

## 2.2 COMMON REVIEW PROCEDURES

The general provisions of this Section apply to all development applications and procedures under this Ordinance, unless otherwise stated.

### 2.2.1 Authority to File Applications

Applications under this Article shall be submitted to the Planning Director by the landowner, lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner.

A) ***Applicant is Not the Owner***

If the applicant is not the landowner or a lessee or person holding an option or contract to purchase or lease land, a form signed by the owner consenting to the submission of the application shall be submitted.

B) ***Applicant is Not the Sole Owner***

If the applicant is not the sole landowner, a letter signed by the other owners or an association representing the owners consenting to or joining in the application for development approval shall be submitted.

### 2.2.2 Planning Director Authorized to Establish Application Submission Schedule

The schedule for the submission of applications shall be established by the Planning Director and made available to the public.

### 2.2.3 Simultaneous Processing

Whenever two or more forms of review and approval are required under this Ordinance (e.g., a Rezoning and a Special Use Permit), the applications for those development approvals may, at the option of the Planning Director, be processed simultaneously, so long as all applicable state and local requirements are satisfied for both applications. However, whenever this Ordinance requires two types of review for the same approval (e.g., a Master Subdivision Plan and a Master Subdivision Final Plat), those two review and approval procedures must be completed as separate steps in the order specified.

### 2.2.4 Form of Application

Applications required under this article shall be submitted in a form established by the Planning Director and made available to the public.

### 2.2.5 Fees

A) ***Determination of Fees***

The Town Council shall determine the fees to accompany all applications submitted under this Ordinance. The Council may adjust fee amounts from time to time. The fee amount shall defray the actual cost of processing the application.

B) ***Fees to be Paid***

No application shall be processed until the established fee has been paid.

C) ***Refund of Fees***

Application fees are not refundable except where the Planning Director determines that an application was accepted in error, or the fee paid exceeded the amount due, in which case the amount of the overpayment will be refunded to the applicant.

### 2.2.6 Pre-Application Meeting

A) **General Overview**

A pre-application meeting is required prior to submission of the following application types: Rezoning (including Planned Development districts), Special Use Permit, Minor or Major Site Plan, Master Subdivision Plan, Variance Permit, or any application within the Small Town Character Overlay District. The purpose of a pre-application meeting is to familiarize the applicant and the Town staff with the applicable provisions of this Ordinance required to permit the proposed development. The pre-application meeting shall be held prior to the applicant mailing a notice of a neighborhood meeting as required by Sec. 2.2.7.B *Neighborhood Meetings*.

B) **Initiation of Pre-Application Meeting**

Any potential applicant may request a pre-application meeting, in writing, with the Planning Director. Along with the request for the pre-application meeting, the applicant shall provide to the Planning Director a description of the character, location, and magnitude of the proposed development and any other supporting documents such as maps, drawings, models, site or sketch plan, and the type of development permit sought a minimum of five (5) working days prior to the pre-application meeting.

C) **Pre-Application Meeting**

The Planning Director shall schedule a pre-application meeting after receipt of the written request for a pre-application meeting. At the pre-application meeting, the applicant, the Planning Director, and any other Town staff and/or State and/or federal representatives the Planning Director deems is appropriate to attend the pre-application meeting, shall discuss the proposed development, and based upon the information provided by the applicant and the provisions of this Ordinance, discuss in general what provisions of this Ordinance apply to the proposed development.

### 2.2.7 Neighborhood Notice

A) **Notification Letter**

The petitioner of a Minor Site Plan for uses that do not require a neighborhood meeting as outlined in Sec. 2.2.7.B *Neighborhood Meetings*, and which are located within 500 feet of a residential land use and have not had a rezoning approval in the previous two (2) years, shall be required to send a letter to all property owners and tenants abutting and located within 500 feet of the land subject to the application, to any neighborhood association that represents citizens within that notification area, and to the Town of Apex Planning Department at least 14 days prior to the submittal of the Minor Site Plan. The letter shall include the developer's and authorized agent's contact information and an explanation of the proposed project, and shall follow the guidelines in the Neighborhood Notification Letter Packet, including the procedure for requesting the notification address list from Town GIS staff.

