



REQUEST FOR VARIANCE Application

Applicant/Owner Information:

<u>Applicant/Authorized Agent</u> (Attach additional pages if Necessary)
Name: _____
Address: _____
City: _____
State: _____ Zip: _____
Contact Phone # _____
Email: _____

<u>Property Owner of Record</u> (Attach additional pages if Necessary)
Name: _____
Address: _____
City: _____
State: _____ Zip: _____
Contact Phone # _____
Email: _____

Property Information:

Physical Address/ Location of Property: _____

Parcel Number(s) _____

Legal Description of Property: (Attach if necessary) _____

Current Zoning District of the premises: _____

Existing Use of Property: _____

Nature of Variance: *(Provide a description of the nature of the variance requested and the specific Article or Section of the County Zoning Ordinance for which the variance request relates to.)* _____

Required Submittals:

- 1. Variance Application and fee.
- 2. Site Plan of the premises indicating the location of all buildings, parking and loading area, traffic access and traffic circulation, open spaces, landscaping, refuse and service areas, utilities, signs, yards, and such other information as the commission may require to determine if the proposed use meets the intent and requirements of this title.
- 3. Statement of Conformity: Attach a narrative statement demonstrating that the requested variance conforms to the following standards, as listed in 9-5-5-E.5 of County Code:
 - 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.
 - 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.
- 4. List of Property Owners within a one-mile radius of the exterior boundaries of the premises.
- 5. Certificate of Mailing, Notice of Hearing, Affidavit of Publication & Affidavit of Posting (to be submitted after hearing date has been scheduled, and in accordance with 9-13-3 of County Code).
- 6. 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) (9-5-5 of County Code.)

Upon departmental review for completeness of the application and accompanying documentation, the application will be scheduled for hearing and placed on the next available Planning and Zoning agenda. Applicant is obligated to provide Notice as set forth in Cassia County Code, Title 9. Applicant will be notified of the scheduled hearing information, or if additional information is needed to process the application. Attached to this application is a copy of County Code 9-5-5 containing the Variance Request requirements and sample notice of hearing protocol for the applicant's review and reference.

Applicant/Owner Certification:

I hereby certify that all information submitted for this application is true and accurate, is prepared to the best of my ability and knowledge, and request that this application be processed for consideration as a Request for Variance. Additionally, I hereby authorize agents of the county to enter upon this subject property for purposes of review concerning the pending application and for determining compliance with applicable county regulations.

Signature of Applicant/Authorized Agent

Date

Signature of Property Owner

Date

For Office Use Only:

Date Application Received: _____	By: _____
Fee Received: \$ _____	Check # _____
(Fee: \$500)	Application # _____

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 hearing will be held on Thursday, the ____day of _____, 20____, beginning at the hour of 3 o'clock P.M., in the Cassia County Courthouse, 1459 Overland Avenue, Room 206, Burley, Idaho 83318, before the Cassia County Planning & Zoning Commission on the application of:

(Names and Addresses of ALL 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 210 of the Cassia County Courthouse, 1459 Overland Ave., Burley, Idaho 83318, prior to the 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 for 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, Room 210 of the Cassia County Courthouse, 1459 Overland Ave., Burley, Idaho 83318. 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 attached letter 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 this _____ 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: _____

CHAPTER 5

ENFORCEMENT AND ADMINISTRATION

SECTION:

9-5-1 : Zoning Administrator, Building Inspector And Compliance Officer

9-5-2: Permit Modifications; Zoning Administrator Authority

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, BUILDING INSPECTOR, AND COMPLIANCE OFFICER:** There is hereby established in Cassia County, state of Idaho, the offices of zoning administrator, building inspector, and compliance officer 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; amd Ord. 2006-11-01, 11-07-6)

9-5-2: **PERMIT MODIFICATIONS; ZONING ADMINISTRATOR AUTHORITY:**

- A. Any permit issued under Title 9, Cassia County Code may be administratively reviewed and amended regarding minor changes or amendments to permits issued under said Title 9 by the Cassia County Planning and Zoning Commission subject to guidelines set out hereafter, and as may be issued by the Commission or Board hereafter. (Ord. 2011-08-01, 8-25-2011.)
- B. The Zoning Administrator shall have discretion to determine those proposed changes or amendments that are considered to be of minor nature for this administrative review process, subject to guidelines set forth in section 9-5-2. (Ord. 2011-08-01, 8-25-2011.)

- C. Any change or amendment that would alter the external boundary of a permitted use or permitted site; or that would increase total animal units or animal unit density previously approved; or that is proposed to meet federal, state or regulatory agency requirements; or that are proposed or is likely to affect air quality or water quality shall be brought before the Commission for further review and consideration. Such review hearing shall be conducted under notice and hearing provisions as set forth within applicable county code, or if no applicable code, then as directed and determined by the Commission. (Ord. 2011-08-01, 8-25-2011.)
- 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. [Amd. Ord. 2009-04-01, 4-14-2009.]

9-5-3:

POWERS AND DUTIES:

- A. Compliance With Provisions Required: 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. (amd. Ord. 2011-08-01, 8-25-2011.)
- B. 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. (amd. reletter only by Ord. 2011-08-01, 8-25-2011.)

- C. Notice Of Violation: Whenever the zoning administrator, building inspector, or the compliance officer 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; amd. reletter only by Ord. 2011-08-01, 8-25-2011.)
- D. 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; amd. reletter only by Ord. 2011-08-01, 8-25-2011.)

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, building inspector, and/or the compliance officer;

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 Interests ¹: 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)

¹ IC § 67-6506

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.

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)
- 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