BOARD OF ADJUSTMENT & BOARD OF COMMISSIONERS JOINT TRAINING MEETING AGENDA

Monday, February 23rd
5:30 P.M.
Yadkinville Town Hall
Commissioners Chambers
213 Van Buren Street, Yadkinville, NC 27055

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1. **CALL MEETING TO ORDER**

2. **NEW BUSINESS**

    - Quasi-judicial training presentation from staff

3. **OLD BUSINESS**
    - Staff reports (pass out at meeting)

4. **ADJOURNMENT**

*The meeting facility is accessible to people with disabilities. To request special accommodations please call 336-679-8732 or email amyrick@yadkinville.org

Quasi-Judicial Training 2026

AGENDA

- What does quasi-judicial mean?
- Who holds q-j hearings
- What is a Special Use Permit
- What is a variance?
- What is an appeal?
- What is a Certificate of Nonconformity Adjustment?
- How to Prep & Hold a Hearing
- Final Steps = Making the Decision; after the hearing

WHAT DOES QUASI-JUDICIAL MEAN?

Noting, pertaining to, or exercising powers or functions that resemble those of a court or a judge: *a quasi-judicial agency*.

WHAT IS A QUASI-JUDICIAL DECISION?

Process of adjudicating how the general law applies to a particular situation based on an evidentiary record

*AKA- Like going to court

NC- 4 TYPES OF QJ HEARINGS

- Special Use Permit
- Variance
- Appeal of Administrative Decisions
- Certificate of Appropriateness (Local Historic Districts)

Certificate of Nonconformity Adjustment

TOWN OF YADKINVILLE'S DEVELOPMENT ORDINANCE

Table 2.1 Approval Processes

Approval Type	Section Reference	Administrator	Board of Adjustment	Planning Board	Town Board
Zoning Permit with Plot Plan (single-family & two-family residential)	2.2.3.2	√			
Zoning Permit for Sign	2.2.3.3	√			
Zoning Permit with Site Plan (multi-family residential & nonresidential)	2.2.3.4	√			
Certificate of Compliance	2.2.3.5	√			
Subdivision, Major and Minor	2.2.4	√			
Minor Special Use Permit	2.2.5		√		
Major Special Use Permit	2.2.5				√
Variance	2.2.6		√		
Appeal	2.2.7		√		
Certificate of Nonconformity Adjustment	2.2.8		√		
Alternative Design	2.2.9			√	
Map Amendment	2.2.10			Recommend	√
Text Amendment	2.2.11			Recommend	√

QJ

SPECIAL USE PERMIT

- A local government may want to add flexibility to their set of zoning regulations. Rather than putting everything into a "yes" or "no" category based on entirely objective standards, the local government may want to include a few "maybes" –QJ Handbook
- These were called special exceptions or conditional use permits- changed with the NCGS update 160D in 2021
- Specific standards must be outlined, the NC Courts have four, we capture them in our Development Ord.
- Limitations on what conditions can be imposed with the SUP (see handout Chapter 7, last page)

SPECIAL USE PERMIT- OUR 5 CONSIDERATIONS

1.That the use will not materially endanger the public health or safety, if located where proposed according to the plan submitted and approved;

2.That the use complies with all required standards, conditions and specifications of this Ordinance;

3.That the use will not substantially injure the value of adjoining or abutting property, or that the special use is a public necessity; and

