

## ARTICLE XVIII

### BOARD OF ADJUSTMENT

#### **SECTION 18.0 ESTABLISHMENT OF BOARD OF ADJUSTMENT; MEMBERSHIP; APPOINTMENT; TERMS; VACANCIES; OATHS; COMPENSATION; REMOVAL; OFFICERS**

- A. A board of adjustment is hereby established.
- B. The board of adjustment shall consist of either three (3), five (5), or seven (7) members, all of whom must be citizen members and not more than two (2) of whom may be citizen members of the planning commission.
- C. The mayor shall be the appointing authority of the board of adjustment, subject to the approval of the legislative body.
- D. The term of office for the board of adjustment 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 county 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 mayor, subject to the approval by the legislative body, for inefficiency, neglect of duty, malfeasance, or conflict of interest. The mayor 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 the county in which he resides.

- 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 18.1 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.
- 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.
- 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 18.2 PROCEDURE FOR ALL APPEALS TO BOARD:** 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 19.0 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.

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 18.3 APPEALS FROM PLANNING COMMISSION OR BOARD OF ADJUSTMENT, OR LEGISLATIVE BODY:** Any appeal from planning commission or 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 or board of adjustment shall appeal from the action to the circuit court of the county in which the property, 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 planning commission or 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. Final action shall not include the planning commission's recommendations made to other governmental bodies.
- B. 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 the county in which the property, which is the subject of the commission's action, lies.

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 30 days shall not be subject to judicial review. Provided, however, any appeal of a planning commission action granting or denying a variance or conditional use permit, as provided in Section 17.0, J. of this ordinance, shall be taken pursuant to this subsection. In such case, the 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. All appeals shall be taken in the appropriate circuit court within 30 consecutive calendar days after the action or decision of the planning commission or board of adjustments and all decisions, which have not been appealed within 30 consecutive calendar 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.

- C. Any person or entity claiming to be injured or aggrieved by any final action of the legislative body of any city, county, or urban-county government, relating to a map amendment, shall appeal from the action to the circuit court of the county in which the property, which is the subject of the map amendment, lies. 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 18.4 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 18.5 POWERS OF BOARD OF ADJUSTMENT:** Upon appeals, the board of adjustment shall have the following powers:

- A. To hear and decide on applications for variances.
- B. 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 a zoning administrator in the enforcement of this ordinance. Such appeal shall be taken within thirty (30) consecutive calendar days.
- C. 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 9.14 of this ordinance.
- D. 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. 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 18.6 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 19.0 of this ordinance) and a Site Plan, subject to the applicable requirements of Section 9.19, are submitted.
  - b. Notice of public hearing shall be given in accordance with Section 18.2 of this ordinance.
  - c. The public hearing shall be held. Any person may appear in person, or by agent, or by attorney.
  - d. Prior to granting a variance:

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- (1) The board of adjustment shall make findings that the requirements of this section have been met by the applicant for a variance.
    - (2) The board of adjustment shall further make a finding that reasons set forth in the application justify the granting of a variance and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.
  - e. 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 16.9 of this ordinance.
  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.
- 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 land, but it cannot be transferred by the applicant to a different site.
- D. 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 herein.
  - 1. The board of adjustment shall have the power to hear and decide on applications to convert or change an existing nonconforming use to another nonconforming use, subject to the following:
    - a. A written application for a change from one nonconforming use to another (including the required fee as per Section 19.0 of this ordinance) and a Site Plan, if applicable, subject to the applicable requirements of Section 9.19, shall be submitted to the board.
    - b. Notice of public hearing shall be given in accordance with Section 18.2 of this ordinance
    - c. The public hearing shall be held. Any person may appear in person, by agent, or by attorney
    - d. 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:
      - (1) That the new nonconforming use shall generate less vehicular traffic (automobile and truck) than the prior nonconforming use;
      - (2) That the new nonconforming use is of a nature which will emit less noise and air pollution than the prior nonconforming use;

- (3) 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.
- e. 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.
- f. 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.
- g. The board of adjustment, in granting a change of nonconforming uses, may attach such conditions thereto as it may deem necessary and proper; and 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.
- h. 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.
- i. 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 18.7 CONDITIONAL USE PERMITS:** Conditional use permits shall not be issued without the specific approval of the board of adjustment, as provided herein.

- 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 Section 19.0 of this ordinance) and a Site Plan subject to the applicable requirements of Section 9.19, shall be submitted to the board.



2. Notice of public hearing shall be given in accordance with Sections 18.2 and 9.14, B., 6. 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 and Section 9.14.

#### **SECTION 18.8 DECISION 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 simple 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.
- C. The details of the decision of the board shall be forwarded to the zoning administrator.

**SECTION 18.9 ACTIONS OF BOARD OF ADJUSTMENT TO BE FURNISHED TO PLANNING AND DEVELOPMENT SERVICES OF KENTON COUNTY:** Pursuant to KRS 147.705, the board of adjustment shall, after final approval of any variance, change from one nonconforming use to another, conditional use permit, and other appeal, furnish, or cause to be furnished, within sixty (60) days after approval, a copy of same to Planning and Development Services of Kenton County.