

REQUEST FOR VARIANCE

APPLICATION NO. _____

1. APPLICANT: (Please print or type)

Name: _____

Address: _____

What is applicant's interest in Property?

2. OWNER: (Indicate if different than applicant)

Name: _____

Address: _____

3. LOCATION: (Street Address) _____

Between _____ Street, and

_____ Street.

Corner Lot? YES _____ NO _____

4. LEGAL DESCRIPTION: (may attach description)

5. REQUESTING VARIANCE FROM THE PROVISIONS OF:

(Article, Section, etc. of the Zoning Ordinance)

6. THIS IS A REQUEST FOR A VARIANCE RELATING TO: _____

PROVISIONS OF THE ORDINANCE.

7. STATE SPECIFICALLY THE CHANGE(S) PROPOSED AND THE REASON(S) SUCH CHANGE(S) ARE NECESSARY:

8. DATE PROPERTY WAS ACQUIRED: _____

9. EXPLAIN WHEREIN YOUR CASE CONFORMS TO EACH OF THE FOLLOWING REQUIREMENTS: (please be complete)

a. That there are such special circumstances or conditions affecting the property that the strict application of the provisions of this ordinance would clearly be impracticable for unreasonable.

b. That strict compliance with the requirements of this ordinance would result in extraordinary hardship to the subdivider because of unusual topography, other physical conditions, or other such conditions which are not self-inflicted, or that these conditions would result in inhibiting the achievement of the objectives of this ordinance.

c. That the granting of the specified variance will not be detrimental to the public welfare or injurious to other property in the area in which the property is situated.

10. PLOT PLAN OR DRAWING ATTACHED: YES _____ NO _____

11. The non-refundable application fee for a Request for Variance must be submitted at the time application is filed. Fee schedule is available in the Cassia County Administrative Office.

Fee submitted: YES _____ NO _____

Applicant Signature: _____

Date: _____

NOTE: This Notice of Hearing is general in nature. Users are responsible for any Notice of Hearing that is used, and must ensure that it is accurate in content and should also ascertain that it meets the requirements of state statutes and county ordinances applicable thereto.

**NOTICE OF HEARING
ON APPLICATION FOR REQUEST FOR VARIANCE**

NOTICE IS HEREBY GIVEN that a public hearing will be held on _____,
the _____ day of _____, 20_____, at _____ o'clock
P.M., _____,
Burley, Idaho before the Cassia County Planning & Zoning Commission on the application of *(names
and addresses if applicants)*_____

Regarding an Application for Request for Variance, which application was received by the County on
the _____ day of _____, 20_____, for the purpose of _____.

The property is located on lands at approximately _____
_____, Cassia County, Idaho more particularly described as follows:
(Place legal description of property here)

Such lands are located within the _____ **zone**. Pursuant to the Cassia
County Zoning Regulations a Conditional Use permit is required for development within said zone.

The applicant will appear at this hearing to provide the Cassia County Planning & Zoning
Commission all the information required for issuance of a Variance under the Cassia County Zoning
Ordinance, before such permit can be issued.

A copy of the Application for Request for Variance, including relevant maps and drawings, and
information concerning the hearing process is available for review by the public at the office of the
Zoning Administrator, Room #4 in the basement of the Cassia County Courthouse, 1459 Overland
Ave., Burley, Idaho, prior to the hearing.

All other interested persons are invited to attend the hearing on the question of issuance of the
requested Variance. Such other interested persons are advised that in order to participate in the
hearing, the following regulations apply:

Request for Variance Notice of Hearing

A. **Written Statements of Support of Objection:** All persons to whom notice is mailed shall be advised in that notice that they and others who can establish that their substantial rights would be affected by the approval or denial of the permit may file written objections or supporting statements with the planning and zoning commission secretary no later than ten (10) days prior to the hearing setting forth in that writing that person's support or objection to the issuance of the Variance.

1. Written objections shall set forth each requirement of law (local, state or federal) which the objecting party believes the requested variance would violate.
2. Written statements shall also set forth either that the party making the statement owns property within one (1) mile of the external boundaries of the requested variance described in the application and/or otherwise setting forth the substantial rights that would be affected by the approval or denial of the variance.
3. Additionally, any party desiring to file any document(s) exceeding one (1) one-sided, 8 1/2" x 11" sized page, shall file such document(s) at least ten (10) days prior to the hearing, with the planning and zoning commission secretary. The planning and zoning commission reserves the right to reject any proffered documentation that violates the intent of this regulation.

