



**CHARLOTTE**

**CITY OF CHARLOTTE  
ZONING ADMINISTRATION**

**VARIANCE, APPEAL AND  
ADMINISTRATIVE DEVIATIONS**

**APPLICATION  
AND  
PROCEDURES PACKET**

CHARLOTTE-MECKLENBURG PLANNING DEPARTMENT

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As of July 1, 2008

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## Types of Requests

There are three types of requests handled by Zoning Administration staff and the Zoning Board of Adjustment as authorized by Chapters 4 and 5 of the Charlotte Zoning Ordinance. Below, please find a brief description of each request type.

**1. Variance Request – (Submit forms 1 and 2 only)**

This is a request to vary the standards of the Zoning Ordinance. One common variance request is for an applicant to seek relief from a front setback or side/rear yard requirement.

Example: An applicant requests to allow their house to be located 40 feet from their rear property line rather than 45 feet as required by zoning ordinance section 9.205 (1) (g) for an R-3 zoning district.

Decision Maker: Zoning Board of Adjustment

Requirements (all three must be true):

- a. There must be a hardship related to the land (not a personal hardship such as a physical handicap or financial hardship); and
- b. The request must be within the spirit and intent of the zoning ordinance; and
- c. The request must not be detrimental to the public safety and welfare.

**2. Appeal Request – (Submit forms 1 and 3 only)**

This type of request is initiated when an applicant feels that the zoning administrator, enforcement officer or plans reviewer has made an error in applying the standards of the zoning ordinance. One common appeal results from a disagreement between an applicant and enforcement officer when a Notice of Violation has been issued for an alleged violation of the zoning ordinance.

Example: An applicant receives a Notice of Violation for running a business in a residential zoning district, however, the applicant claims that the business is grandfathered because it was established prior to the adoption of the zoning ordinance and has been in continuous operation since its establishment.

Decision Maker: Zoning Board of Adjustment

Requirements: An error in the application of the ordinance must be found in order to reverse the decision of the zoning administrator, enforcement officer or plans reviewer.

**3. Administrative Deviation Request – (Submit forms 1 and 4 only)**

Section 4.107 of the zoning ordinance authorizes the zoning administrator to provide limited relief from quantifiable ordinance requirements. Allowable deviations include up to a 3 foot yard or buffer encroachment, a handicap ramp encroachment and up to a 5 percent deviation for other quantifiable ordinance requirements.

Example: An applicant requests permission to place an air conditioning unit 3 feet from the side property line rather than 5 feet as required by zoning ordinance section 9.205 (1) (f) for an R-4 zoning district.

Decision Maker: Zoning Administrator

Requirements (at least one must be true):

- a. There must be something peculiar about the lot that would be a basis for an inadvertent error; or
- b. The physical layout of the lot and structures makes adherence to the standard impractical; or
- c. Application of the ordinance standard would not serve a useful purpose; or
- d. The applicant has agreed to measures that would reduce the impact of the requested deviation on adjacent property owners.

## Application Procedures and Instructions

The following is the general instructions for filing any of the three requests discussed above. Specific application submittal checklists and instructions are included later for each of the forms described below:

