



VARIANCE

User's Guide

**NOTE: FOR DETAILED PROCEDURES,
REFER TO CHAPTER 7 OF THE
UNIFIED DEVELOPMENT CODE**

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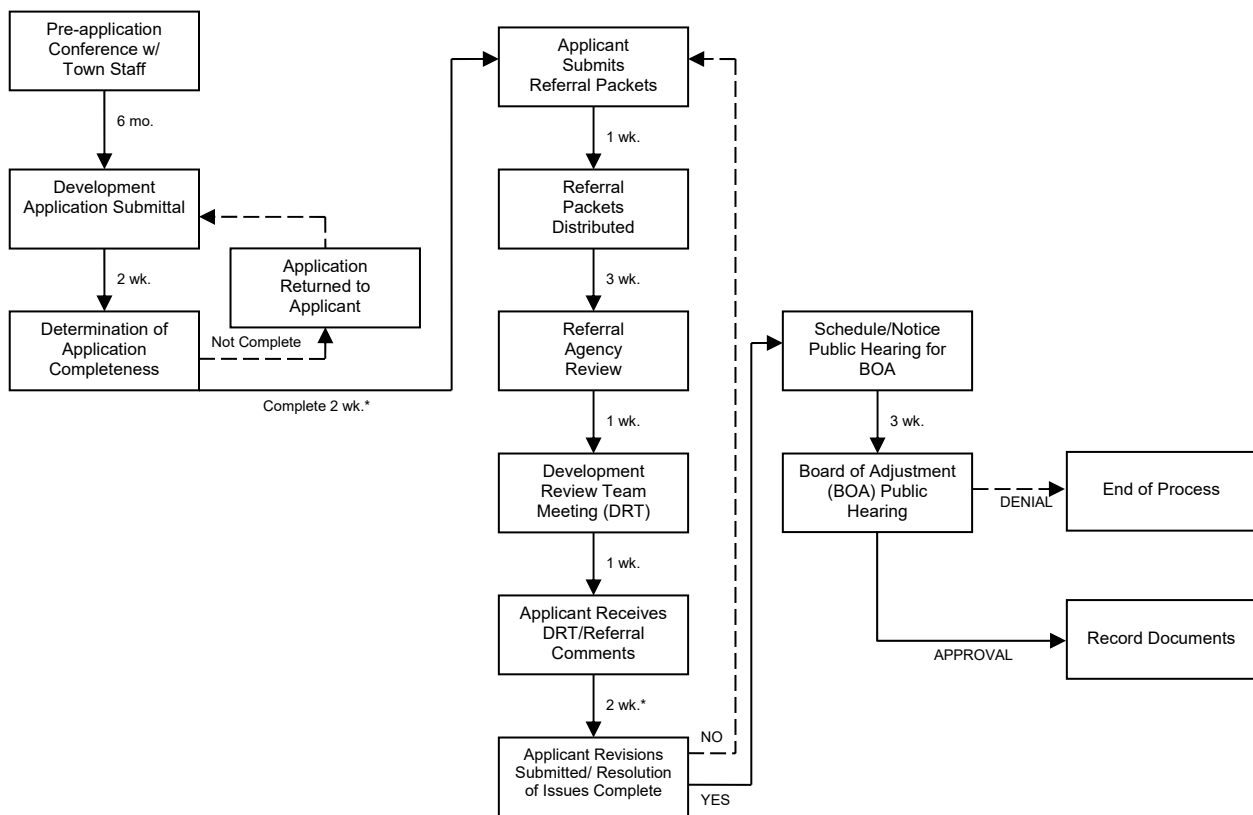
Purpose and Scope

The Variance process is intended to provide limited relief from the requirements of the Unified Development Code (UDC) in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under the UDC. It is not intended that Variances be granted merely to remove inconveniences or financial burdens that the requirements of the UDC may impose on property owners in general. Rather, it is intended to provide relief where the requirements of the UDC render the land difficult or impossible to use because of some unique physical attribute of the property itself or some other factor unique to the property for which the Variance is requested. State and/or Federal laws or requirements may not be varied by the Town.

It is the applicant's responsibility to prove that a hardship or site condition exists on the property which hinders the ability to develop the property in compliance with relevant provisions of the UDC.

Process Summary

The following is a brief summary of the typical Variance process. Detailed step by step instructions may be found in Chapter 7, *Review and Approval Procedures* of the UDC.



*Typical Time Shown, Actual Time Up to Applicant

Pre-application Conference w/Town Staff:

An Applicant is required to schedule a pre-application conference with Planning & Development before making a formal vacation application submittal. The pre-application conference provides an opportunity

for an informal evaluation of the Applicant's proposal by Staff to discuss with the Applicant the application process, submittal requirements, and applicable standards in the Municipal Code.

The Applicant is responsible for bringing to the meeting a description of the character, location and magnitude of the proposed vacation that is supported by documents such as maps or drawings. The Applicant is also responsible for providing a summary of the meeting when the formal application materials are submitted to the Town.

