

TOWN OF CARY

Submit application & fees to **Planning & Development Services**
316 N. Academy Street Cary, NC 27613
P.O. Box 8005, Cary, NC 27512-8005

For office use only:

Method of Payment: CASH ____ CHECK ____ CREDIT CARD ____ Amount: \$ _____ P&Z HTE# _____

- Administrative/Enforcement Appeal **\$600.00**
- Minimum Housing Appeal **\$600.00**

- Civil Penalty/Fine Appeal **\$600.00**

APPEAL APPLICATION

If you are appealing any "decision" of Town staff, including an enforcement decision or an Order of the Minimum Housing Inspector, you **must complete** Section A **and** attach the written "decision" which you are appealing

If you are appealing a civil penalty or fine, either alone or together with an enforcement decision, you **must complete** Section B
(You may use continuation sheets if necessary)

Submittal Date: _____ Case Number: _____

Pre-application Conference Date: _____

REQUEST: _____

Applicant Name: _____

Address: _____

Phone Number: _____

Email Address: _____

Owner Name(s) (If different from Applicant): _____

Address: _____

Phone Number: _____

Email Address: _____

All applicant(s) must sign and have their signatures notarized on the last page

Are any Continuation Sheets attached? Yes No If yes, how many? _____

SECTION A. APPEAL OF ADMINISTRATIVE, ENFORCEMENT, OR MINIMUM HOUSING DECISIONS

1. Provide the following information for the property affected:
Site Address: _____
PIN #: _____ Lot #: _____ Block: _____
Subdivision: _____ Unit or Section: _____
Total lot/tract size: _____ Zoning District: _____

2. Attach a copy of the final and binding order, requirement, or determination made by an administrative official charged with enforcement of the LDO or a copy of the decision or order of the Minimum Housing Inspector that you are appealing. Please note: if this is an appeal from a decision or order of the Minimum Housing Inspector, you must file one copy of this application with Inspection and Permits Department.
Decision attached? Yes No

3. Describe with specificity which provisions or portions of the decision you are appealing: _____

4. For appeals arising under the LDO, fully explain how the administrative official erred in the application or interpretation of the terms of the LDO or related policies of the Town. For appeals of a decision or order of the Minimum Housing Inspector, fully explain how the Minimum Housing Inspector erred in the application or interpretation of the terms of the Minimum Housing Code.
Explain: _____

5. If you are not the land owner, or if the decision was not issued to you, describe how you are aggrieved by the decision:

SECTION B. APPEAL OF CIVIL PENALTY OR FINE

1. Provide the following information for the property affected.
Site Address: _____
PIN #: _____ Lot #: _____ Block: _____
Subdivision: _____ Unit or Section: _____
Total lot/tract size: _____ Zoning District: _____

2. Attach a copy of the document by the Town (“decision”) which includes the penalty or fine amount you are appealing.
PLEASE NOTE: If you wish to appeal a Notice of Violation, in addition to the civil penalty or fine amount, you must also fill out Section A of this form and pay a separate appeal application fee.

Document attached? Yes No

3. Fully explain why you think the amount of the civil penalty or fine should be waived or reduced. You may address:

- the gravity of the violation
- action you took to correct the violation
- the cost of any action you took to correct the violation
- previous violations by you on this site or others

4. If you are not the land owner, or if the penalty was not issued to you, describe how you are aggrieved by the decision:

APPLICANTS' CERTIFICATION

I, _____, the undersigned, being first duly sworn, depose and say that I am the _____ owner, _____ attorney, _____ attorney-in-fact, _____ agent, _____ lessee, or _____ representative of the owner(s) of the property described and which is the subject matter of this application; that all answers to the questions in this application, and all sketches, data and other supplementary information attached to this application are honest and true to the best of my knowledge and belief. If I am not the owner of the property, I have attached a notarized authorization from the owner(s) to submit with this application.

Date

Signature

Date

Signature

_____ COUNTY, STATE OF NORTH CAROLINA

Signed and sworn to or affirmed before me this day by _____

Date

Notary Public

(Official Seal)

My commission expires: _____

_____ COUNTY, STATE OF NORTH CAROLINA

Signed and sworn to or affirmed before me this day by _____

Date

Notary Public

(Official Seal)

My commission expires: _____

General Information About Appeals to the Zoning Board of Adjustment

These instructions are intended to provide general information about appeals. Staff has made every effort to ensure that this information is and remains accurate; however, if there is a conflict between this information and state law, the Town Code, the Town Land Development Ordinance (LDO), or Town policies (collectively 'law'), the law controls.

