

**Polk County Zoning 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.

Rule 2. Governing Authority. The Board is bound by the provisions of N.C. Gen. Stat. §153A-345, applicable ordinances and the General Rules of the Polk County Zoning Board of Adjustment. 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 3. Powers. The Board has the power to hear and decide all proceedings arising under the terms of an applicable ordinance to the extent, but only to the extent, lawfully provided in that ordinance and in any governing statute pursuant to which that ordinance was adopted.

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.

**B. Purpose and Objectives**

Rule 5. 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 6. 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 6 (d) below.

(d) To base all decisions on competent 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 and 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 7. Chairman. The Chairman shall be selected in the manner provided in the General Rules and shall have the following duties and responsibilities:

(a) Scheduling and Conducting Proceedings. The Chairman 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 Chairman shall be solely responsible for ruling on nondispositive questions of procedure<sup>1</sup> and admissibility of evidence, but with due regard for implementing the objectives of the Board set forth in Rule 6(c) above.

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

Rule 8. Vice Chairman. The Vice Chairman shall be selected in the manner provided in the General Rules and shall be responsible for conducting all duties and responsibilities of the Chairman relating to a proceeding in the Chairman's absence.

Rule 9. Clerk. The Clerk shall be selected in the manner provided in the General Rules and shall, in conjunction with the Secretary, be responsible for compiling an appropriate record of all proceedings, and in conjunction with the Chairman, be responsible for formulating the written decision of the Board.

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

(a) Minutes. The Secretary 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.

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<sup>1</sup> Nondispositive 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.

(b) Maintain Records. The Secretary 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 Secretary shall be responsible for all correspondence and notices required by these rules, the applicable ordinance and any governing statute.

(d) Written Decisions. The Secretary shall be responsible for delivering a copy of the Board's written decision to the appropriate administrator, the Petitioner and to every other person who has filed a written request for such a copy with the Secretary.

## **D. Appeals**

Rule 11. Time Limit. Any appeal of any decision of the Zoning Administrator under The Zoning Ordinance of Polk County, North Carolina, of any decision of the ordinance administrator under the Junkyard Ordinance [of] Polk County and of any decision by the appropriate administrator under any other applicable ordinance vesting this Board with authority to specify the time within which an appeal may be taken, shall be taken by filing with the appropriate administrator and with the Secretary a written notice of appeal specifying the grounds for the appeal. The notice of appeal shall be filed no later than 30 days after the person appealing the decision has actual or constructive notice<sup>2</sup> of that decision.

If the person appealing a decision is found not to have standing to appeal after filing a timely notice of appeal, then the dismissal of the appeal for lack of standing shall be without prejudice to reinstate the appeal by filing a renewed notice of appeal within 30 days after any fact conferring standing has first occurred.<sup>3</sup>

Any appeal of any decision of the Building Inspector under the Polk County Sign Ordinance, or of any decision of the appropriate administrator under any other applicable

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<sup>2</sup> Constructive notice is any set of facts and circumstances that would fairly suggest to a reasonable person that a decision has been made. For example, commencement of construction of a building that is visible from off site normally serves as constructive notice to neighboring landowners that the Zoning Administrator has issued a zoning compliance permit determining that the building and its stated use will be in compliance with applicable zoning requirements. Under the constructive notice principle, neighboring landowners are deemed to know whatever a reading of the zoning compliance permit, and any related building permit, would reveal.

<sup>3</sup> For example, under North Carolina case law, a neighboring landowner has standing to appeal the Zoning Administrator's decision only if he or she can show that the Zoning Administrator decision appealed has caused some special damage, distinct from the rest of the community, amounting to a reduction in the value of his or her property. It is possible that that special damage may not occur until after the time for the original appeal has run.

ordinance specifying the time within which an appeal may be taken, shall be taken within the time so specified.<sup>4</sup>

*WARNING: Even though the notice of appeal is filed within the time specified, an appeal might still be barred in some circumstances by unreasonable delay. To protect their interests, persons seeking to appeal a decision should act promptly upon learning facts that suggest a right to appeal might exist.*

Rule 12. Presumption of Correctness. The adverse decision from which the petitioner is appealing shall be presumed to be correct. The burden of proving that the decision was incorrect shall be upon the petitioner.

### **E. Conducting a Proceeding**

Rule 13. 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 14. Scheduling Proceedings. Proceedings normally will be scheduled to commence and be held at a regular monthly meeting of the Board.<sup>5</sup> 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 Chairman, 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 Chairman. Due regard will be given primarily to the availability and convenience of the Board, the Secretary 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 representatives or lawyers).

Rule 15. Notice of Proceedings. Written notice of the date, time and place upon which a proceeding shall initially commence shall be mailed or hand delivered by the Secretary to the appropriate administrator, the petitioner and all other persons to whom the applicable ordinance or any governing statute requires notice be given at least 10 calendar days before the date upon which the proceeding shall initially commence and shall be posted on the bulletin board in the lobby of the Womack Building at the time it is so mailed or delivered. If a proceeding, once commenced, is recessed for any reason and is to be continued, notice of the date, time and place at which the proceeding is to be continued shall be given as follows:

(a) by oral announcement by the Chairman at the time the proceeding is recessed of the date, time and place it will be continued, or

(b) by written notice of the date, time and place it will be continued that is mailed or hand or electronically delivered by the Secretary to the appropriate administrator, the petitioner and all other persons to whom N.C. Gen. Stat. §143-318.12(b)(1) requires notice be given<sup>6</sup> at least 48 hours before the date and time upon which the proceeding is

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<sup>4</sup> Section 6.3 of the Polk County Sign Ordinance prescribes that “Violation Notices and Remove Orders issued by the Building Inspector may be appealed to the Polk County Zoning Board of Adjustment within thirty (30) days of receipt thereof.”

