

**CITY OF GRAYSON, KENTUCKY
PLANNING AND ZONING REGULATIONS**

ARTICLE 6

BOARD OF ADJUSTMENT

ESTABLISHED BY: ORDINANCE #13-2001 on NOVEMBER 6, 2001

AMENDED: Ord 6-2005; July 5, 2005-- Ord 9-2019; December 10, 2019

6.1 ESTABLISHMENT

A Board of Adjustment is hereby established.

6.2 PROCEEDINGS AND MEMBERSHIP

The Board of Adjustment shall meet on a monthly basis, as the need requires on a date specified by the Board. The Board of Adjustment may conduct meetings at the call of the chairman who shall give written 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 of the meeting, and the subject or subjects which will be discussed. A simple majority of the total membership of the Board of Adjustment shall constitute a quorum and all meetings shall be public.

The Board of Adjustment shall adopt By-Laws for the transaction of business and shall keep minutes and records of all proceedings including regulations, transaction findings, determinations, the number of votes for and against each question, whether any member is absent or abstains from voting, all of which shall, immediately after adoption, be filed in the office of the City Clerk. A transcript of the minutes of a Board of Adjustment meeting shall be provided if requested by a party, at the expense of the requesting party and the transcript shall constitute the record.

- 6.21 The Board of Adjustment shall consist of three (3) members, all of whom shall be citizen members and not more than two (2) of whom shall be a citizen member of the Planning Commission. The term of office for members shall be three (3) years and the terms shall be staggered. The members shall be appointed by the Mayor, subject to the approval of the City Council of the City of Grayson. Vacancies shall be filled within sixty (60) days by the City Council. If the City Council fails to act within the time, the Planning Commission shall fill the vacancy. Should a vacancy occur other than through expiration of the term of office it shall be filled for the remainder of the term.

6.3 POWERS.

The Board of Adjustment shall have the following powers:

- 6.31 General Powers. The Board shall have the power to issue subpoenas to compel witnesses to attend its meetings and give the evidence bearing upon the questions before it. The Chairman of the Board of Adjustment shall have the power to administer oaths to the witnesses prior to their testifying before the Board on any issue.
- 6.32 Conditional Use Permits. The Board shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the

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planning area of uses which are specifically named in this Zoning Ordinance which may be suitable only specific locations in the zone only if certain conditions are met and which would not have an adverse influence on existing or future development of the subject property or its surrounding neighborhood.

- 6.321 The Board may approve, modify, or deny any 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 and which would not have an adverse influence on existing or future development of the subject property or other property in the neighborhood. Any such conditions shall be recorded in the Board's minutes and on the Zoning Ordinance listing the conditional use under consideration. The Board shall have power to revoke conditional use permits, or variance for noncompliance with the condition thereof. Furthermore, the Board shall have the right of action to compel offending structures or uses removed at the cost of the violator and may have judgment against property owner for such cost.
- 6.322 The granting of a conditional use permit does not exempt the applicant from complying with all the requirements of building, housing, and other regulations.
- 6.323 In any case where a conditional use permit has not been exercised within the time limit set by the Board, or within one (1) year, if no specific time limit has been set, the granting of such conditional use permit shall be reconsidered by the Board of Adjustment at a public hearing with notice as required under Section 6.4 herein below. The term "exercised" as set forth in this Section, shall mean 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 contract, in development, or 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.
- 6.324 The Building Inspector 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, the Building Inspector shall report that fact in writing to the Chairman of the Board of Adjustment. 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 (1) week before the hearing. If the Board of Adjustment finds that the facts alleged in the report of the Building Inspector 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,

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the Board of Adjustment may authorize the Building Inspector to revoke the conditional use permit and take the necessary steps to cause the termination of the activity on the land which the conditional use permit authorizes.

