

Article 17. HEARING PROCEDURES FOR APPEALS AND APPLICATIONS

Section 17-1: 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 planning 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 17-2: Notice of Hearing

When an appeal or an application for a variance, special use permit, or conditional use permit, or a petition from the planning staff to revoke a special use permit or conditional use permit is requested, the applicant shall provide to the Zoning Administrator a list of names and addresses, as obtained from the county tax listings and tax abstracts, of all abutting property owners and all owners of property within the area under consideration along with one set of business (#10) envelopes stamped with a first class stamp and addressed to each person on the list. These addressed envelopes and the list shall be submitted at least fifteen (15) working days prior to the public hearing. The Zoning Administrator shall then mail notices of the public hearing to each person on the list and shall certify that fact to the Board of Commissioners. Such certification shall be deemed conclusive in the absence of fraud. Notice of the public hearing shall be published in a newspaper of general circulation in the Town of Ayden at least once a week for two successive weeks prior to the hearing and shall comply with GS 160A-364 and 384. Notice may also be made (but is not a substitute for the above requirements) by posting the property involved for a period of one week prior to the hearing.

Section 17-3: Evidence

- (A) The provisions of this section apply to all hearings for which a notice is required by Section 16-1.
- (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 17-4: 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 17-5: Record

- (A) A tape recording shall be made of all hearings required by Section 17-1. 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.

Section 17-6: 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 or special use permit shall be reduced to writing and served upon the applicant or appellant by personal service or certified mail, return receipt requested and all other persons who

make a written request for a copy. Records shall be maintained indicating the date of such service.

- (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 Ordinance requires the same as a prerequisite to taking action.
- (C) Any decision by the Board of Adjustment or Board of Commissioners shall be deemed filed with the Town upon receipt of a final written decision by the Town Clerk. The date of such filing shall be documented by the Clerk.