

**APPLICATION FOR A VARIANCE HEARING  
CITY OF ALBEMARLE**

**INSTRUCTIONS FOR FILING AN APPLICATION FOR A VARIANCE**

This Application must be filed at least fifteen (15) days prior to the next regularly scheduled meeting of the Albemarle Planning and Zoning Board. Return Application to the Albemarle Planning and Development Services Department, 144 North Second Street, Albemarle, NC 28001. You will be notified of the time and location of the meeting. **A variance fee of \$250 per case is required to be filed when submitting the application form. This fee is non-refundable. Please make check payable to the City of Albemarle.**

1. If title to the property is not in the name of the petitioner, include a notarized letter from the owner signifying his/her approval.
2. Please type or print complete names and addresses (including zip code and tax record number) of owners of adjoining properties, and properties directly across the street. Staff may assist in this step.
3. Submit a plot plan (not to exceed 8 ½" x 14") or draw a site plan, which describes the property and variance request. Give all appropriate dimensions, building/structures and their distance to property lines, right-of-ways, etc.
4. Application must be completed and dated for acceptance.

**FOR YOUR INFORMATION**

Upon filing a variance with the Albemarle Planning and Zoning Board, the following rules and procedures shall apply until the Board has ruled on the variance:

- a. No further construction work shall be done except in accordance with the provisions of the Zoning Ordinance.
- b. All legal proceedings to enforce compliance will be held in abeyance.
- c. All written or physical evidence (plans, maps, pictures, letters, etc.) presented before the Board becomes a part of the record and must be turned over to the Board.
- d. All testimony before the Board will be given under oath.
- e. Applicants may be represented by counsel at their own expense, if they choose to do so.

f. No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided however, that members may receive and/or seek information pertaining to the case from Staff members of the Planning Department prior to the hearing.

g. You have the right to appear and present your case before the Board.

**CHECK LIST OF ITEMS TO BE INCLUDED ON/WITH APPLICATION**

- Have you been specific by stating the Sections of the Zoning Ordinance related to your variance request?
- Have you described your variance request by giving the amount of dimensions for each variance from the code requirements?
- Have you answered all questions listed under the heading "FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE?"
- Is your application signed and dated by appropriate parties?
- Have you given complete names, addresses and zip code of adjoining property owners? (Include persons on both sides of, behind and directly across the street from the property in question.)
- Have you listed the tax record number for each adjacent property owner, as described in the above question?
- Have you included a tax map with the property in question highlighted?
- Have you included a plot plan or a scaled drawing showing the exact dimensions of the variance you are requesting?
- If you are not the owner of the property, have you included a notarized letter from the property owner giving permission to appear before the Board?

**IMPORTANT:**

**YOUR VARIANCE REQUEST MAY NOT BE PLACED ON THE AGENDA IF COMPLETE INFORMATION AND REQUESTED DOCUMENTS ARE NOT INCLUDED.**

**PLEASE READ THE ATTACHED FORM TITLED "HEARING PROCEEDINGS." IT WILL GIVE YOU INFORMATION AS TO HOW THE MEETING IS CONDUCTED, AND SOME SUGGESTIONS ON PRESENTING YOUR CASE.**

**CITY OF ALBEMARLE**  
**STATE OF NORTH CAROLINA**

**CASE NO** \_\_\_\_\_  
**MEETING DATE** \_\_\_\_\_

**APPLICATION FOR A VARIANCE**

Variance requested on property at: \_\_\_\_\_  
Property Zoned: \_\_\_\_\_ Tax Record No: \_\_\_\_\_  
Property Owner: \_\_\_\_\_  
Date Existing Structure Erected: \_\_\_\_\_

**TO THE CITY OF ALBEMARLE PLANNING AND ZONING BOARD:**

I, \_\_\_\_\_, hereby petition the Board for a VARIANCE from the literal provisions of the City of Albemarle Zoning Ordinance because, under the interpretation given to me by the Zoning Enforcement Officer, I am prohibited from using the parcel of land described above in a manner shown by the Plot Plan attached to this form. I request a variance from the following provisions of the Zoning Ordinance (cite Section and numbers). Describe the variance being requested on the above referenced property

**FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE:**

The Board does not have unlimited discretion in deciding whether to grant a variance. Under the State Enabling Act, the Board is required to reach three (3) major conclusions as a prerequisite to the issuance of 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 the granting of 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 (3) required conclusions. The burden of proof to grant a variance is the responsibility of the applicant and must be based on Findings of Fact that indicate a hardship to the land that is caused by the Ordinance. A variance can not be granted to permit a use of the land, building, or structure which is not permitted by right or by special exception in the district involved. If there is any question or doubt of a hardship, the Board may ask the applicant for justification.

