



Town of Clayton
Board of Adjustment Agenda
Wednesday, January 15, 2025 at 6:00 PM
Council Chambers, Town Hall, 111 E. Second Street

THE BOARD OF ADJUSTMENT MEETING WILL BE HELD IN PERSON.

ANY MEMBER OF THE PUBLIC IS INVITED TO THE ATTEND THE MEETING.

THE PUBLIC MAY VIEW THE LIVE MEETING ON THE TOWN'S YOU TUBE CHANNEL:

<https://www.youtube.com/TownofClaytonNC>

1. CALL TO ORDER

- a. Roll Call for the Board of Adjustment
Presenter: Conrad Olmedo, Planning Director

2. SWEARING IN OF NEW MEMBERS

- a. Swearing in of new Board Members
Presenter: Heidi Holland, Town Clerk

3. APPROVAL OF MINUTES

- a. No Board of Adjustment Meetings to be Approved.

4. EVIDENTIARY HEARINGS

- a. No Evidentiary Hearings to be heard.

5. OLD BUSINESS

- a. No Old Business to be heard.

6. NEW BUSINESS

- a. Board of Adjustment Training Session
Presenter: Chad Meadows, CodeWright Planners
[Clayton BOA Training Session 1-28-25](#)

7. ADJOURNMENT



Board of Adjustment

Training Session

1.15.25



OVERVIEW

01

**NC General
Statutes**

02

**BOA & the
UDO**

03

**Quasi-Judicial
Process**

04

**BOA Best
Practices**

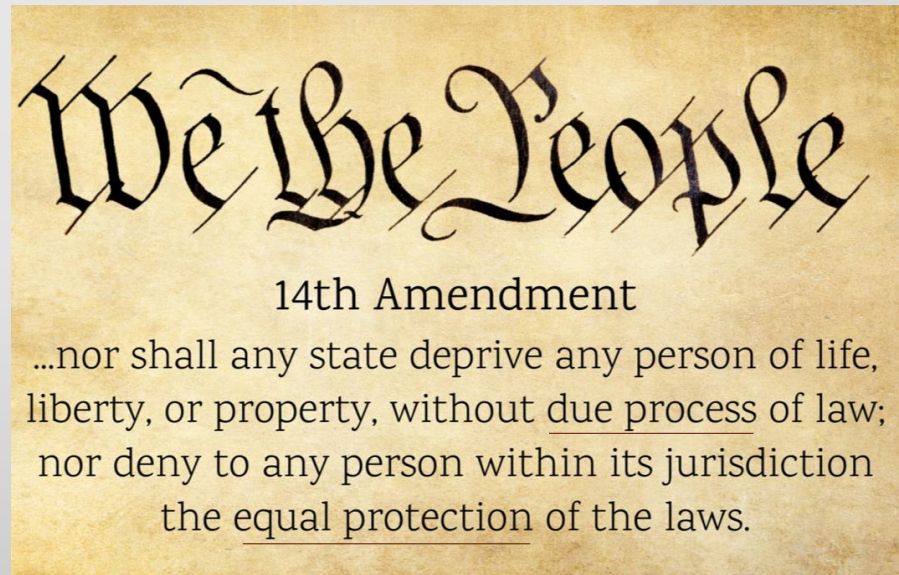
05

Hypotheticals



NC GENERAL STATUTES

- The General Statutes (NCGS) create the authority (enabling legislation) for towns to control land use
- The NCGS recognizes the need for **due process** and **equal protection** under the law
- The BOA is one of the cross checks built into the land use regulatory system to protect due process and ensure equal protection



NC GENERAL STATUTES & THE BOA

<https://www.ncleg.gov/Laws/GeneralStatuteSections/Chapter160D>

- 160D-302 Boards of Adjustment
- 160D-405 Appeals of Administrative Decisions
- 160D-406 Quasi-judicial Procedure
- 160D-705 Quasi-judicial Zoning Decisions

The screenshot shows a web browser window with the URL <https://www.ncleg.gov/Laws/GeneralStatuteSections/Chapter160D>. The page header reads "NORTH CAROLINA GENERAL ASSEMBLY". The breadcrumb trail is "Home / Bills & Laws / General Statutes / Table of Contents / Chapter 160D". The main heading is "CHAPTER 160D - LOCAL PLANNING AND DEVELOPMENT REGULATION." Below this, it states "The General Statutes include changes through SL 2023-151." and "General Statutes published on this website are not official. Please read the [caveats](#) for more information." There are links for "Search" and "Citation Lookup". Under "Chapter 160D", there are links for "Chapter HTML" and "Chapter PDF". A table lists the following sections:

	Chapter HTML	Chapter PDF
Article 1 - General Provisions.		
	G.S. 160D-101	§ 160D-101. Application.
	G.S. 160D-102	§ 160D-102. Definitions. Modified by: SL 2023-108 (H488)
	G.S. 160D-103	§ 160D-103. Unified development ordinance.

