

**AGENDA**

**ROCKINGHAM COUNTY PLANNING BOARD**

**JANUARY 29, 2024 at 2:00PM**

County Commissioners Chambers

Rockingham County Governmental Center



**I. Call to Order**

**II. Invocation**

**III. Matters Before the Board**

- a. Workshop: A workshop to review the role of the planning board in legislative procedures, quasi-judicial procedures and the parliamentary procedures for conducting meetings of the planning board and board of adjustment.

**IV. Adjourn**

# Planning Board Training Materials

Bylaws  
And  
Rules of Procedure



# ROCKINGHAM COUNTY

## GOVERNMENTAL CENTER

### Community Development Department

#### ROCKINGHAM COUNTY PLANNING BOARD AND BOARD OF ADJUSTMENT BYLAWS AND RULES OF PROCEDURE ROCKINGHAM COUNTY, NC LOCAL GOVERNMENT

##### SECTION I: PURPOSE

The Bylaws and Rules of Procedure establish mechanisms for conducting the business of and executing the duties and responsibilities of the Rockingham County Planning Board and Board of Adjustment (hereafter "this Board" or "the Board").

##### SECTION 2: POWERS AND DUTIES

**Powers:** The Board shall have all of the powers conferred by:

1. North Carolina General Statute § 160D, and all other applicable statutes adopted heretofore and hereafter by the General Assembly of North Carolina. All members of the Board shall thoroughly familiarize themselves with these statutes.
2. Ordinances and Resolutions of the Board of Commissioners of Rockingham County (hereafter "the Commissioners").

**Duties:** The Board shall perform the following duties:

1. To prepare and recommend amendments to plans for the ongoing development of the unincorporated lands of Rockingham County.
2. To prepare and recommend ordinances to the Commissioners that promote beneficial and orderly development within the framework of the comprehensive Land Use Plan and Unified Development Ordinance (UDO).
3. To consider proposed rezoning cases, special use permit applications, proposed amendments to the text of the UDO, and changes to the official zoning districts map.
4. When required, to convene as the Rockingham County Board of Adjustment for consideration of Variances from the terms of the UDO and appeals of the decisions of the Zoning Administrator.
5. To keep the Board of Commissioners and the general public informed as to the matters and proceedings of the Planning Board and Board of Adjustment.
6. To perform any other duties that may be lawfully assigned

##### SECTION 3: MEMBERSHIP, TERMS, AND VACANCIES (UDO Article II, Divisions 2 and 3)

The Board shall consist of seven (7) regular members appointed by the Commissioners for staggered three (3) year terms. A majority of Board members (four [4] or more) shall have established residency in Rockingham County for a period of at least five (5) years. Unplanned vacancies occurring for reasons other than expiration of term shall be filled by order of the Commissioners for the period of the unexpired term or for such other periods as may be necessary to establish or re-establish membership and staggered terms.





# ROCKINGHAM COUNTY

## GOVERNMENTAL CENTER

### Community Development Department

As it deems sufficient to enable the Planning Board to conduct business without undue delay or difficulty, the Commissioners may also appoint alternate members to sit for hearings if a regular Board member is unavailable or recused from voting on a given matter. Alternate members shall be appointed for one (1) three-year term, and shall become immediately eligible for appointment as regular Board members upon completion of this term. Alternate members may be appointed as seated members sooner if vacancies among Board membership occur.

To the extent possible, Board membership shall represent the local community in terms of demographics and geographic areas. These areas may be defined as townships, county zip codes, census tracts, or other suitable regions.

The members of the Planning Board shall also serve as the Rockingham County Board of Adjustment. Conducting the business of the Board of Adjustment shall be governed by all ordinances adopted heretofore and hereafter by the General Assembly of North Carolina and the Board of County Commissioners. All members appointed to the Planning Board shall swear an oath of office as required by GS § 160D-309 before assuming duties.

#### SECTION 4: OFFICES

**Elections:** The Board shall elect a Chairperson and Vice-Chairperson from its membership and create and fill such offices as it may be deemed appropriate.

**Tenure:** The term of the Chairperson and other elected officers shall be one (1) year, with eligibility for reelection without limitation.

**Duties:** The Chairperson shall preside at all meetings of this Board. In the absence of the Chairperson, the Vice-Chairperson shall preside. In the absence of both, the senior Board member shall preside. Seniority shall be determined by the time of service as a member of the Board. The presiding Board member has the right to vote on all matters before the Board.

The Chairperson, Vice-Chairperson, or presiding Board member shall decide all matters of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board in session.

The Chairperson shall establish committees and appoint committee members, designate committee chairpersons, and perform such other duties as may be determined by this Board. The Chairperson, a Board member designated by the Chairperson, the Community Development Director, or designated staff may speak officially for the Board. The Community Development Director or a member of Staff shall represent this Board before the Board of Commissioners or before any other public agency or public officer.



# ROCKINGHAM COUNTY

## GOVERNMENTAL CENTER

### Community Development Department

The Community Development Director or Staff shall determine and present official recommendations to the Commissioners and other bodies regarding matters referred for consultation, review, and/or approval.

The Community Development Director or a designated Staff member shall function as Secretary to the Board for the purpose of recording and keeping minutes of every meeting. The Secretary is not eligible to vote on any Board matters.

#### SECTION 5: MEETINGS

**Regular Meetings:** Regular meetings of the Board shall be held on the second Monday of each month at 6:30 pm. When a regularly scheduled meeting falls on a County holiday, the meeting shall occur the immediately following Tuesday evening at 6:30 pm, or as otherwise established by the Chairperson, the Community Development Director or designated Staff.

**Special Meetings:** Special meetings may be convened by the call of the Chairperson, or acting Chair, provided that notice of such meetings shall be given to all Board members at least forty-eight (48) hours before the hour and date for which the meeting is called. Notice of special meetings shall also be provided to the public as required by North Carolina Open Meetings Law provisions.

**Dual Meetings:** The Planning Board and the Board of Adjustment shall operate independently. The Planning Board meeting shall precede the meeting of the Board of Adjustment. At the conclusion of business before the Planning Board, a motion (with a majority in favor) shall be made for the Planning Board meeting to be temporarily adjourned so the members of the Planning Board may reconvene as the quasi-judicial Board of Adjustment. At the conclusion of the Board of Adjustment hearing(s), and upon a motion with a majority in favor, the Board of Adjustment shall adjourn to reconvene the Planning Board.

**Public Access:** All regular meetings, special meetings, and hearings of this Board shall be open to the public, except as provided in the North Carolina Open Meetings Law, GS § 143. All records, files, and accounts shall be public record, except as provided in the applicable North Carolina General Statutes.

**Quorum:** Four (4) members, including the presiding Board member, shall constitute a quorum for transacting business and taking official action on zoning amendments (rezoning, text amendments), recommendations to the Commissioners, for deciding Special Use Permit requests, and for acting on appeals of decisions made by the Zoning Administrator. Six (6) members, including the presiding Board member, shall constitute a quorum for acting on requests for Variances from the requirements of the UDO and protected watershed overlay districts.



# ROCKINGHAM COUNTY

## GOVERNMENTAL CENTER

### Community Development Department

**Alternate Members:** Alternate members of the Board shall be called on to attend meetings and hearings at which one or more regular members are absent or recused. When unable to attend or participate in special or regularly scheduled meetings of the Board, members shall give prompt notice to Planning Staff. Alternate members are expected to attend all regular sessions of the Board to the extent possible. Assignments shall be rotated among the alternate members. At any meeting that they are called to attend, alternate members shall have the same powers and duties as regular members. Except at election of officers, no more than seven (7) members of the Board may participate officially in any meeting or quasijudicial hearing.

**Attendance:** A member who will be unable to attend a regular meeting of the Board must contact Planning Staff at least twenty-four (24) hours before the scheduled meeting and indicate the general reason for being absent. If possible, earlier notification is encouraged. The Board will be notified of the members absence at the meeting. If any Board member misses three (3) consecutive Board meetings, or misses more than one-fourth (1/4) of the regularly scheduled meetings in a calendar year without being excused by the Chairperson, the Chairperson or Planning Staff shall notify the Commissioners of the attendance record of the member and this shall constitute the resignation of that member.

**Agenda:** The Community Development Director or designated Staff shall prepare a single agenda, which is to include business items to be discussed by the Planning Board, the Board of Adjustment, or both when required, on a scheduled meeting date. The agenda shall be submitted to all members and alternates of the Board prior to each meeting date. On request, copies of the agenda shall be given to interested persons at any time after its preparation. Any Board member may, by a timely request, have an item placed on the proposed agenda.

