

## STEPS INVOLVED IN APPEALS TO THE BOARD OF ADJUSTMENT

1. **GET WRITTEN REFUSAL** from the Division of Building Inspection, located on the 2<sup>nd</sup> floor of the Phoenix Building at 101 East Vine Street in Lexington. The “refusal” form indicates the type of appeal (e.g., conditional use, variance, or administrative review) that must be considered by the Board and briefly describes what is proposed in terms of the Zoning Ordinance requirements.
2. **GET APPLICATION FORM(S) & SCHEDULES** from the Division of Planning, on the 7<sup>th</sup> floor of the Phoenix Building at 101 East Vine Street in Lexington. Staff there will provide you with an application package and explain the application process.
3. **PREPARE THE APPLICATION MATERIALS** for filing with the Division of Planning. The application materials that must be filed, as one complete package, are listed below:
  - a. **Completed Application Form**, typed or filled out legibly in ink and signed in ink. If the applicant does not own the property, a letter of permission from the property owner must accompany this form.
  - b. **Refusal Form** issued by the Division of Building Inspection.
  - c. **Certificate of Land Use Restriction**, required by state law and used for recording purposes.
  - d. **Copy of the Deed** to the property.
  - e. **Notification Area Map** - This map identifies all properties (by street address) whose owners must be notified by letter of the proposed activity. If necessary, staff will prepare the map needed for your application. The required notification areas are as follows:

**Conditional Use and Administrative Review** - all properties within 400 feet of the subject property.  
**Variance** – all properties within 200 feet of the subject property.

**Note: Where a conditional use or administrative review adjoins any agricultural zone**, the next two properties beyond the 400’ line, up to one mile from the subject property, must be included. **If a variance adjoins any agricultural zone**, the next two properties beyond the 200’ line, up to 2,400’ from the subject property, must be included.
  - f. **List of Surrounding Property Owners**, listing the names and mailing addresses of all property owners within the required notification area. This list is prepared using the form provided by staff. The quickest way to obtain property owner information is to access the Property Valuation Administrator’s website at [www.fayettepva.com](http://www.fayettepva.com) and go to the tax roll/property search site where individual street addresses can be entered. Alternatively, the information can be obtained by going to the PVA office on the 6<sup>th</sup> floor of the Phoenix Building, at 101 East Vine Street in Lexington. **Note that the physical address of a property and the owner’s mailing address are often different; in such cases, letters must be sent to the property owner at his/her correct mailing address.**
  - g. **Notification Letter & Mailing Envelopes** – A notification letter must be prepared using the form provided by the staff. This letter identifies the name of the applicant, date of the public hearing, type of appeal, address of the property and a brief factual description of the proposed activity. A copy of this letter, **along with a site plan**, must be placed in stamped and addressed envelopes, with one envelope for each property owner identified on the list of surrounding property owners. **A return address rubber stamp is available for your use in the Division of Planning Office if desired.** Duplicate envelopes **are not required** for a property owner that owns multiple properties in the notification area but has the same mailing address for each property. The envelopes should **not be sealed**, and **stamps must be used**, not a postage meter. Also, envelopes **must be stacked in the order that the property owners are listed on the form.**
  - h. **Site Plans** – A site plan providing an illustration of the property and proposed activity must be prepared in accordance with the directions and sample plan provided by the staff. Forty-five (45) copies of this plan are required (in addition to whatever number is required for the mailing envelopes).
  - i. **Fees** – A non-refundable application fee, as indicated in the “Filing Fee Schedule”, must be submitted at the time an application is filed. This fee should be in the form of a check made payable to “Lexington-Fayette Urban County Government” or “LFUCG”. Two additional checks for recording fees are also required, one payable to “Fayette County Clerk” for \$16.00 and one payable to “LFUCG” for \$10.50.
4. **FILE THE APPLICATION & FEES WITH THE DIVISION OF PLANNING**, before the filing deadline, preferably a few days early so that corrections can be made, if necessary. An application **will not be considered as “filed”** if any of the required application materials are inaccurate or incomplete, or if the application arrives after 4:00 PM on filing day!

## THIS HAPPENS AFTER YOU APPLY

5. **REVIEW OF THE APPLICATION BY THE DIVISION OF PLANNING** takes place one to two weeks after the filing deadline. All the materials that are reviewed are listed under #3 above. If the staff discovers errors or inconsistent information in your Application, you can expect a phone call from a staff member. If the errors are serious, or if the staff is unable to contact you by phone, or if you fail to provide corrected information in a timely fashion, this could result in postponement of your request by the Board at their scheduled meeting. Remember that the Board only meets once each month.
6. **ADVERTISING IN THE LEXINGTON HERALD LEADER** is done by the Division of Planning 7-10 days before the Board's scheduled meeting. After the legal ad is published, **only action by the Board** can postpone an Application.
7. **STAFF REPORT & AGENDA ARE MAILED BY THE DIVISION OF PLANNING** one week before the Board's meeting to the address provided on the application. This will inform you of the final staff review of your Application, including a recommendation, and will identify where your request is listed on the Board's meeting agenda.
8. **ATTEND THE PUBLIC HEARING HELD BY THE BOARD.** Some appeals are "abbreviated", meaning: (1) the staff has recommended Approval; (2) the applicant agrees with the staff's recommendations; and (3) there are no citizens in opposition to the request present at the hearing, and none that wish to address the Board. The Board hears these cases first. During the remainder of the meeting, the Board will hear from the applicant, staff, and any citizens who wish to make comments to the Board – either in favor of or opposed to your request. After all are heard, and the Board members ask questions, a decision will be made to approve, disapprove or postpone your appeal. **If you or your representative do not attend the Board of Adjustment meeting, it is likely that consideration of your appeal will be postponed for one month, or longer.**

**...If disapproved**, the appeal cannot be heard again for one year, unless there are new grounds (such as a change of facts or conditions) that were not considered at the first hearing. Should things change, you can request a new appeal before the one year expiration – known as an "Early Rehearing Request". If the Board decides to rehear your appeal, it will set a date for a hearing. Appeals of the Board's decisions can be taken to Circuit Court within 30 days of Board action.

**...If approved**, in most cases a permit will be needed from the Division of Building Inspection before you can initiate your proposed activity. This can generally be obtained once conditions imposed by the Board related to permitting have been satisfied. Applicants should be aware that any party can appeal a Board of Adjustment decision to Circuit Court within 30 days of Board action.

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If you need assistance, the following people may be contacted at the Division of Planning by calling (859) 258-3160:

Jim Marx, Senior Planner; Barbara Rackers, Administrative Officer  
Wanda Howard, Support Services; Bill Sallee, Planning Manager

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**Note:** In conformance with Article 16 of the Code of Ethics, any employee or officer of the LFUCG **must disclose any financial interest**, either direct or indirect, in any matter pending before any department of the Government. Therefore, if either the applicant or any owner is an LFUCG employee/officer, his/her name **must be listed** on the appropriate line of the application form, under item "A" of the "General Information" section, and his/her status **must be indicated** (i.e., LFUCG Employee/LFUCG Officer). In addition, he/she **must sign the Application** on the separate signature line provided in the "Certification" section of the application form.