

APPLICATION FOR VARIANCE

THE PROCESS:

1. Pre-submittal meeting held with Town staff.
2. A complete application and all required materials shall be submitted by 12 pm on the submittal deadline. Incomplete application packages or inaccurate information will delay or prevent processing and review.
3. Planning staff will review submitted petition for sufficiency. Completed petitions are sent forward for board review and evidentiary hearing.
4. The petitioner makes a presentation before the Board of Adjustment at the next regularly scheduled meeting.
5. The Board of Adjustment holds an evidentiary hearing to review the petition and make a final decision.

SUBMITTAL CHECKLIST:

- One (1) completed Application for Variance with original signatures, completed in ink (no copies or faxes)
- \$400 Application Fee
- Three (3) copies of a scaled drawing (1" = 100' or larger) of the site-specific plan. All plans submitted must be clear and accurate as to the request. The drawing(s) must contain the following:
 - All property lines with bearings and distances, north arrow and scale
 - Adjacent right-of-way, including width
 - Location and layout of all structures, parking, landscaping, buffers, access, etc. (existing and proposed)
 - The present and proposed use of the property petitioned and all adjacent uses
 - Zoning classification of the property petitioned and of all adjacent properties
 - Wake County PIN(s) of the property petitioned and all adjacent properties
- Written legal description (metes & bounds)
- One (1) copy of the recorded deed to the property showing current owner(s)

APPLICATION FOR VARIANCE

Date of pre-submittal meeting with town: _____

OWNER & PETITIONER INFORMATION:

Property Owner Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Email Address: _____ Phone: _____

Petitioner Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Email Address: _____ Phone: _____

(If different than property owner, fill out agent authorization)

SITE INFORMATION:

Address: _____

City: _____ State: _____ Zip: _____

Wake County PIN: _____ Acreage: _____

Current Land Use: _____

Proposed Land Use (if applicable): _____

Is there any other hearing or petition pending or planned for this property?

Yes No

If yes, please explain: _____

Existing Land Uses on Adjacent Properties:

North: _____

South: _____

East: _____

West: _____

APPLICATION FOR VARIANCE

AGENT AUTHORIZATION FORM (if applicable):

Approval of a variance by the Board of Adjustment runs with the land; therefore, the property owner is the petitioner. The property owner may authorize an attorney or individual with power of attorney to submit a petition on their behalf; however, the property owner must sign the petition and this form.

I/We _____ am/are the owner(s) of the property for which the attached petition is being submitted authorize the agent herein named to submit this petition.

Property Owner Name: _____

Address: _____

City: _____ State: _____ ZIP: _____

Email Address: _____ Phone: _____

Wake County PIN: _____ Zoning: _____

Signature

Date

Print Name

Agent (Petitioner) Name: _____

Representation: Attorney Power of Attorney

APPLICATION FOR VARIANCE

In the matter of the Town of Fuquay-Varina Board of Adjustment

Petitioner Name: _____

I hereby request to make a presentation before the Town of Fuquay-Varina Board of Adjustment in the matter included herein and petition attached. In making this request, I assert that I understand all the following statements:

1. This request will be reviewed by the Town of Fuquay-Varina Board of Adjustment and may be either granted or denied.
2. Making a presentation will require the presence of myself and/or my representative during any evidentiary hearing held in this matter.
3. My presentation will be limited to discussion of issues and information regarding the matter noted above.
4. Proceedings before the Town of Fuquay-Varina Board of Adjustment are quasi-judicial in nature. In Authorized Practice Advisory Opinion 2006-1, *Appearances at Quasi-Judicial Hearings on Zoning and Land Use* (October 20, 2006), the Authorized Practice Committee of the North Carolina State Bar was asked whether it is the unauthorized practice of law for an individual who is not an active member of the State Bar to appear in a representative capacity for a party in a quasi-judicial hearing before a planning board, board of adjustment, or other body of local government. In the opinion, the Authorized Practice Committee observed that a hearing on an application for a special use permit or for a variance under zoning ordinances is quasi-judicial in nature, noting, among other things, that evidence is formally presented; witnesses are sworn, testify, and cross-examined; the body has the authority to issue subpoenas; a record is created and preserved; the decision must be based upon the evidence presented and include findings of fact; and the decision is reviewable by an appellate court based solely upon the record of the proceeding. The committee also observed that "the law is...clear that an appearance on behalf of another person, firm, or corporation in a representative capacity for the presentation of evidence through others, cross-examination of witnesses, and argument on the law ... is the practice of law." The opinion concludes, therefore, that appearance in a representative capacity at such quasi-judicial proceedings is limited to active members of the State Bar. See N.C. Gen. Stat. §§84-2.1 and 84-4. The Town of Fuquay-Varina strongly advises consultation with legal counsel regarding the unauthorized practice of law including N.C. Gen. Stat. 84-2.1 et seq. and published opinions of the State Bar and takes the position that all appearances made in a representative capacity be made by an active member of the State Bar.

