a pre-application conference with the Planning Department (see Section 3.1.5):

Filing Procedure

An application for a variance may be filed only by the owner of the property affected, an agent, lessee, or contract purchaser specifically authorized by the owner to file such application; or any unit of government that is not the owner of the lot but proposes to acquire the lot by purchase, gift, or condemnation.

When an authorized agent files an application under this chapter on behalf of a property owner, the agent shall provide written documentation that the owner of the property has authorized the filing of the application.

An application shall be filed with the Planning Department in accordance with the guidelines mentioned above as stated below:

Submit **1 original** and **2 copies**, plus **1 digital** copy of all documentation submitted, including the application and its attachments, if applicable. You must also submit a copy of the property survey with a sketch showing the dimensions and location. This sketch must be in a reproducible size of **11" X 17"** or smaller and must show the following:

- lot lines with measured distances; and
- location and outline of existing and proposed structures (with measured dimensions)

Additionally, the applicant may submit any other information or documentation or exhibits (i.e., a subdivision plat, survey map, etc.) that they feel ZBOA may need to render an adequate and fair decision. All applications must be signed and sworn to before a notary public.

Completing Your Application

An application will be considered complete if it is submitted in the required form, includes all mandatory information, including all supporting materials specified by the official responsible for accepting the application, and is accompanied by the applicable fee. The **Planning Director** shall make a determination of application completeness. If an application is determined to be incomplete, the **Planning Director** shall provide notice to the applicant along with an explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected in a future re-submittal. An application that is determined to be incomplete may or may not retain its same processing cycle.

Once the application is complete, the Planning Department shall schedule it for consideration at a quasi-judicial hearing before ZBOA, and shall transmit to ZBOA all applications and other records pertaining to such application prior to the hearing.

Quasi-Judicial Hearing

ZBOA meets the first Monday of each month in the Town Council Chambers. During the quasi-judicial hearing, the ZBOA must hold an evidentiary hearing and make its decision based solely on the written and oral evidence presented; its decision cannot be based on opinions. Members of the ZBOA must refrain from *ex parte* communications (communications outside of the hearing itself) about upcoming or ongoing cases with any parties or other members of the ZBOA. All testimony before the ZBOA must be "sworn" testimony; therefore, all persons wishing to speak on the matter must be sworn in. The ZBOA may affirm, reverse, or modify administrative decisions or civil penalty determinations by a majority vote of the board members; decisions of the minimum housing inspector may be reversed or modified only upon a concurring vote of four members of the board. Appeals from a decision of the ZBOA shall be to Superior Court.

Both individual applicants and individuals opposed to the application who are aggrieved may represent themselves at the quasi-judicial hearing before the ZBOA or be represented by an attorney, and they may have expert witnesses testify for them. **All applicants are strongly advised to have an attorney represent them.** Applicants that are corporations ('corporate applicant') must be represented by an attorney. Engineers, architects, real estate agents, planners and other non-attorneys may only appear as expert witnesses; they may not represent an applicant or those opposed to an application. If a non-corporate applicant desires to have a non-attorney act as his or her representative (and not solely as an expert witness), the applicant should notify the attorney advising the ZBOA who will then advise the ZBOA that it must vote on whether to allow the representation. The request may be denied; therefore, applicants or their attorney should always be present at the hearing.

For more detailed information on the quasi-judicial hearing process, please review Policy Statement 167, "Quasi-Judicial Hearing Procedural Guidelines," available on the Town's website at <http://www.townofcary.org/mayor-council/town-policies/quasi-judicial-hearing-procedural-guidelines>.