

**ARTICLE 6**

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**AMENDMENTS**

**6-1 APPLICATION FOR ZONING MAP AMENDMENT** – A proposal for amendment to the zoning map may originate only with the Commission, the Lexington-Fayette Urban County Council, the owner of the subject property, or by a person having written authorization from the owner of the subject property. Regardless of the origin of the proposed amendment, an application must be filed with the Commission requesting the proposed amendment in such form and accompanied by such information as required by this Zoning Ordinance and the by-laws of the Commission. At the time of filing an application, a non-returnable filing fee shall be paid according to the schedule of fees as established by the Commission, however, there shall be no filing fee for an amendment requested by the Lexington-Fayette Urban County Council, the Commission, or any other governmental agency. Upon the filing of an application for a map amendment by a governmental body, the Commission shall promptly notify the owner of the subject property as required by KRS 100.

**6-1(a) TRAFFIC IMPACT STUDIES** – All significant developments proposed within the Urban Services Area or Rural Activity Center and requiring a Zoning Map Amendment shall submit a Traffic Impact Study. As used herein, the term "significant developments" shall mean any development which will generate one hundred (100) or more additional (new) peak direction (inbound or outbound) trips to or from the site during the adjacent roadway's peak hour or the development's peak hour. The applicant shall have the responsibility of conducting and paying for the study. The Urban County Government will make available to interested parties existing traffic count data needed to complete such studies. Those residential developments in conformance with the Comprehensive Plan shall be required to submit a Traffic Study consisting of those requirements contained in Subsection (b) of this section. Requests for all other types of zoning, whether or not in conformance with the Comprehensive Plan, shall submit a Traffic Impact Study consisting of those requirements contained in Subsection (c) of this section. To the extent that the Government has done any independent traffic study pertinent to the proposed development, the results of such study shall be made available to the applicant.

Anticipated roadway improvements shall be determined by a review of the Urban County Government Capital Improvement Plan and Transportation Improvement Program. If the proposed development is within one (1) mile of any county boundary line, then any proposed roadway improvements in the adjoining county shall be included in the study.

The Transportation Planning staff shall review, analyze, and make recommendations on any Traffic Impact study to be submitted as evidence in a rezoning hearing regardless of whether or not such study is required by this Zoning Ordinance.

**6-1(b) RESIDENTIAL REQUESTS IN CONFORMANCE WITH COMPREHENSIVE PLAN** –. Those significant zone map amendment requests for residential zoning in conformance with the Comprehensive Plan shall file a traffic impact study along with all other application materials for the zone change. The traffic impact study shall contain the following information:

- (1) Study purpose and objectives.
- (2) Description of the site and study area. Care should be taken to include all known congested locations that may be impacted by the proposed development.
- (3) Anticipated nearby development, to the extent that the information can be obtained from existing data compiled by the Transportation Planning Section of the Division of Planning.
- (4) Documented trip generation for each land use and total trip generation, including assumptions and reasoning and the sources of trip generation estimates for residential developments.

- (5) Trip distribution and assignment, including methodology, assumptions, and reasoning underlying the distribution and assignment.
- (6) Capacity and level of service determination during the peak or critical periods for the full development year for all affected streets/roads as measured from the boundary of the property to the first collector or arterial intersection in both directions.
- (7) Recommendations, if any, for site access and public transportation improvements needed to maintain traffic flow to, from, within and past the site at an acceptable and safe level of service D.

6-1(c) REQUESTS FOR NONRESIDENTIAL ZONING, MIXED USE DEVELOPMENTS AND REQUESTS NOT IN CONFORMANCE WITH COMPREHENSIVE PLAN – Those significant zone map amendment requests for nonresidential zoning, mixed use developments and requests not in conformance with the Comprehensive Plan shall file a traffic impact study along with all other application materials for the zone change. All such studies shall be complete and shall meet the requirements set forth herein below.