B) **Neighborhood Meetings**

Neighborhood meetings are required for all applications for Rezoning; Major Site Plans; residential subdivisions, excluding exempt subdivisions; Special Use Permits; and Minor Site Plans for the following uses: Day care facility; Government service; School, public or private; Restaurant, drive-through; and Convenience store with gas sales. Upon submittal of an application for one or more of these applications, the petitioner must file in the office of the Planning Director a written report of at least one (1) neighborhood meeting held by the petitioner. For Rezoning, the petitioner must file a written report of an additional

neighborhood meeting according to subsection 1) below. The neighborhood meeting shall comply with the following procedures.

- 1) *General*

The pre-application meeting with the Technical Review Committee shall be held prior to the applicant mailing a notice of a neighborhood meeting. The purpose of the neighborhood meeting is to educate neighbors about the proposed development and application and any associated long range plan amendments, to receive neighborhood comments, and to address concerns about the development proposal. At least one (1) neighborhood meeting shall be scheduled and held by the applicant or applicant's agent prior to submission of the initial application. The initial neighborhood meeting shall take place within six (6) months of submittal of the application; if more than six (6) months have passed at the time of application, the applicant shall hold a subsequent neighborhood meeting. For Rezoning, an additional neighborhood meeting shall be held in the month prior to the anticipated Planning Board public hearing date.
- 2) *Time and Place*

The neighborhood meeting shall be held either:

  - a) At a place that is generally accessible to neighbors that reside in close proximity to the land subject to the application; or
  - b) Virtually with both internet and dial-in options per the guidelines in the Neighborhood Meeting Packet.
- 3) *Notification*

The applicant shall provide notification of the neighborhood meeting a minimum of 14 calendar days in advance of the meeting by mail, to all property owners and tenants abutting and located within 500 feet of the land subject to the application, to any neighborhood association that represents citizens within that notification area, and to the Town of Apex Planning Department. The applicant shall request this notification list from Town GIS staff per the guidelines in the Neighborhood Meeting Packet. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 500-foot notification area shall be measured from the property line of that entire parcel.
- 4) *Conduct of Meetings*

At the neighborhood meeting, the applicant shall explain the development proposal and application and any associated long range plan amendments, answer any questions, respond to concerns neighbors have about the application and proposed resolutions to these concerns.
- 5) *Report*

The report shall include, among other things:

  - a) A listing of those persons and organizations contacted about the meeting and the manner and date of contact;
  - b) The date, time and location of the meeting;
  - c) An Apex Neighborhood Meeting Roster Form identifying the persons in attendance at the meeting;
  - d) A summary of issues discussed at the meeting; and,
  - e) A description of any changes made by the petitioner as a result of the meeting.

### **2.2.8 Application Submission**

An application shall be submitted to the Planning Director pursuant to the application submittal schedule established by the Planning Director and made available to the public, along with a fee established pursuant to Sec. 2.2.5 *Fees*. Applications for Master Subdivision Plans, Planned Developments, Minor Site Plans, Major Site Plans, and Construction Plans shall be reviewed and commented on by the Technical Review Committee (TRC). Provided, however, that the Town shall not accept any such applications relating to any property within the Town's municipal corporate limits or extraterritorial jurisdiction on which an historic structure (as defined in Article 12) has been demolished (as defined in Article 12) within the immediately preceding 48 months, measured from the date of the Town's final inspection of such demolition activities pursuant to the North Carolina State Building Code. The relocation of historic structures shall not be considered a demolition if the relocation is conducted in accordance with Sec. 2.3.6.C.2.b.

A) ***Determination of Sufficiency***

The Planning Director shall determine if the application is sufficiently complete and includes data in sufficient detail to evaluate the application to determine whether it complies with the appropriate substantive requirements of this Ordinance. This process shall occur within the time frame of the application submittal schedule as established by the Planning Director. If the Planning Director determines the application is not sufficient a written notice shall be transmitted to the applicant specifying the application's deficiencies. No further action shall be taken on the application until the deficiencies are remedied.