**Adoption of the Agenda:** As its first order of business at each meeting, the Board shall adopt the agenda proposed by Staff for the meeting. Upon motions, the agenda can be revised to add items, delete items, or rearrange the order of items either before or after it is adopted. Before adoption, motions to revise or amend the agenda shall require a simple majority of votes. After adoption, motions to amend the agenda shall require a two-thirds (2/3) or larger majority of votes. Once the agenda has been adopted, each item of business on the agenda shall come before each respective Board unless:

1. No member makes a motion.
2. No member objects to a withdrawal of a rezoning request, special use permit, variance, or appeal by an applicant.
3. A motion to delete an item from the agenda is made and passed with a two-thirds (2/3) or larger majority.
4. The meeting runs out of time before an item comes before the Board.



# ROCKINGHAM COUNTY

## GOVERNMENTAL CENTER

### Community Development Department

**Voting:** Voting by members of the Board shall be by signal of a raised hand with spoken yeas, nays, and dissensions recorded. No Board member shall vote on a matter that decides an application or appeal unless he/she reviews the application materials and attends the public hearing on said application or appeal. Voting by proxy is not permitted. The vote of the majority of those members present, or as otherwise required by statute, shall be sufficient to decide matters before the Board. Every member must vote unless excused from voting by the remaining members of the Board. A member who wishes to be excused from voting shall so inform the chair, who will take a vote of the remaining members. No member shall be excused from voting except in cases involving conflicts of interest, as defined by the Board or by law, or the member's official conduct, as defined by the Board. In all other cases, a failure to vote by a member who is physically present, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative (yes) vote. In the event of a tie vote, the motion under consideration fails.

Given that a quorum of members present is met:

1. Motions of the Planning Board shall be adopted by a majority of the votes cast.
2. Motions of the Board of Adjustment to grant a variance to the UDO shall require four-fifths (4/5) vote of all seated members. A simple majority shall be required for all other legislative and quasijudicial matters.

**Staff Reports:** At all hearings. Staff shall present reports and recommendations to the Board regarding matters involved immediately before petitioners and others are heard. Staff reports on public hearing matters shall be considered public record.

**Parliamentary Procedure:** Procedure in all meetings of this Board shall be decided by the Chairperson unless overruled by a majority of the members present at the meeting, given that a quorum is met.

**Procedures for Time Limits:**

1. Given that quorum is met, the Board or a designated committee may limit the length of a meeting or set a time for adjournment by a majority vote of members present.
2. As deemed necessary, the Chairperson, Vice-Chairperson, or presiding Board member may limit the time each person at a public hearing is allowed to continue to speak.

**Continuation of Meetings:** Board meetings shall not extend beyond 9:30 pm. Any item under consideration at that time and any remaining agenda items shall be continued to the next meeting of the Board or at a special meeting to be determined by the Board for continuation of the meeting. If discussion of an agenda item is still ongoing at 9:25 pm, such discussion shall cease to allow the Board to consider procedural items and adjourn.



# ROCKINGHAM COUNTY

## GOVERNMENTAL CENTER

### Community Development Department

**Cancellation of Meetings:** No meeting of the Board shall be conducted unless four (4) members and/or alternate members are present. Whenever there is no business for a regularly scheduled meeting of the Board, the Chairperson, Vice-Chairperson, the Community Development Director or Staff may cancel the meeting by giving notice to all members and alternates no less than forty-eight (48) hours prior to the date and time of the scheduled meeting. Proper public notice of the cancellation shall include notifying the Clerk to the Commissioners and posting a sign conspicuously at the front entrance to the Governmental Center. The minutes of the next regularly scheduled meeting shall indicate the general reason for the cancellation. Additionally, when County offices are closed by determination of the County Manager or Emergency Management Officials on or immediately prior to the date of a scheduled meeting, the Planning Board is concurrently cancelled. Notice of cancellation shall be made to Board members and alternates by the most expeditious means possible and a sign of such notice shall be posted conspicuously at the front entrance to the Governmental Center may be prepared and forwarded to the Commissioners. A member or members not voting with the majority may prepare this report. If requested, the report may be prepared by the Community Development Director or designated Staff. All minority reports shall be signed by the Board members who prepare or request preparation of the report before being forwarded to the Commissioners, along with the majority recommendation. In every case, when the Commissioners overrule, reverse, or do not adopt the recommended actions of the Planning Board, the Community Development Director or Staff shall notify the Planning Board of the findings, conclusions, and decisions of the Commissioners at the next regularly scheduled meeting of the Board.

#### SECTION 6: CONFLICT OF INTEREST

Members shall not vote on any advisory or legislative decision regarding a development regulation where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship. For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes step, half, and in-law relationships. Members shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.



# ROCKINGHAM COUNTY

## GOVERNMENTAL CENTER

### Community Development Department

#### SECTION 7: SUSPENSION AND AMENDMENTS

**Suspension of Bylaws:** This Board may suspend, where applicable, any of these Bylaws by unanimous vote of the members present, given that a quorum is met for the meeting at hand.

**Amendments:** These Bylaws may be amended at any time by an affirmative vote of not less than four-fifths (4/5) of the Board. Such amendments shall be submitted in writing to the regularly scheduled or special meeting of the Board of Commissioners at which the vote is taken.

#### SECTION 9: EFFECTIVE DATE

These Bylaws shall become effective upon adoption.

Adopted, this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Board of Commissioners Chairperson

\_\_\_\_\_  
Planning Board Chairperson

\_\_\_\_\_  
Community Development Director, Staff, or Secretary to the Board

Edited January 18, 2024



# Types of Development Decisions

## Types of Development Decisions

As Planning Board members you will need to understand and correctly apply the standards to the development decision before you during the hearing.

It is our goal to provide you with the standards; describe the decision-maker's discretion, and the role of public input depend on whether the decision is administrative, quasi-judicial, or legislative.

The school of government has a module that will provide you with unlimited access to an overview of the factors, procedures, and limitations for each type of land use decision summarized below:

### **1- Administrative Development Decisions**

Administrative development decisions are ministerial decisions made each day to enforce the development ordinances: zoning permits, notices of violation, interpretations of the ordinance, and similar ministerial decisions.

Administrative decisions are based on clear, objective criteria. There is no room for judgment and discretion.

The land use either is allowed on the property or it is a violation of the Ordinance. The proposed development either meets the standards or it does not. When the term zoning allowance is used, it is described as a use being "as of right" or "by right."

If the use is allowed on the property by the Ordinance, the owner need only show that the development will meet the basic standards of the Ordinance. This is an administrative decision. No discretionary approval is necessary.

There is no need or requirement for notice to the neighbors or for a hearing open to the public. The notice and hearing occurred back when the Unified Development Ordinance was first adopted on August 16, 2021.

When an administrative hearing is appealed, typically there is a level of review before it goes to court. When Planning staff are the decision-makers for the decision, an appeal goes to the board of adjustment.

Most administrative decisions are made by Planning staff:

- 1- The planner approves a zoning permit;
- 2- The zoning officer issues a notice of violation;
- 3- The preservation planner issues a minor work permit.

However, in some cases, the Planning Board may decide an administrative decision. For example, the planning board or governing board may be the final decision-maker for a subdivision plat. If the standards are objective, the Planning Board must follow the normal rules for administrative decisions: If the applicant meets the standards, the applicant gets the permit.

Administrative decisions are efficient and predictable for the local government and the applicant. Administrative decisions afford little flexibility for unique situations and little opportunity for neighbors to weigh in on the specific proposal.

The property might be zoned for residential uses including apartments. In other words, the owner



may build apartments *by right*. The owner will still need to obtain building permits and other standard building approvals based on objective and technical criteria, but there is no need to go before a board for a discretionary approval to build.

## **2- Quasi-Judicial Development Decisions**

Quasi-judicial development decisions are the special requests when there is need for some adjustment to the rules (variances), resolutions of a dispute in interpretation (appeals of staff decisions), or specialized permit (special use permits and certificates of appropriateness).

Quasi-judicial decisions are based on standards in the Unified Development Ordinance. However, the standards require some judgment and discretion.

### **Variance**

A variance, for example, must be granted when the landowner provides evidence that strict enforcement of the Ordinance would cause “unnecessary hardship.” This is not an objective standard. The Planning Board must weigh the evidence, resolve disputed facts, and use their judgement and discretion to apply the Ordinance standards to the particular facts.

In order to make a quasi-judicial decision, the Planning Board must hold an evidentiary hearing.

Quasi-judicial and evidentiary hearings are similar to hearings in court. Witnesses are sworn in, testimony must be based on relevant facts, and parties must have legal standing to make certain claims. Expert witnesses may be required in some cases. The Planning Board may not rely on lay witness testimony or opinions for technical matters like traffic projections and property value impacts.

While there is some room for judgment and discretion, the Planning Board’s discretion is limited.

The Planning Board must base its decision on the evidence in the record and the standards as required in the ordinance.

