



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)

2.11.6 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**
 - (1) Any interested party may 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 make competent, relevant, and material comments.
- (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 160A-939(d), 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 Class B 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) The Board shall give notice of matters coming before it by causing notice to be placed in a newspaper of general circulation in Orange County. The notice shall appear once a week for two consecutive weeks, the first insertion to be not less than ten days nor more than 25 days prior to the meeting date. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.
- (B) In the case of application for a Class B Special Use permit or variance the Planning Director shall give written notice by first class mail to adjacent property owners. This notice shall be mailed at least ten days but not more than 25 days prior to the meeting date. Adjacent property owners are those whose property lies within one thousand feet of the affected property and whom are currently listed as property owners in the Orange County tax records. The outside of the envelope or postcard shall be marked "Notice of Public Hearing."
- (C) The Planning Director shall post on the affected property a notice of the Board meeting at least ten days but not more than 25 days prior to the meeting date.
- (D) 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.

- (2) If a public hearing before the Board of County Commissioners is not required for approval of the development project, then a special hearing shall be scheduled. The hearing shall take place no later than 30 days after the close of the public review period or receipt of comments from the State Clearinghouse, whichever is later.

(C) Notice of Public Hearing

- (1) Notice of the public hearing to review the EIS and receive public comment shall be published at least twice in a newspaper of general circulation in the county, stating the time and place of the hearing.
- (2) Said notice shall appear in said newspaper for two successive weeks with the first notice appearing not less than ten nor more than 25 days before the date set for the public hearing. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.

(D) Board of County Commissioners Action

- (1) The Board of County Commissioners shall receive the EIS and all comments as information only. The information presented may be used only to determine compliance with specific development standards established in this Ordinance.
- (2) No action shall be taken on the development project until after the EIS has been presented to the Board of County Commissioners.

(E) Effect on Other Permits and Actions

Construction or installation of any major development project shall not commence until subsequent to the filing of a Finding of No Significant Impact or acceptance of the Final EIS by the Board of County Commissioners.

SECTION 2.26: APPEALS

2.26.1 Generally

Appeal applications shall be filed in accordance with Section 2.2 within 30 days of the decision being appealed on forms provided by the Planning Department, if applicable.

2.26.2 Planning Director Decisions

(A) Site Plans or Other Decision Pertaining to this Ordinance

Any decision of the Planning Director regarding a site plan application or other decision pertaining to this Ordinance not listed in (B) through (D) below may be appealed to the Board of Adjustment according to the provisions set forth in Section 2.12 of this Ordinance.

- (1) 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:
 - (a) Situations that, in the opinion of the Planning Director, a stay would cause imminent peril to life and/or property.
 - (b) That the situation appealed from is transitory in nature and, therefore, an appeal would seriously interfere with enforcement of the Ordinance.

In either instance in (a) and (b) above, the Planning Director shall place in certificate the facts to support the conclusion.

(B) Exempt Subdivisions

- (1) The decision of the Planning Director regarding an exempt subdivision application may be appealed to the Board of County Commissioners.

- (2) The Board of County Commissioners shall have final approval authority, and, where applicable, all Final Plats shall contain information and/or conditions approved by the Commissioners.
- (3) The Board of County Commissioners in all such appeals shall make findings of fact in support of its decision. The subdivider shall be notified, in writing, of the Board's decision.

(C) Minor Subdivisions

- (1) The decision of the Planning Director regarding a minor subdivision application may be appealed to the Board of County Commissioners.
- (2) The Board of County Commissioners shall have final approval authority, and, where applicable, all Final Plats shall contain information and/or conditions approved by the Commissioners.
- (3) The Board of County Commissioners in all such appeals shall make findings of fact in support of its decision. The subdivider shall be notified, in writing, of the Board's decision.

(D) Major Subdivisions – Final Plat

- (1) The decision of the Planning Director regarding a Major Subdivision Final Plat application may be appealed to the Board of Commissioners.
- (2) The Board of Commissioners shall have final approval authority, and where applicable, all Final Plats shall contain information and/or conditions approved by the Board of Commissioners.
- (3) The Board of Commissioners in all such appeals shall make findings of fact in support of its decision.
- (4) The applicant shall be notified, in writing, of the Board of Commissioners' decision.