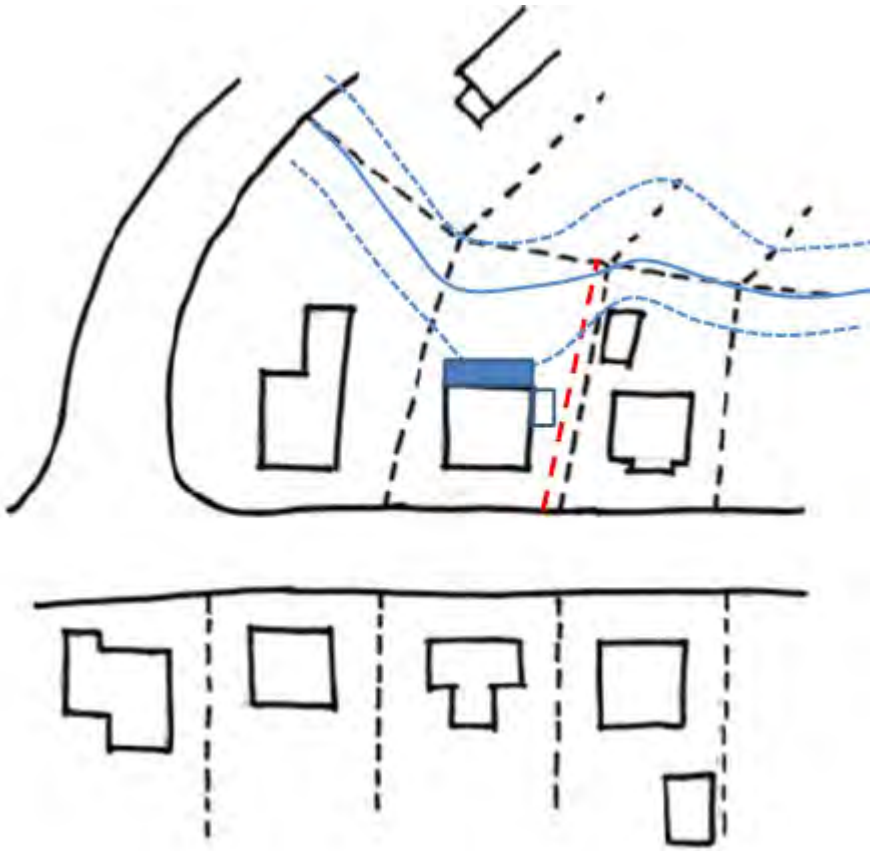
4.That the location and character of the special use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located; and

5.That the location and character of the special use, if developed according to The plan as submitted and approved, will be in general conformity with the Comprehensive Plan and other adopted plans and policy guidance.

SPECIAL USE PERMIT (CONT.)

- If denied, must wait 6 months before reapplying
- Can do amendments to approvals
  - Minor SUP- BOA can allow some changes to conditions with staff report
  - Not minor= new public hearing
  - Major SUP= BOC public hearing
- No closed sessions, all discussions in a public setting

VARIANCE



- No use variances are allowed
- Purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- Burden on applicant to prove
- Reasonable conditions may be imposed

VARIANCE- 4 TESTS

1.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.

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 maybe 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 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.

-TOY DO

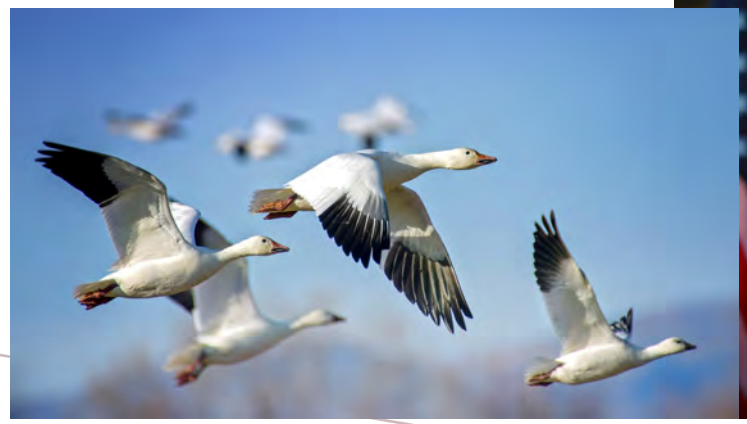
APPEAL

- Written determinization by staff
- Zoning permit, compliance letter, development regulation interpretation, etc.
- Must be filed within 30 days of administrator's decision
- Must post and mail hearing as any other BOA hearing (letters & sign)
- Staff is the witness now, a party defending their decision
- Ex parte communication is scrutinized with this change in role
- BOA may reverse, uphold, modify, or partially uphold staff's decision

APPEAL

- General rules of interpretation are considered:
- (*courts set precedence with these*)
  - Specific provisions control general provisions
  - Birds of a feather flock together
  - Listing one thing is to the exclusion of others
  - Give meaning and avoid absurdity
  - Favor free use of land

"The Board of Adjustment shall hear and decide appeals of decisions of administrative officials charged with enforcement of the Development Ordinance and may hear appeals arising out of any other ordinance that regulates land use or development" -DO



CERTIFICATE OF NON-CONFORMITY ADJUSTMENT

-Essentially an opportunity for property owners to seek a variance for the ordinance's non-conformity clause for uses or expansions.

