

ZONING ORDINANCE

ARTICLE 4

BOARD OF ADJUSTMENT

400 ESTABLISHMENT OF BOARD

The Board of Adjustment shall be established before the City Zoning Ordinance shall be legally enforced. The Board established shall consist of three (3), five (5), or seven (7) citizen members, of whom may be citizen members of the Planning Commission or Board of Adjustment who is not also an elected or appointed official or employee of the City Council. The term of office for members of the Board shall be four years, but the term of office of members first appointed shall be staggered so that a proportionate number serve one, two, three, and four years respectively. Vacancies on the Board shall be filled within sixty days by the respective legislative body. If the Mayor fails to act within that time, the Planning Commission shall fill the vacancy. When a vacancy occurs other than through expiration of the term of office, it shall be filled for the remainder of that term.

All members of the Board shall, before entering upon their duties, qualify by taking the oath of office prescribed by Section 228 of the Constitution of the Commonwealth of Kentucky before a judge, county judge-executive, notary public, clerk of a court, or justice of the peace of Morgan County. Reimbursement for expenses or compensation or both may be authorized for members of the Board.

Any member of the Board may be removed by the appointing authority for inefficiency, neglect of duty, malfeasance, or conflict of interest. The appointing authority who exercises the power to remove a Board member shall submit a written statement to the Planning Commission setting forth the reasons for removal and the statement shall be read at the next meeting of the Board of Adjustment. The member so removed shall have the right of appeal to the Circuit Court of Morgan County.

The Board shall annually elect a chairman, vice-chairman, and a secretary and any other officer it deems necessary. Any officer shall be eligible for re-election at the expiration of his term.

410 MEETING OF BOARD, QUORUM, MINUTE, BYLAWS

The Board shall conduct meetings at the call of the chairman who shall give written or oral notice to all members of the board at least seven days prior to the meeting which notice shall contain the date, time and place for the meeting, and the subject or subjects which will be discussed.

A simple majority of the total membership, as established by regulation or agreement, shall constitute a quorum. Any member of the Board who has any direct or indirect financial interest in the outcome of any question before the body shall disclose the nature of the interest and shall disqualify himself from voting on the question.

The Board shall adopt bylaws for the transaction of business and shall keep minutes and records of all proceedings, including regulations, transactions, findings, and determinations and the number of votes for and against each question, and if any member is absent or abstains from voting, indicating the fact, all of which shall, immediately after adoption, be filed in the office of the Board. If the Board has no office, such records may be kept in custody of an officer of the board and shall be available to the general public. A transcript of the minutes of the Board shall be provided if requested by a party, at the expense of the requesting party, and the transcript shall constitute the record.

420 OTHER RIGHTS AND POWERS OR BOARD

- A) The Board of Adjustment may employ or contract with planners or other persons as it deems necessary to accomplish its assigned duties.
- B) The Board shall have the right to receive, hold, and spend funds which it may legally receive from any and every source in and out of the Commonwealth of Kentucky, including the United States Government, for the purpose of carrying out its duties.
- C) The Board shall have the power to issue subpoenas to compel witnesses to attend its meetings and give evidence bearing upon the questions before it. The Chief of Police and/ or Sheriff shall serve such subpoenas. The Circuit Court may, upon application by the Board, compel obedience to such court or such subpoena by proceedings of contempt.
- D) The Chairman of the Board shall have the power to administer an oath to witnesses prior to their testifying before the board on any issue.

430 CONDITIONAL USE PERMITS

The Board shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the community of uses which are specifically named in the Zoning Ordinance which may be suitable only in specific locations in the district only if certain conditions are met.

- A) The Board may approve, modify or deny any application for a conditional use permit. Before granting any such permits, the Board is required to consider the comments of all adjoining property owners. If it approves such permit it may attach necessary conditions such as time limitations, requirements that one or more things be done before the request can be initiated, or conditions of a continuing nature. Any such conditions shall be recorded in the Board's minutes and on the conditional use permits, or variances for non-compliance with the condition thereof. Furthermore, the board shall have a right of action to compel offending structures or uses removed at the cost of the violator and may have judgement in person for such cost.
- B) Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of building, housing and other regulations.
- C) In case where a conditional use permit has not been exercised within the time limit set by the Board, or within one year, if no specific time limit has been set, such conditional use permit shall not revert to its original designation unless there has been a public hearing. Exercised, as set forth in this section, shall mean that binding contracts for the construction of the main building or other improvement has been let; or in the absence of contracts that the main building or other prerequisite conditions involving substantial investment shall be under contract, in development, or completed. When construction is not a part of the use, exercised shall mean that the use is in operation in compliance with the conditions as set forth in the permit.
- D) The Administrative/Enforcement Officer shall review all conditional use permits, except those for which all conditions have been permanently satisfied, at least once annually and shall have the power to inspect the land or structure where the conditional use is located in order to

ascertain that the landowner is complying with all of the conditions which are listed on the conditional permit. If the landowner is not complying with all of the conditions which are listed on the conditional use permit, the Administrative/Enforcement Officer shall state conditions on the conditional use permit, and copy of the report shall be furnished to the landowner at the same time that it is furnished to the Chairman of the Board. If the Board finds that the facts alleged in the report of the Administrative/Enforcement Officer are true and that the landowner has taken no steps to comply with them between the date of the report and the date of the hearing, the Board may authorize the Administrative/Enforcement Officer to revoke the conditional use permit and take the necessary legal action to cause the termination of the activity on the land which the conditional use permit authorizes.

