

## ARTICLE V

### **APPEALS, VARIANCES, SETBACK EXCEPTIONS, INTERPRETATIONS, AND DETERMINATIONS (AMENDED 6/22/21)**

**Section 15-91 Appeals. (AMENDED 6/21/94; 4/23/96; 5/21/02; 6/22/21) (REPEALED 4/27/82)  
(REWRITTEN 10/21/14)**

(a) The board of adjustment shall hear and decide appeals of decisions of the administrator in accordance with the provisions of G.S sections 160D-302; 405; 406; 705. Those provisions are summarized in the remaining subsections of this section. For purposes of this section, the term “decision” includes any final and binding order, requirement, or determination made by the administrator. **(AMENDED 6/22/21)**

(b) The administrator shall give written notice of the decision to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first- class mail.

(c) Any person who has standing under G.S. sections 160D-405(b); 1402(c), as well as the town, may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the town clerk. The notice of appeal shall state the grounds for the appeal. **(AMENDED 6/22/21)**

(d) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(e) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high is prominently posted on the property that is the subject of the decision, provided that (i) the sign remains on the property for at least 10 days, and (ii) and the sign states that additional information about the decision can be obtained by calling the planning department at a specified telephone number. Posting of such signs shall not be required, and is not the only form of constructive notice, but such posting offers the applicant or landowner a means of ensuring that constructive notice of the decision has been provided. Verification of the posting shall be provided to the administrator.

(f) The administrator shall transmit to the board of adjustment all documents and exhibits constituting the record of the action that is the subject of the appeal. The administrator shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(g) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the administrator certifies to the board of adjustment after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to

life or property, or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the administrator a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(h) Subject to the provisions of subdivision (g) of this section, the board of adjustment shall hear and decide the appeal within a reasonable time.

(i) The administrator shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the 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. The board of adjustment 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 administrator.

(j) The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution.

**Section 15-92 Variances. (AMENDED 11/10/81; 4/21/87; 12/05/89; 4/23/96; 10/24/06; 6/26/12; 10/21/14; REPEALED & AMENDED 3/24/09; REWRITTEN 10/26/10)**

(a) An application for a variance shall be submitted to the board of adjustment by filing a copy of the application with the administrator in the planning department. Applications shall be handled in the same manner as applications for special use permits-B in conformity with the provisions of Sections 15-48, 15-49, and 15-56.

(b) Subject to the remaining provisions of this section, when unnecessary hardships would result from carrying out the strict letter of this ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of this ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance

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- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship
  - (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
- (c) No change in permitted uses may be authorized by variance.
- (d) Appropriate conditions may be imposed on any variance, provided the conditions are reasonably related to the variance.
- (e) A variance may be issued for an indefinite duration or for a specified duration only.
- (f) In determining whether a variance should be granted from any of the provisions of Article XVI, Part I, the board of adjustment shall consider the following factors, each of which shall be addressed in a written report that accompanies the application.
- (1) The danger that materials may be swept onto other lands to the injury of others;
  - (2) The danger to life and property due to flooding or erosion damage;
  - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (4) The importance of the services provided by the proposed facility to the community;
  - (5) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - (6) The compatibility of the proposed use with existing and anticipated development;
  - (7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - (8) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (9) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site; and

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- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(g) Any applicant to whom a variance is granted from the provisions of Article XVI, Part I, shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

(h) With respect to the provisions of Article XVI, Part I, the administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

- (i) With respect to the provisions of Article XVI

Part I:

- (1) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances
- (2) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge
- (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief
- (4) Variances shall only be issued prior to development permit approval
- (5) The Town shall notify the Secretary of the North Carolina Department of Crime Control and Public Safety that a variance has been requested at least 30 days prior to consideration of the application by the board of adjustment

(j) If the board votes to grant a major variance from any of the provisions of Section 15-266, dealing with requirements peculiar to areas within the University Lake Watershed or Jordan Lake Watershed Protection District, the administrator shall forthwith prepare and send to the Environmental Management Commission a record of the proceedings before the board. The variance shall not be issued until it is approved by the EMC. For purposes of this subsection, a major variance is one that authorizes a relaxation of greater than 10% of any requirement set forth in Section 15-266.

