

ARTICLE 3
ADMINISTRATION, ENFORCEMENT AND VARIANCES

3.1 Administrative Official

An administrative official designated by the Planning Commission shall administer and enforce this Ordinance. The administrative official may be provided with the assistance of such other persons as the Planning Commission may direct. The enforcement officers, in the performance of their duties and functions, may enter upon any land and make examinations and surveys that do not do damage or injury to private property.

For the purpose of this Ordinance the Administrative Official shall have the following duties:

- 3.1.1 Issue zoning permits or zoning compliance and occupancy, or both, but may not have the power to permit any use or any change of use which does not conform to the literal terms of the Zoning Ordinance;
- 3.1.2 Upon finding that any of the provisions of this Ordinance are being violated, notify in writing the person responsible for such violation(s), ordering the action necessary to correct such violation(s);
- 3.1.3 Order discontinuance of illegal uses of land, buildings or structures;
- 3.1.4 Order removal of illegal buildings or structures or illegal additions or structural alterations;
- 3.1.5 Order discontinuance of any illegal work being done;
- 3.1.6 Take any other action authorized by this Ordinance to ensure compliance with or to prevent violation(s) of this Ordinance;
- 3.1.7 Make records of all official actions of this office relating to the administration and enforcement of the provisions of this Ordinance including but not limited to written records of all complaints and actions taken with regard thereto, all violations discovered and actions taken thereto, and the final disposition of all such matters.

3.2 Application of Regulations

The regulations set forth by this Ordinance shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, and particularly as follows:

- 3.2.1 No building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed,

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moved or structurally altered unless in conformity with all of the regulations herein specified for the district in which it is located.

3.2.2

No building or structure shall hereafter be erected or altered:

- a. to exceed the height;
- b. to accommodate or house a greater number of families;
- c. to occupy a greater percentage of lot area;
- d. to have narrower or smaller yards or other open spaces;

than herein required; or in any manner contrary to the provisions of this Ordinance.

3.2.3

No part of a yard or other open space, required landscape area, parking or loading area for any building or structure shall hereinafter be included as part of the same requirements for any other building or structure, except as specifically provided for in this Ordinance.

3.2.4

No yard or lot existing at the time of passage of this Ordinance shall be reduced in dimension or area below the minimum requirements set forth in this Ordinance. Yards and lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.

3.3

Planning Commission

Matters of the Planning Commission, pertaining to membership, appointment, terms, vacancies, oath, compensation, removal, and officers shall be in accordance with KRS 100.133-100.182, and according to Open Meetings Law.

The Commission shall adopt rules and set fees as necessary to the conduct of its affairs in keeping with the provisions of this Ordinance. All meetings shall be open to the public. The Commission shall keep minutes of its proceedings, including regulations, transactions, findings, and determinations, and the number of votes for and against each question, and if any member is absent or disqualified from voting, indicating the fact.

For the purpose of this Ordinance, the Commission shall have the following duties:

3.3.1

Review all proposed map and text amendments to this Ordinance and make recommendations to the appropriate legislative body or bodies.

3.3.2

Review all plats, development plans, manufactured housing park proposals, manufactured housing placements (where conditionally approved), and temporary manufactured housing placements.

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3.4

Zoning Permits Required

No building or other structure shall be erected, moved, added to or structurally altered without a permit issued by the Administrative Official. No zoning permit shall be issued by the Administrative Official except in conformity with the provisions of this Ordinance, unless the Administrative Official receives a written order from the Board of Adjustment in the form of an administrative review, conditional use permit, or variance as provided by this Ordinance. Out buildings and accessory structures require zoning permits, except in the AR-1 zone. Outbuildings and accessory structures built in the AR-1 zone are required to comply with Section 3.7.2.2 (1) and (2).

If no zoning permit has been issued and approved and a builder begins or continues to build, a restraining order may be obtained upon application to the proper court of record and evidence of the lack of a zoning permit shall establish a prima facie case for the issuance of the restraining order. Further legal action may be taken as necessary to insure compliance with this Zoning Ordinance.

