

Relevant Zoning Variance Code Sections

(Rev. 2/15/2024)

Town of Vienna

Article 8. Administration, Procedures, And Enforcement

Section 18-843 Zoning Variance

1. **Variances are allowed from requirements of this Chapter.** The Board of Zoning Appeals shall have the power to grant, upon appeal or original application in specific cases, such variance from the terms of this chapter provided the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that the application meets the standard for a variance and the criteria set out in this section.
2. **Modification of Requirements.** Modification of Requirements, as described within §18-830, are not Zoning Variances, and the modifications that are eligible for site plan applications are not also eligible for Zoning Variances.
3. **Submission Requirements.**
 - A. **Site Survey or Infill Lot Plan.** All Zoning Variance requests shall be submitted with a site plan drawn by a licensed surveyor, showing existing lot conditions.
 - B. **Site Survey Showing Proposed Conditions.** A site survey must be provided, showing the proposed specific improvements and the proposed variance from the Zoning Code.
 - C. **Architectural Plans Required.** Variance requests that include the construction of an addition to an existing home or a new structure must include architectural elevations drawn by a licensed architect or other design professional. The architectural plans must be specific and complete as to the variance requested from the Zoning Code.
4. **Criteria for Approval.** Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and:

- A. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
- B. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
- C. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.
- D. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and,
- E. The relief or remedy sought by the variance application is not available through the Conditional Use Permit process or, when permitted by this Chapter, determination by the Zoning Administrator.

5. Application and Review Process.

- A. **Pre-Application Meeting.** Applicant is required to attend a pre-application meeting with Town staff prior to submitting an application for a Zoning Variance. See §18-833 Pre-Application Meeting.
 - B. **Review for completeness.** An application for a Zoning Variance is reviewed for completeness by the Director of Planning and Zoning and the Zoning Administrator. The application may be referred to the Director of Public Works if determined to be necessary by the Zoning Administrator.
 - C. **Application deemed complete.** Once the Director of Planning and Zoning and the Zoning Administrator deem the application to be complete, the application and supporting materials are transmitted to the Board of Zoning Appeals.
 - D. **Action by the Board of Zoning Appeals.**
 - i. **Final Decision.** The Board of Zoning Appeals has the final decision authority on Zoning Variances.
 - ii. **Board may Impose Conditions.** In authorizing a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
- 6. Appeals.** Decisions by the Board of Zoning Appeals may be appealed to the Circuit Court per the Code of Virginia, §15.2-2285, 1950, as amended.
- 7. Variance Valid for six (6) months from Approval.** Any variance authorized by the board to permit the erection or alteration of a building or structure shall be valid only

for six months. Within the six months, a Building Permit must be obtained for the approve variance to remain valid.

Code of Virginia

§ 15.2-2309. Powers and duties of boards of zoning appeals

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.
2. Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a

general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application. Any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable. If a request for a reasonable modification is made to a locality and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable, such request shall be granted by the locality unless a variance from the board of zoning appeals under this section is required in order for such request to be granted.

No variance shall be considered except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

In granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

Sec. 18-215. Allowable encroachments into required yard setbacks.

The following table sets forth permitted encroachments into yards and associated standards:

