

Section 72 – Board of Adjustment

- I. A Board of Adjustment (hereinafter known as “the Board”) shall be appointed and organized in conformance with the KRS 100.217.
- II. The Board shall have the following powers and duties:
 - A. *Bylaws.* To adopt bylaws for its own government.
 - B. *Conditional Uses.* To hear and decide applications for conditional use permits that allow uses which are specifically named in the zoning provisions, and which may be suitable only in specific locations in the zone if certain conditions are met.
 - C. *Administrative Review.* To hear and decide appeals where it is alleged by the applicant that there is an error in any order, requirement, permit, decision, grant, determination or refusal made by the enforcement officer or other administrative office in the carrying out of this chapter, and for interpretation of the zoning map. The Board of Adjustment has authority to said appeals, and to make literal interpretations of the pertinent provisions in order to correct any possible misinterpretation, and to make only those departures from a literal conformance of the zoning regulations, which are specifically delegated to it.
 - D. *Procedures for all appeals to board.* 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 any zoning administrative or 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 parties of records. 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, any interested person may appear and enter his appearance, and all shall be give an opportunity to be heard.
 - E. *Public Notice of Appeal Hearing.* The board shall fix a reasonable time for hearing the appeal and give public notice in accordance with KRS Chapter 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 it within sixty (60) days. The affected party may appear at the hearing in person or by attorney.
 - F. *Variance.* To hear and decide on applications for dimensional variance where, by reason of the exceptional narrowness, shallowness or unusual shape of the site, or by reason of exceptional topographic conditions, or some other extraordinary situation or condition of that site, the literal enforcement of the dimensional requirements of the zoning provisions

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 it decides to grant. 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 form which relief is sought.

- G. *Findings Necessary for Granting Variances.* Before any variance is granted, the board must find that 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 of nuisance to the public, and will not allow an unreasonable circumvent of the requirements of the zoning regulation. In making these finding, the board shall consider whether:
1. The requested variance arises from special circumstances, which 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 not the result of actions of the applicant subsequent to the adoption of the zoning regulation from which relief is sought.
- H. *Nonconforming Use Change.* To permit a change from one nonconforming use to another, providing the new nonconforming use is in the same or a more restrictive zoning classification in accordance with these zoning regulations.
- I. *Limits of Authority.* The Board of Adjustment 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 provisions for the zone in question; or to alter density requirements in the zone in question. The Board does not possess the authority to permit a use not authorized by these zoning regulations.
- J. *Application of Variance.* A dimensional variance applies to the property for which it is granted, and not the applicant. A variance also runs with the land, and is transferable to any landowner of the land, but the applicant cannot transfer it to a different site.
- K. *Additional Authority.* In granting a variance, the Board may attach thereto such conditions regarding the location, character and other features of the proposed building, structure, or use as it may deem advisable in the furtherance of the purposes of these zoning regulations.

- L. *Report.* A written report on each variance that is granted or denied by the Board shall be submitted to the McCracken County Fiscal Court with a copy retained in the files of the Planning Office.
- M. *Member.* The McCracken County Board of Adjustment shall consist of three (3) members.