

**ADMINISTRATIVE MEETING AGENDA  
ORANGE COUNTY BOARD OF ADJUSTMENT (BOA)**

**WHITTED BUILDING  
300 WEST TRYON STREET  
HILLSBOROUGH, NC 27278**

**Wednesday January 11, 2023**

**7:00 p.m.**

- 1. CALL TO ORDER**
- 2. ADMINISTER OATH TO NEW BOA MEMBER AND BOA ASSIGNMENTS**
- 3. APPROVAL OF BOA MINUTES MAY 9, 2022 AND JULY 11, 2022**
- 4. INTRODUCE STAFF**
- 5. REVIEW OF BOA RULES AND PROCEDURES**
- 6. REVIEW BOA WORK PLAN AND ANNUAL REPORT TO BOCC**
- 7. REVIEW BOA CALENDAR**
- 8. DISTRIBUTE SCHOOL OF GOVERNMENT MATERIALS AND CONDUCT TECHNICAL TRAINING ON QUASI-JUDICIAL BOARDS AND OUR UDO**
- 9. ADJOURNMENT**

NOTES:

- A) This is an administrative meeting with no cases or public hearings to consider.
- B) UNC School of Government e-learning modules can be accessed via:  
<https://www.sog.unc.edu/resources/microsites/on-demand-board-training-library>  
Password: 2019-DEC-JUJC

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MINUTES  
BOARD OF ADJUSTMENT  
REGULAR MEETING  
May 9, 2022

**MEMBERS PRESENT:** Leon Meyers, Chair  
Beth Bronson  
Nathan Robinson  
Jeff Scott

**MEMBERS EXCUSED:** Susan Halkiotis, Vice Chair

**MEMBERS UNEXCUSED:** Scott Taylor

**STAFF PRESENT:** Patrick Mallett, Erosion Control and Stormwater Supervisor  
Elaina Cheek, Secretary to the Board  
James Bryan, Staff Attorney

**AGENDA ITEM 1: CALL TO ORDER**

Chair Leon Meyers called the meeting to order at 7:00 p.m.

**AGENDA ITEM 2: CONSIDERATION OF ADDITIONS TO AGENDA**

Leon Meyers: asked if there were any changes to the agenda. Pat stated the only change was the withdrawal of the application.

**AGENDA ITEM 3: APPROVAL OF MINUTES – October 11, 2021**

Leon Meyers: asked the board if there were any questions regarding the minutes and corrections to the minutes. Leon asked for a motion to approve the minutes.

**MOTION** made by Nathan Robinson to approve the minutes. Seconded by Beth Bronson.

**VOTE:** Unanimous

**AGENDA ITEM 4: PUBLIC CHARGE**

Leon Meyers: reads the public charge for those attending the meeting.

The Board of Adjustment pledges to the citizens of Orange County its respect. The Board asks its citizens to conduct themselves in a respectful, courteous manner, both with the Board and with fellow citizens. At any time should any member of the Board or any citizen fail to observe this public charge, the Chair will ask the offending person to leave the meeting until that individual regains personal control. Should decorum fail to be restored, the Chair will recess the meeting until such time that a genuine commitment to this public charge is observed. All electronic devices such as cell phones, pagers, and computers should please be turned off or set to silent/vibrate.

The Board of Adjustment is a quasi-judicial administrative body established in accordance with the provisions of local regulations and State law to perform specified functions essential to the County’s planning program. Action(s) taken by

1 the board are based solely on competent, substantial, and material evidence presented during a scheduled evidentiary  
 2 hearing on a specific item. As detailed within Section 2.12.2 of the UDO the Board chair reserves the right to exclude  
 3 evidence and testimony that is deemed: ‘incompetent, irrelevant, immaterial, or unduly repetitious’ and therefore fails to  
 4 reasonably address the issues before the Board of Adjustment. While it should be noted there is no time limit on the  
 5 presentation of evidence, the Chair asks that the presentation of evidence be consistent with established policies, rules  
 6 of procedure, and acceptable levels of decorum to ensure a fair and equitable hearing for all parties.

7  
8  
9 **AGENDA ITEM 5:                   CASES**

10  
11 ~~**A. SUP22-0002 – Special Use Permit application proposing to erect a new**~~  
 12 ~~**telecommunication facility at 3606 Edmund Latta Road, Hillsborough (PIN 9877-82-**~~  
 13 ~~**3996) ITEM WAS WITHDRAWN FROM CONSIDERATION AT THE REQUEST OF THE**~~  
 14 ~~**APPLICANT ON APRIL 27, 2022.**~~

15  
16 **B. BA22-0001 – Variance application requesting a 8.4 foot reduction to the required site**  
 17 **yard setback at 429 Gaines Chapel Road, Efland (PIN 9844-66-6445)**

18  
19 In accordance with UDO Sections 2.10 *Variances* and 3.3 *Residential Districts*, the  
 20 property owners have submitted this variance request for their parcel of property, which is  
 21 further described as follows:

- 22 • **Orange County Parcel Identification Number:** 9844-66-6445
- 23 • **Acreage:** 0.5 acres
- 24 • **Zoning District:** Rural Residential
- 25 • **Watershed Designation:** Upper Eno Protected

26  
27 The applicants are requesting an 8.4 foot variance from the normally required 20 foot side  
 28 yard setback. If approved, a structure will be allowed to be 11.6 feet from the side property  
 29 line versus the typically required 20 foot side yard setback per Section 3.3 of the UDO.

30  
31 The applicants argue the due to the existing power line easement, septic, and well areas,  
 32 the proposed new home cannot be located and constructed to meet the easement setback  
 33 and the side yard setback. In addition, the existing home located onsite does not meet the  
 34 existing side yard setback.

35  
36 Leon Meyers: asks Patrick Mallett to present a summary of the case.