3.4.1

APPLICATION FOR ZONING PERMIT

All applications for zoning permits shall be accompanied by building plans; a recorded plat or deed and a sketch showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The applications shall include such other information as lawfully may be required by the appropriate building inspector or Administrative Official, including existing or proposed building or alteration; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for, the enforcement of other ordinances.

3.4.2

ISSUANCE

If the proposed construction or alteration conforms with all applicable provisions of the Zoning Ordinance and all other applicable ordinances, regulations and codes, the Administrative Official shall approve a zoning permit authorizing such construction or alteration. If the proposed construction or alteration fails to conform, the Enforcement Officer shall refuse to approve a zoning permit and shall deliver written notice to the applicant stating the reason for the refusal. The Administrative Official shall act upon the applications for building permits within ten (10) days from the date of their submission.

The zoning permit shall become void six (6) months from date of issuance unless substantial progress has been made on construction or alteration by that date.

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3.4.3

ZONING PERMITS NON-TRANSFERABLE

A zoning permit is valid only for the lot to which it was issued and is non-transferable.

3.5

Construction and Use to be as Provided in Applications, Plans, Permits, and Plats

Plats and zoning permits issued on the basis of plans and applications approved by the Administrative Official, authorize only the use, arrangement, and constructions set forth in such approved plats, plans, and applications, and no other use, arrangement, or construction. Use, arrangement or construction at variance with that authorized shall be deemed a violation of this Ordinance, and punishable as provided in Section 3.7.

3.6

Complaints Regarding Violations

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Administrative Official. The Administrative Official shall record properly such complaint thereby admitting it to public record, immediately investigate, and take action thereon as provided by this Ordinance.

3.7

Penalties for Violating

Violation of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) shall constitute a misdemeanor.

Any person who so violates this Ordinance or fails to comply with any of its requirements except as provided in Section 3.7.1 hereinbelow shall upon conviction thereof be fined not less than \$100 but no more than \$500 for each conviction. Each day of violation shall constitute a separate offense.

3.7.1

VIOLATIONS REGARDING LOTS OR PARCELS

Any person shall upon conviction be fined not less than \$100 but no more than \$500 for each lot or parcel which was the subject of sale or transfer, or a contract for sale or transfer where such sale or transfer, or contract thereof, constitutes a violation of this Ordinance.

The owner or tenant of any building, structure, premises, or part thereof, or other person/agent who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

Nothing herein contained shall prevent the county or cities from taking any such other lawful action as is necessary to prevent or remedy any violation.

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3.7.2

VIOLATIONS REGARDING ZONING PERMITS

Any person who begins construction of a building without first obtaining a zoning permit shall be assessed a penalty at 100% of the scheduled building permit fee, over and above the fee itself.

3.7.2.1

No Zoning Permit Required

1. Local governmental utility distributing and collecting structures such as pipes and transmission lines, transformers, meters, etc. Large non-governmental utility structures such as substations are permitted only as conditional uses.
2. Public streets and all official appurtenances necessary for traffic direction and safety. All street and traffic control signs shall conform to the code established and adopted by the Kentucky Department of Highways or the code established by the local government.
3. Private drives, private parking areas, and the parking of vehicles incident to the principal use on the same premises.
4. Real estate signs.
5. Signs not over two square feet in area identifying permitted home occupations.
6. Horticulture and landscaping of any premises, fences and other normal accessory uses.
7. Any requests from any department, commission, board, authority, agency or instrumentality of state or local government as per KRS 100.361.
8. Any other items or structures specifically mentioned elsewhere in this Ordinance.

3.7.2.2

Exceptions Relating to Structures on Agricultural Land

Outbuildings and accessory structures built on land used solely for agricultural purposes shall have no regulations except that:

1. Setback lines and minimum road frontages shall be required for the protection of existing and proposed streets and highways.
2. Structures including swimming pools, dwelling additions, decks, garages and tenant housing shall require zoning permits.
3. All building or structures in a designated floodway or flood plain or which tend to increase flood heights or obstruct the flow of flood waters may be fully regulated.
4. Manufactured homes and other dwellings may be permitted, but shall have regulations imposed which are applicable such as zoning laws, and building permits.

