

Revision of Polk County Board of Adjustment Rules of Procedure for Quasi-Judicial Proceedings

A. General Provisions

Rule 1. Applicability. These rules apply to all quasi-judicial proceedings before the Board arising under the terms of The Zoning Ordinance of Polk County, North Carolina, the Polk County Sign Ordinance, the Junk Ordinance [of] Polk County and any other ordinance under the terms of which the Board is vested with authority to conduct quasi-judicial proceedings. All members of the Board, the administrators responsible for administering the ordinances and all lawyers representing petitioners, opponents or other interested parties, should thoroughly familiarize themselves with the provisions of that statute, the applicable ordinance, the General Rules and these rules before participating in any proceeding.

Rule 2. Governing Authority. The Board is bound by the provisions of N.C. Gen. Stat. §160A-388 and §153A-345.1, applicable ordinances and the General Rules of the Polk County Board of Adjustment.

Rule 3. Powers. The Board of Adjustment shall hear and decide conditional use permits, requests for variances, applications for statutory vested rights, and appeals of decisions of administrative officials charged with enforcement of this ordinance. As used in this section, the term "decision" includes any final and binding order, requirement, or determination. The Board of Adjustment shall follow quasi-judicial procedures when deciding appeals, requests for variances and conditional use permits. The Board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development.

Rule 4. No Rights Granted. These rules do not grant any person the right to petition the Board for any type of relief under an applicable ordinance except to the extent that the ordinance, or the statute pursuant to which it was adopted, expressly grants such a right to the person.

Rule 5. Notice of Hearing. Notice of hearings shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning ordinance. In the absence of evidence to the contrary, the county may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the county shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

Rule 6. Open Meetings Law. All Proceedings shall be conducted in accordance with the North Carolina Open Meetings Law, N.C. Gen. Stat. §§143-318.9 *et seq.*

Rule 7. Scheduling Proceedings. Proceedings normally will be scheduled to commence

and be held at a regular monthly meeting of the Board.¹ When a proceeding is recessed to be reconvened at a later date other than a regular monthly meeting date, or when, at the discretion of the Chair, a proceeding is scheduled to commence and be held on a date other than a regular monthly meeting date, the date shall be determined by the Chair. Due regard will be given primarily to the availability and convenience of the Board, the Clerk to the Board of Adjustment and the appropriate administrator, and, secondarily and to the extent reasonably feasible, also to the availability and convenience of the petitioner, opponents and other interested parties (and their lawyers).

B. Purpose and Objectives

Rule 8. Purpose. The purpose of these rules is to provide an orderly method by which the Board can hear and decide all proceedings arising under an applicable ordinance.

Rule 9. Objectives. The objectives of the Board when conducting a proceeding are:

(a) To conduct the proceedings in a fair and efficient manner, allowing the petitioners, opponents and other interested parties an ample opportunity fully to present their evidence and express their views without undue or arbitrary restrictions.

(b) To ensure that petitioners, opponents and other interested parties who are not represented by a lawyer are not prejudiced by that fact, taking affirmative steps to put them at ease, to prevent them from being intimidated either by the proceeding or by lawyers representing others and to assist them, where possible, in complying with these rules and procedural or evidentiary technicalities.

(c) To base all decisions on the merits, and not on procedural or evidentiary technicalities, to the extent permitted by applicable law and Rule 9 (d) below.

(d) To base all decisions on material, competent and substantial evidence.

(e) To base all decisions on a reasoned consideration of the terms of the applicable ordinance, providing an explanation of the reasoning at the time of the decision.

(f) To ensure that the applicable ordinance is being enforced and administered in a fair and efficient manner, consistently with prior decisions or with an explanation for reasons of departure from prior decisions, with any pertinent statement of policy or intent in the applicable ordinance itself or in the official record of the proceedings leading to its adoption or revision.

C. Duties and Responsibilities

Rule 10. Chair. The Chair shall be selected in the manner provided in the General Rules and shall have the following duties and responsibilities:

¹ Under Section 6 of the General Rules of the Board, the regular monthly meeting is held at 4:00 PM on the first Tuesday of each month.

(a) Scheduling and Conducting Proceedings. The Chair shall schedule and conduct proceedings in an orderly and efficient manner, consistently with the terms of the applicable ordinance, any statute pursuant to which that ordinance was adopted and these rules.

(b) Rulings on Matters of Procedure and Evidence. The Chair shall be solely responsible for ruling on non-dispositive questions of procedure² and admissibility of evidence, but with due regard for implementing the objectives of the Board set forth in Rule 9 above.

