



REQUEST FOR AREA/BULK VARIANCE

Zoning Board of Appeals

Variance Request No. _____

Date: _____

(DO NOT WRITE IN THIS SPACE – FOR OFFICE USE ONLY)

Date set for hearing:

Perm. Parcel No.: _____

Notice published on:

Zoning District Classification: _____

Fee Paid: \$ _____

Date: _____

Action by Zoning Board of Appeals:

- () Denied
() Approved
() Approved with modification by Board

Comments: Indicate other actions such as continuances):

Instructions to Applicant: The purpose of an area/bulk variance is to provide relief to a property owner when the strict enforcement of the zoning regulations pertaining to lot size, setback, parking requirements, etc., impose an undue hardship on him or deny him the reasonable use of his land. For example, a lot which has a deep gully running across the back of it could make it difficult to build a house which meets the front yard setback requirements. (See attached ordinance)

After completion of this application, which must include a site plan as described on the attached sheet and documentary evidence of the hardship pleaded (e.g., engineering reports, topographical maps, photographs, etc.), a public hearing will be scheduled within a reasonable time by the Zoning Administrator. A notice of this hearing must be published in a newspaper of general circulation in the local area at least fifteen (15) days before the hearing and the publication cost must be paid by the applicant prior to the hearing. The applicant will be notified by mail of the time and place of the hearing at least (10) days prior to the hearing date. The applicant or his attorney or his duly authorized agent must appear at the hearing and present his case to the Board of Appeals.

Hardship to the applicant is the crucial test. Variations will be granted only to provide relief in unusual situations which were not intended or foreseen when the Zoning Code was adopted. Economic loss is seldom a unique situation and is generally not considered a valid hardship.

1. Name of Applicant: _____ Phone: _____

Address: _____
(Street) (City) (Zip)

2. Property interest of applicant:

() Owner () Contract Purchaser () Lessee () Other _____

3. Name(s) of owner(s) (if other than applicant): _____

Phone: _____ Address: _____
(Street) (City) (Zip)

4. Location of property:

Address: _____
(Street) (City) (Zip)
Legal description: (lot, block and subdivision, or metes and bounds):

5. Present use of property: _____

6. Purpose for requested variance: _____

7. Does the present use of the property conform to all use regulations for the zone district in which it is located? Yes () No () If "No", specify each non-conforming use: _____

8. Do the existing structures comply with all area and bulk regulations for the zone district in which it is located? Yes () No () If "No", specify each non-conforming use: _____

9. Which unique physical characteristics of the subject property prevent its reasonable use for any of the uses permitted in that zoning district?

- () Too narrow
- () Too small
- () Too shallow
- () Topography
- () Drainage
- () Shape
- () Soil
- () Sub-surface
- () Other _____
(specify)

10. Was the hardship described above created by the action of anyone having property interests in the land after the Zoning Code was adopted? () Yes () No If "Yes", explain: _____

11. Was the hardship created by any other man-made change, such as the relocation of a road? () Yes () No If "Yes", explain: _____

12. Are the conditions of hardship for which you request a variance peculiar only to the property described by this petition? () Yes () No If "No", how many other properties are similarly affected? _____

