# TOWN OF WAYNESVILLE
## Zoning Board of Adjustment

9 South Main Street,
Suite 110
Waynesville, NC 28786
Phone (828) 456-8647 • Fax (828) 452-1492
www.waynesvillenc.gov



**Board Members:**
Edward Moore – Chair
John Mason – Vice Chair
Sam Hyde
Jan Grossman
Mary Ford
Carly Pugh (Alternate)
Kenneth Dambrosio (Alternate)

**Development Services Director**
Olga Grooman


**TOWN OF WAYNESVILLE**
**ZONING BOARD OF ADJUSTMENT**
**REGULAR MEETING**
**Town Hall – 9 South Main Street, Waynesville, NC 28786**
**Tuesday, December 1, 2026, 5:30 pm**

**A. CALL TO ORDER:**

1. Welcome/Announcements.
   - End of Year Summary of the Board's Actions and Activities.

2. Adoption of Minutes (as presented or amended) from September 1, 2026, regular meeting.

**B. BUSINESS ITEMS:**

1. Training on quasi-judicial procedures. Presented by Board Attorney- Ron Sneed.

**C. ADJOURN.**

*The Town's Land Development Standards (LDS) may be found at:*
*https://www.waynesvillenc.gov/departments/development-services/land-use-zoning-ordinances*

*Minutes and agendas from Zoning Board of Adjustment and Town Council meetings may be found at:*
*https://www.egovlink.com/waynesville/*

## Zoning Board of Adjustment Staff Report

| | |
|---|---|
| Subject: | End-of-Year Board Update on Board Action Items |
| Presenter: | Olga Grooman, Development Services Director |
| Date: | December 1, 2026 |

### Background

In 2026, the Zoning Board of Adjustment has met seven (7) times, compared to four (4) times in 2025. The Board has granted four (4) variances and denied one (1) variance. There were no cases involving appeals of administrative decisions that the Board heard in 2026.

### Granted variances:

1. Variance for the ground level glazing/transparency zone requirements for the new Mountain Credit Union office building at 1700 Russ Avenue.

2. Variance for the sidewalk construction requirements for the Habitat for Humanity single-family residential subdivision located off Sylvan Street.

3. Variance request from the façade materials requirements for Haywood Community College at 144 Industrial Park Drive.

4. Variance from the side setback requirements for the property at 2956 Gaddis Branch Road.

### Denied variance:

1. Variance request for the placement of a garage in the front yard at 766 High Ridge Road.

3.

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**Board Members:**
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**Interim Development Services Director**
Olga Grooman

**MINUTES OF THE TOWN OF WAYNESVILLE ZONING BOARD OF ADJUSTMENT**
**Regular Meeting**
**Town Hall – 9 South Main St., Waynesville, NC 28786**
**Tuesday, September 1st, 2026**

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THE TOWN OF WAYNESVILLE ZONING BOARD OF ADJUSTMENT held a Regular Meeting on Tuesday September 1st, at 5:30 p.m., in the Town Hall Board Room at 9 South Main Street, Waynesville, NC 28786.

## A. CALL TO ORDER

1. Welcome/Calendar/Announcements

The following Board members were present:
Edward Moore, Chairman
John Mason, Vice Chair
Mary Ford
Jan Grossman
Sam Hyde

Non-participating alternate Board members were present:
Carly Pugh
Kenneth Dambrosio

The following staff were present:
Olga Grooman, Interim Development Services Director
Esther Coulter, Administrative Assistant
Ron Sneed, Board's Attorney

The applicant's team was present:
Thomas Morgan on behalf of Phoenix Builders LLC

Chairman Edward Moore welcomed everyone and called the meeting to order at 5:33 p.m. Mr. Moore asked Interim Development Services Director Olga Grooman to address the Board. Ms. Grooman told the Board that there is a possibility of an October meeting. Ms. Grooman introduced the new alternate board member Kenneth Dambrosio. Mr. Dambrosio stated he came from a community about the size of Waynesville, and he was fortunate to be elected to serve on the Board.

***A motion was made by Board member Sam Hyde, seconded by Board member John Mason to approve the minutes for the August 4th, 2026, meeting as presented. The motion passed unanimously, 5:0.***

**B. BUSINESS ITEMS:**

1. Election of Chair and Vice Chair.

***A nomination for the Zoning Board of Adjustment Chairman was made by Board member John Mason to re-elect Edward Moore as Chairman, seconded by Board member Mary Ford. Nomination was accepted, and vote was unanimous. 5:0.***

***A nomination for the Zoning Board of Adjustment Vice Chairman was made by Board member Sam Hyde to re-elect John Mason as Vice Chairman, seconded by Chairman Edward Moore. Nomination was accepted and vote was unanimous. 5:0.***

2. A variance request from the side setback requirements for the property at 2956 Gaddis Branch Road (PIN 8606-11-0043), Land Development Standards Section 2.4.1.