(c) Written Decision. The Chair shall, in conjunction with the Clerk, be responsible for formulating the written decision of the Board.

Rule 11. Vice Chair. The Vice Chair shall be selected in the manner provided in the General Rules and shall be responsible for conducting all duties and responsibilities of the Chair relating to a proceeding in the Chair's absence.

Rule 12. Clerk to the Board of Adjustment. The Clerk to the Board of Adjustment shall be selected in the manner provided in the General Rules and shall, be responsible for compiling an appropriate record of all proceedings, and in conjunction with the Chair, be responsible for formulating the written decision of the Board.

(a) Minutes. The Clerk to the Board of Adjustment shall be responsible for taking clear, accurate, and detailed minutes of all proceedings. The minutes shall contain a summary of all evidence or testimony presented before the Board, and a summary of statements made by members of the Board.

(b) Maintain Records. The Clerk to the Board of Adjustment shall be responsible for maintaining all records associated with each proceeding. The records shall include, but not be limited to, the notice of appeal submitted by the petitioner (where applicable), the application for any permit or other determination submitted by the petitioner (where applicable), the minutes pertaining to the proceeding, all documentary evidence offered in the proceeding, whether or not admitted and the Board's written decision.

(c) Notification and Correspondence. The Clerk to the Board of Adjustment shall be responsible for all correspondence and notices required by these rules, the applicable ordinance and any governing statute.

(d) Written Decisions. The Clerk to the Board of Adjustment shall be responsible for delivering the Board's written decisions in accordance with these rules.

D. Rules of Conduct for Members

Rule 13. Recusal. A member of the Board or any other body exercising quasi-judicial functions shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible

² Non-dispositive questions of procedure are those the decision of which will not result in the termination of the proceeding, in whole or in part. See Quasi-Judicial Rule 20 below concerning dispositive questions of procedure.

conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

No objection shall be raised to the participation or voting of any Board member in any proceeding once evidence has begun to be heard in that proceeding if the objection is based on facts that the affected person making it knew or, in the exercise of reasonable care, should have known before evidence began to be heard.

If a Board member recuses himself or herself in a proceeding, he or she should notify the Chair and Clerk to the Board of Adjustment as soon as possible so as to permit an alternate member to be substituted in his or her place. If an objection is timely raised to a member's participation in a proceeding and that member does not recuse himself or herself, the remaining members shall by a majority vote rule on the objection.

Rule 14. Ex Parte Communications. No Board member shall discuss the merits of any proceeding with the appropriate administrator or any petitioner, opponent or other interested party, or anyone who may become a petitioner, opponent or other interested party, or their lawyers or witnesses, before the proceeding is finally determined, provided, however, that the Chair may:

(a) communicate with the appropriate administrator or other Polk County officers or employees concerning the form and content of, or mailing and posting, any required notices concerning the proceeding, the scheduling of the proceeding and physical arrangements for hearing the proceeding;

(b) communicate with the appropriate administrator and any petitioner, opponent or other interested party, or anyone who may become a petitioner, opponent or other interested party, or their lawyers, concerning the date, time, place or manner in which the hearing will be conducted or to pass along any question or matter that any member of the Board specifically asks to be addressed at the hearing;

(c) obtain from the appropriate administrator or other Polk County officers or employees the application and other documents comprising the record of the proceeding and tax maps and related documentation showing properties involved in the proceeding and the owners of those properties, so long as copies of that application, tax maps and other documentation are concurrently delivered to the Clerk to the Board of Adjustment for public disclosure to anyone requesting it; and

(d) receive from the appropriate administrator, and cause to be distributed to other members of the Board, a written staff report setting forth the appropriate administrator's factual findings and recommendations with respect to the proceeding, so long as a copy of that staff report is concurrently delivered to the Clerk to the Board of Adjustment for public disclosure to anyone requesting it.

Rule 15. Public Comment. Members of the Board shall not publicly express individual

opinions or otherwise make public comment on the evidence or proper decision in any proceeding before all deliberations in the proceeding have commenced. Following the commencement of deliberations and until a written decision in the proceeding has been entered, members of the Board should limit their expression of individual opinions to statements to one another as a part of the deliberative process required to reach that decision.

E. Conducting a Proceeding

Rule 16. Personal Attendance. The petitioner, opponents, and other interested parties (or their lawyers) should appear in person at the proceeding if they expect their views to be considered. In circumstances where a petitioner, opponent or interested party is an individual who is unable to participate in person at the proceeding due to serious health or other compelling, verifiable issues, the Board may permit a close familial member to appear on behalf of the affected individual upon presentation of a limited power of attorney. The participation of such family members is subject to all rules of evidence as set out in Rule 19, including but not limited to Rule 19(c).

