

CHAPTER 16 - LAND USE ORDINANCE

Article VI - Hearing Procedures for Appeals and Applications

Section 16-101 Hearing Required on Appeals and Applications.

(A) Before making a decision on an appeal or an application for a variance, special use permit, or conditional use permit, or a petition from the staff to revoke a special use permit or conditional use permit, the board of adjustment or the board of commissioners as the case may be, shall hold a hearing on the appeal or application.

(B) Subject to subsection (C), the hearing shall be open to the public and all persons interested in the outcome of the appeal or application shall be given an opportunity to present evidence and arguments and ask questions of persons who testify.

(C) The board of adjustment or board of commissioners may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay.

(D) The hearing board may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be published unless a period of six weeks or more elapses between hearing dates.

Section 16-102 Notice of Hearing.

The administrator shall give notice of any hearing required by Section 16-101 as follows:

(1) Notice shall be given to the appellant or applicant and any other person who makes a written request for such notice by mailing to such persons a written notice not later than ten days before the hearing.

(2) Notice shall be given to neighboring property owners by mailing a written notice not later than ten days before the hearing to those persons who have listed for taxation real property any portion of which is located within 150 feet of the lot that is the subject of the application or appeal. The administrator shall provide to the applicant a list of the names and addresses of such property owners and the applicant shall furnish the administrator with stamped envelopes properly addressed to such property owners.

(3) Notice shall be given to other potentially interested persons by publishing a notice in a newspaper having general circulation in the area one time not less than seven nor more than fifteen days prior to the hearing.

(4) The notice required by this section shall state the date, time and place of the hearing, reasonably identify the lot that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

Section 16-103 Evidence.

(A) The provisions of this section apply to all hearings for which a notice is required by Section 16-101.

(B) All persons who intend to present evidence to the permit issuing board, rather than arguments only, shall be sworn.

(C) All findings and conclusions necessary to the issuance or denial of the requested permit or appeal (crucial findings) shall be based upon reliable evidence. Competent evidence (evidence admissible in a court of law) shall be preferred whenever reasonably available, but in no case may crucial findings be based solely upon incompetent evidence unless competent evidence is not reasonably available, the evidence in question appears to be particularly reliable, and the matter at issue is not seriously disputed.

Section 16-104 Modification of Application at Hearing.

(A) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the board of commissioners or board of adjustment, the applicant may agree to modify his application, including the plans and specifications submitted.

(B) Unless such modifications are so substantial or extensive that the permit issuing board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the staff.

Section 16-105 Record.

(A) A tape recording shall be made of all hearings required by Section 16-101. Accurate minutes shall also be kept of all such proceedings, but a transcript need not be made.

(B) Whenever practicable, all documentary evidence presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings.

(C) Records made pursuant to this section shall be kept on file by the town for at least two years and may thereafter be disposed of only in accordance with G.S. 132-3.

Section 16-106 Written Decision.

(A) Any decision made by the board of adjustment or board of commissioners regarding an appeal or variance or issuance or revocation of a conditional use permit or special use permit shall be reduced to writing and served upon the applicant or appellant and all other persons who make a written request for a copy.

(B) In addition to a statement of the board's ultimate disposition of the case and any other information deemed appropriate, the written decision shall state the board's findings and conclusions, as well as supporting reasons or facts, whenever this chapter requires the same as a prerequisite to taking action.

Sections 16-107 through 16-110 Reserved.