



***All Community Development permit applications are submitted through the PROJECT PORTAL link below. You will need to create an account and once you receive confirmation, you will be able to fill out the application and upload any supporting documents. THE APPLICATIONS AND CHECKLISTS PROVIDED HERE ARE FOR REFERENCE ONLY.***

**<https://cityworks.brookhavenga.gov/ProjectPortal>**



## **Variance and Special Exception Application**

This application applies to:

- Variances
- Administrative Variances
- Special Exceptions

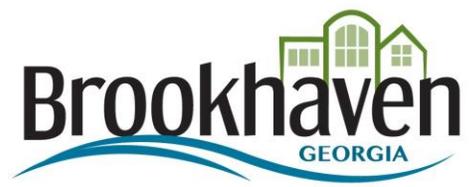
If an applicant needs to further relax the dimensional standards of the Zoning Ordinance for a specific property for the purpose of construction, they can request a variance to the text of the Zoning Ordinance. Such a request might seek to modify the strict terms of lot coverage, placement, setback, yard, buffer, landscape strip, parking and loading or other regulations, but such an application may not occur concurrently with a land use map amendment or modification of conditions, and the approval of one does not indemnify the approval of the other. The Zoning Board of Appeals shall determine whether the requested variance or special exception meets the applicable requirements. The Community Development Director shall determine whether the requested administrative variance meets the applicable requirements.

The variance process for the City of Brookhaven involves one public hearing before the Zoning Board of Appeals, where the item will be heard and a decision will be made based on the applicant's submittal information and the report generated by city staff. The Zoning Board of Appeals meets the third Wednesday of each month at 7:00 PM. in the Brookhaven Council Chambers, located at 4362 Peachtree Road, Brookhaven, GA 30319.

The Administrative Variance process does not require a public hearing. The Community Development Director will issue a decision within 45 days for administrative variances related to Stream Buffers and 30 days for general administrative variance requests. The decision date begins after the date of application acceptance by city staff. The public is invited to provide comments to city staff during the required 15-day public comment period.

Some aspects of development are not allowed to be varied, including requests that would:

- a) Allow a structure or use not authorized in the applicable zoning district or a density of development that is not authorized within such district;
- b) Allow an increase in maximum height of building;
- c) Allow any variance which conflicts with or changes any requirement enacted as a condition of zoning or of a special land use permit by the city council;



- d) Vary the requirements of Chapter 21 for an off premises sign which decreases the applicable development standard by thirty (30) percent or more, or to grant more than two (2) variances for a specific parcel of property for an off-premises sign during a five-year period of time;
- e) Reduce, waive or modify in any manner the minimum lot width and minimum lot area where the lot has been conditionally zoned to a specific site plan or the minimum lot area of any zoning district;
- f) Reduce, waive or modify in any manner the minimum lot area established by the city council for any use permitted by special land use permit or by special exception;
- g) Extend the time period for a temporary outdoor social, religious, entertainment or recreation activity approved by the Community Development Department director;

To initiate a request for a Variance or Special Exception within the City of Brookhaven, an applicant must schedule and hold a pre-application meeting with the Planning & Zoning staff, which must take place by the deadline of 4pm on the Friday preceding the application submission deadline on the first Wednesday of the month. These meetings are scheduled as-needed and the purpose of the pre-application meeting is to establish an expectation on the part of both staff and the applicant for the zoning appeal process. The applicant shall provide preliminary/finalized site plans, a letter of intent regarding the request, and/or other illustrative documents as necessary at the time of the pre-application meeting. The applicant will then provide an overview of their proposed application and their reasoning for why the application is necessary. Staff can then inform the applicant of the City's process to effect the proposed change, and offer a preliminary analysis of the feasibility of the proposal, including ways upon which the proposal may need improvements or revisions.

Following the pre-application meeting, applicants can submit their application and required supplemental materials (detailed in the following checklist) by the deadline of 4pm on the first Wednesday of each month online at:

