



Process Overview

Hillsborough Board of Adjustment

This document gives the public a general overview of the Hillsborough Board of Adjustment's purpose, function and review process. For specific questions regarding board requirements and functions, consult the Hillsborough Unified Development Ordinance, Hillsborough Flood Damage Prevention Ordinance (if applicable), and Hillsborough Planning and Economic Development Division staff. Should this overview conflict with either ordinance or state law, the applicable ordinance and state law shall control.

Role of the Board of Adjustment

The Board of Adjustment reviews applications for special use permits and variances. With exception of appeals relative to the Flood Damage Prevention Ordinance, the board also hears appeals from decisions of Planning and Economic Development Division staff in the enforcement of the Unified Development Ordinance. The regulations regarding the board's actions and decisions can be reviewed in full in either ordinance, as applicable.

The Board of Adjustment functions in a quasi-judicial capacity, meaning it operates similar to a court of law. Its decisions involve making finding of facts regarding a specific proposal and exercising judgment and discretion in applying predetermined policies to a particular case. Quasi-judicial decisions do not involve setting new policies. The board does not have the authority to change a property's zoning designation.

Types of Applications

Special Use Permit — A permit required for a specified land use that requires special consideration as to its location, design, and methods of operation due to its inherent nature, extent of development or external effects.

Variance — A relaxation of the terms of either or both the unified development and flood damage prevention ordinances if literal enforcement would result in unnecessary and undue hardship to the property owner due to conditions peculiar to the property and not as the result of actions or the situation of the applicant. Establishment or expansion of a use otherwise prohibited by the Unified Development Ordinance is not permitted by a variance.

Appeal — Action taken by a person claiming to be aggrieved by a final decision, order, or determination of the Planning and Economic Division staff in the enforcement of the unified development or flood damage prevention ordinances. Appeals from Board of Adjustment decisions are taken to Orange County Superior Court.

Hearings

Applications are heard as necessary at regularly scheduled Board of Adjustment meetings. Hearings before the board are quasi-judicial in nature, meaning they are like a court hearing. State law sets specific procedures and rules concerning how the board must make its decisions. These rules are different from other types of land-use decisions, such as rezoning cases.

The public is welcome to attend and speak at all hearings; however, only persons with standing may present argument, evidence, and testimony for or against the application. Persons with standing are aggrieved parties who can show they will suffer special damages based on the outcome of the board's decision. All persons who intend to present evidence and provide testimony at the hearing must be sworn or affirmed.

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

Notification of Hearings

Special Use Permit — Hearings are advertised in the following ways:

- A hearing notice is published once a week for two consecutive weeks in the local newspaper (The News of Orange County or the Herald Sun) at least 10 days but no more than 25 days before the hearing date.
- Written notice is mailed at least 10 days before the hearing date to the applicant, property owner and all owners of property within 500 feet of the property that is subject to the application.
- A sign is posted on the property or the adjacent street right of way at least 10 days before the hearing date.

Variance or Appeal — Hearings are advertised in the following ways:

- Written notice is mailed at least 10 days before the hearing date to the applicant/appellant, property owner, all owners of property immediately adjacent to the property that is subject to the application or appeal and any potential aggrieved parties for appeals.
- A sign is posted on the property or the adjacent street right of way at least 10 days before the hearing date.
- For variances from Section 4.5.1: Upper Eno Protected Watershed District and Section 4.5.2: Upper Eno Protected Watershed Critical Area District of the Unified Development Ordinance, a written notice is provided to all local governments with jurisdiction in the watershed area and to the entity using the water supply for consumption.

Roles of the Participants

Applicant — The applicant has a responsibility to:

- Present competent, material, and substantial evidence that the proposed development will conform to all applicable provisions in the Unified Development Ordinance.
- Overcome contrary submitted evidence with further evidence of the applicant's own.
- Find and retain fact and expert witnesses, as necessary.