B) ***Determination of Compliance***

When an application is determined sufficient, it shall be reviewed pursuant to the procedures and standards of this article. The Planning Director shall forward the application to each member of the TRC and any other applicable review agencies for review and comments. If the application is found not to comply with one or more aspects of this ordinance or other regulations, then the TRC Chairperson shall compile a list of comments and outstanding issues and transmit it to the applicant. The applicant shall make the requested changes and resubmit revised plans to address the comments of the TRC and any other review agency. Re-submittals of applications must occur no less than one year from the initial submittal date or no less than one year from any re-submittal date in order to be considered active. Inactive applications are null and void one year after the latest submittal or re-submittal date; any submittals made after becoming inactive will be considered a new application. The process shall repeat until the application is found to be complete and in full compliance with this ordinance and all other applicable regulations. This process shall follow the steps and the time frame of the application submittal schedule as established by the Planning Director.

### **2.2.9 Staff Report**

Upon the TRC's finding that the application is complete and in full compliance with this Ordinance and all other applicable regulations, the Planning Director shall prepare a staff report for those applications that are not subject to the approval of the Planning Director or Technical Review Committee. This staff report may include a recommendation from the Town Staff for approval, approval with conditions, or denial. The Town Staff may recommend conditions for approval to eliminate any areas of noncompliance or to mitigate any adverse effects of the development proposal.

### 2.2.10 Scheduling Public Hearing(s)

When an application is subject to a public hearing (see Sec. 2.2.11.E *Timing of Notice* for when a public hearing is required), the Planning Director shall ensure that the public hearing or public hearings on the application are scheduled for a regularly scheduled meeting or a meeting specially called for that purpose by the decision-making or advisory body reviewing the application. The public hearing shall be scheduled so there is sufficient time for a Staff Report to be prepared, and for the public notification requirements to be satisfied.

### 2.2.11 Public Notification

All applications for development approval requiring public hearings shall comply with all applicable North Carolina General Statutes including 160D-601 to -602 and 160D-406(b), 160D-202, the table in Sec. 2.2.11.E *Timing of Notice*, and the other provisions of this Section with regard to public notification.

#### A) **Content**

- 1) All written notice and published notice for public hearings shall:
  - a) *Time and place.* Indicate the time and place of the public hearing or action;
  - b) *Location.* Describe the land involved by street address or by Parcel Identification Number (PIN) and nearest cross street;
  - c) *Describe nature and scope of application.* Describe the nature, scope and purpose of the application or proposal being advertised;
  - d) *Additional information.* Indicate where additional information can be obtained; and
  - e) *Notify interested parties they will be heard.* Include a statement that interested parties may appear at the public hearing and be heard with respect to the application.
- 2) All posted notice for public hearings shall:
  - a) Include the words "Public Hearing";
  - b) Identify the Town of Apex;
  - c) Provide contact information where additional information can be requested.

#### B) **Written (Mailed) Notice**

When the provisions of this Ordinance require that written or mailed notice be provided, the Planning Director shall be responsible for preparing the written notice and mailing the written notice. Notice shall be mailed to all property owners subject to the application, all property owners and tenants abutting and located within 500 feet of the land subject to application, and any neighborhood association that represents citizens within the notification area unless otherwise specified in this Ordinance. However, as an alternate form of notification, NCGS 160D-602(b) may be used when a zoning map amendment proposes to change the zoning designation of more than 50 properties, owned by at least 50 different property owners, and the Town elects to use the expanded published notice provided for in that subsection.

Written notice shall be provided at the last addresses listed for such property owners on the county tax abstracts and all tenant and neighborhood association addresses on record with the Planning Department. Town GIS staff shall provide

the applicant with a list of all property owners of land subject to the application, all property owners and tenants abutting and located within 500 feet of the land subject to application, and any neighborhood association that represents citizens within the notification area. Notice shall be deemed mailed by its deposit in the United States mail, first class, properly addressed, postage paid. The applicant shall be responsible for providing the Planning Director with first class stamped envelopes (postage metering is not acceptable) addressed to all property owners subject to the application, all property owners and tenants abutting and located within 500 feet of the land subject to application, and to any neighborhood association that represents citizens within the notification area.

The Planning Director shall be responsible for preparing an affidavit affirming that the mailed notice met the requirements of Sec. 2.2.11.A *Content*. The affidavit shall be conclusive that notice has been given pursuant to the terms of the subsection. When less than an entire parcel of land is subject to the proposed zoning map amendment, the entire parcel shall be used to determine abutting owners and the 500-foot notification area. Properties are “abutting” even if separated by a street, railroad, or other transportation corridor.