The following are the requirements of a traffic impact study under this subsection:

- (1) Study purpose and objectives.
- (2) Description of the site and study area. Care should be taken to include all known congested locations that may be impacted by the proposed development.
- (3) Existing conditions in the area of the development to include current AADT and Peak Hour traffic volume counts on the adjacent road or roads and intersections (including turning movements), existing level of service on roadways and physical characteristics of the subject roadways. Average peak hour traffic volume shall be the highest average peak hour volume for any weekday 24-hour period.
- (4) Anticipated nearby development, to the extent that the information can be obtained from existing data compiled by the Transportation Planning Section of the Division of Planning.
- (5) A plan of the proposed development.
- (6) The proposed number and type of dwelling units for residential development and for nonresidential developments, the square footage, employees or other relevant trip generation variables of all buildings and a description of their use.
- (7) Documented trip generation for each land use and total trip generation, including assumptions and reasoning and the source(s) of trip generation estimates for residential developments. Additionally for nonresidential development, any adjustments to trip generation rates to reflect pass-by trips captured, mixed use, walk-ins, etc., should be justified in the study report.
- (8) Trip distribution and assignment, including methodology, assumptions, and reasoning underlying the distribution and assignment.
- (9) Full development year traffic volumes (assuming full buildout and occupancy) composed of all of the following:
  - a. Existing traffic volumes.
  - b. Non-site traffic volume growth in the corridor between the existing year and the full development year.
  - c. The traffic volume added by the proposed development.
- (10) A description of any government initiated roadway/intersection improvements which have been assumed as being in place at full development.

- (11) Capacity and level of service determination during the peak or critical period(s) for the full development year for all affected streets/roads and all intersections, as measured from the boundary of the property to the first collector or arterial intersection in both directions.
- (12) An assessment of the change in roadway and intersection operating conditions resulting from the development traffic.
- (13) Recommendations, if any, for site access and public transportation improvements needed to maintain traffic flow to, from, within, and past the site at an acceptable and safe level of service (level of service D).
- (14) If necessary, other factors should be analyzed: safety, neighborhood impacts, service and delivery access, pedestrian and bicycle movements, adequacy of parking, traffic control needs, circulation patterns, transit needs or impacts, and so forth.
- (15) Statement as to the proposed improvements which will be at the developer's expense.

The analysis should be presented in a straightforward and logical sequence.

6-2 APPLICATION FOR ZONING ORDINANCE TEXT AMENDMENT – A proposal for amendment to the text of this Zoning Ordinance may originate with any person or governmental body. An application for a Zoning Ordinance Text Amendment must be filed with the Commission requesting the proposed amendment in such form and accompanied by such information as required by this Zoning Ordinance and the by-laws of the Commission. At the time of filing an application, a non-returnable filing fee shall be paid according to the schedule of fees as established by the Commission; however, there shall be no filing fee for an amendment requested by the Lexington-Fayette Urban County Council, the Commission, or any other governmental agency.

6-3 PRE-APPLICATION CONFERENCE FOR TEXT AMENDMENTS AND ZONE MAP AMENDMENTS – Prior to filing an application for a text amendment or a zone map amendment, the applicant shall meet with appropriate staff members of the Division of Planning to discuss the proposed amendment. The purpose of this conference is to discuss, at the earliest stages, the requirements, procedures and issues related to the proposed amendment. It is intended that this conference will help to alleviate possible conflicts by early recognition of existing conditions, necessary facilities, the recommendations of the adopted Comprehensive Plan and other issues related to the proposed amendment. The applicant shall arrange the conference, which shall be held not less than five (5) working days nor more than three (3) months prior to the filing date. The staff shall keep a record of the conference date and include the information in the records of the text amendment or the map amendment application. Where a development plan is also required to be submitted in conjunction with a zone map amendment, the applicant should discuss both the plan and the zone map amendment at the same conference. The Division of Planning shall not accept an application for a zone map amendment or a text amendment for which a pre-application conference has not been held.

6-4 COMMISSION PROCEDURE – Upon the filing of an application for an amendment to the Zoning Map or the text of this Zoning Ordinance, or a duly imposed binding condition or restriction as set forth in Section 6-7, the Commission shall direct its staff to review the application, make whatever studies the Commission deems necessary, and report its findings at a public hearing. In addition, the Commission may require the applicant to submit further information subsequent to the filing of an application, as provided by KRS 100 and the by-laws of the Commission. A development plan may be required as set forth in Section 21-3.

