



# Board of Adjustment

MALUSHIZKY RESIDENCE  
(Name of Project)

## Variance from the Davidson Planning Ordinance

I DAVE MALUSHIZKY hereby petition the Board of

Adjustment for a variance from the literal provisions of the Town of Davidson Planning Ordinance because under the interpretation given me by the Planning Director, I am prohibited from using the parcel of land described in this application in a manner I have proposed.

I request a variance from the following provisions of the Ordinance:

REQUIREMENT TO MAKE A PAYMENT IN LIEU FOR  
A MULTI-USE PATH ALONG THE FRONT OF MY PROPERTY  
AT 21601 SHEARER ROAD - UNDER THE RURAL  
AREA OVERLAY DISTRICT

so the above-mentioned property can be used in a manner described herein:

EXISTING 740 SF. IS INADEQUATE. THE VALUE IS  
(PER TAX RECORDS) IS \$40,000. BASIC IMPROVEMENTS  
REQUIRE DEMOLITION (PER ORDINANCE) FOR NON-COMPLIANCE  
REPLACING WITH NEW HOUSE CONSISTENT WITH MARKET

the following practical difficulties, special conditions, or unnecessary hardship would result from the strict application of the ordinance:

I AM SEEKING WAIVER OR PARTIAL REDUCTION IN  
AMOUNT BASED ON INEQUITY AS COMPARED TO THE  
MAJORITY OF LOTS IN THIS AREA.

I hereby dispose and say that the information contained herein and herewith is true and that this application shall not be scheduled for official consideration until all of the required contents are submitted in proper form to the Planning Department.

  
\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of Property Owner (if different from applicant)



# Board of Adjustment

(Name of Project)

## Application Requirements - Variance

### Date Received

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- Application Fee per Town of Davidson Fee Schedule
- Contact Information
- Application Request
- Description of the Request
- Findings of Fact
- Metes and Bounds Description of the Property
- Scaled Site Plan on 11" x 17" media  
(including notations of all variance requests)
- Names, Mailing Addresses and Tax Parcel Identification  
of all Adjacent Property Owners, including properties across any  
streets or easements
- Notice to Neighbors and Media
- Additional Requirements as listed below

As the applicant, I hereby confirm that all the required materials for this application are authentic and have been submitted to the Town of Davidson Planning Department.



Applicant's Signature

10/5/10

Date



# Board of Adjustment

MALUSHIZKY RESIDENCE  
(Name of Project)

## Contact Information

### Applicant's Information

Name:

DAVE MALUSHIZKY

E-Mail:

DAVEM@THERBA&GROUP.COM

Mailing Address:

PO BOX 1243

DAVIDSON NC 28036

Business Phone:

Mobile Phone:

704 975 5960

### Property Owner's Information

*(If Different from Applicant)*

Name:

E-Mail:

Mailing Address:

Business Phone:

Mobile Phone:

### Attorney's Information

*(If Parties have Legal Representation)*

Name of Firm:

Architect's Name:

E-Mail:

Mailing Address:

Business Phone:

Mobile Phone:



# Board of Adjustment

MALUSHIZKY RESIDENCE

(Name of Project)

## Description of Request - Variance

Application Date: OCTOBER 5, 2018

Project Location: 21601 SHEARER ROAD / GREY RD. & SHEARER RD.  
(Indicate street frontage, nearest intersection, and address, if assigned)

Tax Parcel(s): 30 51 05

Acreage: 1.35

Existing Planning Area: RURAL PLANNING AREA

Existing Planning Area Overlay District: SCENIC BYWAY OVERLAY

Master Plan or Conditional Plan: N/A

General Statement of Intent: include a full description of all variance requests from use and standards of the Davidson Planning Ordinance  
SEE ATTACHED

Existing Site Conditions: (include details significant to the variance request)  
SEE ATTACHED

Additional Information: SEE ATTACHED

**Malushizky Residence – 21601 Shearer Road****General statement of Intent:**

I am seeking relief from the requirement to construct or provide payment in lieu for a Multi-Use path on my property as currently required per the requirements of the Scenic Byway Overlay District within the Rural Planning Area. I am not seeking relief from dedicating Right of Way for this purpose.