C) **Published Notice**

When the provisions of this Ordinance require that notice be published, the Planning Director shall be responsible for preparing the content of the notice and publishing the notice in either:

- 1) A newspaper of general circulation that has been selected by the Town once a week for two (2) successive weeks prior to the public hearing;
- 2) Or by electronic means including the Town’s website.

D) **Posted Notice**

When the provisions of this Ordinance require that notice be posted on the land subject to the application, the Planning Director shall (1) post the notice on weatherproof signs and (2) place the signs on the property that is the subject of the application, and along each public street which is adjacent to or runs through the subject property in a manner that makes them clearly visible to neighboring residents and passers-by. The sign(s) shall be set back no more than 25 feet from the public street(s) so that the lettering is visible from the street. Where the land does not have frontage on a public street, signs shall be erected on the nearest public street.

E) **Timing of Notice**

Unless otherwise expressly provided in the North Carolina General Statutes or this Ordinance, notice shall be provided as follows:

Application for Development Permit or Other Action	Notice Required (days before hearing/action)				
	Notification Letter (Sec. 2.2.7.A)	Neighborhood Meeting (Sec. 2.2.7)	Written (Sec. 2.2.11.B)	Published (Sec. 2.2.11.C)	Posted (Sec. 2.2.11.D)
Rezoning, Conditional Rezoning, PUD-CZ, SD-CZ, TND-CZ, MEC-CZ	N/A	Written notice no less than 14 days prior to meeting date	Not more than 25 days nor less than 10 days prior to public hearing	Once a week for two successive weeks prior to public hearing; first publication not less than 10 days nor more than 25 days before hearing	Not less than 10 days prior to public hearing

Application for Development Permit or Other Action	Notice Required (days before hearing/action)				
	Notification Letter (Sec. 2.2.7.A)	Neighborhood Meeting (Sec. 2.2.7)	Written (Sec. 2.2.11.B)	Published (Sec. 2.2.11.C)	Posted (Sec. 2.2.11.D)
Special Use Permit (Quasi-judicial public hearings)	N/A	Written notice no less than 14 days prior to meeting date	Not more than 25 days nor less than 10 days prior to quasi-judicial public hearing	Once a week for two successive weeks prior to quasi-judicial public hearing; first publication not less than 10 days nor more than 25 days before quasi-judicial hearing	Not less than 10 days prior to quasi-judicial public hearing
Minor Site Plans as indicated in Sec. 2.2.7.A	Written notice no less than 14 days prior to submittal	N/A	N/A	N/A	N/A
Residential Master Subdivision Plans, Major Site Plans, Minor Site Plans as indicated in Sec. 2.2.7.B	N/A	Written notice no less than 14 days prior to meeting	N/A	N/A	N/A
Unified Development Ordinance (limited instances require Published Notice)	N/A	N/A	N/A	Once a week for two successive weeks prior to public hearing; first publication not less than 10 days nor more than 25 days before hearing for 1) Changes that affect the permitted uses of land; or 2) Changes relating to telecommunications towers or windmills.	N/A
Variance permit (Quasi-judicial public hearings)	N/A	N/A	Not more than 25 days nor less than 10 days prior to quasi-judicial public hearing	N/A	Not more than 25 days nor less than 10 days prior to quasi-judicial public hearing
Appeals to Board of Adjustment (interpretations and decisions of Planning Director) (Quasi-judicial public hearings)	N/A	N/A	Not more than 25 days nor less than 10 days prior to quasi-judicial public hearing	N/A	Not more than 25 days nor less than 10 days prior to quasi-judicial public hearing
Expansion of ETJ	N/A	N/A	No less than 30 days prior to public hearing	Not more than 25 days nor less than 10 days prior to public hearing	N/A

**2.2.12 Withdrawal of Application**

A) **Submission of Application**

Any request for withdrawal of an application shall be submitted in writing to the Planning Director.

B) **Prior to Notice of Public Hearing**

The Planning Director shall approve a request for withdrawal of an application if it has been submitted prior to notification of a public hearing on the application pursuant to Sec. 2.2.11 *Public Notification*.