### **Submission of Application Forms**

- a. **Pre-meeting Requirement.** A pre-meeting with zoning administration staff is required prior to the submission of any type of application. Please contact 704-336-3818 to set up an appointment.
- b. **Application Deadlines.** Applications must be submitted in accordance with the Schedule of Meetings and Submission Deadlines on page 15 of this packet. Please note that a request for an appeal must be filed within 30 days of the date the decision was rendered. A maximum of 10 cases are scheduled for each Board of Adjustment meeting.
- c. **Application Types**
  - i. **For a variance request,** please complete forms 1 and 2 and submit with the required materials indicated on the Variance Request Checklist on page 6.
  - ii. **For an appeal request,** please complete forms 1 and 3 and submit with the required materials indicated on the Appeal Request Checklist on page 9.
  - iii. **For an administrative deviation request,** please complete forms 1 and 4 and submit with the required materials indicated on the Administrative Deviation Request Checklist on page 12.
- d. **Fees.** All applications must be filed with the non-refundable fee as outlined in the Schedule of Fees on page 16.
- e. **Application Filing.** All applications must be filed in person at the Planning Department's office. Our office is located on the 8<sup>th</sup> floor of the Charlotte-Mecklenburg Government Center (600 East 4<sup>th</sup> Street). An appointment is strongly encouraged. To schedule an appointment please call 704-336-3818.
- f. **Signature Required.** Make sure each form is properly signed. Unsigned applications cannot be accepted.
- g. **Completeness Requirement.** Illegible and incomplete applications cannot be accepted. Applicants are strongly encouraged to type their applications. Electronic versions of these applications are available at [www.charmeck.org/Departments/Planning](http://www.charmeck.org/Departments/Planning).
- h. **Application Copies.** 15 copies of your application and all required materials (per the applicable checklist) must be submitted for your submission to be considered complete. Please fold larger maps and other materials to 8 ½ x 14 inch size.

## Application Processing by Staff

The following describes how staff handles your application once submitted:

### **Staff Processing**

- a. **Check for Completeness.** Staff will ensure that the application is complete and signed by the appropriate parties.
- b. **Schedule the Case.** The clerk will assign a case number and hearing date. Please note that there is a 10 case limit per hearing date.
- c. **Alternatives Analysis.** Staff will review your application and the ordinance to determine if any alternatives exist during your pre-application meeting.
- d. **Site Visit.** Staff will visit the site and take photographs for use at the hearing.
- e. **Adjacent Property Owner Notification.** The clerk will prepare and mail hearing notices to adjoining property owners, the applicant and agent.
- f. **Packets Sent to Board Members.** Meeting agendas and application packets are mailed to Board of Adjustment members approximately 10 days prior to the hearing date.
- g. **Staff Report.** Staff will prepare a staff report and make a recommendation (variances and appeals) or decision (administrative deviations) on the request.
- h. **Public Hearing.** A public hearing is held for all cases that require Board of Adjustment action. Meeting dates and times are outlined in the Schedule of Meetings and Submission Deadlines on page 15.

## Hearing Procedures

The following describes how the Board of Adjustment conducts appeal and variance hearings:

1. **Order for each Board of Adjustment Agenda Item:**
  - a. The chairman will ask all those wishing to speak on an item to stand and be sworn in. All testimony must be given under oath.
  - b. A Zoning Administration staff member will explain why a permit was denied, or why a variance is requested and offer staff's recommendation.
  - c. The Board may question the staff member, and then the Applicant may question the staff member.
  - d. The Applicant presents his testimony for this case.
  - e. The Board may question the Applicant, and the staff member may question the Applicant.
  - f. The Applicant may present sworn witnesses. They will be subject to questioning.
  - g. Other parties wishing to speak, pro or con, will be given reasonable time to present sworn testimony.
  - h. The staff and then the Applicant will be given an opportunity for rebuttal and final comments.
2. **Sworn Testimony.** The Board is acting in a quasi-judicial capacity for purposes of this hearing and can accept only sworn testimony. While the Board will not specifically exclude hearsay evidence, it is only given limited weight.
3. **Legal Representation.** If you choose, an attorney may represent you at the hearing at your expense.
4. **Speaker Registration.** All parties who plan to give testimony, pro or con, must complete the blue form to speak. The blue form is available in the meeting room.
3. **Board Decision.** After hearing all cases, the Board will review each case and render a decision. This is usually done in closed session immediately following the morning cases and then the afternoon cases. However, the Board may elect to take up to thirty (30) days to render a decision.
  - a. You may remain present during the deliberations, or
  - b. You may call the Zoning staff after the session to receive the decision of the Board.
4. **Exhibits.** All exhibits must remain with the Board. At the hearing, first hand exhibits to the clerk for tagging, you may then proceed to present the exhibit to the Board. If your case is not appealed to Superior Court thirty (30) days after the Board's decision is filed, you may pick up your exhibits. Exhibits not picked up will be destroyed.
5. **Conflict of Interest.** If you feel there is a conflict of interest of any Member of the Board or an association that would prejudice your case, please let it be known at the start of your case.
6. **Appeals.** Appeal from this Board is to the Mecklenburg County Superior Court. You have thirty (30) days from the date of the Board's written decision to appeal, in accordance with NCGS 160A-388e.
7. **Please turn off your cell phone, pager and PDA.**
8. **Help the Board run an efficient meeting:**
  - a. Keep testimony to the relevant facts of the case. Board members review your application packet prior to the meeting so they will be familiar with your request.
  - b. Do not repeat testimony.
  - c. Hearsay evidence can be given only limited weight. Applicants and witnesses should have first hand knowledge of the situation.

