
ARTICLE

2

ADMINISTRATION

SECTION 200

Designation of Zoning Administrator

Each City and the County shall designate a Zoning Administrator to administer the zoning order. The Boone County Planning Commission may recommend a candidate for this position. The Administrator may be provided with the assistance of other such persons as each City, the County, or Planning Commission may direct, such as a Zoning Enforcement Officer(s) or Zoning Inspector(s).

SECTION 201

Duties of Zoning Administrator

For the purpose of this order, the Zoning Administrator shall have the following duties:

1. Upon finding that any of the provisions of this order are being violated, he shall notify in writing the person responsible for such violation(s), ordering the action(s) necessary to correct such violation;
2. Order discontinuance of illegal uses of land, buildings, or structures;
3. Order removal of illegal buildings or structures or illegal additions or structural alterations;
4. Order discontinuance of any illegal work being done;
5. Determine the classification of a use of land, buildings or structures as a permitted, accessory or conditional use in a specific zoning district, as well as determine the applicability and substance of development performance standards, based on interpretation of the stated and implied requirements of the zoning regulations. This includes the determination of classification of new uses or uses not specifically identified in these regulations.
6. Take any other action authorized by this order or ordinance to ensure compliance with or to prevent violation(s) of these regulations. This may include the issuance of and action on zoning and certificate of occupancy permits and such similar administrative duties as are permissible under provisions of Kentucky Revised Statutes, Section 100.271.
7. The Zoning Administrator may delegate any portion or portions of his duties to a Zoning Enforcement Officer. The Zoning Enforcement Officer shall carry out duties assigned by the Zoning Administrator. Such recommended duties may include, but are not limited to: site inspections regarding complaints of violations of this order; site inspections of developments for compliance with plans approved under this order; issuance of "Notice of Violations" citations; review of development plans for compliance with the rules, regulations and standards of this order.

SECTION 205

General

The Zoning Enforcement Officer shall coordinate all activities with the Zoning Administrator.

SECTION 210

Duties of Boone County Planning Commission

For the purpose of this order the Boone County Planning Commission shall have the following duties:

1. Initiate proposed amendments to this order;
2. Initiate proposed amendments to this order and make recommendations to the appropriate legislative body or Fiscal Court as specified in Article 3;
3. Review and approve or deny development applications required by this order;
4. Administer the Boone County Subdivision Regulations as they apply to this order;
5. Establish a schedule of fees, charges and expense as specified in Section 460;
6. Delegate any tasks as specified in this order relative to its administration;
7. Perform any task and follow any procedure, including those pertaining to committees of the Planning Commission, that is specified in or provided for through the Commission's adopted by-laws.

SECTION 220

Duties of the Board of Adjustment and Zoning Appeals

For the purposes of this order, the Board of Adjustment and Zoning Appeals shall have the following duties:

1. To hear and decide appeals where it is alleged there is an error in any order, requirements, decision, interpretation, grant, or refusal made by the Zoning Administrator;
2. To authorize such variances from the terms of this order as 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 or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations.
3. To grant conditional use permits as specified in this zoning order, with such additional safeguards as will uphold the intent of this order.
4. To grant changes in nonconforming uses as specified in this order.

SECTION 230

Duties of Zoning Administrator, Board of Adjustment and Zoning Appeals, Legislative Authority and Courts on Matters of Appeal

It is the intent of this order that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, and that such questions shall be presented to the Board only on appeal from the decision of the Zoning Administrator, and that recourse from the decisions of the Board shall be to the appropriate court of jurisdiction as provided by law. It is further the intent of this ordinance that the duties for the legislative bodies in connection with this order 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 order. Under this order, the legislative bodies shall have only the duties of considering and adopting or rejecting proposed amendments or the repeal of this order as provided by law.

SECTION 240

Appeals and Variances

Appeals and variances shall conform to the procedures and requirements of Sections 240-254, inclusive, of this zoning order and K.R.S. 100.241-100.271. As specified in Section 220, the Board of Adjustment and Zoning Appeals has appellate jurisdiction relative to appeals and variances.