If the applicant has provided facts to show they meet the applicable standard and if the opponents have only provided general opinions and fears without factual support, then the Planning Board is obligated to approve the applicant’s request.

Quasi-judicial decisions may be assigned to several different boards. Boards of adjustment typically handle variances and appeals from staff decisions. Preservation commissions handle certificates of appropriateness. Special use permits may be assigned to a board of adjustment, planning board, or governing board. While governing boards may handle quasi-judicial decisions, the board must be careful to distinguish its political role in legislative hearings from its quasi-judicial role in evidentiary hearings.

Quasi-judicial decisions must be based upon the facts as presented. Planning Board members should take great care to refrain from visits to the site and curtail any communications with the public or the applicant.

Appeals of quasi-judicial decisions go to Rockingham County Superior Court and the court reviews the case as if it were an appeals court—determining if the decision-making board followed



the right procedures and had sufficient evidence for the decision below. The court will not consider new evidence at the hearing.

The procedural formality can be challenging and frustrating for the applicant, the neighbors, and the Planning Board. The requirement that decisions must be based on evidence in the record insulates decisions, to an extent, from broader political concerns, and depending on the case and Board member perspective, that may be a benefit or detriment to the process.

If the applicant makes a basic case of meeting the standards, then the burden shifts to any opponents. They must provide contrary factual evidence and/or expert opinion to rebut the applicant's case. If the opponents provide contrary evidence, then the Planning Board must weigh the evidence, resolve contested facts, and apply the standards. If the opponents merely show up with complaints while the applicant made their basic case, then the applicant is entitled to the request.

### **3- Legislative Development Decisions**

Legislative development decisions are political decisions by the County Commissioners sitting as a legislative body to set or amend the Unified Development Ordinance. Rezoning a piece of property, adopting the comprehensive land use plan, amending the standards in the subdivision ordinance; each of these actions is a legislative decision. It is action of the Commissioners setting the broad policy for the Rockingham County community much like the NC General Assembly when it enacts new state laws.

In advance of a legislative land use decision, the matter must be referred to the Planning Board for recommendation. The Commissioners must hold a legislative hearing and prior to that hearing there must be proper notice (published twice in the newspaper and, for rezoning matters, posted and mailed notice). When the Commissioners approve an amendment to the zoning ordinance, the Commissioners must adopt a statement of plan consistency or reasonableness. The legislative hearing is a forum for receiving public opinion. Proponents and opponents of the legislative action may voice their support, concern, and opinions about the matter. Legislative hearings do not have the same level of procedural formality as a quasi-judicial evidentiary hearing.

When making a legislative decision the Commissioners have broad discretion. The Commissioners are sitting as a legislative body and make the decision that they determine is in the best interest of the community based on the policies, the politics, and the community's priorities. A legislative decision is not bound to a factual record and established standards as is a quasi-judicial decision. There is no sworn testimony. However, the Commissioners do not have complete discretion in legislative decision-making. Such land use decisions must be reasonable, grounded in land use considerations, and in keeping with the statutory purposes of the Unified Development Ordinance. Legislative land use decisions may not be arbitrary and capricious, may not go beyond the statutory authority of development regulations, and may not be determined based on the race, religion, or ethnicity of the parties.

#### **Conditional Rezoning**

Conditional rezoning is a particular type of legislative decision-making. Conditional rezoning is a legislative action that allows for the applicant and the local government to agree on site-specific

conditions for the particular project. Conditional rezoning is a useful tool for approving large or complex developments that do not fit into the standard categories of the Unified Development Ordinance.

Conditional zoning also is a useful tool for addressing the unique impacts of a particular project. Appeals of legislative decisions are brought in the Rockingham County Superior Court. Opponents may challenge the failure to follow the procedural requirements such as a failure to provide proper notice, a failure to seek planning board recommendation, or a failure of the Commissioners to adopt a statement of plan consistency or reasonableness. Opponents also may challenge the substance or constitutionality of a legislative action. The Courts will give the Commissioners broad discretion as local legislators and therefore substantive challenges to legislative decisions are difficult.

Legislative decisions are the political process of setting the rules for how the community will grow and thrive. Legislative decision-making appropriately involves politics in the best sense of that term as elected officials engaging with constituents, responding to concerns, and using their best judgment for what is in the best interest of the community.

### **How do you know if the decision is Administrative, Quasi-judicial, or Legislative**

The type of decision depends upon the nature of the standards.

- 1- If the standards are objective, the decision is administrative.
- 2- If the standards have some subjectivity, then the decision is quasi-judicial.
- 3- If the decision is setting the standards (through ordinance amendment or rezoning), then it is legislative.

Some decisions may fall into a couple of categories.

#### Subdivisions

Subdivision plat approval typically is an administrative decision based on clear objective standards; such as lot size, open space allocation, technical road specifications, etc.. But, there is statutory authority to make subdivision decisions quasi-judicial.

#### Special Use Permits

In addition to the clear, objective standards, an ordinance may require that the applicant meet certain standards requiring judgment and discretion similar to special use permits approvals:

Is it in harmony with the area?

Will it harm neighboring property values?

If such additional standards apply to a subdivision plat, then the decision must follow the quasi-judicial standards.

#### Site Plan Approval

A basic site plan may be reviewed with simple objective standards such as land use, setback, parking allocation, etc. But, a local ordinance may also require that a site plan is reviewed with



additional standards requiring judgment and discretion; harmony with surrounding development, etc.

Additionally, development ordinances commonly require that a site plan be part of the review for a special use permit or conditional rezoning. In those cases, the site plan review is subject to the same level and type of review as the overall decision.

- 1- quasi-judicial for special use permit; and
- 2- legislative for conditional rezoning.

The nature of the decision will depend upon the nature of the standards. The table below summarizes the types of decisions and related requirements.

Type of Decision	Administrative	Quasi-Judicial	Legislative
Example	Zoning permit, Notice of Violation	Variance, special use permit, certificate of appropriateness	Ordinance amendment, rezoning
Decision Maker	Staff, Typically	Assigned board	Governing board
Standards	Objective	Requires some judgment and discretion	Based on what is in the public interest
Public Notice	None required, local option for notice of decision	Mailed to neighbors and posted at site	Published in newspaper; if rezoning then also mailed to neighbors, and posted on the site
Hearing	none typically, but administrative hearing for certain decisions	Evidentiary hearing	Legislative hearing
Public Input	little or none for a particular decision; input upfront to adopt the ordinance	Limited to sworn, factual testimony at the hearing	Broad public input
Discretion	Very little	Decisions must be based on the applicable standards and evidence in the record	Broad discretion
Appeal	To the board of adjustment	To superior court	To superior court

Credit to Adam Lovelady; UNC SOG for the basic format and information contained in the foregoing summary.

# Types of Decisions

# Types of Decisions

## for Development Regulations in North Carolina

	<b>Administrative</b>	<b>Quasi-Judicial</b>	<b>Legislative</b>
Example	zoning permit, notice of violation	variance, special use permit, certificate of appropriateness	ordinance amendment, rezoning
Decision-maker	staff, typically	assigned board	governing board
Standards	objective	requires some judgment and discretion	based on what is in the public interest
Public Notice	none required, local option for notice of decision	mailed to neighbors and posted on the site	published in newspaper; if rezoning then also mailed to neighbors, and posted on the site
Hearing	none typically, but administrative hearing for certain decisions	evidentiary hearing	legislative hearing
Public Input	little or none for a particular decision; input up front to adopt the ordinance	limited to sworn, factual testimony at the hearing	broad public input
Discretion	very little	decisions must be based on the applicable standards and evidence in the record	broad discretion
Appeal	to the board of adjustment	to superior court	to superior court

For additional explanation, see Adam Lovelady, “Types of Decisions,” Coates’ Canons: NC Local Government Law (August 24, 2021) available at <https://canons.sog.unc.edu/types-of-development-decisions/>



end), but the board would not be bound to take a certain action. Depending on the politics and the board's determination of what is in the best interest of the community, you may get your rezoning or may not.

## It Depends

The type of decision depends upon the nature of the standards. If the standards are objective, the decision is administrative. If the standards have some subjectivity, then the decision is quasi-judicial. If the decision is setting the standards (through ordinance amendment or rezoning), then it is legislative. Certain decisions may fall into a couple of categories. Subdivision plat approval typically is an administrative decision based on clear objective standards (lot size, open space allocation, technical road specifications, etc.). But, there is statutory authority to make subdivision decisions quasi-judicial. In addition to the clear, objective standards, an ordinance may require that the applicant meet certain standards requiring judgment and discretion similar to special use permits (Is it in harmony with the area? Will it harm neighboring property values?). If such additional standards apply to a subdivision plat, then the decision must follow the quasi-judicial standards.