**The City of Charlotte will comply with the American with Disabilities Act (ADA), which prohibits discrimination on the basis of disability. If you need special accommodations to attend and participate in the meeting or need this information in an alternative format because of your disability, please contact the Zoning Administration staff at 704-336-3818 at least 72 hours prior to the meeting.**

**Hearing Request Application - Form 1**  
Zoning Board of Adjustment  
City of Charlotte

**Date Filed:** \_\_\_\_\_ **Case Number:** \_\_\_\_\_ **Received by:** \_\_\_\_\_

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**Instructions**

**This form must be filed out completely. Please attach the appropriate additional form depending on your request type along with required information as outlined in the appropriate checklist.** Please type or print legibly. All property owners must sign and consent to this application, attach additional sheets if necessary. If the applicant is not the owner, the owners must sign the Designation of Agent section at the bottom of this form.

**The Applicant Hereby** (check all that apply):

- Requests a variance from the provisions of the zoning ordinance as stated on Form 2
- Appeals the determination of a zoning official as stated on Form 3
- Requests an administrative deviation as stated on Form 4

**Applicant or Agent's Name:** \_\_\_\_\_

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

City, State, Zip: \_\_\_\_\_

Daytime Telephone: \_\_\_\_\_ Home Telephone: \_\_\_\_\_

Interest in this Case (please circle one):      Owner                  Adjacent Owner                  Other

**Property Owner(s)** [if other than applicant/agent]: \_\_\_\_\_

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

City, State, Zip: \_\_\_\_\_

Daytime Telephone: \_\_\_\_\_ Home Telephone: \_\_\_\_\_

**Property Address:** \_\_\_\_\_

Tax Parcel Number: \_\_\_\_\_ Zoning District: \_\_\_\_\_

Subdivision Name: \_\_\_\_\_ Conditional District:      YES      NO

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**Applicant Certification and Designation of Agent**

I (we) certify that the information in this application, the attached form(s) and documents submitted by me (us) as part of this application are true and correct. In the event any information given is found to be false, any decision rendered may be revoked at any time. I (we) hereby appoint the person named above as my (our) agent to represent me (us) in this application and all proceedings related to it. I (we) further certify to have received, read and acknowledged the information and requirements outlined in this packet.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Property Owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Property Owner

## Variance Request Checklist and Instructions

### Limitations

1. The Board of Adjustment is prohibited from granting use variances. A use variance is a request that would allow the establishment of a use not otherwise permitted in a particular zoning district.

### Instructions

1. **Fill out the form completely.** Because the board must find evidence to support each of the questions/statements, the answer “not applicable” is generally not acceptable and will delay your request. Incomplete applications cannot be accepted.
2. In order for the Board to grant a variance, **a land hardship must be demonstrated.** Per Section 5.108 of the zoning ordinance, only the following conditions shall constitute a hardship (all three must be met):
  - a. The difficulty or hardship would result only from these regulations and from no other cause, including the actions of the owner or previous owners of the property; and
  - b. The difficulty or hardship is peculiar to the property in question and is not generally shared by other properties in the same neighborhood and/or used for the same purposes; and
  - c. The difficulty or hardship resulting from the application of these regulations would prevent the owner from securing a reasonable return or making a reasonable use of the property. The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance.

