

15.1 Procedure

Requests for conditional use permits as authorized by this Ordinance shall be processed and considered in the same ~~procedure-format~~ as set forth in this Ordinance for rezoning requests ~~and the voting procedure shall be the same as that required in zoning matters~~ and shall follow quasi-judicial procedures. ~~No vote greater than a majority vote shall be required to issue such permits for the Board of Commissioners. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority.~~ In considering an application for a conditional use permit the Board of Commissioners shall give due regard that the purpose and intent of this Ordinance shall be served, public safety and welfare secured and substantial justice done. If the Board of Commissioners should find, after public hearing, the proposed conditional use permit should not be granted, such proposed permit shall be denied. (#14) Conditional use permits may include time limits for expiration if specified criteria are not met.

Comment [js1]: NCGS 153A-340 (c1)

In granting a conditional use permit, the Board of Commissioners shall make the following affirmative findings:

1. The use requested is among those listed as an eligible conditional use in the district in which the subject property is located or is to be located.
2. The requested conditional use permit is either essential or desirable for the public convenience or welfare.
3. The requested permit will not impair the integrity or character of the surrounding or adjoining districts, and will not be detrimental to the health, safety or welfare of the community.
4. The requested permit will be consistent with the objectives of the Land Development Plan.
5. Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary facilities have been or are being provided consistent with the County's plans, policies and regulations. (#17)

In granting a conditional use permit, the Board of Commissioners may impose such additional restrictions and requirements upon such permit as it may deem necessary in order that the purpose and intent of this Ordinance are served, public welfare secured and substantial justice done. If all requirements and conditions are accepted by the applicant, the Board of Commissioners shall authorize the issuance of the conditional use permit, otherwise the permit shall be denied. Any conditional use permit so authorized shall be perpetually binding upon the property

included in such permit unless subsequently changed or amended by the Board of Commissioners, as provided for in this Ordinance.

A member of the Board of Commissioners 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 vote rule on the objection.

Comment [js2]: NCGS 153A-345 (e1)

16.3 Powers and Duties of the Board of Adjustment

B. Variance

5. No change in permitted uses may be authorized by a variance.

Comment [js3]: NCGS 153A-345 (d) & 153A-340 (c)

16.4 Appeal Procedure

All appeals from the enforcement and interpretation of this Ordinance, including appeals for variance from the terms of the requirements set forth shall be submitted to the Chatham County Zoning Enforcement Officer within 30 days of enforcement or interpretation (see table below), and shall be addressed to the Chatham County Board of Adjustment. Appeals may be initiated by aggrieved parties.

<u>Enforcement Sequence</u>	<u>Interpretations</u>
<u>1. Notice of Violation – 30 days from receipt</u>	<u>1. Letter of decision – 30 days from date</u>
<u>2. Warning Citation</u>	<u>2. Permit – 30 days from approval date</u>
<u>3. Citation</u>	
<u>4. Criminal Summons (#19)</u>	

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6. The Board of Adjustment may subpoena witnesses and compel the production of evidence. If a person fails or refuses to obey a subpoena

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issued pursuant to this section, the Board of Adjustment may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the Board of Adjustment pursuant to a subpoena issued in exercise of the power conferred by this section may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor.

Comment [js4]: NCGS 153A-345 (g)

16.5 Vote Required - Judicial Appeal

The Board of Adjustment, by a vote of 4/5 of its members, may reverse any order, requirement, decision, or determination of an administrative officer charged with enforcing this Ordinance, or may decide in favor of the applicant a matter upon which the Board is required to pass under this Ordinance, or may grant a variance from the provisions of this Ordinance. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members. Each decision of the Board is subject to review by the Superior Court by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 30 days after the decision of the Board is filed in such office as this Ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Secretary or Chairman of the Board at the time of its hearing of the case, whichever is later. The decision of the Board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

Comment [js5]: NCGS 153A-345 (e)

A member of the Board of Adjustment 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 vote rule on the objection.

Comment [js6]: NCGS 153A-345 (e1)

17.5 Public Hearing and Notice Thereof

A public hearing shall be held by the Board of County Commissioners before adoption of any proposed amendment to this Ordinance. Notice of the public hearing shall be given according to State law. When a zoning map amendment is proposed, a notice of the public hearing shall be prominently posted on the site

proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but sufficient notices shall be posted to provide reasonable notice to interested parties.

Comment [js7]: NCGS 153A-343 (d)

Mailed notice shall be required in compliance with State law when the County initially zones property.

Comment [js8]: Result of a repeal of exemption in NCGS 153A-343(c).

17.7 Planning Board Action on the Amendment Application (#23)

The Planning Board shall consider the amendment upon receipt of the Planning Department recommendation beginning no later than the second regular meeting following the public hearing. ~~The Planning Board's recommendation concerning the disposition of the application shall be forwarded to the Board of County Commissioners.~~The Planning Board shall provide a written recommendation to the Board of County Commissioners that addresses consistency with the adopted comprehensive plan and other matters as deemed appropriate. A recommendation by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration of approval of the proposed amendment by the governing board.

Comment [js9]: NCGS 153A-341

The Planning Board has a maximum of three regularly scheduled meetings to consider the request, following receipt of the Planning Department recommendation. Failure of the Planning Board to make a recommendation to the Board of County Commissioners following the Planning Board's third regular meeting shall be considered a favorable recommendation without conditions.

A Planning Board member shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is likely to have a direct, substantial, and readily identifiable financial impact on the member.

Comment [js10]: NCGS 153A-340 (g)

17.8 Board of County Commissioners Receives Recommendation of Planning Board

The Board of County Commissioners shall not consider the adoption of the proposed amendment until after the Planning Board makes a recommendation, or fails to make a recommendation within the time allowed. A member of the Board of County Commissioners shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Prior to adopting or rejecting any zoning amendment, the Board of Commissioners shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan, is reasonable, and in the public interest.

Comment [js11]: NCGS 153A-340 (g)

Comment [js12]: NCGS 153A-342 (b) & NCGS 153A-341

