ARTICLE 6. HEARING PROCEDURES FOR APPEALS AND APPLICATIONS
(revised 1-9-14)

Section 6-1: Hearing Required on Appeals and Applications

(A) Before making a decision on an appeal or an application for a variance or conditional-use permit, or a petition from the planning staff to revoke a conditional-use permit, the Board of Adjustment shall hold a hearing on the appeal or application in accordance with Section 5-4 unless an expedited hearing is requested by an appellant in appeal situations where a stay of enforcement is denied. All applications for a conditional use permit shall be referred by the Administrator to the City of Southport Planning Board for review and comment. All comments prepared by the City of Southport Planning Board shall be submitted by the Planning Board Secretary, or his or her designee, to the Board of Adjustment as evidence at the public hearing required by this section. This representative of the Planning Board shall be subject to the same scrutiny as other witnesses. Review of the conditional use application by the City of Southport Planning Board shall not be a quasi-judicial procedure but the hearing conducted by the Board of Adjustment shall be. The City of Southport Planning Board shall include in its comments a statement as to the consistency of the application with the City of Southport CAMA Core Land Use Plan. Comments of the City of Southport Planning Board shall be considered with other evidence submitted at the public hearing.

(B) Subject to Subsection (C), the hearing shall be open to the public and all persons with standing under G.S. 160A-393(e) shall be given an opportunity to present evidence, arguments and testimony.

(C) The 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 Board of Adjustment 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 weeks or more elapses between hearing dates.

(E) Except as provided in Section 12-13, the Board of Adjustment may not rehear a quasi-judicial matter previously denied.

(F) The required application fee and all supporting materials must be received by the Administrator before an application is considered complete and a hearing scheduled.

Section 6-2: Notice of Hearing

The administrator or his designee shall cause notice of any hearing required by Section 6-1 to be provided as follows:

(A) Notice shall be given 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 any other person who makes a written request for such notice. In the absence of evidence to the contrary, the county tax listing shall be utilized 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. Within that same time period, the city 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.

(B) 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 or appeal, and give a brief description of the action requested or proposed.

Section 6-3: Evidence/Presentation of Evidence

(A) The provisions of this section apply to all hearings for which a notice is required by Section 6-1.

(B) All persons who shall be witnesses to any matter coming before the board shall be sworn by the board chair or any member acting as chair or by the clerk to the board. The chair, or anyone acting as chair in the chair's absence, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under 160A-393(d) 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 subpoenas he or she shall determine to be relevant, reasonable in nature and scope and not oppressive. Decisions regarding supoenas made by the chair may be appealed to the full board of

adjustment. Any party failing or refusing to obey a subpoena may be subject to application to the General Court of Justice for an order requiring that the subpoena be obeyed and the court shall have jurisdiction to issue such notices after notice to all proper parties.

(C) All quasi-judicial decisions shall be based upon competent, material and substantial evidence in the record.

(D) The Board of Adjustment has the authority to limit testimony that is irrelevant.

(E) The entirety of a quasi-judicial hearing and deliberations shall be conducted in open session.

(F) Parties to a quasi-judicial hearing have a right to cross-examine witnesses.

(G) Factual findings must not be based on hearsay evidence which would be inadmissible in a court of law.

(H) If a Board of Adjustment member has prior or specialized knowledge about a case, that knowledge should be disclosed to the rest of the Board of Adjustment and parties at the beginning of the hearing. A member of the board 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 conflicts 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 rule on that objection.

Section 6-4: 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 of Adjustment, the applicant may agree to modify his application, including the plans and specifications submitted. However, in the case of an appeal, the board shall continue the hearing if new issues are presented that were not in the notice of appeal and immediate consideration might unduly prejudice a party of interest or the City.

(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.

Section 6-5: Record

(A) A tape recording shall be made of all hearings required by Section 6-1, 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.

(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 city for at least two years.

Section 6-6: Decision

(A) Decisions and voting by the Board of Adjustment regarding variances and quasi-judicial matters shall be in accordance with Article 5, Section 5-2 (C). Every quasi-judicial decision shall be reduced to writing and reflect the 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 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 pcopy prior to the date the decision becomes effective. The clerk to the board shall certify that proper notice has been made.

(B) Every quasi-judicial decision shall be subject to review by the 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 is delivered in accordance with the immediately preceding paragraph. When first class mail is used to deliver notice, three days shall be added to the time to file the petition.