37  
38 Patrick Mallett: explains his role in the Orange County planning department as the Erosion Control Supervisor and  
 39 previously in the Current planning role. He explains the variance application for the setback requirements. In the  
 40 abstract you will see the applicant is Beverly Stokes, who is in attendance. She is seeking a variance for this parcel.  
 41 She is seeking a reduction in the minimum of 20 foot side setbacks. If granted the variance, you would be allowing her  
 42 to rebuild up to the 11.6 feet away from the property line. This is parallel to an existing structure. This is the staff  
 43 determination that this is consistent with what is required in terms of the application. We will go over the finding of facts  
 44 at the end. This is the zoning report and site assessment giving an overview of the property. This is the existing home  
 45 here. This is the accessory structure here. The condition of this building, it’s in ill-repair. It is just not cost effective to  
 46 refurbish that structure. Here is the notification letter inviting residents to this meeting. This is the site plan, this is the  
 47 most relevant piece to talk from. Going through here is the transmission easement. You have also got septic systems

1 that need to be reworked and or abandoned. You can see the foot print of the existing house. We can go to what is  
2 there today, it is slightly in a different configuration. As you can see here, there is no wiggle room left. Once you add all  
3 the easements and all the other variables at play. This is the encroachment agreement. Ms. Stokes may want to talk  
4 about this. It sounds like to me that part of the case was that I don't know if her family members were fully cogitative of  
5 what that implied in terms of giving a power easement and the purpose of the addition on the property and it would run  
6 through your grandmother's house. This is the sign that was posted on the property. This is the house that is in ill  
7 repair. Picture of the side yard and between the dwelling and the adjacent property. This is the power line, you can see  
8 it is literally running on top of the existing house and accessory structure. This is the side yard and where the septic  
9 system is that needs to be reworked. This is the transmission line and as you can see this is a large line. So we can  
10 handle this any way you would like. If you have any questions.

11  
12 Patrick Mallett and Beverly Stokes are sworn in.

13  
14 Leon Meyers: Does anyone have questions for Patrick?

15  
16 Nathan Robinson: asked about the yellow box and is there a reason why it can't be pushed more towards Gaines  
17 Chapel Road.

18  
19 Patrick Mallett: Part of it is they are going to try to utilize the sidewalk and the portion of the porch on the front of the  
20 house. Not necessarily the entire house would be demolished.

21  
22 Leon Meyers: stated the red line is a 40 foot setback from the street so if you move closer to the street add another  
23 variance.

24  
25 Patrick Mallett: yes you can't move it but so far.

26  
27 Nathan Robinson: so if you slide it to Gaines Chapel road it would give it 20 feet.

28  
29 Patrick Mallett: No, not without a variance.

30  
31 Beth Bronson: Where the house is? The proposed house?

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33 Patrick Mallett: The Stokes house is yellow, the existing house follows this footprint

34  
35 Beth Bronson: So it was already encroaching?

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37 Patrick Mallett: They want to put a new house and tear down the house that is already 11 feet away from the property  
38 line and put a comparable house in the same relative configuration.

39  
40 Beth Bronson: I just want to clarify, if the parcel is already granted an easement because the house was encroached  
41 when the line was placed, why would that easement not carry through to any new construction?

42  
43 Patrick Mallett: This house is so old that it predates the ordinance

44  
45 Beverly Stokes: The house is 100 years old.

46  
47 Beth Bronson: So I would say the lines were placed afterwards

1 Beverly Stokes: The way I saw and research, the property was purchased before the power lines came in. The power  
2 lines came in in 1910. And the house and all the land was purchased in 1907.

3  
4 Beth Bronson: So it has been there since 1910.

5  
6 Patrick Mallett: Yes, a long time.

7  
8 Leon Meyers: Any other questions for Patrick

9  
10 Jeff Scott: Is the hatch door on this plan, is that the leach proposed for this or is that just the outline of the setbacks with  
11 the easement in it?

12  
13 Patrick Mallett: I believe that is the drainage area for the septic system if I am not mistaken. The area in blue.

14  
15 Leon Meyers: This map is from Environmental Health so it may have some significance for Environmental Health  
16 purposes.

17  
18 Patrick Mallett: So this area all of this colored area, is needed in terms of abandoning and reconfiguring the septic  
19 system with the exception, this colored area. Generally represents either a well or a septic or reconfiguration of the old  
20 septic system to make it work.

21  
22 Leon Meyer: Are there any questions? My question has to do with the easement on this map. The easement is called  
23 out at 68 foot width and the easement itself refers to a 60 foot width. Do you happen to know how that discrepancy  
24 happened?

25  
26 Patrick Mallett: I do not.

27  
28 Leon Meyers: I said easement but I meant the encroachment agreement.

29  
30 Beth Bronson: yeah. You said easement but it was the encroachment agreement. It was from 2020.

31  
32 Leon Meyers: 2021

33  
34 Patrick Mallett: That might have been an error on their part in terms of referring to the width.

35  
36 Leon Meyers: I can ask Ms. Stokes about that as well. At this moment, if there are no other questions for Patrick. Ms.  
37 Stokes if you would come forward please.

38  
39 Nathan Robinson: Where did you see the 60 foot easement?

40  
41 Leon Meyers: In the first paragraph in the encroachment agreement.

42  
43 Patrick Mallett: Speaks with Ms. Stokes about his reference in the encroachment agreement stating it says 68 feet. But  
44 in the agreement I just had up it refers to 60 feet.

45  
46 Nathan Robinson: Which would get you 8 more feet, 4 feet on each side.

47  
48 Beth Bronson: Yeah 60 feet was the total width.

