

# RIPARIAN BUFFER: MODIFICATIONS BY VARIANCE PERMIT APPLICATION

Town of Apex, NC



This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

## VARIANCE PERMIT APPLICATION SUBMISSION:

Applications and fees are due by 12:00 pm on the first business day of each month. See the "[Variance Schedule](#)" on the website for details.

## VARIANCE PERMIT APPLICATION

**FEE:** \$650.00

### Watershed Protection Overlay District Riparian Buffer:

The purpose of the Watershed Protection Overlay District is to ensure the availability of public water supplies at a safe and acceptable level of water quality, to minimize sedimentation of streams, and to protect environment, health, and general welfare of present and future residents of the Town and the Triangle Region.

### Purpose of a Riparian Buffer Variance Permit:

A Riparian Buffer Variance is for a deviation from the Riparian Buffer standards and allowed uses based on standards in Sec. 6.1.14 *Modifications by Variance* of the Unified Development Ordinance (UDO). Requests can be made when the literal enforcement of the provisions of the UDO would result in peculiar and practical difficulties to, or exceptional and undue hardships on the owners of the property, and the deviation would not be contrary to the public interest.

**GENERAL INFORMATION:** The Board of Adjustment conducts a quasi-judicial public hearing process. Only sworn testimony provided at the public hearing may be considered in their decision-making. The Board of Adjustment members cannot be legally contacted by the applicant or applicant's representative prior to the public hearing (e.g. no ex parte communication). If you have any questions, please contact Senior Planner June Cowles at 919-249-3339 or [june.cowles@apexnc.org](mailto:june.cowles@apexnc.org).

### PRE-APPLICATION MEETING:

**A pre-application meeting with Planning Department and Water Resources Department staff is required. The location of the proposed project will determine the process.** Please schedule prior to the submittal of a Riparian Buffer Modification by Variance Permit application. To schedule an appointment for a meeting, the applicant must contact Planner II Thomas Rayle at [thomas.rayle@apexnc.org](mailto:thomas.rayle@apexnc.org).

### PRE-APPLICATION ELECTRONIC SUBMITTAL REQUIREMENTS: [SUBMIT VIA GEOCIVIX \(IDT\)](#)

- A draft plot plan sketch in pdf form with the following information:
  - Existing conditions (existing structures, trees,)
  - Proposed buffer impacts (proposed location of structure(s))

To finalize the appointment time, the applicant must upload the items. The invitation to the meeting will be sent to the applicant and staff once the required information is uploaded.

### PROCESS:

**The Town of Apex has several River Basins, Watershed Districts, and Riparian Buffer Zones. Therefore, the site location and location of proposed structure or project will determine the process for minor and major variances. Due to the measurement of the Buffer Zones requiring exact measurements, below is a BROAD description of the process which may change due to site visit or survey information.**

### Riparian Buffer Zones

The riparian buffer includes 3 zones. Zone 1 is from the top of the bank extend landward a distance of 30 feet. Zone 2 begins at the outer edge of Zone 1 and extends landward a distance of 20 feet. Zone 3 begins at the outer edge of Zone 2 and extends landward a distance of 50 feet.

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The delineation line for the Jordan Lake Basin and Neuse River Basin is Salem Street as follows:

### Neuse River Basin

Generally, the area East of South Salem Street, North Salem Street, Old U.S. Hwy 1 is the Neuse River Basin.

- **Process:** The Neuse River Basin includes strict standards and therefore, the majority of the final decision for a Variance is through the Director of NC Department of Environmental Quality. For more information on North Carolina Department of Environmental Quality review, please see the link below:  
[https://www.deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting/application-forms-help-documents#BufferAuth\\_VarianceApps](https://www.deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting/application-forms-help-documents#BufferAuth_VarianceApps)
- The Watershed District Map includes Primary and Secondary Watershed Districts. Please click on the Watershed District Map link below:  
<https://www.apexnc.org/DocumentCenter/View/1336/Watershed-Protection-Overlay-District-Map-PDF>

### Jordan Lake Basin

Generally, the area West of South Salem Street, North Salem Street, Old US Hwy 1 is the Jordan Lake Basin.