Site plan approval, similarly, may have different aspects. A basic site plan may be reviewed with simple objective standards (land use, setback, parking allocation, etc.). But, a local ordinance may also require that a site plan is reviewed with additional standards requiring judgment and discretion (harmony, etc.). Additionally, development ordinances commonly require that a site plan be part of the review for a special use permit or conditional rezoning. In those cases, the site plan review is subject to the same level and type of review as the overall decision (quasi-judicial for special use permit and legislative for conditional rezoning).

The nature of the decision will depend upon the nature of the standards. The table below summarizes the types of decisions and related requirements. Also, find a pdf of the chart [here](#).

Type of Decision	Administrative	Quasi-Judicial	Legislative
Example	zoning permit, notice of violation	variance, special use permit, certificate of appropriateness	ordinance amendment, rezoning
Decision-maker	staff, typically	assigned board	governing board
Standards	objective	requires some judgment and discretion	based on what is in the public interest published in newspaper; if rezoning then also mailed to neighbors, and posted on the site
Public Notice	none required, local option for notice of decision	mailed to neighbors and posted on the site	

Hearing	none typically, but administrative hearing for certain decisions	evidentiary hearing	legislative hearing
Public Input	little or none for a particular decision; input up front to adopt the ordinance	limited to sworn, factual testimony at the hearing	broad public input
Discretion	very little	decisions must be based on the applicable standards and evidence in the record	broad discretion
Appeal	to the board of adjustment	to superior court	to superior court

All rights reserved. This blog post is published and posted online by the School of Government to address issues of interest to government officials. This blog post is for educational and informational use and may be used for those purposes without permission by providing acknowledgment of its source. Use of this blog post for commercial purposes is prohibited. To browse a complete catalog of School of Government publications, please visit the School's website at [www.sog.unc.edu](http://www.sog.unc.edu) or contact the Bookstore, School of Government, CB# 3330 Knapp-Sanders Building, UNC Chapel Hill, Chapel Hill, NC 27599-3330; e-mail [sales@sog.unc.edu](mailto:sales@sog.unc.edu); telephone 919.966.4119; or fax 919.962.2707.



Making  
Quasi-Judicial  
Decisions

# MAKING QUASI-JUDICIAL DECISIONS

EXCERPT FROM INTRODUCTION TO ZONING; THIRD EDITION, 2007.

AUTHOR DAVID W. OWENS

Decisions on variances, special use permits, and conditional use permits and appeals of administrative decisions made by the zoning administrator require special handling. These decisions involve determining the facts of the case and exercising some degree of judgment and discretion. They are called quasi-judicial decisions, and they are subject to rather demanding procedural rules set forth by the courts, including the requirement of a formal evidentiary hearing.<sup>1</sup> These rules apply to all citizen boards making quasi-judicial decisions, including the city council or board of county commissioners.

Quasi-judicial zoning decisions differ from legislative zoning decisions (such as a rezoning) in a fundamental manner—these decisions involve applying zoning policies rather than setting new policies. In quasi-judicial decisions, the board making the decision must act much like a court to apply the zoning ordinance (the law) to a specific case.

This fundamental difference leads to a very different set of procedures that must be followed by the board. When new policies are being set, as with a zoning text amendment or a rezoning, the law is designed to make sure there is wide public notice and opportunity to comment. On the other hand, when the policies already set out in the

ordinance are being applied to an individual case, the legal requirements shift to a focus on securing a fair and impartial hearing on the merits of the case.

These differences in legal requirements for different types of zoning decisions often confuse citizen board members as well as citizens participating in the hearing. In legislative zoning hearings, citizens can appear and say whatever is on their minds. Community opinions and attitudes are important, legitimate considerations. In evidentiary hearings for quasi-judicial zoning decisions, however, the purpose of the hearing is to gather legally acceptable evidence in order to establish sufficient facts to apply the ordinance. The fact that a hundred angry citizens appear expressing the opinion that the proposed special use permit would be the worst thing to ever happen to the town should have little, if any, bearing on the decision. The question before the board is whether the proposal meets the standards in the ordinance, not whether it is popular among the citizenry.

Citizen boards must keep this difference clearly in mind. Furthermore, it is very helpful if the purpose and limitations of the hearing are fully explained to those appearing at these hearings. A handout for the applicants and neighbors can explain the ground rules for evidentiary hearings and help avoid misunderstandings and legal errors in how these hearings are conducted.

A board making a quasi-judicial decision must do two things. First it must determine the facts of the case. In this task, the board acts much like a jury in a court proceeding. Second, it must apply the standards in the ordinance to those facts. In

this task the board acts much like a judge in applying the law (in this case the standards in the zoning ordinance) to a given set of facts. The terminology used by the statutes and zoning ordinances sometimes leads to confusion about these two responsibilities. For example, the ordinance may provide that a special use permit shall be issued "upon the board finding that the project will not have a significant adverse effect on neighboring property values." Even though the ordinance uses the term "finding," this is really the standard that is to be applied. The board must be careful to both "find the facts"—what exactly are the impacts on neighboring property values and why—and to make a "finding"—a conclusion as to whether any adverse impacts are significant.

Most quasi-judicial zoning decisions are made by boards of adjustment. However, North Carolina law also allows these decisions to be made by the planning board or the governing board. They must not, however, be assigned to a single staff member because state statutes require the decision to be made by a board. The rules discussed here apply whenever a quasi-judicial zoning decision is involved, regardless of which citizen board makes the decision.



## EVIDENTIARY HEARINGS

Hearings on quasi-judicial zoning matters must be conducted in a fair and impartial manner. While the formal rules of evidence that apply in court need not be rigorously followed, zoning evidentiary hearings are serious proceedings that significantly affect the legal rights of the parties. In conducting these hearings, the following guidelines apply.

**Open meetings.** The state's open meetings law applies to boards making quasi-judicial decisions. This means that the regular meeting schedule must be filed with the city or county clerk, additional notice is required for special meetings, and all of the hearing and the board's deliberations must be conducted in open, public session. The board may not go into a closed session to discuss the case after receiving the evidence.

**Parties.** Unlike a court proceeding, quasi-judicial zoning hearings do not have formal plaintiffs and defendants. The person who initiates the action (an applicant for a special or conditional use permit, a person appealing the zoning officer's determination or requesting a variance) is a "party" to the proceeding and has legal rights that must be protected. A person who is directly affected by the decision (such as a neighbor whose property value would be affected) may also ask to participate in the hearing and can be considered a party. Members of the general public are not "parties." A person who is interested in the matter but who does not have a personal stake in the outcome (such as a likely effect on his or her property value) may attend and observe the hearing, but they have no legal right to offer evidence, ask questions, or otherwise directly participate in

the matter. Only the parties whose legal rights are directly affected are entitled to participate. As a practical matter, many presiding officers will allow a person who is not a party to present evidence, but care must be used to be sure it is relevant to the case.

**Burden.** The person requesting a variance or special/conditional use permit has the burden of producing sufficient evidence for the board to conclude the standards have been met. If insufficient evidence is presented, the application must be denied (or the board can continue the hearing to a later date to receive additional evidence). Once sufficient evidence is presented that the standards are met, the applicant is entitled to a permit. If conflicting evidence is presented, the board must determine which facts it believes are correct.

**Oaths.** Those offering testimony are usually put under oath. This reminds witnesses of the seriousness of the matter and the necessity of presenting factual information, not opinions or speculation. All of the witnesses may be sworn in at one time at the beginning of the hearing or each witness may be sworn in as he or she begins to testify. While oaths may be waived if all of the parties agree, most local governments routinely swear in all witnesses, including the staff members and attorneys who are making presentations. If a witness has religious objections to taking an oath, he or she may affirm rather than swear an oath. The oath is generally administered by the chair of the board receiving the testimony (it may also be administered by any notary public).

**Cross-examination.** Parties have the right to cross-examine witnesses. The board can establish reasonable procedures for this, such as allowing questions to be posed only by a single representative of a party. Board members are also free to pose questions to anyone presenting evidence.

**Hearsay.** 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. If a statement from a person who is not present is offered and it is the best evidence available, it can be received by the board. But the board may well decide to limit the weight or credibility it gives such evidence, and critical findings of fact should not be based on hearsay evidence.

**Opinions.** Boards need facts for their findings, not opinions. Opinion evidence (unless offered by a properly qualified expert witness) is generally not allowed and cannot be the basis for critical findings. A witness offering an opinion would need to present the factual information upon which the opinion is based.

**False testimony.** A person who deliberately gives false testimony under oath in a zoning hearing is subject to criminal charges for perjury.