Chairman Edward Moore read the procedures for a quasi-judicial hearing; He opened the public hearing at 5:42 p.m. and sworn in all parties.

Interim Development Services Director, Olga Grooman, read her staff report with the following comments regarding the findings that must be considered by the Zoning Board of Adjustment (LDS 15.13, NC GS 160D-705(d)):

a) Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

In the application materials, the applicant states:

"Unnecessary hardship would result from the strict application of the regulation. The regulation requires 20' front and rear setbacks and 10' side setbacks from any Right of Way. The front and rear setbacks are not an issue as the lot is long and narrow, totaling 1.32 acres. The side-setbacks would reduce the available building site from 40' to 20. This creates an Unnecessary Hardship resulting in extreme difficulty in designing and placing a normal house on the lot."

Staff submits that allowing the residence to be built at the right-of-way lines would still meet the intent of the Low-Density zoning district, as the structure would remain far from the property lines, approximately 40 feet from the paved portion of Odalu Trail to the north, and at least 20 feet from the paved portion of Eagles Nest Road to the south.

b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

The applicant explains:

"The hardships result from conditions that are peculiar to the property. The property is bordered by two roads. One going up to Eagles Nest Road, the other going down Gaddis Branch Road. Each road has a 60' right of way that reaches deep into the lot. Eagles Nest Road is approximately 20' lower than the lot. The Gaddis Branch is approximately 30' lower than the lot. While the Right of Ways reach deep into the property, the significant changes in elevation from the roads to the building site render the Right of Ways unpractical. The regulation would add another 10' set back on each side which makes the building site impractical. I am asking for a zero-set back from the 60' road Right of Ways."

The property is a 1.32-acre, oval-shaped lot. Achieving the side setback would leave only 20 feet of buildable width on each side of the property. Constructing a residence at the right-of-way lines would not significantly increase the disturbance to the slopes, as the proposed building area is located on a relatively flat portion of the side.

c) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.

The applicant states that:

"The hardship did not result from actions taken by the applicant [or] the property owner. This hardship is created by the topography of the lots and the Right of Ways from the roads on each side of the lot."

Staff submits that the setback variance would still allow the applicant to preserve considerable vegetation on site, avoid significant disturbance on the slopes, and minimize the need for fill and cut slopes. Therefore, the variance would be consistent with the intent of the Eagles Nest Residential Low Density (EN-RL) zoning district and the steep-slope protections established in the LDS. Under no circumstances, however, would the proposed building be allowed to encroach into the plated right-of-way.

d) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved.

6.

The applicant submits that:

"The required variance is consistent with the spirit, purpose and intent of the regulation. A Zero Side Set Back from the 60' Road Right of Ways will not affect the intent of the regulation due to the topography involved. The 20' to 30' steep banks that are tree covered will make any house contracted practically unnoticeable. The proximity of the house to the Roads would also not be affected by the Zero Side Setbacks. Thank you for your consideration."

The variance would still allow the applicant to work with the existing topography and construct the residence within the minimally disturbed portion of the lot, where the surrounding vegetation would help screen the residence from view. The construction would not interfere with the adjacent properties either.

Items Entered as Evidence:

- Staff report
- Application materials with payment
- Plat
- Proposed site plan
- Maps: subject property, zoning, municipal boundaries, topo
- Street view images
- Public notices
- Town of Waynesville Land Development Standards and NC G.S. 160D by reference

Board members Jan Grossman and John Mason asked to get clarification on the width of the property at the building site.

The applicant, Mr. Morgan, explained that when you scale it, it's 40 feet in between the two right-of-way lines. The dotted line is the right-of-way from each road, and the variance requested is 10 feet on each side.

**Public Comment**

**Melissa Stopkey**- off Eagle View Circle- testified that she is the acting Eagles Nest HOA President, and she does not really have a problem with this variance, but she wants to make sure it's on the record that they do not allow entrance or exit off that property onto Eagle's Nest Road. That is a private road, and it's in the covenants, and she is legally obligated to enforce that.

**Alan Lang**- off Alpine Lane- which is in the Eagles Nest neighborhood. He is the former President of the Eagle's Nest Homeowners Association. He stated that it's a little bit puzzling to him as someone who's lived on that mountain for a long time, how someone would come in, a contractor, Phoenix Builders, one of the experienced contractors in the area, and would purchase this lot knowing its limitations, and then after the fact, think that they have a basis or grounds for changing the setbacks and other things associated with it. It just strikes as odd that they would do that.

