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A Survey of Experience with Zoning Variances

David Owens and Adam Brueggemann

School of Government

University of North Carolina at Chapel Hill

Institute of Government

Master of Public Administration Program

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SCHOOL OF GOVERNMENT

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A more detailed review of the legal issues related to zoning variances is set forth in David W. Owens, *The Zoning Variance: Reappraisal and Recommendations for Reform of a Much Maligned Tool*, 29 Colum. J. Envtl. L. (forthcoming 2004). Portions of this report are adapted from that article.

A SURVEY OF EXPERIENCE WITH ZONING VARIANCES

David W. Owens and Adam Bruggemann

Many cities and counties throughout the United States have adopted zoning ordinances to regulate land use and development. The ordinance text adopted by the local governing board sets the standards for development. A professional staff, generally the zoning administrator, is responsible for routine implementation and enforcement of the ordinance. A near-universal feature of zoning is an appointed citizen board authorized to grant exceptions to these standards. These exceptions—*zoning variances*—are the subject of this report.

The legal concept of providing administrative relief to detailed government regulations in exceptional cases has a considerable lineage. The version that served as the model for the zoning variance was the building code established for New York City in 1862. It gave the Department of Buildings power to “modify or vary any of the several provisions of [the] act to meet the requirements of special cases, where the same do not conflict with public safety and the public good, so that substantial justice may be done.”¹

In 1916 a similar provision for variation from the strict application of zoning was incorporated into the nation’s first comprehensive zoning regulation, also in New York City. This initial zoning ordinance, which was only about seven pages long, was rudimentary at best. At the time it initiated zoning, New York City had a population of over five million persons and an area of nearly three hundred square miles. The city acknowledged that such a modest zoning ordinance could not fully anticipate all possible variations in particular parcels of land, individual land uses, and peculiar situations that would arise with zoning implementation. Circumstances in which it would be neither fair nor desirable to apply the general standards in the ordinance would certainly arise. So the initial rationale for the variance power was to provide a tool to perfect a crude regulatory instrument. The variance was also deemed to be a constitutional necessity to prevent what would otherwise be an inflexible, unreasonable, arbitrary application of zoning ordinances—to be, in effect, a safety valve for circumstances not anticipated when the ordinance was adopted.

1. N.Y. Laws 1862, c. 356, p. 591.

Those supporting zoning also based the zoning variance on pragmatic and tactical considerations. In the first decades of zoning application, they deemed it advisable to both limit exposure to courts that might invalidate the entire zoning enterprise and avoid frequent amendment of the ordinance. The variance was thus seen as a pragmatic means of taking individual disputes out of political and judicial realms that might well be less hospitable to effective zoning practices.

The variance authorization in North Carolina (first adopted in 1923) generally conforms to the provisions of the original New York City ordinance and the Standard State Zoning Enabling Act and is typical of most state statutes.² The statutes provide that

[w]hen practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall have the power, in passing on appeals, to vary or modify any of the regulations or provisions of the ordinance relating to the use, construction, or alteration of buildings or structures or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.³

In addition, the general grant of zoning authority provides that boards of adjustment may vary the terms of the zoning ordinance “in harmony with their general purpose and intent and in accordance with general or specific rules” set out in the ordinance.⁴ The enabling statutes also often further restrict variance authority by requiring a proposed variance to receive a four-fifths vote of the decision-making board.⁵

2. For a collection of different statutory provisions for zoning variances, see EDWARD H. ZIEGLER JR., RATHKOPF’S THE LAW OF ZONING AND PLANNING § 58:1 (5th ed. 2001).

3. N.C. GEN. STAT. §160A-388(d) (2003) (hereinafter G.S.) for municipalities and G.S. 153A-345(d) (2003) for counties.

4. G.S. 153A-340(c), 160A-381(a) (2003).

5. G.S. 153A-345(e), 160A-388(e) (2003).

It is not uncommon for individual zoning ordinances to provide more detailed standards elaborating upon these basic provisions, in particular additional guidance about what constitutes an “unnecessary” hardship.⁶ However, for the most part, state legislatures and local governing boards have been content to retain essentially the same general delegation of variance authority set out above and to leave to the judiciary and the good judgment of boards of adjustment the details of just what situations qualify for a variance.

Judicial Interpretation of the Standards for Variances

A substantial judicial gloss has been applied to the statutory standards for zoning variances over the past eighty years. The courts have established a detailed and strict interpretation of the statutory requirements a petitioner must meet to qualify for a zoning variance and have, to a lesser extent, elaborated on the negative community impacts variances must avoid. While the precise tests vary, the common tenor set very early was that the “power of variation is to be sparingly exercised and only in rare instances and under exceptional circumstances peculiar in their nature, and with due regard to the main purpose of a zoning ordinance to preserve the property rights of others.”⁷

Impact of Regulation on Petitioner

As historically interpreted by the courts, the most significant limitation on the variance power requires a petitioner to establish that compliance with the strict terms of the ordinance would cause practical difficulties or “unnecessary” hardship.

There is broad consensus that this burden of hardship must be substantial. Inherent in any regulatory scheme is the understanding that some burdens shared by all members of a community do not rise to a level that qualifies an owner for variance consideration.⁸ The courts have held with near uniformity that

6. The standards set forth in the enabling acts are mandatory, and local governments are preempted from adopting contrary standards. However, supplementary standards that provide additional guidance and elaboration of state standards have generally been held to be permissible. *See, e.g.,* Gould v. Santa Fe County, 37 P.3d 122, 128 (N.M. App. 2001) (overturning density variance and holding that a local ordinance may contain more restrictive or detailed standards provided they do not conflict with state variance standards). *But see* Perkins v. Town of Ogunquit, 709 A.2d 106, 110–11 (Me. 1998) (overturning frontage variance and holding zoning statute implicitly preempts local waiver or relief from ordinance based on lesser standards than in statute); Cole v. Bd. of Zoning Appeals, 317 N.E.2d 65, 68 (Ohio App. 1973) (upholding denial of use variance and holding local standards cannot be more stringent nor more liberal than state statute criteria for variances); Lincourt v. Zoning Bd. of Review, 201 A.2d 482, 485 (R.I. 1964) (local standards may neither provide more or less than the state standard).

7. Norcross v. Bd. of Appeal, 150 N.E. 887, 890 (Mass. 1926) (upholding height variance); Hammond v. Bd. of Appeal, 154 N.E. 82, 83 (Mass. 1926) (upholding variance granted to allow retail store in residential district despite several unsuccessful rezoning requests, upon showing inability to rent structure as residence).

8. As Justice Sam Ervin noted in an early zoning case, “If the police power is properly exercised in the zoning of a municipality, a resultant

the fact that more profitable uses for a property are available or that the cost of compliance increases the costs of development do not constitute undue hardship.”⁹ However, determining what constitutes the minimum reasonable use that must be allowed and when additional costs imposed to develop property in strict compliance with zoning standards become unduly excessive are the most difficult issues of judgment and discretion in variance decisions.

The most stringent application of the hardship test requires an owner to show that strict compliance with the zoning would prevent *any* reasonable use of the property.¹⁰ Such a rigorous application of this standard allows the variance to be used as a constitutional safety valve to avoid what might otherwise be an unlawful taking.¹¹ When strictly applied, this requirement substantially limits the range of discretion available to boards of adjustment. However, it is the rare variance request that meets such a strict test of hardship, and the fact that variances are routinely approved without meeting it has long been a principal judicial and academic criticism of variance practice.

Two judicial alternatives to this strict test evolved to increase the potential availability of variances. The first, which appeared in the 1950s, was to apply the “no reasonable use” test only to variances relating to property use and to apply a less-stringent test to requests for dimensional variances (e.g., building setbacks, lot dimensions, size or height of signage, etc.).¹² The rationale for this distinction is that dimensional variances pose less potential harm to neighbors and thus warrant less-stringent judicial oversight. While this distinction may reflect a good faith effort by the courts to better align variance law with variance practice, there is no statutory basis for it in most states. A more recently adopted, second alternative is to consider the degree of impairment the zoning causes to reasonable use and the extent of the costs it imposes on the owner as factors in determining whether the hardship is sufficient to justify a variance.¹³

pecuniary loss to a property owner is a misfortune which he must suffer as a member of society.” Kinney v. Sutton, 230 N.C. 404, 411–12, 53 S.E.2d 306, 311 (1949).

9. Citing cases from twenty-three states, one treatise concludes, “The courts have consistently held that a variance may not be granted solely on the ground that such relief will enable the applicant to make a greater profit.” ANDERSON’S AMERICAN LAW OF ZONING § 20.23 (4th ed. 1996).

10. A leading early case noted the record must establish that “the land in question cannot yield a reasonable return” without the variance. Otto v. Steinhilber, 24 N.E.2d 851, 853 (N.Y. 1939) (overturning variance issued to construct a skating rink on a parcel that was primarily zoned residential).

11. A land use regulation that deprives the owner of all economically beneficial or productive use is, with limited exceptions, an unconstitutional taking. Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1015 (1992). This strict test of unnecessary hardship for a variance is similar, though some courts have noted that it is not quite as restrictive. *See, e.g.,* Belvoir Farms Homeowners Assoc., Inc. v. North, 734 A.2d 227, 240 (Md. Ct. App., 1999).

12. The leading case making this distinction was Village of Bronxville v. Francis, 150 N.Y.S.2d 906, 909 (App. Div., 1956), *aff’d* 153 N.Y.S.2d 220, 135 N.E.2d 724.

13. Simplex Technologies, Inc., v. Town of Newington, 766 A.2d 713, 717 (N.H. 2001) (replacing “no reasonable use” test for unnecessary hardship with a three-factor test for the requisite hardship: (1) ordinance interferes with reasonable use of the property considering its unique setting;

Beyond defining the degree of hardship required, courts have imposed four additional qualifications related to the hardship. These qualifications reflect a judicial policy of limiting variances to extraordinary, nonroutine circumstances and preventing abuse by forcing zoning boards to focus on objective factors related to the property involved, not on the personal situation of the petitioner.

The first qualification requires that the hardship result from application of the ordinance itself. Therefore, a hardship caused by a restrictive covenant,¹⁴ the personal situation of the applicant,¹⁵ or the convenience of the owner¹⁶ does not qualify an owner for variance consideration. Variances requested in response to an owner's handicapped condition present a particularly difficult decision. While the courts have traditionally, and consistently, held that the health of the owner cannot be the basis of the hardship, some more recent decisions allow the board greater flexibility to consider variances as a reasonable accommodation for persons with handicaps.¹⁷

The second qualification holds that the hardship must be related to the specific property involved.¹⁸ The classic justification for a variance is that the unique physical conditions of the land involved—such as a steep slope or the presence of wetlands—make it impractical to meet the precise setbacks required by the ordinance.¹⁹

(2) no fair and substantial relationship exists between the purpose of the ordinance and the particular restriction; and (3) variance would not injure public or private rights of others).

14. *See, e.g.,* Brackett v. Bd. of Appeal, 39 N.E.2d 956, 959–60 (Mass. 1942) (hardship caused by restrictive covenant not a proper grounds for variance).

15. *See, e.g.,* Garibaldi v. Zoning Bd. of Appeals, 303 A.2d 743, 745 (Conn. 1972) (invalidating variance granted from minimum separation requirements for liquor outlets to owner whose previous store had been taken for highway construction); Crossley v. Town of Pelham, 578 A.2d 319, 320 (N.H. 1990) (invalidating dimensional variance to construct larger replacement garage on nonconforming lot); Hickox v. Griffin, 83 N.E.2d 836, 838 (N.Y. 1949) (expense of maintenance and difficulty of sale of large private estates not proper grounds for variance for location of university campus in a residential district).

16. *See, e.g.,* Carney v. Baltimore, 93 A.2d 74 (Md. 1952) (variance to side yard requirement not appropriate to allow elderly owner to construct more convenient downstairs bedroom and bath).

17. The court in *Mastandrea v. North*, 760 A.2d 677, 691–93 (Md. 2000), upheld a variance to buffer requirement to allow building of a brick pathway to creek for access by wheelchair-bound daughter of owner. The ordinance itself required that reasonable accommodations be made for persons with disabilities. Challenges to failure to grant variances for handicapped persons may be brought as an alleged failure to make the requisite "reasonable accommodation" under the Federal Fair Housing Act Amendments of 1988.

18. *See, e.g.,* Young Women's Hebrew Ass'n v. Bd. of Standards and Appeals, 194 N.E. 751, 752 (N.Y. 1935) (convenience of passing motorists not proper grounds from variance for gasoline station).

19. *See, e.g.,* Husnander v. Town of Barnstead, 660 A.2d 477, 479 (N.H. 1995) (odd shape of buildable area left after application of setbacks along lakefront lot would not allow construction of functional residence); Rodenstein v. Bd. of Appeal, 149 N.E.2d 382, 383–84 (Mass. 1958) (presence of subsurface stone on lot justified variance to allow property in residential district to be used as a parking lot); Ferry v. Kownacki, 152 A.2d 456 (Pa. 1959) (presence of ravine, gully, and septic lines on lot justify variance for location of gasoline station in residential district).

