

VARIANCE PERMIT APPLICATION

Town of Apex, NC



This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

VARIANCE PERMIT APPLICATION SUBMISSION:

Applications and fees are due by 12:00 pm on the first business day of each month. See the "[Variance Schedule](#)" on the website for details.

VARIANCE PERMIT APPLICATION FEE: \$650.00

For the complete Town of Apex Fee Schedule visit <https://www.apexnc.org/DocumentCenter/View/407>.

PRE-APPLICATION MEETING: A pre-application meeting with Planning Department staff is required to be scheduled prior to the submittal of a Variance Permit Application. Please contact Planner II Thomas Rayle at thomas.rayle@apexnc.org or 919-249-3426 to set up an appointment. Applicants must e-mail a pdf map, drawing, model, site, or sketch plan to staff no later than five (5) working days prior to the desired meeting day.

GENERAL INFORMATION: The Board of Adjustment conducts a quasi-judicial public hearing process. Only sworn testimony provided at the public hearing may be considered in their decision-making. The Board of Adjustment members cannot be legally contacted by the applicant or applicant's representative prior to the public hearing (e.g. no ex parte communication). If you have any questions, please contact Senior Planner June Cowles at 919-249-3339 or june.cowles@apexnc.org.

PURPOSE OF VARIANCE PERMIT: Variance Permits are deviations from the dimensional standards in the applicable zoning district where due to special circumstances or conditions (like exceptional topographical conditions, narrowness, shallowness, or the shape of a specific piece of property), the literal enforcement of the provisions of the Unified Development Ordinance (UDO) would result in peculiar and practical difficulties to, or exceptional and undue hardships on the owners of the property, and the deviation would not be contrary to the public interest. No Variance Permits from the schedule of permitted uses or special uses applicable in a zoning district shall be allowed pursuant to the terms of UDO Sec. 2.3.8 *Variance Permit*.

Please use the [Riparian Buffer: Modification by Variance Permit application](#) for proposed variances from Sec. 6.1.11 of the UDO.

HARD COPY SUBMITTAL REQUIREMENTS: SUBMIT TO PLANNING DEPARTMENT

- One copy of the Variance Permit Application including a signed Agent Authorization Form and Affidavit of Ownership
- Variance Permit Application fee by one of the following forms of payment:
 - Visa or Master Card (online only);
 - Cash (exact amount only); or
 - Check payable to 'Town of Apex'
- Notification list including property owners of the land subject to the application, all property owners and tenants abutting and located within 500 feet of the land subject to the application, and any neighborhood association that represents citizens within the notification area. This list must be obtained by emailing addressing.team@apexnc.org and will be provided within 5-10 business days of the initial request.
- Envelopes addressed to those on the notification list.
 - Affixed with first class stamps and the following return address:
Town of Apex Planning Department
P.O. Box 250
Apex, NC 27502
- A plot plan or site plan (if applicable) showing a sketch of the requested variance with dimensions labeled.

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ELECTRONIC SUBMITTAL REQUIREMENTS: SUBMIT VIA GEOCIVIX (IDT PLANS) WEBSITE

- One copy of the Variance Permit Application including a signed Agent Authorization Form and Affidavit of Ownership
- A plot plan or site plan (if applicable) showing a sketch of the requested variance with dimensions labeled.
- Notification list including property owners of the land subject to the application, all property owners and tenants abutting and located within 500 feet of the land subject to the application, and any neighborhood association that represents citizens within the notification area. This list must be obtained by emailing addressing.team@apexnc.org and will be provided within 5-10 business days of the initial request.

VARIANCE PERMIT APPLICATION PROCESS SUMMARY:

REVIEW FOR SUFFICIENCY: The Planning Director, or designee, checks application for sufficiency upon submittal. Incomplete applications will be returned to the applicant for revision (typically within the week the application is submitted). Sufficiently complete applications are forwarded to staff for review and comments.

REVISIONS BY STAFF: At the end of the review period, staff comments will be provided to the applicant. Any needed revisions to the application or supporting documents must be resubmitted to staff. The applicant should address all of staff's comments before the public hearing is scheduled.

