



## **ZONING VARIANCES IN POLK COUNTY**

Under the Polk County Zoning Ordinance, Section 10.6, a landowner may request a Variance from zoning restrictions when unnecessary hardships would result from strict enforcement of the Ordinance. To obtain a Variance, the landowner must make an application to the Polk County Board of Adjustment. This handout is designed to help guide landowners through the Variance process.

### ***What Does a Variance Do?***

A Variance allows a property owner to use property in a way that would not otherwise be allowable under the terms of the Zoning Ordinance. Variances serve as a safety valve that allows certain types of adjustments to be made when the rules fail to fit unanticipated situations.

### ***When can a Variance be granted?***

A Variance may be granted only when these four requirements are met:

1. Unnecessary hardship would result from the strict application of the Ordinance. It is not necessary for the landowner 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 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.

The Board does not have the authority to grant a Variance when to do so would 1) result in the extension of a nonconformity or 2) permit a land use, building or structure which is not permitted within the applicable zoning district.

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

The Zoning Administrator is responsible for interpreting and applying the conditions set forward in the Polk County Zoning Ordinance. The Polk County Board of Adjustment acts as zoning court to decide whether the requirements for a Variance have been met. The burden of proof lies with the applicant to make and prove their case.

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

- 1) talk to a Planning & Zoning staff member; they will assist you with the process;
- 2) obtain and fill out an application ; the application should include what the landowner wished to do with the property and any information that will help prove the use satisfies the four requirements;
- 3) pay a \$100 filing fee;
- 4) provide seven copies of a site plan which meets the requirements of the Zoning Administrator.

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

An application must be received by the Zoning Administrator at least 21 days prior to the next scheduled Board of Adjustment meeting - usually the first Tuesday of each month - in order to be placed on the agenda. After the written application is filed, a public hearing is scheduled. The Board of Adjustment

Secretary will mail written notice to the landowner and all adjacent property owners and post notice on the site. This notice will state the time and place of the hearing.

### ***The Public Hearing***

The purpose of the hearing is to allow everyone with an interest in the Variance to present *competent and relevant evidence*. The Board is searching for *facts*, not opinions.

Anyone who wishes to speak at the hearing must identify themselves and be sworn in. Anyone expecting their views to be considered must be present at the hearing, or represented by an attorney. Letters and petitions will not be accepted.

Either four or five members of the Board must be present at the meeting. A Variance requires a super majority of at least four votes to approve. A simple majority decision of the members present is not sufficient.

The Board Chair will preside over the hearing. He or she alone makes rulings on all *procedural* matters, including evidentiary objections.

The Zoning Administrator typically presents preliminary evidence in the case, providing the Board with evidence concerning the Variance application. The applicant then presents evidence, witnesses and/or experts, followed by anyone else who has been sworn in and wishes to present evidence of behalf of the applicant. Anyone presenting evidence may be cross-examined and questioned by Board members. Following the Board questioning, anyone in opposition to the Variance who has been duly sworn in may present evidence.

After all evidence has been heard, the Board will hear closing arguments from all sides. Closing arguments provide an opportunity for the applicant to summarize how the evidence supports their position.

The Board typically reconvenes in one to two weeks. The Board will discuss their findings and reach a conclusion. Anyone may be present for this open deliberation, but no input from the audience is generally allowed.

A written decision is submitted a few days later and mailed to the applicant and others requesting copies of

the written decision. At that point, the Board's decision is final.

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

Applicants and other interested parties have 30 days following the final written decision to file an appeal with Superior Court.

### ***How long does the Variance Application Process Take?***

The process can take anywhere from two to three months.