



Nassau County Department of Planning &
Economic Opportunity
96161 Nassau Place
Yulee, Florida 32097

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Director

APPLICATION AND INSTRUCTIONS FOR A VARIANCE

NOTICE: Florida Statutes and the Courts of Florida require that all Variance applications be heard as a Quasi-Judicial hearing, procedures attached.

1. The Conditional Use and Variance Board will conduct a public hearing for this application.
2. The procedure will require:
 - A. That the public notice of this application be mailed to adjacent property owners, a legal advertisement published in the newspaper and a sign posted on the property.
 - B. To be sworn in to present testimony;
 - C. To be allowed witnesses and the right to present evidence into the record;
 - D. To have the right to cross-examine witnesses opposed to the application and to be cross-examined by those opposed; and,
 - E. That the testimony and evidence address the criteria defined in the Land Development Code that is applicable to the application.
3. The Department of Planning & Economic Opportunity will prepare a staff report for the Conditional Use and Variance Board and for the applicant.
4. If you have any questions about procedures or the criteria, please consult with the Department of Planning & Economic Opportunity prior to the Conditional Use and Variance Board meeting.

INSTRUCTION FOR APPLYING FOR A VARIANCE

It is essential that all the information provided is accurate. Incorrect information can delay or nullify the application process. Use the Department of Planning & Economic Opportunity forms that are available for download at www.nassaucountyfl.com under Departments, Planning & Economic Opportunity, Downloadable Application forms. Please attach additional sheets as needed, using 8½" x 11" size paper, typed or printed .

Definition of Variance: A device which grants a property owner relief from certain provisions of the zoning ordinance, when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to make more money. A variance shall be authorized only for height, lot area, size of structure or yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by the variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or in an adjoining district. The Conditional Use and Variance Board must approve all variances.

- The **Parcel Identification Number** is an eighteen (18) digit number defining the subject property. This number is located at the Property Appraiser's website at www.nassaufpa.com.
- The legal description of the subject property is shown on the deed and the survey. If the property is in a recorded subdivision, use the lot and block number. If the property is not in a recorded subdivision, use the metes and bounds description as shown on the deed or survey. A reference to the section, township, range, or deed book will not be sufficient. **A .txt file of the metes and bounds description of the boundaries of the property is required.**
- Fill in the street location by indicating the property location by side (north, south, east or west) of the street and the nearest intersecting streets (for example: west side of Amelia Road, between Magnolia Street and Amelia Lane). If a street address has been assigned to this property, include such number. If it is impractical to describe the street location by intersecting streets, indicate the approximate distance to the nearest intersecting street (for example: west side of Blackrock Road, CR 107, 1/2 mile north of A1A).
- Provide the name and address of the property owner. The owner's name should agree with the recorded deed.
- Provide the current zoning district classification of the subject property. The official zoning map is available at www.nassaufpa.com under *Map Layers*.
- Provide the Variance sought (for example: reduction of required rear yard from 30 feet to 18 feet). If the variance is more extensive than can be described on the form, use additional sheets. Be sure to include all details of the variance sought by the applicant (for example: reduction of required lot area from 7,500 square feet to 4,800 square feet and providing two parking spaces in lieu of required three spaces, and providing reduction in side yard on North side from 8 feet to 5 feet).
- When considering a variance request, the Conditional Use and Variance Board shall make a written finding that the zoning variance satisfies the criteria listed in Section 3.04B(3) - *Conditional Use and Variance Commission Powers and Duties* of the Nassau County Zoning Ordinance. Please address A-F of on page 2 of the application as completely as possible.
- It is required that a site plan be attached to the application. The site plan must be a scale drawing showing the size and location of the property together with the size and location of all structures. The applicant should also include information that will assist the Conditional Use and Variance Board in its consideration of these factors.
- The Land Development Code provides that a Variance shall be utilized within one (1) year of the date variance was granted. This means that the construction must commence within such time or the variance will become null and void. If the applicant anticipates that they will be unable to begin within one year, they should explain in the application and the Board can consider a longer time as a special condition of the variance. **If no request is made in the application for a longer time, the variance, if granted, will automatically expire within one year.**

The owner's signature is required on the application. If the application is signed by the agent, an *Owner's Authorization for Agent* form must be signed by the owner. Please include the telephone number of the person who can be contacted, and familiar with the application, to obtain additional information.