**Outside evidence.** Persons affected by a decision have the legal right to hear all of the information presented to board members and to know all of the "facts" being considered by the board. Therefore members of the decision-making body are not allowed to discuss the case or gather evidence outside of the hearing (what the courts term *ex parte* communication). Only facts pre-sented to the full board at the hearing may be considered. It is permissible for board members to view the site in question before the hearing, but they should not talk about the case with the applicant, neighbors, or staff outside of the hearing. If a member has special knowledge about a site or case, the member should disclose that at the hearing. A member who fails to disclose any *ex parte* communications is prohibited from participating in the case.

**Time limits.** While unduly repetitious or irrelevant testimony can be barred, an arbitrary time limit on the hearing cannot be used. It would not be appropriate, for example, to limit each side in a variance proceeding to five minutes to present their case. It is acceptable to allow only a single witness representing a group with similar concerns.

**Exhibits.** Witnesses may present documents, photos, maps, or other exhibits. Once presented for consideration by the board, exhibits are evidence in the hearing and become part of the record (and must be retained by the board). Each exhibit should be clearly labeled and numbered as it is received into evidence.

The application for the permit and any correspondence submitted as part of

the application file should also be entered into the hearing record and may be considered by the board. Most application forms are designed to elicit sufficient information for a decision. It is a good practice to have a person familiar with the information in the application (usually the applicant or an agent of the applicant) available to answer any questions the board may have about the written submissions.

**Quality of evidence.** There must be "substantial, competent, and material evidence" to support each critical factual determination. Key points need to be substantiated by the factual evidence in the hearing record; the findings cannot be based on conjecture or assumptions.

**Conflict of interest.** If an individual board member has a strong personal interest in a case, he or she must not participate in that case. "Personal interest" includes a financial interest in the outcome, a close personal, family, or business relation with the parties, a predetermined opinion about the outcome (a disqualifying bias), or undisclosed outside communications about the case. It is a good practice, though not legally required, for a member with a conflict of interest to physically leave the room while that case is being handled by the board.

**Voting.** State statutes impose a special voting requirement for some quasi-judicial decisions. A four-fifths vote rather than a simple majority is required in order for a zoning board of adjustment to grant a variance, issue a special use permit, or overturn a zoning administrator's

determination. If the city council, county board of commissioners, or a planning board is the decision-making body for special use permits or conditional use permits, however, a simple majority vote suffices.

A "four-fifths vote" means four-fifths of the entire board must vote in favor of the proposal, not just four-fifths of those present and voting. In the case of a ten-member board of adjustment with two members absent, a unanimous, eight-to-zero vote would be necessary (eight being four-fifths of the entire ten-member board). Vacant seats and the seats of members who are disqualified from voting due to a conflict of interest are not considered in making the four-fifths calculation.

This supermajority requirement is an additional reason that most boards of adjustment have alternate members who can take an absent or disqualified member's place.

**Written decision.** After taking evidence, the board must make written findings of fact. This is necessary to let the parties—and, if the matter is appealed, the courts—know what the board concluded about the facts of the case. A simple written conclusion that the standards were or were not met is not sufficient, nor is a letter just stating the permit has been issued or denied. The findings need to provide enough detail to let the reader know what the board determined the key facts to be.

The board must also provide a written decision applying these facts to the standards of the ordinance. A formal written copy of the decision must be mailed to the applicant and mailed to those present at the



hearing who made a written request for a copy, and a formal copy must be filed with the city or county office specified in the ordinance. The time period for appeals to court only starts to run when the written decision is both mailed and filed.

The question of how to adopt findings when a minority of the board prevails requires particular attention. For example, if a five-member board of adjustment votes three to two to grant a variance, the variance is denied because it did not receive the required four-fifths majority. The minutes and written decision need to clearly set forth why the two dissenters voted as they did, but there is no requirement that a majority of the board agrees with or officially adopts those views.

**Record keeping.** Complete records must be kept of the hearings.

**Precedent.** Prior decisions are not legally binding on a board. Each case must be decided on its own individual merits. Subtle differences in individual facts and situations can lead to differing results. However, a board should be aware of previous decisions and, as a general rule, similar cases should usually produce similar results. If a board reaches a different result for a very similar fact situation, the board's written decision must clearly explain why there was a different conclusion.

**Rehearings.** Once a final decision is reached on a quasi-judicial zoning decision, the same matter cannot be brought back to

the board for a rehearing. Unless there is a different application or conditions have changed on the site or in the ordinance, a board does not have the legal authority to rehear these cases. This is unlike a legislative rezoning decision where the same petition can be reconsidered after a waiting period set by the ordinance.

**Liability.** Board members are "public officers" and, as such, have limited exposure to personal liability as a result of board actions.

**Appeals.** Appeals of quasi-judicial decisions go directly to court. An applicant may not appeal a board of adjustment's decision to the governing board.

**Attorneys.** The state bar has advised that representing a party at the evidentiary hearing in a quasi-judicial zoning matter—presenting evidence, cross-examining witnesses, advising as to the evidence needed—is the "practice of law" and should only be done by licensed attorneys. Parties are not required to have lawyers and are free to represent themselves.

## JUDICIAL REVIEW

Once a final binding decision has been rendered on any of these quasi-judicial zoning decisions, a person who is directly affected by the decision can appeal that decision to superior court in the county where the decision was made. Such an appeal of a zoning decision to the court

must be filed within thirty days of the date that the final decision is mailed to the parties or officially filed with the city or county, whichever is later. Appeals for other land use regulatory decisions must be made within a reasonable time.

The superior court does not conduct a new hearing to determine the facts. Rather, it sits as an appeals court and bases its decision on the factual record established at the evidentiary hearing conducted by the local citizen board. This is one of the reasons it is important that adequate evidence be presented at the board hearing and that good records be kept of those proceedings. Probably the most frequent reason a citizen board's quasi-judicial zoning decision is overruled by the courts is that there was inadequate evidence in the record to support the board's findings of fact.

Other factors considered by the courts when they review these zoning decisions are whether proper procedures were followed in the decision-making process, whether there were errors made in interpreting the law, and whether the decision was "arbitrary and capricious." On this latter point, the court may not substitute its judgment for that of the citizen board; it does not second-guess a close call or consider whether the citizen board made the "right" decision. But if there is no rational basis for the decision, the court can overturn it.

Legislative  
Zoning  
Hearings

## Legislative Zoning Hearings

<p><b>Legislative Hearing</b></p>	<ul style="list-style-type: none"> <li>• Decisions affect the entire community.</li> <li>• Legislative hearings are conducted to obtain citizens' comments on a specific policy proposal, hearings must be conducted in a fair, orderly manner.</li> <li>• No rules of evidence apply.</li> <li>• Full public discussion is encouraged as is deliberation before a decision is made.</li> <li>• Board has substantial discretion regarding the public policy decision.</li> <li>• The applicant is responsible for presenting all of the evidence necessary to show his/her request meets the standards set forth in the ordinance.</li> </ul>
<p><b>Purpose of Hearing</b></p>	<ul style="list-style-type: none"> <li>• Gather public opinion</li> </ul>
<p><b>Potential policy issues to consider if relevant to case</b></p>	<ul style="list-style-type: none"> <li>• What impact will the development have on the roads, schools, fire, water, and sewer?</li> <li>• What impact will it have on the property owners and the neighbors?</li> <li>• What policy precedent does it set for similar requests in the future?</li> <li>• What impact will it have on the environment?</li> <li>• What impact will it have on public safety?</li> </ul>
<p><b>Limits on Speakers</b></p>	<ul style="list-style-type: none"> <li>• Time for speakers and number of speakers can be reasonably limited, provided the hearing is conducted in a fair and reasonable manner (maximum time limit, designation of spokesmen for groups of persons supporting or opposing the same position).</li> </ul>
<p><b>Findings of Fact</b></p>	<ul style="list-style-type: none"> <li>• No findings of fact or explanation of decision is required. .</li> </ul>



## Legislative Zoning Hearings

<b>Vote Needed</b>	<ul style="list-style-type: none"> <li>• Concurring vote of a simple majority of those members present and voting, need three members present for a quorum.</li> </ul>
<b>Standard for Decision</b>	<ul style="list-style-type: none"> <li>• Board action will recommend the standard.</li> <li>• Cannot base decision on clearly impermissible motive, such as racial discrimination</li> </ul>
<b>Exparte Communication</b>	<ul style="list-style-type: none"> <li>• Board members can discuss the issue outside of the hearing (note the Open Meeting Law will apply if majority of the members of the Board gather to discuss business or deliberate).</li> </ul>
<b>Conditions</b>	<ul style="list-style-type: none"> <li>• Allowed only for conditional use rezonings and if based on standards previously set in the ordinance.</li> </ul>
<b>Creation of Vested Right</b>	<ul style="list-style-type: none"> <li>• No, except for conditional use rezonings if owner/applicant made substantial expenditures in good faith reliance on valid Board approval.</li> </ul>
<b>Conflicts of Interest</b>	<ul style="list-style-type: none"> <li>• Personal or financial interest disqualifies a member from participating.</li> <li>• Nonparticipation includes the discussion as well as voting.</li> </ul>

Materials for the above chart are from the following sources:

OWENS, DAVID W., INTRODUCTION TO ZONING, 2<sup>nd</sup> ed. 8-11, Institute of Government (2001); North Carolina General Statute §153A-345  
 Rockingham County Planning and Development Ordinances; Bylaws and Rules of Procedure for Rockingham County Planning Board



Appeals/  
Evidentiary  
Hearings

## Appeals / Evidentiary Hearings

## PRE-HEARING

- Board members may be given a copy of the Notice of Violation and the Appellant's Appeal. Board members may visit the property before the hearing, but should not seek further evidence or have discussion with any party or Board member regarding the case, and should not form an opinion regarding the case until hearing all evidence and argument presented at the Hearing.
- The Board Chair will determine if the Board needs its own attorney for advice at the hearing.