<https://cityworks.brookhavenga.gov/ProjectPortal>

## Variance and Special Exceptions Application Checklist

**(Incomplete applications will not be accepted)**

- Pre-application meeting (A staff-signed pre-application form must be submitted with application)
- Completed Application (with all relevant information to your case).
- Survey Plat of the subject property in accordance with the attached site plan checklist.
- Signed and notarized affidavits of all property owners. Use separate sheet.
- Signed Campaign Disclosure Statement.
- Written legal description which includes a narrative of the metes and bounds of the property.
- Relevant Site Photos.
- Letter of Intent for Zoning Variances/Special Exceptions (Chapter 27):** Please describe your situation and **how** your variance request is related to the conditions below:
  - 1) The grant of the variance will not be detrimental to the public health, safety or welfare or injurious to property or improvements;
  - 2) The variance request is based on conditions that are:
    - a) Unique to the subject property;
    - b) Not generally applicable to other properties in the same zoning district;
    - c) Not the result of the subject property owner's or applicant's actions;
  - 3) Because of the particular conditions, shape, size, orientation or topographic conditions, the strict application of the requirements of this zoning ordinance would deprive the property owner of rights and privileges enjoyed by other similarly situated property owners;
  - 4) The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other similarly situated properties;
  - 5) The literal interpretation and strict application of the applicable provisions or requirements of this zoning ordinance would cause undue hardship or practical difficulty, as distinguished from a mere inconvenience; and;
  - 6) The requested variance would be consistent with the spirit and purpose of this zoning ordinance and the comprehensive plan.
- Letter of Intent for Sign Variances (Chapter 21):** Please describe your situation and **how** your variance request is a result of **all** of the following conditions:
  - 1) Exceptional conditions pertaining to the property where the sign is to be located as a result of its size, shape, or topography, which are not applicable to other lands or structures in the area;
  - 2) Granting the variance would not confer on the applicant any significant privileges which are denied to others similarly situated;
  - 3) The exceptional circumstances are not the result of action by the applicant;
  - 4) The requested variance is the minimum variance necessary to allow the applicant to enjoy the rights commonly enjoyed by others similarly situated;
  - 5) Granting the variance would not violate more than one (1) standard of this article; and

- 6) Granting the variance would not result in allowing a sign that interferes with road or highway visibility or obstructs or otherwise interferes with the safe and orderly movement of traffic.

Sign variances shall be limited to the minimum relief necessary to overcome the hardship. No variances shall be granted to allow an increase in height of a sign greater than twenty (20) percent of that allowed by the Sign Ordinance; to increase the aggregate area of signs beyond what is permitted; to increase the size of a sign greater than twenty (20) percent of that allowed by the Sign Ordinance; and to increase the size or height of a banner or standard informational sign.

- Letter of Intent for Stream Buffer Variances (Chapter 14):** Please describe the adverse, material hardship should the buffer be maintained and address the following considerations:

- 1) The shape, size, topography, slope, soils, vegetation and other physical characteristics of the parcel;
- 2) The locations of all streams on the parcel, including along parcel boundaries and within adjacent parcels;
- 3) The location and extent of the proposed buffer or setback intrusion;
- 4) Whether alternative designs are possible which require less intrusion or no intrusion;
- 5) The water-quality impacts of the proposed variance; and
- 6) Whether the proposed mitigation compensates for the lost buffer or setback functions and otherwise maintains the function of the required buffer or setback at the same site where the impact will occur and provides at least the same protection of the water as provided by the natural features to be disturbed or removed.

No stream buffer variance shall be granted allowing encroachment into the buffer area that is closer than thirty-five (35) feet from the stream channel unless either (i) the encroachment is (A) necessary because of a circumstance constituting force majeure, or (B) for any rehabilitation or reconstruction by a parcel owner of an impervious cover existing within the buffer described in Sec. 14-153(a); or, (ii) the State of Georgia grants the parcel owner a permit to encroach into the 25 foot state stream buffer area.

## Site Plan Requirements

All applicable items must be included on the Site Plan; separate sheets may be used.

- Key and/or legend and site location map with North arrow.
- Boundary survey of subject property which includes dimensions along property lines that match the metes and bounds of the property's written legal description and clearly indicates the point of beginning.
- Acreage of subject property.
- Location of land lot lines and identification of land lots.
- Existing, proposed new dedicated and future reserved rights-of-way of all streets, roads, and railroads adjacent to and on the subject property.
- Proposed streets on the subject site.
- Current zoning of the subject site and adjoining properties.
- Existing buildings with square footages and heights (stories), wells, driveways, fences, cell towers, and any other structures or improvements on the subject property.
- Existing buildings' locations and heights (stories), wells, driveways, fences, cell towers, and any other structures or improvement on adjacent properties within 200 feet of the subject property.
- Location of proposed buildings with total square footage.
- Layout and minimum lot size of proposed single family residential lots.
- Topography on the subject site and adjacent property up to 200 feet as required to assess runoff effects.
- Location of overhead and underground electrical and pipeline transmission/conveyance lines.
- Required and/or proposed setbacks.
- 100-year flood plain horizontal limits and flood zone designations as shown on survey or FEMA FIRM maps.
- Required landscape strips, undisturbed buffers, and any other natural areas as required or proposed.
- Required and proposed parking spaces; Loading and unloading facilities.
- Lakes, streams, wetlands, and Waters of the State and associated buffers.
- Proposed stormwater management facilities.
- Community wastewater facilities including preliminary areas reserved for septic drain fields and points of access.
- Availability of water system and sanitary sewer system.
- Location of existing trees and trees to be removed, or a statement that there are none, and whether the trees identified are specimen trees. *(A specimen tree is any hardwood (oak, hickories, poplars, etc.) or softwood (pines, evergreens, etc.) tree with a diameter at breast height (DBH) of 30 inches and larger, or a small tree (dogwoods, redbuds, sourwoods, etc.) with a DBH of 10 inches and larger. If no specimen trees exist on the site, note their*



absence on the plans. If a specimen tree is to be removed, provide a calculation for recompense at 1.5x the diameter.)