6-4(a) PUBLIC HEARING ON AMENDMENT APPLICATION – After notice of the public hearing as provided in Subsection (b) of this section, the Commission shall hold a public hearing and vote to recommend approval or disapproval of the proposed amendment within sixty (60) days of the date of filing for any Council initiated text amendment, within six (6) months of the date of filing for all other text amendment requests, within six (6) months of the date of filing of any H-1 or ND-1 Zoning Map Amendment, or within ninety (90) days of the date of filing of all other zoning map or binding conditions or restriction amendment requests, unless the time is extended by the request of or the agreement of the applicant. At the public hearing, the Commission shall receive the report of the staff, orally or in writing, and shall hear the testimony of the staff members as it sees fit. The Commission shall allow the applicant, protestors, and other interested citizens, to testify and rebut the evidence

presented by other parties, provided that the Chairman shall have the power to limit repetitive testimony and exclude irrelevant testimony and evidence.

6-4(b) NOTICE OF PUBLIC HEARING BEFORE THE PLANNING COMMISSION – Before voting upon any proposed text amendment, zone map amendment, or binding condition or restriction amendment, notice of the time, place and reason for holding a public hearing shall be given by one (1) publication in the newspaper of highest circulation in Fayette County, Kentucky, not earlier than twenty-one (21) days or later than seven (7) days before the public hearing. In addition, for any map amendment, or binding condition or restriction amendment, notice of the public hearing shall be posted on the subject property for fourteen (14) consecutive days prior to the hearing, and notice shall be given by first-class letter at least twenty-one (21) days in advance to owners, **and the property addresses, if the property is not the owner's primary mailing address,** of all property addresses within a 500-foot radius of the subject property. In the event that the subject property adjoins land which is zoned Agricultural Urban (A-U), Agricultural Rural (A-R), Agricultural Natural (A-N), or Agricultural Buffer (A-B), notification shall be given by first-class mail to not only those properties **and addresses** within a 500-foot radius of the subject property, but to the next two (2) properties beyond those included in the 500-foot radius; but in no event shall notice be required for property more than twenty-four hundred (2,400) feet from the subject property for a zone change or variance request, or more than one (1) mile from the subject property for a conditional use request in conjunction with a zone change as allowed in Subsection (c) of this section. For any Council- or Commission-initiated map amendment, notice by first-class letter shall be given to all owners of property, **and the property addresses, if the property is not the owner's primary mailing address,** the classification of which is proposed to be changed, at least thirty (30) days prior to the public hearing.

6-4(c) CONDITIONAL USES AND VARIANCES ALLOWED AT THE TIME OF ZONING – The Planning Commission may hear and act upon requested conditional uses and variances associated with a zone change. If the Planning Commission should choose to hear a conditional use or variance request, the Planning Commission shall have all of the powers and responsibilities of the Board of Adjustment, as defined in Sections 7-6(a) and 7-6(b) of this Zoning Ordinance. All conditional use and variance applications shall be acted upon by the Planning Commission within ninety (90) days from the date of the application, unless postponed further by the applicant.

6-4(d) RECOMMENDATION OF COMMISSION FOR ZONING MAP AMENDMENT – Before recommending to the Lexington-Fayette Urban County Council that an application for amendment to the Zoning Map be granted, the Commission shall find that the map amendment is in agreement with the Comprehensive Plan adopted by the Commission; or, in the absence of such a finding, that:

- (1) The existing zoning classification given to the property was inappropriate and the proposed zoning classification is appropriate; or
- (2) There have been major changes of an economic, physical or social nature within the area involved, which were not anticipated in the Comprehensive Plan adopted by the Commission and which have substantially altered the basic character of such area.

The findings of fact made by the Commission shall be recorded in the minutes and records of the Commission. The Commission shall vote to recommend that an application for amendment to the Zoning Map be approved, approved with binding conditions or restrictions, or disapproved. A tie vote shall be subject to further consideration by the Planning Commission for a period not to exceed thirty (30) days, at the end of which, if the tie has not been broken, the application shall be forwarded to the Urban County Council without a recommendation of approval or disapproval.

6-4(e) RECOMMENDATION OF COMMISSION FOR TEXT AMENDMENT – After voting to recommend that an application for amendment to the text of this Zoning Ordinance be granted or denied, the Commission shall forward its recommendation in writing to the Lexington-Fayette Urban County Council.

