



ZONING APPEALS IN POLK COUNTY

Under the Polk County Zoning Ordinance, Section 10.4, any person who has standing may appeal an administrative decision to the Board of Adjustment. This handout is designed to help guide the process. This document is an overview; the specific requirements are contained in the Polk County Zoning Ordinance and Rules of Procedure for Quasi-Judicial Proceedings.

When can an Appeal be processed?

Section 10.4 of the Polk County Zoning Ordinance requires:

- 1) the Board may only hear actual cases where a staff decision (determination) has been issued;
- 2) only the persons with standing can appeal actual or constructive notice of the decision (refer to Section 10.4.3 and 10.4.4);
- 3) the appeal must be filed within 30 days from receipt of the written notice of determination.

Who decides whether to reverse or affirm decision?

The five-member Polk County Board of Adjustment is responsible for interpreting and applying the conditions set forward in the Polk County Zoning Ordinance. They will conduct a public hearing to hear evidence and ultimately decide whether to reverse or affirm the decision.

How do I begin the process?

- 1) talk to a Planning & Zoning staff member; they will assist you with the process;
- 2) a completed Appeal Application must be filled out 30 days prior to the Appeal

Hearing; the application should include any information that will help prove the determination was made in error;

- 3) provide seven copies of site information and determination letter/notice.

What happens next?

An application must be received by the Zoning Administrator at least 30 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. Once the Zoning Administrator is in receipt of a complete application and seven copies of site information and determination letter/notice, a public hearing is scheduled. The Board of Adjustment Secretary will mail written notice to the landowner and all adjacent property owners, as well as posting a sign with notice of hearing at the site for appeal. This notice will state the time and place of the hearing. No communication with Board of Adjustment members is allowed prior to the hearing.

The Public Hearing

The purpose of the hearing is to allow everyone with an interest in the Appeal application to present *competent and relevant evidence*. The Board is searching for *facts*, not opinions. The burden of proof lies with the applicant to provide evidence to support their case. Anyone wishing to speak at the hearing must identify themselves and be sworn in at the beginning of the hearing. 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. 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 Appeal application. The applicant then presents evidence, followed by anyone else who has been sworn in and wishes to present evidence on 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 proposed Appeal 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.

They 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.

After the public hearing and consideration of the record, the Board will take action on the application, either reverse or affirm, wholly or partly, or may modify the decision appealed. A majority of the Board members must vote to reverse the Administrative decision. A written decision is submitted a few days later and mailed to the applicant and others requesting the written decision. At that point, the Board's decision is final.

What if the decision is not reversed?

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

How long does the Appeal Application Process Take?

The process can take anywhere from two to three months.

Do other ordinances apply to this reference sheet?

This handout is an overview, and the general information can be applied to other ordinances.