<sup>5</sup> 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.

<sup>6</sup> N.C. Gen. Stat. §143-318.12(b)(2) requires that written notice “to be mailed or delivered to each newspaper, wire service, radio station, and television station, which has filed a written request for notice with [the Secretary and] any

to be continued, and by posting a copy of that notice on the bulletin board in the lobby of the Womack Building at the time it is so mailed or delivered.

Rule 16. Personal Attendance. The petitioner, opponents, and other interested parties (or their representatives or lawyers) should appear in person at the proceeding if they expect their views to be considered. Unverified written statements and petitions will not be accepted in evidence. The Chairman may admit verified written statements into evidence, but only in those circumstances where he or she finds the need to do so compelling and the facts set forth therein not substantially in dispute.

Rule 17. Subpoenas. The Chairman shall have authority to subpoena witnesses and compel the production the production of evidence in any proceeding:

(a) upon his or her own initiative,

(b) upon written or oral request of any other Board member participating in that proceeding, or

(c) upon the written request of the appropriate administrator, or any petitioner, opponent or other interested party participating in that proceeding, for good cause shown in that written request.

Rule 18. 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 Rule 6(c) above.

Rule 19. 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 6(c) 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 20. Dispositive Procedural Questions. The Board shall by the concurring vote of at least four members (unless a smaller number is permitted by N.C. Gen. Stat. §153A-345(e)) render a decision on all dispositive questions of procedure.<sup>7</sup>

Rule 21. 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 22. Conduct of Proceedings. Proceedings will be conducted as follows:

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person, in addition to the representatives of the media listed above, who has filed a written request with the [Secretary].”

<sup>7</sup> 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 7(b) above concerning nondispositive questions of procedure.

(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 Chairman.

(b) All witnesses shall be placed under oath by the Chairman. Each witness shall be subject to cross-examination by the appropriate administrator, applicant, opponents or other interested parties, as the case may be, and to interrogation by members of the Board.

(c) The Board, acting by and through the Chairman, 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 at least four members (unless a smaller number is permitted by N.C. Gen. Stat. §153A-345(e)). 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 at least four members (unless a smaller number is permitted by N.C. Gen. Stat. §153A-345(e)) 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 at least four members (unless a smaller number is permitted by N.C. Gen. Stat. §153A-345(e)) render an oral decision. However, that oral decision, as well as the findings of fact and conclusions made pursuant to Rules 22(d) and 22(e) above, remain subject to modification as provided in Rule 22(g)(2) below and will become final only when the Board's written decision has been duly entered as provided in Rule 24(a) below.

(g) Notwithstanding the above:

(1) the record in any proceeding remains open for the receipt of additional evidence until the Board's written decision has been duly entered as provided in Rule 24(a) below, but additional evidence will be admitted after the Board begins its deliberations only if and to the extent the Chairman so determines for good cause shown upon written motion,<sup>8</sup> and

(2) findings of fact, conclusions and the oral decision in any proceeding remain subject to modification until the Board's written decision has been duly entered as provided in Rule 24(a) below, but material modifications will be made after the Board has orally announced a decision in open meeting only if and to the extent the Chairman so determines for good cause shown.

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<sup>8</sup> Generally, "good cause" can be established only by showing that there is newly discovered evidence that is material to the proceeding and that could not, with reasonable diligence, have been discovered and offered at the initial evidentiary hearing by the party making the written motion. However, the Chairman has discretion to determine that "good cause" can be shown in other compelling circumstances.

Should the Chairman determine to admit additional evidence pursuant to Rule 22(g)(1), or allow possible modifications to previously made findings of fact, conclusions and an oral decision pursuant to Rule 22(g)(2), notice of a resumed open meeting for that purpose shall be given by the Secretary in accordance with Rule 15 above.

Rule 23. Copies of Legal Authorities To Be Provided. Where an appropriate administrator, applicant, opponent or other interested party (or his, her or its lawyer or representative) 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 24. Decisions.

(a) Written Decision Required. The Board shall enter a written decision in all proceedings within forty-five (45) days following the date upon which the Board last closes the public hearing. 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 24(c) below.

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 without complying with the requirements of Rule 22(g)(2) above.

(b) Supplements to Written Decision. Any member of the Board participating in a proceeding may submit a supplement to the written decision to the Secretary 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. The written decision will be deemed to have been entered for purposes of these rules only when signed and dated by the Chairman and delivered by him or her to the Secretary.

(d) Delivery of Written Decision. The Secretary shall deliver a copy of the written decision to the applicable Administrator, to the petitioner and to every other person who has filed a written request for such a copy with the Secretary.

## F. Rules of Conduct for Members

Rule 25. Personal or Financial Interest. No member of the Board shall participate or vote in any proceeding in a manner that would violate affected persons' constitutional rights to an impartial decisionmaker. Impermissible 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 association with an affected person, or a financial interest in the outcome of the matter.

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 Chairman and Secretary 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 26. 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 other representatives, before the proceeding is finally determined, provided, however, that the Chairman 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 or other representatives, 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 Secretary 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 Secretary for public

disclosure to anyone requesting it.

Rule 27. 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.

### **G. Miscellaneous Matters**

Rule 28. 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 Chairman. On receiving that notification, the Chairman 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.