

VARIANCE APPLICATION

Date: \_\_\_\_\_

Application No.: \_\_\_\_\_

TO THE MONTREAT BOARD OF ADJUSTMENT:

I, \_\_\_\_\_, hereby petition the Board of Adjustment for a VARIANCE from the literal provisions of the Montreat Zoning Ordinance because, under the interpretation given to me by the Zoning Official, I am prohibited from using the parcel of land described in the attached application for a Certificate of Zoning Compliance in a manner shown by the plot plan attached to that form. I request a variance from the following provisions of the Ordinance (cite paragraph numbers): \_\_\_\_\_

so that the above-mentioned property can be used in a manner indicated by the plot plan attached to the Certificate of Zoning Compliance form or, if the plot plan does not adequately reveal the nature of the variance, as more fully described herein: \_\_\_\_\_

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act, the Board is required to reach three conclusions before it may issue a variance: (a) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance; (b) that the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit; and (c) that in granting the variance, the public safety and welfare have been assured and substantial justice has been done. In the spaces provided below, indicate the facts you intend to show and the arguments you intend to make to convince the Board that it can properly reach these three required conclusions.

(A) **There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.** The courts have developed three rules to determine whether in a particular situation “practical difficulties or unnecessary hardships” exist. State facts and arguments in support of each of the following:

1. If s/he complies with the provisions of the ordinance, the property owner can secure reasonable return from, or make no reasonable use of his/her property. (It is not sufficient that failure to grant the variance simply makes the property less valuable.)

\_\_\_\_\_

2. The hardship of which the applicant complains results from unique circumstances related to the applicant’s land. (Note: Hardships suffered by the applicants in common with his/her neighbors do not justify a variance. Also, unique personal or family hardships are irrelevant, since a variance if granted, runs with the land.) \_\_\_\_\_

\_\_\_\_\_

(B) **The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.** (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(C) **The granting of the variance secures the public safety and welfare and does substantial justice.** (State facts to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.) \_\_\_\_\_

\_\_\_\_\_

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district. \_\_\_\_\_

\_\_\_\_\_

2. Granting the requested variance will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.

\_\_\_\_\_

3. A literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located. \_\_\_\_\_

\_\_\_\_\_

4. The requested variance will be in harmony with the purpose and intent of this Ordinance and will not be injurious to the neighborhood or to the general welfare.

\_\_\_\_\_

5. The special circumstances are not the result of the actions of the applicant.

\_\_\_\_\_

6. The variance requested is the minimum variance that will make possible the legal use of the land, building or structure. \_\_\_\_\_

\_\_\_\_\_

7. The variance is not to request a use of land, building or structure which is not permitted in the district involved. \_\_\_\_\_

\_\_\_\_\_

8. Without the requested variance, the applicant may make no reasonable use of the property. \_\_\_\_\_

\_\_\_\_\_

I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief.

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