SECTION 245

Appeals

Appeal to the Board of Adjustment and Zoning Appeals 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 the Zoning Administrator. Such appeal shall be taken within thirty (30) days after the decision by filing, with the Board of Adjustment and Zoning Appeals, a notice of appeal specifying the grounds upon which the appeal is being taken, and by giving notice of such appeal to any and all parties of record. The Zoning Administrator shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken. The appellant may also submit any materials appropriate for review in consideration of the appeal.

SECTION 246

Stay of Proceedings

An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator from whom the appeal is taken certifies to the Board of Adjustment and Zoning Appeals after the notice of appeal is filed with the Administrator, that by reason of facts stated in the application, a stay would, in the officer's 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 upon application to the proper court of record, on notice to the Zoning Administrator from whom the appeal is taken.

SECTION 250

Dimensional Variance

The Board of Adjustment and Zoning Appeals shall have the power to hear and decide on applications for variances. Variance is defined as a departure from dimensional terms of the zoning regulation pertaining to the height, width, or location of structures, and the size of yards and open spaces where such departure meets the requirements of K.R.S. 100.241 to 100.247.

Variances are appropriate by reason of exceptional narrowness, shallowness or unusual shape of a site on the effective date of these regulations or amendment thereof or by reason of exceptional topographic conditions, or some other extraordinary situation or condition of that site, the literal enforcement of the above dimensional terms of the zoning regulations 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 dimensional terms pertaining to height, width and location involve such items as structures, parking space stalls, driveway aisles, and landscaped buffers and signs (excepting the number of signs). Lot frontages, the size of yards and open spaces refer to minimum yard dimensions such as building setbacks. The Board shall not possess the power to grant a variance to permit a use of land, building or structure, which is not permitted by the zoning regulation in the zone in question, or to alter the density requirements in the zone in question. Density is defined as the number of units or square footage of a building per net acre of land developer. 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.

All adjoining property owners shall be notified of the public hearing at least two weeks in advance. The applicant shall be responsible for supplying the names and addresses of all adjoining property owners and shall pay costs of notification. Records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and address of property owners. A sign, that announces the fact that a Board of Adjustment and Zoning Appeals hearing has been scheduled, shall be posted on the subject property at least 7 days prior to the public hearing.

SECTION 251

Application and Standards for Variances

A variance from the terms of this order shall not be granted by the Board of Adjustment and Zoning Appeals unless and until a written and signed application for a Variance is submitted to the Zoning Administrator and the Board of Adjustment and Zoning Appeals, along with any additional information the Board may find appropriate.

1. 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 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 regulations 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 regulations from which relief is sought.
2. 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.

SECTION 252

Supplementary Conditions and Safeguards

In granting any appeal or variance, the Board of Adjustment and Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this order. Violation of such conditions and safeguards, when made a part of the terms under which the appeal or variance is granted, shall be deemed a violation of this order and punishable under Section 430 of this ordinance.

SECTION 253

Notice of Hearing

Notice of the time, place and purpose of a hearing of a notice of appeal or application for variance shall be published in a newspaper of general circulation at least seven (7) days, but not more than twenty-one (21) days before the date of the hearing.

Also, all adjoining property owners involved in an appeal and a variance request shall be notified in writing of the public hearing at least two weeks in advance. The applicant shall be responsible for supplying the names and addresses of all adjoining property owners and shall pay costs of notification. Records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and address of property owners. In addition, a written notice of the appeal shall be made to the applicant or appellant and the Zoning Administrator and a sign, that announces the fact that a Board of Adjustment and Zoning Appeals hearing has been scheduled, shall be posted on the subject property at least 7 days prior to the public hearing if a specific site is being reviewed and subject to an appeal.

SECTION 254

Action by Board of Adjustment and Zoning Appeals

The Board of Adjustment and Zoning Appeals shall hear and decide upon the notice of appeal or application for variance within sixty (60) days of filing. The Board of Adjustment and Zoning Appeals shall either approve, approve with supplementary conditions as specified in Section 245, or disapprove the request for appeal or variance. The Board shall further make a finding that the reasons set forth in an application justify the granting of the variance that will make possible a reasonable use of the land, building, or structure. If the request is disapproved, the board shall state the reasons for disapproval in writing. Appeals from Board decisions shall

be to the appropriate court of jurisdiction as provided by law.