The Board is advised by counsel and may take the position that non-attorney representation is violative of N.C. Gen. Stat. 84-2.1 et seq. and continue the hearing until proper counsel is secured.

Please ensure that signatures on this petition are: (1) for individuals and business owners; or (2) for corporations, partnerships and limited liability companies, signed by individuals who would not violate the State Bar's opinion on the unauthorized practice of law.

Be advised that the Town of Fuquay-Varina Board of Adjustment may choose not to proceed with hearing a case if the Town of Fuquay-Varina Board of Adjustment is informed that a violation of N.C.G.S. §84-2.1 et seq. may occur.

I/We hereby certify that all information given with regard to this property is true and accurate to the best of my/our knowledge and is signed by **all** owners of the property being petitioned for variance. Attached is the applicable signature page(s) of:

Individual(s) Corporation Partnership LLC

APPLICATION FOR VARIANCE

Complete this page if property owned by INDIVIDUAL(S)

(All owners must sign if property is owned jointly and all signatures must be the same as those that appear on recorded deed.)

This _____ day of _____, 20____, by

Signature

Printed Name

State of North Carolina

County of _____

I, _____, Notary Public, do hereby certify that _____ (name of individual(s) whose acknowledgment is being taken) personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this _____ day of _____, 20____.

Official Signature of Notary

(Official Seal)

Notary's printed or typed name
Notary Public

My commission expires: _____

APPLICATION FOR VARIANCE

Complete this page if property owned by a CORPORATION OR PARTNERSHIP

This _____ day of _____, 20____, by

Signature

Printed Name & Title

State of North Carolina

County of _____

I, _____ (name of officer taking acknowledgment), a _____ (official title of officer taking acknowledgment), certify that _____ (name of corporate officer) personally came before me this day and acknowledged that he/she is _____ (title of corporate officer) of _____, a corporation, and that he/she, as _____ (title of officer), being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal this _____ day of _____, 20____.

Official Signature of Notary

(Official Seal)

Notary's printed or typed name
Notary Public

My commission expires: _____

APPLICATION FOR VARIANCE

FINDINGS OF FACTS:

In order to grant a variance, the Board of Adjustment must make the required finding of facts contained in Article P, §9-1753 of the Land Development Ordinance. The petitioner shall submit the following Statements of Justification, presenting factual evidence and testimony supporting each and all of the required findings as they relate to this petition for a variance.

The Board of Adjustment has the authority to approve variances under stated conditions. It is the intent of the Ordinance that the Board of Adjustment ensures specific facts are met before a variance can be granted. The petitioner shall respond in writing to each individual finding of fact. The Board may add reasonable and appropriate conditions to the variance to support the finding of fact and the intent of the Ordinance.

Finding 1

Unnecessary hardship (would/would not) result from the strict application of the Ordinance.

Finding 2

The hardship results from conditions that (are/are not) peculiar to the property, such as location, size or topography.

Finding 3

The hardship (did/did not) result from actions taken by the applicant or the property owner.

Finding 4

The requested variance (is/is not) consistent with the spirit, purpose and intent of the Ordinance, such that public safety is secured and substantial justice is achieved.

APPLICATION FOR VARIANCE

STATEMENT OF JUSTIFICATION:

Each finding must be addressed with factual evidence and testimony to support the petition for variance (add additional sheets as necessary).

Finding #1

Unnecessary hardship (would/would not) result from the strict application of the Ordinance because...

