



**CITY OF SOUTH MIAMI  
PLANNING BOARD  
PUBLIC HEARING APPLICATION  
FOR VARIANCE**

Dear Applicant:

Please, review the procedures for application on the following pages and comply with all requirements as listed in the summary sheets attached. A complete application must be submitted before noon on the deadline date in order to be included on the agenda for the scheduled Planning Board meeting. An incomplete submission will not be processed.

All requests for VARIANCES shall be initiated by the filing of a complete application with the Planning & Zoning Department, City of South Miami. Applications shall be executed and sworn to by the owners of at least seventy-five (75%) percent of the property described in the application, or their duly authorized agents, which agency shall be evidenced by a written power of attorney properly sworn to. Be advised that separate applications will be required for rezoning and special use requests.

An application for a variance may only be made for the following:

- |                    |                        |
|--------------------|------------------------|
| 1. Yard setbacks   | 6. Fences and walls    |
| 2. Lot Size        | 7. Impervious Coverage |
| 3. Lot Coverage    | 8. Off-street parking  |
| 4. Building height | 9. Open Space          |
| 5. Signs           | 10. Landscaping        |

The Department, upon submission of a complete application, is required to make a recommendation to the Planning Board. In the case of zoning variances, the Land Development Code only allows for a variance due to a hardship that runs with the nature of the land. Any other presumed "hardship" by the Applicant is unacceptable. The Department will recommend against any variance that does not involve a hardship that runs with the nature of the land. The criteria for judging a variance application in South Miami is set forth in Section 20-5.9(H) Ord. No. 20-08-1955.

As an independent, advisory body, the Planning Board will make a motion to (1) recommend approval, (2) recommend approval with modifications, or (3) recommend denial of the application, to the City Commission. Planning Board review is not final approval or denial. The applicant must appear before the City Commission for final approval or denial of the VARIANCE request. The City Clerk will schedule the item for a Commission meeting approximately three weeks after the Planning Board meeting and will so notify the applicant.

**ATTACHMENTS:**

- Variance Procedure
- Hardship definition
- Public hearing application
- Planning Board Meeting Schedule
- Lobbyist Registration Forms

## VARIANCE PROCEDURE

1. A preliminary meeting will occur between the Applicant and the Planning & Zoning Department to analyze the request.
2. The Applicant must file a complete application with the Department. At the time of filing, the Applicant must submit the following:
  - **Letter of intent**
  - **Justification for hardship**
  - **Proof of ownership or letter from owner**
  - **Current, official survey of the property, signed and sealed by a Registered Surveyor**
  - **Site plan, which specifies that the project meets all other code requirements**
  - **Fee as required by the City of South Miami**
  - **Public notice mailing labels, affidavit, and location map as described below (see #3)**
  - **Affidavit of Neighborhood Awareness Notice and mail receipts as described below (see #4)**

ALL APPLICATIONS: \$3,000.<sup>00</sup> & EACH ADDITIONAL VARIANCE: \$1,125.<sup>00</sup>

3. The applicant must submit three (3) sets of mailing labels containing the name and addresses of all property owners of record (as listed in the Miami-Dade County Property Appraiser's updated tax roll) within a 500-ft. radius of the property ,which is the subject of the public hearing. The applicant shall provide a sworn affidavit attesting to the validity of the mailing list. A location map showing the proposed site and all properties within the 500 ft. radius must also be submitted.
4. A notarized affidavit shall be presented to the Planning and Zoning Department within five (5) business days of submittal of an accepted application, attesting that the applicant gave notice of the proposed application to all the property owners within the noted five hundred (500) foot radius by regular U.S. mail with the exception of the abutting, or contiguous, property owners, who shall be made aware via Certified Mail. The affidavit shall be accompanied by a copy of the notification letter together with copies of the Certified Mail receipts.
5. The Department will advertise legal notice in a local newspaper at least ten calendar days prior to the Public Hearing by the Planning Board in accordance with the City Code.
6. The Department will post the Applicant's property with a sign ten days prior to the Public Hearing by the Planning Board. **THE APPLICANT MAY REMOVE THIS SIGN ONLY AFTER FINAL CITY COMMISSION PUBLIC HEARING AND DECISION.**
7. The Department will prepare a Notice of Hearing with an accompanying map. The Department will mail a copy of the notice and the accompanying map to the property owners as shown on the submitted list ten days prior to the hearing.
8. The Department will prepare a staff report for submission to the Planning Board.
9. The Applicant must appear before the Planning Board on the night of the Public Hearing. The Planning Board will make a recommendation on the petition to the City Commission. Planning Board review is not final approval or denial. The applicant must appear before the City Commission for final approval or denial.

