

PROCEDURE FOR APPEALS OF TOWN STAFF DECISIONS

State Statutes set forth the responsibilities of the Board of Adjustment. One of the responsibilities of the Board set forth in State Statutes is as follows:

“Except as provided in G.S. 160D-1403.1, appeals of administrative decisions made by the staff under this Chapter shall be made to the board of adjustment. . . Any person who has standing under G.S. 160D-1402(c) or the local government may appeal an administrative decision to the board.” [NCGS §160D-405(a)-(b)].

The responsibility to hear and decide appeals can involve 1) interpreting the meaning of provisions of the Ordinance that are unclear; 2) applying the meaning of the Ordinance to specific factual situations; and if necessary 3) correcting abuses of discretion or mistakes that may have occurred in administering the Ordinance.

Article 4.10 of the Chapel Hill Land Use Management Ordinance states that any decision of the Town Manager made in the administration of the provisions of this appendix may be appealed to the Board of Adjustment by any person aggrieved by such decision. Subsection 4.10.1(b) of the Land Use Management Ordinance provides that:

“An application for appeal shall be filed, with the town clerk, within thirty (30) days of the filing of the decision being appealed or the delivery of any required written notice of the decision, whichever is later.” [LUMO §4.10.1(b)].

Subsection 4.10.3 of the Land Use Management Ordinance defines procedures for appeals and provides that:

“In the case of applications for appeal, the Applicant shall bear the burden of presenting evidence sufficient to establish conclusively that there is an error in the determination of the town manager. A record of the proceedings of the hearing shall be made and shall include all documentary evidence presented at the hearing.” [LUMO §4.10.3].

In addition, the Town is charged with transmitting to the Board all documents constituting the record on which the decision being appealed was based. Article 4.12 of the Land Use Management Ordinance states that the hearing for the appeal shall be open to the public and interested persons shall be given the opportunity to present evidence and arguments as well as ask question of the persons who testify.

For the hearing, all witnesses will be sworn in. The case will be introduced by the Secretary to the Board of Adjustment. The Appellant and their representative will present information challenging the decision. The Town Staff will be present at the hearing as a witness. The appellant and their representative will have an opportunity to cross-examine witnesses and offer evidence. Witnesses will have an opportunity to present evidence and arguments. Rebuttals will

be heard. The Chairman of the Board of Adjustment will summarize the evidence and the hearing will adjourn. The Board members will then discuss the case and take action.

The Board of Adjustment may, by majority vote, reverse, 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.