What Type of Appeals Can Be Made and To Whom?

An appeal to ZBOA may be brought by any person who has standing under NCGS 160A-393(d) from (1) any final and binding order, requirement, determination, or decision ("Decision") that is made by an administrative official charged with enforcement of the LDO; or (2) a Decision of the Minimum Housing Inspector.

(1) Administrative or Enforcement Appeals; Civil Penalty/Fine Appeals – File with Town Clerk's Office

Questions arising in connection with the interpretation and enforcement of the LDO must first be presented to the appropriate administrative official charged with enforcement of the LDO. Decisions of an administrative official may then be appealed to ZBOA, as provided in LDO Sections 3.21.2. and 11.2.2., within **thirty (30)** calendar days of actual or constructive notice of the Decision. Appeals of civil penalty or fine amounts must be made within **thirty (30)** calendar days of receipt of the **first** citation issued for the violation.

(2) Minimum Housing Appeals – File with Town Clerk's Office and Inspections and Permits Department

Appeals of decisions or orders of the Minimum Housing Inspector must be brought within **ten (10)** days from the rendering of the decision or the service of the order.

Filing Procedure

Submit **1 original** and **1 copy**, plus **1 digital** copy of all documentation submitted, including the application and its attachments, if applicable. You must answer every question that pertains to your specific request and provide the required information. If this appeal involves the location of a structure, you must submit a copy of the property survey with a sketch showing the dimensions and location. This sketch must be in a reproducible size of **11" X 17"** or smaller and must show the following:

- lot lines with measured distances; and
- location and outline of existing and proposed structures (with measured dimensions)

Additionally, the applicant may submit any other information or documentation (i.e., a subdivision plat, survey map, etc.) that they feel ZBOA may need to render an adequate and fair decision. All applications must be signed and sworn to before a notary public.

Completing Your Application

An application will be considered complete if it is submitted in the required form, includes all mandatory information, including all supporting materials specified by the official responsible for accepting the application, and is accompanied by the applicable fee. The **Planning Director, or his designee** shall make a determination of application completeness. If an application is determined to be incomplete, the **Planning Director** shall provide notice to the applicant along with an explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected in a future re-submittal. An application that is determined to be incomplete may or may not retain its same processing cycle.

Once the application is complete, the Planning Department shall schedule it for consideration at a quasi-judicial hearing before ZBOA and shall transmit to ZBOA all applications and other records pertaining to such application prior to the hearing.

Quasi-Judicial Hearing

During the quasi-judicial hearing, the ZBOA must hold an evidentiary hearing and make its decision based solely on the written and oral evidence presented. Members of the ZBOA must refrain from *ex parte* communications (communications outside of the hearing itself) about upcoming or ongoing cases with any parties or other members of the ZBOA. All testimony before the ZBOA must be "sworn" testimony; therefore, all persons wishing to speak on the matter must be sworn in. The ZBOA may affirm, reverse, or modify administrative decisions or civil penalty determinations by a majority vote of the board members; decisions of the minimum housing inspector may be reversed or modified only upon a concurring vote of four members of the board. Appeals from a decision of the ZBOA shall be to Superior Court.

Both individual applicants and individuals opposed to the application who are aggrieved may represent themselves at the quasi-judicial hearing before the ZBOA or be represented by an attorney, and they may have expert witnesses testify for them. **All applicants are strongly advised to have an attorney represent them.** Applicants that are corporations ('corporate applicant') must be represented by an attorney. Engineers, architects, real estate agents, planners and other non-attorneys may only appear as expert witnesses; they may not represent an applicant or those opposed to an application. If a non-corporate applicant desires to have a non-attorney act as his or her representative (and not solely as an expert witness), the applicant should notify the attorney advising the ZBOA who will then advise the ZBOA that it must vote on whether to allow the representation. The request may be denied; therefore, applicants or their attorney, should always be present at the hearing.

For more detailed information on the quasi-judicial hearing process, please review Policy Statement 167, "Quasi-Judicial Hearing Procedural Guidelines," available on the Town's website at <http://www.townofcary.org/Departments/Town Clerk s Office/Town Policies/167 - Quasi Judicial Hearing Procedural Guidelines.htm>.