

# VILLAGE OF VOLENTE

## VARIANCE APPLICATION FORM

Date of Submission: \_\_\_\_/\_\_\_\_/\_\_\_\_

### APPLICANT/OWNER INFORMATION

Applicant \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

Applicants Status: *(check one)* \_\_\_\_\_ Owner \_\_\_\_\_ Tenant \_\_\_\_\_ Contractor  
*Owner must sign the application or submit a notarized letter of authorization*

Owner: \_\_\_\_\_

Address: \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

Ownership:*(check one)* \_\_\_\_\_ Individual \_\_\_\_\_ Partnership \_\_\_\_\_ Corporation \_\_\_\_\_ Other \_\_\_\_\_  
*If ownership is a trust, partnership, corporation, or other legal entity, the applicant must name the partners or principals on a separate attachment.*

### PROPERTY DESCRIPTION

Acreage: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Legal Description: *(attach map of area also if available)*

Lot(s): \_\_\_\_\_ Block(s): \_\_\_\_\_

Subdivision: \_\_\_\_\_ Addition: \_\_\_\_\_

Existing Use of Property: \_\_\_\_\_

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## VARIANCE DESCRIPTION

**Applicable Regulation(s):** \_\_\_\_\_

**Project Description:** \_\_\_\_\_

\_\_\_\_\_

**Variance Sought:** \_\_\_\_\_

\_\_\_\_\_

**Justification(s):** \_\_\_\_\_

\_\_\_\_\_

**Special Condition(s):** \_\_\_\_\_

\_\_\_\_\_

**Project Timeline:** \_\_\_\_\_

\_\_\_\_\_

**Attachments:** \_\_\_\_\_

\_\_\_\_\_

*(e.g., construction drawings, site plan, survey, photographs, list of names and addresses for all property owners within 500 feet of the footprint of the structure for which a variance is sought.)*

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## SWORN AFFIRMATION

**SUDCRIBED AND SWORN TO BEFORE ME on \_\_\_\_\_,20\_\_by**

**\_\_\_\_\_**, who is the applicant for a variance as described above, and on whose oath certifies that the above statements are true and correct to the best of the applicant's knowledge.

\_\_\_\_\_  
**Notary Public, State of Texas**

**My Commission expires: \_\_\_\_\_**

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**If the owner of the subject property is not the applicant, by signing below, the owner authorizes the applicant or his authorized representative to make this application on its behalf and to appear before the Village Council.**

\_\_\_\_\_  
**Owner**

\_\_\_\_\_  
**Date**

**SUBSCRIBED AND SWORN TO BEFORE ME on \_\_\_\_\_,20\_\_by,**

**\_\_\_\_\_**, who is the owner of the property for which a variance is sought, and on whose oath certifies that the above statements are true and correct to the best of the owners knowledge.

\_\_\_\_\_  
**Notary Public, State of Texas**

**My Commission expires: \_\_\_\_\_**

# VILLAGE OF VOLENTE

## TO BE COMPLETED BY VILLAGE

**Date Received:**                    \_\_\_/\_\_\_/\_\_\_

**Date Application Complete:**    \_\_\_/\_\_\_/\_\_\_

**Tracking Number:**                **Variance Request # 200**\_\_-\_\_\_\_\_

**Variance Fee:**                    \$ \_\_\_\_\_ ( *paid on* : \_\_\_/\_\_\_/\_\_\_ )

**Reviewed by Village Engineer:** \_\_\_\_\_ ( *initials* ) ( *date* ) \_\_\_/\_\_\_/\_\_\_

**Village Engineer Comments:** \_\_\_\_\_  
\_\_\_\_\_

**Reviewed by Village Attorney:** \_\_\_\_\_ ( *initials* ) ( *date* ) \_\_\_/\_\_\_/\_\_\_

**Village Attorney's Comments:** \_\_\_\_\_  
\_\_\_\_\_

**Reviewed by Mayor:**                \_\_\_\_\_ ( *initials* ) ( *date* ) \_\_\_/\_\_\_/\_\_\_

**Mayors Comments:**                \_\_\_\_\_  
\_\_\_\_\_

**Date Considered by Village Council:** \_\_\_/\_\_\_/\_\_\_

**Notes:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# VILLAGE OF VOLENTE

## Sec.30.129 Variances:

- (a) The board may authorize a variance from the terms of this article when, in its opinion, undue hardship will result from requiring strict compliance. In granting a variance, the board shall prescribe only conditions that it deems necessary for, or desirable to, the public interest. In making the findings herein below required, the board shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, the number of persons who will reside or work within the proposed use, and the probable effect such variance will have upon traffic conditions and upon the public health, safety, convenience and welfare of the Village.
- (b) Conditions Required for Variance: No variance shall be granted without first having given public notice and having held a public hearing on the written variance request in accordance with this article and unless the board finds:
  - (1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of the land; and
  - (2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and
  - (3) That the granting of the variance will not be detrimental to the public health, safety, or welfare, or injurious to other property within the area; and
  - (4) That the granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this article.
- (c) Such findings of the board, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the board meeting at which such variance is granted. Variances may be granted only when in harmony with the general purpose and intent of this article so that the public health, safety and welfare may be secured and that substantial justice may be done.
- (d) Findings of Undue Hardship: In order to grant a variance, the board must make written findings that an undue hardship exists, using the following criteria:

