

2.18 Variance

2.18.1 Applicability

The Board of Zoning Appeals shall have the power to vary these regulations when it may be shown by the Applicant that extraordinary hardships or identifiable concerns are brought about by strict compliance with these regulations and that a variance is required so that substantial justice may be done and the public interest secured provided that such variations shall not have the effect of reducing or nullifying the intent and purpose of the Comprehensive Plan. No nonconforming use of neighboring lands, buildings, or other structures, legal or illegal, in the same district, and no permitted use of lands, buildings, or other structures in adjacent districts, shall be considered as grounds for issuance of a variance permitting similar uses.

2.18.2 Initiation

A variance application shall be filed with the Zoning Administrator. The application shall state fully the special conditions and circumstances applying to the building or other structure or land for which such variance is sought. The application shall demonstrate that the existing conditions and circumstances are such that the strict application of the provisions of this UDO would deprive the Applicant of reasonable use of said land, building, or structure, equivalent to the use made of lands, buildings, or structures in the same district and permitted under the terms of this provision and that the peculiar conditions and circumstances are not the result of the actions of the Applicant.

2.18.3 Decision

The Zoning Administrator shall submit a report to the Board of Zoning Appeals who shall evaluate the application based on the criteria required by this section. The BZA shall render a decision and deny, approve, or approve with conditions the variance after considering the evidence presented at this hearing or agreed on by the parties. Any approved variance shall be entered into the minutes of the Board of Zoning Appeals along with the reasons and justifications set forth. No variance shall be authorized except after notice and hearing as required by the Code of Virginia, § 15.2-2204

2.18.4 Findings and Conditions

Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in Code of Virginia § 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 Code of Virginia § 15.2-2201 and the criteria set out in this section

- A. 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.
- B. 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.
- C. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.
- D. 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.
- E. 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.

- F. 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 Code of Virginia § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of Code of Virginia § 15.2-2286 at the time of the filing of the variance application.
- G. No variance shall be considered except after notice and hearing as required by § 15.2-2204.

2.18.5 Historic Structures

Variations may be issued for the repair or rehabilitation of "historic structures" upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an "historic structure" and the variance is the minimum to preserve the historic character and design of the structure.

2.18.6 Floodway

Variations shall not be issued within any designated regulatory floodway or known or historic floodway areas if any increase in flood levels during the base flood discharge would result or upon a determination by the BZA that the granting of a variance will not result in increased flood heights, additional threats to public expense, create nuisance, cause fraud on or victimization of the public, conflict with existing local laws or ordinances, including FEMA regulations, and may be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and maps.

2.19 Administrative Appeals

2.19.1 Applicability

- A. An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the Town of Strasburg affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article, any ordinance adopted pursuant to this article, or any modification of zoning requirements pursuant to Code of Virginia § 15.2-2286.
- B. Should any person be aggrieved by any decision of the Board of Zoning Appeals, they shall have the right to appeal same to the Circuit Court of Shenandoah County, Virginia, in the manner prescribed by law, consistent with the Code of Virginia, § 15.2-2314.

2.19.2 Initiation

- A. Appeal may be made from any final decision of the Zoning Administrator to the Board of Zoning Appeals. The appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.
- B. Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the Clerk of Circuit Court of Shenandoah County a petition that shall be styled "In Re: date Decision of the Board of Zoning Appeals of the Town of Strasburg" specifying the ground on which aggrieved within 30 days after the final decision of the board.

2.19.3 Stay of Proceedings

When an appeal is filed, all proceedings in furtherance of the action affected by the decision being appealed shall be stayed, unless: