



**CHARLOTTE**

**CITY OF CHARLOTTE  
ZONING ADMINISTRATION**

**VARIANCE, APPEAL AND  
ADMINISTRATIVE DEVIATIONS**

**APPLICATION  
AND  
PROCEDURES PACKET**

**2021**

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## Types of Requests

There are six types of requests handled by Zoning Administration staff and the Zoning Board of Adjustment as authorized by Chapters 4, 5, and 10 of the Charlotte Zoning Ordinance. Below, please find a brief description of each request type.

1. **Variance Request:** This is a request to vary the standards of the Zoning Ordinance per Chapter 5 of the Zoning Ordinance. One common variance request is for an applicant to seek relief from a front setback or side/rear yard requirement.

Process: Complete forms 1 and 2 and submit with the required materials indicated on the Variance Request Checklist included in this packet; timeline approximately 2 – 3 months.

Requirements for Approval (all four must be true to demonstrate a hardship):

1. There is unnecessary hardship from the strict application of the ordinance. It is not necessary to demonstrate that, no reasonable use can be made of the property without the variance; and
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships that result from personal circumstances, or conditions common to the neighborhood or general public, may not be the basis for granting a variance; and
3. The hardship did not result from actions taken by the applicant or the property owner. Purchasing property with knowledge of circumstances that may justify a variance shall not be regarded as a self-created hardship; and
4. The request is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Decision Maker: Zoning Board of Adjustment

2. **Floodplain Ordinance Variance Request:** This is a request for a grant of relief from the requirements of the Mecklenburg County Floodplain Ordinance per 9-87 of the Floodplain Ordinance.

Process: Complete forms 1 and 3 and submit the required materials as indicated on the variance request checklist included in this packet. Process in in coordination with Charlotte-Mecklenburg Storm Water Services; timeline approximately 2 – 3 months.

Requirements for Approval (all three must be true to demonstrate a hardship):

1. There is a showing of good and sufficient cause to grant the variance; and
2. There is a determination that failure to grant the variance would result in exceptional hardship; and
3. There is a determination that granting the variance will not result in increased flood heights (unless the requirements of Section 9-102(a)(6) are met), additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with other existing local laws or ordinances.

(The fact that the property could be utilized more profitably or conveniently with the Variance than without the Variance shall not be considered as grounds for granting the Variance.)

Decision maker: Zoning Board of Adjustment

3. **Appeal Request:** This type of request, found in Chapter 5 of the Zoning Ordinance, is initiated when an applicant feels that the Zoning Administrator, enforcement officer or plans reviewer has made an error in applying the standards of the zoning ordinance.

Process: Complete forms 1 and 4 and submit with the required materials indicated on the Appeal Request Checklist included in this packet; timeline approximately 2 – 3 months.

Requirements: An error in the application of the ordinance must be found in order to reverse the decision of the Zoning Administrator, enforcement officer or plans reviewer.

Decision Maker: Zoning Board of Adjustment

4. **Appeal of Historic District Commission Decision (HDC) Action:** Section 10.213 of the zoning ordinance authorizes the Zoning Board of Adjustment to hear appeals from an HDC decision granting or denying a Certificate of Appropriateness by any aggrieved party who believes the HDC has made an error in their decision.

Process: Complete forms 1 and 4 and submit with verbatim transcripts of each HDC meeting related to the Certificate of Appropriateness. Process is in coordination with the city attorney's office. In addition to meeting transcripts, applicants should submit the required materials indicated on the Appeal Request Checklist included in this packet; timeline approximately 90 to 120 days.

Requirements: Applicant must obtain and pay for verbatim transcript of all related HDC meetings.

Decision Maker: Zoning Board of Adjustment

5. **Administrative Deviation Request:** Section 4.107 of the Zoning Ordinance authorizes the Zoning Administrator to provide limited relief from quantifiable ordinance requirements. There are four types of administrative deviations:

1. **Yard, buffers, and Encroachments** of 2 feet (3 feet for HVAC units)

Requirement: Applicant must provide proof of inadvertent error(s) that occurred during construction

2. **Up to 5% Deviation for Specific Quantifiable Ordinance Requirements**

Requirement: At least one must be true with proof provided by applicant:

- The physical contours of the street, the land, or some other topographical or geographical feature is the basis for a surveying or other inadvertent error.
- The physical layout of the land and the structures upon the land are such that the ordinance requirement cannot be met.
- Because of the nature of the abutting property or intervening topographical or geographical features, the application of the ordinance requirement would not serve a useful purpose.
- The applicant has agreed to measures that would ameliorate the deviation from complete compliance with the ordinance requirement.

3. **Handicap Ramp Encroachments** in Setback or Yard

Requirement: Ramp is required by law and there is no other reasonable location.

4. **Restoration/Replacement of Historic Features**

Requirement: Existing feature located on a structure located in a Historic District Overlay or on a Historic Landmark Designated by the Charlotte Mecklenburg Landmarks Commission. Feature must be substantiated by documentary, physical or pictorial evidence.

Process: Complete forms 1 and 5 and submit with the required materials indicated on the Administrative Deviation Request Checklist included in this packet; timeline approximately 1 month.

Decision Maker: Zoning Administrator

6. **Variance Extension Request – (Submit form 1 and Request Letter)**

A decision of the Board granting a variance shall automatically expire if a building permit is required, pertaining to the need for the variance, and is not obtained within two years from the date of the meeting at which the Board rendered its decision. Section 5.111 of the Zoning Ordinance authorizes the Zoning Administrator to approve an extension of a variance entitlement beyond the two-year expiration date.

Process: Complete form 1 and submit with a request letter for the extension; Follow process in Zoning Ordinance Section 4.107(4); timeline approximately 1 month.

Requirements: Request letter demonstrating that the circumstances for the granting of the variance have not changed and would allow the issuance of the permit.

Decision Maker: Zoning Administrator

**Application Procedures and Instructions**

The following are the general instructions for filing the six requests discussed above. Specific application submittal checklists and instructions are included later for the forms described below:

**Submission of Application Forms**

- a. **Pre-meeting.** A pre-meeting with zoning administration staff is required prior to the submission of an application. Please contact 704-336-8314 to set up an appointment.
- b. **Application Deadlines.** Applications must be submitted in accordance with the Schedule of Meetings and Submission Deadlines included in this packet. Please note that a request for an appeal must be filed within 30 days from receipt of the written decision or receipt or actual or constructive notice of the written decision. Appeals of HDC decisions must be filed within 30 days from the date of the issuance or denial of the Certificate of Appropriateness. A maximum of 10 cases are scheduled for each Board of Adjustment meeting.
- c. **Fees.** All applications must be filed with the non-refundable fee as outlined in the Schedule of Fees included in this packet.
- d. **Application Filing.** All applications must be filed in person at the Planning Department’s office. Our office is located on the 8<sup>th</sup> floor of the Charlotte-Mecklenburg Government Center (600 East 4<sup>th</sup> Street).
- e. **Signature Required.** Make sure each form is properly signed. Unsigned applications cannot be accepted.
- f. **Completeness Requirement.** Illegible and incomplete applications cannot be accepted. Applicants are strongly encouraged to type their applications. Electronic versions of these applications are available at [www.charlottenc.gov/planning/zoningadministration](http://www.charlottenc.gov/planning/zoningadministration)
- g. **Application Copies.** Please submit one digital copy of the application and associated supplemental materials as well as the following number of paper copies:

<b>PROCESS</b>	<b>NUMBER OF COPIES</b>
Administrative Deviation & Variance Extension.....	One (1) Copy
Variance & Appeal.....	Five (5) Copies

**Staff Processing**

- a. **Check for Completeness.** Staff will ensure that the application is complete and signed by the appropriate parties. Staff will also review your application and the ordinance to determine if any other remedies or alternatives might be available.
- b. **Schedule the Case.** The clerk will assign a case number and hearing date.
- c. **Notification.** Staff will visit the site and post a sign on the property with the case number and zoning staff contact information per state statutory requirements. Staff will also take photographs for use at the hearing.
- d. **Adjacent Property Owner Notification.** The clerk will prepare and mail hearing notices to adjoining property owners, the applicant, and agent.
- e. **Packets Sent to Board Members.** Meeting agendas and application packets are mailed to Board of Adjustment members approximately 10 days prior to the hearing date.
- f. **Staff Report.** Staff will prepare a staff report and make a recommendation (variances and appeals) or decision (administrative deviations, variance extensions) on the request. HDC appeals are coordinated through the city attorney’s office who will provide any necessary staff documentation.
- g. **Public Hearing.** A public hearing is held for all cases that require Board of Adjustment action. Meeting dates and times are outlined in the Schedule of Meetings and Submission Deadlines included in this packet.

## Hearing Procedures

The following describes how the Board of Adjustment conducts appeal and variance hearings:

1. **Order for each Board of Adjustment Agenda Item:**
  - a. The chairman will swear in anyone that is going to speak on an item.
  - b. A staff member will present the case and offer a recommendation.
  - c. The Board may question staff, then the Applicant may question the staff member.
  - d. The Applicant may present his testimony for the case.
  - e. The Board may question the Applicant, and staff may question the Applicant.
  - f. The Applicant may present sworn witnesses who will be subject to questioning.
  - g. Other parties wishing to speak on the item may present sworn testimony.
  - h. The staff, then the Applicant, will be given opportunity for rebuttal and final comments.
  - i. The Board will vote to continue the hearing to another meeting to gather more evidence, or close the hearing and deliberate on a decision for the item.
  - j. The Board will render a decision. The Board may grant or deny the variance, or reverse, affirm, or modify the order, decision, requirement, or determination under appeal. Conditions may be imposed on variance approval if the applicant is in agreeance.
2. **Appeal from the Zoning Board of Adjustment Decision.** A Board decision may be appealed to the Mecklenburg County Superior Court within thirty (30) days from the later of: (a) the decision of the board is effective, or (b) a written copy of the decision is delivered in accordance with North Carolina General Statute 160A-388(e2)(1).

## Other Useful Information

3. **Glossary of Terms.** You can find a Glossary of Terms describing the meaning of terms related to variances and appeals in this packet.
4. **Sworn Testimony.** Hearings are quasi-judicial and require sworn testimony. Hearsay is not excluded, but given limited weight.
5. **Another Person Representing the Applicant.** An attorney may represent the applicant at their expense. If the applicant chooses to have a person who is not an attorney represent them, the North Carolina State Bar has issued an opinion on other people acting in a representative capacity for an applicant in a quasi-judicial hearing, titled *Authorized Practice Advisory Opinion 2006-1*, that can be found at the end of this packet.
6. **Speaker Sign Up.** All parties wishing to speak during the hearing must register prior to the hearing, available in the hearing meeting room.
7. **Exhibits.** All exhibits must remain with the Board. Exhibits must be given to the clerk for tagging, before it can be presented to the Board. If your case is not appealed to the Mecklenburg County Superior Court within thirty days after the Board's decision is filed, you may pick up your exhibits. Exhibits that are not picked up will be destroyed.
8. **Conflict of Interest.** If you feel there is a conflict of interest of any Member of the Board or an association that would prejudice your case, please let it be known at the start of your case.
9. **Help the Board run an efficient meeting:**
  - a. Keep testimony to the relevant facts of the case.
  - b. Do not repeat testimony.
  - c. Applicants and witnesses should have first-hand knowledge of the situation. Professionals may also testify for items within their area of professional expertise.

**The City of Charlotte will comply with the American with Disabilities Act (ADA), which prohibits discrimination on the basis of disability. If you need special accommodations to attend and participate in the meeting or need this information in an alternative format because of your disability, please contact the Zoning Administration staff at 704-336-3818 at least 72 hours prior to the meeting.**

**General Application - Form 1**  
Zoning Board of Adjustment  
City of Charlotte

**Date Filed:** \_\_\_\_\_ **Case Number:** \_\_\_\_\_ **Received by:** \_\_\_\_\_

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**Instructions**

**This form must be filed out completely. Please attach the appropriate additional form depending on your request type along with required information as outlined in the appropriate checklist.** Please type or print legibly. All property owners must sign and consent to this application, attach additional sheets if necessary. If the applicant is not the owner, the owners must sign the Designation of Agent section at the bottom of this form.

**The Applicant Hereby** (check all that apply):

- Requests a variance from the provisions of the Zoning Ordinance/Floodplain Ordinance
- Appeals the determination of a zoning official/HDC COA
- Requests an administrative deviation from a quantifiable Zoning Ordinance standard
- Requests an extension of a variance approval

**Applicant or Agent's Name:** \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Daytime Telephone: \_\_\_\_\_ Email Address: \_\_\_\_\_

Interest in this Case (please circle one):      Owner                  Adjacent Owner                  Other

**Property Owner(s)** [if other than applicant/agent]: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Daytime Telephone: \_\_\_\_\_ Email Address: \_\_\_\_\_

**Property Address:** \_\_\_\_\_

Tax Parcel Number: \_\_\_\_\_                  Zoning District: \_\_\_\_\_

Subdivision Name: \_\_\_\_\_                  Conditional District:      YES      NO

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**Applicant Certification and Designation of Agent**

I (we) certify that the information in this application, the attached form(s) and documents submitted by me (us) as part of this application are true and correct. In the event any information given is found to be false, any decision rendered may be revoked at any time. I (we) hereby appoint the person named above as my (our) agent to represent me (us) in this application and all proceedings related to it. I (we) further certify to have received, read and acknowledged the information and requirements outlined in this packet.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Property Owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Property Owner

### **Variance Request Checklist and Instructions**

**Limitations:** The Board of Adjustment shall not grant a variance which would allow the establishment of a use which is not otherwise permitted in the district, would result in the extension or expansion of a nonconforming use, or would change the district boundary, or zoning classification of any or all of the subject property.

#### **Instructions**

1. **Fill out the form completely.** Because the board must find evidence to support each of the questions/statements, the answer “not applicable” is generally not acceptable and will delay your request.
2. In order for the Board to grant a variance, an unnecessary land hardship must be demonstrated.

**Zoning Ordinance Variance:** Per Section 5.108 of the zoning ordinance, only the following conditions shall constitute a hardship (all must be met):

- a. There is unnecessary hardship from the strict application of the ordinance. It is not necessary to demonstrate that, no reasonable use can be made of the property without the variance; and
- b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships that result from personal circumstances, or conditions common to the neighborhood or general public, may not be the basis for granting a variance; and
- c. The hardship did not result from actions taken by the applicant or the property owner. Purchasing property with knowledge of circumstances that may justify a variance shall not be regarded as a self-created hardship; and
- d. The request is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

**Floodplain Ordinance Variance:** Per Section 9-87 of the Mecklenburg County Floodplain Ordinance all three of the following must be true to demonstrate a hardship:

- a. There is a showing of good and sufficient cause to grant the variance; and
- b. There is a determination that failure to grant the variance would result in exceptional hardship; and
- c. There is a determination that granting the variance will not result in increased flood heights (unless the requirements of Section 9-102(a)(6) are met), additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with other existing local laws or ordinances.

The fact that the property could be utilized more profitably or conveniently with the Variance than without the Variance shall not be considered as grounds for granting the Variance.

#### **Checklist**

- 5 copies** of your signed application (includes one original) and all required materials (per the applicable checklist) must be submitted for your submission to be considered complete. Please fold larger maps and other materials to 8 ½ x 14 inch size.
- If applicable, attach a copy of your permit or plan review comments if this variance resulted from a permit or plan denial.
- If this is a new construction project or requested to do so in your pre application meeting, attach an address verification form available by contacting 704-336-6175.
- A survey or to scale site plan must be included. The survey or site plan should include:
  - all existing buildings and structures on the property
  - all easements for streets, utilities, driveways and others
  - all proposed improvements should be drawn on the survey or site plan to scale
  - shade in the map to highlight the portion of the improvements that are subject to the requested variance (i.e. for a setback variance, the amount beyond the setback line)
- Architectural drawings are strongly encouraged to assist the Board in determining if the request is in harmony with the surrounding neighborhood.

#### **Additional Information**

- If applicable, construction must stop on portions of a project in violation of the zoning ordinance.
- If this variance request is a result of a violation, enforcement action will pause until decision on the case.
- Once a case has been heard, the Board may not hear the same case for a period of two years.
- Appropriate conditions may be imposed on any variance that are reasonably related to the variance.



**Variance Application: Zoning Ordinance - Form 2**

Zoning Board of Adjustment  
City of Charlotte

**Date Filed:** \_\_\_\_\_ **Case Number:** \_\_\_\_\_ **Fee Collected:** \_\_\_\_\_

Has work started on this project? YES  NO   
 If yes, did you obtain a building permit? YES  NO  If yes, attach a copy.  
 Have you received a Notice of Violation or Stop Work Order for this project? YES  NO  If yes, attach a copy.  
 Has this property been rezoned? YES  NO  If yes, Petition Number: \_\_\_\_\_

(1) From what zoning ordinance section numbers are you seeking a variance? Please list each section, the requirement, and the requested variance.

Item	Code Section	Code Requirement	Variance Request
<i>Example</i>	<i>9.205 (1)(g)</i>	<i>45 foot rear yard</i>	<i>35 foot rear yard (10 foot reduction from required)</i>
<b>A</b>			
<b>B</b>			
<b>C</b>			
<b>D</b>			
<b>E</b>			

(2) Please describe why the variances requested are necessary.


(3) THERE ARE UNNECESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THE ORDINANCE. The courts have developed rules to determine whether, in a particular situation, "practical difficulties or unnecessary hardships" exist. State facts and arguments in support of each of the following:

(a) 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.


--

(b) 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.


(c) 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.


(d) The requested variance is consistent with the spirit, purpose, and intent of the Zoning Ordinance, such that public safety is secured, and substantial justice is achieved.


**Variance Application: Floodplain Ordinance - Form 3**

Zoning Board of Adjustment  
City of Charlotte

**Date Filed:** \_\_\_\_\_ **Case Number:** \_\_\_\_\_ **Fee Collected:** \_\_\_\_\_

Has work started on this project? YES  NO   
 If yes, did you obtain a building permit? YES  NO  If yes, attach a copy.  
 Have you received a Notice of Violation or Stop Work Order for this project? YES  NO  If yes, attach a copy.  
 Has this property been rezoned? YES  NO  If yes, Petition Number: \_\_\_\_\_

(1) From what floodplain ordinance section numbers are you seeking a variance? Please list each section, the requirement, and the requested variance.

Item	Code Section	Code Requirement	Variance Request
<i>Example</i>	<i>9-102</i>	<i>12' wide dryland access required</i>	<i>9' wide dryland access (3 foot reduction from required)</i>
<b>A</b>			
<b>B</b>			
<b>C</b>			
<b>D</b>			
<b>E</b>			

(2) Please describe why the variance(s) requested are necessary.


(3) **THERE ARE UNNECESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THE ORDINANCE.** The courts have developed rules to determine whether, in a particular situation, "practical difficulties or unnecessary hardships" exist. State facts and arguments in support of each of the following:

(a) There is a showing of good and sufficient cause to grant the variance. Describe why there is sufficient cause to grant the requested variance(s).



(b) There is a determination that failure to grant the variance would result in exceptional hardship. Describe the hardship that would result from failure to grant the variance.


(c) There is a determination that granting the variance will not result in increased flood heights (unless the requirements of Section 9-102(a)(6) are met), additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with other existing local laws or ordinances.


Factors for consideration of a floodplain ordinance variance (Sec. 9-85):

In passing upon variances, the board of adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and the:

1. Danger that materials allowed to be placed in the floodway as a result of the variance may be swept onto other lands to the injury of others during a community base flood;
2. Danger to life and property due to flooding or erosion damage from a community base flood;
3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage during the community base flood;
4. Importance of the services provided by the proposed facility to the community;
5. Necessity to the facility of a waterfront location, where applicable;
6. Availability of alternative locations, not subject to flooding or erosion damage during a community base flood, for the proposed use;
7. Compatibility of the proposed use with existing and anticipated development;
8. Relationship of the proposed use to the Mecklenburg County Floodplain Management Guidance Document, Mecklenburg County Hazard Mitigation Plans, the Mecklenburg County Greenway Plan, and any other adopted land use plans for that area;
9. Safety of access to the property in times of a community base flood for ordinary and emergency vehicles;
10. Expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters during a community base flood expected at the site; and
11. Costs of providing governmental services during and after flood events, including maintenance and repair of public utilities and facilities, such as sewer, gas, electrical and water systems and streets and bridges.

## Appeal Request Checklist and Instructions

### **Limitations**

1. The Board of Adjustment may only reverse an order or finding of a zoning staff member if they find that an ordinance provision was applied in error. This application must be filed within thirty (30) days of a Notice of Violation or the written interpretation/decision of the Zoning Administrator or other City zoning staff member. Applications filed more than 30 days after a written decision or violation notice cannot be accepted.
2. The Board of Adjustment may affirm, reverse, or modify any HDC decision granting or denying a Certificate of Appropriateness after determining if there was an error of law or no competent or substantial evidence to support the HDC decision. This application must be filed within thirty (30) days from the date of the issuance or denial of the Certificate of Appropriateness. Applications filed more than 30 days cannot be accepted.

### **Instructions**

Fill out the form completely. Because the board must find evidence to support each of the questions/statements, the answer “not applicable” is generally not acceptable and will delay your request.

### **Checklist**

- 5 copies** of your signed application (includes one original) and all required materials (per the applicable checklist) must be submitted for your submission to be considered complete. Please fold larger maps and other materials to 8 ½ x 14 inch size.
- If applicable, attach a copy of your permit or plan review comments if this appeal resulted from a permit or plan denial. In addition, submit a copy of your submitted site plan and highlight those areas that are subject to this appeal.
- If applicable, attach a copy of your Notice of Violation if this appeal resulted from an alleged violation of the zoning ordinance.
- If this is a new construction project or requested to do so in your pre-application meeting, attach an address verification form available by contacting 704-336-6175.

### **Additional Information**

- If applicable, construction must stop on portions of a project in violation of the zoning ordinance.
- If this variance request is a result of a violation, enforcement action will pause until decision on the case.
- Once a case has been heard, the Board may not hear the same case for a period of two years.

**Appeal Application - Form 4**  
 Zoning Board of Adjustment  
 City of Charlotte

**Date Filed:** \_\_\_\_\_ **Case Number:** \_\_\_\_\_ **Fee Collected:** \_\_\_\_\_

Has work started on this project? YES  NO   
 If yes, did you obtain a building permit? YES  NO  If yes, attach a copy.  
 Have you received a Notice of Violation or Stop Work Order for this project? YES  NO  If yes, attach a copy.  
 Has this property been rezoned? YES  NO  If yes, Petition Number: \_\_\_\_\_

(1) What zoning ordinance, floodplain ordinance, or historic district guidelines section numbers do you allege were applied in error? Please list each section, the requirement and the requested variance.

Item	Code Section	Code Requirement
<i>Example</i>	7.102(6)	<i>Nonconforming use discontinued for 12 months cannot be re-established; appeal stating use hasn't been discontinued for 12 months</i>
<b>A</b>		
<b>B</b>		
<b>C</b>		
<b>D</b>		
<b>E</b>		

(2) Please describe why you feel the code sections listed above where applied in error. Tell the Board what you feel is the appropriate application of each code section.

(a) Code Section \_\_\_\_\_


(b) Code Section \_\_\_\_\_


(c) Code Section \_\_\_\_\_


(d) Code Section \_\_\_\_\_


(e) Code Section \_\_\_\_\_


## Administrative Deviation Request Checklist and Instructions

There are four types of administrative deviations:

**1. Yard, buffers, and Encroachments of 2 feet (3 feet for HVAC units)**

Requirement: Applicant must provide proof of inadvertent error(s) that occurred during construction

**2. Up to 5% Deviation for Specific Quantifiable Ordinance Requirements**

Requirement: At least one must be true with proof provided by applicant:

- The physical contours of the street, the land, or some other topographical or geographical feature is the basis for a surveying or other inadvertent error.
- The physical layout of the land and the structures upon the land are such that the ordinance requirement cannot be met.
- Because of the nature of the abutting property or intervening topographical or geographical features, the application of the ordinance requirement would not serve a useful purpose.
- The applicant has agreed to measures that would ameliorate the deviation from complete compliance with the ordinance requirement.

\* The Zoning Administrator may only apply items 1 or 2 above. He/she may not apply both items

**3. Handicap Ramp Encroachments in Setback or Yard**

Requirement: Ramp is required by law and there is no other reasonable location.

**4. Restoration/Replacement of Historic Features**

Requirement: Existing feature located on a structure located in a Historic District Overlay or on a Historic Landmark Designated by the Charlotte Mecklenburg Landmarks Commission. Feature must be substantiated by documentary, physical or pictorial evidence.

### **Instructions**

1. Fill out the form completely. The Zoning Administrator must find evidence to support each of the required findings in order to approve your request.

### **Checklist**

- If applicable, attach a copy of your permit or plan review comments if this variance resulted from a permit or plan denial.
- If this is a new construction project or requested to do so in your pre-application meeting, attach an address verification form available by contacting 704-336-6175.
- A survey or to scale site plan must be included. The survey or site plan should include:
  - all existing buildings and structures on the property
  - all easements for streets, utilities, driveways and others
  - all proposed improvements should be drawn on the survey or site plan to scale
  - shade in the map to highlight the portion of the improvements that are subject to the requested deviation (i.e. for a setback variance, the portion of the structure beyond the setback line)

### **Additional Information**

- If applicable, construction must stop on portions of a project in violation of the zoning ordinance.
- If this variance request is a result of a violation, enforcement action will pause until decision on the case.



**Administrative Deviation Application - Form 5**

Zoning Administrator  
City of Charlotte

**Date Filed:** \_\_\_\_\_ **Case Number:** \_\_\_\_\_ **Fee Collected:** \_\_\_\_\_

Has work started on this project? YES  NO   
 If yes, did you obtain a building permit? YES  NO  If yes, attach a copy.  
 Have you received a Notice of Violation or Stop Work Order for this project? YES  NO  If yes, attach a copy.  
 Has this property been rezoned? YES  NO  If yes, Petition Number: \_\_\_\_\_

The requested deviation is for (place an X under the applicable categories):

Yard, Buffer, or Encroachment	Specific Measurable Requirement	Handicap Ramp or Similar Structure Required by Law	Historic Feature

(1) What zoning ordinance section numbers are you seeking a deviation from? Please list each section, the requirement and the requested variance.

Item	Code Section	Code Requirement	Deviation Request
<i>Example</i>	<i>9.205 (1)(g)</i>	<i>45 foot rear yard</i>	<i>2 foot encroachment into rear yard</i>
<b>A</b>			
<b>B</b>			
<b>C</b>			
<b>D</b>			
<b>E</b>			
<b>F</b>			

**All Requests:** Please describe why the deviations requested are necessary.


**Yard, buffers, and Encroachments of 2 feet (3 feet for HVAC units):** Describe the inadvertent error that occurred during construction that caused the encroachment or discrepancy.



**Up to 5% Deviation for Specific Quantifiable Ordinance Requirements:** Describe how at least one of the following conditions are present for the property:

- The physical contours of the street, the land, or some other topographical or geographical feature is the basis for a surveying or other inadvertent error.
- The physical layout of the land and the structures upon the land are such that the ordinance requirement cannot be met.
- Because of the nature of the abutting property or intervening topographical or geographical features, the application of the ordinance requirement would not serve a useful purpose.
- The applicant has agreed to measures that would ameliorate the deviation from complete compliance with the ordinance requirement.


**Handicap Ramp Encroachments in Setback or Yard:** Explain why the ramp or structure must be located in a yard or setback and that there is not another reasonable location that is compliant with ordinance requirements.


**Restoration/Replacement of Historic Features:** Describe proposed replacement or restoration of an existing feature located on a structure located in a Historic District Overlay or on a Historic Landmark Designated by the Charlotte Mecklenburg Landmarks Commission. Feature must be substantiated by documentary, physical or pictorial evidence.


## Schedule of Meetings and Submission Deadlines

**2021**

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Zoning Board of Adjustment

<b>Submission Deadline</b>	<b>Meeting Date</b>
December 23, 2020	January 26, 2021
January 22, 2021	February 23, 2021
February 26, 2021	March 30, 2021
March 26, 2021	April 27, 2021
April 23, 2021	May 25, 2021
May 28, 2021	June 29, 2021
June 25, 2021	July 27, 2021
July 23, 2021	August 31, 2021
August 27, 2021	September 28, 2021
September 24, 2021	October 26, 2021
October 22, 2021	November 30, 2021
November 5, 2021	December 14, 2021

*\*Meeting dates are subject to change!*

**Schedule of Fees**  
Effective July 1, 2020

<b>PROCESS</b>	<b>FEE</b>	
Variance	Residential	\$780.00
	Commercial	\$1,720.00
Appeal (Including HDC Appeal*)	Residential	\$335.00
	Commercial	\$1,620.00
Administrative Deviation & Variance Extension	Residential	\$310.00
	Commercial	\$600.00

**Fee due upon submittal of application, payable by check or money order to the City of Charlotte.**

\*HDC(Historic District Commission) Appeal fee includes application processing fee, but does not include cost to obtain meeting transcripts.

## Glossary of Terms

**Conflict of Interest.** Close familial, business or other associational relationship with the affected person, or a financial interest in the outcome of a matter.

**Evidence.** A quasi-judicial decision must be based on evidence that is:

- **Competent:** trustworthy and reliable.
- **Material:** related to the standards.
- **Substantial:** Sufficient to support a conclusion.

**Ex Parte Communication.** When a board member communicates about the case (to an applicant or other person involved) outside the evidentiary hearing at the ZBA meeting in which the case is heard. This should be avoided and must be disclosed at the hearing if it occurs.

**Hardship.** North Carolina General Statute section [160A-388](#)(d) sets forth the standards for granting a zoning variance. These mandatory standards apply to zoning variances for all counties and municipalities in the state of North Carolina. Under this statute, a board of adjustment shall vary the provisions of the zoning ordinance if strict application of the ordinance would create unnecessary hardship. In order to obtain the variance, the applicant must show all of the requirements of approval found on page one of this document are true to demonstrate a hardship.

Please note: Floodplain Ordinance hardship requirements are found on page one of this document and differ from zoning. North Carolina General Statutes Parts 3, 5, and 8 of Article 19 of Chapter 160A sets forth the standards of floodplain regulations, and are designed to promote the public health, safety, and general welfare.

**Hearsay Evidence.** Emails, letters or other reported statements from individuals not present at the ZBA (Zoning Board of Adjustment) meeting. A person needs to be present at the ZBA hearing for their testimony to be considered in a determination. There is an exception for technical reports from experts (arborists, engineers, etc.) and analysis from government officials (Department of Transportation, Charlotte Mecklenburg Water Quality, etc.), which should be included in the record.

**Party of Standing.** Includes: person with legal interest in the property; applicant; city or county; person who will suffer special damages because of the decision; an association organized to promote the interests of a particular area (Homeowners association or neighborhood group).

**Quasi-judicial Decision.** Process of deciding how the general law applies to a particular situation based on an evidentiary record, or sworn testimony.

**Sworn Testimony.** Testimony gathered by persons at the hearing who have been sworn in, which means they have taken an oath in front of the board and members of the audience to tell the truth. Attorneys do not have to be sworn in to speak at the hearing.

# Authorized Practice Advisory Opinion 2006-1

## October 20, 2006

### Quasi-Judicial Hearings on Zoning and Land Use

#### **Inquiry:**

May a person who is not a lawyer appear before planning boards, boards of adjustment, or other governmental bodies conducting quasi-judicial hearings in a representative capacity for another party?

#### **Opinion:**

At its October 2005 meeting, the Authorized Practice Committee responded to an inquiry concerning the propriety of a person who is not a lawyer appearing before planning boards, boards of adjustment, and city and county government in a representative capacity. The committee's advisory opinion distinguished appearances on legislative concerns, such as general rezoning cases and ordinance amendments, from appearances on behalf of petitioners for special use permits and variances, which are quasi-judicial matters. The committee has received comments from a number of interested parties, including architects, land use planners, and city and county attorneys as a result of that opinion. The committee is issuing this advisory opinion to supplement the prior opinion.

At its October 2005 meeting, the Authorized Practice Committee responded to an inquiry concerning the propriety of a person who is not a lawyer appearing before planning boards, boards of adjustment, and city and county government in a representative capacity. The committee's advisory opinion distinguished appearances on legislative concerns, such as general rezoning cases and ordinance amendments, from appearances on behalf of petitioners for special use permits and variances, which are quasi-judicial matters. The committee has received comments from a number of interested parties, including architects, land use planners, and city and county attorneys as a result of that opinion. The committee is issuing this advisory opinion to supplement the prior opinion.

First, the committee reiterates that the adoption of ordinances and amendments to official zoning maps (i.e. general rezoning cases) by the elected officials in city and county governments are legislative in nature and that any interested person may appear and speak on such matters before governmental bodies, even as representatives of groups or interested parties, without engaging in the unauthorized practice of law. Nonetheless, the general statutory prohibitions on unauthorized practice of law still apply even to persons who appear before governmental bodies on legislative matters. Non-lawyers may not hold themselves out as attorneys, provide legal services or advice, or draft any legal documents with regard to such matters. *See* N.C. Gen. Stat. §§ 84 2.1 and 4.

The law is clear that hearings on applications for special use permits and variances under zoning ordinances, as well as appeals from staff level interpretations related to permits, are quasi-judicial proceedings. N.C. Gen. Stat. §§ 153A-345 and 160A-381 and 388. *See, Humble Oil & Refining Co. v. Bd. of Aldermen of Chapel Hill*, 284 N.C. 458, 202 S.E.2d 129 (1974) and *Woodhouse v. Board of Comm'rs of Nags Head*, 299 N.C. 211, 261 S.E.2d 882 (1980). (For simplicity, the quasi-judicial hearings before these bodies are hereafter referenced to as a "variance hearing" unless the context indicates otherwise.) The governmental body before which the variance hearing is conducted sits in a judicial role of applying the standards of an ordinance to the particular circumstances of a particular party. Accordingly, the role of the governmental body is to receive evidence and make decisions based upon the evidence presented.

Variance hearings require the governmental body hearing the matter to observe certain formalities. Evidence, including witness evidence, is presented to the hearing body, although the Rules of Evidence need not be strictly observed. All witnesses before the body must be sworn and their testimony is subject to cross-examination. The hearing body has the power and authority to issue subpoenas to compel witness testimony. A record of the proceedings must be preserved. The decision is to be based upon the evidence presented at an open hearing, and not on extraneous matters or personal knowledge of the members of the board. The applicant has the burden of proof. The board must make written findings of fact to support its decision. And, the decision of the board is reviewable by the courts on appeal based solely upon the record of the proceedings.

The committee believes that the law is also 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 at a quasi-judicial proceeding is the practice of law. N.C. Gen. Stat. §§ 84 2.1 and 4. Consequently, because the variance hearings are by definition quasi-judicial proceedings, the committee concludes that it is the unauthorized practice of law for someone other than a licensed attorney to appear in a representative capacity to advocate the legal position of another person, firm, or corporation that is a party to the proceeding.

The committee has been urged to recognize that architects, landscape architects, land use planners, and engineers play a vital role at these quasi-judicial proceedings by presenting necessary facts and information on behalf of their clients at variance hearings. The committee agrees that the information these professionals can present is critical to the decision before the hearing body. These professionals are subject matter experts whose expert opinions, as witnesses, must be presented to the hearing body. They

are witnesses who are in the best position to explain to the hearing body the facts of the proposed design and its anticipated effects on a variety of factors, including traffic, environment, and aesthetics, within the framework of matters properly under consideration at the variance hearing. The committee does not believe that the role of legal advocate by attorneys in quasi-judicial proceedings should interfere with or inhibit the role of non-lawyer professionals who speak as witnesses and present information at these quasi-judicial proceedings. In fact, their roles should be complementary.

It is axiomatic that the committee has no authority to amend or formulate exceptions to the statutes. In issuing an advisory opinion, it simply articulates how it believes a court would ultimately resolve the question for the guidance of the public. The committee cannot recognize or create exceptions to the law as expressed by the legislature and the courts. Further, we believe, as a practical matter, that effective representation of parties in variance hearings is becoming increasingly dependent upon legal advocacy of the rights of the parties with an eye toward compiling a supportable record in the event of an appeal. These are the skills an attorney provides. While it is true that many of these hearings involve routine and non-controversial matters, even questions about matters such as the height of residential fences may become the subject matter of an appeal where the appellate courts may only consider the record produced at the variance hearing. *See Robertson v. Zoning Board of Adjustment for the City of Charlotte*, 167 N.C. App. 531, 605 S.E.2d 723 (2004). It is difficult to predict in advance when a matter may require a comprehensive record for appellate purposes. Therefore, with this further elaboration, the committee re-affirms its initial opinion expressed by letter dated October 31, 2005, that the representation of another person at a quasi-judicial hearing is the practice of law.

That said, this opinion should not be interpreted to diminish the role and expertise of land use professionals as witnesses at variance hearings. These professionals may still present their evidence in support of the position of their clients. However, they may not examine or cross-examine other witnesses or advocate the legal position of their clients.

The committee's opinion is also not intended to affect the ability of city and county planning staff to present factual information to the hearing board, including a recitation of the procedural posture of the application, and to offer such opinions as they may be qualified to make without an attorney for the government present, as the committee understands is the proper, current practice and role of the planning staff. Further, nothing in this opinion should be interpreted as limiting the ability of a corporate officer or employee from testifying on factual matters on behalf of a corporate party during a hearing or suggesting that individual parties may not represent themselves before these boards.

In sum, the committee is of the opinion that land use professionals, including architects, engineers, and land use planners, may appear and testify as to factual matters and any expert opinions that they are qualified to present at quasi-judicial proceedings, but the presentation of other evidence, including the examination and cross-examination of witnesses, making legal arguments, and the advocacy for results on behalf of others before quasi-judicial zoning and land use hearings, is the practice of law that may be performed only by licensed attorneys at law.

May a person who is not a lawyer appear before planning boards, boards of adjustment, or other governmental bodies conducting quasi-judicial hearings in a representative capacity for another party? At its October 2005 meeting, the Authorized Practice Committee responded to an inquiry concerning the propriety of a person who is not a lawyer appearing before planning boards, boards of adjustment, and city and county government in a representative capacity. The committee's advisory opinion distinguished appearances on legislative concerns, such as general rezoning cases and ordinance amendments, from appearances on behalf of petitioners for special use permits and variances, which are quasi-judicial matters. The committee has received comments from a number of interested parties, including architects, land use planners, and city and county attorneys as a result of that opinion. The committee is issuing this advisory opinion to supplement the prior opinion.

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**THE NORTH CAROLINA STATE BAR**

208 Fayetteville Street • PO Box 25908 • Raleigh, NC 27611-5908 • 919.828.4620  
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