

**CITY OF GOODING  
APPLICATION  
for  
VARIANCE**

\* \* \* \*

Fee:           \$50.00          

Date of Application: \_\_\_\_\_ Application No.: \_\_\_\_\_

**A. APPLICANT:**

1. Name: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Telephone Number: \_\_\_\_\_

2. Contact Person (ONLY if other than Applicant): \_\_\_\_\_

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

Telephone Number: \_\_\_\_\_

**B. REQUEST:**

1. That a Variance be granted for the real property located at (street address):

\_\_\_\_\_

and legally described as: \_\_\_\_\_

\_\_\_\_\_

for the proposed use of: \_\_\_\_\_

\_\_\_\_\_

2. Present use of property: \_\_\_\_\_

3. Describe the variance: \_\_\_\_\_

4. Existing Zoning District: \_\_\_\_\_

5. Project Land Area: \_\_\_\_\_

6. Project Building Size: \_\_\_\_\_

**C. THE FOLLOWING INFORMATION IS REQUIRED TO ACCEPT AN APPLICATION:**

1. The applicant must prove control of the property for which the request is being made by **providing ONE** of the following:
  - a. Copy of **Warranty Deed**; .....**OR**.
  - b. Copy of Earnest Money Agreement or Contract of Sale, **duly acknowledged and signed by BOTH Buyer and Seller**; .....**OR**
  - c. Copy of Lease Agreement **AND** Owner's Written Consent.
2. A list of names and addresses of all **property owners** within three hundred (300) feet of the **perimeter** of the subject property.  
*(This can be obtained through a title company or the Assessor's Office in the County Courthouse.)*
3. Approval by adjacent property owners: It is necessary that you make an attempt to secure signatures of approval of the adjacent property owners within 300 feet of your property line.  
Please attach signatures to application.
4. A site plan to scale, on **8 ½ " x 11" paper**, of the subject property showing the following information:
  - a. lot dimensions, location of all existing and proposed buildings, parking and loading areas, adjacent streets with traffic access and traffic circulation, landscaped areas with a landscape plan, refuse and service areas, utilities, signs, setbacks, fences, etc.
  - b. If new buildings are proposed, **elevations are required**.
5. On a separate sheet of paper please provide a detailed written statement containing:
  - a. The reason for the request.
  - b. An evaluation of the effects on adjoining property and of the general compatibility with adjacent and other properties in the district.
  - c. An explanation of the variance with documentation demonstrating the building or site is on a national, State, or local register of historic places or sites **OR** that the requested Variance conforms to **ALL** of the following conditions:
    - (1) That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or building in the same district.
    - (2) That a literal interpretation of the provisions of this Title would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Title.
    - (3) That special conditions and circumstances do not result from the actions of the applicant.
    - (4) That granting the variance requested will not confer on the applicant any special privilege that is denied by this Title to other lands, structures or buildings in the same district.
    - (5) That a literal enforcement of the provisions of this Title would result in unnecessary hardship. For purposes of this sections, where a reasonable conforming use is, or can be, located on a lot or parcel, there is no unnecessary hardship.

**OFFICIAL USE ONLY:**

P& Z Commission Hearing:

Publish: \_\_\_\_\_

Hearing: \_\_\_\_\_

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**P&Z COMMISSION ACTION**

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

Conditions: \_\_\_\_\_

By: \_\_\_\_\_ 2nd by: \_\_\_\_\_ Vote: yes \_\_\_\_\_, no \_\_\_\_\_.

Testimony given by: \_\_\_\_\_

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Recommend: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Not Recommended: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**OFFICIAL USE ONLY:**

Council Hearing (upon appeal):

Publish: \_\_\_\_\_

Hearing: \_\_\_\_\_

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**CITY COUNCIL ACTION**

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

Conditions: \_\_\_\_\_

By: \_\_\_\_\_ 2nd by: \_\_\_\_\_ Vote: yes \_\_\_\_\_, no \_\_\_\_\_.

Testimony given by: \_\_\_\_\_

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Recommend: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Not Recommended: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**APPLICATION FOR VARIANCE - APPROVAL BY ADJACENT PROPERTY OWNERS**

Applicant Name:

Applicant Address:

**SIGNATURES OF PROPERTY OWNERS WITHIN THREE HUNDRED (300) FEET OF THE PERIMETER OF THE SUBJECT PROPERTY**

Signature:

Address:

Signature:

Address:

Signature:

Address:

Signature:

Address:

Signature:

Address:

Signature:

Address:

Signature:

Address:

Signature:

Address:

## CHAPTER 17

## VARIANCES

## SECTION:

|          |  |
|----------|--|
| 11-17-1: | Granted When                           |
| 11-17-2: | Application; Filing; Requirements      |
| 11-17-3: | Filing Fee                             |
| 11-17-4: | Public Hearing Required; Notification  |
| 11-17-5: | Commission Action                      |
| 11-17-6: | Council Action; Applicant Notification |

11-17-1: **GRANTED WHEN:** The Planning Commission shall consider variances to the terms of this Title which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Title will result in unnecessary hardship and under such conditions that the spirit of this Title shall be observed and substantial justice done. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest. In acting upon such variance the Planning Commission shall make a full investigation and shall only recommend granting a variance upon finding that the following are true:

- A. That the granting of the variance will not be a conflict with the spirit and intent of the comprehensive general plan for the City, and will not effect a change in zoning;
  - B. That there are exceptional or extraordinary circumstances or conditions, applicable to the property involved, or the intended use thereof, which do not apply generally to the property or class of use in the district, so that a denial of the relief sought will result in:
    1. Undue loss in value of the property,
    2. Inability to preserve the property rights of the owner,
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3. The prevention of reasonable enjoyment of any property right of the owner;

- C. The granting of such relief will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements of other property owners, or the quiet enjoyment of such property or improvements. (Ord. 626, 10-7-2002)

**11-17-2: APPLICATION; FILING; REQUIREMENTS:** One or more property owners may initiate an application for a variance. Such application shall be filed with the Planning Commission on forms prescribed by the Planning Commission accompanied by such data and information necessary to assure the fullest presentation of facts and should include:

- A. Name, address, and phone number of applicant(s);
- B. Legal description of property (and street address, where possible);
- C. Description of nature of variance requested;
- D. A narrative statement demonstrating that the requested variance conforms to the standards set forth in Section 11-17-1 above;
- E. Name and address of all property owners and residents within three hundred feet (300') of the exterior boundaries of the land being considered. (Ord. 626, 10-7-2002)

**11-17-3: FILING FEE:** The owner or owner's representative as set forth in Section 11-19-1 of this Title shall pay a filing fee at the time of the filing. (Ord. 626, 10-7-2002)

**11-17-4: PUBLIC HEARING REQUIRED; NOTIFICATION:** The Planning Commission shall hold at least one public hearing on each variance request following the same hearing and notice procedures as set forth in Chapter 11 of this Title, except notification to property owners shall be by ordinary mail and need not extend beyond three hundred feet (300') of the external boundaries of the land being considered. (Ord. 626, 10-7-2002)

**11-17-5: COMMISSION ACTION:** Within forty five (45) days after the public hearing for a variance request, the Commission shall transmit its recommendations for approval or disapproval to the Council. (Ord. 626, 10-7-2002)

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11-17-6: **COUNCIL ACTION; APPLICANT NOTIFICATION:** Within forty five (45) days after receiving the recommendations of the Commission, the Council shall approve, disapprove, or approve with conditions, the application for variance and shall give written notice to the applicant within ten (10) days after the decision has been rendered. (Ord. 626, 10-7-2002)



## Variations

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The Local Land Use Planning Act requires cities and counties to adopt procedures for processing variance applications as part of the zoning ordinance.<sup>54</sup> Variations are special exceptions to quantifiable zoning standards, such as:

- Lot size;
- Lot coverage;
- Width;
- Depth;
- Front, side and rear setbacks;
- Parking space;
- Building height; and
- Other provisions affecting the size, shape or placement of structures or the size of lots.<sup>55</sup>

The Local Land Use Planning Act restricts variations to bulk and placement and does not permit “use” variations as found in other states, which allow a use prohibited by the zoning ordinance.

Variations may be granted by the governing board, planning and zoning commission or hearings examiner, as provided by local ordinance. Variations have fewer procedural requirements than other planning and zoning matters, requiring only mailed notice to adjacent property owners and an opportunity to be heard.<sup>56</sup>

Applications may be granted only upon a showing of:

- Undue hardship as a result of unique site characteristics, and
- The variance is not contrary to the public interest.<sup>57</sup>

“Generally, Idaho courts have defined unique site characteristics as naturally-occurring, *not man-made*,” says City Attorney and Planner Jerry Mason. “Configuration of lot boundaries and location of existing buildings are not considered unique site characteristics. It is important for local officials to discourage these types of applications because they simply do not qualify for relief under Idaho law.”

Some local governments have adopted administrative procedures to add greater flexibility to the bulk and placement standards. “Our code allows 10 percent ‘minor variance,’ which is approved by staff and does not have to go through the public hearing process,” says Matthew Lewis, Planning Division Manager for the City of Pocatello. “We require the applicant to get the signatures of adjacent property owners to ensure that they don’t have any problems with the proposal. This allows us flexibility to address minor issues.”

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<sup>54</sup> Idaho Code 67-6516.

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