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PLANNING AND ZONING ESSENTIALS

TOWN LAW REVIEW
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RULES OF PROCEDURE

Written rules and procedures are important because they facilitate the conduct of public entities and reduce the risk of mishandling important matters.

Bylaws typically cover issues like the place and time of meetings, the order of business, parliamentary rules governing procedure, and minutes.

A. Agendas

Bylaws should establish an order of business and a process for placing items on an agenda. One example is:

- Call to Order
- Roll Call
- Approval of minutes from previous meeting
- Unfinished business
- New business
- Adjournment

B. Parliamentary Procedure

Parliamentary procedure is a system of rules which aid in transacting business. The rules are designed to preserve order, expedite business, and protect the rights of those involved in making decisions. The chairperson, as presiding officer, is responsible for guarding against abuse of the procedures. The effective use of parliamentary procedures is the joint responsibility of the chairperson and all members of the board or planning commission.

The rules of parliamentary procedure apply to the board or planning commission proceedings only if the bylaws adopt the procedures. Given the size and makeup of most boards and planning commissions, it is not recommended *Roberts Rules of Order* or other similar rules be fully adopted. *The New Roberts Rules of Order, Revised* is designed for meetings of large bodies.

C. Motions

Public entities conduct their business through motions made by members. The following are the typical steps to make and act upon a motion:

- A member of the Planning Commission or Board of Adjustment addresses the chairperson.
- The chairperson recognizes the member.
- The member states his or her motion (“I move”).
- Another member then seconds the motion (“I second the motion.”).
- The chairperson repeats the motion and invites discussion.
- Chairperson asks for a vote (in favor, against).

ROLE OF THE CHAIRPERSON

The chairperson has the responsibility of conducting the public hearing. He or she should explain the procedure to be followed before the meeting begins. People should know when they will be allowed to participate and the rules of conduct.

Order must also be established at the beginning of the hearing. The chairperson should explain the hearing is a formal procedure; everyone will be given an opportunity to participate; and comments should be germane and concise.

If many people share the same viewpoint, the chairperson should encourage the appointment of a spokesperson to avoid repetitive testimony. The chairperson should also announce any time limits for presentations.

HEARING PROCEDURE

A. Staff Presentation

Planning staff should identify the documents which are included in the record; identify the subject property; describe the nature of the application; present the zoning and planning issues; and explain the action to be taken by the planning commission, board of adjustment or town board.

The commissioners or board members should ask the staff questions to ensure they fully understand the information presented.

B. Applicant’s Presentation

In this portion of the hearing, the applicant has the opportunity to present his or her case. The applicant can present factual information demonstrating the proposal’s compliance with the township’s comprehensive plan and zoning ordinance standards.

The applicant may also respond to issues raised during the staff presentation or in staff reports. Remember, the burden is on the applicant to demonstrate compliance with all standards.

The planning commission, board of adjustment or town board should use this time to question the applicant regarding the proposal.

C. Statements from the Public

The chairperson should ask for statements from the public regarding the application. To ensure the record of the proceeding is clear, the chairperson should instruct members of the public to state their name and address.

Even though large crowds against a proposal may be intimidating, the chairperson must ensure an opportunity for those who wish to speak in favor of the proposal.

The chairperson should encourage people to present factual evidence for public consideration. Defamatory and untrue statements should be discouraged.

D. Concluding the Public Hearing

After all evidence has been received and everyone has been given an opportunity to be heard, the public hearing should be concluded.

The planning commission, board of adjustment or town board should then discuss the proposal. This may include asking the applicant or staff follow-up questions.

It should be remembered that for purposes of the open meeting law, a meeting is still being held and the discussions must be open to the public.

E. Board Action

The committee or board hearing the action and after discussing the proposal must make a decision to approve, deny or continue for further discussion (assuming there is adequate time to render a decision under Minnesota Statutes §15.99).

OPEN MEETING LAW CONSIDERATIONS

Purpose: The open meeting law serves three purposes:

- (1) "to prohibit actions being taken at a secret meeting where it is impossible for the interested public to become fully informed concerning

[public bodies'] decisions or to detect improper influences"; (2) "to assure the public's right to be informed"; and (3) "to afford the public an opportunity to present its views to the [public body]." *St. Cloud Newspapers, Inc. v. Dist. 742 Cmty. Schs.*, 332 N.W.2d 1, 4 (Minn. 1983)(citations omitted).