Rule 17. Oaths. The Chair of the Board or any member acting as Chair and the Clerk to the Board of Adjustment are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

Rule 18. Subpoenas. The Board of Adjustment through the Chair, or in the Chair's absence anyone acting as Chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under Rule 26(a) may make a written request to the Chair explaining why it is necessary for certain witnesses or evidence to be compelled. The Chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The Chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the Chair may be appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

Rule 19. Rules of Evidence. The rules of evidence shall apply to the extent required by applicable law, but with due regard for implementing the objectives of the Board set forth in these Rules.

- (a) Burden of Proof. In a quasi-judicial proceeding, the applicant has the responsibility of proving (burden of proof) that the application meets each element required for the applicable request. If the applicant's burden of proof is met, the burden shifts to those seeking the denial of the application that the required elements are not met.
- (b) Evidence Standard. Evidence required for the Board to make findings of fact must be substantial, competent and material. Substantial evidence is enough evidence to support or establish the argued for conclusion. Competent evidence is evidence that is legally sound (admissible under the rules of evidence), is reliable (credible, believable), is real (non-speculative, non-hypothetical) and based on facts (more than conjecture, unsupported generalized statements or opinions, or

mere probabilities). Material evidence must be pertinent, relevant and tend to prove the point(s) that must be proven.

- (c) Hearsay. If a statement is being used as evidence to establish a critical fact, the person making that statement should be present at the hearing to testify and be subject to cross examination. Petitions and unverified written statements will not be accepted in evidence. The Chair may admit verified written statements into evidence but only in those circumstances where the Chair finds it is the best evidence available, the need to have it admitted is compelling, and the facts set forth therein are not substantially in dispute. The Board will limit the weight it gives such evidence and critical findings of fact will not be based solely on hearsay evidence.
- (d) Opinions. Opinion evidence (unless offered by a properly qualified expert witness) is generally not allowed and cannot be the basis for critical findings. Expert witnesses may offer expert opinions into evidence. Expert witnesses need to present the factual information upon which their expert opinion is based.
- (e) Form of Evidence. Evidence can be in the form of sworn oral testimony and exhibits including documents such as staff reports, deeds, surveys, maps, site plans, photographs, and expert opinions/reports such as appraisals and traffic impact analyses. All exhibits must be entered into evidence.

Rule 20. Questions of Procedure. Questions of procedure that arise in a proceeding and are not covered by these procedures shall be determined in accordance with any applicable law but with due regard for implementing the objectives of the Board set forth in Rule 9 above. Where appropriate, guidance may be sought from analogous provisions of the North Carolina Rules of Civil Procedure, N.C. Gen. Stat. §1A-1.

Rule 21. Dispositive Procedural Questions. The Board shall decide by the concurring vote of the Board in accordance with Rule 25.³

Rule 22. Private Court Reporters. No private court reporter will be permitted to transcribe any part of a proceeding unless the person engaging that court reporter agrees, on the record, (a) to provide the Board with a copy of the transcript without charge if an appeal is taken from the Board's decision (regardless of who the appealing party is) and (b) to indemnify and save the Board and Polk County government harmless from any costs that may be assessed against either of them on appeal with respect to the expense of that transcript.

Rule 23. Conduct of Proceedings. Proceedings will be conducted as follows:

(a) Normally, evidence will first be presented by the appropriate administrator, followed by the applicant and his, her or its supporters. Thereafter, evidence will be presented by any opponents. Closing argument, if any, will proceed in the same order. However, this sequence may be varied at the discretion of the Chair.

(b) All witnesses shall be placed under oath by the Chair or the Clerk. Each witness shall be subject to cross-examination by the appropriate administrator, applicant,

³ Dispositive questions of procedure are those the decision of which may result in the termination of the proceeding, in whole or in part. Examples include jurisdictional issues, questions as to proper standing, *etc.* See Quasi-Judicial Rule 20 above concerning non-dispositive questions of procedure.

opponents or other interested parties, as the case may be, and by members of the Board.

(c) The Board, acting by and through the Chair, may, at its discretion, request additional evidence from the appropriate administrator, petitioner, opponents or other interested parties, or from other persons, before arriving at a determination of the case.

(d) The Board shall make findings of fact by the concurring vote of the Board in accordance with Rule 25. Findings of fact made by the Board shall be based on sworn testimony or other competent evidence.

