

## ARTICLE 12

### BOARD OF ADJUSTMENT

#### **SECTION 12.0 ESTABLISHMENT OF BOARD OF ADJUSTMENT; MEMBERSHIP; APPOINTMENT; TERMS; VACANCIES; OATHS; COMPENSATION; REMOVAL; OFFICERS:**

- A. A board of adjustment is hereby established for adopting legislative bodies.
- B. The board of adjustment shall consist of five (5) members, all of whom must be citizen members.
- C. The judge/executive shall be the appointing authority subject to the approval of the Fiscal Court.
- D. The term of office for the board of adjustment members shall be four (4) years, but the term of office of members first appointed shall be staggered so that a proportionate number serve one (1), two (2), three (3), and four (4) years, respectively.
- E. Vacancies on the board of adjustment shall be filled within sixty (60) calendar days by the appropriate appointing authority. If the authority 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.
- F. All members of the board of adjustment 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 any judge, notary public, clerk of court, or justice of the peace, within the district or legislative body in which they reside.
- G. Reimbursement for expenses or compensation or both may be authorized for members on the board of adjustment.
- H. Any member of the board of adjustment may be removed by the appropriate appointing authority, subject to the approval by their respective legislative body, for inefficiency, neglect of duty, malfeasance, or conflict of interest. The appointing authority, in exercising the power to remove a member from the board of adjustment, shall submit a written statement to the planning commission setting forth the reasons and the statement shall be read at the next meeting of the board of adjustment which shall be open to the general public. The member

so removed shall have the right of appeal from the removal to the circuit court of Pendleton County.

- I. The board of adjustment shall elect annually a chairman, vice-chairman, and secretary, and any other officers it deems necessary, and any officer shall be eligible for re-election at the expiration of their term.

**SECTION 12.1 MEETINGS OF BOARDS; QUORUM; MINUTES; BYLAWS; FINANCES; SUBPOENA POWER; ADMINISTRATION OF OATHS:**

- A. The board of adjustment 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 (7) 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. Written notice of the meeting containing date, time, and place of the meeting, shall also be provided to the applicant, by first class mail, at least seven (7) days prior to the meeting.
- B. A simple majority of the total membership of the board of adjustment, as established by regulation or agreement, shall constitute a quorum. Any member of the board of adjustment 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. A quorum must exist for each agenda item to be voted upon after any member disqualifications.
- C. The board of adjustment 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 of adjustment. A transcript of the minutes of the board of adjustment shall be provided if requested by a party, at the expense of the requesting party, and the transcript shall constitute the record.
- D. The board of adjustment 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 state of Kentucky, including the United States Government.
- E. The board of adjustment shall have the power to issue subpoenas to compel witnesses to attend its meetings and give evidence bearing upon the questions before it.
- F. The chairman of the board of adjustment shall have the power to administer an oath to witnesses prior to their testifying before the board on any issue.

- G. A board of adjustment may appoint one (1) or more of its members to act as hearing examiner to preside over a public hearing or public meeting and make recommendations to the board based upon a transcript or record of the hearing.

#### **SECTION 12.2 PROCEDURE FOR ALL APPEALS TO BOARD:**

- A. Appeals to the board of adjustment may be taken by any person or entity claiming to be injuriously affected or aggrieved by an official action, order, requirement, interpretation, grant, refusal, or decision of the Zoning Administrator. Such appeal shall be taken within thirty (30) calendar days after the appellant or his agent receives notice of the action of the official to be appealed from, by filing with said Zoning Administrator and with the board, a notice of appeal specifying the grounds thereof, and giving notice of such appeal to any and all parties of record. A fee, as required by Section 14 of this Ordinance, shall also be given to the Zoning Administrator at this time. Said Zoning Administrator 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 the public hearing on the appeal held by the board, an interested person may appear and enter his appearance, and all shall be given an opportunity to be heard.
- B. The board of adjustment 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 Zoning Administrator at least one (1) calendar week prior to the hearing, and shall decide on the appeal within sixty (60) consecutive calendar days. The affected party may appear at the hearing in person or by attorney.

