

## ARTICLE IV ◇ BOARD OF ZONING ADJUSTMENT

### *Simpsonville Zoning Regulations*

1994

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#### **Section 400 Establishment of Board**

A board of Zoning Adjustment shall be appointed as stipulated by KRS 100.217. The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of these Regulations. Meetings shall be held at the call of the chairperson 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 for the meeting and the subject or subjects to be discussed.

The Board of Adjustment shall keep minutes and records of all proceedings including regulations, transactions, findings of fact and determinations and the number of votes for and against each question all of which shall be public record and be immediately filed in the office of the Board.

#### **Section 410 Meetings of Board, Quorum, Minutes, Bylaws**

The Boards shall conduct meetings at the call of the chairperson 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 for the meeting, and the subject or subjects which will be discussed.

A simple majority of the total membership, as established by regulation or agreement, shall constitute a quorum. Any member of the Board 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 from voting on the question.

The Board shall adopt bylaws for the transaction of business and shall keep minutes and records of all proceedings, including regulations, transactions, findings of fact, 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. If the Board has no office, such records may be kept in custody of an officer of the

board and shall be available to the general public. A transcript of the minutes of the Board shall be provided if requested by a party, at the expense of the requesting party, and the transcript shall constitute the record.

#### **Section 420 Other Rights and Powers of Board**

- a. The Board of Adjustment may employ or contract with planners or other persons as it deems necessary to accomplish its assigned duties.
- b. The Board shall have the right to receive, hold, and spend funds which it may legally receive from any and every source in and out of the Commonwealth of Kentucky, including the United States Government, for the purpose of carrying out its duties.
- c. The Board shall have the power to issue subpoenas to compel witnesses to attend its meetings and give evidence bearing upon the questions before it. The Chief of Police and/or Sheriff shall serve such subpoenas. The Circuit Court may, upon application by the Board, compel obedience to such court or such subpoena by proceedings of contempt.
- d. The Chairperson of the Board shall have the power to administer an oath to witnesses prior to their testifying before the board on any issue.

#### **Section 425 Administrative Review - Appeals to the Board**

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 any Zoning Administrative Official. Such appeal shall be taken within thirty (30) days after the appellant or his/her agent receives notice of the action appealed from, by filing with the Administrative Official and the Board of Adjustment a notice of appeal specifying the grounds thereof. The Administrative Official shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken.

The Board shall find a reasonable time for hearing the appeal and give public notice in accordance with KRS, Chapter 424, as well as written notice to the appellant and Administrative Official at least one (1) week prior to the hearing, and shall decide the same within sixty (60) days. At the hearing any interested party may appear and be heard and may appear in person or by agent or attorney.

An appeal stays all proceedings in furtherance of the action appealed from, unless the Administrative Official from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal is filed with him/her, that by reason of facts stated in the certificate, a stay would, in his/her 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 by the Board of Adjustment or by a court of record on application, or notice to the Administrative Official from whom the appeal is taken and/or due cause shown.

#### **Section 430 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 community and/or county 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.

- a. The Board may approve, modify or deny any application for a conditional use permit. Before granting any such permits, the Board is required to consider the comments of all adjoining property owners. 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 Boards' minutes and on the conditional use permit, along with a reference to the specific section in the Zoning Regulations listing the conditional use under consideration. The Board shall have power to revoke conditional use permits, or variances for noncompliance 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 person for such cost.