### Checklist

- 15 copies** of your application and all required materials (per the applicable checklist) must be submitted for your submission to be considered complete. Please fold larger maps and other materials to 8 ½ x 14 inch size.
- If applicable, attach a copy of your permit or plan review comments if this variance resulted from a permit or plan denial.
- If this is a new construction project or requested to do so in your pre application meeting, attach an address verification form available by contacting 704-336-6175.
- A survey or to scale site plan must be included. The survey or site plan should include:
  - all existing buildings and structures on the property
  - all easements for streets, utilities, driveways and others
  - all proposed improvements should be drawn on the survey or site plan to scale
  - shade in the map to highlight the portion of the improvements that are subject to the requested variance (i.e. for a setback variance, the portion of the structure beyond the setback line)
- Architectural drawings are strongly encouraged to assist the Board in determining if the request is in harmony with the surrounding neighborhood.

### Additional Information

1. If construction has started, no further work shall be done on those portions of the project in violation of the zoning ordinance.
2. If this variance request is a result of a Notice of Violation, no further enforcement action shall be taken by the City until the Board of Adjustment makes a decision regarding your case.
3. Per section 5.112 of the zoning ordinance, once a case has been heard, the Board may not hear the same case for a period of two years.

**Variance Application - Form 2**  
 Zoning Board of Adjustment  
 City of Charlotte

**Date Filed:** \_\_\_\_\_ **Case Number:** \_\_\_\_\_ **Fee Collected:** \_\_\_\_\_

Has work started on this project? YES  NO   
 If yes, Did you obtain a building permit? YES  NO  If yes, attach a copy.  
 Have you received a Notice of Violation for this project? YES  NO  If yes, attach a copy.  
 Has this property been rezoned? YES  NO  If yes, Petition Number: \_\_\_\_\_

(1) What zoning ordinance section numbers are you seeking a variance from? Please list each section, the requirement and the requested variance.

Item	Code Section	Code Requirement	Variance Request
<i>Example</i>	<i>9.205 (1)(g)</i>	<i>45 foot rear yard</i>	<i>35 foot rear yard (10 foot reduction from required)</i>
<b>A</b>			
<b>B</b>			
<b>C</b>			
<b>D</b>			
<b>E</b>			

(2) Please describe why the variances requested are necessary.


(3) 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:

(a) If the property owner/applicant 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.)




## Appeal Request Checklist and Instructions

### **Limitations**

1. The Board of Adjustment may only reverse an order or finding of a zoning staff member if they find that an ordinance provision was applied in error.
2. This application must be filed within thirty (30) days of a Notice of Violation or the written interpretation/decision of the Zoning Administrator or other City zoning staff member. Applications filed more than 30 days after a written decision or violation notice cannot be accepted.

### **Instructions**

1. Fill out the form completely. Because the board must find evidence to support each of the questions/statements, the answer “not applicable” is generally not acceptable and will delay your request. Incomplete applications cannot be accepted.

### **Checklist**

- 15 copies** of your application and all required materials (per the applicable checklist) must be submitted for your submission to be considered complete. Please fold larger maps and other materials to 8 ½ x 14 inch size.
- If applicable, attach a copy of your permit or plan review comments if this appeal resulted from a permit or plan denial. In addition, submit a copy of your submitted site plan and highlight those areas that are subject to this appeal.
- If applicable, attach a copy of your Notice of Violation if this appeal resulted from an alleged violation of the zoning ordinance.
- If this is a new construction project or requested to do so in your pre-application meeting, attach an address verification form available by contacting 704-336-6175.

### **Additional Information**

1. If construction has started, no further work shall be done on those portions of the project in violation of the zoning ordinance.
2. If this appeal request is a result of a Notice of Violation, no further enforcement action shall be taken by the City until the Zoning Administrator makes a decision regarding your request.
3. Per section 5.112 of the zoning ordinance, once a case has been heard, the Board may not hear the same case for a period of two years