49

1 Leon Meyers: I am not sure if that makes a difference because if the center of the easement is in the right place then  
2 they really just need 4 feet of space on either side you care about and you would still be here for a variance even if the  
3 easement were 60 feet. I am just curious as to why the surveyor would show the easement one width and the attorneys  
4 who drew the encroachment agreement would draw another one. It is really a curiosity at this point. Ms. Stokes before  
5 you make your presentation tonight, I am going to make you aware of the fact that there are 4 members of a 5 member  
6 board here tonight. I hope someone has seen to that already. The significance to that is that the state statute and the  
7 zoning ordinance require 4 votes for an approval of a variance to a zoning ordinance and there are 4 of us here tonight.  
8 And in other circumstances there would be 5 members, so what that means is that if you would like to proceed with the  
9 case a unanimous vote would be required for approval of a variance. And I have no way of knowing what every board  
10 member are thinking. It would be an option for you to request for the board to delay hearing this matter if that is what  
11 you prefer.

12  
13 Beverly Stokes: I would not like to delay anymore. I have been in this process for over 3 years trying to redo a house  
14 that needs some repairs. It is better for me to rebuild.

15  
16 Leon Meyers: I certainly understand. I am going to apologize for not being in full force as a board. We had a resignation  
17 as of today which was the 5<sup>th</sup> person otherwise would have been here tonight.

18  
19 Beverly Stokes: We are in question about it shouldn't effect anyone because of that wooded area and then ask the  
20 people who are on that strip, I keep it cleaned off so I don't think it would affect anybody. That's the reason I'm asking  
21 for this permit. It doesn't affect the environment or anything like that. The encroachment with the power company has  
22 caused me to have to be here. They've taken the majority of that land and only allowed me 1,201 square feet out of  
23 half an acre of land. I am asking because I don't think it would be an imposition on anybody's plat.

24  
25 Leon Meyers: Just to be clear, you said no others have contacted you since it was posted?

26  
27 Pat Mallett: I think there have been a few, I'm not sure if the folks here are the same neighbors who called with general  
28 questions but nothing negative. I'll note on this, I think this may be a mistake, the reference to 60 feet. You go back to  
29 the legal description, it says 68 feet. It's odd to see a 68 foot easement as opposed to the standard 60.

30  
31 Leon Meyers: Ms. Stokes, do you have anything else you'd like to tell the Board members or have any questions. I  
32 want to be sure you have a chance to say what you want to say.

33  
34 Beverly Stokes: I really don't because I am just worried. My business complaint and argument is with the power  
35 company for taking so much and if you go and look at it, they did it along their wires and as far as I'm concerned, they  
36 can go and straighten them up and I could have what I need to do. Doing my research, I didn't see when grounds  
37 found for encroachment and that angers me just to have to come here and ask for 8½ feet is a little much. It's wooded  
38 area and I don't think it would be a problem and I think that when they moved the divide, years ago, it just didn't come  
39 out the straight way and according to where I live, the lot that's beside me, my grandfather owned that and it they split  
40 the acre and the house is right there on the line and back then they just didn't know what they were doing. I think that's  
41 the big issue here and as a child, I remember they used all of that property back there, they had outhouses, pig pens  
42 and things of that nature but I was so young, I don't even remember my grandfather but I do remember them using all  
43 of the property and even on the side where the side property is, that was garden area. That I do remember, I just want  
44 8½ feet. The reason I have this property, I was the grandchild that stayed there the most with my grandmother, aunt  
45 and cousin and they took care of the property and my oldest uncle took care of them but they always took care of the  
46 property and I stayed with my grandmother the most. I hate to tear the house down because I so many memories,  
47 good memories of being in this house but I have put so much money in it trying to refurbish and every time I turn  
48 around, it's something else that's wrong. I've tried to, the last ditch effort was to jack the house up and have the floors  
49 repaired, just for the floors and jacking it up was going to costs more than \$1,000. That's a lot of money, that's not to

1 do any of the electricity the plumbing or any of those things. I am the grandchild that wants to keep this property in the  
2 family.

3  
4 Leon Meyers: Members of the Board do you have any questions for Ms. Stokes?

5  
6 Beth Bronson: Where there any other site plans that may have encroached on the encroachment, another direction, is  
7 the only plan given impacts the power utility.

8  
9 Beverly Stokes: Basically, this is the only way I can go because that's ½ acre and I'm only allowed 1,201 square feet to  
10 use so therefore the setbacks and all that is included. It's a tiny house now because I can't get even, Duke Energy  
11 wouldn't let me get the same footprint that the house is on now. They didn't allow that because the wires come  
12 basically the tip of the house so I think you have to be 62 feet from the wires, so 32 on the side or something of that  
13 nature of the wires.

14  
15 Beth Bronson: So they are basically saying you cannot encroach on the new development on this encroachment  
16 agreement.

17  
18 Pat Mallett: They don't want any structures

19  
20 Beverly Stokes: They don't want any structures, if I leave that, I can refurbish it but if I tear it down, I can't go back on  
21 them. So I want to refurbish this if I can. That's my hope to refurbish but I am not going to live in that small structure  
22 but I'm going to live the bigger house. This is going to be like a shelter structure maybe a garage or something of that  
23 nature. Because I don't have any other place to park my car so I need to think about parking my car so if I leave that  
24 structure and just rebuild the line that to take the

25  
26 Beth Bronson: Yeah, right, to fix it up right. I just didn't understand. I didn't know if you had approached Duke Energy  
27 about a site plan that might encroach or might go over the same footprint of the house and that was approved or  
28 denied.

