

ZONING VARIANCES IN POLK COUNTY

Under the Polk County Zoning Ordinance, a landowner can seek a variance from zoning restrictions on his or her property in some limited hardship circumstances. To obtain the variance, the landowner must make an application to the Polk County Zoning Board of Adjustment. We on the Board have prepared this guide to explain the zoning variance process.

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

In reaching our decision, we do not set the requirements for a variance. 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.

In general, a variance will be granted only when it will not be contrary to the public interest and only when, owing to special conditions, a literal enforcement of the Polk County Zoning Ordinance will result in practical difficulty or unnecessary hardship. The Board must be satisfied that the spirit of the ordinance is observed, the public safety and welfare are secured and substantial justice done.

More specifically, six rather strict requirements must be met:

(1) The special circumstances leading to the variance application must result from extraordinary and exceptional conditions pertaining to the property because of its size, shape or topography that are not characteristic of other properties in the same zoning district.

(2) A literal interpretation of the ordinance must deprive the landowner of rights commonly enjoyed by other residents in the same zoning district.

(3) The variance, if granted, must be in harmony with the purpose and intent of the ordinance and must not be injurious to the neighborhood or to the general welfare.

(4) The special circumstances leading to the variance application must not be the result of the landowner's own conduct.

(5) The variance requested must be the minimum variance that will make possible the legal use of the property.

(6) The variance must not involve a *use* of the property that is not a permitted or conditionally permitted use in the same zoning district.

You can obtain a copy of the Polk County Zoning 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 variance, 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 landowner wanting to obtain a variance must file a written application with Mrs. 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 the requirements for a variance have been met. 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 variance 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 variance. 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 variance application to present *competent and relevant evidence*. We seek *facts*, not opinions. And those *facts* should have a direct bearing on whether the six specific requirements for a variance have been met.

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

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

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 landowner seeking the variance and Zoning Administrator, who wants to speak or present evidence. Those who identify themselves, together with the Zoning Administrator and the 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 variance request and making a recommendation for Board action on the variance request.

The landowner seeking the variance 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 then we'll hear from anyone else who identified himself or herself at the beginning of the hearing who wants to present evidence in opposition to the variance 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.

Under the Board's rules, anyone expecting his or her views to be considered 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 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 variance 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 the 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 additional 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 variance 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 landowner and anyone 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.

We hope this information proves helpful to you in understanding the variance application process.

THE POLK COUNTY ZONING BOARD OF ADJUSTMENT

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