



ORANGE COUNTY BOARD OF ADJUSTMENT

APPEAL APPLICATION FORM

The Orange County Board of Adjustment with a majority vote, may overturn or modify an interpretation of an Administrative Official for the Orange County Planning Department concerning the enforcement and/or the interpretation of a specific provision of the Unified Development Ordinance (UDO). Under the State-enabling act, the review of an interpretation by the Board of Adjustment is not intended to vary the UDO but to interpret and apply what the governing body has written and how it is being implemented in a particular circumstance. The decision of the Board of Adjustment shall be in accord with what the members believe to be the actual meaning and intent of the UDO.

Please check all applicable boxes and complete the required documentation.

SUBJECT PARCEL:

Address: _____

Parcel Identification Number (PIN): _____

MATTER BEING APPEALED:

- NOTICE OF VIOLATION**
- FINAL AND BINDING DETERMINATION**
- BOUNDARY INTERPRETATION**
- ZONING COMPLIANCE PERMIT**
- OTHER PERMIT: _____**

I, _____, have standing as described in **Exhibit A** and hereby appeal to the Board of Adjustment from an adverse decision of an Administrative Official of the Planning and Development Department of the County of Orange, North Carolina made on the _____ day of _____, 2____ and attached as **Exhibit B**.

I request an outcome as described in **Exhibit C** and for the reasons stated in **Exhibit D**. If I intend to present any evidence, that evidence is listed in **Exhibit E**.

STATEMENT BY APPELLANT:

I certify that the information presented by me in this application is accurate to the best of my knowledge, information, and belief.

Signature of applicant: _____

Date: _____

Official Use Only:

Date Application Filed: _____ Fee Collected: _____

Accepted by: _____ Permit Case Number: _____

Staff Assigned to Review: _____

Date Scheduled for Public Hearing: _____

EXHIBIT A - STATEMENT OF STANDING

- I am the sole owner of the property subject to this application.

- I have attached notarized letters authorizing this submittal from all entities or individuals with ownership rights to the property.

- I would suffer special damages distinct from the rest of the community as follows:

Owner Information:

Name: _____ Home Phone: _____
Address: _____ Cell Phone: _____
_____ E-mail: _____

Applicant Information: (same as owner)

Name: _____ Home Phone: _____
Address: _____ Cell Phone: _____
_____ E-mail: _____

Agent Information:

Name: _____ Home Phone: _____
Address: _____ Cell Phone: _____
_____ E-mail: _____
Law Firm Name: _____ Bar Number: _____

** Only attorneys may serve as agents within quasi-judicial hearings such as this appeal. Realtors, surveyors and other professionals may not apply or make arguments on behalf of owners. **

EXHIBIT B - COPY OF ACTION BEING APPEALED

*** Please attach and label as “Exhibit B” the official document which you are appealing. The Board of Adjustments **DOES NOT** have jurisdiction over advisory opinions of Orange County Staff. Only something that has binding force may be appealed. Those documents generally have the following words in all capital and in bold: **NOTICE OF VIOLATION, FINAL AND BINDING DETERMINATION, BOUNDARY INTERPRETATION, or ZONING COMPLIANCE PERMIT**. If you are unsure if a staff member’s email or letter has binding force, please consider asking for clarification through a standalone document with one of those terms in bold before seeking an appeal. ***

EXHIBIT E - INTENDED EVIDENCE

I intend to only make arguments and no further evidence is expected to be necessary.

I intend to offer the following evidence:

I intend to introduce the following document and have attached it follows:

Exhibit #1 entitled: “ _____ ”

This is relevant to standards from UDO Sections _____.

It demonstrates that:

_____.

I intend to call the following as a lay witness:

Lay Witness #1, _____ . Their intended testimony has been included in an affidavit attached as Exhibit _____. This witness has personal knowledge of and will testify about:

_____.

This testimony is relevant to standards from UDO Sections _____. The testimony will demonstrate that _____

I intend to call the following as an expert witness:

Expert Witness #1, _____ , is being offered as an expert in

_____.

They possess specialized knowledge in this field through the following training and/or experience: _____

They reviewed or examined the following data: _____

They used the following method of analysis when reviewing that data: _____

This expert opinion is relevant the standard at UDO Section _____. It demonstrates that _____

Their intended testimony has been included in an affidavit attached as Exhibit _____.

(attach additional sheets as necessary)

2.10.11 Conditions of Approval

The Board of Adjustment may impose appropriate conditions provided that such conditions are reasonably related to the variance.