Mr. Lang also explained that he understands that there are conditions that can be placed upon the granted setback. He expressed that he wants to see among those conditions being that they can't just level the entire building site. This terrain is coming up to a peak with a very shallow level area, a small level area at the top. He inquired if the builder is proposing to cut the entire setback down, lowering it closer to the levels of the roads there. That would be objectionable if they were to do that. Another condition that he would like to see is that they preserve the vegetation that borders on this property.

Additionally, to reinforce the point that Ms. Stopkey made, Mr. Lang wants to ensure that the developer receives permission to gain access to this property from the privately owned and maintained portion of Eagles Nest Road. He does not think that a developer has a right to access that property in the way that it sounds like they're proposing. But then, he really has not seen any plans or proposals, so it's difficult to evaluate what they intend to do without seeing a proposed construction plan.

**Kitty Allen**- former President of the Eagles Nest Homeowners Association. The concern she has is mostly with the variance off Eagles Nest Road. The variance on the backside doesn't matter to her, but the variance on Eagles Nest Road is important because it is a very steep slope. If the builder wants 10 feet, he's going to have to lower the property. Just as Mr. Lang said, that's going to make it lower. It just doesn't seem right. She does not think the developer should have access to the lot from that driveway they showed either.

Vice Chairman John Mason asked if her concern was the same as Mr. Lang's?

Kitty Allen explained that she wants 10 feet on that side for the house- off Eagles Nest Road. Otherwise, the house will be too close to road. She claimed that the other houses in the neighborhood are set back off the road.

Vice Chairman John Mason inquired if that was an aesthetic concern, or a safety concern, or a vegetation and erosion concern. He asked what exactly she was concerned about.

Kitty Allen stated that the house would be very visible.

**Joe Syrowik**- a former Board President of Eagles Nest Homeless Association. He lives off Eagles Nest Road. The Waynesville Ordinances and the NCGS 160D-705D require the applicant to prove all four findings. Each one is thin, in his opinion. The first item is unnecessary hardship. This is an assertion, not evidence. The applicant states a 20-foot envelope creates extreme difficulty. The file contains no floor plan, footprint, or design study showing that an actual compliant home was attempted and doesn't fit.

A 20-foot-wide building envelope on a lot with no length constraint, 1.32 acre-long and narrow lot can accommodate many conventional single-family designs. Narrow footprint, two-story, or L-shaped homes are routinely built on similar widths. Cost or design convenience for the builder is explicitly not a valid basis for a variance under the Ordinance's own financial hardship. The applicant does not have sufficient language. Mr. Syrowik asked the Board to request the applicant to show a rejected compliant design before accepting that none exist.

Mr. Syrowik continued that the second point was that a zero-foot setback is not a minimum necessary relief. Even if some relief is warranted because the two rights-of-way cut into the lot, the applicant is asking the Board to eliminate the entire setback rather than request a partial reduction, for example, five feet that would yield 30 feet of width instead of 20. Nothing in the record explains why a lesser variance wouldn't solve this data problem.

Mr. Syrowik explained that number three, the hardship should not be self-created, and it is questionable given who the applicant is. The property was purchased back in February 2020 by the current owner, over six years before this application. The applicant is a professional home builder, professional builder's LLC, not an individual homeowner, discovering an unexpected constraint. The dual row frontage and elevation drops were fully visible on the plan and topography at the time of purchase and would have been apparent to a builder during ordinary due diligence. Choosing not to design around the known visible site condition and instead requesting the maximum possible relief years later looks more like a design business choice than an unavoidable hardship imposed on the applicant.

Mr. Syrowik continued that number four is the consistency with the spirit of intent of the Ordinance. The EN-RL District's purpose emphasizes the minimizing grading, preserving vegetative buffers and protecting beautiful views and rural mountain character. A zero-setback bill sits flush against two public rights-of-way rather than pulled back into the lot. This is the opposite of the buffer screening intent. Staff's rebuttal rests entirely on existing vegetations providing screening, but that vegetation is not guaranteed to remain if graded or utility work is done during construction. If the variance is granted, every other dual-row frontage lot on Eagles Nest Road and Gaddis Branch Road can point to this decision as grounds for the same zero setback, effectively rewriting the district's setback standards lot by lot rather than following the Town's normal ordinance amendment process.

**Joe Stafford**- who lives off Eagle View Circle in the Eagles Nest HOA. He stated that variance involves a lot of other issues. There is a house right across the street from this lot that could be impacted. He inquired whether a continuance could be applied to this hearing as it is unknown what is planned to be built on this spot. The way this property is, it's the entrance into the neighborhood. It's just a beautiful, wooded, no-buildings area right there. The Eagles Nest sign is right there. It's just a very welcoming, natural-looking area. Now he doesn't know what's going to replace that. It's going to be put 10 feet closer to the neighborhood. That's the issue.