### Additional Requirements for Stream Buffer Variances

**Site Plan Requirements:**

1. Delineation of the stream buffer (state, 50-foot undisturbed and 25-foot additional setback) and the limits of all existing and proposed land development or land disturbance, both inside and outside the buffer and setback. The exact area of the buffer to be affected shall be accurately and clearly indicated in a table as follows:

| Buffer Area            | Existing Encroachment<br>(square feet) | Proposed Encroachment<br>(square feet) |
|------------------------|--|--|
| 25 foot (state buffer) |  |  |
| 50 foot (city buffer)  |  |  |
| 75 foot (city setback) |  |  |

2. At least one alternative plan, which does not include a buffer or setback intrusion, and includes an explanation of why such alternative plan is not feasible;
3. A calculation of the total area and length of the proposed intrusion
4. A stormwater management site plan; and,
5. Proposed mitigation for the intrusion as outlined in Section 14-153(b)(1)

For *Grandfather Provisions*, refer to Section 14-151 of the Stream Buffer Protection Ordinance

For *Exemptions*, refer to Section 14-152 of the Stream Buffer Protection Ordinance

For *Additional Information Requirements* refer to Section 14-155 of the Stream Buffer Protection Ordinance

**Mitigation Requirements (not required for administrative stream buffer variances):**

(A) The provision for storm water management and water quality control measures pursuant to Article IV, *Stormwater Management*, and Article V, *Water Quality Control*, of Chapter 14, *Land Disturbance and Subdivisions*, for 100% of the total existing and proposed impervious areas on the parcel; provided, however, in adopting such measures, the exemptions in Sec. 14-79(c) of the code are not available for purposes of this Sec.14-153(b).

(B) the planting of one 2-1/2" caliper tree of a similar type on the parcel, in addition to any other tree(s) that are required to satisfy the landscape or tree ordinances of the city, for each tree having a diameter of eight (8) inches or greater at breast height that is removed from the buffer or setback area pursuant to an approved variance under this ordinance.



## Variance Application

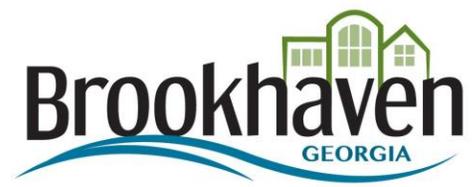
|   |  |   |                |                              |                               |
|---|--|---|----------------|------------------------------|-------------------------------|
| <b>Type</b>                               | Type of Request: <input type="checkbox"/> Zoning/Special Exception <input type="checkbox"/> Sign <input type="checkbox"/> Stream Buffer <input type="checkbox"/> Other<br><input type="checkbox"/> Administrative (Zoning/Special Exception or Stream Buffer)  |   |                |                              |                               |
|   | Applicable Zoning/Sign Code Section:   |   |                |                              |                               |
|   | Nature of Request:   | Required:   | Proposed:      | Minimum Setback Requirements | Proposed Setback Requirements |
|   | <input type="checkbox"/> Setback   | (See Chart to the Right)  |                | Front                        | Front                         |
|   | <input type="checkbox"/> Sign  |   |                | Side                         | Side                          |
| <input type="checkbox"/> # Parking Spaces |  |   | Rear           | Rear                         |                               |
| <input type="checkbox"/> Other _____      |  |   | Other          | Other                        |                               |
| <b>Project</b>                            | Name of Project/Subdivision:   |   |                | Present Zoning:              |                               |
|   | Property Address/Location:   |   |                |                              |                               |
|   | District:  | Land Lot:   | Block:         | Property ID:                 |                               |
| <b>Owner Information</b>                  | Name:  |   |                |                              |                               |
|   | Address:   |   |                |                              |                               |
|   | Phone:   |   | Fax:           |                              |                               |
|   | Cell:  |   | Email:         |                              |                               |
| <b>Applicant</b>                          | Name:  |   |                |                              |                               |
|   | Address:   |   |                |                              |                               |
|   | Phone:   |   | Fax:           |                              |                               |
|   | Cell:  |   | Email:         |                              |                               |
| <b>Affidavit</b>                          | <i>To the best of my knowledge, this variance application form is correct and complete. If additional materials are determined to be necessary, I understand that I am responsible for filing additional materials as specified by the City of Brookhaven Zoning Ordinance. I understand that failure to supply all required information (per the relevant Applicant Checklists and Requirements of the Brookhaven Zoning Ordinance) will result in the rejection of this application. I have read the provisions of the Georgia Code Section 36-67A-3 as required regarding Campaign Disclosures. My Signed Campaign Disclosure Statement is included</i> |   |                |                              |                               |
|   | Applicant's Name:  |   |                |                              |                               |
|   | Applicant's Signature:   |   |                | Date:                        |                               |
| <b>Notary</b>                             | Sworn to and subscribed before me this   |   | Day of         | 20                           |                               |
|   | Notary Public:   |   |                |                              |                               |
|   | Signature:   |   |                |                              |                               |
|   | Date:  |   |                |                              |                               |
| <b>Office Use</b>                         | Application Received By:   |   | Project Title: | Project Number:              |                               |
|   | <input type="checkbox"/> Application Fee <input type="checkbox"/> Sign Fee (\$135 per 500 feet per frontage) <input type="checkbox"/> Legal Fee (\$20)   |   |                |                              |                               |
|   | Fee: \$  | Payment: <input type="checkbox"/> Cash <input type="checkbox"/> Check <input type="checkbox"/> CC |                | Date:                        |                               |
|   | <input type="checkbox"/> Approved <input type="checkbox"/> Approved with Conditions <input type="checkbox"/> Denied  |   |                | Date:                        |                               |



