

# VARIANCE 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 SUBMISSION:**

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

**VARIANCE FEE:** \$350.00

**PRE-APPLICATION MEETING:** A pre-application meeting with Planning Department staff is required to be scheduled prior to the submittal of a Variance application.

Please contact Senior Planner Sarah Rayfield at 919-249-3339 or [sarah.rayfield@apexnc.org](mailto:sarah.rayfield@apexnc.org) 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 Sarah Rayfield at 919-249-3339 or [sarah.rayfield@apexnc.org](mailto:sarah.rayfield@apexnc.org).

**PURPOSE OF VARIANCE:** Variances are deviations from the dimensional standards in the applicable zoning district when owing 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 this Ordinance 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 variances from the schedule of permitted uses or special uses applicable in a zoning district shall be allowed pursuant to the terms of this Section.

### HARD COPY SUBMITTAL REQUIREMENTS: SUBMIT TO PLANNING DEPARTMENT

- One copy of the variance application
- Variance fee
- Agent authorization form
- A signed affidavit with a certified list of property owners of the land subject to the application, all property owners within 300 feet of the land subject to the application and any neighborhood association that represents citizens within the area.
- A plot plan or site plan (if applicable).
- Envelopes Addressed to Certified List of Property Owners within 300 feet of subject property and neighborhood association.
  - Addresses must be from a current list obtained from the Wake County Tax Assessor's Office
  - Affixed with first class stamps
  - Affixed with the following return address:  
Town of Apex  
Planning Department  
P.O. Box 250  
Apex, NC 27502

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

**PUBLIC HEARING NOTIFICATION:** Notification of the public hearing will take place by three different methods. A written notice prepared by the Planning Department for all property owners of the land subject to the application, all property owners within 300 feet of the land subject to the application and any neighborhood association that represents citizens in the area. This notice will be postmarked not more than 25 days nor less than 14 days prior to the Board of Adjustment meeting. A notice will be published on the Town's website no less than 10 days but not more than 25 days prior to the public hearing. A notice will also be posted at the land subject to the application at least 14 days prior to the public hearing.

**PUBLIC HEARING/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 public hearing the Board of Adjustment will vote to approve, approve with conditions or deny the variance. Four-fifths of the members of the Board of Adjustment must vote for approval in order for a variance to be approved.

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Application #: \_\_\_\_\_ Submittal Date: \_\_\_\_\_  
Fee Paid \$ \_\_\_\_\_ Check # \_\_\_\_\_

### APPLICANT INFORMATION

Applicant Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

### OWNER INFORMATION

Owner Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

### PROPERTY INFORMATION:

Address/Location: \_\_\_\_\_  
Property PIN: \_\_\_\_\_  
Acreage: \_\_\_\_\_ Zoning: \_\_\_\_\_  
Town Limits:  Inside corporate limits  In ETJ  Outside corporate limits and ETJ  
Other contacts: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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### The owners of the property applying for a variance 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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Submittal Date: \_\_\_\_\_

## TO THE APEX BOARD OF ADJUSTMENT:

I, \_\_\_\_\_ hereby petition the Apex Board of Adjustment for a VARIANCE 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 from the following provisions of the Unified Development Ordinance (cite the paragraph numbers):

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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, as more fully described herein:

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## FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE

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

- *Unnecessary Hardship.* Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of a variance, 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.
- *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 shall not be regarded as a self-created hardship.
- *Consistency with the UDO.* 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.

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(1) There are unnecessary hardships in the way of carrying out the strict letter of the ordinance. 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 simply makes the property less valuable.)

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(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. Also, unique personal or family hardships are irrelevant since a variance, if granted, runs with the land.)

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

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

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

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\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_  
Date