Mr. Stafford continued that the approval would create a precedent for other dual-road frontage areas that would affect future issues like this in the neighborhood. So, this one's very important because it's the first thing you see when you come to Eagles Nest on HOA.

Board member Jan Grossman asked whether staff will be involved in reviewing the proposed driveway design.

Ms. Grooman explained this is a private road, and the Town does not enforce the driveway standards on private roads, with some exceptions, such as site triangles and fire apparatus access requirements. There will be no Town-issued driveway permit though.

Mr. Grossman asked if it is possible to put a driveway on this property if it doesn't go on the Eagles Nest Road.

The applicant, Mr. Morgan, explained that the road comes in off Gaddis Branch, and you can drive straight through it and come out on Eagles Nest.

***Chairman Edward Moore entertained a motion to close the hearing, seconded by Board member Sam Hyde at 6:35 p.m. The motion was passed unanimously, 5:0.***

Board member Sam Hyde commented that there have been two other similar variances brought before the Board in the past, and this Board ruled that these variances were acceptable because it would cost the builders more otherwise and they would have to move houses back within the right-of-way.

Board Vice Chair John Mason stated that this decision was not easy because the Board is attempting to weigh landowner rights versus the legitimate concerns of the HOA. He stated that the Board needs to be careful about setting precedents and taking away the rights of a landowner, either because of aesthetics or if others just don't want a house there. That's a significant withdrawal of rights. He, therefore, wants to put a great deal of emphasis on landowner's rights with certain restrictions. In this case, he does not see a forceful argument from the HOA, except for aesthetics and not wanting the applicant to use their private road.

Board member Jan Grossman reiterated that nobody seems to object to the 10-foot variance in the back, to the north. Everything he has heard is about the front setback variance. There is less objection to getting rid of the 10 feet of right-of-way to the north. But his other concern is that there will be trouble down the road in terms of access to this house. For example, the fact that the HOA is saying there are rules that the road cannot be used for access to this property.

Board member Mary Ford said that because the Board does not have any site plans shown, it's the Board's job to make a decision based on what is currently presented.

***A motion was made by Board member Sam Hyde to grant the variance as presented, seconded by Board member Mary Ford. Motion passed 4 to 1, with Board member Jan Grossman voting against the variance.***

**C) ADJOURN**

***A motion to adjourn the meeting was made by Board member Sam Hyde, seconded by Board member Mary Ford at 6:47 pm. The motion was passed unanimously, 5:0.***

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**Edward Moore, Chairman** **Esther Coulter, Administrative Assistant**

# QUASI-JUDICIAL HEARINGS WORKSHOP
December 1, 2026

# Municipal Decision-Making Boards and Commissions

| BOARD OR COMMISION | MATTERS HEARD / DECISIONS MADE |
|---|---|
| PLANNING BOARD | ADMISTRATIVE DECISIONS<br>LEGISLATIVE DECISIONS<br>QUASI-JUDICIAL DECISIONS |
| BOARD OF ADJUSTMENT | QUASI-JUDICIAL |
| HISTORIC PRESERVATION COMMISSION | QUASI-JUDICIAL<br>LEGISLATIVE DECISIONS (LOCAL LANDMARK DESIGNATION) |

## ADMINISTRATIVE DECISIONS:

DECISIONS BASED ON A REVIEW OF AN APPLICATION OR PROPOSAL TO DETERMINE IF ALL ORDINANCE AND STATUTORY REQUIREMENTS ARE MET. INVOLVES NO USE OF DISCRETION AND OFTEN REFERRED TO AS A "CHECK THE BOX" PROCESS. MAJOR SITE PLANS AND MAJOR SUBDIVISION APPROVAL ARE ADMINISTRATIVE HEARINGS IN WAYNESEVILLE.

## LEGISLATIVE DECISIONS:

DECISIONS ABOUT RECOMMENDING PROPOSED ORDINANCES OR ZONING MAP CHANGES TO TOWN COUNCIL, INVOLVE USE OF DISCRETION AND DETERMINATIONS OF REASONABLENESS, PUBLIC INTEREST AND CONFORMITY TO COMPREHENSIVE PLAN.




# QUASI-JUDICIAL HEARINGS

QUASI-JUDICIAL HEARINGS ARE WHAT IT SOUNDS LIKE THEY ARE – HEARINGS SIMILAR TO COURT PROCEEDINGS, REQUIRING ALL THE DUE PROCESS ELEMENTSOF COURT PROCEEDINGS.