#### **SECTION 12.3 APPEALS FROM PLANNING COMMISSION, BOARD OF ADJUSTMENT, OR LEGISLATIVE BODY:** Any appeal from the planning commission, board of adjustment, or legislative body action may be taken in the following manner:

- A. Any person or entity claiming to be injured or aggrieved by any final action of the planning commission shall appeal from the final action to the circuit court of Pendleton County. Such appeal shall be taken within thirty (30) days after such action. Such action shall not include the commission's recommendations made to other governmental bodies. All final actions which have not been appealed within thirty (30) days shall not be subject to judicial review. In such case, the thirty (30) day period for taking an appeal begins to run at the time the legislative body grants or denies the map amendment for the same development. The planning commission shall be a party in any such appeal filed in the circuit court. After the appeal is taken, the procedure shall be governed by the rules of civil procedure.

- B. Any person or entity claiming to be injured or aggrieved by any final action of the board of adjustment shall appeal from the action to the circuit court of Pendleton County, which is the subject of the action of the board of adjustment, lies. Such appeal shall be taken within thirty (30) consecutive calendar days after the final action of the board of adjustment. All final actions which have not been appealed within thirty (30) days shall not be subject to judicial review. The board of adjustment shall be a party in any such appeal filed in the circuit court.
- C. Any person or entity claiming to be injured or aggrieved by any final action of the legislative body of any city or county, relating to a map or text amendment, shall appeal from the action to the circuit court of Pendleton County. Such appeal shall be taken within thirty (30) days after the final action of the legislative body. All final actions which have not been appealed within thirty (30) days shall not be subject to judicial review. The legislative body shall be a party in any such appeal filed in the circuit court.
- D. The owner of the subject property and applicants who initiated the proceeding shall be made parties to the appeal. Other persons speaking at the public hearing are not required to be made parties to such appeal.
- E. For purposes of this Ordinance, final action shall be deemed to have occurred on the calendar date when the vote is taken to approve or disapprove the matter pending before the body.

**SECTION 12.4 STAY OF PROCEEDINGS:** An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator from whom the appeal is taken, certifies to the board of adjustment, after the notice of appeal is filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and/or property. In such case, proceedings shall not be stayed other than by a court of record on application, or on notice to the Zoning Administrator from whom the appeal is taken and on due cause shown.

**SECTION 12.5 POWERS OF BOARD OF ADJUSTMENT:** The board of adjustment shall have the following powers:

- A. **VARIANCES:** To hear and decide on applications for variances.
- B. **APPEALS:** To hear and decide appeals, where it is alleged, by the appellant, that there is an error in any order, requirement, decision, grant, or refusal made by the Zoning Administrator in the enforcement of this Ordinance. Such appeal shall be taken within thirty (30) consecutive calendar days.
- C. **CONDITIONAL USES:** To hear and decide applications for conditional use permits to allow the proper integration into the community of uses which are specifically named herein, which may be suitable only in specific locations in the

zone only if certain conditions are met, as specified in Section 12.8 of this Ordinance.

- D. INTERPRETATIONS: To hear and decide, in accordance with the provisions of this Ordinance, requests for interpretation of the official zoning map or for decisions upon other special questions upon which said board is authorized to act upon.
- E. NON-CONFORMING USES: To hear and decide, in accordance with the provisions of this Ordinance and the adopted comprehensive plan, requests for the change from one nonconforming use to another.

**SECTION 12.6 VARIANCES; CHANGE FROM ONE NONCONFORMING USE TO ANOTHER; CONDITIONS GOVERNING APPLICATIONS; PROCEDURES:**

A. VARIANCES:

- 1. A variance shall not be granted by the board of adjustment unless and until:
  - a. A written application for a variance, including the required fee per Section 14 of this Ordinance and a Stage I Development Plan, subject to the applicable requirements of Section 11.2 of this Ordinance, are submitted.
  - b. Notice of public hearing shall be given in accordance with Section 12.2 of this Ordinance.
  - c. The public hearing shall be held. Any person may appear in person, or by agent, or by attorney.
- 2. Before any variance is granted, the board of adjustment must find that the granting of the variance will not adversely affect the public health, safety, or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the board shall consider whether:
  - a. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
  - b. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and

- c. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.
  3. The board shall deny any request for a variance arising from circumstances that are the result of willful violations of this Ordinance by the applicant subsequent to the adoption of this Ordinance from which relief is sought.
  4. In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 11.10 of this Ordinance.
- B. **VARIANCE CANNOT CONTRADICT ZONING REGULATION:** The board of adjustment shall not possess the power to grant a variance to permit a use of any land, building, or structure which is not permitted by this Ordinance in the zone in question, or to alter the density of dwelling unit requirements in the zone in question.
- C. **VARIANCE RUNS WITH LAND:** A variance applies to the property for which it is granted and not to the individual who applied for it. A variance 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.