B. **Providing Testimony at the Public Hearing:** Any person who files a statement in support or objection to the issuance of the request for variance shall indicate in such statement whether or not such person desires to testify at the hearing.

1. Prior to the hearing the planning and zoning commission shall determine which of those persons who desire to testify will be permitted to testify at the hearing.
2. All statements of support or objections shall be made a part of the record at the hearing, but no person except the applicant shall be permitted to testify at the hearing unless they have previously filed a written statement of support for or objection to the issuance of the permit

DATED this _____ day of _____, 20_____.

Signature: _____

Applicant Printed Name: _____

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing document (Notice of Hearing) was on this date _____ served upon the persons listed, at the addresses set out below their names, by mailing to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid.

Dated _____ day of _____ 20 _____.

Applicant _____

State of Idaho)

ss

County of Cassia)

Subscribed and sworn to be before me this _____ day of _____, 2_____, personally appeared before me and proved to me on the basis of satisfactory evidence to be the person (s) whose name(s) are subscribed to this instrument, and acknowledged that they executed the same.

SEAL

Notary
Residing at _____
Commission expires _____

NOTE: This form is general in nature. Users are responsible for any form that is used, and must ensure that it is accurate in content and should also ascertain that it meets the requirements of state statues and county ordinances applicable thereto.

AFFIDAVIT OF POSTING

I _____, hereby state that I personally posted on the property located at _____ Burley, Cassia County, Idaho, a Notice of Hearing as required by Cassia County Zoning Ordinance Chapter 9-13-5- Procedure for Hearing. Notice was posted upon the property listed at the address set out below, the date being not less than one week prior to the date of hearing.

Dated _____ day of _____ 20 _____.

Applicant

Property location: _____

State of Idaho)

ss

County of Cassia)

Subscribed and sworn to or affirmed before me at Burley, Cassia County, Idaho on the _____ day of _____, 2_____.

SEAL

Notary
Commission expires _____
Residing at _____

NOTE: This form is general in nature. Users are responsible for any form that is used, and must ensure that it is accurate in content and should also ascertain that it meets the requirements of state statues and county ordinances applicable thereto.

CHAPTER 5
ENFORCEMENT AND ADMINISTRATION

SECTION:

9-5-1: Zoning Administrator And Building Inspector

9-5-2: Permits Required; Exceptions

9-5-3: Powers And Duties

9-5-4: Planning And Zoning Commission

9-5-5: Appeals, Variances And Requests For Hearings

9-5-1: ZONING ADMINISTRATOR AND BUILDING INSPECTOR: There is hereby established in Cassia County, state of Idaho, the offices of zoning administrator and building inspector, which shall be under the jurisdiction of the board of county commissioners of Cassia County, state of Idaho. The board of county commissioners shall appoint the officers who shall be charged with the administration and enforcement of this title, but the board of county commissioners may from time to time entrust the administration and enforcement, in whole or in part, to any other officer of the county. (Ord. 93-6-1, 6-28-1993)

9-5-2: PERMITS REQUIRED; EXCEPTIONS:

- A. Permit Required; Fee: Any person, firm, or corporation desiring to construct, erect, relocate or remodel a building covered under the terms of the uniform building code as adopted by the county, other than agricultural buildings in the unincorporated territory of the county, or desiring to place, park or tie down a mobile, modular, or manufactured home or other building in Cassia County, state of Idaho, shall first apply for a permit therefor to the building inspector and shall pay a fee for said permit as adopted by the county. (Ord. 99-1-1, 1-4-1999; amd. 2003 Code)
- B. Plats: All applications for building, tie down, or other permits shall be accompanied by a plat showing the size and location of the existing buildings and buildings to be erected and the layout of water and sewer services and utilities existing on the lot or parcel. The plat shall also show the zone in which a lot or parcel of land is located.
- C. Violation; Penalty: It shall be unlawful to commence construction of any structure requiring the issuance of a building permit without having first obtained a building permit therefor, or to occupy a mobile, modular, or manufactured home or other building without having obtained a "tie down" or foundation inspection. Failure to procure the proper permit or inspections shall also result in a monetary penalty equal to one hundred percent (100%) of the permit or inspection fee being imposed in addition to the standard fee at the time the permit or inspection is issued or performed. (Ord. 99-1-1, 1-4-1999)

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- D. Re-inspection Costs/Duplicate Inspection Cards: Upon appointment being set by owner or contractor of any permitted development, and building inspector's attendance at the site for purposes of conducting such inspection, and the purpose for the inspection not being completed, then owner or contractor shall pay a re-inspection fee to the County, as set by resolution of the Board, before any further inspection shall take place by the building inspector.