PUBLIC HEARING NOTIFICATION: Notification of the public hearing will take place by three (3) different methods:

1. A written notice prepared by the Planning Department for all property owners of the land subject to the application; all property owners and tenants abutting and located within 500 feet of the land subject to application; and any neighborhood association that represents citizens within the notification area. This notice will be postmarked not more than 25 days nor less than 10 days prior to the Board of Adjustment meeting;
2. A notice will be published on the Town's website (www.apexnc.org) no less than 10 days but not more than 25 days prior to the public hearing; and
3. A notice will also be posted at the land subject to the application at least 10 days prior to the public hearing.

Town staff cannot provide legal advice to any citizen regarding a particular quasi-judicial hearing. If you have questions, you should consult the services of an attorney.

The following provides an explanation of the issues, standards, and procedures for quasi-judicial public hearings on variances: [Outline of Quasi-Judicial-Procedure for Variance for Audience](#)

QUASI-JUDICIAL PUBLIC HEARING BEFORE THE BOARD OF ADJUSTMENT: The Board of Adjustment will consider the application, relevant support materials, Staff Report, and public testimony given at the public hearing. After the quasi-judicial public hearing the Board of Adjustment will vote to approve, approve with conditions, or deny the variance permit. Four-fifths of the members of the Board of Adjustment must vote for approval in order for a variance permit to be approved.

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Application #: _____
Fee Paid \$ _____

Submittal Date: _____
Check # _____

APPLICANT INFORMATION

Applicant Name(s): _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____ Fax: _____
E-mail Address: _____

OWNER INFORMATION

Owner Name(s): _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____ Fax: _____
E-mail Address: _____

PROPERTY INFORMATION:

Address/Location: _____
Property PIN: _____
Acreage: _____ Zoning: _____
Town Limits: ☐ Inside corporate limits ☐ In ETJ
Other contacts: _____

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Application #: _____ Submittal Date: _____

The owner(s) of the property applying for a Variance Permit are:

1.	_____ Print owner name(s) above	_____ Print address of property
	_____ Signature of owner(s) Date	_____ PIN
2.	_____ Print owner name(s)	_____ Print address of property
	_____ Signature of owner(s) Date	_____ PIN
3.	_____ Print owner name(s)	_____ Print address of property
	_____ Signature of owner(s) Date	_____ PIN
4.	_____ Print owner name(s)	_____ Print address of property
	_____ Signature of owner(s) Date	_____ PIN
5.	_____ Print owner name(s)	_____ Print address of property
	_____ Signature of owner(s) Date	_____ PIN

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Application #: _____

Submittal Date: _____

TO THE APEX BOARD OF ADJUSTMENT:

I, _____, hereby petition the Apex Board of Adjustment for a Variance Permit from the literal provisions of the Unified Development Ordinance (UDO) because, under the interpretation given to me by the Planning Director, I am prohibited from using the parcel of land described in this application in a manner shown by the plot/site plan attached to this form. I request a Variance Permit from the following provisions of the Unified Development Ordinance (cite the UDO section number(s)):

so that the above-mentioned property can be used in a manner indicated by the plot/site plan attached to this form or if the plot/site plan does not adequately reveal the nature of the variance permit, as more fully described herein:

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE PERMIT

The Apex Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance permit. In order to approve an application for a variance permit, the Board of Adjustment shall find the following:

- *Unnecessary Hardship.* Unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of a Variance Permit, no reasonable use can be made of the property.
- *Hardship Results from Peculiar Conditions.* 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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- *Not Result of Action by Applicant.* 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 Permit shall not be regarded as a self-created hardship.
- *Consistency with the Regulation.* The requested variance permit is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved.

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(1) There are unnecessary hardships in the way of carrying out the strict letter of the regulation. The courts have developed three (3) rules to determine whether in a particular situation "unnecessary hardships" exist. State facts and arguments in support of each of the following:

(a) If the applicant complies with the provisions of the Unified Development Ordinance, an unnecessary hardship will result. (It is not sufficient that failure to grant the variance permit simply makes the property less valuable.)