The non-refundable application fee for a Variance is required at the time of application. To confirm the fees, including postage based on the number of property owners within 300 feet, please contact the Department of Planning and Economic Opportunity at 904-530-6300. Return the completed application, any supporting data and the application fee to the Department of Planning & Economic Opportunity. Please make checks payable to: Nassau County Board of County Commissioners (Nassau County BOCC). **The applicant is responsible for the legal advertisement payment and must be made directly with the newspaper.**

Nassau County requires **due public notice** which includes a legal advertisement published in an approved newspaper of general circulation not less than fifteen (15) days in advance of the public hearing, a sign posted in a conspicuous place on or around the subject property and a public notice mailed to all property owners within 300 feet of the periphery of the subject property. The Department of Planning & Economic Opportunity will prepare the legal advertisement, the public notice and the sign. If the signs are destroyed or rendered illegible, notify the Department of Planning & Economic Opportunity immediately so that a replacement can be erected. **The applicant is responsible for delivering the original Proof of Publication from the newspaper to the Department of Planning & Economic Opportunity. The public hearing cannot be held unless Proof of Publication is received by the Department of Planning & Economic Opportunity before the public hearing.**

The applicant is not required to obtain the signatures or approval of the adjoining property owners. If you choose to present a petition of adjoining property owners favoring your application, attach a legibly printed or typed list of the names and addresses submitted on the petition.

If, for any reason, you wish to withdraw the application, you must notify the Department of Planning & Economic Opportunity, in writing, prior to the date of the public hearing. No refunds.

Persons with disabilities requiring accommodations in order to participate at the public hearing should contact (904) 530-6300 at least twenty-four (24) hours in advance to request such accommodation.

The public is invited to be present and be heard. If a person decides to appeal any decision made by the board, agency or commission with respect to any matter considered at such meeting or hearing, he/she will need a record of the proceedings, and that, for such purpose may need to ensure that a verbatim record of the proceedings is made.

The Department of Planning & Economic Opportunity can be reached at 96161 Nassau Place, Yulee, FL 32097, and (904) 530-6300, Monday through Friday, 8:00am until 5:00pm.



APPLICATION FOR A VARIANCE

Official Use Only

Zoning District: _____
 FLUM Designation: _____
 Commission District: _____
 Application #: _____
 Date Filed: _____

Parcel Identification Number (18 digit number)

Driving Instructions: _____

1. Legal Description: Lot _____ Block _____ Subdivision _____
 Plat Book _____ Page _____
 (Please attach a legal description if not located in a subdivision)

2. Location: On the _____ side of _____
 (north, south, east, west) (street)

between _____ and _____
 (street) (street)

Nearest identifiable landmark (for example: Walmart or I-95) _____

3. Name and Address of the Owner as shown in the public records of Nassau County:

Name and Address of the Applicant / Authorized Agent:

(PLEASE NOTE: If applicant is not the owner, this application must be accompanied by completed *Owner's Authorization for Agent* form.)

4. Current Zoning District: _____

5. Zoning Variance Sought: _____

6. Section of Land Development Code or provision that authorizes the granting of this Variance:

7. Section 3.04B (3) - Conditional Use and Variance Board Powers and Duties:

(Please attach a response to the following as Exhibit "A" [using 8½" x 11" size paper] with the answers typed or printed legibly.)