These purposes are deeply rooted in the fundamental proposition that a well-informed populace is essential to the vitality of our democratic form of government. Because the open meeting law was enacted for the public benefit, it is construed in favor of public access.

What is and is not a meeting? Minnesota Statutes § 13D.01, subd. 1 simply says all meetings must be open to the public. Minnesota courts have determined the Minnesota open meeting law applies to any gathering or "meeting" of a quorum or more of public officials where the members discuss, decide or retrieve information as a group on issues related to the official business of the public body.

Penalties for Violations: Any person who intentionally violates the open meeting law is subject to personal liability in the form of a civil penalty of up to \$300 for a single occurrence. The public body may not pay the penalty.

The court may also award reasonable costs, disbursements, and attorney fees of up to \$13,000 to any party in an action alleging a violation of the open meeting law. The court may award costs and attorney fees to a defendant only if the action is found to be frivolous and without merit. A public body may pay any costs, disbursements, or attorney fees incurred by or awarded against any of its members.

Printed Materials: Minnesota Statutes § 13D.01, subd. 6 requires that the public must have access to at least one copy of the printed materials provided to the council for public inspection. This includes memos, e-mails, and other documents considered with the application. This does not apply to classified materials.

Public Meetings: The public is entitled to notice of hearings, but not participation, unless there is a public hearing. The public must be able to hear and see the discussion of the governing body. The body determines whether, when, and how long the public is allowed to speak at a meeting.

Public Notice: Minnesota Statutes § 13D.015, subd. 5 requires a public notice must be provided for meetings of a public body subject to the open meeting law. Public bodies must carefully follow the specific notice requirements for each particular type of meeting

Notice must include:

- Regular meeting location
- That some members may participate by phone or electronically
- Remote monitoring requirements for the public

A schedule of regular meetings is to be kept on file.

The same notice required for a special meeting must be given when a regular meeting occurs at a different time or place than what is stated in the schedule of regular meetings.

Notice of the date, time, place and purpose of special meetings must be given three (3) days before the date of the meeting.

Emergency meetings (requiring immediate consideration on a matter) may be held upon good faith efforts to provide notice, including the subject of the meeting, to each medium that has filed a written request for notice.

Notice requirements also apply to closed meetings.

State law sets forth the notice requirements for public hearings involving conditional use permits and variances. This includes requirements regarding published notice, notice to neighbors, etc.

The notice must identify the general purpose of the hearing. They do not require the specific details of the proposal be disclosed.

Site Inspection Exemption: Minnesota Statutes § 366.01, Subd. 11 provides:

Chapter 13D does not apply to a gathering of town board members to perform on-site inspections, if the town has no employees or other staff able to perform the inspections and the town board is acting essentially in a staff capacity. The town board shall make good faith efforts to provide notice of the inspections to each news medium that has filed a written request for notice if the request includes the news medium's telephone number. The notice shall be given by telephone or by any other method used to notify the members of the public body.

THE RECORD

The record consists of that evidence considered by the municipality when making the permit decision. *Swanson v. City of Bloomington*, 421 N.W.2d 307 (Minn. 1988).

The record includes all documents that come before the Board or Council as a part of "the file", including minutes, reports, letters, applications, other submittals and findings.

The record may also include documents not physically submitted at the hearing on an application if the documents were referred to or testified to at the hearing and had been received by the decision-maker previously.

Documents reflecting the historical designation, regulation and character of the property, including photographs, are part of the record even if they were not presented to the decision-making body.

Observations at a site visit are part of the record if they are reduced to some sort of writing. For example, a board member's shared observations of what they saw of a property are often reflected in minutes.

In almost all cases, an adequate record precludes the applicant from introducing new data during an appeal of the municipality's decision.

During judicial review, a court will review the "record," and determine whether the decision of the board was reasonable in light of record evidence.

THE IMPORTANCE OF THE RECORD

The general standard of judicial review in zoning matters is whether the zoning authority's action was reasonable. Substantial deference is given to the decisions of municipalities in zoning matters.

It is not the province of the court to substitute its judgment for that of the municipality, but merely to determine whether the body was within its jurisdiction, was not mistaken as to the applicable law, and did not act arbitrarily, oppressively or unreasonably, and to determine whether the evidence could reasonably support or justify the determination.

THE PUBLIC HEARING

Under state and federal law the right to due process means the right to notice and an opportunity to be heard. The right to procedural due process does not

normally include the right to cross examine witnesses. The right to procedural due process can be analogized to a right to a fundamentally fair process. Time limits are fine.