The third qualification is that the practical difficulties or substantial hardships claimed must not be self-induced or self-created. The hardship cannot result from the applicant's own actions, such as an unintentional violation, buying the property for a purpose not permitted under the zoning and then seeking a variance, or selling part of a parcel and seeking a variance to develop the remainder.²⁰ Several states allow variances when there has been a good faith mistake by the owner;²¹ but if any negligence or bad faith is involved, the variance is generally denied.²²

The fourth qualification requires the hardship to be peculiar or unique to the property involved. The reasoning here is that if the hardship is common to a number of properties, a zoning amendment, not a variance, is the proper remedy.

Impact of the Variance on Community Interests

While much of the variance litigation focuses on the hardship threshold for variance consideration, the potential impact of variances on community interests is also an important factor limiting local governments' authority to issue variances. The statutory requirement that variances be consistent with the spirit and intent of the zoning ordinance substantially limits the subjects for which variances can be granted. The requirement that variances promote the public safety and welfare and that substantial justice be served requires the board of adjustment to find that the variance would promote the interests of the community as a whole.

In jurisdictions where an ordinance expresses such a clear intent, a variance authorizing contrary action is impermissible as such and tantamount to an ordinance amendment.²³ A number of courts have used this rationale to hold all use variances illegal. Courts have likewise held that a nonconforming use may not be extended by variance²⁴ and that it is not permissible to adjust

20. *See, e.g.,* Bd. of Zoning Appeals v. Waskelo, 168 N.E.2d 72 (Ind. 1960) (where owner sells part or conforming lot, variance may not be granted to allow construction on undersized remainder); Olsen v. City of Hopkins, 178 N.W.2d 719, 721 (Minn. 1970) (overturning variance for commercial use of remainder parcel in residential district); Leimann v. Bd. of Adjustment, 88 A.2d 337, 343 (N.J. 1952) (irregularly shaped parcel assembled after zoning enactment does not qualify for variance).

21. *See, e.g.,* Moyerman v. Glanzberg, 138 A.2d 681, 687 (Pa. 1958) (upholding side yard variance when mistake as to lot width discovered after construction); DeFelice v. Zoning Bd. of Review, 189 A.2d 685, 687–88 (R.I. 1963) (upholding front yard setback variance for addition constructed in good faith before error in setback measurement discovered).

22. *See, e.g.,* Misuk v. Zoning Bd. of Appeals, 86 A.2d 180, 182–83 (Conn. 1952) (variance for sideyard encroachment inappropriate where owner's reckless conduct—no building permit obtained nor survey conducted prior to initiation of construction—created the need for a variance).

23. *See, e.g.,* *In re Schrader*, 660 P.2d 135, 139 (Ok. 1983) (variance for a carport that would effectively eliminate the entire required side yard setback is inconsistent with intent of ordinance).

24. *See, e.g.,* Colati v. Jirout, 47 A.2d 613, 616 (Md. 1946) (no authority for variance to allow substantial enlargement of building housing a nonconforming commercial use in a residential zone); Rexon v. Bd. of Adjustment, 89 A.2d 233, 236 (N.J. 1952) (variance may not be issued to allow industrial use in commercial zone even though adjacent land is in industrial use and zone); *In re Crossroads Recreation, Inc. v. Broz*, 149

zoning district boundaries through a variance.²⁵ Courts have also held that variances are only appropriate when an “unanticipated” situation arises and when the variance will not alter the “essential character” of the adjoining neighborhood.²⁶ These limitations help distinguish cases in which a zoning amendment is needed from those in which a variance is the appropriate relief.

There are also situations in which a variance that is otherwise justified can be denied because of the harm it would generate. For example, if it is found that a variance would create a nuisance, lower neighboring property values, cause environmental harm,²⁷ create a traffic hazard,²⁸ or cause more harm to neighbors than benefit to the applicant,²⁹ it may be denied. The fact that the variance would be inconsistent with a comprehensive plan adopted by the jurisdiction may also justify variance denial.

North Carolina Application

The first major North Carolina case on zoning variances, *Lee v. Board of Adjustment*,³⁰ involved a request to build a grocery store/service station in a district of Rocky Mount zoned exclusively for residential use. The court first held that the applicant must suffer “undue” hardship in order to qualify for variance consideration. Because the applicant only held an option to purchase the land, the court ruled, he would suffer no undue hardship from denial of the variance.³¹ The applicant could simply not execute the option, thereby avoiding any hardship at all. The court also noted that there was no hardship based on the contention that the proposed use would be more profitable than uses allowed by the zoning.

N.E.2d 65, 68 (N.Y. 1958) (inability to replace nonconforming gasoline station with modern facility is not undue hardship); *Griffin v. Zoning Bd. of Review*, 200 A.2d 700, 702–03 (R.I. 1964) (variance may not be issued to expand nonconforming cafe).

25. *See, e.g.*, *Real Properties, Inc. v. Bd. of Appeal*, 65 N.E.2d 199, 201 (Mass. 1946) (inappropriate to extend commercial area into adjacent residential zone by variance).

26. *See, e.g.*, *Otto v. Steinhilber*, 24 N.E.2d 851, 853 (N.Y. 1939).

27. *See, e.g.*, *Town of Beverly Shores v. Bagnall*, 590 N.E.2d 1059, 1063 (Ind. 1992) (upholding denial of variance for residence construction in manner that would have obliterated a protected sand dune); *Grey Rocks Land Trust v. Town of Hebron*, 614 A.2d 1048 (N.H. 1992) (variance to expand nonconforming marina invalid as it would substantially impair natural scenic, recreational, and environmental values zoning district seeks to protect); *Biggs v. Town of Sandwich*, 470 A.2d 928, 932 (N.H. 1975) (upholding denial of variance for structure that would use septic system constructed within wetland setback because such created an unacceptable risk of pollution); *Saturley v. Town of Hollis*, 533 A.2d 29, 32 (N.H. 1987) (upholding variance denial for residence and septic tank within wetland setback, based on potential threat septic system failure and runoff posed to public water supply).

28. *See, e.g.*, *Bell Savings and Loan Assoc. v. Zoning Hearing Bd.*, 301 A.2d 436, 437 (Pa. Commw. 1973) (upholding denial of dimensional variance for drive-in bank that would create traffic hazard).

29. *See, e.g.*, *Planning Bd. of Framingham v. Zoning Bd. of Appeals*, 360 N.E.2d 677, 678 (Mass. App. 1977) (impact of variance on other property within the zoning district is a mandatory factor that must be considered). Many of the cases on this point have dealt with use variances.

30. 226 N.C. 107, 37 S.E.2d 128 (1946).

31. *Id.* at 110, 37 S.E.2d at 131.

The court in *Williams v. North Carolina Department of Environment and Natural Resources* further explored the requirement for unnecessary hardship.³² It held that the owner’s possession of other developable property near the parcel for which the variance was sought was irrelevant, as the variance had to be considered strictly in relation to the property itself, not to the owner of the property. The critical inquiry, the court held, was whether the property could be put to some reasonable use without a variance. The court in *Showcase Realty and Construction Co. v. City of Fayetteville Board of Adjustment*³³ held that the petitioner for a variance must present substantial evidence regarding the impact of the ordinance on his or her ability to make reasonable use of the property. The court noted that the board may not simply rely on a conclusory statement to decide that the financial cost of compliance alone (in this case, relocation of an improperly placed concrete slab for a building under construction) is sufficient to establish the requisite “unnecessary hardship.”

In *Lee* the court specifically held that use variances are illegal in North Carolina. The court found that allowing a use not permitted by the ordinance cannot be within the purpose and intent of the ordinance. The court in *Sherrill v. Town of Wrightsville Beach*³⁴ likewise ruled that a variance could not be granted for a duplex in an area zoned for single-family use. Such a substantial departure from the terms of the ordinance would violate the spirit and purpose of the ordinance, even though the duplex was also a residential use and there were already other duplexes in the neighborhood as nonconforming uses. Because the ordinance specifically limited density by allowing only single-family residences, the court held, actions contrary to that purpose required an ordinance amendment—a rezoning—not a variance.

The requirement that variances be consistent with the spirit of the ordinance is not limited to use variances per se. This point is emphasized in *Chambers v. Board of Adjustment*.³⁵ Here the court ruled that the Winston-Salem Board of Adjustment could not grant a variance for a housing project without off-street parking when the zoning ordinance specifically required these projects to have garages or other on-site parking. Similarly, in *Donnelly v. Board of Adjustment*³⁶ the court held that where a zoning ordinance, read as a whole, expresses a clear intent to exclude tall privacy fences from highly visible locations, the board of adjustment is without authority to grant a variance that would be directly contrary to that intent.

32. 144 N.C. App. 479, 548 S.E.2d 793 (2001).

33. 155 N.C. App. 548, 573 S.E.2d 737 (2002).

34. 76 N.C. App. 646, 334 S.E.2d 103 (1985).

35. 250 N.C. 195, 108 S.E.2d 211 (1959).

36. 99 N.C. App. 702, 394 S.E.2d 246 (1990).

Survey of Variance Experience in North Carolina

In late 2002 the Institute of Government conducted a survey of North Carolina cities and counties to determine how they have actually used the power to grant zoning variances. The survey was mailed in November to all 544 incorporated cities and all 100 counties in the state. A copy of the survey instrument is set out in Appendix A. If the jurisdiction had a zoning administrator listed on the Institute's mailing list, the survey was mailed to that person. If the mail list did not include a zoning official, the survey was mailed to the city or county manager or administrator. A second copy was mailed in December 2002 to all jurisdictions that had not responded to the initial mailing. A final e-mail reminder was sent in January 2003 to all non-responding jurisdictions that listed a zoning administrator in the directory of either the North Carolina League of Municipalities or the Association of County Commissioners. Jurisdictions were asked to respond even if they did not have a zoning ordinance so that an overall response rate could be computed.

The response rate was very high and represents a strong cross-section of cities and counties in the state. In all, 441 of the 644 jurisdictions in the state responded, a 68 percent response rate (Table 1). Of the 203 nonresponding jurisdictions, 109 were cities with populations under 1,000. The combined 2001 population of all responding jurisdictions totaled 7,431,190—some 91 percent of the state's total population. A list of responding jurisdictions is set out in Appendix B.

Of the 441 jurisdictions that responded, 357 reported having a zoning ordinance. As expected, municipalities with higher populations were the most likely to have zoning in place (Table 2).

The data tables in this report show the number of jurisdictions responding to a survey question in a particular manner, along with a percentage based on the total number of responses to that question. Since not all respondents answered all questions, the number of respondents is frequently lower than the total of the 357 jurisdictions that have zoning.

One initial finding from the survey was somewhat surprising: A large number of jurisdictions reported having zoning in place for only a modest time period. Since zoning has been extensively used in North Carolina for over seventy-five years, we might expect that there would be few jurisdictions just starting to zone. In fact, most cities with populations over 10,000 have had zoning in place for most of this period. However, cities with smaller populations, as well as newly incorporated cities and an increasing number of counties, have adopted zoning only in the past few decades. As a result, nearly 40 percent of the responding jurisdictions with zoning reported that their ordinance had been adopted since 1990. Table 3 shows the number and percent of jurisdictions that have adopted zoning in recent decades.

Table 1 Survey Response of Jurisdictions, by Population

<i>Population</i>	<i>No.</i>	<i>No. responding</i>	<i>Response rate (%)</i>
<i>Municipalities</i>	544	353	65
<500	135	65	48
500–999	98	59	60
1000–9999	247	173	70
>10,000	64	56	88
<i>Counties</i>	100	88	88
<10,000	11	10	91
>10,000	89	78	88
<i>All jurisdictions</i>	644	441	68

Table 2 Zoning in Municipalities and Counties, by Population

<i>Population</i>	<i>No. responding</i>	<i>No. with zoning</i>	<i>No. without zoning</i>	<i>% with zoning</i>
<i>Municipalities</i>	353	293	60	83
<500	65	30	35	46
500–999	59	42	17	71
1,000–9,999	173	165	8	95
>10,000	56	56	0	100
<i>Counties</i>	88	64	24	73
<i>All jurisdictions</i>	441	357	84	81

Table 3 Decade of Zoning Adoption

	<i>No. of Jurisdictions</i>	<i>Percent (%)</i>
Prior to 1960	16	5
1960–69	35	11
1970–79	61	20
1980–89	74	24
1990–99	96	31
2000–2003	24	8
Total	306	100

Organization and Administration

Decision-Making Body

The North Carolina statutes place the power to grant zoning variances with the board of adjustment, as the laws of most other states do. However, local governments have considerable flexibility in the organizational options they adopt. First, the size of the board of adjustment can vary. Although the statutes require that the board have at least five members serving three-year terms, cities and counties may have larger boards. They also have the option of appointing alternate members. Cities that exercise extraterritorial jurisdiction over areas outside the city boundaries must appoint extraterritorial members but may choose whether

Table 4 Assignment of Variance Function

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
Board of adjustment	295	83
Governing board	39	11
Planning board	17	5
Other or joint board	5	1
Total	356	100

Table 5 Board Responsible for Variance Function, by Jurisdiction Population

<i>Population</i>	<i>Board of adjustment</i>		<i>Governing or planning board</i>	
	<i>No.</i>	<i>Percent (%)</i>	<i>No.</i>	<i>Percent (%)</i>
1–499	16	53	14	47
500–999	25	61	16	39
1,000–9,999	147	89	19	11
10,000–39,999	61	92	5	8
>40,000	46	96	2	4
Total	295		56	

Table 6 Board Responsibility for Variances, by Number of Petitions Considered

<i>No. of requests in past year</i>	<i>Board of adjustment</i>		<i>Governing or planning board</i>	
	<i>No.</i>	<i>Percent (%)</i>	<i>No.</i>	<i>Percent (%)</i>
0	71	79	19	21
1–4	124	82	27	18
5–9	50	91	5	9
10+	43	93	3	7

Table 7 Extraterritorial Members on City Boards Making Variance Decisions

<i>No. of ETJ members</i>	<i>Cities</i>	
	<i>No.</i>	<i>Percent (%)</i>
0	100	38
1	63	24
2	62	23
3–7	40	15
Total	265	100

to allow those members to vote on all variance petitions or only on those arising in the extraterritorial area. Cities and counties also have the option of assigning any function of the board of adjustment to the planning board, the governing board, or some other citizen board.

