



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

Board Members Present:

Joseph Warta
Rebecca Berry
Jim Perricone
Marty Bizzell
Karen Spicer

Staff Present:

Conrad Olmedo, Planning Director
Sam Johnson-Phillips, Deputy Town Clerk

Board Members Absent:

Richie Wiggins

1 CALL TO ORDER

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

Chair Bizzell called the meeting to order at 6:05 p.m. Mr. Olmedo conducted roll call.

2 SWEARING IN OF NEW MEMBERS

- a) Swearing in of new Board Members
Presenter: Sam Johnson-Phillips, Deputy Town Clerk

Ms. Johnson-Phillips swore in Board Member Ms. Karen Spicer.

3 APPROVAL OF MINUTES

- a) November 20, 2024 Board of Adjustment Minutes

Motion to Approve November 20, 2024 Minutes

RESULT:	CARRIED 5-0
MOVER:	Jim Perricone
SECONDER:	Joseph Warta
YES:	Joseph Warta, Rebecca Berry, Jim Perricone, Marty Bizzell, and Karen Spicer

NO:	None
ABSENT:	Richie Wiggins

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

Mr. Meadows provided training to the board, covering the following topics:

- NC General Statutes
- BOA & UDO
- Quasi-Judicial Process

Mr. Meadows communicated the importance of having a Board of Adjustment. It was stated under the Federal Constitution, specifically the 14th Amendment. Everyone in the United States has two fundamental rights that are relevant to the development review process, that the Board of Adjustment is responsible for protecting: due process and equal protection.

It was stated the General Statutes (NCGS) create the authority (enabling legislation) for towns to control land use. The Board of Adjustment is one of the cross checks built into the land use regulatory system to protect due process and ensure equal protection.

Mr. Meadows stated there are four main sections of the General Statutes. "160D" is the most important chapter because it relates to land use.

160D-302 Board of Adjustment:

Mr. Meadows stated 160D-302 establishes the ability of local government to have a Board of Adjustment. This allows Clayton to designate or delegate their review authority for certain kinds of applications. Board of Adjustment members are appointed not elected. It was stated the Board can act as a judge when hearing appeals.

It was shared that the following statutes outline the different methods the Board of Adjustment can use to make decisions:

- 16D-405 Appeals of Administrative Decisions
- 160D-406 Quasi-Judicial Procedure
- 160D-705 Quasi-Judicial Zoning Decisions

Mr. Meadows stated Clayton's Unified Development Ordinances (UDO) are still new. It was adopted January 2, 2024, and it is undergoing the amendment process.

§ 1.8.5 Board of Adjustment

The Board consists of five members and two alternates. It was noted that a quorum of three members is required to make a vote, and all board members must remain impartial.

Mr. Meadows gave an overview of the development review procedures outlined in the UDO. Table 2.2.1 in the UDO illustrates these procedures, the yellow section indicated the decisions made by the Board of Adjustment.

There was discussion about administrative decisions, which are appeals of those decisions. Mr. Meadows clarified, decisions made by the Board could be appealed, those appeals would be heard by the Superior Court of Johnston County.

The Board of Adjustment acts as a "judge" to determine whether the Town's staff made an error in interpreting the UDO or in deciding whether a UDO standard was met. The Board has the authority to reverse, affirm, or modify the action taken by the Town staff member. It was pointed out that the Board of Adjustment has the same powers as the Town staff member who made the decision being appealed, including the ability to approve or deny permits.

Mr. Olmedo explained the appeals process to the Board, noting when a violation is issued, the citizen has the right to appeal within a specific timeframe. He further explained that Board members would make the final decision on the appeal. Mr. Meadows added that the appeal must be filed within 30 days of receiving the notice of violation.

§ 2.3.22 Special Use Permit

It was mentioned some uses, although permitted in the zoning district where they are proposed (§4.2.5), require additional scrutiny due to their potential negative impact on the surrounding area. The Board of Adjustment would be responsible for applying this extra scrutiny to ensure that any adverse effects are addressed. Special Use Permits require a neighborhood meeting (§2.4.4) and a concept plan review by the TRC before being considered. Decisions must be based on the six review standards (§2.3.22.F).

§ 2.3.29 Variance

This is a strict application of the UDO standards that would create an undue and unique hardship for a landowner, and the landowner would seek relief. Mr.