- **Process:** The Jordan Lake Basin allows the majority of the final decision for a Variance to the Town of Apex Board of Adjustment.
- The Watershed District Map includes Primary and Secondary Watershed Districts. Please click on the Watershed District Map link below:  
<https://www.apexnc.org/DocumentCenter/View/1336/Watershed-Protection-Overlay-District-Map-PDF>

### Cape Fear River Basin

- **Process:** The Cape Fear River Basin allows the majority of the final decision for a Variance to the Town of Apex Board of Adjustment.

## ELECTRONIC SUBMITTAL REQUIREMENTS: **Submit via GeoCivix (IDT)**

At the pre-application meeting, staff will determine whether Board of Adjustment review and decision is required. The applicant may then submit an application for a Riparian Buffer Variance. The following are the electronic submittal requirements:

- One copy of the Variance Permit Application. Please select "Board of Adjustment Submittal" as the Application Type in GeoCivix (IDT).
- Agent authorization form and Affidavit of Ownership
- Notification list including property owners of the land subject to the application, all property owners and tenants abutting and located within 500 feet of the land subject to the application, and any neighborhood association that represents citizens within the notification area. This list must be obtained by emailing [addressing.team@apexnc.org](mailto:addressing.team@apexnc.org) and will be provided within 5-10 business days of the initial request.
- A plot plan/site plan to scale of the property (in pdf form):
  - Show the location of existing and proposed improvements on the property, property lines, stream top of bank, and location of the riparian buffer. Zones 1, 2 and 3, as applicable should be labeled on the plan.
  - Calculate and label the dimensions and area (in square feet) of all temporary and/or permanent impacts within the riparian buffer
  - All mitigation measures proposed (ex: plantings, removal of existing impervious surface).

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## HARD COPY SUBMITTAL REQUIREMENTS: SUBMIT TO PLANNING DEPARTMENT

- Variance Permit Application fee by one of the following forms of payment:
  - Visa or Master Card (online only);
  - Cash (exact amount only); or
  - Check payable to 'Town of Apex'
- Envelopes addressed to those on the notification list obtained from [addressing.team@apexnc.org](mailto:addressing.team@apexnc.org)
  - Affixed with first class stamps and the following return address:  
Town of Apex Planning Department  
P.O. Box 250  
Apex, NC 27502

## VARIANCE PERMIT APPLICATION PROCESS SUMMARY:

**REVIEW FOR SUFFICIENCY:** The Planning Director, or designee, checks application for sufficiency upon submittal. Incomplete applications will be returned to the applicant for revision (typically within the week the application is submitted). Sufficiently complete applications are forwarded to staff for review and comments.

**REVISIONS BY STAFF:** At the end of the review period, staff comments will be provided to the applicant. Any needed revisions to the application or supporting documents must be resubmitted to staff. The applicant should address all of staff's comments before the public hearing is scheduled.

**PUBLIC HEARING NOTIFICATION:** Notification of the public hearing will take place by three (3) different methods:

1. A written notice prepared by the Planning Department for all property owners of the land subject to the application; all property owners and tenants abutting and located within 500 feet of the land subject to application; and any neighborhood association that represents citizens within the notification area. This notice will be postmarked not more than 25 days nor less than 10 days prior to the Board of Adjustment meeting;
2. A notice will be published on the Town's website ([www.apexnc.org](http://www.apexnc.org)) no less than 10 days but not more than 25 days prior to the public hearing; and
3. A notice will also be posted at the land subject to the application at least 10 days prior to the public hearing.

*Town staff cannot provide legal advice to any citizen regarding a particular quasi-judicial hearing. If you have questions, you should consult the services of an attorney.*

**QUASI-JUDICIAL PUBLIC HEARING BEFORE THE BOARD OF ADJUSTMENT:** The Board of Adjustment will consider the application, relevant support materials, Staff Report, and public testimony given at the public hearing. After the quasi-judicial public hearing the Board of Adjustment will vote to approve, approve with conditions, or deny the variance permit. Four-fifths of the members of the Board of Adjustment must vote for approval in order for a variance permit to be approved.