The vast majority of North Carolina jurisdictions—83 percent of those responding to this question—assign the variance function to the board of adjustment. A number of smaller jurisdictions with lighter caseloads assign it to the governing board. A modest number of jurisdictions assign variances to the planning board or to a joint planning board/board of adjustment. These responses are set out in Table 4. Another option infor-

mally reported by respondents, but not measured by the survey, is to have both a planning board and a board of adjustment but to appoint the same members to each board.

Table 5 shows that smaller jurisdictions are more likely to assign variance functions to a governing or planning board—probably because their variance workload is lighter. In municipalities with populations over 1,000, the variance function is most often handled by a board of adjustment. Table 6 illustrates that as the variance workload increases, the likelihood that variance functions will be assigned to a board of adjustment rises.

The five-member board suggested by the statutes is the most common size for the board making variance decisions. Of the local governments responding to this question, 52 percent had five regular members of the board; 22 percent had more members, ranging from six to eleven; and 25 percent reported having fewer than five regular members (which can occur only if the variance function is assigned to a smaller planning or governing board or if extraterritorial members are used to reach a total membership of five).

A majority of the jurisdictions responding provide for alternate members who can serve in place of an absent member or a member with a conflict of interest that precludes participation in an individual case. Sixty percent of the respondents have alternates for regular board members, and a smaller number (33 percent) have alternates for extraterritorial members.

A majority of the cities responding have extraterritorial jurisdiction and thus have extraterritorial members on the board that decides variances (Table 7). The number of extraterritorial board members relative to regular members is required by statute to be in the same proportion as the population of the extraterritorial area to the population inside the city limits.

In the vast majority of instances, extraterritorial members are allowed to vote on all cases coming before the board. Of the responding jurisdictions, 91 percent reported that extraterritorial members participated in cases arising inside the city as well as those from the extraterritorial area.

North Carolina law does not set any specific educational or experience qualifications for board of adjustment membership. Still, a considerable number of the board members have substantial experience. As indicated in Table 8, only 15 percent of board members in responding jurisdictions have a year or less experience and over half have more than three years of experience. Thus, while there is constant turnover on these boards, a considerable number of members are appointed to multiple terms.

A considerable number of board members have also received some training in zoning law and in how to conduct quasi-judicial proceedings. Forty percent of the jurisdictions responding reported that they had provided some training of this type to board members within the previous twelve months. The training came from a variety of sources. The most common form was provision of books or written material (88 respondents), followed by training by staff members (75 respondents), training by the Institute of Government or other outside personnel (60 respondents), and use of video tapes or teleconferences (52 respondents).

A somewhat surprising result appeared when jurisdictions were asked what proportion of the board's workload was taken up with consideration of variances, which has long been assumed to be the principal function of boards of adjustment. Yet a substantial majority of jurisdictions—62 percent—reported that the board spends less than half of its working time making variance decisions. Table 9 sets out these responses.

One partial explanation for this figure emerges when the data is examined more closely. Decision-making boards in cities with smaller populations are far more likely than those in larger cities to spend a low proportion of their working time on variances. Of the twenty-three cities with populations under 500 responding, nearly 80 percent reported that variances constituted less than half of the board's workload. (By contrast, only 42 percent of the fifty-four cities with populations over 10,000 reported spending such a low proportion of their workloads on variances, as shown by Figure 1.) In the smaller jurisdictions, too, the decision-making board is far more likely to be a board that has responsibilities other than quasi-judicial zoning matters: the governing board, planning board, or a combined planning board-board of adjustment. In fact, as Table 10 shows, variances are a much larger proportion of the workload for boards of adjustment than they are for governing and planning boards.

Administration

Most local governments charge a fee for a variance petition. As shown in Table 11 and Figure 2, the most common amount charged is between \$50 and \$200. As indicated by Figure 3, cities with smaller populations are more likely than larger municipalities to charge a low fee. In counties, there was no similar relationship between size of application fee and population.

When a person contacts the board's staff about a petition for a variance, a staff member provides the requisite forms for submitting the petition. The legal burden is then on the petitioner

Table 8 Experience of Board Members

	<i>Members</i>	
	<i>No.</i>	<i>Percent (%)</i>
<1 year	350	15
1–3 years	708	31
>3 years	1,204	53
Total	2,262	100

Table 9 Variance Petitions As Proportion of Board Workload (in 12-Month period)

<i>Share of board's workload</i>	<i>Jurisdictions</i>	
	<i>No.</i>	<i>Percent (%)</i>
<50	198	62
51 to 75	41	13
76–90	29	9
>90	53	17
Total	321	100

Table 10 Variances as Proportion of Board Workload, by Type of Board (in percent)

<i>Share of workload spent on variances (in %)</i>	<i>Decision-Making Boards</i>		
	<i>Boards of adjustment (N=272)</i>	<i>Governing boards (N=30)</i>	<i>Planning boards (N=15)</i>
<50	56	93	93
50–74	14	3	7
75–89	11	0	0
>90	19	3	0
Total	100	100	100

Table 11 Fees for Variance Petitions

<i>Fee (\$)</i>	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
0	46	13
1–25	29	8
26–50	37	11
51–100	89	25
101–200	93	27
201–300	30	9
Over 300	16	5
Separate fees for residential and industrial/commercial	10	3
Total	350	100

Figure 1 Proportion of Board Workload Spent on Variances, by Population Size

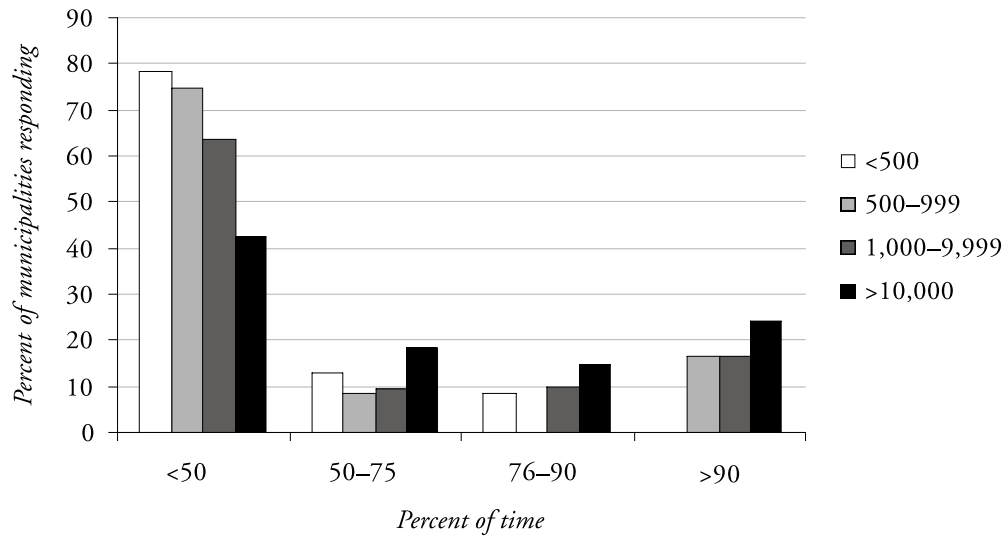


Figure 2 Fees for Variance Applications

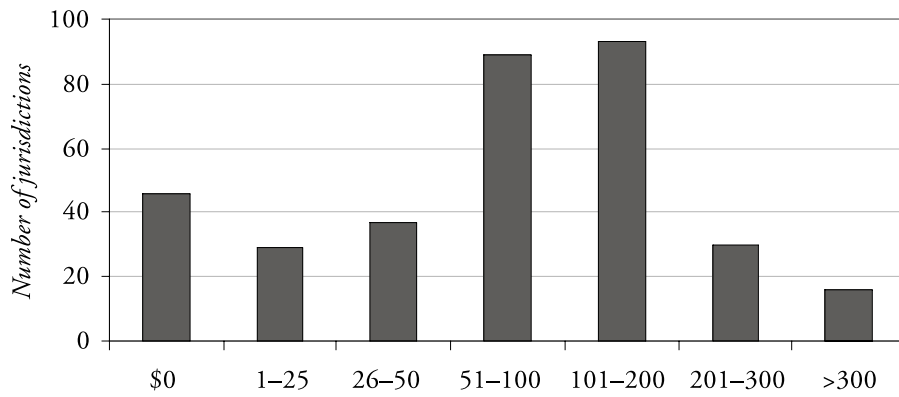
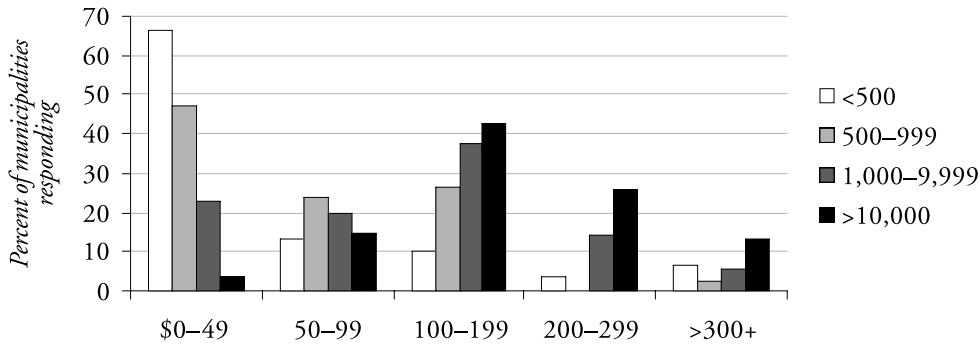


Figure 3 Variance Fees, by Population Size



to produce sufficient competent, substantial, and material evidence to justify the variance. However, it is common for city or county staff members to provide the petitioner with some additional information. As shown in Table 12, staff members usually provide information on variance standards, forms and procedures, and, frequently, alternatives to a variance; nearly half also may give the petitioner advice on the likelihood of obtaining a variance.

In most North Carolina jurisdictions, the city or county attorney provides legal representation for the board making variance decisions. Of those jurisdictions responding to this question, 90 percent said the city or county attorney represented the board, while 10 percent had outside counsel.

This representation is often limited to handling legal matters outside the context of individual hearings. Some 48 percent of the respondents reported that the board's attorney never, or only rarely, attended variance hearings. At the other end of the spectrum, 37 percent reported that the board's attorney was always or almost always present. The distribution of responses to this question is shown in Table 13.

Gathering Evidence

Zoning variances are quasi-judicial in nature. The North Carolina courts have held that constitutional requirements of due process require that fair trial standards be observed whenever quasi-judicial decisions are made. Boards considering variances must, therefore, conduct evidentiary hearings to gather evidence; and the record of such hearings must contain sufficient competent, substantial, and material evidence to support the board's findings.

Hearing Length

The typical variance hearing in North Carolina lasts anywhere from fifteen minutes to an hour. Table 14 summarizes the length of time boards spend on a typical individual variance, including presentation of the evidence, deliberation, and making a decision.

Interestingly, the data show that a jurisdiction's population size has no significant impact on the length of hearings—with one modest exception. Cities with populations under 500 are more likely than any other category to have hearings that last over an hour (Table 15 and Figure 4). There was no similar trend for counties.

Neither the type of board deciding variances, the experience level of the board, nor the board's workload has any appreciable impact on the length of the average variance hearing.

