

HILLSBOROUGH BOARD OF ADJUSTMENT PROCESS OVERVIEW

The Board of Adjustment (BOA) reviews applications for Conditional Use Permits, Special Exception Permits, and Variances. The Board also hears appeals from decisions of planning staff, the Historic District Commission, the Technical Review Committee, and the Minimum Housing Code Inspector. This document is intended to help explain the process and the responsibilities of different stakeholders. The regulations and guidelines regarding BOA actions and decisions can be reviewed in full in the Zoning Ordinance.

Role of the BOA

The BOA is considered a quasi-judicial board, as their decisions involve the finding of facts regarding the specific proposal and the exercise of judgment and discretion in applying predetermined policies to a particular case. Quasi-judicial decisions do not involve setting new policies. The BOA evaluates applications by the Findings of Fact listed in the Zoning Ordinance. The Findings are discussed further below.

Public Hearings (Sec. 4.4.7)

Public hearings are held on individual applications at regularly scheduled BOA meetings. The public is welcome to come to public hearings, and is given the opportunity to present evidence and arguments for or against the application, and to ask questions on the presentation of the evidence and arguments. All persons who intend to present evidence at the public hearing shall be sworn in.

Notification (Sec. 4.4.7)

A public hearing for Conditional Use Permits, variances, and Special Exception Permits is advertised in the following ways:

- A public hearing notice is run once a week for two consecutive weeks in the News of Orange, at least 10 days but less than 25 days before the date of the hearing.
- For Conditional Use Permits and variance requests, all adjacent property owners within 500 feet of the property in question are mailed a notice at least ten days before the date of the hearing.
- For Special Exception Permits, notices are mailed to all adjacent property owners within 100 feet of the property.
- For appeals, notices are mailed only to the appellant and any potential aggrieved parties. No newspaper notice is required.

Roles of the Public (Sec. 4.4.7)

Applicant: The applicant has a responsibility to:

- Present evidence that the proposed development will conform to all applicable provisions in the Zoning Ordinance.
- If contrary evidence is submitted, it is the applicant's responsibility to overcome that evidence with further evidence of their own.

Persons Opposed: Members of the public that are opposed to the development have the responsibility of:

- Presenting evidence contrary to the applicant's evidence, or
- Presenting evidence that the proposed development will not meet any of the general standards outlined in Section 4.3 (below).

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

Evidence

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

- Persons who have special knowledge based on experience or training are considered **expert witnesses**. They can testify about their opinions, which must be based upon their area of expertise.
- Members of the public, such as adjoining property owners, are considered **layperson witnesses**, and generally cannot present their opinions as evidence because they may lack professional training and expertise on the topic at hand. Laypersons *can* give fact-based testimony about matters within their personal knowledge.
- If a member of the public does not have expertise in the area of concern, but wishes to provide evidence for or against the application, they are advised to find an expert witness who can come to the public hearing and provide a credible opinion.
 - Evidence submitted from a credible source, such as a letter from a real estate appraiser concerning their expert opinion on the effect of a development on nearby property values, may be taken into consideration by the Board, but it will not hold as much weight as the same information presented to the Board in person, where the ability to cross examine is available.
- 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; otherwise the statement is considered hearsay evidence.

General Standards and Findings of Fact

The below standards are the general criteria by which an application is evaluated. In addition to these general standards, each application type also has more specific criteria by which it is evaluated, which can be found in the appropriate sections in the Zoning Ordinance.

The BOA shall not approve a development application unless it finds:

- a) The use will not materially endanger the public health and safety, if located where proposed and developed and operated according to the plan as submitted.
- b) The use complies with all applicable regulations and standards.
- c) The use will not substantially injure the value of contiguous property, or the use is a public necessity.
- d) The use is in compliance with the general plans for the physical development of the Town as embodied in these regulations or in the Comprehensive Plan, or portion thereof, adopted by the Town Board of Commissioners.

Appeals of Decisions of the Board of Adjustment:

- Must be taken within 30 days of the filing by the Secretary of the Board of the decision in the office of the Zoning Officer or within 30 days of the delivery by the Zoning Officer of mailed notice of the decision.
- Appeals are to the Orange County Superior Court and are filed in the nature of certiorari. This means that the court will review the record of the case and determine if the Board made their decisions properly and in accordance with BOA adopted rules of procedure.

Note: The purpose of this overview is to give the public a general idea of the Board of Adjustment process. The Town Zoning Ordinance and/or Town Planning staff should be consulted with specific questions regarding Board requirements and functions.