

15A NCAC 07J .0703 PROCEDURES FOR DECIDING VARIANCE PETITIONS

- (a) The Commission may review the variance petition and staff recommendation and hear oral presentation by the petitioner, if any, in full session or may appoint a member or members to do so. In cases where a member or members are appointed, they shall report a summary of the facts and a recommended decision to the Commission.
- (b) The Commission or its appointed member or members shall be provided with copies of the petition, the stipulated facts, and the staff recommendation before considering the petition.
- (c) At the Commission's request, staff shall orally describe the petition to the Commission or its appointed member(s) and shall present comments concerning whether the Commission should make the findings necessary for granting the variance. The petitioner shall also be allowed to present oral arguments concerning the petition. The Commission may set time limits on such oral presentations.
- (d) The final decision of the Commission may be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by certified mail, return receipt requested within 30 days of the meeting at which the Commission reached its decision. In the event that the Commission cannot reach a final decision because it determines that more facts are necessary, it shall remand the matter to staff and the petitioner with instructions for the parties to either agree to the necessary fact(s) or to request a hearing in the Office of Administrative Hearings.
- (e) Final decisions concerning variance petitions shall be made by concurrence of a majority of a quorum of the Commission.
- (f) To grant a variance, the Commission must affirmatively find each of the four factors listed in G.S. 113A-120.1(a).
- (1) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;
 - (2) that such hardships result from conditions peculiar to the petitioner's property such as location, size, or topography;
 - (3) that such hardships did not result from actions taken by the petitioner; and
 - (4) 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.

*History Note: Authority G.S. 113A-120.1;
Eff. December 12, 1979;
Amended Eff. December 1, 1991; March 3, 1981;
Temporary Amendment Eff. December 20, 2001;
Temporary Amendment Expired October 12, 2002;
Temporary Amendment Eff. December 1, 2002;
Amended Eff. March 1, 2009; August 1, 2004.*