

Instructions for Completing the Application for Zoning Variance

Purpose

This application is used to request of the Board of Adjustment or the County Planner an exception from the development standards of the Whitman County Zoning Ordinance. The Board may grant a variance for a property if the strict application of the Zoning Ordinance could, because of the property's size, shape, topography, location, or surroundings, deprive its owner of privileges enjoyed by owners of other similar properties. The Board may grant a variance if the literal application of the provisions of the Zoning Ordinance would result in practical difficulties or unnecessary hardship. The County Planner may grant an Administrative Variance to specific conditions of the Zoning Ordinance. The power of the County Planner is limited to only those conditions addressed in the Administrative Variance section of the Zoning Ordinance (Section 19.06.021).

The Board of Adjustment holds a public hearing to make sure that variance would not be unduly detrimental to surrounding properties, contrary to the public interest, or in conflict with the Comprehensive Plan. The Board also decides whether the proposed variance would alleviate a clearly demonstrated practical difficulty or unnecessary hardship rather than granting a special privilege of convenience or allowing for increased financial return to the owner. A variance may be granted only if the applicant's plight is unique. In the case of an Administrative Variance, no public hearing is required, though the same criteria for approval apply.

The Board shall not grant a variance to cure existing violations by the petitioner of the Zoning Ordinance. The Board shall not grant a variance allowing property to be used for purposes not authorized by the Zoning Ordinance for the property's zoning district.

Two additional provisions apply for properties within the Flood Management Overlay District. The Board shall not grant a variance for property within any designated floodway if any increase in flood levels during the base flood discharge would result. The Board shall only grant a variance after determining the variance is the minimum necessary, considering the flood hazard, to afford relief. However, these additional provisions shall not apply to proposed variances for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places. For those structures only, the normal variance procedures apply.

Application

To be accepted, the application must, in the judgment of the County Planner, be complete, and a fee of \$250 deposit and actual costs up to \$500 must be paid. If necessary, a State Environmental Policy Act (SEPA) checklist will accompany the application, along with the

appropriate filing fee (make checks payable to Whitman County Treasurer). If the environmental checklist is necessary, the variance application will not be considered complete or vested until the SEPA process has been satisfactorily completed.

Completing the Application Form

1. Enter applicant's name, address, and telephone number, together with applicant's status. If the applicant is not, according to the County Auditor's Office, the recorded property owner, the property owner must complete the owner's affidavit on the back of the application (Section 5). For the purposes of this application, "owner" shall mean:
 - a. Recorded owner as shown by the County Auditor's Office.
 - b. In the case of mortgaged property, the mortgagor (person buying the property).
 - c. In the case of property purchased on contract, the signature of the contract holder (person selling the property).
 - d. In the case of a corporation owning the land, any officer of the corporation who is duly authorized to execute deeds or encumbrances on behalf of the corporation. In such cases, a certified excerpt from the bylaws of the corporation showing such authority shall be attached to the application.
 - e. In the case of property standing in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian shall suffice.
2. *Enter the address or location of the subject property, together with its current zone and the size of the land affected.*
3. Briefly describe the existing use of the property, the purpose of the proposed variance, the changes that will have to be made to the property to allow for the intended use, and any additional information that could help the Board of Adjustment or the County Planner make a decision.
4. Answer the four Findings of Fact questions to provide a basis for the Board of Adjustment's Findings of Fact. Give facts to justify the proposed action, using additional sheets of paper if necessary. In explaining why the variance is necessary note special circumstances such as size, shape, topography, location, or the surroundings of the subject property, or whether the variance would provide use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located.
5. If the applicant is not the owner of the property, the owner must complete the owner's affidavit and have it notarized.

Supplementary Documents

In addition to the application form, the applicant must submit four other documents in support of his/her application for a variance:

List of Property Owners – Submit a list of names of owners of property abutting the lot or parcel of land involved, but not including public rights-of-way (generally alleys and streets). The County Planner may add to this list the names of owners of any other lots he deems to be affected by the proposed variance. The County Assessor's Office in Colfax or a title company can supply the names of neighboring property owners.

Legal Description – Provide a complete legal description that adequately describes the property in question. Grant deeds or statements of title insurance often provide a sufficient legal description. If public rights-of-way are involved, the legal description may need to be expanded to include the rights-of-way.

Plan – Submit a plot plan showing clearly the location and size of all buildings, parking areas, and landscaping on the property. All plans must be accurately drawn and complete with dimensions.

Proof of Ownership – submit a photocopy of the deed, real estate contract, or other document on file with the County auditor's office that indicates that the applicant (or the person signing the owner's affidavit) is the owner of the property.

Review Procedure

The County Planner will review the application to make sure it is complete. If an environmental checklist is required, the Planner will determine whether the proposed action is "non-significant" or "significant" under the guidelines of the State Environmental Policy Act (SEPA). At his option, the Planner may convene a Threshold Hearing with the applicant and interested parties to help him determine the significance of the proposed action. If the proposed action is significant, the applicant must prepare, at his own expense, an Environmental Impact Statement.

