

**ARTICLE X**  
**BOARD OF ZONING ADJUSTMENTS**

**Section 10.01. POWER AND DUTIES**

A Board of Zoning Adjustment is hereby created for the City of Central City, Kentucky. The Board shall be known as the Central City Board of Zoning Adjustments. The Board shall have the powers, duties, and responsibilities as set forth in KRS, Chapter 100.

(a) The membership, appointment, and term of office of the Board of Zoning Adjustments is as follows:

The Board shall consist of five citizen members, at least one and not more than two of which shall be a Planning Commission member.

The mayor of the city shall appoint the members of the Board with the approval of the City Council. The term of office of members first appointed shall be staggered so that a proper proportionate number serve one, two, three and four years respectively, with

later appointments or re-appointments continuing the staggered pattern. Members of the Board of Zoning Adjustment previously existing, at the effective date of this Ordinance, shall constitute the membership of the Board of Zoning Adjustment created hereunder.

(b) Reimbursement for expenses lawfully incurred by a member of the Board in the performance of his duties may be authorized by formal action of the City Council. No member of the Board shall receive any other compensation.

(c) The Board shall have the power to receive, hold, administer and disburse funds which it may lawfully receive from any and every source. Prior to the beginning of each fiscal year the Board may adopt a budget which will be presented to the City Council for the purpose of receiving funds for the cost of its operation.

(d) Expenditures of such appropriations and funds shall be in accordance with the formal action of the Board pursuant to the regulations lawfully established. Administration of the Board shall be as described in KRS Chapter 100 and as may be amended in the future.

(e) Vacancies on the Board shall be filled within sixty (60) days by the mayor and City Council. If City Council fails to act within that time, the Planning Commission shall fill the vacancy. When a vacancy occurs other than through expiration of terms of office, it shall be filled for the remainder of the term.

(f) All members of the Board of Adjustments shall, before entering upon their duties, qualify by taking the oath of office prescribed by Section 228 of the Constitution of the Commonwealth of Kentucky before any Judge, Notary Public, Clerk of a Court or Justice of the Peace within the district or county in which he/she resides.

(g) Any member of the Board of Adjustments may be removed by the appropriate appointing authority for inefficiency, neglect of duty, malfeasance or conflict of interest. Any appointing authority who exercises the power to remove a member of the Board of Adjustments shall submit a written statement to the Planning Commission setting forth the reasons for removal, and the statement shall be read at the next meeting of the Board of Adjustments which shall be open to the general public. The member so removed shall have the right of appeal from the removal to the Circuit Court of the County in which he/she resides.

(h) The Board of Adjustments shall annually elect a Chairman, Vice-Chairman and Secretary and any other such officers it deems necessary and any officer shall be eligible for re-

election at the expiration of his term.

(i) The Board of Adjustments shall conduct meetings at the call of the Chairman who shall give written notice 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 subjects which will be discussed.

(j) A simple majority of the total membership of a Board of Adjustments as established by regulation or agreement shall constitute a quorum. Any member of the Board of Adjustments who has any direct or indirect financial interest in the outcome of any question before the body shall disclose the nature of the interest and shall disqualify himself/herself from voting on the question.

(k) The Board of Adjustments shall adopt by-laws for the transaction of business and shall keep minutes and records of all proceedings including regulations, transactions, findings and determinations and the number of votes for and against each question, and if any member is absent or abstains from voting, indicating the fact, all of which shall immediately after adoption, be filed in the office of the Board. A transcript of the minutes of a Board of Adjustments meeting shall be provided if requested.

(l) The Board of Adjustments may employ or contract with planners or other persons as it deems necessary to accomplish its assigned duties.

(m) The Board of Adjustments shall have the power to issue subpoenas to compel witnesses to attend its meetings and give evidence bearing upon the questions about it. Any person authorized by the Kentucky Rules of Civil Procedure to serve subpoenas in the Courts of Kentucky may serve such subpoenas issued by the Board of Adjustments.

(n) The Chairman of the Board of Adjustments shall have the power to administer an oath to witnesses prior to their testifying before the Board on any issue.

(o) 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 regulations which may be suitable only in specific locations in the zone only if certain conditions are met.