(k) With respect to a variance from any of the provisions of Part III (Water Quality Buffers) of Article XVI, the following procedure shall apply in addition to the standards set forth in Section 15-92(b): **(AMENDED 6/04/24)**

- (1) The Board may grant minor variances, which are activities that pertain to Zone Two as defined in 15a NCAC O2b.0267, as amended, and shall make a finding of fact as to whether there are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. A finding of practical difficulties or unnecessary hardships shall require that the following conditions are met:
  - a. If the applicant complies with the provisions of this part, they can secure no reasonable return from, nor make reasonable use of, their property;
  - a1. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of this part that shall make reasonable use of the property possible;
  - b. The hardship results from application of this part to the property rather than from other factors such as deed restrictions or other hardship;
  - c. The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that compliance with provisions of this part would not allow reasonable use of the property;
  - d. The applicant did not cause the hardship by knowingly or unknowingly violating this part;
  - e. The applicant did not purchase the property after August 11, 2009, the effective date of this part, and then request a variance; and
  - f. The hardship is rare or unique to the applicant's property.
- (2) For any variance request, the local government shall make a finding of fact as to whether the variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and
- (3) For any variance request, the Board shall make a finding of fact as to whether, in granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.
- (4) **MINOR VARIANCES.** A minor variance request pertains to activities that will impact only Zone Two of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in subsection (k)(1) through (k)(3) of this part by the Board pursuant to G.S. 160D-102(38). The Board may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program.
- (5) Request for appeals to decisions made by the Board shall be made on certiorari to the local Superior Court.

(6) MAJOR VARIANCES. A major variance request pertains to activities that will impact any portion of Zone One or any portion of both Zones One and Two of the riparian buffer. If the local government has determined that a major variance request meets the requirements in subsection (k)(1) through (k)(3) of this part, then it shall prepare a preliminary finding and submit it to the Board for approval. Within 90 days after receipt by the local government, the Board shall review preliminary findings on major variance requests and take one of the following actions: approve, approve with conditions and stipulations, or deny the request. Appeals from a Board decision on a major variance request are made on judicial review to the local Superior Court.

(l) The administrator shall keep a record of all variances granted during any calendar year from the provisions of Sections 15-266 or Part III of Article XVI and shall submit the record of such variances on or before January 1 of the following year to the Division of Water Quality. The record shall contain a description of each project receiving a variance and the reason for granting the variance.

(m) If the board votes to grant a major variance from the provisions of Section 15-263, the board shall then prepare a preliminary record of the hearing and submit it to the Environmental Management Commission for review and approval. If the Commission approves the major variance or approves with conditions or stipulations added, then the Commission shall prepare a Commission decision which authorizes the board to issue a final decision which would include any conditions or stipulations added by the Commission. If the Commission denies the major variance, then the Commission shall prepare a Commission decision to be sent to the board. The board shall prepare a final decision denying the major variance. For all proposed major and minor variances from the other local governments having jurisdiction within the Jordan Lake Watershed Area and any local governments using Jordan Lake as a water supply for consumption. Appeals from a board decision on a major or minor variance request are made on certiorari to the local Superior Court. Appeals from the Commission decision on a major variance request are made on judicial review to Superior Court. For purposes of this subsection, a major variance is one that authorizes a relaxation by more than five percent of any requirement set forth in Section 15-263.

**Section 15-92.1 Setback Exceptions. (AMENDED 6/21/94; 6/4/24)**

***[PLEASE REFERENCE "APPENDIX H"]***

(a) An application for a setback exception shall be submitted to the board of adjustment by filing a copy of the application with the administrator in the planning department.

(b) All of the provisions of this article applicable to the processing of variance applications shall also apply to setback exception requests, except the provisions of Subsections 15-92(b) and 15-96(b) and (c).

