

APPLICATION FOR SPECIAL USE PERMIT

THE PROCESS:

1. Petitioner shall request a mandatory pre-submittal meeting with the Planning Department to discuss the request and the Town's requirements prior to application submittal.
2. Application and all required materials (see checklist) must be submitted by 12:00 PM on the Board of Adjustment submittal deadline. Incomplete application packages or inaccurate information will delay or prevent processing and review.
3. Planning Staff will review submitted application for sufficiency. Submittal of incomplete or inaccurate information will delay processing of application. Completed applications are sent forward for review.
4. The Board of Adjustment holds an evidentiary hearing during a regularly scheduled meeting, on the application and votes on whether to approve or deny the application.
5. All petitioners/applicants must attend the Board of Adjustment evidentiary hearing and make the case for their request. Special Use permits are quasi-judicial proceedings and Town Staff does not recommend whether to approve or deny the application.

SUBMITTAL CHECKLIST:

- Submit one (1) completed Application for Special Use Permit with original signatures, completed in ink (no copies or faxes)
- \$400 Special Use Permit Fee
- Two (2) scaled plat maps, sized 11" x 17", of the proposal with the following information at a minimum:
 - All property lines with dimensions
 - Adjoining streets with right-of-way dimensions
 - North arrow, scale
 - Existing zoning district
 - Location and use of all existing structures, parking, landscaping, buffers, easements, and street access
 - Existing zoning districts of all abutting properties including those located across streets
 - Wake County tax map and parcel number of the land petitioned
- Written legal description of the metes & bounds zoning change area
- Copy of deed book and page numbers verifying current property owner(s)
- Digital copies of all required submitted materials

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PETITIONER INFORMATION:

Property Owner Name: _____
Address: _____
City: _____ State: _____ ZIP: _____
Email Address: _____ Phone: _____
Wake County PIN: _____ Zoning: _____

Petitioner Name: _____
Address: _____
City: _____ State: _____ ZIP: _____
Email Address: _____ Phone: _____
Wake County PIN: _____ Zoning: _____

Contact Person Name: _____
Address: _____
City: _____ State: _____ ZIP: _____
Email Address: _____ Phone: _____
Wake County PIN: _____ Zoning: _____

PROPERTY INFORMATION:

Address: _____
City: _____ State: _____ ZIP: _____
Email Address: _____ Phone: _____
Wake County PIN: _____ Zoning: _____
Present Use of The Property: _____
Total Acreage: _____
Land Use Classification: _____
Name of Public Street(S) / Thoroughfare(S) The Property Fronts or Has Access: _____

Existing/Proposed Land Uses on Adjoining Properties:
North: _____
South: _____
East: _____
West: _____

SPECIAL USE PERMIT REQUEST:

State the applicable Land Development Ordinance Section and/or provide a description of the Special Use Permit request: *(Attach Additional Sheets If Necessary)*

Was the property rezoned for the proposed use? Yes No

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REQUEST FOR PRESENTATION BEFORE THE FUQUAY-VARINA BOARD OF ADJUSTMENT

I hereby request to make a presentation before the Town of Fuquay-Varina Board of Adjustment in the matter of the case noted above and petition attached. In making this request, I assert that I understand all the following statements:

1. This request will be reviewed by the Town of Fuquay-Varina Board of Adjustment and may be either granted or denied.
2. Making a presentation will require the presence of myself and/or my authorized agent during any evidentiary hearing held in this matter and such presentation will be limited to discussion of issues and information regarding the matter noted above.
3. Proceedings before the Town of Fuquay-Varina Board of Adjustment are quasi-judicial in nature. In Authorized Practice Advisory Opinion 2006-1, *Appearances at Quasi-Judicial Hearings on Zoning and Land Use* (October 20, 2006), the Authorized Practice Committee of the North Carolina State Bar was asked whether it is the unauthorized practice of law for an individual who is not an active member of the State Bar to appear in a representative capacity for a party in a quasi-judicial hearing before a planning board, board of adjustment, or other body of local government. In the opinion, the Authorized Practice Committee observed that a hearing on an application for a special use permit or for a variance under zoning ordinances is quasi-judicial in nature, noting, among other things, that evidence is formally presented; witnesses are sworn, testify, and cross-examined; the body has the authority to issue subpoenas; a record is created and preserved; the decision must be based upon the evidence presented and include findings of fact; and the decision is reviewable by an appellate court based solely upon the record of the proceeding. The committee also observed that "the law is...clear that an appearance on behalf of another person, firm, or corporation in a representative capacity for the presentation of evidence through others, cross-examination of witnesses, and argument on the law ... is the practice of law." The opinion concludes, therefore, that appearance in a representative capacity at such quasi-judicial proceedings is limited to active members of the State Bar. See N.C. Gen. Stat. §§84-2.1 and 84-4. The Town of Fuquay-Varina strongly advises consultation with legal counsel regarding the unauthorized practice of law including N.C. Gen. Stat. 84-2.1 et seq. and published opinions of the State Bar and takes the position that all appearances made in a representative capacity be made by an active member of the State Bar.