1. The Board may approve, modify, or deny and application for a conditional use permit. If it approves such permit it 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 permit along with a reference to the specific section in the zoning regulation listing the conditional use under consideration. The Board shall have the power to revoke conditional use permits or variances for non-compliance with the condition thereof. Furthermore, the Board shall have a right of action to compel offending structures or uses removed at the cost of the violator and may have judgment in personam for such cost.

2. Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of building, housing and other regulations.

3. In any case where a conditional use permit has not been exercised within the time limit set by the Board, or within one year, if no specific time limit has been set, such conditional use permit shall not revert back to its original designation unless there has been a public hearing. Exercised as set forth in this section shall mean that binding contracts for the construction of the main building or other improvements have been met; or in the absence of contracts that the main building or other improvements is under construction to a substantial degree, or that prerequisite conditions involving substantial investment under contract, in development are completed. When construction is not a part of the use, exercised shall mean that the use is in operation in compliance with the conditions as set forth in the permit.

4. The administrative official shall review all conditional use permits except 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 listed on the conditional use permit. If the landowner is not complying with all of the conditions listed on the conditional use permit, the administrative official shall report the fact in writing to the Chairman of the Board of Adjustments. 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 it is furnished to the Chairman of the Board of Adjustments. The Board shall hold a hearing on the report within a reasonable time and notice of the time and place of the hearing shall be furnished to the landowner at least one week prior to the hearing. If the Board of Adjustments finds that the facts alleged in the report of the administrative official are 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 of Adjustments may authorize the administrative official to revoke the conditional

use permit and take the necessary legal action to cause the termination of the activity on the land which the conditional use permit authorizes.

5. Once the Board of Adjustment has completed a conditional use permit and all the conditions required are such type that they can be completely and permanently satisfied, the administrative official, upon request of the applicant, may if the facts warrant, make a determination that the conditions have been satisfied (note the conclusion in the margin of the copy of the conditional use permit which is on file with the County Court Clerk as required in KRS 100.344.) Thereafter said use, if it continues to meet the other requirements of the regulations, will be treated as a permitted use.

(q) Before any variance is granted, the Board must find all of the following, which shall be recorded along with any imposed conditions or restrictions in its minutes and records and issued in written form to the applicant to constitute proof of the dimensional variance:

1. The specific conditions in detail which are unique to the applicants land and do not exist on other land in the same zone.

2. The manner in which the strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land in the manner equivalent to the use permitted other landowners in the same zone.

3. That unique conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulations.

4. Reasons that the variance will preserve, not harm the public safety and welfare and will not alter the essential character of the neighborhood.

(r) 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.

(s) A dimensional variance applies to the property for which it is granted, and not to the individual who applied for it. A variance also runs with the land and is transferable to any future owner of the land, but it cannot be transferred by the application to a different site.

(t) The lawful use of a building or premises existing at the time of adoption of any zoning regulations affecting it may

be continued, although such use does not conform to the provisions of such regulations except as otherwise provided herein.

The Board of Adjustments shall not allow the enlargement or extension of a non-conforming use beyond the scope and area of its operation at the time the regulation which makes its use non-conforming was adopted, nor shall the Board permit a change from one non-conforming use to another or a more restrictive classification provided, however, the Board of Adjustments may grant approval, effective to maintain non-conforming use status, for enlargements, or extensions, made or to be made of the facilities of a non-conforming use where the use consists of the presenting of a major public attraction or attractions such as a sports event or events, which has been presented at the same site over such period of years and has such attributes and public acceptance as to have attained international prestige and to have achieved the status of public tradition, contributing substantially to the economy of the community and state, of which prestige and status the site is an essential element, and where the enlargement or extension was or is designed to maintain the prestige and status by meeting the increasing demands of participants and patrons.

(u) The Board of Adjustments 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 sixty days.

(v) Appeals to the Board may be taken by any person or entity claiming to be injuriously affected or aggrieved by an official action or decision of the zoning enforcement officer. Such appeal shall be taken within thirty days after the appellant or his agent receives notice of the action appealed from, 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 any hearing by the Board any interested person may appear and enter his appearance and all shall be given an opportunity to be heard.

(w) The Board shall fix a reasonable time for hearing the appeal and give public notice in accordance with KRS Chapter 100.424 as well as written notice to the appellant and the zoning enforcement officer at least one week prior to the hearing and shall decide it within sixty days. The affected party may appear at the hearing in person or by attorney.

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(x) If no building permit has been issued 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 building permit shall establish a prima facie case for the issuance of the restraining order.