## Board of Adjustment Meeting

Call to order; Roll Call to assure a quorum

## OPEN HEARING

- Announce the Case Number and the address of the Property affected
- Announce party names: Appellant (IT)- Property Owner; Appellee (Δ)- Zoning Administrator or other officer whose decision is being appealed

## BOARD DISCLOSURES:

Board members must disclose any prior property visits and facts observed, any non-casual communications regarding the property or case, and any conflicts of interest in the matter before the Board.

- Board members should disclose any visits to the Property, and any facts as they observed them at that time.
  - o Hold questions regarding the member's facts until presentation of evidence that is similar, at which time the member may be questioned by other members or by the parties regarding the observations of the member.
- Board members should disclose any more-than-casual communications they have had regarding the case, including those with parties or other Board members.
  - o Example of casual: "When is that appeal scheduled?"
- Board members may not participate in the hearing if they have already formed an opinion regarding the case.

## OPENING STATEMENTS

- What the presenter expects the evidence will show. This statement does not include actual evidence, opinion, or argument.
  - o Allowed: e.g., "The evidence will show that there was a box on the property, and that the box was 40 feet high"
  - o Not allowed: e.g., "I measured the box to be 20 feet high" (testimonial evidence) or "The ordinance should not apply to boxes because..." (argument).
- Party with the burden of proof goes first

Δ

Appellee presents Opening Statement (has burden of proof per § 12-65(1))

Π

Appellant presents Opening Statement

## PRESENTATION OF EVIDENCE

Types of Evidence

- Testimony
  - o Fact Witness- things the person testifying did or experienced (see, hear (other than hearsay), smell, feel, taste)
  - o Opinion Witness- only by expert. See Requirements & Limitations, below.
    - Expert: has greater special knowledge, skill, experience, training or education on a subject than does a lay person.
- Exhibits

Requirements & Limitations on Evidence

- Hearsay- a statement about the matter made by someone who is not present to be questioned about that statement by the opposing party. Can be either oral ("Bob said...") or written (sworn, notarized affidavit by Bob).
  - o Evidence presented via hearsay may not be the basis for a critical factual finding.
  - o Hearsay exceptions: if evidence falls within an exception, it is not hearsay. e.g., report or letter from a government official providing unbiased information within that official's knowledge or based on their records kept in the normal course of business
- Opinion testimony- expert must provide supporting facts or examples for the opinion, not just generalized opinion without support
- Exhibits being entered into evidence must be:
  - o Identified by a witness with personal knowledge of the exhibit;
  - o Relevant to the matter at hand; and
  - o Authentic- the document or thing is what it is purported to be (should be original document, if possible);

Procedures

- Testimony- Witness is sworn
  - o Direct Examination- questions to the party's own witness (Who? What? When? Where? Why? How?); questioner should question, not testify
  - o Cross Examination- questions to the opposing party's witness
  - o Board Examination- should be limited, if possible
- Exhibits
  - o Exhibit is numbered (by Clerk), shown to opposing party first, then shown to the witness
  - o Witness is asked questions to show that it meets requirements (see above).
    - Personal knowledge: witness states what the exhibit is (not what it says or shows) and how they know that (e.g., "I took this photo of the box")
    - Relevance- e.g., "I took this photo of the property the day before the violation was filed"
    - Authentic- "This is the original report I received about the building from the Building Inspector"
- Objections- should be directed to the Board Chair, and a basis for the objection stated (e.g., "Objection, that is hearsay").



<b>Δ</b>	<b>Appellee Presents Evidence</b>
----------	-----------------------------------

**QUESTION FOR THE BOARD (per § 12-65(1)):**

Has the Appellee (Zoning Administrator) met the burden imposed by § 12-65(1) to present "*sufficient evidence and argument to justify the order or decision appealed*"?

-Motion (citing some facts on which motion is based); Second; Discussion; Vote

- If Appellee *meets* their burden, the burden of proof shifts to Appellant per § 12-65(1), and presentation of evidence continues
- If Appellee *does not meet* their burden, the Administrator's decision is overturned and the case ends

<b>Π</b>	<b>Appellant Presents Evidence</b>
----------	------------------------------------

<b>Δ</b>	<b>Appellee Presents Rebuttal Evidence</b> (only evidence responsive to evidence presented by Appellant)
----------	--

**CLOSE OF PRESENTATION OF EVIDENCE**  
No further new evidence may be presented

**CLOSING ARGUMENTS**

- The party's contention of how the law, when applied to the evidence presented at the hearing, leads to a ruling in the party's favor

<b>Δ</b>	<b>Appellee Presents Closing Argument</b>
----------	---

<b>Π</b>	<b>Appellant presents Closing Argument</b> (has burden of proof per § 12-65(1))
----------	---

**CLOSE HEARING**  
No further evidence or argument may be presented

**DELIBERATION BY THE BOARD**

	General discussion by the Board <ul style="list-style-type: none"> <li><input type="checkbox"/> Evidence presented or made known (Board disclosures) at the hearing                         <ul style="list-style-type: none"> <li>o No more evidence can be heard, even if there is a difference of opinion regarding a fact</li> </ul> </li> <li><input type="checkbox"/> Law- statutes, ordinances</li> <li><input type="checkbox"/> Has Appellant met their Burden of Proof?</li> </ul>
--	---

**MOTION**

- Action proposed to be taken
  - o Administrator's decision be Upheld or Administrator's decision be Reversed
- Basis ("Findings of Fact")- explicit statement of the main evidence used to support the proposed action
  - o Decision must be based on evidence that is *in the record* at the hearing and that evidence must be "substantial, competent, and material."
- Example: Based on the fact that -----; the testimony of Mr. -----, who I found to be credible when he said -----; and on the ----  
----, I move that the Administrator's decision be -----.

	<p><b>Second</b></p> <p><b>Discussion</b> of the motion before the Board</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Any proposed modifications to the motion must be agreed to by the original movant, the motion re-stated as modified, and a new second received before the modified motion can be considered.</li> </ul> <p><b>Vote</b> (see § 12-66)</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> If motion is to reverse or modify Appellee's decision                     <ul style="list-style-type: none"> <li>o Must receive 4/5 vote</li> </ul> </li> <li><input type="checkbox"/> If there is no motion to reverse or modify, or if such a motion failed to receive a 4/5 vote, then a motion to uphold the Appellee's decision should be considered                     <ul style="list-style-type: none"> <li>o Must receive <u>more</u> than 1/5 vote</li> </ul> </li> </ul>
--	--

Denial of Request  
for a  
Special Use  
Permit

## **DENIAL OF REQUEST FOR A SPECIAL USE PERMIT**

\*You must find that **at least one of the listed factors does not exist** to deny the request for a special use permit.

“Based on the evidence presented, I move to **DENY** the request for a special use permit and specifically find that:

1. The use or development **is not** located, designed and proposed to be operated so as to maintain or promote the public health, safety and general welfare BECAUSE . . . \_\_\_\_\_.  
**(Identify the evidence that supports this factor.)**

**OR**

2. The use or development **does not** comply with all required regulations and standards of this ordinance and with all other applicable regulations BECAUSE . . . \_\_\_\_\_.  
**(Identify the evidence that supports this factor.)**

**OR**

**(The applicant must show that competent, material, and substantial evidence exists to support either 3a or 3b. If the applicant provides evidence to support 3a, you can't deny the special use permit based on no support for 3b.)**

- 3a. The use or development **is not** located, designed and proposed to be operated so as to maintain or enhance the value of contiguous property BECAUSE . . . \_\_\_\_\_.  
**(Identify the evidence that supports this factor.)**

- 3b. The use or development **is not** a public necessity BECAUSE . . . \_\_\_\_\_.  
**(Identify the evidence that supports this factor.)**

**OR**

4. The use or development **does not** conform to the general plans for the land use and development of Rockingham County as embodied in the zoning ordinance and in the Rockingham County Development Guide BECAUSE . . . \_\_\_\_\_.  
**(Identify the evidence that supports this factor.)**



## APPROVAL OF REQUEST FOR A SPECIAL USE PERMIT

\*You must find **all four of the listed factors exist** to grant the special use permit.

