



GUILFORD COUNTY PLANNING AND DEVELOPMENT

BOARD OF ADJUSTMENT AGENDA

Carolyn Q. Coleman Conference Room
First Floor, Old Guilford County Courthouse
301 W Market St, Greensboro, NC 27401

June 2, 2026

Regular Meeting

6:00 PM

I. Roll Call

II. Agenda Amendments

III. Approval of Minutes: May 5, 2026

IV. Rules and Procedures

V. Old Business

**A. VARIANCE CASE #26-02-BOA-00003: 6522 HAYWORTH SPRINGS RD
JAMESTOWN, NC 27282**

Pursuant to N.C.G.S. 160D-406(j), approve Order(s) Granting a Variance with respect to the application submitted by Oscar Moreno Bahena for the property at 6522 Hayworth Springs Rd, Jamestown, NC 27282 (Guilford County Tax Parcel #161302 in Jamestown Township), as heard and decided by the Board of Adjustment on May 5, 2026.

**B. VARIANCE CASE #26-04-BOA-00004: 4200 OAKCLIFFE RD, GREENSBORO, NC
27406**

Pursuant to N.C.G.S. 160D-406(j), approve Order(s) Granting a Variance with respect to the application submitted by Christopher and Wendy Harr for the property at 4200 Oakcliffe Road, Greensboro, NC 27406 (Guilford County Tax Parcel #124886 in Clay Township), as heard and decided by the Board of Adjustment on May 5, 2026.

VI. New Business

None

VII. Other Business

A. Board Refresher Session

VIII. Adjournment

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**GUILFORD COUNTY
BOARD OF ADJUSTMENT
MEETING MINUTES**

Carolyn Q. Coleman Conference Room
First Floor, Old Guilford County Courthouse
301 W Market St, Greensboro, NC 27401

May 5, 2026

Call to Order

6:00 p.m.

Chair Miller called the meeting to order at 6:05 p.m. and welcomed everyone to the meeting. She asked staff to call the roll for those members present at the meeting.

I. Roll Call

Mr. Moss called the roll for attendance at this meeting:

Present: Ditra Miller, Chair; Willie Johnson, Vice Chair; Joshua Scott; Dr. LaToya Gathers, Alternate

Absent: Franklin Havens; Carey Campbell

The following Guilford County staff members were also present: Jason Hardin, Planning and Development Deputy Director; Avery Tew, Senior Planner; Troy Moss, Planner I; and Matthew Mason, Attorney.

II. Agenda Amendments

Chair Miller moved to amend the agenda to hold the election of officers before the scheduled hearings. The motion was seconded by Vice Chair Johnson. The Board voted unanimously, 4-0, in favor of the motion. (Ayes: Miller, Johnson, Scott, Gathers. Nays: None.)

III. Approval of Minutes: March 3, 2026

Vice Chair Johnson moved to approve the minutes of the Board's March 3, 2026, regular meeting, as submitted. The motion was seconded by Mr. Scott. The Board voted unanimously, 4-0, in favor of the motion. (Ayes: Miller, Johnson, Scott and Gathers. Nays: None.)

IV. Election of Officers

Chair Miller nominated Franklin Havens for the position of Chair. She explained that she had spoken with Mr. Havens and he had agreed to accept that position, if nominated. The nomination was seconded by Vice Chair Johnson. The Board voted unanimously, 4-0, to elect Mr. Havens to the position of Chair. (Ayes: Miller, Johnson, Scott, Gathers. Nays: None.)

Vice Chair Johnson nominated himself for the position of Vice Chair. The nomination was seconded by Chair Miller. The Board voted unanimously, 4-0, to elect Mr. Johnson to the position of Vice Chair. (Ayes: Miller, Johnson, Scott, Gathers. Nays: None.)

Chair Miller moved that Mr. Havens' term as Chair will begin at the next regular meeting as he was not present. The motion was seconded by Vice Chair Johnson. The Board voted unanimously, 4-0, in favor of the motion. (Ayes: Miller, Johnson, Scott, Gathers. Nays: None.)

V. Rules and Procedures

Chair Miller explained the rules and procedures followed by the Board of Adjustment.

Chair Miller also noted that there were only four Board members present out of five total seats. She presented the applicants for both variance cases on the agenda with the option of requesting a continuance to the next regular meeting, when a full complement of Board members could be present. Both applicants gave verbal confirmation that they wished to move forward with having their cases heard at the present meeting.

VI. Old Business:

A. APPROVAL OF ORDERS FOR VARIANCE CASE #26-01-BOA-00001: 5305 MOCKINGBIRD RD, GREENSBORO, NC 27406

Mr. Tew stated that the Board heard and decided this case at the March 3 meeting. Staff has prepared draft Orders for the two variances granted at that meeting, for consideration by the Board. If approved, the Orders will be distributed for signatures.

Attorney Mason stated that the materials for the March 3 meeting, at which these variances were decided, have been shared with the Board members. To be able to vote and approve the Orders; it should be shown on the record that each Board member has reviewed the minutes and case materials. Each Board member gave verbal confirmation that they had reviewed the minutes and case materials and felt comfortable voting on the Orders.

Mr. Scott moved to approve the first Order Granting a Variance for Case #26-01-BOA-00001, as heard and decided at the March 3, 2026, Board of Adjustment regular meeting. The motion was seconded by Dr. Gathers. The Board voted unanimously, 4-0, in favor of the motion. (Ayes: Miller, Johnson, Scott, Gathers. Nays: None.)

Chair Miller moved to amend the previous motion to include both Orders Granting a Variance for Case #26-01-BOA-00001. The motion was seconded by Dr. Gathers. The Board voted unanimously, 4-0, in favor of the motion. (Ayes: Miller, Johnson, Scott, Gathers. Nays: None.)

At this point, the Orders were distributed to the Board members for signatures.

VII. New Business

At this time, Chair Miller swore in or affirmed all individuals who intended to speak or provide testimony in relation to the evidentiary hearings on the agenda.

A. VARIANCE CASE #26-02-BOA-00003: 6522 HAYWORTH SPRINGS RD JAMESTOWN, NC 27282 (TWO VARIANCES – GRANTED)

Mr. Tew stated that the property owner, Oscar Moreno Bahena, is requesting two variances from Unified Development Ordinance (UDO) Subsection 4.2.2.B, which requires a 40 ft. minimum setback from front property lines abutting local or collector streets and a 30 ft.

minimum rear setback for properties zoned RS-40, as shown in the slides presented. Located at 6522 Hayworth Springs Rd, Jamestown, NC 27282 (Guilford County Tax Parcel #161302 in Jamestown Township), the subject property comprises 0.26 acres and is zoned RS-40-MH, Residential – Manufactured Housing Overlay.

Mr. Tew explained that the applicant is seeking the following variances: (1) a 15 ft. variance to allow a 25 ft. front setback in order to permit placement of a manufactured home on the property, in accordance with the submitted site plan; and (2) a 9 ft. variance to allow a 21 ft. rear setback in order to permit placement of a manufactured home on the property, in accordance with the submitted site plan.

Mr. Tew noted the lot is currently vacant, surrounded by other residential developments on the east, west, and south of the property, as well as a large undeveloped tract to the north. The topography of the property ranges from nearly level to gently sloping. There are no regulated floodplains, mapped wetlands, or streams on site. The property is located within the Lower Randleman Lake WS-IV, General Watershed Area.

Mr. Tew said County staff posted a notice sign on the subject property and mailed letters to adjacent property owners to notify them of the hearing.

Chair Miller opened the evidentiary hearing and asked if there was anyone wishing to speak in favor of this request.

Mr. Oscar Moreno Bahena, owner of the subject property, 6522 Hayworth Springs Road, stated through an interpreter (Jose Mora Hernandez with LanguageLine Solutions) that he had purchased the subject property last year and had also purchased a double-wide manufactured home with the intent of placing the home on the property and living there with his family. He said he would follow all rules and requirements necessary to be able to use the property and the manufactured home.

Mr. Scott asked how an unnecessary hardship would be created in the absence of a variance? Mr. Moreno responded that if he was not able to place the manufactured home on the property, it would represent a significant economic loss for him and his family. He already owned the land, so he would look at other potential uses for it if the variances were not granted.

Mr. Scott asked whether Mr. Moreno had explored other manufactured home models that might be able to be placed on the site in compliance with the setback requirements? Mr. Moreno responded that he had not looked at other alternatives because the manufactured home he had purchased was a good value that was affordable for him and his family. He had been told by his surveyor that the manufactured home was ideal for his property.

Mr. Scott asked how the requested variance might affect the neighboring properties, and whether Mr. Moreno had considered that? Mr. Moreno responded that he had not communicated much with the neighboring property owners.

Vice Chair Johnson noted that County staff had sent out notice letters to the adjacent property owners. He asked whether staff had heard from any of the neighboring property owners? Mr. Tew responded that he had been contacted by one property owner who did not have concerns about the variance case, but the notice letter had prompted questions for him about what he could do with his property.

Vice Chair Johnson asked whether a rezoning would be required to permit a manufactured home on the property? Mr. Tew responded that the property's existing zoning would permit a manufactured home.

Chair Miller asked if there was anyone wishing to speak in opposition to the request. There being no one in opposition, Chair Miller closed the evidentiary hearing by acclamation.

Mr. Scott stated that he believes this is a fair request. Vice Chair Johnson and Dr. Gathers agreed.

Mr. Scott moved that the Guilford County Board of Adjustment, having held an evidentiary hearing on May 5, 2026, to consider Case #26-02-BOA-00003, submitted by Oscar Moreno Bahena, a request for Variance 1: A 15 ft. variance to allow a 25 ft. front setback in order to permit placement of a manufactured home on the property, in accordance with the submitted site plan, with respect to the property located at 6522 Hayworth Springs Road, Jamestown, NC 27282, being Tax Parcel #161302, in a manner not permissible under the literal terms of the Ordinance, and having heard all the evidence and arguments presented at the hearing, makes the following findings of fact and draws the following conclusions:

1. It is the Board's CONCLUSION that unnecessary hardship **will** result from the strict application of the Ordinance. This conclusion is based on the following FINDINGS OF FACT: The property owner has already purchased the manufactured home and is not able to place the manufactured home on the lot in compliance with the setback requirements for the property's RS-40 zoning district. Strict application of the Ordinance would require the property owner to purchase a new home or be unable to place a home on the residentially-zoned property.
2. It is the Board's CONCLUSION that the hardship **does** result from conditions that are peculiar to the property, such as location, size or topography. This conclusion is based on the following FINDINGS OF FACT: The house that existed previously on the lot also could not meet the setback requirements. Additionally, applying the setbacks of the RS-40 zoning district would make it impossible to place the property owner's manufactured home on the property due to the lot's small size and triangular shape.
3. It is the Board's CONCLUSION that the hardship **does not** result from actions taken by the applicants or the property owners. This conclusion is based on the following FINDINGS OF FACT: The lot was created prior to the property's RS-40 zoning. When the area was zoned RS-40, it made several lots nonconforming in terms of their size. Additionally, the current property owner purchased the property in its current configuration. The lot's dimensions and size did not result from any action taken by the current property owner.
4. It is the Board's CONCLUSION that the requested variance **is** consistent with the spirit, purpose and intent of the Ordinance, such that public safety is secured and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT: The variances that are being requested would allow the property owner's manufactured home to be placed on the property in such a way that it would be consistent with the pattern of development in the neighborhood.

Therefore, on the basis of all the foregoing, it is ordered that the applicant's request for Variance 1: A 15 ft. variance to allow a 25 ft. front setback in order to permit placement of a manufactured home on the property, in accordance with the submitted site plan, be granted subject to the following: Compliance with all local, state, and federal laws.

The motion also directed staff to draft a proposed order reflecting these findings and conclusions and such other findings and conclusions as may be consistent with the Board's decision and supported by the evidence and the law, for the Board's consideration at its next meeting. The motion was seconded by Dr. Gathers. The Board voted unanimously, 4-0, in favor of the motion. (Ayes: Miller, Johnson, Scott, Gathers. Nays: None.)

Mr. Scott then moved that the Guilford County Board of Adjustment, having held an evidentiary hearing on May 5, 2026, to consider Case #26-02-BOA-00003, submitted by Oscar Moreno Bahena, a request for Variance 2: A 9 ft. variance to allow a 21 ft. rear setback in order to permit placement of a manufactured home on the property, in accordance with the submitted site plan, with respect to the property located at 6522 Hayworth Springs Road, Jamestown, NC 27282, being Tax Parcel #161302, in a manner not permissible under the literal terms of the Ordinance, and having heard all the evidence and arguments presented at the hearing, makes the following findings of fact and draws the following conclusions:

1. It is the Board's CONCLUSION that unnecessary hardship **will** result from the strict application of the Ordinance. This conclusion is based on the following FINDINGS OF FACT: The property owner has already purchased the manufactured home and is not able to place the manufactured home on the lot in compliance with the setback requirements for the property's RS-40 zoning district. Strict application of the Ordinance would require the property owner to purchase a new home or be unable to place a home on the residentially-zoned property.
2. It is the Board's CONCLUSION that the hardship **does** result from conditions that are peculiar to the property, such as location, size or topography. This conclusion is based on the following FINDINGS OF FACT: The house that existed previously on the lot also could not meet the setback requirements. Additionally, applying the setbacks of the RS-40 zoning district would make it impossible to place the property owner's manufactured home on the property due to the lot's small size and triangular shape.
3. It is the Board's CONCLUSION that the hardship **does not** result from actions taken by the applicants or the property owners. This conclusion is based on the following FINDINGS OF FACT: The lot was created prior to the property's RS-40 zoning. When the area was zoned RS-40, it made several lots nonconforming in terms of their size. Additionally, the current property owner purchased the property in its current configuration. The lot's dimensions and size did not result from any action taken by the current property owner.
4. It is the Board's CONCLUSION that the requested variance **is** consistent with the spirit, purpose and intent of the Ordinance, such that public safety is secured and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT: The variances that are being requested would allow the property owner's manufactured home to be placed on the property in such a way that it would be consistent with the pattern of development in the neighborhood.

Therefore, on the basis of all the foregoing, it is ordered that the applicant's request for Variance 2: A 9 ft. variance to allow a 21 ft. rear setback in order to permit placement of a manufactured home on the property, in accordance with the submitted site plan, be granted subject to the following: Compliance with all local, state, and federal laws. The motion also directed staff to draft a proposed order reflecting these findings and conclusions and such other findings and conclusions as may be consistent with the Board's decision and supported by the evidence and the law, for the Board's consideration at its next meeting. The motion was seconded by Dr. Gathers. The Board voted unanimously, 4-0, in favor of the motion. (Ayes: Miller, Johnson, Scott, Gathers. Nays: None.)

B. VARIANCE CASE #26-04-BOA-00004: 4200 OAKCLIFFE RD, GREENSBORO, NC 27406. (GRANTED)

Mr. Tew stated that the property is located at 4200 Oakcliffe Road, Greensboro, NC 27406. The property owners, Christopher and Wendy Harr, are requesting a variance from Unified Development Ordinance (UDO) Subsection 4.2.2.B, which requires a 15 ft. minimum side setback for properties zoned RS-40. Located at 4200 Oakcliffe Road, Greensboro, NC 27406 (Guilford County Tax Parcel #124886 in Clay Township), the subject property comprises 0.57 acres and is zoned RS-40, Residential.

Mr. Tew said the applicants are seeking a 9 ft. variance to allow a 6 ft. side setback in order to permit construction of a detached garage on the property, in accordance with the submitted sketch plan.

Mr. Tew explained that accessory structures, like the detached garage proposed by the applicants, are required to comply with the 15 ft. side setback requirement for the RS-40 zoning district. However, accessory structures that are 600 sq. ft. or less are subject to a reduced side and rear setback requirement of 5 ft. The property owners are proposing a 24 ft. x 30 ft. detached garage, which is over the 600 sq. ft. limit, so it would be subject to the regular 15 ft. side setback. The applicants provided a drawing showing that a 24 ft. x 25 ft. detached garage could be 5 ft. from the side property line, whereas a 24 ft. x 30 ft. detached garage would need to be 15 ft. from the side property line.

Mr. Tew noted there is an existing accessory structure in the proposed location of the garage, which would be replaced if the variance is granted. The property is being used for residential purposes and is within the Forest Oaks Country Club neighborhood.

Mr. Tew said the property is gently sloping and there are no regulated floodplains, mapped wetlands or streams on the property. It is located in the Lake MacIntosh (Big Alamance Creek) WS-IV, General Watershed Area.

Mr. Tew pointed out that County staff posted a notice sign on the subject property and mailed letters to adjacent property owners to notify them of the hearing.

Chair Miller opened the evidentiary hearing and asked if there was anyone wishing to speak in favor of this request.

Mr. Christopher Harr, co-owner of the subject property, 4200 Oakcliffe Road, stated that they are looking for a variance from the side setback requirement in order to build a larger garage on their property. Their lot size and other circumstances do not allow them to meet the 15 ft. setback requirement.

Chair Miller asked whether staff had been contacted by any neighboring property owners who had concerns about the case? Mr. Tew responded that staff had not received any communication from neighboring property owners regarding the case.

Mr. Scott asked whether an attached garage or a different orientation that might meet the required setbacks had been considered? Mr. Harr responded that he did not see an alternative to the orientation shown on the submitted sketch plan. There is about 37 ft. from the house to the side property line. Having the garage face the front property line is the only way it can be used. He had not considered an attached garage, but he said he did not think that was an option, based on the floor plan of the house.

Vice Chair Johnson asked whether the proposed garage would be attached or detached? Mr. Harr responded that it would be a detached garage.

Vice Chair Johnson asked how close the neighboring house would be to the proposed garage? Mr. Harr responded that he was not sure.

Vice Chair Johnson asked whether there would be enough space for emergency services to reach the rear of the neighboring property. Ms. Wendy Harr, co-owner of the subject property, 4200 Oakcliffe Road, responded that the neighboring property had its own driveway that she thought could provide access to the rear of their property. She did not think the proposed garage would block emergency access to the neighboring property.