Presentation of Information

The type and amount of information and analysis staff members prepare and present to the board making the variance decision varies. It is very common for the staff to make a presentation to the board at the variance hearing. Staffs in 87 percent of the jurisdictions responding make a

Table 12 Information Provided to Variance Petitioners

<i>Information</i>	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
Variance standards, forms, procedures	289	81
Alternatives to a variance	234	66
Likelihood of success	172	48
Other	18	5

Table 13 Board Attorney's Attendance at Hearings

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
Never	70	22
Rarely	81	26
Occasionally	40	13
Frequently	5	2
Almost always	29	9
Always	87	28
Total	312	100

Table 14 Board Time Spent on Typical Variance Petition

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
<15 minutes	20	6
15–30 minutes	142	46
31–60 minutes	121	39
>60 minutes	28	9
Total	311	100

Table 15 Average Length of Municipal Variance Hearing (in percent of cities of each population size reporting)

<i>Length of hearing</i>	<i>Population of Municipality</i>			
	<i><500 (N=15)</i>	<i>500–999 (N=34)</i>	<i>1,000–9,999 (N=151)</i>	<i>>10,000 (N=52)</i>
<15 minutes	0	6	9	2
15–30 minutes	33	50	40	56
31–60 minutes	47	32	42	35
>60 minutes	20	12	9	8

Figure 4 Average Length of Variance Hearing, by Population Size

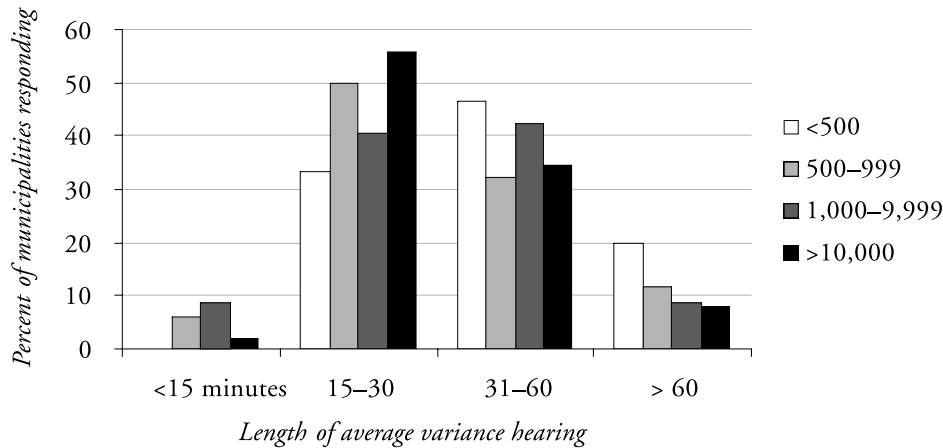


Table 16 Information Provided to Board by Staff

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
Factual information on the petition	282	98
Information/analysis of relevant ordinance provision involved	245	85
Video/photographs of site	166	57
Recommendation on decision	114	39
Other	14	5

Table 17 Appearance of Witnesses Other Than Petitioner or Staff at Variance Hearings

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
Never	24	8
Rarely	96	31
Occasionally	125	40
Frequently	43	14
Almost always	17	5
Always	6	2
Total	312	100

Table 18 Appearance of Expert Witness at Variance Hearings

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
Never	72	23
Rarely	142	46
Occasionally	71	23
Frequently	21	7
Almost always	3	1
Always	1	0
Total	310	100

report at hearings. As shown in Table 16, staffs in virtually all these jurisdictions prepare factual information on the petition for the board’s review. A significant number also prepares some information and analysis of the ordinance provision from which the variance is sought, and a majority produces video or photographic coverage of the site. Fewer than half of the staffs in responding jurisdictions also present a recommendation to approve or deny the variance.

As a general rule, staffs in the more populous cities are more likely than those in smaller towns to make presentations to the board. In towns with populations under 500, 70 percent of the jurisdictions reported that the staff prepared reports. This percentage rises to 76 percent for cities with populations in the 500–999 range, 83 percent for cities in the 1,000–9,999 range, and 100 percent for those over 10,000.

More often than not, the staff and the petitioner are the only witnesses at a variance hearing. As indicated in Table 17, 79 percent of the jurisdictions report that other witnesses appear only occasionally, or even less frequently. It is not altogether rare, however, for other people to appear at the hearing to offer testimony regarding a variance petition; 21 percent of the jurisdictions reported that others appear “frequently,” “almost always,” or “always.”

It is uncommon for expert witnesses to be present at variance hearings. As Table 18 indicates, 79 percent of responding jurisdictions report that expert witnesses never or rarely appear. There were no substantial differences in the frequency of reported appearances by expert witnesses in jurisdictions of different population size.

Attorneys also attend hearings quite infrequently. As Table 19 indicates, 68 percent of responding jurisdictions report that attorneys representing either petitioners or opponents “never” or “rarely” appear. Yet, as might be expected, attorneys representing a party do attend variance hearings more frequently in jurisdictions with larger populations. In 86 percent of the cities with populations under 1,000, attorneys reportedly “never” or “rarely” attend hearings to represent a party, whereas this was reported to be the case in only 42 percent of the cities with populations over 10,000.

Table 19 Appearance of Attorney Representing Petitioner or Opponent at Variance Hearings

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
Never	73	24
Rarely	118	38
Occasionally	97	31
Frequently	16	5
Almost always	6	2
Always	0	0
Total	310	100

Table 20 Reported Trends in Formality of Variance Proceedings (past five years)

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
More formalistic and legalistic	137	44
Less formalistic and legalistic	19	6
Sometimes more formal, sometimes less	41	13
No change	111	36
Total	308	100

There appears to be a trend toward greater formality of variance proceedings. When asked about changes over the past five years, nearly half the jurisdictions reported that proceedings were becoming more formalistic and legalistic. Table 20 summarizes these responses.

Decision-Making Process

Findings

A board making a quasi-judicial decision must explicitly set forth what it determines to be the essential facts upon which its decision is based. The findings of fact adopted must be sufficiently detailed to inform the parties and a reviewing court about the bases of a decision. Use of a preprinted form noting only that a property does or does not meet the standards for a variance is insufficient. Likewise, a conclusory statement that a standard has or has not been met is inadequate.

The most common means of preparing the findings of fact for a variance decision is to use the minutes of the board making the decision to set out the initial draft of the findings. Forty-eight percent of the jurisdictions responding indicate that their boards followed this practice. In a substantial number of other jurisdictions, the staff prepares the draft findings—either prior to the hearing (27 percent) or after it (24 percent). Table 21 sets out the full range of methods reported for preparing the findings of fact. (The number of methods employed and the percentages add to more than 100 percent because jurisdictions do not always use the same methods and they were asked to check all options employed in the past year.)

Table 21 First Draft of Findings of Fact

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
Included in meeting minutes	148	48
Prepared by staff before meeting	84	27
Prepared by staff after hearing	75	24
Prepared by board member after hearing	37	12
Proposed before or at hearing by petitioner or opponents	33	11
Proposed by board attorney before hearing	8	3
Proposed by board attorney after hearing	15	5
Other methods	13	4
Total jurisdictions responding:	207	

Table 22 Typical Time Period from Submission of Variance Petition to Board Decision

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
<30 days	164	52
31–60 days	142	45
61–90 days	8	3
>90 days	1	0
Total	315	100

Figure 5 Days Required for Completion of Variance Process

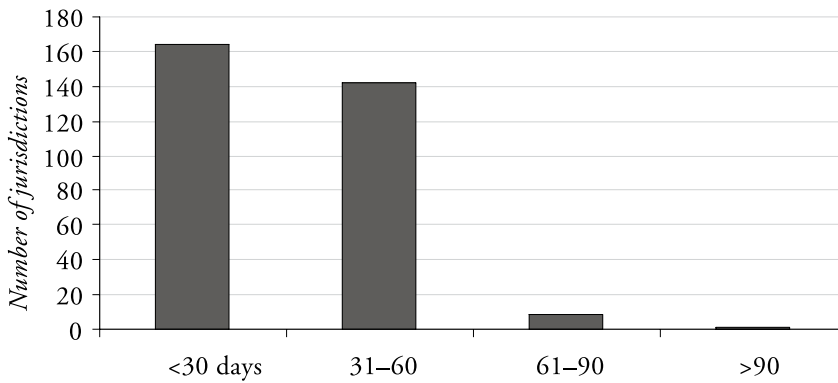
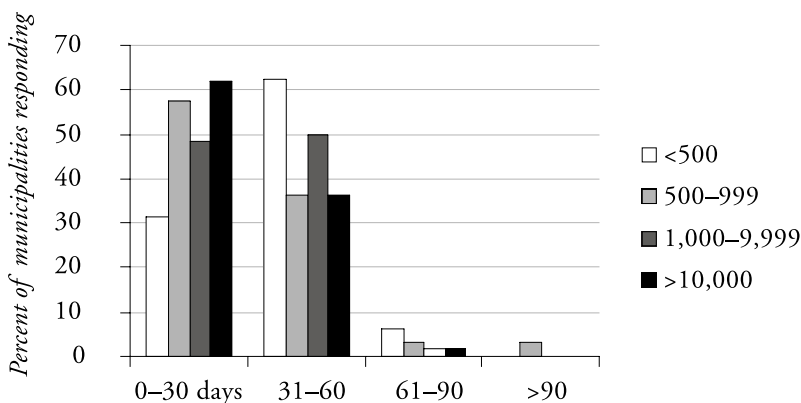


Table 23 Average Length of Variance Process from Petition to Decision of Municipal Board (in percent of cities of each population size reporting)

<i>Avg. Length of Variance Process</i>	<i>Population of Municipalities</i>			
	<i><500 (N=16)</i>	<i>500–999 (N=33)</i>	<i>1,000–9,999 (N=151)</i>	<i>>10,000 (N=55)</i>
0–30 days	31	58	48	62
31–60 days	63	36	50	36
61–90 days	6	3	2	2
>90 days	0	3	0	0

Figure 6 Average Length of Variance Process, by Municipal Population



Length of Process

A frequent complaint of petitioners is that the time taken to complete the entire variance process is too long. The survey indicates, however, that a variance case rarely takes a long time to resolve. Only 3 percent of the jurisdictions reported that the time from the filing of a completed petition to the board’s decision exceeded sixty days. Table 22 and Figure 5 show the time frame for completing the entire variance process in 315 jurisdictions.

Table 23 and Figure 6 demonstrate that cities with populations of less than 500 are more likely than larger cities to have a variance process that lasts between one and two months. Larger cities are more likely to process variance petitions in a month or less. This difference is probably a function of board workload, as boards in larger municipalities handle significantly more variance applications than those in small jurisdictions. As a result, they are more likely to have developed efficient systems for processing requests. In smaller jurisdictions, variances are often decided by governing and planning boards, which are not organized for the purpose of expediting variance applications.

Decisions Made

Outcomes

The survey asked officials how many petitions for zoning variances were filed in their jurisdictions in a recent twelve-month period. The results indicate that petitions for zoning variances are fairly common. The jurisdictions responding considered 1,806 petitions.

The number of variance petitions considered varies significantly from jurisdiction to jurisdiction. As illustrated by Figure 7, a majority of the jurisdictions (nearly two-thirds of the total) considered three or fewer variances per year. On the other end of the spectrum, a small but significant number of jurisdictions (13 percent) considered more than ten variances per year.

As would be expected, jurisdictions reporting larger numbers of variance petitions tend to be those with larger populations. For example, the state’s most populous city, Charlotte, alone considered 6.5 percent of all the variance petitions

Table 24 Variance Petitions Considered and Granted in a Recent Twelve-Month Period, by Population

<i>Population of jurisdiction</i>	<i>No. of petitions</i>	<i>No. granted</i>	<i>Percent approved</i>	<i>Petitions per 1,000 population</i>	<i>Approvals per 1,000 population</i>
Municipalities					
<500	39	20	51	4.25	2.18
500–999	90	70	78	2.79	2.17
1,000–9,999	465	341	73	0.79	0.58
>10,000	740	506	68	0.26	0.18
Counties					
<10,000	172	138	80	0.23	0.12
>10,000	300	220	73	0.12	0.09
Total	1,806	1,295	72	0.24	0.17

reported, which is not surprising since Charlotte is home to some 6.7 percent of the state's population. Together, the state's six cities with populations over 100,000 considered 350 variance petitions, nearly 20 percent of the total reported. But even among this small group, there was substantial variability in the numbers considered: Charlotte (116 petitions considered), Raleigh (92), Greensboro (59), Durham (10), Winston-Salem (22), Fayetteville (51).

Table 24 sets out the numbers of petitions and the approval rates of reporting jurisdictions according to their population size. Of the 1,806 variance petitions reportedly considered over a twelve-month period, 1,295 (72 percent) were granted. This overall approval rate is remarkably consistent with several national studies conducted over a relatively long period of time. There was some difference in the approval rates of reporting jurisdictions based on their populations (though it should be noted that the relatively lower number of petitions considered in smaller jurisdictions may reduce the significance of the percentage variations). While cities with populations under 1,000 had a substantially higher than average rate of variance petitions and approvals per 1,000 population, those with the very lowest populations (under 500) had the lowest approval rate (51 percent approved compared with an overall average of 72 percent).

The type of board responsible for deciding variance requests appears to exert a modest influence on the approval rate. As shown by Table 25, boards of adjustment approve fewer variances than governing and planning boards do.