6-5 FORWARDING OF THE PLANNING COMMISSION'S ACTION TO THE URBAN COUNTY COUNCIL – Within fourteen (14) days of the Commission's final action to recommend that a zone map amendment be approved, approved with binding conditions or restrictions, or disapproved, the development plan(s) and/or other plans filed in conjunction with the map amendment shall be certified by the Commission's Secretary as set forth in Section 21-4 herein, or else the final action of the Commission on the zone map amendment shall be null and void. Any further

consideration of the zone map amendment shall be treated as a new application and shall be reviewed as set forth herein. Upon certification of the plan(s), the Commission's Secretary shall forward its report in writing to the Urban County Council. This report shall include at least the application, legal description of the property, notification area map, staff report, and the findings of fact and conclusions of law and the recommendation of the Planning Commission, including any binding conditions or restrictions to be imposed as set forth in Section 6-7 below. Minutes of the Planning Commission public hearing shall be included in the final report whenever they are available.

**6-6 ACTION BY LEXINGTON-FAYETTE URBAN COUNTY COUNCIL ON ZONING MAP AMENDMENTS** –

The Lexington-Fayette Urban County Council shall take final action upon a proposed map amendment within ninety (90) days of the date upon which the Planning Commission takes its final action upon such a proposal. The Council shall not act upon a proposed amendment to the Zoning Map until it shall have received the written report from the Commission. Upon receiving the report, the Council may adopt the recommendation of the Commission without a public hearing or may elect to hold a new public hearing. In the event that the Council shall elect to have a public hearing, notice of such hearing shall be in the same manner as the notice required to be given under Section 6-4(b) herein. The Council shall allow testimony from members of the staff, the applicant, protestors, and any other interested citizens, and it shall allow parties to rebut the evidence presented by other parties, provided that the Mayor or presiding officer of the Council shall have the authority to limit repetitive testimony and to exclude irrelevant testimony or evidence. Regardless of whether or not the Council holds a public hearing, the Council may order a written transcript of the Planning Commission's hearing to be prepared for distribution to each Council member. In the event the Council shall order the preparation of a transcript, it shall be prepared at the cost of the applicant, certified by the Secretary of the Commission, and distributed to each Council member at least forty-eight (48) hours prior to second reading of the ordinance pertaining to the Zoning Map Amendment. It shall take a majority of the entire Lexington-Fayette Urban County Council to override the recommendation of the Commission, and it shall take a majority of the entire Council to adopt a zone map amendment whenever the Planning Commission forwards the application to the Council without a recommendation due to a tie vote.

**6-7 CONDITIONS TO GRANTING A ZONE MAP AMENDMENT** – Pursuant to KRS 100.203(8), Planning Commission or the Urban County Council may, as a condition to granting a map amendment, restrict the use of the property affected to a particular use, or a particular class of use, or a specified density within those permitted in a given zoning category; impose architectural or other visual requirements or restrictions upon development in areas zoned historic; and impose screening and buffering restrictions upon the subject property. In recognition that the aforementioned powers may be useful in accomplishing the purposes set forth in Section 1-3, but at the same time in recognition that such powers should be thoughtfully and sparingly used, the method whereby such restrictions or conditions may be imposed, modified, removed, amended and enforced is set forth below.

**6-7(a) CRITERIA AND TERMS** – A binding restriction or condition may be imposed whenever one (1) or more of the specifications of this Zoning Ordinance for the proposed zoning category, if exercised by the applicant, would impair the integrity and character of the area in which the subject property is located or adjoining areas, unless restrictions or conditions as permitted in this Article are imposed in addition to those imposed in the Zoning Ordinance. Such restriction or condition may include, but shall not be limited to, time limitations, requirements that one (1) or more things be done, or restrictions or conditions of a continuing nature, so long as the same are limited to the matters set forth in this section 6-7. No restriction or condition may be imposed which shall deprive the applicant of a reasonable use of the land or create an unnecessary hardship on the applicant.