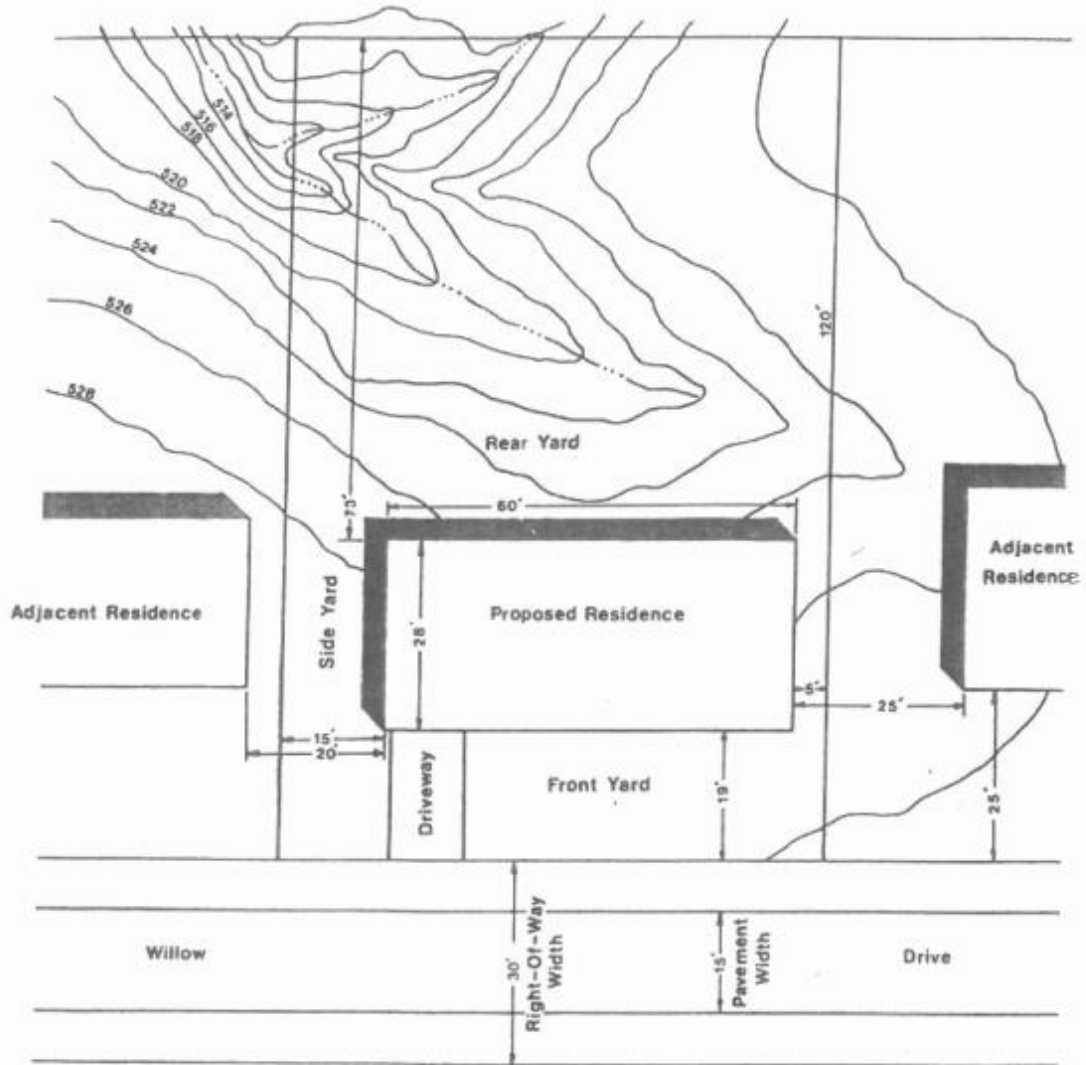
13. What is the "minimum" modification (variance) from the area/bulk regulations that will permit you to make reasonable use of your land? (Specify using maps, site plans with dimensions and written explanation. Attach additional sheets, if necessary.) _____

"I certify that all of the above statements contained in any papers or plans submitted herewith are true and accurate. I consent to the entry in or upon the premises described in this application by any authorized official of this municipality for the purpose of inspecting or of posting, maintaining and removing such notes as may be required by law."

DATE _____ SIGNATURE OF APPLICANT _____

DATE _____ SIGNATURE OF OWNER(S) _____

Sample Site Plan For Area-Bulk Variance (Topographical Constraint To Building Setback)



Lot	Building
Width: 80 ft.	Length: 60 ft.
Depth: 120 ft.	Width: 28 ft.
Area: 9,600 sq. ft.	Floor Area: 1,680 sq. ft.


 Scale: 1" = 20'

SITE PLAN

A site plan must be attached or drawn below at a scale larger enough for clarity showing the following information:

- A. Location and dimensions of: Lot, buildings, driveways, and off-street parking spaces.
- B. Distance between: Buildings and front, side and rear lot lines; principal building and accessory buildings; principal building and principal buildings on adjacent lots.
- C. Location of: Signs, easements, underground utilities, septic tanks, tile fields, water wells, etc.
- D. Any additional information as may reasonably be required by the Zoning Administrator and applicable sections of the Zoning Code.

SCALE: 1" = _____

DIVISION V - VARIATIONS

40-10-26 **AUTHORIZATION.** The Zoning Board of Appeals may authorize such variations from the terms of this Code as will not be contrary to the public interest. Variations may be authorized only in those specific instances enumerated in **Section 40-10-27**, and then only when the Zoning Board of Appeals has made findings of fact, based upon the standards set out in **Section 40-10-28**, that owing to special conditions, a literal enforcement of the provisions of this Code will, in an individual case, result in practical difficulties or particular hardship for the owner, lessee, or occupant of land or a structure.

40-10-27 **APPLICATION FOR VARIATION.** An application for a variation shall be filed in duplicate with the Zoning Administrator who shall forward without delay, a copy to the Secretary of the Zoning Board of Appeals. The application shall contain the following information as well as such additional information as may be prescribed by rule of the Zoning Board of Appeals:

(A) The particular requirements of this Code which prevent the proposed use or construction;

(B) The characteristics of the subject property which prevent compliance with said requirements of this Code;

(C) The reduction of the minimum requirements of this Code which would be necessary to permit the proposed use or construction; and

(D) The practical difficulty or particular hardship which would result if said particular requirements of this Code were applied to the subject property.