Figure 7 Annual Number of Variance Petitions Submitted

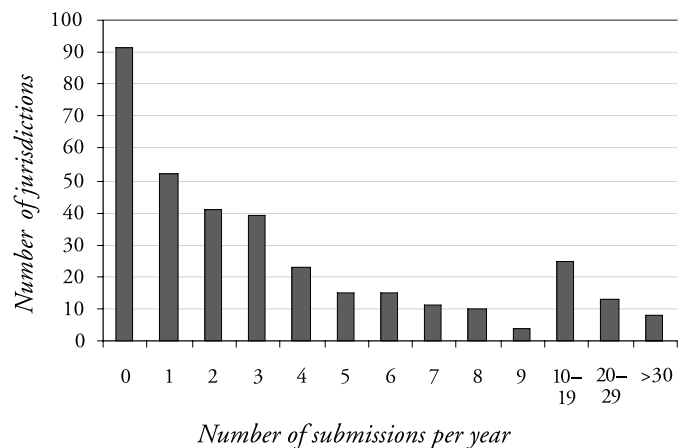


Table 25 Variance Petitions Approved in Twelve-Month Period, by Type of Decision-Making Board

	<i>Variations requested</i>	<i>Variations approved</i>	<i>Approval rate (%)</i>
Boards of Adjustment	1,645	1,163	71
Governing Board	80	65	81
Planning Board	70	56	80

Table 26 Effect of Board Members' Experience on Variance Approvals (in 12-month period)

<i>Experience</i>	<i>Variances requested</i>	<i>Variances approved</i>	<i>Approval rate (%)</i>
Less than 3 years	1,013	695	69
More than 3 years	720	547	76

Table 27 Variance Approvals in Recent Twelve-Month Period, by Decade of First Zoning Ordinance

<i>First zoning ordinance adopted</i>	<i>Total variances requested</i>	<i>Variances approved</i>	<i>Approval rate (%)</i>
Before 1960	247	203	82
1960–1969	351	249	71
1970–1979	275	199	72
1980–1989	291	234	80
1990–1999	328	210	64
2000–2003	79	45	57

Table 28 Effect of Board Members' Recent Training on Variance Approvals (in 12-month period)

<i>Within past 12 months</i>	<i>Variances requested</i>	<i>Variances approved</i>	<i>Approval rate (%)</i>
Received training	770	538	70
Received no training	965	699	72

Table 29 Effect of Staff Report on Variance Approvals (in 12-month period)

	<i>Variances requested</i>	<i>Variances approved</i>	<i>Approval rate (%)</i>
Report presented to board	1,646	1,179	72
No staff report	135	97	72

Table 30 Effect of Board Attorney's Attendance at Hearings (in 12-month period)

<i>Frequency of board attorney attendance</i>	<i>Variances requested</i>	<i>Variances approved</i>	<i>Approval rate (%)</i>
Never–Occasionally	716	508	71
Frequently–Always	1,057	762	72

Somewhat surprisingly, more-experienced boards approve variances at modestly higher rates than less-experienced boards do, as illustrated in Table 26.

Another unexpected finding was that jurisdictions that have had zoning for more than ten years experience higher variance approval rates than those with more recently adopted zoning ordinances. As Table 27 shows, localities that implemented zoning before 1960 have an 82-percent approval rate, while jurisdictions that implemented zoning in the 1990s and 2000s have, respectively, a 64- and 57-percent approval rate.

Tables 28, 29, and 30 show that variance approval rates do not appear to be influenced by training for board members, staff presentations to the board, or the frequency of board attorneys' attendance at variance hearings.

Subject Matter of Variances

Zoning administrators report that by far the most common variance requested is from regulations establishing the setback of principal structures. When asked to identify the three most common situations for which variances were requested in the past twelve months, 75 percent included principal-structure setbacks. The next most frequent request involved the location of accessory buildings, which was reported by 22 percent of responding jurisdictions. The fact that the courts in North Carolina have for fifty years consistently held use variances to be illegal no doubt decreases (but does not eliminate) petitions for use variances. Table 31 sets out the most common subjects of variance petitions in the order of frequency with which jurisdictions named them as one of the top three variances requested.

Despite the strong predominance of requests for variances from principal-structure setbacks, most zoning administrators reported that no one particular type of variance petition is more likely than others to be granted or denied. Sixty-two percent reported that no one type of variance was granted more often than others, and 68 percent reported that no one type of variance was denied more often than others. Not surprisingly, to the extent that one type of variance is more likely to be either granted or denied, it is the principal-structure setback variance—the only individual type of variance to be listed by at least 10 percent of responding jurisdictions as one of the top three types of variances granted or denied. Otherwise, the order of variances most likely to be granted follows the same order as the types most likely to be requested. The same generally holds true for the types of variances most likely to be denied, except that variances for sign size, height, and location are ranked modestly higher in the order of types denied than they are in the order of types requested.

Table 32 shows that as jurisdiction size increases, setbacks are more likely to rank as the most requested type of variance.

Table 31 Most Common Types of Variance Requested (listed as one of top three)

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
Setback for principal structure	204	75
Location of accessory building	59	22
Sign size or height	50	18
Lot dimension	46	17
Lot size	41	15
Miscellaneous others	37	14
Parking requirements	31	11
Type of use permitted	31	11
Landscaping requirements	26	10
No particular type	19	7
Sign location	17	6
Building height	8	3
Access	7	3
Total	273	—

Table 32 Percent of Cities Identifying Setbacks as Most Common Type of Variance Requested, by Population

<i>Population</i>	<i>Percent (%)</i>
<500	38
500–999	48
1,000–9,999	59
>10,000	67

Factors Influencing Variance Decisions

Merits of the Petition

The merit of the petition is reportedly the most significant factor explaining the outcome of variance petitions. Overall, 79 percent of administrators in responding jurisdictions reported that the board deciding variance petitions “frequently,” “almost always,” or “always” bases its decision on the legal standards set out in the ordinance. Table 33 provides the details for this response, and Figure 8 displays the same information in graphic form.

The figures shown in Table 34 and Figure 9, however, indicate that boards in large municipalities are less likely to base their variance decisions on legal standards. Officials in only 45 percent of municipalities with populations over 10,000 responded that decisions were “almost always” or “always” based on legal standards. This compares to 78 percent for municipalities with populations under 500.

There was a relationship between the age of the ordinance and the perception that variance decisions were frequently based on legal standards. Jurisdictions with more recently adopted ordinances were slightly more likely than those with older ordinances to report that the boards adhered to legal standards for

Table 33 Perceived Adherence of Variance Decisions to Legal Standards

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
Never	3	1
Rarely	20	6
Occasionally	41	13
Frequently	64	20
Almost always	133	42
Always	55	17
Total	316	100

Figure 8 Adherence of Variance Decisions to Legal Standards

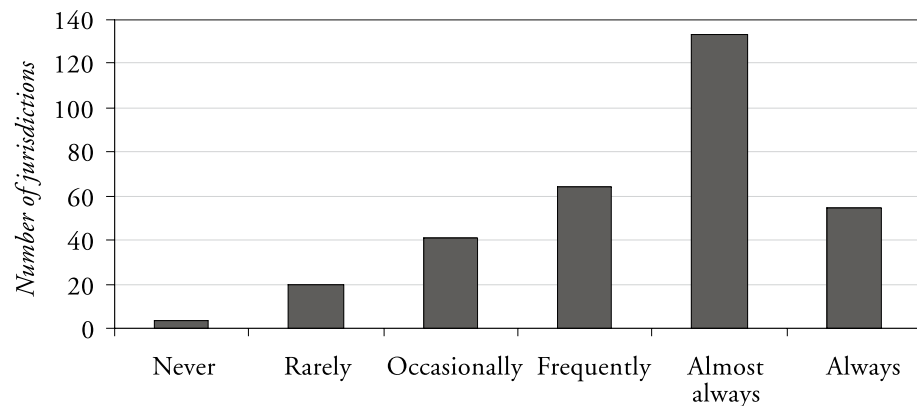


Figure 9 Adherence of Variance Decisions to Legal Standards, by Population Size

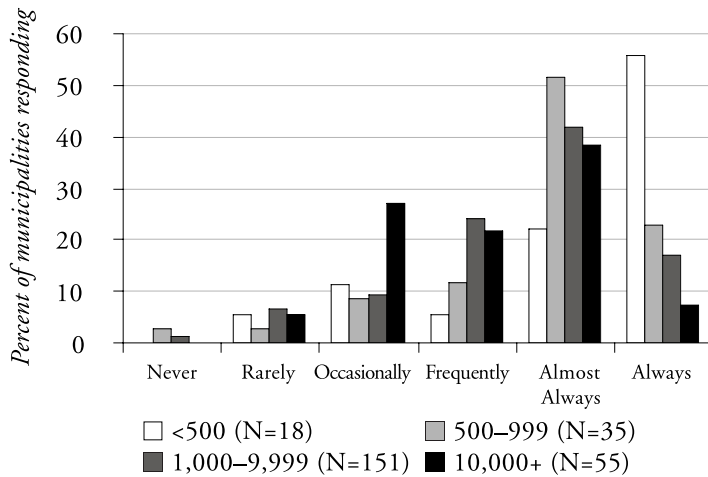
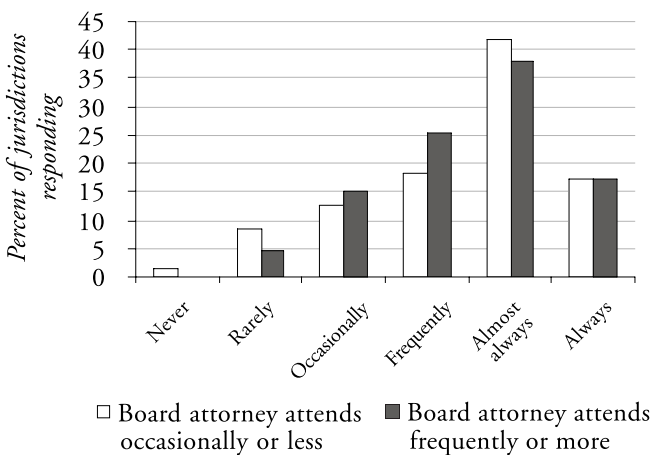


Table 34 Adherence of Variance Decisions to Legal Standards (in percent of cities of each population size responding)

	Population of Municipality			
	<500 (N=18)	500-999 (N=35)	1,000-9,999 (N=151)	>10,000 (N=55)
Never	0	3	1	0
Rarely	6	3	7	5
Occasionally	11	9	9	27
Frequently	6	11	24	22
Almost always	22	51	42	38
Always	56	23	17	7

Figure 10 Adherence of Variance Decisions to Legal Standards, by Attendance of Board Attorney at Hearing



variances. Of responding jurisdictions with zoning ordinances adopted before 1969, 49 percent reported that their decisions were “almost always” or “always” based on the legal standards; 63 percent of the jurisdictions with more recently adopted ordinances reported that level of adherence.

Several other factors, however, had no appreciable impact on adherence to legal standards. Attendance of the board’s attorney at variance hearings did not appear to result in decisions that applied legal standards more strictly (see Figure 10). Similarly, the data suggest that preparation of staff reports for board members did not increase the board’s tendency to make variance decisions based on legal standards (see Figure 11).

There were also no significant differences in perceived adherence to legal standards between the variance decisions made by a governing board and a board of adjustment (although the sixteen jurisdictions where the variance decision is assigned to the planning board did report modestly higher levels of perceived adherence to the legal standards).

The data also show no appreciable effect on reported adherence to legal standards related to either the experience level or recent training of board members.

All the legal standards for a variance are important factors in decision making; but, as expected, boards struggle the most with application of the hardship standard. While 58 percent of the jurisdictions responding reported that no one standard was more difficult to apply than others, 31 percent said the “practical difficulties or unnecessary hardship” standard was most difficult. (Compare this figure to the 6.5 percent and 2 percent, respectively, of jurisdictions who reported they found the spirit-of-the-ordinance and the public safety/welfare or substantial justice standards the most difficult to apply

As for which standards determined the outcome of variance decisions, 47 percent of responding jurisdictions reported that no one standard is more likely than others to be the basis of a variance denial. To the extent that a single factor does come into play, however, the failure to establish sufficient practical difficulties or unnecessary hardship to justify a variance is by far the most likely. Table 35 summarizes the survey data on this point.

To the extent that there is a trend in variance decision making, zoning administrators report that their boards are paying increasing attention to whether variance petitions conform to the legal standards. When asked if they have noticed any changes in their board in this respect over the past five years, nearly half said no. However, a third of the respondents indicated that their boards were applying the standards more strictly, while only 8 percent noted that their boards were becoming less strict. Table 36 provides the detailed response to this question.