Mr. Harr asked his contractor, Mr. Don Coble to address any technical questions the Board may have.

Mr. Coble, 465 NC Highway 62 East, stated that he thought a detached garage would allow the property owners to request a lesser variance than if it were attached. Based on an existing survey, the distance from the neighboring house to the shared property line is 16 ft. 3 inches. If the requested variance is approved, the distance between the proposed garage and the neighboring house would be about 22 ft. or 23 ft.

Chair Miller asked how tall the proposed structure would be, compared to the existing house? Mr. Coble responded that the existing house is 24 ft. tall. The proposed detached garage would be the same height or slightly less tall than the existing house.

Mr. Scott asked whether the requested variance would provide sufficient space for proper drainage and maintenance without encroaching onto the neighboring property? Mr. Coble responded that it would. The subject property had a gradual slope from front to back, so the driveway would facilitate drainage. The proposed garage would not substantially alter the topography of the property, so there would be no need for a swale or to encroach onto the neighboring property to maintain proper drainage.

Mr. David Michaels, 4102 Oakcliffe Road, stated that he lives adjacent to the subject property, but on the far side from the proposed garage. He has lived there since 1996 and has been involved in the residential development business since that time through various entities. He is familiar with the Board of Adjustment process. Originally, this neighborhood was served by private wells and septic systems, which influenced its zoning of RS-40. Since the neighborhood received access to public water and sewer utilities, a number of the lots in the neighborhood do not comply with the minimum lot size of 40,000 sq. ft. A lot of them are a

half-acre or less. There is also multi-family zoning within the neighborhood, so there is a variety of zoning classifications. He is not opposed to this request, and he thought it would be a reasonable use of the property and would not have any impact on the neighborhood as a whole. If the structure was slightly smaller, it would be in compliance. The owners just want a slightly larger garage for better functionality. There is a golf course behind the property with a large easement that cannot be encroached upon.

Vice Chair Johnson asked whether the property would need a septic repair area? Mr. Michaels responded that he believes the property is already connected to public water and sewer utilities, which were installed a few years ago. His understanding is that the water and sewer lines are in the front of the property. To the rear of the property, there are electrical lines in a utility easement. He did not believe the requested variance would have any impact on water or sewer issues.

Chair Miller asked if there was anyone wishing to speak in opposition to the request. There being no one in opposition, Chair Miller closed the evidentiary hearing by acclamation.

Dr. Gathers moved that the Guilford County Board of Adjustment, having held an evidentiary hearing on May 5, 2026, to consider Case #26-04-BOA-00004, submitted by Christopher and Wendy Harr , a request for a 9 ft. variance to allow a 6 ft. side setback in order to permit construction of a detached garage on the property, in accordance with the submitted sketch plan, with respect to the property located at 4200 Oakcliffe Road, Greensboro, NC 27406, being Tax Parcel #124886, in a manner not permissible under the literal terms of the Ordinance, and having heard all the evidence and arguments presented at the hearing, makes the following findings of fact and draws the following conclusions:

1. It is the Board's CONCLUSION that unnecessary hardship **will** result from the strict application of the Ordinance. This conclusion is based on the following FINDINGS OF FACT: Strict application of the 15 ft. side setback creates an unnecessary hardship because it would require an inconvenient garage placement in order to circumvent the existing heat pump located between the existing driveway and house. The corner of the house would then partially block the garage door, making it difficult to access the garage. This would prevent practical utilization of the proposed 24 ft. x 30 ft. garage, which is a reasonable use for the subject property, based on its size and zoning. Additionally, strict application of the Ordinance may prevent siting of the proposed garage in such a way that it could maintain sufficient separation from the existing home for fire protection purposes.
2. It is the Board's CONCLUSION that the hardship **does** result from conditions that are peculiar to the property, such as location, size or topography. This conclusion is based on the following FINDINGS OF FACT: The subject property has unique constraints, such as a 30 ft. utility easement in the rear of the property, as opposed to 15 ft. in much of the surrounding community. The width of the lot is reduced by 23 ft. in the rear, compared to the front, which means that most of the space where a garage could be constructed is in the back of the property where the utility easement is located. Additionally, the house is placed 65 ft. back from the front property line, which is significantly more than the 40 ft. minimum front setback requirement. This limits the buildable area behind the house to about 20 ft. deep instead of 45 ft. deep, when accounting for the 30 ft. utility easement at the rear.

3. It is the Board's CONCLUSION that the hardship **does not** result from actions taken by the applicants or the property owners. This conclusion is based on the following FINDINGS OF FACT: The hardships that have been presented did not arise from actions taken by the current property owners, but instead they arose from how the development and subdivision of the neighborhood took place, as well as the location and position of the house on the lot.
4. It is the Board's CONCLUSION that the requested variance **is** consistent with the spirit, purpose and intent of the Ordinance, such that public safety is secured and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT: The proposed garage for which the variance is being requested would be utilized for personal storage of vehicles. This is a reasonable use for a residential lot and it would maintain the residential character of the neighborhood. The proposed garage would be 720 sq. ft., which is only slightly above the 600 sq. ft. threshold that would allow for a 5 ft. side setback. Therefore, the requested variance is minimal. The requested variance also takes into account public safety by taking into account the location of the existing HVAC system, as well as concerns regarding fire safety with respect to the location of the proposed garage in relation to the existing house.

The motion also directed staff to draft a proposed order reflecting these findings and conclusions and such other findings and conclusions as may be consistent with the Board's decision and supported by the evidence and the law, for the Board's consideration at its next meeting.

Therefore, on the basis of all the foregoing, it is ordered that the applicant's request for a 9 ft. variance to allow a 6 ft. side setback in order to permit construction of a detached garage on the property, in accordance with the submitted sketch plan, be granted subject to the following: Compliance with all local, state, and federal laws. The motion was seconded by Vice Chair Johnson. The Board voted unanimously, 4-0, in favor of the motion. (Ayes: Miller, Johnson, Scott, Gathers. Nays: None.)

VIII. Other Business

Attorney Mason suggested that the Board, at its discretion, could instruct staff to include language in the motion template directing staff to draft a proposed order reflecting the Board's findings and conclusions and such other findings and conclusions as may be consistent with the Board's decision and supported by the evidence and the law, for the Board's consideration at its next meeting.

Chair Miller made a motion to include such language in the motion template provided to the Board by staff. The motion was seconded by Dr. Gathers. The Board voted unanimously, 4-0, in favor of request. (Ayes: Miller, Johnson, Scott, Gathers. Nays: None.)

IX. Adjournment

There being no further business before the Board, Mr. Scott moved to adjourn the meeting at 7:23 p.m. The motion was seconded by Dr. Gathers. The Board voted unanimously, 4-0, in favor of request. (Ayes: Miller, Johnson, Scott, Gathers. Nays: None.)

The next regular meeting of the Guilford County Board of Adjustment is scheduled for June 2, 2026, at 6:00 p.m. in the Carolyn Q. Coleman Conference Room, located on the first floor of the Old Guilford County Courthouse, 301 W Market St, Greensboro, NC 27401.

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**GUILFORD COUNTY
DEPARTMENT OF PLANNING & DEVELOPMENT
400 W. Market St.
P. O. Box 3427
Greensboro, NC 27402
(336) 641-3334**

ORDER GRANTING A VARIANCE (FRONT SETBACK)

The Guilford County Board of Adjustment (“the Board”) held a duly-noticed hearing on **Tuesday, May 5, 2026**, to consider **Case #26-02-BOA-00003**, a Variance Application submitted by **Oscar Moreno Bahena**, seeking a variance from the provisions of Unified Development Ordinance (UDO) Section 4.2.2.B to use the property located at **6522 Hayworth Springs Rd, Jamestown, NC 27282** (being Tax Parcel **#161302** in Jamestown Township) in a manner not permissible under the literal terms of the ordinance.

The application sought a 15 ft. variance to allow a 25 ft. front setback in order to permit placement of a manufactured home on the property, in accordance with the submitted site plan.

Having considered all of the evidence and arguments presented at the hearing, the Board, based upon competent, material, and substantial evidence, upon motion duly made and seconded, and by unanimous vote, four (4) to zero (0), makes the following FINDINGS OF FACT¹ and draws the following CONCLUSIONS:

- 1) The Board concludes that unnecessary hardship **would** result from the strict application of the UDO, based on the following findings of fact:

The property owner has already purchased the manufactured home and is not able to place the manufactured home on the lot in compliance with the setback requirements for the property's RS-40 zoning district. The manufactured home is not a large dwelling, particularly for a family. Strict application of the Ordinance would rule out most family-sized dwellings. Strict application of the Ordinance would also require the property owner to purchase a new, unreasonably small home or be unable to place a home on the residentially-zoned property.

- 2) The Board concludes that the hardship **does** result from conditions that are peculiar to the property, such as location, size, or topography, based on the following findings of fact:

The house that existed previously on the lot also could not meet the setback requirements. Additionally, applying the setbacks of the RS-40 zoning district would make it impossible to place the property owner's relatively small home on the property due to the lot's small size and triangular shape and its well and septic field locations.

- 3) The Board concludes that the hardship **does not** result from actions taken by the Applicant, the property owner, based on the following findings of fact:

The lot was created prior to the property's RS-40 zoning. When the area was zoned RS-40, it made several lots, including this one, nonconforming in terms of their size. Additionally, the current property owner purchased the property in its current configuration. The lot's challenging dimensions and size did not result from any action taken by the current property owner.

- 4) The Board concludes that the requested variance **is** consistent with the spirit, purpose and intent of the ordinance such that public safety is secured, and substantial justice is achieved, based on the following findings of fact:

The variances that are being requested are needed to allow even a relatively small family-sized residence, such as the property owner's manufactured home, to be placed on the property. Further, the property owner's proposal would be consistent with the pattern of development in the neighborhood, which is within a residential district with a manufactured housing overlay.

¹ The Board has made all factual findings herein by the greater weight of the evidence, placing the burden of proof on the Applicant.

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the Application for the described variance from the literal terms of UDO Section 4.2.2.B with respect to the Property is **GRANTED** as follows, subject to compliance with all local, state, and federal laws:

1. A 15 ft. variance to allow a 25 ft. front setback in order to permit placement of a manufactured home on the property, in accordance with the submitted site plan.

ORDER APPROVED BY THE GUILFORD COUNTY BOARD OF ADJUSTMENT ON this the ___ day of June, 2026, as follows (N.C. Gen. Stat. 160D-406(i)):

Franklin Havens, Chair Approved Not Approved _____
Signature

Willie Johnson, Vice Chair Approved Not Approved _____
Signature

Ditra Miller, Member Approved Not Approved _____
Signature

Carey Campbell, Member Approved Not Approved _____
Signature

Joshua Scott, Member Approved Not Approved _____
Signature

Larry Standley, Alternate Approved Not Approved _____
Signature

Ronasia Dougherty, Alternate Approved Not Approved _____
Signature

Dr. LaToya Gathers, Alternate Approved Not Approved _____
Signature

SO ORDERED, this the ___ day of June, 2026.

Franklin Havens, Chair
Guilford County Board of Adjustment

Witness

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

I certify that Avery Tew personally appeared before me this day and certified to me under oath or by affirmation that he is not a grantee or beneficiary of the transaction, and that Avery Tew witnessed/recognizes the signatures of Franklin Havens, Willie Johnson, Ditra Miller, Carey Campbell, and Dr. LaToya Gathers, and that the signatures are genuine.

Date: _____

Jessie H. Baptist, Notary Public

My commission expires: _____

Official Seal



**GUILFORD COUNTY
DEPARTMENT OF PLANNING & DEVELOPMENT
400 W. Market St.
P. O. Box 3427
Greensboro, NC 27402
(336) 641-3334**

ORDER GRANTING A VARIANCE (REAR SETBACK)

The Guilford County Board of Adjustment (“the Board”) held a duly-noticed hearing on **Tuesday, May 5, 2026**, to consider **Case #26-02-BOA-00003**, a Variance Application submitted by **Oscar Moreno Bahena**, seeking a variance from the provisions of Unified Development Ordinance (UDO) Section 4.2.2.B to use the property located at **6522 Hayworth Springs Rd, Jamestown, NC 27282** (being Tax Parcel **#161302** in Jamestown Township) in a manner not permissible under the literal terms of the ordinance.

The application sought a 9 ft. variance to allow a 21 ft. rear setback in order to permit placement of a manufactured home on the property, in accordance with the submitted site plan.

Having considered all of the evidence and arguments presented at the hearing, the Board, based upon competent, material, and substantial evidence, upon motion duly made and seconded, and by unanimous vote, four (4) to zero (0), makes the following FINDINGS OF FACT¹ and draws the following CONCLUSIONS:

- 1) The Board concludes that unnecessary hardship **would** result from the strict application of the UDO, based on the following findings of fact:

The property owner has already purchased the manufactured home and is not able to place the manufactured home on the lot in compliance with the setback requirements for the property's RS-40 zoning district. The manufactured home is not a large dwelling, particularly for a family. Strict application of the Ordinance would rule out most family-sized dwellings. Strict application of the Ordinance would also require the property owner to purchase a new, unreasonably small home or be unable to place a home on the residentially-zoned property.

- 2) The Board concludes that the hardship **does** result from conditions that are peculiar to the property, such as location, size, or topography, based on the following findings of fact:

The house that existed previously on the lot also could not meet the setback requirements. Additionally, applying the setbacks of the RS-40 zoning district would make it impossible to place the property owner's relatively small home on the property due to the lot's small size and triangular shape and its well and septic field locations.

- 3) The Board concludes that the hardship **does not** result from actions taken by the Applicant, the property owner, based on the following findings of fact:

The lot was created prior to the property's RS-40 zoning. When the area was zoned RS-40, it made several lots, including this one, nonconforming in terms of their size. Additionally, the current property owner purchased the property in its current configuration. The lot's challenging dimensions and size did not result from any action taken by the current property owner.

- 4) The Board concludes that the requested variance **is** consistent with the spirit, purpose and intent of the ordinance such that public safety is secured, and substantial justice is achieved, based on the following findings of fact:

The variances that are being requested are needed to allow even a relatively small family-sized residence, such as the property owner's manufactured home, to be placed on the property. Further, the property owner's proposal would be consistent with the pattern of development in the neighborhood, which is within a residential district with a manufactured housing overlay.

¹ The Board has made all factual findings herein by the greater weight of the evidence, placing the burden of proof on the Applicant.

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the Application for the described variance from the literal terms of UDO Section 4.2.2.B with respect to the Property is **GRANTED** as follows, subject to compliance with all local, state, and federal laws:

1. A 9 ft. variance to allow a 21 ft. rear setback in order to permit placement of a manufactured home on the property, in accordance with the submitted site plan.

ORDER APPROVED BY THE GUILFORD COUNTY BOARD OF ADJUSTMENT ON this the ___ day of June, 2026, as follows (N.C. Gen. Stat. 160D-406(i)):

Franklin Havens, Chair Approved Not Approved _____
Signature

Willie Johnson, Vice Chair Approved Not Approved _____
Signature

Ditra Miller, Member Approved Not Approved _____
Signature

Carey Campbell, Member Approved Not Approved _____
Signature

Joshua Scott, Member Approved Not Approved _____
Signature

Larry Standley, Alternate Approved Not Approved _____
Signature

Ronasia Dougherty, Alternate Approved Not Approved _____
Signature

Dr. LaToya Gathers, Alternate Approved Not Approved _____
Signature

SO ORDERED, this the ___ day of June, 2026.

Franklin Havens, Chair
Guilford County Board of Adjustment

Witness

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

I certify that Avery Tew personally appeared before me this day and certified to me under oath or by affirmation that he is not a grantee or beneficiary of the transaction, and that Avery Tew witnessed/recognizes the signatures of Franklin Havens, Willie Johnson, Ditra Miller, Carey Campbell, and Dr. LaToya Gathers, and that the signatures are genuine.

Date: _____

Jessie H. Baptist, Notary Public

My commission expires: _____

Official Seal

(Insert Color Paper)

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**GUILFORD COUNTY
DEPARTMENT OF PLANNING & DEVELOPMENT
400 W. Market St.
P. O. Box 3427
Greensboro, NC 27402
(336) 641-3334**

ORDER GRANTING A VARIANCE

The Guilford County Board of Adjustment (“the Board”) held a duly-noticed hearing on **Tuesday, May 5, 2026**, to consider **Case #26-04-BOA-00004**, a Variance Application submitted by **Christopher and Wendy Harr**, seeking a variance from the provisions of Unified Development Ordinance (UDO) Section 4.2.2.B to use the property located at **4200 Oakcliffe Rd, Greensboro, NC 27406** (being Tax Parcel **#124886** in Clay Township) in a manner not permissible under the literal terms of the ordinance.

The application sought a 9 ft. variance to allow a 6 ft. side setback in order to permit construction of a detached garage on the property, in accordance with the submitted sketch plan.

Having considered all of the evidence and arguments presented at the hearing, the Board, based upon competent, material, and substantial evidence, upon motion duly made and seconded, and by unanimous vote, four (4) to zero (0), makes the following FINDINGS OF FACT¹ and draws the following CONCLUSIONS:

¹ The Board has made all factual findings herein by the greater weight of the evidence, placing the burden of proof on the Applicant.

- 1) The Board concludes that unnecessary hardship **would** result from the strict application of the UDO, based on the following findings of fact:

Strict application of the 15 ft. side setback creates an unnecessary hardship because it would require an unreasonable and inconvenient garage placement in order to circumvent the existing heat pump located between the existing driveway and house. The corner of the house would then partially block the garage door, making it difficult to access the garage. This would prevent practical utilization of the proposed 24 ft. x 30 ft. garage, which is a reasonable use for the subject property, based on its size and zoning. Additionally, strict application of the Ordinance may prevent siting of the proposed garage in such a way that it could maintain sufficient separation from the existing home for fire protection purposes.