29  
30 Beverly Stokes: They wouldn't let me do anything, I did approach them, when I first started, I asked the County, the  
31 County had no problems, this was years ago. I don't know if the changes or somebody else, they said they had no  
32 problems because the footprint would stay the same just in the same area. Duke Energy said no. They did allow and  
33 then I brought to them the fact that the house had been there many years, it has to have some type of maintenance to  
34 be able to live in the house and at the time my mother was still living with me and she was 90 years and people can't  
35 live in what the house is like now. They have taken all this land on the side where we could have at least moved over  
36 some but they wouldn't allow that but they have allowed me to use that that blue area where the septic goes, I can put a  
37 new septic tank there. That is the only thing that they are letting.

38  
39 Pat Mallett: I just want to add 2 things, 1, utility power companies are generally obsessive about not having any  
40 structures or obstructions so that they can go through and maintain their transmission easements. This is also done  
41 and recorded at a time when, this lot predates zoning, predates everything, subdivision. There was going back to the  
42 70s, 80s I believe you could do a ½ acre lot and that opportunity doesn't exist so you couldn't create lot of this size and  
43 configuration today. It's what we call a non-conforming lot but what she's seeking relief from is not that, it's the side set-  
44 back one variance.

45  
46 Leon Meyers: Any further questions.

47  
48 Beth Bronson: No, thank you for answering the questions.

49

1 Nathan Robinson: Patrick, I see that there's a road, are we concerned about the road? Is the proposed location of a  
2 traffic barrier is it related to us or are we concerned about anything other than 6 ft.?  
3

4 Pat Mallett: I think that is something that Reliant is working through for  
5

6 Overlapping conversations  
7

8 Leon Meyers: I believe that traffic barriers need to protect the green field area so you can't drive onto the green field.  
9

10 Pat Mallett: And crush the lines.  
11

12 Beverly Stokes: It's a little fence, you can just stay off of it and not drive across it.  
13

14 Pat Mallett: That's an Environmental Health thing. In addition to this, there are other layers that have to be dealt with  
15 building permits, demolition permit for the existing house, and then completing the process with the finalization of the  
16 rework for the well and septic.  
17

18 Beth Bronson: It's a very small area to work with.  
19

20 Leon Meyers: Before this comes back to the Board for a decision and the steps, do you have anything more or is there  
21 anything you'd like to tell the Board?  
22

23 Beverly Stokes: I don't think I have anything else that is pertinent right now. What they are asking for in order for the  
24 builders to be in compliance is that you allow that 8 ½ feet of space and it's wooded area and nobody is using that  
25 particular piece of property.  
26

27 Leon Meyers: I'm going to say a little bit out of school here that I was in home building business, I would encourage  
28 your builder to be very careful about where he wants the house because there is little space to spare.  
29

30 Beverly Stokes: They do understand that. The builders have been very good about checking things out walking the  
31 property and having it surveyed. I've had the property surveyed 3 times myself and they've had it again I think twice.  
32

33 Leon Meyers: That's great. Before we close the public hearing, are there any other questions for Patrick or Ms.  
34 Stokes?  
35

36 Nathan Robinson: I just want to clarify the neighbors have not submitted any opposition to this request, I want to make  
37 sure.  
38

39 Pat Mallett: There have be inquiries but not in opposition or in favor just inquiries about what the nature of the request  
40 is and that is pretty common.  
41

42 Leon Meyers: If you would like to testify could you come forward and be sworn.  
43

44 *Eric Thompson was sworn in*  
45

46 Eric Thompson: I live in Mebane but the property there is on the backside of Mrs. Stoke's house, my family owns. I just  
47 want to ask a question for my clarity. Approving this variance, how does that affect the property, does it subtract from  
48 our property or I'm wondering exactly if it's approved how it affects my property.  
49

1 Pat Mallett: What is being considered is that location of the house on Mrs. Stoke's property. There is no modification to  
2 the property line, there's no gain on her end or loss on your end or any adjacent property owners. There is no change  
3 in the property boundary line. That's the whole point of this request, keep the property line intact but allow for building  
4 setback which normally would go all the way down to there (demonstrated). There is no change to your property line,  
5 it's comparatively speaking what you see with the house and property is the same.  
6

7 Eric Thompson: Our property line actually goes all the way down to the end of her property line.  
8

9 Pat Mallett: There is no change to that property line. This is the configuration of the lot lines today and configuration it  
10 would be tomorrow and so on and so forth.  
11

12 Eric Thompson: So no property around it will be down.  
13

14 Pat Mallett: No, this is only dealing with the setback requirement for the house.  
15

16 Leon Meyers: Arguably the improvement that Ms. Stokes plans to make on this parcel would have a positive impact on  
17 your adjacent property.  
18

19 Eric Thompson: My interest was not to prevent her, I just wanted, my interest was our property and knowing exactly  
20 what is going on.  
21

22 Leon Meyers: I understand thank you for coming. Are there any other questions? We will close the public hearing and  
23 the matter is before the Board. Thoughts?  
24

25 Beth Bronson: No, I have no questions.  
26

27 Nathan Robinson: I am just looking, in Section 2.10.4, where it identifies approved variances, as I move through a, b, c,  
28 d it seems this request fits the reason for approval in it. That's about it for me.  
29

30 Jeff Scott: I think it was maybe a year ago but we had something, it wasn't a new construction house but it was a  
31 variance for an existing, the setbacks where the wetlands area and it is pretty minor and so it's not that president that  
32 we would grant something like this.  
33

34 Leon Meyers: I would say the motion would be in order. James guide me here? It would need to refer to those four  
35 findings in 2.2? Is that right?  
36

37 James Bryan: Yeah, that's right so this would be just like any other case where you need Findings of Fact and then  
38 conclusions of law. What you have here is two people testified, or really three people testified but only Pat gave  
39 substantive evidence. You don't have any conflicting facts so I don't want you to, you could just that put that into the  
40 motion for the record that the Board has received no conflicting evidence.  
41

42 Leon Meyers: So Board, the two motions we recognize, Findings. The 4 findings related to in the UDO they're going to  
43 require for a variance first and the second motion we will grant a variance, do I understand correctly?  
44

45 James Bryan: First is Findings of Fact and that is just all the facts which is basically you are relying on the reports and  
46 stuff like that. You don't have, there's no conflict, you don't have to go into great detail. I think the motion would be  
47 something to the effect of the Board makes the Finding of Fact that there is competent substantial material evidence to  
48 support its conclusions and that there is no evidence in controversy.  
49

50 Leon Meyers: Anybody here to make that motion.

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**MOTION** made by Nathan Robinson that there evidence to support our conclusions and there is no evidence to the contrary. Seconded by Beth Bronson.

