

CONDITIONAL USE PERMITS IN POLK COUNTY

Under the Polk County Zoning Ordinance, some kinds of land uses are called “conditional uses”. Conditional uses on zoned land are allowed only if the landowner applies for and obtains a conditional use permit from the Polk County Zoning Board of Adjustment. We on the Board have prepared this guide to explain the conditional use permitting process.

When a landowner applies for a conditional use permit, our Board acts as a zoning court, deciding whether the conditional use requirements have been met based on evidence offered at a public hearing.

In reaching our decision, we do not set the requirements for a conditional use. The County Commissioners do that, with the assistance of the Polk County Planning Board. The requirements are contained in the Polk County Zoning Ordinance. We simply interpret and apply them.

Under the Polk County Zoning Ordinance, four requirements must be met:

- (1) the proposed conditional use must fulfill the statement of district intent contained in the Polk County Zoning Ordinance for the zoning district in which the land is located;
- (2) the proposed use must not endanger the public health and safety;
- (3) it must not substantially injure surrounding property values; and
- (4) it must be in harmony with the surrounding area.

You can obtain a copy of the Polk County Zoning Ordinance from Mrs. Beth Fehrmann, the Board’s Secretary, for a nominal charge.¹ She is located in the County Manager’s office in the Womack Building, and can be reached at (828) 894-3301 (Ext. 8).

In hearing an application for a conditional use permit, we must follow our own procedural rules.² You can also obtain a copy of these procedural rules from Mrs. Fehrmann for a nominal charge.

Under our procedural rules, a landowner wanting to obtain a conditional use permit must file a written application with Ms. Fehrmann (and pay a \$100 filing fee). The written application should explain just what the landowner wants to do with the property and, if the landowner wishes, can include any

information that might be helpful in our consideration whether that use satisfies the four requirements. The written application doesn’t need to be formal. All that’s required is a simple statement. The Zoning Administrator or Mrs. Fehrmann can help prepare it.

After the written application is filed, we will schedule a public hearing, usually on the first Tuesday of a month. Mrs. Fehrmann will mail a written notice to the landowner and to the neighbors owning the properties surrounding the land for which a conditional use permit is sought. This notice will state the time and place the hearing will be held. Frequently the notice will be accompanied by a set of written questions we on the Board believe should be answered at the hearing.

Either four or five members of the Board will be present at the hearing. This is because it takes at least four votes to approve a conditional use permit. A 3-to-1 or a 3-to-2 decision to approve is not enough; there must be a minimum of four votes.

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 everyone having an interest in the conditional use permit application to present *competent and relevant evidence*. We seek *facts*, not opinions. And those *facts* should have a direct bearing on whether the four requirements for a conditional use permit are met.

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 land owner seeking the conditional use permit and Zoning Administrator, who wants to speak or present evidence. Those who identify themselves, together with the Zoning Administrator and landowner, 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 conditional use application

¹ The Zoning Ordinance is also posted on the County’s internet website (<http://www.polknc.org/newordinances/zoningordinance/pdf>).

² Our procedural rules are also posted on the County’s internet website (<http://www.polknc.org/documents/quasijudicialrules.doc>).

and making a recommendation for Board action on the application.

The landowner seeking the conditional use permit will next be permitted to present his or her evidence. We'll then hear from anyone else who identified himself or herself at the beginning of the hearing and who wants to present evidence in support of the landowner.

And we'll hear from anyone else who identified himself or herself at the beginning of the hearing and who wants to present evidence in opposition to the conditional use permit application.

The landowner (and those who offered evidence in support of his or her 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.

Also, under the Board's rules, anyone expecting his or her 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.

One note about property values: The presence or absence of injury to surrounding property values should be established by the testimony of a disinterested real estate professional (such as a realtor, appraiser, etc.) or by showing specific *facts* from which the Board can properly infer the presence or absence of such an injury. General "off the cuff" lay opinions simply concluding there will or will not be an injury to surrounding property values are not sufficient.

When all evidence has been heard, we'll hear closing arguments from all sides. Closing argument provides an opportunity for you to show us how and why the *evidence* offered at the hearing supports your position on the conditional use permit application. Again, only the landowner, 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.

We then typically adjourn for a week or so to consider the evidence we've heard. We'll let hearing participants know when and where we'll reconvene, usually by an announcement at the close of the hearing.

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

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

We intend to make decisions based on the merits, not on procedural or evidentiary technicalities. While anyone is entitled to a lawyer, a lawyer is not required. We try to ensure that no one is prejudiced by not having a lawyer.

Any question you have about the appeal process should be addressed to Mrs. Fehrmann or the Zoning Administrator, who is also located in the County Manager's office and can also be reached at (828) 894-3301 (Ext. 8).

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 your communication in writing and give it to Mrs. Fehrmann, with copies to the Zoning Administrator, the land owner and anyone else 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.

We hope this information proves helpful to you in understanding the conditional use application permitting process.

THE POLK COUNTY ZONING BOARD OF ADJUSTMENT

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