SECTION 260

Conditional Use Permits

Conditional uses shall conform to the procedures and requirements of Sections 261-267, inclusive of this order and the requirements of K.R.S. 100.237.

SECTION 261

Contents of Application for Conditional Use Permit

An Application for Conditional Use Permit along with whatever additional information the Board may find appropriate, shall be filed with the chairperson of the Board of Adjustment and Zoning Appeals by at least one owner or owner by contract (option) or lessee with permission of the owner of property for which such conditional use is proposed. The Board may require the applicant to submit a site plan as detailed in Article 30 of these regulations.

SECTION 262

General Standards Applicable to All Conditional Uses

In addition to any specific requirements for conditionally permitted uses deemed appropriate by the Board of Adjustment and Zoning Appeals, the Board shall review the particular facts and circumstances of each proposed use and determine that the use is in fact a conditional use as established under the provisions of this zoning order. The Board may consider whether such use at the proposed location:

1. Will be harmonious with and in accordance with the general objectives, or with any specific objective of the County's comprehensive plan, a specific corridor plan and/or the zoning order;
2. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and shall not change the essential character of the same area;
3. Will be hazardous to existing or future neighboring uses;
4. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;
5. Will create excessive additional requirements at public cost for public facilities and services and will be detrimental to the economic welfare of the community;
6. Will involve uses, activities, process, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, dust, fumes, glare or odors;
7. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.

SECTION 263

Specific Standards Applicable to All Conditional Uses

The Board shall also consider the criteria for conditional uses as set forth in each zoning district.

SECTION 264

Supplementary Conditions and Safeguards

In granting any conditional use, the Board may prescribe appropriate conditions and safeguards in conformity with this order. Violations of such conditions and safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this order and punishable under Section 430 of this

order.

SECTION 265

Procedure for Hearing Notice

Upon receipt of the application for a conditional use permit specified in Section 261, the Board shall establish a time and place for a hearing, publish notice of the hearing in a newspaper of general circulation in the County between 7 and 21 days in advance, and notify adjoining property owners by mail at least fourteen (14) days in advance of the hearing. The applicant shall be responsible for supplying the names and addresses of all adjoining property owners and shall pay the costs of notification.

Records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and address of property owners. In addition, a sign, that announces the fact that a Board of Adjustment and Zoning Appeals hearing has been scheduled, shall be posted on the subject property at least 7 days prior to the public hearing.

SECTION 266

Action by the Board of Adjustment and Zoning Appeals

The Board of Adjustment and Zoning Appeals shall hear and decide upon the application for a conditional use permit within sixty (60) days of filing. The Board shall either approve, approve with supplementary conditions as specified in Section 264, or disapprove the application as presented. If the application is approved or approved with modification, the Board shall direct the Zoning Administrator to issue a conditional use permit listing the specific conditions specified by the Board for approval. If disapproved, the Board shall state the reasons for disapproval. If the application is disapproved by the Board, the applicant may seek relief through the appropriate circuit court. Appeals from Board decisions shall be as provided in Kentucky Revised Statutes, Section 100.347.

SECTION 267

Expiration Conditional Use Permit

A conditional use permit shall be deemed to authorize only a particular conditional use. If said permit has not been exercised within one (1) year from the date it was issued, or a time limit established by the Board, or if said conditional use shall cease for more than one (1) year, the conditional use permit shall not revert to its original designation unless a new public hearing has been conducted. "Exercised" means that binding contracts for the construction of the main building or other improvement have been let; or in the absence of contracts that the main building or other improvement 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, or that substantial costs or expenses to establish the use have been incurred.

SECTION 270

Nonconforming Lots, Uses, and Structures

Within the districts established by this order or amendments to districts that may later be adopted, lots, uses of land, and structures, which were lawful before this order was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this order or further amendments may exist. It is the intent of this order to permit these nonconforming lots, uses and structures to continue until they are no longer non-conforming. It is further the intent of this order that a nonconforming use or structure shall not be enlarged or extended beyond the scope and area of its operation at the time it became a legal nonconforming use, nor shall other uses or structures which are prohibited elsewhere in the same district be permitted on lots of nonconforming uses or structures.