If the Inspection Card is not readily available to the building inspector at such time as the inspection is requested, then Inspector shall cease inspection and owner or contractor shall pay for a re-inspection fee and a duplicate inspection card fee, at such rates as determined by the Board and thereafter set by resolution.

- E. Agricultural Building Siting Permit: The County shall regulate and ensure compliance with road setbacks and utility easements with respect to agricultural buildings. These buildings shall otherwise be exempt from building codes. Applicants for Agricultural Building Siting Permits shall file an application for such permit, on a form approved by the County, with the County Building Department, and pay such fee as is determined by the Board for said permit.

9-5-3: POWERS AND DUTIES:

- A. Duties: It shall be the duty of the zoning administrator and/or building inspector or other specified official to inspect the plans of all buildings for which permits are required, and to make sure that the use, area, yards, height, size, lot coverage, and other requirements of this title are complied with. They shall enforce all provisions of this title, report all violations of this title to the board of commissioners and refer all violations to the county attorney, entering actions in the courts when necessary, and their failure to do so shall not legalize any violation of such provisions, nor shall the failure of the county attorney to enter actions in the courts legalize any violation of such provisions. (Ord. 93-6-1, 6-28-1993)
- B. Permit Required: The erection, structural alteration, or moving of any building or structure (except agricultural buildings located more than 100 feet from the owner's property line), or any part thereof, or the installation of a modular or manufactured building, or the tie down, skirting, or connection to utilities of a mobile home, shall not be proceeded with except after the issuance of a written permit for the same by the building inspector, except when specifically exempted from this requirement by the terms of the applicable ordinance. Failure to purchase a building permit prior to the construction, repair, alteration, moving or installation of a structure pursuant to this subsection shall result in the imposition of a penalty of one hundred percent (100%) of the standard fee adopted by the county in addition to the standard fee. (Ord. 99-1-1, 1-4-1999)

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- C. **Compliance With Provisions Required:** From the time of the effective date hereof, the zoning administrator and/or the building inspector shall not grant a permit for the construction of any building or structure, or for the moving of the building into a lot, or for the change in any use of land, building or structure if such construction, alteration, moving or change in use would be in violation of any of the provisions of this title, nor shall any other officer of the county grant any permit or license for the use of any building or land if such would be in violation of this title.
- D. **Certificate Of Occupancy:**
1. **Certificate Required:** It shall be unlawful to use or permit the use of any building or premises or part thereof hereafter created, erected, altered, changed, or converted wholly or partly in its use or structure until a certificate of occupancy to the effect that the building or premises or the part thereof so created, erected, altered, changed or converted and the proposed use thereof conform to the provisions of this title shall have been issued by the building inspector; provided, however, that no certificate of occupancy shall be required for buildings which are exempt from the provisions of this title.
 2. **Issuance:** It shall be the duty of the building inspector to issue a certificate of occupancy within ten (10) days after a request for the same shall have been filed in his office by an owner of a building or premises affected by this title, provided said building or premises or the part thereof so created, erected, altered, changed or converted and the proposed use thereof conform with all the requirements herein set forth, and the terms of other county building regulations.
- E. **Approved Uses Only:** Building permits or certificates of occupancy issued on the basis of plans and applications approved by the building inspector authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this title and punishable as provided herein.
- F. **Business Licenses:** No business license or permit shall be issued by an officer or employee of Cassia County, state of Idaho, until the application for the permit or license has been first reviewed by the zoning administrator as to conformance with the provisions of this title. A permit or license, if issued in conflict with the provisions of this title, shall be null and void.