BIAS / PREJUDGMENT

The test for determining whether a decision maker is unbiased is whether the decision maker's situation could tempt "the average man" as a judge to forget the burden of proof required to rule against an alleged violator. *In re Khan*, 804 N.W.2d 132 (Minn. App. 2011) (Kahn failed to show that a three year contract with the city to provide hearing officer services would tempt an average judge to forget burden of proof and rule in favor of city.)

If prejudice/bias is established, the court can invalidate a decision. *See Continental Property Group v. Minneapolis*, 2011 WL 1642510 (Minn. App. 2011); *Living Word Bible Camp v. County of Itasca*, 2012 WL 4052868 (Minn. App. 2012).

FINDINGS OF FACT

"Findings of fact" is a common term used to refer to a board's written explanation of a land use decision. Findings of fact are necessary to support a decision. Findings of fact apply the facts in the record to the standards set forth in the ordinance. Findings are your written reasons why a permit should be granted or denied. It important you follow your Ordinance requirements for findings. *See, e.g., Bio Wood Processing, LLC v. Rice Cty. Bd. of Comm'rs* (remanding denial of an application for an amended conditional use permit to correct a procedural defect).

NEIGHBORHOOD OPPOSITION

The saying "neighborhood opposition itself is not enough to justify the denial of a permit" is shorthand for a more nuanced principle. Neighbors can and often do have information pertinent to the decision being made.

"Concrete information" from neighbors can be pertinent and relied upon. This means observations concerning personal experiences regarding current conditions capable of being observed by average citizens are the type of information courts say is "concrete" and capable of being relied upon by decision-makers. Generalized statements reflecting speculative fears of future occurrences, and statements not within the realm of the person's personal knowledge, are not "concrete." They are the type of "neighborhood opposition" that cannot be relied upon.

Comments by the board or commission, if relied upon, must also have a factual basis.

VARIANCES

Minnesota Statutes § 462.357, Subd. 6 provides:

Variations shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variations are consistent with the comprehensive plan.

Variations may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.

The board of adjustment may impose conditions in the granting of variations. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

Applicant Must Satisfy ALL Criteria: The applicant has the burden to demonstrate he or she satisfies all of the statutory criteria to be entitled to a variance.

Use Variations Prohibited: A use variance permits a use or development of the land in a manner other than that prescribed by zoning regulations. *In re Stadsvold*, 754 N.W.2d 323, 329 (Minn. 2008).

Conditions: A condition must be directly related to and must bear a rough proportionality to the impact created by the variance. But, you cannot require the removal of a legal nonconforming structure as a condition. *See* Minn. Stat. § 117.184. Requiring the removal of a legal nonconforming use as a condition for the

issuance of a variance constitutes a taking and is prohibited without the payment of just compensation.

Sample Conditions:

- That the applicant undertake the project according to the plans and specifications submitted to the town with the application.
- That the variance is invalid, or expires, if the holder has not substantially completed the building within [insert period of time] of the granting of the permit.
- That the variance will be periodically reviewed by the town to assure compliance with the permit and permit conditions.
- That the town may enter onto the premises at reasonable times and in a reasonable manner to insure the variance holder is in compliance with the conditions and all other applicable statutes, rules and ordinances.

Conditions to Avoid:

- Removal of Nonconformity
- No further variances will be granted for a property

Additional After-the-Fact Variance Considerations:

- Did the applicant act in good faith and attempt to comply with the ordinance?
- Did the applicant make a substantial investment?
- Is the construction completed?
- Are there similar structures in the area?
- Are the town's benefits outweighed by the applicant's burden if the applicant were required to comply with the ordinance?

Use of Checklists are Allowed: Attached are some sample checklists that can be used to facilitate consideration of all the variance criteria and create findings to support your decision.

Consistency / Equal Protection Considerations:

A zoning ordinance must operate uniformly on those similarly situated. The equal protection clauses of the Minnesota Constitution and of the Fourteenth Amendment of the United States Constitution require that "one applicant not be

preferred over another for reasons unexpressed or unrelated to the health, welfare, or safety of the community or any other particular and permissible standards or conditions imposed by the relevant zoning ordinances." *Nw. Coll. v. City of Arden Hills*, 281 N.W.2d 865, 869 (Minn. 1979).

If a township finds it is issuing many variances to a particular standard, then it may wish to consider amending the ordinance to change the standard. In other words, if a township is consistently allowing landowners to break a particular rule, perhaps the need for the rule should be revisited.