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- (1) That literal enforcement of the zoning controls will create an unnecessary hardship or practical difficulty in the development of the affected property; and
  - (2) That the situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district; and
  - (3) That the relief sought will not injure the permitted use of adjacent conforming property; and
  - (4) That the granting of a variance will be in harmony with the spirit and purpose of this article.
- (e) A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely upon economic gain or loss, nor shall it permit any person the privilege of developing a parcel of land not permitted by this article on other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship upon another parcel of land.
- (f) The applicant bears the burden of proof in establishing the facts that may justify a variance.
- (g) Special Exceptions for Nonconforming Uses and Structures: Upon written request of the property owner the board may grant special exceptions to the provisions of Section 30.135 of this article, limited to the following, and in accordance with the following standards:
- (1) Expansion of a nonconforming use within an existing structure a maximum of ten percent (10%); provided that, in the case of a nonconforming residential use, such expansion does not increase the number of dwelling units to more than the number existing when the use first became nonconforming; or
  - (2) Expansion of the gross floor area of a nonconforming structure a maximum of ten percent (10%), provided that such expansion does not decrease any existing setback.
  - (3) Change from one nonconforming use to another, re-construction of a nonconforming structure that has been totally destroyed, or resumption of a nonconforming use previously abandoned, only upon finding that the failure to grant the special exception deprives the property owner of substantially all use or economic value of the land.

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- (4) In granting special exceptions under this Sec.30.129 the board may impose such conditions as are necessary to protect adjacent property owners and to ensure the public health, safety and general welfare, including but not limited to conditions specifying the period during which the nonconforming use may continue to operate or exist before being conformed to the standards of this article.

## **Sec.30.130 Procedures:**

- (a) Application and Fee: An application to the board shall be made in writing using forms prescribed by the Village, and shall be accompanied by an application fee, a site plan and such additional information as may be requested in writing in order to properly review the application. Such information may include, but is not limited to, plat plans, site building plans, photographs, topographic contour maps, and other similar documents. All drawings must be to scale.
- (b) Review and Report by the Village: The Village shall visit the site where the requested board action will apply and the surrounding area, and shall report its findings to the board.
- (c) Notice and Public Hearing: The board shall hold a public hearing for consideration of the application no later than forty-five (45) days after the date the application for action, or an appeal, is filed. Notice of the public hearing shall be provided to all property owners within two hundred feet (200') of the affected property at least ten (10) days prior to the public hearing, and also published in the official local newspaper at least ten (10) days prior to the public hearing.
- (d) Action by the Board: The board shall not grant an appeal or a variance unless it finds, based upon evidence, that each of the conditions in Sec.30.128 has been established. The board may impose such conditions, limitations and safeguards as it deems appropriate upon the granting of any variance or appeal. Violation of any such condition, limitation or safeguard shall constitute a violation of this article.

## **Sec.30.131 Appeals to the Board:**

- (a) The appellant must file with the board and the Village administrative official from whom the appeal is taken a written notice to appeal specifying the grounds for the appeal. The appeal must be filed within sixty (60) days after the Village official's decision has been rendered. Upon receiving the notice, the Village administrative official from whom the appeal is taken shall immediately transmit to the board all papers constituting the record of Village action that is appealed.

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- (b) An appeal stays all Village proceedings in furtherance of the Village action that is appealed unless the Village administrative official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the Village proceedings may be stayed only by a restraining order granted by the board or a court of record on application, after notice to the official, if due cause is shown.
- (c) The appellant may appear at the appeal hearing in person or by agent or attorney.
- (d) The board shall decide the appeal within four (4) weeks after the notice of appeal is filed with the Village, after which time the appeal shall be deemed automatically approved if no formal action is taken.
- (e) The board may reverse or affirm, in whole or in part, or modify the Village administrative official's order, requirement, decision or determination from which an appeal is taken, and may make the correct order, requirement, decision or determination.

**Sec.30.132 Finality of Decisions; Judicial Review:** All decisions of the board are final and binding. However, any person aggrieved by a decision of the board may present a verified petition to a court of record which states that the decision of the board is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition must be presented within ten (10) days after the date the board's decision is filed in the Village subject to the provisions of Chapter 211.011 of the Texas Local Government Code, only a court of record may reverse, affirm or modify a decision of the board.