



## **CITY OF CRESTVIEW HILLS, KENTUCKY ZONING BOARD OF ADJUSTMENT**

### **WHAT IS THE ZONING BOARD OF ADJUSTMENT?**

The Zoning Board of Adjustment is a five member quasi-judicial Board appointed by the City Council whose primary responsibility is to hear and review requests for variances and appeals on matters related to the City of Crestview Hills Zoning Ordinances. It is not a legislative body with the authority to amend ordinances or create new laws.

### **WHY DOES THE CITY HAVE A BOARD OF ADJUSTMENT?**

State Law allows local governments to have a planning board within their jurisdiction (KRS Chapter 100) and further requires that the government maintain a separate Board of Adjustment in addition to the planning board that determines cases in which lawful variances, conditional uses, and non-conforming uses can be granted by the Board.

### **WHAT IS A VARIANCE?**

The Zoning Board of Adjustment may in specific cases authorize variances to the zoning regulations where the Board determines that; (1) the variance will not adversely affect the public health, safety, or welfare; (2) the variance will not alter the essential character of the general vicinity; (3) the variance will not cause a hazard or a nuisance to the public; and (4) the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations.

A variance may include the modification of the height, yard setbacks, area coverage and parking regulations as may be required to secure the appropriate development of a parcel of land which differs from other parcels in the same zoning district by being of such restricted area, shape, or slope, that it cannot be appropriately developed without such modifications.

### **WHAT IS A NON-CONFORMING USE?**

A non-conforming use is one in which the Activity lawfully existed before the adoption or amendment of the Zoning Code, but did not conform to all of the regulations contained in the Zoning Code. Activity refers to the use of the property, not to the actual structure(s) on the property. Also, the use must have been a lawful use at the time. Such activities are usually considered “Grandfathered” uses within that Zone.

The Board may grant a property owner a change from one non-conforming use to another provided that the new non-conforming use is in the same or more restrictive classification.

## **WHAT IS A CONDITIONAL USE?**

A conditional use is a use which is essential to or would promote the public health, safety or welfare in one or more zones, but which would not impair the integrity and character of the zone in which it is located, or in adjoining zones, unless restriction on location, size, extent, and character or performance are imposed in addition to those imposed in the zoning regulations.

An example of a non-conditional use would be allowing a day-care facility in a residential zone. Before the Board can grant a conditional use, it must be cited in the City's Zoning Code as a "Conditional Use" within that particular zone. If the zoning code does not list the use as a "Conditional Use", then the Board may not allow the use. An example would be locating a factory within a residential zone, since it is not allowed by right or conditional use in the Zoning Code.

A public hearing is required before the Board may take final action on the conditional use request. Special notifications are required if the conditional use is adjoining or in a residential zoning classification.

## **WHAT IS AN ADMINISTRATIVE APPEAL?**

The Board of Adjustment can hear and decide cases in which the applicant believes there has been an error by the Zoning Administrator in the interpretation or enforcement of the Zoning Code. 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 any zoning enforcement officer.

The Appeal must be placed within 30 days after the applicant receives notice of action from the Zoning Administrator. The appeal shall specify the grounds for the appeal, and shall give notice of the appeal to any and all parties involved.

## **WHAT IS THE PROCESS FOR SUBMITTING AN APPLICATION TO THE ZONING BOARD OF ADJUSTMENT?**

1. **MEET WITH CITY STAFF:** Make arrangements to meet with the Zoning Administrator to discuss the issues that are the subject of your variance or appeal, and to clarify issues related to the application requirements. Staff may also be able to recommend alternatives that would eliminate the need for an appeal or variance. Have a sketch or drawing available that illustrates the relevant site development issues.
2. **PREPARE APPLICATION MATERIALS:** A complete zoning board of adjustment application must include the following documents:
  - ✓ A zoning board of adjustment application form signed by the applicant;
  - ✓ A site plan that accurately illustrates the nature of the variance or appeal

- ✓ A written narrative from the applicant outlining the reasons for the variance or appeal. The narrative **must** address the legal reasons by which the Board may grant a variance.

3. **SUBMIT APPLICATION:** Submit all the required application materials along with the application fee to the City of Crestview Hills, 50 Town Center Boulevard, Crestview Hills, KY 41017. The City accepts applications Monday through Friday from 8:30 am to 5:00 pm.

*The City Staff cannot accept an incomplete application.*

### **HOW MUCH DOES AN APPLICATION TO THE ZONING BOARD OF ADJUSTMENT COST?**

The fee for a Zoning Board of Adjustment application is \$500. The fee is non-refundable even if the application is denied.

### **WHAT ARE THE DEADLINES FOR SUBMITTING AN APPLICATION TO THE ZONING BOARD OF ADJUSTMENT?**

The City accepts applications for BOA Hearings at any time. The Board will normally schedule a meeting on an 'as needed' basis within 30 days of receipt of the application. This will provide sufficient time for public notice and advertisements.

