



## ZONING APPEALS IN POLK COUNTY

### ***When can Appeals be granted?***

If someone is dissatisfied with a decision or interpretation concerning the Polk County zoning rules that has been made by the Polk County Zoning Administrator, he or she can appeal that decision or interpretation to the Polk County Zoning Board of Adjustment. An interpretation by the Zoning Administrator that no zoning rule has been violated can be appealed just as can his or her decision that a violation has occurred.

### ***Who decides whether to approve it?***

In an appeal, the Board acts as a zoning court, deciding whether the Zoning Administrator's decision or interpretation was correct after hearing evidence and argument from both sides.

In reaching a decision, the Zoning Board does not and cannot decide what they think the zoning rules ought to be. They do not make those rules; the County Commissioners do that, with the assistance of the Polk County Planning Board.

The zoning rules that the Board interprets are contained in the Polk County Zoning Ordinance. You can obtain a copy of this ordinance from the Board's Secretary, for a nominal charge. She is located in the Zoning Administrator's office, and can be reached at (828) 894-2732. In hearing an appeal, the Board must also follow their own procedural rules. You can also obtain a copy of these procedural rules from the Board's Secretary for a nominal charge.

### ***How do I begin the process?***

Under the Zoning Board procedural rules, a person or agent wanting to appeal a decision or interpretation made by the Zoning Administrator must file a written notice of appeal with the County Clerk (and pay a \$100 filing fee). The written notice of appeal should tell what decision or interpretation the Zoning Administrator has made, when he or she made it and why it's wrong. The written notice doesn't need to be formal. All that's required is a simple statement.

The written notice of appeal must be filed with the County Clerk within 30 days after the date the person or agent appealing the decision or interpretation had actual or constructive notice of that decision or interpretation. 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. Anyone with standing concerned about a possible violation of the zoning rules should act promptly to protect his or her rights as soon as he or she learns facts suggesting that a violation has occurred.

### ***What happens next?***

An application must be received by the Zoning Administrator at least 30 days prior to the date of a Zoning Board of Adjustment meeting in order to be scheduled for such meeting. After the written notice of appeal is filed, a public hearing will be scheduled, usually on the first Tuesday of a month. Notice 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.

## ***The Public Hearing***

A majority of the Board of Adjustment members shall be required to overrule the Zoning Administrator's decision or interpretation that is being appealed.

The parties to an appeal that has been made may agree to mediation or other forms of alternative dispute resolution.

One of the members of the Board, usually its Chairman, will preside at the hearing. He or she alone makes rulings on all procedural matters, including evidentiary objections.

The principal purpose of the hearing is to allow all interested persons to present competent and relevant evidence. The Board seeks facts, not opinions. And those facts should have a direct bearing on the particular interpretation of the zoning rules they are being asked to make.

The presiding member typically begins the hearing with a preliminary statement describing the proceeding and the issues involved. He or she will then ask whether there is anyone present, other than the person or agent appealing and Zoning Administrator, who wants to speak or present evidence. Those who identify themselves, together with the Zoning Administrator and person or agent appealing, will then be put under oath.

The Zoning Administrator will normally begin the presentation of evidence, outlining the facts involved in the proceeding, providing the Board with pertinent evidence concerning the decision or interpretation appealed and explaining the reasons for that decision or interpretation.

The person or agent appealing will next present their evidence. The Board will then hear from anyone else who identified themselves at the beginning of the hearing and who wants to present evidence in support of the person appealing.

And the Board then will hear from anyone else who identified themselves at the beginning of the hearing and who wants to present evidence in support of the Zoning Administrator's position.

The person or agent appealing (and those who offered evidence in support of their position) will be permitted to offer further evidence in rebuttal.

Anyone presenting evidence will be subject to cross examination and to questioning by Board members.

Under the Board's rules, anyone expecting their views to be considered in an appeal must be present at the hearing, either in person or represented by a lawyer. Letters and petitions will not be accepted.

When all evidence has been heard, the Board will hear closing arguments from both sides. Closing argument provides an opportunity for you to show how and why the *evidence* offered at the hearing supports your interpretation of the zoning rules. Again, only the person or agent appealing, the Zoning Administrator and those who identified themselves at the beginning of the hearing will be permitted to participate in closing argument. Anyone making closing argument will be subject to questioning by the Board.

The Board then typically adjourns for a week or so to reflect on what has been heard. You will be notified of when and where to reconvene, usually by an announcement at the close of the hearing after closing argument.

When the Board reconvenes, they will discuss among themselves their views of the issues on appeal, adopt findings of fact and reach our conclusions and decision. These will be reduced to written decision several days later. That's when the decision actually becomes final. Anyone may be present for these deliberations, but normally there will be no additional input from the audience (although additional evidence and argument can be specifically authorized by the presiding member).

*Please do not try to speak directly with any member of the Board.* That's not permitted (except during the public hearing with everybody present). If you feel you must communicate with the Board (as, for example, to ask for a postponement), put it in writing and give it to Board's Secretary with copies to the person appealing, the Zoning Administrator, the landowner (if different from the person appealing) and anyone else you know to be opposed to your position.

Postponements will be sparingly granted and only for good cause. If you want a lawyer, please engage him or her promptly.

### ***What if my appeal is not approved?***

Any interested party dissatisfied with our written decision will have 30 days after that written decision becomes final to appeal to the Superior Court.