- b. Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of building, housing and other regulations.
- c. A conditional use permit must be exercised within the time limit set by the Board, or within one (1) year of issuance.
- d. 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 land owner is complying with all of the conditions which are listed on the conditional use permit. If the landowner is not complying with all of the conditions which are listed on the conditional use permit, the Administrative Official shall state conditions on the conditional use permit, and prepare a report, in which a copy of the report shall be furnished to the landowner at the same time that it is furnished to the Chairperson of the Board. Upon hearing the report, as required by KRS 100.237, if the Board finds the facts alleged to be true and that the land owner has taken no steps to comply with them between the date of the report and the date of the hearing, the Board may authorize the Administrative Official to revoke the activity on the land which the conditional use permit authorizes.
- e. Once the Board has completed a conditional use permit and all the conditions required are of 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, 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 100.237. Thereafter said use, if it continues to meet the other requirements of the Regulations, will be treated as a permitted use.
- f. Any person or entity claiming to be injured or aggrieved by any final action of the Board of Zoning Adjustment shall appeal from the action to the Shelby Circuit Court. Such appeal shall be taken within thirty (30) days after action of the board. All final actions which have not been appealed within thirty (30) days shall not be subject to judicial review.
- g. Notice of public hearing shall be given as per Article XIV.

**Section 435 Conditional Uses That May Be Approved In All Zones**

- a. Non-local public utility and private transmission lines and pipes.
- b. Radio, T.V., and telephone transmission structures (See Section 750 for Satellite Dish Guidelines).
- c. Large utility structures and public service buildings.
- d. Expansion of railroads and appurtenances.
- e. Government buildings and uses.
- f. Churches and libraries.

- g. Private and/or public satellite dish and similar components (see Article VII, Section 750).

#### **Section 436 Specific Zones/Districts**

Other conditional uses may be approved only in those zones where they are designated as conditional uses under the zoning Regulations.

#### **Section 437 Procedure**

An applicant shall submit an application for a conditional use permit to the Administrative Official, and the applicant shall follow all procedures set forth in Sections 320 and 450 of these Regulations and KRS 100.237. The Administrative Official shall refer the application to the Board of Adjustment. Payment of a fee shall be required of the applicant before the issuance of the conditional use permit. An applicant shall be the owner of the property.

#### **Section 440 Dimensional Variance**

The Board shall have the power to hear and decide on applications requested by the owner of the property for dimensional variances where, by reason of the exceptional narrowness, shallowness, or unusual shape of a site on the effective date of these Regulations or by reason of exceptional topographic conditions, or some other extraordinary situation or condition of that site, the literal enforcement of the dimensional requirements (height or width of building or size of yards, but not population density) of these 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 Board may impose any reasonable conditions or restrictions on any variance it decides to grant.

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.

- a. The specific conditions in detail which are unique to the applicant's land and which do not exist on other land in the same zone.
- b. The manner in which the strict application of the provisions of these Regulations 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.
- c. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of these Zoning Regulations from which relief is sought (KRS 100.243).
- d. Reasons that the variance will preserve, not harm, the public safety and welfare and will not alter the essential character of the neighborhood.
- e. Consideration of all adjoining property owner's comments regarding the variance request.
- f. Notice of public hearing shall be given as Article XIV.
- g. The public hearing shall be held. Any party may appear in person or have an agent or attorney represent them.
- h. Any variance request must be accompanied by a development and/or site plan.
- i. The Board of Adjustment shall make findings that the requirements of Article IV have been met by the applicant. The Board shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that these findings shall be recorded along with any imposed conditions or resolutions in its minutes and records

and issued in written form to the applicant to constitute proof of the dimensional variance.

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 Ordinance in the zone in question, or to alter density requirements in the zone in question.

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 applicant to a different site.

#### **Section 450 Recording of Variances and Conditional Use Permits**

All variances and conditional use permits approved by the Board of Zoning Adjustment shall be recorded at the expense of the applicant in the Office of the County Court Clerk.

#### **Section 460 Existing Nonconforming Use, Continuance, Change**

The lawful use of a building or premises, existing at the time of the adoption of these Zoning Regulations, may be continued, although such use does not conform to the provisions of such regulation, except as otherwise provided herein (See Article V for details).

The Board of Adjustment shall not allow the enlargement or extension of a nonconforming use beyond the scope and area of its operation at the time the Regulations, which makes its use nonconforming, was adopted. Nor shall the Board permit a change from one nonconforming use to any other nonconforming use that is less compatible.

