



County of Culpeper – Subdivision Waiver Process

What is a subdivision variation or “waiver” and when should such requests be approved?

A subdivision variation, commonly referred to as a waiver, is an approval of a subdivision which is not in compliance with one or more of the provisions of the Subdivision Ordinance. This should not be confused with a variance from the Zoning Ordinance, which is granted by the Board of Zoning Appeals. The Board of Supervisors may grant a variation for a minor subdivision if they find that:

(Pursuant to) Culpeper County Code, Appendix B, Article 9. – Section 960, Normal requirements and variations: The requirements of this Ordinance may be varied in specific cases if the Planning Commission or the Board of Supervisors, whichever is the final reviewing authority, determines that an unusual situation exists which makes it necessary or desirable to vary one or more standards or procedures, or when strict adherence to the general regulations would result in substantial injustice or hardship.

Before a variation can be granted, the applicant (usually the owner of the property) must show that the criteria above have been met by demonstrating how they will be worse off as a result of being denied the waiver. The burden of proof is on the applicant, and it must be shown that there will be substantial injustice or substantial hardship. If the applicant has caused the hardship, the hardship is considered “self-imposed,” and a waiver is not generally justified. Similarly, if there are other options available, it stands to reason that the burden of proof cannot be met.

Procedure

All variation requests must be filed on the attached form. Applications are processed according to a schedule of deadlines and meeting dates, which is published each year.

The applicant or a representative is required to attend the meeting. Additional written comments may also be submitted.

The Culpeper County Subdivision Ordinance, Section 960 authorizes The Board of Supervisors to grant variations under the following circumstances:

Where an unusual situation exists which makes it necessary or desirable to vary one or more standards or procedures, or when strict adherence to the general regulations would result in substantial injustice or hardship.

To assist you in addressing the pertinent issues, please answer the following questions (Attach additional sheets if necessary):

1. How does the subdivision ordinance prohibit, or unreasonably restrict, the use of this property? How is this situation *unique or unusual*?

2. What is the *substantial* injustice that will occur if the ordinance is strictly enforced? What is the *substantial* hardship that will be suffered?

3. How would the applicant and/or owner be worse off than they are *currently* if this this variation to the subdivision ordinance is not granted?

4. Describe what is being provided in order to meet the required burden of proof for this request (written testimony, documentation of hardship, etc.).

NOTICE

Culpeper County does not discriminate - against religions or on the basis of sex, age, race, national origin, or a disability - in its planning and land use processes. If you believe that you have been discriminated against or that the Religious Land Use & Institutionalized Persons Act (“RLUIPA”) has been violated, please ask for a complaint form.

Under the laws of the United States and the Commonwealth of Virginia, no government may discriminate against religions or on the basis of sex, age, race, national origin, or a disability - in its planning and land use processes.

Under RLUIPA, no government may apply its zoning or land use laws, or its policies and procedures in a manner that unjustifiably imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution.

RLUIPA also provides that no government may apply its zoning or land use laws in a manner that treats a religious assembly or institution on less than equal terms that a non-religious institution or assembly.

Finally, RLUIPA provides that no government may impose or implement a land use regulation in a manner that discriminates against a religious assembly or institution.

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