

ZONING APPEALS IN POLK COUNTY

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. We on the Polk County Zoning Board of Adjustment have prepared this guide to help you understand the appeal process.

In an appeal, our 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 our decision, we do not and cannot decide what we think the zoning rules ought to be. We do not make those rules; the County Commissioners do that, with the assistance of the Polk County Planning Board. We simply interpret and apply them.

The zoning rules that we interpret are contained in the Polk County Zoning Ordinance. You can obtain a copy of this 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. In hearing an appeal, we must also follow our own procedural rules. You can also obtain a copy of these procedural rules from Mrs. Fehrmann for a nominal charge.²

Under our procedural rules, a person wanting to appeal a decision or interpretation made by the Zoning Administrator must file a written notice of appeal with Mrs. Fehrmann (and pay a \$100 filing fee). The written notice of appeal should tell us 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. Mrs. Fehrmann can help you prepare it.

The written notice of appeal must be filed with Mrs. Fehrmann within 30 days after the date the person appealing the decision or interpretation had actual or constructive notice of that decision or interpretation. A person has constructive notice when he or she knows facts that would fairly suggest to a reasonable person that the Zoning Administrator has made a decision or interpretation. 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. However, even though the written notice is filed within the time specified, an appeal can still be barred in some circumstances by unreasonable delay. Anyone 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

After the written notice of appeal 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 person appealing, to the owner of the land affected by the Zoning Administrator's decision or interpretation (if different from the person appealing) and to the surrounding landowners. 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 think 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 overrule the Zoning Administrator's decision or interpretation that is being appealed. A 3-to-1 or a 3-to-2 decision to overrule is not enough; there must be a minimum of four votes to overrule the Zoning Administrator.

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*. We seek *facts*, not opinions. And those *facts* should have a direct bearing on the particular interpretation of the zoning rules we 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

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>).

then ask whether there is anyone present, other than the person appealing and Zoning Administrator, who wants to speak or present evidence. Those who identify themselves, together with the Zoning Administrator and person 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 appealing will next 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 person appealing.

And 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 Zoning Administrator's position.

The person appealing (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.

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.

When all evidence has been heard, we'll hear closing arguments from both sides. Closing argument provides an opportunity for you to show us how and why the *evidence* offered at the hearing supports your interpretation of the zoning rules. Again, only the person 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.

We then typically adjourn for a week or so to reflect on what we've heard. We'll let you know when and where we'll reconvene, usually by an announcement at the close of the hearing after closing argument.

When we reconvene, we will discuss among ourselves our 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 our 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).

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 want to emphasize that it's our goal to make decisions based on the merits of an appeal, not on procedural or evidentiary technicalities. While anyone is entitled to a lawyer, a lawyer is not required. When someone is not represented by a lawyer, we will try to be sure that he or she is not prejudiced by the lack of 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 it in writing and give it to Mrs. Fehrmann, 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, by the way, will be sparingly granted and only for good cause. If you want a lawyer, please engage him or her promptly.

We hope this will prove helpful to you in understanding the zoning appeal process.

THE POLK COUNTY ZONING BOARD OF
ADJUSTMENT

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