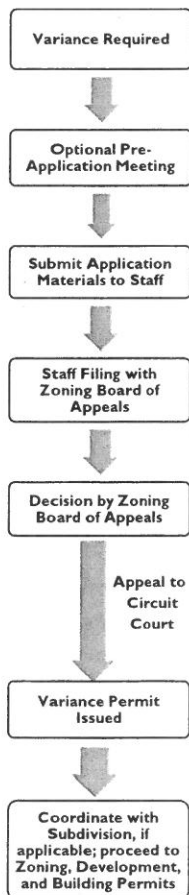


7.2.140 Variance Permit

- A. **Purpose.** The purpose of a Variance Permit is to allow certain deviations from the dimensional standards of this Development Code (such as height, yard setback, lot coverage, or similar numerical standards) when the landowner demonstrates that, owing to special circumstances or conditions beyond the landowner’s control (such as topographical conditions, beachfront setbacks, narrowness, shallowness, or shape of a specific parcel of land), a literal application of the standards would result in undue and unique hardship to the landowner and the deviation would not be contrary to the public interest. Variance Permits are to be exercised only in rare instances, and under exceptional circumstances.
- B. **Applicability.** The Variance Permit procedure may be used to seek hardship relief from the dimensional or numerical standards in this Development Code, provided that no variance may be sought that increases development density (e.g., units per acre) beyond that allowed in a base zone, or increases the number of a particular type of signs beyond that allowed by signage standards. No Variance Permit may be sought that would permit a use not permitted in a zone, or would have the effect of allowing a prohibited use or a prohibited sign.

C. Variance Permit Procedure.

- 1. **Pre-Application Conference is Optional.** See Section 7.4.20 (Pre-Application Conference).
- 2. **Application Submittal and Acceptance.** See Section 7.4.30 (Application Submittal and Acceptance).
- 3. **Staff Review and Action.** Applicable to a staff report and recommendation by the Director. See Section 7.4.40 (Staff Review and Action). The Director’s recommendation shall be based on the standards in Subsection 7.2.140.D.
- 4. **Scheduling and Notice of Public Hearing.** See Section 7.4.50 (Public Hearing Scheduling and Notice).
- 5. **Public Hearing Procedures.** See Section 7.4.70 (Public Hearing Procedures).
- 6. **Decision-Making Body Review and Decision.** Applicable to a decision by the ZBOA following a public hearing. See Section 7.4.90 (Decision-Making Body Review and Decision). The ZBOA’s decision shall be based on the standards in Subsection 7.2.140.D.
- 7. **Appeal.** The decision of the ZBOA may be appealed to the Circuit Court.



D. Variance Permit Review Standards.

- 1. A Variance Permit application shall be approved on a finding the applicant demonstrates all of the following standards are met:
 - a. There are extraordinary and exceptional conditions (such as topographical conditions, beachfront setback lines, narrowness, shallowness, or the shape of the parcel of land) pertaining to the particular land or structure for which the Variance Permit is sought, that do not generally apply to other lands or structures in the vicinity;
 - b. The extraordinary and exceptional conditions referred to in Subsection 7.2.140.D.1.a, above, are not the result of the actions of the landowner;

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- c. Because of the extraordinary and exceptional conditions referred to in Subsection 7.2.140.D.1.a, above, the application of this Development Code to the land or structure for which the Variance Permit is sought would effectively prohibit or unreasonably restrict the utilization of the land or structure and result in unnecessary and undue hardship;
 - d. The Variance Permit would not confer any special privilege on the landowner that is denied to other lands or structures that are similarly situated;
 - e. The extent of the Variance Permit is the minimum necessary to allow a reasonable use of the land or structure;
 - f. The Variance Permit is in harmony with the general purpose and intent of this Development Code and preserves its spirit;
 - g. The Variance Permit would not adversely affect the health or safety of persons residing or working in the neighborhood, be injurious to land or improvements in the surrounding neighborhood, or otherwise be detrimental to the public welfare; and
 - h. The Variance Permit is consistent with the Comprehensive Plan.
2. The following factors do not constitute sufficient grounds for approval of a Variance Permit:
- a. A request for a particular use that is expressly, or by inference, prohibited in the zone;
 - b. Hardships resulting from factors other than application of standards of this Development Code;
 - c. The fact that land or a structure may be utilized more profitably or be more marketable with a Variance Permit; or
 - d. The citing of other nonconforming or conforming uses of land or structures in the same or other zones.
- E. **Effect of Approval.** Approval of a Variance Permit authorizes only the particular regulatory relief approved. It does not exempt the applicant from the responsibility to obtain all other approvals required by this Development Code and any other applicable laws, and does not indicate that the development for which the Variance Permit is granted should receive other development permits or approvals under this Development Code unless the relevant and applicable portions of this Development Code or any other applicable laws are met. Unless it expires in accordance with Section 7.4.130 (Expiration of Development Approval), a Variance Permit, including any conditions of approval, shall run with the land, shall be binding on the landowners and their successors and assigns, and shall not be affected by a change in ownership.
- F. **Expiration.** Not applicable.
- G. **Amendment.** A Variance Permit may be amended only in accordance with the procedures and standards for its original approval.