



City of Raleigh, NC Variance Application

INSTRUCTION SHEET

PRE-APPLICATION CONFERENCE:

A pre-application conference with **Planning Department Staff** is required to be scheduled *prior to* the submittal of a Variance Application. Please contact Eric Hodge, Assistant Planning Administrator, at (919) 996-2639 or eric.hodge@raleighnc.gov to set up an appointment for a pre-application conference.

FILING FEE: \$200.00

SUBMITTAL REQUIREMENTS *All requirements must be met to constitute a complete Variance Application*

1. One (1) hard copy of a completed Variance Application signed and notarized by all the owners of the Subject Property;
2. Payment of filing fee;
3. At minimum, a plot plan (also known as a survey plot plan) drawn to scale, containing a north arrow, area of lot, location of all existing improvements and use areas, location of proposed improvements, location of any constraints such as flood plain area, tree conservation area, buffer yards, easements, sight distance triangles, and impervious surface coverage. The plot plan must be drawn, signed and sealed either by a surveyor licensed in North Carolina, or a professional engineer licensed in North Carolina. If the variance request involves a structure, sign, or fence, then architectural elevations must also be submitted;
4. A list that includes the names and mailing addresses of the following: (1) owner(s) of the property (the "Subject Property") included in the Variance Application and (2) the owners of all property within 100 feet on all sides of the Subject Property, all as listed in the Wake County tax records at the time of submittal; and
5. Stamped (first class) and labeled envelopes addressed to the owner(s) of the Subject Property and the owners of all property within 100 feet on all sides of the Subject Property as noted on the required list. It is requested that the envelopes be self-sealing (peel and stick) and labeled with the following return address: Department of City Planning, City of Raleigh, P.O. Box 590, Raleigh, NC 27602-0590.

Incomplete Applications: Planning staff checks applications for sufficiency following submittal. Incomplete applications cannot be accepted and will be returned to the applicant.

FILING DEADLINES

Complete applications must be filed by 4:00 p.m. on the filing deadline. (See the "Raleigh Board of Adjustment Application Deadlines" on the City's official website for current filing dates and deadlines. <https://www.raleighnc.gov/home/content/BoardsCommissions/Articles/BoardofAdjustment.html>)

PUBLIC HEARING REQUIREMENT

The Raleigh Board of Adjustment ("BOA") is a quasi-judicial body that considers requests for variances. The BOA considers the application, any other relevant written and/or illustrative evidence entered into the record, including a Staff report, along with sworn testimony, all provided at a public hearing.

Notification of the public hearing will take place by each of the following methods:

- **By Mail** - The Planning Department will prepare and mail a written notice to the owner(s) of the property (the "Subject Property") included in the Variance Application and the owners of all property within 100 feet on all sides of the Subject Property. This notice will be postmarked not more than 25 calendar days and no less than 10 calendar days prior to the date of the public hearing.
- **By Publication** - Notice will be published at least once in a newspaper having general circulation in the City no less than 10 calendar days but not more than 25 calendar days prior to the date of the public hearing.
- **By Web** - Notice will be posted on the City's official website no less than 10 calendar days prior to the date of the public hearing.

- **On-Site** - Notice will also be posted by City staff on the Subject Property at least 10 days prior to the date of the public hearing. ***NOTICE TO APPLICANT - The applicant must retrieve the posted sign the morning of the public hearing and return it to the City either at the public hearing or within three (3) business days following the public hearing.***

General Information about Variances and the Board of Adjustment

The following is provided for informational purposes only. For further information, applicants are advised to consult the appropriate sections of the North Carolina General Statutes, the City Code, and the City's Unified Development Ordinance ("UDO"). Please note the UDO proscribes that certain UDO provisions shall not be varied.

WHAT IS A VARIANCE?

A variance is intended to provide relief where the strict application of a UDO provision would result in an unnecessary hardship. Variances are not granted to remove inconveniences. A variance may not be granted from any specific use standard associated with a use requiring the approval of a Special Use Permit nor anything considered a "use variance".

RALEIGH BOARD OF ADJUSTMENT

The Raleigh Board of Adjustment ("BOA") is a quasi-judicial body that considers requests for variances. Its decisions are final but may be subject to judicial review by the courts. The BOA consists of eight members, but only five members sit and vote on each of the hearings before the BOA. Four regular members and two alternate members of the BOA are appointed to two-year terms by the City Council and must reside within the City limits. One regular member and one alternate member of the BOA are appointed to two-year terms by the Wake County Board of Commissioners and must reside within the City's extraterritorial jurisdiction.

QUASI-JUDICIAL HEARING

The BOA will consider the application, any other relevant written and/or illustrative evidence entered into the record, including the Staff Report, and any sworn testimony, all at a public hearing. After the public hearing, the BOA will vote to approve, approve with conditions, or deny the variance. Four out of the five members of the BOA who are sitting and voting on a variance hearing must vote for approval in order for a variance to be approved.

BOA meetings are typically held the second Monday of each month in the City Council Chamber, room 201 of the Raleigh Municipal Building located at 222 W. Hargett Street. Meetings begin at 1:00 p.m. unless otherwise specified.

During a quasi-judicial hearing on a variance request, the BOA holds an evidentiary hearing and makes its decision based solely on the written and oral evidence presented; its decision cannot be based on opinions inconsistent with the facts in evidence. Members of the BOA must refrain from *ex parte* communications (communications outside of the hearing itself) with anyone about substantive issues in upcoming or ongoing cases including other members of the BOA. All testimony before the BOA must be "sworn" testimony; therefore, all persons wishing to speak on the matter must be sworn in. As noted above, the BOA can approve variances only upon a concurring vote of four members of the board (out of a possible 5 votes). Appeals from a decision of the BOA shall be to Superior Court.

All applicants are advised to have an attorney represent them as this is a legal proceeding. Applicants that are entities, including governmental entities, corporations, LLCs, LLPs and Partnerships must be represented by an attorney. Engineers, architects, real estate agents, planners and other non-attorneys may only appear as witnesses; they may not appear on behalf of an applicant or those opposed to an application in a representative capacity. In addition, only an expert can testify regarding matters that require expert testimony such as impacts of proposed activities on property values, traffic, or stormwater runoff. Individuals opposed to an application may appear and represent themselves at the variance hearing (entities opposing an application, however, must be represented by an attorney as explained above).

ADDITIONAL INFORMATION:

For further information on the quasi-judicial hearing process, please review "*A Citizen's Guide to Evidentiary Hearings*" available on the City's website here:

<http://www.raleighnc.gov/content/PubAffairs/Documents/EvidentiaryHearing.pdf>.

Application for Variance



RALEIGH
DEPARTMENT OF
CITY PLANNING



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2682

Submit application to: Department of City Planning,
1 Exchange Plaza, Suite 300
Raleigh, NC 27601

Submittal Date: _____

Pre-Application Conference

Completed? _____ Yes _____ NO

Date of Conference: _____

Property Information

Property Address _____
PIN _____ Property Size (acres) _____
Property _____ Property Overlay _____
Zoning District _____ District (if applicable) _____

Owner Information

Name(s) _____
Mailing Address _____
Telephone _____
Fax _____
Email _____

CONTACT PERSON (if an attorney representing the Owner on the Variance Request)

Name _____
Mailing Address _____
Telephone Number _____
Fax Number _____
Email Address _____

VARIANCE REQUEST

Applicable UDO Provision(s) From Which Variance(s) Is/Are Being Sought: _____

Nature of Variance Request: (What are you asking the Board to grant? Be specific as to the nature and extent of the variance requested.)

STANDARDS FOR GRANTING VARIANCE.

Under the state enabling act, the BOA is to approve a variance only upon the applicant showing that each of the four standards set forth below have been met. *See* N.C. Gen. Stat. § 160A-388(d); UDO §10.2.10.D.3. Please provide facts and arguments in support of each of the following required standards. ***Attach additional sheets if needed.***

- 1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the 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 owner. 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.**

Do you propose to attach any conditions to this variance request? Yes No.

If yes, specify the condition(s). ***Attach additional sheets if needed.*** (Examples of appropriate conditions include those that reduce or minimize any injurious effect the variance might have, such as in the case of a transition yard width variance, a condition that you install and maintain increased vegetative plantings in the remaining transition area.)

Proposed Conditions:

NOTARIZED CERTIFICATION OF OWNER(S)

I, _____, the undersigned, being first duly sworn, depose and say that I voluntarily submitted this Variance Application to the City of Raleigh; that I am the owner(s) of the property described and which is the subject matter of this Variance Application; that all answers to the questions in this application, and all plot plan(s), sketches, data and other supplementary information attached to this application are honest and true to the best of my knowledge and belief.

[NOTE: If the owner is a corporation, this must be signed by an authorized corporate officer; If the owner is a partnership, this must be signed by a general partner; If the owner is a limited liability company, this must be signed by the Manager for a manager managed LLC, or all the members for a member managed LLC.] For multiple owners, attach additional Notarized Certification of Owner(s) pages.

Date: _____

Signature

STATE OF NORTH CAROLINA
_____ COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing variance application for the purpose stated therein and in the capacity indicated:

_____.

Date: _____

Official Signature of Notary

[NOTARY SEAL]

_____, Notary Public
Notary's Printed or Typed Name

My Commission expires: _____