-Not regulated with 160D

Possible side setback not met but can be in line with current house

Image: google

A Certificate of Nonconformity Adjustment may be granted by the Board of Adjustment to enlarge, expand, or otherwise alter a nonconforming use or structure as set forth in Article 7. Certificates shall be issued in accordance with quasi-judicial proceedings prescribed in NCGS 160D.

PREPARING FOR THE HEARING

- Mailed notices are sent to adjacent property owners & owner/applicant 10-25 days prior to hearing
- Posted notice on property 10-25 days prior to hearing
- May do newspaper advertisements, not required
- Application and supporting documents sent to board members prior to hearing including staff analysis
- Site visits but cannot speak to one another or anyone encountered at property or even the grocery store!

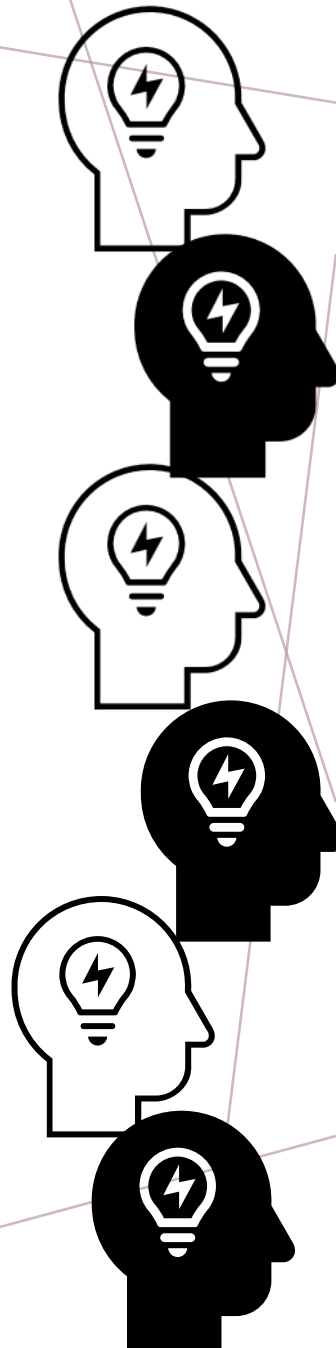
COMMON ORDER OF MEETING

- Opening
- Administer Oaths
- Introduction of the case (staff or chair)
- Applicant presents
- Other parties present
- Non-party witnesses present
- Rebuttal from applicant and other parties
- Deliberation
- Decision

BIAS/CONFLICT OF INTEREST

- **Unbiased review:**
  - Board member cannot have a fixed opinion* that is not susceptible to change
  - Cannot be biased against applicant/owner
    - "Well, I just don't like his haircut."
    - "My best friends lives next to her and the things they decorate with are atrocious and they were rude to her once."
    - "I just hate outdoor storage and how it looks."

- **Conflicts of Interest:**
  - a close familial, business, or other associational relationship with an affected person
  - a financial interest in the outcome of the matter



*If you do have a biased opinion, just don't let that sway your review.... if you can't separate, then recuse yourself

WHAT IS EX-PARTE COMMUNICATION?

Examples:

- "Maney stopped me at the grocery store and told me I had to disapprove this accessory dwelling unit request because it was going to make the neighborhood junky!"(SUP)
- Phone calls- "Louis called and explained to me that his neighbor's addition was going to be too close, and they didn't want to see them drinking coffee in the morning"(Variance)
- Stop by staff's office- "Why can't you just approve this and make it go away?" (Appeal)

WHO'S AT THE EVIDENTIARY HEARING

1. Board Chair/Mayor
2. Board members/Commissioners
3. Staff
4. Attorneys
5. Applicants/Owners
6. Parties/Witnesses

WHO'S STANDING???

Parties with legal standing include:

- Applicant
- Owner
- Town or government entity
- Persons who will suffer damages- must demonstrate proximity, property values, other adverse effects
- Neighborhood or HOA group

WHAT'S A WITNESS OR A PARTY?

Witness	Parties
Applicant's experts, planning staff, interested citizens (no property interest in outcome)	Individual or entity with a clearly defined interest in the outcome
Providing testimony and evidence for the record	Making legal arguments in addition to providing to testimony and evidence
Individual does not have a right to speak (May be called by party or permitted by board)	Due process right to present evidence, make legal arguments, and appeal

OPENING OF HEARING

- Swearing In Witnesses, Staff, Applicant, Owners, anyone wishing to provide evidence that has standing
- Description of the Hearing
- Description of the Standards
- Opportunity for Recusal
- Opportunity to Disclose Ex Parte Communication

THE EVIDENCE

"Every quasi-judicial decision shall be based upon ***competent***, ***material***, and ***substantial*** evidence in the record."