## Administrative Deviation Request Checklist and Instructions

### Limitations

1. Deviation requests may not exceed 5% of quantifiable standards. Approvals may only be granted if one of the following conditions is present:
  - a. The physical layout of the land, street or other geographical or topographical feature lead to an inadvertent error; or
  - b. The existing physical layout of the land or structures upon it prevent compliance; or
  - c. Due to the nature of the adjacent land use or lay of the land, the application of the ordinance requirement would serve no useful purpose; or
  - d. The applicant has agreed to measures that would mitigate the requested deviation.
2. **Yard and Buffer Requests Only** - Deviation requests for a yard or buffer requirement are limited to two (2) feet except when involving heating and air conditioning units when a three (3) foot deviation may be requested.
3. The Zoning Administrator may only apply items 1 or 2 above. He/she may not apply both items.
4. **Handicap Ramps and Similar Structures Only.** When required by law, the Zoning Administrator may approve an encroachment for a handicap ramp or other similar structure when no other reasonable location is feasible.

### Instructions

- 1 Fill out the form completely. The Zoning Administrator must find evidence to support each of the required findings in order to approve your request. Incomplete applications cannot be accepted.

### Checklist

- If applicable, attach a copy of your permit or plan review comments if this variance resulted from a permit or plan denial.
- If this is a new construction project or requested to do so in your pre-application meeting, attach an address verification form available by contacting 704-336-6175.
- A survey or to scale site plan must be included. The survey or site plan should include:
  - all existing buildings and structures on the property
  - all easements for streets, utilities, driveways and others
  - all proposed improvements should be drawn on the survey or site plan to scale
  - shade in the map to highlight the portion of the improvements that are subject to the requested deviation (i.e. for a setback variance, the portion of the structure beyond the setback line)

### Additional Information

4. If construction has started, no further work shall be done on those portions of the project in violation of the zoning ordinance.
5. If this deviation request is a result of a Notice of Violation, no further enforcement action shall be taken by the City until the Zoning Administrator makes a decision regarding your request.
6. Per section 4.107 (4) (c) of the zoning ordinance, if an aggrieved person objects to the requested deviation with a stated reason, the Zoning Administrator must deny the request and the applicant would need to file for a Variance Hearing with the Board of Adjustment.



(b) The physical layout of the land and structures on the land are such that Ordinance requirements cannot be met.


(c) Because of the nature of the abutting property or intervening topographical or geographical features, the application of the Ordinance requirements would not serve a useful purpose.


(d) If an inadvertent error by a City staff member, surveyor, contractor, building inspector or other similar individual is involved please describe the nature of the error and provide the name and contact information for the person who made the error.


(e) The applicant agrees to the measures listed below to mitigate the impact of the requested deviation.


(4) For handicap ramps and other similar structures, please indicate why the improvement is necessary and explain why there is no other feasible location that would comply with the zoning ordinance.


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## Schedule of Meetings and Submission Deadlines

**2012**

Zoning Board of Adjustment

<b>Meeting Date</b>	<b>Filing Deadline</b>
January 31st	December 30, 2011
February 28th	January 27th
March 27th	February 24th
April 24th	March 23rd
May 29th	April 27th
June 26th	May 25th
July 31st	June 29th
August 28th	July 27th
September 25th	August 24th
October 30th	September 28th
November 27th	October 26th
December 11th	November 9 <sup>th</sup>
January 29, 2013	December 28, 2012