**6-7(b) PROCEDURE** – Imposition of binding restrictions or conditions may be considered at any point in the Zoning Map Amendment procedure. However, before the Commission recommends such a restriction or condition or the Urban County Council adopts the same, it shall make findings of fact and conclusions of law which are supported by substantial and competent evidence; which are not arbitrary or capricious; and which demonstrate that the effect of the proposed Zoning Map Amendment on the public health, safety and welfare in the area in which the subject property is located and adjoining areas has been considered. The Council may also designate certain conditions or restrictions as amendable only by Council action. Any such condition or restriction so designated may only be amended, modified or removed by Council action as set forth under Subsection (c)(1) of this section. Conditions or restrictions not so designated may be amended, modified or removed by the Planning Commission as set forth under Subsection (c)(2) of this section. Only when the Urban County Council holds its own public hearing or reviews the record and the transcript of the Commission hearing may the Council impose a binding restriction or condition not recommended by the Commission, or modify or remove a restriction

recommended by the Commission or designate certain conditions as amendable only by Council action. Any binding restriction or condition finally imposed after completion of the Zoning Map Amendment process shall be included in the Urban County Council ordinance adopting the Zoning Map Amendment, a copy of which the Urban County Council Clerk shall furnish to the Divisions of Building Inspection and Planning.

6-7(c) AMENDMENT – Modification, removal or amendment of conditions or restrictions shall be as follows:

6-7(c)(1) RESTRICTIONS OR CONDITIONS DESIGNATED BY THE URBAN COUNTY COUNCIL – The Urban County Council shall have final authority to consider and act upon requests for modification, removal or other amendment of a duly imposed binding restriction or condition so designated by the Council at the time of their adoption.

6-7(c)(1)(a) FINDINGS REQUIRED – The request may be granted by the Council only if it is found that there has been a major change of an economic, physical or social nature on the subject property or within the area in which the subject property is located, which was not anticipated at the time the binding restriction or condition was imposed, and which has substantially altered the basic character of such area making the restriction or condition inappropriate or improper. The burden shall be on the applicant to establish said finding by a clear preponderance of the evidence.

6-7(c)(1)(b) PROCEDURE – The procedure for review, notice and action on requests to modify, remove or amend an imposed restriction or condition shall be the same as for a zone map amendment, except that a full public hearing by the Urban County Council shall be required in all cases. The Council's decision to modify, remove or amend a duly imposed binding restriction or condition shall be final action; and any person or entity claiming to be injured or aggrieved by that action may appeal to Fayette Circuit Court within thirty (30) days after such final action pursuant to KRS 100.347.

6-7(c)(2) ALL OTHER RESTRICTIONS OR CONDITIONS – The Planning Commission shall have final authority to consider and act upon requests for modification, removal or other amendment of all other restrictions or conditions in accordance with the procedure and requirements set forth in Subsection (c)(1) of this section, except that no Council action shall be required. In the case of a request to modify, remove or amend a Neighborhood Design Character Overlay (ND-1) zone restriction(s), the application shall follow the procedure as set forth above, but shall be reviewed by the Planning Commission for adherence to the requirements set forth in Subsection (c)(2)(a) of this section. In addition, notice shall be given to the members of the Urban County Council, to the Mayor and to the Council Clerk at least fourteen (14) days in advance of the public hearing. Members of the Urban County Council may appear and speak at the public hearing. The Planning Commission's decision to modify, remove or amend a duly imposed binding restriction or condition shall be final action, and any person or entity claiming to be injured or aggrieved by that action may appeal to Fayette Circuit Court within thirty days after such final action, pursuant to KRS 100.347.

6-7(c)(2)(a) FINDINGS REQUIRED FOR ND-1 OVERLAY ZONE – The request may be granted by the Planning Commission only if the request for modification, removal or amendment is found to meet the following:

- (1) The granting of the modification, removal or amendment to an ND-1 Overlay restriction will not adversely affect the public health, safety or welfare, will not alter the essential character of the overlay district, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the ND-1 Overlay restrictions. In making these findings, the Planning Commission shall consider whether:
  - a. The requested modification, removal or amendment arises from special circumstances that do not generally apply to land in the same ND-1 Overlay District;
  - b. The strict application of the provisions of the restriction 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 ND-1 Overlay restrictions from which relief is sought; and
  - d. The general intent and preservation goals of the ND-1 Overlay District are being met.

- (2) The Planning Commission shall deny any request for modification, removal or amendment to an ND-1 Overlay restriction arising from circumstances that are the result of willful violations of the restriction by the applicant subsequent to the adoption of the ND-1 Overlay zone from which the amendment is sought.

The burden shall be on the applicant to establish said finding by a clear preponderance of the evidence.