### **WHEN AND WHERE DOES THE ZONING BOARD OF ADJUSTMENT MEET?**

The Zoning Board of Adjustment usually meets on an 'as needed' basis. The Board meets in the City Council Chambers at the City of Crestview Hills City Building located at 50 Town Center Boulevard, Crestview Hills. The Board generally meets at 5:30 pm.

### **WHAT FACTORS ARE CONSIDERED BY THE ZONING BOARD OF ADJUSTMENT IN REVIEWING A VARIANCE APPLICATION?**

In deciding the variance application, the Board shall apply the following criteria:

- (A) The Variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (B) Strict application of the zoning code provisions would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship; or
- (C) The circumstances are the result of actions of the applicant subsequent to the adoption of the regulations.

According to State Law, the Board of Adjustment **shall** deny any request arising from circumstances that are the results of willful violations of the zoning regulations.

## **WHAT IS UNNECESSARY HARDSHIP?**

The Board must find that the literal interpretation of the Ordinance would impose an unnecessary hardship on the applicant. While the term “unnecessary hardship” it is not specifically defined, the following arguments *do not* constitute unnecessary hardship and may not be considered by the Board.

- Property that cannot be used for its “highest and best use”
- A financial hardship
- A self created hardship

## **WHEN CAN THE ZONING BOARD OF ADJUSTMENT APPROVE A CONDITIONAL USE?**

The Board of Adjustment may grant a conditional use under the following conditions:

- The proposed use is listed as a conditional use within that zoning classification;
- The proposed use, at the particular location, is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood and the community;
- The proposed use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.

The Board of Adjustment may place appropriate conditions on the property owner in granting a conditional use. The law generally gives the Board latitude in determining appropriate restrictions; they could consist of items such as operating hours, screening, entrances/exits, parking, building materials and architecture, etc.

## **WHEN WILL THE BOARD OF ADJUSTMENT APPROVE THE CHANGE IN NON-CONFORMING USES?**

The Board of Adjustment may grant a change for a property from one non-conforming use to another non-conforming with the following considerations:

- The new non-conforming use shall generate less traffic than the prior non-conforming use;
- The new non-conforming use is of a nature which will emit less noise and air pollution than the prior non-conforming use; and
- The new non-conforming use will be more in character with the existing neighborhood than the prior nonconforming use, in that it is more in conformance with the comprehensive plan and with the other permitted uses in the same zoning district.

The Board cannot legally allow for the expansion of the non-conforming use beyond the scope and area of its operation at the time the regulation was adopted.

## **ADMINISTRATIVE APPEALS**

Any person aggrieved or any officer, department, or board of the City affected by an order, requirement, decision or determination made by an administrative official charged with enforcing the Zoning Ordinance may appeal the decision to the Board of Adjustment.

The appeal must be filed within thirty (30) days after the decision has been rendered by the city administrative official, by filing at the City offices. The Zoning Administrator will notify the Board of Adjustment members and schedule a hearing.

The Board's responsibility relative to an appeal is to determine whether or not the specific requirements of the zoning ordinance have been properly applied and enforced. The Board does not have the authority to amend ordinances with which the Board, either individually or collectively, disagrees.

### **HOW IS AN APPLICATION TO THE ZONING BOARD OF ADJUSTMENT PROCESSED AND APPROVED?**

1. **PUBLIC NOTICE IN THE NEWS PAPER:** Upon receiving a complete application, City Staff is required by State law to publish notice in the newspaper that a public hearing will be held on the request. The notice is published at least seven (7) days prior to the meeting of the Board.
2. **NOTICE SENT TO ADJACENT PROPERTY OWNERS:** State law requires that Staff provide written notice to the owners of all property located within 150 feet of the property that is the subject of the request. This notice is mailed at least ten (10) days before the meeting of the Board. All public input is presented to the Board.
3. **STAFF REPORT AND RECOMMENDATION:** City Zoning Staff will review the application and all relevant information and prepare a written report to the Board of Adjustment. The staff report will normally contain a recommendation; however certain cases may be presented without staff recommendation.
4. **CONSIDERATION AND VOTE BY THE BOARD:** The Zoning Board of Adjustment will hold a public hearing on each request and will provide opportunity for the public to speak in favor or opposition to the request. The applicant should be present to speak at the public hearing. After the close of the public hearing, the Commission will vote to either approve or deny the request. A majority vote of the five (5) board members present is required to approve any request submitted to the Board. (A quorum of the Board is a simple majority)

### **CAN THE DECISIONS OF THE BOARD OF ADJUSTMENT BE APPEALED?**

Decisions of the Zoning Board of Adjustment may only be appealed to Circuit Court for the jurisdiction. A petition for court review must be presented to the Circuit Court within

thirty (30) days after the decision of the Board. Decisions of the Board may not be appealed to nor overturned by the City Council.