- 2) The Board concludes that the hardship **does** result from conditions that are peculiar to the property, such as location, size, or topography, based on the following findings of fact:

The subject property has unique constraints, such as a 30 ft. utility easement in the rear of the property, as opposed to 15 ft. in much of the surrounding community. The width of the lot is reduced by 23 ft. in the front, compared to the rear, which means that most of the space where a garage could be constructed is in the back of the property where the utility easement is located. Additionally, the house is placed 65 ft. back from the front property line, which is significantly more than the 40 ft. minimum front setback requirement. This limits the buildable area behind the house to about 20 ft. deep instead of 45 ft. deep, when accounting for the 30 ft. utility easement at the rear.

- 3) The Board concludes that the hardship **does not** result from actions taken by the Applicant, the property owner, based on the following findings of fact:

The hardships that have been presented did not arise from actions taken by the current property owners, but instead they arose from how the development and subdivision of the neighborhood took place, as well as the location and position of the house on the lot.

- 4) The Board concludes that the requested variance **is** consistent with the spirit, purpose and intent of the ordinance such that public safety is secured, and substantial justice is achieved, based on the following findings of fact:

The proposed garage for which the variance is being requested would be utilized for personal storage of vehicles. This is a reasonable use for a residential lot in this neighborhood and it would maintain the residential character of the neighborhood. The proposed garage would be 720 sq. ft., which is only slightly above the 600 sq. ft. threshold that would allow for a 5 ft. side setback. Therefore, the requested variance is minimal. The requested variance also takes into account public safety by taking into account the location of the existing HVAC system, as well as concerns regarding fire safety with respect to the location of the proposed garage in relation to the existing house.

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the Application for the described variance from the literal terms of UDO Section 4.2.2.B with respect to the Property is **GRANTED** as follows, subject to compliance with all local, state, and federal laws:

1. A 9 ft. variance to allow a 6 ft. side setback in order to permit construction of a detached garage on the property, in accordance with the submitted sketch plan.

ORDER APPROVED BY THE GUILFORD COUNTY BOARD OF ADJUSTMENT ON this the ___ day of June, 2026, as follows (N.C. Gen. Stat. 160D-406(i)):

Franklin Havens, Chair	<input type="checkbox"/> Approved <input type="checkbox"/> Not Approved	_____	Signature
Willie Johnson, Vice Chair	<input type="checkbox"/> Approved <input type="checkbox"/> Not Approved	_____	Signature
Ditra Miller, Member	<input type="checkbox"/> Approved <input type="checkbox"/> Not Approved	_____	Signature
Carey Campbell, Member	<input type="checkbox"/> Approved <input type="checkbox"/> Not Approved	_____	Signature
Joshua Scott, Member	<input type="checkbox"/> Approved <input type="checkbox"/> Not Approved	_____	Signature
Larry Standley, Alternate	<input type="checkbox"/> Approved <input type="checkbox"/> Not Approved	_____	Signature
Ronasia Dougherty, Alternate	<input type="checkbox"/> Approved <input type="checkbox"/> Not Approved	_____	Signature
Dr. LaToya Gathers, Alternate	<input type="checkbox"/> Approved <input type="checkbox"/> Not Approved	_____	Signature

SO ORDERED, this the ___ day of June, 2026.

Franklin Havens, Chair
Guilford County Board of Adjustment

Witness

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

I certify that Avery Tew personally appeared before me this day and certified to me under oath or by affirmation that he is not a grantee or beneficiary of the transaction, and that Avery Tew witnessed/recognizes the signatures of Franklin Havens, Willie Johnson, Ditra Miller, Carey Campbell, and Dr. LaToya Gathers, and that the signatures are genuine.

Date: _____

Jessie H. Baptist, Notary Public

My commission expires: _____

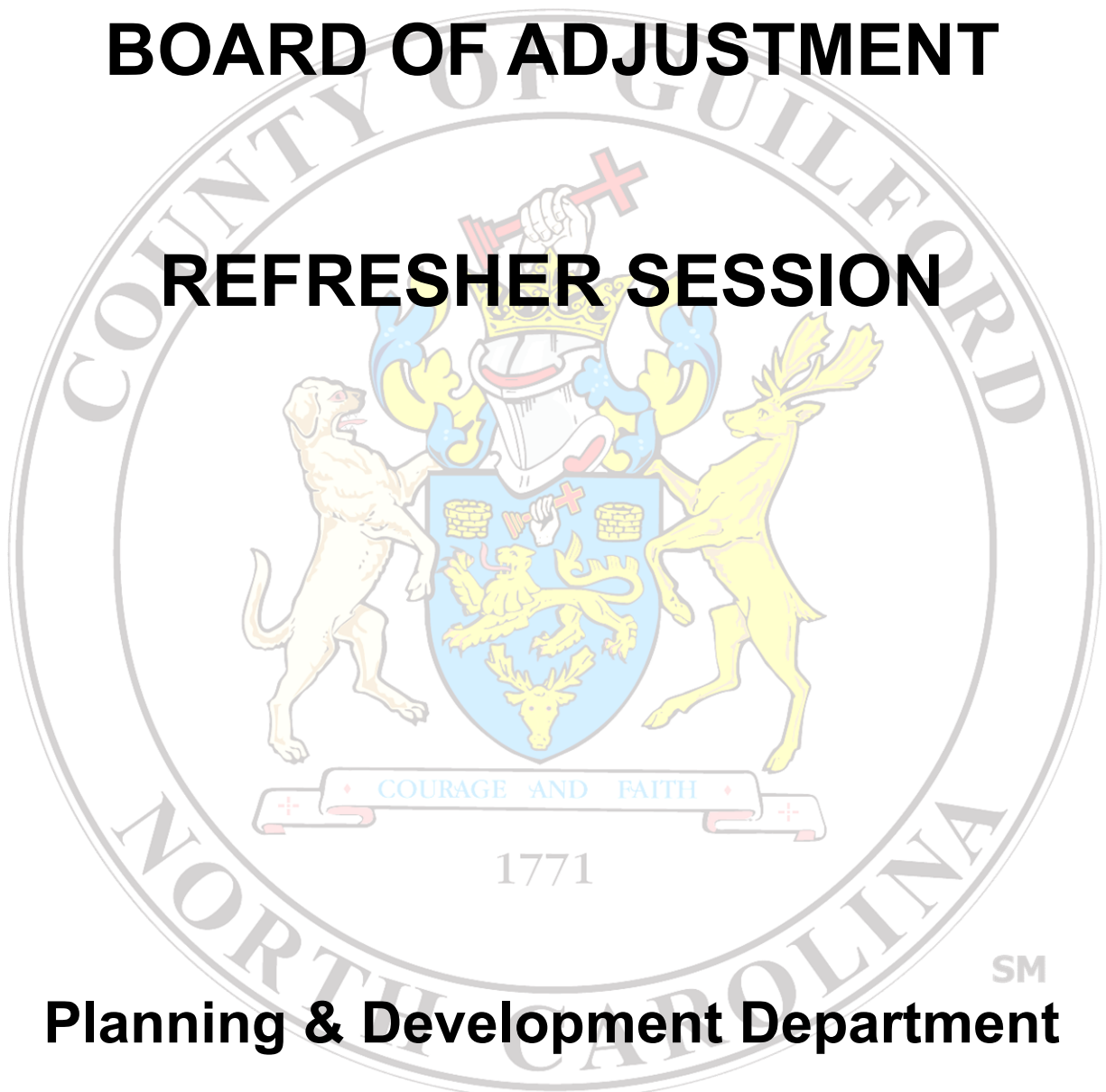
Official Seal

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**GUILFORD COUNTY
BOARD OF ADJUSTMENT**

REFRESHER SESSION



Planning & Development Department

June 2, 2026



Legislative & Quasi-Judicial Decisions (Evidentiary Hearings) – The Difference

J. LESLIE BELL, AICP

PLANNING & DEVELOPMENT DIRECTOR

OCTOBER 28, 2022

LAST REV. MAY APRIL 20, 2026

QUICK REVIEW

BOTH ARE HEARINGS, SO WHAT'S THE DIFFERENCE?

Legislative decision (§160D-1-2) - The adoption, amendment, or repeal of a regulation under this Chapter or an applicable local act. It also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Article 10 of this Chapter.

Legislative hearing (NCGS 160D-1-2) - A hearing to solicit public comment on a proposed legislative decision.

Examples:

Zoning Map Amendments

Text Amendments

Adoption of UDO

Public Hearing

Quasi-judicial decision (§160D-1-2) - A decision involving the finding of facts regarding a specific application of development regulation and that requires the exercise of discretion when applying the standards of the regulation. Quasi-judicial decisions include but are not limited to decisions involving variances, special use permits, major certificates of appropriateness, and appeals of administrative determinations.

Examples:

Special Use Permits

Variances

Appeals

HPC's Major Certificate of Appropriateness (COA)

Evidentiary Hearing

QUASI-JUDICIAL PROCEDURES

- ✓ Chairman will call the specific case
- ✓ Swearing in of all witnesses
- ✓ Introduction of case by Planning staff
- ✓ Opening arguments (optional)
- ✓ Presentation of applicant's case (direct examination, re direct, re-cross)
- ✓ Closing arguments (optional)
- ✓ Deliberations (See Worksheet for Findings of Fact & Conclusions)
- ✓ Decision – By Board Vote to Grant a Variance
Variance = 4/5 Vote or 4 of 4 if only Four (4) Mbrs. Voting
A majority of the members required to decide any other quasi-judicial matter (e.g., Special Use Permit) or to determine an appeal made in the nature of certiorari.

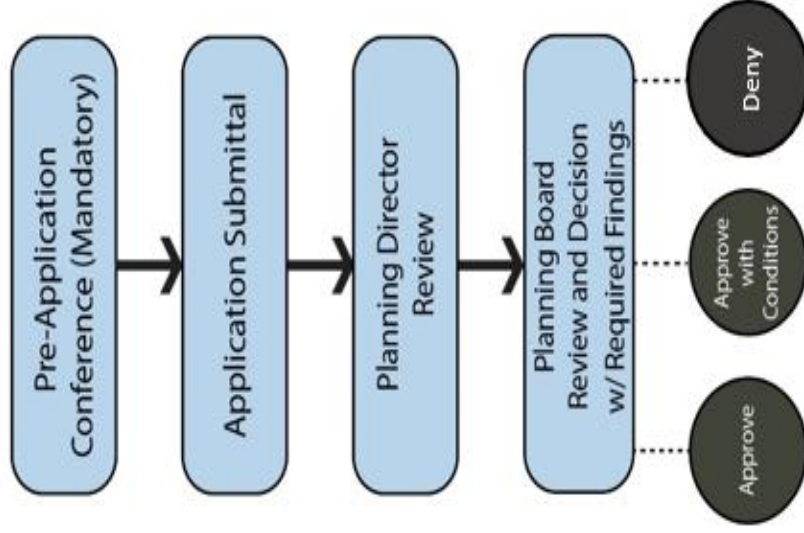
Notes:

No *ex parte* communication

NC State Bar Opinion (Adopted Oct. 20, 2006)



Special Use Permit (SUP) Quasi-Judicial Article 3 – Permits and Procedures United Development Ordinance (UDO)



Review Factors

1. Circulation
2. Parking & Loading
3. Service Entrances & Areas
4. Lighting
5. Utilities
6. Open Spaces
7. Environmental Protection
8. Landscaping, Buffering & Screening
9. Effect on Nearby Properties
10. Compatibility



Review Summary Video

<https://www.youtube.com/watch?v=gPeraH6D3xc>

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School of Government

Background Material for Board of Adjustment

David W. Owens

January, 2022

Legal topic(s)

Decisions can be grouped into four categories: legislative, quasi-judicial, advisory, and administrative. Often the body charged with making the decision varies according to the type of decision involved. Governing boards usually make legislative decisions but can also make quasi-judicial decisions. Planning boards usually make advisory decisions but can also make quasi-judicial decisions. However, more important than which *board* is making the decision, the rules that must be followed change depending on the *type* of decision involved, and these rules apply no matter which board is making the decision. This is a brief summary of the rules to be followed by any board making quasi-judicial decisions under a local development regulation.

Summary:

Background Material for Board of Adjustment Workshops

(Last updated: January 2022)

[Note: For more details on this topic, see Owens and Lovelady, [Quasi-Judicial Handbook: A Guide for Boards Making Development Regulation Decisions](#) (2017)]

Roles and Types of Decisions

Decisions can be grouped into four categories: legislative, quasi-judicial, advisory, and administrative. Often the body charged with making the decision varies according to the type of decision involved. Governing boards usually make legislative decisions but can also make quasi-judicial decisions. Planning boards usually make advisory decisions but can also make quasi-judicial decisions. However, more important than which board is making the decision, the rules that must be followed change depending on the type of decision involved, and these rules apply no matter which board is making the decision. Therefore knowing the type of decision is vital to determining what decision-making process should be used.

Legislative decisions affect the entire community by setting general policies applicable through the zoning or other ordinance. They include decisions to adopt, amend, or repeal the ordinance. The zoning map is a part of the zoning ordinance, so amending the map to rezone even an individual parcel is considered a legislative decision. Because legislative decisions have such an important impact on landowners, neighbors, and the public, state law mandates broad public notice and hearing requirements for these decisions. Broad public discussion and careful deliberation are encouraged and substantial discretion on these decisions is allowed. These decisions are generally made by the local government body, which "legislates" or sets policy. The statutory provisions for adoption and amendment of development regulations are in Article 6 of Chapter 160D of the General Statutes, particularly G.S. 160D-601.

Quasi-judicial decisions involve the application of ordinance policies to individual situations. Examples include variances, special- and conditional-use permits (even if issued by the governing board), appeals, and interpretations. These decisions involve two key elements—the finding of facts regarding the specific proposal and the exercise of judgment and discretion in applying predetermined policies to the situation. Since quasi-judicial decisions do not involve setting new policies, the broad public notice requirements that exist for legislative decisions do not apply. However, the courts have imposed fairly strict procedural requirements on these decisions in order to protect the legal rights of the parties involved. Quasi-judicial decisions are most often assigned to boards of adjustment, appointed by the governing board. But these decisions can also be assigned to the planning board or to the governing board itself. The principal statutory provision for quasi-judicial procedures is G.S. 160D-406.

Advisory decisions are made by bodies that may recommend decisions on a matter but have no final decision-making authority over it. The most common example is the advice on rezoning petitions given by planning boards to the city council or board of county commissioners. There are few rules set by state law or by the courts on how advisory decisions are made. G.S. 160D-604 mandates advisory review of all zoning regulation amendments.

Administrative decisions are typically made by professional staff in various government departments. Such decisions cover the day-to-day non-discretionary matters related to the implementation of an ordinance, including issuing basic permits, interpreting the ordinance, and enforcing it. Examples include issuing a certificate of zoning compliance for a permitted use or a notice of violation. These decisions may be appealed to the board of adjustment. The principal statutory provisions for administration of development regulations are in Article 4 of Chapter 160D of the General Statutes.

Some Key Differences Between Legislative and Quasi-judicial Decisions

	Legislative	Quasi-judicial
Decision-maker	Only governing board can decide (others may advise)	Can be board of adjustment, planning board, or governing board
Notice of hearing	Newspaper; mailed notice to owners and neighbors and posted notice for map amendments	Mailed notice to applicant, owner, and abutting owners; posted notice; others as ordinance mandates
Type of hearing	Legislative	Evidentiary
Speakers at hearings	Can reasonably limit number of speakers, time for speakers	Witnesses are presenting testimony, can limit to relevant evidence that is not repetitious; may allow non-party testimony at discretion of board
Evidence	None required; members free to discuss issue outside of hearing	Must have substantial, competent, material evidence in record; witnesses under oath, subject to cross-examination; no ex parte communication allowed
Findings	None required (statement on plan consistency and rationale required for zoning amendments)	Written findings of fact required; must determine contested facts
Voting	Simple majority of entire board	Simple majority of entire board except 4/5 to grant a variance
Standard for decision	Establishes standards	Can only apply standards previously set in statute and ordinance
Conditions	Not allowed, except with conditional zoning	Allowed if based on standard in ordinance
Time to initiate judicial review	Two months to file challenge map amendment; one year from standing for text amendment	30 days to file challenge
Conflict of interest	Direct, substantial, and readily identifiable financial interest or close relationship with applicant	Any financial interest, close relationship with applicant, personal bias, or undisclosed ex parte communication disqualifies; impartiality required
Creation of vested right	None	Yes, if substantial expenditures are made in reliance on it

TYPICAL ALLOCATION OF LOCAL GOVERNMENT PLANNING FUNCTIONS

Agency	Primary role	Other possibilities
GOVERNING BOARD: (city council, county board of commissioners)	Legislative decisions: adopts ordinances, amendments, policy statements, budgets; approves acquisitions; makes appointments to other bodies	May also serve as planning board; may approve plats and special use permits
PLANNING BOARD: (planning board; planning commission; planning committee of governing board)	Advisory decisions: sponsors planning studies; recommends policies, advises governing board; coordinates public participation; must recommend initial zoning ordinance	May also serve as board of adjustment; may approve or review plats

BOARD OF ADJUSTMENT:	Quasi-judicial decisions: hears zoning appeals, variances, special use permits	
STAFF: (Planning department, inspections department, community development department)	Administrative decisions: issues permits, conducts technical studies, initiates enforcement; advises manager	

Preliminary Matters

Notice of hearings. A local government must give notice of its quasi-judicial hearings to all parties to the case. State law requires individual mailed notice to:

1. The applicant;
2. The owner of the affected property;
3. The owner of abutting properties; and
4. Anyone else required to receive notice under the ordinance.