The following provides an explanation of the issues, standards, and procedures for quasi-judicial public hearings on variances: [Outline of Quasi-Judicial-Procedure for Variance for Audience](#)

**For major variances, if the Board of Adjustment provides a recommendation of approval, the final step is for that recommendation to go to the NC Environmental Management Commission for the final decision.**

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Application #:	_____	Submittal Date:	_____
Fee Paid	\$ _____	Check #	_____

## APPLICANT INFORMATION

Applicant Name(s): \_\_\_\_\_

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

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

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

## OWNER INFORMATION

Owner Name(s): \_\_\_\_\_

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

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

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

## PROPERTY INFORMATION:

Address/Location: \_\_\_\_\_

Property PIN: \_\_\_\_\_

Acreage: \_\_\_\_\_ Zoning: \_\_\_\_\_

Town Limits:  Inside corporate limits  In ETJ

Other contacts: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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## The owner(s) of the property applying for a Variance Permit are:

1.	_____	_____
	Print owner name(s) above	Print address of property
	_____	_____
	Signature of owner(s)      Date	PIN
2.	_____	_____
	Print owner name(s)	Print address of property
	_____	_____
	Signature of owner(s)      Date	PIN
3.	_____	_____
	Print owner name(s)	Print address of property
	_____	_____
	Signature of owner(s)      Date	PIN
4.	_____	_____
	Print owner name(s)	Print address of property
	_____	_____
	Signature of owner(s)      Date	PIN
5.	_____	_____
	Print owner name(s)	Print address of property
	_____	_____
	Signature of owner(s)      Date	PIN

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**Please check the appropriate box and answer the questions below:**

Major Variance       Minor Variance

Description of the proposed activity and purpose.

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Provide a description of how mitigation will be achieved at your site pursuant to the mitigation requirements of the applicable river basin/watershed.

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Provide a description of how diffuse flow will be maintained through the protected riparian buffers (e.g., re-planting vegetation or enhancement of existing vegetation, gutter splash pads, level spreader to control of runoff from impervious surfaces, etc.).

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Buffer Impact Number <sup>1</sup> – Permanent (P) or Temporary (T)	Reason for Impact	Buffer Mitigation Required	Zone 1 Impact (square feet)	Zone 2 Impact (square feet)	Zone 3 Impact (square feet)
B1 - <input type="checkbox"/> P <input type="checkbox"/> T		<input type="checkbox"/> Yes <input type="checkbox"/> No			
B2 - <input type="checkbox"/> P <input type="checkbox"/> T		<input type="checkbox"/> Yes <input type="checkbox"/> No			
B3 - <input type="checkbox"/> P <input type="checkbox"/> T		<input type="checkbox"/> Yes <input type="checkbox"/> No			
<b>Total Buffer Impacts</b>					

<sup>1</sup>Label on site plan

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**TO THE APEX BOARD OF ADJUSTMENT:**

I, \_\_\_\_\_, hereby petition the Apex Board of Adjustment for a Variance Permit from the literal provisions of the Unified Development Ordinance (UDO) because, under the interpretation given to me by the Planning Director, I am prohibited from using the parcel of land described in this application in a manner shown by the plot/site plan attached to this form. I request a Variance Permit from the following provisions of the Unified Development Ordinance (cite the UDO section number(s)):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

so that the above-mentioned property can be used in a manner indicated by the plot/site plan attached to this form or if the plot/site plan does not adequately reveal the nature of the variance permit, as more fully described herein:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

In reviewing variances from the standards of the Watershed Protection Overlay Districts, the Board of Adjustment shall also find that the standards of UDO Sec. 6.1.14.E.2-3 are met, except for a request submitted pursuant to the alternative variance process in Sec. 6.1.14.F.

**6.1.14 Modifications by Variance**

E) *Standards*

- 2) In order to approve an application for a variance permit, the Board of Adjustment shall make a finding of fact as to whether there are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements.
- 3) A finding of practical difficulties or unnecessary hardships shall require that the following conditions are met:

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**Please answer the standards below. If extra space is required, please attach a separate paper.**

a) If the applicant complies with the provisions of this Sec. 6.1.11, applicant can secure no reasonable return from, nor make reasonable use of, applicant’s property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Board of Adjustment shall consider whether the variance is the minimum possible deviation from the terms of Sec. 6.1.11 that shall make reasonable use of the property possible; \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b) The hardship results from application of Sec. 6.1.11 to the property rather than from other factors such as deed restrictions or other hardship; \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that compliance with provisions of Sec. 6.1.11 would not allow reasonable use of the property; \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

d) The applicant did not cause the hardship by knowingly or unknowingly violating this Sec. 6.1.11;

