

9. Describe your project request in detail.

10. Explain why your requested variance is essential to the practical use of your property.

For Zoning Administrator Use Only:

1. State the applicable Chapter and Subsection of the Town of Clear Lake, Indiana Zoning Regulations that has caused this appeal. _____

2. Have there been previous appeals filed on this property? Explain _____

**Board of Zoning Appeals
Findings Of Fact
Developmental Standard Variance**

For the BZA to consider your petition for a variance from development standards you will need to present evidence on the following points. The BZA must make a determination on each of these points in deciding whether or not to grant your petition. Indiana case law has determined that it is not enough to make the required statutory determinations in the words of the ordinance (e.g. stating “the approval will not be injurious to the public health, safety, morals and general welfare of the community”) but that the BZA must make findings that support those determinations. In effect, “because” must be added to each of the criterion, with a corresponding explanation, (e.g., “the approval will not be injurious to the public health, safety, morals, and general welfare of the community because ...”). **Failure to present evidence in support of any of these findings will result in denial of your petition; therefore, please state:**

- A. How will your proposed building-structure not be injurious to the public health, safety, morals and general welfare of the community?

Because _____

- B. How will the use and value of the area adjacent to the property for which you are requesting a variance not be affected in a substantially adverse manner?

Because _____

- C. How will the strict application of the terms of the Clear Lake zoning regulations result in practical difficulties in your use of your property?

Because _____

Affidavit

(I or We) _____ , Being duly sworn, depose and say that (I or We) (am or are) the (Owner[s] or contract purchaser[s]) of the property involved in this application; and that the forgoing signatures, statements and answers herein contained, and the information herewith submitted, are in all respects true and correct.

Signed: _____

Signed: _____

STATE OF INDIANA)
) SS:
COUNTY OF)

Subscribed and sworn to before me, a Notary Public, in said County and State, on this ____ day of _____, 20__.

Witness my hand and notarial seal.

(Notary Public)

(Name Printed)
Resident of _____ County, IN

My Commission Expires:

9.19 Variance

A. Purpose and Intent: The Board of Zoning Appeals may vary the regulations of this 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 this 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:

Eligible Applicants: An Application for a Variance shall 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.

D. Filing Requirements:

- b. *Application*: Application for a Variance shall be made on a form provided by the Board of Zoning Appeals.
- c. *Supporting Information*: The following items shall accompany a completed Application for a Variance.
 - a. A list of names and mailing addresses of all known property owners within 300 feet of the boundary of the proposed site. The measurement shall include any property that is wholly or partially within the 300-foot boundary regardless if a road, river, railroad, or other physical barrier exists. This information may be obtained from the Steuben County Auditor's Office.
 - b. Applicable plans, drawings, and descriptions of the use, structure, and proposed site shall accompany the application for a variance. All submitted drawings shall be to a scale no greater than one inch equals one hundred feet (1"=100'). Any other information necessary to support a thorough review of the project and as requested in writing by the Board of Zoning Appeals or the Zoning Administrator.

- d. *Deadline:* An Application for a Variance shall be filed at least twenty-one (21) days prior to the public meeting at which it is first to be considered by the Board of Zoning Appeals.
- e. *Fees:* Applicable fees shall be paid at the time the Application for a Variance is filed. Fees shall include reimbursement for any cost borne by the Board of Zoning Appeals or Zoning Administrator to hire a professional engineer, professional planner, or other professional technician necessary to subsidize the Zoning Administrator's capabilities for review of the application or proposed project.

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-one (21) 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 Board of Zoning Appeals shall notify all interested parties of the public hearing by regular U.S. mail a minimum of ten (10) days before the public hearing.
 - b. The Board of Zoning Appeals shall publish legal notice in a newspaper of general circulation a minimum of ten (10) days before the public hearing.
4. *Attendance:* The applicant shall be present at the Board of Zoning Appeals meeting to present the Application for a Variance and address and discuss comments and concerns. Failure to appear shall 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 this 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 development standards variance will not be injurious to the public health, safety, morals and general welfare of the community.
 - ii. The use and value of the areas adjacent to the property included in the development standards 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 use 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 use 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 use variance is sought.
 - v. The approval does not interfere substantially with the *Town of Clear Lake 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 Steuben County Recorder. A recorded commitment is binding on the owner of the land, any subsequent owner of the land and any person who acquires an interest 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 this Unified Development Ordinance.
2. *Use Variance*: A use variance granted by the Board of Zoning Appeals may be subject to a commitment or condition for duration, but otherwise use variances shall run with the land until such time as:
 - a. The use is vacated for one (1) year consecutively;
 - b. The use conforms with the Unified Development Ordinance as written

G. Modification: Modifications authorized by the Zoning Administrator shall be reported, in writing, to the Board of Zoning Appeals at the next regular meeting of the Board of Zoning Appeals.

1. *Development Standards Variance*: Modification of a development standards variance that makes a project more compliant with the provisions of this 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 this 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 this Unified Development Ordinance or re-file an Application for a Variance or other appropriate application.