

QUASI-JUDICIAL PROCEEDINGS FOR USE PERMITS

The purpose of a quasi-judicial hearing is for the Board of Commissioners to hear and consider pertinent facts related to a use permit application.

A “use permit” refers to a situation in which a particular kind of use is permitted in a zoning district not as a matter of right but under ordinance provisions that allow the Board of Commissioners to issue a use permit when the board makes specified findings. In addition to finding compliance with specific provisions of the Unified Development Ordinance (UDO) the Board of Commissioners may affix other reasonable and appropriate conditions to the use permit for the protection of both neighboring properties and larger public interests.

Pursuant to the Currituck County Unified Development Ordinance the Board of Commissioners must be able to find and conclude from evidence presented during the course of the hearing that:

1. The use will not endanger the public health or safety;
2. The use will not injure the value of adjoining or abutting property and will be in harmony with the area in which it is located;
3. The use will be in conformity with the Land Use Plan or other officially adopted plan; and,
4. The use will not exceed the county’s ability to provide adequate public facilities, including, but not limited to, schools, fire and rescue, law enforcement, and other county facilities. Applicable state standards and guidelines shall be followed for determining when public facilities are adequate.

For the purposes of a use permit hearing, the Board of Commissioners sits as a quasi-judicial body. That means the Board of Commissioners is required to comply with procedural rules much like those of a trial court and to provide for the constitutional right to due process such as sworn testimony of witnesses, no reliance upon hearsay testimony for a critical finding of fact, and the direct and cross examination of witnesses.

Accordingly, those offering testimony will be placed under oath and only sworn testimony will be considered by the Board of Commissioners to make its decision. The Board of Commissioners findings must be supported by competent material and substantial evidence presented during the course of the hearing. “Competent” evidence is generally understood to mean that evidence which is legally admissible in a Court of Law. Pursuant to Section 160a-393 of the North Carolina General Statutes, the requirement for competent evidence does not preclude reliance by the Board of Commissioners on evidence that would not be admissible in a Court of Law if (i) The evidence was admitted without objection or (ii) The evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the Board of Commissioners to rely upon it. As further provided by Section 106a-393 of the North Carolina General Statutes, competent evidence does not include the opinion testimony of lay witnesses as to any of the following:

- The use of property in a particular way would affect the value of other property.

- The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.
- Matters about which only expert testimony would generally be admissible under rules of evidence applicable to the trial courts.

In addition, the board may not make a critical finding based solely on hearsay. Hearsay means a statement not made at the hearing that the proponent seeks to have admitted as evidence of the truth of the matter asserted in that statement. A witness or expert needs to be present so questions can be asked about the particulars of their statement. An example is a petition which is not valid evidence that can be considered in making a finding.

As provided in section 2.3.8.B of the UDO the burden of demonstrating that an application complies with the review and approval standards of the UDO is on the applicant. Once a completed application has been submitted, the burden of presenting evidence to the Board of Commissioners sufficient to lead the board to conclude that the application should be denied shall be upon the parties urging denial unless information presented by the applicant in its application and at the hearing is sufficient to justify a reasonable conclusion that a reason exists to deny the application.

Other Points Related to Quasi-Judicial Hearings

1. Opportunity to Present Testimony and Evidence

Any affected party shall be afforded a reasonable opportunity to present testimony and evidence in support of or in opposition to the application, and to ask questions of the applicant and the applicant's representatives and county staff and county staff's representatives. At the discretion of the person chairing the body conducting the public hearing, an affected party may be granted an opportunity to ask questions of any other member of the public who has testified at the hearing.

2. Not Bound by Rules of Evidence

Except as otherwise provided in the North Carolina General Statutes, the body conducting a quasi-judicial public hearing is not bound by the rules of evidence, or limited to consideration of evidence that is admissible in a court of law. The body may consider all testimony and evidence it deems competent and material to the application under consideration.

3. Cross Examination

Any inquiry under cross-examination shall be limited to matters raised in the direct examination of the witness. No re-direct or re-cross shall be allowed unless requested by the applicant, an affected party, or the county—who shall state the desired area of inquiry—and the request is approved by the person chairing the body conducting the hearing. If re-direct or re-cross is allowed, it shall be limited to questions of the witness on issues raised in the cross-examination.

4. Ex Parte Communication

Ex parte communication between an applicant or an affected party and a member of the board reviewing or making a decision on the application is prohibited, and must be disclosed during the public hearing, if it occurs.

5. Conflict

In the event conflict between these standards and the standards in Section 2.3.8.B, Conduct of Public Hearing, these standards shall control during a quasi-judicial public hearing.