OVERVIEW

01

NC General
Statutes

02

BOA & the
UDO

03

Quasi-Judicial
Process

04

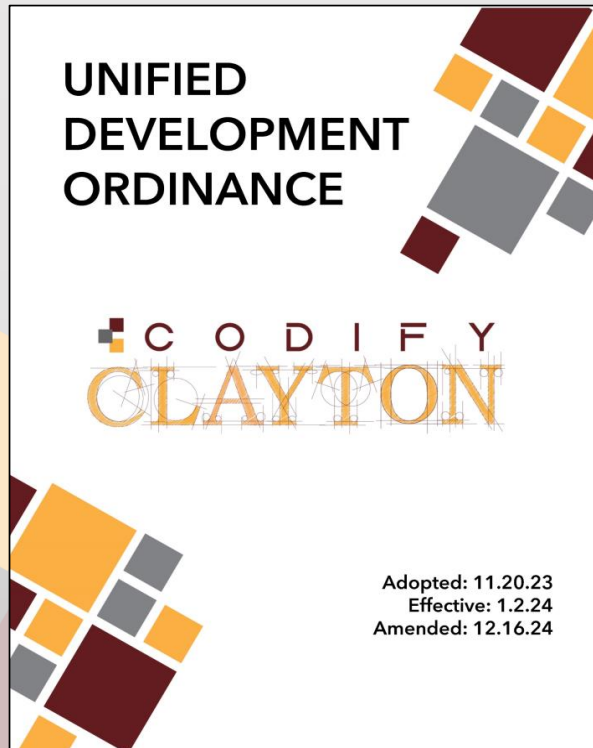
BOA Best
Practices

05

Hypotheticals



UNIFIED DEVELOPMENT ORDINANCE & THE BOA



- § 1.8.5 Board of Adjustment
- § 2.3.2 Appeals
(of Administrative Decisions)
- § 2.3.22 Special Use Permits
- § 2.3.29 Variance

UDO § 1.8.5 BOARD OF ADJUSTMENT

- Membership (5 + 2 alt.)
- Quorum (= 3)
- Power & Duties (BOA role)
- Voting (simple majority except for variances, then supermajority)
- Conflict of Interest (must be impartial)

IMPARTIAL means:

- ✓ No fixed opinions prior to hearing
- ✓ Disclose any ex-parte communication
- ✓ No business/familial association with applicant
- ✓ No financial interest in outcome

Chapter 2 Applications

Section 2.2 Application Summary Tables
Sub-section 2.2.1 Development Applications

G. Numbers in brackets signify table notes, which are found at the bottom of the table (the table bottom may be on a subsequent page).

TABLE 2.2.1: APPLICATION TYPES TABLE											
Process Type: see Section 2.2.3, Process Diagrams Pre-Application Conference: M = Mandatory; O = Optional; N/A = Not Applicable Type of Action: C = Comment; R = Recommendation; D = Decision; A = Appeal Type of Public Hearing: () = Legislative; = Evidentiary [#] = Table Note (see end of table)											
APPLICATION TYPE	UDO SECTION	PROCESS TYPE	PRE-APP. CONF.	TECH. REVIEW COMMITTEE	TOWN STAFF [1]			PLANNING BOARD	TOWN COUNCIL	BOARD OF ADJUSTMENT	SUPERIOR COURT
					INSPECTIONS DIRECTOR	ENGINEERING DIRECTOR	PLANNING DIRECTOR				
Administrative Adjustment	2.3.1	II	O	C	•	•	D	•	•	A	•
Appeal	2.3.2	III	O	•	•	•	•	•	•	D	A
Annexation	2.3.3	IV	O	C	•	•	R	•	(D)	•	A
Building Permit [2]	2.3.4	I	N/A	•	D	•	•	•	•	•	•
Certificate of Occupancy [2]	2.3.5	I	N/A	•	D	•	•	•	•	•	•
Conditional Rezoning [3]	2.3.6	IV	M	•	•	•	•	R	(D)	•	A
Conservation Subdivision [4]	2.3.7	II	M	C	•	•	D	•	•	A	•
Conventional Rezoning	2.3.8	IV	M	C	•	•	•	R	(D)	•	A
Determination [5] AMENDED 9.16.24 (UDOTA2-24)	2.3.9	I	O	•	D	D	D	•	•	A	•
Development Agreement	2.3.10	IV	O	C	•	C	C	•	(D)	•	A
Driveway Permit	2.3.11	I	O	•	•	D	•	•	•	A	•
Exempt Subdivision	2.3.12	I	N/A	•	•	•	D	•	•	A	•
Fee-in-Lieu [6]	2.3.13	II	O	C	•	D	D	•	•	A	•
Floodplain Permit	2.3.14	I	O	•	•	D	•	•	•	A	•