- 6.325 Once the Board of Adjustment has granted a conditional use permit and all of the conditions required are of such type that they can be completely and permanently satisfied, the Building Inspector upon request of the applicant, may, if the facts warrant, make a determination that the conditions have been satisfied and enter the facts which indicate that the conditions have been satisfied and the conclusion in the margin of the copy of the conditional use permit which is on file with the County 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.
- 6.33 Dimensional Variance. The Board shall have the authority to grant variances from the terms of this Ordinance, subject to the terms and conditions fixed by the Board. However, no variance shall be authorized by the Board unless all of following conditions are found to exist:
- 6.331 The variance does not authorize any use of land, building or structure, which is not permitted by this Ordinance.
- 6.332 The variance does not exceed the net density allowed within a specific zone.
- 6.333 The need for variance is due to the specific conditions, which are unique to the applicant's land and do not exist on other land in the same zone.
- 6.334 The strict application of the specific provision of the regulation would deprive the applicant of a reasonable use of land in a manner equivalent to the use permitted other landowners in the same zone.
- 6.335 That the unique conditions or circumstances for which the variance is needed are not the result of actions of the applicant.
- 6.336 That the variance will preserve, not harm the public safety and welfare, and will not alter the essential character of the surrounding neighborhood.
- 6.337 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 this Zoning Ordinance in the zone in question.
- 6.338 A dimensional variance applies to the property for which it is granted and not the individual who applied for it. A variance also runs with the land and is transferable to any future owner of the land, but the applicant cannot transfer it to a different site.

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6.34 Administrative Review. The Board of Adjustment shall have the power to hear and decide cases where it is alleged by applicant that there is an error in any order, requirement, decision, grant or refusal made by the Building Inspector in the enforcement of this Zoning Ordinance. The Code Enforcement Officer must take appeals under this Section within sixty (60) days of the date of official action.

6.4 APPEALS FROM BOARD OF ADJUSTMENT, PLANNING COMMISSION OR LEGISLATIVE BODY ACTION; FINAL ACTION DEFINED

6.41 Any person or entity claiming to be injured or aggrieved by any final action of the Board of Adjustment shall appeal from the action to the Circuit Court of Carter County in which the property, which is the subject of the action of the Board of Adjustment, lies. Such appeal shall be taken thirty- (30) days after the final action of the Board. All final actions, which have not been appealed within thirty- (30) days, shall not be subject to judicial review. The Board of Adjustment shall be a party in any such appeal filed in the Circuit Court.

6.42 Any person or entity claiming to be injured or aggrieved by any final action of the Planning Commission shall appeal from the final action to the Circuit Court of Carter County in which the property, which is the subject of the Commission's action, lies. Such appeal shall be taken within thirty- (30) days after such action. Such action shall not include the Commission's recommendations made to other governmental bodies. All final actions, which have not been appealed within thirty (30) days shall not be subject to judicial review. Provided, however, any appeal of a Planning Commission action granting or denying a variance or conditional use permit authorized by KRS 100.203(5) shall be taken pursuant to this subsection. In such case, the thirty- (30) day period for taking an appeal begins to run at the time the legislative body grants or denies the map amendment for the same development. The Planning Commission shall be a party in any such appeal filed in the Circuit Court.

6.43 Any person or entity claiming to be injured or aggrieved by any final action of the legislative body of any city, county or urban-county government, relating to a map amendment shall appeal from the action to the Circuit Court of Carter County in which the property, which is the subject of the map amendment, lies. Such appeal shall be taken within thirty- (30) days after the final action of the legislative body. All final actions, which have not been appealed within thirty (30) days, shall not be subject to judicial review. The legislative body shall be a party in any such appeal filed in the Circuit Court.

6.44 The owner of the subject property and applicants who initiated the proceeding shall be made parties to the appeal. Other persons speaking at the public hearing are not required to be made parties to such appeal.

6.45 For purposes of this Ordinance, final action shall be deemed to have occurred on the calendar date when the vote is taken to approve or disapprove the matter pending before the body.

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- 6.46 The issuance of a writ on a petition hereunder shall not stay proceedings upon the decision appealed from; but the court, on application after notice to the Board and on due cause shown, may grant a restraining order.

The Board shall fix a reasonable time for hearing the appeal and give public notice in accordance with KRS Ch. 424, as well as written notice to the appellant and the Code Enforcement Officer at least once (1) week prior to the hearing, and shall make any decisions within sixty (60) days. The affected party may appear at the hearing in person or by attorney.

Any appeal to the Board decision shall follow the procedures set forth in KRS 100.257, 100.261, and 100.263.

SEE ALSO, ARTICLE 20; DEFINITIONS