



## DEPARTMENT OF COMMUNITY DEVELOPMENT

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## VARIANCE

### Purpose

The purpose of allowing variances from the standards of the Jefferson County Code (JCC) is to ensure that all persons and their property are guaranteed equal rights and opportunities under similar circumstances. Variances from the standards of the JCC shall only be granted where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the JCC would impose unnecessary hardships on the applicant or thwart the purpose and goals of the Jefferson County Comprehensive Plan or JCC. Variances may only be granted for dimensional, area and bulk requirements (e.g., height, setbacks, yard size, lot coverage, frontage, floor area and the like) specified by the JCC.

JCC 18.40 outlines the provisions for variance procedures and criteria allowed under the Code, except for reasonable economic use variances and environmentally sensitive area buffer width reductions, which are governed by the provisions of JCC 18.22 Critical Areas. In addition to the supplemental Variance Application Form in this packet, you must also complete the Master Permit Application Form for all variance applications. Variance approval may involve either a Type II or Type III review process under the JCC, depending on the specific type of variance requested.

### Types of Variances

There are three broad types of variances identified in the JCC.

**Reasonable Economic Use Variance:** A Reasonable Economic Use variance may be applied for if the application of Environmentally Sensitive Area buffers (i.e. wetland, streams, geohazards, etc) identified in JCC 18.15.185 deny all reasonable economic use of a property. Applicants may apply for a reasonable economic use variance only upon denial of a permit due to the requirements of the JCC 18.22 – Critical Areas.

**Minor Variance:** Minor variances include variances that would permit expansion of an existing building which would extend no more than ten (10) percent beyond the dimensional, area and bulk requirements specified by the JCC. Minor variances also include variances to allow expansion of an existing building that is nonconforming as to setback or lot coverage requirements as long as the proposed expansion would not:

- Increase the nonconformity of the building; and
- Result in any portion of the building or expansion being located closer to an abutting property line than does the existing building at its nearest point to the property line.

Applications for minor variances are processed according to the procedures for Type II land use decisions established in JCC 18.40.270.

**Major Variance:** Major variances include all other variances not classified as minor. Applications for major variances are processed according to the procedures for Type III land use decisions established in Article IV of Chapter 18.40.

### Process

**Step 1 – Pre-Application Conference:** A pre-application conference is required for all Variances. Conceptual plans, county requirements, future permit requirements, etc., and answers to related questions are discussed at the conference. Information provided by Department of Community Development staff helps the applicant to prepare a better application and potentially decreases code-related questions and time required for formal review.

**Step 2 – Determination of Completeness:** Following submittal of your application, county staff will make a determination within 28 days as to whether your application is complete.

**Step 3 – Formal Application Review and Decision:** Following the determination of completeness, a final decision must be made by the county within 120 calendar days. The final decision may be made by either the Administrator (for all **Minor Variances**) or the Hearing Examiner (for all **Reasonable Economic Use Variances and Major Variances**). Public hearings before the Hearing Examiner are required for all Reasonable Economic Use Variances and Major Variances. In all variance cases the decision may be appealed.

## Approval Criteria

### Reasonable Economic Use Variances

Your reasonable economic uses variance application [pursuant to JCC 18.22.090] will be evaluated on the basis of the criteria listed in the relevant section of the Jefferson County Code (see JCC 18.22.090), and in some instances, inspection of the property.

A reasonable economic use variance may be granted only if the applicant demonstrates all of the following:

No reasonable economic use with less impact on the ESA or its buffer is possible;

There is no feasible on-site alternative to the proposed activities that would allow a reasonable economic use with less adverse impacts to ESA's or ESA buffers;

The proposed variance will result in the minimum feasible alteration or impairment of the ESA;

Disturbance of ESA's has been minimized by locating any necessary alteration in ESA buffers to the minimum extent possible;

The proposed variance complies with applicable Federal, State, and local law;

There will be no material damage to nearby public or private property and no material threat to the health or safety of people on or off the property;

The inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of this code.

In instances where all of the above findings cannot be made, the application shall be denied.