10. The Department will submit the recommendation of the Planning Board to the City Clerk.
11. The petition will be advertised and scheduled as an item on the agenda of the City Commission by the City Clerk, approximately three weeks after the Planning Board meeting.
12. The applicant must appear before the City Commission on the night of the scheduled commission meeting in order to obtain final approval or denial of the VARIANCE request.



## WHAT IS HARDSHIP?

In determining what a hardship is, one criterion is paramount. The "hardship" must be inherent in the land and not based on the people involved or the circumstances in which they find themselves. A classic example of a hardship concerns a lot, which, because of a peculiar shape or an extreme topographical feature, is virtually unbuildable under the yard requirements of the ordinance. This amounts to a defect in the land which deprives the owner of a right enjoyed by all other owners of adjoining lots.

The special conditions which must be found are those which apply uniquely to the property in question and which prevent its being used in the same way as other properties in its vicinity or in the zoning district. Under these conditions, the granting of a variance would not allow a special privilege not enjoyed by other property in the same vicinity or zone. The conditions must be so unusual that the ordinance, as applied to the particular property, would probably be invalid in that a reasonable use of the property is not allowed.

An "unnecessary" hardship is one which is not required in order to accomplish the objectives of the zoning ordinance. Some hardship (or limitation of privilege) is unavoidable. For example, restrictions against commercial use of property in a residential district are not an "unnecessary" hardship, for it is the clear intent of the zoning ordinance to so restrict all property in the district for the benefit of the community. Similarly, mere economic loss is not a valid hardship, particularly if the same loss applies generally to other properties in the district.

Hardship cannot be self-imposed. The owner of a building constructed in violation of the regulations could not claim "hardship" in being required to remove it. Ignorance of the existence or application of zoning regulations does not constitute legally recognizable hardship....

The variance should never be used to correct improper zoning. The hardship may be real and unnecessary, but, it is also general, the proper approach is through a change of zoning by the legislative body, *the City Commission*....

As established by Florida's general municipal zoning enabling act, there must be special conditions in a specific case; the hardship must be unnecessary and the variance, if granted, must not be contrary to the public interest. The latter can be interpreted to mean "not contrary to the comprehensive plan" as outlined in the zoning ordinance.

*Excerpted from Metropolitan Dade County, Florida, ZONING HANDBOOK,  
Atlanta: Harland Bartholomew and Associates; September, 1965.*

## **Variations South Miami LDC Section 20-5.9**

“(H) All variance decisions shall be based on an affirmative finding as to each of the following criterion:

1. The variance is necessary to relieve particular extraordinary conditions relating to a specific property;
2. Denial of the variance would result in hardship to the owner. Hardship results if the restriction of the zoning ordinance, when applied to a particular property, becomes arbitrary, confiscatory or unduly oppressive because of conditions of the property that distinguish it from other properties under similar zoning restrictions;
3. The extraordinary conditions and circumstances do not result from the actions of the applicant;
4. The requested variance is the minimum variance necessary to make possible the reasonable use of the land, *building or structure*;
5. That the approval of the variance will be ~~in~~ consistent with the general intent and purpose of the Land Development Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.”



