

# ARTICLE IV

## BOARD OF ADJUSTMENT

### 400 Appointment and Proceedings of Board

Matters of the Board of Adjustment, pertaining to membership, appointment, terms, vacancies, oath, compensation, removal and officers, shall be in accordance with KRS 100.

The Board of Adjustment shall adopt rules necessary to the conduct of its' affairs and in keeping with the provisions of this ordinance. Meetings shall be held 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 to be discussed.

The Board of Adjustment shall keep minutes and records of all proceedings including regulations, transactions, findings and determinations, and the number of votes for and against each question all of which shall be public record and be immediately filed in the office of the Board.

### 401 Powers and Duties

The Board of Adjustments shall have the following powers and duties:

#### A. Administrative Review - Appeals to the Board

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 an administrative official in the enforcement of the zoning regulation. Such appeal shall be taken within thirty (30) days.

#### 1. Procedures

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 any zoning enforcement officer. Such appeal shall be taken within thirty (30) days after the appellant or his agent receives notice of the action of the official by filing with said officer 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. Said officer 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 of Adjustment, any interested person may appear and enter his appearance, and all shall be given an opportunity to be heard.

#### 2. Public Notices

The Board shall find a reasonable time for hearing the appeal and give public notice in accordance with KRS 424, as well as written notice to the appellant and the Administrative Official at least one (1) week prior to the hearing, and shall decide the same within sixty (60) days. The affected party may appear at the hearing in person or by agent or attorney.

An appeal stays all proceedings in furtherance of the action appealed from, unless the Administrative Official 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 restraining order which may be granted by the Board of Adjustment or by a court of record on application, or notice to the Administrative Official from whom the appeal is taken and/or due cause shown.

B. 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 community of uses which are specifically named in the Zoning Ordinance which may be suitable only in specific locations in the zone and only if certain conditions are met.

1. All Districts: The following conditional uses may be approved in all zoning districts:
  - A. Non-local public utility and private transmission lines and pipes.
  - B. Radio, T.V. and telephone transmission structures.
  - C. Large utility structures and public service buildings.
  - D. Expansion of railroads and appurtenances.
  - E. Government buildings and uses.
  - F. Churches and libraries.
2. Specified Zoning Districts: Other conditional uses may be approved only in those zoning districts where they are designated as conditional uses under the zoning district regulations.
3. Procedure: An applicant shall submit an application for a conditional use permit to the Administrative Official, and the applicant shall follow all procedures set forth in Article IV Section 401 of this ordinance and KRS 100.237. The Administrative Official shall refer the application to the Board of Adjustment. Payment of a fee shall be required of the applicant before the issuance of the conditional use permit. Other regulations for conditional use permits are as follows:
  - A. The Board of Adjustment 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. Any such conditions shall be recorded in the Board's minutes and on the conditional use, along with reference to the specific section in the zoning regulation listing the conditional use permit under consideration. The Board of Adjustment shall have the power to revoke conditional use permits, or variances for non-compliance with the conditions thereof. The Board shall have the right of action to compel offending structures or uses removed at the cost of the violator and may have judgment in person for such costs. Furthermore, the Board of Adjustment may, where appropriate, base their findings and recommendations on information provided by the Agricultural Advisory Review Committee, appointed by the Woodford County Fiscal Court. **(Amended October 2003)**
  - B. Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of this ordinance, building, housing, and other regulations.
  - C. A conditional use permit shall be exercised within one (1) year from the date of issuance within the meaning of KRS 100.
  - D. The Administrative Official shall review all conditional use permits except for 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 which are listed on the conditional use permit. If the landowner is not complying with all of the conditions which are listed on the conditional use permit, the Administrative Official shall report the fact in writing to the Chairman of the Board of Adjustment. The report shall state specifically the manner in which the landowner is not complying with the conditions of the permit. A copy of the report shall be furnished to the landowner at the same time it is furnished to the Chairman of the Board of Adjustment. Upon hearing the report, as required by KRS 100, if the Board finds the facts alleged to be 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 may authorize the Administrative Official to revoke the conditional use permit and to cause the termination of the activity on the land which the conditional use permit authorizes.
  - E. Once the Board of Adjustment has completed a conditional use permit and all the conditions required are of such type that they can be completely and permanently satisfied, the Administrative Official, upon the request of the applicant may, if the facts warrant, make a

determination that the conditions have been satisfied. The Administrative Official shall compile a report including findings of fact to be included in the file and attached to the file a copy of the conditional use permit. Thereafter said use, if it continues to meet the other requirements of the regulations, will be treated as a permitted use.