2.26.3 Planning Board Decisions

(A) Major Subdivisions – Concept Plan

- (1) The decision of the Planning Board regarding Concept Plan Development Options may be appealed to the Board of Commissioners.
- (2) Any notice of appeal shall be filed, in writing, with the Planning Director within 15 days after the date of the Planning Board's decision.
- (3) If the appeal involves a plan/map approval, 16 copies of the plan/map shall be submitted along with the written appeal.
- (4) The Board of Commissioners shall have final approval authority, and, where applicable, all Concept Plan Development Options shall contain information and/or conditions approved by the Board of Commissioners.
- (5) The Board of Commissioners in all such appeals shall make findings of fact in support of its decision. The applicant shall be notified, in writing, of the Board of Commissioners' decision within ten days after said decision is made.

2.26.4 Board of Adjustment Decisions

- (A)** Every decision of the Board shall be subject to review at the request of any person who has standing as detailed within NCGS 160A-393(d) by the Superior Court by proceedings in the nature of certiorari. The appeal to Superior Court must be filed within 30 days of the availability of the notice of decision (2.12.5(A)).

2.26.5 Board of County Commissioners Decisions

(A) Quasi-Judicial Decisions

- (1) Quasi-judicial decisions made by the Board of County Commissioners pursuant to the Ordinance shall be subject to review at the request of any person who has standing as detailed within NCGS 160A-393(d) by the Superior Court by proceedings in the nature of certiorari.
- (2) The appeal to the Superior Court must be filed within 30 days of the filing of the decision of the Board of County Commissioners by the Planning Director or the delivery of the notice of the decision to the applicant, whichever is later.

(B) Legislative Decisions

- (1) Legislative decisions made by the Board of County Commissioners pursuant to the Ordinance shall be subject to review at the request of any aggrieved party by the Superior Court.
- (2) The appeal to the Superior Court must be filed from the date of adoption of said Ordinance within the prescribed period below:
 - (a) 60 days in cases involving the appeal of an Ordinance amending the Zoning Atlas,
 - (b) 1 year (365 days) in cases involving the appeal of an Ordinance amendment the UDO,
 - (c) 3 years (1,035 days) in cases involving an appeal based on an alleged defect in the adoption process of an Ordinance amending the UDO.

2.26.6 Water Supply Watershed Critical Area Boundary Line

Appeal applications disputing the Planning Director's decision regarding the location of a Water Supply Watershed Critical Area boundary line shall be accompanied by:

- (A) A survey prepared by a North Carolina registered land surveyor or professional engineer depicting the differences between:
 - (1) The locational criteria in Section 4.2,
 - (2) The official Watershed map on file in the Planning Department, and
 - (3) The boundary line the applicant asserts is correct.
- (B) A detailed explanation describing the differences in the three boundary lines contained in (A) above.

2.26.7 Flood Regulations

- (A) Any property owner who has received an order to take corrective action in accordance with Section 9.7 may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten business days following issuance of the final order.
- (B) The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

2.26.8 Soil Erosion and Sedimentation Control

(A) Appeal of Erosion Control Plan

Except as provided in subsection (D) below, the appeal of a disapproval, approval with modifications, or approval with conditions of an Erosion Control Plan shall be governed by the following provisions:

- (1) The disapproval of, modification of, or conditions of approval attached to any proposed Erosion Control Plan by the Erosion Control Officer shall entitle the person submitting the plan to an appeal of the decision to the Orange County Planning Director.
- (2) If the Planning Director upholds the decision, the person shall be entitled to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of disapproval, modification, or conditions of approval.

(B) Hearings

(1) Orange County

- (a) This sub-subsection pertains to appeals for land-disturbing activities occurring outside the corporate limits of the Towns of Chapel Hill, Carrboro, and Hillsborough, and the City of Mebane.
- (b) Hearings held pursuant to this sub-subsection shall be conducted by the Orange County Planning Board within 30 days after receipt of written demand, as provided for in (A)(2) above.
- (c) The Orange County Planning Board shall make recommendations to the Board of County Commissioners within 30 days after the date of the hearing on such Erosion Control Plan.
- (d) The Board of County Commissioners will render its final decision on any Erosion Control Plan appeal within 30 days of receipt of the Planning Board recommendation.

