

YOUNGSVILLE BOARD OF ADJUSTMENT QUASI-JUDICIAL HEARING EVIDENTIARY AND CONDUCT GUIDELINES.

An Evidentiary Hearing, also known as a Quasi-Judicial Hearing, occurs when an agenda item has been advertised and noticed according to the law; however, the Board acts like a court of law. During an Evidentiary Hearing, the Board receives ONLY sworn testimony and other credible evidence. In addition, the Board must make Findings of Fact based upon the evidence presented. Citizens may give testimony in an Evidentiary Hearing only AFTER they have taken an oath.

Because the Board functions in a different capacity during an Evidentiary Hearing, it uses a procedures form. Below is a summary of the procedures for an Evidentiary Hearing.

Hearing:

The Mayor, acting as Chairman, will call the Hearing to order.

Roll Call:

The Chairman shall take a roll call of all Members of the Board, along with Staff.

Approval of the Minutes:

Minutes from prior meetings shall be approved.

Old Business / New Business:

The Chairman shall announce the business at hand. Each application will be handled separately, one after the other.

Outline of Hearing Conduct / Rules of Procedure:

The Town Attorney introduces the Evidentiary Hearing procedures. He explains that the Board of Commissioners normally functions in a legislative capacity; however, the Board of Commissioners, acting as the Board of Adjustment, essentially acts as a court of law. There is a burden upon the applicant to meet the criteria found in the Youngsville Zoning Ordinance. Anyone opposed to the application must put on evidence of a similar kind showing the criteria has not been met. Testimony must be given under oath. All testimony and evidence provided to the Board must be competent, material and substantial. Pursuant to North Carolina General Statutes, competent evidence does not include opinion testimony of lay witnesses on certain matters. Hearsay evidence will not be admitted. The Board will apply the criteria contained in the Youngsville Zoning Ordinance and make its decision based on the evidence and testimony presented at the Hearing. The role of the Town Attorney during the hearing is to monitor all evidence and testimony to ensure that it complies with North Carolina law, the Town's Zoning Ordinance and Procedures, and all other applicable requirements.

Oaths:

Oaths shall be administered to all persons wishing to present testimonies, including Staff.

Staff Report:

The Chairman or his / her designee will give a preliminary statement describing the case.

Conflict of Interest / Bias:

The Town Attorney / Chairman will ask if any member of the Board has any of the following possible disqualifications from hearing or voting on this case. Impermissible conflicts include, but are not limited to: a fixed opinion prior to hearing the matter that is not susceptible to change, an undisclosed ex parte communication, a financial interest in the outcome of the matter, or a close familial, business, or other associational relationship with an affected person or entity. If an objection is raised to a Member's participation and that Member does not recuse himself / herself, the remaining Members, shall by majority vote, rule on the objection. The Member may excuse himself / herself because of the potential conflict, or may ask the Chairman to make a determination. The Chairman shall announce any recusals prior to the Hearing.

Applicant Testimony:

The applicant shall be called to present his / her case. If the applicant or a representative is not present to give testimony, the Chairman shall call for a vote of the Members present to continue the Hearing for 30 days. The applicant shall be notified of such action. The Chairman, with the advice of the Town Attorney, shall be responsible for keeping testimony relevant and factual.

Members and other sworn witnesses can cross examine the witness. Each questioner will get one opportunity to ask questions unless based on new evidence or questions asked since that person had an opportunity to ask.

Staff Findings:

The Planning and Zoning Staff shall present any Staff Findings.

Opposition Testimony:

Those speaking in opposition to the application shall be called upon to present their case. The Town Attorney shall be responsible for keeping testimony relevant and factual.

Members and other sworn witnesses can cross examine opposing testimony. Each questioner will get one opportunity to ask questions unless based on new evidence or questions asked since that person had an opportunity to ask.

Applicant Rebuttal:

The applicant and / or those in support of the application shall be provided an opportunity to rebut testimony provided by the opposition. The Board may also ask questions of the applicant at this time.

Opposition Rebuttal:

Those in opposition to the application shall be provided an opportunity to rebut testimony provided by the applicant. The Board may also ask questions of the opposition at this time.

Hearing Summary:

Before voting to close the Hearing, The Chairman or his / her designee will summarize the evidence that has been presented, giving the parties opportunity to make corrections or objections. Also, Staff should designate any conditions that the Board should consider.

Close the Gathering of Evidence:

The Board will vote to close the portion of the Hearing where evidence is gathered and testimony given. The Board will then begin deliberations on the application.

Deliberation:

The Board will deliberate the application. All deliberations are open to the public and additional testimony is NOT taken during deliberations. Once called into deliberation, no person may address the Board and no questions may be asked by the Board to the public. However, the Board may discuss proposed conditions with the applicant.

Action – Findings for Decision:

Once the discussion of the evidence has been completed, each findings of fact shall be discussed in turn and a vote shall be made selecting if the findings of fact are yes / true or no / false.

For Special / Conditional Use applications, a quorum would be three (3) or more Members and a majority vote of the Members present for approval. A Variance application requires that there be 4/5th of the Board present and a unanimous decision is needed of those four (4) Members to approve the Variance request.

Action – Application Approval / Denial

Once the findings of fact have been decided and based on the results of the evaluation and vote on those findings of fact, the application will either be approved or denied. Failure of any single criteria to achieve majority approval by the Board shall necessitate a decision against the application. A majority vote for approval for all criteria shall necessitate a decision in favor of the application.

Reports and Other Business:

Staff shall report any other business or information to the Board that they may find relevant about upcoming meetings or procedures.

Adjourn:

The Board shall make a motion to adjourn the meeting.

For any information regarding Public Hearings or Evidentiary Hearings, please contact Town Hall at 919-925-3401. Agendas will be added to our webpage at www.townofyoungsville.org forty eight (48) hours before the Hearings.