



ORDINANCE NO. 10-815B

The Town Council of the Town of Carolina Beach, hereby adopts the following amendments:

I. AMENDMENT ADDING NEW SUBSECTION (3) to SECTION 21.3(i) DEALING WITH ARTICLE 19 MOTIONS TO REVOKE APPROVALS

Section 21.3 Board of adjustment

(i) *Powers and duties of the board of adjustment*

(3) *To Render Quasi-Judicial Final Decisions on Article 19 Motions to Revoke Approvals.* The Board of Adjustment may revoke an Approval in accord with the following procedures:

- a. *Motion for Revocation.* A motion to revoke an Approval under Article 19 shall be filed with the Board of Adjustment (or its designee that may be specified in any rules of procedure adopted by the Board of Adjustment). The Motion shall attach a copy of the subject Approval, describe the Article 19 Situations and Conditions in particularity, specify how the same violate the terms of the Approval, and identify the persons liable. The Article 19 Official may exercise any, all, or none of other Article 19 enforcement mechanisms, remedies and procedures without regard to a motion to revoke. Revocation proceedings are not subject to judicial review prior to a dispositive ruling by the Board of Adjustment on the motion to revoke. The dispositive ruling is a Final Decision subject to judicial review as provided in subsection (m).
- b. *Notice of Motion for Revocation and Conduct of Hearing.* The movant shall forward the motion for revocation and written notice of hearing to the persons liable and the holder of the subject Approval. The written notice shall be issued at least ten (10) days prior to the hearing on the Motion for revocation. The mode of delivery of the Motion for revocation and notice and the computation of time applicable shall be pursuant to Section 19.7 of this Ordinance. The hearing before the Board of Adjustment is a quasi-judicial proceeding.

- c. *Burden of Proof and Persuasion.* At the hearing before the Board of Adjustment, the burden of proof and persuasion shall be on the movant that the Approval should be revoked. A movant other than the Official has the burden of proof establishing it is a Person Aggrieved as defined in Article 19.
- d. *Vote on Motion for Revocation by Board of Adjustment.* In issuing a Final Decision on the motion to revoke, the Board of Adjustment may employ any of the enforcement mechanisms in Article 19 or any combination of them in addition to or in lieu of revoking the Approval. The vote on the Final Decision by the Board of Adjustment on a motion to revoke shall be according to the procedures set forth in subsection (j).
- e. *Withdrawal of Motion for Revocation Before Hearing.* A Motion to revoke an Approval may be withdrawn at any time before the hearing on revocation begins. The Motion may not be withdrawn once the hearing begins except upon leave granted by the presiding officer of the Board of Adjustment.
- f. *Statement of Final Decision of Revocation.* The Final Decision of the Board of Adjustment shall provide a written statement of the decision and the reasons therefore. A Final Decision revoking an Approval shall identify the Approval involved, specify the Situations and Conditions involved, and describe how the same violated the Approval. The Board of Adjustment shall provide a copy of the Final Decision to the person(s) liable under Article 19, the holder of the subject Approval(s), the movant, and every Article 19 Person Aggrieved who filed with the Board of Adjustment prior to the closing of the hearing a written request for a copy, together with the address to which the copy may be delivered by personal service and certified United States mail.
- h. *Other procedures.* Except as otherwise provided herein, revocation procedures before the Board of Adjustment are subject to subsections (f)(2) & (3), (j) and (k) below. Should Article 19 of Chapter 160A of the North Carolina General Statutes mandate any procedures inconsistent with, or contrary to any the revocation procedures set forth in this subsection (i)(3), then the State statutory procedures shall apply.

(Ord. No. 10-815B, 2-9-10)

[Authority: NCGS 1-269; 160A-377; -381; -385.1, -388; -393; -399]

II. AMENDMENT ADDING NEW SUBSECTION (4) to SECTION 21.3(i) DEALING WITH DECISIONS OF ARTICLE 19 OFFICIAL CONCERNING THE TOWN'S ZONING ORDINANCE (OTHER THAN REVOCATION)

Section 21.3 Board of adjustment

- (i) *Powers and duties of the board of adjustment*

(4) *To hear appeals from an Article 19 Decision by a Section 19.1(a) Official other than to file a Motion for revocation, and make Final Decisions on same.*

An Article 19 Decision is not subject to judicial review prior to exercising administrative review and appeal remedies as specified herein. Administrative review procedures of Article 19 Decisions [other than a Motion for revocation of an Approval, which is reviewed under subsection (3) above] are provided in this subsection. The Board of Adjustment hears administrative appeals from Article 19 Decisions. Upon payment of a filing fee as provided in Section 1.11, any Article 19 Person Aggrieved may appeal an Article 19 Decision as follows:

- a. The appellant must file with the Town Clerk, the Official issuing the appealed Decision, and the Board of Adjustment (or its designee that may be specified in any rules of procedure adopted by it) a written appeal within ten (10) consecutive calendar days after the Decision and at least thirty (30) days before the Board of Adjustment's next regularly scheduled meeting;
- b. The appeal shall (1) state in full the grounds stating why that the Decision is erroneous or contrary to law; (2) provide the names and addresses of (i) all parties in interest and (ii) the owners of land and premises that are the subject of the Article 19 Decision and adjacent land and premises (Land and premises separated from the subject land and premises only by any right of way, street, road, alley, easement, or buffer are deemed to be adjacent for the purposes of this subsection); and (3) the addresses of the subject and adjacent land and premises. The Article 19 Official that issued the Decision appealed shall transmit to the Board of Adjustment all papers constituting the record upon which the Decision appealed from was taken.
- c. The Board of Adjustment shall fix a reasonable time for the hearing and give public notice in the manner set forth in subsection (2)d, as well as to those persons as identified in the appeal under subsection b above.
- d. The hearing shall be conducted in accordance with those procedures set forth in subsections (f)(2) & (3); (i)(1); (j); and (k) to the extent applicable. In the event an ordinance that served as the basis of the appealed Decision has been amended before the hearing on the appeal, the Board of Adjustment shall apply the terms of those ordinances applicable at the time of the Official's Decision. The burden is on the appellant to establish the Decision is erroneous or contrary to law.
- e. The Board of Adjustment shall issue its Final Decision and state its reasons in writing. The Board of Adjustment may affirm, uphold, adopt, alter, modify, reverse, reject, or change all or any part of the appealed Decision and may exercise any, all, or any combination of the enforcement mechanisms and remedies allowed by Article 19 or any other provision of law.

- f. The Board of Adjustment shall provide a copy of the Final Decision to the person(s) liable under Article 19, the holder of the subject Approval(s), and every Article 19 Person Aggrieved who filed with the Board of Adjustment at the hearing a written request for a copy, together with the address to which the copy may be delivered by personal service and certified United States mail. The Final Decision shall provide a written statement of the decision and the reasons therefore.
- g. An appeal to the Board of Adjustment stays all proceedings in furtherance of the Decision appealed from unless within ten (10) days after the appeal is filed with the Town Clerk, the Official submits a written certification to the Board of Adjustment stating that because of the facts outlined in the certification, in the Official's opinion, the stay would cause imminent peril to life or property, or that because any violation that is the subject of the Decision is transitory in nature, the stay would seriously interfere with the enforcement of the Town's Zoning Ordinance. The Official shall have one (1) copy of the certification delivered by registered mail or by personal service upon the appellant and to each member of the Board of Adjustment. Upon filing of the certification, the proceedings under the Decision that is the subject of the appeal shall not be stayed unless the Board of Adjustment thereafter by written order implements the stay notwithstanding the certification.
- h. Should Article 19 of Chapter 160A of the North Carolina General Statutes mandate any procedures inconsistent with, or contrary to any procedures set forth in this Subsection (4), then the State statutory procedures shall apply.

(Ord. No. 10-815B, 2-9-10)

[Authority: NCGS 1-269; 160A-377; -381; -385.1; -388; -393; -399]

III. AMENDMENT ADDING NEW SUBSECTION (m) to SECTION 21.3 DEALING WITH JUDICIAL REVIEW OF ARTICLE 19 FINAL DECISIONS BY THE BOARD OF ADJUSTMENT

Section 21.3 Board of adjustment

(m) *Judicial Review of Board of Adjustment Final Decisions Regarding Article 19 Matters.*

The provisions of subsection (l) above notwithstanding, judicial review of Article 19 matters are conducted solely pursuant to the following procedures:

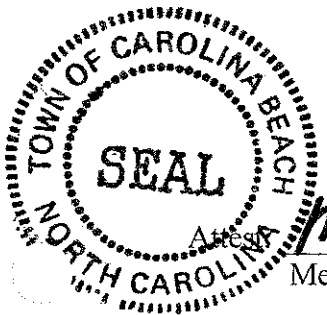
- (1) An Article 19 Final Decision of the Board of Adjustment under subsections (i) (3) and (4) above is subject to judicial review only by proceedings in the nature of certiorari filed in the Superior

Court of New Hanover County. Judicial review in the nature of certiorari may be brought by:

- (a) The Article 19 Persons liable.
 - (b) An Article 19 Person Aggrieved that is aggrieved by the Final Decision;
 - (d) The appellant who sought review by the Board of Adjustment;
 - (e) The Town, any Town officer, department, board or commission;
 - (f) Any person who will suffer special damages in connection with the Final Decision.
- (2) The petition for the writ of certiorari must be filed with the New Hanover County clerk of court within thirty (30) days after the later of the following occurrences:
- (a) A written copy of the Board of Adjustment's Final Decision has been filed with the Town Clerk;
 - (b) A written copy of the Board of Adjustment's Final Decision has been delivered by personal service or certified mail, return receipt requested to the person(s) liable;
 - (c) A written copy of the Board of Adjustment's Final Decision has been delivered by personal service or certified mail, return receipt requested, to every Person Aggrieved who filed at the Board of Adjustment hearing a written request for a copy of the Final Decision;
- (3) A copy of the writ of certiorari shall be served upon the Town of Carolina Beach.
- (4) The petitioner shall follow procedures required by Article 19 of Chapter 160A of the North Carolina General Statutes

(Ord. No. 10-815B, 2-9-10); [Authority: NCGS 1-269; 160A-377; -381; -388; -393; -399]

Adopted this 9th day of February 2010.



Melinda N. Prusa, Town Clerk


Joel A. Macon, Mayor