(2) Other than Orange County

- (a) This sub-subsection pertains to appeals for land-disturbing activities occurring within the corporate limits of the Towns of Chapel Hill, Carrboro, and Hillsborough, and the City of Mebane.
- (b) Hearings held pursuant to this sub-subsection shall be conducted by a designated agency of the appropriate town or city board within 30 days after receipt of written demand, as provided for in (A)(2) above.
- (c) The said designated agency shall make recommendations to the appropriate town or city board within 30 days after the date of the hearing on such Erosion Control Plan.
- (d) The said appropriate town or city board will render its final decision on any Erosion Control Plan appeal within 30 days of the receipt of the recommendations from the said designated agency conducting the hearing.

(C) Appeal from Local Government's Decision

If the local governing body upholds the disapproval, modification, or conditions of approval of a proposed Erosion Control Plan following the public hearing, the applicant shall be entitled to appeal the local government's action to the North Carolina Sedimentation Control Commission as provided in Section 113A-61(c) of the General Statutes and Title 15A NCAC 4B.0118.

(D) Appeal of Erosion Control Plan if Disapproval Based on Applicant's Past Performance

The applicant may appeal disapprovals issued under the provisions of Section 2.19.11 of this Ordinance directly to the North Carolina Sedimentation Control Commission.

(E) Appeal of Land-Disturbing Stop Work Order

- (1) The person conducting the land-disturbing activity may appeal a stop work order to the Board of County Commissioners within a period of five days after the order is issued.
- (2) Notice of the appeal shall be given in writing to the Board of County Commissioners, with a copy to the Erosion Control Officer.
- (3) The Board of County Commissioners shall conduct a hearing at their next scheduled regular meeting at which the appellant and the Erosion Control Officer or Inspector shall be permitted to submit relevant evidence, and shall rule on the appeal as expeditiously as possible.
- (4) Pending the ruling by the Board of County Commissioners on an appeal, no further work shall take place in violation of a stop work order.

2.26.9 Stormwater Management Plan

- (A) Appeals of the Erosion Control Officer's decision on a Stormwater Management Plan shall be made to the Orange County Planning Director.
- (B) If the Planning Director upholds the decision, the applicant shall be entitled to a public hearing if the applicant submits written demand for a hearing within 15 days after receipt of written notice of disapproval, modification, or conditions of approval.
- (C) The hearing shall be conducted by the Orange County Planning Board within 30 days after receipt of written demand for a hearing.
- (D) The Orange County Planning Board shall make recommendations to the Board of County Commissioners within 30 days after the date of the hearing.
- (E) The Board of County Commissioners shall render its final decision on any stormwater management plan upon which a hearing is requested within 30 days of receipt of the recommendations from the Planning Board.

2.26.10 Appeal of Stop Work Orders Regarding Stormwater Management Provisions

- (A) The person conducting the development activity may appeal a stop work order to the Board of County Commissioners within a period of five days after the order is issued.
- (B) Notice of the appeal shall be given in writing to the Board of County Commissioners, with a copy to the Erosion Control Officer.
- (C) The Board of County Commissioners shall conduct a hearing at their next scheduled regular meeting at which the appellant and the Erosion Control Officer or Inspector shall be permitted to submit relevant evidence, and shall rule on the appeal as expeditiously as possible.
- (D) Pending the ruling by the Board of County Commissioners on an appeal, no further work shall take place in violation of a stop work order.

2.26.11 Appeals from Final Decisions Regarding Soil Erosion and Sedimentation Control Civil Penalties

- (A) **Appeal from Board of County Commissioners or Other Governing Body Decisions**
Appeal from the final decision of the governing body regarding civil penalties assessed for violations of the soil erosion and sedimentation control provisions of this Ordinance shall be to the Superior Court of the county where the violation occurred, or in the county where the violator's residence or principal place of business is located.