“Based on the evidence presented, I move to **GRANT** the request and specifically find that:

1. The use or development is located, designed and proposed to be operated so as to maintain or promote the public health, safety and general welfare BECAUSE . . . \_\_\_\_\_  
\_\_\_\_\_. **(Identify the evidence that supports this factor.)**
  
2. The use or development complies with all required regulations and standards of this ordinance and with all other applicable regulations BECAUSE . . . \_\_\_\_\_  
\_\_\_\_\_. **(Identify the evidence that supports this factor.)**

**(The applicant must only show that competent, material, and substantial evidence exists to support either 3a or 3b.)**

- 3a. The use or development is located, designed and proposed to be operated so as to maintain or enhance the value of contiguous property BECAUSE . . . \_\_\_\_\_  
\_\_\_\_\_. **(Identify the evidence that supports this factor.)**

**OR**

- 3b. The use or development is a public necessity BECAUSE . . . \_\_\_\_\_  
\_\_\_\_\_. **(Identify the evidence that supports this factor.)**

**AND**

4. The use or development conforms to the general plans for the land use and development of Rockingham County as embodied in the zoning ordinance and in the Rockingham County Development Guide BECAUSE . . . \_\_\_\_\_  
\_\_\_\_\_. **(Identify the evidence that supports this factor.)**

**IN ADDITION**, I recommend that the conditions recommended by the Planning Staff be placed on the Special Use Permit.”

## **DENIAL OF REQUEST FOR A SPECIAL USE PERMIT**

\*You must find that **at least one of the listed factors does not exist** to deny the request for a special use permit.

“Based on the evidence presented, I move to **DENY** the request for a special use permit and specifically find that:

1. The use or development **is not** located, designed and proposed to be operated so as to maintain or promote the public health, safety and general welfare BECAUSE . . . \_\_\_\_\_.  
**(Identify the evidence that supports this factor.)**
  - a. Evidence presented by Dr. Smith indicates that applicant’s proposed junkyard would pose potential health threats to the neighborhood because old tires and metal scraps have been shown to promote the growth of mosquito larvae that carry and transmit a number of deadly diseases.
  - b. The proposed airport is too close to a residential area. The noise expert testified that airplanes taking off and landing on 3 minute intervals within 500 feet of 20 residences would cause the persons in those residences to experience noise at an unhealthy level.
  - c. The proposed parking for the employees is located on a lot across Highway 220 from the office building site and the safety of the employees will be jeopardized when they cross the highway to get to and from the office.
  - d. The proposed reservoir will flood farmland. The biology expert testified that chemicals found on the farms will contaminate the water and it will be unsuitable to drink without extensive treatment.
  - e. The sign in the store parking lot will obstruct the view of drivers on the road.
  - f. The evidence does not show a medical hardship and thus granting a special use permit for a mobile home on a lot with an existing residence will not promote the public health, safety, and general welfare.



- g. The applicant has not submitted enough evidence about the Planned Unit Development. The plan lacks essential details. Public health and safety could be threatened when the plan develops later without any further oversight from the planning department (can add a condition to address this issue).
- h. All of the evidence in opposition to allowing the proposed mobile home park was speculation and generalized fears about a high level of crime at mobile home parks. This evidence is not competent evidence and does not provide evidence upon which I can vote to deny the special use permit.

**OR**

2. The use or development **does not** comply with all required regulations and standards of this ordinance and with all other applicable regulations BECAUSE . . . \_\_\_\_\_ . **(Identify the evidence that supports this factor.)**

- a. The applicant refuses to comply with the landscaping requirements for this development.
- b. The applicant refuses to present documentation from the FAA showing that the telecommunications tower is in compliance with FAA requirements.
- c. The proposed mobile home is a 1950 model and the ordinance states that this age home is not allowed to be moved into the county for use as a residence.

**OR**

**(The applicant must show that competent, material, and substantial evidence exists to support either 3a or 3b. If the applicant provides evidence to support 3a, you can't deny the special use permit based on no support for 3b.)**

3a. The use or development **is not** located, designed and proposed to be operated so as to maintain or enhance the value of contiguous property BECAUSE . . . \_\_\_\_\_ . **(Identify the evidence that supports this factor.)**



- i. Evidence brought before the Planning Board by an expert in real estate appraisals indicates that the development of a junkyard on applicant's property would reduce the value of contiguous property by twenty percent.

**3b.** The use or development **is not** a public necessity BECAUSE . . . \_\_\_\_\_  
\_\_\_\_\_. **(Identify the evidence that supports this factor.)**

- i. There is no public necessity for a junkyard in the vicinity of the applicant's property. The County currently has a disposal site for junk vehicles with a mile of the applicant's property.
- ii. There is no public necessity for allowing a race track dragstrip because a dragstrip will not fulfill a need or service for the public good (this may be debatable here in NASCAR country).

**OR**

**4.** The use or development **does not** conform to the general plans for the land use and development of Rockingham County as embodied in the zoning ordinance and in the Rockingham County Development Guide BECAUSE . . . \_\_\_\_\_  
\_\_\_\_\_. **(Identify the evidence that supports this factor.)**

- a. Junkyards are not permitted in the RA zoning district and this application is for a junkyard in a RA zoning district. The RA district is for low density residential and agricultural uses and allowing a junkyard in the RA district is contrary to the ordinance and does not promote orderly development.
- b. The proposed development in a critical watershed area does not conform with the county's goals to preserve the county's critical assets.

Denial of Request  
for a  
Variance

## DENIAL OF REQUEST FOR A VARIANCE

\*You must find **that only one of the listed factors does not exist** to deny the variance.

“Based on the evidence presented, I move to **DENY** the request and specifically find that:

1. A variance from the terms of the Ordinance will be contrary to the public interest BECAUSE:
  - a. The proposed variance will allow the establishment of a use not otherwise permitted in a district by the Ordinance;
  - b. The proposed variance will extend in area or expand a non-conforming use of land;
  - c. The proposed variance will change the district boundaries shown on the zoning map;
  - d. The proposed variance will impair any adequate supply of light and air to adjacent property;
  - e. The proposed variance will materially increase the public danger of fire;
  - f. The proposed variance will materially diminish or impair established property values within the surrounding area;  
**OR**
  - g. The proposed variance will impair the public health, safety, morals, and general welfare [\*the proposed variance will create a nuisance or violate any laws; the harm to the neighbors from granting the variance will outweigh the harm to the applicant from denying the variance].

**OR**

2. Special circumstances attach to the property that generally apply to other properties affected by the Ordinance provision at issue;

BECAUSE . . . \_\_\_\_\_  
**(Identify the evidence that supports this factor.)**

**OR**

3. Due to these special circumstances (noted in number 2 above), a literal enforcement of the terms of the Ordinance will not result in undue hardship to the applicant. An undue hardship will not result BECAUSE:

- a. There can be reasonable use of the property without a variance.

BECAUSE . . . \_\_\_\_\_  
**(Identify the evidence that supports this factor.)**

- b. The hardship is self-created.

BECAUSE . . . \_\_\_\_\_  
**(Identify the evidence that supports this factor.)**

Approval of Request  
for a  
Special Use Permit



## APPROVAL OF REQUEST FOR A SPECIAL USE PERMIT

\*You must find **all four of the listed factors exist** to grant the special use permit.

“Based on the evidence presented, I move to **GRANT** the request and specifically find that:

1. The use or development is located, designed and proposed to be operated so as to maintain or promote the public health, safety and general welfare BECAUSE . . . \_\_\_\_\_  
\_\_\_\_\_. **(Identify the evidence that supports this factor.)**
  
2. The use or development complies with all required regulations and standards of this ordinance and with all other applicable regulations BECAUSE . . . \_\_\_\_\_  
\_\_\_\_\_. **(Identify the evidence that supports this factor.)**

**(The applicant must only show that competent, material, and substantial evidence exists to support either 3a or 3b.)**

- 3a. The use or development is located, designed and proposed to be operated so as to maintain or enhance the value of contiguous property BECAUSE . . . \_\_\_\_\_  
\_\_\_\_\_. **(Identify the evidence that supports this factor.)**

**OR**

- 3b. The use or development is a public necessity BECAUSE . . . \_\_\_\_\_  
\_\_\_\_\_. **(Identify the evidence that supports this factor.)**

**AND**

4. The use or development conforms to the general plans for the land use and development of Rockingham County as embodied in the zoning ordinance and in the Rockingham County Development Guide BECAUSE . . . \_\_\_\_\_  
\_\_\_\_\_. **(Identify the evidence that supports this factor.)**

**IN ADDITION**, I recommend that the conditions recommended by the Planning Staff be placed on the Special Use Permit.”



## APPROVAL OF REQUEST FOR A SPECIAL USE PERMIT

\*You must find all four of the listed factors exist to grant the special use permit.