**VOTE:** Unanimous

James Bryan: Second we can make conclusion based on these four, if they were to be different you could handle them separately if they are all the same you can make one motion that as a conclusion that all four of there are met/not met.

Leon Meyers: Do I hear a motion to that?

**MOTION** made by Beth Bronson that all points of hardship have been provided and the burden of proof for all four points for the reason to authorize a variance with no conflicting evidence and therefore the Board should grant the variance. Seconded by Jeff Scott.

**VOTE:** Unanimous

Leon Meyers: Ms. Stokes, congratulations you're ready to build.

Beverly Stokes: Thank you.

Leon Meyers: Any other business before the Board? I want to talk about a couple of things with you James.

Pat Mallett: I think we have some training anticipated at some point and that includes books and packets and on-line things.

Leon Meyers: I would say, given where we are with Board appointments maybe we want to postpone that until we have something close to a full board. At Patrick's suggestion, I approached Travis Myren today about the importance of taking some appointments before the Board of County Commissioners so that we don't end up with four members sitting of a case that should have five. I also have an issue that on our website, at least, no one I've talked to seems to actually know about this but on the website, a couple of these current seats have expired and my seat expires in a couple of months and we are short on three positions because of Susan's resignation, Kent's resignation and Mr. Taylor's non-participation. I would like is to ask the County Commissioners to appoint the alternates to a regular seat and ask also that you have agreed to a second, three year term.

Beth Bronson: Does that change the clock for accepting a permanent position?

Leon Meyers: I don't know the answer to that but I am sure James will figure it out.

James Bryan: We can work with the Clerk's Office to figure that out.

Beth Bronson: I have no objections.

**AGENDA ITEM 6: ADJOURNMENT**

The meeting was adjourned at 7:45 p.m.

MINUTES  
BOARD OF ADJUSTMENT  
ADMINISTRATIVE MEETING  
July 11, 2022

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**MEMBERS PRESENT:** Leon Meyers, Chair  
Beth Bronson  
Nathan Robinson  
Jeff Scott  
Adam Beeman  
Roderick Jones

**STAFF PRESENT:** Cy Stober, Planning & Inspections Director  
James Bryan, Staff Attorney  
Pat Mallett, ECS&E Supervisor  
Tina Love, Administrative Support

**AGENDA ITEM 1: CALL TO ORDER**

Chair Leon Meyers called the meeting to order at 7:00 p.m.

**AGENDA ITEM 2: ADMINISTER OATH TO NEW BOA MEMBERS**

Laura Jenson, Clerk to the Board of County Commissioners administered the Oath to the new Board of Adjustment Member

**AGENDA ITEM 3: ASSIGN BOA POSITIONS**

Election of Chair and Vice-Chair was postponed

**AGENDA ITEM 4: INTRODUCE STAFF**

Introductions were made between staff and the BOA members

**AGENDA ITEM 5: REVIEW OF BOARD OF ADJUSTMENT RULES AND PROCEDURES**

Staff Attorney James Bryan reviewed the BOA Rules and Procedures

**AGENDA ITEM 6: DISTRIBUTE SCHOOL OF GOVERNMENT MATERIALS AND CONDUCT TECHNICAL TRAINING ON QUASI-JUDICIAL BOARDS AND OUR UNIFIED DEVELOPMENT ORDINANCE**

Staff Attorney James Bryan gave a training presentation to the members

**AGENDA ITEM 7: ADJOURNMENT**

The meeting was adjourned at 8:42 p.m.

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LEON MEYERS, CHAIR

**ORANGE COUNTY  
BOARD OF ADJUSTMENT (BOA)  
Meeting Date: January 11, 2023**

**Agenda  
Item No. 5**

**SUBJECT:** Adopt updated BOA Rules of Procedure

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**DEPARTMENT:** Planning and Inspections

**PUBLIC HEARING:** (Y/N)

No

**ATTACHMENTS:**

1. Updated BOA Rules of Procedure
2. Resolution of Approval

**INFORMATION CONTACT:**

Pat Mallett, Deputy Dir. Development Services  
(919) 245-2577  
[pmallett@orangecountync.gov](mailto:pmallett@orangecountync.gov)

Tina Love  
Administrative Support I  
Secretary to the Board and Minutes  
(919) 245-2571  
[tlove@orangecountync.gov](mailto:tlove@orangecountync.gov)

**PURPOSE:** For the BOA to update and amend their current Rules of Procedure.

**BACKGROUND:** Per Section 1.8.5 of the UDO: *Rules of Procedure*:

*“The Board shall adopt Rules of Procedure and Regulations for the conduct of its affairs. The rules shall be maintained in the office of the Planning Director. Except as otherwise expressly stated in this Ordinance, the rules adopted by the Board of Adjustment shall provide for:*

- a. Selection of officers, specifically a Chair and Vice-Chair, whose term of office shall be one year, with eligibility for re-election.*
- b. Attendance requirements.*
- c. Establishment of a quorum, which shall be a majority of the appointed members, to allow the Board to conduct business.*
- d. Establishment of a date and time for a regular meeting.*
- e. A procedure for calling special meetings as the need of the Board requires.”*

The BOA has maintained Rules of Procedure since 1968. These rules have been revised periodically to align with legislative changes and/or update procedural matters. This most recent update as contained within Attachment 1 revises legislative references; grammar; and specific meeting requirements to a more flexible schedule.