*\*Meeting dates are subject to change!*

**SCHEDULE OF FEES**  
**APPEALS (Residential & Commercial)**

APPROXIMATE REVIEW PERIOD: 2 months  
FEE AMOUNT: EFFECTIVE JULY 1, 2008

RESIDENTIAL

Planning Department ..... \$150.00  
**Total: \$150.00**

COMMERCIAL

Planning Department ..... \$350.00  
**Total: \$350.00**

**VARIANCES (Residential & Commercial)**

APPROXIMATE REVIEW PERIOD: 2 months  
FEE AMOUNT: EFFECTIVE JULY 1, 2008

RESIDENTIAL

Planning Department ..... \$415.00  
**Total: \$415.00**

COMMERCIAL

Planning Department ..... \$1,035.00  
**Total: \$1,035.00**

**ADMINISTRATIVE DEVIATIONS (Residential & Commercial)**

APPROXIMATE REVIEW PERIOD: 1 – 2 weeks  
FEE AMOUNT: EFFECTIVE JULY 1, 2008

RESIDENTIAL

Planning Department ..... \$150.00  
**Total: \$150.00**

COMMERCIAL

Planning Department ..... \$350.00  
**Total: \$350.00**

**Fee due upon submittal of application, payable by check or money order to the City of Charlotte.**

## Authorized Practice Advisory Opinion 2006-1 October 20, 2006

### Quasi-Judicial Hearings on Zoning and Land Use

#### Inquiry:

May a person who is not a lawyer appear before planning boards, boards of adjustment, or other governmental bodies conducting quasi-judicial hearings in a representative capacity for another party?

#### Opinion:

At its October 2005 meeting, the Authorized Practice Committee responded to an inquiry concerning the propriety of a person who is not a lawyer appearing before planning boards, boards of adjustment, and city and county government in a representative capacity. The committee's advisory opinion distinguished appearances on legislative concerns, such as general rezoning cases and ordinance amendments, from appearances on behalf of petitioners for special use permits and variances, which are quasi-judicial matters. The committee has received comments from a number of interested parties, including architects, land use planners, and city and county attorneys as a result of that opinion. The committee is issuing this advisory opinion to supplement the prior opinion.

At its October 2005 meeting, the Authorized Practice Committee responded to an inquiry concerning the propriety of a person who is not a lawyer appearing before planning boards, boards of adjustment, and city and county government in a representative capacity. The committee's advisory opinion distinguished appearances on legislative concerns, such as general rezoning cases and ordinance amendments, from appearances on behalf of petitioners for special use permits and variances, which are quasi-judicial matters. The committee has received comments from a number of interested parties, including architects, land use planners, and city and county attorneys as a result of that opinion. The committee is issuing this advisory opinion to supplement the prior opinion.

First, the committee reiterates that the adoption of ordinances and amendments to official zoning maps (i.e. general rezoning cases) by the elected officials in city and county governments are legislative in nature and that any interested person may appear and speak on such matters before governmental bodies, even as representatives of groups or interested parties, without engaging in the unauthorized practice of law. Nonetheless, the general statutory prohibitions on unauthorized practice of law still apply even to persons who appear before governmental bodies on legislative matters. Non-lawyers may not hold themselves out as attorneys, provide legal services or advice, or draft any legal documents with regard to such matters. *See* N.C. Gen. Stat. §§ 84 2.1 and 4.

The law is clear that hearings on applications for special use permits and variances under zoning ordinances, as well as appeals from staff level interpretations related to permits, are quasi-judicial proceedings. N.C. Gen. Stat. §§ 153A-345 and 160A-381 and 388. *See, Humble Oil & Refining Co. v. Bd. of Aldermen of Chapel Hill*, 284 N.C. 458, 202 S.E.2d 129 (1974) and *Woodhouse v. Board of Comm'rs of Nags Head*, 299 N.C. 211, 261 S.E.2d 882 (1980). (For simplicity, the quasi-judicial hearings before these bodies are hereafter referenced to as a "variance hearing" unless the context indicates otherwise.) The governmental body before which the variance hearing is conducted sits in a judicial role of applying the standards of an ordinance to the particular circumstances of a particular party. Accordingly, the role of the governmental body is to receive evidence and make decisions based upon the evidence presented.

Variance hearings require the governmental body hearing the matter to observe certain formalities. Evidence, including witness evidence, is presented to the hearing body, although the Rules of Evidence need not be strictly observed. All witnesses before the body must be sworn and their testimony is subject to cross-examination. The hearing body has the power and authority to issue subpoenas to compel witness testimony. A record of the proceedings must be preserved. The decision is to be based upon the evidence presented at an open hearing, and not on extraneous matters or personal knowledge of the members of the board. The applicant has the burden of proof. The board must make written findings of fact to support its decision. And, the decision of the board is reviewable by the courts on appeal based solely upon the record of the proceedings.