THE ELEMENTS OF DUE PROCESS ARE NOTICE AND THE RIGHT TO BE HEARD BY AN **IMPARTIAL PANEL.**

160d-109(d) PROVIDES THAT "IMPERMISSIBLE VIOLATIONS OF DUE PROCESS INCLUDE, BUT ARE NOT LIMITED TO, A MEMBER HAVING A FIXED OPINION PRIOR TO THE HEARING THAT IS NOT SUSCEPTIBLE TO CHANGE, UNDISCLOSED EX PARTE COMMUNICATIONS, A CLOSE FAMILIAL, BUSINESS, OR OTHER ASSOCIATIONAL RELATIONSHIP WITH AN AFFECTED PERSON, OR A FINANCIAL INTEREST IN THE OUTCOME OF THE MATTER."

FOR QUASI-JUDICIAL MATTERS, BOARD MEMBERS ARE ALLOWED TO REVIEW THE PACKET PROVIDED TO THEM BY THE TOWN, MAKE SITE VISITS INDIVIDUALLY (NOT AS A GROUP) AND TO REVIEW ANY PERTINENT STATUTES OR ORDINANCES NOTED IN THE PACKET, BUT THEY ARE NOT TO PERFORM ANY FACTUAL RESEARCH PRIOR TO THE HEARING.

# THE PARTIES

THE APPLICANT AND THE TOWN ARE ALWAYS PARTIES

THOSE PEOPLE OR ENTITIES WHO HAVE STANDING HAVE ALL THE RIGHTS AND PRIVILEGES AND RESPONSBILITIES OF PARTIES AND INSERT THEMSELVES INTO THE HEARING AS PARTIES

PARTIES MAY PRESENT EVIDENCE, CALL WITNESSES, QUESTION WITNESSES, CROSS WITNESSES AND MAKE ARGUMENTS, AND MAY APPEAL THE DECISION

PERSONS WITH STANDING MAY APPEAL THE DECISION EVEN IF THEY ARE NOT DETERMINED AT THE HEARING TO HAVE STANDING, BUT WILL HAVE TO ESTABLISH STANDING TO PURSUE THEIR APPEAL

THE BOARD MAY ALLOW MEMBERS OF THE PUBLIC TO SPEAK AT THE HEARINGS, AND CONSIDER WHAT THEY SAY IF IT IS GOOD EVIDENCE AND ON POINT, BUT THAT DOES NOT MAKE THEM PARTIES.

# WHAT IS STANDING?

A PERSON OR ENTITY HAS STANDING IF HE OR SHE HAS AND OWNERSHIP OR CONTRACTURAL INTEREST IN THE PROPERTY, OR IS AFFECTED BY THE POTENTIAL DECISION DIFFERENTLY FROM OTHERS IN THE COMMUNITY.

A NON-OWNER PERSON OR ENTITY HAS STANDING IF:

HIS OR HER PROPERTY VALUE WILL BE ADVERSELY AFFECTED IF THE APPLICANT GET WHAT IT REQUESTS

TRAFFIC CHANGES WHICH WILL RESULT FROM A GRANT OF THE APPLICANT'S REQUEST WILL ADVERSELY AFFECT THE PERSON

OTHER ADVERSE AFFECTS, SUCH AS STORMWATER RUNOFF

AN ASSOCIATION, ENTITY OR ORGANIZATION AT LEAST ONE OF THE MEMBERS OF WHICH IS AFFECTED AS DESCRIBED ABOVE

IT IS NOT ENOUGH THAT THE PERSON THINKS ONE OR MORE ADVERSE EFFECT MIGHT OCCUR, AND THE TESTIMONY OF AN EXPERT IS NEEDED TO PROVE THESE EFFECTS

# EVIDENCE

QUASI-JUDICIAL DECISIONS MUST BE BASED ON **COMPETENT, MATERIAL**, AND **SUBSTANTIAL** EVIDENCE IN THE RECORD.

THE EVIDENCE NEEDS TO BE TRUSTWORTHY AND RELIABLE, RELATED TO THE STANDARDS BEING APPLIED AND SUFFICIENT TO SUPPORT A CONCLUSION. WHEN THERE IS CONFLICTING EVIDENCE, THE BOARD WEIGHS THE EVIDENCE, DECIDES ON THE VERACITY OF THE WITNESSES, AND FINDS THE FACTS.

GOOD WITNESS TESTIMONY IS SWORN OR AFFIRMED FACTUAL TESTIMONY FOCUSED ON THE STANDARDS AND, IN SOME MATTERS, LAND USE IMPACTS. GOOD TESTIMONY IS SUPPORTED BY FIRST-HAND KNOWLEDGE AND DOCUMENTARY EVIDENCE.