Petitioner Statement: _____

Finding #2

The hardship results from conditions that (are/are not) peculiar to the property, such as location, size or topography because...

Petitioner Statement: _____

Finding #3

The hardship (did/did not) result from actions taken by the applicant or the property owner because...

Petitioner Statement: _____

Finding #4

The requested variance (is/is not) consistent with the spirit, purpose and intent of the Ordinance, such that public safety is secured, and substantial justice is achieved because...

Petitioner Statement: _____

APPLICATION FOR VARIANCE

STATEMENT OF JUSTIFICATION:

The petitioner shall demonstrate through evidence presented before the Board of Adjustment that the specific factors listed below have been adequately addressed as part of the required statements of justification (*attach additional sheets as necessary*).

- 1. **Circulation** (number and location of access points and proposed structures; safety and convenience for automotive, bicycle and pedestrian movement; traffic flow and control; and public safety access and movement)

- 2. **Parking & Loading** (location and required number of off-street parking and loading areas)

- 3. **Service Entrances & Areas** (locations of refuse and service areas)

- 4. **Lighting** (all locations of exterior lighting including parking areas, entrance and exit, sidewalks and structures with reference to direction, coverage, and glare)

- 5. **Utilities** (location, size, capacity and availability of utilities)

APPLICATION FOR VARIANCE

STATEMENT OF JUSTIFICATION:

6. **Open Space** (location of required buffers, open space areas, and preservation of existing trees and other natural features)

7. **Environmental Protection** (preservation of existing vegetation, floodplain, riparian stream buffers, wetlands, steep slopes, and heritage trees, or avoiding clear-cutting)

8. **Screening, Buffers & Landscaping** (required screening to adjacent properties, and required and general landscaping)

9. **Effect on Adjacent Property** (noise, odor, lighting, traffic, etc.)

10. **Compatibility** (the appropriateness of the scale, design and use in relationship to other properties)

11. Was this property rezoned to allow the existing or proposed use? Yes No

If yes, what was the previous zoning and how has the area changed? *(attach additional sheets as necessary)* _____

APPLICATION FOR VARIANCE

STATEMENT OF JUSTIFICATION:

12. Do you propose to attach any conditions with this variance petition? Yes No

If yes, specify the condition(s) (*attach additional sheets as necessary*)

I/we submit this Statement of Justification in support of the findings to which factual evidence and testimony are given and provided, and witnesses, herein listed, give testimony and factual evidence to further support the findings to give justification for approval of a variance by the Board of Adjustment.

PETITIONER SIGNATURE:

Signature

Date

Print Name

WITNESSES:

Witness #1 _____
Name (Print)

Professional Qualification

Witness #2 _____
Name (Print)

Professional Qualification

Witness #3 _____
Name (Print)

Professional Qualification

Witness #4 _____
Name (Print)

Professional Qualification

Witness #5 _____
Name (Print)

Professional Qualification

APPLICATION FOR VARIANCE

PETITIONER SIGNATURE:

I/we the undersigned, being first duly sworn, do hereby certify that all contents of this petition and all attached documents are true, complete, and accurate to the best of my/our knowledge and belief, and I/we have read and reviewed the petition and understand the required documentation and process to be followed before the Board of Adjustment.

Signature

Date

Print Name

State of North Carolina

County of _____

I, _____, Notary Public, do hereby certify that _____ (name of individual(s) whose acknowledgment is being taken) personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this _____ day of _____, 20____.

Official Signature of Notary

(Official Seal)

Notary's printed or typed name
Notary Public

My commission expires: _____

APPLICATION FOR VARIANCE

HEARING PROCEEDING & VARIANCE INFORMATION:

Board of Adjustment Information

The Board of Adjustment consists of members appointed by the Town Board of Commissioners and the Wake County Board of Commissioners with recommendations from the Town Board of Commissioners. The Board of Adjustment is an independent Board that renders decisions on special exceptions, variances and appeals. The only avenue to appeal a decision by the Board of Adjustment is to Wake County Superior Court. The Board of Adjustment conducts its proceedings in a similar manner to a court of law, which in common terminology and under the General Statutes of the State of North Carolina is called a “quasi-judicial hearing.” A petition presented before the Board of Adjustment is a form of written testimony and is used to show how ordinance considerations are addressed, and to present evidence and witnesses to the Board of Adjustment that the required findings for approval can be made.