## Property Owner(s) Notarized Certification

The owner and petitioner acknowledge that this variance application form is correct and complete. By completing this form, all owners of the subject property certify authorization of the filing of the application for variance(s), and authorization of an applicant or agent to act on their behalf in the filing of the application including all subsequent application amendments.

|   |  |              |       |
|---|--|--------------|-------|
| <b>Property Owner</b>                     | Signature:   |              | Date: |
|   | Address:   | City, State: | Zip:  |
|   | Phone:   |              |       |
|   | Sworn to and subscribed before me this _____ day of _____, 20_____ |              |       |
| Notary Public:                            |  |              |       |
| <b>Property Owner<br/>(If Applicable)</b> | Signature:   |              | Date: |
|   | Address:   | City, State: | Zip:  |
|   | Phone:   |              |       |
|   | Sworn to and subscribed before me this _____ day of _____, 20_____ |              |       |
| Notary Public:                            |  |              |       |
| <b>Property Owner<br/>(If Applicable)</b> | Signature:   |              | Date: |
|   | Address:   | City, State: | Zip:  |
|   | Phone:   |              |       |
|   | Sworn to and subscribed before me this _____ day of _____, 20_____ |              |       |
| Notary Public:                            |  |              |       |



## Campaign Disclosure Ordinance

Campaign Disclosure Ordinance

**Please read the law and complete the Campaign Disclosure Statement on the following page if you are requesting a Rezoning, Concurrent Variance, or Conditional Use.**

GA Citation/Title

GA Code 36-67A-3, Disclosure of campaign contributions

\*38069 Code, 36-67A-3

**CODE OF GEORGIA TITLE 36. LOCAL GOVERNMENT PROVISIONS APPLICABLE TO COUNTIES AND MUNICIPAL CORPORATIONS CHAPTER 67A. CONFLICT OF INTEREST IN ZONING ACTIONS** (Current through 2000 General Assembly)

36-67A-3 Disclosure of campaign contributions.

- a) When any applicant for rezoning action has made, within two years immediately preceding the filing of that applicant's application for the rezoning action, campaign contributions aggregating \$250.00 or more to a local government official who will consider the application, it shall be the duty of the applicant to file a disclosure report with the governing authority of the respective local government showing:
  - 1) The name and official position of the local government official to whom the campaign contribution was made; and
  - 2) The dollar amount and description of each campaign contribution made by the applicant to the local government official during the two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution.
- b) The disclosures required by subsection (a) of this Code section shall be filed within ten days after the application for the rezoning action is first filed.
- c) When any opponent of a rezoning action has made, within two years immediately preceding the filing of the rezoning action being opposed, campaign contributions aggregating \$250.00 or more to a local government official of the local government which will consider the application, it shall be the duty of the opponent to file a disclosure with the governing authority respective local government showing:
  - 1) The name and official position of the local government official to whom the campaign contribution was made; and
  - 2) The dollar amount and description of each campaign contribution made by the opponent to the local government official during the two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution.
- d) The disclosure required by subsection (c) of this Code section shall be filed at least five calendar days prior to the first hearing by the local government of any of its agencies on the rezoning application.

(Code 1981, 36-67A-3, enacted by Ga. L. 1986, p. 1269, 1; Ga. L. 1991, p. 1365, 1; Ga. L. 1993, p. 91, 36.)

*Official Code of Georgia Annotated Copyright 1982 – 2000 State of Georgia.*