- A. Show that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and are not applicable to other lands, structures, or buildings in the same zoning district.
- B. Show that the special conditions and circumstances do not result from actions of the applicant.
- C. Show that granting the variance will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings, or structures in the same zoning district.
- D. Show that literal interpretation of the provisions of this ordinance would deprive the applicants of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance and would place unnecessary and undue hardship on the applicant.
- E. Show that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
- F. Show that the granting of the variance will be in harmony with the general intent and purpose of this ordinance and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

9. Supporting data which is considered by the Conditional Use and Variance Board:

- _____ Site Plan
- _____ Any additional data

10. Has any application been submitted within the last two (2) years for a Zoning Exception, Conditional Use, Zoning Variance or for the Rezoning of any portion of the subject property included in this application? _____

If so, give details of such application and final disposition.

11. Is this parcel subject to deed restrictions enforced by a homeowners association? _____

If so, please provide an address and contact name.

In filing this application for a Variance, the undersigned understands it becomes a part of the official records of the Conditional Use and Variance Board and does hereby certify that all information contained herein is true to the best of his/her knowledge.

Signature of Owner: _____

Signature of Applicant: _____

(if different than Owner)

Signature of Agent: _____

(if different than Owner)

Owner's mailing address: _____

Telephone: _____

Email: _____

NOTE: If prepared or signed by an agent, a notarized *Owner's Authorization for Agent* form must be provided.

Newspaper for legal advertisement (OFFICIAL USE ONLY):

Fernandina Beach News Leader: _____

Nassau County Record _____

CONSENT FOR INSPECTION

I, _____, the owner or authorized agent for the owner of the premises located at _____ do hereby consent to the inspection of said premises and the posting of public notice by an employee of the Department of Planning & Economic Opportunity, Nassau County, Florida, in conjunction with application _____, without further notice.

Dated this _____ day of _____, 20__.

Signature of Owner or Authorized Agent

Telephone Number

STATE OF FLORIDA:
COUNTY OF NASSAU:

The foregoing instrument was acknowledged before me the _____ day of _____, 20__, by _____ who is personally known to me or who has produced _____ as identification.

Notary Public Signature

Name (typed or printed)

(Seal)

AGENT AUTHORIZATION (FOR COMPANY OR LLC)

_____ is hereby authorized as the Agent TO ACT ON BEHALF OF

_____, the owner(s) of those lands described within the attached application, and as described in the attached deed or other such proof of ownership as may be required, in applying to Nassau County, Florida, for an application pursuant to a:

- | | |
|--|--|
| <input type="checkbox"/> Rezoning/Modification | <input type="checkbox"/> Conditional Use |
| <input type="checkbox"/> Variance | <input type="checkbox"/> Preliminary Binding Site Plan |
| <input type="checkbox"/> Plat | |

BY:

Signature of Agent

Print Name of Agent

Agent Address

Agent Email

Agent Telephone Number

Signature of President, Chairman of the Board or managing partner of _____
(Circle one)

Print Name

Address

Telephone Number Email

I, _____, hereby affirm or swear that I have the authority on behalf of
(name of agent)

_____, to file the _____ application
with Nassau County.

Initials

Initials

Certificate

I _____, (signer's name), _____ (title) of

_____ (company or LLC) an entity lawfully organized and existing
under the laws of _____ (name of State) do hereby affirm or swear that I am empowered and
authorized, on behalf of the entity, to execute this Agent Authorization form, and all documents required by Nassau
County regarding this application, and further expressly warrants that _____ has been given
and has received and accepted authority to sign and execute the documents on behalf of
_____.

Signature Title

State of Florida
County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, ____ by
_____ as _____ for _____.

Personally Known _____ OR Produced _____ as identification.

Notary Signature

My Commission expires: _____

A cop of the by-laws are attached hereto.

Initials

Initials

QUASI-JUDICIAL HEARING PROCEDURES

Florida Statutes and the Courts of Florida require that your conditional use application be heard as a Quasi-Judicial Hearing. A Quasi-Judicial Hearing, by state and case law, is different than a regular hearing conducted by this Board. A Quasi-Judicial Hearing is less formal than a court hearing but similar in procedures and evidence issues. In a Quasi-Judicial Hearing, the applicant has the burden of demonstrating by competent substantial evidence that his/her application meets requirements of the County Zoning Code, Comprehensive Plan and other applicable regulations. General objections, without more specific evidence, does not constitute substantial competent evidence.

