

Town of Swansboro Unified Development Ordinance
Hearing Procedures §152.065 through §152.070

§ 152.065 QUASI-JUDICIAL DECISIONS.

(A) Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision.

(B) The hearing shall be open to the public and all persons interested in the outcome of the application shall be given an opportunity to present evidence and arguments and ask questions of persons who testify.

(C) Boards 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 may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the Board is not then present, the hearing shall be continued until the next regular Board meeting without further advertisement.

(Ord. 2005-03, passed 3-15-2005; Am. Ord. 2021-03, passed 5-24-2021)

§ 152.066 NOTICE OF HEARING.

The Administrator shall give notice of any hearing required by § 152.065 as follows:

(A) Notice 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 the local development regulation. In the absence of evidence to the contrary, the town may rely on the county tax listing to determine owners of property entitled to mailed notice;

(B) The notice must be deposited in the mail at least ten days, but not more than 25 days, prior to the date of the hearing;

(C) 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; and

(D) The notice required by this section shall state the date, time, and place of the hearing, reasonably identify the property that is the subject of the application, and indicate the action requested or proposed.

(Ord. 2005-03, passed 3-15-2005; Am. Ord. passed 6-16-2009; Am. Ord. passed 1-21-2014; Am. Ord. 2021-03, passed 5-24-2021)

§ 152.067 EVIDENCE.

(A) The provisions of this section apply to all hearings for which a notice is required by § 152.065.

(B) The applicant, the local government, and any person who would have standing to appeal the decision shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the Board.

(C) The Chair of the Board or any member acting as Chair and the Clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

(D) The 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.

(Ord. 2005-03, passed 3-15-2005; Am. Ord. 2021-03, passed 5-24-2021)

§ 152.068 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, 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.

(Ord. 2005-03, passed 3-15-2005; Am. Ord. 2021-03, passed 5-24-2021)

§ 152.069 VOTING.

(A) The concurring vote of four-fifths of the board shall be necessary to grant a variance.

(B) A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari.

(C) For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. § 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

(Ord. 2021-03, passed 5-24-2021)

§ 152.070 WRITTEN DECISION.

(A) The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record.

(B) Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board.

(C) A quasi-judicial decision is effective upon filing, the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. Special use permits will be recorded in the office of the Onslow County Register of Deeds.

(D) The Administrator shall certify that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

(Ord. 2005-03, passed 3-15-2005; Am. Ord. 2014-09, passed 4-15-2014; Am. Ord. 2021-03, passed 5-24-2021)