

§ 160A-393. Appeals in the nature of certiorari.

(a) Applicability. – This section applies to appeals of quasi-judicial decisions of decision-making boards when that appeal is to superior court and in the nature of certiorari as required by this Article.

(b) For purposes of this section, the following terms mean:

- (1) Decision-making board. – A city council, planning board, board of adjustment, or other board making quasi-judicial decisions appointed by the city council under this Article or under comparable provisions of any local act or any interlocal agreement authorized by law.
- (2) Person. – Any legal entity authorized to bring suit in the legal entity's name.
- (3) Quasi-judicial decision. – A decision involving the finding of facts regarding a specific application of an ordinance and the exercise of discretion when applying the standards of the ordinance. Quasi-judicial decisions include decisions involving variances, special and conditional use permits, and appeals of administrative determinations. Decisions on the approval of site plans are quasi-judicial in nature if the ordinance authorizes a decision-making board to approve or deny the site plan based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings of fact to be made by the decision-making board.

(c) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing with the superior court a petition for writ of certiorari. The petition shall:

- (1) State the facts that demonstrate that the petitioner has standing to seek review.
- (2) Set forth the grounds upon which the petitioner contends that an error was made.
- (3) Set forth with particularity the allegations and facts, if any, in support of allegations that, as the result of impermissible conflict as described in G.S. 160A-388(e)(2), or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles.
- (4) Set forth the relief the petitioner seeks.

(d) Standing. – A petition may be filed under this section only by a petitioner who has standing to challenge the decision being appealed. The following persons shall have standing to file a petition under this section:

- (1) Any person meeting any of the following criteria:
 - a. Has an ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.
 - b. Has an option or contract to purchase the property that is the subject of the decision being appealed.
 - c. Was an applicant before the decision-making board whose decision is being appealed.
- (2) Any other person who will suffer special damages as the result of the decision being appealed.
- (3) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing

property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

- (4) A city whose decision-making board has made a decision that the council believes improperly grants a variance from or is otherwise inconsistent with the proper interpretation of an ordinance adopted by that council.

(e) Respondent. – The respondent named in the petition shall be the city whose decision-making board made the decision that is being appealed, except that if the petitioner is a city that has filed a petition pursuant to subdivision (4) of subsection (d) of this section, then the respondent shall be the decision-making board. If the petitioner is not the applicant before the decision-making board whose decision is being appealed, the petitioner shall also name that applicant as a respondent. Any petitioner may name as a respondent any person with an ownership or leasehold interest in the property that is the subject of the decision being appealed who participated in the hearing, or was an applicant, before the decision-making board.

(f) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of superior court of the county in which the matter arose. The writ shall direct the respondent city, or the respondent decision-making board if the petitioner is a city that has filed a petition pursuant to subdivision (4) of subsection (d) of this section, to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct that the petitioner shall serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4(j) of the Rules of Civil Procedure, except that, if the respondent is a decision-making board, the petition and the writ shall be served upon the chair of that decision-making board. Rule 4(j)(5)d. of the Rules of Civil Procedure shall apply in the event the chair of a decision-making board cannot be found. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

(g) Answer to the Petition. – The respondent may, but need not, file an answer to the petition, except that, if the respondent contends that any petitioner lacks standing to bring the appeal, that contention must be set forth in an answer served on all petitioners at least 30 days prior to the hearing on the petition.

(h) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to intervene as a petitioner or respondent in an action initiated under this section with the following exceptions:

- (1) Any person described in subdivision (1) of subsection (d) of this section shall have standing to intervene and shall be allowed to intervene as a matter of right.
- (2) Any person, other than one described in subdivision (1) of subsection (d) of this section, who seeks to intervene as a petitioner must demonstrate that the person would have had standing to challenge the decision being appealed in accordance with subdivisions (2) through (4) of subsection (d) of this section.
- (3) Any person, other than one described in subdivision (d)(1) of this section, who seeks to intervene as a respondent must demonstrate that the person would have had standing to file a petition in accordance with subdivisions

(2) through (4) of subsection (d) of this section if the decision-making board had made a decision that is consistent with the relief sought by the petitioner.

(i) **The Record.** – The record shall consist of all documents and exhibits submitted to the decision-making board whose decision is being appealed, together with the minutes of the meeting or meetings at which the decision being appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the decision being appealed was considered if such a recording was made. Any party may also include in the record a transcript of the proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree, or the court may direct, that matters unnecessary to the court's decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the municipal respondent, or the respondent decision-making board, upon all petitioners within three days after it is filed with the court.

(j) **Hearing on the Record.** – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section. Except that the court may, in its discretion, 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 the following issues:

- (1) Whether a petitioner or intervenor has standing.
- (2) Whether, as a result of impermissible conflict as described in G.S. 160A-388(e)(2), or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles.
- (3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (k) of this section.

(k) **Scope of Review.** –

- (1) When reviewing the decision of a decision-making board under the provisions of this section, the court shall ensure that the rights of petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:
 - a. In violation of constitutional provisions, including those protecting procedural due process rights.
 - b. In excess of the statutory authority conferred upon the city or the authority conferred upon the decision-making board by ordinance.
 - c. Inconsistent with applicable procedures specified by statute or ordinance.
 - d. Affected by other error of law.
 - e. Unsupported by substantial competent evidence in view of the entire record.
 - f. Arbitrary or capricious.
- (2) When the issue before the court is whether the decision-making board erred in interpreting an ordinance, the court shall review that issue *de novo*. The court shall consider the interpretation of the decision-making board, but is not bound by that interpretation, and may freely substitute its judgment as appropriate.
- (3) The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection

or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:

- a. The use of property in a particular way would affect the value of other property.
- b. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.
- c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

(l) Decision of the Court. – Following its review of the decision-making board in accordance with subsection (k) of this section, the court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall be guided by the following in determining what relief should be granted to the petitioners:

- (1) If the court concludes that the error committed by the decision-making board is procedural only, the court may remand the case for further proceedings to correct the procedural error.
- (2) If the court concludes that the decision-making board has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.
- (3) If the court concludes that the decision by the decision-making board is not supported by substantial competent evidence in the record or is based upon an error of law, then the court may remand the case with an order that directs the decision-making board to take whatever action should have been taken had the error not been committed or to take such other action as is necessary to correct the error. Specifically:
 - a. If the court concludes that a permit was wrongfully denied because the denial was not based on substantial competent evidence or was otherwise based on an error of law, the court may remand with instructions that the permit be issued, subject to reasonable and appropriate conditions.
 - b. If the court concludes that a permit was wrongfully issued because the issuance was not based on substantial competent evidence or was otherwise based on an error of law, the court may remand with instructions that the permit be revoked.

(m) Ancillary Injunctive Relief. – Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal. (2009-421, s. 1(a); 2013-126, ss. 13, 14.)