- C) **Subsequent to Notice of Public Hearing**  
Once notice of a public hearing has occurred pursuant to Sec. 2.2.11 *Public Notification*, the request for withdrawal of the application shall be placed on the public hearing agenda and acted upon by the appropriate decision-making body.

**2.2.13 Citizen Comments**

Per NCGS 160D-603, if any resident or property owner in the local government submits a written statement regarding a proposed amendment, modification, or repeal to a zoning regulation, including a text or map amendment that has been properly initiated as provided in NCGS 160D-601, to the clerk to the board at least two (2) business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to the governing board. If the proposed change is the subject of a quasi-judicial proceeding under NCGS 160D-705 or any other statute, the clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the board shall not disqualify any member of the board from voting.

**2.2.14 Review and Recommendation of Planning Board**

After submission of an application (Sec. 2.2.8) and preparation of the Staff Report (Sec. 2.2.9), scheduling of a public hearing (Sec. 2.2.10) and public notification (Sec. 2.2.11), the Planning Board shall conduct a public hearing on the application pursuant to Sec. 2.2.18 *Public Hearing Procedures*. At the public hearing, the Planning Board shall consider the application, the relevant support materials, the Staff Report, and the public testimony given at the public hearing. After the close of the public hearing, the Planning Board shall recommend to the Town Council either to approve, approve with conditions (if appropriate) or disapprove the application based on the relevant review standards, and forward the application to the Town Council.

Per NCGS 160D-604(b), all proposed amendments to the zoning ordinance or zoning map shall have a written report provided from the Planning Board to the Town Council within 30 days of referral of the amendment to the Planning Board, or the Town Council may act on the amendment without the Planning Board report. Furthermore, in no case is the Town Council bound by the recommendations, if any, of the Planning Board.

Per NCGS 160D-604(d), the Planning Board shall advise and comment on whether the proposed zoning amendment is consistent with all applicable officially adopted plans, and provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the officially adopted plans shall not preclude consideration or approval of the proposed amendment by the Town Council.

**2.2.15 Action by the Town Council**

After receipt of the recommendation from the Planning Board (if required), or at the Town Council's discretion, after 30 days of consideration of proposed amendments to the zoning ordinance or zoning map by the Planning Board with no written recommendation, the scheduling of a public hearing (Sec. 2.2.10) and public notification (Sec. 2.2.11), the Town Council shall conduct a public hearing on an application pursuant to Sec. 2.2.18 *Public Hearing Procedures*. At the public hearing, the Town Council shall consider the application, the relevant support materials, the Staff Report, the Planning Board recommendation, and the public testimony given at the public hearing. After the close of the public hearing, the Town Council by a majority vote of the quorum present, shall approve, approve with conditions (if appropriate), or disapprove the application based on the relevant review standards.

Per NCGS 160D-605, prior to adopting or rejecting any zoning text or map amendment, the Town Council shall approve a statement describing whether its action is consistent or inconsistent with all applicable officially adopted plans. For zoning map amendments, the statement shall also explain why the Council considers the action taken to be reasonable and in the public interest.

#### 2.2.16 Decisions

All decisions shall be made part of the tape recorded or transcribed record of the public hearing and the written minutes. The decision shall include:

- A) **Information Presented**  
The information presented before the decision-making body.
- B) **Documentary Evidence**  
The documentary evidence submitted into the record; and
- C) **Statement of Approval, Approval with Conditions, or Disapproval**  
A clear statement of approval, approval with conditions, or disapproval, whichever is appropriate.

#### 2.2.17 Notification of Decision

Notification of a decision on a development approval or permit shall be provided by the Planning Director to the applicant and property owner by mail, e-mail, or personal delivery.