**RECOMMENDATION:** Staff recommends that the BOA review, consider and adopt the revised Rules of Procedure contained within Attachment 1, and Resolution contained within Attachment 2 at their January 11, 2023 meeting so it can be incorporated for the next BOA meeting.

## RULES OF PROCEDURE

### BOARD OF ADJUSTMENT ORANGE COUNTY, NORTH CAROLINA

#### I. General Rules

- Amended 6/11/90  
4/12/22
- A. The Orange County Board of Adjustment shall be governed by the terms of ~~Article 18, Part 3 of Chapter 153A and, when effective,~~ Chapter 160D of the General Statutes of North Carolina and by the Unified Development Ordinance of Orange County, North Carolina, adopted April 5, 2011, and as amended. All Board members shall be thoroughly familiar with these laws.

#### II. Officers and Duties

- Amended 2/12/68  
6/12/78  
6/11/90  
4/12/22
- A. Chair
- The Chair shall be elected by majority vote of the membership of the Board from among its members.

The term of office shall be for one year, and until a successor is elected, beginning on July 1, and the Chair shall be eligible for re-election. Subject to these rules, the Chair shall decide upon all points of order of the Board in session at the time.

The Chair shall appoint any committees found necessary to investigate any matter before the Board.

- Amended 6/11/90  
4/12/22
- B. Vice Chair
- A Vice Chair shall be elected by the Board from among its members in the same manner and for the same term as the Chair. The Vice Chair shall serve as Acting Chair in the Chair's absence, and at such times the Vice Chair shall have the same powers and duties as the Chair.

C. Clerk to the Board

A Clerk to the Board shall be appointed by the Chair of the Board, either from within or outside its membership, to hold office during the term of the Chair and until a successor Clerk to the Board shall have been appointed. \_The Clerk to the Board shall be eligible for reappointment. \_The Clerk to the Board acting as clerk to the board, subject to the direction of the Chair and the Board, shall keep all records, shall conduct all correspondence of the Board, shall arrange for all public notices required to be given, and shall generally supervise the clerical work of the Board. \_The Clerk to the Board shall keep in a permanent volume the minutes of every meeting of the Board. These shall be and show the record of all important facts pertaining to each meeting and hearing, every resolution acted upon by the Board, and all votes of members of the Board upon any resolution or upon the final determination of any question, indicating

the names of members absent or failing to vote. If the Clerk to the Board is chosen from outside the membership of the Board, the Clerk to the Board shall not be eligible to vote upon any matter. The Chair may appoint an Acting Clerk to the Board in the Clerk to the Board's absence.

### III. Alternate Members

Amended  
6/11/90  
4/12/22

Alternate members of the Board shall attend all meetings and hearings of the Board unless otherwise notified. A regular Board member, on receiving notice of a meeting which he or she cannot attend or upon learning that he or she will be unable to participate in a meeting, shall promptly give notice to the Clerk to the Board of the Board that he or she is unable to attend or unable to participate.

Where, because of the inability of a regular member to serve or to participate, the attendance of an alternate member is necessary to make quorum as defined by Section V-D below, the Chair, or any member acting as Chair, shall designate an alternate member to have all the powers and duties of a regular member.

### IV. Members

Amended  
6/11/90  
4/12/22

- A. Membership on the Board of Adjustment shall be governed by the terms of 160D-302 of the General Statutes of North Carolina as well as applicable parts of the Orange County Advisory Board Policy where it specifies the Board of Adjustment.
- B. ~~In cases where an individual is appointed to serve the unexpired portion of a Board member's term, the appointment shall be for the time period of the unexpired term only and shall not be counted as a regular term for that member.~~
- C. ~~All members appointed to the Board of Adjustment shall, before entering their duties, qualify by taking an oath of office as required under NCGS 153A-26.~~
- D. Members of the Board may be removed for cause.
- E. Faithful attendance at all meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite of continuing membership on the Board.
- F. No Board member shall take part in the hearing, consideration or determination of any case in which that member is personally or financially interested.
- G. No Board member shall vote on any matter deciding an application or appeal unless that member has attended the public hearing on that application or appeal.
- H. No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided however, that members may receive and seek information pertaining to the case from any other member of the Board and its Clerk to the Board prior to the hearing.

I. Members of the Board will not express individual opinions on the proper judgment of any case with any parties thereto prior to its determination of that case. Violation of this rule shall be cause for dismissal from the Board.

J. Each member of the Board shall be familiar with the applicable provisions of the Unified Development Ordinance associated with matters before them.

Amended  
6/11/90  
4/12/22

K. At any meeting, which an alternate member is called upon to participate within, shall have the same powers and duties as regular members.

Amended  
6/11/90  
4/12/22

L. , At no time shall more than five members (including alternate members) officially participate or vote in any meeting or hearing.

**V. Meetings**

Amended  
6/12/78  
6/11/90  
2/3/10  
4/12/22

A. Regular Meetings

Regular meetings of the Board shall be held as indicated on the published Board of Adjustment Calendar on the second Monday of each month at 7:00 p.m. in the Orange County Whitted Building Human Services Center Complex at 300 West Tryon Street in Hillsborough, North Carolina or an alternate time or meeting location provided, that if the directed by the Chair so directs, meetings may be held at any other place/time in the County.

~~However, W~~ when such a meeting coincides with a county or state holiday, then the meeting shall be cancelled.

Meetings will adjourn at 10:00 p.m. unless otherwise voted upon by the Board.