You are entitled to be represented by counsel and if you desire a continuance to obtain counsel, please come forward and make that request. The Board has the discretion to grant or deny the request. The hearing procedures will be:

1. Staff will be sworn and shall describe the applicant's (you) request, provide staff's recommendation and present any witnesses in support of staff's recommendation. Staff shall have fifteen (15) minutes.
2. The applicant (you) and others presenting evidence will be sworn and shall state their name, address and subject to which they will testify. The applicant (you) or its agent/attorney may elect to waive their presentation and to rely on the application, recommendation, and staff comments, reserving the right to address the Board if any evidence against the application is presented.
3. The applicant (you), or his/her attorney/representative, if they do not waive their presentation, will have an opportunity to present evidence for the application and will have fifteen (15) minutes for the presentation. If the applicant has witnesses, the applicant will indicate the name of each witness and the subject to be addressed. The applicant's witnesses will each have five (5) minutes. The applicant may also call the Zoning Official or other staff member who are present as a witness and ask them questions. Again, the time limit for questions is five (5) minutes.
4. Those who present evidence against the application will be sworn in and will be provided five (5) minutes each to present evidence and witnesses that address the criteria. Those who present evidence against, may also call the applicant, Zoning Official, witnesses or other staff members that are present as witnesses and ask them questions, subject to the five minute time limit. Extension of time limits may be granted by the Chair.
5. The applicant or its attorney may then cross examine those presenting evidence against, subject to control by the chair and county attorney. Cross-examination shall be five (5) minutes for each witness.
6. Sharing or transferring time is not allowed and anyone presenting repetitious evidence or evidence that does not address the criteria will be directed to stop and address the criteria.
7. Evidence must be relevant. Relevant evidence is that which addresses the criteria in the County Code and the specific matter under consideration. Irrelevant evidence is that which does not address the County Code or the matter under consideration, or is a personal attack as to presenters or Board members or is loud or boisterous to the point that it interrupts the proceedings. The Chair, will advise any person who violates these rules to stop. Failure to stop may lead to removal from the Chamber by the Bailiff or Deputy Sheriff.
8. Persons presenting evidence will address the Board, at the podium, and if there are documents or photos they must be presented when the particular individual is testifying. No documents will be returned, as they become a part of the record.
9. As a Quasi-Judicial Hearing, numbers of individuals for or against a particular item will not be considered. The meeting is being taped; therefore there can be no applause or outbursts.
10. The Clerk shall state what documents will be placed into evidence and a motion shall be made to move those documents into the record. Any new or additional documents presented into evidence either by a sworn individual or staff shall also be included in the motion moving the documents into the record.
11. The Office of the County Attorney represents the Board and provides advice to the Board including advice as to the procedures and the admissibility of evidence.

12. The Board will afford members of the audience who have not presented evidence for or against three (3) minutes each to address any information provided. The members of the public will not be sworn in. Their testimony will not be considered as evidence as to the matter under consideration.
13. The applicant will be permitted to provide rebuttal as to any evidence against (a maximum of ten (10) minutes).
14. Staff may have five (5) minutes to provide final comments to the Board.
15. The Board will then close the public hearing and will discuss the application and may ask questions of the applicant, staff or those presenting evidence against or witnesses for the application. Any motion of the Board should include whether or not the board finds competent substantial evidence in the record and/or testimony received to support the board's decision for approval or denial.
16. The strict rules of evidence applicable to a court proceeding will not be utilized; however, the Board, with the assistance of the attorney, may exclude evidence that is not relevant or material or is repetitious. Again, the Quasi-Judicial procedures are required by law and all those participating need to be aware of the procedures. Anyone who fails to follow the procedures may be required to stop his/her presentation or relinquish their time.
17. TO BE FAIR TO EVERYONE AND IN ORDER TO FOLLOW THE PROCEDURES, IF YOU HAVE ANY QUESTIONS PLEASE CALL THE COUNTY ATTORNEY'S OFFICE AT (904) 530-6100 OR THE DEPARTMENT OF PLANNING & ECONOMIC OPPORTUNITY AT (904) 530-6300.