TESTIMONY IS NOT HELPFUL AND CANNOT BE RELIED ON BY THE BOARD IF IT IS UNSWORN, PERSONAL OPINION, FOCUSED ONOWNER OR RESIDENTS, AND/OR SUPPORTED BY MERE SPECULATION, VAGUE ASSERTIONS, AND UNSUBSTANTIATED FEARS.

# OPINION EVIDENCE

PERSONAL OPINIONS BY LAY WITNESSES ARE INADMISSIBLE EVIDENCE AND MAY NOT BE RELIED ON BY THE BOARD

OPINIONS BY EXPERT WITNESSES ARE ADMISSIBLE. THE QUALIFICATIONS OF THE PURPORTED EXPERT MUST BE PRESENTED TO THE BOARD AND THE CHAIR, OR THE BOARD, SHALL DETERMINE IF THE WITNESS QUALIFIES AS AN EXPERT AND THE OPINION EVIDENCE IS ADMISSIBLE.

TYPICAL EVIDENCE PROVIDED BY EXPERT WITNESSES INCLUDE PROPERTY VALUES, PROJECTED TRAFFIC IMPACTS AND OTHER TECHNICAL MATTERS.

# OUTSIDE EVIDENCE

WITNESSES SHOULD BE PRESENT AT THE HEARING AND GIVE THEIR TESIMONY IN PERSON AND UNDER OATH.

WRITTEN STATEMENTS, AFFIDAVITS FOR DEPOSITION TRANSCRIPTS SHOULD BE ALLOWED INTO EVIDENCE ONLY IF THE PARTIES TO THE HEARING AGREE AND THE BOARD IS WILLING TO ACCEPT THEM. THIS PRACTICE IS STRONGLY DISCOURAGED. DEPOSITIONS OR AFFIDAVITS MAY BE USED TO CHALLENGE THE STATEMENTS MADE BY WITNESSES IN HEARINGS.

HEARSAY IS PROHIBITED UNDER FORMAL RULES OF EVIDENCE, BUT THERE IS A LIMITED EXCEPTION IN QUASI-JUDICIAL HEARINGS FOR INFORMATION OR STUDIES PUBLISHED IN REPUTABLE JOURNALS OR PUBLICATIONS, AND FOR TECHNICAL ANALYSES FROM EXPERTS OR GOVERNMENT OFFICIALS.

## DELIBERATION AND DECISION

AFTER ALL EVIDENCE IS PRESENTED AND ARGUMENTS MADE BY THE PARTIES, THE BOARD CLOSES HEARING AND DELIBERATES IN OPEN SESSION. THE BOARD IS THE "JURY" BUT DOES NOT GET TO RETIRE TO THE JURY ROOM TO DELIBERATE IN PRIVATE.

DELIBERATIONS MUST FOCUS ON THE APPLICABLE STANDARDS AND THE DECISION MUST BE BASED ON THE EVIDENCE IN THE RECORD.

THE DECISION MUST BE BY A MAJORITY OF ALL THE BOARD MEMBERS, NOT JUST THOSE PRESENT. THE PLANNING BOARD CONSISTS OF NINE MEMBERS, SO FIVE MEMBERS MUST APPROVE A SPECIAL USE APPLICATION, EVEN IF ONLY FIVE MEMBERS ARE PRESENT FOR THE HEARING. THE BOARD OF ADJUSTMENT CONSISTS OF FIVE MEMBERS, AND THERE ARE ALTERNATES APPOINTED TO FILL IN FOR ABSENT REGULAR MEMBERS SO THAT MATTERS BEFORE IT WILL NOT BE DELAYED. THREE VOTES FOR AN APPLICANT OR APELLANT IS SUFFICIENT TO GRANT THE RELIEF REQUESTED, BUT A FOUR/FIFTHS (FOUR MEMBERS) VOTE IS REQUIRED TO GRANT A VARIANCE.

CONDITIONS CAN BE ADDED TO MOST ORDERS FROM QUASI-JUDICIAL HEARINGS. CONDITIONS MUST COMPLY WITH STANDARDS AND WILL MAKE DEVELOPMENT COMPLIANT.

# BURDEN OF PROOF

GENERALLY, THE APPLICANT BEARS THE BURDEN OF PROOF

THE BURDEN SHIFTS TO OPPONENTS AFTER THE APPLICANT PROVIDES EVIDENCE TO SUPPORT HIS OR HER CASE

# WRITTEN DECISION

ALL DECISIONS FROM QUASI-JUDICIAL HEARINGS MUST BE PUT IN WRITING

SOME PARTIES, OR THEIR ATTORNEYS, MAY PROVIDE A PROPOSED WRITTEN DECISION PRIOR TO THE HEARING

MORE COMMONLY, A FINAL DECISION DOCUMENT IS PREPARED AFTER THE HEARING

THE WRITTEN DECISION IS KNOWN BY DIFFERENT NAMES, INCLUDING "ORDER" OR "FINDINGS OF FACT" OR OTHER SIMILAR TITLES, BUT THE WRITTEN DECISION MUST ACCURATELY REFLECT THE ACTION AND REASONING OF THE BOARD AND BE SIGNED BY THE CHAIR OR AN AUTHORIZED MEMBER. A SIGNED COPY OF THE MEETING MINUTES IS INSUFFICIENT.