B. Special Meetings

Special meetings of the Board may be called at any time by the Chair. At least forty-eight (48) hours written notice of the time and place of special meetings shall be given, by the Clerk to the Board or by the Chair, to each member of the Board.

C. Cancellation of Meetings

1. For Lack of Business or Quorum —Whenever there are no appeals, applications for exceptions or variances, or other business for the Board, or whenever so many regular and alternate members notify the Clerk to the Board of inability to attend that a quorum will not be available, the Clerk to the Board may dispense with a meeting by giving written or oral notice to all members prior to the time set for the meeting.

2. Inclement Weather or Similar Consideration —Meetings may also be canceled whenever there may be additional considerations which make a meeting unsafe or infeasible.

Such determination may be made by the Chair upon good cause or by the

Clerk to the Board where the cause is closure of County offices or facilities. Upon such a cancelation, either the Chair or the Clerk to the Board may dispense with a meeting by giving written or oral notice to all members prior to the time set for the meeting.

Amended 1/11/99  
4/12/22

D. Quorum

A quorum of the Board, necessary to conduct any business of the Board shall, consist of at least four Board members.

Amended 6/11/90  
4/12/22

E. Conduct of Meetings

All meetings of the Board shall be conducted in compliance with the North Carolina Open Meetings Law, North Carolina General Statutes 143-319.9 et seq. The Board shall give public notice of its meetings also as provided in the Open Meetings Law. The order of business at regular meetings shall be as follows:

- a. reading of the Public Charge;
- b. approval of minutes;
- c. hearing of cases;
- d. consideration and determination of past cases; and,
- e. other business.

## VI. Applications for Appeal

### A. Types of Appeals

The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Planning Director. It shall also hear and decide all matters referred to it or upon which it is required to pass by the Unified Development Ordinance of Orange County, North Carolina. In deciding appeals, it may hear both those based upon an allegedly improper and erroneous interpretation of the ordinance and those based upon alleged hardship resulting from the strict interpretation of the ordinance.

Amended 6/11/90  
4/12/22

B. Procedure for Filing Appeals

No appeal shall be heard by the Board unless notice thereof is filed as required by the UDO within thirty (30) days after the decision, determination or directive was made by the Planning Director and record of that action filed in the office of the Planning Director. No appeal shall be considered by the Board unless a completed application is received. All applications for hearings shall be filed with the Clerk to the Board, or with the Planning Director, who shall act as Clerk to the Board for the Board in receiving this notice. All applications shall be made upon the form furnished for that purpose, and all required information shall be provided thereon before an appeal or an application shall be considered as having been filed.

C. Hearings

Amended  
6/11/90  
4/12/22

1. Time

After receipt from the Planning Director or Clerk to the Board of the completed notice of appeal or application, the Clerk to the Board shall schedule a time for a hearing, which shall be heard at either a regularly scheduled meeting or at a special meeting.

Amended  
6/11/90  
4/12/22

2. Notice

The Board shall give public notice of the hearing as required by the North Carolina Open Meetings Law and as specified in the Orange County Unified Development Ordinance.

Notices shall state the location of the building or lot, the general nature of the question involved, and the time and place of the hearing.

3. Conduct of Hearing

Any party may appear in person or by attorney at the hearing. Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of such evidence as would be admissible in a court of law. The Board may, in its discretion, view the premises and obtain additional facts in the matter before arriving at a determination of the case. The order of business for each hearing shall be as follows:

- (a) the Chair, or such person as the Chair shall direct, shall give a preliminary statement of the case;
- (b) the applicant shall present the arguments in support of his case or application;
- (c) persons opposed to granting the application shall present the argument against the application;
- (d) both sides will be permitted to present rebuttals to opposing testimony;
- (e) the Chair, or such person as the Chair shall direct, shall summarize the evidence which has been presented, giving the parties an opportunity to make objections or corrections.

4. Administration of Oaths

The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

5. Denial and Re-hearings

When the Board ~~of Adjustment shall have~~ has denied an application for a Special Use Permit, the Board ~~of Adjustment~~ shall not receive another application for the same or similar petition affecting the same property or a portion thereof until the expiration of a one-year period, extending from the date of denial.

An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the Board to determine whether there has been substantial change in the facts, evidence, or conditions in the case.

A re-hearing shall be denied by the Board if in its judgment there has been no substantial change in the facts, evidence, or conditions in the case. If the Board finds that there has been such a change, it shall thereupon treat the request in the same manner as any other application.

Amended  
6/11/90  
4/12/22

1. Form

The Board's decisions to approve or deny any application shall be reduced to writing in the form of an Order. Such Order shall include the reasons for the Board's decision and signed by the Chair.

Amended  
6/11/90  
4/12/22

2. Voting at Hearings

Required voting on matters before the Board shall be in accordance with applicable State statutes and the provisions of the Orange County Unified Development Ordinance (UDO).

3. Public Record of Decisions

The minutes and orders of the Board shall be a public record, available for inspection at all reasonable times.

**VII. Amendments**

Amended  
6/12/78  
4/12/22

A. These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than four-fifths (4/5ths) members of the Board, provided that such amendment be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

Attachment 2

**RESOLUTION OF THE  
ORANGE COUNTY BOARD OF ADJUSTMENT (BOA)**

Whereas, on January 11, 223, the Orange County Board of Adjustment (BOA) met to conduct an administrative meeting.

AND

Whereas, the BOA reviewed, considered and adopted revised BOA Rules of Procedure.

AND

Whereas, the BOA reviewed, considered and adopted revised their BOA Annual Report and Work Plan to the BOCC.

**NOW THEREFORE BE IT RESOLVED** by the Board of Adjustment hereby amends their Rules of Procedure and forwards their Annual Report and Work Plan to the BOCC.

Upon motion of BOA Member \_\_\_\_\_, and seconded by BOA Member \_\_\_\_\_, the foregoing resolution was adopted this the 11<sup>th</sup> day of January 2023.