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(c) The board of adjustment may issue a setback exception for the purposes and under the circumstances set forth in the remaining subsections of this section if it concludes, in addition to any other findings required below, that:

- (1) Issuance of the permit will not create a threat to the public health or safety; and
- (2) Issuance of the permit will not adversely affect the value of adjoining or neighboring properties. **(AMENDED 6/04/24)**

(d) The board of adjustment may issue a setback exception under this section to allow a reduction of up to 50% in the required distances that buildings must be set back from lot boundary lines under Subsection 15-184(a)(4), provided that:

- (1) The reduction may be permitted only for buildings on lots used for conforming residential purposes in residential districts, where (i) the building in question has existed for at least three years prior to the application for the setback exception permit, or (ii) the lot is to be developed or redeveloped using the residential density bonus for affordable housing provided for elsewhere in this chapter at Section 15-184. **(Amended 5/14/02)**
- (2) In no case may the reduction allow a building to be located closer to a lot boundary line than a distance equal to one-half of the minimum building separation requirement established by the North Carolina State Building Code or allow the location of a building in such proximity to a pre-existing building as to violate the minimum building separation requirement of the North Carolina State Building Code;
- (3) Reductions may be allowed under this section only for setbacks from lot boundary lines, not setbacks from street right-of-way lines.

(e) The board of adjustment may issue a setback exception to authorize a structure to encroach upon a setback required under Section 15-184 if it finds that:

- (1) The proposed encroachment results from an addition to or an extension of an existing structure that already is nonconforming with respect to the requirements of section 15-184; and
- (2) The proposed addition or extension will not encroach upon any required front, rear, or side yard to a greater extent than the existing structure on that lot.

**Section 15-93 Interpretations. (REWRITTEN 10/21/14)**

(a) The administrator is authorized to interpret the official zoning map and to pass upon disputed questions of district boundary lines and similar questions.

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(b) Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

- (1) Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams, or railroads shall be construed to follow such centerlines;
- (2) Boundaries indicated as approximately following lot lines, city limits, or extraterritorial boundary lines shall be construed as following such lines, limits or boundaries;
- (3) Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as following such shorelines;
- (4) Where a district boundary divides a lot or where distances are not specifically indicated on the Official Zoning Map, the boundary shall be determined by measurements, using the scale of the Official Zoning Map;
- (5) Where any street or alley is hereafter officially vacated or abandoned, the regulation applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.

**Section 15-93.1 Determinations. (AMENDED 6/22/21)**

(a) The administrator is authorized to make determinations, a written, final, and binding order, requirement, or determination regarding an administrative decision. This includes any interpretation of the requirements of this chapter, affirmation of nonconforming status, notice of violation or other binding order concerning development regulations.

- (1) When making a determination, the administrator shall give written notice of the decision to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner.
- (2) It is conclusively presumed that all persons with standing to appeal have constructive notice of the determination from the date a sign providing notice that a determination has been made is prominently posted on the property that is the subject of the determination, provided the sign remains on the property for at least 10 days. The sign shall contain the words "Zoning Decision" or "Subdivision Decision" or similar language for other determinations in letters at least 6 inches high and shall identify the means to contact a local government staff member for information about the determination. Posting of signs is not the only form of constructive notice. Any such posting is the responsibility of the landowner, applicant, or person who sought the determination. Verification of the posting shall be provided

to the staff member responsible for the determination. Absent an ordinance provision to the contrary, posting of signs shall not be required

(b) Determinations may be appealed to the board of adjustment in accordance with Section 15-91.

**Section 15-94 Requests To Be Heard Expeditiously.**

As provided in Section 15-66, the board of adjustment shall hear and decide all appeals, variance requests, and requests for interpretations as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Article VI, and obtain the necessary information to make sound decisions.

**Section 15-95 Burden of Proof in Appeals, Variances, and Special Exceptions. (AMENDED 6/21/94; REPEALED 10/21/14)**

**Section 15-96 Board Action on Appeals, Variances, and Special Exceptions. (AMENDED 4/27/82; 6/21/94; 10/21/14)**

(a) With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings that support that motion. If a motion to reverse or modify is not made or fails to receive the four-fifths vote necessary for adoption of a variance (see Section 15-32), then a motion to uphold the decision appealed from shall be in order. Insofar as practicable, this motion shall include a statement of the findings, or reasons that support it. This motion is adopted as the board's decision if supported by at least two members. **(AMENDED 6/22/21)**

(b) Before granting a variance, the board must take a separate vote and vote affirmatively (by a 4/5 majority--see Section 15-32) on each of the four required findings stated in Subsection 15-92(b). Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in Subsection 15-92(b) shall include a statement of the specific reasons for findings of fact supporting such motion.

(c) A motion to deny a variance may be made on the basis that any one or more of the four criteria set forth in Subsection 15-92(b) are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the board's decision if supported by at least two members.

