

ARTICLE XVII

BOARD OF ADJUSTMENT

SECTION 17.0 ESTABLISHMENT OF BOARD OF ADJUSTMENT; MEMBERSHIP; APPOINTMENT; TERMS; VACANCIES; OATHS; COMPENSATION; REMOVAL; OFFICERS:

- A. The Board of Adjustment is hereby established for the Highland Heights.
- 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 City Council.
- 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 mayor. 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.
- 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 he resides.
- 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 City Council 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 this term.

SECTION 17.1 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, which notice shall contain the date, time and place for the meeting, and the subject of 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 Commonwealth 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.

SECTION 17.2 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 or decision of the Zoning Administrator and with the Board, a notice of such appeal specifying the grounds thereof, and giving notice of such appeal to any and all parties of record. A fee, as required by Section 18.0 of this Ordinance shall also shall be taken within thirty (30) calendar days after the appellant or his agent receives notice of the action to be appealed from, by filing with said Zoning Administrator and with the Board, a notice of such appeal specifying the grounds thereof, and giving notice of such appeal to any and all parties of

record. A fee, as required by Section 18.0 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 any hearing by the Board, any interested person may appear and enter his appearance, and all shall be given the opportunity to be heard.

The board of adjustment shall fix a reasonable time for hearing the appeal and give public notice 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 17.3 APPEALS FROM PLANNING COMMISSION, BOARD OF ADJUSTMENT, OR LEGISLATIVE BODY: Any appeal from the Planning Commission or Board of Adjustment 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 may appeal from the action to the circuit court of the county in which the land lies. Such appeal shall be taken within thirty (30) consecutive calendar days after the final action of the Planning Commission or Board of Adjustment. Final action shall not include the Planning Commission's recommendations made to other governmental bodies.
- B. All appeals shall be taken in the appropriate circuit court within thirty (30) consecutive calendar days after the action of decision of the Planning Commission or Board of Adjustment and all decisions, which have not been appealed within thirty (30) consecutive calendar days, shall become final. After the appeal is taken, the procedure shall be governed by the rules of the 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.

SECTION 17.4 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 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 17.5 POWERS OF BOARD OF ADJUSTMENT: Upon appeals, the Board of Adjustment shall have the following powers:

- A. To hear and decide on applications for 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 the zoning ordinance would deprive the applicant of reasonable capacity to make use of the land.
- 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 sixty (60) 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 9.12 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 adoption of the comprehensive plan for the city, requests for the change from one nonconforming use to another.

SECTION 17.6 DIMENSIONAL VARIANCES; CHANGE FROM ONE NONCONFORMING USE TO ANOTHER; CONDITIONS GOVERNING APPLICATIONS; PROCEDURES:

- A. **DIMENSIONAL VARIANCES:** Before any dimensional variance is granted, the Board of Adjustment 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 application to constitute proof of the dimensional variance. Such dimensional variance shall not be granted by the Board of Adjustment unless and until:
 - 1. A written application for a dimensional variance (including the required fee as specified in Section 18.0 of this ordinance) and a development plan subject to the applicable requirements of Section 9.19, are submitted demonstrating:
 - a. That specific conditions and circumstances exist which are unique to the applicant's land and do not exist on other land in the same zone;
 - b. That the manner in which the strict application of the provisions of this ordinance would deprive the applicant of a reasonable use of the land in

- the manner equivalent to the use permitted other land owners in the same zone;
 - c. That the unique conditions and circumstances are not the result of actions of the applicant taken subsequently to the adoption of this ordinance;
 - d. Reasons that the dimensional variance will preserve, not harm, the public safety and welfare, and will not alter the essential character of the neighborhood; and
 - e. That granting the dimensional variance requested will not confer on the applicant any special privilege that is not conferred by this ordinance to other lands, structures or buildings in the same zone. No nonconforming use of neighboring lands, and structures in the same zone shall be considered grounds for the issuance of a dimensional variance.
- 2. Notice of public hearing shall be given in accordance with Section 17.2 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 dimensional variance:
 - a. The Board of Adjustment shall make findings that the requirements of this section have been met by the applicant for a dimensional variance
 - b. The Board of Adjustment shall further make a finding that reasons set forth in the application justify the granting of dimensional variance and that the dimensional variance is the minimum variance that will make possible the reasonable use of the land, building, or structure, and under no circumstances shall the Board of Adjustment:
 - (1) Grant a dimensional variance which would vary by more than fifty (50) percent of the applicable regulation when the development is occurring in newly platted areas; and
 - (2) Grant a dimensional variance which would vary by more than fifty (50) percent of the average height, yard, and setback of existing surrounding development when the proposed construction occurs on lots or parcels of land already platted and where more than fifty-one (51) percent of said lots or parcels of land are improved with structures. If less than fifty-one (51) percent of the surrounding lots or parcels of land are improved with structures, then said development shall be governed by the requirements of Section 17.6, A, 4, b, (1).
 - c. The Board of Adjustment shall further make a finding that the granting of the dimensional variance will be in harmony with the general purpose and intent of this ordinance as well as the adopted comprehensive plan for the city, and will not be injurious to the neighborhood, or otherwise, detrimental to the public welfare

5. In granting any dimensional variance, the Board of Adjustment 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 dimensional variance is granted, shall be deemed a violation of this ordinance and punishable under Section 15.9 of this ordinance
- B. **DIMENSIONAL VARIANCE CANNOT CONTRADICT ZONING REGULATION:** The Board of Adjustment shall not possess the power to grant a dimensional 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. **DIMENSIONAL VARIANCE RUNS WITH LAND:** A dimensional variance applies to the property for which it is granted and not to the individual who applied for it. A dimensional 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.
- 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 specified in Section 18.0 of this ordinance) and a development 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 17.2 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 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 of the city, 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 city
- 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, said use shall be governed according to the requirements of Section 9.12

SECTION 17.7 CONDITIONAL USE PERMITS: Conditional use permits shall not be issued 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 for conditional use permits, subject to the following:
1. A written application for a conditional use permit (including the required fee, as specified in Section 18.0 of this ordinance) and a development 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 17.2 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, Section 9.14

SECTION 17.8 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 simple majority of the total membership of the Board of Adjustment, as established by regulation or agreement, 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 manner upon which it is required to pass under this ordinance, or to affect any variation in the application of this ordinance.
- C. The details of the decision of the Board shall be forwarded to the Zoning Administrator.