ANY PARTY TO THE HEARING MAY APPEAL WITHIN THIRTY DAYS OF RECEIPT OF THE WRITTEN DECISION, WHICH MAY BE DELIVERED BY EMAIL (IF THE PARTY AGREES), FIRST CLASS MAIL OR PERSONAL DELIVERY.

# APPEALS FROM DECISIONS

APPEALS FROM QUASI-JUDICIAL DECISIONS ARE TO THE SUPERIOR COURT, WITH THE POSSIBLE EXCEPTION FOR HISTORIC PRESERVATION DECISIONS

THE SUPERIOR COURT DOES NOT TRY THE CASE OVER, BUT MAKES ITS DECISION BASED ON THE WRITTEN RECORD TO DETERMINE IF THE DECISION IS SUPPORTED BY EVIDENCE AND IF THE LAW WAS PROPERLY APPLIED.

THE COURT MAY UPHOLD THE DECISION, REVERSE THE DECISION, REMAND THE MATTER BACK TO THE DECIDING BOARD FOR FURTHER FACT FINDING AND CONSIDERATION, OR MODIFY THE DECISION

DECISIONS BY THE HISTORIC PRESERVATION COMMISSION ARE TAKEN TO THE BOARD OF ADJUSTMENT WHICH REVIEWS THE RECORD ONLY WITHOUT NEW EVIDENCE AND HAS THE SAME POWERS AS THE SUPERIOR COURT WHEN IT HEARS APPEALS OF QUASI-JUDICIAL DECISIONS

# QUASI-JUDICIAL HEARING: VARIANCES

A VARIANCE IS AN ALLOWANCE TO TAKE ACTIONS NOT PERMITTED BY ORDINANCE, SUCH AS BUILDING OVER THE BUILDING SETBACK LINE

TO BE GRANTED A VARIANCE, THE APPLICANT MUST SHOW

- THAT STRICT APPLICATION OF AN ORDINANCE WILL CREATE UNDUE HARDSHIP
- THAT THE HARDSHIP IS PECULIAR TO THE PROPERTY
- THE HARDSHIP DOES NOT RESULT FROM AN ACTION OF THE APPLICANT
- REQUESTED VARIANCE IS CONSISTENT WITH THE SPIRIT, PURPOSE AND INTENT OF THE REGULATION, SUCH THAT PUBLIC SAFETY AND SUBSTANTIAL JUSTICE IS ACHIEVED

USE VARIANCES ARE NOT ALLOWED

# QUASI-JUDICIAL HEARING: APPEALS OF ADMINISTATIVE DECISIONS

APPLICANTS FOR PERMITS AND PERSONS RECEIVING A NOTICE OF VIOLATION OF TOWN ORDINANCES MAY APPEAL THE ADVERSE DECISION TO APPLICATIONS OR NOTICES OF VIOLATION TO THE BOARD OF ADJUSTMENT.

FOR THESE APPEALS, THE BOARD OF ADJUSTMENT STANDS IN THE SHOES OF THE ADMINISTRATOR WHO MADE THE DECISION, HEARS ALL THE EVIDENCE AND CAN UPHOLD THE ADMINISTRATOR'S DECISION, REVERSE THE DECISION OR ISSUE A MODIFIED DECISION WHICH MAY INCLUDE CONDITIONS

A SIMPLE MAJORITY IS REQUIRED TO UPHOLD, REVERSE OR MODIFY THE DECISION

# QUASI-JUDICIAL HEARING: REASONABLE ACCOMMODATION

THE STATUTES REQUIRE THE TOWN TO MAKE REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH PHYSICAL AND MENTAL LIMITATIONS. SUCH ACCOMMODATIONS MAY BE AN ALLOWANCE FOR A HANDICAP RAMP TO BE BUILT IN THE BUILDING SETBACK AREA, OR FOR A GROUP CARE HOME TO BE CONSTRUCTED CLOSER THAN ORDINANCE ALLOW TO ANOTHER GROUP TOWN HOME.

THESE ARE TYPICALLY HEARD BY THE BOARD OF ADJUSTMENT BUT MAY BE ASSIGNED TO A DIFFERENT BOARD OR PANEL. THE STANDARDS DIFFER FROM VARIANCES AND THE HANDLING OF APPEALS. LOCAL ORDINANCES MAY OUTLINE THE PROCESS AND SET THE STANDARDS.