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- G. Notice Of Violation: Whenever the zoning administrator or the building inspector shall observe any apparent violation or infraction of this title, they shall send a notice to the property owner on whose land the apparent violation occurs, setting forth the nature of the alleged violation, and a statement that said alleged violation must be corrected within a reasonable time to be specified in the notice. (Ord. 93-6-1, 6-28-1993)
- H. Multiple Applications: Multiple applications under this title on the same premises, e.g., conditional use permit and variance, may be made at the same time, and upon payment of only one application fee, plus the additional advertising costs, if any. (Ord. 99-1-1, 1-4-1999)

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9-5-4: PLANNING AND ZONING COMMISSION:

- A. Creation: There is hereby created a planning and zoning commission to administer this title with powers and duties as hereinafter set forth. Said commission shall consist of seven (7) members appointed by resolution of the board of county commissioners.
- B. Duties: For the purpose of this title, the planning and zoning commission shall have the following duties:
 - 1. Future Development; Comprehensive Plan: To plan for the future growth and development of the county and to fulfill the mandates for the implementation, review and updating of the county's comprehensive plan pursuant to Idaho Code sections 67-6507 and 67 -6508; (Ord. 99-1-1, 1-4-1999)
 - 2. Amendments: Initiate proposed amendments to this title and conduct a biennial review of the complete zoning and subdivision ordinances; (Ord. 99-1-1, 1-4-1999; amd. 2003 Code)
 - 3. Review Of Amendments: Review all proposed amendments to this title, the subdivision ordinance, or other related ordinances;
 - 4. PUD Review: Review all planned unit developments;
 - 5. Conditional Use Permits: Grant conditional use permits as specified in this title and under the conditions as herein specified with such additional safeguards as will uphold the intent of this title;
 - 6. Appeals: Hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation or determination made by the zoning administrator and/or building inspector;

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7. Variances: Authorize such variances from the terms of the zoning and subdivision ordinances as will not be contrary to the public interest where, owing to the special conditions, a literal enforcement of such ordinances will result in unnecessary hardship, and so that the intent of the ordinances shall be observed and substantial justice done; and
8. Rules Of Procedure: Adopt rules of procedure not inconsistent with the provisions of this title or state law for the conduct of its business and procedures.
- C. Conflict Of Interests¹: A member or employee of the planning and zoning commission shall not participate in any proceedings or action when the member or his employer, or employee, business partner, business associate or any person related to him by blood or marriage within the second degree has an economic interest in the procedure or action. Any actual or potential interest in any proceedings shall be disclosed at or before any meeting at which the action is being heard or considered. (Ord. 99-1-1, 1-4-1999)

9-5-5: APPEALS, VARIANCES AND REQUESTS FOR HEARINGS:

- A. General: The planning and zoning commission shall consider administrative appeals where it is alleged that an error has been made by the zoning administrator or building inspector, variances from the terms of the zoning and subdivision ordinances and requests for hearings from affected persons. (Ord. 99-1-1,1-4-1999)
- B. Administrative Appeals: Appeals to the planning and zoning commission concerning interpretation or administration of this title may be taken by any person aggrieved or by any officer or bureau of the county affected by any decision of the zoning administrator. Such appeal shall be taken within twenty eight (28) days after the decision of the zoning administrator by filing with the zoning administrator and with the planning and zoning commission a notice of appeal specifying the grounds upon which the appeal is being taken and payment of a fee as set by the county. The zoning administrator shall transmit to the commission all the papers constituting the record upon which the appeal is based. (Ord. 99-10-2, 10-18-1999; amd. 2003 Code)
- C. Stay Of Proceedings: An appeal stays all proceedings in furtherance of the action taken unless the zoning administrator certifies to the planning and zoning commission after the notice of appeal is filed with him that by reason of facts stated in the application, a stay would, in his opinion, cause imminent peril of life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by a court based upon an application, with notice to the zoning administrator showing due cause.

¹ IC § 67-6506.