Uses of structures not legally established before this order was passed or amended shall not be given the statutes of legally pre-existing, non-conforming uses or structure, and may be subject to penalties for violation under Section 410 through 430 of this order.

SECTION 271

Single Non-Conforming Lots of Record and Subdivisions, and Non-Conforming Setbacks

If any lot of record does not meet the minimum square footage requirements that are generally applicable in the district wherein said lot is located, and that lot existed at the effective date of adoption or amendment of this order, the owner may develop that lot in conformance with the dimensional (square footage) regulations, including front yard setback requirements, previously in effect. The lot must be developed in conformance with all other requirements of this order. Variances of any requirements other than the square footage of a lot or lot size shall be obtained only through action of the Board of Adjustment and Zoning Appeals as provided in Section 250 through Section 254. Subdivisions which had been granted preliminary plan approval prior to the adoption of this order may be developed in conformance with dimensional regulations under which preliminary plan approval was given.

In such instances where the front yard setback requirements for a pre-existing development differ from the current regulations, and an extension or enlargement of a previously developed street or subdivision is approved, the front yard setback requirements shall be adjusted at a rate of at least five feet for each consecutive lot until the new minimum required setback is obtained, although all other requirements of this order must be met. When an addition is proposed for a pre-existing structure that does not meet the current setback requirements, the addition may be located along the nonconforming building line established by the existing structure, but may not encroach into such nonconforming setback unless a variance is granted by the Board of Adjustment and Zoning Appeals.

SECTION 272

Non-Conforming Uses of Land

Where, at the time of adoption of this order, legally established, uses of land exist which would not be permitted by regulations imposed by this order, the uses may be continued so long as they remain otherwise lawful, provided the Board shall not allow the enlargement or extension of a non-conforming use beyond the scope and area of its operation at the time these regulations were adopted.

K.R.S. 100.253 allows the following:

1. The lawful use of a building or premises, existing at the time of the 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.
2. The board of adjustment 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 nonconforming was adopted, nor shall the board permit a change from one (1) nonconforming use to another unless the new nonconforming use is in the same or a more restrictive classification, provided, however, the board of adjustment may grant approval, effective to maintain nonconforming-use status, for enlargements of extensions, made or to be made, of the facilities of a nonconforming 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 a 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.
3. Any use which has existed illegally and does not conform to the provisions of the zoning regulations, and has been in continuous existence for a period of ten (10) years, and which has not been the subject of any adverse order or other adverse action by the administrative official during said period, shall be deemed a nonconforming use. Thereafter, such use shall be governed by the provisions of subsection (2) of this section.

SECTION 273

Change from One Nonconforming Use to Another

The Board of Adjustments and Zoning Appeals shall have the power to hear and decide on applications to permit a change from one nonconforming use to another.

The Board shall not permit such a change unless the new nonconforming use is as equally or more compatible with permitted uses in the district in which it is located as the existing nonconforming use. Application for change of nonconforming use shall conform to the procedures and requirements for appeals as specified in Sections 245-254, inclusive, of this order and Kentucky Revised Statutes, Section 100.253.

The Board shall not allow any changed nonconforming use to be increased or enlarged, nor extended to occupy a greater area of land than was occupied by the original nonconforming use. In permitting such change in nonconforming use, the Board may require appropriate conditions and safeguards in accord with other provisions of this order, such as the provision of landscaping and buffering, the improvement of parking areas, and restrictions on the hours of operation.

SECTION 274

Non-Conforming Structures

Where a lawful structure exists at the effective date of adoption or amendment of this order that could not be built under the terms of this order by reason of restrictions on intensity or size or lot coverage or height or bulk or setback, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity;
2. Should such structure be moved for any reason for any distance, it shall thereafter conform to the regulations for the district in which it is located after it is moved as otherwise provided in Kentucky Revised Statutes, Section 100.253(2).

SECTION 275

Avoidance of Undue Hardship

To avoid undue hardship, nothing in this order shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this order and upon which actual building construction has been carried on diligently; provided, however, such construction is not found to have been or be a purposely planned evasion of the intents of this order. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that the work shall be carried out diligently, but subject to the same clarifications of planned intent above. Neither shall this order be deemed to require a revision in the preliminary plans of subdivisions which had been approved prior to the adoption of these regulations provided that schedules for submission of improvement plans and final plans are met.

