

EXPLANATION OF ISSUE, STANDARDS, AND PROCEDURES  
FOR QUASI-JUDICIAL HEARINGS ON SPECIAL USE PERMITS

This paper is a short explanation of how the Board of Adjustment (the "Board") handles quasi-judicial hearings on special use permit applications. The Unified Development Ordinance (the "UDO") states: "Special uses are those uses that are potentially incompatible with the other uses permitted in a zoning district and, therefore, require, special, individual review of their location, design, configuration, intensity, and density of use or structures. To ensure land use compatibility, conditions of approval may be imposed that are pertinent to the particular use at a particular location."

The decision before the Board when reviewing a special use permit is whether to approve, approve with conditions, or deny the special use permit. In deciding whether to approve, approve with conditions, or deny special use permit applications, the Board must determine the relevant facts and apply the UDO's special use permit standards to the facts to determine whether the standards are met.

The UDO states that to approve an application for a special use permit, the Board shall find that:

- 1) *Compatibility*. The proposed special use shall be appropriate for its proposed location and compatible with the character of surrounding land uses.
- 2) *Zoning district supplemental standards*. The proposed special use shall comply with Sec. 4.4, Supplemental Standards.
- 3) *Design avoids significant adverse impacts, avoids being a nuisance, and minimizes adverse impact*. The proposed special use shall not have a significant adverse impact on surrounding lands (including but not limited to) regarding trash, traffic service delivery, parking and loading, odors, noise, glare, visual impact, and vibration. The proposed special use shall not create a nuisance. The proposed special use shall be designed to minimize adverse effects of the proposed use on adjacent lands.
- 4) *Design minimizes environmental impact*. The proposed special use shall minimize environmental impacts and shall not cause significant deterioration of water and air resources, wildlife habitat, and other natural resources.
- 5) *Impact on public facilities*. The proposed special use shall not have a significant adverse impact on public facilities and services, including roads, potable water and wastewater facilities, parks, police, fire, and EMS facilities.
- 6) *Standards of this Ordinance*. The proposed special use shall comply with all standards imposed on it by all other applicable provisions of this Ordinance for use, layout, and general development characteristics.

The burden of proof is on the Applicant to prove facts that show the above eight standards are met.

State law and the UDO require the Board to conduct a quasi-judicial hearing on the question of whether to approve, approve with conditions, or deny, a special use permit.

Quasi-judicial hearings have characteristics similar to court proceedings. Quasi-judicial decisions must be based only on the evidence presented at the hearing. The Board Members must be impartial decision makers and must disclose conflicts of interest, site visits, and ex parte communications about pending cases. Witnesses must testify under oath or affirmation. The parties have the right to cross examine the witnesses. There is a right to present rebuttal evidence. The evidence provided by witnesses must be competent and relevant to the issues before the Board.

A witness may not give an opinion about scientific, technical, or other specialized subjects unless the witness, by knowledge, skill, experience, training or education, has expertise on the subject. A person wanting to give an opinion on a subject requiring expertise must first state his or her qualifications for having expertise on the subject. The limitations on expert testimony do not prohibit anyone from testifying about what he or she personally knows or has observed.

Hearsay evidence is testimony by a person present at a hearing trying to prove something is true by telling what someone else said about it. Hearsay evidence is not competent evidence unless the witness shows that the evidence appears to be sufficiently trustworthy and the circumstances show that it is reasonable for the Board to rely on the evidence. The law makes certain exceptions to the rule against hearsay evidence. For example, evidence of what an interested party has previously said or admitted about a relevant subject may be presented against the interested party.

Upon proper authentication, things such as documents, maps, and other exhibits may be used to prove relevant facts. How to authenticate a document or exhibit depends on the nature of the item and includes such things as explaining what it is and who signed or created it, and, if applicable, showing that it is accurate. The hearsay rule may prevent the presentation of some documents. For example, a witness is generally not allowed to present a letter authored by another person as a substitute for the author's being present at the hearing to testify to the facts the author asserts in the letter. Exhibits may be presented with less authentication if they are used merely to illustrate a witness's testimony, and not as independent proof of anything. Please keep in mind that before a witness describes or presents a document or exhibit to the Board, the witness should let the opposing party and the Board Secretary have a copy of it.