The Board is advised by counsel and may take the position that non-attorney representation is violative of N.C. Gen. Stat. 84-2.1 et seq. and continue the hearing until proper counsel is secured.

PETITIONER SIGNATURE:

Signature Date

Print Name

State of North Carolina
County of _____

I, _____, Notary Public, do hereby certify that _____ (name of individual(s) whose acknowledgment is being taken) personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this _____ day of _____, 20____.

(Official Seal)

Official Signature of Notary
Notary's printed or typed name
Notary Public

My commission expires: _____

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FINDINGS OF FACT

In order to grant a Special Use Permit, the Board of Adjustment must make the required findings of fact, as required by the North Carolina General Statutes. The petitioner shall present factual evidence and testimony supporting each and all of the required findings of fact as they relate to this petition for a Special Use Permit, as provided below. *(attach additional sheets if necessary)*

The Board of Adjustment has the authority to approve or deny Special Use Permit petitions that are specifically permitted by the Land Development Ordinance. The North Carolina General Statutes require that the Board of Adjustment ensure specific facts are met before a Special Use Permit can be granted. The petitioner is encouraged to respond below. If the petitioner chooses not to prepare a written response, he or she will still be required to prove to the Board that all findings of fact have been met. The Board may attach reasonable and appropriate conditions with granting of a Special Use Permit, provided to support the findings of fact and the intent of the Land Development Ordinance.

Finding 1. The proposed use [will/will not] materially endanger the public health or safety if located where proposed and developed according to the plan as submitted.

Finding 2. The proposed use [meets/does not meet] all required conditions and specifications.

Finding 3. The proposed use [will/will not] substantially injure the value of adjoining property or the use is a public necessity.

Finding 4. The location and character of the proposed use, if developed according to the plan submitted, [will/will not] be in harmony with the area in which it is to be located and in general conformity with the plan of development of the Town of Fuquay-Varina and its ordinances.

Finding 1: The proposed use [will/will not] materially endanger the public health or safety if located where proposed and developed according to the plan as submitted.

Statement By Petitioner:

Finding 2: The proposed use [meets/does not meet] all required conditions and specifications.

Statement By Petitioner:

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Finding 3: The proposed use [will/will not] substantially injure the value of adjoining property or the use is a public necessity.

Statement By Petitioner:

Finding 4: The location and character of the proposed use, if developed according to the plan submitted, [will/will not] be in harmony with the area in which it is to be located and in general conformity with the plan of development of the Town of Fuquay-Varina and its ordinances.

Statement By Petitioner:

CONTRIBUTING FACTOR DESCRIPTIONS

As part of the required statement of justification the petitioner shall demonstrate through factual evidence that the contributing factors listed below have been adequately addressed, as applicable:

Circulation (access points to the property and the proposed structures; safety and convenience for automotive, bicycle and pedestrian movement; and public safety)

Parking & Loading Location Areas

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Service Entrance & Areas (locations of service areas and dumpsters)

Lighting (locations of exterior lighting with reference to direction, coverage, glare & traffic safety)

Utilities (location, size, capacity and availability of utilities)

Open Space & Landscaping (location of open spaces, landscape areas, and preservation of existing trees and other natural features)

Environmental Protection (floodplain, riparian stream buffers, wetlands, steep slopes, heritage trees, avoiding clear-cutting)

Effect on Adjacent Property (including, but not limited to noise, odor, lighting, and traffic)

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Compatibility (including, but not limited to the appropriateness of the scale, design and use in relation to other properties)

List Any Proposed Conditions:

LIST OF WITNESSES

In support of an application for a Special Use Permit, the petitioner may have witnesses testify to their professional area of expertise as it relates to the application. Please list any witnesses herein.

Name (print)	Profession / Area of Expertise
1.	
2.	
3.	
4.	
5.	

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AGENT AUTHORIZATION FORM

Approval of any Special Use Permit by the Board of Adjustment runs with the land; therefore, the property owner is the petitioner. The property owner may authorize an individual licensed to practice law in North Carolina to act as an agent; however, the property owner must sign the petition and this form.