The Board uses four (4) rules to determine whether in a particular situation “practical difficulties or unnecessary hardships” exist. Please state facts, evidence, and arguments in support of each of the following required Findings of Fact:

**(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.**

**(2) 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.**

**(3) 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**

**(4) 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.**

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

\_\_\_\_\_  
Represented by (Signature)

\_\_\_\_\_  
Printed Name of Applicant

\_\_\_\_\_  
Printed Name of Above

\_\_\_\_\_  
COMPLETE ADDRESS

\_\_\_\_\_  
COMPLETE ADDRESS

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Telephone Number

## HEARING PROCEEDINGS

### The order of each case will be as follows:

- a. All parties who plan to give testimony, pro or con, are to be sworn in.
- b. The Zoning Enforcement Officer will explain why the case is before the Board by providing a preliminary statement of the case.
- c. The Board may question the staff member.
- d. The applicant may question the staff member at this time, or wait until their time to be heard.
- e. The applicant will have the opportunity to present their arguments in support of the application.
- f. The Board may question the applicant.
- g. The staff member may question the applicant at this time, or wait until the rebuttal time.
- h. Persons opposed to granting the application shall present the argument against the application.
- i. The applicant may present witnesses in favor of granting the application. They will be subject to questioning.
- j. The staff, and then the applicant, will be given an opportunity for rebuttal.
- k. The Chairman will summarize the evidence which has been presented, giving the parties opportunity to make objections and corrections. The Board may view the premises before arriving at a decision and may request additional information from the applicant before rendering a decision.

After the hearing of all cases, the Board will review each case and render a decision. This is usually done in immediately following the hearing(s). However, the Board may elect to take up to thirty-one (31) days to render a decision.

The purpose of a public hearing for a quasi-judicial decision is to gather quality evidence (i.e. evidentiary hearing). The applicant must show/document (provide sufficient evidence) that the project meets the four findings of fact. Quasi-judicial decisions are similar to court decisions. The Board must base its decision on factual evidence. **Applicant bears the burden of providing sufficient evidence.** Evidence has to be competent (i.e. trustworthy and reliable this may include first-hand knowledge, expert analysis, documents, photos, etc.), material (i.e. related to a standard), and substantial (i.e. relevant and something a reasonable mind would regard as sufficient to support a specific conclusion). When the issues are technical, such as whether or not a proposal will create a traffic problem, an expert witness may be the only qualified person who can provide factual information that is admissible. Technical reports from experts are permitted when the author cannot attend. Examples of what is not evidence are mere speculation, hearsay, vague assertions or unsubstantiated fears/unsupported personal opinion. Lay witness (unsupported personal opinion) cannot be relied on for: affect on property values; traffic effects/problems and; other matters where only expert testimony would generally be relied upon. Factual Evidence must support each finding. **The burden of providing sufficient evidence is on the applicant.**

## **REQUEST FOR ASSISTANCE IN MOVING HEARINGS ALONG EFFICIENTLY**

It is extremely important to try to proceed as efficiently as possible with the hearing of each case. Based on the past experience of the Board, it is respectfully requested, if you plan to speak before the Board, to try to help the Board by keeping in mind the following suggestions:

1. **Please try to be brief.** The Board will have received the application about a particular case in their agenda packets. Most importantly, the Board will ask the questions that the Board finds necessary in order to understand the issue and to arrive at its decision.

2. **Please try to avoid any repetitious comments.** Repetitious testimony is one of the most time-consuming problems the Board has experienced.

3. **Please try to focus on the legal standards and issues in the Zoning Ordinance.** Another common problem is for people to begin to address issues that are particularly involved in the Zoning Ordinance standards.

4. **The chairman, on behalf of the Board and for the people waiting to be heard, attempts to move the hearing along as efficiently as possible.** That, of course, is an important function of the chairman.

Your cooperation in seeking to conduct these hearings as efficiently as possible is appreciated by everyone.

Thank You.