The mailed notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the hearing. A notice must also be posted on the site within the same time period. The zoning statutes impose no published notice requirements for quasi-judicial decisions (unlike proposed zoning amendments). If a zoning ordinance itself requires additional notice, such as publication in the newspaper or a wider mailing, that additional notice is mandatory. The open meetings law also has requirements for meeting notices. Once a hearing has been opened, it may be continued to a later date if that is necessary to receive additional evidence. Additional notice of the continued hearing is not required by law, but many boards provide it.

Open meetings law. Boards of adjustment are subject to the state open meetings law [G.S. 143-318.9 to 143-318.18]. All meetings of a majority of the board, or any committees of the board, for the purpose of conducting business must be open to the public. Closed sessions may be held only for narrow purposes set forth by statute (e.g., receiving legal advice regarding pending litigation). A board may not retire to a private session to deliberate a case. Public notice must be provided for all meetings (regular schedule filed with clerk, special meetings notice posted and mailed to media).

Liability. Members of boards making quasi-judicial decisions are “public officers” and, as such, have limited exposure to personal liability as a result of board actions. Members do have exposure to liability for intentional torts (such as assaulting someone during a board meeting) and for willful misconduct (such as intentionally denying a permit that should have been issued because of a personal vendetta against the applicant). Good faith mistakes or errors in judgment do not expose members to personal liability.

Quasi-Judicial Hearings and Decisions

Collecting Evidence

Subpoenas. Boards conducting these hearings have the authority to issue subpoenas to compel testimony or production of evidence deemed necessary to determine the matter. Requests for subpoenas and objections to subpoenas are made to the board chair prior to the hearing, who then rules on and issues the subpoena. Objections to the chair’s rulings may be taken to the full board.

Burden. The person requesting a variance or special use permit has the burden of producing sufficient evidence for the board to conclude the standards have been met. If insufficient evidence is presented, the application must be denied (or the board can continue the hearing to a later date to receive additional evidence). Once sufficient evidence is presented that the standards are met, the applicant is entitled to approval. If conflicting evidence is presented, the board must determine which facts it believes are correct.

Oaths. Those offering testimony are usually put under oath. This reminds witnesses of the seriousness of the matter and the necessity of presenting factual information, not opinions or speculation. All of the witnesses may be sworn in at one time at the beginning of the hearing or each witness may be sworn in as they begin to testify. While oaths may be waived if all of the parties agree, most local governments routinely swear in all witnesses, including the staff members and attorneys who are making presentations. If a witness has religious objections to taking an oath, they may affirm rather than swear an oath. The oath is generally administered by the chair or clerk of the board receiving the testimony (it may also be administered by any notary public).

Cross-examination. Parties have the right to cross-examine witnesses. The board can establish reasonable procedures for this, such as allowing questions to be posed only by a single representative of a party. Board members are also free to pose questions to anyone presenting evidence.

Hearsay. Hearsay evidence (a statement about the facts made by someone who is not present and available for cross-examination) is generally not allowed. If that is the best evidence available the board can receive it, but the board may well decide to limit the weight or credibility it gives such evidence.

Opinions. Opinion evidence generally should be offered only by a properly qualified expert witness. The statutes specifically prohibit use of opinion testimony by nonexperts on how a project would affect property values, how traffic would affect public safety, and any other matter for which only expert testimony would be permitted in court.

False testimony. A person who deliberately gives false testimony under oath in a zoning hearing is subject to criminal charges for perjury.

Outside evidence. Persons affected by a decision have the legal right to hear all of the information presented to board members, to know all of the "facts" being considered by the board. Therefore members of the decision-making body are not allowed to discuss the case or gather evidence outside of the hearing (what the courts term ex parte communication). Only facts presented to the full board at the hearing may be considered. It is permissible for board members to view the site in question before the hearing, but they should not talk about the case with the applicant, neighbors, or staff outside of the hearing. If a member has personal knowledge about a site or case, the member should disclose that at the hearing.

Time limits. While unduly repetitious or irrelevant testimony can be barred, an arbitrary time limit on the hearing cannot be used. It would not be appropriate, for example, to limit each side in a variance proceeding to ten minutes to present their case. It is acceptable to allow only a single witness representing a group with similar concerns.

Exhibits. Witnesses may present documents, photos, maps, or other exhibits. Once presented for consideration by the board, exhibits are evidence in the hearing and become part of the record (and must be retained by the board). Each exhibit should be clearly labeled and numbered as it is received into evidence.

The application for the permit and any correspondence submitted as part of the application file should also be entered into the hearing record and may be considered by the board. Most application forms are designed to solicit sufficient information for a decision. It is a good practice to have a person familiar with the information in the application (usually the applicant or an agent of the applicant) available to answer any questions the board may have about the written submissions.

Quality of evidence. There must be "substantial, competent, and material evidence" to support each critical factual determination. Key points need to be substantiated by the factual evidence in the hearing record; the findings cannot be based on conjecture or assumptions. For example, for the board to find that neighboring property values would be significantly reduced by a proposed project, there must be some testimony in the record to support that finding, such as testimony from an appraiser about the impacts of a similar project elsewhere in town or presentation of facts that would allow a reasonable person to conclude property values would go down. Where conflicting evidence is presented, the board has the responsibility of deciding how much weight to accord each piece of evidence.

Record. Complete records must be kept of the hearings. Detailed minutes must be kept noting the identity of witnesses and giving a complete summary of their testimony. Any exhibits presented should be retained by the board and become a part of the file on that case. An audio or video tape of the hearing should be made, though that is not mandated by statute. Any party may request the tape be included in the record of the hearing. Any party may include a transcript of the hearing in the record if the case is appealed to the courts, with the cost of the transcript being borne by the party requesting it.

Summarizing Evidence and Findings

Findings. The board's decision must be reduced to writing. The written decision must determine any contested facts and apply the facts to the applicable standards. Simply repeating the standards for the ordinance and noting each is met is generally not sufficient. It is useful for the staff and board to have a clear and common set of terminology relative to "standards," "findings," "findings of fact," "decisions," and "orders." An example of the findings for a simple variance decision is attached at the end of these materials.

The written decision must be signed by the board chair and filed with the clerk to the board. It is effective upon filing. The decision must be mailed to the applicant, the property owner, and anyone else who requested a copy in writing prior to the effective date of the decision. It can be delivered by email, first class mail, or personal delivery.

Voting on a Decision

Quorum and voting. The general rule is that a majority of the board is a quorum. Most decisions of the board of adjustment require a simple majority of the board, but a variance requires a four-fifths majority (a few local government charters vary this requirement). Members who are recused due to a conflict of interest and seats that are vacant are not considered when computing the required majority.

Precedents. Prior decisions are not legally binding on a board. Each case must be decided on its own individual merits. Subtle differences in individual facts and situations can lead to differing results. However, a board should be aware of previous decisions and, as a general rule, similar cases should usually produce similar results. If a board reaches a different result for a very similar fact situation, the board's written decision must clearly explain why there was a different conclusion.

Rehearings. As a general rule, a board may not hear a quasi-judicial case a second time. The applicant and other affected parties must present their evidence at the initial hearing. Appeals of the initial decision may be made to the courts, not back to the board. If there is a substantially different application, or there has been a significant change of conditions on the site or in the ordinance, a new hearing may be held. Some boards allow a case to be withdrawn without a formal decision anytime up to a vote; others do not allow withdrawal after the hearing begins and some limit withdrawal after publication of notice of the hearing.

Conflicts of interest. The Constitution and the statutes give parties to a quasi-judicial decision a legal right to an impartial decision maker. Thus boards must avoid conflicts of interest. In addition to financial impact, bias (defined as a predetermined opinion that is not susceptible to change), undisclosed ex parte communications about the case, and close family or business ties also disqualify members from participating. Nonparticipation includes the discussion as well as voting.

Participation in continued hearing. If a hearing is continued or conducted over several days, a member may miss part of the hearing, but be present when a vote is called. The courts allow a member who was not physically present for the presentation of all evidence to vote, but only if the member had full access to the record of evidence presented in the member's absence (such as an opportunity to read the minutes, see the exhibits, or listen to a tape). This is also allowed for a new member appointed after some of the evidence was presented. Some jurisdictions have local legislation or rules of procedure that disqualify a member who did not actually hear all of the evidence from voting on that case.

Standards for Particular Types of Quasi-judicial Decisions

Variances

Purpose. A zoning variance gives an owner permission to do something that is contrary to the requirements of the zoning ordinance. Variances are a safety valve in zoning that allows adjustment of the rules to fit individual unanticipated situations. The standards for obtaining a variance are very strict, as this is one of the most powerful tools available to boards of adjustment and can be subject to substantial abuse if not carefully administered. Variances must not be used as a substitute for amendments to the zoning ordinance. Members of boards of adjustment must be careful not to substitute their judgment for what the zoning ordinance should be for that of the elected officials who are responsible for adoption of the ordinance.

Standards. A variance may be granted only if all three of these general standards are met. Meeting one of the standards, but not the others, is insufficient.

1. The applicant must show that strict application of the rules would create unnecessary hardships. State law provides several tests regarding unnecessary hardships:

- It is not necessary to show that no reasonable use can be made of the property without a variance, but the hardship must be real and substantial. Mere inconvenience or additional expense is not adequate.
- The hardship must be peculiar to the property, such as the property's location, size, or topography. Conditions common to the neighborhood or the public are not sufficient.
- The hardship must not have been self-created. Purchase of the property knowing it may be eligible for a variance is not a self-created hardship.

2. The applicant must show that the variance would be consistent with intent and purpose of ordinance. This means:

No "use variances" can be allowed

Nonconformities may not extend beyond what the ordinance allows

3. The applicant must show that the variance would be consistent with the overall public welfare and that substantial justice will be done. The variance must not create nuisance or violation of other laws.

Conditions may be applied to variances and the conditions may be enforced, but only conditions related to variance standards may be imposed.

Variances must be allowed in a zoning ordinance. Other development regulations may provide for variances, but that is not required. If they are allowed, the variance standards are the same as set out above for zoning.

Special Use Permits

Standards. The decision-making standards must be included in the text of the ordinance. They cannot be developed on a case-by-case basis. The decision to grant or deny the permit, or to impose conditions on an approval, must be based on the standards that are actually in the ordinance and that are clearly indicated as the standards to be applied to this decision.

The standards must provide sufficient guidance for decision. The applicant and neighbors, the board making the decision, and a court reviewing the decision all need to know what the ordinance requires for approval. The courts have held there is inadequate guidance if the ordinance only provides an extremely general standard, such as that the project be in the public interest or that it be consistent with the purposes of the ordinance. The courts have approved use of four relatively general standards that are now incorporated into many North Carolina zoning ordinances. These are that the project:

1. Not materially endanger the public health and safety,
2. Meet all required conditions and specifications,
3. Not substantially injure the value of adjoining property (or be a public necessity), and
4. Be in harmony with the surrounding area and in general conformance with the comprehensive plan.

Specific standards may also be included. Typical specific standards include minimum lot sizes, buffering or landscaping requirements, special setbacks, and the like. Many ordinances use a combination of general and specific standards.

Burden. The burden of proof in these cases is allocated as follows: The applicant must present evidence that standards in ordinance are met. It is not the staff's responsibility to produce this basic information. Often application forms are required that will elicit most of this information. If the applicant presents sufficient evidence that the standards are met, the applicant is legally entitled to a permit. If contradictory evidence is presented, the board must make findings and then apply the standards.

Conditions. Individual conditions may be applied. These conditions are fully enforceable. A board may only impose conditions related to the standards that are already in the ordinance.

Appeals and Interpretations

Determination required. A board of adjustment is not allowed to issue advisory opinions. The board may only hear actual cases where a staff decision has been issued and is being appealed. The staff must have made a final, binding determination to trigger appeal rights. The staff determination must be in writing and provided to the person who is subject to the decision and to the property owner if that is a different person. The notice of the determination may be provided by email, first class mail, or personal delivery. The staff person who made the determination must appear at the hearing as a witness.

Standing. Only persons with standing to make a judicial appeal can appeal a staff determination. An appeal is filed with the city clerk and must state the grounds for appeal.

Time. Appeals must be filed within 30 days from receipt of the notice of the determination. The board cannot waive this deadline. A person with standing who did not receive the written determination has 30 days from receipt of actual or constructive notice to file an appeal to the board. A landowner receiving a determination has the option of posting the site with a notice that a determination has been made. If the owner's posting remains in place for ten days, that provides constructive notice to neighbors and the public that a determination has been made, thereby starting the 30 day period to appeal to the board as of the date of initial posting of the sign. The board must hear and resolve appeals within a reasonable time.

Deference. The board of adjustment makes its own independent assessment of what the terms of the ordinance mean. The board should give due consideration to the professional judgment of the zoning administrator, taking into account his or her training and experience. But the question of what the ordinance means is a question of law for which the board must make its own decision. In making this determination the key goal should be giving full effect to the terms of the ordinance and the intent of the governing board that adopted it, not substituting the opinion of the board of adjustment as to what the ordinance should say.

Alternate dispute resolution. The parties may agree to mediation or other forms of alternate dispute resolution and the ordinance may include procedures to facilitate and manage such voluntary action.

Imposition of Conditions

Quasi-judicial Decisions

Conditions can be (and usually are) imposed on quasi-judicial approvals such as special and conditional use permits and variances.

However, the conditions are limited to those needed to bring the project into compliance with the standards specified in the ordinance for that decision. For example, a design change may be needed to make the project "harmonious" with the surrounding neighborhood or a buffer may be needed to prevent harm to neighboring property values (assuming those are standards applicable to that decision).

Exactions

Exactions are requirements imposed as a part of a development approval that a land owner/developer provides a public improvement at its own expense.

Typical forms of exactions include:

- Dedication of land for streets and utility easements
- Construction of specified public improvements, such as roads, sidewalks, water and sewer lines
- Dedication of land for open space
- Dedication of land and construction of facilities for parks
- Setting aside land for future government purchase for school sites

There are two key legal issues with any exaction. First, is the amount of the exaction constitutional? Second, is there statutory authority to impose it?

On the constitutional issue, there must be a rational relation or nexus to needs generated by project. The amount or size of the exaction must also be no more than that which is roughly proportional to the public facility needs generated by the development being approved. The determination of whether an exaction is proper must be made on an individualized basis. The burden of proving an exaction is constitutional is on the government.

On the statutory authority front, the subdivision statutes have detailed provisions on what land dedications, public improvements, and fees in lieu can be imposed. The zoning statute also addresses street, utility, and recreational exactions.

References

Additional information is available on the NC Planning web page maintained by the School of Government. Log on at:
<http://www.sog.unc.edu/organizations/planning/>

The page includes links to various resources, such as frequently asked questions, legislative summaries, and digests of recent court cases. The "Publications" link at that page sets out a number of resources. A few are noted below.

Sample Online Reports

A Survey of Experiences with Zoning Variances (Special Series No. 18, Feb. 2004)

Special Use Permits in North Carolina Zoning (Special Series No. 22, April 2007)

Books available include:

Quasi-Judicial Handbook: A Guide for Boards Making Development Regulation Decisions (2017)

Introduction to Zoning and Development Regulation (4th. ed. 2013)

Land Use Law in North Carolina (3d ed. 2020)

Blog

The School of Government also has a blog on local government law issues, Coates' Canons, that regularly addresses planning and land use law issues. The blog is online at:

<http://sogweb.sog.unc.edu/blogs/localgovt> . See particularly posts by Richard Ducker, Jim Joyce, Adam Lovelady, and David Owens.



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EM

NORTH CAROLINA STATE BAR

QUASI-JUDICIAL HEARINGS ON ZONING AND LAND USE

Adopted: October 20, 2006

Inquiry:

May a person who is not a lawyer appear before planning boards, boards of adjustment, or other governmental bodies conducting quasi-judicial hearings in a representative capacity for another party?

Opinion:

At its October 2005 meeting, the Authorized Practice Committee responded to an inquiry concerning the propriety of a person who is not a lawyer appearing before planning boards, boards of adjustment, and city and county government in a representative capacity. The committee's advisory opinion distinguished appearances on legislative concerns, such as general rezoning cases and ordinance amendments, from appearances on behalf of petitioners for special use permits and variances, which are quasi-judicial matters. The committee has received comments from a number of interested parties, including architects, land use planners, and city and county attorneys as a result of that opinion. The committee is issuing this advisory opinion to supplement the prior opinion.

First, the committee reiterates that the adoption of ordinances and amendments to official zoning maps (i.e. general rezoning cases) by the elected officials in city and county governments are legislative in nature and that any interested person may appear and speak on such matters before governmental bodies, even as representatives of groups or interested parties, without engaging in the unauthorized practice of law. Nonetheless, the general statutory prohibitions on unauthorized practice of law still apply even to persons who appear before governmental bodies on legislative matters. Non-lawyers may not hold themselves out as attorneys, provide legal services or advice, or draft any legal documents with regard to such matters. See N.C. Gen. Stat. 84-2.1 and 4.

The law is clear that hearings on applications for special use permits and variances under zoning ordinances, as well as appeals from staff level interpretations related to permits, are quasi-judicial proceedings. N.C. Gen. Stat. 153A-345 and 160A-381 and 388. See, *Humble Oil & Refining Co. v. Bd. of Aldermen of Chapel Hill*, 284 N.C. 458, 202 S.E.2d 129 (1974) and *Woodhouse v. Board of Comm'rs of Nags Head*, 299 N.C. 211, 261 S.E.2d 882 (1980). (For simplicity, the quasi-judicial hearings before these bodies are hereafter referenced to as a "variance hearing" unless the context indicates otherwise.) The governmental body before which the variance hearing is conducted sits in a judicial role of applying the standards of an ordinance to the particular circumstances of a particular party. Accordingly, the role of the governmental body is to receive evidence and make decisions based upon the evidence presented.

