

ARTICLE VI

HEARING PROCEDURES FOR APPEALS AND APPLICATIONS

Section 15-101 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 planning staff to revoke a special use permit or conditional use permit, the board of adjustment or the board of aldermen, as the case may be, shall hold a hearing on the appeal or application. Hearings on conditional use permits shall be set by the 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 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 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)**

Section 15-102 Notice of 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)**
- (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 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 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

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rental property 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 neighboring property owners by mailing a written notice not later than 10 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 located within 500 feet of the lot that is the subject of a special use permit and 1000 feet of the lot that is the subject of a conditional use permit. The planning staff shall also make reasonable efforts to mail a similar written notice not less than 10 days before the hearing to the non-owner occupants of residential rental property located within 1,000 feet of the lot that is the subject of the conditional 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 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 conditional 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 15-103 Evidence.

(a) The provisions of this section apply to all 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.

(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

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not reasonably available, the evidence in question appears to be particularly reliable, and the matter at issue is not seriously disputed.

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 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 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 planning staff.

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.

Section 15-106 Written Decision. (AMENDED 10/21/14)

(a) As provided in G.S. 160A-388(e2), every quasi-judicial decision made by the 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 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.

(b) A quasi-judicial decision is effective upon filing the written decision in the planning department. 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.

Section 15-107 through 15-110 Reserved.