

## Article 4: Boards of Adjustment

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### 4.1 Boards of Adjustment

The Boards of Adjustment as constituted at the time of the original adoption of this Zoning Regulation, having been established as stipulated by KRS 100.217, shall continue to operate in the manner herein prescribed. Meetings shall be held at the call of the chairman or his/her designee who shall give or cause to be given written or oral notice to all members of the Board at least seven days prior to the meeting which shall contain the date, time, and place for the meeting and the subject or subjects to be discussed. Meetings may be set on a regular schedule and deadlines established for applications to be submitted.

### 4.2 Rules for Proceedings Before Board

The Boards shall adopt rules governing all proceedings before it. Such rules shall provide and require that:

- A. Public notice shall be given of all hearings and all hearings shall be open to the public, in accordance with KRS Chapter 100;
- B. Due notice of all hearings shall be given to parties in interest in writing and to the Planning Commission which Commission shall be permitted to intervene, for and on behalf of the municipality, in all public hearings;
- C. At any public hearing a representative of the Commission and any other interested party may appear in person or by agent or by attorney, offer evidence and testimony and cross-examine witnesses;
- D. All witnesses shall be sworn or shall affirm their testimony in the manner required in courts of record;
- E. All evidence and testimony shall be presented publicly. The Board may take judicial notice of facts to the same extent and in the same manner as courts of record and may consider any relevant facts within the personal knowledge of any member. For each case or matter heard, the Board shall cause a record of its proceedings to be prepared. The record of proceedings shall include all documents and physical evidence considered in the case together with an electronically recorded record of all proceedings that supplements minutes taken. The record of proceedings shall be filed immediately in the office of the Board and shall be a public record. The electronically recorded record of the proceedings shall be kept for a two year period after which it will be disposed of. The minutes shall constitute the official and permanent record of the proceedings before the Board. Contents of the minutes shall be as determined by the Administrative Official after consultation with the appropriate Board.

### 4.3 Powers of the Board

Subject to the limitations enumerated herein, the Board shall have and exercise the following powers; the Board may reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from and may make such order, requirements, decision or determination as ought to be made and, to that end, shall have all the powers of the officer or department from whom the appeal is taken. Specific powers include:

- A. Administrative Review: To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this ordinance.

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- B. Variances: To authorize, upon appeal in specific cases such variance from the dimensional requirements of this ordinance, subject to terms, and conditions fixed by the Board, as will not be contrary to the public interest where, owing to exceptional and extraordinary circumstances, literal enforcement of the provisions of this ordinance will result in unnecessary hardship; provided however, that no variance shall be authorized unless the Board shall find that all of the following conditions exist:
- (1) That the variance will not authorize the operation of a use other than those uses specifically enumerated as permitted uses for the district in which is located the property for which the variance is sought;
  - (2) That the development or use of the property for which the variance is sought, if limited by a literal enforcement of the provisions of this ordinance, cannot yield a reasonable return in service, use or income as compared to adjacent conforming property in the same district;
  - (3) That the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, that the unique circumstances were not created by the owner of the property and are not due to or the result of general conditions in the district in which the property is located;
  - (4) That the variance will not substantially or permanently injure the appropriate use of adjacent conforming property in the same district;
  - (5) That the variance will not alter the essential character of the district in which is located the property for which the variance is sought;
  - (6) That the variance will not weaken the general purposes of this ordinance or the regulations herein established for the specific district;
  - (7) That the variance will be in harmony with the spirit and purposes of this ordinance;
  - (8) That the variance will not adversely affect the public health, safety or general welfare.
- C. Conditional Use Permits: To hear and decide applications for conditional use permits. Conditional use permits, as defined in KRS 100.111, are granted by the Board of Adjustment within whose jurisdiction the site of the proposed conditional use is located. Conditional use permits are to be granted only after all applicable substantive and procedural requirements of KRS 100 and these regulations are met. Neither the approval or existence of a conditional use shall be deemed to alter the basic character of the area in which it is located and shall not be admissible for evidentiary purposes for any rezoning request. All requests for conditional use permits shall meet the following mandatory requirements as well as being reviewed for the requirements, if any, listed for the conditional use in each specific zone under “conditional uses permitted”:
- (1) The proposed use must blend in with surrounding uses and is not a detriment to the area;
  - (2) Adequate public or private utilities are provided on site to serve the particular needs of the specific use proposed;
  - (3) Traffic circulation is adequate both to and from the site;
  - (4) Adequate parking and traffic flow areas are provided on site; and
  - (5) When necessary to insure compliance with the forgoing requirements, limitations may be placed on the hours of operation and/or on the duration of the permit.