# QUASI-JUDICIAL HEARING: APPEAL FROM HISTORIC PRESERVATION COMMISSION

HEARINGS BEFORE THE HISTORIC PRESERVATION COMMISSION ARE QUASI-JUDICIAL HEARINGS, AT WHICH PLANS FOR HISTORIC STRUCTURE RENOVATION, REPAIR, AND MODIFICATION ARE PRESENTED AND CERTIFICATES OF APPROPRIATENESS ARE GRANTED OR DENIED. THE HEARING STANDARDS ARE THE SAME AS FOR ALL QUASI-JUDICIAL HEARINGS, AND A SIMPLE MAJORITY OF THE FULL COMMISSION IS SUFFICIENT TO GRANT THE REQUESTED CERTIFICATE.

APPEALS MAY BE TO THE BOARD OF ADJUSTMENT OR DIRECTLY TO SUPERIOR COURT AS PROVIDED IN THE TOWN ORDINANCES.

# QUASI-JUDICIAL HEARING: SPECIAL USE PERMIT

IN WAYNESVILLE, SPECIAL USE PERMITS ARE APPROVED AND ISSUED BY THE PLANNING BOARD AFTER BEING PROVIDED EVIDENCE IN SUPPORT OF THE APPLICATION IN A QUASI-JUDICIAL HEARING

AT THIS TIME, SPECIAL USE PERMITS ARE THE ONLY MATTERS THAT WILL COME BEFORE THE PLANNING BOARD AND BE HEARD IN A QUASI-JUDICIAL HEARING

SPECIAL USES ARE LISTED IN THE LAND DEVELOPMENT STANDARDS IN THE TABLE OF PERMITTED USES IN SECTION 2.5.3.

ALL THE STANDARDS GOVERNING QUASI-JUDICIAL HEARINGS, INCLUDING NOTICE, THE REQUIREMENT FOR AN IMPARTIAL PANEL, ADMISSIBLE EVIDENCE AND A WRITTEN DECISION, ARE REQUIRED

A FAVORABLE DECISION FOR THE APPLICANT REQUIRES A FAVORABLE VOTE OF ALL MEMBERS ELIGIBLE TO VOTE

CONDITIONS OF APPROVAL MAY BE IMPOSED BY THE BOARD

# REQUIREMENTS FOR APPROVAL OF SPECIAL USE PERMITS

REQUIREMENTS FOR SPECIAL USE PERMITS ARE A MIX OF ADMINISTRATIVE DECISION MAKING AND DISRETIONARY OR MORE SUBJECTIVE FACT FINDING

ALL THE DISTRICT REQUIREMENTS, SUCH AS ALLOWED USES, DIMENSIONAL REQUIREMENTS, AVAILABILITY OF INFRASTRUCTURE, ARE MORE ADMINISTRATIVE AND CANNOT BE WAIVED OR VARIED BY THE PLANNING BOARD EXCEPT AS MODIFIED BY THE PARTICULAR ALLOWANCE FOR A SPECIAL USE PERMIT

SPECIAL USE PERMITS MAY BE ISSUED CONTINGENT UPON VARIANCES WHICH MUST BE GRANTED BY THE BOARD OF ADJUSTMENT

# REQUIRED FINDINGS FOR ALL SPECIAL USE PERMITS

LDS SECTION 15.10.2 SETS OUT THE FINDINGS WHICH MUST BE MADE TO APPROVE ANY SPECIAL USE PERMIT

THOSE FINDINGS ARE:

- THE PROPOSED USE CONFORMS TO THE CHARACTER OF THE NEIGHBORHOOD
- INGRESS AND EGRESS DESIGNED SO AS TO MINIMIZE TRAFFIC PROBLEMS
- THE PROPOSED USE WILL NOT BE NOXIOUS OR OFFENSIVE
- ORDERLY DEVELOPMENT OF SURROUNDING PROPERTY WILL NOT BE IMPEDED
  THE PROPOSED USE WILL NOT ENDANGER PUBLIC HEALTH,SAFETY OR WELFARE

THERE MUST BE EVIDENCE PRESENTED AND PRESERVED IN THE RECORD TO SUPPORT THE FINDINGS

CONDITIONS MAY BE ADDED TO THE PERMIT BY THE PLANNING BOARD

EACH IDENTIFIED SPECIAL USE MIGHT HAVE ADDITIONAL REQUIREMENTS SO THAT ADDITIONAL FINDINGS OF FACT MAY BE NEEDED, SO REVIEW THE REQUIREMENTS FOR THE SPECIAL USE REQUESTED IN AN APPLICATION