The decision of the Planning Commission shall be recorded in minutes and records and issued in written form to the applicant, the Division of Planning and the Division of Building Inspection to constitute proof of the change.

6-7(d) ENFORCEMENT – Binding restrictions or conditions imposed under this Article shall be enforced through subsequent development plans, subdivision plans, building permits, occupancy permits and other enforcement powers and shall be in addition to requirements imposed by such plans or permits and other laws or regulations.

6-7(e) JUDICIAL REVIEW – Imposition of binding restrictions or conditions pursuant to this Article shall be upheld on review if supported by substantial, reliable and probative evidence found within the record as a whole.

6-8 ACTION BY LEXINGTON-FAYETTE URBAN COUNTY COUNCIL ON TEXT AMENDMENTS – The Lexington-Fayette Urban County Council shall not act upon a proposed amendment to the text of this Zoning Ordinance until it shall have received the written recommendation thereon from the Planning Commission. It shall take an affirmative vote of a majority of the Lexington-Fayette Urban County Council to adopt the proposed amendment.

## ARTICLE 7

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### **BOARD OF ADJUSTMENT**

**7-1 ESTABLISHMENT** – The Board of Adjustment, as constituted at the time of the re adoption of this Zoning Ordinance, shall continue in power. There shall be seven members appointed by the Mayor with the approval of the Urban County Council, for four (4) year terms ending on July 1 of the designated year. The terms shall be staggered so that the terms of no more than two (2) members expire in any year. Vacancies on the Board of Adjustment shall be filled within sixty (60) days. If the vacancy is not filled within that time, the Planning Commission shall fill the vacancy.

**7-2 STAFF** – The staff to the Board of Adjustment shall be the Division of Planning of the Lexington-Fayette Urban County Government.

**7-3 GENERAL POWERS** – The Board of Adjustment may employ or contract with planners or other persons as it deems necessary to accomplish its assigned duties. 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 the provisions of this Zoning Ordinance. 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 witnesses prior to their testifying before the Board on any issue.

**7-4 PROCEEDINGS** – The Board of Adjustment shall 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.

The Board of Adjustment shall adopt by-laws for the transaction of business and shall keep minutes and records of all proceedings, including regulations, transactions, 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 Board. 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.

**7-5 NOTICE** – The Board shall fix a reasonable time for hearing an action or appeal and shall give public notice in accordance with KRS Chapter 424, as well as written notice as set forth more fully herein. Any person may appear at the hearing personally or by attorney. All applications shall be decided by the Board within sixty (60) days from the date of the application, unless postponement is granted pursuant to the Board's by-laws.

When an application is made for a variance, written notice shall be given at least fourteen (14) days in advance of the public hearing on the application to the applicant, Division of Building Inspection, and to the owner, and the property addresses, if the property is not the owner's primary mailing address, of every parcel of property and property address within two hundred (200) feet of the property to which the application applies. In the event that the subject property adjoins land which is zoned Agricultural Urban (A-U), Agricultural Rural (A-R), Agricultural Natural Areas (A-N), or Agricultural Buffer (A-B), notification shall be given by first-class mail to not only those properties and addresses within a 200-foot radius of the subject property, but to the next two (2) properties beyond those included in the 200-foot radius; but in no event shall notice be required for property more than twenty-four hundred (2,400) feet from the subject property.

When an application is made for a conditional use permit, administrative review, non-conforming use or structure appeal, or any other appeal, written notice shall be given at least twenty-one (21) days in advance of the public hearing on the application to the applicant, Division of Building Inspection, and to owners, and the property addresses, if the property is not the owner's primary mailing address, of parcels of property and addresses within five hundred (500) feet of the property to which the application applies. In the event that the subject property adjoins land which is zoned



Agricultural Urban (A-U), Agricultural Rural (A-R), Agricultural Natural Areas (A-N), or Agricultural Buffer (A-B), notification shall be given by first-class mail to not only those properties and addresses within a 500-foot radius of the subject property, but to the next two (2) properties beyond those included in the 500-foot radius; but in no event shall notice be required for property more than one (1) mile from the subject property. Notification shall also be given by first-class mail to any neighborhood or homeowner's association within the 500-foot radius of the subject property. Such association must be duly registered with the government through the Division of Planning and the Office of Geographic Information Systems (GIS). In addition, for any conditional use permit, notice of the public hearing shall be posted on the subject property for fourteen (14) consecutive days prior to the hearing.