#### 2.2.18 Public Hearing Procedures

A public hearing held pursuant to this Ordinance shall comply with the following procedures:

- A) **Examination and Copying of Application and Other Documents**  
At any time upon reasonable request, and during normal business hours, any person may examine an application and materials submitted in support of or in opposition to an application in the Planning Department offices. Copies of such materials shall be made available at a reasonable cost.
- B) **Conduct of Public Hearing**
  - 1) **Burden of proof or persuasion.** The burden of demonstrating that an application complies with applicable review and approval standards is on the applicant. The burden is not on the Town or other parties to show that the standards have not been met by the applicant.
  - 2) **Rights of all persons.** Any person may appear at a public hearing and submit evidence, either individually or as a representative of a person or an organization. Each person who appears at a public hearing shall be identified, state an address, and if appearing on behalf of a person or organization, state the name and mailing address of the person or organization being represented.
  - 3) **Exclusion of testimony.** The body conducting the public hearing may exclude testimony or evidence that it finds to be irrelevant, immaterial, or unduly repetitious.
  - 4) **Offers of testimony.** In the event any testimony or evidence is excluded as irrelevant, immaterial, or unduly repetitious, the person offering such testimony or evidence shall have an opportunity to offer such testimony or evidence for the record. Such offer shall be made at the public hearing.

- 5) *Continuance of public hearing*
    - a) The body conducting the public hearing may, on its own motion or at the request of any person, continue the public hearing to a fixed date, time and place. An applicant shall have the right to request and be granted one continuance; however, all subsequent continuances shall be granted at the discretion of the body conducting the public hearing only upon good cause shown.
    - b) A public hearing for which proper notice was given may be continued to a later date without again complying with the notice requirements of this Section, provided that the continuance is set for a date within 60 days, and the date and time of the continued hearing is announced at the time of the continuance.
  - 6) *Order of proceedings at public hearing.* The order of the proceedings at the public hearing shall be as follows:
    - a) The Planning Director shall present a narrative and/or graphic description of the application.
    - b) The Planning Director shall present a Staff Report that includes a written recommendation.
    - c) The applicant shall present any information the applicant deems appropriate.
    - d) Public testimony shall be heard.
    - e) The applicant may respond to any testimony or evidence presented by the public.
    - f) The Planning Director or Planning Department staff, the Town Attorney, and any other Town staff may respond to any statement made by the applicant or the public.
  - 7) *General procedures and findings at public hearing*
    - a) All decision-making bodies and persons shall act in accord with any time limits established in this Ordinance. Action shall be taken as promptly as possible in consideration of the interests of the citizens of the Town and the applicant, and shall include a clear statement of approval, approval with conditions, or disapproval, where appropriate.
    - b) In approving development applications, the decision-making body shall be authorized to impose such conditions upon the approval and land benefited by the approval as is necessary to ensure compliance with the relevant review standards, so long as the condition relates to a situation created or aggravated by the proposed use or development for which approval is granted and is roughly proportional to its impact.
    - c) The form of all decisions shall comply with Sec. 2.2.16 *Decisions*.
- C) **Notification of Decision**  
Notification of a decision-making body's decision shall comply with Sec. 2.2.17 *Notification of Decision*.

D) **Record**

- 1) *Recording of public hearing.* The body conducting the public hearing shall record the public hearing by any appropriate means. A copy of the public hearing record may be acquired by any person upon application to the Planning Director, and payment of a fee to cover the cost of transcription or duplication of the record.
- 2) *The record.* The record of oral proceedings, including testimony and statements of personal opinions, the minutes of the Secretary, all applications, exhibits and papers submitted in any proceeding before the decision-making body, the Staff Report, and the decision of the decision-making body shall constitute the total record.

**2.2.19 Quasi-judicial Public Hearing Procedures**

A quasi-judicial public hearing held pursuant to this Ordinance shall comply with the following procedures:

A) ***Examination and Copying of Application and Other Documents***

At any time upon reasonable request, and during normal business hours, any person, not to include members of the decision-making body, may examine an application and materials submitted in support of or in opposition to an application in the Planning Department offices. Copies of such materials shall be made available at a reasonable cost.