“Based on the evidence presented, I move to **GRANT** the request and specifically find that:

1. The use or development is located, designed and proposed to be operated so as to maintain or promote the public health, safety and general welfare BECAUSE . . . \_\_\_\_\_

\_\_\_\_\_. (Identify the evidence that supports this factor.)

- a. The applicant has agreed to move the driveway location 20 feet south of the curve to make cars exiting the driveway more visible to traffic.
- b. The applicant will not store any tires outside to prevent mosquito problems.
- c. The applicant will put up a fence to keep the children at the daycare away from the road.
- d. The proposed telecommunications tower will not make any noise or pollution.
- e. The proposed nursing home will add 10 jobs, paying \$10 per hour on average.
- f. The proposed industry will only operate from 8 a.m. to 5 p.m. Monday through Friday and will not generate any noise or traffic at other times.
- g. The applicant agrees to require all trucks leaving the facility to be covered to prevent dust and debris from flying out of the trucks.
- h. The proposed development will turn an empty/overgrown lot into a well-maintained lot. The police officer testified that this change to the lot may help reduce crime in the area.
- i. The traffic impact analysis shows the proposed traffic light and new turn lane will maintain a safe intersection even with an increase in traffic due to the development.
- j. The proposed use of the property as a fire station will promote the public safety because it will decrease response time to fire calls in the area.

2. The use or development complies with all required regulations and standards of this ordinance and with all other applicable regulations BECAUSE . . . \_\_\_\_\_  
\_\_\_\_\_. **(Identify the evidence that supports this factor.)**

- a. The use complies with the purpose of the Residential Agricultural District because it will be a very low density residential use.
- b. The applicant has provided all of the materials required for a special use permit for a junkyard and has agreed to obtain an erosion control permit and to comply with the conditions set forth by the Planning Staff.
- c. The use complies with the purpose of this watershed district which is to protect the creek from contamination. The applicant has agreed to move the proposed building 30 feet further away from the creek to protect the creek from contamination.

**(The applicant must only show that competent, material, and substantial evidence exists to support either 3a or 3b.)**

3a. The use or development is located, designed and proposed to be operated so as to maintain or enhance the value of contiguous property BECAUSE . . . \_\_\_\_\_  
\_\_\_\_\_. **(Identify the evidence that supports this factor.)**

- a. The applicant has testified that he will keep the property and buffer well maintained to maintain the value of adjoining property.
- b. The value of the proposed mobile home and lot will be about equal to the value of the contiguous properties and will not negatively impact the value of these contiguous properties.
- c. The real estate expert testified that the proposed development will enhance the value of contiguous properties. This evidence is also competent, material, and substantial evidence as opposed to the speculation and general fears of decreased property values presented by Mr. X.

- d. The proposed building is designed to blend in with neighboring businesses and the continuity in architectural styles will maintain the value of adjoining properties.
- e. The proposed home office will cause no visible change to the current home and the business hours will be only on weekdays from 1-4 and will therefore have very limited impact on the value of the contiguous residential properties.

**OR**

**3b.** The use or development is a public necessity BECAUSE . . . \_\_\_\_\_  
\_\_\_\_\_. **(Identify the evidence that supports this factor.)**

- a. The community needs a landfill, the county's environmental engineering director testified and presented documents to show that the current landfill is almost full.
- b. The community needs a waste-water treatment facility, the county's environmental engineering director testified and presented documents to show that the existing infrastructure is not meeting the demand.
- c. The public needs sources of energy as the Duke Power official testified and the proposed dam and associated turbines and equipment will provide the needed energy.



**AND**

**4.** The use or development conforms to the general plans for the land use and development of Rockingham County as embodied in the zoning ordinance and in the Rockingham County Development Guide BECAUSE . . . \_\_\_\_\_  
\_\_\_\_\_. **(Identify the evidence that supports this factor.)**

- a.** The proposed development will help preserve the county's land and water resources because only 2 small buildings are included on the site plan and the applicant testified that the telemarketing business will not utilize much water.
- b.** The proposed development is a quality, planned development in a good location for a private school because it is within walking distance of a high density subdivision and is in an area zoned for future high density residential development.

**IN ADDITION**, I recommend that the conditions recommended by the Planning Staff be placed on the Special Use Permit.

Add any other conditions that you find will promote the public health, safety, and welfare or will allow you to make one of the above findings. For example, if you find that the applicant should put lights along the front of the storage units, add or remove or move entrances and exits, add additional buffer areas to preserve the rural character of the RA district, etc.

Memo from  
Attorney  
RE: Spot Zoning

# Memo

**To:** Planning Board Members  
**From:** Clyde B. Albright  
**Re:** SPOT ZONING

---

## **I. Background**

Spot zoning occurs when a relatively small tract of land is zoned differently from the surrounding area. Spot zoning is not illegal in a conditional use context in North Carolina. However, for spot zoning to be upheld it must be clearly supported by a reasonable basis and not grant benefits to or relieve burdens from the property owner at the expense of his neighbors and the community at large.

## **II. Burden**

In adopting a spot zone, the local government must affirmatively show the reasonable public policy basis of its action. The North Carolina General Statute 153A-341 requires that zoning regulations be made in accordance with a comprehensive plan. A rezoning decision on a small parcel that does not consider the effects of the rezoning within the larger community context violates this statutory mandate. Thus, the public hearing record should reflect consideration of the factors below for differential zoning treatment of the property involved.

## **III. Legal test**

The courts consider these four factors particularly important in determining whether there is a reasonable basis for spot zoning.



**1. Consider the size of the tract in question.** The tract to be rezoned should be considered in relation to the vast majority of the land immediately around it.

**2. Consider the compatibility of the disputed zoning action with an existing comprehensive zoning plan.** The rezoning should fit into a larger context involving rational planning for the community and promote the most appropriate use of the land.

**3. Consider the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors, and the surrounding community.** Review and weigh the balance of the harm and benefit to the owner, neighbors, and community at large from the rezoning. Even a substantial benefit for the owner will not offset substantial harm to others.

**4. Consider the relationship between the uses envisioned under the new zoning and the uses currently present on the adjacent tracts.** The greater the disparity in uses, the more likely the rezoning is to be held illegal.

#### **IV. Site specific considerations**

1. Does the property have different physical characteristics that make it especially suitable for the proposed zoning, such as peculiar topography or unique access to roads or utilities?
2. Are there land uses on or in proximity to the site that are different from the uses on most of the surrounding sites?
3. Would the proposed use be in harmony with the legitimate expectations of the neighbors?
4. Will the character of the existing neighborhood be greatly harmed as a result of the rezoning?
5. Does the spot zoning provide a service needed by the community? The benefits to the community must be real and substantial and not merely convenient.

6. Is there a reason to single out this small tract for differential zoning treatment?

## **V. Case law**

The rezoning of an individual lot from a single-family and multifamily residential district to a business district was upheld. The majority of the property directly across the street as already zoned for business use, and the court concluded that given the prevalence of business zoning in the immediate vicinity of this lot, there was some plausible basis for the rezoning. *Nelson v. City of Burlington*, 80 N.C. App. 285, 288, 341 S.E.2d 739, 741 (1986).

A rezoning of 17.6 acres from residential-agricultural to industrial was held to be impermissible spot zoning because it was four to five miles from the nearest industrial zone with all of the intervening property being in residential districts. *Budd v. Davie County*, 116 N.C. App. 168, 447 S.E.2d 449 (1994), *review denied*, 338 N.C. 524, 453 S.E.2d 174 (1995).

A rezoning of a 17.45-acre tract was ruled to be impermissible spot zoning. The rural tract was zoned for single-family residential use, as was all the surrounding property, and the rezoning was to an industrial district. *Godfrey v. Union County Board of Commissioners*, 61 N.C. App. 100, 300 S.E.2d 273 (1983).

The rezoning of a 14.2-acre tract from a residential-agricultural district to a mobile home park, when the surrounding 500 acres were residentially zoned, was impermissible spot zoning. The court held this to be impermissible spot zoning even though an adjacent sixteen-acre tract owned by the same person had been rezoned to a mobile home park eleven years earlier. *Alderman v. Chatham County*, 89 N.C.App. 610, 366 S.E.2d 885, *review denied*, 323 N.C. 171, 373 S.E.2d 103 (1988).