Figure 11 Adherence of Variance Decision to Legal Standards, by Preparation of Staff Report

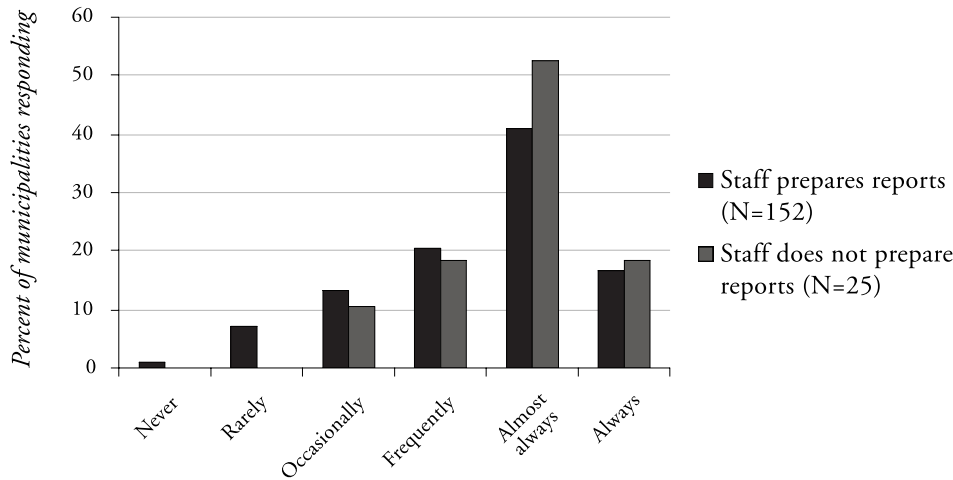


Table 35 Reported Standard Most Likely to Be Basis of Variance Denial

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
None more likely than others	134	47
Insufficient practical difficulties or unnecessary hardships	108	38
Spirit of ordinance not observed	24	8
Public safety and welfare not secured	19	7
Substantial justice not done	3	1
Total	288	100

Table 36 Perceived Trend in Application of Variance Standards (past five years)

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
Standards applied more strictly	100	32
Standards applied less strictly	25	8
Sometimes applied more strictly, sometimes less so	42	14
No trend	144	46
Total	311	100

Identity of Petitioner or Opponent

A criticism sometimes made of local governments’ quasi-judicial decision making is that the applicant’s identity sometimes has a greater impact on the decision than the merits of the petition. Zoning administrators acknowledged that this is sometimes the case, though not as often as one might suspect. Of the responding jurisdictions, 76 percent reported that a bias in favor of the petitioner or opponents either “never” or only “rarely” affects the outcome of the decision. Less than 10 percent indicated that this happens frequently (or more often) in their jurisdiction. These responses are detailed in Table 37.

Zoning administrators from more populous municipalities were more likely to indicate that variance decisions are influenced by sympathy for the personal circumstances of the petitioner (Tables 38 and 39, Figure 12). In municipalities with over 10,000 people, 62 percent of officials reported that sympathy for personal circumstances affect the outcome of variance decisions “occasionally” or more often. This compares to only 19 percent in municipalities with populations under 500 and 33 percent of those between 500 and 999.

Table 37 Does Favoritism for Petitioner or Opponent Influence Variance Decision?

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
Never	80	26
Rarely	125	40
Occasionally	81	26
Frequently	17	5
Almost always	7	2
Always	2	1
Total	312	100

Figure 12 Sympathy for Petitioner As Factor in Variance Decisions Not Meeting Legal Standards, by Population Size

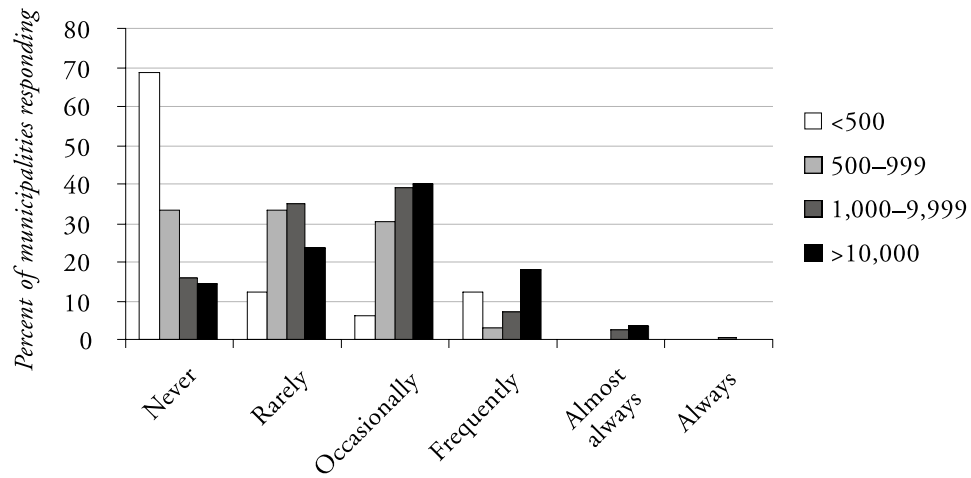


Table 38 Does Sympathy for Petitioner’s Personal Circumstances Affect Outcome of Petition?

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
Never	66	21
Rarely	94	30
Occasionally	108	34
Frequently	36	11
Almost always	9	3
Always	2	1
Total	315	100

Table 39 Sympathy for Petitioner As Factor in Variance Decisions Not Meeting Legal Standards (in percent of cities of each population size responding)

	<i>Population of Municipality</i>			
	<i><500</i>	<i>500-999</i>	<i>1,000-9,999</i>	<i>>10,000</i>
Never	69	33	16	15
Rarely	13	33	35	24
Occasionally	6	30	39	40
Frequently	13	3	7	18
Almost always	0	0	3	4
Always	0	0	1	0

Figure 13 Sympathy for Opponents As Factor in Denial of Variances Meeting Legal Standards, by Population Size

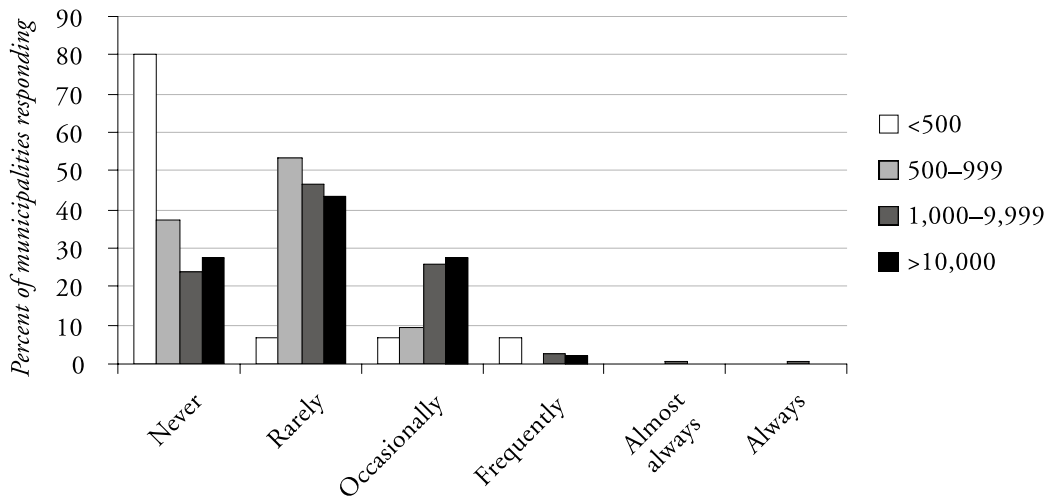


Figure 14 Effect on Variance Decision of Favoritism toward Petitioner or Opponent, by Population Size

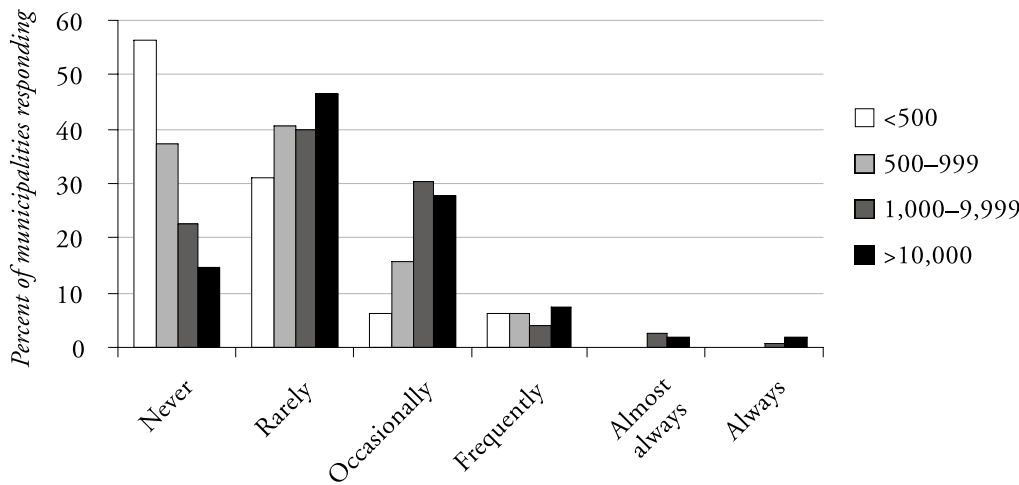


Table 40 and Figure 13 show that the same trend is evident with regard to the effect of board members' sympathy for opponents, although the data suggest that sympathy for opponents does not affect the outcome of the variance process as frequently as sympathy for petitioners.

As Table 41 and Figure 14 show, jurisdictions with smaller populations are less likely to report that favoritism for either the petitioner or opponent affects the variance decision. In 87 percent of jurisdictions with fewer than 500 people, officials report that favoritism rarely or never affects the decision—compared with only 61 percent in municipalities with populations over 10,000.

Staff Recommendations

In some 40 percent of responding jurisdictions, the staff makes recommendations to the board. Survey responses indicate, however, that board members make independent judgments based on the merits of variance petitions: only 7 percent of the jurisdictions report that their boards “always” make decisions consistent with staff recommendations. Yet boards also clearly consider the staff position and very often do make decisions that are consistent with it. As indicated in Table 42, 82 percent of the jurisdictions report that their board's actions are “frequently,” or even more often, consistent with the staff's recommendation. There were no substantial differences in the level of staff–board concurrence based on population size, although there was a very modest tendency for boards in more populous jurisdictions to disagree with staff recommendations more frequently.

The data show some tendency for boards to be more responsive to a staff recommendation to grant a

Table 40 Sympathy for Opponents As Factor in Denial of Variances Meeting Legal Standards (in percent of cities of each population size responding)

	<i>Population of Municipality</i>			
	<i><500</i>	<i>500-999</i>	<i>1,000-9,999</i>	<i>>10,000</i>
Never	80	38	24	27
Rarely	7	53	47	44
Occasionally	7	9	26	27
Frequently	7	0	3	2
Almost always	0	0	1	0
Always	0	0	1	0

Table 41 Effect on Variance Decision of Favoritism toward Petitioner or Opponent (in percent of cities of each population size responding)

	<i>Population of Municipalities</i>			
	<i><500</i> <i>(N=16)</i>	<i>500-999</i> <i>(N=32)</i>	<i>1,000-9,999</i> <i>(N=151)</i>	<i>>10,000</i> <i>(N=54)</i>
Never	56	38	23	15
Rarely	31	41	40	46
Occasionally	6	16	30	28
Frequently	6	6	4	7
Almost always	0	0	3	2
Always	0	0	1	2

Table 42 Board’s Decision Is Consistent with Staff Recommendation

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
Never	4	2
Rarely	6	3
Occasionally	21	12
Frequently	53	30
Almost always	80	45
Always	13	7
Total	177	100

Table 43 Effect of Neighbors’ Appearance at Hearing in Support of Variance

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
Reduces chances for variance approval	0	0
Has no effect	93	30
Increases chances for variance approval	219	70
Total	312	100

variance than one to deny it. While in about half of the jurisdictions the substance of a staff recommendation reportedly did not affect the likelihood of board approval, zoning administrators in 46 percent of jurisdictions observed that the board was more likely to follow a recommendation to approve a petition than one to deny it.

Appearance of Neighbors

The role of neighbors also has a significant impact on variance decisions. In over two-thirds of the jurisdictions responding, the appearance at the hearing of neighbors supporting or opposing a variance influenced the outcome of the decision. As shown in Tables 43 and 44, the influence of the neighbors was about the same whether they supported or opposed the variance.

On closer examination, however, the data in Figure 15 indicate that neighbors’ opposition to a variance is perceived as less influential in cities under 500 in population. Over half the respondents from these small towns suggested that neighbors’ opposition has no effect on a variance decision. In contrast, zoning officials in about seven out of ten cities with populations exceeding 500 responded that neighbors’ opposition reduces the chances of variance approval. Zoning administrators’ perceptions that neighbors’ support for a variance increases its chances for approval were similar across all municipality sizes.