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Land Disturbance Permit AMENDED 9.16.24 (UDOTA2-24)	2.3.15	I	O	•	•	D	•	•	•	A	•
Limited Subdivision	2.3.16	I	O	•	•	•	D	•	•	A	•
Major Subdivision	2.3.17	II	M	C	•	•	D	•	•	A	•
Minor Subdivision	2.3.18	II	O	C	•	•	D	•	•	A	•
Performance Guarantee [7]	2.3.19	II	O	C	•	D	D	•	D	A	A
Sign Permit [8]	2.3.20	I	O	•	•	•	D	•	•	A	•
Site Plan [9]	2.3.21	II	M	C	•	•	D	•	•	A	•
Special Use Permit [10]	2.3.22	III	M	•	•	•	•	•	•	D	A
Stormwater Permit	2.3.23	I	O	•	•	D	•	•	•	A	•
Street Renaming/Closure	2.3.24	IV	M	C	•	•	•	R	(D)	•	A
Temporary Permit	2.3.25	II	O	C	•	C	D	•	•	A	•
Text Amendment	2.3.26	IV	O	C	•	•	C	R	(D)	•	A
Transportation Impact Analysis	2.3.27	I	M	•	•	D	C	•	•	A	•
Tree Clearing Certificate	2.3.28	II	O	C	•	•	D	•	•	A	•
Variance [11]	2.3.29	III	M	•	•	•	•	•	•	D	A
Vested Rights Certificate	2.3.30	III	O	•	•	•	R	•	(D)	•	A



§ 2.3.2 APPEALS (OF ADMINISTRATIVE DECISIONS)

- BOA hears appeals of staff decisions; decisions of the Town Council are heard by Superior Court for Johnston County
- BOA sits as a “judge” to determine if the Town’s staff made 1 of 2 different mistakes:
 - Erred in interpretation of the UDO or
 - Erred in determining if a standard of the UDO was met
- BOA can reverse, affirm, or modify the Town staff member’s action
- The BOA has the same powers as the Town staff member who took the action being appealed - they can approve or deny permits, etc.



§ 2.3.22 SPECIAL USE PERMIT

- Certain uses, while allowed in the zoning district where proposed (§ 4.2.5), require special scrutiny based on potential negative impacts on their surroundings
- The BOA is charged with applying this special scrutiny to ensure that any potential negative impacts are mitigated
- Requires a Neighborhood Meeting to be conducted (§2.4.4)
- Requires a Concept Plan review by the TRC prior to consideration
- Decision to be based on the 6 review standards (§ 2.3.22.F)
- May apply conditions of approval to help ensure compliance with the review standards



§ 2.3.29 VARIANCE

- A strict application of the UDO standards creates an undue and unique hardship for a landowner, and the landowner seeks relief
- Four different kinds of Variance applications:
Zoning/Subdivision, Flood hazard overlay, Stormwater, Water Supply Watershed
- The BOA decides if a hardship exists, and whether or not relief from the hardship is in the public interest
- Requires a Neighborhood Meeting to be conducted (§2.4.4)
- (BOA must make 4 findings of fact to grant a variance (§2.3.29.G)
There are other special standards for floodplain, stormwater, & WSW Variances
- Also hear Reasonable Accommodations to uphold the U.S. Fair Housing Act of 1968
- May apply conditions of approval to help ensure compliance with the review standards



OVERVIEW

01

NC General
Statutes

02

BOA & the
UDO

03

Quasi-Judicial
Process

04

BOA Best
Practices

05

Hypotheticals



QJ PROCESS - KEY ELEMENTS

Quasi-Judicial decision-making involves two key elements:

1. The **finding of facts** regarding the specific proposal
2. The exercise of **judgment and discretion** in applying standards to unique situations

QJ PROCESS - EVIDENTIARY HEARING

1. Public notice
2. Staff report/ materials delivered
3. Hearing opened
4. Presentation by staff
5. Applicant presentation & evidence
6. Opposition speaks
7. Cross-examination by applicant
8. Hearing is closed
9. Staff recommendation
10. Deliberation
11. Decision
12. Order

QJ PROCESS - STANDING

- Standing is the legal right to provide testimony or evidence and participate in a quasi-judicial hearing
- Who has standing?
 - The applicant
 - The landowner, lessee, or contract purchaser
 - Any person who will suffer special damages as a result of the decision
 - Any association (provided it was not created in response to the application being considered)