- D. Variance: The planning and zoning commission may authorize in specific cases such variance from the terms of the zoning and subdivision ordinances as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of such ordinances would result in unnecessary hardship. No nonconforming use of neighboring lands, structures or buildings in other districts shall be considered grounds for issuance of a variance. Variances shall not be granted on the grounds of convenience or profit, but only where strict application of the provisions of this title would result in unnecessary hardship.
- E. Application And Standards For Variances: A variance from the terms of this title shall not be granted by the planning and zoning commission unless and until a written application for a variance is submitted to the zoning administrator and the planning and zoning commission containing: (Ord. 99-1-1, 1-4-1999)
1. Fee: A fee per application as set by the county; (Ord. 99-1-1, 1-4-1999; amd. 2003 Code)
 2. Personal Information: Name, address and phone number of applicant(s);
 3. Legal Description: Legal description of property; (Ord. 99-1-1, 1-4-1999)
 4. Nature Of Variance: Description of nature of variance requested and the specific section of this title that relates to the requested variance; and (Ord. 99-10-2,10-18-1999)
 5. Statement Of Conformity: A narrative statement demonstrating that the requested variance conforms to the following standards:
 - a. Special Circumstances: That special conditions and circumstances exist which are not applicable to other lands, structures or buildings in the same district;
 - b. Deprivation Of Rights: That a literal interpretation of the provisions of the title would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the title;
 - c. Circumstances Unavoidable: That such special conditions and circumstances do not result from the actions of the applicant;
 - d. Not A Special Privilege: That granting of 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; and

e. **Minimum Change:** That the variance requested is the minimum change necessary to alleviate the hardship. A variance shall not be granted unless the planning and zoning commission makes specific findings of fact based directly on the particular evidence presented to it which support conclusions that the above mentioned standards and conditions have been met by the applicant.

- F. **Supplementary Conditions And Safeguards:** Under no circumstances shall the planning and zoning commission grant an appeal or variance to allow a use not permissible under the terms of this title in the zone involved, or any use expressly or by implication prohibited by the terms of this title in said zone. In granting any appeal or variance, the planning and zoning commission may prescribe appropriate conditions and safeguards in conformity with the title. Violation of such conditions and safeguards, when made a part of the terms under which the appeal or variance is granted, shall be deemed a violation of this title. (Ord. 99-1-1,1-4-1999)
- G. **Public Hearing:** Upon receipt of the application for an appeal or a variance, the planning and zoning commission shall schedule a public hearing. The applicant shall publish a notice thereof in a newspaper and give written notice to all parties as required for conditional use permits, and file proof of giving such notice with the zoning administrator. (Ord. 99-10-2, 10-18-1999)
- H. **Action By Planning and zoning commission:** Within sixty (60) days after the public hearing, the planning and zoning commission shall either approve, conditionally approve, or disapprove the request for appeal or variance. Upon granting or denying an application the planning and zoning commission shall specify:
1. **Evaluation Standards:** The ordinance and standards used in evaluating the application;
 2. **Reasons:** The reasons for approval or denial; and (Ord. 99-1-1, 1-4-1999)
 3. **Actions To Grant Appeal Or Variance:** The actions, if any, that the applicant could take to obtain a variance or be granted an administrative appeal.
- I. **Notification Of Applicant:** Within twenty (20) days after a decision has been rendered, the zoning administrator shall provide the applicant with written notice of the action on the request to:
1. Grant or deny a variance or an administrative appeal; or
 2. Delay such a decision for a definite period of time. (Ord. 99-1-1, 1-4-1999; amd. 2003 Code)

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- J. Appeal: Appeals from the decisions of the planning and zoning commission may be taken by any person whose substantial rights are affected by the decision, or by officers of any department, board or bureau of the county affected by any decision of the commission. A notice of such appeal shall be filed within twenty eight (28) days after the date of the decision from which the appeal is taken, by filing with the county clerk a notice of appeal specifying the grounds therefor and paying a fee as set by the county. The planning and zoning commission shall forthwith transmit to the board of county commissioners all of the documents, exhibits in the file and the tape recordings of the hearing, etc., which constitute the record upon which the action appealed from was taken. The filing of the notice of appeal stays all proceedings in the matter appealed from, unless the planning and zoning commission certifies to the board of county commissioners that, by reason of the facts stated in the certificate, a stay would, in its opinion, cause imminent peril to life or property. In such case, the proceedings shall not be stayed, except by a restraining order granted by the board of county commissioners or by a court of competent jurisdiction on application and notice to all parties. The board of county commissioners shall fix a reasonable time for a hearing on the appeal to be held not less than thirty (30) nor more than sixty (60) days from the filing of the notice of appeal and give notice thereof to the parties in interest. Such appeals to the board of county commissioners shall be held and decided pursuant to the procedures and standards of review of the Idaho administrative procedures act². (Ord. 99-10-2, 10-18-1999; amd. 2003 Code)

² IC title 67, chapter 52.