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The exceptions in this section do not apply to structures where agriculture is not the primary land use and/or the property consists of less than five (5) contiguous acres. On such property of less than five (5) contiguous acres, all zoning laws and subdivision regulations shall apply.

3.8 Schedule of Fees, Charges, and Expenses

3.8.1 The Planning Commission shall establish a schedule of fees, charges, and expenses and a collection procedure for zoning permits, appeals, and other matters pertaining to this Ordinance as permitted by KRS 100. The schedule of fees shall be posted in the office of the Administrative Official, and may be altered or amended only by the Commission. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

3.8.2 All final plats, final development plans, certificates of variances/conditional uses/zoning conditions or other land use restrictions shall be filed with the Boyle County Court Clerk at the expense of the applicant. The Enforcement Officer shall collect the County Clerk's filing fee (as established by the County Clerk) at the time the proceeding is initiated which may result in approval of any of the above, or imposition, adoption, amendment or release of any land use restrictions, and the Enforcement Officer shall charge the applicant a fee not to exceed \$15 for the reasonable cost of copying, completing and filing the plat or certificate with the County Clerk, in addition to any fees imposed by the County Clerk. These fees shall be refunded to the applicant in the event no land use restriction is imposed or adopted as the result of the proceeding.

3.9 Board of Adjustment

3.9.1 APPOINTMENT, PROCEEDINGS, FUNDING AND RECORD KEEPING

3.9.1.1 Matters of the Board of Adjustment pertaining to membership, appointment, terms, vacancies, oath, compensation, removal and officers shall be in accordance with KRS 100.217

3.9.1.2 The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance and the rules and regulations of the Planning and Zoning Commission. All meetings shall be open to the public.

3.9.1.3 The Board of Adjustment shall keep minutes of its proceedings, showing the vote upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the Administrative Official.

3.9.1.4 All funds raised by the Planning and Zoning fees and/or the financial support of the legislative bodies are for the maintenance and operation of both the Planning and Zoning Commission and the Board of Adjustment. However, all funds expended must be approved in advance by the Planning and Zoning Commission.

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3.9.1.5 The Planning and Zoning office staff shall keep the records and serve the administrative functions of the Board of Adjustment.

3.9.2 PROCEDURE FOR APPEALS TO THE BOARD OF ADJUSTMENT

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 the appellant's agent receives notice of the action of the official by filing with said officer and with the Board of Adjustment a notice of such 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 of Adjustment 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 or her appearance, and all shall be given an opportunity to be heard.

3.9.3 POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT

In exercising its duties the Board may, as long as such action is in conformity with the terms of this Ordinance, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from. The concurring vote of a majority of the members present and voting shall be necessary to reverse any order, requirement, decision, or favor of the applicant on any matter upon which it is required to pass under this Ordinance or to effect any variation in the application of this Ordinance. For the purpose of this Ordinance, the Board of Adjustment has the following specific responsibilities:

3.9.3.1 *Administrative Review*

To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, determination or interpretation of the Zoning Ordinance or District Boundaries on the Official Zoning Map made by the Administrative Official. Such appeal shall be filed within thirty (30) days.

3.9.3.2 *Conditional Use Permits*

3.9.3.2.1 To hear and decide only such exception as the Board of Adjustment is specifically authorized to pass on by the terms of this Ordinance; to decide such questions as are involved in determining whether conditional use permits should be granted; and to grant conditional use permits with such safeguards as are appropriate under this Ordinance, or to deny conditional use permits when not in harmony with the purpose and intent of this Ordinance or with the purpose and intent of the Comprehensive Plan. Conditional use permits shall not be granted by the Board of Adjustment unless and until:

1. A written application for a conditional use permit is submitted indicating the section of this Ordinance under which the permit is sought and stating the

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grounds on which it is requested. Applicable fees must be paid before action is taken.

