

## ARTICLE 7

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### **BOARD OF ADJUSTMENT**

**7-1 ESTABLISHMENT** - The Board of Adjustment, as constituted at the time of the re-adoption of this Zoning Ordinance, shall continue in power. There shall be seven (7) members appointed by the Mayor with the approval of the Urban County Council, for 4-year terms, ending on July 1 of the designated year. The terms shall be staggered so that the terms of no more than two members expire in any year. Vacancies on the Board of Adjustment shall be filled within sixty (60) days. If the vacancy is not filled within that time, the Planning Commission shall fill the vacancy.

**7-2 STAFF** - The staff to the Board of Adjustment shall be the Division of Planning of the Lexington-Fayette Urban County Government.

**7-3 GENERAL POWERS** - The Board of Adjustment may employ or contract with planners or other persons, as it deems necessary, to accomplish its assigned duties. 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 the provisions of this Zoning Ordinance. The Board shall have the power to issue subpoenas to compel witnesses to attend its meetings and give the evidence bearing upon the questions before it. The Chairman of the Board of Adjustment shall have the power to administer oaths to witnesses prior to their testifying before the Board on any issue.

**7-4 PROCEEDINGS** - 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 of the meeting, and the subject or subjects which will be discussed. A simple majority of the total membership of the Board of Adjustment shall constitute a quorum.

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; determinations; the number of votes for and against each question; whether any member is absent or abstains from voting; all of which shall, immediately after adoption, be filed in the office of the Board. A transcript of the minutes of a Board of Adjustment meeting shall be provided if requested by a party, at the expense of the requesting party, and the transcript shall constitute the record.

**7-5 NOTICE** - The Board shall fix a reasonable time for hearing an action or appeal and shall give public notice in accordance with KRS Chapter 424, as well as written notice as

set forth more fully herein. Any person may appear at the hearing personally or by attorney. All applications shall be decided by the Board within sixty (60) days from the date of the application, unless postponement is granted pursuant to the Board's bylaws.

When an application is made for a variance, written notice shall be given at least fourteen (14) days in advance of the public hearing on the application to the applicant, Division of Building Inspection, and to the owner of every parcel of property within two hundred (200) feet of the property to which the application applies. In the event that the subject property adjoins land which is zoned Agricultural Urban (A-U), Agricultural Rural (A-R), Agricultural Natural Areas (A-N), or Agricultural Buffer (A-B), notification shall be given by first-class mail to not only those properties within a 200-foot radius of the subject property, but to the next two properties beyond those included in the 200-foot radius; but in no event shall notice be required for property more than 2,400 feet from the subject property.

When an application is made for a conditional use permit, administrative review, non-conforming use or structure appeal, or any other appeal, written notice shall be given at least twenty-one (21) days in advance of the public hearing on the application to the applicant, Division of Building Inspection, and to owners of parcels of property within five hundred (500) feet of the property to which the application applies. In the event that the subject property adjoins land which is zoned Agricultural Urban (A-U), Agricultural Rural (A-R), Agricultural Natural Areas (A-N), or Agricultural Buffer (A-B), notification shall be given by first-class mail to not only those properties within a 500-foot radius of the subject property, but to the next two properties beyond those included in the 500-foot radius; but in no event shall notice be required for property more than one (1) mile from the subject property. Notification shall also be given by first-class mail to any neighborhood or homeowner's association within the 500-foot radius of the subject property. Such association must be duly registered with the government through the Division of Planning and the Office of Geographic Information Systems (GIS). In addition, for any conditional use permit, notice of the public hearing shall be posted on the subject property for fourteen (14) consecutive days prior to the hearing.

All 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 section and of any neighborhood or homeowner's association located within the required notice area. Records maintained by the Property Valuation Administrator

may be relied upon 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 that administers property commonly owned by the condominium or cooperative owners.

**7-6 SPECIFIC POWERS** - The Board of Adjustment shall have the following powers:

**7-6(a) 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 planning area of uses which are specifically named in this Zoning Ordinance, which may be suitable only in specific locations in the zone only if certain conditions are met, and which would not have an adverse influence on existing or future development of the subject property or its surrounding neighborhood.

- (1) The Board 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 and which would not have an adverse influence on existing or future development of the subject property or other property in the neighborhood. 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 Ordinance, listing the conditional use under consideration. Where the Zoning Ordinance establishes conditions for a conditional use, such conditions are the minimum requirements for the use and may not be waived or varied unless otherwise specifically allowed. The Board shall have power to revoke conditional use permits 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 judgment in personam for such cost.
- (2) In approving a conditional use permit, the Board shall find that the public facilities and services that will be needed are, or will soon be, adequate to serve the proposed use. The Board shall give consideration to the road system sewage disposal facilities, utilities, fire and police protection and other services and facilities as are relevant to the proposed use. The Board may establish conditions to ensure that the proposed conditional use will not have an adverse influence on the

subject property or the surrounding neighborhood.