CONDITIONAL USE PERMITS (CUPs)

Conditional uses may be approved by the governing body or other designated authority by a showing by the applicant that the standards and criteria stated in the ordinance will be satisfied. Minn. Stat. § 462.3595, subd. 1.

State law places the burden on the applicant to "show" that its proposed use meets the standards and criteria for granting a CUP.

Conditions: If a municipality can impose additional conditions on a CUP that will satisfy any issue raised during the application process, denying the application rather than issuing the CUP subject to the additional conditions may indicate arbitrary action. *See Trisko v. City of Waite Park*, 566 N.W.2d 349 (Minn. App. 1997) ("Evidence that a municipality denied a conditional use permit without suggesting or imposing conditions that would bring the proposed use into compliance may support a conclusion that the denial was arbitrary"); *In re Lawrence*, 2009 WL 438058 (Minn. App. 2009); *Buberl Recycling & Compost, Inc. v. Chisago County*, 2009 WL 274623 (Minn. App. 2009).

Time Limits: CUPs cannot have time limits. *See Minn. Op. Atty. Gen. 59A-32* (1990) (stating conditions in CUPs issued pursuant to Minn. Stat. § 462.3595 could not include limitations on the duration of the permit, especially since the legislature created a mechanism for limited land use permits – interim permits).

But, a CUP can have a time limit to act on it, or it is void and never effective. *See State by Minneapolis Park Lovers v. City of Minneapolis*, 468 N.W.2d 566 (Minn. App. 1991) (finding CUP voided where city ordinance stated a CUP expired if the conditional use ceased for more than one year).

Revocation: A CUP shall remain in effect as long as the conditions agreed upon are observed. Minn. Stat. § 462.3595, Subd. 3. To revoke a CUP, however, there must be due process afforded the permit holder.

INTERIM USE PERMITS

A township has the authority to allow a use until a particular date, event, or until zoning ordinance no longer permits. Minnesota Statutes § 462.3597.

REZONING

A decision to rezone a property is a quasi-legislative decision, entitled to deference. It is a policy decision, and consistency with the comprehensive plan is a factor.

It is still subject to the review of the record and findings to determine if the decision was reasonable, and not arbitrary and capricious.

Spot zoning: Spot zoning represents the reclassification of a small area of land in a manner not compatible with the surrounding neighborhood for the benefit of the property owner and to the detriment of others. *Alexander v. City of Minneapolis*, 125 N.W.2d 583, 586 (Minn. 1963). It applies when a zoning change establishes a use classification inconsistent with surrounding uses, creating an island of nonconforming use within a larger zoned district. The burden of demonstrating spot zoning rests with the litigant attacking the zoning change with the usual presumption of validity attaching to the zoning amendment.

NONCONFORMITIES

Minnesota Statutes § 462.357, subd. 1e: Nonconformities (a):

Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion . . .

How do you define expansion versus improvement?

Sample definitions:

- “Expansion,” “enlargement,” or “intensification” means any increase in a dimension, size, area, volume, or height, any increase in the area of use, any placement of a structure or part thereof where none existed before, any addition of a site feature such as a deck, patio, fence, driveway, parking area, or swimming pool, any improvement that would allow the

land to be more intensely developed, any move of operations to a new location on the property, or any increase in intensity of use based on a review of the original nature, function or purpose of the nonconforming use, the hours of operation, traffic, parking, noise, exterior storage, signs, exterior lighting, types of operations, types of goods or services offered, odors, area of operation, number of employees, and other factors deemed relevant to the city.

- “Improvement” means making the nonconforming use better, more efficient, or more aesthetically pleasing, including any change that does not replicate what pre-existed, but does not include an expansion, enlargement or intensification.
- “Replacement,” “reconstruction,” or “restoration” means construction that exactly matches pre-existing conditions.

CONFLICTS OF INTEREST

Prohibited Conflicts: Minn. Stat. § 471.87: “Except as authorized in Section 471.88, a **public officer** who is authorized to take part in any manner in making any **sale, lease, or contract** in official capacity shall not voluntarily have a **personal financial interest** in that sale, lease, or contract or **personally benefit** financially therefrom. Every public officer who violates this provision is guilty of a gross misdemeanor.”

