

## ARTICLE VI

### **EVIDENTIARY HEARING PROCEDURES FOR APPEALS AND APPLICATIONS**

#### **Section 15-101 Evidentiary Hearing Required on Appeals and Applications.**

(a) Before making a decision on an appeal or an application for an administrative decision, variance, class B special use permit, or class A special conditional-use permit, certificate of appropriateness, or a petition from the planning staff to revoke a special use permit ~~or conditional use permit~~, the board of adjustment or the town council~~board of aldermen~~, as the case may be, shall hold an evidentiary hearing on the appeal or application. Evidentiary hearings are also known as quasi-judicial hearings. Evidentiary hearings on class A special conditional-use permits shall be set by the town council~~board of aldermen~~ as provided in Section 2-17 of the Town Code. (AMENDED 4/27/82)

(b) Subject to subsection (c), the hearing shall be open to the public and all persons interested in the outcome of the appeal or application shall be given an opportunity to present evidence and arguments and ask questions of persons who testify.

(c) The board of adjustment or town council~~board of aldermen~~ may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross examination of witnesses so that the matter at issue may be heard and decided without undue delay.

(d) The board of adjustment or town council~~hearing board~~ may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. No further notice of a continued hearing needs to be published. (REWRITTEN 3/23/10)

(e) If an evidentiary hearing is set for a given date and a quorum of the board of adjustment or town council is not then present, the hearing shall be continued until then next regular meeting without further advertisement.

#### **Section 15-102 Notice of Evidentiary Hearing.**

Except as provided in Section 15-117 (dealing with appeals of stop work orders), the administrator shall give notice of any hearing required by Section 15-101 as follows: (AMENDED 10/24/89)

(1) Not later than ten days before the hearing, a written notice of such hearing shall be sent by first class mail to (i) the appellant or applicant, (ii) the owner of the property that is the subject of the hearing if the owner did not initiate the hearing, and (iii) any other person who makes a written request for such notice. (AMENDED 10/21/14)

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(2) With respect to hearings on matters other than special ~~and conditional~~ use permits, notice shall be given to neighboring property owners by mailing a written notice not later than 10 days or earlier than 25 days before the hearing to those persons who are listed on Orange County's computerized land records system as owners of real property any portion of which is abutting or located within 150 feet of the lot that is the subject of the application or appeal. The planning staff shall also make reasonable efforts to mail a similar written notice not less than 10 days before the hearing to the occupants of residential rental property which is abutting or located within 150 feet of the lot that is the subject of the application or appeal. With respect to hearings on the issuance or revocation of special ~~and conditional~~ use permits, notice shall be given to abutting property owners by mailing a written notice not later than 10 days or earlier than 25 days before the hearing to those persons who are listed on Orange County's computerized land records system as owners of real property any portion of which is abutting or located within 500 feet of the lot that is the subject of a class B special use permit and 1000 feet of the lot that is the subject of a class A special conditional use permit. The planning staff shall also make reasonable efforts to mail a similar written notice not less than 10 days or earlier than 25 days before the hearing to the non-owner occupants of residential rental property abutting or located within 1,000 feet of the lot that is the subject of the class A specialeconditional use permit. In all cases, notice shall also be given by prominently posting signs in the vicinity of the property that is the subject of the proposed action. Such signs shall be posted within the same 10 to 25-day period for mailed notice, not less than 7 days prior to the hearing. (AMENDED 10/12/82; 1/22/85; 04/15/97; 10/12/99; 3/26/02)

(3) In the case of class A specialeconditional use permits, notice shall be given to other potentially interested persons by publishing a notice in a newspaper having general circulation in the Carrboro area one time not less than seven nor more than fifteen days prior to the hearing. (AMENDED 10/12/99)

(4) The notice required by this section shall state the date, time, and place of the hearing, reasonably identify the lot that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

(5) In the case of an application for a variance from the provisions of Sections 15-265 and 15-266, dealing with requirements peculiar to areas within the University Lake Watershed or Jordan Lake Watershed, the administrator shall also send the notice required by this section to each government having jurisdiction in the watershed or using the water supply for consumption. (AMENDED 10/15/96)

**Section 15-102.1. Administrative Materials.**

The administrator or staff to the board of adjustment or town council shall transmit to the board or council all applications, reports, and written materials relevant to the matter being

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considered. The administrative may be distributed to the members of the board or council prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant.

- (1) The administrative materials, may be provided in written or electronic form, and shall become part of the hearing records.
- (2) Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board or council at the hearing.