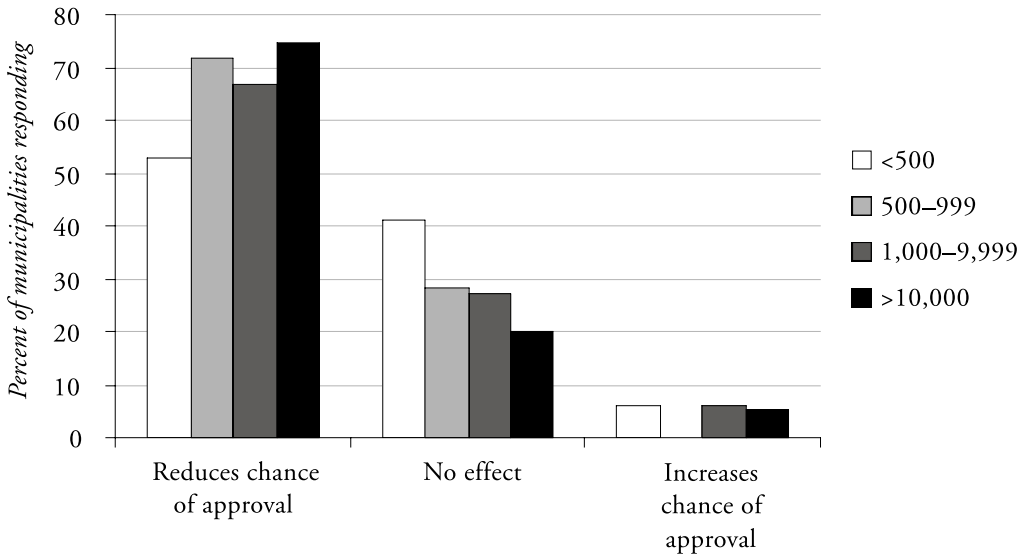
Appearance of Attorneys

In contrast, the presence of an attorney representing a party was deemed to affect the outcome in only a third of the responding jurisdictions. Table 45 indicates that in 67 percent of the jurisdictions, an attorney’s appearance for a party reportedly had no effect on the decision. There is, however, some reported difference on this point based on the population of the responding jurisdiction—it appears that the presence of attorneys representing opponents or petitioners is more likely in larger communities than in smaller communities to impact the outcome, as shown by Figure 16. Zoning administrators in 38 percent of municipalities over 10,000 people reported that the presence of attorneys increases the chances for variance approval; only 7 percent of officials in municipalities with populations in the 500–999 range and 20 percent of those in municipalities with under 500 residents concurred.

Table 44 Effect of Neighbors’ Appearance at Hearing in Opposition to Variance

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
Reduces chances for variance approval	208	67
Has no effect	85	27
Increases chances for variance approval	17	5
Total	310	100

Figure 15 Perception that Neighbors' Opposition to a Variance Affects the Outcome, by Population Size



Impacts of Variance Decisions

Impacts on Plans and Ordinance Integrity

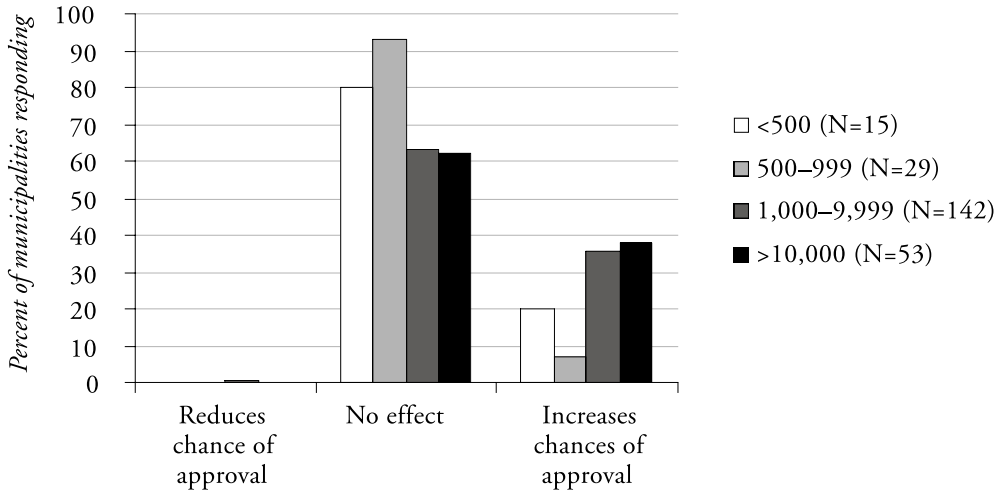
Seventy-two percent of responding officials stated that the number and type of variances granted did not undercut the purposes and intents of the jurisdiction's comprehensive plan or overall zoning scheme; only 3 percent of the responding jurisdictions reported this to be a significant issue (Table 46).

Compared to larger municipalities, we have seen that cities with smaller populations consistently reported greater adherence to legal standards, less likelihood of favoritism or sympathy for petitioners or opponents affecting variance decisions, and less influence on variance decisions by neighbors and attorneys. Therefore, it is not surprising that zoning administrators in small towns were also less likely to conclude that variances were

Table 45 Effect of Attorney Representing Petitioner or Opponents at Hearing

	<i>No. of jurisdictions</i>	<i>Percent (%)</i>
Reduces chances of success for represented party	4	1
Has no effect	200	67
Increases chances of success for represented party	93	31
Total	297	100

Figure 16 Perception that Attorneys' Presence at Hearing Affects Variance Decision, by Population Size



undercutting the comprehensive plan or overall zoning scheme (Figure 17). By contrast, in more populous jurisdictions, variances were far more likely to be perceived as at least a modest problem. This assessment rose steadily with increased population size: from a low of 6 percent in towns with populations under 500 to 44 percent for cities with populations over 10,000.

Judicial Appeals

In North Carolina, appeals of quasi-judicial zoning decisions go directly to superior court. The typical variance decision is not,

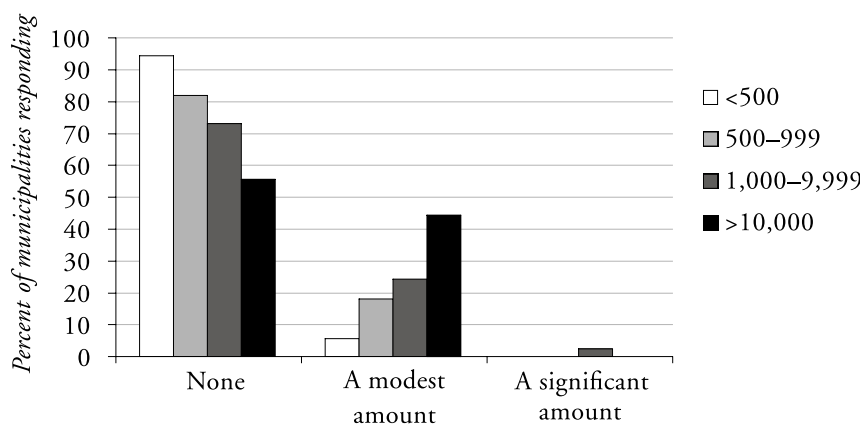
however, appealed. Only 7 percent of responding jurisdictions reported that any of their variance decisions had been appealed in a recent twelve-month period. Of the 1,806 variance petitions handled by all jurisdictions reporting during this one-year period, only 48 (2.5 percent) were appealed to superior court.

The most common result of a court appeal is affirmation of the board’s decision. Of the seventeen cases decided by the trial court in this period, the board’s decision was upheld in ten cases (59 percent) and reversed in five cases (29 percent); the matter was remanded for further board action in two cases (12 percent).

Table 46 Impact on Overall Zoning Scheme of Number and Type of Variances Granted (in percent of cities of each population size responding)

	<i>All jurisdictions</i> (<i>N=316</i>)	<i>Population of Municipality</i>			
		<i><500</i> (<i>N=18</i>)	<i>500–999</i> (<i>N=33</i>)	<i>1,000–9,999</i> (<i>N=152</i>)	<i>>10,000</i> (<i>N=54</i>)
No effect	72	94	82	73	56
Undercuts scheme by modest amount	25	6	18	24	44
Significantly undercuts scheme	3	0	0	3	0

Figure 17 Negative Impact of Number and Type of Variances Granted on Overall Zoning Scheme, by Population Size



Appendix A. The Survey Instrument

The following survey should be completed by the *zoning administrator* for the city or county (or the person who most directly works with the board that decides zoning variance petitions).

If you do not have precise numbers readily available, please make your best estimate where possible. If you do not have a response for a particular question, just leave it blank but please complete as many questions as possible before returning this survey. Thanks very much for your assistance.

Responses will not be reported in a way that identifies individual respondents. The following identification information will be used only for statistical analysis and for tracking which jurisdictions have responded to the survey.

Jurisdiction: _____

Please return completed surveys to:

David Owens
Institute of Government
CB 3330, Knapp Building
University of North Carolina-Chapel Hill
Chapel Hill, N.C. 27599

Note: If your jurisdiction does not have zoning, please indicate that on Question 1 and return the survey for our records. Thank you.

1. Does your jurisdiction have a zoning ordinance?
___ No. Thank you. You may skip the remainder of this survey, but please return it for our records.
___ Yes. If so, year adopted if known: 19__
20__

2. Which board is assigned responsibility for deciding variance petitions?
___ Board of adjustment.
___ Planning board.
___ Governing board (city council/board of county commissioners).
___ Other. Please specify: _____.

3. How many members are on this board? Please enter the number of members in each category.
___ Regular members. ___ Alternates for regular members
___ Extraterritorial members. ___ Alternates for extraterritorial members
___ Others. Please specify: ___ ___ Alternates (for any member)

4. If your jurisdiction is a city with extraterritorial members, do those members vote:
(check the response that applies)
___ Only on cases in the extraterritorial area, or
___ On both cases inside the city and in the extraterritorial area.

5. Has the board that decides variances received any training on zoning law or how to conduct quasi-judicial cases in the past twelve months?
___ Yes.
___ No.

6. If they have did receive such training on legal/quasi-judicial procedures, what type of training did they have? (check all that apply)
___ Live training from an outside source (IOG, COG, others)
___ Live training from city/county staff or attorneys
___ Video tape, teleconference, or other remote training
___ Books and written materials provided
___ Other. Please specify: _____

7. How many of the voting members of this board have served:
___ less than one year
___ one to three years
___ more than three years

8. Is a fee currently charged for a variance petition?
___ No.
___ Yes. If so, the amount of the fee is \$ ___

For the following questions about variances, please use the most recent 12 month period that is convenient for you or for which you have readily available information (you can use the past calendar year, fiscal year, or most recent 12 months). If you do not have precise numbers readily available, please make your best estimate where possible. The period you considered in completing this information was: _____ to _____.

9. How many variance petitions were filed? ___

10. How many of these were granted? ___

11. What were the three most common types of situations for which variances were **requested** in your jurisdiction in this 12 month period? Enter 1 for most common, 2 for second most common, 3 for third most common (mark only three items).

- Setbacks for principal structure (front, side, or rear yard)
- Lot dimensions (frontage, etc.)
- Lot size
- Building height
- Location of accessory building
- Sign location
- Sign size or height
- Parking requirements
- Landscaping requirements
- Type of uses permitted
- Access (driveway location, size, number)
- Other. Please specify: _____
- No particular type of variance requested more than others

12. Of those variances requested in this period, is there a type of variance that was **approved** or granted more often than others? If so, enter 1 for most common, 2 for second most common, 3 for third most common (mark only three items).

- No particular type of variance granted more often than others
- Yes. The variance types most likely to be approved were:
 - Setbacks for principal structure (front, side, or rear yard)
 - Lot dimensions (frontage, etc.)
 - Lot size
 - Building height
 - Location of accessory building
 - Sign location
 - Sign size or height
 - Parking requirements
 - Landscaping requirements
 - Type of uses permitted
 - Access (driveway location, size, number)
 - Other. Please specify: _____

13. Of those variances requested in this period, is there a type of variance that was **denied** more often than others? If so, enter 1 for most common, 2 for second most common, 3 for third most common (mark only three items).

- No particular type of variance denied more often than others
- Yes. The variance types most likely to be denied were:
 - Setbacks for principal structure (front, side, or rear yard)
 - Lot dimensions (frontage, etc.)
 - Lot size
 - Building height
 - Location of accessory building
 - Sign location
 - Sign size or height
 - Parking requirements
 - Landscaping requirements
 - Type of uses permitted
 - Access (driveway location, size, number)
 - Other. Please specify: _____

14. Does the staff provide information other than required forms to persons considering filing for a variance?

- No.
- Yes. If yes, what type of information is provided:
 - Information about variance standards, forms, and/or procedures.
 - Advice or information about their likelihood of success.
 - Information on alternatives to a variance.
 - Other. Please specify: _____

14. What is the typical amount of time the board spends on an individual variance petition (including hearing evidence, debate, and making a decision)?

- Less than 15 minutes
- 15 to 30 minutes
- 31 to 60 minutes
- More than 60 minutes

15. Does the city/county staff make a presentation to the board regarding variance petitions?

- No.
- Yes. If yes, does the presentation include: (Check all that apply)
 - Factual information regarding the petition
 - Information/analysis of ordinance provisions involved
 - Video or photographs of site
 - Recommendation regarding decision
 - Other. Please specify: _____

16. If staff recommendations are made on variances, how often is the board's decision consistent with that recommendation?

- Never
- Rarely
- Occasionally
- Frequently
- Almost Always
- Always

17. If staff recommendations are made on variances, is the board more likely to agree with a recommendation to grant the variance than they are a recommendation to deny it?

- Yes.
- No.
- No difference based on recommendations to grant or to deny.

18. How often does a person other than the petitioner and or city/county staff members appear as a witness in an individual variance case?

- Never
- Rarely
- Occasionally
- Frequently
- Almost Always
- Always

19. How often does an expert witness—such as a real estate appraiser, traffic engineer, or other professional—offer evidence (either in person or by affidavit) in an individual variance case?

