

## **ARTICLE 6. BOARD OF ADJUSTMENT HEARING PROCEDURES FOR APPEALS AND APPLICATIONS**

### **Section 6-1. Hearing Required on Appeals and Applications**

- (A) Before making a decision on an appeal or an application for a variance or conditional-use permit, or a petition from the planning staff to revoke a 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. All persons presenting evidence or arguments shall be sworn in by the Chairman prior to the presentation of any evidence or arguments.
- (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 6-2. Notice of Hearing**

The administrator shall give notice of any hearing required by Section 6-1 as follows:

- (A) 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 10 days before the hearing.
- (B) Notice shall be given to neighboring property owners by mailing a written notice not later than 10 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. Notice shall also be given by prominently posting signs in the vicinity of the property that is the subject of the proposed action. Such signs shall be posted not less than seven days prior to the hearing.
- (C) 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 6-3. Evidence**

- (A) The provisions of this section apply to all hearings for which a notice is required by Section 6-1.

- (B) All persons who intend to present evidence to the permit-issuing board, rather than arguments only, shall be sworn in by the Chairman.
- (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 6-4. 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 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 planning staff.

**Section 6-5. Record**

- (A) A tape recording shall be made of all hearings required by Section 6-1, and such recordings shall be kept for at least two years. 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 and shall be kept by the Town for at least two years.

**Section 6-6. 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 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 conclusion, as well as supporting reasons or facts, whenever this Ordinance requires the same as a prerequisite to taking action.