QJ PROCESS - BURDEN OF PROOF

- The applicant has the burden of proof for producing sufficient evidence for the BOA to approve the request
- If insufficient evidence is presented, the application must be denied (though the case may be continued to allow the applicant to prepare additional evidence)
- Once sufficient evidence has been presented and accepted, the applicant is entitled to approval
- If there is conflicting evidence presented, the BOA must determine which facts it believes correct

QJ PROCESS - EVIDENCE

To make a legally defensible decision, the BOA must rely solely on:

SUBSTANTIAL, MATERIAL, and COMPETENT EVIDENCE

1. **Substantial** evidence: the amount of evidence provided is the minimum necessary to reach a decision
2. **Material** evidence: the evidence is relevant, or logically connected to facts in the case
3. **Competent** evidence: evidence that a reasonable mind would accept as adequate to support a conclusion

QJ PROCESS - HEARSAY

- A person needs to be present at a hearing to present testimony
- Use of letters or proxy statements typically not accepted as evidence
- Courts do allow a special class of hearsay - technical reports and analyses from governmental officials
- Having in-person testimony permits cross examination and an evaluation of credibility
- Hearsay may be allowed as testimony, if it is offered without rejection (suggest avoiding this)



QJ PROCESS - EXPERT TESTIMONY

- Expert witness testimony has more credibility than lay person testimony
- Opinion evidence should only be offered and accepted by a properly qualified expert witness
- Anyone claiming to be an expert witness must present their credentials for analysis and approval by the Chair
- Expert witness testimony is **required** for providing evidence about impacts on property values and traffic/safety impact

QJ PROCESS - DELIBERATING

Step 1: Determine the facts of the case

Step 2: Apply the standards to the facts

Step 3: Reach a decision only via step 2

Ask yourself:

- Has the applicant met their burden of proof?
- Do the facts you have support your conclusion or are you reaching to make a conclusion?



QJ PROCESS – CONDITIONS OF APPROVAL

These may be applied to address perceived impacts from the proposed development

Conditions must be:

- Proportional and reasonably related to the impacts
- Measurable and trackable
- In writing, and agreed to in writing by the applicant before the decision is made
- In compliance with federal law
- In compliance with §2.4.10



OVERVIEW

01

NC General
Statutes

02

BOA & the
UDO

03

Quasi-Judicial
Process

04

BOA Best
Practices

05

Hypotheticals



BOA BEST PRACTICES 1

1. Have a written summary of the quasi-judicial proceedings available for public inspection present at each hearing
2. Consider using a pre-printed meeting introduction to be read out by the Chair before each regular meeting
3. Select a designated alternate to be seated first
4. Ensure at least one alternate from the ETJ, where possible
5. Call the seating for each case before the case starts



BOA BEST PRACTICES 2

6. Read out the applicable review criteria for each case before the staff report
7. The staff report should not include a recommendation for appeal or variance cases
8. Discuss each finding or criterion, in order, during deliberation
9. Consider using a round robin approach to deliberation discussion
10. When applying conditions, ask the applicant if they accept the conditions before the final vote

BOA BEST PRACTICES 3

- 11.** Keep a form ready for staff to use to collect the signature of acceptance of conditions of approval by the applicant
- 12.** Motions should be always be in the positive - "I make a motion we approve..." members who do not support the motion may vote no during role call
- 13.** Case votes should always be roll call votes
- 14.** Review your Rules of Procedure at least once per year
- 15.** Training on hypothetical scenarios is a good idea



OVERVIEW

01

**NC General
Statutes**

02

**BOA & the
UDO**

03

**Quasi-Judicial
Process**

04

**BOA Best
Practices**

05

Hypotheticals



HYPOTHETICAL VARIANCES

- Reconstruction of a nonconforming secondary structure as part of conversion into a new detached ADU
- Request to not provide an otherwise required greenway connection
- Encroachment into a required riparian buffer zone
- Reasonable accommodation for a group home not meeting minimum separation requirements

HYPOTHETICAL APPEALS

- Appeal of a Notice of Violation for conducting on-site retail sales activity
- Appeal of a staff decision to permit a submittal of a "new" application following a prior denial
- Appeal of a Site Plan denial



HYPOTHETICAL USE PERMITS

- **Veterinary Hospital (with animal boarding)**
- **100-foot-tall Stealth Telecommunications Facility in the RUR District**
- **Chicken restaurant with a drive-through in the MXD district**

QUESTIONS / FOLLOW-UP?



Butner, NC • BOA Training Session • 6.13.24