

HILLSBOROUGH BOARD OF ADJUSTMENT PROCESS OVERVIEW

The Board of Adjustment (BOA) reviews applications for Conditional Use Permits and Variances. The Board also hears appeals from decisions of planning staff, the Historic District Commission, the Technical Review Committee, and the Minimum Housing Inspector. This document is intended to help explain the process and the responsibilities of different stakeholders. The regulations and guidelines regarding BOA actions and decisions can be reviewed in full in the Unified Development Ordinance and Administrative Manual.

Role of the BOA

The BOA is considered a quasi-judicial board, as their decisions involve the finding of facts regarding the specific proposal and the exercise of judgment and discretion in applying predetermined policies to a particular case. Quasi-judicial decisions do not involve setting new policies. The BOA evaluates applications by the Findings of Fact listed in the UDO. The Findings are discussed further below.

Public Hearings

Public hearings are held on individual applications at regularly scheduled BOA meetings. The public is welcome to come to public hearings, and is given the opportunity to present evidence and arguments for or against the application, and to ask questions on the presentation of the evidence and arguments. All persons who intend to present evidence at the public hearing shall be sworn in.

Notification

A public hearing for Conditional Use Permits and Variances are advertised in the following ways:

- A public hearing notice is run once a week for two consecutive weeks in the News of Orange, at least 10 days but less than 25 days before the date of the hearing.
- All adjacent property owners within 500 feet of the property in question are mailed a notice at least 10 days before the date of the hearing.
- A sign advertising the hearing is posted on the property or in the immediate vicinity at least 10 days before the date of the hearing.

For appeals:

- Notices are mailed to the appellant, the property owner (if different from the appellant), any potential aggrieved parties, and owners of property immediately adjacent to, and across the street from, the property subject to the appeal.
- A sign advertising the hearing is posted on the property or in the immediate vicinity at least 10 days before the date of the hearing.

Roles of the Public

Applicant: The applicant has a responsibility to:

- Present evidence that the proposed development will conform to all applicable provisions in the UDO.
- If contrary evidence is submitted, it is the applicant's responsibility to overcome that evidence with further evidence of their own.

Persons Opposed: Members of the public that are opposed to the development have the responsibility of:

- Presenting evidence contrary to the applicant's evidence, or
- Presenting evidence that the proposed development will not meet any of the general findings of fact outlined in Section 3.9.3 (for Conditional Use Permits) and Section 3.10.3 (for Variances).

If the application meets all of the applicable provisions, and no opposing evidence is submitted, the applicant shall be granted the requested permit or variance.

Evidence

Evidence is any information that is presented to the board during the public hearing. This includes witness testimony, staff reports, pictures, and other documents. The BOA needs factual evidence to make a finding; findings cannot be based on conjecture or assumptions.

- Persons who have special knowledge based on experience or training are considered **expert witnesses**. They can testify about their opinions, which must be based upon their area of expertise.
- Members of the public, such as adjoining property owners, are considered **layperson witnesses**, and generally cannot present their opinions as evidence because they may lack professional training and expertise on the topic at hand. Laypersons *can* give fact-based testimony about matters within their personal knowledge.
- If a member of the public does not have expertise in the area of concern, but wishes to provide evidence for or against the application, they are advised to find an expert witness who can come to the public hearing and provide a credible opinion.
 - Evidence submitted from a credible source, such as a letter from a real estate appraiser concerning their expert opinion on the effect of a development on nearby property values, may be taken into consideration by the Board, but it will not hold as much weight as the same information presented to the Board in person, where the ability to cross examine is available.
- If a statement is being used as evidence to establish a fact, the person making that statement should be present at the hearing to testify and be subject to cross examination; otherwise the statement is considered hearsay evidence.

General Standards and Findings of Fact

The below standards are the general criteria by which an application for a Conditional Use Permit or Variance (as noted in the finding below) is evaluated. In addition to these general standards, each application type also has more specific criteria by which it is evaluated, which can be found in the appropriate sections in the UDO.

Conditional Use Permit

The BOA shall not approve a Conditional Use Permit unless it finds:

- a) That the use or development is located, designed, and proposed to be operated so as to maintain the public health, safety, and general welfare.
- b) That the use or development complies with all required regulations and standards of this Ordinance (the UDO), including all applicable provisions of Articles 4, 5 and 6 and all applicable regulations;
- c) That the use or development is located, designed, and proposed to be operated so as to maintain or enhance the value of contiguous property, or that the use or development is a public necessity; and
- d) That the use or development confirms with the general plans for the physical development of the Town as embodied in the Town's Comprehensive Plan.

Variance

The BOA shall not approve a Variance application unless **all** of the following findings are met:

- a) Unnecessary hardship would result from the strict application of the Ordinance (the UDO). It shall not be necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property; and
- b) 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; and
- c) 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; and
- d) The requested Variance is consistent with the spirit, purpose and intent of the Ordinance (the UDO) such that public safety is secured and substantial justice is achieved.

Additional standards must be met for specific types of variances (i.e., watershed and riparian buffer variances).

Appeals of Decisions of the Board of Adjustment:

- Must be taken within 30 days after the filing of the decision in the office of the Planning Director (the Planning Department) or within 30 days of the delivery of a written copy of the decision to every aggrieved party who has filed a written request for a copy of the decision, *whichever is later* (reference NCGS 160A-388(e2)).
- Appeals are to the Orange County Superior Court and are filed in the nature of certiorari. This means that the court will review the record of the case and determine if the Board made their decisions properly and in accordance with BOA adopted rules of procedure.

Note: The purpose of this overview is to give the public a general idea of the Board of Adjustment process. The Town Unified Development Ordinance and companion Administrative Manual and/or Town Planning staff should be consulted with specific questions regarding Board requirements and functions.