- Trustworthy and reliable
- Related to the standards
- Sufficient to support a conclusion

Does not allow reliance on lay witness testimony on:

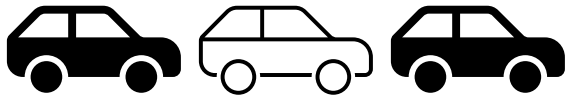
- Use of property that would affect property values

- Increase in vehicular traffic that would pose a danger to public safety

- Matters which only expert testimony would generally be relied upon

HEARSAY…..

- A petition signed by 100 persons
- Well in Georgia, we did this…….why can't you do this here?
- If you all approve this, my house will never sell as the property values will go down
- Have you seen how much traffic one of these creates?



HOLD IT TOGETHER!

Maintaining composure during the Q&A session is essential for projecting confidence and authority. Consider the following tips for staying composed:

*Stay calm

*Actively listen

*Pause and reflect

*Maintain eye contact

FACTS, FACTS, FACTS!

- Apply the standards
  - 5 standards (Special Use Permit)
  - Unnecessary hardship-4 tests (Variance)
  - Facts for administrative decision, were they correct with their decision? (Appeal)

MAKING THE DECISION

- Deliberate in **open session**
- Consider the evidence- it must be competent, material and substantial
- Remember to focus on the applicable standards for case (Variance, SUP, Appeal)
- Conditions can be considered with motion, parties all agree, must meet or exceed Development Ordinance requirements

THE MOTION

- Findings of fact
- Board can approve, approve with conditions, or deny
- Must include reasoning for the decision based on evidence and standards

The Vote:

- Simple majority of the board passes the motion EXCEPT **Variances need 4/5 majority**

NOTICE OF THE DECISION

- Staff will draft up the decision with the findings of facts and have signatures as needed
- Must accurately reflect the action and reasoning behind board's decision
- Mailed, emailed, or personal delivery to the applicant
- Clerk affidavit or other certification of delivery

CHALLENGE

- After the hearing, **within 30 days** an appeal may be made to challenge the *signed decision*
- Only those with standing may initiate a judicial review
- **Superior Court** is the next step….unless it becomes a discrimination case = federal court
- The court will review the quasi-judicial decision by proceedings in certiorari pursuant to NCGS 160D-1405
  - Essentially ensure constitutional, statutory, procedures, law, and evidence was considered correctly
- Court can affirm, reverse, or remand it back to the board for further action
- Appeal from the Superior Court will go to North Carolina Court of Appeals

EXERCISE

- ***Proposal.*** In the town of Normal, North Carolina, Joe Developer is proposing a new apartment complex. Currently the property is an aging garden apartment complex with 74 units. Joe is proposing to tear down the existing buildings and build a new, higher-density apartment complex with 200 units (creatively called The New Apartments). Under the existing ordinance, the New Apartments require a Special Use Permit.
- ***Context.*** The property is surrounded by a mix of residential uses on adjoining properties: another apartment complex, single family homes oriented away from the New Apartment site, and a wooded area.
- *SEE HANDOUT FOR MORE INFO*

RESOURCES

- Included are handout links for additional information and staff can secure you the book listed, just let me know.
- Yadkinville's Development Ordinance section- Board of Adjustment & Board of Commissioners roles; Special Use Permits, Variances, Certificate of Nonconformity, and Appeals https://www.yadkinville.org/planning-zoning/yadkinville-development-ordinance
- https://canons.sog.unc.edu/2023/04/making-quasi-judicial-decisions/
- https://canons.sog.unc.edu/2021/08/types-of-development-decisions/
- GS 160D
  - 405. Appeals of administrative decisions
  - 406. Quasi-judicial procedure
  - 705. Quasi-Judicial Zoning Decisions
- https://www.sog.unc.edu/publications/books/quasi-judicial-handbook-guide-boards-making-development-regulation-decisions-2024-edition

UNC SCHOOL OF GOVERNMENT

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.

§ 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, 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.

(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).)

§ 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.

(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).)