**Existing Site Conditions:**

The parcel, at .35 acres, is the smallest of the few small lots in the area. The existing structure is assessed at approximately \$43,800 (per the most recent tax records). At 740 SF, the existing home is inadequate for an average family and as such would generally be expected to require modest renovations and additions to meet current average market living accommodations. For such a small lot, the road frontage is disproportionately high when compared to many other large lots in the area. In addition to the financial impact of the multi-use path, the property is already disproportionately burdened with a requirement to replace the structure and the associated Sceptic system rather than make renovations, additions and simply expand the existing sceptic system. This is due to language in the ordinance requiring non-conforming structures to be brought into compliance when improvements exceed 50% of the assessed value of the structure. This same metric is resulting in a payment in lieu of \$5,938.00.

**Additional Information:**

I purchased this property before the adoption of the Rural Area Plan with intentions of increasing the size of the existing 750 SF structure. After designing an expansion for the home in 2016 and advancing discussions with a contractor, I learned that expansion was no longer an option after the Rural Area Plan was adopted. As one of the very few small parcels in the rural area, this lot is inequitably burdened with redevelopment costs that most other large lots in area are not. Simply said, most other single-family homeowners with similar road frontage can make significant additions and improvements to their homes that would not trigger the Multi-use path requirements under the ordinance. I have attached an analysis that I will present that highlights the financial hardship for small lots and also demonstrates that my property carries the highest cost per acre of all the parcels along Shearer Road.

The following are lots in the same general area on the same side of the Shearer Road as the subject property. The subject property is listed at the top