The informal evaluation by the Town at the conference are not binding upon the applicant or the Town, but are intended to serve as a guide to the applicant in making the application. After a pre-application conference has been held, a complete formal application must be submitted within six months. If an application is not submitted within six months, a new pre-application conference will be required.

Development Application Submittal:

The applicant shall submit to Planning & Development one copy of the application submittal packet that includes a completed application form, fees and support documents as specified in the **Submittal Requirements** section below.

Determination of Application Completeness:

The assigned Project Planner will review the application submittal packet for completeness. The Project Planner will determine whether an application submittal packet is complete and can continue forward to **Applicant Submits Referral Packets** or is not complete and moves back in the process to **Application Returned to Applicant**.

Application Returned to Applicant - "Not Complete":

An application submittal packet that is not complete in terms of submitting the documents required or adequacy of the information provided or fees required will not be accepted by the Town for further review. The Project Planner will return the application submittal packet to the Applicant, so the Applicant can address the elements of the application submittal packet that are not complete. Once the Project Planner's review for completeness items are addressed, the Applicant resubmits the application submittal materials as described in **Development Application Submittal**.

Applicant Submits Referral Packets - "Complete":

An application submittal packet that is deemed to be complete by the Project Planner will continue on into the review process. The first step of the application review process is for the Applicant to submit to Planning & Development copies of the application submittal packet for review by Town staff, Town consultants and outside referral agencies. The Project Planner will give the Applicant a list of the referral agencies in which to make referral packets for. Referral packets shall be submitted in unsealed Tyvek envelopes, addressed to the referral agencies identified by the Project Planner, containing all submittal information properly folded and compiled.

Referral Packets Distributed:

Once Planning & Development has received the referral packets from the Applicant, Planning & Development will distribute the referral packets to the appropriate Town staff, Town consultants and outside referral agencies.

Referral Agency Review:

Referral agencies will have approximately three weeks to review the application submittal packets. Referral agency written comments will be due to Planning & Development before the **Development Review Team Meeting (DRT)** is held so that any issues a referral agency may have can be discussed at the DRT meeting. The Project Planner will collect and coordinate all referral comments. The applicant is required to pay fees assessed by referral agencies for their review.

Development Review Team Meeting (DRT):

The Project Planner will schedule a Development Review Team Meeting (DRT) after the referral agency review period is over. At the DRT meeting the Project Planner discusses the review comments from all review agencies and discusses the neighborhood meeting comments with the DRT attendees. The DRT meeting typically includes Planning & Development, Public Works staff, the Building Official, Town consultants, and the Fire Marshall. The DRT Meeting does not include the Applicant. If the applicant would like to explain the application to the Project Planner before the DRT meeting they should contact the Project Planner to set up a separate meeting before the DRT meeting is held. After the DRT meeting, the Project Planner will compile all of the staff and referral comments for distribution to the applicant.

Applicant Receives DRT/Referral Comments:

The Project Planner will provide the Applicant with a copy of all the staff and referral comments from the review of the application submittal packet. A meeting between staff and the applicant may be held to review the staff and referral comments. The applicant may also meet directly with the agency(ies) that have expressed concerns with the application. The Project Planner should be included in meeting or correspondence with referral agencies.

Applicant Revisions Submitted/Resolution of Issues Complete:

The Applicant shall address, in writing, all issues and deficiencies identified in the staff and referral comments. To continue the process in a timely fashion, the applicant must complete the requested revisions and resubmit the revised application submittal packet for a second review by the Project Manager and any applicable referral agencies as quickly as possible. If an Applicant fails to submit required information for a period of more than six months from the initial request, the applicant shall become void and the resubmittal of a new application and fees will be required.

The revised application submittal packet will be reviewed by Project Planner at a DRT meeting after any further referral agency comments are received on the revised application submittal packet. The Project Planner shall provide the Applicant with a copy of the staff and referral comments from the second review and will indicate whether or not the application has resolved all of the issues raised in the comments. If the issues have not been resolved then the application goes back to the **Applicant Submits Referral Packets** portion of the process for another round of reviews. Additional fees may be charged for resubmittals that do not address comments. If the issues have been resolved then the application goes forward to the **Schedule/Notice Public Hearing for BOA** portion of the process.

Schedule/Notice Public Hearing for BOA:

The Project Planner shall notify the Applicant when the application is ready for public hearing with the Board of Adjustment. The Project Planner will schedule the first available Board of Adjustment hearing date based on public hearing notification requirements and room on the BOA agenda.

The Board of Adjustment public hearing requires public hearing notification in the form of notice published in the newspaper, notice mailed, and notice posted on the property by sign. Full detail of the notice process can be found in Municipal Code Title 10 Unified Development Code Section 7.2 F.

Planning & Development shall have the public notice published in the newspaper at least 15 days before the public hearing. The Applicant is responsible for providing the correct legal description of the property to the Town before the notice is sent to the newspaper for publication.

