

Article 6 - Hearing Procedures for Appeals and Applications

Section 16-6.1. General Requirements for Quasi-Judicial Hearings and Decisions. A quasi-judicial decision is a process that involves the finding of facts regarding a specific application of an ordinance and the exercise of discretion when applying the standards of the ordinance. Quasi-judicial decisions include decisions involving variances, special use permits, and appeals of administrative determinations.

16-6.1.1. Procedure for Filing Appeals and Applications. Notices of appeal shall be filed with the Town Clerk. Applications for special use permits and applications for variances shall be filed with the Administrator and processed in accordance with applicable provisions of the Land Use Ordinance. All appeals and applications shall be made upon the form specified for that purpose and all information required on the form shall be complete before an appeal or application shall be considered as having been filed.

16-6.1.2. Notice of Hearing. Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal or application 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 immediate properties separated by street, railroad, or other transportation corridor as provided by NCGS 160D-602. In the absence of evidence to the contrary, the Town may rely on the applicable County tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 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. In addition, notice of a hearing on an application for a special use permit shall be posted at Town Hall and published in a newspaper having general circulation in the Town within that same time period.

16-6.1.3. Hearings. The board with jurisdiction to hear and decide a matter shall conduct a quasi-judicial hearing on the appeal or application. It shall determine contested facts and make its decision within 45 days of the conclusion of hearing. Testimony shall be given under oath. All parties with standing, must be allowed to participate fully in an evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments. The Board chair must rule on objections to inclusion or exclusion of administrative material. The board's decision shall be based upon competent, material, and substantial evidence in the record of the hearing. The decision shall establish written findings of fact and conclusions of law, in accordance with NCGS 160D-406. The written decision shall be signed by the mayor, the chair or other duly authorized member of the board. The decision of the board shall be effective upon filing such decision with the clerk to the Board. The clerk shall see that the decision is delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, any entity granted party status at the

hearing, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective and shall certify that proper notice has been made.

Section 16-6.2. Modification of Application at Hearing. In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board of Commissioners or Board of Adjustment, the applicant may agree to modify the application, including the plans and specifications submitted. Provided, however, if such modifications are so substantial or extensive that the permit-issuing 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 staff.

Section 16-6.3. Record. A tape recording shall be made of all hearings required by Section 16-6.1. Accurate minutes shall also be kept of all such proceedings, but a transcript need not be made. 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. Records made pursuant to this section shall be kept on file by the Town for at least two years and may thereafter be disposed of only in accordance with NCGS 132-3.