- Never
- Rarely
- Occasionally
- Frequently
- Almost Always
- Always

20. How often do attorneys appear on behalf of the petitioner or an opponent to the variance?

- Never
- Rarely
- Occasionally
- Frequently
- Almost Always
- Always

21. Who provides legal representation for the board that makes variance decisions?
 City or county attorney.
 Separate attorney represents board.
22. How often does the attorney who represents the board (either the city or county attorney or separate attorney who represents the board) attend variance hearings?
 Never
 Rarely
 Occasionally
 Frequently
 Almost Always
 Always
23. How is the first draft of the written findings of fact regarding a variance decision prepared? (check more than one if applicable)
 Drafts are proposed prior to or at the hearing by the petitioner or opponents.
 Drafts are proposed prior to or at the hearing by the staff.
 Drafts are proposed prior to the hearing by the board's attorney.
 Initial findings are written after the decision by the zoning staff.
 Initial findings are written after the decision by the board's attorney.
 Initial findings are written after the decision by a board member.
 Initial findings are prepared as part of the minutes of the meeting.
 Other. Please specify: _____
24. What is the typical period from the time a completed variance petition is filed to the time a decision is made?
 Less than 30 days
 31 to 60 days
 61 to 90 days
 More than 90 days
25. Were any of the variance decisions made by your board during this 12 month period appealed to superior court?
 No.
 Yes. If so, how many? ____
26. Have there been any superior court decisions during this 12 month period on variances decisions that were appealed to court?
 No.
 Yes. If yes, how many court decisions:
 Upheld the board's decision
 Reversed the board's decision
 Remanded the case for further board action.
27. What proportion of the board's total workload is taken up by work on variance petitions?
 less than 50 percent
 50-75 percent
 76-90 percent
 91 percent or more

The following questions ask for your subjective evaluation. Please give us your reactions and experience in your current jurisdiction relative to these observations that are sometimes made about variances.

28. Do you feel that variance decisions in your jurisdiction are primarily based on the legal standards for variances set out in the ordinance?
 Never
 Rarely
 Occasionally
 Frequently
 Almost Always
 Always

29. Is there a particular variance standard that is more difficult than the others for your board to understand and apply? (check only one)
- Practical difficulties or unnecessary hardship.
 - Spirit of ordinance observed.
 - Public safety and welfare secured.
 - Substantial justice done.
 - None more difficult than others.
30. For those variances that are **denied** by your board, is there a particular variance standard that is more likely than others to be the basis for the denial? (check only one)
- Insufficient practical difficulties or unnecessary hardship.
 - Spirit of ordinance not observed.
 - Public safety and welfare not secured.
 - Substantial justice not done.
 - None more likely to be basis for denial than others.
31. Do you think the appearance of an attorney at the hearing to represent the petitioner or opponent affects the outcome of the decision?
- Reduces chances for success for represented party.
 - Has no effect on outcome.
 - Increases chances for success for represented party.
32. Do you think the appearance of neighbors at hearing to **support** the variance affects the outcome of the decision?
- Reduces chances of a variance being granted.
 - Has no effect on outcome.
 - Increases chances of a variance being granted.
33. Do you think the appearance of neighbors at hearing to **oppose** the variance affects the outcome of the decision?
- Reduces chances of a variance being granted.
 - Has no effect on outcome.
 - Increases chances of a variance being granted.
34. Observers have made these criticisms of the variance process in the past. In your experience, how often do the following factors come into play in variance decisions in your jurisdiction?
- a. Favoritism based on the identity of the petitioner or opponent.
- Never
 - Rarely
 - Occasionally
 - Frequently
 - Almost Always
 - Always
- b. Sympathy for the personal circumstances of the petitioner leading to granting variances that do not meet the legal standards for a variance.
- Never
 - Rarely
 - Occasionally
 - Frequently
 - Almost Always
 - Always
- c. Sympathy for opponents leading to denial of a variance that meets the legal standards for a variance.
- Never
 - Rarely
 - Occasionally
 - Frequently
 - Almost Always
 - Always

35. Do you feel the number and type of variances granted in your jurisdiction undercut the purposes and intent of the comprehensive plan and overall zoning scheme?

- No
- A modest amount
- A significant amount

36. Have you noticed an overall trend in the past five years as to how your board addresses variance petitions?

- More strictly applying standards
- Less strictly applying standards
- Sometimes more strict, sometimes less
- No trend

37. In general, over the past five years have variance proceedings in your jurisdiction become:

- More formal and legalistic
- Less formal and legalistic
- Sometimes more formal, sometimes less
- No change

If you would like to add any additional comments about zoning variances or the variance process in your jurisdiction, please do so in the space below.

We would also appreciate your sending us a copy of variance petition forms, informational handouts you use regarding variances, statements about the process that are read at the beginning of hearings, or other material you have that may be relevant to this study.

Thanks again for your assistance with this study. Study results will be mailed to all cities and counties.

Appendix B. North Carolina Municipalities and Counties Responding to the Survey

MUNICIPALITIES			
AHOSKIE	CHIMNEY ROCK	GASTONIA	LELAND
ALBEMARLE	CLAREMONT	GIBSON	LENOIR
ALLIANCE	CLEMMONS	GIBSONVILLE	LEWISVILLE
ANGIER	CLEVELAND	GLEN ALPINE	LEXINGTON
ANSONVILLE	CLYDE	GOLDSBORO	LIBERTY
APEX	COATS	GOLDSTON	LINCOLN TON
ARCHDALE	COLERAIN	GRAHAM	LINDEN
ASHEBORO	COLUMBIA	GRANITE QUARRY	LITTLETON
ASHEVILLE	CONCORD	GRANTSBORO	LOCUST
ASKEWVILLE	CONETOE	GREEN LEVEL	LOUISBURG
AUTRYVILLE	CONNELLY SPRINGS	GREENEVERS	LOWELL
AYDEN	CONOVER	GREENSBORO	LUMBER BRIDGE
BAKERSVILLE	CONWAY	GREENVILLE	LUMBERTON
BALD HEAD ISLAND	COOLEEMEE	GRIFTON	MACCLESFIELD
BANNER ELK	CORNELIUS	HAMILTON	MACON
BEAR GRASS	COVE CITY	HAMLET	MADISON
BEECH MOUNTAIN	CRAMERTON	HARRELLS	MAIDEN
BELVILLE	CREEDMOOR	HARRISBURG	MARIETTA
BELWOOD	DALLAS	HAVELOCK	MARION
BENSON	DAVIDSON	HAW RIVER	MARS HILL
BERMUDA RUN	DILLSBORO	HAYESVILLE	MARSHALL
BETHANIA	DOBBINS HEIGHTS	HENDERSON	MARSHVILLE
BETHEL	DOBSON	HENDERSONVILLE	MARVIN
BEULAVILLE	DOVER	HERTFORD	MATTHEWS
BILTMORE FOREST	DUBLIN	HICKORY	MAYODAN
BISCOE	DURHAM	HIGH POINT	MAYSVILLE
BLACK CREEK	EARL	HIGHLANDS	MCFARLAN
BLACK MOUNTAIN	EAST ARCADIA	HILLSBOROUGH	MEBANE
BLADENBORO	EDEN	HOLLY RIDGE	MIDDLESEX
BLOWING ROCK	EDENTON	HOLLY SPRINGS	MINERAL SPRINGS
BOGUE	ELIZABETH TOWN	HOOKERTON	MINT HILL
BOILING SPRING LAKES	ELK PARK	HOPE MILLS	MOCKSVILLE
BOLIVIA	ELKIN	HOT SPRINGS	MOMEYER
BOONE	ELLENBORO	HUDSON	MONROE
BREVARD	ELON	HUNTERSVILLE	MOORESVILLE
BRIDGETON	EMERALD ISLE	JACKSON	MOREHEAD CITY
BROADWAY	ERWIN	JACKSONVILLE	MORGANTON
BROOKFORD	EUREKA	JAMESVILLE	MORRISVILLE
BRYSON CITY	FAIR BLUFF	JEFFERSON	MORVEN
BURGAW	FAISON	JONESVILLE	MOUNT AIRY
BURLINGTON	FAITH	KANNAPOLIS	MOUNT HOLLY
BURNSVILLE	FALCON	KELFORD	MOUNT OLIVE
CANDOR	FALLSTON	KENLY	MOUNT PLEASANT
CAROLINA BEACH	FAYETTEVILLE	KILL DEVIL HILLS	MURFREESBORO
CAROLINA SHORES	FLAT ROCK	KING	MURPHY
CARRBORO	FLETCHER	KITTY HAWK	NAGS HEAD
CARTHAGE	FOREST HILLS	LA GRANGE	NASHVILLE
CARY	FOREST CITY	LAKE LURE	NEW BERN
CASTALIA	FOUR OAKS	LAKE PARK	NEW LONDON
CATAWBA	FOX FIRE	LAKE WACCAMAW	NEWLAND
CENTERVILLE	FRANKLIN	LANDIS	NEWPORT
CHADBOURN	FRANKLINTON	LASKER	NEWTON
CHARLOTTE	FUQUAY-VARINA	LAUREL PARK	NORMAN
	GAMEWELL	LAURINBURG	NORTH TOPSAIL BEACH
	GARNER	LAWNDALE	NORTH WILKESBORO

NORTHWEST	SHALLOTTE	WENTWORTH	GRAHAM
NORWOOD	SHARPSBURG	WESLEY CHAPEL	GRANVILLE
OAK CITY	SHELBY	WHISPERING PINES	GREENE
OAK ISLAND	SILER CITY	WHITAKERS	GUILFORD
OAK RIDGE	SIMPSON	WHITEVILLE	HALIFAX
OAKBORO	SIMS	WILKESBORO	HARNETT
OLD FORT	SOUTHERN PINES	WILLIAMSTON	HAYWOOD
ORIENTAL	SOUTHPORT	WILMINGTON	HENDERSON
OXFORD	SPEED	WILSON	HERTFORD
PANTEGO	SPENCER	WILSON'S MILLS	HYDE
PARKTON	SPINDALE	WINDSOR	IREDELL
PATTERSON SPRINGS	SPRING HOPE	WINFALL	JACKSON
PEACHLAND	SPRUCE PINE	WINGATE	JOHNSTON
PINE KNOLL SHORES	STALLINGS	WINSTON-SALEM	JONES
PINE LEVEL	STANLEY	WINTERVILLE	LEE
PINEBLUFF	STAR	WINTON	LENOIR
PINEHURST	STATESVILLE	WOODLAND	LINCOLN
PINEVILLE	STEDMAN	WRIGHTSVILLE BEACH	MACON
PINK HILL	STOKESDALE	YADKINVILLE	MADISON
PITTSBORO	STONEVILLE	YANCEYVILLE	MECKLENBURG
PLEASANT GARDEN	STONEWALL	ZEBULON	MITCHELL
POLKTON	SUGAR MOUNTAIN		MONTGOMERY
POLKVILLE	SUMMERFIELD	COUNTIES	MOORE
POWELLSVILLE	SUNSET BEACH	ALEXANDER	NASH
PRINCETON	SURF CITY	ALLEGHENY	NEW HANOVER
PRINCEVILLE	SWANSBORO	ASHE	ONSLOW
PROCTORVILLE	SWEPSONVILLE	BEAUFORT	ORANGE
RAEFORD	SYLVA	BERTIE	PAMLICO
RALEIGH	TAR HEEL	BLADEN	PASQUOTANK
RAMSEUR	TARBORO	BRUNSWICK	PENDER
RANDLEMAN	TAYLORSVILLE	BUNCOMBE	PERQUIMANS
RANLO	TEACHEY	BURKE	PERSON
RAYNHAM	THOMASVILLE	CABARRUS	PITT
RED SPRINGS	TOBACCOVILLE	CALDWELL	POLK
REIDSVILLE	TRENTON	CAMDEN	RANDOLPH
RHODISS	TRINITY	CARTERET	ROBESON
RICHLANDS	TROUTMAN	CASWELL	ROCKINGHAM
RIVER BEND	TROY	CATAWBA	ROWAN
ROANOKE RAPIDS	TRYON	CHATHAM	RUTHERFORD
ROBBINS	UNIONVILLE	CHEROKEE	SAMPSON
ROCKINGHAM	VALDESE	CHOWAN	SCOTLAND
ROCKWELL	VARNAMTOWN	CLEVELAND	STANLY
ROLESVILLE	WADESBORO	COLUMBUS	STOKES
ROPER	WAGRAM	Craven	SURRY
ROSE HILL	WAKE FOREST	CUMBERLAND	SWAIN
ROSMAN	WALKERTOWN	CURRITUCK	TRANSYLVANIA
ROWLAND	WALLACE	DARE	TYRRELL
ROXBORO	WALNUT COVE	DAVIDSON	UNION
ROXOBEL	WALNUT CREEK	DAVIE	WAKE
RUTH	WALSTONBURG	DUPLIN	WASHINGTON
RUTHERFORD COLLEGE	WARRENTON	DURHAM	WATAUGA
RUTHERFORDTON	WARSAW	EDGEcombe	WAYNE
SAINT JAMES	WASHINGTON	FORSYTH	WILKES
SALEMBURG	WEAVERVILLE	FRANKLIN	WILSON
SALISBURY	WEBSTER	GASTON	YADKIN
SANDYFIELD	WEDDINGTON	GATES	
SANFORD	WENDELL		

About the Authors

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Other School Publications

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Nineteenth edition, 2002

Compiled by David W. Owens

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