

**ARTICLE VI - Hearing Procedures for Appeals and Quasi-Judicial Applications**  
*(Amended 9/28/2015)*

**§ 152-101. Hearing Required on Appeals and Quasi-Judicial Applications.**

(A) Before making a decision on an appeal or an application for a special use permit, special exception, conditional use permit, variance, or a petition from the planning staff to revoke a special use permit or a conditional use permit, the Planning Board, Town Board or Board of Adjustment, 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 Planning Board, Town Board or Board of Adjustment 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 (6) weeks or more elapses between hearing dates.

**§ 152-102. Notice of Hearing.**

The Administrator shall give notice of any hearing required by section 152-25 "Powers and Duties of Planning Board"; 152-31 "Powers and Duties [of the Board of Adjustment]"; 152-92, "Appeals"; 152-93 "Variances"; 152-94 "Special Exceptions"; 152-54 "Special and Conditional Use Permits"; and 152-95 "Interpretations" as follows:

(A) Notice of all quasi-judicial hearings conducted pursuant to this chapter 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 Moore 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.

(B) 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.

(C) The notices 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.

**§ 152-103. Evidence.**

(A) The provisions of this section apply to all hearings for which a notice is required by section 152-101.

(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 (i.e. crucial findings) shall be based upon competent, material and substantial evidence in the record.

(D) Competent Evidence.

(1) Competent evidence (i.e. 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.

(2) Competent evidence shall not include the opinion testimony of lay witnesses as to any of the following:

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

**§ 152-104 Burden of Proof in Appeals and Variances.**

(A) When an appeal of the Administrator's decision is taken to the Board of Adjustment in accordance with section 152-92 "Appeals", the Administrator shall have the initial burden of presenting to the Board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

(B) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in subsection 152-93(D) as well as the burden of persuasion on those issues remains with the applicant seeking the variance.

**§ 152-105. 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 Planning Board, Town Board 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.

**§ 152-106. Record.**

(A) A tape or digital recording shall be made of all hearings required by section 152-101, and such recordings shall be kept for at least two (2) 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 (2) years.

**§ 152-107. Conflicts of Interest**

A member of any board exercising quasi-judicial functions shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change; undisclosed ex parte communications; a close familial, business, or other associational relationship with an affected person; or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

**§ 152-108. Board Action on Appeals and Variances.**

(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 of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the simple majority vote necessary for adoption, then a motion to uphold the decision appealed from shall be in order.

(B) Before granting a variance, the Board must take a separate vote and vote affirmatively (by a four-fifths majority) on each of the four required findings stated in subsection 152-92(D). Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in subsection 152-93(D) shall include a statement of the specific reasons or 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 152-93(D) 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.

**§ 152-109. Written Decision.**

(A) Every quasi-judicial decision 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 conclusions of law and their application to the applicable standards.

(B) 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 with the clerk to the board. 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.

**§ 152-110. Appeals of Quasi-Judicial Decisions**

Every quasi-judicial decision shall be subject to review by the Moore County Superior Court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with section 152-108. When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.