**Section 15-103 Evidence.**

(a) The provisions of this section apply to all evidentiary hearings for which a notice is required by Section 15-101.

(b) All persons who intend to present evidence to the permit-issuing board, rather than arguments only, shall be sworn.

- (1) The applicant, the town, and any person who would have standing to appeal the decision under G.S. 160D-1402(c), and Article V of this chapter, shall have the right to participate as a party at the evidentiary hearing.
- (2) Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board of adjustment or town council.
- (3) Any person who, while under oath during a proceeding before the board or council determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

(c) All findings and conclusions necessary to the issuance or denial of the requested permit or appeal (crucial findings) shall be based upon reliable evidence. Competent evidence (evidence admissible in a court of law) shall be preferred whenever reasonably available, but in no case may crucial findings be based solely upon incompetent evidence unless competent evidence is not reasonably available, the evidence in question appears to be particularly reliable, and the matter at issue is not seriously disputed.

(d) Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board or council. The chair shall rule on any objections, and the chair's rulings may be appealed to the full board or council. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

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(e) — The council or board making a quasi-judicial decision under this chapter through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the town, and any person with standing under G.S. 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas that the chair determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the council or board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

**Section 15-104 Modification of Application at Hearing.**

(a) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the town council~~board of aldermen~~ or board of adjustment, the applicant may agree to modify his application, including the plans and specifications submitted.

(b) Unless such modifications are so substantial or extensive that the town council or board of adjustment~~board~~ cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the council or board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the planning staff.

(c) The administrator who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the council or board shall continue the hearing.

**Section 15-105 Record.**

(a) A tape recording shall be made of all hearings required by Section 15-101, and such recordings shall be kept for at least two years. Accurate minutes shall also be kept of all such proceedings, but a transcript need not be made.

(b) Whenever practicable, all documentary evidence presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept by the town for at least two years.

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—(a) As provided in G.S. ~~160D-403(a)160A-388(e2)~~, every quasi-judicial decision made by the ~~town council~~~~board of aldermen~~ or the board of adjustment shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the council's or board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the town or board.

(b) —A quasi-judicial decision is effective upon filing the written decision in the planning department. The decision of the council or board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

**Section 15-107- Standing.**

A petition may be filed under this section only by a petitioner who has standing to challenge the decision being appealed. The following persons have standing to file a petition under this section:

- (1) Any person possessing any of the following criteria:
  - a. An ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.
  - b. An option or contract to purchase the property that is the subject of the decision being appealed
  - c. An applicant before the decision-making board whose decision is being appealed.
- (2) Any other person who will suffer special damages as the result of the decision being appealed.
- (3) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at

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least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

(4) The Town of Carrboro whose decision-making board has made a decision that the Town Council believes improperly grants a variance from or is otherwise inconsistent with the proper interpretation of a development regulation adopted by the Council.

(d) The respondent named in the petition shall be the Town of Carrboro whose decision-making board made the decision that is being appealed, except that if the petitioner is the town that has filed a petition pursuant to subdivision (4) of subsection (c) of this section, then the respondent shall be the decision-making board. If the petitioner is not the applicant before the decision making board whose decision is being appealed, the petitioner shall also name that applicant as a respondent. Any petitioner may name as a respondent any person with an ownership or leasehold interest in the property that is the subject of the decision being appealed who participated in the hearing, or was an applicant, before the decision-making board.

(e) Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of superior court of Orange County. The writ shall direct the town or the respondent decision-making board, if the petitioner is the town that has filed a petition pursuant to subdivision (4) of subsection (c) of this section, to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct the petitioner to serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4(j) of the Rules of Civil Procedure, except that, if the respondent is a decision-making board, the petition and the writ shall be served upon the chair of that decision-making board. Rule 4(j)(5)d. of the Rules of Civil Procedure applies in the event the chair of a decision-making board cannot be found. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court. Upon the filing of a petition for writ of certiorari, a party may request a stay of the execution or enforcement of the decision of the quasi-judicial board pending superior court review. The court may grant a stay in its discretion and on conditions that properly provide for the security of the adverse party. A stay granted in favor of a city or county shall not require a bond or other security.

(f) The respondent may, but need not, file a response to the petition, except that, if the respondent contends for the first time that any petitioner lacks standing to bring the appeal, that contention must be set forth in a response served on all petitioners at least 30 days prior to the hearing on the petition. If it is not served within that time period, the matter may be continued to allow the petitioners time to respond.

**Section 15-1087 through 15-110 Reserved.**