Variance hearings require the governmental body hearing the matter to observe certain formalities. Evidence, including witness evidence, is presented to the hearing body, although the Rules of Evidence need not be strictly observed. All witnesses before the body must be sworn and their testimony is subject to cross-examination. The hearing body has the power and authority to issue subpoenas to compel witness testimony. A record of the proceedings must be preserved. The decision is to be based upon the evidence presented at an open hearing, and not on extraneous matters or personal knowledge of the members of the board. The applicant has the burden of proof. The board must make written findings of fact to support its decision. And, the decision of the board is reviewable by the courts on appeal based solely upon the record of the proceedings.

The committee believes that the law is also clear that an appearance on behalf of another person, firm, or corporation in a representative capacity for the presentation of evidence through others, cross-examination of witnesses, and argument on the law at a quasi-judicial proceeding is the practice of law. N.C. Gen. Stat. 84 2.1 and 4. Consequently, because the variance hearings are by definition quasi-judicial proceedings, the committee concludes that it is the unauthorized practice of law for someone other than a licensed attorney to appear in a representative capacity to advocate the legal position of another person, firm, or corporation that is a party to the proceeding.

The committee has been urged to recognize that architects, landscape architects, land use planners, and engineers play a vital role at these quasi-judicial proceedings by presenting necessary facts and information on behalf of their clients at variance hearings. The committee agrees that the information these professionals can present is critical to the decision before the hearing body. These professionals are subject matter experts whose expert opinions, as witnesses, must be presented to the hearing body. They are witnesses who are in the best position to explain to the hearing body the facts of the proposed design and its anticipated effects on a variety of factors, including traffic, environment, and aesthetics, within the framework of matters properly under consideration at the variance hearing. The committee does not believe that the role of legal advocate by attorneys in quasi-judicial proceedings should interfere with or inhibit the role of non-lawyer professionals who speak as witnesses and present information at these quasi-judicial proceedings. In fact, their roles should be complementary.

It is axiomatic that the committee has no authority to amend or formulate exceptions to the statutes. In issuing an advisory opinion, it simply articulates how it believes a court would ultimately resolve the question for the guidance of the public. The committee cannot recognize or create exceptions to the law as expressed by the legislature and the courts. Further, we believe, as a practical matter, that effective representation of parties in variance hearings is becoming increasingly dependent upon legal advocacy of the rights of the parties with an eye toward compiling a supportable record in the event of an appeal. These are the skills an attorney provides. While it is true that many of these hearings involve routine and non-controversial matters, even questions about matters such as the height of residential fences may become the subject matter of an appeal where the appellate courts may only consider the record produced at the variance hearing. See *Robertson v. Zoning Board of Adjustment for the City of Charlotte*, 167 N.C. App. 531, 605 S.E.2d 723 (2004). It is difficult to predict in advance when a matter may require a comprehensive record for appellate purposes. Therefore, with this further elaboration, the committee re-affirms its initial opinion expressed by letter dated October 31, 2005, that the representation of another person at a quasi-judicial hearing is the practice of law.

That said, this opinion should not be interpreted to diminish the role and expertise of land use professionals as witnesses at variance hearings. These professionals may still present their evidence in support of the position of their clients. However, they may not examine or cross-examine other witnesses or advocate the legal position of their clients.

The committee's opinion is also not intended to affect the ability of city and county planning staff to present factual information to the hearing board, including a recitation of the procedural posture of the application, and to offer such opinions as they may be qualified to make without an attorney for the government present, as the committee understands is the proper, current practice and role of the planning staff. Further, nothing in this opinion should be interpreted as limiting the ability of a corporate officer or employee from testifying on factual matters on behalf of a corporate party during a hearing or suggesting that individual parties may not represent themselves before these boards.

In sum, the committee is of the opinion that land use professionals, including architects, engineers, and land use planners, may appear and testify as to factual matters and any expert opinions that they are qualified to present at quasi-judicial proceedings, but the presentation of other evidence, including the examination and cross-examination of witnesses, making legal arguments, and the advocacy for results on behalf of others before quasi-judicial zoning and land use hearings, is the practice of law that may be performed only by licensed attorneys at law.

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Requesting a Special Use Permit or Variance

From the Planning Board or Board of Adjustment

Quasi-judicial Proceedings

Proceedings to consider whether to issue a Variance or Special Use Permit are “quasi-judicial.”

Applicants (and any opponents):

- are expected to call witnesses and may cross-examine opposing witnesses
- qualify expert witnesses as subject matter experts (e.g., certified real estate appraiser)
- elicit material and relevant testimony from witnesses to meet their burden of proof as to the specific findings (Findings of Fact) the board is required to make
- should be able to formulate any objections to preserve the issue and the record on appeal in the event the decision is appealed.

Quasi-judicial is a term used to describe those proceedings where public administrative officers or bodies are required to hold hearings, hear sworn testimony, weigh evidence, determine the existence of facts, and draw conclusions as a basis for their decisions. Quasi-judicial decisions are subject to appeal to Superior Court.



Applicant Representation

The information below is intended to assist you with proper representation in quasi-judicial hearings.

Applicant	Authorized to Sign the Application	Authorized to Represent at the Hearing
Individual Property Owners	Property Owner or NC Licensed Attorney	Property owner and/or NC Licensed Attorney
Corporation	Officer <i>or responsible official with authority to sign</i>	Officer and/or NC Licensed Attorney
LLC	Member/Manager <i>or responsible official with authority to sign</i>	Member/Manager and/or NC Licensed Attorney
Partnership	General Partner	General Partner and/or NC Licensed Attorney
Trust / Estate	Qualifying Fiduciary <i>or responsible official with authority to sign</i>	Fiduciary or NC Licensed Attorney

Representation

While it is perfectly acceptable for an applicant (or opponent) to represent himself or herself (pro se) in a quasi-judicial proceeding, the North Carolina Bar Association considers it the unauthorized practice of law for a person to appear for another at a quasi-judicial hearing or proceeding, or to otherwise represent another at such a hearing or proceeding.

While a non-lawyer such as an architect, engineer, landscape architect, planner, or surveyor may not appear in a representative capacity at quasi-judicial proceedings, they may offer testimony.



Guilford County Planning & Development

400 W. Market Street • Independence Center
Greensboro, NC 27401

HOURS: Monday – Friday
8:00 AM – 5:00 PM

PHONE: 336-641-3334
FAX: 336-641-6988

Planning Board Special Use* **\$500**
per case

Board of Adjustment Variance* **\$400**
per case

Appeal of Admin. Decisions **\$250**
per case

***Plus Recording Fee** **\$26**
(up to 15 pages) per case



Please note Board will make discretionary decision regarding any refund of Appeal Fee

Special Use Permit

Applicants seeking a Special Use Permit, (e.g., Adult Day Care Center for 16+ Adults) have the burden of presenting evidence sufficient to allow the approving authority to make the following findings:

1. The proposed use is represented by an “S” in the column for the district in which it is located in the Guilford County Unified Development Ordinance (UDO), ARTICLE 4 – Zoning Districts (See Table 4-3-1 Permitted Use Schedule).
2. That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan submitted.
3. That the use meets all required conditions and specifications.
4. That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity.
5. That the location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which it is to be located and in general conformity with the plan of development of the jurisdiction and its environs.

Applicants (and any opponents) are expected to call witnesses, qualify expert witnesses as subject matter experts (e.g., certified real estate appraiser), and elicit material and relevant testimony from witnesses to meet their burden of proof as to the specific findings (Findings of Fact) the board is required to make.

Applicants shall demonstrate that these review factors (see UDO Subsection 3.5.Q) have been adequately addressed:

- Circulation
- Parking and Loading
- Service Entrances and Areas
- Lighting
- Utilities
- Open Spaces
- Environmental Protection
- Landscaping, Buffering & Screening
- Effect on Nearby Properties

Variance

Applicants seeking a Variance have the burden of presenting evidence sufficient to allow the approving authority (board) to make the following findings:

1. Unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make reasonable accommodation under the Federal Fair Housing Act for persons with disability.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.



Opponents to a Proposed Special Use or Variance

Please note that simply stating during the hearing that the findings for either are not met or stating that you are not in favor of the proposed development **is not** sufficient evidence to affect the approving authority’s final decisions.

- Effective January 1, 2010, North Carolina Session Law 2009-421, Senate Bill 44 provides that lay opinions in a quasi-judicial proceeding may not be used to establish impacts on property value or the impacts of vehicular traffic on public safety.
- Opponents to a proposed Special Use Permit or Variance request are encouraged to cross-examine the applicant and the applicant’s witnesses and should also present expert witness testimony to refute the applicant’s evidence.

What if the Application is Denied?



Applications that are denied by the Planning Board or Board of Adjustment must abide by the current Ordinance. Applicants can accept the decision or appeal the decision to Superior Court **within thirty (30) days after the date the Board’s decision is filed** with the appropriate office or official as specified in the development regulation.

Questions?



Contact a member of the Guilford County Planning & Development staff at 336-641-3334.



**GUILFORD COUNTY BOARD OF ADJUSTMENT
ORDER GRANTING A VARIANCE**

**CASE #BLANK
VARIANCE WORKSHEET**

The Guilford County Board of Adjustment, having held a hearing on **BLANK**, to consider Case #**BLANK**, submitted by **BLANK**, a request for a **BLANK** variance to allow a **BLANK** in order to permit **BLANK**, on the property located at **BLANK**, being Tax Parcel #**BLANK**, in a manner not permissible under the literal terms of the Ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACTS and draws the following CONCLUSIONS:

- 1. It is the Board's CONCLUSION that unnecessary hardship **will** result from the strict application of the Ordinance. This conclusion is based on the following FINDINGS of FACT:

- 2. It is the Board's CONCLUSION that the hardship **does** result from conditions that are peculiar to the property, such as location, size or topography. This conclusion is based on the following FINDINGS OF FACT:

- 3. It is the Board's CONCLUSION that the hardship **does not** result from actions taken by the applicants or the property owners. This conclusion is based on the following FINDINGS OF FACT:

- 4. It is the Board's CONCLUSION that the requested variance **is** consistent with the spirit, purpose and intent of the Ordinance, such that public safety is secured and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT:

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE be **GRANTED** subject to the following:

- 1. Compliance with all local, state and federal laws.



**GUILFORD COUNTY BOARD OF ADJUSTMENT
ORDER DENYING A VARIANCE**

**CASE #BLANK
VARIANCE WORKSHEET**

The Guilford County Board of Adjustment, having held a hearing on **BLANK**, to consider Case #**BLANK**, submitted by **BLANK**, a request for a **BLANK** variance to allow a **BLANK** in order to permit **BLANK**, on the property located at **BLANK**, being Tax Parcel #**BLANK**, in a manner not permissible under the literal terms of the Ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACTS and draws the following CONCLUSIONS:

- 1. It is the Board’s CONCLUSION that unnecessary hardship **will not** result from the strict application of the Ordinance. This conclusion is based on the following FINDINGS OF FACT:

- 2. It is the Board’s CONCLUSION that the hardship **does not** result from conditions that are peculiar to the property, such as location, size or topography. This conclusion is based on the following FINDINGS OF FACT:

- 3. It is the Board’s CONCLUSION that the hardship **does** result from actions taken by the applicants or the property owners. This conclusion is based on the following FINDINGS OF FACT:

- 4. It is the Board’s CONCLUSION that the requested variance **is not** consistent with the spirit, purpose and intent of the Ordinance, such that public safety is secured and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT:

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE be **DENIED**.



**BOARD OF ADJUSTMENT
Regular Meeting Schedule**

Carolyn Q. Coleman Conference Room
Old County Courthouse
301 W. Market St., Greensboro, N.C. 27401
6:00 P.M.

Application Submittal Dates (Due by Noon)	Meeting Dates (1 st Tuesday of the Month)
December 1, 2025	January 6, 2026
January 5, 2026	February 3
February 2	March 3
March 2	April 7
April 6	May 5
May 4	June 2
June 1	July 7
July 6	August 4
August 3	September 1
August 31	October 6
October 2*	November 2*
November 2	December 1
November 30	January 5, 2027

*Date adjusted due to holiday

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Guilford County Board of Adjustment Member List

Franklin Havens, Chair

Term: 10/21/23 – 10/20/26 (4th Term)

Phone: 336-267-5565

Email: franklinhavens@gmail.com

Willie Johnson, Vice Chair

Term: 10/21/23 – 10/20/26 (4th Term)

Phone: 336-558-8115

Email: willieaj@bellsouth.net

Ditra Miller

Term: 5/17/22 – 5/16/25 (5th Term)

Phone: 336-525-6588

Email: ditra.miller@gmail.com

Carey Campbell

Term: 11/7/24 – 6/2/27 (4th Term)

Phone: 336-456-5151

Email: cdcampbell51@gmail.com

Joshua Scott

Term: 6/5/25 – 6/4/28 (1st Term)

Phone: 336-951-9314

Email: josh@joshuascottassociates.com

Larry Standley, Alternate

Term: 6/3/24 – 6/2/27 (5th Term)

Phone: 336-501-8321

Alt. Phone: 336-855-7095

Email: lstandley@gmail.com

Ronasia Dougherty, Alternate

Term: 6/18/25 – 6/17/28 (1st Term)

Phone: 980-527-2981

Email: ronasiadougherty30@gmail.com

Dr. LaToya Gathers, Alternate

Term: 4/2/26 – 4/1/29 (1st Term)

Phone: 336-303-2510

Email: drgathers630@outlook.com

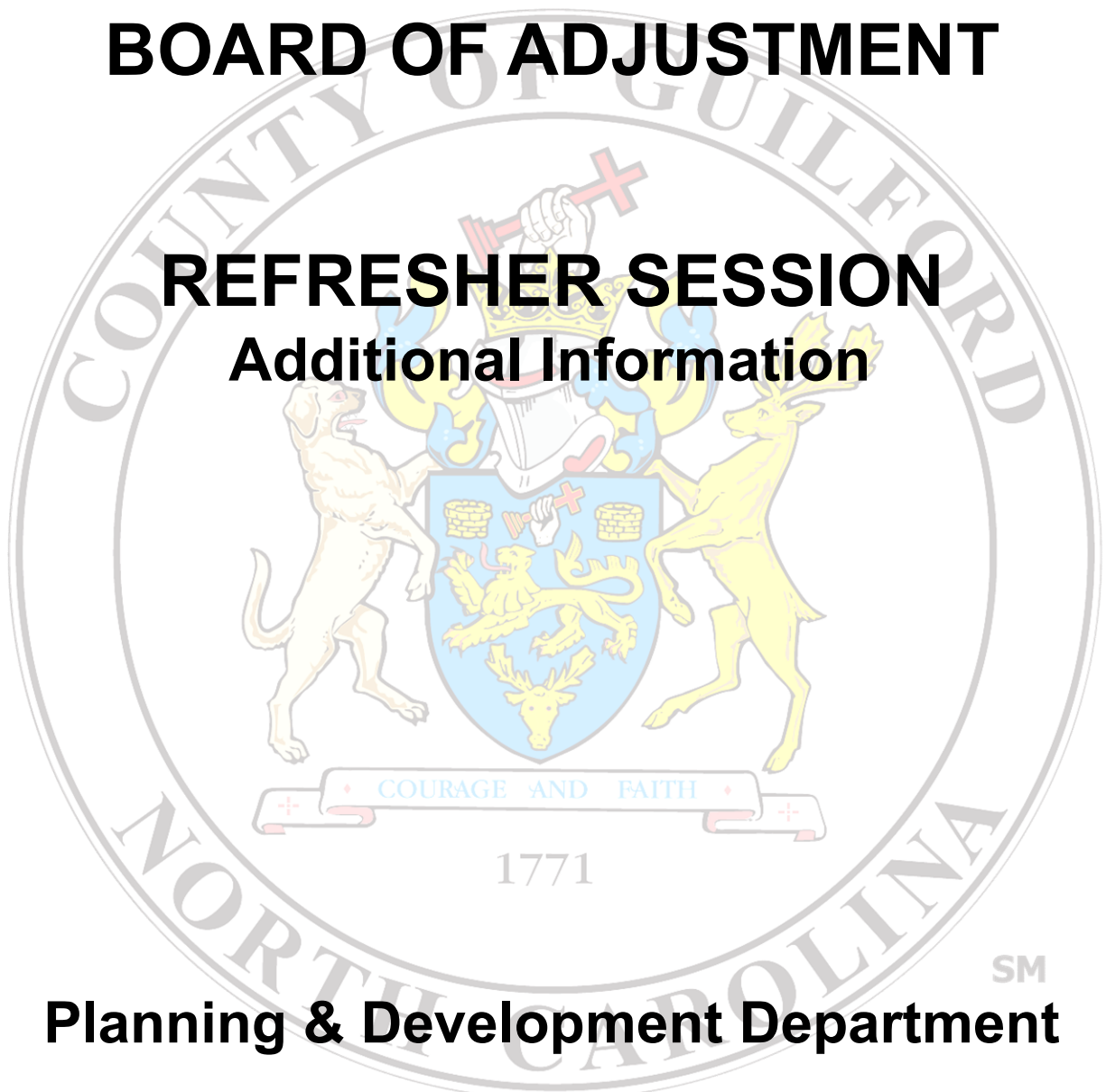
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**GUILFORD COUNTY
BOARD OF ADJUSTMENT**

**REFRESHER SESSION
Additional Information**



Planning & Development Department

June 2, 2026

§ 160D-705. Quasi-judicial zoning decisions.

(a) Provisions of Ordinance. - The zoning or unified development ordinance may provide that the board of adjustment, planning board, or governing board hear and decide quasi-judicial zoning decisions. The board shall follow quasi-judicial procedures as specified in G.S. 160D-406 when making any quasi-judicial decision.

(b) Appeals. - Except as otherwise provided by this Chapter, the board of adjustment shall hear and decide appeals from administrative decisions regarding administration and enforcement of the zoning regulation or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development. The provisions of G.S. 160D-405 and G.S. 160D-406 are applicable to these appeals.