All written notice shall be by first-class mail, with certification by the Board's Secretary or other officer that the notice was mailed. It shall be the duty of the applicant to furnish to the Board the address of each parcel of property, the name and address of an owner of each parcel of property as described in this section, the property addresses, where the property is not the owner's primary mailing address, and of any neighborhood or homeowner's association located within the required notice area. Records maintained by the Property Valuation Administrator may be relied upon to determine a list of the identity and those addresses address of said owner. In the event such property is in condominium or cooperative forms of ownership, ~~then the person notified by mail shall be~~ the president or chairperson of the owner group that administers property commonly owned by the condominium or cooperative owners shall also be notified.

7-6 SPECIFIC POWERS – The Board of Adjustment shall have the following powers:

7-6(a) 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 planning area of uses which are specifically named in this Zoning Ordinance, which may be suitable only in 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.

- (1) 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 (1) 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 conditional use permit, along with a reference to the specific section in the Zoning Ordinance listing the conditional use under consideration. Where the Zoning Ordinance establishes conditions for a conditional use, such conditions are the minimum requirements for the use and may not be waived or varied. The Board shall have power to revoke conditional use permits, 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 personam for such cost.
- (2) In approving a conditional use permit, the Board shall find that the public facilities and services, which will be needed, are or will soon be adequate to serve the proposed use. The Board shall give consideration to the road system, sewage disposal facilities, utilities, fire and police protection and other services and facilities as are relevant to the proposed use. The Board may establish conditions to ensure that the proposed conditional use will not have an adverse influence on the subject property or the surrounding neighborhood.
- (3) In approving a conditional use permit, the Board shall provide for the continuation of existing or proposed collector streets, and whenever possible, provide for the continuation of local streets.
- (4) When reviewing a conditional use application, the Board shall thoroughly address potential impacts to any identified environmentally sensitive area (ESA), geologic hazard area (GHA), as further regulated under the Subdivision Regulations, and/or Rural Service Area (RSA) prime soils as well as any other resources of special concern located on the property. The Board may require a more detailed site plan and more comprehensive associated information in order to assess and consider the future protection of such areas and resources. Such a site plan shall be prepared by a qualified professional well-suited to addressing a particular issue or concern of interest, including landscape architects, hydrologists, geologists, environmental engineers, naturalists, arborists, etc. The site plan shall show or describe

- protection measures, mitigation and enhancement of the ESA(s) and/or GHA(s) and their associated buffer areas, when they are, or could be, impacted by any alteration, use or activity within the ESA(s) and/or GHA(s) and their buffer areas pre-construction, during construction and post-construction. For any conditional use permit granted for a site containing any ESA(s) and/or GHA(s), the Board may impose intermediate certification and verification reviews during the pre-construction, active construction and/or post-construction phases of development in order to ensure protection of environmentally sensitive areas and environmental hazard areas during all phases of a project. Such certification or verification reviews may be conducted by either a public enforcement agency or a qualified private contractor, as deemed appropriate by the Board. In addition, when the proposed conditional use is located within the Rural Service Area (RSA), the Board may consider a requirement that alterations to the ESA(s) and/or GHA(s), such as non-habitable structures, non-habitable facilities, natural feature modification and paving installation associated with the conditional use permit be removed, and/or restored if the conditional use were to cease operation.
- (5) The granting of a conditional use permit does not exempt the applicant from complying with all other requirements of the law.
  - (6) 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 not revert to its original designation unless there has been a public hearing, with notice as required hereinbelow. 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 absence of contracts, that the main building or other improvement is under construction to a substantial degree or that prerequisite conditions involving substantial investment shall be under contract, in development or completed. When construction is not a part of the use, the term "exercised" shall mean that the use is in operation in compliance with the conditions as set forth in the permit.
  - (7) The Division of Planning 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 Division of Planning shall report the 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 hearings shall be furnished to the landowner at least one (1) week prior to the hearing. If the Board of Adjustment finds that the facts alleged in the report of the Division of Planning 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 Adjustment may authorize the Division of Planning 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.
  - (8) 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 Division of Planning, 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. Thereafter, said use, if it continues to meet the other requirements of the regulations, will be treated as a permitted use.
  - (9) The granting of a conditional use permit for a "functional family" shall be based upon application of the following considerations by the Board:
    - a. Members of the functional family will share a strong bond or commitment to a single purpose (e.g., religious orders);
    - b. Members of the functional family are not legally dependent on others not part of the functional family;
    - c. Members can establish a legal domicile as defined by Kentucky law;

- d. Members share a single household budget;
- e. Members prepare food and eat together regularly;
- f. Members share in the work to maintain the premises;
- g. Members legally share in the ownership or possession of the premises;
- h. Members demonstrate stability in the arrangement as opposed to transient living arrangements.