(e) After all findings of fact have been made by the Board, the Board shall by the concurring vote of the Board in accordance with Rule 25 draw conclusions based on the findings of fact.

(f) After all conclusions have been drawn by the Board, the Board shall by the concurring vote of the Board in accordance with Rule 25 render an oral decision. However, that oral decision, as well as the findings of fact and conclusions made pursuant to Rules 23(d) and 23(e) above, remain subject to modification as provided in Rule 28 below and will become final only when the Board's written decision has been duly entered as provided in Rule 28 below.

Rule 24. Copies of Legal Authorities To Be Provided. Where an appropriate administrator, applicant, opponent or other interested party (or his, her or its lawyer) relies on a judicial or administrative decision or a statute or governmental regulation in support of a position, a separate copy of that decision, statute or regulation shall be provided for each member of the Board hearing the proceeding.

Rule 25. Voting. The concurring vote of four-fifths of the Board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

F. Appeals

Rule 26. Appeals. The Board of Adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning ordinance and may hear appeals arising out of any other ordinance that regulates land use or development. An appeal is taken by filing a notice of appeal with the County Clerk. The notice of appeal shall state the grounds for the appeal.

(a) Each of the following shall have standing to appeal a decision to the Board of Adjustment:

(1) Any person meeting any of the following criteria:

a. Has an ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the

subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.

- b. Has an option or contract to purchase the property that is the subject of the decision being appealed.
 - c. Was an applicant before the decision-making board whose decision is being appealed.
- (2) Any other person who will suffer special damages as the result of the decision being appealed.
 - (3) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.
 - (4) The county whose decision-making board has made a decision that the board of commissioners believes improperly grants a variance from or is otherwise inconsistent with the proper interpretation of an ordinance adopted by that board of commissioners.
- (b) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
 - (c) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
 - (d) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision.
 - (e) The official who made the decision shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
 - (f) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the

Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

- (g) Subject to the provisions of subdivision (f) of this subsection, the Board of Adjustment shall hear and decide the appeal within a reasonable time.
- (h) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the county would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the official who made the decision.
- (i) When hearing an appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as follows:
 - (1) When reviewing the decision of a decision-making official under the provisions of this section, the Board shall ensure that the rights of petitioners have not been prejudiced because the decision-making official's findings, inferences, conclusions, or decisions were:
 - a. In violation of constitutional provisions, including those protecting procedural due process rights;
 - b. In excess of the statutory authority conferred upon the authority conferred upon the decision-making official by ordinance;
 - c. Inconsistent with applicable procedures specified by statute or ordinance;
 - d. Affected by other error of law;
 - e. Unsupported by substantial competent evidence in view of the entire record; or
 - f. Arbitrary or capricious.
 - (2) When the issue before the Board is whether the decision-making official erred in interpreting an ordinance, the Board shall review that issue de novo. The Board shall consider the interpretation of the decision-making official, but is not bound by that interpretation, and may freely substitute its judgment as appropriate.

- (3) The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making official on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making official to rely upon it. The term "competent evidence," as used in this subsection, shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:
- a. The use of property in a particular way would affect the value of other property;
 - b. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety; or
 - c. Matters about which only expert testimony would generally be admissible under the rules of evidence.
- (j) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution.
- (k) A majority of the members shall be required to decide to determine an appeal made in the nature of certiorari in accordance with Rule 25 of these Rules of Procedure.

G. Conditional Use Permits

Rule 26. Conditional Use Permits. A conditional use permit from the Board of Adjustment is required for all conditional uses. The Board of Adjustment shall hear and decide conditional use permits in accordance with standards and procedures specified in this ordinance and may issue conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified herein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided.

- (a) **Application.** When a conditional use permit is required by the terms of the Zoning Ordinance, application for such permit, along with the fee established by resolution of Board of Commissioners, shall be submitted to the Zoning Administrator. A completed application for a conditional use permit must be received by the Zoning Administrator at least 30 days prior to the date of a Board of Adjustment meeting in order to be scheduled for such meeting.
- (b) **Site Plan.** The application for a conditional use permit shall be accompanied by seven copies of a complete site plan conforming to the requirements of the Zoning Administrator.
- (c) **Quasi-Judicial Hearings on Applications for Conditional Use Permits.** Once the Zoning Administrator is in receipt of a complete application and seven copies of a complete site plan, he or she will schedule the application for a public hearing before the Board. The Clerk shall mail the Notice of Hearing in accordance with Rule 5 of these

Rules of Procedure. The Board of Adjustment shall conduct a quasi-judicial hearing on the application and shall allow any interested party to appear, either in person or by attorney.