(c) Special Use Permits. - The regulations may provide that the board of adjustment, planning board, or governing board hear and decide special use permits in accordance with principles, conditions, safeguards, and procedures specified in the regulations. Reasonable and appropriate conditions and safeguards may be imposed upon these permits. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. Conditions and safeguards imposed under this subsection shall not include requirements for which the local government does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the local government, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land.

The regulations may provide that defined minor modifications to special use permits that do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively. Any other modification or revocation of a special use permit shall follow the same process for approval as is applicable to the approval of a special use permit. If multiple parcels of land are subject to a special use permit, the owners of individual parcels may apply for permit modification so long as the modification would not result in other properties failing to meet the terms of the special use permit or regulations. Any modifications approved apply only to those properties whose owners apply for the modification. The regulation may require that special use permits be recorded with the register of deeds. If a special use permit expires and does not vest, the current zoning classification or regulation for the property applies.

(d) Variances. - When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the board of adjustment shall vary any of the provisions of the zoning regulation upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the regulation.
It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and

appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other development regulation that regulates land use or development may provide for variances from the provisions of those ordinances consistent with the provisions of this subsection. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 17, 50(b), 51(a), (b), (d); 2025-94, s. 29(b).)

§ 160D-405. Appeals of administrative decisions.

(a) Appeals. - Except as provided in G.S. 160D-1403.1, appeals of administrative decisions made by the staff under this Chapter shall be made to the board of adjustment unless a different board is provided or authorized otherwise by statute or an ordinance adopted pursuant to this Chapter. If this function of the board of adjustment is assigned to any other board pursuant to G.S. 160D-302(b), that board shall comply with all of the procedures and processes applicable to a board of adjustment hearing appeals. Appeal of a decision made pursuant to an erosion and sedimentation control regulation, a stormwater control regulation, or a provision of the housing code shall not be made to the board of adjustment unless required by a local government ordinance or code provision. Appeals of administrative decisions on subdivision plats shall be made as provided in G.S. 160D-1403.

(b) Standing. - Any person who has standing under G.S. 160D-1402(c) or the local government may appeal an administrative decision to the board. An appeal is taken by filing a notice of appeal with the local government clerk or a local government official designated by ordinance. The notice of appeal shall state the grounds for the appeal.

(c) Repealed by Session Laws 2020-25, s. 10, effective June 19, 2020.

(d) Time to Appeal. - The owner or other party has 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

(e) Record of Decision. - The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(f) Stays. - An appeal of a notice of violation or other enforcement order to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal or during the pendency of any civil proceeding authorized by law or related appeal. If, however, the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation, then enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after the request is filed.

Notwithstanding any other provision of this section, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation does not stay the further review of an application for development approvals to use the property; in these situations, the appellant or local government may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

(g) Alternative Dispute Resolution. - The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution. The

development regulation may set standards and procedures to facilitate and manage voluntary alternative dispute resolution.

(h) No Estoppel. - G.S. 160D-1403.2, limiting a local government's use of the defense of estoppel, applies to proceedings under this section. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 10, 50(b), 51(a), (b), (d); 2022-62, s. 59(a).)

§ 160D-406. Quasi-judicial procedure.

(a) Process Required. - Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision.

(b) Notice of Hearing. - Notice of evidentiary hearings conducted pursuant to this Chapter shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the local development regulation. In the absence of evidence to the contrary, the local government may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the local government shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.

(c) Administrative Materials. - The administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

(d) Presentation of Evidence. - The applicant, the local government, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.

Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

(e) Appearance of Official New Issues. - The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the local government would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

(f) Oaths. - The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-

judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

(g) Subpoenas. - The board making a quasi-judicial decision under this Chapter through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the local government, and any person with standing under G.S. 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

(h) Appeals in Nature of Certiorari. - When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below, and the scope of review shall be as provided in G.S. 160D-1402(j).

(i) Voting. - The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

(j) Decisions. - The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within a reasonable time by personal delivery, email, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

(k) Judicial Review. - Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d). The governing board of the local government that is a party to the judicial review of the quasi-judicial decision shall have the authority to settle the litigation, subject to Article 33C of Chapter 143 of the General Statutes. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d); 2021-168, s. 3(a); 2025-25, s. 29(1).)



GUILFORD COUNTY CODE

CHAPTER 15 - PLANNING AND DEVELOPMENT

FOOTNOTE(S):

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Cross reference— Administration, ch. 2; buildings and building regulations, ch. 6; parks and recreation, ch. 13.

State Law reference— Meetings of public bodies open to the public, G.S. 143-318.10; power of county to levy property taxes for planning and development, G.S. 153A-149(c)(26); planning and regulation of development, G.S. 153A-320 et seq.; regional planning commissions, G.S. 153A-391 et seq.

ARTICLE II. - RELATED ORDINANCES

Sec. 15-56 Unified Development Ordinance

(File No. 2020-432, 11/19/2020; File No. Ord. of 1-20-22(1), 01/20/2022)

Subsec. 2 – Administration

2.7 BOARD OF ADJUSTMENT

A. AUTHORITY

The Board of Adjustment is hereby established pursuant to G.S. § 160D-302.

B. MEMBERSHIP

1. The Board of Adjustment shall consist of members appointed by the Guilford County Board of Commissioners and may have alternates as appointed by the Board of Commissioners.
2. The Planning Board may serve as the Board of Adjustment for Special Use Permits, minor watershed variances, and recommend approval to the NC Environmental Management Commission for a major stormwater management/watershed variance.
3. **Board of Commissioners serving as Board of Adjustment.** If the Board of Commissioners chooses not to appoint members to the Board of Adjustment, it shall sit as the Board of Adjustment subject to the provisions of this Ordinance.

C. POWERS AND DUTIES

The Board of Adjustment shall have the following powers and duties (See [Subsec. 3](#) - Development Review Procedures for details of processes listed below):

1. To decide development procedures, namely:
 - a. Variances



2. To hear and decide appeals from and review any administrative order, requirement, decision, determination, or interpretation made by an administrative official charged with enforcing this Ordinance, namely:
 - a. Interpretation of zoning provisions of this Ordinance;
 - b. Floodplain boundary, zoning boundary, or other delineated boundaries;
 - c. Address assignments; and
 - d. Decisions of the Historic Preservation Commission (Major Certificate of Appropriateness), limited to certiorari.
 - e. Site Plans - Minor and Major
 - f. Subdivision - Minor and Major
3. To hear and decide any exceptions which are specifically delegated to it by this Ordinance;
4. To determine and vary application of zoning regulations in harmony with their general purpose and intent and in accordance with general and specific rules contained therein;
5. To hear and decide appeals for variances from the zoning provisions of this Ordinance in cases where special conditions would make strict and literal interpretation and enforcement of the zoning provisions of this Ordinance result in a loss of privileges shared by other properties within the same zoning district;
6. To interpret zoning maps and pass upon disputed questions of district boundary lines and similar questions that may occur in the administration of this Ordinance;
7. To hear and decide all matters referred to it or upon which it is required to pass under this Ordinance;
8. To determine upon application of an owner or upon referral from the Planning and Development Director whether a proposed nonconforming use is equal or less intensive than an existing, legal nonconforming use, in accordance with [Subsec. 11](#) – Nonconformities; and
9. To hear and decide upon appeals concerning violations of the Guilford County Solid Waste Ordinance.

D. OATHS

The Chairman of the Board or any member temporarily acting as Chairman shall administer oaths to witnesses in any matter coming before the Board.

E. VOTING

1. Required votes for approval are dependent on the hearing and may require:
 - a. A four-fifths (4/5) vote of its members shall be required for a Board of five (5) members to grant a variance from the provisions of the Ordinance.
 - b. A simple majority of its members shall be required to:
 - (1) Affirm or reverse any order, wholly or partly; modify a requirement, decision, determination or interpretation of an administrative officer charged with enforcing this Ordinance.
 - (2) Decide in favor of the applicant on a matter upon which the Board is required to pass under this Ordinance.
 - (3) Grant special exceptions for Historic Districts and other purposes, as assigned.



Commentary: SL 1979-282 SB285 authorizes the Guilford County Board of Commissioners to delegate the Guilford County Planning Board as the authority to close a public road or easement.

SL 1981-59 HB139 amends SL 1979-282 SB285 above to provide that the Resolution of Intent to close a public road or easement need only be published once a week for two successive weeks.

2. Vote of the Chairman

The Board chairman shall vote as any other Board member.

3. Delay of Decision

The Board may, in its discretion, direct that its decision be delayed to a date or time subsequent to the Board's vote on an appeal.

F. NOTICE OF DECISION

Each quasi-judicial decision shall be reduced to writing and be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

G. APPEAL

1. Appeal to Superior Court. Each decision of the Board of Adjustment shall be subject to Superior Court review by proceedings in the nature of certiorari.

2. Timing of Appeal.

- a.** Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the decision of the Board is filed in the Planning or Building Inspections Department; or
- b.** After a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Clerk or Chairman of the Board at the time of its hearing of the case, whichever is later.

(File No. 23-09-PLBD-00064, 11/06/2025)

Effective on: 11/6/2025

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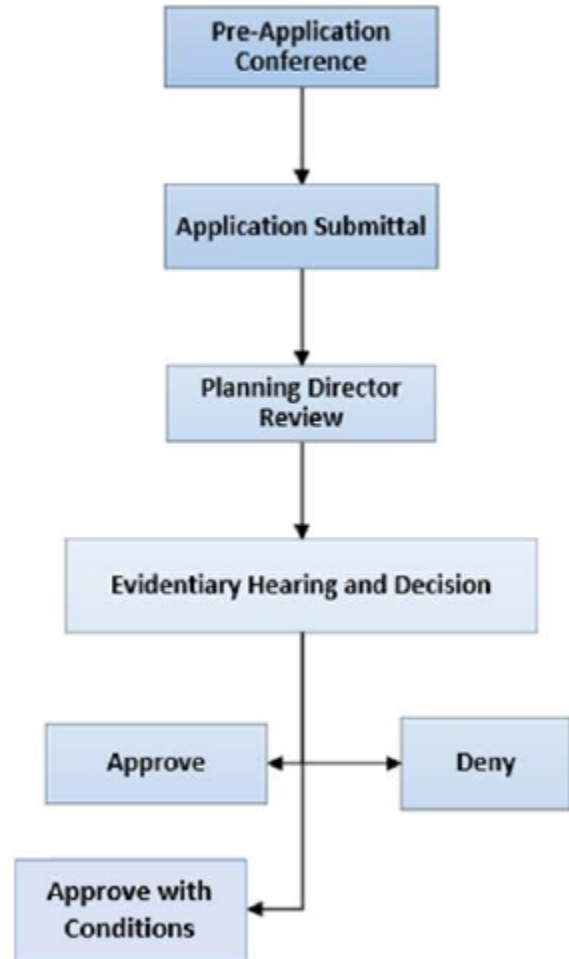
3.4 QUASI-JUDICIAL PROCEDURES

A. OVERVIEW

3. For development applications subject to quasi-judicial procedures, an evidentiary hearing shall be held by the Board designated in Table 3.1: Development Review Procedures; namely:
 - a. Appeals of Administrative Decisions;
 - b. Major Certificates of Appropriateness;
 - c. Special Use Permits; and
 - d. Variances.
4. The hearing shall be held and in accordance with G.S. § 160D, Subsec. 7.

B. COMMON QUASI-JUDICIAL PROCEDURES

3. Pre-Application Submittal and Planning & Development Director Review
 - a. General review times for specific permits and procedures shall be listed on the application forms available from the Planning & Development Department or County’s website.
 - b. Applications shall be reviewed during the review cycle in place when the application is determined to be complete.
 - c. When an application is determined to be complete, it shall be distributed by staff to review agencies for review and comment, as appropriate.
 - d. If deficiencies in complying with applicable standards of this Ordinance are identified, the Planning and Development Director shall notify the applicant of such deficiencies and provide the applicant a reasonable opportunity to discuss and revise the application accordingly.
 - e. In the preparation of a staff report, the Planning and Development Director shall transmit all applications, reports and written materials relevant to the matter being considered in accordance with G.S. § 160D-406.



C. EVIDENTIARY HEARING AND DECISION

3. Rules of Procedure

- a. In all quasi-judicial hearings, rulings must be based only upon the evidence received by the (Board) at the hearing in accordance with G.S. § 160D(a).
- b. A member shall not participate in or vote on any quasi-judicial matter in a manner that would violate the applicant’s constitutional right to an impartial decision maker. Impermissible violations of due process include, but are not limited to:



- (1) A member having a fixed opinion prior to hearing the matter that is not susceptible to change.
 - (2) Undisclosed ex-parte communications.
 - (3) A close familial, business, or other associational relationship with an affected person.
 - (4) A financial interest in the outcome of the matter.
 - c. If an objection is raised to a member's participation and that member does not recuse himself/herself, the remaining members shall, by majority vote, rule on the objection.
 - d. The Board shall act as a fact-finding body and shall approve or disapprove the application in accordance with the evidence presented before it which is substantial, competent, relevant and material.
4. The presiding officer of the Board shall call the proceedings to order and announce the hearing has begun.
5. All witnesses who are to testify at the hearing shall be sworn in or affirmed.
6. The Planning and Development Director or their designee shall briefly describe the applicant's request, introduce all relevant County codes, and answer questions from the Board.
7. The applicant or their legal counsel shall present the case in support of the application.
8. Parties in interest, including the County, shall have the right to present evidence and cross-examine witnesses, as to any competent material and relevant facts, inspect documents and make oral arguments.
9. Counsel for the Board may advise the Board as to the applicable law and the findings of fact that must be made to approve or deny the request.
10. The Board shall conduct open deliberation of the application.
11. The Board shall act as a fact-finding body and shall approve or disapprove the application in accordance with the evidence presented.
12. In accordance with G.S. § 160D-406, each Board under the provisions of this Ordinance shall ensure that the rights of petitioners have not been prejudiced because of the Board's findings, inferences, or conclusions.
13. In accordance with G.S. § 160D-406, in the case of an appeal, the Board may affirm the decision, reverse the decision and remand the case with appropriate instructions to County staff of other advisory/recommending body, or remand the case for further proceedings.
14. Every decision shall include the vote, abstention, or recusal from voting or absence of each member.
15. The decision shall clearly state the factors considered in making the decision and the basis or rationale for the decision including findings of fact and conclusions of law which shall be filed with the Register of Deeds.
16. A written copy of the decision shall be made available to the public in the office of the Planning and Development Department during normal business hours.
17. **Failure to Act.** Upon failure of the Board to act on a request following an evidentiary hearing, and any properly followed continuance procedures, the application shall be deemed denied.

D. EXAMINATION

Members of the Board may ask questions of persons presenting testimony or evidence at any time during the proceedings until commencement of deliberation.



E. CROSS-EXAMINATION

After each witness testifies, testimony is subject to cross-examination.

F. NOTIFICATION OF DECISION

Timing. The Board shall take action on the application as promptly as reasonably possible in consideration of the public interest. Except where otherwise stated in this Ordinance, the Planning and Development Director shall provide the applicant written notification of a decision or action within ten (10) business days after a final decision on a development application.

G. APPEAL PROCEDURES

See Section [3.5.C](#), Appeals.

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W. VARIANCE

1. Purpose and Intent

- a. The variance process is a Quasi-Judicial Procedure (Section 3.4) and is intended to provide limited relief from the requirements of this Ordinance in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of the land in a manner otherwise allowed under this Ordinance.

2. Authority

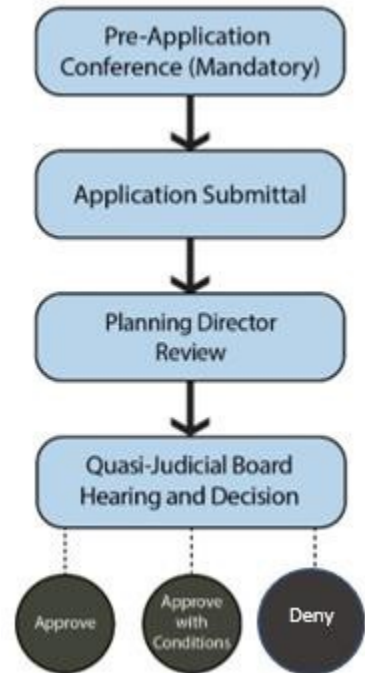
- a. Multiple boards shall serve as the Board of Adjustment for quasi-judicial matters in Guilford County. If the Board of Commissioners chooses not to appoint members to the Board of Adjustment, it shall sit as the Board of Adjustment subject to the provisions of this Ordinance.
- b. Depending on the request, variances may be heard by the:
 - (1) Planning Board.
 - (2) Board of Adjustment.
 - (3) Board of Commissioners.

3. Applicability

- a. Development that would otherwise be subject to undue and unique hardship from the application of the standards of this Ordinance may seek relief from this Ordinance in accordance with this section that otherwise would not be satisfied under the allowances set forth in Ordinance.
- b. In no event shall a quasi-judicial board grant a variance which would allow the establishment of a use which is not otherwise allowed in a zoning district or which would change the density, district classification, or the district boundary of the property in question.
- c. In no event shall a quasi-judicial board grant a variance which would conflict with any State code.
- d. The Board of Commissioners shall not grant a variance to permit a use otherwise not permitted by this Ordinance in the zoning district involved.
- e. Variance Runs with the Land. Any variance so authorized, shall be perpetually binding upon the property included in such permit, unless subsequently changed or amended through application for a new or amended variance.