**SECTION 12.7 CHANGE FROM ONE NONCONFORMING USE TO ANOTHER:** A nonconforming use shall not be changed to another nonconforming use without the specific approval of the board of adjustment, as provided for herein.

- A. The board of adjustment shall have the power to hear and decide on applications to convert or change nonconforming use to another nonconforming use, subject to the following:
  1. A written application for a change from one nonconforming use to another (including the required fee per Article 14 of this Ordinance) and a Stage I Development Plan, if applicable, subject to the applicable requirements of Section 11.2 of this Ordinance, shall be submitted to the board.
  2. Notice of public hearing shall be given in accordance with Section 12.2 of this Ordinance.
  3. The public hearing shall be held. Any person may appear in person, by agent, or by attorney.

4. Prior to granting a change from one nonconforming use to another, the board of adjustment shall find that the new nonconforming use is in the same or more restrictive classification of use as the prior nonconforming use. In the determination of the same or more restrictive classification of use, the applicant shall establish and the board of adjustment shall find:
  - a. That the new nonconforming use shall generate less vehicular traffic (automobile and truck) than the prior nonconforming use.
  - b. That the new nonconforming use is of a nature which will emit less noise and air pollution than the prior nonconforming use.
  - c. That the new nonconforming use will be more in character with the existing neighborhood than the prior nonconforming use, in that it is more in conformance with the adopted comprehensive plan, and also, more in conformance with the uses permitted in the zone in which the use is located, than the prior nonconforming use.
5. Any change of nonconforming use granted by the board of adjustment shall conform to the requirements of this Ordinance, including, but not limited to, parking requirements, sign regulations and yard requirements, and all other pertinent ordinances of the legislative body, unless specifically waived by the Board of Adjustment upon written application and for good cause shown at the public hearing.
6. The board of adjustment shall not allow the enlargement or extension of a nonconforming use beyond the scope and area of its operation at which time its use became nonconforming.
7. The board of adjustment, in granting a change of nonconforming uses, may attach such conditions thereto as it may deem necessary and proper. The action, limitations, and conditions imposed, if any, shall be in writing, directed to the applicant, with a copy to be furnished to the Zoning Administrator.
8. The change of nonconforming use, as may be granted by the board of adjustment, applies to the property for which it is granted and not to the individual who applied and, therefore, cannot be transferred by the applicant to a different property.
9. In the case where the change of nonconforming use has not occurred within one (1) year after the date of granting thereof, the change of nonconforming use permit shall be null and void and reapplication to the board of adjustment shall have to be made.

**SECTION 12.8 CONDITIONAL USE PERMITS:** In accordance with KRS 100.237, the board of adjustment 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 herein which may be suitable only in specific locations in the zone only if certain conditions are met.

- A. The board of adjustment shall have the power to hear and decide on applications for conditional use permits, subject to the following:
1. A written application for a conditional use permit (including the required fee per Article 14 of this Ordinance) and a Stage I Development Plan subject to the applicable requirements of Section 11.3.A. of this Ordinance, shall be submitted to the board.
  2. Notice of public hearing shall be given in accordance with this Section of this Ordinance.
  3. The public hearing shall be held. Any person may appear in person, or by agent, or by attorney.
  4. Prior to granting a conditional use permit, the board of adjustment shall find that the application for a conditional use permit meets the requirements of this Ordinance, That the proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or the community; and that such use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.
  5. **CRITERIA:** Evaluation of the proposed conditional use and/or development plan shall be based upon the following criteria (In review of the application, the Board may modify the area and height requirements of the zone in which the conditional use is located provided that the Board finds that such changes are in agreement with the criteria established within this section of this Ordinance) :
    - a. Agreement with the various elements of the Comprehensive Plan, and where applicable, any other adopted plan.
    - b. Extent to which the proposed development plan is consistent with the purpose of the zoning district in which it is proposed to be located.
    - c. Adequacy of the proposed site, considering such factors as the sufficiency of the size of the site to comply with the established

criteria, the configuration of the site, and the extent to which the site is formed by logical boundaries (e.g., topography, natural features, streets, relationship of adjacent uses, etc.).