Exceptions:

- Minn. Stat. § 471.88, subd. 2: The **designation of a bank** as an authorized depository for public funds, or as a source of borrowing upon certain conditions.
- Minn. Stat. § 471.88, subd. 3: The **designation of an official newspaper** when it is the only newspaper complying with statutory requirements relating to designation or publication.
- Minn. Stat. § 471.88, subd. 4: A **contract with a cooperative association** of which the officer is a shareholder.
- Minn. Stat. § 471.88, subd. 5: A contract for which **competitive bids** are not required by law.
- Minn. Stat. § 471.88, subd. 6: A **contract with a volunteer fire department** for the payment of compensation to its members or for the payment of retirement benefits.

- Minn. Stat. § 471.88, subd. 13: **Rental of space in a public facility** at a rate commensurate with that paid by other members of the public.
- Minn. Stat. § 471.88, subd. 15: **Franchise agreement** - employee of a public utility may serve as a city council member during the term of the franchise agreement so long as the council member abstains from voting on official action relating to the franchise agreement and discloses the reason for the abstention in the minutes.

Consequences of a Violation: The contract is void. This applies to any contract in which an official is “authorized to take part.” Therefore, it does not matter whether or not an officer abstains from voting.

Conflict in Non-Contract Situation: The purpose behind the creation of a rule which would disqualify public officials from participating in proceedings in a decision-making capacity when they have a direct interest in its outcome is to ensure that their decision will not be an arbitrary reflection of their own selfish interests. There is no settled general rule as to whether such an interest will disqualify an official. Considerations:

- The nature of the decision being made.
- The nature of the financial interest.
- The number of interested officials.
- The need, if any, for the interested persons to make the decision.
- Other means available.

Example:

Since a town board member owned property across from a bar that was subject to a liquor license renewal decision, he was disqualified from voting on the license renewal. The town board member stated his property had been devalued by \$100,000 since the bar had opened, and he was elected to the board based largely on his opposition to the bar. The court stated, “A more direct, admitted, financial interest is hard to imagine.” In *E.T.O., Inc. v. Town of Marion*, 375 N.W.2d 815 (Minn. 1985).

Examples of Non-Contract Situations:

- Improvement of Creek - **No conflict**
- Establishment of ditch that drained Commissioner’s land - **Conflict**

- Renewal of liquor license located next to Town Supervisor's land – **Conflict**
- Church affiliation – **No Conflict**
- Street Vacation – **Conflict**
- Rezoning on your own property - **Conflict**

Consequence of a Violation: A disqualifying interest does not affect the result if the requisite majority without the interested official takes action. Actions for which a disqualified member votes are void where the vote of the member is necessary to make up the number of votes required to take the action.

Disclosure: Minn. Stat. § 10A.07: If an official is required to take an action or make a decision that would substantially affect the official's financial interests:

- Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict of interest;
- Deliver copies of the statement to the official's immediate supervisor, if any; and
- If a member of the governing body, deliver a copy of the statement to the presiding officer of the body of service.

Conflict checklist: Consult with the town attorney.

- Make disclosure at the earliest stage preceding the discussion.
 - Make oral disclosure to the governing body or board.
 - Make written disclosure, as necessary.
- Do not vote or take any official action unless the town attorney decides there is no prohibited conflict of interest.
- Do not influence others.
- Do not participate in the discussion, either at the time of the vote or earlier.
- Leave the room when the governing body is discussing the matter.

NO BRIBERY

Minn. Stat. § 375.09, Subd. 2: "No commissioner shall receive any money or other valuable thing as a condition of voting or inducement to vote for any contract or other under consideration by the board." Any votes or contracts made contrary to this section are void.

VARIANCE FINDINGS

All Statutory Criteria must be answered in the affirmative in order to grant the variance.

1. **Is the proposed use allowed in the zoning district in which the subject property is located?** The Board shall consider those uses that are considered permitted, provisional, accessory or conditional in the district (state the type of use and district for the record).
2. **Is the variance in harmony with the general purposes and intent of the official control?** The Board shall consider the purposes and intent of the official controls as noted within each zoning and/or overlay district that applies (please state specifically which purpose statement is met or not met for the record).
3. **Is the variance request consistent with the comprehensive plan?** The Board shall consider the Goals and objectives of the Comprehensive plan to determine if the request is consistent (please state specifically which goals or objectives are met or not met for the record).
4. **Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?** The Board shall consider what reasonable use of the property is lost (practical difficulties) by the strict enforcement of Official Control (please state why it is reasonable on the record).
5. **Is the plight of the landowner due to circumstances unique to the property not created by the landowner?** The Board shall consider what circumstances are unique to the property (lot size, lot configuration, wetland, steep slope, Shore impact zone, bluff, flood plain, floodway, etc.; one or more should be stated on the record; what differentiates this parcel from others, not a feature that affects all parcels similarly).
6. **Will the variance maintain the essential character of the locality?** The Board shall consider and state for the record why the request does or does not maintain the character of the area (is this request similar to what others have, what are the near shore conditions of neighbors, similar sized or number of structures adjacent or in area).
7. **Is the variance solely for economic reasons?** The Board should consider if economics is the only reason for the request (the fact that developing in compliance with ordinance requirements may cost considerably more does not constitute practical difficulties).