When the County Planner has determined an application is complete, he will schedule a date for a public hearing before the Board of Adjustment and will publish a legal notice of the hearing. The Planner will mail notices of the public hearing to the applicant and to all property owners within 300 feet of the applicant's property. The Planner prepares a staff report on the proposed variance for the Board and mails a copy of this report to the applicant before the hearing.

At the hearing, the county Planner will present the written staff report. After this, the applicant can present his justification for the requested variance. Decisions concerning variances must be made during a public hearing, so the applicant should avoid discussing the proposed variance with individual

members of the Board of Adjustment. Such discussion would be in conflict with the "Appearance of Fairness" doctrine and could invalidate the zone variance if it were later challenged. Therefore, it is best the applicant to present his request clearly and completely to the Board during the public hearing.

The hearing can take a lot of time, so the applicant's presentation should be brief, concise and to the point. The applicant should concentrate on the reason for needing the zone variance and should present information based mainly around the Findings of Fact (section 4 of the application). It is up to the applicant to prove that the zone variance request meets the requirements of the Finding of Fact.

After the applicant's presentation, the public is allowed to make comments for or against the proposed variance or to ask pertinent questions. The applicant is generally allowed to answer questions or to make rebuttals at the discretion of the chair.

After the presentations, the hearing is closed and the Board discusses the issue and makes Findings of Fact. Findings of Fact are the official determination of the Board and specify why the zone variance is granted. The ultimate tests of the Findings of Fact are reasonableness and community benefit. For the variance to be granted, the Findings of Fact must verify that all of the following conditions exist:

- a. The variance will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property is located.
- b. The variance is necessary.
- c. The granting of such variance will not be materially detrimental to the public welfare or injurious to property or improvements in the vicinity and zone in which the subject property is situated.
- d. The granting of the variance will not adversely affect the Whitman County Comprehensive Plan's intention for the zoning district wherein the property is situated.

In addition, to grant variances in the Flood Management Overlay District, the Findings of Fact must verify that all of the following conditions exist:

- a. There is good a sufficient cause for the variance.
- b. Failure to grant the variance would result in exceptions hardship to the applicant.
- c. Granting the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws or ordinances.

After the hearing, the Board of Adjustment will approve the application, deny it, or approve it with conditions. The Board's decision is final unless appealed within 10 days in a court of competent jurisdiction.

Formal Notice of Action

The County Planner will mail the applicant a written notice of the Board's decision. If the decision includes a variance to the Flood Management Overlay District that allows the lowest floor to be built below the base flood elevation, the written notice shall include a statement that the cost of flood insurance will be commensurate with the increased risk. A copy

of the notice shall be forwarded to the Federal Flood Insurance Administration.

Need Help?

The County Planner can provide further information about the application process. If you have questions, call 509 397-5209.

Application received

Application for Zoning Variance

Application complete

Case Number: _____

TO: Board of Adjustment:

I, the undersigned, hereby petition for a variance to certain provisions, specified below, of Title 19 of the Whitman County Code.

1. Applicant

Name: _____ Telephone: _____

Mailing Address: _____

City: _____ State: _____ ZIP: _____

Status (lessee of property, agent, owner, prospective buyer, etc.): _____

(If applicant does not own the property, property owner must complete the affidavit on the reverse of this form.)

2. Property

Address or location: _____

Current Zone: _____ Size (acres or square feet): _____

Attach a legal description of the property and a plot plan.

3. Land Use

Existing use of the property:

Purpose of the variance:

Changes to be made to the property to allow intended use:

Special Information (deed restrictions, etc.) the Board of Adjustment should know:

Submit list of property owners, legal description, plan and proof of ownership with this application.

4. Findings of Fact (use additional sheets if necessary)

Show why the variance will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property is located:

Show why the variance is necessary:

Show how the granting of such variance will not be materially detrimental to the public welfare or injurious to property or improvements in the vicinity and zone in which the subject property is situated:

Show how the granting of the variance will not adversely affect the Whitman County Comprehensive Plan's intention for the zoning district wherein the property is situated:

Applicant's Signature

Date

Owner's Affidavit

(To be completed if the applicant is not the owner of the property involved)

STATE OF _____
County of _____ SS.

I, _____ being duly sworn,
(print or type full name)

deposit and say that I am the owner of property or his/her authorized agent, involved in this Application, and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects true and correct to the best of my knowledge and belief; and I grant my permission to the above-named applicant to apply for a Conditional Use for the above-described property; and for County staff to examine this subject property in the cause of their work related to this application.

Property Owner

Address

City, State, ZIP Code

Telephone

SUBSCRIBED and sworn to before me this _____ day of _____, 20_____.

Notary Public in and for the State of _____, residing at _____

My commission expires _____