In granting any variance, the Administrator or Hearing Examiner (as applicable) may prescribe appropriate conditions and safeguards to assure that the purpose and intent of the JCC and the Jefferson County Comprehensive Plan will not be violated.

### Minor and Major Variances

Your minor or major variance application will be evaluated on the basis of the criteria listed in the relevant section of the Jefferson County Code (see JCC 18.40.640), and in some instances, inspection of the property.

A variance may be granted only if the applicant demonstrates all of the following:

- The variance will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and land use district in which the subject property is located;
- The variance is necessary because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the land use district in which the subject property is located;
- The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and land use district in which the subject property is located;
- The special circumstances of the subject property make the strict enforcement of the provisions of this Code an unnecessary hardship to the property owner;
- The special circumstances are not the result of the actions of the applicant; and
- The variance is consistent with the purposes and intent of the Code.

In instances where all of the above findings cannot be made, the application shall be denied.

In granting any variance, the Administrator or Hearing Examiner (as applicable) may prescribe appropriate conditions and safeguards to assure that the purpose and intent of the JCC and the Jefferson County Comprehensive Plan will not be violated.

The Administrator or Hearing Examiner (as applicable) may not grant a variance for the following:

- The provisions of the JCC establishing allowed, conditional, discretionary and prohibited uses within the various land use districts (i.e., Table 3-1 in JCC 18.15. 040);
- The density provisions of this code;
- The procedural or administrative provisions this code; or
- Any provision of this code which, by its terms, is not subject to a variance.

Approval of the variance is effective for three (3) years from the date of original approval. If a building permit has not been issued within the three (3) year period, the variance approval will expire.



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## VARIANCE APPLICATION

MLA # _____	PROJECT/APPLICANT NAME: _____
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A variance is an exception from the general rule or standard and as such must be accompanied by sufficient reasoning to justify granting its approval. Granting a variance is based on a hardship presented by applying the standard to circumstances or conditions unique to the property rather than personal circumstances of the applicant and generally not experienced by other properties.

A site plan must accompany the variance request. It needs to be no larger than 11 x 17 inches, suitable for copying, and graphically illustrate or identify the following features:

- North arrow and engineer scale.
- Development area (property boundary lines, section lines, etc.).
- Property improvements (existing and proposed structures, utilities, septic tank and drainfield location, existing wells, etc.).
- Property features (existing and proposed changes to topography and ground relief, vegetation, shoreline location, outstanding physical features, etc.)
- Setbacks (required and proposed, if different).
- Roads (State, County, and private) and easements (road, utility and others).
- Other information that explains the variance request.

The following questions will assist in the evaluation of the variance request:

1.	From which standards are you requesting a variance? [Identify applicable Jefferson County Code section(s).] _____
2.	Describe the requested variance. _____
3.	Describe the proposed standard(s). _____
4.	Describe the extraordinary conditions or unusual circumstances which exist on your property that would justify deviation from the standard (such as topographic features, parcel size and shape, drainage, etc.). Attach topographic photographs or topographic map showing unique features, etc. _____

5. Are these conditions unique to your property and not experienced by other properties in the area? (If yes, please explain.)
6. Were any of these conditions or circumstances caused directly by you? (If yes, please explain.) _____
7. Describe the hardship the standard places on the use of your property. _____
8. Is the deviation you request the minimum necessary to accomplish your project or is there another reasonable way to accomplish your project that would not require a variance? (Please explain.) _____
9. Describe how granting the variance will not be materially detrimental to the public health, safety, welfare, use, or interest, or injurious to property or improvements in the vicinity. _____
10. Is there anything else you would add which supports your request? _____

**ACKNOWLEDGEMENT**

By signing the application form, the applicant/owner attests that the information provided herein is true and correct to the best of their knowledge. Any material falsehood or any omission of a material fact made by the applicant/owner with respect to this application packet may result in this permit being null and void.

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(APPLICANT OR AUTHORIZED REPRESENTATIVE SIGNATURE) (DATE)

[NOTE: Representative authorization is required if application is not signed by the Owner.]