

## **ARTICLE 6. HEARING PROCEDURES FOR APPEALS AND APPLICATIONS**

### **Section 6.1 Hearing Required on Appeals and Applications.**

(a) Before making a decision on an appeal or an application for a variance, special use permit, or interpretation, or a petition from the administrator to revoke a special use permit, the Board of Adjustment or the Town Council as the case may be, shall hold a hearing on the appeal or application. *(Amended 9/14/2021)*

(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. All persons presenting evidence or arguments shall be sworn in prior to the presentation of any evidence or arguments. The oath may be administered by the Chair, any member acting as Chair, or the Clerk to the Board. *(Amended 9/14/2021)*

(c) The Board of Adjustment or Council 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 required application fee and all supporting materials must be received by the administrator before an application is considered complete and a hearing scheduled. *(Amended 9/14/2021)*

### **Section 6.2 Notice of Hearing.**

The administrator shall give notice of any hearing required by Section 101 as follows:

- (1) Notice of evidentiary hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing, to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by this Ordinance. In the absence of evidence to the contrary, the town may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days, prior to the date of the hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

The Board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement. *(Amended 9/14/2021)*

- (2) In the case of special use permits, notice shall be given to other potentially interested persons by publishing notice in a newspaper having general circulation in the area once a week for two successive weeks, not less than ten

days nor more than twenty-five days before the date for the hearing. *(Amended 2/12/91; 9/14/2021)*

- (3) 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.

### **Section 6.3 Administrative Materials.**

The administrator shall transmit to the Board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the Board 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. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. 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 at the hearing. *(Amended 9/14/2021)*

### **Section 6.4 Presentation of Evidence.**

The applicant, the town, and any person who would have standing to appeal the decision as defined in Appendix A shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the Board. Objections regarding jurisdictional and evidentiary hearing issues, including but not limited to, the timeliness of an appeal or the standing of a party, may be made to the Board. The Board Chair shall rule on any objections and the Chair's ruling may be appealed to the full Board. These rulings are also subject to judicial review pursuant to NCGS 160D-102. Objections based on jurisdictional issues may be raised for the first time on judicial review. *(Amended 9/14/2021)*

### **Section 6.5 Appearance of Official; New Issues.**

The official who made the decision or the person currently occupying that position if the decisionmaker is no longer employed by the town, 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 Board shall continue the hearing. *(Amended 9/14/2021)*

### **Section 6.6 Oaths.**

All persons who intend to present evidence to the decision-making board, rather than arguments only, shall be sworn in. The Chair of the Board or any member acting as Chair and the Clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor (refer to Article 7, Enforcement and Review). *(Amended 9/14/2021)*

### **Section 6.7 Subpoenas.**

The decision-making board making a quasi-judicial decision under this Article, through the Chair, or in the Chair's absence, anyone acting as the Chair may subpoena witnesses and compel

the production of evidence. To request issuance of a subpoena, the applicant, the town, and any persons with standing as defined in Article 2 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 he or she 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 decision-making board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the decision-making 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 property parties. *(Amended 9/14/2021)*

### **Section 6.8 Modification of Application at Hearing.**

(a) In response to questions or comments by persons appearing at the hearing or recommendations by the Town Council or Board of Adjustment, the applicant may agree to modify his application, including the plans and specifications submitted. *(Amended 9/14/2021)*

(b) Unless such modifications are so substantial or extensive that the decision-making board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the decision-making 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 administrator. *(Amended 9/14/2021)*

### **Section 6.9 Record.**

(a) A tape recording shall be made of all hearings required by Section 6.1, and such recordings shall be kept as provided by state law. Accurate minutes shall also be kept of all such proceedings. A transcript may be made, but is not required.

(b) All documentary evidence, including any exhibits, 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 in accordance with NCGS 160D-1402. *(Amended 9/14/2021)*

### **Section 6.10 Appeals in the Nature of Certiorari.**

When hearing an appeal pursuant to NCGS 160D-947 or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in NCGS 160D-1402(k). *(Amended 9/14/2021)*

### **Section 6.11 Decision.**

The Board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the Board may reverse or affirm (wholly or partly) or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards, and be approved by the Board and signed by the Chair or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board or such other office or official as this Ordinance

specifies. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, landowner, 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 to the town that proper notice has been made and the certificate shall be deemed conclusive in the absence of fraud. *(Amended 9/14/2021)*

### **Section 6.12 Rehearings.**

When an application involving a quasi-judicial procedure/petition is denied by the Town Council or Board of Adjustment, reapplication involving the same property, or portions of the same property, may not be submitted unless the petitioner can demonstrate a substantial change in the proposed use, conditions governing the use of the property, or conditions surrounding the property itself. *(Amended 9/14/2021)*

### **Section 6.13 Judicial Review.**

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to NCGS 160D-1402. Appeals shall be filed within the times specified in NCGS 160D-1405(d). *(Amended 9/14/2021)*