

CAMA VARIANCE REQUEST FORM

DCM FORM 11

DCM FILE No.: _____

PETITIONER'S NAME _____

COUNTY WHERE THE DEVELOPMENT IS PROPOSED _____

Pursuant to N.C.G.S. § 113A-120.1 and 15A N.C.A.C. 07J .0700 *et seq.*, the above named Petitioner hereby applies to the Coastal Resources Commission (CRC) for a variance.

VARIANCE HEARING PROCEDURES

A variance petition will be considered by the CRC at a regularly scheduled meeting, heard in chronological order based upon the date of receipt of a complete petition. 15A N.C.A.C. 07J .0701(e). A complete variance petition, as described below, must be *received* by the Division of Coastal Management (DCM) a minimum of six (6) weeks in advance of the first day of a regularly scheduled CRC meeting to be eligible for consideration by the CRC at that meeting. 15A N.C.A.C. 07J .0701(e). The final set of stipulated facts must be agreed to at least four (4) weeks prior to the first day of a regularly scheduled meeting. 15A N.C.A.C. 07J .0701(e). The dates of CRC meetings can be found at DCM's website: **www.nccoastalmanagement.net**

If there are controverted facts that are significant in determining the propriety of a variance, or if the Commission determines that more facts are necessary, the facts will be determined in an administrative hearing. 15A N.C.A.C. 07J .0701(b).

VARIANCE CRITERIA

The petitioner has the burden of convincing the CRC that it meets the following criteria:

- (a) Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? Explain the hardships.
- (b) Do such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property? Explain.
- (c) Do the hardships result from actions taken by the petitioner? Explain.
- (d) Will the variance requested by the petitioner (1) be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; (2) secure the public safety and welfare; and (3) preserve substantial justice? Explain.

Please make your written arguments that Petitioner meets these criteria on a separate piece of paper. The Commission notes that there are some opinions of the State Bar which indicate that non-attorneys may not represent others at quasi-judicial proceedings such as a variance hearing before the

Commission. These opinions note that the practice of professionals, such as engineers, surveyors or contractors, representing others in quasi-judicial proceedings through written or oral argument, may be considered the practice of law. Before you proceed with this variance request, you may wish to seek the advice of counsel before having a non-lawyer represent your interests through preparation of this Petition.

For this variance request to be complete, the petitioner must provide the information listed below. The undersigned petitioner verifies that this variance request is complete and includes:

- _____ The name and location of the development as identified on the permit application;
- _____ A copy of the permit decision for the development in question;
- _____ A copy of the deed to the property on which the proposed development would be located;
- _____ A complete description of the proposed development including a site plan;
- _____ A stipulation that the proposed development is inconsistent with the rule at issue;
- _____ Proof that notice was sent to adjacent owners and objectors*, as required by 15A N.C.A.C. 07J .0701(c)(7);
- _____ Proof that a variance was sought from the local government per 15A N.C.A.C. 07J .0701(a), if applicable;
- _____ Petitioner's written reasons and arguments about why the Petitioner meets the four variance criteria, listed above;
- _____ A draft set of proposed stipulated facts and stipulated exhibits. Please make these verifiable facts free from argument. Arguments or characterizations about the facts should be included in the written responses to the four variance criteria instead of being included in the facts.
- _____ This form completed, dated, and signed by the Petitioner or Petitioner's Attorney.

**Please contact DCM or the local permit officer for a full list of comments received on your permit application. Please note, for CAMA Major Permits, the complete permit file is kept in the DCM Morehead City Office.*

Due to the above information and pursuant to statute, the undersigned hereby requests a variance.

Signature of Petitioner or Attorney

Date

Printed Name of Petitioner or Attorney

Email address of Petitioner or Attorney

Mailing Address

(_____)_____
Telephone Number of Petitioner or Attorney

City

State

Zip

(_____)_____
Fax Number of Petitioner or Attorney

DELIVERY OF THIS HEARING REQUEST

This variance petition must be **received** by the Division of Coastal Management at least six (6) weeks before the first day of the regularly scheduled Commission meeting at which it is heard. A copy of this request must also be sent to the Attorney General's Office, Environmental Division, 15A N.C.A.C. 07J .0701(e).

Contact Information for DCM:

Contact Information for Attorney General's Office:

By mail, express mail or hand delivery:

Director
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

By mail:

Environmental Division
9001 Mail Service Center
Raleigh, NC 27699-9001

By Fax:

(252) 247-3330

By express mail:

Environmental Division
114 W. Edenton Street
Raleigh, NC 27603

By Email:

Check DCM website for the email
address of the current DCM Director
www.nccoastalmanagement.net

By Fax:

(919) 716-6767



TO: DCM Permitting Staff and CAMA LPOs

FROM: Christine A. Goebel, Assistant General Counsel

DATE: October 6, 2017

RE: **Guidance on Local Variance Prerequisite before seeking CRC Variance under 15A NCAC 7J .0701(a)**

The Coastal Resources Commission's ("CRC") rule for seeking a variance from the CRC's rules for coastal development ("CAMA Variance") includes the following language:

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. . .

This long-standing rule of the CRC was re-affirmed as recently as the 2009 update to the Variance rules. When it discussed these rules, the Commission indicated an interest in having local governments provide variances from their own setbacks in order for development to happen in those instances in which the CRC was asked to reduce the CAMA setbacks.

Any petitioner requesting a CAMA Variance *must* seek a variance from applicable local requirements as a prerequisite *before* filing for a CAMA Variance. The purpose of this rule is to alleviate the need for or reduce the scope of the CAMA variance and in this manner limit development in Areas of Environmental Concern protected by the CAMA. Most often, this rule is applicable when the petitioner is seeking a variance from either the CRC's oceanfront setbacks or from the CRC's 30' buffer rules. The variance sought from local governments is typically seeking to relax local regulations/ordinances governing lot setbacks, such as street-side setbacks. If petitioner receives a variance from a local government's street-side setback, the project can be sited further landward making the lot "buildable" for the proposed development and may eliminate or reduce the need for a CAMA Variance.

Petitioner does not need to show that a variance from the local government's regulations was granted by the locality in order to proceed with a CAMA Variance. Petitioner must simply show that a good faith attempt to receive a local variance has been made. Sometimes there are situations where a local variance would not provide any relief to a Petitioner. If you believe that is the case, please direct a potential variance petitioner to check with DCM legal counsel to see if this is the case.

If you or the Petitioner have any questions about the application of this rule specifically, or about the variance process generally, please contact me.