F. Notice of the public hearing shall be given at least 14 days in advance of the hearing in accordance with KRS 100.

4. Recording: As required by KRS 100, a copy of the conditional use permit must be filed with the County Court Clerk at the applicant's expense.

### C. Variances

The Board shall have the power 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 the zoning regulation 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 in a manner equivalent to the use permitted other landowners in the same zone. The Board may impose any reasonable conditions or restrictions on any variance it decides to grant.

#### 1. Findings Necessary

The Board may grant a variance provided that the granting of the variance will not adversely affect the public's 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.
- 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.

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.

#### 2. Procedures

An applicant shall submit an application for a variance to the Administrative Official, and the applicant shall follow all procedures set forth in Article IV of this ordinance. The Administrative Official shall refer the application to the Board of Adjustment. Payment of a fee shall be required of the applicant before the issuance of the permit. Other regulations for variances are as follows:

- A. Notice of public hearing shall be given as in Section 401.A (2).
- B. The public hearing shall be held. The affected party may appear in person or by agent or attorney.
- C. The Board of Adjustment shall make findings that the requirements of Section 401.C (1) have been met by the applicant. The Board shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that these findings shall be recorded along with any imposed conditions or resolutions in its minutes and records and issued in written form to the applicant to constitute proof of the dimensional variance.
- D. If the property adjoins residential property, the adjoining property owners must be notified in writing 14 days in advance of the meeting date.

3. Recording

As required by KRS 100, a copy of the variance must be filed with the County Court Clerk at the applicant's expense.

4. Variance Runs With The 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 the land, but it cannot be transferred by the applicant to a different site, as per KRS 100.

D. Non-Conforming Use and Structure Appeals

The Board of Adjustment shall have the authority to hear and decide appeals as authorized in Article VIII concerning non-conforming uses and structures per KRS 100. The Board shall not allow the enlargement, substitution or extension of a non-conforming use beyond the scope and area of its operation at the time the ordinance, which makes its use non-conforming, was adopted. Nor shall the Board permit a change from one non-conforming use to any other non-conforming use. If it approves the appeal, the Board must find, in addition to all requirements of Article VI, 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 insure the health, safety, and welfare of the community and to protect the essential character of the surrounding area.

E. Limits of Authority

The Board shall act only within the strict limits of its authority as defined in the Zoning Ordinance. 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 the zoning regulation in the zone in question, or to alter density requirements in the zone in question. (KRS 100)

F. Board Has Powers of Administrative Official on Appeals; Reversing Decision of Administrative Official

In exercising the above mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have the powers of the Administrative Official from whom the appeal is taken.

G. Interpretation of Zoning Map

Where the street or lot layout actually on the ground, or as recorded, differs from the street and lot lines indicated on the zoning map, the Board after, notice to the owners of the property and after public hearing, shall interpret the map in such a way as to carry out the intent and purpose of this ordinance for the particular section or district in question.

**402 Duties of Administrative Official, Board of Adjustment, Legislative Bodies and Courts on Matters of Appeal**

It is the intent of this ordinance that all questions of interpretation and enforcement shall be first presented to the Administrative Official, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Administrative Official, and that recourse from the decisions of the Board of Adjustments shall be to the courts as provided by law.

It is further the intent of this ordinance that the duties of the governing bodies in connection with this ordinance shall not include hearing and deciding questions of interpretation and enforcement that may arise. The procedure for deciding such questions shall be as stated in this section and this ordinance. Under this ordinance the governing bodies shall have only the duty of considering and adopting or rejecting proposed amendments or the repeal of this ordinance, as provided by law.