**CITY OF SOUTH MIAMI**  
**PLANNING BOARD/ LOCAL PLANNING AGENCY**  
 6130 Sunset Drive, South Miami, FL 33143  
 Phone: (305) 663-6326 \* Fax (305)-668-7356



**2013 APPLICATION DEADLINE AND MEETING DATES 2001**  
 Section 20-6.1(B) Planning Board

<b><u>MEETING (TUESDAY 7:30PM)</u></b>		<b><u>DEADLINE (NOON, 30 DAYS PRIOR)</u></b>	
January	10, 2013	<b>December</b>	<b>07, 2012</b>
January	29, 2013	<b>December</b>	<b>28, 2012</b>
February	12	<b>January</b>	<b>13, 2013</b>
February	26	<b>January</b>	<b>27, 2013</b>
March	12	<b>February</b>	<b>11</b>
March	26	<b>February</b>	<b>25</b>
April	09	<b>March</b>	<b>08</b>
April	30	<b>March</b>	<b>29</b>
May	14	<b>April</b>	<b>12</b>
May	23	<b>April</b>	<b>26</b>
June	11	<b>May</b>	<b>10</b>
July	09	<b>June</b>	<b>07</b>
August	13	<b>July</b>	<b>12</b>
September	10	<b>August</b>	<b>09</b>
October	08	<b>September</b>	<b>06</b>
November	12	<b>October</b>	<b>11</b>
December	10	<b>November</b>	<b>08</b>

**ADJUSTMENT FOR HOLIDAY AND CITY ACTIVITY MAY BE MADE IF NECESSARY**

Section 20-6.1(B)(2)(d): States that Planning Board shall hold regular meetings at 7:30 pm, on the second Tuesday of each month with the exception of the months of June and July.





**IV. Fees (Registration Fee: \$500.00 as of Oct. 1, 2008—Ord. No. 44-08-1979)**

Any person who only appears as a representative for a non-profit organization (such as a charitable, neighborhood or civic organization) shall be required to register, but shall not be required to pay any registration fees.

\*\* Pursuant to Section 2-11.1(q) of the County Code, have you been employed by the City in the last two years? Yes \_\_\_ No \_\_\_ If yes, state position you held below. In addition, you may be barred from lobbying your former city for a period up to two years.

\_\_\_\_\_

\*\* Pursuant to Section 2-11.1(s) of the County Code, a lobbyist shall state the extent of any business or professional relationship with any member(s) of the City Council/Commission. (Please state below)

\_\_\_\_\_

\_\_\_\_\_

\*\* Pursuant to Section 2-11.1(s) of the County Code, any person who registers as a lobbyist shall file an expenditure report listing all expenditures, by category, by principal and in excess of \$25.00. A statement shall be filed even if there have been no expenditures during the reporting period. The expenditure report is due ~~July~~ 4<sup>th</sup> October 1<sup>st</sup> and a fine of \$50.00 per day shall be assessed for reports filed thereafter.

**OATH**

**“I DO SOLE SWEAR THAT ALL OF THE FOREGOING FACTS ARE TRUE AND CORRECT AND I HAVE READ OR AM FAMILIAR WITH PROVISIONS CONTAINED IN SECTION 2-11.1 OF THE MIAMI-DADE COUNTY CONFLICT OF INTEREST AND CODE OF ETHICS ORDINANCE, INCLUDING WITHDRAWAL AND REPORTING REQUIREMENTS.”**

Signature of Lobbyist: \_\_\_\_\_ Date: \_\_\_\_\_

State of Florida, County of Miami-Dade

(Seal)

Sworn to and subscribed before me

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public/City Clerk

Entered by \_\_\_\_\_

Data Entry Date \_\_\_\_\_, 20\_\_

Should you have any additional questions regarding the registration and reporting requirements you may call the Miami-Dade County Commission on Ethics and Public Trust at (305) 579-2594. Questions concerning fees and legislative issue information should be directed to the City Clerk.