1. SUBSTANTIAL COMPETENT EVIDENCE

In order to sustain a local government's quasi-judicial land use decision, it must be shown that there was "substantial competent evidence" presented to the board to support its rulings. *Board of County Commissioners of Brevard County v. Snyder*, 627 So.2d 469 (Fla. 1993). Although simply stated, this requirement of "competent substantial evidence" is -- in the words of one court -- "susceptible to misunderstanding." *Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So.2d. 996, 1003 (Fla. 2d DCA 1993). Competent substantial evidence "involves a purely legal question;" that is:

[W]hether the record contains the necessary quantum of evidence. The circuit court is not permitted to go farther and *reweigh* that evidence (*e.g.*, where there may be conflicts in the evidence), or to substitute *its* judgment about what *should* be done for that of the administrative agency.

The seminal case defining "substantial competent evident" is *DeGroot v. Sheffield*, 95 So.2d 912 (Fla. 1957). In that case, the Florida Supreme Court defined competent substantial evidence as "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion."

In sum, quasi-judicial decisions must be supported, in the record, by evidence that is both legally competent and quantifiably substantial.

2. Expert Testimony

Expert testimony is considered to be substantial competent evidence as long as the expert gives testimony that is within his area of expertise and is based either facts known to the expert, a hypothetical situation or facts disclosed at the hearing. It is important that expert witnesses state their qualifications on the record or submit their resume to the quasi-judicial body record.

The reports and recommendations of a local government professional planning staff have long been recognized as the type of expert testimony sufficient to sustain a quasi-judicial zoning decision where the

statements in the report are supported by the facts and are not merely conclusory in nature and are within their area of expertise.

In addition to professional planning staff recommendations, the courts have also held decisions of a local government's Planning and Zoning Board may also constitute substantial competent evidence upon which to grant or deny a zoning request. *Hillsborough County Board of County Commissioners v. Longo*, 505 So.2d 470 (Fla. 2d DCA 1987); *Connetta v. City of Sarasota*, 400 So.2d 1051 (Fla. 2d DCA 1981).

In contrast, the "testimony" of attorneys does not constitute substantial competent evidence. *National Advertising Co. v. Broward County*, 491 So.2d 1262 (Fla. 4th DCA 1986). Attorneys generally appear on behalf of a party; they are advocates -- not witnesses. As such, absent stipulation by the opposing party, they cannot testify. Although mere conclusory assertions of law may sound persuasive, they fall far short of satisfying the requisite foundational element of "competent" evidence.

3. Citizen Testimony

Florida courts have long acknowledged the legitimate interest of neighboring property owners in preserving the character of their neighborhood. As recently recognized by the Fourth District Court of Appeal:

The role of the governmental entity is to arrive at sound decisions affecting the use of property within its domain. *This includes receiving citizen input regarding the effect of the proposed use on the neighborhood*, especially where the input is fact-based.

City of Dania v. Florida Power & Light, 718 So.2d 873 (Fla. 4th DCA, 1998).

In short, although citizen testimony may be considered, it can only be used to support a quasi-judicial zoning decision when it is based on something more than mere opinions. Popularity polls of neighborhood residents do not constitute substantial competent evidence. See *City of Apopka v. Orange County*, 299 So.2d 657 (Fla. 4th DCA 1974).