2.10.12 Notice Requirements

Notice of matters before the Board of Adjustment shall follow the procedures in Section 2.12.6.

SECTION 2.11: INTERPRETATIONS

2.11.1 Generally

An appeal from an order, requirement, decision or determination of the Planning Director shall be decided by the Board of Adjustment based upon its findings of fact and to achieve the intent of this Ordinance. In exercising this power, the Board of Adjustment shall act in a prudent manner so that the purposes of this Ordinance shall be served. The effect of the decision shall not be to vary the terms of this Ordinance nor add to the list of Permitted Uses in the districts.

2.11.2 Application Requirements

- (A) Applications for an appeal of an interpretation of a decision, file determination, directive, Notice of Violation, or other similar determination shall be submitted on forms provided by the Planning Department in accordance with Section 2.2 of this Ordinance. Ten copies of the application and supporting documentation shall be submitted.
- (B) Applications must be received by the Planning Director no later than 30 days after the decision, file determination, directive, Notice of Violation, or other similar determination was made.

2.11.3 Burden of Proof

Applicants shall have the burden of establishing by competent material and substantial evidence, in the form of testimony, exhibits, documents, models, plans, and other materials, that the application meets the requirements for approval of an appeal from an order, requirement, decision, or determination of the Planning Director.

2.11.4 Stay on Further Proceedings

- (A) An appeal to the Board of Adjustment from a decision or determination of the Planning Director stays all proceedings in furtherance of the decision or determination appealed from, except as provided herein.
- (B) An appeal to the Board of Adjustment of a determination or decision of the Planning Director shall not stay further proceedings in furtherance of the decision or determination appealed from, if the Planning Director certifies to the Board of Adjustment in an affidavit either:
 - (1) A stay would cause imminent peril to life or property, or
 - (2) The situation appealed from is transitory in nature and, therefore an appeal would seriously interfere with enforcement of the Ordinance.
- (C) In either instance, the Planning Director shall place in the determination facts to support the conclusion if (B)(1) and/or (B)(2) are invoked.
- (D) If (B)(1) and/or (B)(2) are invoked, and approved by the Board of Adjustment, enforcement proceedings shall not be stayed except through the issuance of a restraining order issued by a court of competent jurisdiction. If enforcement proceedings are not stayed, the appellant may file a request for an expedited hearing of the appeal.

2.11.5 Review Procedures

- (A) Applications for an appeal of an interpretation shall be reviewed and acted upon by the Board of Adjustment in accordance with the procedures contained in Section 2.12 of this Ordinance.
- (B) The conduct of the hearing shall be consistent with the provisions of Section 2.12 of this Ordinance.
- (C) The Planning Director shall complete an assessment of the application and provide a recommendation on the disposition of the application. The assessment shall include all relevant facts utilized in rendering the disputed decision and the rationale for the interpretation made by the Planning Director.
- (D) The assessment shall be introduced at the hearing and become part of the record.
- (E) Upon hearing all evidence associated with the application, the Board of Adjustment shall close the hearing and render a decision on the matter to affirm, modify, or reverse the decision of the Planning Director.

2.11.6 Findings of Fact

The Board of Adjustment shall provide a detailed rationale for its decision in the form of an order to affirm, modify, or reverse the decision of the Planning Director. This order shall provide the necessary justification for the Board's action based on the testimony and evidence entered into the record during the hearing.

2.11.7 Notice Requirements

Notice requirements shall follow Section 2.12.6(A). Other subsections of Section 2.12.6 are not applicable to applications for an appeal of an interpretation.

SECTION 2.12: BOARD OF ADJUSTMENT

2.12.1 General Provisions

- (A) The Board shall act on all applications before it.
- (B) The Board shall act on any appeal of a Stop Work Order issued by the Planning Director at its next regularly scheduled meeting or at a special meeting called for that purpose.

2.12.2 Quasi-Judicial Proceedings

- (A) The Board of Adjustment acts in a quasi-judicial capacity. However, it is not intended that its proceedings be conducted as formally as those before courts.
- (B) The rules of procedure and evidence set forth in this Ordinance shall be followed to protect the interests of all parties and the public.
- (C) The presiding officer shall administer oaths to all witnesses and shall make rulings necessary to preserve fairness, order, or proper decorum in any matter before the Board of Adjustment. Any person who, while under oath during a proceeding before the Board, willfully swears falsely is guilty of a Class I misdemeanor.
- (D) Any member of the Board of Adjustment or any interested party may object to, and the presiding officer may exclude, any evidence, testimony, or statement that is deemed incompetent, irrelevant, immaterial, or unduly repetitious and therefore fails to reasonably address the issues before the Board of Adjustment.