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

e) If in the Jordan Lake watershed, the applicant did not purchase the property after August 11, 2009, the effective date of [15A NCAC 02B .0267](#), and then request a variance;

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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f) The hardship is rare or unique to the applicant's property; \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

g) The variance is in harmony with the general purpose and intent of the Town's Watershed Protection Overlay Districts and preserves its spirit; \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

h) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Applicant Date

\_\_\_\_\_  
Signature of Applicant Date

# AGENT AUTHORIZATION FORM

Application #: \_\_\_\_\_ Submittal Date: \_\_\_\_\_

\_\_\_\_\_ is the owner\* of the property for which the attached application is being submitted:

- Rezoning: For Conditional Zoning and Planned Development rezoning applications, this authorization includes express consent to zoning conditions that are agreed to by the Agent which will apply if the application is approved.
- Site Plan
- Subdivision
- Variance
- Other: \_\_\_\_\_

The property address is: \_\_\_\_\_

The agent for this project is: \_\_\_\_\_

- I am the owner of the property and will be acting as my own agent

Agent Name: \_\_\_\_\_

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

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

E-Mail Address: \_\_\_\_\_

Signature(s) of Owner(s)\*

\_\_\_\_\_

\_\_\_\_\_ Type or print name

\_\_\_\_\_ Date

\_\_\_\_\_

\_\_\_\_\_ Type or print name

\_\_\_\_\_ Date

Attach additional sheets if there are additional owners.

\*Owner of record as shown on the latest equalized assessment rolls of Wake County. An option to purchase does not constitute ownership. If ownership has been recently transferred, a copy of the deed must accompany this authorization.

Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this application and all documents related hereto containing an electronic or digitized signature are legally binding in the same manner as are hard copy documents executed by hand signature. The parties hereby consent to use electronic or digitized signatures in accordance with the Town's Electronic Signature Policy and intend to be bound by the application and any related documents. If electronic signatures are used the application shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

**AFFIDAVIT OF OWNERSHIP**

Application #: \_\_\_\_\_

Submittal Date: \_\_\_\_\_

The undersigned, \_\_\_\_\_ (the "Affiant") first being duly sworn, hereby swears or affirms as follows:

1. Affiant is over eighteen (18) years of age and authorized to make this Affidavit. The Affiant is the sole owner, or is the authorized agent of all owners, of the property located at \_\_\_\_\_ and legally described in **Exhibit "A"** attached hereto and incorporated herein (the "Property").
2. This Affidavit of Ownership is made for the purpose of filing an application for development approval with the Town of Apex.
3. If Affiant is the owner of the Property, Affiant acquired ownership by deed, dated \_\_\_\_\_, and recorded in the Wake County Register of Deeds Office on \_\_\_\_\_, in Book \_\_\_\_\_ Page \_\_\_\_\_.
4. If Affiant is the authorized agent of the owner(s) of the Property, Affiant possesses documentation indicating the agency relationship granting the Affiant the authority to apply for development approval on behalf of the owner(s).
5. If Affiant is the owner of the Property, from the time Affiant was deeded the Property on \_\_\_\_\_, Affiant has claimed sole ownership of the Property. Affiant or Affiant's predecessors in interest have been in sole and undisturbed possession and use of the property during the period of ownership. Since taking possession of the Property on \_\_\_\_\_, no one has questioned Affiant's ownership or right to possession nor demanded any rents or profits. To Affiant's knowledge, no claim or action has been brought against Affiant (if Affiant is the owner), or against owner(s) (if Affiant is acting as an authorized agent for owner(s)), which questions title or right to possession of the property, nor is any claim or action pending against Affiant or owner(s) in court regarding possession of the Property.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_ (seal)  
 \_\_\_\_\_  
 Type or print name

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, the undersigned, a Notary Public in and for the County of \_\_\_\_\_, hereby certify that \_\_\_\_\_, Affiant, personally known to me or known to me by said Affiant's presentation of said Affiant's \_\_\_\_\_, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing Affidavit.

\_\_\_\_\_  
 Notary Public  
 State of North Carolina  
 My Commission Expires: \_\_\_\_\_

[NOTARY SEAL]

**AFFIDAVIT OF OWNERSHIP: EXHIBIT A – LEGAL DESCRIPTION**

Application #: \_\_\_\_\_

Submittal Date: \_\_\_\_\_

**Insert legal description below.**