

## Town of Indian Trail



P.O. Box 2430  
Indian Trail, North Carolina 28079  
Telephone 704-821-5401  
Fax 704-821-9045

### **PLANNING AND DEVELOPMENT DEPARTMENT BOARD OF ADJUSTMENT MINUTES**

**February 25, 2016**

**06:30 P.M.**

#### **Call to Order**

#### **Roll Call**

The following members of the governing body were present:

Board Members: Daniel Takah, Shirley Howe, Christopher Chopelas, Robert Thurbon, and Patrick O'Connor.

Members Present but None.

not Voting:

Absent: Tripp Melton, Keith Merritt- Town Attorney.

Staff Members: Kevin Icard-Senior Planner, and Pam Good-Board Secretary

Swearing in of Pat O'Connor to regular seat (filling remainder of Seat #5  
term 7/1/14-6/30/17)

#### **Approval of Minutes** - October 29, 2015

Member Howe made a motion to approve the minutes as written. Member O'Connor seconded the motion. The vote to approve was unanimous.

#### **Public Hearings**-none.

#### **Other Business-**

Presentation of 2016 meeting calendar. The board voted to accept the 2016 calendar with the change of moving the May meeting to Thursday May 19<sup>th</sup>.

#### Informational Review - Building the Record for a Quasi-Judicial Decision

The training consisted of:

- Evidentiary Hearings, General
- Distinguishing Evidence within the Record
- Getting Evidence
- Appeals to Court

Senior Planner Kevin Icard led the board through training with power point slides based on information taken from Adam Lovelady, Assistant Professor of the UNC School of Government. He began with an overview of distinguishing evidence within the record, making the point that although incompetent material should not be used in a board's decision, the evidence should still be left in the record.

Where an applicant presents evidence to show the he meets the standards for a special use permit, **the burden shifts to opponents to produce evidence to the contrary**. If neighbors produce nothing more than unrelated comments and speculative opinions (insufficient evidence), then the board does not have sufficient evidence to deny the permit. The board must **APPROVE** the permit.

## **Getting Evidence**

### Application and Evidentiary Hearing

- The evidence creating the record is provided by the parties involved
- Either in advance of the hearing (with the application) or as part of the evidentiary hearing.
- The burden typically is on the applicant to present the evidence that they meet the applicable standards.

### Administrative Record

- In addition to the typical evidentiary hearings described above, the board of adjustment is tasked with handling appeals from decisions made by the zoning administrator/planning director.
- Appeals from the Planning Director's decision to the Board of Adjustment;
- Consider an appeal of an administrative decision such as issuing a notice of violation or making a formal interpretation of the ordinance.
- When an administrative decision is appealed, the zoning administrator who made the decision "shall transmit to the board all documents and exhibits constituting the record."
- The zoning administrator also must provide the record to the appealing party and owner of the property

### Subpoena

- BOA when making quasi-judicial decisions are authorized to subpoena witnesses and compel the production of evidence
- A party to the case may request that the chair of the board subpoena a witness or compel evidence
- The chair makes the decision about issuing subpoenas; that decision may be appealed to the full board
- If a party fails to comply, the board or the party requesting may seek an order requiring compliance from the General Court of Justice

## **Appeals to Court**

When a decision from a quasi-judicial board is appealed to superior court, the reviewing court is acting like an appeals court. Generally, the court must base its decision on the record that was before the decision-making board. But, for certain topics, the court may supplement the record. The reviewing court may "allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the record is not adequate to allow an appropriate determination" of specific legal standards:

legal standing

conflicts of interest

actions that are unconstitutional or in excess of the board's statutory authority

Discussion continued regarding the attorney's role and the use of his expertise when a member is unsure of something.

## **Questions from Board**

Member Howe questioned how the board would know if applicants that have been denied don't continue on with what they are doing (i.e. landscaping or business in a residential area). A question also rose about when there is a change of ownership. Staff Icard reminded the board that an SUP stays with the land. Chair Takah asked if there is periodic follow-up to monitor cases. Staff Icard emphasized that there is consistently follow-up.

Discussion followed regarding when a board member has personal history about an applicant that would make an approval would likely have a negative impact on neighbors. Staff Icard recommended that the board ask the Town Attorney for advice and direction in such an instance.

Member Thurbon commented that he appreciates Staff collecting information and presenting it to the board. Chair Takah pointed out that some persons misunderstand in their thinking that Staff is on the side of the

applicant and that is not true. Staff is presenting information as unbiased, factual info for the Board to make the decision.

**Adjournment**

Member Howe moved to adjourn the meeting, seconded by Member Chopelas. Vote to adjourn was unanimous.

The meeting was adjourned at 7:50pm.

Chairman:

\_\_\_\_\_

Date: \_\_\_\_\_

Secretary:

\_\_\_\_\_

DRAFT