



# LEWISVILLE PLANNING DEPARTMENT

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## **A CITIZEN'S GUIDE TO EVIDENTIARY HEARINGS (ALSO CALLED QUASI-JUDICIAL HEARINGS)**

North Carolina law, [G.S. 160D-102\(16\)](#), defines an Evidentiary Hearing as:

“A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation.”

Most people will find that legal definition confusing and will have no idea what it actually means. This guide is meant to turn those words into plainer English and explain how they apply to land use matters.

NC state law ([General Statute 160D](#)) describes certain types of land use decisions that require an “evidentiary hearing.” In Lewisville, these include things like special use permits, variances and appeals of administrative determinations. The evidentiary hearing process is quite *unlike* the process used to make zoning decisions, which involves a “legislative hearing.” Most people are more familiar with that process. In the legislative hearing process, the Town Council may consider all sorts of comments and concerns from its residents, staff reports, board recommendations, and even its own opinions and judgements. The legislative process gives the Town Council broad discretion when making zoning decisions.

Evidentiary hearings come with a different set of legal requirements. In Lewisville, the Town Council has appointed the Zoning Board of Adjustment (ZBOA) to make quasi-judicial decisions. This board is made up of Lewisville residents and conducts regularly scheduled monthly meetings. The ZBOA makes decisions that involve a certain degree of discretion, but it must apply pre-determined standards established in the Lewisville Unified Development Ordinance when it does. This is how evidentiary hearings work.

An applicant for a special use permit, variance or appeal must present substantial, competent evidence that a proposal meets a series of specifically-defined standards for the proposal under consideration. These standards are written or referenced in the Town of Lewisville Unified Development Ordinance (UDO). Should they choose to do so, opponents of the application must also present substantial, competent and material evidence that the proposal does not meet the applicable standards.

Information concerning the application may only be presented during an evidentiary hearing conducted by the ZBOA. Neither the applicant nor other interested persons may discuss the matter with the members of this board outside of the hearing. Also, members of the ZBOA may not discuss an application amongst themselves or with anyone else outside of the hearing.



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The applicant and others who wish to address the ZBOA are considered witnesses. As witnesses, they must take an oath or be affirmed, just like in a court of law. Only the testimony and opinion of qualified experts in a particular field may be accepted into the record of the hearing. Laypersons, including local residents may provide opinion testimony during an evidentiary hearing, but the ZBOA cannot take that opinion into consideration, only the testimony of qualified persons. The ZBOA Chair decides which testimony is admissible or inadmissible.

The ZBOA determines whether the applicant's plan conforms with the standards of the Lewisville UDO and issues specific findings. Because the purpose of this type of hearing is to introduce evidence and testimony as to whether or not a proposal meets specific standards, no other type of information can be considered by the ZBOA. This includes no inadmissible hearsay and no information on any unrelated issue.

Those testifying must follow rules of evidence set out in NC State statutes. Just as happens in a court of law, if an opposing party objects to inadmissible evidence, the objection will be sustained and the inadmissible evidence will not be allowed in the record. All witnesses who testify may be cross-examined as in a court of law. The only appeal of a quasi-judicial decision made in an evidentiary hearing is to Superior Court. (For the Historic Resources Commission, appeals go first to the Board of Adjustment, then to Superior Court.)

## **COMMON QUESTIONS & ANSWERS ABOUT EVIDENTIARY HEARINGS**

### ***How do I get more information on a proposal near me that requires an evidentiary hearing?***

Notices are sent out by first-class mail to nearby property owners, and a sign is posted on the subject property. If you receive a letter, it will include information about where to seek more specific information on the proposal. Additional information is provided on the Town of Lewisville Planning Website (<https://lewisvillenc.net/planning>) and may be obtained by contacting Planning Department staff.

### ***If I believe that standards are not fully met for this plan and want to testify, what do I do?***

You simply come to the hearing. The ZBOA Chair will ask those who wish to testify to come forward and be sworn in. You may then present testimony, evidence and be cross-examined. The ZBOA will decide whether the testimony and evidence is qualified and admissible.

### ***Should I or my neighbors hire an attorney or an expert to testify?***

That is an option, but Town of Lewisville staff cannot offer advice on this question. When the issues are technical, such as whether or not a proposal will create a traffic problem, an expert witness may be the only qualified person who can provide factual information that is admissible.



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***What if I want to talk to members of the Zoning Board of Adjustment or Town Council?***

Under the rules for an evidentiary hearing, no communication with either the ZBOA or Town Council is allowed outside the hearing. Just like judges in Court, ZBOA members who make quasi-judicial decisions cannot discuss cases except during a hearing and then must decide applications based on evidence.

***Why doesn't the Town Council simply use the legislative hearing process, rather than the more difficult and technical evidentiary hearing process for these cases?***

North Carolina statutes give the Town of Lewisville no other choice. As such, the Town Council has appointed the Zoning Board of Adjustment to conduct all evidentiary procedures.

***Tell me again, What types of proposals require evidentiary hearings in Lewisville?***

Applications for special use permits, variances from the requirements of the Lewisville Unified Development Ordinance (UDO) and appeals of administrative determinations made by the Planning Director or designees.