



## **OVERVIEW**

The Guilford County Board of Adjustment (BOA) is a quasi-judicial board appointed by the Board of County Commissioners. The Board of Adjustment is established by the General Statutes to hear the following:

- Appealed decisions and Determinations- Interpretations of the Enforcement Officer
- To hear and decide on variances from provisions of the Unified Development Ordinance (UDO)
- To review appeals from the Historic Preservation Commission and Flood Hazard appeals
- To interpret zoning map district boundaries and nonconforming use intensity

The Board operates under NC General Statute 160D.

## **MEMBERSHIP AND PROCEDURES**

The Board members are appointed for three (3) year terms and may be re-appointed. The membership comprises five (5) regular and five (5) alternate members. A Chairman and Vice-Chairman are elected each year.

The Board also is governed by their own Rules of Procedure. These Procedures spell out membership requirements, meeting information and appeals of decisions of the BOA.

The Board generally meets the first Tuesday of each month in the Carolyn Q. Coleman Conference Room, First Floor, Old County Courthouse, 301 West Market Street, Greensboro, North Carolina. Please refer to Guilford County Meeting Schedule for specific dates and times.

## **APPLICATION PROCEDURES**

Once it has been determined that a hearing with the Board of Adjustment is needed, a complete Application with all applicable required information must be submitted to the Planning and Development Department.

Please contact a Planner at 336-641-3334.

When the application is received and verified, a Notice of Evidentiary Hearing is prepared at least ten (10) days prior

to the Evidentiary Hearing, the property in question is posted, the adjoining owners and media are notified, the bulletin board is posted at the courthouse and the case is advertised on the Guilford County legal notice web page.

## **AT THE HEARING**

The cases generally are heard in the order in which they are received. The applicant and anyone giving testimony will be sworn-in. The property owner is given an opportunity to present their case and submit any evidence in support of the case.

All parties present, who wish to speak will be given an opportunity to be heard, either for or against the case. After the initial presentation, rebuttals may be presented. The Board will close the public comment portion of the hearing and generally make a decision at that time, based on the findings of fact. The applicant will be given written notice of the results of the hearing.

## **APPEALS**

Appeals of BOA decisions must be filed in Superior Court in nature of certiorari within 30 days after the decision of the Board is filed.

## **POWERS AND DUTIES OF THE BOARD**

- Decide on appeals of an Enforcement Officer's decision
- Review appeals from the Historic Preservation Commission concerning issuance of Certificate of Appropriateness
- Decide on exceptions delegated by the County Development Ordinance
- Hear and decide on variances from the zoning provision of the ordinance
- Interpret zoning map boundaries
- Make determinations on nonconforming uses in accordance with the UDO Article 11, Section 11.06 Nonconforming Uses.
- Decide on appeals of the flood control provision of the Ordinance.



### **GROUND FOR A VARIANCE**

Grounds for a variance can be found in Section 3.5.W in the Guilford County Unified Development Ordinance and includes the following:

- The variance requested is the minimum variance that will make possible the reasonable use of the land, building or structure. The fact that property may be utilized for greater profit, however, will not be considered adequate to justify the granting of a variance.
- Neither the nonconforming use of lands, buildings or structures in the same zoning district, nor the permitted use of lands, buildings or structures in other zoning districts shall be considered as grounds for the issuance of a variance. Furthermore, mere financial hardship does not constitute grounds for the granting of a variance.
- A variance may be granted where a building permit has been issued and, due to unintentional error of the Planning and Development Director in determining the location of the structure on the property, there is a minimal violation of the dimensional requirements, provided that such relief may be granted without substantially impairing the purpose and intent of this Ordinance.

The Board may not grant a variance to permit a use or density not otherwise permitted or a nonconforming use of land, building or structure legally permitted in another district.

### **FACTORS RELEVANT TO GRANTING A VARIANCE**

A variance may be granted by the Board of Adjustment if evidence presented by the applicant persuades it to reach the following findings of fact:

- 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.

*This document is intended for public information purposes only. It summarizes and omits some provisions. It is not to be construed or used as an official interpretation of the Guilford County Unified Development Ordinance in any legal proceeding.*



**GUILFORD COUNTY  
PLANNING AND DEVELOPMENT**

**Board of Adjustment  
Variance Application**

Date Submitted: \_\_\_\_\_ Fee **\$426.00** Receipt # \_\_\_\_\_ Case Number \_\_\_\_\_  
(includes \$26 recording fee)

**PROPERTY INFORMATION**

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
Tax Parcel # \_\_\_\_\_ Zoning: \_\_\_\_\_  
Plat Book & Page \_\_\_\_\_ Deed Book & Page \_\_\_\_\_ Township \_\_\_\_\_

**OWNER INFORMATION**

Name \_\_\_\_\_ Phone Number \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
Email \_\_\_\_\_

Owner Signature \_\_\_\_\_  
*I certify that all information presented by me in this application is accurate to the best of my knowledge, information, and belief.*

**APPLICANT INFORMATION** – *If not property owner, a notarized statement of permission is required from the property owner.*

Name \_\_\_\_\_ Phone Number \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
Email \_\_\_\_\_

Applicant Signature \_\_\_\_\_  
*I certify that all information presented by me in this application is accurate to the best of my knowledge, information, and belief.*

**TO THE GUILFORD COUNTY BOARD OF ADJUSTMENT:**

I, \_\_\_\_\_, hereby petition the Board of Adjustment for a VARIANCE from the literal provisions of the Development Ordinance because, under the interpretation given to me by the Enforcement Officer, I am prohibited from using the parcel of land described above in a manner shown by the plot plan attached. I request a variance from the following provisions of the ordinance (cite section numbers):

\_\_\_\_\_  
If the plot plan does not adequately reveal the nature of the variance, the request is more fully described below:





## GUILFORD COUNTY PLANNING AND DEVELOPMENT

## Board of Adjustment Variance Application

### **BOARD OF ADJUSTMENT CHECKLIST**

The following is a list of materials and information which you must submit in order to have your case presented at the Board of Adjustment meeting. Failure to comply with all of the following may result in the case being delayed. Refer to the Meeting Schedule below for submittal deadlines and meeting dates.

1. Completed application.
2. Required fee paid.
3. Site/Plot Plan drawn to scale showing the property as it exists and with any proposed additions, structures, buildings, driveways, well, septic system, and abutting streets.
4. Written statement outlining the request and any information you wish to present to the Board for their consideration, optional.
5. Provide a minimum of 4, maximum of 6 photographs showing the area affected by your appeal. Graphics or architectural sketches may be used to fill this requirement. Additional information may be provided at the hearing.
6. If applicable, approval from the Guilford County Environmental Health Division, contact them at 336-641-7613.

Refer to the Guilford County Meeting Schedule for BOA meeting dates.



# 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
<b>Individual Property Owners</b>	Property Owner or NC Licensed Attorney	Property owner and/or NC Licensed Attorney
<b>Corporation</b>	Officer <i>or responsible official with authority to sign</i>	Officer and/or NC Licensed Attorney
<b>LLC</b>	Member/Manager <i>or responsible official with authority to sign</i>	Member/Manager and/or NC Licensed Attorney
<b>Partnership</b>	General Partner	General Partner and/or NC Licensed Attorney
<b>Trust / Estate</b>	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



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.