- d. Nature and extent of the proposed uses in relation to the unique characteristics of the site.
- e. Extent to which the design of the proposed development responds to the natural and man - made features of the site.
- f. Building locations should be planned to accomplish a desirable transition with open spaces, pedestrian areas, and off - street parking areas.
- g. Extent to which the scale of the proposed use relates to and is harmonious with the natural environment and adjacent buildings and will not change the essential character of the same area.
- h. Heights of structures should be compatible with the height of existing structures adjacent to the site.
- i. Amount of traffic that would be generated by the proposed development and the ability of the existing street system to adequately handle said traffic. Where deficiencies exist, proposed traffic improvements that would correct such deficiencies should be considered.
- j. Existing trees, streams, natural features, and scenic views should be preserved and maintained where feasible and practicable.
- k. Extent to which an overall landscaping plan is developed and achieved to compliment the overall project.
- l. Landscaping should be an integral part in the design of off - street parking areas to soften the impact of hard surfaced areas on adjacent areas.
- m. Open spaces and landscaping along the perimeter of the site shall be compatible with adjoining uses and zones.
- n. Extent to which all necessary public utilities and facilities are available to service the proposed development, including police and fire protection, water and sewer services (where applicable) and other services normally provided within the area. Where

deficiencies exist, improvements that would correct such deficiencies may be considered.

- B. The board of adjustment may approve, modify, or deny any application for a conditional use permit. 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 permit, along with a reference to the specific section in the zoning regulation listing the conditional use under consideration. In addition, a certificate of Land Use Restriction shall be filed pursuant to Section 11.9 of this Ordinance. The board shall have the power to revoke conditional use permits, or variances for noncompliance with the condition thereof. Furthermore, the board shall have the right of action to compel offending structures or uses removed at the cost of the violator and may have personal judgment for such cost.
- C. Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of this Ordinance, the building code, housing code, and other regulations of the governing body.
- D. In any case, where a conditional use permit has not been exercised within the limit set by the board, or within twelve (12) consecutive calendar months from date of issuance, 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 improvement is under construction to a substantial degree, or that 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.
- E. The Zoning Administrator 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 use permits. If the landowner is not complying with all of the conditions listed on the conditional use permit, the Zoning Administrator shall report the fact in writing to the chairman of the board of adjustment. The report shall state specifically the manner in which the landowner is not complying with the conditions on the conditional use permit, and a copy of the report shall be furnished to the landowner at the same time it is furnished to the chairman of the board of adjustment. The board shall hold a hearing on the report within a reasonable time, and notice of the time and place of the hearing shall be furnished to the landowner at least one week prior to the

hearing. If the board of adjustments finds that the facts alleged in the report of the Zoning Administrator 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 of adjustment may authorize the Zoning Administrator 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.

- F. Once the board of adjustment has completed a conditional use permit, and all the conditions required are of such type that they can be completely and permanently satisfied, the Zoning Administrator, 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 conclusion in the margin of the copy of the conditional use permit which is on file.
- G. When an application is made for a conditional use permit for land located within or abutting any residential zoning district, written notice shall be given at least fourteen (14) days in advance of the public hearing on the application to the applicant, administrative official, an owner of every parcel of property adjoining the property to which the application applies, and such other persons as this Ordinance or board of adjustment bylaws shall direct. Written notice shall be by first class mail with certification by the board's secretary or other officer that the notice was mailed. It shall be the duty of the applicant to furnish to the board the name and address of an owner of each parcel of property as described in this subsection. Records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and address of said owner. In the event such property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group which administers property commonly owned by the condominium or cooperative owners. A joint notice may be mailed to two or more co-owners of an adjoining property who are listed in the property valuation administrator's records as having the same address.

#### **SECTION 12.9 DECISIONS OF THE BOARD OF ADJUSTMENT:**

- A. In exercising the aforementioned powers, the board of adjustment may, so long as such action is in conformity with the provisions of this Ordinance, reverse or affirm wholly or partly, or may modify the order, requirements, decision, or determination as made by the Zoning Administrator, from whom the appeal is taken.
- B. A majority of board members present and voting shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator, so long as such action is in conformity with the provisions of this Ordinance, or to decide in favor of the applicant on any matter upon which it is required to pass

under this Ordinance, or to effect any variation in the application of this Ordinance. A quorum must exist for each agenda item to be voted upon after any member disqualifications.

- C. The details of the decision of the board shall be forwarded to the zoning administrator.