2. Notice shall be given no more than twenty-one (21) days nor less than fourteen (14) days in advance of a public hearing. Every adjoining property owner shall be notified by first class mail postmarked at least fourteen (14) days prior to the public hearing.
3. The public hearing shall be held. Any party may appear in person, or by an agent or attorney.
4. The Board of Adjustment shall make a finding that:
 - a. It is empowered under the section of this Ordinance described in the application to grant the conditional use permit; and
 - b. The granting of the permit will not adversely affect the general health, safety, and welfare of the public.

3.9.3.2.2

Before any conditional use permit shall be issued, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual permits and that satisfactory provision arrangement has been made concerning the following, where applicable:

1. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
2. Off-street parking and loading areas where required with particular attention to the items in Section 3.9.3.2.2 (1) and the economic noise, glare, or odor effects of the conditional use permit on adjoining properties and properties generally in the district;
3. Refuse and service areas, with particular attention to items in Section 3.9.3.2.2 (1);
4. Utilities, with reference to locations, availability, and compatibility;
5. Screening and buffering with reference to type, dimensions, an character;
6. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;
7. Required yards and other open space;
8. Other items pertaining to the general health, safety, and welfare of the public; or, as required in individual district regulations (see Article 5).

3.9.3.2.3

A conditional use permit shall be exercised within one (1) year from the date of issuance within the meaning of KRS 100.237.

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3.9.3.2.4

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 the conditions which are listed on the conditional use permit. If the landowner is not complying with all conditions listed on the 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 on the conditional use permit and a copy of the report shall be furnished to the landowner at the same time that it is furnished to the Chairman of the Board of Adjustment. Upon hearing the report as required by KRS 100.237, if the Board of Adjustment finds the facts alleged to be true and that the landowner has taken no steps to comply with all the conditions of the conditional use permit between the date of the report and the date of the hearing, the Board of Adjustment shall authorize the Administrative Official to revoke the conditional use permit and to take the necessary legal action to cause the termination of the activity.

3.9.3.3

Variances; Conditions Governing Applications; Procedures

To authorize upon appeal in specific cases such variance from only the terms of dimensions and setbacks as specified in this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the Ordinance would result in undue hardship or practical difficulty. A variance from the terms of this Ordinance shall not be granted by the Board of Adjustment unless and until:

3.9.3.3.1

A written application for a variance is submitted demonstrating all of the following to be true:

1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zone;
2. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
3. That the special conditions and circumstances do not result from the actions of the applicant taken after adoption of this Zoning Ordinance, or previous applicable Zoning Ordinances;
4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same zoning district, and will not be detrimental to any neighboring premises.

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- 3.9.3.3.2 Notice of public hearing shall be given in accordance with Section 3.9.3.2.1 above.
- 3.9.3.3.3 The public hearing shall be held. Any party may appear in person, or by an agent or attorney.
- 3.9.3.3.4 The Board of Adjustment shall make findings that the requirements of KRS 100.243 have been met by the applicant for a variance.
- 3.9.3.3.5 The Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structure.
- 3.9.3.3.6 The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, as well as with the general purpose and intent of the Comprehensive Plan, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
- 3.9.3.3.7 In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 3.7 of this Ordinance.
- 3.9.3.3.8 No non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
- 3.9.3.3.9 Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.
- 3.9.2.2.10 A non-conforming use shall not be extended or enlarged in any way by a variance or any other action of the Board of Adjustment.

3.10 Appeals from the Board of Adjustment

Any person or persons, or any board, taxpayer, department or bureau of the county or cities aggrieved by any decision of the Board of Adjustment may seek relief by a court of record of such decision, in the manner provided by the laws of the Commonwealth of Kentucky and particularly by KRS 100.347. Appeal shall be filed within thirty (30) days after final action of the Board of Adjustment.

3.11 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

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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 Adjustment shall be to the courts as provided by law and particularly KRS 100.347. Such appeal shall be filed within thirty (30) days after such action.

3.12

Limits of Authority

The Board of Adjustment shall act only within the strict limits of its authority as defined in the Zoning Ordinance. The Board of Adjustment has no authority to vary the use regulations or other regulations not specifically delegated to it. The Board of Adjustment shall not hold hearings on applications or appeals seeking decisions that the Board of Adjustment is not authorized to make.