General Information

1. A variance applies to the property unless otherwise restricted by the Board of Adjustment; therefore, the property owner is the petitioner, except one who is licensed to practice law in the State of North Carolina may represent the property owner as the petitioner.
2. Unless otherwise specified, any order or decision of the Board of Adjustment granting a variance shall expire if the petitioner does not obtain a building permit or Certificate of Occupancy for such use within 12 months from the date of the decision by the Board of Adjustment.
3. Any appeal of a decision by the Board of Adjustment shall be to Wake County Superior Court within 30 days of the date of the decision by the Board of Adjustment.
4. The petitioner has the burden of proof in the proceedings before the Board of Adjustment to provide evidence and testimony that the petition for the variance presents justification to meet the finding of facts in the case.

Petitioner Responsibilities

1. **Attendance at the hearing is required.** A petitioner may represent themselves and call upon witnesses to give testimony supporting the petitioners request or may be represented by someone qualified for quasi-judicial evidentiary hearings. In this case, a qualified individual is someone who is licensed to practice law in the State of North Carolina, or a qualified professional to the area of testimony.
2. The petitioner plays a very active role in the Board of Adjustment’s consideration and must provide sufficient evidence in order for the required findings to be affirmed. The evidentiary hearing will allow the petitioner, proponents, opponents, and anyone else the opportunity to speak, cross-examine and ask questions in regards to the petition.

Hearing Proceedings

1. The evidentiary hearing before the Board of Adjustment is held on the second Monday of each month at 7 PM in the Town of Fuquay-Varina Town Hall Board Room, unless otherwise notified.
2. The Statement of Justification must include list of witnesses that will provide testimony to support these statements.

APPLICATION FOR VARIANCE

Hearing Proceedings, continued

3. Once the Board of Adjustment meeting is called to order and the Board members conduct initial business prior to hearing cases, the Chairperson will ask that anyone wishing to speak on a particular case be sworn in.
4. The Chairperson will recognize the Planning Department staff for a brief presentation at the start of each petition hearing that will be limited to: (1) addressing the nature of the request; (2) presenting a map of the location of the affected tract or tracts of land; and (3) the applicable ordinances the Board of Adjustment is acting under.
5. The Chairperson will open the evidentiary hearing and ask the petitioner to present their testimony, evidence, and witnesses to justify the request. A decision by the Board of Adjustment applies to the property unless otherwise restricted; therefore, the property owner is always the petitioner. The property owner may retain an attorney to present the case and call witness(es) for the petitioner, or the property owner may present a case and call witnesses to give testimony.
6. Once the petitioner has completed testimony and presented evidence and/or called witnesses, the Chairperson will call for any proponents to give testimony, present evidence, and/or call witnesses in support of the petition.
7. The Chairperson will then call for opponents to give testimony, present evidence, and/or call witnesses in opposition to the petition.
8. The members of the Board of Adjustment may ask questions for clarification of any testimony given by the petitioner, proponents, opponents, and witnesses for the petition.
9. The petitioner, proponents, and opponents may cross-examine testimony and evidence given. The Chairperson will recognize individuals who request to cross-examine testimony or evidence given.
10. Upon completion of all testimony, evidence, and witnesses before the Board of Adjustment, the Chairperson will close the evidentiary hearing. Discussion of the testimony and evidence presented will commence by Board of Adjustment members. At this point the petitioner, proponents, opponents, and witnesses are not permitted to provide additional testimony or ask questions to the Board members. The Chairperson may reopen the evidentiary hearing to ask questions or receive additional clarification on testimony presented.
11. The Board of Adjustment may approve the petition, approve with conditions, continue for more information, or deny the petition. Typically, the Board of Adjustment will render a decision at the date of the evidentiary hearing.
12. A vote by the Board of Adjustment on a variance petition requires a “super majority” which is 4/5 of the membership present. For example, with 6 members present, the vote must be 5 in favor to pass the petition. If the vote was 4 in favor and 2 opposed, the request would be denied.