Meadows mentioned and discussed four different kinds of Variance applications:

- Zoning/Subdivision
- Flood Hazard Overlay
- Stormwater
- Water Supply Watershed

The Board of Adjustment is responsible for determining whether a hardship exists and if granting relief from that hardship serves the public interest. A Variance would require a neighborhood meeting to be held (§2.4.4). To approve a Variance, the Board must make four findings of fact (§2.3.29.G). There are additional standards for floodplains, stormwater, and water supply watersheds. Mr. Meadows noted when certain state agencies are involved, particularly regarding water supply watersheds. The Environmental Management Commission (EMC) would handle decisions on major water supply watershed variances, but the Board of Adjustment would still be required to review and make decisions on those cases. Once the Board decides, the record would be sent to the Environmental Management Commission (EMC) for a final determination. Additionally, it was mentioned that the Board of Adjustment can also hear cases related to reasonable accommodations in accordance with the U.S. Fair Housing Act of 1968.

Quasi-Judicial Process - Key Elements

Mr. Meadows stated Quasi-Judicial decision-making involves two key elements:

- The findings of facts regarding the specific proposal.
- The exercise of judgement and discretion in applying standards to unique situations.

Quasi-Judicial Process - Evidentiary Hearing

Mr. Meadows presented the process used for an Evidentiary Hearing:

- Public notice (done by the staff)
- Staff report/materials delivered (the materials are delivered to anyone that has requested it. Generally, there are no statutory time frames associated)
- Hearing opened (anyone that provides testimony must be sworn in first)
- Presentation by staff
- Applicant presentation & evidence
- Opposition speaks
- Cross examination by applicant
- Hearing closed
- Staff recommendation
- Deliberation
- Decision
- Order

Quasi-Judicial Process - Standing

It was stated, standing is the legal right to provide testimony or evidence and participate in a Quasi-Judicial hearing. The statute states the following have standing:

- The applicant
- The landowner, lessee, or contract purchaser
- Any person who suffered special damages because of the decision
- Any association (provided it was not created in response to the application being considered)

Quasi-Judicial Process - Hearsay

Mr. Meadows stated, a person needs to be present at a hearing to present testimony.

Quasi-Judicial Process - Expert Testimony

It was reported that an expert witness testimony has more credibility than a lay person's testimony. Opinion evidence should only be offered and accepted by a properly qualified expert witness. It was stated that anyone claiming to be an expert witness must present their credentials for analysis and be approved by the Chair. An expert witness testimony is required for providing evidence about the impacts on property values and traffic/safety impact.

Quasi-Judicial Process - Deliberating

It was communicated to the Board when deliberating the facts of the case; apply the standards to the facts and reach a decision. When deliberating, make sure the applicant met their burden of proof and make sure the facts support the conclusion.

Quasi-Judicial Process - Conditions Of Approval

In conclusion, Mr. Meadows provided highlights of the conditions. The 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

Chair Bizzell thanked Mr. Meadows for the training.

Mr. Olmedo expressed his gratitude to Chair Bizzell and the board for their participation in the training. He mentioned that a Vice Chair will need to be elected at the March meeting. It was noted, to date, there are no cases

scheduled to be heard in February. Mr. Olmedo also stated that he would arrange a time with Mr. Meadows to return and continue the training.

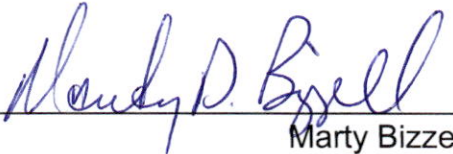
7 ADJOURNMENT

a)

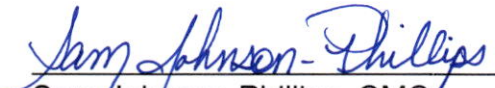
With nothing further Chair Bizzell adjourned the meeting at 8:05 p.m.

RESULT:	CARRIED 5-0
MOVER:	Rebecca Berry
SECONDER:	Joseph Warta
YES:	Joseph Warta, Rebecca Berry, Jim Perricone, Marty Bizzell, and Karen Spicer
NO:	None
ABSENT:	Richie Wiggins

Duly adopted this 19th day of March 2025.


Marty Bizzell
Board Chair

ATTEST:


Sam Johnson-Phillips, CMC
Deputy Town Clerk