SECTION 276

Repairs and Maintenance

On any non-conforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the cubic content existing when it became non-conforming shall not be increased. Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

SECTION 277

Pre-Existing Use Under Conditional Use Provisions Not Non-Conforming Uses

Any pre-existing use which is permitted as a conditional use in a district under the terms of this order shall not be deemed a non-conforming use in such a district, but shall without further action be considered a conforming use. However, a Conditional Use Permit must be granted by the Board of Adjustment and Zoning Appeals before such use can be expanded in size or scope.

SECTION 280

Certificate of Land Use Restriction

Land use restrictions adopted or imposed by the planning commission, board of adjustments, legislative body or fiscal court upon property within Boone County shall be filed in the form of a Certificate of Land Use restrictions with the County Clerk's office as described in KRS 100.3681 through 100.3684 and summarized below.

Filing shall occur within 30 days of the date upon which the body takes final action to impose or adopt the restriction. The certificates shall be completed by the secretary of the planning commission and be in the form designated in KRS 100.3683. The county clerk shall index the certificates by property owner and, if applicable, name of subdivision or development. The Boone County Planning Commission office shall maintain the files of conditions or restrictions which require certificates. When all conditions or restrictions have been complied with or a restriction reflected on the certificate is amended (which requires a new certificate) the previous certificate shall be released by the secretary of the planning commission in the same manner as releases of encumbrances upon real estate. Certificates of Land Use Restrictions shall be filed in the Boone County Clerk's office for the following reviews: Zoning Map Amendments, Development Plans, Unrecorded Subdivision Plats, Variances, Conditional Use Permits and a Conditional Zoning Conditions.

SECTION 285

Transferable Development Rights

1. In accordance with K.R.S. 100.208, any legislative unit in Boone County may provide, by ordinance for:
 - a. The voluntary transfer of the development rights (TDR) permitted on one (1) parcel of land to another parcel of land;
 - b. Restricting or prohibiting further development of the parcel from which development rights are transferred; and
 - c. Increasing the density or intensity of development of the parcel to which such rights are transferred.

SECTION 290

Annexation by Cities

When a city which has adopted zoning or other land use regulations pursuant to K.R.S. 100 and proposes to annex new territory, it may amend its comprehensive plan and official zoning map to incorporate and establish zoning or other land use regulations. If the city elects to follow this procedure, the planning commission shall hold a public hearing, after the adoption of the ordinance stating the city's intention to annex and prior to final action upon the ordinance or annexation, for the purpose of adopting the comprehensive plan amendment and making its recommendations as to the zoning or other land use regulations which will be effective for the property upon its annexation. Notice setting forth the time, date, location, and purpose of the public hearing shall be published as required by KRS Chapter 424 and shall be given to the owners of all properties within the area proposed for annexation and to adjoining property owners in accordance with KRS 100.212(2). The city legislative body shall take final action upon the planning commission's recommendation prior to adoption of the ordinance of annexation and shall include in the ordinance of annexation a map showing the zoning or other land use regulations which will be effective for the annexed property. If the city elects not to follow the procedure provided for in this section prior to the adoption of the ordinance of annexation, the newly annexed territory shall remain subject to the same land use restrictions, if any, as applied to it prior to annexation until

those restrictions are changed by zoning map amendments of other regulations in accordance with this chapter.

SECTION 295

Statutory Exemptions

State and local government entities, their political subdivisions, departments, commissions, boards, authorities, agencies, or instrumentalities of state government are not required to obtain approval for proposals pursuant to KRS 100.361. Some public utilities are not required to obtain approval for certain facilities under KRS 100.324. Regardless of statutory exemptions, these entities are required to submit proposals for acquisition or disposition of land for public facilities, or changes in character, location or extent of structures or land for public facilities, with some exclusions under KRS 100.324(4), to the Planning Commission in light of the Comprehensive Plan. This section merely informs the public that certain entities are exempt from zoning approvals under state law and does not expand those exemptions set forth in the Kentucky Revised Statutes.