Address	Parcel ID	Acreage	Total existing SF	Assessed value			Threshold for P.I.L.	Street frontage (feet)	P.I.L.	Cost/Acre	Cost/Assessed Property Value
				Structure(s)	Property	Total	50% Assessed Value				
<b>21601 Shearer Rd.</b>	<b>305105</b>	<b>0.35</b>	<b>744</b>	<b>\$43,800.00</b>	<b>\$33,100.00</b>	<b>\$76,900.00</b>	<b>\$21,900.00</b>	<b>125</b>	<b>\$5,938</b>	<b>\$16,964.29</b>	<b>17.94%</b>
<b>22001 Shearer Rd.</b>	<b>305107</b>	<b>2.7</b>	<b>3,396</b>	<b>\$211,800.00</b>	<b>\$80,700.00</b>	<b>\$292,500.00</b>	<b>\$105,900.00</b>	<b>505</b>	<b>\$23,988</b>	<b>\$8,884.26</b>	<b>29.72%</b>
22001 Shearer Rd.	305110	1	No Structure	\$0.00	\$45,000.00	\$45,000.00	\$0.00	93	\$4,418	\$4,417.50	9.82%
21909 Shearer Rd.	305109	2.8	1,464	\$89,100.00	\$83,100.00	\$172,200.00	\$44,550.00	208	\$9,880	\$3,528.57	11.89%
21901 Shearer Rd.	305108	2.8	2,494	\$185,600.00	\$93,900.00	\$279,500.00	\$92,800.00	199	\$9,453	\$3,375.89	10.07%
21525 Shearer Rd.	305103	3.6	2,231	\$93,200.00	\$113,300.00	\$206,500.00	\$46,600.00	331	\$15,723	\$4,367.36	13.88%
not available on GIS	305102	1	No Structure	\$0.00	\$50,600.00	\$50,600.00	\$0.00	67	\$3,183	\$3,182.50	6.29%
<b>not available on GIS</b>	<b>305112</b>	<b>0.5</b>	<b>1,728</b>	<b>\$84,500.00</b>	<b>\$30,000.00</b>	<b>\$114,500.00</b>	<b>\$42,250.00</b>	<b>84</b>	<b>\$3,990</b>	<b>\$7,980.00</b>	<b>13.30%</b>
<b>not available on GIS</b>	<b>305111</b>	<b>0.48</b>	<b>No Structure</b>	<b>\$0.00</b>	<b>\$30,000.00</b>	<b>\$30,000.00</b>	<b>\$0.00</b>	<b>85</b>	<b>\$4,038</b>	<b>\$8,411.46</b>	<b>13.46%</b>
21121 Shearer Rd.	311101	20.3	6,746	\$1,130,600.00	\$588,261.00	\$1,718,861.00	\$565,300.00	840	\$39,900	\$1,965.52	6.78%
not available on GIS	310113	10.6	924	\$43,800.00	\$172,700.00	\$216,500.00	\$21,900.00	883	\$41,943	\$3,956.84	24.29%
20735 Shearer Rd.	310101	41.8	No Structure	\$0.00	\$343,100.00	\$343,100.00	\$0.00	506	\$24,035	\$575.00	7.01%
20543 Shearer Rd.	310121	4.68	No Structure	\$0.00	\$140,000.00	\$140,000.00	\$0.00	273	\$12,968	\$2,770.83	9.26%
20527 Shearer Rd.	310103	4.57	2,774	\$369,200.00	\$151,900.00	\$521,100.00	\$184,600.00	273	\$12,968	\$2,837.53	8.54%
<b>20510 Shearer Rd.</b>	<b>310104</b>	<b>0.88</b>	<b>1,470</b>	<b>\$93,900.00</b>	<b>\$56,200.00</b>	<b>\$150,100.00</b>	<b>\$46,950.00</b>	<b>234</b>	<b>\$11,115</b>	<b>\$12,630.68</b>	<b>19.78%</b>
20501 Shearer Rd.	310105	23.22	6,079	\$232,500.00	\$548,918.00	\$781,418.00	\$116,250.00	230	\$10,925	\$470.50	1.99%
20419 Shearer Rd.	337105	1.98	1,988	\$126,500.00	\$74,000.00	\$200,500.00	\$63,250.00	251	\$11,923	\$6,021.46	16.11%
not available on GIS	337102	18.1	No Structure	\$0.00	\$402,689.00	\$402,689.00	\$0.00	98	\$4,655	\$257.18	1.16%
20201 Shearer Rd.	337101	4.22	1,450	\$95,700.00	\$190,740.00	\$286,440.00	\$47,850.00	416	\$19,760	\$4,682.46	10.36%
20025 Shearer Rd.	337107	2.04	2,464	\$206,100.00	\$75,600.00	\$281,700.00	\$103,050.00	204	\$9,690	\$4,750.00	12.82%
<b>20015 Shearer Rd.</b>	<b>309208</b>	<b>1.2</b>	<b>3,362</b>	<b>\$145,600.00</b>	<b>\$59,100.00</b>	<b>\$204,700.00</b>	<b>\$72,800.00</b>	<b>292</b>	<b>\$13,870</b>	<b>\$11,558.33</b>	<b>23.47%</b>
<b>20001 Shearer Rd.</b>	<b>309245</b>	<b>0.56</b>	<b>912</b>	<b>\$22,400.00</b>	<b>\$44,100.00</b>	<b>\$66,500.00</b>	<b>\$11,200.00</b>	<b>94</b>	<b>\$4,465</b>	<b>\$7,973.21</b>	<b>10.12%</b>
19801 Shearer Rd.	309217	65.59	1,547	\$208,600.00	\$1,475,277.00	\$1,683,877.00	\$104,300.00	1173	\$55,718	\$849.48	3.78%
19741 Shearer Rd.	309206	1.92	1,371	\$90,400.00	\$80,700.00	\$171,100.00	\$45,200.00	182	\$8,645	\$4,502.60	10.71%
19701 Shearer Rd.	309205	4.36	2,776	\$109,500.00	\$148,500.00	\$258,000.00	\$54,750.00	123	\$5,843	\$1,340.02	3.93%
19647 Shearer Rd.	309211	0.6	2,075	\$93,300.00	\$45,400.00	\$138,700.00	\$46,650.00	103	\$4,893	\$8,154.17	10.78%
1816 Grey Rd.	314108	1.1	No Structure	\$0.00	\$21,000.00	\$21,000.00	\$0.00	49	\$2,328	\$2,115.91	11.08%
1920 Grey Rd.	314103	4.93	8,069	\$466,400.00	\$138,600.00	\$605,000.00	\$233,200.00	80	\$3,800	\$770.79	2.74%
2006 Grey Rd.	314102	8.7	5,073	\$298,900.00	\$267,800.00	\$566,700.00	\$149,450.00	324	\$15,390	\$1,768.97	5.75%
2032 Grey Rd.	314101	82.1	4,399	\$182,900.00	\$1,951,268.00	\$2,134,168.00	\$91,450.00	833	\$39,568	\$481.94	2.03%