Agent Name: _____
Address: _____
City: _____ State: _____ ZIP: _____
Email Address: _____ Phone: _____
Wake County PIN: _____ Zoning: _____

DECLARATION & SIGNATURE:

I/we the undersigned do hereby certify that all information given above is true, complete, and accurate to the best of my/our knowledge.

Petitioner(s):

Signature Date

Print Name

Property Owner(s):

Signature Date

Print Name
(print and attach additional signature pages, as necessary)

State of North Carolina
County of _____

I, _____, Notary Public, do hereby certify that _____ (name of individual(s) whose acknowledgment is being taken) personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this _____ day of _____, 20____.

(Official Seal)

Official Signature of Notary
Notary's printed or typed name
Notary Public

My commission expires: _____

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HEARING PROCEEDING & SPECIAL USE PERMIT INFORMATION

General Information

The petitioner/applicant has the burden of proof in proceedings before the Board of Adjustment, and shall provide evidence, testimony and justification to meet the finding of facts for the petition/request.

Unless otherwise specified, any decision by the Board of Adjustment granting a Special Use Permit shall expire if the petitioner does not obtain a building permit or Certificate of Occupancy for such use within 12 months from the date the decision was made.

Board of Adjustment

The Board of Adjustment is an independent body, made up of appointed residents of Fuquay-Varina's corporate limits and extraterritorial jurisdiction (ETJ), that renders decisions on Special Use Permit and variance applications and appeals of the administrator of the Land Development Ordinance. The Board of Adjustment conducts its proceedings in a similar manner to a court of law, which in common terminology and under the General Statutes of the State of North Carolina is called a "quasi-judicial hearing". Any appeal of a decision made by the Board of Adjustment shall be to Wake Superior Court within 30 days of the date the decision is rendered.

Petitioner Responsibilities

- Attendance at the hearing is required. The Board of Adjustment will not hear and withholds the right to deny a petition where the petitioner is unavailable to present evidence during the hearing.**
- A petitioner may represent themselves or may be represented by agent and may call upon witnesses to give testimony supporting the request. The petitioner holds the responsibility of ensuring that sufficient evidence is provided for the Board of Adjustment to make affirmative decisions on each of the required findings of fact for the petition/request.

Hearing Proceedings

In general, the Board of Adjustment proceedings are as follows:

- Once the Board of Adjustment meeting is called to order and the Board conducts initial business, the Chair will ask that anyone wishing to speak during the meeting come forward to be sworn in.
- The Chair will recognize Fuquay-Varina Planning Department Staff for a brief presentation on the petition/request that will be limited to the nature of the request; a map of the location parcel(s) included in the petition; and applicable Land Development Ordinance regulations the Board of Adjustment is considering when taking action or applicable to the requested use.
- The Chair will then open the case for evidentiary hearing and ask the petitioner to present evidence and justification of the findings of fact related to the petition/request. Witnesses made available to justify the request will be made available at this time.
- Once the petitioner has completed their testimony, and presented evidence and/or witnesses, the Chair will call for both proponents and opponents to give testimony and present evidence and/or witnesses in support of or opposition to the petition/request.
- The Board of Adjustment may ask questions and request clarification of any testimony given by the petitioner, proponents, opponents and/or witnesses for a petition/request being considered.

- Any party sworn-in prior to testimony may cross-examine testimony and/or evidence given by any other party. The Chair will recognize individuals who request to cross-examine testimony or evidence given in order for cross-examination to occur.

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- Upon completion of all testimony, evidence and/or witnesses the Chair will close the evidentiary hearing. At this point no additional testimony by any parties is permitted.
- Discussion and review by the Board of Adjustment regarding testimony, evidence and/or witnesses of the testimony and evidence presented will then occur. If necessary, the Chair may re-open the evidentiary hearing to ask questions and/or receive clarification on testimony presented.
- The Board of Adjustment will take action and vote on each of the required findings of fact related to the petition/request. A vote by the Board of Adjustment requires a simple majority of the members present at the hearing. The Board of Adjustment may approve the petition; approve with conditions; continue the hearing to a later date to gather additional information; or deny the petition. Typically, the Board of Adjustment will render a decision when the petition is presented.

Planning Department Staff Information

Address: 134 N Main Street, Fuquay-Varina, NC 27526

Phone: (919) 552-1429

Email: planning@fuquay-varina.org

Hours: 8 AM – 5 PM, Monday through Friday