

ARTICLE IX. ZONING BOARD OF APPEALS

Sec. 9-1. Membership.

- A. *Membership and Appointments.* The Fayette County Zoning Board of Appeals shall consist of five (5) members residing within the County and shall be appointed by the Board of Commissioners of Fayette County. None of the Board members shall hold any other public office, except that one (1) member may also be a member of the Planning Commission. The Zoning Board of Appeals members shall be removed by the Board of Commissioners for cause, upon written charges, and after public hearing. Any member of the Zoning Board of Appeals shall be disqualified to act upon a matter before the Zoning Board of Appeals with respect to property in which the member has an interest. It may be deemed cause for removal should any Zoning Board of Appeals member fail, without proper reason, to attend three (3) consecutive meetings.
- B. *Term of Office.* The term of office for each member of the Zoning Board of Appeals shall be for three (3) years. It is the intent of this section that their terms be staggered with no term limitation. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment.
- C. *Compensation.* The Zoning Board of Appeals members shall receive compensation for their service as determined by the Board of Commissioners of Fayette County.

Sec. 9-2. Rules and Procedures.

The Zoning Board of Appeals shall elect one (1) of its members as Chairman and another as Vice-Chairman, each serving for one (1) year, or until re-elected, or a successor is elected. The Vice-Chairman shall have the authority to act as Chairman in the Chairman's absence. The Zoning Board of Appeals shall appoint a Secretary who shall be an employee of Fayette County. The Zoning Board of Appeals shall have authority to adopt rules of procedure. Meetings of the Zoning Board of Appeals may be held at the call of the Chairman. The Chairman may administer oaths and compel the attendance of witnesses by subpoena. The Zoning Board of Appeals shall keep Minutes of its proceedings, showing the vote of each member 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 immediately filed in the office of the Zoning Board of Appeals and shall be public record. The decisions of the Zoning Board of Appeals shall contain a statement of the subject matter being considered by the Zoning Board of Appeals, the decisions of the Zoning Board of Appeals, and the grounds for its decision reduced to written form. The full text shall be sent to the appellant. An application which seeks the same relief in regard to the same property shall not be accepted for a period of 12 months following the date of the written decision from said application, except that this limitation shall not affect the right of the Zoning Board of Appeals to grant a rehearing as provided in the rules of procedure as may be adopted by the Zoning Board of Appeals.

Sec. 9-3. Administrative Assistance.

The Zoning Administrator shall provide such technical, administrative, clerical assistance, and office space as is required by the Zoning Board of Appeals to carry out its function under the provisions herein.

Sec. 9-4. Public Hearing.

- A. *Notice of Hearing Shall be Given.* Before making its decision on an appeal, a request for a variance, or any other matter within the Zoning Board of Appeals' purview, the Zoning Board of Appeals shall hold a public hearing thereon. At

least 15 calendar days notice of the time and place of such hearing shall be sent to the appellant/petitioner by certified U.S. Mail to the appellant/petitioner's last known address. Such notice shall contain the name of the appellant/ petitioner; the date, time, and place set for the hearing; and a brief statement of the nature of the hearing.

- B. *Public Notice in Newspaper.* The Zoning Board of Appeals shall cause public notice of the hearing to be published in the legal organ of Fayette County, at least 15 calendar days but not more than 45 calendar days, prior to the date of the public hearing.
- C. *Who May Appear.* Any party may appear at the public hearing in person or by agent or attorney.
- D. *Zoning Board of Appeals' Decision.* The Zoning Board of Appeals shall approve, deny, or table each application by a public vote. An action to table shall include justification of such action and a specific meeting date at which the application is to be reconsidered.

If there is not a full Zoning Board of Appeals board present at the public hearing, the Petitioner may request to table the petition to the next Zoning Board of Appeals public hearing, provided the Petitioner requests to table the agenda item prior to the presentation.