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- D. Community Facilities Review: To authorize, upon appeal in specific cases, such exceptions from the terms of this ordinance, subject to terms and conditions fixed by the Board, as will permit qualified applicants to initiate and complete construction in accordance with definite, formalized site plans (no portion of said plans having been constructed) or to initiate and complete the construction of additional structures in accordance with an existing major structure or structures. Every exception authorized hereunder shall be personal to the applicant therefore and shall not be transferable, shall run with the land only after the construction of the authorized structure or structures and only for the life of such structure or structures. No exception shall be authorized hereunder unless the Board shall find that all of the following conditions exist:
- (1) That the exception will not authorize the operation of a use other than those uses specifically enumerated as permitted uses for the district in which is located the property for which the exception is sought, or a use typically associated with the applicant as described in subsection B below;
  - (2) That the applicant is a public utility or a non-profit community facility providing a service but not a commodity and is acting through its executive management or governing authority;
  - (3) That the full development is designed and intended to serve the district in which the development is sought to be operated and maintained;
  - (4) That the full development is necessary and desirable to provide a service or a facility which would contribute to the general well-being of the district in which the development is sought to be operated and maintained;
  - (5) That the facility will not substantially or permanently injure the appropriate use of adjacent conforming property in the same district;
  - (6) That the facility will not alter the essential character of the district in which is located the property for which the exception is sought;
  - (7) That the facility will not weaken the general purposes of this ordinance or the regulations herein established for the specific district;
  - (8) That the facility will be in harmony with the spirit and purposes of this ordinance;
  - (9) That the facility will not adversely affect the public health, safety or general welfare.
- E. Oaths and Attendance of Witnesses: For the purpose of exercising the powers herein enumerated, the Board shall elect a chairman and vice-chairman. The chairman, or, in his absence, the vice-chairman, shall administer oaths to or accept affirmations from witnesses. A failure or a refusal to appear in response to a subpoena issued by the Board shall constitute a violation of this ordinance.

### 4.4 Limitations on Powers of Board

- A. Concurring Vote Required: The concurring vote of a simple majority of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant on any matter upon which the Board is required to pass under this ordinance or to effect any dimensional variance from this ordinance.
- B. Findings of Fact: Every decision of the Board shall be based upon findings of fact and every finding of fact shall be supported in the record of its proceedings. The enumerated conditions required to exist on any matter upon which the Board is required to pass under this ordinance or to effect any dimensional variance from this ordinance shall be construed as limitations on the power of the Board to act. A mere finding or recitation of the enumerated conditions unaccompanied by findings of specific facts shall not be deemed findings of fact and shall not be deemed compliance with this ordinance.

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- C. Powers Strictly Construed: Nothing herein contained shall be construed to empower the Board to change the terms of this ordinance, to effect changes in the official map or to add to the specific uses omitted in any district. The powers of the Board shall be so construed that this ordinance and the official map are strictly enforced.

### 4.5 Appeals from the Board

- A. Procedure: Any person aggrieved, any taxpayer, the municipality or any officer or department of the municipality may have a decision of the Board reviewed in the manner as set forth in KRS 100.347 (1) or other applicable provisions of state law.
- B. Effect of Appeal: The issuance of a writ on a petition hereunder shall not stay proceedings upon the decision appealed from but the court, on application after notice to the Board and on due cause shown, may grant restraining order.

### 4.6 Liability

Any commissioner, or employee, or member of the Board of Adjustment, charged with the enforcement of this code, acting for any city or the county in the discharge of his duties, shall not thereby render himself liable personally, and he is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties. Any suit brought against any commissioner, or employee, or member of Board of Adjustment, because of such act performed by him in the enforcement of any provision of this code shall be defended by legal representative until the final termination of the proceedings.

### 4.7 Conditional Use Permits and Variances Requested in Conjunction with Zoning Map Amendments.

Applicants for zoning map amendments and subdivisions may elect, at the time of application, to have variance(s) or conditional use permit(s) for the same development heard and decided by the Planning Commission. In such cases, the Planning Commission shall assume all powers and duties otherwise exercised by the Board of Adjustments pursuant to KRS 100.231, 100.233, 100.237, 100.241, 100.243, 100.247, and 100.251. For purposes of Article 4 only, references to the Board of Adjustment shall also include the Planning Commission when the Commission is considering Variance(s) or Conditional Use Permit(s). Determinations on the issuance of Variance(s) or Conditional Use Permits shall be made in accordance with the provisions of KRS 100.237.

*Amended 8-30-06*