4. Variance Procedures

- a. Pre-Application Conference
 - (1) Mandatory. Pre-Application Conference is mandatory.
- b. Application Submittal
 - (1) An application for a variance shall be submitted in writing to the Board by filling an application with the Planning and Development Director.
- c. Planning and Development Director Review





- (5)** Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the Base Flood Elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the Base Flood Elevation will result in increased premium rates for flood insurance up to twenty-five dollars (\$25.00) per one hundred dollars (\$100.00) of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (6)** The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- (7)** Conditions for Variances:

 - (a)** Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.
 - (b)** Variances shall not be issued within any designated floodway or non- encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 - (c)** Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (d)** Variances shall only be issued prior to development permit approval.
 - (e)** Variances shall only be issued upon:

 - i.** A showing of good and sufficient cause;
 - ii.** A determination that failure to grant the variance would result in exceptional hardship; and
 - iii.** A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (8)** A variance may be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met:

 - (a)** The use serves a critical need in the community.
 - (b)** No feasible location exists for the use outside the Special Flood Hazard Area.
 - (c)** The reference level of any structure is elevated or floodproofed to at least the Regulatory Flood Protection Elevation.
 - (d)** The use complies with all other applicable federal, state, and local laws.
 - (e)** The County of Guilford has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

Effective on: 11/7/2024

Coates' Canons NC Local Government Law

Making Quasi-Judicial Decisions

Published: 04/04/23

Author: Jim Joyce

Imagine, if you will: A long, contentious hearing over a controversial variance request has finally come to a close. The Board took careful steps to follow appropriate procedures related to notice, impartiality, and communication between board members and the public. Now it is time for the Board to deliberate, weigh its evidence, and reach a decision. This post addresses how they do so.

Quasi-judicial decisions (including the controversial variance request mentioned above) center around two things: the standards the Board* must apply and the evidence in the record that relates to those standards.

*I will refer to a board of adjustment in the rest of this post as “the Board” for ease of reference. The body making a quasi-judicial decision in any given jurisdiction could be a board of adjustment or it could be a planning board or governing board that serves as the board of adjustment. Regardless of the form of the Board, these rules are the same.

Readers familiar with legislative decisions will recognize that these standards make quasi-judicial decisions quite different from legislative ones. Readers not familiar with the types of development regulatory decisions are encouraged to check out [THIS](#) post by Adam Lovelady. Governing boards do not make legislative decisions based on statutory or ordinance standards (in fact, they often set those standards). Instead, governing boards make legislative decisions based on policy reasoning and their political perspectives. On the other hand, quasi-judicial decisions *do* have guiding standards that the local or state government has set through the legislative process. The Board must apply those standards regardless of policy preferences or political pressures.

Oxford Languages defines “quasi-” as “being partly or almost” and defines “judicial” as “of, by, or appropriate to a court or judge.” So a decision that is “quasi-judicial” is one that is partly like a court’s decision. As a result, any Board making a quasi-judicial decision must follow certain procedural rules that protect the rights of the parties, a bit like a court might do. Some of those

rules refer to the hearing process. Others refer to the way the Board decides the case once the evidence is in. Below are the key rules about how deliberation should take place, what evidence should be the basis of the Board's decision, what decisions the Board can make, how they take action to reach their decision, and how the final decision gets formalized.

Deliberations must happen in public.

Once the presentation of evidence is complete, it is time for the Board to review the evidence and discuss how they will decide the matter. A Board is a public body making a public decision about an individual's property rights. Consequently, North Carolina open meetings laws apply to their deliberations. A bit more on open meetings laws can be found in [THIS](#) blog by Kristina Wilson, and much more can be found in [THIS](#) book by Frayda Bluestein.

Because open meetings laws apply to the Board acting in a quasi-judicial capacity, all of the Board's debate must happen during open session. There are very limited exceptions for boards to go into closed session and most do not apply to quasi-judicial proceedings. For this reason, the Board may not go into closed session to discuss the case privately.

A Board may continue the quasi-judicial item until a subsequent meeting, but this path is fraught with peril and should only be undertaken very carefully. Specifically, Board members must not engage in any discussion, deliberation, or fact-gathering between meetings. Such activity could violate the due process rights that must be afforded to an applicant or property owner in a quasi-judicial matter.

Another danger with continuance is whether additional evidence can be taken at the next meeting. Here, whether the hearing is closed or not becomes a significant factor. If the Board holds the hearing open from one meeting to the next, it can accept new evidence at the continued hearing. If the Board closes the hearing, on the other hand, it has moved on to the deliberation phase and can accept no new evidence.

The decision must be based on competent, material, and substantial evidence in the record.

“Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record.” G.S. 160D-406(j). This concept is included in the statutory rules regarding quasi-judicial procedures and is repeated in just about every case concerning quasi-judicial decision-

making. So what counts as “competent, material, and substantial evidence in the record”? What *can* serve as the basis for answering a quasi-judicial question? Let us look at each term in that phrase:

First, **competent evidence** is trustworthy, reliable evidence. For documents, the rules are much looser than they would be in a court of law, but a Facebook post from an unknown source or the neighborhood conspiracy theorist might not be competent. When it comes to testimony, the witness should have first-hand knowledge of the matter about which they are speaking. For instance, I know what my neighborhood looks like and in a general sense how often people and cars come by. On the other hand, can I talk about traffic in Waxhaw if I only have heard about it from my cousin’s roommate’s best friend? Probably not.

Another key point relates to opinion testimony. Much like in an actual court hearing, opinions about what might happen in the future should be given by experts. This is particularly true—and most commonly encountered—when the issue is impact on traffic or property values. Evidence about what a given quasi-judicial proposal *would* have on traffic in the future is a matter of opinion, and that opinion must come from a traffic engineer or similar expert who has analyzed the project. Likewise, evidence about what could happen to property values must come in the form of testimony and a report from an appraiser or similar expert who has appraised the property. For a deeper discussion of who can provide evidence at a quasi-judicial hearing, see [THIS POST](#) by David Owens.

Second, **material evidence** is that which relates to the questions the board has to answer. Regardless of whether the matter is a special use permit, variance, or other quasi-judicial approval, there are certain standards that apply to the decision. Material evidence should relate to those standards or to the land use impacts of the proposal.

This is one place where the process can be challenging for boards that also have to make other types of land use decisions. With quasi-judicial decisions, a Board must leave the politics aside. In special use permit cases, a political decision has already been made that a certain use should be allowed under certain conditions. For variance cases, this decision has been made at the state level. A quasi-judicial hearing is not the time to revisit these policy questions. Even if dozens of people are at the meeting with matching t-shirts and signs, their presence is probably not material evidence. Public opinion can be divided or even firmly against a quasi-judicial proposal, but it is not material to the core decision of whether the evidence matches the applicable standards.

Next, **sufficient evidence** is any evidence that tends to support a finding that the relevant standard is met. What evidence is sufficient, as discussed in more detail in [THIS](#) blog post, depends on the context. Generally, evidence is sufficient if it tends to help a side meet their burden of proof.

The burden of proof in a quasi-judicial matter is a bit like a seesaw. The burden is first on the applicant. Imagine the seesaw board tipped toward away from the applicant. If nothing happens, the seesaw will remain pointing in the other direction and the applicant does not get the approval they seek. However, if the applicant provides enough evidence to make its “*prima facie*” case – if they provide enough evidence that a board *could* find in their favor on *each* of the applicable criteria – the burden shifts to opponents of the proposal. In the seesaw analogy, imagine the applicant piling enough evidence on their end of the seesaw that it tips in their direction. Once the applicant has made this *prima facie* case and the burden shifts, any opponents of the proposal must pile up some evidence on their side of the seesaw. If they do not provide competent, material, and substantial evidence in response, the Board lacks authority to deny the application. It is only when there is evidence on both ends of this metaphorical seesaw that the Board is called upon to weigh the evidence.

Finally, the evidence needs to be **on the record**. The Board should not be gathering or receiving evidence outside of the public evidentiary hearing. The applicant has a legal right (due process again) to respond to evidence presented in their case, so any evidence that might be the basis for the board’s decision should be in the documentary record or presented at the evidentiary hearing.

One topic that comes up from time to time regarding evidence on the record is the question of site visits. Some Board members like to see a site for themselves to understand its particular conditions. These are generally permissible, but since they happen outside of the hearing, they must be disclosed to the rest of the Board and to the public. Further, any key findings should be identified so that they can be discussed in the hearing.

Keeping evidence on the record can also be tricky when it comes to *ex parte* communications. These occur when a Board member speaks with someone about the substance of the hearing outside of the hearing. These communications are to be avoided where possible, and disclosed where they cannot be avoided. The decision still must be made on the evidence in the hearing and on the record, but this disclosure allows an applicant to be aware of and to respond to all evidence in the case.

When reviewing evidence and reaching its decision, the board needs to focus on the competent, material, and substantial evidence that was presented to it during the evidentiary hearing and in any earlier documentation provided in the record (e.g., application materials and responses to requests for additional information).

The Board has a few options for how to act.

Once the Board has heard and weighed all of the evidence, what can they do with it? The answer depends on whether the quasi-judicial matter is an appeal of an administrative action or a development approval (such as a special use permit, variance, or certificate of appropriateness). In either situation, however, the Board has a few options available to it.

For **appeals of administrative decisions**, the board deciding an administrative appeal has a great deal of flexibility. In addition to simply affirming or reversing the challenged administrative decision, they can choose to affirm part of the decision but reverse another part, modify the decision appealed from, and make whatever other orders, determinations, etc. that the original decision-maker could make. In other words, the Board can mold the administrative outcome into what the board thought it should have been, at least within the bounds of the original decision-maker's discretion. See N.C. Gen. Stat. § 160D-406(j).

For **development approvals**, the board has three choices: it can approve the application, deny it, or approve it subject to certain conditions. The range of conditions is limited, however – N.C. Gen. Stat. § 160D-705(d) allows “[a]ppropriate conditions” to be placed on a variance approval if those conditions are reasonably related to the variance, and N.C. Gen. Stat. § 160D-705(c) allows a board of adjustment to put “[r]easonable and appropriate conditions and safeguards” on special use permit approvals. Conditions that are reasonable and appropriate tend to be those that relate to the standards the ordinance provides for making the decision or to the land use impacts of the proposed project. For special use permits, N.C. Gen. Stat. § 160D-705(c) specifically prohibits any conditions that are outside the scope of the local government's authority, including taxes, impact fees, regulation of certain residential building design elements, and driveway improvements in excess of NC DOT limitations.

When a condition is not related to the ordinance standards that apply to the application or to the land use impacts of the proposed project, that condition is at risk of being challenged and even reversed by a court. Conditions also must not be out of proportion with the project's impact or

outside the scope of the government's authority to impose.

Most quasi-judicial decisions require a simple majority vote; variances require a 4/5 supermajority.

N.C. General Statute 160D-406(i) requires the vote of four-fifths (that is, 80%) of the board to grant a variance, but states that a simple majority is required to decide other quasi-judicial matters. In making these calculations, one does not count members of the board who have conflicts of interest or vacant board positions.

To provide an example, if Boroville has a nine-member board, eight members must vote to approve a variance petition in order to grant it (seven of nine is about 78%, which is just under 4/5, so we need that eighth vote to get over the four-fifths threshold). For other quasi-judicial matters, five votes (five is just over half of nine) are required to decide the question. But what if there is an open seat, and one of the board members has a conflict of interest? Since G.S. 160D-406(i) requires us not to count the board member who is conflicted out or the vacant position, we calculate the number of votes we need out of the (9-2=7) seven remaining. Six out of seven (roughly 85%) would be enough to approve a variance and four would be enough to make any other quasi-judicial decision.

There must be a written decision that explains how the board reached their decision.

Once the requisite proportion of the board has agreed on a result, their decision must be put into writing and finalized. The decision is not final and effective until it has been reduced to writing, approved by the board, and filed with the clerk to the board. Only then does it become effective, and only then does the clock for the timeline to challenge the decision begin to run.

When it comes to drafting the decision document, one of the first questions that might arise is how much detail must be in the written decision. Of course, there is no hard-and-fast rule, but here are a few points to keep in mind:

- One, General Statute 160D-406(j) requires that the decision “reflect the board’s determination of contested facts and their application to the applicable standards.”
- Second, North Carolina courts have maintained, at least since 1974’s *Humble Oil & Refining Co. v. Board of Aldermen*, 284 N.C. 458, 202 S.E.2d 129 (1974), that the parties have a right to know the basis of the board’s decision.
- Third, any appeal of the decision will be based on the Board’s record. A reviewing court will look to the decision document and recording of the hearing rather than call Board members

to testify. For this reason, it is essential to explain the Board's reasoning in the decision document. On the other hand, if the document makes clear what the Board decided and why, it should be sufficient in most cases.

Because this document often takes some significant time and energy to assemble, many boards ask the applicant, staff, or their attorney to prepare a draft decision in the form of proposed findings of fact and conclusions of law. In some cases, boards might allow the prevailing party in the matter to draft the decision document. If there is no proposed set of findings and conclusions in advance, the board's staff or attorney can prepare the document after the meeting. Regardless of how or by whom the decision is drafted, it must accurately reflect the action the board took and its general reasoning. A simple checklist of whether each standard has been met is not sufficient. The decision must include some explanation of *how* each standard is met or not met, whether the decision is to approve, to approve with conditions, or to deny the application.

Once the decision document is complete, the statutes require that it "be approved by the board and signed by the chair or other duly authorized member of the board." G.S. 160D-406(j). Exactly *how* the board must approve the decision is not specified. Some boards may circulate the decision by email for each member's approval, while others might vote to approve a final draft of the decision at its next meeting following the vote. While the latter procedure assures that the written decision is approved in a public meeting, it also has the effect of delaying the effective date of the approval – recall that the decision is not effective before it has been finalized and filed. Once the document is approved, it is signed by the board chair (or another authorized member), can be filed with the clerk, and becomes effective.

These points and more related to the requirements for the final decision document are discussed in [THIS](#) David Owens blog post.

Distribution and final steps

Once the written decision has been finalized and filed, the Board must provide copies of the decision to the applicant, landowner, and anyone who has submitted a written (including e-mail) request for a copy. Whoever is providing the notice "shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud." This certification can be important, as it serves as the beginning of the time to file any appeals.

Concluding comments

Although there are several steps to making a quasi-judicial decision and reducing it to a final written document, the operation can be straightforward if taken one step at a time. The vote must happen in a public meeting; the result must be based on competent, material, and substantial evidence in the record; a written document must memorialize the board's decision; and that decision must be appropriately filed and distributed. Following these general principles will help assure a legal, defensible, and appropriate quasi-judicial decision.

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Coates' Canons NC Local Government Law

Variance Standards: What is hardship? And when is it unnecessary?

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Generally, development regulations like zoning and subdivision standards apply equally to all properties. But sometimes a particular property is unfairly burdened by the general rules, creating an unnecessary hardship for the owner. The general statutes authorize the local board of adjustment to grant a variance from the rules in those limited circumstances. But what is an unnecessary hardship? Recent amendments to the state statute clarify what can (and what can't) qualify as unnecessary hardship. This blog explores those new standards.

General Statute section 160A-388(d) sets forth the standards for granting a zoning variance (The standards also may be applied to subdivision and other development regulation). These mandatory standards apply to zoning variances for all counties and municipalities in the state, and the new standards override any contrary ordinance provisions that may have been in place prior to 2013. For a summary of the other changes to the board of adjustment statute, see this [blog](#) from my colleague David Owens.

Under the new statute a board of adjustment *shall* vary the provisions of the zoning ordinance if strict application of the ordinance would create unnecessary hardship. In order to obtain the variance, the applicant must show all of the following:

- Unnecessary hardship would result from the strict application of the ordinance
- The hardship results from conditions that are peculiar to the property
- The hardship is not a self-created hardship

Additionally, the applicant must show that the variance will

- Be consistent with the intent of the ordinance
- Secure public safety
- Achieve substantial justice

Finally, the statute prohibits any use variance.

To be sure, a variance is not a free pass from regulations or a tool to subvert the zoning ordinances. In order to obtain a variance, the applicant bears the burden of providing competent, substantial and relevant evidence to convince the decision-making board that the property meets all of the statutory standards for a variance. Merely showing some hardship is insufficient.

Let's consider each of the standards in more detail.

Unnecessary Hardship from Strict Application

Whenever there is regulation, there is some level of necessary hardship and inconvenience shared by all of the community. An applicant for a variance must show *unnecessary* hardship. What is enough hardship? Unfortunately, there is no simple formula. It is determined on a case-by-case basis. That is why the board of adjustment holds a quasi-judicial hearing and considers the evidence presented.

The hardship must be more than mere inconvenience or a preference for a more lenient standard. Cost of compliance may be a factor, but cost is not determinative. It is not enough for an applicant to say that development will cost more in order to comply. The applicant must show the substantial and undue nature of that additional cost as compared to others subject to the same restriction.

Under the old statutes, many jurisdictions applied a standard that the applicant must show that there is no reasonable use of the property without a variance. Under current statutes, that stringent standard is no longer allowed. A property owner can prove unnecessary hardship, even if the owner has some reasonable use of the property without the variance.

Peculiar to the Property

The unnecessary hardship must be peculiar to the property, not general to the neighborhood or community. Such peculiar characteristics might arise, for example, from location of the property, size or shape of the lot, or topography or water features on the site.

Imagine a lot that narrows dramatically toward the front yard and where the side yard setbacks prohibit the property owner from building an addition. The hardship (not being allowed to build an addition) flows from the strict application of the ordinance (the setback) and is peculiar to the property (because of the shape of the lot). A variance may be appropriate if the owner presents evidence to show she meets all of the standards.

By contrast, a variance is not the appropriate remedy for a condition or hardship that is shared by the neighborhood or the community as a whole. Consider that same narrowing lot. If all of the houses on the street shared that hardship, a variance would not be appropriate. Such conditions should be addressed through an ordinance amendment.

Hardships that result from personal circumstances may not be the basis for granting a variance. The board is looking at the nature of the property and the land use ordinances, not the nature of the applicant and their circumstances. Bringing an elderly parent to live with the family, for example, is a change in personal circumstance, not a condition peculiar to the property.