I, Tina Love, Secretary to the Board of Adjustment, HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board at a meeting held on January 11, 2023 as relates in any way to the adoption of the foregoing and that said proceedings are maintained by the Orange County Planning Department.

WITNESS my hand and the seal of said County, this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Secretary to the Board of Adjustment

**ORANGE COUNTY  
BOARD OF ADJUSTMENT (BOA)  
AGENDA ITEM ABSTRACT**  
Meeting Date: January 11, 2023

**Agenda  
Item No.** 6

**SUBJECT:** Adoption of BOA Annual Report and Work Plan 2023

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**DEPARTMENT:** Planning and Inspections

**PUBLIC HEARING:** (Y/N)

No

**ATTACHMENTS:**

1. BOA Annual Report and Work Plan 2023
2. Resolution of Approval

**INFORMATION CONTACT:**

Pat Mallett, Deputy Dir. Development Services  
(919) 245-2577

[pmallett@orangecountync.gov](mailto:pmallett@orangecountync.gov)

Tina Love  
Administrative Support I  
Secretary to the Board and Minutes  
(919) 245-2571

[tlove@orangecountync.gov](mailto:tlove@orangecountync.gov)

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**PURPOSE:** For the BOA to review and forward their required Annual Report and Work Plan for 2023.

**BACKGROUND:** The Orange County Board of County Commissioners (BOCC) requires all of the Orange County appointed boards and commissions to file an Annual Report Work Plan with the County Clerk every January. The BOA submittal to the Clerk is contained within Attachment 1. This material meets the format and size limits set forth by their Clerk for all boards and commissions.

**RECOMMENDATION:** Staff recommends that the BOA review, consider and adopt the material and Resolution of Approval as contained within Attachment 2 at their January 11, 2023 meeting so it can be forwarded by Staff to the Clerk's Office no later than January 27, 2023.

Attachment 1

**NAME OF BOARD/COMMISSION:** Board of Adjustment

**Report Period** January 2022-December 2022

**ORANGE COUNTY BOARDS AND COMMISSIONS  
ANNUAL REPORT/ WORK PLAN FOR THE COUNTY COMMISSIONERS**

The Board of Commissioners appreciates the dedication of all the volunteers on their boards and commissions and welcomes input from various boards and commissions throughout the year. Please complete the following information, limited to the front and back of this form. Other background materials may be provided as a supplement to, but not as a substitute for, this form.

**Board/Commission Name:**

Board of Adjustment (BOA)

**Person to address the BOCC and contact information:**

Leon Meyers, BOA Chair  
[lmeyersnc@gmail.com](mailto:lmeyersnc@gmail.com) 919 422-5773  
3126 Carriage Trail, Hillsborough

**Primary County Staff Contact:**

Patrick Mallett, Deputy Director Development Services  
Planning & Inspections Department  
[pmallett@orangecountync.gov](mailto:pmallett@orangecountync.gov)  
Office (919) 245-2577 / Mobile (919) 819-3402

**How many times per month does this board/commission meet, including any special meetings and sub-committee meetings?**

One meeting per month as outlined in the published BOA Calendar.

[2023 Calendars | Orange County, NC \(orangecountync.gov\)](#)

Note: the BOA only meets on published dates when there is a case to be considered and/or required administrative actions or training. Historically, the BOA has met 4-6 times per year.

**Brief Statement of Board/Commission's Assigned Charge and Responsibilities.**

As required by NCGS §160D-302 and Unified Development Ordinance (UDO) Section 1.8.1, the BOA is required quasi-judicial appointed board that is established and maintained to hear and decide:

1. Appeals regarding any decision, or determination made by the Planning Director;

2. Applications requesting the approval of Special Use Permit (SUP);
3. Variance requests from the minimum requirements of the UDO; and
4. Other matters as required by state law, the UDO and/or the BOCC.

**What are your Board/Commission's most important accomplishments?**

1. Successfully deciding appeals, variances and SUPs per the state statute and UDO requirements without any higher appeals or legal challenges.
2. Successfully meeting virtually and/or in person during the COVID crisis.
3. Adapting its rules and process to meet the new requirements of 160D-302.
4. Successfully appointing all the required and alternate BOA seats for the first time in over 10-years.
5. Revising the applications, required materials and published calendars to make the process simpler, quicker and more accessible to the public.

**List of Specific Tasks, Events, or Functions Performed or Sponsored Annually.**

N/A

**Describe this board/commission's activities/accomplishments in carrying out BOCC goal(s)/priorities, if applicable.**

1. Successfully meeting state and UDO requirements for BOAs.

**Describe the collaboration relationship(s) this particular board has with other advisory boards and commissions?**

1. Operationally none. The BOA is by definition an independent, autonomous quasi-judicial decision making body.
2. Administratively, BOA's meeting needs and support is coordinated alongside the Planning Board.

**Identify any activities this board/commission expects to carry out in 2023 as they relate to established BOCC goals and priorities. If applicable, is there a fiscal impact (i.e., funding, staff time, and other resources) associated with these proposed activities (please list).**

1. Continuing to improve the process and public information about the BOA.
2. Minimize addition Staff and funding needs to the extent legally possible (e.g. streamlining the review process and legal notification processes).

**What are the concerns or emerging issues your board has identified for the upcoming year that it plans to address, or wishes to bring to the Commissioners' attention?**

1. Continuing to meet the requirements caused by NCGS §160D-302.

Attachment 2

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I, Tina Love, Secretary to the Board of Adjustment, HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board at a meeting held on January 11, 2023 as relates in any way to the adoption of the foregoing and that said proceedings are maintained by the Orange County Planning Department.

WITNESS my hand and the seal of said County, this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Secretary to the Board of Adjustment