FEATURE	EXTENT AND LIMITATIONS ON ENCROACHMENT
1. Accessibility (ADA) ramp	ADA ramps in all yards are permitted to encroach the minimum distance required by the Virginia Uniform Statewide Building Code (USBC).
2. Accessory structures	A. Accessory structures for single-unit detached residential uses are permitted to encroach in the rear and side yard pursuant to § 18-403. B. Standards for accessory structures for multi-unit attached residential are found in Article 4B, Division 2. C. Standards for accessory structures for commercial, industrial and mixed-uses are found in Article 5A, Division 2. D. Standards for accessory structures for public, institutional, and community uses are found in Article 5B, Division 2.
3. Architectural features, Major (See definition in Article 9)	A. Such features shall not project more than two and one-half (2.5) feet into any required yard, or exceed two (2) stories in height or ten (10) feet in length. B. The combined length of all such features shall not exceed one-third ($\frac{1}{3}$) of the total length of the building facade upon which they are located.
4. Architectural features, Minor (See definition in Article 9)	Such features shall not project more than four (4) feet into any required yard.
5. Attached carport or garage	A. An unenclosed carport or garage may project no more than five (5) feet into a required side yard; however, any corner side yard shall not be reduced to less than ten (10) feet in width. B. The portion of carport or garage encroaching shall be single story, not to exceed fourteen (14) feet in height as measured from the average front grade.
6. Driveway	Driveways may encroach into required yards, however, they must maintain a one (1) foot setback from interior lot lines.
7. Fence	Fences may encroach into required yards. See § 18-410 for Single-Unit Detached Residential Uses; § 18-465 for Multi-unit Attached Residential Uses; § 18-513 for Commercial, Industrial, and Mixed-Uses; § 18-562 for Public, Institutional, and Community Uses.
8. Fire Escape	Open fire escapes may not extend into any required yards.
9. Landscaping	Landscaping may encroach into required yards, subject to compliance with Article 4A Division 3 for Single-Unit Detached Residential Uses; Article 4B, Division 3 for Multi-unit Attached Residential Uses; Article 5A, Division 3 for Commercial, Industrial, and Mixed-Uses; Article 5B, Division 3 for Public, Institutional, and Community Uses.
10. Open/uncovered deck	Uncovered decks shall not project more than four (4) feet into any required front or side yard and no more than ten (10) feet into any required rear yard.
11. Patio	Patios are permitted to encroach in all yards up to 5 feet from the property line.
12. Sign	A. Ground-mounted signs are permitted to encroach in required yards provided they are set back from the right-of-way a distance at least equal to the sign height and that they comply with § 18-412 and § 18-514. B. Temporary signs are permitted to encroach into required yards provided compliance with § 18-412 and § 18-514.
13. Single-story front porch (unenclosed)	A. The portion of the front porch encroaching cannot be fully enclosed on three sides and cannot exceed fourteen (14) feet in height as measured from the average

	front grade. B. For unenclosed front and sides of porch, railing shall not exceed forty-two (42) inches above the porch floor and solid walls shall not exceed twenty-four (24) inches above the porch floor. C. Steps coming off the porch are permitted to encroach the minimum distance required by the Virginia Uniform Statewide Building Code (USBC). D. Applicable to single-unit detached residential only.
14. Stormwater management facility	Encroachment permitted in any required yard, provided that the facilities are part of a Virginia DEQ approved BMP.
15. Wall	A. Decorative, non-retaining walls under four (4) feet in height are permitted in all required yards with compliance with § 18-412 and § 18-514. B. Retaining walls under five (5) feet in height are permitted in all required yards with compliance with § 18-412 and § 18-514.