The Applicant shall provide Planning & Development with a current (prepared within 30 days of the scheduled public hearing) list of property owners within 500 feet of the application property area and any associated homeowners associations. Additionally, the Applicant shall provide a stamped and addressed envelopes for each entity identified on the list for each public hearing. Planning & Development shall mail the public notice at least 15 days prior to the public hearing.

Planning & Development shall provide the Applicant with signs to be posted on the property for public hearing notice. The applicant is responsible for posting the signs at least 15 days before the public

hearing, checking on the signs to make sure they remain in place, and to remove the signs within two days after the meeting. Before the public hearing the applicant shall submit to Planning & Development a notarized affidavit, on the Town form, stating that the notice was posted and maintained.

Board of Adjustment (BOA) Public Hearing:

The Applicant is required to submit all required public hearing documents at least 3 weeks before the public hearing so that the Project Planner has adequate time to write the staff report and draft resolution for the Board of Adjustment. The Project Planner shall identify the items the Applicant is to include in the public hearing documents. The public hearing documents shall be submitted as eight full copies of the public hearing documents for public and the Planning Commission review. The staff report and draft resolution shall be forwarded to the Applicant by the Project Planner when the BOA agenda packets are sent to the Planning Commission for review. A copy of all public hearing documents are available in Planning & Development for public review at this time as well.

The public hearing will be conducted by the Town of Erie Board of Adjustment. The order of the proceedings at the public hearing shall be as follows:

1. The Board of Adjustment shall open the public hearing.
2. The Project Planner will present the staff report and draft resolution.
3. The Applicant will present any relevant information the Applicant deems appropriate for the hearing.
4. Public testimony is heard by the Board of Adjustment.
5. The Board of Adjustment will ask questions of the Applicant and Staff, and for clarification on any issues raised during public testimony.
6. The Board of Adjustment will close the public hearing.
7. The Board of Adjustment will make a final decision on the application by resolution. The decision will be to grant the requested variance, conduct an additional public hearing or deny the application, based on the applicable approval criteria below. If the application is denied you move to **End of Process**. If the application is approved you move to **Record Documents**.

End of Process:

The applicant is at the end of the process when the Variance is denied.

Record Documents:

The Town shall be responsible for sending the Certificate of Variance to the County Clerk for recordation. The Applicant shall be billed for the cost to record the document.

Approval Criteria

The Board of Adjustment (BOA) may approve a Variance only if it finds that **all** of the criteria listed below have been met:

1. There are unique physical circumstances or conditions, such as irregularity, narrowness or shallowness of lot, or exceptional topographical or other physical conditions peculiar to the affected property;
2. The unusual circumstances or conditions do not exist throughout the neighborhood or district in which the property is located;
3. Such physical circumstances or conditions were not created by the applicant;
4. Because of such physical circumstances or conditions, the property cannot reasonably be developed in conformity with the provisions of the UDC;

5. The Variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property; and
6. The Variance, if granted, is the minimum Variance that will afford relief and is the least modification possible of the provisions of the UDC which are in question.

No Variance shall be granted that violates the intent of the UDC or its amendments.

No Variance shall be granted from any written conditions attached by another decision-making body to the approval of a Special Review Use or Subdivision Plat or Site Plan.

No Variance shall be granted if the conditions or circumstances affecting the applicant's property are of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situations.

No Variance may authorize a use other than those permitted in the district for which the Variance is sought; also, an application or request for a Variance shall not be heard or granted with regard to any parcel of property or portion thereof upon which zoning request for any parcel of property or portion thereof has not been finally acted upon by both the Towns' Planning Commission and Board of Trustees.

Expiration of Approval

If granted, any Variance shall become null and void, if:

1. The Variance is not exercised within 180 days of the date it is granted, or
2. Any building, structure, or characteristic of use permitted by the Variance is moved or altered so as to enlarge the Variance or discontinue it.

Submittal Requirements

One copy of the following information shall be submitted to Planning & Development – Planning Division, unless waived by the Planning & Development Director in order to perform a completeness review.

Applications will not be accepted for review unless all information is present.

1. **Completed application.**
2. **Application fee.**
3. **Proof of ownership** that includes a warranty deed or current title insurance policy/title commitment.
4. **A notarized letter of authorization** from the landowners permitting a representative to process the application, when the landowner is not the applicant.
5. **Letter of Request**, addressed to the Town Board of Adjustment, detailing:
 - a. The nature of the request; and
 - b. How the request complies with **all** of the approval criteria listed above.
6. **A survey, Improvement Location Certificate (ILC), or site plan** drawn to scale showing:

- a. All existing and proposed structures;
 - b. All existing property lines and easements; and
 - c. Setbacks measured to property line(s) for proposed or existing encroachments.
7. If applicable, a recommendation letter from the Homeowners Association (HOA).
8. Additional information such as photos, graphic renderings or drawings to assist the Board of Adjustment in making a determination.
9. Any additional information or referral documents as required by the Planning & Development Director, in order to thoroughly review the impacts of the proposed development.