

Submittal Process

- Submittal of Variance Application:
 - Complete application form
 - Fee-\$350.00 (\$500.00 after the fact)
 - Plans- One (1) full size (24"x36") site plans including landscape plan and elevations and one plan in digital format (PDF).
- The City will advertise a legal ad in the newspaper at least ten (10) days prior to the public hearing, and notify all property owners at a minimum of 150 feet of the subject property of the public hearing.
- Board of Adjustment will conduct a public hearing where the applicant, representative of the applicant, adjoining property owner or a member of the general public are given the opportunity to speak, but must testify under oath and be subject to cross examination. The board can only consider facts and evidence relevant to the case.
- Planning Staff will present evidence to the board explaining the technical aspects of the ordinance as it pertains to the case. Once the Board has heard and received all necessary evidence, discussion will then be open to the applicant or anyone else who wishes to present evidence related to the case. The Board will then openly discuss the facts and render a decision to approve or deny the request.

Submittal Process Continued

Details

Details required on the Plans

Site Plan: All applications must include a site plan, drawn to scale, and supporting text that, if approved, will become a part of the approval. The sealed site plan, drawn by an architect, landscape architect, professional surveyor, or engineer licensed to practice in North Carolina, shall include but not limited to right-of-ways existing and new, structures, easements, lot layout (if applicable), phasing (if applicable), landscaping, general comments provided by staff, zoning and parcel numbers of adjacent property owners, and supporting information .

The Board of Adjustment, which serves as a Quasi-Judicial Board meets the 4th Thursday of every month at 6:00pm.

Meetings are open to the public.

Additional Requirements on Variance Applications

A variance may be granted by the Board of Adjustment if it concludes that strict enforcement of the ordinance would result in unnecessary hardships for the applicant and that, by granting the variance, the spirit of the ordinance will be observed, public safety secured, and substantial justice achieved. It may reach these conclusions if it finds that:

1. *Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of variance, no reasonable use can be made of the property.*

2. *The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.*
3. *The hardship did not result from actions taken by the applicant or the property. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.*
4. *The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.*

* The Zoning Administrator may require additional information whenever necessary and may waive one or more of the requirements if such is found to be irrelevant to the proposed project. All evidence submitted becomes a permanent part of the official record.

Making Quasi-Judicial Decisions

Quasi-judicial decisions involve applying zoning policies rather than setting new policies. In quasi-judicial decisions, the board making the decision must act much like a court to apply the zoning ordinance (the law) to a specific case. When policies in the ordinance are being applied to an individual case, the legal requirements shift to a focus on securing a fair and impartial hearing on the merits of the case. First the Board must determine the facts of the case and second it must apply the standards in the ordinance to those facts. In this task the Board acts much like a judge in applying the law to a given set of facts.

Legal Ad & Adjacent Property Notification

Planning staff is required by State law for placing an ad in the local newspaper, notifying adjoining property owners and posting a zoning sign on the property of the public hearing date. The public hearing must be advertised in a paper with local circulation at least 10 days prior to the public hearing and no more than 25 days prior to the public hearing date. Additionally, staff is required to send letters through first-class mail to all property owners that are located within a minimum of 150 feet of the subject property of the public hearing. The notification must include the date, time and location of the public hearing.

Open Meeting & Board of Adjustment Decision

The project must be filed with the Planning Department and all of the hearing and the board's deliberations must be conducted in open, public session. Only those parties whose legal rights are directly affected are entitled to participate. Those offering testimony are placed under oath. Members of the decision making board are not allowed to discuss the case or gather evidence outside of the hearing (what the courts term *ex parte* communication).

Members are allowed to view the site, but not discuss the case with the applicant, neighbors, or staff outside of the hearing. There must be "substantial, competent, and material evidence" to support each critical factual determination; therefore the findings cannot be based on conjecture or assumptions. A **four-fifths** vote rather than a simple majority is required in order for the Board of Adjustment to grant approval of the special use permit.

Variance

A Variance refers to a situation in which strict enforcement of the ordinance would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done. All Variances require a **four-fifths** vote for approval.

The burden of presenting a complete application to the permit-issuing board shall be upon the applicant.

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Variance Process



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