(b) The hardship of which the applicant complains results from unique circumstances specific to the applicant's land. (Note: Hardships suffered by the applicant in common with his neighbors do not justify a variance permit. Also, unique personal or family hardships are irrelevant since a variance permit, if granted, runs with the land.)

(c) The hardship is not the result of the applicant's or property owner's own actions.

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Application #: _____ Submittal Date: _____

(2) The variance permit is consistent with the spirit, purpose, and intent of the regulation.

(3) The granting of the variance permit secures the public safety and welfare and does substantial justice. (State facts and arguments to show that, on balance, if the variance permit is denied, the benefit to the public will be substantially outweighed by the hardship suffered by the applicant.)

Signature of Applicant

Date

Signature of Applicant

Date

AGENT AUTHORIZATION FORM

Application #: _____ Submittal Date: _____

_____ is the owner* of the property for which the attached application is being submitted:

- ☐ Rezoning: For Conditional Zoning and Planned Development rezoning applications, this authorization includes express consent to zoning conditions that are agreed to by the Agent which will apply if the application is approved.
- ☐ Site Plan
- ☐ Subdivision
- ☐ Variance
- ☐ Other: _____

The property address is: _____

The agent for this project is: _____

- ☐ I am the owner of the property and will be acting as my own agent

Agent Name: _____

Address: _____

Telephone Number: _____

E-Mail Address: _____

Signature(s) of Owner(s)*

Type or print name

Date

Type or print name

Date

Attach additional sheets if there are additional owners.

*Owner of record as shown on the latest equalized assessment rolls of Wake County. An option to purchase does not constitute ownership. If ownership has been recently transferred, a copy of the deed must accompany this authorization.

Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this application and all documents related hereto containing an electronic or digitized signature are legally binding in the same manner as are hard copy documents executed by hand signature. The parties hereby consent to use electronic or digitized signatures in accordance with the Town's Electronic Signature Policy and intend to be bound by the application and any related documents. If electronic signatures are used the application shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

AFFIDAVIT OF OWNERSHIP

Application #: _____

Submittal Date: _____

The undersigned, _____ (the "Affiant") first being duly sworn, hereby swears or affirms as follows:

1. Affiant is over eighteen (18) years of age and authorized to make this Affidavit. The Affiant is the sole owner, or is the authorized agent of all owners, of the property located at _____ and legally described in **Exhibit "A"** attached hereto and incorporated herein (the "Property").
2. This Affidavit of Ownership is made for the purpose of filing an application for development approval with the Town of Apex.
3. If Affiant is the owner of the Property, Affiant acquired ownership by deed, dated _____, and recorded in the Wake County Register of Deeds Office on _____, in Book _____ Page _____.
4. If Affiant is the authorized agent of the owner(s) of the Property, Affiant possesses documentation indicating the agency relationship granting the Affiant the authority to apply for development approval on behalf of the owner(s).
5. If Affiant is the owner of the Property, from the time Affiant was deeded the Property on _____, Affiant has claimed sole ownership of the Property. Affiant or Affiant's predecessors in interest have been in sole and undisturbed possession and use of the property during the period of ownership. Since taking possession of the Property on _____, no one has questioned Affiant's ownership or right to possession nor demanded any rents or profits. To Affiant's knowledge, no claim or action has been brought against Affiant (if Affiant is the owner), or against owner(s) (if Affiant is acting as an authorized agent for owner(s)), which questions title or right to possession of the property, nor is any claim or action pending against Affiant or owner(s) in court regarding possession of the Property.

This the _____ day of _____, 20____.

(seal)

Type or print name

STATE OF NORTH CAROLINA

COUNTY OF _____

I, the undersigned, a Notary Public in and for the County of _____, hereby certify that _____, Affiant, personally known to me or known to me by said Affiant's presentation of said Affiant's _____, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing Affidavit.

[NOTARY SEAL]

Notary Public

State of North Carolina

My Commission Expires: _____

AFFIDAVIT OF OWNERSHIP: EXHIBIT A – LEGAL DESCRIPTION

Application #: _____

Submittal Date: _____

Insert legal description below.