

## HEARSAY AND EVIDENCE

Hearsay evidence is a person at the hearing trying to prove something is true by telling what someone else said about it. Hearsay evidence is not competent evidence unless the witness shows that the evidence appears to be sufficiently trustworthy and the circumstances show relying on the evidence is reasonable. Hearsay evidence describing what an interested party said about a relevant subject is competent evidence. Documentary evidence and exhibits may be used to illustrate the testimony of a witness. Exhibits must be clearly labeled and numbered, and must be retained by the Board. Documentary evidence usually may not be used as a substitute for a person being present at the hearing to testify to the facts asserted in the document or exhibit. The documentary evidence must be properly authenticated beforehand by explaining who signed or created it.

Persons affected by a decision have the legal right to hear all of the information presented and to know all of the facts being considered. Board members are not allowed to discuss the case or gather evidence outside of the hearing (see ex- parte communication). Only facts presented at the public hearing may be considered. It is permissible for Board members to view the site in question before the hearing, but they should not talk about the case with the applicant or neighbors outside the public hearing.

If a board member has special knowledge about a site or case, the member should disclose that at the public hearing. There must be substantial, competent, and material evidence to support each critical factual determination. Key points need to be substantiated by the factual evidence in the hearing record; the findings cannot be based on conjecture or assumptions.

## OPINIONS

Opinions are not admissible evidence. North Carolina General Statutes (NCGS) §160D-406(d) prohibits a person from giving opinions about a scientific, technical or other specialized subject unless the person, by knowledge, skill, experience, training or education, is in fact an expert on the subject, and must state their qualifications. The statute specifically prohibits opinions that “the use of the property in a particular way would affect the value of other properties” or opinions that “the increase in vehicular traffic resulting from a proposed development would pose a danger to safety” unless the witness is an expert on the subject.



## EX-PARTE COMMUNICATION

Rulings must be based only upon the evidence in the record. Any communication between a board member and an interested party received outside of the hearing is considered ex-parte communication. Please do not approach or attempt to communicate with a board member outside the public hearing; doing so may provide legal grounds for a court to overturn the Board’s decision.



## Contact Information

If you have any questions about quasi-judicial procedures, contact one of the Town of Nashville Planning Department employees listed below:

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Office Hours:  
Monday — Friday  
8:00am - 5:00pm

## Quasi-Judicial Hearings



**Town of Nashville**  
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## QUASI-JUDICIAL HEARINGS

Town Council hold quasi-judicial hearings for special use permits. The Board of Adjustment holds quasi-judicial hearings for variances and appeals of staff decisions. The Boards must hold an evidentiary hearing based solely on written and oral evidence presented by witnesses testifying under oath and subject to cross-examination, as they would in a court room. Board members are free to pose questions to anyone presenting evidence, and reasonable policies can be established for cross-examinations. A witness with religious objections may affirm rather than swear an oath.

The quasi-judicial hearings do not involve setting new policies, but rather the application of previously adopted policies to the parties involved. State law and constitutional considerations require that a quasi-judicial decision must be based solely on the evidence presented and cannot be based on the Board's or witnesses' unsubstantiated opinions, not can additional information be provided at a later time. A quasi-judicial decision requires the Board members to find facts and apply the standards set forth in the Town's ordinances to a specific situation.



## PRECEDENT

Prior decisions are not legally binding. Each case must be decided on its own individual merits. Subtle differences in individual facts and situations can lead to differing results.

## BURDEN

The applicant will bear the burden of presenting evidence sufficient to enable the Board to make the findings of fact required by the Town's ordinances. Those in opposition bear the burden of presenting evidence that a required standard will not be met. The findings of fact for special use permits are:

1. Use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;
2. Use meets all required conditions and specifications;
3. Use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
4. Location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which is to be located and in general conformity with the plan of development of the town.

When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the board of adjustment shall vary any of the provisions of the zoning regulation upon a showing of all of the following while considering a variance:



1. Unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. 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 a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
3. 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 shall not be regarded as a self-created hardship.

4. 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.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other development regulation that regulates land use or development may provide for variances from the provisions of those ordinances consistent with the provisions of this subsection. (2019-111, s. 2.4.)

## TIME LIMITS

While repetitious or irrelevant testimony can be barred, an arbitrary time limit on the hearing cannot be used. For example, limiting each side to a quasi-judicial proceeding to five minutes to present their case would be inappropriate. Allowing only a single witness representing a group with similar concerns is acceptable.