(d) Before granting a special exception permit, the board shall vote affirmatively on each of the findings required under section 15-92.1. A motion to deny a special exception may be made on the basis that any one or more of the findings required by section 15-92.1 are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it.

**Section 15-97 Reasonable Accommodations. (Amended 6/26/19)**

(a) The Town is authorized to grant reasonable accommodations under the Federal Fair Housing Act and Americans with Disabilities Act under the circumstances set forth in this section.

(b) An application for a reasonable accommodation may be filed only by the owner of the land affected by the reasonable accommodation; an agent, lessee, or contract purchaser specifically authorized by the owner to file such application; or any unit of government that is not the owner of the lot but proposes to acquire the lot by purchase, gift or condemnation.

(c) An application for a reasonable accommodation shall be filed with the Administrator and contain: (1) the applicant's contact information (name, mailing address, telephone number, fax number, and email address); (2) the contact information for the owner(s) of the property (if different from the applicant); (3) the address of the property at which the reasonable accommodation is requested; (4) a description of the reasonable accommodation requested; (5) a statement explaining how and why the request meets the standards for a reasonable accommodation (see subsection (f) below); and (6) the notarized signature of the applicant and property owner(s) (if different from the applicant). No filing fee shall be required for the application.

(d) The Council shall hold a quasi-judicial hearing on the proposed reasonable accommodation and shall decide the request upon a majority vote of the members.

(e) The quasi-judicial hearing shall be noticed in accordance with Section 15-102(1) and conducted in accordance with Sections 15-103 through 15-106 to the extent not inconsistent with this Section.

(f) The Council shall grant a reasonable accommodation to any provision of the Land Use Ordinance if the Council finds by the greater weight of the evidence that the proposed reasonable accommodation is both reasonable and necessary, in accordance with the following:

- (1) Reasonable: An accommodation will be determined to be reasonable if it would not undermine the legitimate purposes and effects of existing zoning regulations, and if it will not impose significant financial and administrative burdens upon the Town and/or constitute a substantial or fundamental alteration of the Town's Land Use Ordinance provisions; and
- (2) Necessary: An accommodation will be determined to be necessary if it would provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap, and would afford persons with disabilities equal opportunity to enjoy and use housing in residential districts in the Town.

(g) After the Council approves a reasonable accommodation, the applicant shall follow all applicable Land Use Ordinance procedures for the approval of any permits, certificates, or other approvals required in order to proceed with development or use of the property. All orders, decisions, determinations, and interpretations made by administrative officers under those procedures

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shall be consistent with the reasonable accommodation granted by the Council.

**Section 15-98 through 15-100 Reserved.**

## ARTICLE VI

### EVIDENTIARY HEARING PROCEDURES FOR APPEALS AND APPLICATIONS (AMENDED 6/22/21)

#### **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, special use permit-B, special use permit-A, certificate of appropriateness, or a petition from the planning staff to revoke a special use permit, the board of adjustment or the town council, 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 special use permits-A shall be set by the town council as provided in Section 2-17 of the Town Code. (AMENDED 4/27/82) (REWRITTEN 6/22/21)

(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 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 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. (AMENDED 6/22/21)

#### **Section 15-102 Notice of Evidentiary Hearing.** (AMENDED 6/22/21)

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 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 or earlier than 25 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 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 special use permit-B and 1000 feet of the lot that is the subject of a special use permit-A. 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 located within 500 feet of the lot that is subject to a special use permit-B and 1,000 feet of the lot that is the subject of the special use permit-A. 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. **(AMENDED 10/12/82; 1/22/85; 4/15/97; 10/12/99; 3/26/02) (REWRITTEN 6/22/21)**
- (3) In the case of special use permits-A, 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)**

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**Section 15-102.1 Administrative Materials. (AMENDED 6/22/21)**

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 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. (REWRITTEN 6/22/21)**

(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

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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.

(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 council or 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 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 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. **(AMENDED 6/22/21)**

**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.

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(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. 160D-403(a), every quasi-judicial decision made by the town council, 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 council or board. (AMENDED 6/22/21)

(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. (AMENDED 6/22/21)**

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.

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- (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 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, when a Town 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

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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 15-108 through 15-110 Reserved.**