40-10-28 **HEARING AND NOTICE.** The Zoning Board of Appeals shall select a reasonable time and place for the hearing. Public notice of such hearing shall be published at least once, not less than **fifteen (15) days** nor more than **thirty (30) days** before such hearing in a newspaper published within the Village, or in a newspaper of general circulation within the Village. Such notice shall contain the date, time, and place of the hearing, the street address or common description of the property involved, the legal description of the property involved, and a brief description of the relief sought. The Zoning Board of Appeals may give such additional notice as it may, from time to time, by rule, provide. Any party in interest may appear and be heard at the hearing in person, by agent, or by attorney.

40-10-29 **AUTHORIZED VARIATIONS.** Variations from the regulations of this Code shall be granted only in accordance with the standards set out in **Section 40-10-30**, and may be granted only in the following instances, and in no others.

(A) To vary the applicable lot area, lot width, and lot depth requirements, subject to the following limitations:

(1) The minimum lot width and lot depth requirements shall not be reduced more than **twenty-five percent (25%)**.

(2) The minimum lot area for a single-family or two-family dwelling shall not be reduced more than **twenty percent (20%)**.

(3) The minimum lot area per dwelling unit requirements for multiple-family dwellings shall not be reduced so as to permit more than **one (1) dwelling** unit in addition to the number that would be permitted by strict application of the minimum lot area requirements.

(B) To vary the applicable bulk regulations, including maximum height, maximum lot coverage, maximum floor-area ratio, and minimum yard requirements.

(C) To vary the applicable off-street parking and off-street loading requirements contained in **Article IX** of this Code.

(D) To vary the regulations relating to restoration of damaged or destroyed non-conforming structures or uses contained in **Section 40-7-5** of this Code.

(E) To permit the expansion or structural alteration of a non-conforming structure or use.

(F) To permit a use not otherwise permitted by the applicable district regulations.

40-10-30 STANDARDS FOR VARIATIONS. The Zoning Board of Appeals shall not vary the regulations of this Code unless it shall make findings of the fact based upon the evidence as presented that:

(A) The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations of the district in which it is located.

(B) The proposed variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship which will result if the strict letter of the regulations were carried out and which is not generally applicable to property within the same district.

(C) The alleged hardship has not been created by any person presently having a proprietary interest in the premises.

(D) The proposed variation will not be materially detrimental to the public welfare or injurious to other property or improvements in the neighborhood.

(E) The proposed variation will not impair an adequate supply of light and air to adjacent property, substantially increase congestion in the public streets, increase the danger of fire, or endanger the public safety.

(F) The proposed variation will not alter the essential character of the neighborhood.

(G) The proposed variation is in harmony with the spirit and intent of this Code.

The Zoning Board of Appeals may impose such conditions and restrictions upon the location, construction, design, and use of the property benefited by a variation as may be necessary or appropriate to comply with the foregoing standards and to protect adjacent property and property values.

40-10-31 DECISION ON VARIATIONS. The concurring vote of **four (4) members** of the Zoning Board of Appeals shall be necessary to grant a variation. The order of the Zoning Board of Appeals shall be by written resolution and shall contain its findings of fact. If the Zoning Board of Appeals denies a variance, the applicant shall not resubmit the request for at least **six (6) months**.

40-10-32 **PERIOD OF VALIDITY.** No decision granting a variation shall be valid for a period longer than **twelve (12) months** from the date of such decision unless:

(A) an application for a zoning certificate is obtained within such period and construction, moving, remodeling, or reconstruction is started, or

(B) an occupancy certificate is obtained and a use is commenced.

The Zoning Board of Appeals may grant additional extensions of time not exceeding **one hundred eighty (180) days** each, upon written application made within the initial **twelve (12) month** period, without further notice or hearing, but said right to so extend said time shall not include the right to grant additional relief by expanding the scope of the variation.

40-10-33 **PENALTIES**

A) In the event that any person, firm, business, corporation, association or other entity of any kind or nature begins or initiates any improvement or builds, constructs or erects any building, structure or other object of any kind or nature, in whole or in part within the Village of Smithton which requires a variance but prior to having been granted said variance, then said person or entity shall be subject to the penalties imposed by Article XII, Penalties, Section 40-12-1 et seq.

B) In the event that the issuance of a variance is ultimately denied, then whatever portion of any object, improvement, building or structure of any kind or nature that has been erected, begun, or initiated without the said variance shall in its entirety be dismantled and removed upon notification by the Village.
(Ord. 905; 03-06-18)

40-10-34 **RESERVED.**