B) ***Conduct of Public Hearing***

- 1) *Burden of proof or persuasion.* The burden of demonstrating that an application complies with applicable review and approval standards is on the applicant. The burden is not on the Town or other parties to show that the standards have not been met by the applicant.
- 2) *Rights of all persons.* The applicant, staff, and any person with standing under NCGS 160D-1402(c) may appear at a public hearing and submit evidence, either individually or as a representative of a person or an organization. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the decision-making body. Each person who appears at a quasi-judicial public hearing shall be identified, state an address, and if appearing on behalf of a person or organization, state the name and mailing address of the person or organization being represented.
- 3) *Exclusion of testimony.* The body conducting the quasi-judicial public hearing may exclude testimony or evidence that it finds to be irrelevant, immaterial, or unduly repetitious.
- 4) *Offers of testimony.* In the event any testimony or evidence is excluded as irrelevant, immaterial, or unduly repetitious, the person offering such testimony or evidence shall have an opportunity to object to its exclusion. The chair of the body conducting the quasi-judicial public hearing shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to NCGS 160D-1402.
- 5) *Continuance of quasi-judicial public hearing*
  - a) The body conducting the quasi-judicial public hearing may, on its own motion or at the request of any person, continue the quasi-

judicial public hearing to a fixed date, time, and place. An applicant shall have the right to request and be granted one (1) continuance; however, all subsequent continuances shall be granted at the discretion of the body conducting the quasi-judicial public hearing only upon good cause shown.

- b) A quasi-judicial public hearing for which proper notice was given and which was convened may be continued to a fixed date, time, and place without again complying with the notice requirements of this Section.
- 6) *Order of proceedings at quasi-judicial public hearing.* The order of the proceedings at the quasi-judicial public hearing shall be as follows:
- a) All persons wanting to testify shall be sworn in at once.
  - b) The applicant, supporters, and opponents shall be identified.
  - c) Each member of the decision-making body shall describe (1) any communications about the case that have been made with or by such member prior to the hearing, (2) any relations or familial conflict related to the case, and (3) whether a decision can be made impartially and solely on the competent evidence presented at the public hearing.
  - d) Each member of the decision-making body shall indicate if they have viewed the site and if so, shall describe their observations. The applicant and any opponent parties shall be allowed to ask the members about their observations.
  - e) Opening statements, if any, may be made by staff, the applicant, and any opponent parties.
  - f) The Planning Director shall present evidence which shall include a narrative and/or graphic description of the application. Staff reports for quasi-judicial public hearings shall not contain a written recommendation. Members of the decision-making body, the applicant, and any opponent parties may cross examine staff, if desired.
  - g) The applicant and any supporters shall present evidence regarding the application with opportunity for cross examination by member of the decision-making body and any opponent parties.
  - h) Any opponents shall present evidence regarding the application with opportunity for cross examination by member of the decision-making body and the applicant.
  - i) Staff and the applicant shall have the opportunity to present non-repetitive rebuttal evidence, with opportunity for cross examination by member of the decision-making body, the applicant, and any opponents.
  - j) Each party may present closing arguments.
  - k) After the public hearing is closed, member of the decision-making body shall deliberate over the finding of facts and applying the standards of this Ordinance as they relate to the

issue of approving, approving with conditions, or denying the application.

- 7) **General procedures and findings at the quasi-judicial public hearing**
- a) All decision-making bodies and persons shall act in accord with any time limits established in this Ordinance. Action shall be taken as promptly as possible in consideration of the interests of the citizens of the Town and the applicant, and shall include a clear statement of approval, approval with conditions, or disapproval, where appropriate.
  - b) In approving development applications subject to a quasi-judicial public hearing, the decision-making body shall be authorized to impose such conditions upon the approval and land benefited by the approval as is necessary to ensure compliance with the relevant review standards, so long as the condition relates to a situation created or aggravated by the proposed use or development for which approval is granted and is roughly proportional to its impact.
  - c) The form of all decisions shall comply with Sec. 2.2.16 *Decisions*.
- C) **Notification of Decision**  
Notification of a decision-making body's decision shall comply with Sec. 2.2.17 *Notification of Decision*.
- D) **Record**
- 1) **Recording of quasi-judicial public hearing.** The body conducting the quasi-judicial public hearing shall record the quasi-judicial public hearing by any appropriate means. A copy of the quasi-judicial public hearing record may be acquired by any person upon application to the Planning Director, and payment of a fee to cover the cost of transcription or duplication of the record.
  - 2) **The record.** The record of oral proceedings, including testimony and statements of personal opinions, the minutes of the Secretary, all applications, exhibits, and papers submitted in any proceeding before the decision-making body, the Staff Report, and the decision of the decision-making body shall constitute the total record.