The reverse is also true. An applicant's personal circumstances cannot be the basis for denying a variance. The board should consider the property, not the applicant's bank account and ability to cover the cost of the hardship. Moreover, the fact that the applicant owns property nearby is irrelevant to the consideration of whether this particular property deserves a variance (*Williams v. N.C. Dept. of Env. & Nat. Resources*, 144 N.C. App 479, 548 S.E. 2d 793 (2001))

Not Self-Created Hardship

You can't shoot yourself in the foot and then ask for a variance. The hardship must not result from actions taken by the applicant or property owner.

So what is self-created? Suppose a property owner sells part of a conforming lot and makes the remainder of the lot nonconforming. The hardship (limitations on the non-conforming lot) was self-created (by the owner selling the sliver off the parcel. The owner may not seek a variance for building on the substandard lot. Similarly, where an owner failed to seek zoning and building permits and then incorrectly placed foundation footings in the setback, the hardship is self-created. No variance is allowed. Ignorance of the law is no excuse.

What if the owner relied in good faith on seemingly valid surveys and obtained building permits? After construction began, a neighbor objected, citing a new survey and arguing that the foundation wall is within the setback. Is the owner's hardship self-imposed? Our North Carolina courts have held that hardships resulting from such good faith reliance on surveys and permits are eligible for a variance (*Turik v. Town of Surf City*, 182 N.C. App. 427, 642 S.E.2d 251 (2007)).

An important statutory provision applies here: "The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-

created hardship.” For example, if the original owner had a legitimate case for a variance, someone buying the lot from that owner would have the same legal position as the original owner. They could seek a variance. This rule aligns with the broader zoning concept that land-use permissions run with the land, and land-use decisions are based on the property and impacts of development, not based on the particular owner. Is this a loophole for an unscrupulous owner to overcome the limit on variances for self-created hardship by selling the property to a spouse or sham LLC? Maybe, but the requirement for substantial justice (discussed below) probably protects from someone gaming the system.

Restrictive covenants and other legal limitations *may* be a factor in determining hardship. Consider a property that has limited development ability due to a privately-imposed covenant for a street setback and a publicly-imposed stream setback. Can the owner seek a variance from the public stream setback? The NC Court of Appeals—interpreting a specific local ordinance—found that the board should consider physical *and* legal conditions of the property, including restrictive covenants (*Chapel Hill Title & Abstract Co., Inc. v. Town of Chapel Hill*, 362 N.C. 649, 669 S.E.2d 286 (2008)).

Let me emphasize that covenants and other legal limitations *may* be a factor. In that case, the decision was based on the local ordinance, and the decision pre-dated the statutory variance standards. A self-imposed legal limitation—like an easement across a property that limits buildable area—that was created after a zoning ordinance limitation became effective, could be viewed as a self-imposed hardship so that no variance should be granted.

Ordinance Purpose, Public Safety, and Substantial Justice

In addition to those standards for “unnecessary hardship,” the statutory standard for granting a variance requires the applicant to show that “[t]he requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.”

Where an ordinance expresses a clear intent, a variance cannot subvert that intent. But, alternatively, a variance may help to give effect to the ordinance intent. In one North Carolina case, an applicant was seeking a variance to allow an additional sign at a secondary entrance. Among other things, the ordinance purpose was to provide “adequate and effective signage,” “prevent driver confusion,” and “allow for flexibility to meet individual needs for business identification.”

The purpose, the court found, called for the flexibility that the applicant sought, and the variance was allowed. (*Premier Plastic Surgery Ctr., PLLC v. Bd. of Adjustment for Town of Matthews*, 213 N.C. App. 364, 369, 713 S.E.2d 511, 515 (2011)).

The applicant also must show that the variance does not harm public safety. Even if an applicant met the standard for unnecessary hardship, a variance may be denied for public safety concerns. A property owner may prove an unnecessary hardship exists from limitations on on-site drives and parking for a commercial use. But, if neighbors presented expert evidence that the increased traffic and stormwater effects will harm public safety, the board may be justified in denying the variance.

Additionally, the statute requires the applicant to show that through the variance “substantial justice is achieved.” The concept of substantial justice raises issue of fairness for the community and neighbors. This concept echoes the requirement that hardship must be peculiar to the property—not shared by the community. If everyone bears this hardship, then one lucky person should not be relieved through a variance. Similarly, the justice standard draws upon a notion of precedence. Suppose Joe sought a variance last year and was denied. If Karl is seeking variance this year that is essentially the same request for a similar property, then the variance outcome should be the same.

The substantial justice standard also can play in favor of the applicant. If an applicant relies in good faith on a city permit, and that permit turned out to be wrongly issued, the applicant would have no vested rights in that mistakenly issued permit. Substantial justice might argue for allowing a variance for the applicant.

No Use Variance

North Carolina courts long ago established that use variances are not permitted, and that rule is now part of the statutory standards. If a land use is not permitted on the property, a variance cannot be used to, in effect, amend the ordinance and allow the use. If only single family residences are permitted in a district, a variance cannot permit a duplex (*Sherrill v. Town of Wrightsville Beach*, 76 N.C. App. 646, 334 S.E.2d 103 (1985)).

If the use is already permitted on the property, a variance to allow the expansion of the permitted use is permissible. So, for example, if a sign is permitted for a commercial property, a variance to permit an additional sign is allowable. It is an area variance, not a use variance. (*Premier Plastic*

Surgery Ctr., PLLC v. Bd. of Adjustment for Town of Matthews, 213 N.C. App. 364, 713 S.E.2d 511 (2011)).

Conclusion

Making decisions about variances is a hard job. How much hardship is enough hardship? Is justice being served? Does the variance preserve the spirit of the ordinance? Rarely are there clear answers for these questions. Seeking those answers is the hard task of the board of adjustment. The applicant must present competent, material, and substantial evidence that they meet all of the standards. And the board must consider the issues on a case-by-case basis; they must weigh the evidence, apply the required statutory standards, and decide if a variance is warranted.

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Coates' Canons NC Local Government Law

Appeals of Administrative Development Decisions

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Seemingly clear, objective development regulations may be the subject of debate and interpretation. Is that new business unlawful? Was the notice of violation correctly issued? Does the proposed development meet the applicable standards? Did the administrator correctly interpret the regulation? Each of these scenarios may raise disputes.

To resolve such disputes, appeals of administrative development decisions are assigned to the local board of adjustment. State law sets forth the procedures and standards for those appeals. This blog outlines those rules.

Principles and Purposes

No development regulation can address every possible scenario. Properties are unique, landowners are creative, and land uses evolve. Not only that, but no ordinance is perfect. Inevitably there are ambiguities, contradictions, and gaps. Public officials are called to apply these imperfect regulations to an array of scenarios and the correct application is not always clear. Sometimes reasonable people may disagree about the proper interpretation of an ordinance. Sometimes the public official did not have access to complete information at the time of determining the violation. In such cases, an appeal can help resolve the disagreement.

What's more, these imperfect regulations affect rights and liberties. Business owners and religious groups, homeowners and residents, farmers and developers—they all have a deep interest in the productive use of their own land, protection of their investments, minimizing of nuisances, and ensuring equal treatment under the law. These rights are enshrined in the US Constitution through the Fifth Amendment protection against deprivation of property rights without due process of law. Appeals to the board of adjustment are grounded in that Constitutional assurance of due process and practical reality that ordinances are not always clear.

An appeal is not the right process for everything, however. If an owner wants a waiver of a requirement because the strict application of the rules will cause hardship, that owner should seek a variance, not an appeal. And, if a citizen is simply looking for a change to the rules, that requires an ordinance amendment, not an appeal.

With those principles in mind, let's turn to the details for appeals of administrative development decisions.

Zoning and More

The provisions for administration of development regulations—including administrative decisions and appeals—are outlined in Article 4 of Chapter 160D. G.S. 160D-405 states that for local development regulations, appeals of administrative decisions made by staff *shall* be made to the board of adjustment. So, administrative decisions for zoning, subdivision, and other development regulations are appealed to the local board of adjustment. The statute does allow that such appeals may be assigned to other boards if authorized by statute or local ordinance. So, for example, an appeal of a minor work permit in a historic district might be assigned to the local preservation commission rather than the board of adjustment. If the ordinance assigns any appeals of administrative decisions to another board, that board must follow quasi-judicial procedures just the same as the board of adjustment (G.S. 160D-405(a)).

Certain development regulations have separate appeals procedures. Minimum housing codes, authorized in Article 12 of Chapter 160D, must follow specified procedures for notice, administrative hearings, and final orders. Moreover, G.S. 160D-1208 outlines the authority and procedures for appeals of minimum housing decisions to the housing appeals board. Similarly, the appeals procedures for local stormwater regulations and erosion and sedimentation control regulations are outlined in separate statutes. For those topics—minimum housing codes, stormwater, and erosion and sedimentation control—appeals of administrative decisions do not go to the board of adjustment unless explicitly stated in the local ordinance (G.S. 160D-405(a)).

The Decision

“Determination”

In order for an administrative decision to be appealed, the public official must have made an

official determination—a written, final, and binding order, requirement, or determination (160D-405(d) & -102(10)).

Examples of final, binding determinations include a formal notice of violation, a zoning compliance permit, a formal ordinance interpretation, and other final, written decisions. A formal determination that a particular activity is permitted in a zoning district is an appealable determination (*S.T. Wooten Corp. Board of Adjustment*, 210 N.C. App. 633, 711 S.E.2d 158 (2011)). Additionally, a written determination that the owner has complied with applicable height limits is appealable (*Meir v. City of Charlotte*, 206 N.C. App. 471, 698 S.E.2d 704 (2010)).

Some staff actions are not formal determinations so they are not subject to appeal to the board of adjustment. If a written statement affects no rights and is merely advisory in nature, it is unlikely to be appealable. A letter that merely states the basic zoning district of a property is not a binding decision; it is merely a recitation of the current rules. A written statement about how the ordinance *might* be interpreted in the future is not an appealable decision (*In re Appeal of the Society for the Preservation of Historic Oakwood*, 153 N.C. App. 737, 571 S.E.2d 588 (2002)). A written communication that amounts to nothing more than a recommendation at a preliminary stage of the permit review process is not a final, binding decision (*Ashe Cty. v. Ashe Cty. Plan. Bd.*, 376 N.C. 1, 852 S.E.2d 69 (2020); *Wilson v. Mebane Board of Adjustment*, 212 N.C. App. 176, 710 S.E.2d 403 (2011)). Inaction by staff is not a decision that can be appealed, but a party may seek a court order to require staff action that is not discretionary.

The administrator cannot defer a question to the board prior to making a staff decision. When a decision is assigned to staff, the administrator must make the decision and then allow the appeal to the board of adjustment. (*Tate v. Board of Adjustment*, 83 N.C. App. 512, 350 S.E.2d 873 (1986)).

Notice of the Decision

Pursuant to G.S. 160D-403, the local government official who made the decision must provide written notice of the decision to the property owner and the requesting party, if different from the owner. This written notice may be provided by personal delivery, email, or first-class mail. The timing of notice is important, as that starts the clock running for the time of appeal.

A property owner or developer who wants to start the clock for neighbor appeals can establish constructive notice for the neighbors by posting a sign on the property in question pursuant to G.S.

160D-403(b). The sign must clearly state “Zoning Decision” or “Subdivision Decision” in letters at least six inches high and provide a way to contact an official about the decision. The sign must be posted for at least ten days, and the person posting the sign must provide verification of such posting to the official who made the decision. An ordinance may require such posted notice of decisions, but if not specified in the ordinance, it is an option for the property owner. Note that this sign to establish constructive notice is separate from the routine notice required in advance of any quasi-judicial hearing, including an appeal of a staff decision.

Filing an Appeal

Deadline for Appeal

Parties have thirty days from notice of the decision to appeal (160D-405(d)). For a party receiving written notice from staff, the thirty-day period begins with receipt of the notice. Notice sent by email or hand delivery is presumed received on the date it is sent or delivered. With regard to mailed notice, it is presumed to be received on the third business day following deposit of the notice for mailing. For other parties, the thirty-day period begins with any notice—actual or constructive—of the decision. That notice could be a letter from the property owner, a posted sign as discussed above, the beginning of construction on the site, or some other means of learning about the decision. If a party fails to appeal within thirty days, the board of adjustment cannot hear the appeal.

Standing to Appeal

State law allows an appeal of administrative decision by a person with legal standing. As outlined at G.S. 160D-1402(c), that includes an individual with an ownership interest in the subject property, the applicant for a permit or recipient of a notice of violation (if different from the owner), the local government, any person who will suffer special damages from the decision, and certain associations that have members who will suffer special damages.

For some of these parties, standing is clear. The applicant, the owner, and the local government are easily identified as parties with standing to appeal. Determining whether a neighbor will suffer special damages requires more, as discussed in this blog on [standing in quasi-judicial hearings](#). In short, the courts look at factors such as proximity, property value impacts, and additional adverse impacts (noise, pollution, traffic, etc.) to determine special damages. The application form for an

appeal may request information to confirm legal standing, and at the hearing, the question of standing is a threshold matter for the board to determine. If the person filing the appeal lacks standing, the board lacks authority to hear the appeal.

Notice of Appeal

A person seeking to appeal an administrative decision must file a notice of appeal with the local government clerk or other official as designated by the local government ordinance. The notice of appeal must state the grounds for appeal. Local governments commonly have a form or application for appeals of administrative decisions. Once a complete application is filed properly, staff is obligated to put the request on the agenda for the board; staff cannot make decisions on legal questions, such as standing (*Morningstar Marinas/Eaton Ferry, LLC v. Warren Cty.*, 368 N.C. 360, 360, 777 S.E.2d 733, 734 (2015)).

Stays of Enforcement and Permitting

For an appeal of an enforcement action, the appeal stays enforcement. Civil penalties and other enforcement actions are paused for the duration of the appeal. However, if the enforcement official certifies that “a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation,” then enforcement is only stayed by a restraining order (G.S. 160D-405(f)).

For an appeal of an approved development permit, the appeal “does not stay the further review of an application for development approvals to use the property.” But, the person appealing the permit or the local government may request that the board of adjustment stay any final decision on the development approval applications, including building permits (G.S. 160D-405(f)).

Quasi-Judicial Procedures

An appeal of an administrative development decision must follow quasi-judicial procedures, as outlined at G.S. 160D-406. Among other things, notice must be mailed and posted on the property; witnesses must provide sworn testimony and factual evidence; and the board must base its decision upon competent, substantial, relevant evidence in the record. Politics and personal preference are not legitimate bases for the decision.

Administrator Compiles the Record

In advance of the hearing the official who made the decision being appealed must compile the record upon which he or she based the decision, including all applicable documents and exhibits. The administrator must provide that record to the board and a copy of the record to the individual appealing the decision and the property owner, if different.

Administrator Appears as a Witness

As required by G.S. 160D-406(e), the public official who made the decision being appealed “shall be present at the evidentiary hearing as a witness.” If the individual who made the decision is no longer employed by the local government, then the individual currently occupying that position must appear as a witness.

This role of appearing as a witness is different from the staff role in other types of quasi-judicial decisions. In a variance case or special use permit case a staff person may serve as a clerk and/or witness providing support and analysis for the board, but in appeals of staff decisions the staff person acts as a party defending an interpretation of the ordinance. This leads to heightened concerns of *ex parte* communications between the board and the staff person. Local government staff often interact with board members outside of meetings. In the case of a staff person as party, they should be careful not to discuss the substance of the appeal with board members outside of the hearing

This dynamic of *staff-person-as-party* also may complicate the role of the local government attorney who is called in to advise the board and the staff member who is appearing before the board. For this reason, some local governments assign separate attorneys, one for staff and one for the board, for appeals of staff decisions.

Additional Evidence

In some cases, the party making the appeal, or that party’s attorney, may submit in advance a written analysis (essentially a legal brief) for board consideration. If so, copies should be provided to the board and the parties just as the rest of the record is provided.

The extent to which new evidence is needed or appropriate depends on the case. In some cases, the parties may agree to the basic facts (proposed building, applicable section of the ordinance, etc.) but disagree on the legal question of how to interpret the ordinance correctly (for example, does the proposed building qualify as a single-family home?).

In other cases, the board may need to supplement the record with additional facts in order to make the decision. In an appeal of a notice of violation, for example, the parties may dispute whether and when a certain land use occurred on the property. The property owner may have documents or testimony that challenges the record provided by staff. The evidentiary hearing may elicit additional evidence for the record, and the board must resolve contested facts in its decision.

The chair of the board of adjustment is authorized to issue subpoenas to compel the production of evidence. A party may make a written request to the chairperson explaining why a subpoena is necessary to compel certain witnesses or evidence, and the chairperson shall issue the subpoena if he or she determines it to be relevant, reasonable in nature and scope, and not oppressive (160D-406(g)).

Legal Interpretations

Commonly a dispute over an administrative decision is a dispute over interpretation. For more guidance on interpretation, take a look at this blog on [Interpreting the Zoning Ordinance](#).

Decision and Appeal

The board of adjustment must decide an appeal within a reasonable time. As with any quasi-judicial decision, the board's decision must be based on competent, material, and substantial evidence in the record. The board must determine any contested facts and apply relevant legal standards. The board has all of the powers of the official who made the decision—they board steps into the shoes of the administrative staff, so to speak. The board may affirm the staff decision, reverse the staff decision, or modify the staff decision, and the board may “make any order, requirement, decision, or determination that ought to be made.”

Appeals of administrative decisions are decided by a simple majority vote. The decision “shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board.” The decision of the board of adjustment may be appealed to the superior court in the nature of certiorari pursuant to G.S. 160D-1402.

Alternatives to the Board of Adjustment

Instead of taking an appeal to the board of adjustment, the parties to an appeal may agree to

mediation or other alternative dispute resolution. The ordinance may set standards and procedures to facilitate this process.

When the basis of the appeal is a challenge of the enforceability, validity of the regulation itself, or the whether the regulation is unconstitutional, is beyond the statutory authority of the local government, or is an unconstitutional regulatory taking, a person with standing may opt to bypass the board of adjustment and take those legal challenges straight to superior court.

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