

## **Article VI      Hearing Procedures for Appeals and Applications**

### **Section 118. Hearing Required on Appeals and Applications**

**[a]** Before making a decision on an appeal or an application for a variance, special-use permit, zoning vested right, or a petition from staff to revoke a special use permit, the Board of Adjustment shall hold a public 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 the application shall be given an opportunity to present evidence and arguments and ask questions of persons who testify.

**[c]** 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 (6) weeks or more elapses between hearing dates.

### **Section 119. Notice of Hearing**

**[a]** The administrator shall give notice of any hearing required by Section 118 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 (10) days before the hearing.
- [2] Notice shall be given to neighboring property owners by mailing a written notice not later than ten (10) days before the hearing to those persons who have listed for taxation real property any portion of which is located within one hundred fifty (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 (7) days prior to the hearing.

- [3] Notice shall be given to other potentially interested persons by publishing a notice one (1) time in a newspaper having a general circulation in the area not less than ten (10) nor more than twenty five (25) days prior to the date of the hearing. Notice for vested rights applications shall be given to other potentially interested persons by publishing a notice two (2) times in a newspaper having a general circulation in the area not less than ten (10) nor more than twenty-five (25) days prior to the date of the hearing.
- [4] The notice required by this section shall state the date, time, and place of 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 120. Evidence**

**[a]** The provisions of this section apply to all hearings for which a notice is required by Section 118.

**[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 121. 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 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 staff.

**Section 122. Record**

**[a]** A tape recording shall be made of all hearings required by Section 118, and such recordings shall be kept for at least two (2) 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 (2) years.

**Section 123. Written Decision**

**[a]** Any decision made by the Board of Adjustment regarding an appeal or variance or issuance or revocation of a 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. A copy of the decision shall also be placed in the Planning and Inspections Department and, in case of an approved special use permit or variance, recorded at the Watauga County Registry.

**[b]** Any conditions attached to the issuance of a variance or special use permit shall be entered on the face of any necessary zoning permit.

**[c]** 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.

**Section 124. Reserved****Section 125. Reserved****Section 126. Reserved****Section 127. Reserved**