(d) Board action on applications for Conditional Use Permits. After the public hearing, and on consideration of the record, the Board shall take action on the application, either (1) denying it, (2) approving it, or (3) approving it subject to one or more conditions. A majority of the members shall be required to decide an application for conditional use permit in accordance with Rule 25 of these Rules of Procedure. The Board shall not approve an application for a conditional use permit, with or without conditions, unless it makes each of the following findings of fact:

(1) the proposed use complies with the standards for such use, if any, contained in this Zoning Ordinance;

(2) the proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood of such proposed use;

(3) the proposed use will not be detrimental or injurious to property, property uses or property values, or to public improvements, in the neighborhood of such proposed use; and

(4) the proposed use is designed and will be operated in such a manner as to be in harmony with the neighborhood in which it is to be located.

(f) Recordation/Effect of Approval. The conditional use permit shall be filed with the Polk County Register of Deeds by the Clerk to the Board of Adjustment within one month from the date of approval. All conditional use permits that are granted shall run with the property or structure for which the conditional use permit is being sought and not with the owner of the property or structure.

H. Variances

Rule 27. Variances. When unnecessary hardships would result from carrying out the strict letter of the zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance;

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist

that may justify the granting of a variance shall not be regarded as a self-created hardship; and

- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

(a) Application. When a variance is requested the applicant shall submit a completed application for such permit, along with a fee established by resolution of Board of Commissioners.

(b) Quasi-Judicial Hearings on Applications for Variances. Once the Zoning Administrator is in receipt of a complete application and seven copies of a complete site plan, he or she will notify the Chair to schedule the application for a public hearing before the Board. The Clerk shall mail the Notice of Hearing in accordance with Rule 5 of these Rules of Procedure. The Board of Adjustment shall conduct a quasi-judicial hearing on the application and shall allow any interested party to appear, either in person or by attorney.

(c) Board action on Applications for Variances. After the quasi judicial hearing, and on consideration of the record, the Board shall take action on the application, either (1) denying it, (2) approving it, or (3) approving it subject to one or more conditions. A concurring vote of four-fifths of the Board shall be necessary to grant a variance in accordance with Rule 25.

(d) Recordation/Effect of Approval. The approved variance shall be filed with the Polk County Register of Deeds by the Clerk to the Board of Adjustment within one month from the date of approval. All variances that are granted shall run with the property or structure for which the variance is being sought and not with the owner of the property or structure.

I. Quasi-Judicial Decisions

Rule 28. Quasi-Judicial Decisions. The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record.

(a) Written Decision Required. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the Board. The decision shall contain the following sections:

- (1) "Findings of Fact" which shall list the facts of the proceeding as determined by the Board;

- (2) "Conclusions" which shall list the conclusions reached by the Board in light of the facts listed in the findings of fact;
- (3) "Decision" which shall state the decision of the Board; and
- (4) Any supplements submitted by Board members pursuant to Rule 28(b).

In the case of inconsistency, the written decision of the Board shall prevail over its earlier oral decision. However, no material change from the earlier oral decision shall be made in the written decision.

(b) Supplements to Written Decision. Any member of the Board participating in a proceeding may submit a supplement to the written decision to the Clerk to the Board of Adjustment requesting that it be included as a part of that written decision. Such supplements normally will consist of dissenting views by that member when voting in the minority on an issue, or further explanations of that member's reasons for taking a position on an issue, in circumstances where he or she believes that the written opinion does not adequately address his or her position on that issue. Such supplements shall constitute an integral part of the written decision.

(c) When Written Decision Entered. A quasi-judicial decision is effective upon filing of the signed, written decision with the Clerk to the Board of Adjustment.

(d) Delivery of Written Decision. The decision of the Board shall be delivered by Clerk to the Board of Adjustment by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, applicable Administrator, and to any person who has submitted a written request for a copy with the Clerk to the Board of Adjustment prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

J. Judicial Review

Rule 29. Judicial Review. Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the Clerk of Superior Court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with Rule 28 (d) of these Rules of Procedure. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

K. Miscellaneous Matters

Rule 29. Assignment of Alternate Members. Alternate members of the Board shall participate in those proceedings in which one or more regular members are unable to participate because of recusal, removal or unavailability. Regular members, on receiving notice of a proceeding in which they will be unable to participate, shall promptly notify the Chair. On receiving that notification, the Chair shall, by the most expeditious means, notify an alternate member to attend and participate. Assignments shall be rotated among alternate members to the

extent feasible.