This issue regarding the weight and legal sufficiency to be accorded public "concerns" was recently revisited by the Third District Court of Appeal in the case of *Metropolitan Dade County v. Section 11 Property Corp.*, 719 So.2d 1204 (Fla. 3^d DCA 1998). In that case, the court expressly considered whether the opposition of neighboring property owners to a proposed land use could be considered as "competent substantial evidence" sufficient to withstand judicial review of the local government's decision to deny the zoning request. According to the developer (as well as the circuit court), the citizen testimony was "merely opinion" and therefore insufficient grounds for denying the proposed development.

a. Examples of Unacceptable Citizen Testimony

T-Mobile South, LLC vs. Cobb County, Georgia, 2011 WL 336641

The comments of witnesses must be probative or competent as to whether the standards in the ordinance have been satisfied. The courts have universally held that objections of neighborhood residents, without more, are not a sound basis for denying a permit.

Examples of citizen testimony that does not constitute substantial competent evidence include: *Pollard v. Palm Beach County*, 560 So.2d 1358 (Fla. 4th DCA 1990) (special exception for an ACLF; neighbors testified as to traffic, light and noise problems that would occur if permit approved); *Flowers Baking Co. v. City of Melbourne*, 537 So.2d 1040 (Fla. 5th DCA 1989) (gas station will cause tremendous traffic problem adjacent to condominium inhabited by retirees); *City of St. Petersburg v. Cardinal Industries Development Corp.*, 493 So.2d 535 (Fla. 2^d DCA 1986) (lay testimony insufficient to sustain denial; concerns that construction would be done by labor force from outside the area, wooden homes would be a fire hazard); *BML Investments v. City of Cassleberry*, 476 So.2d 713 (Fla. 5th DCA 1985), *rev. denied*, 486 So.2d 595 (Fla. 1986) (development plan approval denied; testimony of residents regarding relationship of project to surrounding neighborhood insufficient to deny plan approval); *City of Apopka v. Orange County*, 299 So.2d 657 (Fla. 4th DCA 1974) (special exception for airplane landing strip; noise

and cost of future home construction cited by interested residents); *Conetta v. Sarasota*, 400 So.2d 1051 (Fla. 2d DCA 1981) (special exception for guest house; residents stated it would not conform to neighborhood); *Miami Mental Health Center v. City of Miami*, 3 Fla. L. Weekly Supp. 91 (Fla. 11th Cir. Ct. 1995) (two residents testified as to declining property values if mental health facility was approved; testimony disapproved as ambiguous); *Robinson v. City of Miami Beach*, 3 Fla. L. Weekly Supp. 320 (Fla. 11th Cir. 1995) (testimony by resident that helicopters are dangerous was unacceptable as contrary to a city code which allowed the permitting of helicopter pads);

Similarly, expressions of mass opinions from neighborhood residents do not constitute substantial competent evidence. It has long been common practice at a hearing for someone to get up and ask the question: "How many people here oppose this project?" A large number of the citizens present stand or raise their hands. Acceptable? No!

The function of a quasi-judicial board must be exercised on the basis of facts adduced at the hearing and upon appropriate zoning principles and objectives as set forth in the zoning ordinance and should not be based on a mere poll or plebiscite of the neighbors.

b. Examples of Acceptable Citizen Testimony
***Verizon Wireless vs. City of Jacksonville, Florida* 670 F. Supp. 2d 1330 (2009)**

Courts

Verizon vs. City of Jacksonville, FL

- 1) The decision to deny or approve must be in writing and supplemented by competent substantial evidence combined in a written record.
- 2) Is the evidence general opinion rather than the facts?
- 3) The testimony included general evidence presented by a local realtor with 16 years' experience that locating cell phone towers in residential neighborhoods devalues surrounding properties and makes them more difficult to sell. More specifically, the realtor stated that she had "already lost potential buyers for her own property in the area because of the proposed tower". Residents also testified about aesthetic issues. The aesthetic evidence was supported by the objective evidence of the Realtor.
- 4) Blanket aesthetic objection does not constitute substantial evidence under §332. Such a standard would eviscerate the substantial evidence requirement and unnecessarily retard mobile phone service development. Aesthetic objections coupled with evidence of an adverse impact on property values can constitute substantial evidence.