

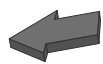
## WHAT IS THE BOARD OF ADJUSTMENTS?

The Board of Adjustment is a “quasi-judicial” board consisting of representatives appointed equally from citizens inside the town limits and the ETJ, which includes one mile outside of the city limits by the Town Board of Fuquay-Varina and the Wake County Board of Commissioners. There are six Board members and two alternates. The term “quasi-judicial” is used because the Board’s power is above that of the code enforcement officers, but below that of the courts. The Board exists because it is the most effective method of maintaining a zoning ordinance that meets the needs of the community *and* addresses hardship in individual cases. The Board serves to interpret the town ordinances and policies for unique situations or special cases. If the Board did not exist, each of these individual cases could go before a court of law as a suit or before the legislative body as a request for a change to the town ordinance. These options are expensive and time consuming. The Board of Adjustment provides the Town and its citizens a process of dealing with exceptions without legal action or without changes to the zoning ordinance.

## WHAT CAN THE BOARD DO?

The Board has the power to decide:

- Variances;
- Special Exceptions;
- Appeals.



**SEE BACK  
PANEL FOR  
DEFINITIONS**

Property owners who feel that practical or unnecessary hardships exist on their property by or because of the zoning ordinance may petition the Board. An approving vote by five of six members is necessary to approve a petition.

## WHAT ARE THE STEPS FOR PETITIONING THE BOARD OF ADJUSTMENTS?

1. Determine the current zoning classification on the

property, see the Official Zoning Map.

2. Determine the uses allowed and standards required for the current zone, (see the Zoning Ordinance of the Town of Fuquay-Varina).
3. For a variance, decide if you believe a hardship exists on your property by or because of the zoning ordinance. For a special exception, check the list of uses in a particular zoning district to see if a special exception hearing is needed.
4. The next recommended step is to schedule a meeting with the Planning Department. This optional meeting with the Planning Staff will outline the aspects of your petition, discuss the hardships, and give you a better idea of how to proceed.
5. Request a Board of Adjustment Petition Application and attachments, if applicable, from the Planning Department.
6. Return the completed application and application fee. Please make sure that all requested information is provided.

Before filing, each petitioner has the option to meet with the Planning Department and discuss the details of the proposed petition. When the petition is filed a \$350.00 fee is charged to cover the cost of advertisement and administration. After the petition is checked for completeness, a public hearing with the Board of Adjustment is scheduled based upon a pre-arranged schedule. Board of Adjustment Schedules are available from the Planning Department. The Board of Adjustment usually meets on the second Monday of each month.

## WHAT CAN THE BOARD OF ADJUSTMENT DECIDE?

The Board’s decision making process is like that of a court of law. It will hear the evidence that is presented from both opponents and proponents, and then issue a decision. The Board can decide to approve the petition, deny the petition, or approve the petition with conditions. If the petition is approved, the conflict with the ordinance is allowed. If the petition is denied, the ordinance is enforced as it

exists. If conditions are applied to the petition, the conflict is allowed only if certain “reasonable” requirements outlined by the Board are met. Whether a requirement is reasonable or not is determined by the courts. If a condition is found to be invalid by the courts, the petition becomes invalid, and the non-conforming use is not permitted.

## WHAT IF MY PETITION IS APPROVED?

If a petition is approved, property owners are allowed to use the property based on the Board’s approval. All conditions included must be met. If the applicant does not obtain a building permit or certificate of occupancy within **six months** of the Board’s decision, approval will expire, and the petition must be resubmitted.

## WHAT IF MY PETITION IS DENIED?

Petitions that are denied by the Board must abide by the current ordinance. Applicants can accept the decision, appeal the decision to Superior Court within 30 days of the Board’s decision, or explore methods of changing Town ordinances.

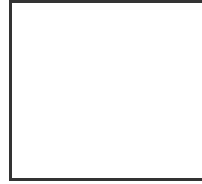
## PETITION CHECKLIST

- Completed petition form;
- Legal metes and bounds description of property.
- Name, address, and property information for all adjoining property owners including across the street;
- A site plan, which shall include: (*special exception and variance only*);
  - All property lines with dimensions, north arrow, and scale.
  - Adjoining street names and right of ways.
  - All structures parking, landscaping, access (existing and proposed).
  - The present use of the land and adjacent land uses.
  - Zoning classification of all adjoining properties.
  - County Property Identification Number (PIN).
- Completed Finding of Facts Sheet. (*for Variance only; optional; available from the Planning Dept*);
- Any other reasonable or appropriate information.



## DEFINITIONS

*Variances:* A variance is a permit, which the Board *may* grant in certain situations, that enables a property owner to make use of the property in some way that conflicts with the literal provisions of the zoning ordinance. A variance shall not be granted unless and until the Board finds:



1. That special conditions exist which are peculiar to the property involved and which are not applicable to others properties in the same district.
2. That the literal provisions of the zoning ordinance would deprive the applicant of rights commonly enjoyed by others in the same district under the terms of the ordinance.
3. That the special conditions do not result from the actions of the applicant.
4. That granting the variance will not confer on the applicant any special privilege denied to others in the same district.

**Special Exceptions:** A Special Exception is a permit that the Zoning Ordinance authorizes to be granted in particular zoning classifications under stated conditions. Each zoning classification has a list of uses that can be constructed and a list of uses that *may* be allowed to be constructed. (See the Zoning Ordinance for more details.) The Board of Adjustment is given the authority to determine if one or more of these special exceptions will be permitted on a specific piece of property. The Board will make its decision by comparing the specified criteria in the zoning ordinance with the factual evidence of the case. Under no circumstances can the Board grant a special exception for a use not specifically listed in a zoning district.

**Appeals:** The Board is given the responsibility of correcting any mistakes or abuses of discretion made by the code enforcement officers. In this process, it is important to note that the Board does *not* have the power to change the ordinance and is limited to interpretation of the ordinance. Its decisions are based on what the Board believes to be the actual meaning and intent of the ordinance.

TOWN OF FUQUAY-VARINA  
Planning Department  
401 Old Honeycutt Rd.  
Fuquay-Varina, NC 27526  
(919) 552-1429



# The Board of Adjustment



## Variances, Special Exceptions and Appeals

Additional information on Town Policies is available on the Internet at: <http://fuquay-varina.org>



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Planning Department  
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