9.18 Variance

A. Purpose and Intent: The Board of Zoning Appeals may vary the regulations of the Unified Development Ordinance for projects that meet the findings of fact set forth in this Section. Variances may be a "development standards variance" granting relief from a development standard such as height, bulk, or area; or a "use variance" allowing a use that is not listed as a permitted or special exception use in a district.

B. Project Applicability:

1. *Jurisdiction*: Projects within the jurisdictional area of the Plan Commission that are unable to meet the provisions of the Unified Development Ordinance may apply for a variance.
2. *Previously Denied Applications*: The Zoning Administrator shall refuse to accept an Application for a Variance that has been denied by the Board of Zoning Appeals within the last twelve (12) months. However, the Zoning Administrator shall have the authority and discretion to determine that an Application for a Variance containing major changes may justify re-filing within the aforementioned twelve (12) month period.

C. Prerequisites

1. *Eligible Applicants*: An Application for a Variance may be filed by the owner, his agent, or any person having a legal or equitable interest in the subject property, but the written authorization of any owner who is not an applicant shall be required.
2. *Pre-application Meeting*: Prior to submitting an Application for a Variance, the applicant shall meet with the Zoning Administrator to review the zoning classification of the site, ordinance provisions, the application packet, and the procedure involved.

D. Filing Requirements.

1. *Application*: Application for a Variance shall be made on a form provided by the Zoning Administrator.
2. *Supporting Information*:
   a. A list of names and mailing addresses of all known adjacent property owners. The measurement shall include any adjacent property regardless if a road, river, railroad, or other physical barrier exists. This information may be obtained from the Wayne County Auditor's Office.
   b. Applicable plans, drawings, and descriptions of the use and proposed site shall accompany the Application for a Variance. If the proposed project is within the APO District, the supporting information listed in *Section 9.11(D)(2)(i)* shall also be submitted. The supporting information shall accurately and completely describe the proposed project and the need for the requested variance.
3. *Deadline*: An Application for a Variance shall be filed at least twenty-eight (28) days prior to the public meeting at which it is first to be considered by the Board of Zoning Appeals.
4. *Fees*: Applicable fees shall be paid at the time the Application for a Variance is filed.

E. Formal Procedure:

1. *Assignment*: An Application for a Variance, which is determined to be complete and in proper form by the Zoning Administrator, shall be assigned a case number and placed on the first Board of Zoning Appeals agenda that occurs twenty-eight (28) days after the Application for a Variance is submitted in its entirety. The Zoning Administrator shall notify the applicant, in writing, of the date of the meeting.
2. *Internal Review*: Upon assignment of a number and hearing date, the Zoning Administrator may ask applicable departments to review and comment on the proposed project. The Zoning Administrator may submit a written report to the Board of Zoning Appeals stating any facts concerning the physical characteristics of the area involved, the surrounding land use, public facilities available to service the area, or other pertinent facts. The written report may also contain opinions of the Zoning Administrator concerning the Application for a Variance and/or information from other departments that have reviewed the Application for a Variance. A copy of such report shall be made available to the applicant and all remonstrators.

3. *Public Notice*: The following public notice standards apply to an Application for a Variance. All costs associated with providing public notice shall be borne by the applicant.
   a. The Zoning Administrator shall notify all interested parties of the public hearing by regular US mail a minimum of ten (10) days before the public hearing.
   b. The Zoning Administrator shall publish legal notice in a newspaper of general circulation a minimum of ten (10) days before the public hearing.
   c. The Zoning Administrator shall be responsible for providing proof of published notice to the Plan Commission and including proof in the case file.
4. *Attendance*: The applicant shall be present at the Board of Zoning Appeals meeting to explain the proposed Variance and address and discuss comments and concerns posed by the Board of Zoning Appeals. Failure to appear may result in the dismissal of the Application for a Variance.
5. *Public Hearing*: A public hearing shall be held in accordance with the Board of Zoning Appeals Rules of Procedure.
6. *Review*: At their regularly scheduled public meeting, the Board of Zoning Appeals shall review
   a. The Application for a Variance.
   b. Supporting information.
   c. Presentation by the applicant.
   d. Information presented in writing or verbally by the Zoning Administrator or other applicable department or agency.
   e. Input from the public during the public hearing.
   f. Applicable provisions of the Unified Development Ordinance.
   g. Any other additional information as may be required by the Board of Zoning Appeals to evaluate the application.
7. *Decision*: The Board of Zoning Appeals shall make findings of fact and take final action or continue the Application for a Variance to a defined future meeting date.
   a. Development Standards Variance Findings of Fact: The Board of Zoning Appeals shall make the following findings of fact for Development Standards Variances. Approval of findings may be in the form of a general statement. Disapproval of findings shall specify the reason for non-compliance.
      i. The approval of the variance will not be injurious to the public health, safety, morals and general welfare of the community.
      ii. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
      iii. The strict application of the terms of the ordinance will result in practical difficulties in the use of the property.
   b. Use Variance Findings of Fact: The Board of Zoning Appeals shall make the following findings of fact for Use Variances. Approval of findings may be in the form of a general statement. Disapproval of findings shall specify the reason for non-compliance.
      i. The approval of the variance will not be injurious to the public health, safety, morals and general welfare of the community.
      ii. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
      iii. That the need for the use variance arises from some condition peculiar to the property involved.
      iv. The strict application of the terms of the ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought.
      v. The approval does not interfere substantially with the *City of Richmond Comprehensive Plan*.

c. Final Action:
   i. If the Board of Zoning Appeals finds all of the findings of fact in the affirmative, it shall approve or approve with conditions and/or commitments the Application for a Variance.
   ii. If the Board of Zoning Appeals does not find all of the findings of fact in the affirmative, it shall deny the Application for a Variance.

d. Commitments and Conditions:
   i. Commitments: The Board of Zoning Appeals may require the owner to make a written commitment. Commitments shall be recorded in the Office of the Wayne County Recorder. A recorded commitment is binding own the owner of the land, any subsequent owner of the land, and any person who acquires interested in the land.
   ii. Conditions: The Board of Zoning Appeals may require certain conditions for approval.

F. Duration:
   1. *Development Standards Variance*: A development standards variance granted by the Board of Zoning Appeals shall run with the land until such time as the property conforms with the Unified Development Ordinance.
   2. *Use Variance*: A use variance granted by the Board of Zoning Appeals may run with the land or applicant until such time as:
      a. The use of the variance ends, is vacated, or unused for twelve (12) months consecutively; or
      b. The property conforms with the Unified Development Ordinance as written.

G. Modification: Modifications authorized by the Zoning Administrator shall be reported, in writing, to the Plan Commission at the next regular meeting of the Plan Commission.
   1. *Development Standards Variance*: Modification of a development standards variance that makes a project more compliant with the provisions of the Unified Development Ordinance may be authorized by the Zoning Administrator. Modification of a development standards variance that makes a project less compliant with the provisions of the Unified Development Ordinance shall re-file an Application for a Variance or other appropriate application.
   2. *Use Variance*: Modification of use variance shall not be permitted. Any modification of an approved use variance shall meet all of the provisions of the Unified Development Ordinance or re-file an Application for a Variance or other appropriate application.