

# The Board of Adjustments and Variances

( The following is extracted exactly as written from “ MUNICIPAL GOVERNMENT IN NORTH CAROLINA” second edition 1995 by Wicker and Lawrence, published by The Institute of Government, UNC at Chapel Hill, pages 566 and 567)

*Even though zoning regulations may be burdensome on individual property owners, the board of adjustment's authority to grant variances is limited under the law....To issue a variance , the board must conclude that all of the following are true:*

- 1. If the property owner complies with the provisions of the ordinance, he or she will be unable to enjoy a reasonable return from the property or to make a reasonable use of it.*
- 2. The hardship affecting the property results from the application of the ordinance (not from market conditions or the existence of private restrictive covenants).*
- 3. The hardship is suffered by the applicant's property. (The applicants personal, social, or economic circumstances are irrelevant).*
- 4. The hardship does not result from the applicant's own actions.*
- 5. The hardship is peculiar to the applicant's property and does not affect other properties in the same neighborhood. (If a number of properties suffer from the same problem, the council (board of alderman) should consider amending the zoning ordinance.*
- 6. The variance is in harmony with the general purpose and intent of the zoning ordinance and preserves its spirit. Use Variances, which purport to authorize uses of land not otherwise authorized in the district, have been held by North Carolina courts not to be in harmony with the purpose and intent of a zoning ordinance and not to preserve its spirit.*
- 7. By granting the variance, the board will ensure the public safety and welfare and do substantial justice.*

03/15/2004

VARIANCE APPLICATION FORM

Application No: \_\_\_\_\_

Date: \_\_\_\_\_

Permit Fee: \_\_\_\_\_

Receipt#: \_\_\_\_\_

TOWN OF NORTH TOPSAIL BEACH

GENERAL APPLICATION FORM

Permit or Relief Requested: \_\_\_\_\_ Appeal \_\_\_\_\_ Variance \_\_\_\_\_

Applicant: \_\_\_\_\_ Owner \_\_\_\_\_

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

\_\_\_\_\_

Telephone: \_\_\_\_\_ Telephone: \_\_\_\_\_

Legal relationship of applicant to property owner: \_\_\_\_\_

Purpose of permit: \_\_\_\_\_

Property location: \_\_\_\_\_

Street address

Tax map \_\_\_\_\_ Block \_\_\_\_\_ Lot \_\_\_\_\_

Lot size: \_\_\_\_\_ square feet \_\_\_\_\_ Zoning District: \_\_\_\_\_

No. of buildings to remain: \_\_\_\_\_ Gross floor area to remain; \_\_\_\_\_

No. of buildings proposed: \_\_\_\_\_ Gross floor area of proposed buildings \_\_\_\_\_

Total square footage of land to be disturbed: \_\_\_\_\_ square feet.

Estimated cost of project \$ \_\_\_\_\_

To illustrate appeal or request for variance, attach plot plan.

\_\_\_\_\_  
Signature of applicant

APPLICATION NO# \_\_\_\_\_

TOWN OF NORTH TOPSAIL BEACH

APPLICATION FOR A VARIANCE

Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_

TO THE NORTH TOPSAIL BEACH BOARD OF ADJUSTMENT:

I, \_\_\_\_\_, hereby petition the Board of Adjustment for a VARIANCE from the literal provisions of the \_\_\_\_\_ Ordinance because, under the interpretation given to me by the Zoning Enforcement Officer, I am prohibited from using the parcel of land described in the attached form (Variance Application Form) in a manner shown by the attached documentation to that form. I request a variance from the following provisions of the ordinance (cite paragraph numbers): \_\_\_\_\_ so that the above-mentioned property can be used in a manner indicated by the documentation attached to the Variance Application form or, if the documentation does not adequately reveal the nature of the variance, as more fully described herein: \_\_\_\_\_

(Attached additional pages if not enough space)

**Factors Relevant to the Issuance of a Variance**

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act, the Board is required to reach three conclusions before it may issue a variance: (a) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance; (b) that the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit; and (c) that in granting the variance, the public safety and welfare have been assured and substantial justice has been done. In the spaces provided below, indicate the *facts* that you intend to show and the *arguments* that you intend to make to convince the Board that it can properly reach these three required conclusion.

- a. **There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.** The courts have developed three 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:
  - (1) *If he complies with the provisions of the ordinance, the property owner can secure no reasonable return from, or make no reasonable use of, his property.* (It is not sufficient that failure to grant the variance simply makes the property less valuable.) (Attach additional pages if not enough room to explain)

\_\_\_\_\_

(2) *The hardship of which the applicant complains results from unique circumstances related 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). \_\_\_\_\_

(3) *The hardship is not the result of the applicant's own actions.* \_\_\_\_\_

(b) **The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.** (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 substantially detract from the character of the neighborhood.) \_\_\_\_\_

(c) **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 harm suffered by the applicant.) \_\_\_\_\_

I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information, and belief.

\_\_\_\_\_  
Signature of Applicant

**TOWN OF NORTH TOPSAIL BEACH  
STATE OF NORTH CAROLINA**

**AUTHORITY FOR APPOINTMENT OF AGENT**

The undersigned owner \_\_\_\_\_, does hereby appoint \_\_\_\_\_, as his/her exclusive agent for the purpose of making application to the North Topsail Beach Board of Adjustment for a variance or for an appeal to the Board of Adjustment as provided for in the General Statutes of the State of North Carolina.

The owner does hereby covenant and agree with North Topsail Beach that said agent has the authority to do the following acts for and on behalf of the owner:

1. To submit a proper application and the required supplemental materials.
2. To appear at public meetings to give testimony and make commitments on behalf of the owner.
3. To accept conditions or recommendations of the Board of Adjustment regarding the owner's property.
4. To act in the owner's behalf without limitations regarding any and all things directly or indirectly connected with or arising out of any application for a variance from the Town of North Topsail Beach or any appeal to the Board of Adjustment.

This agency agreement shall continue in effect until final disposition of the application submitted in conjunction with this appointment.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Agent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Owner