- (3) In approving a conditional use permit, the Board shall provide for the continuation of existing or proposed collector streets, and whenever possible, provide for the continuation of local streets.
- (4) The granting of a conditional use permit does not exempt the applicant from complying with all other requirements of law.
- (5) In any case where a conditional use permit has not been exercised within the time limit set by the Board; or within one (1) year, if no specific time limit has been set, the granting of such conditional use permit shall not revert to its original designation unless there has been a public hearing, with notice as required herein below. Exercised, as set forth in this section, shall mean that binding contracts for the construction of the main building or other improvement have been let; or in 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.
- (6) The Division of Planning 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 listed on the conditional use permit. If the landowner is not complying with all of the conditions listed on the conditional use permit, the Division of Planning shall report the fact in writing 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 hearings shall be furnished to the landowner at least one (1) week prior to the hearing. If the Board of Adjustment finds that the facts alleged in the report of the Division of Planning 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 Division of Planning 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.

- (7) Once the Board of Adjustment has granted a conditional use permit, and all of the conditions required are of such type that they can be completely and permanently satisfied, the Division of Planning, 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 with the County Clerk. Thereafter, said use, if it continues to meet the other requirements of the regulations, will be treated as a permitted use.
- (8) The granting of a conditional use permit for a "functional family" shall be based on application of the following considerations by the Board:
  - a. Members of the functional family will share a strong bond or commitment to a single purpose (e.g., religious orders);
  - b. Members of the functional family are not legally dependent on others not part of the functional family;
  - c. Members can establish a legal domicile as defined by Kentucky law;
  - d. Members share a single household budget;
  - e. Members prepare food and eat together regularly;
  - f. Members share in the work to maintain the premises;
  - g. Members legally share in the ownership or possession of the premises;
  - h. Members demonstrate stability in the arrangement, as opposed to transient living arrangements.

7-6(b) VARIANCES - The Board shall have the power to hear and decide on applications for variances that are defined as departures from dimensional terms of the Zoning Ordinance pertaining to the height, width, or location of structures, and the size of yards and open spaces where such departures meet with the requirements of this section. The Board may grant a variance to vary the lot coverage or floor area ratio in the Single Family Residential (R-1A, R-1B, R-1C, R-1D and R-1E) zones or in the Two-Family Residential (R-2) zone, as these factors do not increase the permitted number of dwelling units. The Board may grant a variance for dimensional requirements only and may not vary the number of permitted signs, minimum number of required parking spaces outside of the Infill & Redevelopment Area, or other numeric requirements or limits of the zone. However, the Board

may grant a variance to the maximum number of parking spaces allowed in a zone, or reduce the minimum number of parking spaces by fifty percent (50%) of the otherwise required number in accordance with Article 16-10 for projects within the defined Infill & Redevelopment Area. Any reduction granted by the Board shall account for and include all other allowable parking reductions. The Board may impose any reasonable conditions or restrictions on any variance it decides to grant, and may revoke a variance for non-compliance with the conditions thereof. The Board shall not have the authority to vary lot coverage, floor area ratio (except in the R-1A, R-1B, R-1C, R-1D, R-1E and R-2 zones, as permitted above), nor lot size; nor to vary the maximum height of a building containing residential units in the Neighborhood Business (B-1) zone, as these are methods of controlling population density used in this Zoning Ordinance.

7-6(b)(1) FINDINGS REQUIRED FOR VARIANCE

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

- (a) 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:
  - (1) The requested variance arises from special circumstances that do not generally apply to land in the general vicinity, or in the same zone;
  - (2) 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
  - (3) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.
- (b) The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought.

7-6(b)(2) - 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 this Zoning Ordinance in the zone in question.

7-6(b)(3) - A variance applies to the property for which it is granted, and not the individual who applied for it. A variance also runs with the land and is transferable to any further owner of the land, but it cannot be transferred by the applicant to a different site.

7-6(c) NON-CONFORMING USE AND STRUCTURE APPEALS - The Board of Adjustment shall have the authority to hear and decide appeals, as authorized in Article 4, concerning non-conforming uses and structures. If it approves the appeal, the Board must find, in addition to all requirements of Article 4, that the non-conformity of the use or the non-conformity of the structure would not be increased in scope or area of its operation, and that it would not have an adverse effect on existing or future development of the subject property or the surrounding area. In approving an appeal, the Board may require appropriate conditions be met to ensure the health, safety, and welfare of the community and to protect the essential character of the surrounding area.

7-6(d) ADMINISTRATIVE REVIEW - The Board of Adjustment shall have the power to hear and decide cases where it is alleged by an applicant that there is an error in any order, requirement, decision, grant, or refusal made by the Division of Planning or the Division of Building Inspection in the enforcement of this Zoning Ordinance. Appeals under this section must be taken within thirty (30) days of the date of official action by the Division of Planning.

7-6(e) ALL OTHER APPEALS - Appeals to the Board 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 Division of Planning or the Division of Building Inspection in the enforcement of this Zoning Ordinance. Such appeal shall be taken within thirty (30) days after the appellant or his agent receives notice of the action appealed from, by filing with the Board a notice of appeal specifying the grounds thereof, and giving notice of such appeal to any and all parties of record. The Division of Planning shall forthwith transmit to the Board 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 an opportunity to be heard.

7-7 AUTHORIZATION - Based upon the official record of the Board's public hearing, a written report of the Board's action shall be prepared by the Division of Planning and shall be forwarded to any responsible Division. Such report shall

constitute the authorization to the Division to issue a permit, provided the permit application meets all other requirements of law, or take other action as appropriate.

7-8 RECORDING - All variances and conditional use permits approved by the Board shall be recorded at the expense of the applicant at the office of the County Clerk.