

SECTION .0700 – PROCEDURES FOR CONSIDERING VARIANCE PETITIONS

15 NCAC 07J .0701 VARIANCE PETITIONS

(a) Any person whose application for a CAMA major or minor development permit has been denied or issued with condition(s) that the person does not agree with may petition for a variance from the Commission by means of the procedure described in this Section. Before filing a petition for a variance from a rule of the Commission, the person must seek relief from local requirements restricting use of the property, and there must not be pending litigation between the petitioner and any other person which may make the request for a variance moot.

(b) The procedure in this Section shall be used for all variance petitions except when:

- (1) the Commission determines that more facts are necessary; or
- (2) there are controverted facts that are necessary for a decision on the variance petition.

(c) Variance petitions shall be submitted on forms provided by the Department of Environmental Quality. The following information shall be submitted before a variance petition is considered complete:

- (1) the case name and location of the development as identified on the denied permit application;
- (2) a copy of the deed to the property on which the proposed development would be located;
- (3) a copy of the permit application and denial for the development in question;
- (4) the date of the petition, and the name, address, and phone number of the petitioner and his or her attorney, if applicable;
- (5) a complete description of the proposed development, including a site drawing with topographical and survey information;
- (6) a stipulation that the proposed project is inconsistent with the rule from which the petitioner seeks a variance;
- (7) notice of the variance petition sent via certified mail, return receipt requested to the adjacent property owners and persons who submitted written comments to the Division of Coastal Management or the Local Permit Officer during the permit review process and copies of the documents which indicate that the certified mail notices were received or that deliveries were attempted;
- (8) an explanation of why the petitioner believes that the Commission should make the following findings, all of which are necessary for a variance to be granted:
 - (A) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;
 - (B) that such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property;
 - (C) that such hardships did not result from actions taken by the petitioner; and
 - (D) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.
- (9) a proposed set of stipulated facts, for staff's consideration, containing all of the facts relied upon in the petitioner's explanation as to why he meets the criteria for a variance; and
- (10) proposed documents, for the staff's consideration, that the petitioner wants the Commission to consider.

(d) Petitions shall be mailed to the Director of the Division of Coastal Management, Department of Environmental Quality, 400 Commerce Avenue, Morehead City NC 28557 and to Air and Natural Resources Section, Environmental Division, Attorney General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001.

(e) A variance petition shall be considered by the Commission at a scheduled meeting. Petitions shall be scheduled in chronological order based upon the date of receipt of a complete variance petition by the Division of Coastal Management. A complete variance petition, as described in Paragraph (c) of this Rule, shall be received by the Division of Coastal Management at least six weeks in advance of a scheduled Commission meeting to be considered by the Commission at that meeting. If the petitioner seeks to postpone consideration of his or her variance request, the request shall be treated as though it was filed on the date petitioner requested postponement and scheduled for hearing after all then pending variance requests.

(f) Written notice of a variance hearing or Commission consideration of a variance petition shall be provided to the petitioner and the permit officer making the initial permit decision.

*History Note: Authority G.S. 113A-120.1; 113A-124;
Eff. December 12, 1979;*

Amended Eff. December 1, 1991; May 1, 1990; March 1, 1988, February 1, 1983;
Temporary Amendment Eff. December 20, 2001;
Temporary Amendment Expired October 12, 2002;
Temporary Amendment Eff. December 1, 2002;
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