



# PLANNING DEPARTMENT

NASSAU COUNTY, FLORIDA

## 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 Planning Department of Nassau County 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 Planning Department of Nassau County prior to the Conditional Use and Variance Board meeting.











**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 Planning Department of 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)



# PLANNING DEPARTMENT

NASSAU COUNTY, FLORIDA

## 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:

- Rezoning/Modification
- Variance
- Plat
- Conditional Use
- Preliminary Binding Site Plan

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





# PLANNING DEPARTMENT

NASSAU COUNTY, FLORIDA

## 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 copy 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 PLANNING DEPARTMENT OF NASSAU COUNTY 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 were 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. 4<sup>th</sup> 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. 4<sup>th</sup> 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. 3d 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. 2d 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.