A new legal advertisement will not be required with an announcement to a specific meeting date if an application is tabled; however, the property shall be reposted with new signage indicating the new public hearing dates.
- E. *Time Limit on Zoning Board of Appeals' Decision.* The Zoning Board of Appeals shall reach a decision following a public hearing within 45 calendar days or the application shall be deemed to be approved.
- F. *"Writ of Certiorari" (Appeal.)* An applicant has 30 calendar days from the date of the Zoning Board of Appeals' decision to file a "Writ of Certiorari" (Appeal) with the Superior Court of Fayette County.

Sec. 9-5. Powers and Duties.

- A. *Appeals from Actions of the Zoning Administrator.* The Zoning Board of Appeals shall hear and decide upon appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Administrator in the enforcement of these regulations.
 - 1. *Who May Appeal.* Appeals to the Zoning Board of Appeals may be taken by any person aggrieved or by an officer, department, or board of Fayette County affected by any decision of the Zoning Administrator. Such appeals, specifying the grounds thereof shall be filed with the Planning and Zoning Department no later than 30 calendar days after the date of notification of the Zoning Administrator's decision. The Zoning Administrator shall forthwith transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed from was taken.
 - 2. *Legal Proceedings Stayed.* An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Zoning Board of Appeals that by reason of facts stated in the certificate a stay would, in the Zoning Administrator's opinion, cause imminent peril to life and property. In such a case, proceedings shall not be stayed otherwise than by a restraining order from a court of competent jurisdiction.

3. *Extent of the Zoning Board of Appeals' Power.* The Zoning Board of Appeals may, in conformity with the provisions of these regulations, reverse or affirm the order, requirement, decision, or determination of the Zoning Administrator. The Zoning Board of Appeals may direct the issuance of a permit. It shall be the duty of the Zoning Administrator to carry out the decisions of the Zoning Board of Appeals.
- B. *Request for a Variance.* The Zoning Board of Appeals may authorize, upon appeal in specific cases, a variance from the terms of these regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of these regulations will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done. However, a variance shall not be granted for a reduction in lot size, lot width, road frontage, or any requirements of a Conditional Use with the exception of a nonconforming Conditional Use (see Article VII.), or a use of land, building, or structure that is prohibited in the zoning district at issue, except as otherwise provided herein. A variance may be granted in an individual case upon a finding by the Zoning Board of Appeals that the following exists:
1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography; and
 2. The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship; and
 3. Such conditions are peculiar to the particular piece of property involved; and
 4. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of these regulations; provided, however, no variance may be granted for a use of land, building, or structure that is prohibited herein; and
 5. A literal interpretation of this Ordinance would deprive the applicant of any rights that others in the same zoning district are allowed; and
 6. Provided that the Zoning Board of Appeals may impose or require such additional restrictions, conditions, and standards, as may be necessary, to protect the health and safety of workers and residents in the community, and to protect the value and use of property in the general neighborhoods; and provided that wherever the Board shall find, in the case of any permit granted pursuant to the provisions of these regulations, that any of the restrictions, conditions, and standards upon which such permit was granted are not being complied with, said Zoning Board of Appeals shall rescind and revoke such permit after giving due notice to all parties concerned and granting full opportunity for a hearing. In exercising the above powers, the Zoning Board of Appeals shall not consider any nonconforming use of neighboring lands, structures or buildings in the same zoning district, and no permitted use of lands, structures, or buildings in other zoning districts as grounds for the issuance of a variance.
- C. *Compliance with Standards.* Where an application to the Board is initiated due to an existing violation of the Zoning Ordinance and said application is denied, the violation shall be required to be corrected within 10 calendar days of such denial, or as specified by the Board, if a greater time period is necessary. The maximum extension of the time shall not exceed 30 calendar days.

- D. *Forms.* Appeals, requests for variances, and requests for extensions or continuances of nonconformances shall be made on forms provided by the Zoning Administrator; and all information requested on the forms shall be provided by the appellant. Forms shall be filed with the Zoning Administrator along with the necessary fees incidental to the appeal. No form shall be accepted by the Zoning Administrator unless it contains all pertinent information and is accompanied by the required fee.