2.12.3 Evidence and Testimony

- (A) **Interested Party and Objections**

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- (A) **Interested Party and Objections**

- (1) Any interested party shall be permitted to present evidence or testimony, cross-examine witnesses, inspect documents, and offer evidence or testimony in explanation or rebuttal.
- (2) Any member of the Board of Adjustment may question any interested party.
- (3) Persons other than interested parties may offer competent, relevant, and material testimony or evidence that is not repetitive as allowed by the Board.
- (4) Administrative materials such as applications, staff reports, and other relevant administrative materials shall become part of the hearing record and may be provided in written or electronic form.
 - (a) Administrative materials shall be distributed to the applicant and to the landowner, if that person is not the applicant, at the same time they are distributed to the Board.
 - (b) Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the Board at the hearing.
- (5) Objections regarding jurisdictional and evidentiary issues, including but not limited to, the timeliness of an appeal or the standing of a party, may be made to the Board. The Board chair shall rule on any objections and the chair's ruling may be appealed to the full Board.

(B) Subpoenas

- (1) The Board of Adjustment may subpoena witnesses and compel the production of evidence.
- (2) To request issuance of a subpoena, persons with standing as detailed under NCGS 160D-1402(c), shall make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas in those cases where testimony or evidence is deemed to be relevant, reasonable in nature and scope, and not oppressive.
- (3) The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full Board.
- (4) If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment, or the party seeking the subpoena, may apply to the General Court of Justice for an order requiring that its order be obeyed, and the Court will have jurisdiction to issue those orders after notice to all proper parties.
- (5) No testimony of any witness before the Board of Adjustment, pursuant to a subpoena issued in exercise of the power conferred by this subsection, may be used against the witness in any civil or criminal action, other than a prosecution for false swearing committed on the examination.
- (6) Anyone who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor.

2.12.4 Quorum and Vote Required

- (A) A quorum of the Board is necessary to conduct any business and shall consist of four members.
- (B) The affirmative vote of four of the members of the Board shall be necessary in order to effect any variation in this Ordinance.
- (C) A majority of the members shall be required to decide on the issuance of a Special Use Permit or an appeal application.

2.12.5 Notification of Board Action

- (A) Within five working days after Board action, the Planning Director shall have available in the Planning Department's office a notice of decision of the Board's action.
- (B) The Planning Director shall notify the parties to an application or appeal of the Board's disposition. This includes the applicant, the property owner if different from the applicant, or any individual who has submitted a written request for a copy prior to the date the decision becomes effective. This notice shall be made by registered or certified mail within five working days of the Board's actions.
- (C) The Planning Director shall keep a copy of the Board's action on file.

2.12.6 Notice Requirements for Matters Before the Board

- (A) Notice for Special Use Permit or Variance applications shall follow the process in Section 2.7.6
- (B) In the case of an appeal of a Stop Work Order issued by the Planning Director, the Planning Director shall give written notice by certified mail to the property owner, and/or person(s) engaged in the alleged violation. Notification of adjacent property owners, posting of property, and publication of a hearing notice is not required.

SECTION 2.13: EXEMPT SUBDIVISIONS

2.13.1 Generally

- (A) Persons proposing divisions of land that do not constitute a subdivision must request a determination of an exempt subdivision status with the Planning Director. Activities that do not constitute a subdivision are found in Section 7.2.1.
- (B) One copy of the final mylar plat and three paper copies of the plat shall be submitted with the request for a determination for an exempt subdivision.
- (C) Exempt subdivisions shall comply with all applicable non-plat requirements of this Ordinance.

2.13.2 Review and Action

- (A) Following receipt of a request for a determination of an exempt subdivision status, the Planning Director shall make a determination of the land division's exempt or nonexempt status.
- (B) If the Planning Director determines that the proposed land division does not constitute a subdivision, the Planning Director shall certify the proposed land division as exempt and include the necessary statement on the plat certifying same.
- (C) If the Planning Director determines that the proposed land division constitutes a subdivision, the applicant shall be informed of such in writing and shall be required to submit the appropriate Subdivision application.

SECTION 2.14: MINOR SUBDIVISIONS

2.14.1 Review and Decision Processes and Flow Charts
