



CHECKLIST – APPEALS FROM DECISIONS APPLYING THE LAND USE ORDINANCE

- _____ 1. Determine that a final land use decision has been rendered by a land use authority.
- _____ 2. Determine that the request for appeal was filed in a timely manner. State law requires that the local ordinance set a deadline to appeal that is not less than ten days after the land use decision has been rendered in writing.
- _____ 3. Determine that the request for appeal is sufficiently complete for consideration.
- _____ 4. Determine that all appeal fees have been paid.
- _____ 5. Place the item on an agenda for the appeal authority, if the appeal authority is composed of a board or commission that includes more than one person.
- _____ 6. Provide the required notice of a meeting (or, if required by local ordinance, a hearing) to consider the application, if the appeal authority is composed of a board or commission that includes more than one person. Notify the members of the appeal authority of the meeting.
- _____ 7. Review standards in the local land use ordinance and state law that apply to the consideration of the appeal.
- _____ 8. Verify that the appeal authority is impartial and free of bias from conflicts of interest with regard to the matter before it.
- _____ 9. Conduct the meeting, and, if a hearing is required by local ordinance as part of the consideration of an appeal application, a hearing. A hearing is not required by state law.
- _____ 10. Act in a quasi-judicial manner and gather evidence impartially. Afford the applicant due process, which includes the rights of notice, to be heard, to confront witnesses, and to respond to evidence submitted by others.
- _____ 11. If there is no standard of review provided for in the local land use ordinance, consider the appeal “de novo”, which means that the appeal authority may look at the issue as a new issue, as if the matter had not been decided before. The appeal authority, if acting “de novo”, does not

need to defer to the prior decision of the land use authority. If the ordinance provides for a different standard of review, follow the ordinance.

12. Allow the person bringing the appeal to present evidence supporting his or her appeal. The person bringing the appeal has the burden to show that the previous decision was in error. If the person does not meet this burden, dismiss the appeal.

13. If a person appears in opposition to the appeal and will be adversely affected if the appeal is granted, allow him or her to present evidence supporting his or her point of view. While the procedure need not be overly formal, allow each side to respond to the evidence presented by the other side.

14. Deliberate. Since an appeal authority is a quasi-judicial body, its deliberations may be conducted in private. Consider evidence that is before the appeal authority that is both relevant and credible related to the issue on appeal. After considering the standards and the evidence, determine which view of the matter is correct.

15. In interpreting the law or ordinance, look to its plain language. If it is ambiguous, interpret ambiguities in a light favorable to the use of property. If it is not ambiguous, give effect to the intent of the legislative body that enacted the law or ordinance. Harmonize conflicting provisions so that they can be reconciled. Do not impose an absurd or unreasonable result.

16a. If, in the opinion of the appeal authority, the applicant has provided substantial evidence in the record to support his or her point of view, and there is no substantial evidence to the contrary, approve the appeal.

b. If, in the opinion of the appeal authority, the applicant has failed to provide substantial evidence in the record to support his or her point of view, deny the appeal.

c. If, in the opinion of the appeal authority, there is substantial evidence that supports either the approval or denial of the appeal, the appeal authority may exercise its discretion and either approve or deny the appeal.

17. Support the action of the appeal authority with evidence in the record, identifying the evidence that the appeal authority relied upon in its decision. The decision must be supported by substantial evidence in the record and not solely by public clamor.

_____ 18. Preserve the record of the proceedings to document the law and evidence that was considered by the appeal authority before it made a decision related to the application.

NOTES:

The action taken by an appeal authority is only legal if it is supported by substantial evidence in the record. "Substantial Evidence" is evidence that is relevant and credible. To be relevant, it must relate to the standards in the ordinance and state law related to the review of applications for variances. To be credible, it must be objective and independent.

Public clamor is not substantial evidence. Evidence is independent – it stands on its own and is not based on public opinion. For the average person, either participating in a land use decision as a member of the appeal authority or as a citizen, his opinion is not evidence. Evidence is the justification – the facts – that are the basis for the opinion.

The opinion of expert witnesses qualified to testify in their field of expertise can be substantial evidence if proper information is provided supporting the qualifications of the persons expressing the opinions.

