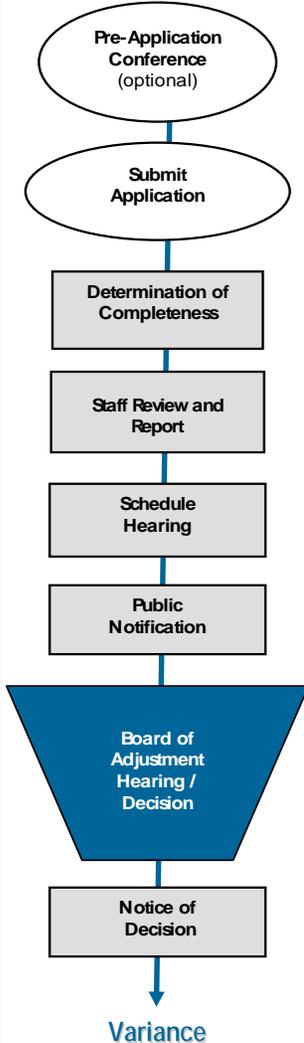




Variance Review Process



Contact Information

Currituck County
Planning and Community Development
153 Courthouse Road, Suite 110
Currituck, NC 27929

Phone: 252.232.3055
Fax: 252.232.3026

Website: <http://www.co.currituck.nc.us/planning-community-development.cfm>

Step 1: Application Submittal and Acceptance

The applicant must submit a complete application packet on or before the application submittal date. A complete application packet consists of the following:

- Completed Currituck County Variance Application.
- Application Fee (\$150).
- Site plan drawn to scale. The plan shall include the items listed in the variance design standards checklist.
- Any other documentation deemed necessary by the administrator to determine compliance with variance review standards.
- Number of Copies Submitted:
 - 10 Copy of the site plan.
 - 10 Copy of ALL documents.
 - 1 PDF digital copy (ex. Compact Disk – e-mail not acceptable) of all plans AND documents.

On receiving an application, staff shall, within ten business days, 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 determine whether it complies with appropriate review standards. If an application is determined to be incomplete, the applicant may correct the deficiencies and resubmit the application for completeness determination. Failure to resubmit a complete application within 45 calendar days after being determined incomplete will result in the application being considered withdrawn.

Step 2: Staff Review and Action

After accepting the variance application, staff shall review it, relevant support material, and any comments or recommendations from other staff and review agencies to which the application was referred. After review, staff will prepare a written report including a recommendation on the application. A copy of the staff report and recommendation will be provided to the applicant in advance of the Board of Adjustment meeting. At the discretion of the administrator, non-residential requests for a variance may be reviewed by the Technical Review Committee one month prior to the Board of Adjustment meeting.

Step 3: Public Hearing Scheduling and Public Notification

Staff shall ensure that the public hearing on it 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:

○ **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.

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 approve the variance application, with a four-fifths (4/5) vote, on a finding the applicant demonstrates all of the following standards are met:

- The alleged hardship is suffered by the applicant as a result of the application of the Ordinance, and the same hardship is not shared by neighbors or the general public;
- The hardship relates to the applicant's land, such as location, size, or topography, rather than personal circumstances;
- The hardship is unique, or nearly so, rather than one shared by many surrounding properties;
- The hardship is not the result of the applicant's own actions; and
- The variance will not authorize the initiation of a nonconforming use of land.



Variance Application

OFFICIAL USE ONLY:

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

Contact Information

APPLICANT:

Name: _____

Address: _____

Telephone: _____

Fax Number: _____

E-Mail Address: _____

PROPERTY OWNER:

Name: _____

Address: _____

Telephone: _____

Fax Number: _____

E-Mail Address: _____

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: _____

Property Information

Physical Street Address: _____

Location: _____

Parcel Identification Number(s): _____

Request

I, _____, hereby request a variance from Section(s) _____ of the Unified Development Ordinance.

Provide a narrative of why the variance is needed and what circumstances have lead to the need for a variance:

Relevant Factors for Issuance of a Variance

A variance may be granted by the Board of Adjustment if it concludes that strict enforcement of the ordinance would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done. It may reach these conclusions if it makes detailed written findings that:

- A. The alleged hardship is suffered by the applicant as a result of the application of the Ordinance. *(Variances can not be granted if the hardship is the result of restrictions other than those of the ordinance; restrictive covenants are an example).*

- B. The hardship relates to the applicant's land, such as location, size, or topography, rather than personal circumstances. *(Hardships suffered by the applicant should be the result of factors directly related the applicant's land and not ordinance requirements).*

- C. The hardship is unique, or nearly so, rather than one shared by many surrounding properties. *(Hardships suffered by the applicant in common with neighbors does not justify a variance, the proper remedy is not a variance, but rather an amendment of the ordinance. Courts have held that a board's granting a variance based on such factors amounts to an attempted usurpation of legislative power).*

- D. The hardship is not the result of the applicant's own actions. *(Where a property owner has either knowingly or unknowingly violated the ordinance by erecting a forbidden structure, he/she cannot cite expenses as a hardship, otherwise no one would ever comply with the ordinance. Similarly, when a person buys property and certain restrictions exist, he/she cannot be said to suffer hardship if those restrictions are enforced; such hardship would be self imposed).*

- E. The variance will not authorize the initiation of a nonconforming use of land. *(State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted will not create a new nonconformity).*

Variance Design Standards Checklist

The table below depicts the design standards of the site plan for a variance application. Please make sure to include all applicable listed items to ensure all appropriate standards are reviewed.

Variance

Site Plan Design Standards Checklist

Date Received: _____

Project Name: _____

Applicant/Property Owner: _____

Site Plan Design Standards Checklist		
General		
1	Property owner name, address, phone number, and e-mail address.	
2	Site address and parcel identification number.	
3	North arrow and scale to be 1" = 100' or larger.	
4	Existing zoning classification of the property.	
5	Scaled drawing showing property lines, setbacks, existing and proposed development, and proposed dimensional modification. Additional site features (i.e. vehicular use areas, utilities, infrastructure, surface water) may be required by the administrator if applicable.	
6	Approximate Flood Zone line and Base Flood Elevation as delineated on the "Flood Insurance Rate Maps/Study Currituck County."	
7	Approximate location of all designated Areas of Environmental Concern or other such areas which are environmentally sensitive on the property, such as Maritime Forest, CAMA, 404, or 401 wetlands as defined by the appropriate agency.	
OR Architectural Elevations (Height Modification)		
8	Architectural drawings and/or sketches illustrating the design, character, and height of the proposed building(s).	
Other		
9	Any other documentation deemed necessary by the administrator to determine compliance with variance review standards.	

Variance Submittal Checklist

Staff will use the following checklist to determine the completeness of your application within ten business days of submittal. Please make sure all of the listed items are included. Staff shall not process an application for further review until it is determined to be complete.

Variance Submittal Checklist

Date Received: _____

Project Name: _____

Applicant/Property Owner: _____

Variance Submittal Checklist		
1	Complete Variance application	
2	Application fee (\$150)	
3	Site Plan	
4	Other documentation deemed necessary	
6	10 copies of plans	
7	10 hard copies of ALL documents	
8	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

