



Appeal Review Process

Contact Information

Currituck County
Planning and Community Development
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Step 1: Application Submittal and Acceptance

The applicant must submit a complete application packet within thirty days of the date of the interpretation or decision being appealed, or within ten days of the date of the notice of violation being appealed. A complete application packet consists of the following:

- Complete Currituck County Appeal Application.
- Application Fee (\$150).

On receiving an application, staff shall, determine whether the application is complete or incomplete. A complete application contains all the information and materials listed above, and is in sufficient detail to evaluate and prepare a staff report. If an application is determined to be incomplete, the applicant may correct the deficiencies and resubmit the application for completeness determination within the thirty or ten day appeal window.

Step 2: Staff Review and Action

After accepting the appeal application, staff shall review it and prepare a written report. Staff shall transmit the appeal and the record of material considered by the decision-maker in making the decision or interpretation, including but not limited to the application and support materials, staff report, other plans, documents, reports, and studies considered in making the decision, and any minutes, transcripts, or record of the meetings held to consider and make the decision. These materials, plus the Land Use Plan, Unified Development Ordinance (UDO), and any other relevant adopted plan, shall constitute the record of the appeal.

Appeal

Step 3: Public Hearing Scheduling and Public Notification

Staff shall ensure the public hearing is scheduled for a regularly scheduled Board of Adjustment meeting or a meeting specially called for by the Board of Adjustment. The required public hearing with the Board of Adjustment shall be scheduled so there is sufficient time for a staff report to be prepared and for the public notification requirements to be satisfied under state law.

The application shall meet the following public notification requirements:

- **Published Notice**
Staff shall publish a notice of the hearing once a week for two successive calendar weeks in a newspaper having general circulation in the county. The first time notice is published, it shall not be less than 10 days nor more than 25 days before the date fixed for the hearing.

- **Mailed Notice***
Staff shall be responsible for preparing and mailing a written notice between 10 and 25 days before the public hearing. Notice shall be mailed to:
 - All owners of the land subject to the application;
 - The applicant, if different from the land owner;
 - All owners of land within 200 feet of the property lines of land subject to the application (including owners of land located outside the county) whose address is known by reference to the latest ad valorem tax records; and
 - Commanders of military bases located within five miles of the subject application when the development proposal affects the type of uses allowed.
- **Posted Notice***
At least 10 days before the public hearing, posted notice shall be made by staff. A sign shall be placed in a conspicuous location as to be clearly visible to the traveled portion of the respective street. Where the land subject to the notice does not have frontage on a public street, the sign shall be erected on the nearest street right-of-way with an attached notation generally indicating the direction and distance to the land subject to the application.

*Mailed and Posted notification are required only in cases where the appeal pertains to a specific parcel of land.

Step 4: Public Hearing Procedures, and Decision-Making Body Review and Decision

Staff will present the application and staff report to the Board of Adjustment. The applicant must attend the public hearing to present evidence and answer any questions the board or public may have about the application. The Board of Adjustment shall conduct a quasi-judicial hearing that is subject to procedural rules set forth by the courts including having all persons who intend to present evidence to the board be sworn. Quasi-judicial public hearings are subject to the following:

- **Opportunity to Present Testimony and Evidence**
Any affected party shall be afforded a reasonable opportunity to present testimony and evidence in support of or in opposition to the application, and to ask questions of the applicant and the applicant's representatives and county staff and county staff's representatives. At the discretion of the person chairing the body conducting the public hearing, an affected party may be granted an opportunity to ask questions of any other member of the public who has testified at the hearing.
- **Not Bound by Rules of Evidence**
Except as otherwise provided in the North Carolina General Statutes, the board is not bound by the rules of evidence, or limited to consideration of evidence that is admissible in a court of law. The board may consider all testimony and evidence it deems competent and material to the application under consideration.
- **Cross Examination**
Any inquiry under cross-examination shall be limited to matters raised in the direct examination of the witness. No re-direct or re-cross shall be allowed unless requested by the applicant, and affected party, or the county – who shall state the desired area of inquiry – and the request is approved by the person chairing the body conducting the hearing. If re-direct or re-cross is allowed, it shall be limited to questions of the witness on issues raised in the cross-examination.
- **Ex Parte Communication**
Ex parte communication between an applicant or an affected party and a member of the board reviewing or making a decision on the application is prohibited, and must be disclosed during the public hearing, if it concurs.

The Board of Adjustment shall decide on the application base solely on the record of the appeal, as supplemented by arguments presented at the public hearing. The decision shall be one of the following:

- Affirmation of the decision or interpretation (in whole or in part);
- Modification of the decision or interpretation (in whole or in part); or
- Reversal of the decision or interpretation (in whole or in part).

A majority vote by the Board of Adjustment members present shall decide the application.

In deciding on the appeal application, the board is limited to the following determinations, which shall be based on clear and substantial evidence in the record:

- The decision-maker did not make an error or correctly applied the standards of the UDO in making the decision or interpretation;
- The decision-maker made an error in determining whether a standard was met. The record must indicate that an error in judgment occurred or facts, plans, or regulations were misread in determining whether the particular standard was or was not met;
- The decision-maker made the decision based on a standard not contained in the UDO or other appropriate county ordinances, regulations, or state law, or that a standard more strict or broad than the standard established in the UDO was applied; or
- The decision-maker made an error in applying a standard or measuring a standard.

Where conflicting evidence exists, the appeal is limited to determining what evidence or testimony bears the greatest credibility in terms of documentation and qualifications of those making the determination.

The Board of Adjustment shall not hear any evidence or make any decision based on hardships or special conditions. Such matters may only be considered in the context of an application for a variance or use permit.

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Appeal Application

OFFICIAL USE ONLY:

Case Number: _____
Date Filed: _____
Gate Keeper: _____
Amount Paid: _____

Contact Information

APPLICANT:

Name: _____

Address: _____

Telephone: _____

E-Mail Address: _____

PROPERTY OWNER:

Name: _____

Address: _____

Telephone: _____

E-Mail Address: _____

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: _____

Property Information

Physical Street Address: _____

Location: _____

Parcel Identification Number(s): _____

Statement of Error, or Improper Decision or Interpretation

I wish to appeal a: Decision or Interpretation Notice of Violation

The determination being dated ____/____/____.

Grounds for appeal

State the facts you are prepared to prove to the Board of Adjustment that should lead the board to conclude that the decision of the administrator was made in error.

Please include all related support materials with the application.

I, the undersigned, do certify that all of the information presented in this application is accurate to the best of my knowledge, information, and belief. All information submitted and required as part of this application process shall become public record.

Appellant/Applicant

Date

Appeal Submittal Checklist

Staff will use the following checklist to determine the completeness of your application. Only complete applications will be accepted.

Appeal Submittal Checklist

Date Received: _____

BOA Date: _____

Project Name: _____

Applicant/Property Owner: _____

Appeal Submittal Checklist		
1	Complete Appeal application	
2	Application fee (\$150)	
3	All related support materials/evidence.	
4	10 hard copies of ALL documents	
5	1 PDF digital copy of all plans AND documents (ex. Compact Disk – e-mail not acceptable)	

For Staff Only

Pre-application Conference (optional)

Pre-application Conference was held on _____ and the following people were present:

Comments

