



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

Fees



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.