The committee believes that the law is also 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 at a quasi-judicial proceeding is the practice of law. N.C. Gen. Stat. §§ 84 2.1 and 4. Consequently, because the variance hearings are by definition quasi-judicial proceedings, the committee concludes that it is the unauthorized practice of law for someone other than a licensed attorney to appear in a representative capacity to advocate the legal position of another person, firm, or corporation that is a party to the proceeding.

The committee has been urged to recognize that architects, landscape architects, land use planners, and engineers play a vital role at these quasi-judicial proceedings by presenting necessary facts and information on behalf of their clients at variance hearings. The committee agrees that the information these professionals can present is critical to the decision before the hearing body. These professionals are subject matter experts whose expert opinions, as witnesses, must be presented to the hearing body. They are witnesses who are in the best position to explain to the hearing body the facts of the proposed design and its anticipated effects on a variety of factors, including traffic, environment, and aesthetics, within the framework of matters properly under consideration at the variance hearing. The committee does not believe that the role of legal advocate by attorneys in quasi-judicial proceedings should interfere with or inhibit the role of non-lawyer professionals who speak as witnesses and present information at these quasi-judicial proceedings. In fact, their roles should be complementary.

It is axiomatic that the committee has no authority to amend or formulate exceptions to the statutes. In issuing an advisory opinion, it simply articulates how it believes a court would ultimately resolve the question for the guidance of the public. The committee cannot recognize or create exceptions to the law as expressed by the legislature and the courts. Further, we believe, as a practical matter, that effective representation of parties in variance hearings is becoming increasingly dependent upon legal advocacy of the rights of the parties with an eye toward compiling a supportable record in the event of an appeal. These are the skills an attorney provides. While it is true that many of these hearings involve routine and non-controversial matters, even questions about matters such as the height of residential fences may become the subject matter of an appeal where the appellate courts may only consider the record produced at the variance hearing. *See Robertson v. Zoning Board of Adjustment for the City of Charlotte*, 167 N.C. App. 531, 605 S.E.2d 723 (2004). It is difficult to predict in advance when a matter may require a comprehensive record for appellate purposes. Therefore, with this further elaboration, the committee re-affirms its initial opinion expressed by letter dated October 31, 2005, that the representation of another person at a quasi-judicial hearing is the practice of law.

That said, this opinion should not be interpreted to diminish the role and expertise of land use professionals as witnesses at variance hearings. These professionals may still present their evidence in support of the position of their clients. However, they may not examine or cross-examine other witnesses or advocate the legal position of their clients.

The committee's opinion is also not intended to affect the ability of city and county planning staff to present factual information to the hearing board, including a recitation of the procedural posture of the application, and to offer such opinions as they may be qualified to make without an attorney for the government present, as the committee understands is the proper, current practice and role of the planning staff. Further, nothing in this opinion should be interpreted as limiting the ability of a corporate officer or employee from testifying on factual matters on behalf of a corporate party during a hearing or suggesting that individual parties may not represent themselves before these boards.

In sum, the committee is of the opinion that land use professionals, including architects, engineers, and land use planners, may appear and testify as to factual matters and any expert opinions that they are qualified to present at quasi-judicial proceedings, but the presentation of other evidence, including the examination and cross-examination of witnesses, making legal arguments, and the advocacy for results on behalf of others before quasi-judicial zoning and land use hearings, is the practice of law that may be performed only by licensed attorneys at law.

May a person who is not a lawyer appear before planning boards, boards of adjustment, or other governmental bodies conducting quasi-judicial hearings in a representative capacity for another party? At its October 2005 meeting, the Authorized Practice Committee responded to an inquiry concerning the propriety of a person who is not a lawyer appearing before planning boards, boards of adjustment, and city and county government in a representative capacity. The committee's advisory opinion distinguished appearances on legislative concerns, such as general rezoning cases and ordinance amendments, from appearances on behalf of petitioners for special use permits and variances, which are quasi-judicial matters. The committee has received comments from a number of interested parties, including architects, land use planners, and city and county attorneys as a result of that opinion. The committee is issuing this advisory opinion to supplement the prior opinion.

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**THE NORTH CAROLINA STATE BAR**

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