- E) Once the Board has completed a conditional use permit and all the conditions required are of such type that they can be completely and permanently satisfied, the Administrative/Enforcement Officer upon request of the applicant, may, if the facts warrant, make a determination that the conditions have been satisfied, and enter the facts which indicate that the conditions have been satisfied and the County Clerk, as required in KRS 100.237. Thereafter said use, if it continues to meet the other requirements of the regulations, will be treated as a permitted use.

440 DIMENSIONAL VARIANCE

The Board shall have the power to hear and decide on applications for dimensional variances where, by reason of the exceptional narrowness, shallowness, or unusual shape of a site on the effective date of this Ordinance or by reason of exceptional topographic conditions, or some other extraordinary situation or condition of that site, the literal enforcement of the dimensional requirements (height or width of building or size of yards, but not population density) of this Ordinance would deprive the applicant of reasonable capacity to make use of the land in a manner equivalent to the use permitted other

landowners in the same district. The Board may impose any reasonable conditions to restrictions on any variance it decides to grant.

Before any variance is granted, the Board must find all of the following, which shall be recorded along with any imposed conditions or restrictions in its minutes and records and issued in written form to the applicant to constitute proof of dimensional variance.

- a) The specific conditions in detail which are unique to the applicant's land and which do not exist on other land in the same zone.
- b) The manner in which the strict application of the provisions of the Ordinance would deprive the applicant of a reasonable use of land in the manner equivalent to the use permitted other landowners in the same zone.
- c) That the unique conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption of the Ordinance.
- d) Reasons that the variance will preserve, not harm, the public Safety and welfare and will not alter the essential character of the neighborhood.
- e) Consideration of all adjoining property owners' comments regarding the variance request.

The Board shall not possess the power to grant a variance to permit a use of any land, building, or structure which is not permitted by the Ordinance in the district in question, or to alter density requirements in the district in question.

A dimensional variance applies to the property for it is granted, and not to the individual who applied for it. A variance also runs with the land and is transferable to any future owner of the land, but it cannot be transferred by the applicant to a different site.

450 RECORDING OF VARIANCES AND CONDITIONAL USE PERMITS

All variances and conditional use permits approved by the Board of Adjustment shall be recorded at the expense of the applicant in the Office of the County Court Clerk.

460 EXISTING NONCONFORMING USE, CONTINUANCE, CHANGE

The lawful use of a building or premises, existing at the time of the adoption of the Zoning Ordinance affecting it may be continued, although such use does not conform to the provisions of such regulation, except as otherwise provided herein (See Article 5 for details).

The Board of Adjustment shall not allow the enlargement or extension of a nonconforming use beyond the scope and area of its operation at the time the Ordinance, which makes its use nonconforming, was adopted. Not shall the Board permit a change from one nonconforming use to any other nonconforming use.

470 ADMINISTRATIVE REVIEW

The Board shall have the power to hear and decide cases where it is alleged by an applicant that there is error in any order, requirement, decision, grant, or referral made by the Administrative/Enforcement Official in the enforcement of this Ordinance. A request for review shall be taken within thirty days after the applicant or his agent receives notice of the action alleged to be in error.

480 PROCEDURE FOR ALL APPEALS TO BOARD

Appeals to the Board may be taken by any person, or entity claiming to be injuriously affected or aggrieved by an official action or decision of any officer enforcing this Ordinance. Such appeal shall be taken within thirty days after the appellant or his agent receives notice of the action appealed from by filing with said officer and with the appropriate Board a notice of appeal specifying the grounds thereof, and giving notice of such appeal to any and all parties of record. Said officer shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken and shall be treated as and be the respondent in such further proceedings. At any hearing by the Board any interested person may appear and enter his appearance, and all shall be given opportunity to be heard.

The Board shall fix a reasonable time for hearing the appeal and give public notice in accordance with KRS Chapter 424, as well as written notice to the appellant and the Administrative/Enforcement Official at least one week prior to the hearing, and shall decide within sixty days. The affected party may appear at the hearing in person or by attorney.

Any person or entity claiming to be injured or aggrieved by any final action of the Planning Commission or Board of Adjustments may appeal from the action to the circuit court of the county in which the land lies.

All appeals shall be taken in the circuit court within thirty days after the action or decision of the Planning Commission or Board of Adjustment and all decisions which have not been appealed within thirty days shall become final. After the appeal is taken the procedure shall be governed by the rules of civil procedure. When an appeal has been filed, the Clerk of the Circuit Court shall issue a summons to all parties, including the Planning Commission in all cases, and shall cause it to be delivered for service as in any other law action.