Persons Opposed — Members of the public opposed to the application or development have the responsibility to:

- Establish they have standing and will suffer special damages based on the outcome of the decision. Persons without standing may still participate in the hearing as fact witnesses.
- Present evidence contrary to the applicant's evidence.
- Present evidence that the proposed development will not meet any of the general findings of fact outlined in Section 3.8.3 for special use permits; Section 3.10.3 for variances; Section 3.10.3.3 for riparian buffer variances; Section 4.5.5.2 for variances from the Upper Eno Protected Watershed and Upper Eno Protected Watershed Critical Area districts; and Section 4.E for variances from Flood damage Prevention Ordinance requirements.
- Find and retain fact and expert witnesses, as necessary.

Evidence

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

Expert Witnesses — Persons who have special knowledge based on experience or training. These witnesses can testify about their opinions, which must be based upon their area of expertise. Only expert witnesses may provide opinion testimony on:

- How the use of property in a particular way affects the value of other property.
- How the increase in vehicular traffic from a proposed development poses a danger to the public safety.
- Other matters for which only expert testimony would be generally admissible under the rules of evidence.

Lay Witnesses — Individuals who are not experts and who do not have specialized experience or training in a particular field. These witnesses 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.

- Additionally, regarding evidence: 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, the person is advised to find an expert witness who can attend the hearing and provide a credible opinion.
- Evidence submitted from a credible source may be taken into consideration by the board, but it may not hold as much weight as the same information presented to the board in person, where the ability to cross-examine is available. An example of such submitted evidence is a letter from a real estate appraiser concerning the appraiser's expert opinion on the effect of a development on nearby property values.
- If a statement is used as evidence to establish a fact, the person making the statement should be present at the hearing to testify and to be subject to cross examination; otherwise, the statement is considered hearsay evidence.

General Standards and Findings of Fact

The standards below are the general criteria by which an application for a special use permit, variance or appeal is evaluated. Each application type also has more specific criteria by which it is evaluated. These additional criteria can be found in the appropriate sections of the Unified Development Ordinance.

Special Use Permit

The Board of Adjustment shall not approve a special use permit unless it finds that the use or development:

- a) Is located, designed, and proposed to be operated so as to maintain the public health, safety, and general welfare.
- b) Complies with all required regulations and standards of the Unified Development Ordinance, including all applicable provisions of articles 4, 5, and 6 and all applicable regulations.
- c) 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.
- d) Conforms with the general plans for the physical development of the town and is consistent with the town's comprehensive plan.

A simple majority of the board's total membership must vote in the affirmative to approve a special use permit.

Variance

The following findings are specific to variance requests except those related to the following sections of the Unified Development Ordinance:

- Section 4.5.1: Upper Eno Protected Watershed District
- Section 4.5.2: Upper Eno Protected Watershed, Critical Area District
- Section 6.20.16: Riparian Buffers

(Contact Planning and Economic Development Division staff for details on variance requests relative to the above referenced ordinance sections.)

The Board of Adjustment shall not approve a variance application unless each of the following findings is met:

- Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property.
- 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 to provide reasonable accommodation under federal Fair Housing Act for a person with a disability.
- 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.
- 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.

A four-fifths majority of the board's total membership must vote in the affirmative to approve a variance.

Appeals

In deciding appeals, the Board of Adjustment may hear arguments based upon an allegedly improper or erroneous interpretation of the ordinance. The board will:

- Interpret the meaning of parts of the ordinance.
- Apply the ordinance provisions to particular fact situations in the application.

A simple majority of the board's total membership must vote in the affirmative to decide an appeal.

Appeals of Board of Adjustment Decisions

Appeals:

- Must be taken within 30 days after the decision's filing in the office of the planning and economic development manager (the Planning and Economic Development Division) 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 160D-1402).
- Are to the Orange County Superior Court and are filed in the nature of certiorari. This means the court will review the record of the case and determine if the board made its decisions properly and in accordance with adopted rules of procedure.