

QUASI-JUDICIAL PROCEEDINGS

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

Quasi-judicial is a term used to describe those proceedings, e.g. Planned Unit Developments (PUD’s), Group Care Homes, Garage Service and/or Auto Repair, etc., 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.

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 the board is required to make. Applicants and opponents may cross-examine opposing witnesses. They should also be able to formulate any objections to preserve the issue and the record on appeal in the event the decision is appealed.

While it is perfectly acceptable for an applicant (or opponent) to represent him 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.



APPLICANT REPRESENTATION

The information below is intended to assist you with proper representation in quasi-judicial hearings. Please feel free to contact a member of the Brunswick County Planning Staff (1-800-621-0609 or 910-253-2025) should you have any questions.

Applicant	Authorized to Sign Application	Authorized to Represent at the Quasi-Judicial Hearing
Individual Property Owner(s)	Property owner or NC licensed attorney	Property owner and/or NC licensed attorney
Corporation	Officer or responsible official with authority to sign	Officer and/or NC licensed attorney
LLC	Member-Manager or responsible official with authority to sign	Member/Manager and/or NC licensed attorney
Partnership	General partner	Partner and/or NC licensed attorney
Trust/ Estate	Qualifying fiduciary or responsible official with authority to sign	Fiduciary or NC licensed attorney

- Please note that 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.

SPECIAL EXCEPTION PERMIT

Applicants seeking a Special Exception Permit, (e.g. PUDs, Group Care Homes, Garage Service and/or Auto Repair) have the burden of presenting evidence sufficient to allow the approving authority to make the following findings:

1. That the proposed use will be in harmony with the area and not substantially injurious to the value of properties in the general vicinity;
2. That the proposed use will be in conformance with all special requirements applicable to the use;
3. That the proposed use will not adversely affect the health or safety of the public; and
4. That the proposed use will adequately address all twelve (12) **review factors** listed in **Section 3.3.9.B.** of the Brunswick County Unified Development Ordinance (See UDO for further descriptions of these 12 factors):

- 1) **Circulation**
- 2) **Parking and Loading**
- 3) **Service Entrances and Areas**
- 4) **Lighting**
- 5) **Signs**
- 6) **Utilities**
- 7) **Open Spaces**
- 8) **Environmental Protection**
- 9) **Screening, Buffering and Landscaping**
- 10) **Effect on Adjoining Property**
- 11) **Compatibility**
- 12) **Impacts on Military Installations**

- Please note that the burden of proof is on the applicant to provide expert testimony from qualified witnesses to satisfy the four (4) findings listed above.

Opponents to a Proposed Special Exception

Please note that *simply* stating during the hearing that the four (4) findings above are not met or stating that you are not in favor of the proposed development is not sufficient evidence to effect the approving authority’s final decision.

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



VARIANCE

Applicants seeking a variance have the burden of presenting evidence sufficient to allow the approving authority to make the following findings:

- 1. The special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts;
- 2. That the special conditions or circumstances or practical difficulties do not result from the actions of the owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the Building Official before a contractor proceeds beyond the foundation stage has not revealed an error, which is discovered later;
- 3. That the strict enforcement of this Ordinance would deprive the owner or applicant of reasonable use of the property that is substantially consistent with the intent of this Ordinance;
- 4. That the granting of a variance will not result in advantages or special privileges to the applicant or property owner that this Ordinance denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief;
- 5. That the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. Consideration of the effects of the variance shall include but not be limited to, increases in activity, noise, or traffic resulting from any expansion of uses allowed by the variance;

- 6. That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties; and
- 7. That the variance will not result in the expansion of a nonconforming use.

In the case of expansions to nonconforming structures, the variance granted shall be the smallest that is reasonably necessary.

Opponents to a Proposed Variance

Please note that *simply* stating during the hearing that the seven (7) findings above are not met or stating that you are not in favor of the proposed development **is not** sufficient evidence to allow the approving authority to make the seven (7) findings above.

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

Fees:

Planning Board Special Exceptions (PUDs).....	\$500
Board of Adjustment Special Exceptions.....	\$250
Board of Adjustment Variance.....	\$100



**BRUNSWICK COUNTY
PLANNING AND COMMUNITY
DEVELOPMENT HOURS:**

Monday – Friday: 8:30am – 5:00pm

**BRUNSWICK COUNTY
PLANNING AND COMMUNITY
DEVELOPMENT
P.O. BOX 249
BOLIVIA, NC 28422
(910) 253-2025
(800) 621-0609**

Last Revised: 5/21/10

Requesting a ...

*Special
Exception
or Variance*



FROM THE
**PLANNING
BOARD**

Or

**BOARD OF
ADJUSTMENT**