7-6(b) VARIANCES – The Board shall have the power to hear and decide on applications for variances that are defined as departures from dimensional terms of this Zoning Ordinance pertaining to the height, width, or location of structures, and the size of yards and open spaces where such departures meet with the requirements of this section. The Board may grant a variance to vary the lot coverage or floor area ratio in the Single-Family Residential (R-1A, R-1B, R-1C, R-1D and R-1E) zones or in the Two-Family Residential (R-2) zone, as these factors do not increase the permitted number of dwelling units. The Board may grant a variance for dimensional requirements only and may not vary the number of permitted signs, minimum number of required parking spaces outside of the Infill and Redevelopment Area, or other numeric requirements or limits of the zone. However, the Board may grant a variance to the maximum number of parking spaces allowed in a zone, or reduce the minimum number of parking spaces by fifty percent (50%) of the otherwise required number in accordance with Section 16-10 for projects within the defined Infill and Redevelopment Area. Any reduction granted by the Board shall account for and include all other allowable parking reductions. The Board may impose any reasonable conditions or restrictions on any variance it decides to grant, and may revoke a variance for noncompliance with the conditions thereof. The Board shall not have the authority to vary lot coverage, floor area ratio (except in the R-1A, R-1B, R-1C, R-1D, R-1E and R-2 zones, as permitted above), nor lot size; nor to vary the maximum height of a building containing residential units in the Neighborhood Business (B-1) zone, as these are methods of controlling population density used in this Zoning Ordinance.

7-6(b)(1) FINDINGS REQUIRED FOR VARIANCE – Before any variance is granted, the Board must find the following, which shall be recorded along with any imposed conditions or restrictions in minutes and records and issued in written form to the applicant to constitute proof of the variance:

- a. 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:
  - (1) The requested variance arises from special circumstances that do not generally apply to land in the general vicinity, or in the same zone;
  - (2) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
  - (3) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.
- b. 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.

7-6(b)(2) 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.

7-6(b)(3) A 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 further owner of the land, but it cannot be transferred by the applicant to a different site.

7-6(c) NON-CONFORMING USE AND STRUCTURE APPEALS – The Board of Adjustment shall have the authority to hear and decide appeals, as authorized in Article 4, concerning non-conforming uses and structures. If it approves the appeal, the Board must find, in addition to all requirements of Article 4, that the non-conformity of the use or the non-conformity of the structure would not be increased in scope or area of its operation, and that it would not have an adverse effect on existing or future development of the subject property or the surrounding area.

In approving an appeal, the Board may require appropriate conditions be met to ensure the health, safety, and welfare of the community and to protect the essential character of the surrounding area.

7-6(d) ADMINISTRATIVE REVIEW – The Board of Adjustment 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 the Division of Planning or the Division of Building Inspection in the enforcement of this Zoning Ordinance. Appeals under this section must be taken within thirty (30) days of the date of official action by the Division of Planning.

7-6(e) ALL OTHER APPEALS – Appeals to the Board 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 Division of Planning or the Division of Building Inspection in the enforcement of this Zoning Ordinance. 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 the Board a notice of appeal specifying the grounds thereof, and giving notice of such appeal to any and all parties of record. The Division of Planning shall forthwith transmit to the Board 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.

7-7 AUTHORIZATION – Based upon the official record of the Board's public hearing, a written report of the Board's action shall be prepared by the Division of Planning and shall be forwarded to any responsible Division. Such report shall constitute the authorization to the Division to issue a permit, provided the permit application meets all other requirements of law, or take other action as appropriate.

7-8 RECORDING – All variances and conditional use permits approved by the Board shall be recorded at the expense of the applicant at the office of the County Clerk.