#### **Section 470 Administrative Review**

The Boards shall have the power to hear and decide cases where it is alleged by an applicant that there is error in any order, requirement, decision, grant, or refusal made by the Administrative Official in the enforcement of these Regulations. A request for review shall be taken within thirty (30) days after the applicant or his agent receives notice of the action alleged to be in error.

#### **Section 480 Procedure for All Appeals to Board**

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 any official enforcing these Regulations. Such appeal shall be taken within thirty (30) days after the appellant or his agent receives notice of the action appealed from by filing with said officer and with the appropriate Board a notice of appeal specifying the grounds thereof, and giving notice of such appeal to any and all parties of record. Said official 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 opportunity to be heard.

The Board shall fix a reasonable time for hearing the appeal and give public notice in accordance with KRS Chapter 424, as well as written notice to the appellant and the Administrative Official at least one (1) week prior to the hearing, and shall decide it within sixty (60) days. The affected party may appear at the hearing in person or by attorney.

Any person or entity claiming to be injured or aggrieved by any final action of the Planning Commission or Board of Zoning Adjustments may appeal from the action to the Shelby County Circuit Court.

All appeals shall be taken in the circuit court within thirty (30) days after the action or decision of the Planning Commission or Board of Zoning Adjustment and all decisions which have not been

appealed within thirty (30) days shall become final. After the appeal is taken the procedure shall be governed by the rules of civil procedure. When an appeal has been filed, the Clerk of the Circuit Court shall issue a summons to all parties, including the Planning Commission in all cases, and shall cause it to be delivered for service as in any other law action.

**Section 481 Appeal from Board of Zoning Adjustment, Planning Commission, or Legislative Body Action - Final Action Defined**

- a. Any person or entity claiming to be injured or aggrieved by any final action of the Board of Zoning Adjustment shall appeal from the action to the Shelby Circuit Court. Such appeal shall be taken within 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.
- b. 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 Shelby Circuit Court. 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 the Commission's action granting or denying a variance permit authorized by KRS 100.203 (5) shall be taken pursuant to this sub action. In such cases, 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 Commission shall be a party in any such appeal filed in the Circuit Court.
- c. Any person or entity claiming to be injured or aggrieved by the final action of the Shelby County Fiscal Court, the Shelbyville City Council, or the Simpsonville City Commission, relating to a map amendment shall appeal from the action to the Shelby Circuit Court. Such appeal shall be taken within thirty (30) 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.
- d. 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.
- e. For purposes of this section, 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.

**Section 482 Interpretation Of Zoning Map**

Where the street or lot layout actually on the ground, or as recorded, differs from the street and lot lines indicated on the zoning map, the Board, after notice to the owners of the property and after public hearing, shall interpret the map in such a way as to carry out the intent and purposes of these Regulations for the particular district or zone in question as stipulated in Article VI, section 620, of these Regulations.

**Section 484 Off Street Parking, Loading and Unloading**

The Board shall interpret the amount of off-street parking, loading and unloading space required according to Article X of these Regulations.

**Section 486 Special Conditions**

The Board may attach special conditions to any decision it is authorized to make to ensure that the intent of the Zoning Regulation is carried out.

**Section 488 Limits of Authority**

The Board shall act only within the strict limits of its authority as defined in these Zoning Regulations. The Board shall not possess the power to grant a variance to permit 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.

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 the regulation that makes its use non-conforming adopted. Nor shall the Board permit a change from one non-conforming use to another unless the new non-conforming use is in the same or a more restricted classification.

**Section 490 Summary of Duties of Administrative Official, Board of Adjustment, Legislative Bodies and Courts on Matters of Appeal**

It is the intent of these Regulations that all questions of interpretation and enforcement shall be first presented to the Administrative Official, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Administrative Official, and that recourse as provided by law and particularly by State Statutes.

It is further the intent of these Regulations that the duties of the City and County Legislative Bodies in connection with these Regulations 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 these Regulations. Under these Regulations, the legislative bodies shall have only the duty of considering and adopting or rejecting proposed amendments or the repeal of these Regulations as provided by law.