

ARTICLE VI

HEARING PROCEDURES FOR APPEALS AND APPLICATIONS

Section 101 Hearing Required on Appeals and Applications.

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

(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 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 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 need be published unless a period of six weeks or more elapses between hearing dates.

Section 102 Notice of Hearing.

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

- (1) Notice shall be given to the appellant or applicant and any other person who makes a written request for such notice by mailing to such persons a written notice not later than ten days before the hearing.
- (2) Notice shall be given to neighboring property owners by mailing a written notice not later than ten days before the hearing to those persons who have listed for taxation real property any portion of which is located within 100 feet of the lot that is the subject of the application or appeal. 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 not less than seven days prior to the hearing.
- (3) In the case of conditional 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)*
- (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.

Section 103 Evidence.

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

(b) All persons who intend to present evidence to the decision-making board, rather than arguments only, shall be sworn in by the Chair. 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 decision-making board, 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 (necessary findings) shall be based upon competent, substantial evidence. The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (1) the evidence was admitted without objection or (2) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:

- (1) The use of property in a particular way would affect the value of other property.
- (2) The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.
- (3) Matters about which only expert testimony would generally be admissible under the rules of evidence.

(d) The entirety of a quasi-judicial hearing and deliberation shall be conducted in open session.

(e) Parties to a quasi-judicial hearing have a right to cross-examine witnesses.

(f) Factual findings must not be based on hearsay evidence which would be inadmissible in a court of law.

(g) If a member of the decision-making board has prior or specialized knowledge about a case, that knowledge should be disclosed to the rest of the decision-making board and parties at the beginning of the hearing.

(h) The decision-making board 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, persons with standing under GS 160A-393(d) 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 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.

Section 104 Modification of Application at Hearing.

(a) In response to questions or comments made in sworn testimony at the hearing, 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 board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the 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.

Section 105 Record.

(a) A tape recording shall be made of all hearings required by Section 101, 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 160A-393(l).

Section 106 Quasi-Judicial Decision.

The Board shall determine contested facts and make its decision within a reasonable time. 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. The written decision shall be signed by the Chair or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision within 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, 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.

Sections 107 through 110 Reserved.