

Town of Boone Legal Representation Guidance

Must I have a lawyer at a hearing before the Board of Adjustment or Historic Preservation Commission?

When a hearing is held before the Board of Adjustment (for a variance, special use permit, major subdivision preliminary plat approval, or appeal of a staff decision) or before the Historic Preservation Commission (for a Certificate of Appropriateness), the hearing is considered to be “quasi-judicial.” Under state law, only a licensed attorney can provide legal representation for another person in a quasi-judicial hearing. Legal representation means providing legal services as the representative of another person and includes, for example, presenting legal arguments, asking questions of and cross-examining witnesses, and making objections to evidence or otherwise establishing a record for appeal.

Applicants and other parties who are individuals (i.e., “natural persons”):

A natural person is the legal term for a human being who is acting in their own name representing their own interests. A natural person may be represented by an attorney, or may represent themselves (i.e., proceeding “*pro se*”). If a natural person who is a party to the proceedings chooses to represent themselves, that person can argue the case to the Board of Adjustment or the Historic Preservation Commission by summarizing the facts and offering legal argument, can testify, and can ask questions and cross-examine witnesses who appear.

Applicants and other parties who are corporations, LLCs, or other nonhuman entities:

State law and official opinions issued by the North Carolina State Bar generally make it unlawful for non-lawyers to engage in the practice of law on behalf of anyone but themselves as individuals (natural persons). Only an attorney licensed by the State of North Carolina may represent a corporation, LLC, or other non-human entity in a quasi-judicial hearing before the Board of Adjustment or Historic Preservation Commission. Attorneys may argue the law and facts of a case, object to materials and evidence offered by another party or a witness, question their client’s witnesses, and cross-examine other witnesses. Lawyers also may play an important role in establishing and preserving the record in the event of an appeal.

Non-lawyers associated with a corporation or other nonhuman entity, including corporate employees, officers and owners, and retained professionals, such as engineers, architects, and appraisers, may provide factual testimony in a quasi-judicial hearing, but they may not argue the law and facts of a case, object to materials and evidence offered by others, or question other witnesses. Non-lawyers who engage in such activities are acting in violation of the laws against the unauthorized practice of law.

Thus, while an applicant or other party that is a corporation or other nonhuman entity will be permitted to proceed with a hearing on an application before the Board of Adjustment or the Historic Preservation Commission without an attorney, such a party must be represented by an attorney if it wishes to do more than offer factual testimony or other evidence through non-lawyer fact witnesses.

Non-party witnesses

Non-party witnesses may provide factual testimony (i.e., as “natural persons,” in their own individual capacities) and do not need a lawyer. Indeed, other than providing factual testimony, a witness may not participate in a hearing (through a lawyer or *pro se*) unless they have requested and been permitted to intervene in the case as a party.