# Board of Adjustment

MALUSHIZKY RESIDENCE  
(Name of Project)

## Findings of Fact - Variance Request

The Board of Adjustment is a quasi-judicial board, which means it functions similar to a court or judge. The Board has limited discretion in deciding whether to grant a variance and must determine a case based on findings of fact presented as sworn evidence or testimony at the hearing. Calls or conversations with members outside of the hearing are not permitted and may not be considered in the decision. Below are findings of fact questions the Board must determine in the affirmative before it can issue a variance from the ordinance. It is the applicant's responsibility to present evidence supporting the findings of facts. Below, present facts to convince the Board that these criteria are met. When completing the questions keep in mind the following are not cause for a variance 1) other nonconformities or conforming uses of land or structures in the same or other districts; 2) a request for a particular use expressly, or by inference, prohibited in the planning area; 3) the fact the property may be used more profitably with a variance; or 4) the need for the variance is self-created.

1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.

THE ORDINANCE REQUIREMENTS IN QUESTION REPRESENTS AN UNFAIR FINANCIAL BURDEN AS COMPARED TO OTHER PROPERTIES AND THE SPIRIT OF THE ORDINANCE

2. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit.

REQUESTING A VARIANCE FOR FINANCIAL RELIEF WHILE AGREEING TO HONOR THE REQUIREMENT TO DEDICATE R.O.W. - IS IN KEEPING W/ THE SPIRIT OF THE ORDINANCE

3. In granting the variance, the public safety and welfare have been assured and substantial justice has been done.

THE VARIANCE REQUEST DOES NOT NEGATIVELY IMPACT THE SAFETY AND WELLBEING OF THE PUBLIC

4. The reasons set forth in the application justify the granting of a variance, and that the variance is a minimum one that will make possible the reasonable use of land or structures.

THE VARIANCE REQUEST RECOGNIZES THAT OTHER COST BURDENS ASSOCIATED WITH THE ORDINANCE RENDER THE PAYMENT IN LIEU AN UNNECESSARY IMPEDIMENT TO AFFORDABLY IMPROVING

5. If the applicant complies with the provisions of this ordinance, he can secure no reasonable return from, nor make any reasonable use of the property.

THE SIZES OF THIS LOT MAKE IT FINANCIALLY IMPRACTICAL TO IMPROVE THE PROPERTY FOR ITS INTENDED USE

THE PROPERTY



# Board of Adjustment

VNALUSHIZKY RESIDENCE  
 (Name of Project)

## Hearing Process

**Date Completed**

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- Application and Fee
- Hearing Date Set
- Notification of Public Hearing to Interested Parties
- Legal Notice of Public Hearing in Newspaper
- Agenda, Staff Report, Case Materials  
sent to Board Members and Applicants
- Board of Adjustment Hearing and Decision  
which may include conditions of approval
- Board of Adjustment Written Findings of Fact
- Appeal from Board Decision  
Any aggrieved party may file a writ of certiorari within 30 days of the filing of the decision in the office of the Board.





# Board of Adjustment

MALUSHIZKY RESIDENCE  
(Name of Project)

## Decision - Variance

Date

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**Approval**

Written Findings Approved

Written Findings Sent to Board and Applicant

The Board of Adjustment, in granting a variance may prescribe appropriate conditions and safeguards in conformity with the planning ordinance. These conditions will be made a part of the motion at the hearing and included in the written findings of fact. Violation of such conditions and safeguards shall be deemed a violation of the Davidson Planning Ordinance and punishable as prescribed in the ordinance.

Conditions of Approval

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Expiration of Approval

Unless otherwise authorized by the Board of Adjustment and included in its decision to grant a variance, an order of the Board of Adjustment in granting a variance shall expire, if a building permit or certificate of occupancy (for a use in which a building permit is not required) has not been obtained within one year from the date of the decision.

**Denial**

Written Findings Approved

Written Findings Sent to Board and Applicant

Appeal Filed

Any aggrieved party may appeal of the Board of Appeal's by filing a writ of certiorari with the Superior Court of Mecklenburg County. The appeal must be filed within 30 days of the decision.