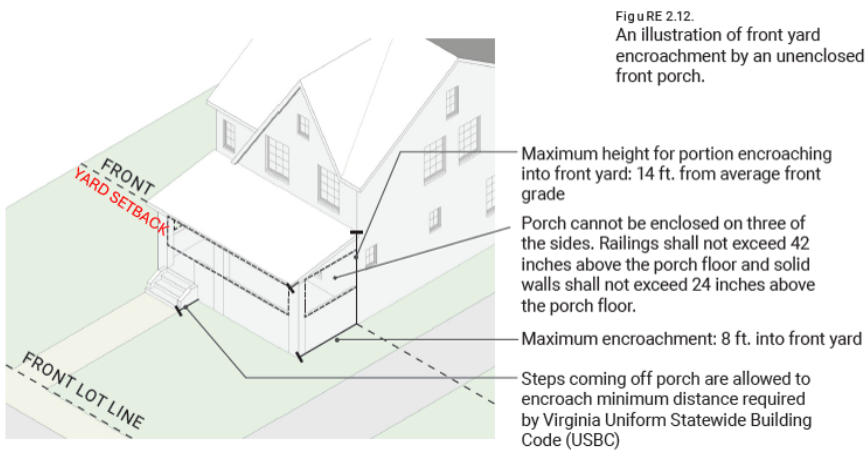
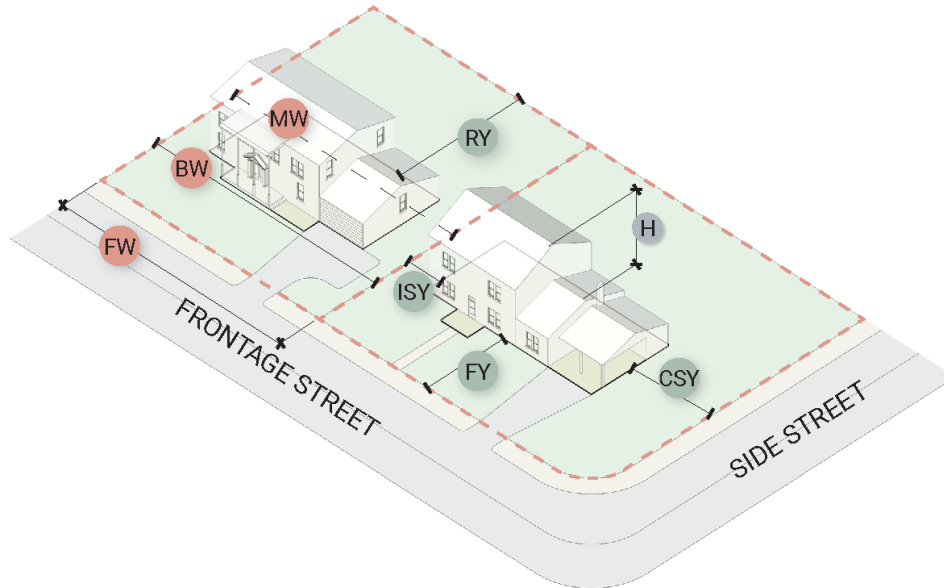


Figure 2.12. An illustration of front yard encroachment by an unenclosed front porch.

(Ord. of 2-24-2025)

Sec. 18-218. Residential - Single-Unit, 12,500 sq. ft. Zone (RS-12.5).

1. **RS-12.5 Purpose.** The purpose of this zone is to provide standards for single-unit, detached residences with a minimum lot area of 12,500 square feet.



2. RS-12.5 Dimensional Standards.

Principal Structure Count: 1 per lot max.

BUILDABLE LOT DIMENSIONS		
	Lot Area	12,500 sq. ft. min.
FW	Lot Width at Front Lot Line	50 ft. min.
BW	Lot Width at Front Building Line	65 ft. min.
MW	Lot Width at Midline	80 ft. min.
RESIDENTIAL COVERAGE		
Lot coverage	25% max.	
Outdoor living coverage	5% max. covered by decks Up to 400 sq. ft. of decks may be covered, setback with conditions outlined in § 18-213	
BUILDING STANDARDS		
H	Building Height	35 ft. max.
	Number of Stories	2.5 max.
BUILDING PLACEMENT STANDARDS		
FY	Front Yard Setback	30 ft. min. from front property line, incl. after any required dedication
ISY	Interior Side Yard Setback	15 ft. min. Non-Residential Principal Structures: 30 ft. min.

CSY	Corner Side Yard Setback	25 ft. min.
RY	Rear Yard Setback	35 ft. min.

Reference to Other Standards

Uses and Use Standards; Accessory Living Units: See Article 3;

Accessory structure setbacks: See Article 4A;

Development Standards - Single-Unit Detached Residential Uses: See Article 4A;

Development Standards - Public, Institutional, and Community Uses - See Article 5B.

(Ord. of 11-22-2024)