

**ARTICLE 6. HEARING PROCEDURES FOR APPEALS AND APPLICATIONS**  
(revised 6-12-08)

**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 shall hold a hearing on the appeal or application within sixty (60) days of the submittal of a completed appeal or application. All applications for a conditional use permit shall be referred by the Administrator to the City of Southport Planning Board for review and comment. All comments prepared by the City of Southport Planning Board shall be submitted by the Planning Board Secretary, or his or her designee, to the Board of Adjustment as evidence at the public hearing required by this section. This representative of the Planning Board shall be subject to the same scrutiny as other witnesses. Review of the conditional use application by the City of Southport Planning Board shall not be a quasi-judicial procedure. The City of Southport Planning Board shall include in its comments a statement as to the consistency of the application with the City of Southport Comprehensive Plan. Comments of the City of Southport Planning Board shall be considered with other evidence submitted at the public hearing.
- (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 testify.
- (C) The Board of Adjustment 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 Board of Adjustment 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.
- (E) Except as provided in Section 12-13, the Board of Adjustment may not rehear a quasi-judicial matter previously denied.
- (F) The required application fee and all supporting materials must be received by the Administrator before an application is considered complete and a hearing scheduled.

## **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) In the case of conditional-use permits, notice shall be given to other potentially interested persons by publishing a notice one time in a newspaper having general circulation in the area not less than seven nor more than fifteen days prior to the hearing.
- (D) 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/Presentation of 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 Board of Adjustment, rather than arguments only, shall be sworn.
- (C) All findings and conclusions necessary to the issuance or denial of the requested permit or appeal (necessary 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 necessary 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.
- (D) The Board of Adjustment has the authority to limit testimony that is irrelevant.

- (E) The entirety of a quasi-judicial hearing and deliberations shall be conducted in open session.
- (F) Parties to a quasi-judicial hearing have a right to cross-examine witnesses.
- (G) Factual findings must not be based on hearsay evidence which would be inadmissible in a court of law.
- (H) If a Board of Adjustment member has prior or specialized knowledge about a case, that knowledge should be disclosed to the rest of the Board of Adjustment and parties at the beginning of the hearing.

#### **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 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 city for at least two years.

#### **Section 6-6: Written Decision**

- (A) Any decision made by the Board of Adjustment 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.