VARIANCE FINDINGS

The Board may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance. (Mitigating impervious surface with storm water management, deep rooted vegetative buffers, rain gardens, etc.)

It is the Board's job to apply appropriate legal standards to a specific fact situation. Variances are meant to be an infrequent remedy where an ordinance imposes a unique and substantial burden.

When considering an after-the-fact variance request the Board should consider these additional factors when deciding the statutory criteria:

- a. **Did the applicant act in good faith and attempt to comply with the ordinance?** (obtain any other permits, what measures could be stated on the record);
- b. **Did the applicant make a substantial investment?** (State why it is or is not);
- c. **Is the construction completed?** (If not how far along is the project);
- d. **Are there similar structures in the area?**; and
- e. **Are the county's benefits outweighed by the applicant's burden if the applicant were required to comply with the ordinance?**

It is advisable the Board make findings on these additional items for after-the-fact variances.

POLK COUNTY BOARD OF ADJUSTMENT
FINDINGS OF FACT AND DECISION – AFTER-THE-FACT VARIANCE

Applicant: _____ Parcel #: _____

Requested Variance: _____

- A. An area Variance may be granted only where the strict enforcement of county zoning controls will result in “practical difficulty”. A determination that a “practical difficulty” exists is based upon consideration of the following criteria:

The applicant identified the following practical difficulty:

1. Is the variance in harmony with the general purposes and intent of the zoning ordinance?
2. Is the variance consistent with the goals and policies of the comprehensive plan?
3. Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?
4. Is the need for a variance due to the circumstances unique to the property not created by the landowner or prior landowners?
5. Will the issuance of the variance maintain the essential character of the locality?
6. Does the need for the variance involve more than just economic considerations?

Facts supporting the answer to each question above, together with those other facts that exist in the record, are hereby certified to be the Findings of the Board of Adjustment.

THE POLK COUNTY BOARD OF ADJUSTMENT FINDS THAT THE CRITERIA ABOVE HAS BEEN:

_____ SATISFIED

_____ NOT-SATISFIED

The Board of Adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance. (Mitigating impervious surface with storm water management, deep rooted vegetative buffers, rain gardens, etc.)

It is the Board of Adjustments job to apply appropriate legal standards to a specific fact situation. Variances are meant to be an infrequent remedy where an ordinance imposes a unique and substantial burden.

POLK COUNTY BOARD OF ADJUSTMENT
ADD ON FOR AFTER-THE-FACT VARIANCE

Applicant: _____ Parcel #: _____

If the Board of Adjustment finds that the criteria has been met for the first 6 questions for a variance, thereby finding that all of the criteria set forth in section 5.4340 are met, then the following additional criteria may be considered and weighed by the Board of Adjustment in determining whether to grant or deny a request for the after the fact variance:

1. Was there any attempt to comply with the applicable Official controls? Indicate why the applicant failed to obtain the required permit or comply with the applicable official control before commencing work.
2. Did the applicant make a substantial investment in the property before learning of the failure to comply with the applicable official controls?
3. Did the applicant complete the work before being informed of the violation of applicable official controls?
4. Are there similar structures in the area?
5. Based on all of the facts, does it appear to the Board of Adjustment that the applicant acted in good faith?
6. Would the benefit to the county appear to be outweighed by the detriment the applicant would suffer if forced to remove the structure?

Facts supporting the answer to each question above, together with those other facts that exist in the record, are hereby certified to be the Findings of the Board of Adjustment.

THE POLK COUNTY BOARD OF ADJUSTMENT: APPROVES _____ DENIES _____
THE REQUESTED VARIANCE:

This decision is based on:

- _____ application
- _____ information received at public hearing
- _____ staff report
- _____ pictures
- _____ viewing by _____ members of the board

DATED: _____

CHAIRMAN, BOARD OF ADJUSTMENT